

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2024] NZERA 570
3267379

BETWEEN JORDYN ANTONIO-ROONEY
Applicant
AND AIR NEW ZEALAND LIMITED
Respondent

Member of Authority: Eleanor Robinson
Representatives: Simon Greening, counsel for the Applicant
David France, counsel for the Respondent
Investigation Meeting: 11 September 2024 in Auckland
Submissions and/or further evidence: 17 September 2024 from the parties
Determination: 27 September 2024

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Ms Jordyn Antonio-Rooney, claims that she was unjustifiably dismissed for serious misconduct by the Respondent, Air New Zealand Limited (Air NZL).

[2] Air NZL denies that Ms Antonio-Rooney was unjustifiably dismissed, and claims that she was justifiably dismissed after breaching Airport Security by using her security card to access unauthorised areas, and allowing an unauthorised person to also access unauthorised areas.

The Authority's investigation

[3] The Authority received written and, under oath or affirmation, oral evidence from the Applicant, Ms Antonio-Rooney.

[4] The Authority received written and, under oath or affirmation, oral evidence from the Respondent witness: Douglas Grant.

[5] Oral and written submissions were received from Mr Greening for the Applicant and from Mr France for the Respondent. Whilst I have not referred to all the submissions made by the parties, I have fully considered them.

[6] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

Issues

[7] The issue requiring investigation is whether or not Ms Antonio-Rooney was unjustifiably dismissed by Air NZL.

Background

[8] Air NZL is the flag carrier airline of New Zealand, operating scheduled passenger flights to domestic and international destinations. It operates in a highly regulated environment and security and safety are of paramount importance.

[9] Ms Antonio-Rooney was employed by Air NZL on 1 May 2023 in the position of Crew Enablement Support. Previously Ms Antonio-Rooney had been employed as a Flight Attendant, her employment with Air NZL having commenced on 5 May 2017.

[10] The role of Crew Enablement Support included general administrative and enablement tasks for Cabin Crew. Ms Antonio-Rooney had specific responsibilities to assist in the onboarding of new Flight Attendants to Air NZL which included speaking to new Flight Attendants about the application for, and requirements regarding, Airline and Airport IDs, visas and other necessary travel documentation.

[11] Ms Antonio-Rooney had been provided with an individual employment agreement which she signed on 22 May 2023 (the Employment Agreement) which stated the following at clauses 11, 12 and 24c:

Policies

11. Air New Zealand is a listed company operating in a highly regulated environment, and as such there are a lot of policies which all Air New Zealanders must abide by. You need to familiarise yourself with Air New Zealand policies, and remain current with those policies because they may change as our industry changes
12. Serious or repeated breaches of Air New Zealand's Code of Conduct policies or procedures could result in termination of your employment.

24.c. In the case of serious misconduct, your employment could end immediately without notice.

[12] Ms Antonio-Rooney had access to the Air NZL policies including the Code of Conduct via the Korunet, Air NZ's intranet site. The Air NZL Code of Conduct (the Code of Conduct) referred to five key principles, the first of which was to "Operate Safely, Responsibly and Reliably".

[13] Under the heading 'Airline Security' it stated:

Global security remains volatile and we must take our safety and security seriously. We must all have a high level of security awareness and consistently apply appropriate security measures to protect our customers, employees, assets, premises and property.

What this means for you:

- Always wear your security ID in secure areas ...
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- Vigilantly adhere to safety and security protocol, standards and practices at all times, and follow requirements for your area.
- Only bring unauthorised individuals into secure areas after appropriate security checks and authorisation . Always escort your visitors while they are on the premises – never leave them alone in secure areas.

[14] Mr Grant, Senior Manager – Enablement and Engagement/Cabin Crew, said Ms Antonio-Rooney was also bound by additional requirements because she worked at Auckland International Airport (the Airport) which is a highly regulated environment. Airport workers like Ms Antonio-Rooney whose role may require them to work in certain parts of the Airport are required to comply with the Auckland Airport Workers' Rules (the Rules).

