

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** John Ioane (Applicant)  
**AND** Fisher & Paykel Appliances Limited (Respondent)  
**REPRESENTATIVES** Victoria Letele, Counsel for Applicant  
Shan Wilson, Counsel for Respondent  
**MEMBER OF AUTHORITY** Leon Robinson  
**INVESTIGATION MEETING** 8 February 2005  
9 February 2005  
**SUBMISSIONS RECEIVED** 11 March 2005  
**DATE OF DETERMINATION** 30 March 2005

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**DETERMINATION OF THE AUTHORITY**

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- 1. The Authority is unable to assist Mr Ioane in the resolution of his employment relationship problem.**
  - 2. The parties are invited to resolve any costs issues between them but failing agreement, either party may make prompt application to have the matter determined.**
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## **Employment Relationship Problem**

[1] The respondent Fisher & Paykel Appliances Limited (“Fisher & Paykel”) employed the applicant Mr John Ioane (“Mr Ioane”) in its Machining Cell Department (“MCD”).

[2] On 22 October 2004 Fisher & Paykel summarily dismissed Mr Ioane for falsifying his wage alteration sheet. Mr Ioane had worked for Fisher & Paykel for more than eleven years.

[3] Mr Ioane claims he has an employment relationship problem because his dismissal is unjustifiable. He asks the Authority to assist him to resolve his employment relationship problem because the parties were unable to resolve the differences between them by the use of mediation.

[4] The Authority now investigates Mr Ioane’s employment relationship problem to see whether Fisher & Paykel carried out a full and fair enquiry which disclosed information capable of being regarded as serious misconduct.

### **A full and fair enquiry?**

[5] On 11 October 2004 Mr Sydney Gray an employee in the MCD (“Mr Gray”) approached Fisher & Paykel Human Resources Manager Mr Kim Parkes (“Mr Parkes”) and told him that he thought Mr Royal Sanelivi (“Mr Sanelivi”) and Mr Ioane were claiming double time for hours they worked on Saturday. Mr Parkes told Mr Gray that he would look into the matter.

[6] Mr Parkes then immediately told Ms Jannine Mullaney, Human Resource Advisor MCD (“Ms Mullaney”) that she would need to investigate. Mr Parkes also informed Mr Chris Lee the Area Manager responsible for the MCD (“Mr Lee”).

[7] Ms Mullaney and Mr Lee perused wage alteration sheets for September and October 2004. There were instances where Mr Ioane, Mr Sanelivi and Mr Mo Tulevihi (“Mr Tulevihi”) appeared to have claimed 12 hours double time on a Sunday. The records showed that Mr Ioane had claimed 12.5 hours double time for Sunday 19 September 2004, 12 hours double time for Sunday 16 September 2004 and 8 hours double time for Sunday 3 October 2004.

[8] Ms Mullaney and Mr Lee then met with Mr Gray that same day. Mr Gray told them that Mr Ioane and Mr Sanelivi were dishonest with their time sheets. He said he had noticed for two or three weeks that Mr Ioane and Mr Sanelivi were not working the hours they had claimed on Sundays because he had not seen them working the hours they had claimed. He said it was “not on” and that someone was taking the company for a ride.

[9] Ms Mullaney then spoke with Mr Alan Morris the NZ Amalgamated Engineering, Printing & Manufacturing Union Incorporated’s representative for the MCD (“Mr Morris”). She advised him of the investigation and that she and Mr Lee wished to speak with Mr Ioane, Mr Sanelivi and Mr Tulevihi at the beginning of their shift at 11.00 pm that evening. She also advised him to inform the employees that the matter was serious.

[10] Ms Mullaney and Mr Lee interviewed Mr Sanelivi, Mr Tulevihi and Mr Ioane at 11.00 pm that evening. Mr Morris attended as each employee was interviewed.

[11] Mr Ioane was informed that particular meeting was an investigation meeting and not a disciplinary one. He was informed the meeting related to a serious issue of falsification of timesheets and that Fisher & Paykel considered the matter very serious. He was advised matters could result in the termination of his employment and that the meeting was his opportunity to explain.

