IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

CA 45/09
5106856

	BETWEEN	IAN FEATHERSTON Applicant
	AND	RAVENSDOWN FERTILISER COOPERATIVE LIMITED Respondent

Member of Authority:	James Crichton
Representatives:	Jenny Beck, Counsel for Applicant Scott Wilson, Counsel for Respondent
Investigation Meeting:	10 and 11 February 2009 at Dunedin
Determination:	9 April 2009

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant (Mr Featherston) alleges that he was unjustifiably dismissed by the respondent employer (Ravensdown). Ravensdown resist that allegation.

[2] Mr Featherston was employed as Production Manager at Ravensdown's Dunedin facility at the point at which his dismissal took effect on 6 June 2005 and Mr Featherston had been employed by Ravensdown for the previous 12 years.

[3] On 26 April 2007, an order for plastic piping was generated through the Ravensdown purchasing system from a third party, Mico Plumbing. The following day, Mico generated an invoice for Ravensdown. The invoice was silent as to who had authorised the order.

[4] On or about 7 May 2007, Ravensdown's Purchasing Officer received the invoice and as he knew nothing about the order, he commenced inquiries.

[5] Eventually, the Purchasing Officer (Mr Read) discovered that Mr Featherston had generated the order and had receipted the goods as being received on 30 April 2007.

[6] The effect of receipting the order was to approve payment for the invoice and the process of payment simply happened automatically from thereon. In receipting the order, Mr Featherston had also charged the product in question to Ravensdown's repairs and maintenance account.

[7] Mr Reid consulted Mr Featherston. Mr Read's evidence (which is disputed) is that Mr Featherston told Mr Read that the product was for Ravensdown's *FSA storage system*. He also told Mr Read (it is alleged) that the product was on the Ravensdown site.

[8] Attempts to locate the product were unsuccessful. Mr Read referred the matter to Mr Hendry, Ravensdown's Works Manager at Dunedin. Mr Hendry spoke with Mr Featherston on or about 30 May 2007, the upshot of which was that Mr Featherston confirmed that the product in fact was at his home.

[9] There was a meeting on 31 May 2007 at which Mr Featherston had his son as a support person. There is dispute between the parties as to precisely what information Mr Featherston was provided with by Ravensdown in respect to that meeting, and its seriousness.

[10] At the meeting, Mr Featherston acknowledged that he knew what Ravensdown's staff purchasing scheme required and Ravensdown contends that Mr Featherston acknowledged that he had not followed the staff purchasing scheme.

[11] When asked about what Mr Featherston had told Mr Read, Ravensdown say that Mr Featherston agreed that he had *lied*. Mr Featherston sought to distance himself from that contention at the investigation meeting.

[12] That meeting concluded and Ravensdown sought further time to consider Mr Featherston's explanation. A further meeting was called for 1 June 2007 at which Mr Featherston was legally represented. On this occasion, Mr Featherston read a prepared statement and then declined to further engage with Ravensdown. At the conclusion of this second meeting, Ravensdown told Mr Featherston that its provisional conclusion was that he had been guilty of serious misconduct and that

dismissal may be warranted. In accordance with Ravensdown's policy, the issue was then referred to Ravensdown's General Manager – Manufacturing (Mr Whitty) who was the final decision maker. In terms of Ravensdown's policy, Mr Featherston could request an interview with Mr Whitty which is in fact what happened.

[13] That meeting between Mr Whitty and Mr Featherston (again on this occasion represented by legal counsel) took place on 6 June 2007. It is common ground that Mr Featherston took the opportunity to raise matters which he wanted Ravensdown to have regard to. Some of the material covered in the meeting with Mr Whitty had not been raised by Mr Featherston in earlier meetings.

