

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

WA 6/09  
5143020

BETWEEN                      SHAUN BARWICK  
   Applicant  
  
AND                                LEADERBRAND PRODUCE  
   LIMITED  
   Respondent

Member of Authority:      P R Stapp  
  
Representatives:            Nicola Wright for the Applicant  
   Murray McPhail for the Respondent  
  
Investigation Meeting:      18 December 2008 at Gisborne  
  
Determination:              21 January 2009

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**DETERMINATION OF THE AUTHORITY**

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**The employment relationship problem**

[1]      The employment relationship problem is about Mr Barwick's approval for another employee to take two sackfuls of lettuces from work; trust and confidence in the work place, and Mr Barwick's summary dismissal.

**The facts**

[2]      Mr Barwick was employed by LeaderBrand Produce Limited (LeaderBrand) for ten years. Mr Barwick was a supervisor and paid a guaranteed \$13.50 per hour, plus a piece rate. The parties signed off an employment agreement. There was a job description, and a terms and conditions of employment booklet containing a provision for taking produce.

[3]      On Friday 10 October 2008 Mr Barwick was approached by another worker who requested to take some lettuce home. Mr Barwick says he gave permission

without asking how much the employee intended to take and says he knew the reason for the request was for the lettuce to be used at a party and funeral.

[4] Mr Murray McPhail, the owner, and Mr Kristen (Onslow) Martin, the fresh crop operations manager, discovered the removal of two sackfuls of lettuce from the workplace. Two large sackfuls of lettuce were carried over a ditch and put into another person's vehicle at the side of Tucker's Road. The Police were called. The Police decided not to do anything when it was established that the employee had been given permission to take some lettuce by Mr Barwick. Mr Barwick acknowledged at the scene that he had given the employee permission to take some lettuce, but now he disputes seeing the two sackfuls that were retrieved at the site by Mr McPhail and the Police.

[5] On the same day Mr Barwick was called to a meeting with Mr Martin and Dr Stuart Davis, LeaderBrand's operations general manager. There is a dispute about whether or not Mr Barwick was told then that the worker had been caught taking two sackfuls of lettuce. Mr Barwick says that he learnt about the two sackfuls of lettuce from a letter he received later that day. He says they told him that Mr McPhail wanted someone to be "*fired*" for being responsible, which they dispute. Mr Barwick was then required to return to work.

[6] Later on the same day Mr Barwick was handed the letter (dated 10 October), I referred to above, by Mr Martin, advising him that LeaderBrand considered his action, and that of the other employee, amounted to "*over-reaching his authority*" and theft constituting serious misconduct. He was suspended without pay. This has been addressed and payment settled.

[7] There was a further meeting held on 13 October, but Mr Barwick says he was unable to arrange a representative to be present, despite being advised of his right to have a representative prior to the meeting. Also, he says he did not know he could have asked to delay the meeting. It is common ground that no one present at the meeting discussed Mr Barwick not having a support person present and any delay to the meeting.

[8] Mr Barwick says that he said at the meeting that he did not know how many lettuces had been taken and denied seeing the two sackfuls of lettuce at the site. It is common ground that no one counted the number of lettuces in the bags. The retrieved sackfuls of lettuce were put in the boot of Mr Martin's vehicle at the time, and Mr Martin confirmed to me that he destroyed them on Sunday 12 October because the lettuces had deteriorated.

[9] Dr Davis says that he informed Mr Barwick of his decision to dismiss him, and that the dismissal would be confirmed in writing later. Mr Barwick says he was told that he would be contacted further. Later that day Mr Martin and another employee arrived at Mr Barwick's home to deliver a letter confirming his dismissal.

### **The application filed in the Authority**

[10] Mr Barwick filed an application in the Authority for interim reinstatement with an undertaking for damages. It was agreed that a substantive investigation meeting would be held instead. In the meantime mediation services were provided by the Department of Labour, on 2 December 2008.

[11] Following the mediation Mr Barwick withdrew his claim for reinstatement. He is now only claiming two months' lost wages based on 50 hours' work per week at an average of \$18.00 per hour (including the piece rate). Also, he is seeking \$10,000 compensation for humiliation and stress. He is claiming costs and he has legal aid without paying any contribution.

[12] The company's owner decided to represent the respondent and not to have its lawyers present at the Authority's investigation.