[15] The Rules describe key parts of the Civil Aviation Rules, made under the Civil Aviation Act 1990, which apply to all workers in the Aeronautical Zone. This included Ms Antonio-Rooney.

[16] The Rules set out that security was: "everyone's responsibility" and that: "continuous vigilance and awareness are required on the part of all employees."¹ The Rules stated at 3.12.3:

Only workers with legitimate cause for the purposes of their employment may enter Customs Controlled areas. In particular, workers who do not have any legitimate reason to be in the processing areas used by Customs to risk assess and process arriving passengers and crew, cannot pass through these areas simply as a convenient exit route.

[17] Ms Antonio-Rooney was required by the Rules to have a Civil Aviation Authority Airport Identity Card (CAA Card) which has a red background and is issued by the Civil

¹ The Auckland Airport Workers' Rules at 2.2.4.

Aviation Authority (CAA) and an Auckland Airport CEM Access Card (AIAL Card) which has a purple background and is issued by Auckland Airport. Ms Antonio-Rooney also had an Air NZL Identity Card.

[18] The CAA Card and the AIAL Card are strictly controlled security clearance cards, which permit a worker to have access to certain secure areas of the airport including airside, which they need to access for legitimate work purposes.

[19] Mr Grant explained that some airport workers are issued with a CAA Card and an AIAL Card that allows them to bypass standard security controls while working. The AIAL Card is also a swipe card which allows the worker to move through controlled doors within the airport.

[20] He said access to airside areas is not automatically granted by virtue of employment at the airport. Before being granted a CAA Card and an AIAL Card, employees are required to be vetted, trained and approved,

[21] The Air NZL Identity Card is renewed every three years. In order for it to be renewed an Air NZL employee is required to complete computer-based training which describes airside areas. It also serves as an access swipe card allowing the holder to access Air NZL property at the airport and at Air NZL locations.

[22] Mr Grant said that parts 3.8, 3.9, and 34.10 of the Rules cover the authority to Access Airside Areas, and the use of CAA and AIAL Cards.

[23] An 'Airside Area' is defined in Part 9 of the Rules as " those parts of the [Auckland International Airport] comprising the Airfield Airside Area and Terminal Airside Area."

[24] The 'Terminal Airside Area' is defined in the Rules as including "those parts of the International Terminal Building" which have been declared as a "Security area by the Director of Civil Aviation pursuant to section 84 (1) of the Civil Aviation Act 1990" and also parts "within the Customs Controlled Areas licenced by Customs under s 59 of the Customs Act 2019."

[25] The Rules state that:

3.8.1 Workers must not enter an Airside Area unless they are required to do so in the course of their legitimate and approved airside work duties and are in possession of a valid CAA Airport Identity Card visibly displayed above the

waist in the front of their outer garments and an Auckland Airport CEM Access Card.²

3.8.3 The authority of workers to be in Airside Areas is limited to the times and areas workers need to access in order to carry out the duties related to their role. Workers cannot enter or remain in an Airside Area when not required to be there for the purposes of the Workers role.

3.9.4 Tailgating is not allowed.

[26] Similar to the provision in the Code of Conduct, the Rules also have reference to visitors and state:

3.10.2 Workers escorting any visitor airside must provide a security, biosecurity and health and safety briefing...

3.10.2a You must remain with your escort at all times.

3.10.2c You must go through Avsec security screening before accessing any sterile areas.

3.10.2e You must not let a person through a security door/gate or allow a person to tailgate through a security door/gate after you.

[27] Ms Antonio-Rooney confirmed that she had received training including full security training when she worked as part of Flight Crew, and since then had maintained training requirements by completing online training modules. There were also regular email communications on aspects of security training, but she said she found it difficult to read all of these because of the volume.

[28] At the time of the incident on 23 June 2023 Ms Antonio-Rooney said she was undertaking an application process to renew her CAA Card. This included attending computer based learning modules on security requirements.

Events 23 June 2023

[29] Ms Antonio-Rooney said that on 23 June 2023 she was on annual leave and travelling from Auckland to Australia on a 9.00 a.m. flight for a family celebration. Travelling with her was her Auntie.

