

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
ER AUTHORITY AUCKLAND OFFICE**

BETWEEN Yvonne Anna Sparrow
AND Air New Zealand Ltd
REPRESENTATIVES Helen White for the applicant
Peter Kiely for the respondent
MEMBER OF AUTHORITY Yvonne Oldfield
INVESTIGATION MEETING Friday 5 May 2006
SUBMISSIONS 11 May, 17 May
DATE OF DETERMINATION 23/05/2006

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

- [1] Ms Sparrow worked for Air New Zealand as a Customer Services Agent (CSA) for thirteen years without problems of any sort. Then on 23 January 2006 Mark Freeman, Service Delivery Manager at Auckland International Airport, received a complaint from a passenger, Ms S, who alleged that two days earlier, shortly before she and her daughter had boarded a flight to Sydney, Ms Sparrow had assaulted the five year old girl.
- [2] Because of the seriousness of the matter, Air New Zealand's Airport Manager, Mr Greg Edmonds, decided to investigate it himself, with the assistance of Mr Freeman and Human Resources Advisor Ms Jackie Lai. Mr Edmonds began by interviewing Ms Sparrow (with a co-worker, Ms Thornton, present for support) on 26 January. At that meeting he told her that he was simply investigating a complaint and the process had not become disciplinary in nature.
- [3] He next proceeded to interview the complainant as well as the Team Leader, Duty Manager and three other staff members who had been at work in the relevant area at the time of the alleged incident. On 13 February he met with Ms Sparrow again to tell her that he was now treating the matter as potential serious misconduct. He then went away to conduct a final interview with the mother of Ms S (who was standing with her daughter and granddaughter at the time of the alleged assault.)
- [4] On 21 February he presented Ms Sparrow with all the information he had, and heard her response. He concluded on balance that she had smacked little passenger S, and told her so.
- [5] Up until this point, Ms Sparrow had met Mr Edmonds with only Ms Thornton for support. Ms Thornton had been a union delegate at some time in the past and after the meeting of 21 February she advised Ms Sparrow to approach the union for assistance.

- [6] On 24 February Mr Edmonds held a further meeting with Ms Sparrow to hear her submissions about what consequence should follow his finding that serious misconduct had occurred. This time the organiser, Mr Loughran, was in attendance. Since Mr Edmonds was about to travel overseas he asked Ms Sparrow if she would prefer him to delegate the making of the final decision to someone else. She declined and instead, she was stood down from her duties until his return. On 8 March he met with her and Mr Loughran for the last time and told her that she was dismissed for serious misconduct.
- [7] Ms Sparrow denies assaulting the child. She admits that she reached out and touched her in a sudden movement but says this was intended to restrain her from the potentially dangerous rollers of a baggage line. She says that the conclusion Air New Zealand reached was not open to it on the information it had. She seeks reimbursement of lost earnings, reinstatement to her position, and compensation for hurt and humiliation arising out of the dismissal. The matter came to the Authority as an urgent application for interim reinstatement as well as substantive relief but with the consent of the parties, I proceeded directly to an investigation of the substantive employment relationship issues.

Issues

- [8] The first issue here is whether Mr Edmond's inquiry was full and fair. Ms Sparrow was represented in front of me by her union, EPMU, which has acknowledged that she had support at every stage of Mr Edmonds' inquiry, was provided with all the information he gathered, and was given an opportunity to comment on it. It does however allege procedural shortcomings in two key areas. The first relates to what Ms Sparrow was led to believe about the seriousness of her situation. The union says she was misled on this point and did not realise until very late in the process that her job was at risk. The second key area relates to the scope of the inquiry that was conducted. It is argued for Ms Sparrow that Mr Edmonds failed to follow up and interview witnesses with relevant knowledge of what happened.
- [9] Over and above all this, however, the union argues that even on the information he had, it was not open to Mr Edmonds to reach the conclusion he did. The second issue is therefore whether it was established on balance that the alleged serious misconduct (assault of the child) had occurred.

