

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Jitendra Singh
AND Frucor Beverages Limited
REPRESENTATIVES Jitendra Singh in person
Naomi Cervin, Counsel for the Respondent
MEMBER OF AUTHORITY Ken Raureti
INVESTIGATION MEETING 6 December 2006
DATE OF DETERMINATION 6 March 2007

DETERMINATION OF THE AUTHORITY

Employment relationship problem.

[1] Frucor Beverages Limited (Frucor) terminated Mr Singh's employment in July 2006. Mr Singh has raised two alleged employment relationship problems, one being he says that his dismissal was unjustified because he was wrongfully blamed for one of the incidents he was dismissed for, (the pallet incident), and his other claim is that he has been the subject of racial discrimination from the Warehouse Manager, Mr James Vincent.

[2] Frucor does not accept either of the allegations. In respect of Mr Singh's termination of employment, it says that he was dismissed following three instances of a disciplinary nature, as well as providing coaching and counselling sessions. In respect of the allegations that Mr Vincent is racist and that he harassed Mr Singh, Frucor deny the allegations. It says that Mr Vincent treated Mr Singh more than fairly.

Background.

[3] Mr Singh was employed by Frucor as a Storeman. His responsibilities included picking and packing orders, driving fork hoists, storing product and other work associated with storeman/warehousing functions. He commenced employment with the company in March 1997, and worked there until his employment was terminated in July 2006. Mr Singh's predominant work history was without previous incidents. He described himself as being very honest, accurate, hard working and reliable. He says that it wasn't until Mr Vincent started with Frucor in October/November 2005 that his problems began.

[4] Between October 2005 and July 2006, various workplace incidents arose with Mr Singh which occasioned Frucor to address and manage them. The incidents related to absenteeism, a further occasion of absenteeism, an incident where Mr Singh had an accident with his reach truck in that he hit another employee, and the last incidents of 21 – 27 June, two of which he was dismissed for. The incidents he was dismissed for were one of driving his reach in a manner which resulted in damage to company property, and the other was stacking pallets in a potentially dangerous manner. Frucor described these incidents as wilful or negligent acts that affected both safety and quality.

Absenteeism.

[5] Mr Vincent started work with Frucor as the Northern Warehouse Manager in October 2005. Not long after he started, he became concerned about the high levels of employee absenteeism. During October/November 2005, Mr Vincent, had an informal meeting with Mr Singh to discuss his high level of absenteeism. It is apparent that Mr Vincent told Mr Singh that his absences over the previous 12 month period was at a high level, and that he would be clamping down on employees with high levels of absenteeism. Mr Singh was one of approximately six staff that Mr Vincent spoke to about absenteeism and punctuality.

[6] At the same time, Mr Vincent also met with the Union Organiser of the National Distribution Workers' Union and the union site delegates because members of the NDU had complained to the union that Mr Vincent was cracking down hard on absenteeism across the board. After that meeting, the union met with all of its members and addressed the distribution staff on the issue.

Disciplinary meeting, 25 January 2006.

[7] Mr Singh's attendances did not improve, and on the 25th of January 2006 Frucor had a formal disciplinary meeting with Mr Singh to discuss his high level of absenteeism. At the meeting, Frucor learnt that Mr Singh was going through a major personal/marriage crisis that was impacting on him, and it was apparent that he was putting in some very long hours at work.

[8] In light of Mr Singh's personal circumstances and consistent with Frucor's culture of ensuring employees have a work/life balance, Frucor confirmed that it wanted to support him during this difficult period, to make certain his hours of work were reasonable and that his work environment was supportive. Frucor advised Mr Singh of the free, confidential EAP services that were available to him and his family and they encouraged him to access it at anytime.

[9] No disciplinary action was taken by Frucor. As Mr Singh had a large amount of accrued annual leave, they agreed to develop a plan of when Mr Singh would take his annual leave so that it did not accrue beyond 30 days; his working hours were to be maintained at a reasonable level (Mr Singh was offered the premium distribution shift of 4 days per week @ a salary of \$60k plus per annum), and he was to decrease the level of unscheduled leave.

