

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 466/09  
5108491

BETWEEN                   ALY JOHNSON  
                                  Applicant

AND                         TE RUNANGA O  
                                  KIRIKIROA TRUST INC  
                                  Respondent

Member of Authority:     Dzintra King

Representatives:         Simon Scott, Counsel for Applicant  
                                  Alex Hope, Counsel for Respondent

Investigation Meeting:   16 July 2009 and 6 October 2009

Submissions Received    13 November 2009 from Applicant  
                                  30 October 2009 from Respondent

Determination:           21 December 2009

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     The applicant, Mr Aly Johnson, says he has been unjustifiably dismissed by the respondent, Te Runanga o Kirikiritoa Trust Inc (“the Runanga” or “the Trust”) on 8 April 2005.

[2]     Mr Johnson commenced work for the respondent as kai mahi as a casual employee. On 23 February 2004 he became a permanent employee.

[3]     On 9 February 2005 the then Human Resources Manager, Ms Sandra Eru, wrote to Mr Johnson alleging that he had committed serious misconduct. The letter referred to three matters, two of which were instrumental in the dismissal. These were that he had raised his voice and waved his finger in the face of a fellow employee and that he had raised his voice

to and put his hands on the back of another employee. The Runanga has a zero tolerance to violence policy.

[4] On 17 February Ms Eru asked for a meeting with Mr Johnson and indicated that he could bring a support person.

[5] On 9 March the parties met together with Mr Scott for the applicant and Mr Hope for the respondent. The meeting was adjourned to enable the respondent to gather additional information.

[6] On 1 April 2005 a further meeting was held. This was recorded. Present were Mr Johnson, Mr Scott, Ms Eru and a woman named Mania from Human Resources. Ms Eru did not ask any questions nor proffer any comment. Mr Hope and Mr Scott did most of the talking with some input from Mr Johnson. The meeting lasted twenty five minutes.

[7] On 8 April 2005 Ms Mere Balzer, the Chief Executive Officer, who had the authority to dismiss and who had not spoken to Mr Johnson regarding the allegations or been present at any meeting with him, wrote to him saying she had reasonable cause to believe the allegations were true, that they constituted serious misconduct and that he was summarily dismissed. It is not clear what information Ms Balzer acted upon.

[8] Ms Balzer said her concern was with the safety of the staff. There were three, perhaps four, staff who felt that Mr Johnson's interactions made it uncomfortable for them to come to work so she had to consider that broader picture. It was within that context that the decision was made. She said that in her opinion the people who felt intimidated felt unable to carry out their duties. It is also clear that Ms Balzer did not consider whether there was an alternative to the dismissal.

[9] Ms Balzer asked Ms Eru to obtain an opinion from the Trust's solicitor. She said that having read the opinion, dated 6 April 2005, and the documents and discussed the matter with Ms Eru and Mr Hope she made the decision to dismiss.

[10] By letter dated 4 May 2005 Mr Hope gave the reasons for dismissal as being verbal and physical abuse of a co-worker.

## **Decision Making**

[11] It is clear that Ms Balzer did not hear from Mr Johnson. She did not communicate with him until she handed him the dismissal letter. Ms Eru carried out the investigative work. After what is now the passage of a significant period of time it is not surprising that the evidence regarding what Ms Eru had communicated to Ms Balzer was unclear. Statements were made to the effect that certain things would have happened. Regardless of what information was actually provided to Ms Balzer regarding the allegations and the conduct of the investigation her failure to speak with Mr Johnson and give him an opportunity to put his case to her as decision maker renders the dismissal unjustified. The allegations that were made against Mr Johnson were serious and he was entitled to be able to put his case to the person making the decision.

[12] Mr Hope submitted that Ms Balzer had an open door policy and Mr Johnson could have approached her. It is the employer that runs a disciplinary process and it is up to the employer to do it fairly.

## **Remedies**

[13] Mr Johnson seeks reimbursement of lost wages and compensation for humiliation and distress.

[14] Mr Johnson has not mitigated his losses. He had applied for a position at Te Wananga o Aotearoa and then turned it down because the pay offered was too low. He declined to attend an interview after being shortlisted. He was also offered a position at the Henry Bennett Centre at the Waikato DHB, seven months after his dismissal, and did not attend the interview because he felt embarrassed. He obtained casual employment seven months after his dismissal. Evidence of other attempts to find employment was non-existent.

[15] I accept that Mr Johnson was upset and humiliated by the dismissal.

[16] I have considered whether Mr Johnson contributed to the circumstances that gave rise to the personal grievance. It is unclear whether an important report from an employee was ever seen by either Ms Eru or Ms Balzer. Neither of them could recall seeing it. This, coupled with the fact that Ms Balzer did not give Mr Johnson an opportunity to respond

means that I cannot conclude that he contributed to the situation that led to the personal grievance.

[17] The respondent is to pay the applicant the sum of \$4,000.

**Costs**

[18] If the parties are unable to agree on this matter, the applicant should file a memorandum within 42 days of the date of this determination. The respondent should file a memorandum in reply within 14 days of receipt of the applicant's memorandum

Dzintra King  
Member of the Employment Relations Authority