### **The issues**

[13] Would a fair and reasonable employer have come to an honestly held belief that the actions it determined occurred on 10 and 13 October amounted to a breach of trust and confidence to justify dismissal? What were the allegations and reasons for the dismissal? Would a fair and reasonable employer have dismissed Mr Barwick for serious misconduct in all the circumstances?

[14] Was the process fair?

[15] In order to resolve these key issues there are some factual matters requiring determination and these include:

- Did Mr Barwick see the two sacks of lettuce on 10 October?
- Was he told on the same day two sackfuls of lettuce were involved, or did he find out there were two sackfuls involved when he read the letter dated 10 October given to him on the same day?
- Did Mr Barwick change his mind at the meeting on 13 October about knowing the amount of lettuce?
- When was Mr Barwick dismissed?

### **What were the allegations put to Mr Barwick?**

[16] The evidence of the employer's enquiry and the allegations against Mr Barwick are found in the letter of 10 October 2008. That letter reads in full as follows:

*10 October 2008*

*Dear Shaun,*

*This to summarise LeaderBrand's position following the events of today. This morning, [name's withheld] an employee on the lettuce harvesting crew was discovered by Murray McPhail in possession of two large sacks of LeaderBrand bagged lettuce which he was assisting another person to load into a vehicle for removal from LeaderBrand property. The Police were called and on questioning [name's withheld] stated that he had sought and been granted permission by you to take these lettuces. You confirmed this in the field and subsequently in a meeting with Kristen Martin and me. You also stated that [name's withheld] had requested permission to take the lettuces. I stated LeaderBrand's view that you had over-reached your authority in allowing such a large quantity of product to be taken without seeking permission from LeaderBrand management. LeaderBrand's position is that the actions of you and [name's withheld] constitute theft of LeaderBrand property which in turn constitutes serious misconduct under LeaderBrand's Terms and Conditions of Employment. It is LeaderBrand's decision that you be suspended from work without pay from the time of receipt of this letter pending a further meeting with Kristen and me on Monday at 9:00am at LeaderBrand's office at 33 Parkinson Street. You should be aware that this is a serious matter and therefore the potential outcome of the meeting could be disciplinary action up to and*

*including dismissal. You may wish to have a support person at the meeting with you.*

*Yours faithfully,  
Stuart Davis  
General Manager Operations*

[17] The next letter was the dismissal letter and it reads as follows:

*13 October 2008*

*Dear Shaun,*

**SUMMARY DISMISSAL**

*This is to summarise LeaderBrand's position following my letter of 10 October and the meeting you had with Kristen Martin and me today. Having considered the points covered in our meeting today, I can now advise that LeaderBrand's position remains unchanged and you are dismissed from your employment with LeaderBrand effective immediately.*

*Yours faithfully,*

*Stuart Davis  
General Manager Operations*

[18] The terms and conditions of employment provide two lists of misdemeanours, which are not exhaustive lists, identifying what could amount to misconduct and serious misconduct. The misconduct list of examples is qualified that the degree of the offence will determine the seriousness of any misconduct and does not rule it out from being serious. There is a process for warnings to be provided for misconduct. LeaderBrand has relied on the serious misconduct provision under the terms and conditions of employment as follows:

***POLICY 7...***

***GENERAL DISCIPLINE AND PROCEDURE FOR RESOLVING EMPLOYMENT RELATIONSHIP PROBLEMS***

***7.2 The following are types of misconduct that LeaderBrand will consider a breach of the company's code of conduct***

*Misconduct is divided into two types:*

- (i) Misconduct...*
- (ii) Serious misconduct*

*Is conduct that will render, in itself, you liable to summary dismissal (dismissal without notice). Serious misconduct is misconduct which breaches the basic necessary level of trust and confidence which underpins the employment relationship. ...*

[19] Dr Davis and Mr Martin say that Mr Barwick changed his mind about not knowing the amount of lettuces taken on 13 October. They concluded that Mr Barwick was lying, and thus, he was not credible and plausible. This sealed the decision that he could not be trusted and that the employer could not have any confidence in Mr Barwick as an employee.

**What were the reasons for the dismissal?**

[20] LeaderBrand accepted that Dr Davis dismissed Mr Barwick for serious misconduct involving a breach of trust and confidence.

[21] At the time the employer put its allegations to Mr Barwick on notice it considered that Mr Barwick had “*over-reached [his] authority in allowing such a large quantity of product to be taken without seeking permission from LeaderBrand management*” and “*theft of LeaderBrand property*”. LeaderBrand’s allegation was that these constituted serious misconduct.

