

employer would have done in all the circumstances at the time the dismissal or action occurred.

[4] The section requires me to scrutinise Bridgestone's actions and ascertain whether it carried out a full and fair investigation that disclosed conduct which a fair and reasonable employer would regard as warranting dismissal. The statutory test obliges the Authority to then separate out the employer's actions for evaluation against the objective standard of what a fair and reasonable employer would have done in the circumstances.

Mr Mika's employment history

[5] Bridgestone says Mr Mika was an unsatisfactory employee with ongoing issues of lateness, absenteeism, poor work performance and communication. It says that the point was reached whereby the company could not longer rely upon Mr Mika to present for work and service clients.

[6] Mr Mika was subject to a series of warnings and meetings that were designed to bring about a change in Mr Mika's approach to attending work and communicating as to his whereabouts.

12 December 2007

[7] This disciplinary meeting was for the purpose of investigating Mr Mika's absenteeism. He had been absent from work for 37 days between 1 April and December 2007. The interview record taken at the time of the meeting indicates Mr Mika did not disagree with the level of absenteeism, and explains that he had family and anger management problems. He is also recorded as advising Mr Colin Hardy, Mr Mika's Manager, that he didn't like coming to work as the other employees were untrained and Mr Hardy was too hard on the staff and needed to lighten up.

[8] Mr Mika received a formal written warning and was advised that if he required sick leave in the future he would be required to provide a medical certificate. To assist with Mr Mika's anger management issues, Mr Hardy also provided Mr Mika with a brochure outlining the Employee Assistance Program available to all Bridgestone employees.

19 December 2007

[9] This disciplinary meeting was to discuss a complaint from a Bridgestone client that Mr Mika had failed to complete a job. Mr Mika was issued with a formal written

warning for not completing the job. Mr Mika was instructed to complete daily call sheets with details of all jobs undertaken on fleet service work with the time taken, recorded clearly on all jobs.

20 December 2007

[10] There was a further absence by Mr Mika on 20 December, however, no formal disciplinary meeting occurred as a result of that absence. Instead the matter was dealt with by an informal discussion where Mr Mika was advised once again, that his behaviour was unacceptable.

Further absences

[11] On 20 February 2008 Mr Hardy wrote to Mr Mika setting out his concerns that Mr Mika continued to take a lot of time off work. For the three months ending February 2008 Mr Mika had taken a further twelve days off work.

[12] Mr Mika was again absent on 17, 18 and 19 March. A letter written to Mr Mika from Mr Hardy dated 19 March 2008 indicates that Mr Mika had not been in contact with Mr Hardy and attempts to contact Mr Mika had been unsuccessful.

[13] Mr Hardy reinforced previous statements made to Mr Mika, that he had an obligation to contact him as his manager, if he was not able to attend work for any reason. Mr Hardy explained that having had no contact from Mr Mika, if Mr Mika did not attend work by 25 March he would be deemed to have abandoned his employment.

[14] Mr Mika attended work on 25 March 2008 and handed in his resignation. After a discussion with Mr Hardy and Mr Jason Graham, acting store manager, it was agreed that Mr Mika would withdraw his resignation. Again, it was made clear to Mr Mika that he was expected to attend work on time and where he was not able to get to work for good reason, he was to notify Mr Hardy directly.

[15] Mr Hardy and Mr Mika met on 31 March to discuss Mr Mika's absences the previous week. In his letter dated 1 April Mr Hardy states:

...

I understand that there was a close family member that was in hospital. However, Bridgestone relies on its employees to provide services to our customers. If you are off work for reasons other than annual leave or your own sickness, this affects the efficient running of this business.

To just go off without notifying your Manager is unacceptable. When you are sick you MUST notify the store manager personally as soon as possible.

Note that text messages are NOT acceptable. You must speak to me face to face or on the phone.

All absences from now on must be covered by a Doctor's certificate.

You have used up all your available sick leave at this time.

Ina, you have received formal warnings in the past for absences and I hope that you will now be able to resolve this issue. You must be aware that any further absences and lack of communication from you may result in further disciplinary action being taken, which could result in the termination of your employment. I hope this will not happen.

[16] On 29 April 2008 a further disciplinary meeting was set up to discuss Mr Mika's late arrival at work that morning, coming as it did on the heels of further discussions Mr Hardy had with Mr Mika about lateness on 15 and 16 April.

[17] A handwritten note on Bridgestone's copy of the letter indicates that Mr Mika didn't turn up for the meeting on Friday 2 May. When he phoned Mr Mika, Mr Hardy was told that he [Mr Mika] did not want to come to the meeting. Mr Mika, however, did eventually turn up whereupon he yelled and argued with Mr Hardy and then left abruptly and went home.

[18] The following Monday and Tuesday Mr Mika rang in sick. He provided a medical certificate for the Wednesday when he returned to work on the Thursday.

[19] On 8 May 2008 Mr Hardy wrote once again to Mr Mika inviting him to a disciplinary meeting to discuss complaints received by Bridgestone from a client where fleet checks had not been completed at the contracted time of 6.30am. This time had been specified to allow the clients' trucks to leave the clients' yard after being checked by Mr Mika and to ensure the trucks could then be used to complete a full day of work. Mr Hardy also wished to discuss Mr Mika's lateness on 30 April 2008.