Further absenteeism & disciplinary meeting 8 February.

[10] Within the next 7 working days, Mr Singh had taken another two days off on sick leave. Frucor set up another disciplinary meeting with Mr Singh for the 8th to explain his absences. Mr Singh says he explained to Mr Vincent that he and his wife had separated and the reason why he had the days off work was because his daughter was sick and he needed to look after her. Mr Vincent reminded Mr Singh that they had had a meeting about the same issue a couple of weeks earlier and decided not issue him with a warning but to work out a plan to try and help him.

[11] Frucor considered Mr Singh's explanations about his excessively high level of absenteeism, and did not accept his explanation for the recent two days of absence as reasonable. Frucor says he had been coached around his absenteeism, they worked out an action plan, he was provided with access to EAP services, and he was offered the premium shift to accommodate his hours, but it had not seen a marked improvement. Frucor reminded Mr Singh of his high level of absenteeism and that it is his responsibility to manage his lifestyle. Frucor told him it offers him employment and it expects that he attends work when scheduled. The result was that Mr Singh was issued with a first written warning.

Incident 9 March, Mr Singh's Reach truck hit another employee.

[12] On the 9th March, Mr Singh was involved in an incident where the reach truck he was driving hit another member of the staff. Frucor arranged a disciplinary meeting with Mr Singh. At the meeting Mr Singh acknowledged he had driven the reach in such a manner that it hit another employee, and that the manner in which he had driven it, he had not followed standard operating procedures. He also put to Mr Vincent some mitigating circumstances that lead to the incident.

[13] One outcome of the meeting was the company concluded Mr Singh had not followed correct procedures, there was potential for serious damage or consequences arising from the incident, and he was issued with a final written warning which would be valid for 6 months.

[14] A secondary outcome of the meeting was that Frucor required Mr Singh to undertake a refresher fork-hoist/reach truck driver training course to reinforce the training he had previously received. Mr Singh attended that training with an external provider on the 23rd of May. In the practical aspects of the training Mr Singh apparently scored one of the highest results of any participant, he got 94%, and in the theory he only missed a pass by 4 points.

Incidents of 21 - 27 June.

[15] On the 21st June, Mr Singh had another incident while driving his reach truck in that while he was manoeuvring his hoist away from a stack of pallets his mast hit the corner of the despatch office damaging the spouting. In that same week, an incident also arose in relation to Mr Singh allegedly driving a piece of machinery which was leaking hydraulic fluid which left a trail of oil behind it.

[16] On the 27th June, Mr Vincent and Mr Bedggood (Export Warehouse Coordinator) were doing a routine walk about when they came across a pallet that had been stacked in a *very unstable, unsafe manner*. Mr Vincent told Mr Bedggood to find out who had packed the pallet while he went and got a camera to take photos of it. Mr Bedggood's check of the Production Receipt Schedule (known as the Production Put Away sheet which records all pallets that are packed away on a given day), had Mr Singh's name as being the person who had stacked that particular pallet.

[17] Mr Vincent says that after having seen the Production Put-Away sheet with Mr Singh's name on it, he didn't think it was fair for him to be blamed for stacking the pallet if it hadn't actually been him, so he asked Mr Bedggood to check with all of the reach drivers and warehouse staff if any of them remembered packing that pallet or packing that product in general.

[18] Mr Bedggood says that all of the staff told him they had not packed that pallet or that product. He also asked them whether they had put Mr Singh's name on the Production Put-Away Sheet next to that pallet to which he was told that they had not. Mr Bedggood says their response did not surprise him as it was not usual practice for co-workers to write each others names down on the sheet.

Disciplinary meeting & dismissal.

[19] After considering the information, Mr Vincent discussed it with Mr Joe Akari, Frucor's Human Resources Director. They decided to arrange a disciplinary meeting to hear Mr Singh's explanations in respect of an alleged failure to follow standard procedures and alleged wilful or negligent acts affecting safety or quality in relation to the incident around the damaged guttering, the leaking hydraulic fluid incident, and the potentially hazardous stacking of pallets.

