

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 72/08
5097628

BETWEEN LEONARD SAUNDERS
 Applicant

AND POST HASTE COURIERS
 LIMITED
 Respondent

Member of Authority: R A Monaghan

Representatives: S Clews, Counsel for Applicant
 Mark Trougher, Advocate for Respondent

Investigation Meeting: 29 January 2008 at Rotorua and
 13 February 2008 at Wellington

Determination: 05 March 2008

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Post Haste Couriers Limited (“Post Haste”) employed Leonard Saunders as a ‘deconsolidator’ at its depot in Whakatane, commencing 17 February 2004. It dismissed Mr Saunders on the ground that there was a discrepancy between the hours of work he recorded in his timesheet for the first week of February 2005 and the hours he actually worked.

[2] Mr Saunders says the dismissal was unjustified and has raised a personal grievance.

Events leading to the dismissal

[3] A deconsolidator’s job was to sort out the freight (being parcels and small items) delivered to the depot by Post Haste’s trucks, making it ready for collection and distribution by couriers. Mr Saunders carried out that work on a part time basis,

for the most part between 3.30 am and 6.30 am between Mondays and Saturdays. There was some variation in start and finish times, usually associated with whether the delivery trucks were on time or not.

1. The warning

[4] The Whakatane depot was managed from the Rotorua branch. In late May 2004 it came to the attention of the Rotorua branch manager, Dan Sawyer, that Mr Saunders had not been at work on Saturday 22 May 2004 yet completed the relevant timesheet to show he had been at work that day. Mr Sawyer began a disciplinary process in respect of the matter.

[5] Mr Saunders gave Mr Sawyer his reason for not being at work. When asked why he had completed his timesheet to show he was at work, he explained that he completed his timesheets once a week on Fridays. Timesheets were processed on a Monday so if a Saturday was to be worked, the expected hours of work were recorded on the timesheet in advance on the Friday. Mr Saunders had completed his timesheet on that basis. He did not correct the timesheet following his non-attendance at work on the Saturday.

[6] Mr Sawyer explained the importance of completing timesheets correctly, and pointed out that Mr Saunders could contact him using the telephone in the depot to advise when he had not been at work. Although Post Haste considered 'falsifying' timesheets to be serious misconduct, Mr Sawyer took into account Mr Saunders' further explanation that he thought someone else would advise of his absence and issued Mr Saunders with a final written warning.

[7] The warning was set out in a letter dated 1 June 2004. It included the following statements:

“Taking into account that you are apologetic and that there was no malice with the non-attendance this letter serves as first and final written warning as discussed and we remind you that repetitive incidents of the above behaviour may result in further disciplinary action or even termination.

... You are a valued member of my team and I need to be able to have complete faith that you are undertaking these tasks as expected. You are in a position of trust here and need to show maturity and reliability in future.”

2. The dismissal

[8] In February 2005 another instance of Mr Saunders’ inaccurate completion of his timesheet was brought to Mr Sawyer’s attention. A contract courier complained that freight had not been prepared for pickup early on the morning of Tuesday 1 February 2005 and there was no sign of Mr Saunders. Mr Saunders recorded on his timesheet for the week to Saturday 5 February 2005 that he was at work between 3.30 am and 6.00 am on 1 February.

[9] Mr Sawyer again embarked on a disciplinary process, and sought a meeting with Mr Saunders. The meeting went ahead on 9 February 2005. Mr Saunders attended with his brother, Phillip Jacobs, as a support person.

[10] When asked whether he had worked on 1 February Mr Saunders’ initial response was that he was present and worked from 3.30 – 6.30 am. However he corrected that to say he had come into work at 3.30 am but went home again because he thought the freight was done. He was present for only a couple of minutes. When asked why he had completed the timesheet as he did, he said he had done so ‘by accident’. When asked on what day he filled in his timesheet he replied ‘Thursday’.

[11] Mr Jacobs wished to speak for Mr Saunders. He was concerned for and protective of Mr Saunders because, as he put it, Mr Saunders has a below average IQ and is quite gullible.

[12] Thus Mr Jacobs said in evidence that he sought to intervene at the point when Mr Saunders said he had been on the premises and worked from 3.30 am, while the contractor who had brought the matter to Mr Sawyer’s attention had said that was not so. Mr Jacobs said he and his brother thought about the matter and after discussion concluded Mr Sawyer had not made it clear the Tuesday in question was the day after the anniversary day holiday. He suggested that Mr Saunders’ answer to the question of whether he had worked on the Tuesday would have been different if he had been asked whether he was at work on the day after anniversary weekend.

[13] That outcome is speculative, but in the circumstances I believe Mr Saunders' initial response that he had been at work from 3.30 – 6.30 am on 1 February should not be held against him. Further, the extent to which it was held against him is doubtful. Mr Sawyer struggled to answer questions about the view he took of Mr Saunders' honesty, and discussion during the investigation meeting about the employment relationship in general leads me to consider it unlikely that the underlying concern was with Mr Saunders' honesty.

[14] Mr Jacobs also sought to explain how Mr Saunders could have completed the timesheet in the way he did 'by accident'. He suggested in evidence that Mr Saunders' 'mistake' might have been based on Mr Saunders' routine of completing his timesheet once a week. One difficulty with the suggestion was that Mr Saunders had just given evidence that, when he made mistakes on his timesheet, he had telephoned Mr Sawyer to advise of them. However another difficulty - illustrated by that exchange - lay in obtaining a reliable account from Mr Saunders, rather than Mr Jacobs, of what had happened.

[15] Mr Sawyer sought to avert that kind of difficulty in the disciplinary meeting by telling Mr Jacobs he was not entitled to ask questions or offer an explanation or clarification for Mr Saunders. In evidence Mr Jacobs expressed a concern about that approach, and also expressed a concern that there was no probing into how Mr Saunders had completed the timesheet as he did 'by accident'. He perceived that Mr Sawyer was not prepared to deviate from a prepared script or list of questions.