[14] In the result, Mr Whitty decided that the applicant had been dishonest and had misled Ravensdown, had failed to follow company policy which he knew and understood and had lied to a fellow (and less senior) employee of Ravensdown. On that basis, Mr Whitty felt that Mr Featherston's conduct constituted serious misconduct and his actions had irretrievably damaged the necessary trust and confidence that must exist between employer and employee. In the result, Mr Featherston was dismissed for serious misconduct.

[15] A personal grievance was raised by letter dated 28 August 2007.

Issues

[16] The circumstances leading up to the disciplinary investigation are largely uncontested. There are, however, some points of difference between the parties and these need to be explored in more detail.

[17] It will be helpful if the Authority looks in more detail at the following issues:

(a) Was Mr Featherston's intention relevant?

(b) Did Mr Featherston understand the staff purchasing policy?

(c) Did Mr Featherston mislead Mr Read?

(d) Did Ravensdown set Mr Featherston up?

(e) Was the decision to dismiss too harsh?

(f) Was the process fair?

Was Mr Featherston's intention relevant?

[18] Mr Featherston says that he always intended to pay for the piping. Accordingly, he puts his intention into the mix as a relevant factor for the Authority to reflect on.

[19] Further, Mr Featherston says that Ravensdown were never able to "prove" that he acted in bad faith; at best, it is suggested that Ravensdown could only allege incompetence or confusion.

[20] Mr Featherston suffers from a condition called hydrocephalus, which on the evidence I heard would produce amongst other things, forgetfulness and impulsive behaviour. Furthermore, it was suggested that a person with this condition would of necessity require many prompts before being able to recall to do things.

[21] In terms of the process of purchasing the piping, it is suggested for Mr Featherston that the very absence of those prompts made it difficult for him to remember to pay (which he says was always his intention) and so by the time the purchase matter was in the hands of the Works Manager for investigation, it was already too late.

[22] But this suggested explanation for Mr Featherston's behaviour I confess to finding unsatisfying. Even if it is true that Mr Featherston's condition inclined him to impulsivity, it seems to me as a matter of fact that there were numerous prompts (or to use the expression I deployed in the investigation meeting, trigger points) which would have encouraged Mr Featherston to remember his obligations.

[23] The evidence was very clear that if at any point Mr Featherston had, of his own volition, produced a personal cheque to pay for the product he would not have been dismissed but would simply have received a warning. He sought to do that in the first disciplinary meeting, but of course by then it was indeed too late. By that stage, it was over a month after he had lodged the order and on any reasonable analysis, one would have to conclude it was unrealistic of Mr Featherston to expect that the matter could then be resolved by the payment of the requisite sum.

[24] Not only is that because so much time has elapsed and so many opportunities have presented themselves to put matters right, but also because, in the interim,

Mr Featherston had had a discussion with a staff colleague who on any analysis of the evidence, he had misled as to the true position.

[25] Mr Featherston may say that there was never an intention to defraud his employer. But how was that intention disclosed to the employer? Nothing in the evidence I heard suggests that there was any basis on which Ravensdown could discern Mr Featherston's intentions. All they had to go on was his actions. His actions, on the face of it, appeared suspicious. By the time Mr Featherston had told his immediate superior Mr Hendry that he always intended to pay and that he was prepared to pay then (this conversation happening on 30 May 2007), there were already doubts in Mr Hendry's mind (and understandably so) about Mr Featherston's honesty.

[26] It follows that I am not persuaded that Mr Featherston's intention is relevant to the question before the Authority, not because I do not accept that there may be circumstances in which intention is a relevant factor in a matter of this kind, but rather because in the particular circumstance of this case, there was no way for Ravensdown to discern Mr Featherston's intention at least until it was, in truth, too late. Furthermore, as I indicated earlier, I am not attracted by Mr Featherston' contention that the nature of his illness somehow precluded him from accepting the normal prompts or trigger points that would have encouraged him to remember his obligations. After all, the factual position is that at each of the significant steps that Mr Featherston himself would have been personally involved with, any reasonable person, whatever their medical status, would have been reminded of their obligations. The sequence of events is worth repeating:

(a) Mr Featherston lodges the order on 26 April 2007, that order being for product he intended to use personally but yet he lodged the order using Ravensdown's purchasing system.