[20] Mr Singh's responses were; in respect of the damaged gutter incident he said the reach was parked too close to the building and he had reported the incident. With regard to the leaking hydraulic fluid, he said he had reported the incident straight away and had been told to move the reach truck outside. In respect to the stacking of the pallet incident, Mr Singh said it

wasn't him who stacked it, it was not a safety hazard, and he also said that the sign off on the Production Put-Away sheet was not his signature. After receiving Mr Singh's explanations, Frucor adjourned the meeting and agreed to reconvene at 1.00pm the following day.

[21] The following day, Mr Akari met with Mr Singh and conveyed his decision to him. He told Mr Singh that he accepted his response in relation to the leaking hydraulic hose and the company was not going to take any further action in relation to that. In respect of the spouting incident, Mr Akari concluded that although the reach was close to the building, it could still have been moved safely without damaging the building. In respect of the pallet incident, Mr Akari said he believed that Mr Singh was responsible for stacking that pallet. He came to that conclusion reliant on the Production Put-Away sheet, the fact that Mr Singh was on shift at that time working in that area, and because of what Mr Bedggood had told him.

[22] He said he did not accept that the manner in which the pallet was stacked was not a safety hazard because if the pallet was stacked improperly on the bottom of the stack (which this one was), then everything that gets stacked on top of that can create a problem.

[23] Mr Akari concluded that it *was very disappointing given that the circumstances of this meeting have been within the context of previous warnings including a final warning issuedon March 24. Mr Akari goes on to say that having considered all of the above and your work history, it was decidedto terminate your employmentdue to wilful or negligent acts that affect both safety and quality.*

Incidents of alleged racial harassment.

[24] Mr Singh says he has worked with other managers and area co-ordinators without problem, until Mr Vincent started as the new Area Co-coordinator/Warehouse Manager in about November 2005. He says that Mr Vincent started to harass him in a sense of him being racist, and he gave four examples of Mr Vincent's actions/behaviours that made him feel discriminated against. One was an incident concerning alleged swearing at Mr Singh, another related to timing Mr Singh whilst he worked, there was an alleged Easter egg incident, and the other related to a request Mr Singh made for a new pair of overalls.

Swearing.

[25] Mr Singh says that Mr Vincent had only been there for about two weeks when he (Mr Singh) was half an hour late for work. He said he phoned his Team Leader to tell him he was running late, and as soon as he arrived at work Mr Vincent called him into the office. He explained to Mr Vincent why he was late, and he says Mr Vincent allegedly said "*Fuck, I don't want you to come late*". Mr Singh says that he told Mr Vincent to *please* not use that word again, and he says he later told the Union delegate about it. Mr Singh indicated that swearing and such language makes him feel very uncomfortable as it is not acceptable to him, his family values and his culture. That was the only alleged occasion that Mr Vincent used such language in conversation or interactions with Mr Singh.

[26] Mr Vincent said he does not recall ever swearing at Mr Singh. He also indicated that that sort of language is not the sort of language he would use when he is dealing with his staff.

Timing Mr Singh while he worked.

[27] Mr Singh says that after the swearing incident, Mr Vincent came into the warehouse wearing his wrist watch and started timing him to see how long it took him to move pallets and go about his tasks. He says he did that about two or three times and he felt very nervous and uncomfortable. Mr Singh says he told the union delegate about the timing incident.

[28] Mr Vincent recalls timing Mr Singh, along with other distribution employees as he was concerned that Frucor's staffing levels could not meet the required production levels. He said he timed employees performing basic functions, including stock transfer and production put-

away functions. Mr Vincent says this was part of an overall assessment he was doing to enable him to allocate time more effectively.

Easter egg.

[29] Prior to Easter last year, Frucor gave its employees an Easter egg. Mr Singh says that Mr Vincent gave everybody an Easter egg except him. He said he asked his Team Leader about the eggs and he was told that Mr Vincent has one in his locker and he will give it to him. Mr Singh says he never received the Easter egg but he got dismissed.