[30] On arrival at Auckland Airport (the Airport) Ms Antonio-Rooney said she and her Auntie checked in for their flight at the self-service kiosk and were issued with boarding passes. This was at 7.46 a.m. They checked in two bags at 7.53 a.m. and proceeded to the main Customs area.

² Above n1 at 3.8.1.

[31] Ms Antonio-Rooney said there was a large queue waiting in the Customs area so she decided to detour to the IFS (the Crew Room) to check if a passport for a crew member had arrived. She said this was urgently required in connection with, and for the purposes of, undertaking her duties in cabin crew enablement.

[32] Ms Antonio-Rooney said she told her Auntie to accompany her through the secure access door. When questioned about her reason for doing so rather than leaving her Auntie waiting in the queue, Ms Antonio-Rooney said her Auntie was having a panic attack so she did not want to leave her alone.

[33] Mr Grant said the Air NZL records showed that Ms Antonio-Rooney used her AIAL Card at 07.57 a.m. to swipe through an access point, IF187. This is situated down a corridor leading away from the International Departures Hall with a sign above it which states: "Operating Air Crew/Staff". The corridor is besides the area where passengers queue for Customs Passport Control.

[34] In accordance with the Rules, access through the IF187 entry is authorised only for workers on duty who hold valid AIAL Cards and have a legitimate reason to pass through the doors for work purposes.

[35] Mr Grant said he understood that after she had passed through the IFS doors, Ms Antonio-Rooney allowed her Auntie, an unauthorised person, to tailgate her through the doors into the restricted area for operating staff only.

[36] After passing through IF187, Ms Antonio-Rooney said she followed a pilot through the door he had held open for her, IF186. She said she did not swipe her access card due to the pilot holding the door open for her. She said this had not been a deliberate act, but an oversight on her part.

[37] Mr Grant said it is the employee's responsibility to swipe their access card even if someone is holding a door open for them.

[38] Ms Antonio-Rooney said she entered the IFS room, the Inflight Service Room, to check on the crew member's passport, and left her Auntie alone in the corridor outside, a secure area.

[39] After checking the status of the crew member's passport, Ms Antonio-Rooney used her AIAL Card to swipe and pass through door IF183 which provided access to a short glass

corridor, which leads to security, bypassing the Customs area desks. Ms Antonio-Rooney allowed her Auntie to tailgate her through the door.

[40] Ms Antonio-Rooney said she believed the door would lead her back to the Customs line. However the door did not provide direct access to the Customs line.

[41] Mr Grant said the glass corridor is not currently in general use, but it has from time to time been used to enable Air Crew when on duty to bypass Customs/Immigration and pass directly to Security. These doors provide the one-way air lock for entering the Airside area and prevent pass back from Airside to Landside.

[42] Mr Grant said a sign marks door IF183 as an off-limits area with a sign saying:

SECURITY AREA/CAA/ACCESS PROHIBITED – AUTHORISED PERSONS ONLY/AIRPORT IDENTITY CARDS MUST BE DISPLAYED/UNAUTHORISED PERSONS ARE LIABLE TO BE REMOVED OR ARRESTED/CIVIL AVIATION ACT 1990 – PENALTY 3 MONTHS IMPRISONMENT OR \$2,000 FINE/DIRECTOR OF CIVIL AVIATION

[43] Mr Grant said that door IF183 has a glass window. It would have been clear to Ms Antonio-Rooney and her Auntie walking along that corridor that, upon exiting door IF183A, they would have bypassed the Customs Passport Control and they would be right at the front of the security screening queue, which was straight ahead of them as they exited the door.

[44] Ms Antonio-Rooney allowed her Auntie to tailgate her again, through door IF183A.

Exiting the secure area

[45] Upon exiting the glass corridor, Ms Antonio-Rooney said she approached and asked a Customs Officer where she should queue for Customs.

[46] Whilst she was still speaking to that Customs Officer another Customs Officer came up to her and asked for an explanation. Ms Antonio-Rooney explained that she had mistakenly come through the wrong door and was asking how to return to the Customs line. She said the second Customs Officer was abrupt and rude.

