

Events leading to the dismissal

[3] Mr McManus was employed as a territory manager working in Christchurch. Essentially, his role was to sell merchandise on behalf of the respondent from a mobile truck. Some of the sales were made through the telesales team and some by Mr McManus selling directly to individuals at their homes on the truck. The aim was for Mr McManus and his colleagues to sign up customers to what is styled a Lifestyle Account and to encourage those customers to refer new customers to the company.

[4] According to his evidence, on 1 December 2011, after Mr McManus had had no luck in making any sales that day, a well dressed man approached him, asked some questions about the setup and looked around the truck. Mr McManus' evidence is that the man stated that he lived just down the road, but he needed to buy a present for his niece's birthday urgently and that he had no ID on him (and so could not open an account). Mr McManus' evidence is that, after some discussion with the individual, he agreed to sell a doll retailing at \$65 to the individual, who offered \$60 cash for it.

[5] Mr McManus' evidence, corroborated by the respondent, is that the mobile trucks do not carry a cash float and so Mr McManus did not have any change. Therefore, although the doll was actually priced at \$65, he accepted \$60 from the individual, took off the bar code from the box in which the doll was presented, stuck it on the back of a pad which contained what he called resale forms, and handed the doll over to the individual.

[6] Mr McManus' evidence is that he had never made a cash sale to somebody who was not already a customer or who was not opening an account and so he was not sure what paperwork to fill in. Essentially, there were two choices; an invoice intended for existing customers and another document intended for new customers who were signing up.

[7] Mr McManus' evidence was that he called his branch manager, Mr Collings, to ask him what to do and Mr Collings told him that he would show him later that day. Mr McManus said that he also told the other territory manager in Christchurch, known as Steve, that he had made a cash sale. He said he did this because he was having such a very bad day from a sales point of view, wanted to know how the others were doing and had said, essentially, that all he had managed to sell all day so far was one doll for cash.

[8] Mr McManus' evidence was that he later had a call from Mr Collings who wanted to know whether Mr McManus had a certain camera on his truck which a customer was wanting to buy. Mr McManus confirmed that he did and drove to the address of the customer and met Mr Collings there. He handed over the camera to Mr Collings so that Mr Collings could finalise the transaction and then, because Mr Collings was having a very good day, making a very large sale to this particular customer, Mr Collings let Mr McManus take on another appointment originally intended for Mr Collings. This appointment turned out to be the only other sale that Mr McManus made that day. It was to an existing customer and, accordingly, the appropriate invoice was correctly filled out.

[9] Mr McManus' evidence was that, later on in the evening of 1 December, as was their habit, Mr McManus and Mr Collings met up at the office where they had intended to complete their paperwork for the day and, Mr McManus hoped, where he would be shown by Mr Collings how to fill out the paperwork for his cash sale. However, as they arrived at the office, Mr Daviesonn, the respondent's regional sales manager, appeared, accompanied by another individual who turned out to be a security consultant. Mr McManus was told by the security consultant that he was to go away as they needed to have a meeting with Mr Collings. Therefore, according to his evidence, Mr McManus did not have the opportunity to do the paperwork for the one sale to the existing customer that he had, nor did he have the opportunity to talk to Mr Collings about the cash sale.

[10] It turned out that the meeting that Mr Daviesonn wanted to have with Mr Collings was to advise him that he was facing a disciplinary investigation in relation to serious concerns that the company had. That meeting with Mr Collings took place the following morning, Friday 2 December 2011, at the end of which Mr Collings was dismissed for serious misconduct. Mr Collings' dismissal is the subject of a separate investigation by the Authority under case number 5388767.