(i) Was the inquiry process full and fair?

- [10] The passenger complaint was as follows:

"after checking in our luggage at the Air NZ international check in counter, I had just placed my daughter's car seat on the conveyor belt at the oversize luggage counter. My 5 year old daughter was standing beside me and my mother who was holding my daughter's hand was standing to her left. The staff member checking boarding passes was standing behind us. My daughter of 5 yrs (who suffers from mild Autism, an intellectual disability), let out a high-pitched scream and the staff member reached down and smacked my daughter on the rear of her right upper thigh-buttocks region. This upset my daughter to a point where she started crying.

I turned to the staff member, (female) who smacked my daughter and said "Excuse me, don't hit my child" She immediately apologised by saying "Sorry, I'm so sorry, I shouldn't have done that." I said to her you don't smack someone else's child."

- [11] Ms Sparrow was subsequently identified as the staff member in question. The written complaint went on to detail further concerns which were not with her, but with the team leader on duty that day. The way the team leader handled the situation had not been to the satisfaction of the complainant.

- [12] In Ms Sparrow's original incident report (completed on 21 January, the day of the incident) she gave this account of what had happened:

"Today 21st Jan I was working at fragile & o/size counter. It was an extremely busy and noisy day. A small child suddenly screamed incredibly loudly very close to me. My immediate thought was that the child's fingers/hand were caught in the rollers. I put my hand on her arm and said "hey." Two ladies possibly mother and grandmother were very upset with me. As well as getting a fright, I was also concerned for the child's safety as the area was very congested with prams, trolleys, bags, passengers and small children.

I am sorry that I touched the child."

- [13] On the day in question the duty manager, Mr Williams, had reassured Ms Sparrow that video footage of the check in area would show what had happened. This as it turned out was a misapprehension, as the camera had not been trained on the right location at the relevant time.

- [14] Ms Sparrow was called to the meeting on 26 January in a letter with the passenger complaint attached. That letter concluded:

"This matter which has been raised may constitute a breach of our code of conduct and Air New Zealand policies and procedures and if substantiated may lead to disciplinary action being initiated, up to and including termination of employment. You are advised to bring a representative of your choice to the meeting."

- [15] At the meeting of 26 January Ms Sparrow ran over what had happened again, consistent with her original statement, as well as confirming that she had apologised to the child's mother. After the team leader became involved, she said, she had moved the family away and Ms Sparrow had continued with her work.

- [16] Ms Sparrow also provided Mr Edmonds with a drawing of where she, the complainant and her daughter had been standing at the time of the incident. This showed that area to have been congested, consistent with what was known of the day in question. The incident had taken place in the check in area, immediately in front of the fragile and oversize items belt, located to one side of Counter 7. Mr Edmonds asked Ms Sparrow if she recalled any witnesses and she named her team leader and the security officer stationed at the belt. She and Mr Edmonds also briefly discussed who might have been stationed at counters 7, 8, and 9. Ms Sparrow was not sure about this as, in her words, many staff had been to and fro that day.

- [17] Next, Mr Edmonds interviewed the team leader, Ms McLean. She told him that she did not witness the incident but approached Ms Sparrow and the complainant to see what was happening when she became aware of the "commotion" which followed it. She spoke with the family, who remained very upset, before moving them away from the area and calling in the duty manager, Mr Williams who took over and assisted Passenger S and her daughter to her flight. Ms McLean told Mr Edmonds that after Mr Williams had left Passenger S:

"three passengers who had been had [sic] the fragile counter and had witnessed this incident, came up to us and told us they had seen the incident and that Yvonne had done nothing wrong and the [Passenger S] had overreacted (these were their words.)"

- [18] Ms McLean told Mr Edmonds she asked this passenger "if she could write the details down" but she responded "we don't have time we have to run for our flight."

- [19] Ms McLean also told Mr Edmonds that a Ms Simpson (the CSA on Counter 7) was a witness to the incident.