[30] Mr Vincent said that he did not personally hand out the Easter eggs; they were given to the Team Leaders to distribute. He says that Mr Singh was on annual leave at that time and that may explain why he did not receive his Easter egg, however if he had known that Mr Singh had missed out he would have ensured that he got one.

Overalls.

[31] Mr Singh says that he only had one pair of overalls for more than one year when it was ripped in the back. He says he asked Mr Vincent for another pair and Mr Vincent said that he would get the Team Leader to get him a pair. More than two weeks passed and he was still wearing his ripped overalls so he went to his union delegate to chase it up. Not long after that he received some new overalls.

[32] Mr Vincent recalls Mr Singh coming to him about his overalls, and he was in complete agreement that he should get new overalls. Mr Vincent said when he learnt that Mr Singh had not received a new issue, he was not happy with his Team Leader because he had given him an instruction that Mr Singh was to receive new overalls as a priority, and the Team Leader never got on to it until being reapproached about it.

Legal Considerations

[33] There are two predominant legal considerations for this matter. One of the considerations is in respect of the allegations of racial harassment, which section 109 of the Employment Relations Act 2000 provides that:

109 Racial harassment

For the purposes of sections 103(1)(e) and 123(d), an employee is racially harassed in the employee's employment if the employee's employer or a representative of that employer uses language (whether written or spoken), or visual material, or physical behaviour that directly or indirectly –

- (a) expresses hostility against, or brings into contempt or ridicule, the employee on the ground of the race, colour, or ethnic or national origins of the employee; and*

- (b) *is hurtful or offensive to the employee (whether or not that is conveyed to the employer or representative); and*
- (c) *has, either by its nature or through repetition, a detrimental effect on the employee's employment, job performance, or job satisfaction.*

And the other legal consideration is that of s.103A of the Employment Relations Act 2000 **Test of justification**

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 considering whether the employer's actions, and how the employer acted, were what a fair and reasonable employer would have done in all the circumstances at the time the dismissal or action occurred.

[34] The Court has recently examined the test for justification (*Air New Zealand v Hudson* unreported AC 30/06). It was held there that the effect of s.103A is to separate out the employer's actions (including the decision to dismiss) for evaluation by the Authority or the Court against the specified objective standard of what a fair and reasonable employer would have done in the circumstances.

[35] At paragraph 144 the Court said in respect of the case before it:

"The question is how would a fair and reasonable employer have acted in all the circumstances of this case. An employer does not have to prove that the incident which it characterised as serious misconduct happened. It must, however, show that it carried out a full and fair investigation which disclosed conduct which a fair and reasonable employer would regard as serious misconduct. The employer is not required to conduct a trial or even a judicial process but there are some fundamental requirements of natural justice which are appropriate and which, in this case, are reinforced by the company's policies. As part of a full and fair investigation, natural justice requires that an employee is given a proper opportunity to comment on the allegations made against her".

[36] The Court noted that the objects of the Act including the obligation of good faith must inform any objective assessment of what a fair and reasonable employer would do in the circumstances.

Discussions and Findings, alleged racial harassment.

[37] Mr Singh's claims of racial harassment and discrimination by Mr Vincent related to four alleged incidents; the alleged swearing, timing Mr Singh while he worked, the distribution of Easter eggs, and the overalls incident.

[38] In respect of the alleged swearing incident, Mr Singh indicated that it was a one-off incident. He indicated that the "F" word and such language makes him very uncomfortable as it is not acceptable to him, his family values and his culture. Mr Vincent said he does not recall ever swearing at Mr Singh, and that sort of language is not the sort of language he uses when he is dealing with his staff

[39] At my investigation meeting, I indicated to Mr Singh that I accepted his evidence that swearing, and the language he described if it occurred is likely to make him feel uncomfortable and may embarrass him. **With respect to the swearing allegation, I was not satisfied on the evidence that such an incident happened, however, in isolation, even if Mr Vincent did use such language toward Mr Singh (although the evidence did not substantiate it) while such language may be inappropriate, it did not fall within the description of s.109 above.** [para 33]

[40] In respect of the other three incidents, individually, they may have irked Mr Singh, made him feel nervous, or even in his mind made him think he was the subject of racial discrimination, however, neither the timing matter, the Easter egg incident, or the overalls issue, reflected any hostility, contempt or ridicule on the grounds of Mr Singh's race, colour, or ethnic or national origin.