[11] After Mr Collings' dismissal, Mr McManus, according to his evidence, was in some shock about the news and he, Mr Collings and Steve all met up later in the day to discuss what had happened. Mr McManus says that it was during their meeting that it emerged that the same individual who had bought the doll for cash from Mr McManus had, on the same day or the day before, approached the mobile trucks of Mr Collings and Steve telling the same story about living just down the road, not

having any ID, not wanting to sign up to an account but wanting to buy a gift for their niece's birthday for cash. Understandably, the three men grew suspicious and believed that something strange was happening. It was only when the briefs of evidence of the respondent were lodged and served in this current Authority matter that it emerged that the individual who had visited each of the three mobile trucks had actually been a private investigator, engaged by a security company, Securitek, on behalf of the respondent as a mystery shopper.

[12] The evidence of the respondent is that a report from the mystery shopper was made available to the respondent on or around Monday 5 December 2011 and, in that report, it was stated that Mr McManus had not given the mystery shopper a receipt for the doll. The respondent checked the invoices from Mr McManus and, on 6 December, having found that no invoice had been submitted for the sale of the doll, decided that the matter needed to be investigated as it occurred to them that Mr McManus may have taken the money for himself. Accordingly, a letter was sent to Mr McManus dated 6 December 2011 in the following terms:

Dear Nathan

We have some concerns about information we have received and would like to discuss this with you formally. We have scheduled a meeting for Wednesday 7 December 2011 at 12pm. This meeting will be held at the Home Direct office in Christchurch.

Specifically we would like to discuss the concern we have about a possible cash sale you made on Thursday 1 December 2011. We are concerned from the information we have so far that this might indicate the misappropriation of stock and/or failure to follow the appropriate procedure for documentation regarding cash sales.

Nathan, we view the allegation as serious and wish to hear your account of the matter detailed above. If your explanation for the above is unsatisfactory, disciplinary action including termination of your Employment Agreement is a possible outcome at this meeting.

Given the serious nature of the concerns, we recommend you bring a support person with you to this meeting. Jon-Paul Jacquier, Wellington Operations Manager may be present at this meeting also.

If for any reason you cannot attend this meeting please contact me on [number omitted] to reschedule.

Yours sincerely

*Gavin Daviesonn
Regional Sales Manager*

[13] Mr McManus chose not to have a support person with him at the disciplinary meeting.

[14] It is the evidence of Mr McManus that, at the disciplinary meeting which took place on 7 December 2011, Mr Daviesonn had told him that the customer had returned the doll because it was faulty. The doll was sitting on the table in front of them still in its box. Mr Daviesonn denies that he said this. However, Mr Daviesonn admits that he did not tell Mr McManus that the doll had actually been purchased by a mystery shopper, or that he had a report about the incident from the mystery shopper. In fact, it was only on 8 February 2013 that this report was made available to Mr McManus' representative and to the Authority.

[15] The report stated as follows:

I spoke with the salesperson who stated that I was lucky to have caught him as he was having a break and had just finished.

The back of the truck smelled slightly of smoke. I said that I was interested in having a look and he opened the truck and invited me in. The salesperson explained how the system worked in regards to opening an account. I asked whether or not I could just make a purchase there and then and the salesperson said "absolutely".

I then asked if he had any Bratz dolls but the salesperson stated that he didn't although he did have one of the more expensive Bratz Shimmer Dolls.

I asked how much it was and the salesperson replied \$60.00.

I paid the salesperson \$60.00 in cash which he placed directly into his pocket. The salesperson scratched off the pricing label from the box and handed it to me. He did not provide a receipt or enter the sale in any way.

As I left, I asked the salesperson for a card, which he provided.

[16] Mr McManus' evidence is that he explained that he had tried to find out what paperwork to fill in for the cash sale but that he had not been able to talk to Mr Collings about what paperwork to fill in because Mr McManus had been told to go home on the evening of 1 December and Mr Collings had been dismissed early on 2 December. Mr Collings' evidence to the Authority was that, although he had told Mr McManus that he would show him how to do the paperwork for the cash sale, he himself was not sure exactly how to do it because it was very unusual to make a cash sale to someone who was neither an existing customer, nor someone who was signing up to be a new customer.