[20] Mr Edmonds then proceeded to interview Mr Williams, Ms Simpson, the security officer (Mr Stunzer) the complainant and her mother. He also re-interviewed Ms McLean in order to put to her the information he had received from the complainant and her mother. He also spoke to the CSA who had checked in Passenger S before she proceeded to the oversize baggage belt. He did not attempt to interview the customer service agents at counters 8 and 9 as he decided that these counters were too far away to have had a clear view of what happened.

[21] In his interview, Mr Williams had confirmed Ms McLean's account of the approach by other passengers in support of Ms Sparrow. Mr Edmonds told me he spent some time considering how he might be able to find out who they were and how to contact them. However, he said that this proved impossible. Such video footage as was available was not at close enough range to see what they looked like, and even if it had been, the only way of establishing their names would have been to ask Customs to match up the pictures with passport information, which Customs was not prepared to do. Ms Edmonds concluded he *"could only evaluate what these passengers said as relayed by Ms McLean and Mr Williams."*

[22] As I have outlined already, Mr Edmonds then proceeded to make his decision based on the information he had. After Ms Sparrow was dismissed the CSA who was looking after counters 8 and 9, Ms Kawai, came forward to make a statement in support of Ms Sparrow. However Mr Edmonds did not find her statement reliable and it did not cause him to reconsider his decision. He told me that individuals who claimed that Ms Sparrow did not smack the child may simply not have been looking at the crucial moment or have had too poor a view to see clearly.

Determination

[23] The first issue here relates to when and how Ms Sparrow was advised of the seriousness of her situation. The union argues that Ms Sparrow was misled about this by Mr Edmonds's initial assertion that his inquiry was not disciplinary in nature. In addition she had also relied on an assurance Mr Williams had given her, at the time of the incident, that it would have been recorded on video. As it turned out, it was impossible to tell what had happened from the video footage. As a result of all this, Ms Sparrow did not obtain the assistance of the union organiser at the outset as she now feels she should have.

[24] The letter notifying Ms Sparrow of the meeting of 26 January put her on notice that the investigation of the complaint could lead to disciplinary action. This did of course eventuate with the start of a disciplinary process at the meeting of 13 February. Mr Edmonds advised Ms Sparrow of this in person, at the meeting, and after questioning both of them about what he said, I am satisfied that he put her on notice that the process was from that point disciplinary in nature.

[25] Having said this, I also note that I accept that it was some time before the seriousness of her situation sank in for her, but I am of the view that was because she was sure that she had done nothing wrong and had complete faith that this would become obvious as the investigation unfolded. **I am satisfied that she was not misled about the process which was being followed from 13 February.**

[26] The second issue raised relates to Mr Edmonds's decision not to interview the CSA who was looking after counters 8 and 9. He made this call in the belief that this person was too far away to see anything useful and given the congestion in the area, would most likely have found his or her view obscured anyway. At the investigation meeting I questioned all witnesses about the distance involved. It appears that it was at least 8 metres. If I have understood him correctly, part of Mr Edmonds concern is that at that distance, it could be hard to distinguish exactly what was going on.

[27] I consider this a valid concern. He had to limit the scope of his investigation at some point; there would have been no purpose in interviewing everyone working in check in at the relevant time. However, no-one at any stage suggested he look for witnesses beyond counter 9 and I consider that it would have been preferable for him to err on the side of caution and interview this one remaining potential witness. He could then have weighed what she said in light of her distance from the incident. I accept that the CSA on Counters 8 and 9 should have been identified and interviewed during the investigation.

[28] The third issue related to whether Mr Edmonds could and should have followed up and interviewed the two passengers who had come forward to make statements in support of Ms Sparrow's account of events.

[29] It was argued for Ms Sparrow that he could have used video footage, as described already, or taken an educated guess as to what flight they were on. However I am satisfied that neither of these suggestions was practicable. Because the oversize belt served all flights, the passengers could have been travelling on any one of a number of airlines. Short of writing individually to every passenger on the flights which were about to leave at around that time, there was no way of contacting them, and even this would require the co-operation of the airlines involved to forward mail to those passengers. I accept that Mr Edmonds was unable to find and talk to the passengers concerned.