(b) On 30 April 2007 Mr Featherston receipted the goods, which Mr Featherston describes as a quick computer transaction. However, it is another way-station where he had to do something which one would have thought would have put him into a frame of mind that would have encouraged him to think about the nature of the transaction. Furthermore, Mr Featherston, as a senior manager of Ravensdown, would have known that by receipting the order, he was approving

payment of the invoice, payment of the invoice not by Mr Featherston himself but by his employer Ravensdown.

(c) At the same time as Mr Featherston receipted the product, he also charged the product to Ravensdown's repairs and maintenance account. Quite clearly the product was not for Ravensdown's repairs and maintenance account. It was for Mr Featherston's own garage. It is difficult to see how Mr Featherston can deny that this again was an opportunity for him to realise that he had committed a fundamental error. By affirmatively charging the piping to repairs and maintenance at Ravensdown, he was quite deliberately misrepresenting the position.

(d) Then there was the fateful discussion with Mr Read which took place on either 7 or 8 May 2007. This is still only 11 or 12 days after Mr Featherston raised the order. But again, despite being questioned by Mr Read about the order, he not only lied to Mr Read about the circumstances (about which more in a minute) but he also failed to see this discussion as yet another opportunity for him to correct matters before it was too late.

(e) Mr Read gave Mr Featherston the invoice and the invoice was matched and batched as part of the normal purchasing run by the Ravensdown staff, on 11 May 2007. That means that Mr Featherston must have given the invoice to Ravensdown for processing some time between 7 or 8 May and 11 May 2007. Again, this is a deliberate action by Mr Featherston which runs absolutely counter to his contention that he always intended to pay. If it was his intention to pay, why did an event like this, where he took affirmative action to cause Ravensdown to pay the bill, not alert him to his fundamental error?

[27] Mr Featherston's evidence is that from that point onward he completely forgot about his obligations and it was not until the matter was raised with him by Mr Hendry on 30 May 2007 that he realised that he had completely forgotten to reimburse Ravensdown.

[28] In my opinion, there is no evidence whatever from the actual behaviour of Mr Featherston by which Ravensdown could have discerned that his intention was to

pay the bill from his own resources. All of his affirmative actions were designed to ensure that the bill was paid by Ravensdown. As I have catalogued above, he had, over a short period of time, a number of clear opportunities to realise that he was fundamentally in error, but on each occasion he affirmatively took action to promote the fiction that the order was a legitimate Ravensdown one. Each step that Mr Featherston took had the effect of either taking a further step along the path of authorisation of the account for Ravensdown to pay and/or of coding the order to a Ravensdown project which he knew perfectly well had nothing whatever to do with the order.

[29] I am not persuaded then that Ravensdown had any way of discerning Mr Featherston's intention save from his behaviour, and each step that Mr Featherston took in progressing the order in question, tended to reinforce the conclusion that he had no intention whatever of paying the bill himself.

[30] Furthermore, I do not think that Mr Featherston's health status is of any particular relevance. Mr Featherston was a senior manager at Ravensdown and was treated as such by his employer. They were entitled to expect a level of responsibility from him which was commensurate with his status. There was no suggestion that Mr Featherston's health precluded him from performing his duties at Ravensdown. That being the position, I cannot see how Mr Featherston's health status could be seen to have contributed to him making a fundamental error in relation to the trust invested in him by Ravensdown.

Did Mr Featherston understand staff purchasing policy?

[31] Mr Featherston's evidence is that he was at best confused by the staff policy which in simple terms was that a purchase order on Ravensdown paper was obtained by the staff member, the approval of the immediate manager was obtained and then the Ravensdown order was presented to the supplier **with a cash payment**. The cash payment of course came from the employee and not from Ravensdown.

