

NZPSPLA 004185 / 2017

**IN THE MATTER OF**

A complaint under s 74 of The Private Security Personnel and Private Investigators Act 2010

**BETWEEN**

**BILL FROST**

Complainant

**AND**

**JOSEPH ANSTIS**

Certificate Holder

**HEARD** by telephone on 17 July 2019 and 12 August 2019

**APPEARANCES**

Bill Frost, complainant  
Joseph Anstis, certificate holder

**DECISION**

[1] Mr Frost has filed a complaint on behalf of BDR Security, Mr Anstis's former employer. Mr Frost says Mr Anstis is guilty of misconduct by:

- Purchasing items for personal use on company accounts without prior approval,
- Running up several hundred dollars worth of consumable goods on company accounts prior to ceasing employment which were not returned and were not used on jobs.
- Obtaining wages to which he was not entitled by advising his employer he was not resigning when he had no intention of returning to work and had already accepted another job.
- Not returning all company property when he ceased employment.

[2] Mr Anstis accepts he left his job at BDR Security without giving notice. He also accepts that he purchased personal items on the company accounts without prior approval. However, Mr Anstis says this was not always required and that he expected the amounts involved to be deducted from his wages. He denies all the other allegations made against him. He also says that he is a skilled and experienced security worker and he has had no prior complaints against him. Therefore, even if the allegations are established his certificate should not be cancelled or suspended.

[3] The issues I need to decide are:

- Did Mr Anstis improperly purchase items on company accounts without prior approval?
- Did Mr Anstis purchase consumables on company accounts that were not returned when he left and were not used on jobs?
- Did Mr Anstis improperly obtain wages by wrongly saying he had not resigned when he had accepted another job?
- Did Mr Anstis fail to return company property when he left his job?
- If any of the above are established do they amount to misconduct?
- If so, what should the penalty be?

**Did Mr Anstis improperly purchase items on company accounts without prior approval?**

[4] Shortly prior to ceasing work for BDR Mr Anstis purchased a complete alarm kit and a camera system costing several hundred dollars for personal use on the company accounts. He also purchased petrol for his personal vehicle on a company fuel card. Mr Frost advises that standard company policy required prior approval and a purchase or stock order to be obtained for personal goods to be purchased on company accounts and Mr Anstis did neither. In addition, only fuel for the company vehicle was to be purchased on the fuel card.

[5] Mr Anstis accepted he purchased some items for personal use on the company account and that company policy required prior approval. However, he considered he was not required to follow standard company policy because of potential difficulties he might have contacting the person from who he needed to seek approval.

[6] Mr Anstis also says that he thought it was acceptable to put his name beside any personal items, rather than obtaining prior approval, which he did in this case. He assumed that the value of the goods had been deducted from pay.

[7] Mr Anstis was clearly aware of the company policy and made no attempt to follow it. In addition, he included the notation of "Joe van stock" beside the purchases and not just his name or "Joe personnel". Notating the purchases as van stock meant that it would normally be assumed that the purchasers were to replace consumables and other stock kept in the company van, rather than a personal purchase.

[8] I do not accept Mr Anstis's explanation that he thought these expenses had been deducted from his wages as he did not receive a copy of his wage slip. The email string that has been provided in support of the complaint shows that Mr Anstis was sent a copy of his pay slip and that the purchases had not been deducted.

[9] Mr Anstis accepts that he purchased petrol for his private vehicle on the company fuel card which should only have been used for fuel for the company vehicle. However, he says that he left the receipt for this with the fuel card in the vehicle when he returned it and assumed his employer when then deduct the fuel.

[10] I conclude that Mr Anstis purchased personal items on company accounts and the fuel card without the required prior approval and without informing his employer that they were personal items and authorising deduction from his pay slip. He intentionally failed to follow established company protocols for no good reason. He did not provide any meaningful communication that these were personal purchases until the issue was specifically raised with him after he had ceased his employment. While he then accepted he needed to pay for them I consider his actions were designed to try and get his employer to pay for personal items.

**Did Mr Anstis purchase consumables on company accounts that were not returned when he left and were not used on jobs?**

[11] Mr Frost says that Mr Anstis purchased hundreds of dollars worth of consumables on company accounts that were neither used on jobs Mr Anstis did before he left, nor returned when he ceased employment. Mr Anstis said that a couple of the purchases replaced supplies or tools he had personally brought to the job and others were used for clients. He

advises he is unable to allocate goods to individual jobs as Mr Frost has refused him access to the company computer system.

[12] There is a grey area between what items are for personal use and what are for company purposes. Technicians, such as Mr Anstis were required to have some of their own tools and associated items when they commenced employment. If some of the tool parts, or consumables used in conjunction with them, wore out technicians could purchase replacement parts on company accounts. This is all Mr Anstis said he did.

[13] I accept some of the items purchased may fit within this category but that Mr Anstis's purchases in the weeks before he left exceeded what was acceptable or reasonable. I therefore conclude that Mr Anstis purchased consumables for his own personal use, or for jobs he took on privately, on his employer's account. However, the extend of these purchases were not as great as Mr Frost claims.

**Did Mr Anstis improperly obtain wages by wrongly saying he had not resigned when he had accepted another job?**

[14] Mr Anstis left work early on 11 April 2019 as he was unwell. He took unpaid leave on 12 April and on Monday 15 April left message with his employer to say that he dropped the company vehicle off with his lap top and other company items in it.

[15] On 17 April 2019 Mr Frost emailed Mr Anstis as they were processing wage payments and Mr Anstis had not completed his work record card which was required for payroll. In addition, as he had not formally resigned, Mr Frost was unsure of Mr Anstis's employment status so asked him if he had resigned. Mr Anstis emailed saying he did not intend on resigning or abandoning employment. His employer accordingly paid him an additional two weeks wages to which he would not be entitled if he had resigned.

