

[4] When the matter proceeded to an investigation meeting in Dunedin, the applicant and his counsel were present at the appointed time but SCS did not appear.

[5] After a decent interval, I determined to proceed to deal with the matter and, having heard the evidence of Mr Ward, I took a brief adjournment and issued an oral decision which this determination now confirms.

[6] Mr Ward's evidence is that he was employed by SCS in September 2007 to work as a custodian at the Meridian Mall in Dunedin. He was to work for five hours per week and at other times as notified. An employment agreement was signed and an hourly rate of \$11.30 was stipulated. As part of the engagement, Mr Ward was required to purchase trousers and new shoes which cost him \$150.

[7] He was to commence his employment by a period of training on Thursday, 6 September 2007 but began to feel unwell the previous day and he made various attempts to contact the employer to explain the position.

[8] His bout of ill health continued through Friday, 7 September.

[9] Mr Ward's attempts to contact the employer were frustrating. He rang the phone number in the telephone directory and got the disconnected signal. He then rang a cellphone number in the Dunedin directory and got a person in Queenstown. Then later on Thursday, someone from SCS rang him on his cellphone and he was finally able to explain that he was ill and unable to attend. There was some suggestion from SCS that the phones were playing up.

[10] As Mr Ward's ill health continued on the Friday, he again attempted to contact the employer, again without success. Once again, he was rung on his cellphone by SCS and he was again able to explain that he was unwell.

[11] Then, on Monday, 10 September 2007, Mr Ward was able to speak with somebody at Meridian Mall who went and got a person from SCS who then spoke with Mr Ward, telling Mr Ward that Mr Ward was unreliable and then indicating that he was dismissed as a consequence. I am satisfied from the correspondence received from SCS by counsel for Mr Ward and disclosed to the Authority, that the person who dismissed Mr Ward on the telephone was indeed an employee of SCS as that person is referred to specifically by name in SCS's correspondence with Ms Leonard.

[12] I am satisfied that SCS knew that Mr Ward was ill. SCS rang Mr Ward on two occasions when its phone system was down for some reason, once on Thursday, 6 September and once on Friday, 7 September, and on each occasion Mr Ward was able to confirm that he was unwell and would not be attending at work. It follows that SCS knew perfectly well that Mr Ward was absent on the grounds of ill health.

Determination

[13] I am satisfied Mr Ward has been summarily dismissed and that that decision, conveyed as it was by telephone, was unjustified and that, in consequence, Mr Ward has a personal grievance and is entitled to remedies.

[14] Before I consider the question of remedies, I need to deal with the question whether, by his behaviour, Mr Ward has in any way contributed to the circumstances giving rise to his dismissal.

[15] I am satisfied that no culpability can be sheeted home to Mr Ward in respect of the circumstances giving rise to his personal grievance. Mr Ward was, I find, genuinely ill and he took all proper steps to notify his employer of that illness. It was not his fault that the phone system was malfunctioning at the relevant time; in any event, SCS contacted Mr Ward on two occasions, once on the Thursday and once on the Friday, and on each occasion was able to be advised that he remained unwell and unfit for duty. When Mr Ward finally had a substantive conversation with his employer's representative on Monday, 10 September 2007, he was dismissed over the telephone, allegedly on the basis that he was unreliable and not telling the truth about his ill health.

[16] On that basis then, I find no contribution by Mr Ward's behaviour in the circumstances giving rise to his personal grievance.

[17] I make the following orders to remedy Mr Ward's personal grievance and direct that SCS is to pay these amounts to Mr Ward:

- (a) Reimbursement of \$150 for the purchase of shoes and trousers;
- (b) Reimbursement of the Authority's filing fee of \$70;
- (c) A contribution to Mr Ward's legal costs in the sum of \$1,000;

- (d) Compensation under s.123(1)(c)(i) of the Employment Relations Act 2000 for hurt, humiliation and injury to feelings in the sum of \$2,000;
and
- (e) Reimbursement of three months' lost remuneration in the sum of \$734.50 gross.

James Crichton
Member of the Employment Relations Authority