[16] Mr Sawyer acknowledged he had prepared the questions to be answered, but denied that he was not prepared to deviate from them. Even so, there was very little deviation. The focus did appear to be on identifying the key questions, without attempting further questioning in order to place the incident in its proper context and drawing a conclusion from all of the material available. I agree that Mr Sawyer tended to take a 'tick the box' approach when it came to questioning Mr Saunders.

[17] Mr Sawyer said further that he saw Mr Jacobs as a support person only. I understood him to mean he did not see Mr Jacobs as having an advocacy role, and that Mr Jacobs could not act as a witness because he was not directly involved in the relevant incident.

[18] In that respect I note that the company's code of conduct said:

"In any potential disciplinary situation, the employee will be given ... the opportunity to have a witness or support person present and the opportunity to give an explanation."

[19] Mr Sawyer's approach to Mr Jacobs' role was too restrictive. As I have indicated, Mr Sawyer was entitled to require Mr Saunders to give his own account of matters. However the obligation to give an employee an opportunity to explain must be read widely and the role of a 'support person' can fairly be said to involve ensuring that a full opportunity to explain is available. In that respect a support person can intervene. There can be a fine line between ensuring an employee gives an explanation that is not one suggested by someone else, and allowing an employee an opportunity to provide a full and accurate explanation with the assistance of someone else. Mr Sawyer placed too much emphasis on the former.

[20] Ultimately, when giving reasons for the decision to dismiss Mr Sawyer said he was satisfied Mr Saunders was aware of the requirement to complete timesheets accurately and understood the implications of not doing so. He found Mr Saunders' explanation for the 'discrepancy' between the number of hours recorded and the number of hours worked to be unacceptable. He considered Mr Saunders' actions amounted to serious misconduct and that summary dismissal was appropriate. The decision was confirmed in a letter dated 9 February 2005.

Justification for the dismissal

[21] It was accepted that Mr Saunders had recorded in his timesheet that he worked certain hours on Tuesday 1 February 2005, when he had not worked those hours.

[22] For his part Mr Saunders expressed a concern that he was dismissed in order to make his position available for a relative of the same contractor who had reported his absence to Mr Sawyer. That is why he felt the dismissal was unjustified. However the relative was engaged for a brief period after Mr Saunders' dismissal, in order to cover the position while Post Haste recruited a replacement. Mr Saunders' view of why he was dismissed is not the correct one.

[23] Otherwise the dismissal was said to be unjustified because:

- (a) the question of how Mr Saunders had come to complete the timesheet as he did by accident was not pursued;
- (b) Post Haste operated a flawed process for the completion of timesheets in that it permitted staff to fill the sheets out in advance of completing the work in question; and
- (c) Mr Jacobs should have been permitted to participate in the disciplinary meeting.

[24] I regard (a) and (c) as being related. I do not accept that (b) has any substance.

[25] Further to (a) and (c), the view I have set out is that Mr Sawyer was entitled to seek Mr Saunders' account of events from Mr Saunders himself. Mr Jacobs was not entitled to suggest an account to Mr Saunders, although he was entitled to assist in making Mr Saunders' account clearer. He was at least able to have Mr Saunders correct his answer about the time spent at work on 1 February, but was not able to explore how the timesheet came to be completed in the way it was by accident, or more particularly the possibility that Mr Saunders had simply completed the timesheet by rote and without thought about the accuracy of its contents.

[26] In the context of the justification for the dismissal the restriction on Mr Jacobs' participation is a procedural flaw, but the question is whether it is sufficient to render the dismissal unjustified. Having heard from the parties I consider it likely that the only answer Mr Saunders himself could offer for the incorrect completion of the timesheet was that it was an accident. He could say nothing more. He knew he had been at work for no more than a few minutes on 1 February, and that some two days later he completed a timesheet saying he was at work. He knew he was required to complete his timesheets accurately, and that errors in them were to be reported to Mr Sawyer. He knew he had not done so.

[27] That does not mean I consider it likely Mr Saunders intended to make a dishonest claim for payment, and I doubt Mr Sawyer took such a view of the matter. The reality was that Mr Saunders presented a particular kind of challenge to this employer. At the same time Mr Saunders' condition has not been the subject of any

particular diagnosis, there is no publicly-funded support regime for him and it may be that, as Mr Jacobs said, Mr Saunders has 'fallen through the cracks'. Further, the associated difficulties were not identified or notified when Mr Saunders was recruited.

[28] As to whether the failure to engage with Mr Jacobs is fatal to the justification for the dismissal, it is relevant that Mr Saunders was employed at a small depot which did not have an on-site supervisor. On an important matter like the correct recording of time worked for the purposes of calculating payment, his employer was entitled to rely on him. Mr Jacobs suggested that an alternative would have been to institute a clock card system, but that kind of system is not without problems and I doubt it would have helped matters. As it was, Mr Saunders was aware of his obligations but did not observe them. He had been warned about the importance of completing timesheets accurately, and of what could happen if he failed to do so.

[29] Mr Saunders had shown that he could not be relied on to complete his timesheets correctly. The nature of his employment meant such reliability was necessary.

[30] For those reasons I conclude that dismissal was action a fair and reasonable employer would have taken. The dismissal was justified.

Costs

[31] Costs are reserved. The parties are invited to agree on the matter. If they seek a determination from the Authority there shall be 28 days from the date of receipt of this determination in which to file and serve memoranda on the matter. Any reply is to be filed and served within 7 days of the date of receipt of the relevant memorandum.

R A Monaghan

Member of the Employment Relations Authority