[30] However, that was not the case for Ms McLean and Mr Williams. They failed to take up the opportunity to obtain the passengers' names, which could have been done without difficulty if for example Mr Williams had escorted them to the gate. Exactly why they did not do more to obtain this information is not known (Mr Edmonds told me he simply accepted the explanation that the passengers were in a hurry.) I note however that both Ms McLean and Mr Williams are on record as expressing the view that the alleged behaviour would have been totally out of character for Ms Sparrow, and Mr Williams thought the incident would have been recorded on camera. I infer that they too failed at that stage to appreciate the potential seriousness of Ms Sparrow's situation.

[31] I conclude that the failure of the team leader and duty manager to obtain contact details of the passengers in question amounted to a failure by the airline to gather all information relevant to the inquiry into Ms Sparrow's alleged misconduct.

(ii) Was the conclusion that serious misconduct had occurred open to Mr Edmonds on the information available to him?

[32] In addition to what has already been recorded here, Mr Edmonds ended up with the following information. (Quotes are from his notes of interviews.)

[33] The complainant, Passenger S, was interviewed in Sydney in the company of her husband. Her mother was interviewed separately in Auckland. Both alleged that Ms Sparrow had struck the child on her right buttock with an open palm in a movement which each demonstrated for Mr Edmonds and which he describes as a "bowling" gesture. The grandmother recalled that Ms Sparrow had a clipboard in one hand. Both women say that this caused the little girl to start crying. They also both say that Ms Sparrow apologised and that she neither denied nor admitted the accusation, made by the girl's mother to her face, that she smacked the child.

[34] Passenger S told Mr Edmonds that she was very angry about the incident but, referring to Ms Sparrow, said: "*I didn't try to knock her out; she seemed like a nice lady.*" She also told Mr Edmonds that it was "*the attitude of the staff that drove [them] to complain. If handled differently (with compassion) probably would not have gone to a complaint.*" This last appears to be a reference primarily to Ms McLean's handling of the incident, which was itself the subject of complaint.

[35] Ms McLean told Mr Edmonds that when she approached the scene, Passenger S was very angry, shouted at her and Ms Sparrow and attempted to push Ms McLean out of her way. She said that she attempted to calm the situation sufficiently to find out what happened and said that once she did, Ms Sparrow gave her the same account that she later recorded in her incident report.

[36] Mr Williams told Mr Edmonds that at the time of his involvement the child was a few metres away from him and was screaming intermittently but *"not crying (no physical tears)."* Ms McLean also recalls that the child continued to scream intermittently. Mr Williams told Mr Edmonds that after he had assisted Passenger S to board, her mother had told him that her daughter had been stressed.

[37] Ms Simpson provided a written statement as follows:

"I was standing at counter 7 when I heard a piercing screaming coming from the fragile area. I looked over and saw a small girl standing in front of the rollers and next to Yvonne. Yvonne turned around with a start and touched her arm to redirect the child's attention whilst saying "hey, hey" or something similar."

[38] Mr Edmonds also interviewed Ms Simpson. He asked her if anyone was obstructing her view and she said no, another CSA was at her counter but was behind her. Mr Edmonds asked if she had a full unrestricted view, and Ms Simpson replied that she did. She confirmed that she could see Ms Sparrow's body movements and arms, and that she saw Ms Sparrow touch the child on the upper arm, close to the shoulder. However she could not recall if the child had her back to Ms Sparrow or what the child was wearing. Mr Edmonds asked Ms Simpson if Ms Sparrow had said "I'm sorry I hit your child" to which Ms Simpson responded:

"in her opinion, she did not think YS had said this, that she didn't hear this, that it looked more like YS was trying to figure out what was going on."