[22] A new issue emerged during the meeting held on 13 October when Dr Davis reached the decision that Mr Barwick’s part in the matter gave rise to the suspicion that he was “*complicit in aiding and abetting theft*”. Dr Davis says this was a breach of trust and confidence (paragraph 51). Further Dr Davis says he suspected that Mr Barwick “*had some hand in [name’s withheld] theft of product*”.

**Analysis of the employer’s decision**

[23] The employer is required to justify the decision to dismiss under s 103A of the Employment Relations Act. S 103A requires that the employer’s actions are to be objectively determined by considering whether they were what a fair and reasonable employer would have done in all the circumstances at the time of dismissal. I must consider each stage of the employer’s actions including the procedure leading to any findings made by the employer without imposing minute and pedantic scrutiny of the process. The procedure has to be fair and the decision to dismiss must be one which a fair and reasonable employer would have taken in all the circumstances relating to both the employer and employee: see *The Chief Executive of UNITEC Institute of*

*Technology v Kathleen Henderson* (unreported) Colgan CJ 19 March 2007 AC 12/07 and *Chief Executive of the Department of Corrections v George Imo* (unreported) Shaw J 14 November 2007 AC 57/07 and *Air New Zealand Ltd v Hudson* [2006] 3 NZELR 155.

[24] Further I must scrutinise the employer's decision on the basis that the employer reached an honestly held belief that there had been serious misconduct and that the allegations against Mr Barwick were of such gravity to bring the employment to an end: *BP Oil NZ Ltd v Northern etc Distribution Workers etc IUOW* (1989) ERNZ Sel Case 512; [1989] 3 NZILR 276; [1989] 3 NZLR 580 (CA) and *Northern Distribution Union v BP Oil NZ Ltd* [1992] 3 ERNZ 483; 4 NZELC 95,600 (CA) and *Click Clack International Ltd v James* [1994] 1 ERNZ 15 applied.

[25] The test does not mean that the Authority is to substitute its own decision for that of the employer (*X v Auckland District Health Board* [2007] 1 ERNZ 66), but it may reach a different conclusion from that of the employer provided the conclusion is reached objectively and having regard to all the circumstances at the time the dismissal occurred (*UNITEC v Henderson* and *Air New Zealand v Hudson* above applied). The principles on fairness are well established: see *Auckland CC V Hennessey* (1982) ERNZ Sel Case 4; [1982] ACJ 699 (CA) and *Airline Stewards and Hostesses (NZ) IUOW v Air NZ Ltd* [1990] 3 NZLR 549.

[26] Dr Davis decided during the second meeting that he could not trust Mr Barwick given his primary conclusions (amongst others he put in his evidence) that:

- Mr Barwick would more than probably have known the number of lettuces because he would have seen the two sacks in the field at the time.
- He did not express any surprise, shock or express any issue on the amount of lettuces taken.
- He had a responsibility to supervise, including being watchful and knowing that taking company product without permission was unacceptable.
- Mr Barwick understood the cost associated with the product and that it was important to account for every lettuce.

- Mr Barwick was advised that another employee had been caught taking two sackfuls of lettuce and now denies knowing that there were two sackfuls involved, but had earlier acknowledged knowing that. Dr Davis believed that Mr Barwick was lying.

[27] Not all Dr Davis's considerations were put to Mr Barwick.

[28] One difficulty is that LeaderBrand relied on the word "*theft*", and that Mr Barwick was "*complicit in aiding and abetting theft*" in written statements from Dr Davis and in the respondent's statement in reply (SIR). This has confused the situation compared with the 10 October letter. I can accept that the word theft means in this context unauthorised possession of company product, but Mr Barwick was not actually discovered being in unauthorised possession of company produce, which possibly involved other people. He was working and having morning tea in the paddock at the time the produce was discovered being removed. In this regard the employer has a difficulty in establishing any theft involving Mr Barwick directly, because there was no Police prosecution and Mr Barwick was not found in possession of the company produce.

[29] There are no detailed allegations about how Mr Barwick was involved in aiding and abetting theft, other than Mr Barwick's admission that he gave the employee permission to take lettuce and that he did not ask the employee how much lettuce that employee wanted. This is affected by there being no causal link established between Mr Barwick giving permission to the employee, what the other employee is alleged to have done and what that employee told LeaderBrand. It is questionable that Dr Davis relied at the time on the findings he has put in his evidence, and now being put before me, because Mr Barwick was not informed by Dr Davis about what Dr Davis believed; for example that he believed Mr Barwick was lying and "*complicit in aiding and abetting theft*", and that he suspected that Mr Barwick "*had some hand in [name's withheld] theft of product*".

