

IN THE MATTER OF

A complaint made under s 73 of the Private Security Personnel and Private Investigators Act 2010 (the Act) against **Ms CD**

HEARD virtually on 9 February 2024

DECISION

[1] Mr PR says that Ms CD has harassed and discriminated against vulnerable people, performed illegal bag searches, and breached the Bill of Rights Act while working as a security guard at a shopping mall. He says this is both misconduct and a breach of Ms CD's certificate of approval.

[2] Ms CD denies she harassed vulnerable people or breached the Bill of Rights Act. She accepts that she misspoke when she advised some young women, she was legally entitled to search their bags. However, she denies she performed an illegal bag search. Ms CD considers the matters complained about were about internal operational procedures and were more appropriately dealt with as an employment issue.

[3] Mr PR was Ms CD's security supervisor at the time he filed the complaint. He advises he had laid a complaint against Ms CD with his employer but did not feel they were taking the matter seriously. He therefore filed his complaint with the PSPLA around the time he tendered his resignation.

[4] His complaint relates outlines two key incidents, one on 6 October when he alleges Ms CD harassed two vulnerable people and breached their human rights. The other occurred on 22 October when Mr PR alleges Ms CD breached section 21 of the Bill of Rights Act by unlawfully searching a girl's bag.

[5] The issues I therefore need to decide are whether Ms CD has breached her certificate of approval or is guilty of misconduct or unsatisfactory conduct by:

- Harassing and breaching vulnerable people's human rights on 6 October.
- Breaching the Bill of Rights Act and performing an illegal bag search on 22 October.

The 6 October incident

[6] Mr PR says that Ms CD approached two people advising them that she knew about their shoplifting and was watching them. He says this was not only contrary to internal employment policies but amounted to harassment and a breach of their human rights.

[7] Mr PR had previously sent a text message to Ms CD advising her that the man in question was on Auro for being drunk and disorderly and breaching trespass notices several times. He also advised he was a person she should keep a watch on.

[8] On 6 October Ms CD saw a shoplifting report from an adjacent retailer referring to the man and his female companion. When she saw them in the shopping centre later that day, she and a colleague remotely surveilled the couple. She then approached them and advised she was aware of the recent events at a nearby retailer and therefore security would be keeping an eye on them.

[9] Mr PR was unable to say why he considered Ms CD's actions amounted to harassment or a Breach of the Human Rights Act. At most, Ms CD may have acted contrary to her employer's standard processes not to approach people directly. This however is only an internal employment matter and is not a breach of Ms CD's COA. In addition, it falls short of the threshold required for unsatisfactory conduct or misconduct. This part of the complaint therefore fails.

The 22 October incident

[10] Ms CD was approached by the manager of one of the retailers in the shopping centre in relation to possible shoplifters. At the manager's direction she approached the three young women in question advising she wanted to look in their bags. She agrees she wrongly advised the young women that it was legal or the law for her to search their bags.

[11] Ms CD advises that after approaching them the young women complied with her request and opened their bags for her to look in. She did not touch their property or the individuals in question at any time and they left without any further incident or complaint.

[12] Ms CD accepts she was wrong when she told the young women she was legally entitled to search their bags. I accept that this was partly a matter of semantics as what Ms CD should have said was that she was legally entitled to ask if she could search their bags or to ask them to open their bags for inspection. Ms CD has learnt from her mistake and was able to clearly outline the appropriate way to deal with such situations in future.

[13] Given the background circumstances it was reasonable for Ms CD and the store manager to ask the young women to open their bags for inspection. I accept the wrong information Ms CD gave the young women raises questions about whether they voluntarily opened their bags. This however does not make Ms CD's actions a breach of s 21 of the Bill of Rights Act as Ms CD did not conduct an unreasonable search.

[14] Mr PR advised that it was against their company policy to get involved in bag searches or internal store security measures. Even if he is correct, breach of such an internal guideline is an HR issue and not a disciplinary matter for the Private Security Personnel Licensing Authority.

Conclusion

[15] Mr PR has exaggerated Ms CD's wrongdoings in his complaint and failed to substantiate his allegations with credible evidence. The two incidents of concern were dealt with as a training and employment matter and Ms CD continues to have the support of her employers.

[16] Mr PR filed the complaint because he did not consider his employers were dealing with the matter appropriately. This is not a proper basis to lay a complaint and I accept Ms CD's submission that Mr PR filed the complaint to get back at her for differences that had arisen between them in the workplace. If the Licencing Authority had been aware at the time the complaint was filed that Mr PR was not filing it on behalf of his employer it would not have been accepted.

[17] I conclude that Ms CD has not breached a condition of her certificate and she is not guilty of unsatisfactory, conduct or misconduct. The complaint is accordingly dismissed.

DATED at Wellington this 19th day of February 2024


P A McConnell

Private Security Personnel Licensing Authority