

parties went to mediation provided by the Department of Labour before the union lodged the application in the Employment Relations Authority.

[2] On 10 July 2009 the employment Relations Authority issued a determination on interim reinstatement. The application was declined.

[3] A substantive investigation meeting was scheduled on notice for 6 and 7 August 2009 to be held in New Plymouth. Mr Weko did not turn up and that meeting had to be abandoned. Mr Weko was requested to provide the reasons for his failure to attend the investigation meeting in writing. The union provided some information, but Tegel requested that Mr Weko comply with the Authority's request to explain where he was and what he was doing. No further information was provided.

[4] On 30 September 2009 notice was issued for the current investigation meeting and to give Mr Weko time to prepare. The notice of investigation meeting has been served on the parties, which included Mr Weko's representative. Mr Weko's representative attempted to contact him (by letter and in person) and through intermediaries (his mother, girlfriend, union officials) to advise him of the investigation meeting and to get instructions. The union considered that Mr Weko was avoiding any contact. One of the union officials has confirmed that he was informed by another person that the letter advising Mr Weko of the investigation meeting was received by Mr Weko. In addition the union has arranged for Mr Weko to be served and that happened on 12 December 2009 involving a private server. The union has withdrawn from the proceedings because it has not been able to get instructions from Mr Weko.

[5] I am satisfied that Mr Weko is aware of the investigation meeting. The Authority's support officer made a telephone call to a number provided by the union to contact Mr Weko. The support officer was informed that Mr Weko was not there and no explanation was provided as to his whereabouts. There was no good cause for his failure to appear and be represented. Therefore I decided to proceed and act fully in the matter as if Mr Weko had duly attended or been represented (Clause 12 schedule 2 of the Employment Relations Act applied).

Issues

[6] Was Mr Weko's dismissal justified in all the circumstances?

The facts

[7] Mr Weko was employed with Tegel from 7 January 2008. He was covered by the provisions of a collective employment agreement and member of the union party to that agreement.

[8] On 5 May there was an incident between him and his team leader where the team leader alleged that Mr Weko was abusive and used threatening behaviour. He denied that.

[9] A complaint was made and Mr Weko was informed that there would be an investigation. He was able to obtain representation. He was suspended without any objection and there is no issue about that. Witness statements were obtained and the matters that were raised were put to Mr Weko for his comment. After considering his comments and requests the company decided to dismiss Mr Weko. Mr Weko was given the opportunity to comment further. Tegel considered the comments, but decided Mr Weko had nothing more to add for it to change its mind, and the dismissal was confirmed. Tegel did reconsider the matter when the union made further submissions and provided further statements, but would not, with adequate reasons, change its mind.

[10] Tegel has supported its decision with evidence from Mr Alf Robson, human resources manager. Furthermore, I have considered all the affidavits deposed in the interim application plus the statement of problem and statement in reply lodged in the Authority before the investigation meeting. Mr Robson represented the company and relied on the company's employment agreement to establish that it was open to it to categorise the incident as serious misconduct. Mr Weko has failed to appear without good cause to advance his application and claims. He can not possibly succeed by being absent and not being available for questioning.

Determination

[11] I find that Tegel has been able to justify the dismissal for serious misconduct with reasons. It has acted fairly. Therefore Mr Weko does not have a personal grievance.

Orders of the Authority

[12] Mr Weko's claims are dismissed.

[13] Costs are reserved.

P R Stapp
Member of the Employment Relations Authority