[17] Mr McManus also gave evidence to the Authority that, during the investigation meeting with Mr Daviesonn, Mr McManus stated that he still had the cash in his pocket. This was denied by Mr Daviesonn. He said he also went to get the pad of resale forms, on the back of which was the bar code from the doll. He says that he explained that, after Mr Collings had been dismissed, he had forgotten about the cash sale until he had received the letter dated 6 December inviting him to the disciplinary meeting.

[18] The disciplinary meeting was adjourned and, when it reconvened, Mr McManus was told that he was to be dismissed for serious misconduct. The following day, a letter was sent to Mr McManus dated 8 December 2011 in the following terms:

Dear Nathan

We met on Wednesday 7 December at 12pm to discuss concerns we had regarding your behaviour. In the letter dated 6 December 2011 you were advised you could bring a support person to this meeting. You chose not to bring a support person and when questioned confirmed you were happy to proceed without a support person present.

Specifically we met to discuss a cash sale you conducted on 1 December 2011 for which an invoice registering the sale has not been submitted. You confirmed that you conducted a sale for cash at Ashgrove Terrace on 1 December 2011 at 3.20pm and confirmed you sold an item number 0439067 Bratz Shimmer Doll for \$60 cash however did not write an invoice registering the sale. In the meeting you stated that you did not write a cash sale invoice at the time of the transaction because you were unsure on how to complete a cash sale invoice.

You stated that during the course of the day you met up with the Christchurch Branch Manager at [address withheld], Aranui, Christchurch and advised him of the cash sale. You advised us that the Branch Manager told you to write a cash sale invoice. At the time of our meeting no cash sale invoice had been written or received into the data entry department recording this transaction. Your explanation was that you had forgotten about the transaction and only remembered when it was brought to your attention by your Manager [Jon Paul Jacquier]. This was three working days after the transaction occurred. The impact of this is the stock for your mobile shop is unbalanced as the Company does not have a record of the stock being sold and the customer does not have a record of the transaction for warranty purposes. We believe you have failed to follow Company Procedure by neglecting to accurately complete transaction records and have failed to submit funds from the cash sale, which we view as serious misconduct.

Nathan, you could not satisfactorily explain why you did not write an invoice for the cash transaction on the day. We have considered your responses to the concerns and the interests of the Company in this matter and in particular the fundamental requirement on the Company's part to feel certain that when an employee completes a transaction they record the transactions fully and that all information can be trusted. We view your deliberate action of neglecting to complete this invoice and failing to follow Procedure serious misconduct.

The outcome of our consideration is that we are unfortunately driven to the view that you deliberately neglected to follow Procedure for completing accurate documentation and have misappropriate cash funds. This constitutes serious misconduct. We advise you that unfortunately the only appropriate course of action in this matter is to terminate your employment for serious misconduct. This letter confirms that we are terminating your employment, effective immediately.

We will be seeking reparation for the missing funds and other deductions in accordance with clauses 16, 38, 39 and 40 of your signed Employment Agreement. Details of the calculations are as follows [details omitted].

Yours sincerely

*Gavin Daviesonn
Regional Sales Manager*

The issues

[19] The Authority must consider the following issues:

- i. Was Mr McManus unjustifiably dismissed?
- ii. Did Mr McManus suffer an unjustified disadvantage in his employment by the company deliberating putting a false customer onto his truck in order to pressurise him to act outside preferred procedures?

Was Mr McManus unjustifiably dismissed?

[20] In determining this issue, the Authority must apply the test set out at s.103A of the Employment Relations Act 2000 (the Act). This states as follows:

- (1) *For the purposes of section 103(1)(a) and (b), the question of whether a dismissal or an action was justifiable must be determined, on an objective basis, by applying the test in subsection (2).*
- (2) *The test is whether the employer's actions, and how the employer acted, were what a fair and reasonable employer*