[12] Mr Ioane confirmed his normal hours of work were 11.00 pm to 7.00 am Sunday to Thursday each week. When he was asked what hours he worked on Saturday 2 October 2004, he replied that he had worked from 7.00 pm until 3.00 am the following Sunday 3 October 2004. He had then commenced a further shift from 7.00 pm later that same Sunday evening. Mr Ioane admitted that the relevant wage alteration sheet had been completed to show he had worked 12 hours on Sunday and at double time. He was asked to explain. He said he had recently returned from Australia and that before he went away work on Fridays was claimed as overtime although he said he had doubts about the situation. He said he had seen Mr Sanelivi and Mr Tulevihi's timesheets completed this way. He said he had asked Mr Tulevihi why he had recorded 12 hours double time and Mr Tulevihi had told him that was how it was done at his old work. Mr Ioane said he dismissed that explanation. He said he told Mr Sanelivi he would have to see Mr Morris about the situation. He said he had not had a chance to speak with Mr Morris.

[13] Ms Mullaney and Mr Lee had met with Mr Tulevihi prior to speaking with Mr Ioane. Mr Tulevihi said he had spoken to Mr Ioane and Mr Sanelivi about the situation which was apparently on 23 September 2004. He said he approached them and told them it was wrong. He said there was mention of employees being dismissed for similar conduct previously and he had advised Mr Ioane and Mr Sanelivi that he would complete his own hours on the wage alteration sheet because he was not happy. He said that Mr Ioane and Mr Sanelivi did not listen to him and made fun of him and said "we'll be right".

[14] Ms Mullaney and Mr Lee consulted the machine run sheets. That enquiry confirmed Mr Ioane had worked from 7.00 pm on Saturday 18 September 2004 to 3.00 am on Sunday 19 September 2004. He had worked from 7.00 pm on Saturday 25 September 2004 to 3.00 am on Sunday 26 September 2004. He had worked from 7.00 pm on Saturday 2 October 2004 to 3.00 am on Sunday 3 October 2004.

[15] On 13 October 2004 Ms Mullaney and Mr Lee tested workers in the MCD about their understanding of recording hours of work. The workers demonstrated a correct understanding of how they would record the same hours that Mr Ioane had worked. When they interviewed Mr Sega Leuluai, they learned that Mr Sanelivi had told Mr Leuluai, he had recorded 12 hours on Sunday after having spoken to his Union. Mr Leuluai had queried the situation with Mr Sanelivi. Mr Sanelivi told Mr Leuluai it was a penalty payment.

[16] Ms Mullaney and Mr Lee met with Mr Ioane again on 18 October 2004. They explained to him the meeting was a disciplinary meeting, that it was a serious matter and an outcome of the process may be the termination of his employment. Again Mr Morris attended with Mr Ioane. Mr Ioane denied what Mr Tulevihi had previously advised Ms Mullaney and Mr Lee. Additionally, Mr Ioane remarked that the sum involved was only \$130.00.

[17] Ms Mullaney and Mr Lee resolved that they did not accept Mr Ioane's explanations and reached the conclusion that dismissal was appropriate. On 19 October 2004 Ms Mullaney and Mr Lee presented their findings to Mr Parkes. Mr Parkes agreed with their conclusions and a decision was made to terminate Mr Ioane's employment.

[18] On 22 October 2004 Mr Lee and Mr Parkes met with Mr Morris, Mr Maurice Davis Union Organiser (“Mr Davis”) and Mr Neil Saxon the Union site convenor at Fisher & Paykel (“Mr Saxon”). The meeting lasted for over two hours. The union was presented with Fisher & Paykel’s findings. Mr Morris and Mr Davis asked questions. At the end of the meeting, Mr Parkes and Ms Mullaney confirmed the decision to dismiss. They offered Mr Morris and Mr Davis an opportunity to be present when the decision was communicated to Mr Ioane. Mr Morris and Mr Davis both declined.

[19] Mr Parkes telephoned Mr Ioane and asked him to come in to discuss the matter. Mr Ioane declined because he was caring for his child. He insisted on being advised of the decision over the telephone. Mr Parkes explained the decision. There was then a discussion for a lengthy period. Mr Ioane continued to protest his innocence. He said he was an innocent person and had not known what he had done wrong. Mr Parkes advised Mr Ioane he should consult with Mr Davis about his options.