[41] Mr Singh may have strongly held convictions or thoughts that he was being racially harassed and discriminated against by Mr Vincent; however **it is my finding that the incidents outlined above do not separately, or cumulatively amount to racial discrimination as per s.109 of the Act. Mr Singh was not the subject or racial discrimination from Mr Vincent.**

25 January disciplinary meeting.

[42] Frucor's processes and disciplinary procedures in respect of Mr Singh was carefully managed and well documented. In the four disciplinary meetings he was required to attend between January and July 2006, he was notified in writing of the company's intention to formally meet with him to hear his explanations of the allegation or misconduct. The letters formally advised him that the meetings were of a disciplinary nature, and of the possible outcome. Mr Singh was also advised/invited to have a representative of his choice at the meetings, and on each occasion, Mr Singh arranged support/representation by way of a site union delegate.

[43] In respect of the first disciplinary meeting of 25 January about Mr Singh's high level of absenteeism, Frucor was supportive and understanding of Mr Singh's circumstances and chose not to take any disciplinary action. Frucor confirmed that it wanted to support him during that difficult period and they agreed to meet and formulate an action strategy to work with Mr Singh. The outcome was consistent with Frucor's culture of valuing its employees and ensuring employees have a work/life balance; it is reflective of a responsible employer caring and looking after its employees.

8 February disciplinary meeting.

[44] Three working days later, Mr Singh took a day's sick leave, and four working days after that he had another day off on sick leave. Within that 7 day working period, Mr Singh had taken two days off on sick leave. Frucor set up another disciplinary meeting with Mr Singh for the 8th of February to explain his absences. Mr Singh explained that he and his wife had separated and he had the days off work because his daughter was sick and he stayed home to care for her.

[45] Frucor did not accept Mr Singh's explanation as reasonable. Within the space of 7 working days of the meeting of 25 January, the good work, the support and understanding of Mr Singh's circumstances, and the company's iteration of its commitment to ensure its employees have a work/life balance was undone.

[46] Frucor told him he had been coached around his absenteeism, they worked out an action plan, he was provided with access to EAP services, he was offered the premium shift to accommodate his hours, but the company had not seen a marked improvement. Frucor altered its agreed course to work together with Mr Singh to one of putting the onus and responsibility on him to manage his lifestyle. Frucor told him it offers him employment and it expects that he attends work when scheduled. The outcome of the meeting was that Mr Singh was issued with a first written warning.

[47] It was not apparent that Frucor ascertained Mr Singh's sick leave balance at the time of the meeting, nor is it apparent that it factored the generous sick leave entitlement of its Collective Agreement (10 days after 6 months, cumulative up to 50 days) which is available for use when either the employee, the employee's spouse, or dependant child is sick or injured. Such an entitlement is further recognition of Frucor's commitment and understanding of the importance of individual and family wellness for a successful employment relationship.

[48] **In my view, issuing Mr Singh with a first written warning so soon after a commitment to work together was premature and unjustified.** The affect of that warning disadvantaged Mr Singh and had a significant impact on the disciplinary meetings that followed. Frucor's disciplinary policy is that, except in the case of serious misconduct, generally there will be a process of first warning, followed by a final warning, before dismissal of an employee is considered. Mr Akari's evidence was that because Mr Singh was on a final written warning, he decided that he should be involved in the process as dismissal was a potential outcome.

Incidents of 21-27 June.

[49] There were three incidents (the gutter incident, leaking hydraulic fluid and the pallet incident) that Frucor investigated as alleged wilful or negligent acts affecting safety or quality. In respect of the leaking hydraulic oil, the company accepted Mr Singh's explanation and decided not to take any further action concerning that incident.

[50] In respect of the spouting incident, Mr Akari concluded that although the reach was close to the building, it could still have been moved safely without damaging the building.