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

- (3) *In applying the test in subsection (2), the Authority or the court must consider –*
- (a) *whether, having regard to the resources available to the employer, the employer sufficiently investigated the allegations against the employee before dismissing or taking action against the employee; and*
 - (b) *whether the employer raised the concerns that the employer had with the employee before dismissing or taking action against the employee; and*
 - (c) *whether the employer gave the employee a reasonable opportunity to respond to the employer's concerns before dismissing or taking action against the employee; and*
 - (d) *whether the employer genuinely considered the employee's explanation (if any) in relation to the allegations against the employee before dismissing or taking action against the employee.*
- (4) *In addition to the factors described in subsection (3), the Authority or the Court may consider any other factors it thinks appropriate.*
- (5) *The Authority or the Court must not determine a dismissal or an action to be unjustifiable under this section solely because of defects in the process followed by the employer if the defects were –*
- (a) *minor; and*
 - (b) *did not result in the employee being treated unfairly.*

[21] The following are relevant considerations:

- i. Whether, as submitted by Ms Oberndorfer, the decision to dismiss Mr McManus was predetermined;
- ii. Whether Mr McManus had been given sufficient time to prepare for the meeting;
- iii. Whether the respondent had acted in good faith in not telling Mr McManus that the customer had in fact been a mystery shopper engaged on behalf of the respondent;
- iv. Whether the policy on handling cash was sufficiently clear to Mr McManus; and

- v. Whether a fair and reasonable employer would have concluded that Mr McManus was lying and that he had misappropriated the \$60.

Whether Mr McManus' dismissal was predetermined

[22] The basis for this assertion derives from the fact that the mystery shopper had apparently tried to persuade all three of the salesmen, including the branch manager, in Christchurch to sell him a doll for cash. The investigation meeting was reconvened on 15 May 2013 in order to hear from the private investigator who acted as a mystery shopper, Mr Kovloskis. Mr Kovloskis gave evidence that he had carried out mystery shops before, but never for Home Direct. He had received his instructions from Securitek, and had been told the basics of how Home Direct worked. He had been instructed to try to make a cash purchase but had been told to expect to be refused.

[23] Mr Kovloskis said that he had not been told to try to catch out the staff and had not been an *agent provocateur*. He explained that he meant by that, someone who tries to persuade someone to do something they would not otherwise do. I found Mr Kovloskis to be a helpful, candid and credible witness and I accept his evidence.

[24] Accordingly, I accept the evidence of the respondent in this matter that Mr Kovloskis was a genuine mystery shopper and that, whilst it very much appears that the individual was trying to catch out the three salesmen, I do not believe that the respondent did this deliberately in order to try to find reasons to dismiss their three salesmen in Christchurch, as has been alleged by Mr McManus. It would not make any sense to do so just as the Christmas rush was getting underway.

[25] The other reason for this assertion is that advertisements initially appeared to have been listed on TradeMe the night before Mr McManus' dismissal. However, this assertion appears to have been based upon information received from the respondent which turned out to be erroneous and, on balance, the evidence provided suggests that the advertisements to replace Mr Collings and Mr McManus were placed after Mr McManus' dismissal.

Was Mr McManus given enough time to prepare for the meeting?

[26] In effect, Mr McManus was given around 23 hours to prepare for the meeting. Under many circumstances, that timeframe would be woefully inadequate. However, in this particular case, I believe that Mr McManus completely understood what the

issue was that he had to discuss and, as suggested by his decision not to have a support person with him, he clearly did not feel that he was particularly disadvantaged. Therefore, in the circumstances at the time, I believe that a fair and reasonable employer could have required Mr McManus to attend the meeting slightly less than 24 hours after he was first notified of it. This does not render the dismissal unjustified therefore.

Did the respondent act in good faith?