[39] Mr Edmonds told Ms Simpson that the mother had reported that Ms Sparrow had smacked the child because the child had screamed. Ms Simpson:

"reiterated that she observed the interaction from the time the child screamed, this caused her to look over and she did not see YS smack the child."

[40] Mr Edmonds asked Ms Simpson if the child was crying and she said no.

[41] Mr Stunzer was interviewed by telephone. He told Mr Edmonds he was looking at an image on his screen when the child screamed and did not see Ms Sparrow touch the child. Then he:

"heard the mother start to make accusations to the CSA of hitting and assaulting her child. My observation of the CSA was that the CSA had a considerable look of bewilderment on her face and just started to apologise saying "I'm sorry I was frightened." The mother asked "Why did you hit her?" The CSA said 'I don't know, I'm sorry, I'm sorry.' At that point the team leader arrived."

[42] Mr Stunzer said that the child did not appear to be under any sort of stress and was definitely not crying.

[43] In his second meeting with Ms McLean (conducted after the other interviews had been completed) Mr Edmonds asked her to comment on the fact that he had been told by others that *"at the time of incident, YS said I am sorry, should not have done it, not aware that she refuted smacking the child-in your statement you say that she did."* Ms McLean confirmed that, once she had arrived on the scene, Ms Sparrow did deny smacking the child.

[44] Mr Edmonds also checked this point with Ms Sparrow who confirmed that when Passenger S accused her of hitting the child, she did not deny it, although she did so when recounting the incident to Ms McLean.

[45] Mr Edmonds also spoke to the CSA who had checked in Passenger S and her daughter. She recalled nothing of note about the family at that time.

[46] Mr Edmonds also considered it relevant background that the day in question was a very busy one, equipment failure had caused delays and Passenger S had waited for an hour in the check-in queue.

[47] Ms Sparrow's relevant employment history was that she had 13 years service during which no issues had ever been raised in relation to her performance or conduct. Mr Edmonds did not know her personally but told me that (then and now) he was prepared to accept as accurate the judgement Ms McLean and Mr Williams had of her character, since they did know her well. Their view, as previously expressed, was that it would have been out of character for her to behave as alleged.

[48] Mr Edmonds told me he weighed all this information and came to the conclusion that Ms Sparrow must have smacked the child. His reasons were as follows.

[49] He came to the conclusion that Ms Simpson's statement was not reliable for two main reasons. First he believed that if the area was as congested as Ms Sparrow had shown in her diagram, Ms Simpson would not have been able to see what happened. In addition, he noted that Ms Simpson had been unclear about whether the child had her back to Ms Sparrow and had not recalled what the child was wearing.

[50] In response to a question at my investigation meeting Mr Edmonds stated that other witnesses besides Ms Sparrow had provided diagrams of the scene. These had not been retained and were not provided to me as part of the evidence. Nor were they put to Ms Sparrow for comment. It was not known whether Ms Simpson had provided a diagram.

[51] As for the unknown passengers, he felt:

"Since I could not obtain any further information as to who these passengers were and did not have the opportunity to clarify their evidence, I could only evaluate what they said as relayed by Ms McLean and Mr Williams. My view of the passengers' information was that it was not necessarily helpful. They only said that Ms Sparrow had not done anything wrong and that "they" ...had overreacted. That did not necessarily mean that Ms Sparrow had not smacked the child."

[52] In response to questions at my investigation meeting, Mr Edmonds acknowledged that he had no reason to think that what the anonymous passengers said was unreliable in itself or to think that the report Ms McLean and Mr Williams gave of what they said was unreliable. He also agreed that it was probable that they did see the incident as it would otherwise be unlikely that disinterested strangers would have come forward with information.