[30] Dr Davis told me that it was his suspicion that Mr Barwick had been lying and he did not tell Mr Barwick that this was a factor being considered. This leads to a question of whether or not it was necessary for the employer to start a fresh inquiry. A fair and reasonable employer would have paused at this development. The

seriousness of this development would have meant that a fair and reasonable employer would have put Mr Barwick on proper notice of the development and enabled him time to consider getting assistance, representation and advice, and to reply. Also such a conclusion means that the employer was influenced by a factor, the detail of which Mr Barwick was not aware of, in coming to its decision, other than on the original grounds relied on. The legal principle that applies here is that the more serious the allegation is there is an obligation on an employer to obtain sufficient evidence to prove the allegation: *Honda NZ Ltd v New Zealand etc Shipwrights etc IUOW* (1990) ERNZ Sel Case 855 applied. LeaderBrand did not meet that standard.

[31] The only matter that has any veracity is the employer's allegation that Mr Barwick "*over-reached his authority*". Here Mr Barwick's problem, as the supervisor at the time, is that he never asked how much lettuce the employee wanted to take. The discovery that the employee apparently had taken two sackfuls has left Mr Barwick open to criticism when he reasonably should have asked the employee how much lettuce he wanted. The number of sacks has not been challenged despite Mr Barwick saying he did not see them at the site. Mr Barwick has left himself open to criticism when it is accepted that when employees ask for large quantities of product permission has to be obtained from management. I accept that two sacks constitute a large quantity given the evidence I heard from all the witnesses. Indeed it was common ground that any amount beyond 2-5 lettuces would require management approval. I conclude that although there was no prescriptive policy on numbers there was a clear understanding about what approvals were required for small amounts for personal use and large amounts for special use.

[32] I am not persuaded that Mr Barwick innocently over-looked the company policy as Mr Barwick's representative suggested. I am not persuaded that if Mr Barwick had allowed the same worker to take more than enough lettuce for personal use on other occasions that this in any way modified the employer's policy that Mr Barwick understood applied. Furthermore he had no authority to change the policy and if he was allowing anybody else to take more than was required for personal use then he was not applying the policy properly, I find. An employer cannot condone a practice it is unaware of.

[33] During my investigation another witness described to me that workers did get permission for more than just two lettuces, and that witness says, up to as much as a sack would be taken and that he approved it when he was acting in the absence of the supervisor. He was not able to provide any details of this. The employer was not aware of this at the time of Mr Barwick's investigation. Mr Barwick never relied upon this information as a defence at the time. This witness also confirmed how the policy otherwise worked and that small amounts of lettuce would be 2-5 lettuce to be taken for personal use and that permission was required for larger amounts from management. Also, Mr Barwick and this witness have relied upon the employee getting permission to take home lettuce some days earlier and not doing so then. This simply is not plausible given Mr Barwick accepted he gave the employee his permission at the time and that, I find, would be the permission that would apply. Also Mr Barwick agreed that employees would take their approved amounts home at the end of the working day and carry it out the gate. I have decided to put the above witness's evidence to one side and not to rely on it.

[34] Also I have reached the conclusion that Mr Barwick's failure to ask how much lettuce the worker wanted to take left him open to being accused that he "*over-reached his authority*" when it was discovered two sackfuls of lettuces had been recovered from being removed from the company's paddock. Mr Barwick was the supervisor and person responsible. Indeed Mr Barwick says he knew the reason for the request was for the lettuce to be used at a party and funeral. In those circumstances he was seriously amiss in not asking how many lettuces the worker wanted. Mr Barwick should have referred the request to management for approval.

[35] That leaves the question of whether or not "*over-reached authority*" is serious misconduct, to the extent, under the employment agreement, of being a breach of trust and confidence.

[36] My finding is that on its own the allegation of "*over-reached authority*" would not be serious misconduct under the terms and conditions of employment because the list of misdemeanours under misconduct includes the provision:

(a) *Failing to follow LeaderBrand's policies, standard procedures and/or a legitimate instruction given by a supervisor or other authorised person.*

[37] Dr Davis did not draw any attention to this provision or any other provisions in his evidence. They were not referred to in his letter dated 10 October and have not been referred to in the SIR. Nor could he establish a linkage between this and any “theft” involving Mr Barwick, and whatever the other worker he gave permission to, was doing. Furthermore there was no linkage established by Dr Davis and Mr Martin about the lettuce being taken for use at the flea market, which they referred to.

