

I refuse to put up with the continual abuse from Ron Peel any longer. He is unsafe and unstable in his work methods and his attitude to myself and to those around him. I do not want him in the workshop under any circumstances any longer while he is in this state of mind. I am happy to work on his truck and trailer so long as he is not in the same building.

[3] Mr Tim Watkins, a director and the chief executive of the company, said that on 12 December he held an informal investigation to clarify the complaint and ascertain whether it had substance. Mr Cannell then set out his complaint in a formal manner. He maintained that Mr Peel kept swearing and threatening him even on his days and time off. Mr Peel refused to stop smoking when asked to do so and adopted unsafe work practices in the workshop. Mr Cannell wrote:

Ron continually abuses me and other employees, (drinking) as last Saturday in the whole workshop at 10.30am. Then starts to make trouble while I am carrying out my work duties. The drink/driving laws of the country mean nothing to him as then he drives back to his Huntly home. He is a bad influence on some of the other employees, and does nothing for our company's good image. Members of the public have been abused by him I have their names.

Meeting 20 December 2007

[4] Mr Peel said that on Wednesday Mr Wayne Slater rang him about 3pm and told him there were eight complaints about him. Mr Peel was told that he would be spoken to when he got to the office. A meeting was arranged for 10am and Mr Peel told Mr Slater that he would be there with a solicitor as it seemed quite serious. However, the time of the meeting was changed and Mr Peel did not contact a solicitor.

[5] Mr Peel said Mr Slater refused to tell him who had made the complaints.

[6] Mr Watkins said he was concerned about the drinking allegations and that the company had a no smoking policy, which included no smoking in the trucks. However, the issue of smoking was secondary to the abuse and threat allegations.

[7] Mr Tim Watkins, Mr Slater, Mrs Joey Bianchina, then the Human Resources/Payroll Officer for Auckland Steel (the previous company), and Mr Tolich, the assistant manager and company accountant, were present at the meeting.

[8] Mr Peel recorded that meeting and I have been provided with a transcript. Mr Watkins said he understood there were several complaints about Mr Peel's behaviour,

attitude and communication with staff. Mr Slater agreed that he had referred to there being about eight complaints when he had spoken to Mr Peel on 17 December. Mr Watkins told Mr Peel that the purpose of the meeting was to get his side of the story. Mr Peel asked who the complainants were. At this point Mr Peel was given a copy of complaints made by Mr Cannell on 5 December and 12 December.

[9] Mr Watkins said he wanted to focus on Mr Cannell's complaints. He told Mr Peel that he had witnessed his abusive nature with other employees and referred to a conversation about an employee called Andy; and to ongoing problems between Mr Peel and Mr Swinburne. Mr Peel said Mr Swinburne had been harassing him.

[10] Mr Peel was of the view that the whole matter related to his relationship with Mr Swinburne. He and Mr Swinburne had had a stand up argument about Mr Peel's smoking in Mr Swinburne's truck. Mr Peel said Mr Swinburne had asked him whether he was the cunt who had been smoking in his truck. He believed that Mr Swinburne had a letter signed by himself and other employees saying they would refuse to work with Mr Peel.

[11] Mr Watkins then brought the discussion back to Mr Cannell's complaints. He said Mr Cannell had said Mr Peel had threatened him. Mr Peel denied it.

[12] The discussion then moved back to Andy and the threat Mr Watkins said Mr Peel had made about Andy – that he would take him out the back and deal to him. Mr Peel who did not deny it. He replied that that was what he should have done. Mr Watkins said that was not acceptable. When I asked Mr Peel what he meant, he said he would have had a discussion first and then it would have got physical.

[13] Mr Peel then brought up the topic of Mr Swinburne again. He said:

Yes. I've made threats of what I'd like to do and all that, and I'd still like to do that, right. What am I? the piece of shit that he can kick around just because he feels like it, just because his wife died, he's got nobody to poke sticks at anymore, it's not my problem.

[14] Mr Watkins said that Mr Peel had been abusive and obnoxious to his fellow employees and that he needed to have a look at himself. Mr Peel asked who he had been obnoxious to. Mr Watkins replied "To everybody! Why do you think we are getting complaints from the guys?"

[15] Mr Peel asked to have complaints put in writing and shown to him. Mr Watkins said he would ask that formal interviews be conducted.

[16] At that stage Mr Peel was suspended on full pay. Mr Watkins said he would give a decision about Mr Cannell's complaint and the other issues that had been raised in terms of abuse and attitude issues. When I asked Mr Watkins about this he said he meant he would make a decision about the Cannell complaint and that the other issues were secondary to that.

[17] The discussion then moved back to Mr Cannell.

21 December 2007 Meeting

[18] Mr Watkins opened the meeting by saying he had had an opportunity to look at some of the "affidavits" provided to him in support of the allegation that Mr Peel behaved in a threatening, abusive and intimidating way. The statements had been provided by Mr Loveridge and Mr Swinburne. Mr Peel asked to see them but was told he could not because they were not part of Mr Cannell's personal grievance and that the other statements were nothing to do with what was being talked about. This was despite the fact that the previous day there had been a wide ranging discussion which included references to Mr Peel's abusive and intimidating behaviour towards employees other than Mr Cannell.

[19] Mr Peel had asked previously that Mr Watkins check whether he had been working the Saturday on which Mr Cannell had said he had been drinking and had become abusive. Mr Watkins confirmed that he had been working that day.