[51] In respect of the pallet incident, Mr Akari said he believed that Mr Singh was responsible for stacking that pallet. Mr Akari came to that conclusion reliant on the Production Put-Away sheet, the fact that Mr Singh was on shift at that time and working in that area, and because of what Mr Bedggood had told him. Mr Singh denied stacking the pallet in question and also said the sign off on the sheet was not his signature.

[52] It became apparent during my investigation that Frucor has an electronic stock inventory system which can track and trace the movement of product within the warehouse right down to the time the pallet had been packed away. Such information is readily available on its computer system by way of doing a "screen dump". Mr Bedggood did a screen dump which showed that the pallet was stacked away shortly before 2.00pm. The result of that screen dump satisfied Mr Bedggood that it must have been Mr Singh who packed the pallet away, he put it to Mr Singh, however he did not relay that information to Mr Vincent or Mr Akari.

[53] Mr Akari found that in respect of the pallet incident, *if a pallet is packed improperly at the bottom of a stack (which this one was) then everything that gets stacked on top of that can create a problem.* At my investigation meeting, it was explained to me that the pallets in question are not stacked on top of each other as the weight of the pallets would buckle, distort, or collapse the product beneath it. Each pallet is stacked in a structure of fixed shelving and on its own runners. **The affect of how the pallet was stacked was in my view overstated. The incorrect stacking of the pallet did not create a serious hazard to all employees working in the area.**

[54] In Frucor's letter of termination, Mr Akari said it was *very disappointing given that the circumstances of this meeting have been within the context of previous warnings including a final warning issued to you on March 24. Having considered all of the above and your work history, it was decided that the appropriate disciplinary action was to terminate your employment.....due to wilful or negligent acts that affect both safety and quality."*

[55] While Frucor's disciplinary policy lists *Wilful or negligent acts affecting safety or quality* as an example of serious misconduct for which an employee may be dismissed summarily, it was not apparent from the evidence that Frucor would have embarked on a disciplinary meeting for *serious misconduct* in isolation, or as a stand-alone matter. The matter escalated to a disciplinary meeting for which a potential outcome may have been termination of employment because Mr Singh was already on a final written warning. I have already concluded that the first written warning was unjustifiable, however having issued that warning, the company progressed to the final written warning stage, and then dismissal. The consequence of that first written warning had the effect of escalating every action after that to another level. That

escalation was one of the reasons for a finding which ultimately resulted in Mr Singh's dismissal.

Determination.

[56] Standing back and objectively considering all of the evidence available to me, Frucor's actions are not what a fair and reasonable employer would have done in all the circumstances. The first written warning issued to Mr Singh was unjustified; it created a disadvantage to him in the subsequent disciplinary meetings by escalating matters to a higher level. If Mr Singh was not on a final written warning, it is unlikely that the matters were serious enough to warrant a stand-alone disciplinary meeting for serious misconduct in isolation.

[57] Mr Singh was unjustifiably dismissed; he has a personal grievance and is entitled to remedies in settlement of that personal grievance.

Remedies.

[58] Having concluded that Mr Singh was unjustifiably dismissed, it follows that consideration must be given to the remedies available to him under sections 123, and 128 of the Employment Relations Act 2000. I am bound by s.124 of the Act to consider the extent to which Mr Singh's actions contributed towards the situation that gave rise to the personal grievance, and if those actions so require, to reduce the remedies accordingly.

[59] Mr Singh says he wants his old job back because he has been there for 10 years without any problems or no red marks. He indicated that while he has another job, the rate of pay is less than he was on at Frucor, the hours of work are longer, the shift he currently works has a significant detrimental impact on his family life and circumstances, and the travel time and distance he is now confronted with has gone from 2 kms and 5 minutes, to 14 kms and 30 minutes. He is also seeking lost wages for 3 months he was out of work, and compensation for humiliation and loss of dignity.