[16] Mr Anstis did not return to work after 11 April but did not formally resign until an email sent to Mr Frost on 29 April 2019. In the resignation email Mr Anstis said he was resigning because he did not see himself getting back on the tools any time soon. However, by that date Mr Anstis had already started another security job.

[17] Mr Frost says that by 17 April when Mr Anstis advised he was not resigning, he already had a new job and had no intention of returning to work. He submits that Mr Anstis deliberately mislead his employer to obtain wages to which he was not entitled.

[18] Mr Anstis has been vague as to when he accepted and started the new job. In a direction I issued after he disconnected from the first hearing he was asked to provide confirmation of when he started his new job by way of either a pay slip or a copy of his contract or letter of offer from his new employer. He did not do this but offered at the second hearing to provide this information by the afternoon of 12 August. He again failed to provide this information and has still not done so, although he has subsequently provided further submissions.

[19] At the second hearing Mr Anstis accepted that he had applied for a new job some weeks earlier. He also said that he accepted the new job prior to 17 April and started the following week. I therefore conclude that by 17 April 2019 Mr Anstis had accepted a new job and had no intention of returning to work for BDR Security. He deliberately misled them by saying he needed leave for health-related issues in order to obtain wages to which he would not otherwise be entitled.

### **Did Mr Anstis fail to return company property when he left his job?**

[20] When Mr Anstis returned the company vehicle it contained his lap top and phone but no other company equipment usually kept in his van such as ladders, cables, spare parts and other consumables. Mr Frost was required to chase these up and it was not until 29 April that Mr Anstis emailed to advise these items could be picked up from his parents' house the following day.

[21] I accordingly accept Mr Frost's submission that Mr Anstis did not return the goods when he returned the company vehicle and put obstacles in the way of returning them. However, they were ultimately retrieved.

### **Do any of the above amount to misconduct?**

[22] Section 74(4) of the Act provides that it is a ground for a complaint if a certificate holder, such as Mr Anstis, has been guilty of misconduct or gross negligence in the course of his work as a security employee.

[23] Misconduct is defined in s 4 of the Act as:

*Conduct by a licensee or certificate holder that a reasonable person would consider to be disgraceful or conduct that contravenes this Act or any Regulations made under the Act.*

[24] The Authority has previously held that the use of word "disgraceful" was deliberate and used to indicate that misconduct must be at a reasonably high level.<sup>1</sup> Disgraceful is not defined in the Act but its dictionary definition is "shameful, dishonourable degrading"<sup>2</sup>.

[25] The Act further reinforces the high level of culpability required for a complaint to be established against a certificate holder by requiring any negligence to be gross. Negligence is defined as careless or lack of proper care or attention<sup>3</sup>. Gross is defined as serious, major or flagrant<sup>4</sup>.

[26] Mr Anstis has not specifically breached any of the provisions of the Act. Therefore, to fit within this ground of complaint his actions needs to either be conduct that could reasonably be considered disgraceful, constitute a major or serious breach of his duty of care, or amount to flagrant or serious carelessness.

[27] I have concluded that Mr Anstis purchased personal items on company accounts without the appropriate approval and obtained wages to which he was not entitled by saying he had not resigned when he had already accepted another job. The ultimate loss to the company run into several hundred dollars.

[28] Mr Anstis not only refused to comply with standard process but lied to his employer to obtain a financial advantage. He purchased several hundred dollars worth of personal goods on company accounts without indicating they were for personal use. At the time he did this he knew he was about to resign and his intention was to get his employer to pay for

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B <sup>1</sup> *Zindel v Haden*, PSPLA 8 November 2012

<sup>2</sup> The Concise Oxford Dictionary

<sup>3</sup> Ibid

<sup>4</sup> Ibid

personal goods which is equivalent to theft from his employer. This also amounts to an abuse of trust in the employment relationship. A reasonable person would consider such behaviour to be disgraceful. Mr Anstis is therefore guilty of misconduct.

### **What is the appropriate penalty?**

[29] Section 83 of the Act provides that misconduct or gross negligence is a discretionary ground for cancellation of a certificate. The effect of s 81 of the Act is that where misconduct has been established I may cancel Mr Anstis's certificate or, in addition to or instead of cancellation, I can:

- Suspend Mr Anstis's certificate
- Order that he undergo training
- Order that he work under supervision or work subject to certain conditions
- Bar Mr Anstis from applying for a licence or certificate for a set period
- Fine Mr Anstis up to \$2000
- Reprimand Ms Anstis

[30] There are no aspects of this complaint that call into question Mr Anstis's technical ability as a security technician. He has worked in the industry for 12 years and is an experienced and very competent technician and there is a shortage of his skills.

[31] By a narrow margin I do not consider the degree of Mr Anstis's wrongdoing is sufficient to cancel or suspend his certificate. It would not only penalise his new employer but would mean that Mr Anstis can no longer work in the only industry in which he is skilled and in which he has worked since he was 18.

[32] Mr Anstis needs to accept that his conduct was unacceptable. Other than not dealing with his resignation appropriately Mr Anstis still submits he has done little wrong. By in large he blames his previous employer for what happened. If a similar complaint is proved against him in the future his certificate will be in jeopardy.

[33] However, in this case I conclude that the appropriate penalty is a reprimand and a fine together with the publication of this decision. I accordingly order:

- a) Mr Anstis is formerly reprimanded
- b) Mr Anstis is fined \$1000.00

**DATED** at Wellington this 16<sup>th</sup> day of August 2019



P A McConnell  
**Private Security Personnel Licensing Authority**