

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 16
5292229

BETWEEN MICHAEL METTRICK
Applicant

AND CONTINENTAL CAR
SERVICES LIMITED
Respondent

Member of Authority: Vicki Campbell

Representatives: John Appleby for Applicant
Rob Towner for Respondent

Investigation Meeting: 12 October 2010

Submissions Received: 2 November 2010 from Applicant
29 October 2010 from Respondent

Determination: 14 January 2011

DETERMINATION OF THE AUTHORITY

[1] Mr Michael Mettrick was employed by Continental Car Services Limited (CCSL) as an Automotive Technician in July 2006. On 12 November 2009, Mr Paul Varga, CCSL's Audi Service Manager raised with Mr Mettrick a serious problem with a car he had been servicing. Mr Mettrick had forgotten to secure a brake calliper bleed nipple after changing the brake fluid in a customer's car.

[2] This mistake led to a disciplinary meeting which Mr Mettrick says, concluded with an agreement that Mr Mettrick's work would be subject to closer scrutiny and a review of his overall performance would be held three months later.

[3] On 19 November 2009 Mr Mettrick was invited to attend a further disciplinary meeting on 23 November 2009 at the end of which he was dismissed. Mr Mettrick claims his dismissal was unjustified and seeks remedies.

[4] The issue to be determined is whether in all the circumstances of this case, CCSL acted as a fair and reasonable employer would have acted when it dismissed Mr Mettrick.

The dismissal

[5] On 12 November Mr Mettrick left a brake calliper bleed nipple loose. This error allowed brake fluid to drain away and would have resulted in a complete failure of the brakes if the error had gone unnoticed. The error was brought to Mr Varga's attention by another employee.

[6] Mr Varga implemented a disciplinary meeting which included an invitation to Mr Mettrick to have a support person present and an indication that Mr Mettrick may be issued with a warning.

[7] The disciplinary meeting occurred on 18 November 2009. During the meeting Mr Mettrick told Mr Varga that he was bored with his job and had lost his focus. Mr Mettrick also raised with Mr Varga that he understood he was supposed to be doing more challenging work. In response to this Mr Mettrick was advised that before he could be given more challenging work his performance must improve. He was reminded of a similar incident two weeks previously in which Mr Mettrick had failed to identify two fundamental issues with a vehicle he was servicing.

[8] It was discussed that before Mr Mettrick could be given more challenging tasks Mr Phil Davis, Audi Team Leader, would need to conduct regular quality control checks on his work and a significant improvement would be needed in Mr Mettrick's work quality within three months.

[9] CCSL says the meeting was then adjourned until 23 November 2009 to allow Mr Varga and Mr Davis to discuss the appropriate disciplinary action. Mr Mettrick says the disciplinary meeting had concluded when all those present agreed on the closer supervision, and shook hands.

[10] I find that the discussion about the closer supervision for three months was in direct response to Mr Mettrick's request for more challenging work and was not the conclusion of the disciplinary process. I am supported in my conclusions by the email sent by Mr Varga on 20 November where he states:

Given that there was potential for serious property damage and or personal injury as a result of this incident I believe the outcome should reflect this.

[11] Following the 19 November 2009 meeting Mr Davis raised with Mr Varga his concerns that Mr Mettrick had not accepted or taken responsibility for the error he had made on 12 November 2009. It was Mr Davis's view that unless Mr Mettrick could accept responsibility for the mistake he would not improve. Mr Davis became concerned that he could no longer trust Mr Mettrick to perform his job to the required standards and that serious consequences could result.

[12] On 19 November 2009 Mr Mettrick was issued with a second letter from Mr Varga inviting him to a further meeting on 23 November 2009. The letter sets out the new concerns held by CCSL regarding Mr Mettrick's explanation given on 18 November. Mr Mettrick is asked for a response to CCSL's concerns about whether he had exercised the appropriate duty of care when carrying out the job on 12 November 2009. Mr Mettrick is advised that if his response is unsatisfactory he may be dismissed on the basis that CCSL had lost trust and confidence in him.