[32] Mr Featherston gave evidence that he thought that he could put through a purchase order using the company's system and then reimburse the company subsequently. But his evidence was not consistent on the point. When he spoke to Mr Whitty at the final meeting before dismissal, he gave a different version of events,

a version which is confirmed by his own notes which he provided to the Authority and which he acknowledged he spoke from when talking to Mr Whitty.

[33] Furthermore, despite what Mr Featherston told the Authority, at the first disciplinary meeting on 31 May 2007 the notes of that meeting (which I have no reason to doubt) disclose him saying that he did know what the staff policy was. Amongst other things, he acknowledged at the time that he had trained his direct reports in what the staff policy was.

[34] Mr Featherston denied in his evidence that he had made those admissions at the meeting; I cannot imagine why Ravensdown would have falsified the minutes of their meeting on this very subsidiary point. Given that Mr Featherston's evidence on this whole issue is at best confused, and at worst disingenuous, I prefer Ravensdown's evidence.

[35] A further issue which Mr Featherston sought to rely upon was the company credit card which he had been issued with and which he indicated he had from time to time erroneously used for personal purchases. When that happened, he said that he immediately repaid the personal expenditure and nothing untoward was said about it. He said this happened from time to time with all the managers who had these business credit cards.

[36] Ravensdown quite properly accepted that the sequence of events described may well have happened, not just to Mr Featherston but to others. In response they said that the positions were not analogous and I accept that suggestion. First, they are not analogous because the credit card example involves an inadvertent mistake, and second because it is almost immediately remedied by the manager concerned taking the appropriate remedial action. Neither of those situations are relevant in the present case where the timeframe hardly supports inadvertent error and there was no immediate remedy.

[37] Even if it could be accepted on the evidence that Mr Featherston did not know the company policy on staff purchases or was in any way confused about them, one would have thought that as a senior manager he would have made inquiry. He did not do that. Indeed he did not tell anybody in the organisation about what he had done, either before he did it or subsequently. The whole exercise suggests a lack of

transparency and a deliberate and sustained attempt to evade detection rather than a simple mistake because of the misunderstood policy.

Did Mr Featherston mislead Mr Read?

[38] I am satisfied on the evidence before me that Mr Featherston did indeed mislead Mr Read.

[39] Mr Read gave evidence at the investigation meeting. I formed the conclusion that he was a truthful witness. He seemed unmoved by the occasion and gave clear and concise answers to the questions that he was asked. He said that he asked Mr Featherston about the relevant invoice on Monday morning 7 May 2007. He was very clear that that was the date that he spoke to Mr Featherston, although Mr Featherston contends it was actually a day later, 8 May 2007. Nothing turns on which party has the date right, but for the sake of completeness I indicate I prefer Mr Read's recollection; he said that he had discussed the invoice issue with the Works Manager, Mr Hendry, on Friday afternoon 4 May 2007 and it was agreed by the two of them that Mr Read would present the invoice to Mr Featherston for explanation the following Monday morning. That evidence has the ring of truth about it and I accept it.

[40] In response to Mr Read's question about the invoice, Mr Featherston told him that the piping was for the FSA project of the scrubber system. I note at this point that the response recalled by Mr Read is specific to a particular project.

[41] Mr Read's next step was to visit the site of that FSA project but he could find no evidence of the pipe that was the subject of the order.

[42] In his evidence, Mr Featherston denied that he had told Mr Read that the purchase was *for the FSA storage project*. What he says is that he told Mr Read that the project was *coded to* that project. There are two points to be made about this evidence. First, the difference is arguably no more and no less than sophistry. Presumably, if the order was **coded** to the FSA project then it was **for** the FSA project. Why would it be coded to the FSA project if it was not for the FSA project? Second, whether Mr Featherston said the piping was for the FSA project or coded to the FSA project is neither here nor there. He knew perfectly well that it was for neither purpose, that it had nothing whatever to do with the FSA project, that it was

for his own garage. In attempting to divert Mr Read's attention to the FSA project, Mr Featherston misled Mr Read.