[38] I note that the issue of Mr Barwick’s alleged lying and that he was “*complicit in aiding and abetting theft*” could have been linked to the original allegation of theft, but I have rejected this because of the absence of any details being provided at the time and Dr Davis’s belief was not put to Mr Barwick to respond to and reply to directly, as it should have been. Dr Davis had a suspicion and I find this was most probably the reason why the employer relied on serious misconduct as the reason to justify the dismissal without relying on any particularised term of serious misconduct under the terms and conditions of employment.

[39] The employer relied on more than just the accusation that Mr Barwick: “*over-reached his authority*”. Thus, all the reasons relied upon at the time have to be supported being established at the time. Because there was not enough evidence to establish that: (1) Mr Barwick had any unauthorised possession of any produce, (2) Mr Barwick was allegedly “*complicit in aiding and abetting theft*” and (3) that Dr Davis *suspected* that Mr Barwick “*had some hand in [name’s withheld] theft of product*”, I am bound to find that Mr Barwick has a personal grievance.

### **Was the process fair?**

[40] There were only two formal meetings. Dr Davis and Mr Martin say the first meeting (10 October) was an investigation where Mr Barwick had an opportunity to explain and any provide any relevant information in regard to what he knew and his role. They say he acknowledged giving the employee permission. Mr Barwick accepts that he did give permission to the employee to take lettuce and did not ask how many lettuces the employee wanted. It is common ground that the two sacks were large. The two sackfuls of lettuces involved much more lettuce than what would be regarded for personal use and required permission from management.

[41] I am satisfied that even though Mr Barwick was not invited to have a representative at the first meeting (10 October) such an omission was not prejudicial because it was a fact finding meeting and a further meeting was arranged at which Mr Barwick was offered the opportunity to have a support person present.

[42] The second meeting (13 October) involved Mr Barwick being given prior notice in writing of the employer's allegations: "*over-reaching authority in allowing a large quantity of product to be taken without seeking permission from...management*". Mr Barwick was also put on notice of the seriousness of the situation involving allegations of theft and serious misconduct under the terms and conditions of employment. Mr Barwick was advised of his right to have a support person and that any disciplinary action could include dismissal if the allegations were established. Dr Davis and Mr Martin say Mr Barwick had an opportunity to explain and was given time to put forward an alternative to dismissal. He asked to be demoted, which they rejected.

[43] The meeting on 13 October was a mixed one of discipline and investigation and a decision being made, which included Mr Barwick asking for a demotion and saying that he thought the decision was harsh. This is significant recognition from Mr Barwick that he had an opportunity to explain at least his involvement in giving permission for the worker to take lettuce during both meetings. However, it was fatal that the employer did not pause when Dr Davis formed the belief that Mr Barwick was lying and suspected Mr Barwick was involved in theft, to enable Mr Barwick to reply and possibly further try and get representation. The very seriousness of the allegations would have meant that a fair and reasonable employer would not have remained silent on the matter of representation and would have delayed the next stage of the process to enable Mr Barwick to get representation. Also, because of the seriousness of the allegations a fair and reasonable employer would have told Mr Barwick the findings so that such findings were clear and that he had an opportunity to mitigate the findings and comment before a final decision was made.

[44] The employer's process was not sophisticated and whilst there will be flaws that will often not be fatal in an investigation and disciplinary process, in this case, the seriousness of the allegations would have meant that a fair and reasonable employer would have paused and taken more time to make its findings and give any tentative or

preliminary conclusion for comment, reply and any mitigation before making a final decision. Such a further step would in best practice have been desirable. Also, lying during a disciplinary investigation needs to be put and examined separately. It is most probable Mr Barwick was informed of the decision to dismiss him at the meeting given the clear written evidence from Dr Davis and the words contained in the dismissal letter. Also, I have borne in mind that Dr Davis elaborated on his evidence during the investigation about when he made his decision and added orally to his written evidence that he considered the decision on dismissal after the meeting on 13 October and before confirming it in his letter of dismissal. It was commendable that Dr Davis considered his decision further, but does not alter my findings above because I consider Dr Davis got flustered during his interview with me. It was not enough to impact negatively on Dr Davis' credibility and reliability as a witness.

