

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2023] NZERA 437
3201359

BETWEEN	SHANE MATANGI Applicant
AND	WAIKATO COURIERS LIMITED Respondent

Member of Authority: Alastair Dumbleton

Representatives: Alex Hope, counsel for the Applicant
No appearance for the Respondent

Investigation Meeting: 21 July 2023 at Hamilton

Determination: 11 August 2023

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Shane Matangi applied to the Authority for an investigation and determination of an unresolved personal grievance.

[2] His grievance is a claim that he was unjustifiably dismissed by Waikato Couriers Ltd (WCL), a firm he briefly worked for as a courier driver.

[3] When mediation did not resolve the grievance, a statement of problem was lodged in the Authority followed by a statement in reply from WCL.

[4] The employer rejected the grievance, contending that Mr Matangi was justifiably dismissed for serious misconduct. The misconduct was alleged to be a

breach of company policy, by taking home undelivered parcels at the end of the working day instead of returning them to the depot until they could be delivered.

[5] At an investigation meeting Mr Matangi provided evidence and information, and his counsel Mr Hope made submissions.

[6] WCL did not attend the meeting. The day before, WCL advised the Authority and Mr Hope that the company was insolvent and had ceased trading several weeks earlier. A principal witness for the employer was also said to be no longer available. This presumably was the Depot Manager, Renee Bennett, who had employed Mr Matangi and later dismissed him.

[7] As WCL did not dispute the dismissal of Mr Matangi it fell to it to justify that action. Under s 103A(2) of the Employment Relations Act (the ER Act) an employer must show the Authority that its actions were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal occurred.

[8] If the company had attended the investigation meeting, it is unlikely to have established justification for the dismissal when it had failed to give Mr Matangi an opportunity to respond to an allegation of serious misconduct. He was simply told what he had done and that he was being dismissed without notice.

The dismissal

[9] Mr Matangi commenced as an Aramex courier driver at the end of June 2021, driving in the northern Waikato region out of a depot in Frankton. He lived at Huntly.

[10] On 20 July while making a delivery to a house, he was attacked by a Pitbull and twisted his ankle attempting to get away from the dog. He needed medical attention.

[11] After he told the depot manager Ms Bennett what had happened and advised her that he would need time off to go to a doctor, he received a text message from her saying;

This is not working out we are letting you go. We need reliability.

Thanks for the work you have done.

[12] This advice was confirmed by Ms Bennett by letter the following day. She advised the dismissal was without notice and for serious misconduct.

[13] In another letter from Ms Bennett to Mr Matangi that day, 21 July, the serious misconduct was referred to as theft;

Having freight at your house is classed as theft and as such is deemed serious misconduct.

[14] Theft or stealing is generally defined as dishonestly using or dealing with the property of another, with intent to deprive the owner permanently of the property, after obtaining possession of it or control over it.

[15] Mr Matangi had undelivered parcels at his house on at least two occasions. The Authority accepts his evidence that Ms Bennett the depot manger had agreed he could keep parcels or packages at home overnight if they could not be delivered by the end of the working day.

[16] Mr Matangi was not asked by Ms Bennett for an explanation of the alleged serious misconduct, so it will never be known how a conversation about that might have gone between them. There was no suggestion by Ms Bennett in her communications that Mr Matangi had intended to permanently keep the parcels he had in his possession at home, so there could be no basis for a conclusion that Mr Matangi had stolen or intended to steal anything.

[17] The serious misconduct alleged was breach of policy. The Authority accepts the likelihood that WCL, because of the nature of its business, had such a policy. The written form of it was not shown in the statement in reply. Perhaps by mistake the policy that was attached to the statement in reply related to vehicle security and checks of vehicles operated by Fastway Couriers franchisees (policy - 2.127). Mr Matangi was not a franchisee and had not been checked to see if he was working outside of a franchise territory. (Fastway was a previous owner of the business.)

[18] The policy attached to the statement in reply stated that theft is a criminal offence and conduct Fastway Couriers would not tolerate. Mr Matangi may be taken to have known that theft was an offence.

[19] Mr Matangi's evidence was that keeping parcels at home overnight for delivery next day was known about by Ms Bennett, condoned, and even encouraged by her.

The Authority accepts such a thing was possible in a busy operation where meeting customer demand was of major importance.