[47] Seeing the Airport Manager walking towards her, Ms Antonio-Rooney said she approached him to offer an explanation for the situation. She had clarified that she was a staff member traveling on a staff pass and had no intention of by-passing Customs. She explained that her Auntie was travelling with her and they had mistakenly gone through the wrong door.

[48] Ms Antonio-Rooney said the Airport Manager listened to her explanation, discussed the AVSEC (Aviation Security) ID policies and she admitted she should have been more aware due to her role in cabin crew enablement. She said the Airport Manager mentioned that the Airport held security courses regularly and suggested that she could attend one to rectify the situation.

[49] She then returned to the Customs queue and subsequently boarded her flight to Australia.

Following the incident

[50] Ms Antonio-Rooney said after she returned from leave, she met with an ETU Union Representative to discuss the incident. He provided her with reassurance, noting that other Air NZL employees had retained their jobs despite breaches of Air NZL's Code of Conduct and airport security protocols, giving examples of crew members who had done so but not been dismissed.

[51] Mr Grant said he became aware of the events concerning Ms Antonio-Rooney's actions on 23 June 2023 when the Senior HR Manager notified him of the incident via email. At that time Ms Antonio-Rooney was transferring to his area of responsibility as part of a minor structural change.

[52] The Senior HR Manager stated in the email that she and the Commercial and Operations Performance Manager had been notified of the event by the Cabin Crew Manager who had been at IFS on the morning of the event, and been present when the Airport Manager reported his concern about Ms Antonio-Rooney's actions to Air NZL Crew Management.

[53] At Auckland International Airport the airside of the Airport can only be accessed by travelling customers after they have cleared Customs Passport Control and AVSEC security screening. As Ms Antonio-Rooney was a travelling customer on 23 June 2022, Mr Grant said that she was only permitted to access airside areas which were public facing. She was not permitted to enter any security areas or restricted airside areas, which were exclusively for operating staff.

[54] Mr Grant explained that it was upon exiting Door IF183A that Ms Antonio-Rooney and her Auntie interacted with the Airport Manager and other AVSEC staff members who questioned their authority to enter the security screening area through door IF183A as travelling customers. The AVSEC staff confiscated Ms Antonio-Rooney's AIAL Card.

Suspension

[55] Ms Antonio-Rooney was invited to attend a meeting on 27 June 2023, with a support person if she wished, to discuss a proposal to suspend her on full pay whilst Air NZL conducted an investigation into what had occurred on 23 June 2023. In regard to reason for the workplace investigation the letter stated:

... We have received information from the New Zealand Aviation Security Service that you allegedly bypassed New Zealand Customs using your airport security card to access the crew lane coming through IF183A. In addition, you allowed a buddy travelling with you to tail-gate you through the door. On questioning by New Zealand Customs service you then told them that you were paxing Air New Zealand Aircrew.

If these allegations are substantiated, this may amount to a breach of multiple company policies. ...

[56] The letter also noted that Ms Antonio-Rooney's airport security card had been retained by AVSEC. Since Ms Antonio-Rooney had been on annual leave travelling with her Auntie, Mr Grant said there would be no reason for Ms Antonio-Rooney to use her CAA Card or her AIAL Card when on holiday. In fact that was prohibited.

[57] Mr Grant was accompanied at the meeting by Katy Lloyd, People Specialist Cabin Crew. Ms Antonio-Rooney attended the meeting without a support person and provided her comments on whether or not she should be suspended.

[58] Ms Antonio-Rooney said she had not considered she needed a support person at the meeting because of the comments made to her regarding retraining. She had agreed to the suspension proposal.

[59] Mr Grant said he considered the comments made by Ms Antonio-Rooney following the meeting, however he considered her presence in the workplace to be inappropriate whilst he investigated the incident, given that the issues related to safety and security. This was explained in the letter dated 28 June 2023 sent to Ms Antonio-Rooney confirming her suspension:

As explained to you, the reason for the suspension is for us to undertake a workplace investigation in relation to these concerns, and I consider your presence in the workplace may be inappropriate while I investigate the concerns as the concerns relate to matters that potentially impact safety and security, and additionally in the absence of you holding an airport security card.