[20] Mr Peel denied abusing and intimidating Mr Cannell. Mr Watkins asked if he had called Mr Cannell an old cunt. Mr Peel responded in the affirmative. He said that when Mr Cannell asked him to put out the cigarette in the truck he probably said something like "fuck off you old cunt". He said he did not consider those remarks to be threatening or abusive.

[21] At the hearing Mr Peel said Mr Swinburne had said he was an arselicker who crawled up people's arseholes. When I asked Mr Peel how this differed from the comments he had made to Mr Cannell he said this was different because it was personal and vicious.

[22] Mr Peel said he had two witnesses (Mr Woodthorpe and Mr Shelford) who he wanted brought in. Mr Watkins said he would arrange to speak to them later that afternoon.

[23] Mr Peel said that Mr Cannell treated him like a piece of shit and that he should get some in return. Mr Watkins said he had more statements. Mr Peel asked Mr Watkins to put them on the table. Mr Watkins refused and said Mr Peel did not need to see them.

[24] At that stage an adjournment took place. After the adjournment Mr Watkins said he had asked Mr Woodthorpe and Mr Shelford whether they had ever seen Mr Peel being abusive, intimidating or threatening towards other staff. Mr Watkins said they had.

[25] Mr Watkins had made notes of the interviews but did not show them to Mr Peel. He said he did not consider that the statements supported Mr Peel in any way.

[26] On being told that it was necessary to have further investigations and that he would be asked to attend another inquiry, Mr Peel said he was not willing to travel back to Auckland from Huntly because it cost him too much in petrol money, but would do so if the company put up the money for the fuel. At that stage the meeting adjourned while Mr Peel waited in his car and Mr Watkins made a decision. He decided that Mr Peel had committed gross misconduct and he was going to dismiss him that day on the basis of his unacceptable behaviour.

Rationale For Dismissal

[27] Mr Watkins said he dismissed Mr Peel because he did not deny the allegations and showed no remorse. He needed to protect the staff from Mr Peel.

[28] He said the primary focus of the investigation was on Mr Cannell's complaint but other employees had confirmed Mr Cannell's allegations. The statements made by Messrs Loveridge and Swinburne were not really taken into account. However, Mr Watkins said he believed that their statements were accurate. The statements Mr. Watkins obtained from Messrs Loveridge and Swinburne contained a number of very serious allegations, including an allegation of assault.

[29] Other staff – Messrs Slater, Woodthorpe and Shelford – confirmed that Mr Peel had been drinking on the premises and that he had been abusive towards Mr Cannell.

[30] Mr Watkins said he did not use the other information he had been given; it just supported the allegations made about Mr Peel's general behaviour. He said he was keeping a specific line between Mr Cannell's complaints and those made by other staff. He did not allow his judgement to be affected other than that the other staff comments identified a general concern amongst other staff about Mr Peel's behaviour, which Mr Watkins had witnessed himself.

Decision

[31] In Air New Zealand Ltd v Hudson [2006] 1 ERNZ 415 the Court looked at s 103A and said it required the Authority or the Court to determine what a fair and reasonable employer would have done in the circumstances.

[32] It is clear that Mr Peel used offensive language in an intimidating and threatening manner. Mr Peel said he did not believe his use of language was offensive, intimidating or threatening. He said such language was commonplace on the workplace.

[33] I asked Mr Peel if he could see a difference between general use of swear words and use of offensive language directed specifically at an individual. Mr Peel found the differentiation difficult.

[34] Mr Scott has said that the bad language was directed at co workers and not at Mr Peel's employer. While that is so, it can nonetheless be grounds for dismissal.

[35] Mr Peel was not given notice that the meeting was a disciplinary meeting, he was not given adequate notice about the allegations and he was not provided with highly pertinent information gathered by the employer. He was not told that his employment might be terminated although Mr Peel had reached the conclusion that the matter was serious given the number of complaints.

[36] In terms of process, much was left to be desired. Although Mr Watkins maintained that he was dealing solely with Mr Cannell's complaints, the way in which the meetings progressed did not make this at all clear. There was much discussion

about incidents unrelated to Mr Cannell. Mr Watkins' claim that he did not take the statements from Messrs Loveridge and Swinburne into account other than as support for the fact that Mr Peel behaved abusively does not justify denying access to the statements to Mr Peel. There were matters taken into account in making the decision to dismiss which had not been put to Mr Peel.

[37] However deficient the process overall was, Mr Peel admitted using abusive language towards Mr Cannell. He also agreed he had threatened Andy and Mr Swinburne. He did not accept responsibility and could see little if anything wrong with his behaviour. On the strength of those admissions, and Mr Peel's lack of remorse and clear disinclination to alter his behaviour, the employer was entitled to dismiss him.

[38] Had I found that the procedural deficiencies were overwhelming I would have followed Waitakere City Council v Ione [2005] 1 ERNZ 1043 and found that a fair procedure would have inevitably resulted in a justified dismissal, that Mr Peel was very much the author of his own misfortune and that any award of compensation would be unjust.

Costs

[39] If the parties are unable to resolve the issue of costs, the respondent should file a memorandum with 28 days of the date of this determination. The applicant should then file a memorandum in reply within 14 days of receipt of the respondent's memorandum.

Dzintra King
Member of the Employment Relations Authority