

A Tangled Web of Deceit

A recent Employment Relations Authority determination – **Karina Knedler v. Flight Centre (NZ) Limited** [Unrep [2001] NZER 118] has reinforced the integral nature of trust and confidence in an employment relationship.

The Authority had before it an unusual however interesting set of facts which concerned the employee's lack of honesty during the course of the pre-employment communications with the prospective employer.

At the time of applying for a position with the Flight Centre in Invercargill, Ms Knedler was asked to complete a Flight Centre application form which required that she enter details of her current employer and previous employment. Ms Knedler did not write anything into the section regarding "current employer" and wrote "Curves" down as her previous employer. The application form contained a declaration which provided:

"Flight Centre Limited reserves the right to summarily terminate your employment if you have misrepresented fact in this disclosure statement . . ."

Ms Knedler was subsequently offered and accepted the full-time position with Flight Centre and commenced employment on 31 August 2009 and performed her work satisfactorily.

However on 16 September 2009 Tracey Brown, Team Leader of Flight Centre Invercargill, received a number of text messages from a family friend who worked at Pak 'n Save asking whether Ms Brown had a new staff member called Karina who had previously worked at Pak 'n Save. The Authority summarised the events as follows:

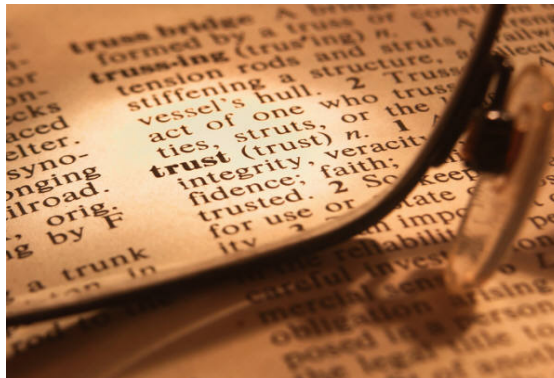
"Ms Brown knew nothing of Ms Knedler's previous employment there so it took several text messages and a discussion before it became clear to her that the family friend was referring to Ms Knedler. Next morning Ms Brown went to Pak'nSave with a photo of Ms Knedler and the family friend confirmed it was the person who had been working at Pak'n'Save. Ms Brown spoke to Pak'n'Save's security guard (John Adcock) and was taken to see the operations manager who took her through to meet with the owner/operator Bryan Dobson. From these exchanges Ms Brown gathered the following story (as set out in a later memo):

"She [Ms Knedler] was employed there as a duty manager with the roster of 4 days on and 4 days off. After she started she told them that she had found a lump on her leg and needed to get it checked, this lead to getting it removed eventually. They said they felt sorry for her regarding this but she seemed to be coping well with it. Then she came to them saying she had had a scan and they found a lump on her back and then 5 lumps in her breast 2 in one and 3 in the other one, she was very upset by this. She told them they had to be removed and had was undergoing chemo.

On the 10th August she called in sick and this was the day that we offered her the job. Then she told them she had been accepted to have the operation in Dunedin and was going up on the 24th August (the day she was flying to Christchurch for us for training). She asked them if they were willing to give her time off and keep her job open for 3 months while she had the operation and recovered from the surgery. They gave her this time off.

She had told them that she would be having the op then coming home for a week and back to have the reconstruction surgery done.

They said that she never actually resigned from her job as she asked to have the 3 months off. They also said they employed someone else to cover on a temporary basis until Karina returned."



Ms Brown then met with Ms Knedler in an informal setting where she told Ms Knedler how much she valued trust and honesty and ultimately advised her of the information she had received from Pak 'n Save. There was a conflict in evidence at the Authority hearing as to how Ms Knedler initially responded however the Authority (not surprisingly!) accepted Ms Brown's evidence:

" . . . that Ms Knedler said that she did two shifts of four days temping at Pak'n'Save; that there were contractual issues with Pak'n'Save; that she finished in July; that there had been cancer taken off her leg in July; that she left Pak'n'Save because of too much rumour and gossip; and that she did not include Pak'n'Save on her CV as it was a short term job and company policy precluded references for staff with less than 12 month's service."

Ms Brown then told Ms Knedler that she was aware that contrary to the representations Ms Knedler had made that Ms Knedler had in fact signed a contract with Pak 'n Save in December 2008 commencing a full time role as Duty Manager.