[45] Also the evidence placed before me indicates that the employer's investigation was not as thorough or complete as it should have been because:

- 1) there were differences over the application of the policy on getting permission to take different amounts of product that have emerged,
- 2) there was a failure to establish any details of any linkage to theft or unauthorised possession of company product and Mr Barwick being "*complicit in aiding and abetting theft*"
- 3) there should have been full and proper consideration of the circumstances that might have been relevant impacting on the decision to dismiss Mr Barwick including his length of service and that he had no current performance issues and no current warning for misconduct. It was unclear whether or not these were factors properly considered by Dr Davis at the time. There was no reference to them in his evidence.

[46] Finally Mr Barwick has made an allegation that Dr Davis's decision to dismiss him was predetermined. I am satisfied this was not the case because Mr Barwick

clearly and unambiguously did not pursue this during my investigation meeting. He accepted that the decision was made after he had been heard during the meeting on 13 October. Mr Barwick was very clear about this during his interview with me. I find that the decision was solely made by Dr Davis and I accept his evidence that he alone made the decision without any influence from Mr McPhail. This was not challenged. Thus I reject the claim that Dr Davis was *required* to “fire” whoever was responsible.

### **Remedies for personal grievance**

[47] Having said that Mr Barwick has a personal grievance I must consider remedies. Reinstatement is now no longer being sought. Mr Barwick has lost 2 months wages before getting a new job. However, he failed in the first four weeks to start looking for work. I do not accept Mr Barwick’s opinion that he did not look for work in the first 4 weeks because he was seeking reinstatement. He had a responsibility to look for work and at least attempt to mitigate his loss. This period will be deducted from his claim. Next I find that Mr Barwick’s omission not to ask the worker how much lettuce the worker wanted was a serious omission in Mr Barwick’s responsibilities. Also I find that Mr Barwick’s omission would amount to misconduct in which it would have been open to the employer to consider a lesser penalty. The extent of any lesser penalty would have been affected by Mr Barwick’s omission that led to an appearance of unauthorised possession of company product involving another employee and that the produce being taken in circumstances quite different to what would normally occur with it being openly taken out of the gate.

[48] I find that Mr Barwick has compounded the problem by leading Dr Davis to believe that he [Mr Barwick] was lying when Mr Barwick allegedly changed what he was saying on 13 October. I conclude that Mr Barwick did know that there were two large sacks of lettuces because it is more than likely that he would have been told on 10 October given the involvement of the Police, how upset the witnesses say Mr McPhail was when he discovered the sacks being removed from the property and that Mr Barwick said in his affirmed affidavit for interim reinstatement that he had been advised another employee had been caught taking two sackfuls of lettuce. Mr Barwick now says that was a mistake. I do not accept that. He makes the same statement in his written statement of evidence, and when he had the opportunity to make any comment, corrections, alterations, additions or any deletions to his

evidence, he did not do so. I do not accept his oral evidence that he first became aware that two sackfuls were involved when he read the letter dated 10 October. He has changed his evidence and more than likely did that at the time of the meeting held on 13 October. If the employer had set about considering this as a separate matter it would have been open to Dr Davis to make a conclusion that Mr Barwick had changed his position and as such concluded he was deliberately misrepresenting what he knew, and if the employer had investigated this properly I find it would have been open for the employer to impose further disciplinary measures relating to trust and confidence considering that Mr Barwick was a supervisor. My finding is that Mr Barwick's change of position was to minimise his involvement (and possibly to protect someone else) and therefore I conclude he has been grossly negligent. I am supported in this finding by Mr Barwick not having a defence and that he changed his story to minimise his involvement and exposure, and these could have led to his dismissal. I assess the contribution as 100%. As such I make no award for any lost wages.

[49] Next Mr Barwick claimed \$10,000 compensation. The paucity of the evidence that Mr Barwick put before me, and the lack of any corroboration of what he told me, means that he has not established he has a claim. Indeed his contribution in the situation giving rise to the personal grievance means there should be no award.

[50] Finally there is the matter of costs. The parties attended mediation. The Authority's investigation meeting lasted approximately six hours. Mr Barwick was partially successful, but not on his monetary claims. The result, given that the employer represented itself at the Authority's investigation meeting to save legal costs and Mr Barwick was on legal aid, is that costs should lie where they fall. Either party can apply for me to reconsider this finding. Leave is reserved.