[43] Worse than that, when this issue was raised squarely with Mr Featherston at the meeting on 31 May 2007, the notes of the meeting record him as indicating that he *lied* to an employee so as not to implicate anyone else.

[44] When pressed on this at the investigation meeting, Mr Featherston complained that he was unaware that he was accused of lying to Mr Read until the 31 May meeting. That may well be the case, but this was the first meeting in the employer's investigation and on the employer's evidence, the contention that lying was involved came from Mr Featherston himself. As I have just noted, the employer's minutes of that meeting record Mr Featherston as having confirmed that he had *lied* to Mr Read.

[45] In answering a question from me, Mr Featherston tried to draw a distinction between *lying* and *being frank*, presumably on the footing that he accepted that he was less thank frank but he was not actually lying. However, when I pressed him about this, he said that he thought he had said something like *I suppose you could say I lied*.

[46] However, in answer to the very next question, Mr Featherston denied making a false statement to Mr Read and reiterated that he had told Mr Read where the goods were coded to.

[47] I am satisfied then on the balance of probabilities that Mr Featherston did indeed lie to Mr Read about the piping, that he affirmatively told Mr Read that the piping was for the FSA project when it plainly was for his garage, that he did not in fact say to Mr Read that the piping was coded to the FSA project and that at the meeting on 31 May 2007 with Ravensdown, he confirmed in as many words that he had lied to Mr Read.

[48] I am particularly driven to the last conclusion, not only by the admission that I got from Mr Featherston in my questioning of him at the investigation meeting, but also from the evidence of Ms Tracey Paterson who took the minutes of the 31 May meeting and gave evidence before the Authority. It was clear to me from her evidence that Mr Featherston's admission about lying (which she was absolutely sure about and flatly denied Mr Featherston's evidence that she had put those words in his mouth) had an almost transfixing effect on the Ravensdown personnel at the meeting and the meeting concluded very shortly thereafter.

Did Ravensdown set Mr Featherston up?

[49] In essence, Mr Featherston contends that it was available to Ravensdown to reach a less draconian conclusion than one that required summary dismissal for cause.

[50] Mr Featherston also contends that Ravensdown effectively *set him up* because, having discovered what on the face of it was wrongdoing by Mr Featherston, they let matters run on until Mr Featherston was confronted by Mr Hendry on 30 May 2007 by which time the dye was cast.

[51] That particular allegation can be shortly dealt with. It is true that by shortly after the interview between Mr Read and Mr Featherston, Ravensdown were seized of a potentially serious allegation about a senior manager's honesty. Why then did Ravensdown not confront Mr Featherston immediately rather than let the matter run on?

[52] In fact, the apparent delay is meticulously explained in Mr Read's brief of evidence. First, Mr Featherston was confronted on 7 May 2007. He was handed the invoice. It was available to him at that point to simply pay the invoice with a personal cheque and the matter would have concluded there, but as we have already established, Mr Featherston processed the invoice for payment so that it was matched and batched by 11 May 2007.

[53] In the meantime, Mr Read was looking for the piping which Mr Featherston had erroneously told him was for the FSA project, so Mr Read was looking around that particular area of the plant to try to find the piping. Of course he was not successful because the piping was at Mr Featherston's home.

[54] In the meantime, Mr Hendry, the Works Manager, was away on annual leave and did not return to duty until 10 May 2007. When he returned on 10 May (that is the day before the invoice was matched and batched by the Ravensdown system) itself a consequence of Mr Featherston's actions, Mr Read quite properly reported to Mr Hendry.

[55] Mr Hendry, who impressed as a serious and careful man, wanted to be absolutely sure that the growing suspicions about Mr Featherston's integrity were well founded. Accordingly, Mr Hendry instructed Mr Read to find out from Mico how the piping had been conveyed away from Mico's site.