[53] However, he felt that the only witnesses he could be sure had seen what happened were Ms Sparrow, the complainant and her mother. He told me he believed all three were genuine in their beliefs about what had happened but that he found the mother and grandmother more credible. He came to this conclusion because:

- i. they gave very similar and detailed versions of events;
- ii. while it was possible that they might have discussed their statements together, it was in his view unlikely;

- iii. *"there was nothing in it for them...no offer of free flights or monetary compensation..."*
- iv. Ms Sparrow did not, at least at first, deny the assault;
- v. Ms Sparrow apologised to the mother, which to him indicated guilt.

[54] In relation to points (iv) and (v) and what happened immediately after Ms Sparrow's contact with the child, Mr Edmonds felt that the other most reliable source of information was Mr Stunzer, because he was closest. Mr Edmonds told me:

"What is most important from Mr Stunzer's version of events is that he recalled that [Passenger S] had specifically questioned Ms Sparrow as to why she had hit her child. Ms Sparrow did not deny this allegation in her response to [Passenger S] – instead she said she did not know why she had done it and apologised for what she had done."

[55] Mr Edmonds felt that Mr Stunzer's account provided further support for the conclusion that Ms Sparrow must have smacked the child. Mr Edmonds told me that *"if you are accused of something very serious, such as hitting a child, the natural reaction would be to deny it vehemently. You would not apologise."*

[56] By way of explanation for her failure, at first, to deny the accusation, Ms Sparrow had explained that when someone shouts at her, she gets upset and closes off, that she was stunned that her actions had been perceived as smacking, and that she was *"trying to digest this."* She also told Mr Edmonds that there were plenty of people around (her implication being that it would have been obvious to them that she did not hit the child.) As for the apology, she said that it was to her a natural and appropriate reaction to apologise to a customer who was upset, and was not an admission of guilt. (She pointed out to me that both Ms McLean and Mr Williams had also apologised to Passenger S.)

[57] At the meeting of 24 February the union organiser, Mr Loughran, raised the fact that the mother of Passenger S had said Ms Sparrow was carrying a clipboard, when she had said she was not. Mr Edmonds however felt that it was not relevant whether Ms Sparrow was carrying a clipboard or not. He felt that that even if she had not been, this was a minor matter which did not undermine the overall credibility of the grandmother's evidence.

Determination

[58] After reviewing the information Mr Edmonds had available to him I have decided that it did not, on balance, support the conclusion he reached. My reasons are as follows.

[59] First of all, I do not consider he had sufficient grounds to discount Ms Simpson's statement, as he effectively did.

[60] Mr Edmonds' principal basis for doubting her word was the fact that Ms Sparrow's drawing of the area showed that it was very congested. His reliance on this drawing was not justified. For one thing, he did not put it to Ms Simpson for her comment. More importantly, when it is compared with the photographs produced by Air New Zealand it is obvious that it is neither to scale nor in proportion. It cannot be relied on as a precise depiction of the scene. Even if it were, most of the congestion shown in the drawing is not in the line of sight between where the CSA was standing at counter 7 and the spot where the child was indicated. Only one or two of the 20 or so crosses marking the positions of customers are close to that line, leaving open the possibility that the CSA may have been able to see at the critical moment.

[61] The other point Mr Edmonds considered was the fact that Ms Simpson could not recall what the child was wearing or whether she had her back to Ms Sparrow. I consider this to be no more or less relevant than the question whether or not Ms

Sparrow carried a clipboard, or the fact that the mother and grandmother are the only ones who recall the child crying. If potential mistakes on these points need not discredit the mother or grandmother's accounts, a failure to recall the child's outfit should not discredit Ms Simpson's recall.

[62] Ms Simpson was close to the scene¹ and was very clear that she saw the whole incident. Her account could not therefore be construed as a mistake, or related to something that happened after the alleged misconduct. Either she was telling the truth or she was not. There has been no suggestion that she was not to be trusted. **I conclude that Mr Edmonds is unable to justify his conclusion that Ms Simpson was not a reliable witness to the incident.**

[63] Secondly, I consider that Mr Edmonds should have placed more weight on what the anonymous passengers reported they had seen. As he acknowledged, it was more probable than not that they had seen the incident and it was reasonable to proceed on the basis that they were disinterested. Although it would have been preferable to have a full interview with them, it was the company's responsibility that this did not happen. Ms Sparrow should not have been disadvantaged by this failure. Like Ms Simpson's statement, the passengers' statement should have weighed in the balance as support for Ms Sparrow's version of events.