[60] Mr Grant said that after the meeting he commenced investigating the incident, seeking more information including Ms Antonio-Rooney's swipe card access reports for 23 June 2023; and CCTV footage of Ms Antonio-Rooney and her Auntie tailgating a pilot through door IF186.

[61] Mr Grant said he was unable to view the CCTV footage of Ms Antonio-Rooney and her Auntie exiting door IF183A into the airside area because Customs was not able to provide their video footage. Instead they provided screenshots which he viewed. The screenshots, together with screenshots of the CCTV footage which showed Ms Antonio-Rooney and her Auntie tailgating the pilot through door IF186, were provided to Ms Antonio-Rooney on 5 July 2023.

[62] On 5 July 2023 Mr Grant sent Ms Antonio-Rooney a letter inviting her to attend a disciplinary meeting. Ms Antonio-Rooney was invited to have a support person or representative with her at the meeting. All the information and documents on which Air NZL was relying for the investigation process were sent to Ms Antonio-Rooney with the letter. These included the CCTV screenshots and statements from the Senior Customs Officer and the Airport Manager with whom Ms Antonio-Rooney had had interactions on 23 June 2023.

The Disciplinary Process

[63] Mr Grant said the letter dated 5 July 2023 explained that Air NZL had four key concerns or allegations which were set out in the letter and summarised as:

- a. Ms Antonio-Rooney may have used her CAA Card and/or her AIAL Card and/or her Air NZ Identity Card to allow an unauthorised member of the public through security areas;
- b. Ms Antonio-Rooney may have used her CAA Card and/or her AIAL Card and/or her Air NZ Identity Card to access a security area for personal reasons and not for the purposes of her role;
- c. Ms Antonio-Rooney may have been dishonest about her position at Air NZ and for the purpose of her travel when speaking to Air NZ's stakeholders;
and
- d. Ms Antonio-Rooney may have breached the Staff Travel Policy by using her CAA Card and/or her AIAL Card and/or her Air NZ Identity Card to take advantage of her position for personal gain.

[64] The letter advised Ms Antonio-Rooney of the possible consequences if her actions were found to be substantiated:

If any of the above allegations set out in this letter are substantiated, your actions may amount to serious misconduct which could result in disciplinary action being taken in accordance with Air New Zealand Group Disciplinary Policy, up to and including summary dismissal for serious misconduct.

[65] On 7 July 2023 Mr Grant and Ms Lloyd met with Ms Antonio-Rooney to hear her responses to the allegations. A People Specialist was present to take notes. Mr Grant said Ms Antonio-Rooney provided a fulsome statement during the meeting, a copy of which was emailed to him following the meeting.

[66] Ms Antonio-Rooney's feedback had included that it was a genuine mistake and her written statement set out that she took full responsibility: "... for the slip up and allowing my buddy to come to IFS with me". She also stated:

I now acknowledge and deeply feel a lot of shame for my errors and poor decision-making during staff travel, but I feel that overall, my trust is very recognizable ...

[67] During the following week and a half Mr Grant said he carefully considered Ms Antonio-Rooney's feedback, but upon consideration, he did not accept that what Ms Antonio-Rooney had done was accidental.

[68] He considered that she had engaged in a total number of 9 security breaches including taking a member of the public into an unauthorised area. Her behaviours were also considered significant by the New Zealand Customs Service and the Auckland Airport company, both of which advised they would be conducting their own investigations.

[69] Mr Grant said he concluded Ms Antonio-Rooney had used her position with Air NZ and her access rights to gain an advantage to circumnavigate the normal process when travelling because the Customs Hall was busy, and she and her Auntie were running late.

[70] He said this caused him to have significant concern in the importance Ms Antonio-Rooney had placed in her responsibilities as an employee. He considered that given her past and current work experience, she should have had a greater awareness for the rules than most, yet she had still chosen to break the rules.