Later that day Ms Knedler told Ms Brown:

“. . . that she had left Pak'nSave for lifestyle reasons and because the job was not for her; that there had been lots of rumours about operations and chemotherapy; that Mr Dobson (Pak'nSave's owner/operator) had made her life a living hell over a contractual issue; and that she had tendered her resignation officially at Pak'n'Save well before starting at Flight Centre.”

Subsequent to this Ms Knedler provided Flight Centre with a copy of a letter of resignation dated 3 August 2009 which she alleged she had given to Mr Dobson in August 2009.

As if Ms Knedler's representations about Pak 'n Save were not enough, Flight Centre also found out that the individual whom Ms Knedler had specified as a referee from her previous employment at Curves was in fact a friend of Ms Knedler's and that both women reported directly to the owner.

Not surprisingly Flight Centre initiated a formal disciplinary process requiring Ms Knedler to respond to *“possible breaches of honesty, trust and confidence arising from her failure to disclose her employment with Pak'n'Save and misrepresenting her referee's position with Curves . . . ”*. Ms Knedler's responses during the course of the disciplinary process were:

“Ms Knedler said that she had resigned from Pak'nSave on 3 August 2009 before she had applied for the Flight Centre position; she denied telling Mr Dobson that she had breast cancer and asking for 3 months leave without pay; she denied sending the text messages about breast cancer seen by Ms Brown; she said that she had returned Pak'nSave's property to Mr Dobson; she said that there were employment issues with Mr Dobson causing him now to jeopardise her subsequent employment; she said that she had told Ms Bakker that the employment was less than 12 months duration and not full-time and Ms Bakker advised her that it was not necessary to include details of short term employment; she explained that was why she also did not mention the Pak'nSave employment when asked by Ms Brown and Mr Parke during the ISA; she said that Ms Dudley was known to her, that they were workmates and that Ms Dudley was promoted and was not a close friend despite being invited to her wedding (the invitation had been mentioned in emails); and she said in response to a comment about discrepancies in the date of an operation to remove a lesion on her leg that she got confused over dates and should not be expected to remember exact dates off the top of her head.”

Ultimately Flight Centre reached a decision to dismiss Ms Knedler after considering that she had *“breached honesty and trust and confidence that must exist in an employment relationship with Flight Centre”*.

In reaching this decision that Flight Centre's actions in dismissing Ms Knedler were justified the Authority noted the following:

“Mr Parke rejected Ms Knedler's explanation that she had mentioned her Pak'nSave employment to Ms Bakker who then told her it was not necessary to include any reference to it in her application. That is the conclusion that any fair and reasonable employer would have reached. It was Ms Bakker's job to properly inquire into Ms Knedler's employment history. Her notes reflected her properly discharging these responsibilities. In addition Mr Parke relied on his and Ms Brown's recollection of what they had been told during the ISA by Ms Knedler about setting up home in Invercargill rather than working. Mr Parke concluded that Ms Knedler had misled them about her employment history. That too is the conclusion that any fair and reasonable employer would have reached.

Mr Parke did not accept Ms Knedler's explanation about the circumstances of her departure from Pak'nSave. He noted the change in her story about the nature of the employment, as reflected in Ms Brown's notes of the 17 September meeting. There were different dates on different occasions given by Ms Knedler in relation to her surgery which did not match the medical records she had supplied. Pak'nSave's actions especially requesting the return of their property only after Ms Knedler's employment with Flight Centre came to their attention was consistent with her still being employed there (although on leave without pay) while working at Flight Centre. In light of these circumstances any fair and reasonable employer would have rejected the accuracy of Ms Knedler's explanations and concluded (as did Mr Parke) that she was still employed at Pak'nSave while working for Flight Centre.

In the end Mr Parke felt he did not have to reach any conclusions about whether Ms Knedler's referee was a work colleague or her direct supervisor.

These matters led Mr Parke to conclude that Ms Knedler's honesty and trustworthiness were brought into question and that the trust and confidence that Flight Centre needed to have in Ms Knedler had been irreparably damaged. These are conclusions that any fair and reasonable employer would have reached. . . .”

While it would be extremely unlikely that employers would commonly be faced with such duplicitous behaviour on an employee's behalf, this determination has demonstrated that *“trust and confidence”* is crucial to any relationship and that in circumstances where an employee acts in such a way as to breach trust and confidence this may constitute serious misconduct justifying summary dismissal.