



[5] Later that same day, Mr Stocker was stopped by Police when driving one of Drayton Transport's trucks in an overloaded condition. An infringement notice was issued and the fines and costs associated with that infringement notice amount to the sum claimed by Drayton Transport against Mr Stocker.

[6] Drayton Transport paid the fines but sought proposals from Mr Stocker for reimbursement. None were forthcoming and in consequence these proceedings issued.

### **Process**

[7] In a telephone conference I held between the parties prior to the investigation meeting, I sought to encourage the parties to attend mediation but while Drayton Transport was prepared to participate, Mr Stocker was not. Indeed, Mr Stocker was so resistant to the idea of attending mediation that I formed the view a referral to mediation would be pointless.

[8] Mr Stocker's reluctance to attend mediation was based on his conviction that Drayton Transport's Mr Drayton was *too dogmatic* together with the fact that he had to take time off work to attend either an investigation meeting or mediation and he thought the mediation would simply not be a good use of time.

### **Issues**

[9] The first issue for the Authority to determine is whether there was a breach of the applicable employment agreement.

[10] Then, the Authority must decide whether, if there is a breach, whether that breach has caused loss to Drayton Transport which it is fair and equitable for it to recover from Mr Stocker.

### **Was there a breach of the applicable employment agreement?**

[11] Mr Drayton said in his evidence that he had presented a written employment agreement to Mr Stocker for consideration and execution but that it was never returned. Mr Stocker, by contrast, said that no such agreement was ever provided.

[12] It follows that there is no documentary evidence to support any particular conclusion about the provisions of the employment agreement. However, whatever the terms of Mr Stocker's employment agreement with Drayton Transport and whatever the hours he worked, there is no dispute that Mr Stocker was employed by Drayton Transport as a truck driver.

[13] In essence, Mr Stocker said that he did not knowingly overload the vehicle and would not ever do that. That evidence was countered by Mr Drayton's testimony to the effect that the vehicle in question was not just overloaded but **grossly** overloaded to the extent that it seemed nine leaf springs had been broken. Further, Mr Drayton gave evidence that the enormity of the offence was such that it was *an instant overload* situation whereby the vehicle is so overloaded that the traffic authorities require it to be immediately discharged of its load. Mr Drayton told me that the measurements done by Police indicated that the vehicle exceeded its carrying capacity by approximately twice.

[14] Given the measurements taken by Police about the excess weight and the damage to the springs, it seems to me inconceivable that Mr Stocker did not know the vehicle was grossly overloaded.

[15] Mr Drayton gave evidence that the owners of the product being carried on 19 January when Mr Stocker was stopped by Police had contacted him and told him about Mr Stocker's overloading. Mr Drayton explained that the client in question was a long standing client for whom his firm provided regular carriage and that firm indicated to Mr Drayton that Mr Stocker was regularly overloading.

[16] I do not accept Mr Stocker's evidence that when he loaded the product in question, there were occasions when no one supervised his loading. I prefer Mr Drayton's evidence to the effect that the loading weights were available from a computerised robot arrangement at the loading dock and that any responsible driver would check the weights before he completed the load.

[17] I also prefer Mr Drayton's evidence on the issue of whether Mr Stocker was warned on the day the incident happened, or not. Mr Drayton says that he spoke to Mr Stocker at about 8.25am on the morning of 19 January 2006, having been rung the day before by his client drawing his attention to Mr Stocker's overloading.

[18] It follows that I accept Mr Drayton's evidence that he warned Mr Stocker on 19 January 2006 about the necessity to avoid overloading company vehicles, that notwithstanding that warning Mr Stocker went ahead and grossly overloaded his vehicle on that same day, was caught by Police and issued with an infringement notice and that subsequent inquiry disclosed that the vehicle was damaged by the overloading and that the overloading was extremely serious and in no sense minor.

[19] The question is whether a working truck driver could reasonably be expected to ensure that his vehicle complies with the relevant road transport regulations. In the particular circumstances of this case, I reach the conclusion that it is more rather than less likely that Mr Stocker knowingly overloaded the vehicle and that that act must be seen as a breach of a term or an implied term in the employment agreement of a working truck driver.

#### **Has the breach caused loss?**

[20] I am satisfied from the evidence I heard that Drayton Transport has suffered a loss as a consequence of the breach of Mr Stocker's employment agreement. That loss is occasioned by Drayton Transport having to meet the costs and penalties associated with the infringement notice issued by Police to Mr Stocker as the operator of the relevant Drayton Transport vehicle.

[21] I see no good reason why Mr Stocker should be able to escape the consequences of his actions, particularly in circumstances where the offending which resulted in the infringement notice was gross and on the very day it happened was the subject of a warning which Mr Stocker simply ignored.

[22] I am also satisfied that Mr Drayton's evidence about his exchange with Mr Stocker after the incident is truthful. Mr Drayton said that he was upset about the incident and he spoke with Mr Stocker afterwards, asking Mr Stocker *why you did it*. Mr Drayton says that Mr Stocker told him that he did not think he would get caught.

#### **Determination**

[23] I am satisfied on the balance of probabilities that there has been a breach of the applicable employment agreement, that that breach has caused loss to the applicant and that it is proper that Mr Stocker make good the loss he has caused Drayton Transport.

[24] That being the Authority's conclusion, I direct that Mr Stocker is to reimburse Drayton Transport the sum of \$4,870.00 being the fines and costs associated with Mr Stocker's default in breaching his employment agreement. Mr Stocker is also to reimburse Drayton Transport for the \$70.00 filing fee.

[25] While I accept that there has been a breach of the employment agreement, I do not think in the circumstances it is either necessary or appropriate to require that Mr Stocker also pay a penalty in relation to that breach.

### **Summary**

[26] Mr Stocker is to pay to Drayton Transport the sum of \$4,940.00 being the total of the fines and Court costs associated with the infringement notice together with the \$70.00 filing fee.

### **Costs**

Costs are reserved.

J Crichton  
Member of the Employment Relations Authority