[71] On 18 July 2023 Mr Grant sent Ms Antonio-Rooney a letter setting out his findings and the proposed disciplinary outcome. In the letter he set out that his preliminary view was that the first, second and fourth allegations were substantiated, but the third allegation was not.

[72] In relation to the first two allegations, his preliminary view was that her conduct amounted to serious misconduct, which called into question Air NZL's ability to trust her in the future, and have trust and confidence in her ability to follow its policies and procedures. He also notified Ms Antonio-Rooney that he had considered alternatives, but his preliminary view was that dismissal without notice might be the appropriate outcome.

[73] The letter set out in table form and some detail the allegations, Ms Antonio-Rooney's responses, Mr Grant's views, and his decision. The letter concluded:

Proposed Outcome

Considering all the information that I've gathered in the conduct of this disciplinary investigation, including the information above, I have to consider what an appropriate outcome is.

When considering the outcome, I have taken into account:

- You have admitted that you made a mistake allowing a member of the public, your buddy [Auntie] to tailgate you through at least three (3) secure doors, of which two (2) are Airside secure doors at AIAL. You said it was a silly error and did apologize.
- Tenure, you have worked here for approximately 1 year in the role of Cabin Crew and Crew Enablement Support and before this, as a Flight Attendant for five years, so should have a clear understanding of our Airside security resources and conditions of Access cards.
- The fact that you went to the International Departure Hall on the morning of 23 June 2023 knowing this was the correct path to take and on seeing the lines of passengers as per my findings above, decided to take a short cut through at least three (3) security doors of which two (2) were Airside security doors to bypass the lines whilst you were on staff leisure leave which resolved in multiple breaches of security.
- You said you hadn't travelled for a while and weren't familiar with the doors at AIAL and the process. You said you were also distracted as you said your Aunty was experiencing a panic attack.
- The seriousness of allowing a member of the public to go airside with you and the resulting Auckland Airport Worker Rules breached.
- The seriousness of taking a route that skipped the New Zealand Customs line taking you to the front of the New Zealand Security (AVSEC) line.
- The seriousness of the impact that your judgement has had on or has the potential to have on the airlines brand and the subsequent investigation in relation to allowing a member of the public through Airside.

The serious misconduct that I have found that you have committed calls into question my ability to trust you going forward to have the trust and confidence in your ability to conduct yourself in accordance with our policies and procedures.

On the basis of the above, I have found the preliminary view that dismissal may be an appropriate outcome.

[74] Mr Grant invited Ms Antonio-Rooney to meet with him and Ms Lloyd and discuss the proposed outcome. The meeting took place on 27 July 2023. Ms Antonio-Rooney was accompanied at the meeting by Mr Greening.

[75] Ms Antonio-Rooney provided her response to the proposed outcome at the meeting, and on 4 August 2023 Mr Greening provided further feedback by email on Ms Antonio-Rooney's behalf.

[76] In the email dated 4 August 2023 Mr Greening stated that Ms Antonio-Rooney had been honest and transparent throughout the investigation and that it was a "one-off mistake". As such it could not be categorised as behaviour that deeply impaired the trust between employer and employee. The email concluded:

It is unclear why a final written warning would not be sufficient to hold Jordyn to account for what occurred. Jordyn is also agreeable to all privileges associated with Air NZ travel for staff, be cancelled for 12 months.

[77] Mr Grant said he had considered a lesser outcome than dismissal, but he did not accept that what had occurred was accidental. There had been numerous breaches. Although the Rules provided a demerits approach to breaches, the incidences cited were less serious than what had happened in regard to Ms Antonio-Rooney. He had serious concerns as to her judgment and this had resulted in his loss of trust and confidence in her.

[78] He informed Ms Antonio-Rooney of the outcome of the disciplinary process in a letter dated 11 August 2023. The letter confirmed that, whilst he had considered the feedback, he did not consider a final written warning to be appropriate because:

... I have serious concerns regarding your judgement and have found on the basis of your actions ... I no longer have the necessary trust and confidence in you which is essential to the employment relationship.