[56] The person who could have told Mr Read that was away from Dunedin on business. He was not back until the week commencing 14 May. Once he returned, Mr Read was able to obtain the information from him that the piping had been collected by an individual with a trailer. This intelligence was then passed to Mr Hendry who, not unnaturally, sought advice from his immediate superior, Mr Whitty.

[57] Between them, Mr Hendry and Mr Whitty decided that they needed to:

(a) follow the transaction through the head office system; and

(b) follow the transaction through the Mico system.

[58] On Mr Hendry's evidence, the purpose of these two devices was to eliminate the possibility that the invoice had been paid by Ravensdown but also paid by a staff member. By the end of the month it was clear that the invoice had only been paid by Ravensdown and that the payment had been received by Mico; there was no evidence that Mico had received any other payment for the piping concerned. That being the position, Mr Hendry then commenced the disciplinary process.

[59] I am absolutely satisfied that this is a proper course of action for an employer confronted with these kinds of circumstances. Section 103A requires the Authority to apply the test of what a fair and reasonable employer would have done in the circumstances **after the conducting of a proper investigation**. The process I have just described is, I hold, part of Ravensdown's legitimate investigation into the very serious allegations that potentially were faced by Mr Featherston. The whole point of the exercise was that Mr Featherston was capable of being criticised for failing to pay for product for himself personally and for abusing the company's purchase system. If events at the end of May 2007 disclosed that Mr Featherston had finally fulfilled his obligation and paid for the material that he was to use on his garage, then, on Mr Hendry's own evidence, while Mr Featherston could expect to be *growled at*, any more serious disciplinary consequence was impossible.

[60] Indeed, even when Mr Hendry spoke with Mr Featherston for the first time on 30 May 2007, it was clear that he was still hopeful that the matter might have an innocent explanation. By all accounts, Mr Hendry expressed the hope at the beginning of the meeting that the matter could be cleared up *in a few minutes*. This is not a surprising attitude. The two men had known each other for many years and worked together at a senior executive level for a long period as well.

[61] I am satisfied then that the behaviour of Ravensdown was not a *set up* or an attempt to entrap Mr Featherston, but was no more and no less than part of the proper process of investigation designed to establish the basic outline of the allegation to be put to the employee concerned.

Was the decision to dismiss too harsh?

[62] The question is whether Ravensdown applied the sanction of dismissal inappropriately. Mr Featherston says in effect that they overreacted and that while he made a mess of things they ought not to have dismissed him for what he did.

[63] But the evidence assembled by Ravensdown from their initial inquiries and the three meetings that they had with Mr Featherston, led them inexorably to the conclusion that Mr Featherston had committed serious misconduct and as a consequence, in terms of the company house rules, was liable to dismissal.

[64] It is difficult to see how this could not be the position. First, Mr Featherston was a long serving employee. If he did not know the rules in respect to staff purchases, then he ought to have. The fact that he was an employee of long standing ought to have made it plain to him that there were processes to be followed and at the very least ought to have encouraged him to ask if he was unsure.

[65] Furthermore and of significant importance in my judgement is the fact that Mr Featherston was not just a long serving employee but also a senior one. He was effectively the second most senior person at the Dunedin plant. He had held that role for over a decade. It is difficult to see how the employer could have appropriately responded to a finding of serious misconduct against Mr Featherston that would have enabled him to remain in his position. One would have thought that the sort of conduct complained of was fundamentally inimical to the required trust and confidence between Ravensdown and the employee.

[66] As an example to other employees less senior in either status or service than Mr Featherston, continuing Mr Featherston on the payroll after this matter had been revealed would not, in my judgement, be the action of a fair and reasonable employer having regard to that employer's obligations of fair and reasonable dealing as regards other employees as well. If conduct such as this is to be excused or minimised, then it is difficult to see how any standards could be appropriately maintained.