[64] Turning to Mr Stunzer, I do not consider his evidence to be as conclusively in support of the complainant as Mr Edmonds did. His statement does indicate that Ms Sparrow impliedly accepted the accusation that she hit the child. However he also says that Ms Sparrow appeared bewildered, which is consistent with what Ms Simpson and Ms Sparrow also said of her reaction, and which is consistent with her being taken aback that a well meant gesture had been misconstrued.

[65] As for the complainant, Mr Edmonds knew that her own mother had told Mr Williams that Passenger S was stressed. At the time of the incident she had waited in line for an hour with her small daughter, and was anxious that she might miss her plane. It was possible that it was she, and not Ms Sparrow, who overreacted and behaved irrationally. In my view also, especially once the matter had been escalated to a formal complaint, it was unlikely that the two women would not have discussed the events of that day in the interval before they were each interviewed. By this I do not mean to suggest any deliberate fabrication on their part but simply that in the re-telling, as so often happens, the story may have acquired added shape and force.

[66] I also consider that it should have weighed in the balance that Ms Sparrow's account was simply more plausible. There was every reason why she might reach forward to protect the child from potential danger. This is normal behaviour for someone who, like Ms Sparrow, is a mother and grandmother herself. It is also the action of a responsible employee². On the other hand, one would not expect any reasonable bystander (let alone a customer services agent with a good performance record) to strike a child at random in these circumstances. As far as I am aware Mr Edmonds knew of nothing to indicate that Ms Sparrow was anything other than a reasonable person; in fact quite the opposite.

[67] As for Ms Sparrow's apology, I see this quite differently from Mr Edmonds. I expect most people in Ms Sparrow's position would react with an apology. As for her failure to immediately deny the accusation, I think this has been explained by the accounts that she was initially bewildered by the reaction she encountered.

¹ Air New Zealand provided me with photographs of the area in question which show that she was at the very most, five metres from the scene.

² Mr Edmonds acknowledged that there is no blanket prohibition on touching a customer as it is understood that in some circumstances, safety considerations might warrant this.

[68] In summary, the weight of the information Mr Edmonds had supports a conclusion that Ms Sparrow touched the child in a sudden but protective gesture rather than a blow. Mr Edmonds has agreed that this would not amount to serious misconduct. The dismissal is therefore unjustified.

Remedies

[69] There can be no question in this case of contributory conduct. Air New Zealand has not established that any blame should attach to Ms Sparrow at all. She also has the overwhelming support of her colleagues. (At the time of my investigation meeting, almost 200 of them had signed a petition in support of her. It described her as "*gentle, helpful, polite, considerate, honest and ...very caring.*") I do not consider that there should be any problem in reintegrating Ms Sparrow to the workplace.

[70] I order Ms Sparrow's immediate reinstatement and reimbursement of lost earnings.

[71] Ms Sparrow has also claimed compensation for hurt and humiliation. She told me that she is suffering from shock and embarrassment at being dismissed in these circumstances. Joanne Thornton, the colleague who assisted her in the disciplinary process, described the stress as doing "*long term harm to her self esteem*" precisely because of the "*kind of gentle person she is.*"

[72] This evidence is accepted. In addition to the orders for reimbursement and reinstatement I therefore consider an award of compensation for hurt and humiliation is required. Air New Zealand is ordered to pay to Ms Sparrow the sum of \$5,000.00 pursuant to s.123 of the Employment Relations Act 2000.

Costs

[73] I leave it to the parties to discuss this issue between themselves. If the Authority should be required to determine the matter, submissions should be lodged within 28 days of the date of this determination.

Yvonne Oldfield
Member, Employment Relations Authority.