[20] Mr Ioane requested a further meeting with Mr Parkes and Mr Lee and this proceeded on 27 October 2004. Mr Ioane was assisted by Mr Morris. Mr Ioane asked for the decision to dismiss to be reversed but he did not raise anything that he had not previously said. He said he wanted the decision reviewed by Mr John Wardrop, General Manager, Operations and Human Resources (“Mr Wardrop”) and Mr Alan McArdle, Site Operations Manager (“Mr McArdle”). At the conclusion of the meeting Mr Parkes confirmed the decision to dismiss.

[21] Mr Ioane met with Mr Wardrop and Mr McArdle separately on 29 October 2004. Mr Wardrop undertook to look into matters. He met with Mr Parkes, Ms Mullaney and Mr Lee on 1 November 2004.

[22] The decision to dismiss communicated to Mr Ioane on 22 October 2004 was confirmed in writing by letter dated 2 November 2004.

[23] Mr Wardrop met with Mr Ioane again on either 3 or 4 November 2004 and advised that he would not interfere with the decision to dismiss.

[24] I conclude that there was a full and fair enquiry carried out by Fisher & Paykel in investigating the allegation against Mr Ioane.

### **Serious misconduct?**

[25] The dismissal letter dated 2 November 2004 stated the essential allegation against Mr Ioane as follows:-

*From the payroll week ending 24.09.04 until the payroll week ending 08.10.04, you worked overtime every Saturday night from 7.00pm until 3.00am Sunday morning. The above times worked were all entered onto your wage alteration sheets as Sunday at double time. The correct procedure would be to enter the time worked on Saturdays from 7.00pm – midnight as Saturday at time-and-a-half.*

[26] Mr Ioane’s wage alteration sheets had been completed incorrectly. He had recorded his hours in the incorrect day column. He had recorded 12 hours for Sunday instead of five hours for Saturday and three hours for Sunday. The hours were also recorded in the wrong pay rate column.

[27] Mr Ioane’s explanation that Fridays had been worked as overtime referred to a practice of recording the last hour on Friday night between 11.00 pm and 12.00 am as worked on Saturday. That was permitted by Fisher & Paykel for payroll convenience.

[28] Mr Parkes concluded that Mr Ioane had intended to be dishonest rather than that he was simply mistaken or had made an error. I consider that that conclusion was reasonable having regard to the statements Mr Tulevihi had made to Ms Mullaney and Ms Lee. Mr Tulevihi told them he had spoken to Mr Ioane and Mr Sanelivi about the situation. He had said he approached them and told them what they were doing was wrong. He said they talked about other employees being dismissed for similar conduct previously and he had advised Mr Ioane and Mr Sanelivi that he would complete his own hours on the wage alteration sheet because he was not happy. He said that Mr Ioane and Mr Sanelivi did not listen to him and made fun of him and said “we’ll be right”. Mr Ioane denied this conversation when it was put to him.

[29] It was reasonable for Fisher & Paykel to reject Mr Ioane’s denial and accept Mr Tulevihi’s statement. Having accepted that statement, it was then a reasonable conclusion for the company to infer that Mr Ioane had been deliberately dishonest in completing his wage alteration sheet.

[30] It was also reasonable for the company to reject Mr Ioane’s explanation that he could record Saturday overtime on Sunday because Friday overtime was recorded as Saturday. It was accepted practice that only the last hour from 11.00 pm on Friday evenings were recorded as Saturday time. No other employee in the MCD had that erroneous understanding. Fisher & Paykel was also entitled to take into account that Mr Ioane had been a union delegate who had assisted other employees with time sheets. Fisher & Paykel also knew that Mr Sanelivi had proffered a different explanation to that put forward by Mr Ioane.

[31] I conclude therefore that Fisher & Paykel had information before it which was capable of being regarded as serious misconduct.

## **Determination**

**[32] I find that Fisher & Paykel conducted a full and fair enquiry which disclosed information capable of being regarded as serious misconduct. I conclude that Mr Ioane was not unjustifiably dismissed. Consequently, the Authority is unable to assist Mr Ioane in the resolution of his employment relationship problem.**

## **Costs**

[33] If costs are sought, I invite the parties to resolve the matter between them but failing agreement, either party may make prompt application to have the matter determined.

[34] I am grateful to Counsel for their assistance in my investigation.

Leon Robinson  
**Member of Employment Relations Authority**