[27] It is a major concern that, throughout the disciplinary process, Mr McManus was not told that the person he had sold the doll to was not in fact a genuine customer but someone engaged on behalf of the respondent as a mystery shopper. Section 4(1) of the Act states as follows:

The parties to an employment relationship specified in subsection (2)-

- (a) *must deal with each other in good faith; and*
- (b) *without limiting paragraph (a), must not, whether directly or indirectly, do anything –*
 - (i) *to mislead or deceive each other;*
 - or*
 - (ii) *that is likely to mislead or deceive each other.*

[28] This obligation is set out in mandatory and absolute terms and it is clear that the respondent acted in breach of it. I found Mr McManus to be a wholly credible witness and had no doubts at all that he was telling me the truth to the best of his recollection. Therefore, I prefer Mr McManus's evidence to that of Mr Daviesonn when he tells me that Mr Daviesonn said that the customer had returned the doll because it was faulty. That was clearly a falsehood.

[29] Even if I am wrong in that conclusion, Mr Daviesonn, on his own admission, chose not to tell Mr McManus that the individual to whom he had sold the doll was not actually a customer and created the impression that the purchaser was a genuine customer. That was clearly misleading and deceiving conduct. Furthermore, the dismissal letter refers to the individual as a customer who *does not have a record of the transaction for warranty purposes*. Whilst that may have been the case if the customer had been genuine, he was not genuine and therefore did not need a warranty as he had not made a genuine purchase and had returned the doll to the respondent at the end of the mystery shopping exercise.

[30] The evidence of Mr Daviesonn is that he did not want to disclose the fact that the individual had been a mystery shopper because it would have endangered the mystery shopper programme that had been rolled out across all regions around one year before. Considerable evidence was heard about the mystery shopper programme and, whilst I believe it was a genuine programme, I do not accept the evidence of Mr Daviesonn, nor of Ms Comrie, the then National Sales Manager, that to have disclosed the fact that a mystery shopper programme had been in progress in Christchurch would have endangered the way it was implemented elsewhere. The evidence was, in a nutshell, that the salesmen would not behave naturally the next time somebody came on board a mobile truck wanting to buy something for cash.

[31] However, notwithstanding the fact that I think this is overstated given that the mystery shopper has only visited Christchurch once since the inauguration of the programme in late 2010 (the one occasion involving Mr McManus and the doll), a position description produced by the respondent of the territory manager role (the role held by Mr McManus) makes reference to a mystery shopper system. Specifically, it states the following:

The role is responsible for ensuring all customer service standards are met or exceeded to promote and meet the brand promise:

- *Promote and utilise mystery shopping system for assessment, training and performance purposes.*

[32] All in all, I am not satisfied that the respondent had a reasonable excuse for failing to tell Mr McManus that the individual had been a mystery shopper. Indeed, it is clear from the wording of s.4(1) of the Act that it is an absolute duty not to mislead and deceive in any event, no matter what the excuse. Any right to protect a performance management tool (as the mystery shopping programme was) must be overridden by the duty to comply with the duty of good faith.

[33] In light of this fundamental breach of the duty of good faith by the respondent in the way that it carried out the disciplinary procedure, I must find that it renders the dismissal procedurally unjustified, as no fair and reasonable employer could have misled Mr McManus during the disciplinary procedure.

[34] Furthermore, the report into the event made by the mystery shopper was not made available to Mr McManus and that, I find, is a breach of s.4(1A) of the Act which, at subsection (c), requires an employer who is proposing to make a decision

that will, or is likely to, have an adverse effect on the continuation of the employment of one or more of his or her employees to provide to the affected employees access to information, relevant to the continuation of the employees' employment, about the decision; and an opportunity to comment on the information to their employer before the decision is made.

[35] The report by the mystery shopper into the incident led directly to the disciplinary investigation meeting and so was clearly of material relevance to Mr McManus and should have been disclosed. This failure to do so was, again, in breach of the Act and, again, leads me to conclude that the dismissal was unjustified.

Whether the policy on handling cash was sufficiently clear to Mr McManus

[36] The company had a cash handling policy, a copy of which was shown to the Authority. However, it emerged during the evidence that it was highly unlikely that Mr McManus had ever seen it and, in any event, it was partially out-of-date by the time of the incident involving the sale of the doll. The evidence from the respondent was that this was available on the intranet but I am not satisfied that Mr McManus ever saw it or had been directed to look at it. Therefore, insofar as the respondent may allege that Mr McManus breached this policy, as he was not aware of its detailed contents, I do not believe that the respondent can be justified in reaching that conclusion.