[13] Mr Varga says that at the second meeting Mr Mettrick continued to refuse to take responsibility for the error and continued to blame other factors such as the repetition of the tasks he was required to carry out. Mr Varga considered Mr Mettrick's explanation and concluded that there was no guarantee that Mr Mettrick would not lose focus again. That conclusion together with concerns that Mr Mettrick did not understand the seriousness of the error led Mr Varga to decide Mr Mettrick should be dismissed without notice for serious misconduct. Mr Mettrick was provided with an opportunity to comment on the decision to dismiss him.

[14] The mistake by Mr Mettrick was as serious a mistake as a service technician could make on a car. The failure of vehicle brakes to operate has the potential for catastrophic consequences.

[15] Mr Mettrick's error on 12 November 2009 was not the first error made during a vehicle service. Two weeks prior to 12 November, Mr Mettrick had failed to identify two service related problems with another vehicle. These failures were brought to Mr Mettrick's attention at the time, and he was reminded of these when he attended the disciplinary meeting on 18 November.

[16] In assessing the actions taken by CCSL, I am satisfied it acted as a fair and reasonable employer would have in all the circumstances. CCSL met with Mr Mettrick and provided him with a full opportunity to explain his actions on 12 November. CCSL considered Mr Mettrick's explanations to be unsatisfactory and became very concerned that Mr Mettrick was of the view that the brake issue from 12 November 2009 was not serious despite the very real potential for harm, possibly death.

[17] CCSL became concerned also that Mr Mettrick was reluctant to take responsibility for the issues and this in turn led them to question whether Mr Mettrick had acted with care in carrying out the job. All of these issues were then raised with Mr Mettrick and he was advised as to the seriousness of CCSL's concerns.

[18] Mr Mettrick knew how seriously CCSL viewed his responses on 18 November as he then ensured he had legal representation at the meeting on 23 November 2009. It is fair to say that the focus of the meeting on 23 November 2009 was not the actual incident on 12 November 2009, but rather, was focussed on Mr Mettrick's attitude towards the incident and his failure to take responsibility for the incident on 12 November instead blaming the incident on the lack of challenging work, and boredom.

[19] Mr Mettrick was dismissed due to CCSL's conclusion that it had lost trust and confidence in Mr Mettrick to perform his job to a standard that would not put lives at risk. Trust and confidence is of course, a fundamental implied term of employment. CCSL says Mr Mettrick's failure to take responsibility for the incident on 12 November, his failure to recognise the significance of his mistake and CCSL's concerns about whether Mr Mettrick had failed to exercise due care in the discharge of his duties led CCSL to the conclusion that it had lost trust and confidence in Mr Mettrick as an employee.

[20] Mr Mettrick was a trained technician. The mistake he made on 12 November 2009 had the potential to cause serious harm to the owner of the vehicle, if the mistake had not been picked up. The consequences of the mistakes such as those made by Mr Mettrick during his employment also had the potential to seriously damage the reputation of his employer.

[21] Standing back and assessing the actions of CCSL and how it acted when it dismissed Mr Mettrick, I am satisfied CCSL acted as a fair and reasonable employer

would have acted in all the circumstances of this matter. Mr Mettrick's dismissal was justified and I can be of no further assistance to him.

Costs

[22] Costs are reserved. In the event that costs are sought, the parties are encouraged to resolve that question between them. If they are not able to reach agreement on the matter of costs, Continental Car Services Limited may lodge and serve a memorandum as to costs within 28 days of the date of this determination. Mr Mettrick will have 14 days from the date of service to lodge a reply memorandum. No application for costs will be considered outside this time frame without prior leave.

[23] In order to assist the parties with resolving costs themselves, I can indicate (subject to any submissions) that a tariff based approach to costs is likely. In which case the usual starting point would be around \$3,000 (GST inclusive) per day. That figure would then be adjusted in light of the particular circumstances of this case.

Vicki Campbell
Member of Employment Relations Authority