...

As a result I consider that Air New Zealand Limited is justified in all the circumstances in concluding that summary dismissal is a fair and reasonable outcome.

Was Ms Antonio-Rooney unjustifiably dismissed by Air NZ?

Did Ms Antonio-Rooney commit serious misconduct?

[79] It is submitted for Ms Antonio-Rooney that, while her behaviour was negligent, the Code of Conduct suggested that reckless behaviour is misconduct.

[80] Mr Greening submitted that in *Makatoa v Restaurant Brands (NZ) Ltd* the Court stated that serious misconduct:

... Will generally involve deliberate action inimicable to the employer's interests ... [it] will not generally consist of mere inadvertence, oversight, or negligence however much that inadvertence, negligence, or oversight may seem an incomprehensible dereliction of duty.

... It is conduct which deeply impairs or is destructive of that basic confidence or trust that is an essential of the employment relationship.³

[81] It is submitted for Ms Antonio-Rooney that her behaviour was negligent and that she accepted her mistakes and was willing to make amends.

[82] It is submitted for Air NZL that Ms Antonio-Rooney's actions demonstrated a disregard for security rules, poor judgment and a degree of recklessness which deeply impaired its trust and confidence in her to such a degree that continuity of the employment relationship was not tenable.

³ *Makatoa v Restaurant Brands (NZ) Limited* [1999] 2 ERNZ 311 at 319

[83] It is not in dispute that Ms Antonio-Rooney committed a total of nine breaches of security rules on 23 June 2023 or that the actions constituted breaches of the Code of Conduct.

[84] It is noted that Ms Antonio-Rooney's evidence during the disciplinary process was that she did not intend to breach security protocols, that it was a mistake and not a deliberate breach. It is submitted that even if each breach were not intentional, that does not undermine a finding of serious misconduct.

[85] Air NZL submits that in the Court of Appeal's judgment in *Chief Executive of Department of Inland revenue v Buchanan (no 2)* the Court rejected the proposition that a failure to establish wilfulness created a presumption that the behaviour was not serious misconduct, observing:

What must be evaluated is the nature of the obligations imposed on the employee by the employment contract, the nature of the breach that has occurred, and the circumstances of the breach,⁴

[86] In that case the Court held:

The actions of the respondents, even if they were undertaken in ignorance of the strict requirements of the Code, were clear breaches of the Code which the respondents had contracted to comply with.⁵

[87] It was set out in clause 11 of the Employment Agreement which Ms Antonio-Rooney had signed that Auckland International Airport was a highly regulated environment and Ms Antonio-Rooney was required to not only familiarise herself with, but remain updated with, the Air NZL policies. Ms Antonio-Rooney had initialled and dated the page of the Employment Agreement containing clause 11.

[88] The policies included the Code of Conduct which required her to work within all applicable laws, rules and regulations, including complying with the Rules.

[89] Ms Antonio-Rooney was by virtue of her employment with Air NZL both as a flight crew member and as part of the Crew Enablement team able to access security areas within the airport including areas which the non-travelling public, and also other areas the travelling public were not allowed to enter.

⁴ In *Chief Executive of Department of Inland revenue v Buchanan (no 2)* {2005} ERNZ 767 at [36]

⁵ Above n4 at [38]

[90] She had been issued as a result of her employment with cards which gave her access into those restricted areas. On 23 June 2023 Ms Antonio-Rooney was undergoing a process to renew her CAA Card, which involved completing training modules on security.

[91] During the Investigation Meeting Ms Antonio-Rooney's evidence included that she had not had sufficient time to update herself on the various policies. I find that does not absolve her from the contractual requirement to "remain current" that she had agreed to comply with contained in clause 11 of the Employment Agreement.

[92] Moreover her evidence established that she knew (i) the security requirements in the Code of Conduct; (ii) that she should not take an unauthorised member of the public into the secure areas, (iii) that she should not leave a member of the public alone in an unauthorised area; and (iv) that tailgating was prohibited through doors into secure areas.