[37] Furthermore, I accept Mr McManus' evidence that he did not know what paperwork to complete when the unusual transaction involving the mystery shopper took place. On the face of it, neither available document was appropriate as the mystery shopper was neither an existing customer, nor one who was signing up. The evidence of Mr Daviesonn was stated blithely that either could have sufficed, as if it were obvious. However, I do not believe that a fair and reasonable employer could have found it was obvious, and the evidence of Ms Comrie as to what details Mr McManus had been supposed to have recorded under the circumstances both changed during her evidence and seemed to me to be a post hoc justification of the company's actions.

[38] Of course, the Authority cannot substitute its own view for that of the employer, and I must decide whether the respondent's decision to dismiss was what a

fair and reasonable employer could have done in all the circumstances at the time the dismissal occurred.

[39] In my view, no fair and reasonable employer could have relied upon the cash handling policy in these circumstances to conclude that Mr McManus had breached it and should be dismissed for such breach.

Was the dismissal substantially justified?

[40] It is clear that, from the evidence given by Mr Daviesonn and from the dismissal letter, that Mr McManus' discounting of the doll by \$5 did not lead to the dismissal. Mr Daviesonn said that it carried little weight in his decision even though the company has a policy that states that deliberate under-selling would be treated as theft.

[41] In fact, it emerged during the evidence that Mr McManus intended to pay the \$5 out of his own pocket as part of the sale transaction because he was hoping that this customer would sign up to an account in the future. This, it emerged, was common practice where a customer was approaching or about to exceed their purchase limit so that the salesman would discount the amount by a few dollars to ensure that the customer did not exceed their purchase limit and would make up the difference themselves. This was worth their while because of the way the commission structure worked apparently.

[42] The evidence from the respondent and from Mr McManus was that cash sales were relatively uncommon and that the mobile truck did not carry cash floats (for security reasons), but that salesmen would accept cash from time to time from existing customers or from new customers. The practice was that the individuals kept the cash but noted it down on the invoice so that their next salary or commission payment would be reduced by the amount of the cash retained by the salesman.

[43] Therefore, neither Mr McManus' keeping the \$60 nor him carrying out the cash sale of the kind he did in any way in breach of the company's procedures. However, I note that the brief note of the disciplinary meeting shows that Mr Daviesonn asked Mr McManus why cash sales were a *no-no*. Mr Daviesonn tried to argue that this was a question that had been asked by Mr McManus but, I am afraid, I simply do not believe that.

[44] The essence of the wrongdoing, as alleged by the respondent, is that Mr McManus failed to complete an invoice so that neither the customer had a receipt nor the company had a record of the stock having been sold. I do accept that a deliberate failure to make up an invoice would certainly raise a question as to the honesty of a salesman if he had taken cash for an item. However, in my view, the explanation given by Mr McManus to Mr Daviesonn during the disciplinary meeting was quite plausible and, in my view, no fair and reasonable employer could have concluded that Mr McManus was lying and had intended to keep the money. In reaching this conclusion I take into account the following:

- a. The transaction carried out by Mr McManus in relation to the mystery shopper was unusual (a one off casual cash purchase) and no paperwork existed that dealt with that precise transaction;
- b. Mr McManus was perfectly entitled to ask his branch manager to explain what paperwork to complete and cannot reasonably be criticised for not asking anyone else when his branch manager had promised to tell him;
- c. The paperwork expected by the respondent was only three working days late;
- d. During that period, Mr McManus' branch manager had been dismissed and no replacement had been provided until 6 December 2011, when a relief branch manager came down from Wellington;
- e. Mr McManus did not throw away the bar code sticker on the packaging for the doll or leave it on the packaging for the supposed customer to take with him, as one would have expected if he had had dishonest intent, but retained it by putting it on his resale forms, and
- f. Mr McManus was shocked by the sudden and unexpected dismissal of his branch manager and so it is quite credible that he had forgotten about the transaction.