[20] The disciplinary meeting occurred on 12 May. Mr Mika's explanation was that he had had to attend two call outs on his way to the client's yard and that was what had made him late. Mr Hardy appears to have accepted that explanation and agreed to trial a back-up system so that if Mr Mika received a call out just before he was due at the client's yard Mr Mika was to call another fleet service person to cover that call out.

[21] Mr Mika also raised the possibility of being rotated from one client to another client. It was agreed that a rotation would be trialled for two months at which time the situation would be assessed.

[22] In a letter dated 13 May Mr Hardy confirmed the outcome from the disciplinary meeting:

- The company would trial a back-up system so that he could call another Fleet service person in the event that he was not going to be able to attend the customer's yard in time;
- Transferred Mr Mika to the Works Infrastructure yard in response to Mr Mika's request;
- In view of the previous two written warnings in place (13 and 20 December 2007), advised that should any further issue arise, disciplinary action will be taken and "...this may place your future employment with the company in jeopardy".

[23] At this stage in Mr Mika's employment Bridgestone were still attempting to retain Mr Mika's services. However, this was its last attempt to get him back on the right path. He could be under no illusion that there were issues with his absenteeism and failure to communicate his whereabouts with the store manager, Mr Hardy.

The dismissal

[24] In the final straw for Bridgestone, on Sunday 29 June 2008, Mr Mika sent a text message to Mr Rick Manuatu advising him he would not be in at work on Monday 30 June as his father-in-law had been admitted to hospital. Mr Mika failed to make contact with his manager, Mr Hardy as instructed, and failed to alert his back-up with regard to not being at work, which then resulted in a complaint from Works Infrastructure.

[25] Mr Blair McCollum, a store manager contacted Mr Mika and advised him that there were issues with his absence. Mr McCollum suggested Mr Mika ring Mr Hardy.

[26] The next day Mr Mika was late to work. He says he had advised Mr Manuatu that he would be late.

[27] By way of letter dated 30 June 2008 Mr Mika was invited to attend a disciplinary meeting to discuss four issues including that he had not advised his

manager that he would not be at work on Monday 30 June despite receiving warnings and instructions about this previously, that Mr Mika failed to complete a fleet check for a client, and an allegation that Mr Mika had breached the trust expected of him as an employee. Mr Mika was advised that the allegations could constitute serious misconduct if established and that his continued employment may be in jeopardy.

[28] The disciplinary meeting took place on 3 July 2008. Mr Mika concluded that as he had advised others of his absence his job would not be in jeopardy and so did not arrange for a support person. Mr Hardy and Mr Graham Francis were both in attendance at the meeting. Mr Mika's explanation was that he could not contact Mr Hardy due to not having his company phone with him and had no credit on his own phone. This explanation was not accepted by the company.

[29] The company considered there were options available to Mr Mika, he could have used his partner's phone, a family member's cell phone or one of the telephones available at the public hospital to place a call to Mr Hardy and leave a message with him. Once Mr Mika returned to his home on the Monday morning, he could have telephoned Mr Hardy from his work cell phone.

[30] Mr Mika was dismissed on 3 July 2008 with one week's notice which was paid out in lieu of Mr Mika working his notice period.

Bridgestone's policies

[31] On behalf of Mr Mika, Ms Swarbrick submits that Bridgestone has failed to follow its own policies. It was submitted that the policy required a manager to make a note on the Disciplinary Interview Record if an employee does not bring a support person or representative with him to the meeting. Ms Swarbrick submits in that situation, the employee is to be given an opportunity to have a support person or representative and, if necessary the meeting is to be adjourned to allow the employee time to get a witness. If the answer is still "no" then the manager is required, with agreement, to get a third party to act as a witness.

[32] Of four interview records placed before the Authority, three record that Mr Mika did not want a support person. I have however, accepted the submissions of Mr Harrison on behalf of Bridgestone that there has been no breach of the company's policy. The statement at the top of the interview record page is simply a reminder to

Managers to check whether an employee wishes to make use of a support person or representative and does not form part of the written policy in the code of conduct.

[33] I find Mr Mika was well versed in disciplinary processes as they related to Bridgestone. He was at all times offered the opportunity to have a support person or representative. On at least one occasion Mr Mika took up that offer, but on the whole he felt he could manage the situation himself.

Conclusion

[34] I have concluded that Bridgestone's actions in dismissing Mr Mika were what a fair and reasonable employer would have done in all the circumstances of this case. Mr Mika was given very clear guidance as to the expectations of him when unable to attend work or was running late. Bridgestone persisted over a lengthy period of time to attempt to persuade Mr Mika to achieve those expectations. There comes a point when an employer is entitled to say enough is enough. This is one of those instances.

[35] Mr Mika does not have a personal grievance and I am unable to be of further assistance to him.

Costs

[36] Costs are reserved. In the event that costs are sought, the parties are encouraged to resolve that question between them. If the parties fail to reach agreement on the matter of costs, Bridgestone New Zealand Limited may file and serve a memorandum as to costs within 28 days of the date of this determination. I will not consider any application outside that timeframe.

Vicki Campbell
Member of Employment Relations Authority