[93] Despite her knowledge of these requirements as set out in the Code of Conduct, Ms Antonio-Rooney knowingly allowed her Auntie to tailgate her through secure access doors, through to Airside and to the AVSEC Security screening area, and left her alone in a secure area.

[94] It is not disputed by Ms Antonio-Rooney that she committed the security breaches, but that these were a "huge error", a "slip-up".

[95] Air NZL considered Ms Antonio-Rooney's explanation but decided that her actions constituted serious misconduct.

[96] I find that the actions committed by Ms Antonio-Rooney were not an isolated act of negligence, but the breaches were repeated and sustained. Moreover they were committed in full knowledge of the importance of the security requirements.

[97] I find that the decision that Ms Antonio-Rooney's actions amounted to serious misconduct to be a conclusion open to Air NZL as a fair and reasonable employer.

Was dismissal an outcome that a fair and reasonable employer could have reached?

[98] Ms Antonio-Rooney accepted her actions were negligent, but she did not consider it was conduct capable of undermining Air NZL's trust and confidence in her to such an extent that it could no longer employ her.

[99] It is submitted for Ms Antonio-Rooney that Air NZL relied heavily on the fact that Ms Antonio-Rooney had breached the Rules, and the Rules allowed for a progressive disciplinary system. However there was no evidence that Air NZL considered the Rules disciplinary system.

[100] It is also submitted that Ms Antonio-Rooney was processed by Customs and allowed to fly that day; her access card was only removed because it was due to expire and there is no evidence that it would not have been renewed; and Auckland Airport took no further action.

[101] It is submitted for Ms Antonio-Rooney that a fair and reasonable employer could not have formed the view that dismissal was justified on the basis that an employee did not comply with external rules.

[102] It is submitted for Air NZL that once it is established that Ms Antonio-Rooney's actions constituted serious misconduct, its decision to dismiss was justified in terms of s 103A of the Act and dismissal was an action a fair and reasonable employer could take in all the circumstances at the relevant time.

[103] Mr Grant's evidence was that because Air NZL operated in a tightly regulated environment, it needed to be able to trust its employees to follow all procedures and exercise good judgment. In her role, Ms Antonio-Rooney required security access, and she was entrusted with significant responsibility to look after other flight attendants' passports and to obtain work visas for them. As such, her role required Air NZL to have a high level of trust in her.

[104] Mr Grant had given full consideration to submissions made by Ms Antonio-Rooney and on her behalf during the disciplinary process, but reached the view that her serious misconduct had undermined the basic trust and confidence Air NZL needed to have in her as an employee. It is submitted that this was a judgment a fair and reasonable employer could make.

[105] Dismissal is always a harsh outcome of a disciplinary process. In this case Air NZL had concluded Ms Antonio-Rooney had committed serious misconduct. She had been in a privileged position in which she was trusted with access to secure parts of Auckland International Airport. On the morning of 23 June 2023 she had repeatedly breached security protocols and rules.

[106] Air NZL considered that Ms Antonio-Rooney's actions breached the Code of Conduct and were so serious as to undermine its trust and confidence in her and to justify dismissal.

[107] Employers are required to carry out a fair and reasonable process in which the employee is advised of the allegations against them, and given a full opportunity to explain their actions. The employer is required to give a full and fair consideration to those explanations before reaching a decision. It was incumbent on Air NZL to follow a fair procedure. I find that it did so.

[108] Having undertaken a fair procedure in which Ms Antonio-Rooney's explanations were considered and Air NZL having found serious misconduct, I find dismissal was an option Air NZL could have reached as a fair and reasonable employer.

[109] I determine that Ms Antonio-Rooney was not unjustifiably dismissed by Air NZL.

Costs

[110] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[111] If they are not able to do so and an Authority determination on costs is needed Air NZ may lodge, and then should serve, a memorandum on costs within 28 days of the date of issue of the written determination in this matter. From the date of service of that memorandum Ms Antonio-Rooney would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

[112] All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence.

[113] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff.⁶

Eleanor Robinson
Member of the Employment Relations Authority

⁶ *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106]-[108].