[45] Therefore, I believe that the decision to dismiss Mr McManus was substantially flawed.

Did Mr McManus suffer an unjustified disadvantage in his employment?

[46] Did Mr McManus suffer an unjustified disadvantage in his employment by the company deliberating putting a false customer onto his truck in order to pressurise him to act outside preferred procedures? I do not believe that the respondent intended to pressurise Mr McManus to act outside preferred procedures. In fact, I do not believe that Mr McManus did so.

[47] I accept that the appearance of Mr Kovloskis on Mr McManus' truck was part of the respondent's mystery shopping programme. I do not believe, therefore, that Mr McManus suffered a disadvantage in his employment by this action, but even if he did, the action by the respondent was justified. Mystery shopping programmes are part and parcel of many retail organisations, and the respondent was entitled to use one to test the performance and standards of the operation, especially when the salespersons work so much alone.

Summary

[48] In conclusion, it is my view that the dismissal of Mr McManus by the respondent was both procedurally and substantially unjustified.

Remedies

[49] Mr McManus stated that, although he has not been able to find new employment since his dismissal, he could not contemplate being reinstated to the employment of the respondent. However, it was agreed at the investigation meeting that, as there would be difficulties in estimating easily the commission lost by Mr McManus were he to be successful, this would be investigated in a separate meeting. Furthermore, relying on this agreement, as counsel for the respondent did not address the issue of quantum at all, I shall not fix any award, including compensation under s.123(1)(c)(i) at this stage. I set out below directions to assist the parties at agreeing quantum.

[50] However, I believe that it would assist the parties to understand the Authority's conclusions on contribution, which both parties' counsel did have the opportunity to address.

Contribution

[51] Section 124 of the Act requires me to consider the extent to which the actions of the employee contributed towards the situation that gave rise to the personal grievance and, if those actions so require, to reduce the remedies that would otherwise have been awarded accordingly.

[52] There is no doubt that Mr McManus' forgetting to find out what paperwork he needed to complete after the cash sale led to his dismissal, which in turn led to his personal grievance. I am also satisfied that this failure was blameworthy, in the sense that an alert and conscientious worker would not have forgotten and would have taken all reasonable steps to have found out what paperwork to have completed, especially when cash was involved.

[53] Accordingly, I do believe that a reduction is warranted. However, I am not convinced that the level of blameworthiness was significant. It was not deliberate and was, to a large extent, understandable in the circumstances where his manager as suddenly dismissed.

[54] I believe that a reduction of no more than 10% is warranted from both a loss of wages award and an award under s.123(1)(c)(i) of the Act.

Directions

[55] I direct the parties to attend mediation with a view to agreeing what sums are owed to Mr McManus under s.123(1)(b) and s.123(1)(c)(i) of the Act. The parties should ensure that mediation has occurred within eight weeks of the date of this determination. Prior to mediation, the respondent is to provide all records reasonably required by Mr McManus to enable quantum under s. 123(1)(b) of the Act to be assessed.

[56] In the absence of an agreement on quantum between the parties within eight weeks of the date of this determination, Ms Oberndorfer is to apply to the Authority for the setting down of an investigation meeting to enquire into and determine quantum, and the Authority will conduct a case management conference in order to direct the arrangements for the efficient undertaking of that investigation.

Costs

[57] The parties are to seek to agree how the costs of the liability investigation are to be disposed of between them and, accordingly, costs are reserved. If the parties cannot agree, then Ms Oberndorfer must serve and lodge a memorandum setting out her client's position on costs no later than 14 days after the date of the mediation, if the mediation is successful in settling the issue of quantum, and Mr White must serve and lodge his response within a further 14 days.

[58] If the mediation is not successful in settling the issue of quantum, then the Authority will give further directions as to costs in its determination after the end of the investigation into quantum.

David Appleton

Member of the Employment Relations Authority