[60] With regard to remedies, Frucor submits that any remedies that would otherwise be awarded to Mr Singh should be reduced by 100% to account for his conduct. In respect of reinstatement, Frucor opposes reinstatement because it says Mr Singh was driving his reach truck in a wilful or negligent manner affecting both safety and quality. It also says that there is risk of further repetition of incidents, and the position he previously held is no longer available as another employee has been appointed.

[61] Mr Singh's actions and behaviours during 2006 cumulatively influenced the manner in which Frucor managed him. Mr Singh acknowledged that his absences were less than ideal, and he did have an accident where he was responsible for hitting another employee while driving his reach truck. He was the driver of the reach when it damaged the guttering, and even if he didn't pack the pallet in the manner that it was, in my view, his conduct is such that it is appropriate to reduce any financial remedies available to him by 30%, however, it is not so serious or blameworthy to such an extent to disentitle him to consideration of the primary remedy available to him of reinstatement.

[62] Under s.125 of the Employment Relations Act 2000, reinstatement is the primary remedy. Under s.125 (2), the Authority must, whether or not it provides for any other remedies provide wherever practicable for reinstatement as per s.123 (1) (a). Frucor is a large employer which employs between 320 – 350 employees. It has been on notice that Mr Singh was seeking reinstatement at least from October 8 2006 which is when Mr Singh filed his Statement of Problem with the Authority. Frucor gave several reasons opposing reinstatement including the fact that it has appointed another employee to his position. I have had regard for those reasons, however I am not persuaded that reinstatement is impracticable. **Frucor Beverages Limited is ordered to reinstate Mr Singh to his former position, or to a position no less advantageous than the position he held at the time of the unjustified dismissal.**

[63] Recognising that reinstatement after approximately 7 months may be a problematic exercise that requires some give and take from both sides on practical issues, the parties are encouraged to utilise the Mediation services of the Department of Labour to assist them. Finalisation of all matters surrounding Mr Singh's reinstatement is to be completed before 28 March 2007.

[64] **Mr Singh is entitled to 70% of the wages he has lost from the date of dismissal to 14 October 2006.** To assist the parties in their calculations, I understand that Mr Singh had no employment from the date of his dismissal until 6 September 2006. The calculation for his lost wages shall be the lost wages for that period, plus the balance of the difference between his earnings after 6 September 2006 and between 14 October 2006, minus the contribution component of 30%.

[65] I am satisfied that Mr Singh has suffered some hurt and humiliation surrounding the dismissal, and require the company to pay Mr Singh \$1000.00 pursuant to s.123 (1) (c) (i) of the Act. That amount is to be reduced by 30%.

[66] At a very late stage, Mr Singh sought a variety of other remedies for petrol, the costs of employing a babysitter, and money for the extra time it takes him to travel from his home to the new job he found. Neither of the claims was quantified, nor was any evidence given to substantiate his claims. **I decline to award any further remedies to Mr Singh.**

Summary of findings and orders.

- 1) **With respect to the swearing allegation, I was not satisfied on the evidence that such an incident happened, however, in isolation, even if Mr Vincent did use such language toward Mr Singh (although the evidence did not substantiate it) while such language may be inappropriate, it did not fall within the description of s.109 above.**
- 2) **Mr Singh was not the subject or racial discrimination from Mr Vincent.**
- 3) **Issuing Mr Singh with a first written warning so soon after a commitment to work together was premature and unjustified.**
- 4) **The affect of how the pallet was stacked was in my view overstated. The incorrect stacking of the pallet did not *create a serious hazard to all employees working in the area.***
- 5) **Mr Singh was unjustifiably dismissed; he has a personal grievance and is entitled to remedies in settlement of that personal grievance.**
- 6) **Frucor Beverages Limited is ordered to reinstate Mr Singh to his former position, or to a position no less advantageous than the position he held at the time of the unjustified dismissal.**
- 7) **Mr Singh is entitled to 70% of the wages he has lost from the date of dismissal to 14 October 2006.**

Costs.

[67] Mr Singh was unrepresented at the investigation meeting, therefore there shall be no award for costs, however, Frucor is ordered to reimburse the Authority filing fee of \$70.00 to Mr Singh.