[20] Although having parcels at home was likely to be a breach of an express policy, the Authority accepts from Mr Matangi that his supervisor had allowed him to think the policy had been waived for him. Although Mr Matangi had been required to comply with WCL's policies, the employer had expressly reserved for itself a discretion to vary them.

[21] Mr Matangi's actions were not theft or unauthorised possession of property.

[22] In its statement in reply WCL also said that Mr Matangi had consistently failed to turn up to work and had complained that he could not do the job as it was too much for him. WCL did not support this with any evidence or information.

[23] There was no fair or reasonable treatment by WCL of Mr Matangi, that might have supported the Authority finding that WCL had acted with justification in accordance with the test at s 103A of the ER Act. The dismissal was unjustified.

[24] For that reason Mr Matangi has a personal grievance.

Remedies for personal grievance

[25] The abrupt dismissal communicated by text message and conducted without any fair treatment, suggest that WCL simply viewed Mr Matangi as someone who did not fit in and, because he had gone off a benefit on to a job, he could just as easily go back on the benefit. Mr Matangi had the same employment rights as anyone else and WCL's lack of respect shown for those rights was humiliating for him.

[26] Although Mr Matangi had only been employed for a short time, he suffered injury to his feelings by being described as a thief, even though Ms Bennett had allowed him to keep parcels at home overnight.

[27] After a short employment he was dismissed by text on the grounds of theft, without a meeting to give him an opportunity to answer that serious allegation.

[28] Under s 123(1)(c)(i) of the ER Act, the Authority orders payment by WCL to Mr Matangi of \$11,000 as compensation for humiliation, loss of dignity and injury to feelings.

[29] On his uncontradicted account which the Authority accepts, Mr Matangi did not contribute to the situation that gave rise to his grievance. No reduction of the amount of compensation is required under s 124 of the ER Act.

[30] Under s 123(1)(b) of the Act the claim for reimbursement of lost wages is accepted for the standard 3 month period. This includes three weeks' notice, which Mr Matangi was not given. Schedule 1 of the employment agreement provided for that notice. Mr Matangi described the attempts he made to mitigate his loss by finding new work after he was dismissed.

[31] His employment agreement had guaranteed 40 hours work a week to be paid at \$20 per hour. For 13 weeks, the amount WCL is ordered to pay Mr Matangi is \$10,400.

[32] Interest is to be paid on \$10,400 from 21 July 2021 until the entire amount is paid, under clause 11(1) of Schedule 2 of the ER Act. The calculation of the amount is to be made using the Civil Debt Interest Calculator available at www.justice.govt.nz/fines/civil-debt-interest-calculator.

[33] Payment to Mr Matangi of the amounts ordered by the Authority, is to be made within 14 days of the date of this determination.

Costs

[34] An order for costs is sought against Mark Milroy. He was not Mr Matangi's employer but represented WCL as counsel, a capacity confirmed below his signature on the statement in reply and by his attendance in a case management conference with the Authority. Mr Milroy is also listed as a director and part owner of WCL.

[35] The order is sought based on Mr Milroy's advice that he had been aware WCL was insolvent for about three weeks before the investigation meeting. He had not disclosed this until the day before. Mr Hope submits that his client, a legally aided party, was needlessly put to the expense of preparing for what appeared to be a defended hearing, only to find the costs of doing so were wasted. The Authority sympathises with that argument.

[36] Under clause 15 of Schedule 2 of the ER Act, the Authority may order any party to a matter to pay costs to any other party.

[37] Mr Milroy personally is not a party to the proceedings but could be joined under s 221 of the ER Act.

[38] If costs against Mr Milroy are to be considered, an application must be filed and served on him, setting out the basis on which an order is sought. Any application is to be made within 14 days of the date of this determination. Mr Milroy shall have a further 14 days in which to reply.

[39] The Authority will make an order against WCL on the usual daily tariff basis and then, if Mr Milroy becomes a joined party and a costs order is appropriate, he can be made jointly and severally liable to meet the order against WCL.

[40] WCL is to pay costs of \$2,250 to Mr Matangi for the half day of the investigation meeting.

[41] This determination is given in accordance with s 174E of the ER Act and does not therefore record all the evidence or information considered by the Authority, or submissions received.

Alastair Dumbleton
Member of the Employment Relations Authority