[67] Ravensdown also urge on me the effect of the recent decision of the Court in *Blaker v. B & D Doors (New Zealand) Ltd* 21 September 2007, AC8B/07, a decision of the Employment Court (Judge Travis). Blaker was a supervisor who had taken offcuts and then lied during a subsequent investigation whereupon the employer considered those two aspects constituted serious misconduct and justified dismissal. Judge Travis agreed, holding that a fair and reasonable employer would have dismissed an employee for removing the employer's property from its premises without permission and then lying about it.

[68] Ravensdown suggest *Blaker* is on all fours with the present case and I agree. I also agree with Ravensdown's submissions that actually Mr Featherston's situation is more graphic that Mr Blaker's because the piping was not offcuts and Mr Featherston actually caused Ravensdown to incur cost by having them pay for product which he had in his possession and which he was using for his own purposes.

[69] It follows then that I am satisfied that it was available to Ravensdown to reach a conclusion that the only possible response to a finding of serious misconduct of this sort was the ultimate sanction of dismissal.

Was Ravensdown using an unfair procedure?

[70] Mr Featherston alleges that the procedure adopted by the employer was unfair in that he was advised at the meeting on 30 May 2007 that the allegations he faced were that he had breached the staff purchase policy and that he had failed to pay for the piping. This was the meeting at which Mr Hendry honestly conceded that he began the meeting by expressing the hope that the matter could be quickly resolved.

[71] Mr Featherston complains that Mr Hendry did not tell him about the involvement of Mr Read and in particular that Mr Featherston had no idea that Mr Read had been endeavouring to find the piping and to work out how the whole transaction had come about since the two men had met on 7 May 2007. Mr Featherston contends that had he known that the employer Ravensdown was relying on evidence from Mr Read, he might have been less sanguine about the possible outcome of the meeting which was set to take place on 31 May 2007. In particular, he might have brought a lawyer along to that meeting rather than his son.

[72] Mr Hendry says that he did tell Mr Featherston how serious the matter was and that he encouraged Mr Featherston to bring a support person and specifically not a family member.

[73] When I pressed Mr Hendry about his hope that the matter could have *an innocent explanation* he confessed that he could not now think of what that innocent explanation might be.

[74] Mr Featherston's complaint about the failure of Ravensdown to advise him of Mr Read's involvement seems a bit disingenuous. Mr Featherston knew perfectly well Mr Read was involved because Mr Read had spoken to Mr Featherston. Mr Featherston knew that he had given Mr Read information which was plainly incorrect. Mr Featherston ought to have made the appropriate connection that Mr Read's involvement would have been material to the employer and it seems to me unreasonable of Mr Featherston to complain that he was not alerted to Mr Read being a player.

[75] However, with that qualification, I thought Mr Featherston's complaints about the way in which he was invited to the first disciplinary meeting on 31 May 2007 are made out. I think Mr Hendry, for entirely human reasons, may well have minimised the seriousness of the position because of his long standing work and personal association with Mr Featherston which must have made things quite difficult for him. Clearly, Mr Hendry hoped for a positive outcome and that was clear from his straightforward testimony before the Authority. His early intimation at the beginning of the meeting on 30 May that things hopefully would be *cleared up in a few minutes* is evidence of that view but may well have lulled Mr Featherston into a false sense of security, so much so as to encourage him to bring his son to the meeting rather than a lawyer.

[76] In the result, the meeting on 31 May that followed, did not go well for Mr Featherston. I found as a fact that he made admissions at that meeting which were fatal to his cause and it may be that he would have performed better at that meeting if he had been properly advised. In particular, Mr Featherston made admissions in respect to lying to Mr Read which escalated the whole issue concerning Mr Read's involvement quite dramatically.

[77] However, I am satisfied, as I have already made clear, that Mr Featherston did make those admissions and having heard them, Ravensdown was entitled to take them into account.

[78] The meeting that followed on 1 June 2007 was really a continuation of the meeting on 31 May 2007 which had adjourned at roughly the point at which Mr Featherston had made his admissions about lying to Mr Read in order that Mr Hendry could get advice from Mr Whitty. In the result Mr Whitty was not available and the continuation of the meeting was effectively deferred 24 hours.

[79] When it reconvened, the meeting began almost at the point where it should have ended with Mr Hendry telling Mr Featherston that prima facie he was guilty of serious misconduct and that dismissal was appropriate. Mr Hendry denied that he had said any such thing at the meeting, but the notes confirm that is precisely what he said and that is certainly what Mr Featherston heard.

[80] Worse than that, the evidence is plain that Mr Hendry had a conversation with Mr Featherston's then lawyer, Mr Tony Woods, in which Mr Hendry indicated that the two options available were a criminal prosecution for Mr Featherston's behaviour or a summary dismissal. That conversation took place before Mr Hendry and the Ravensdown team met with Mr Featherston on 1 June 2007, and of course, as I have just explained, at the beginning of that meeting Mr Hendry indicated that dismissal was the outcome.

[81] However, whether that admission fatally flaws the process or not depends to some extent on whether Mr Hendry was the decision-maker. Ravensdown say that Mr Whitty was the decision-maker and that that was the position particularly because Mr Featherston had insisted (as he was entitled to do) on interviewing Mr Whitty before the final decision was taken. I think Mr Featherston is on weak ground in arguing that Mr Whitty was not the decision-maker because it is clear from the evidence (and not denied by Mr Featherston) that Mr Whitty heard evidence at his meeting from Mr Featherston which Mr Featherston had not advanced at the earlier meetings.

[82] I am satisfied on the evidence I heard that Mr Whitty was in truth the decision-maker but there is no doubt that Mr Hendry rather compromised the position of the inquiry initially by really down playing its seriousness and then by appearing to

confirm that the dye was cast both in the telephone discussion with Mr Woods (which was profoundly unhelpful) and in the admission at the beginning of the 1 June 2007 meeting that dismissal was the preferred course of action.

[83] Having made those criticisms of Mr Hendry, I want to be clear that I thought his evidence straightforward, truthful and honest and I do not in any way wish to impugn his integrity in the criticisms I make of him. However, I do not think that he made it easy for Ravensdown to deal effectively and efficiently with this difficult process.

Determination

[84] In the result, the only matter on which I have given earnest consideration is whether by reason of Mr Hendry's inadvertent slips, he has so damaged the process as to leave the taint of unfairness. Certainly, I am absolutely clear that up to the point at which Mr Hendry became involved in meetings with Mr Featherston there can be no criticism whatever of Ravensdown's behaviour and indeed the inquiries that Mr Hendry undertook prior to meeting with Mr Featherston were proper, measured and reflective. Only in the face-to-face discussions with Mr Featherston and in the telephone discussion with Mr Woods, do I think that Mr Hendry may perhaps have tried too hard to be all things to all people.

[85] However, it is not for the Authority to impose on parties a perfect process. In the exigencies of the moment and with the normal human emotions at play, requirements that a process be perfect are simply a vain hope.

[86] Furthermore in the particular circumstances of this case, I am satisfied beyond doubt that Mr Whitty made the decision to dismiss and it is clear law that an earlier unsatisfactory process can be perfected by subsequent corrective actions: see, for instance *Rankin v Attorney General (No 2)* ERNZ at 476 para 132. As Ravensdown correctly point out, there was no criticism at all of Mr Whitty's process and ample opportunity for Mr Featherston to provide further and better particulars of his position (which in fact he did).

[87] On the balance of probabilities then, Mr Featherston's claim fails in its entirety.

Costs

[88] Costs are reserved.

James Crichton
Member of the Employment Relations Authority