

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN Murray West (Applicant)
AND Workbridge Incorporated (Respondent)
REPRESENTATIVES Dave McLeod for Applicant
David Bigio for Respondent
MEMBER OF AUTHORITY G J Wood
**INVESTIGATION
MEETING** 3 February 2005
SUBMISSIONS RECEIVED 17 February 2005
**DATE OF
DETERMINATION** 24 February 2005

DETERMINATION OF THE AUTHORITY

1. The applicant, Mr Murray West, claims that his summary dismissal for serious misconduct by the respondent (Workbridge) was unjustified on a large number of grounds, all of which are disputed by Workbridge.

The Facts

2. Workbridge is a charitable trust operating throughout New Zealand helping people with disabilities to participate fully in the labour market. Its primary focus, for which it receives government assistance, is to assist people with injuries and disabilities into jobs. Contracts with government agencies specify the number of jobs to be provided by Workbridge over the course of a year. Targets are then passed on to each office according to the size of the office.
3. In the Napier office, where Mr West started work on 24 March 2003, work is split up between pre-employment and placement consultants, of which there were two of each.

Mr West was a placement consultant and was thus responsible for half of the office's placement targets, being two each per week, as he was aware from the outset. Mr West was given a full induction into the work of Workbridge.

4. Serious attention was only really given by Workbridge into Mr West's achievement of the target of two placements per week once the new financial year had commenced on 1 July. On that date, Mr West's boss, Ms Natasha Mackie, the Napier Office Manager, had the first of many meetings with Mr West about him having to meet the target of two placements per week and not doing so. As a result, over the next few months he was required to provide weekly activity reports to Ms Mackie and (as well as regular meetings with Ms Mackie) was given additional assistance, including the attendance by him on a sales course.
5. As at 10 February 2004, Mr West had only achieved 60% of his targeted job placement numbers. Ms Mackie wrote to Mr West on 10 February telling him that, given the availability of a lot of jobs at that time of year, he would have to achieve double placements during two weeks in February. Mr West was told that if the agreed outcomes were not achieved, "*the performance management process will commence and your employment with Workbridge could be at risk*". Mr West responded stating that he did not understand that the target was cumulative and that his being threatened with dismissal was counter-productive.
6. On 8 March 2004 Mr West wrote to Ms Mackie with a placement strategy for March to June, which referred to contacting and following up clients in April of the other case manager, who was leaving. On 10 March Ms Mackie wrote back thanking Mr West for the strategy, but noting that it outlined work he wanted to take over from his existing colleague's employers and job seekers. The letter then clearly states that that workload would be given to that worker's replacement to manage, not Mr West.
7. It was clear to everybody in the office that Mr West was under pressure in relation to meeting the placement targets set by Workbridge. As a result, I am satisfied that at a former employee's suggestion, Mr West's placement consultant colleague passed on to him three placements that had come to Workbridge indirectly through the former employee's efforts, for Mr West to process and manage in the future despite the fact

that the placements should properly have been filed under Mr West's colleague's name and supported by Mr West's colleague's replacement, not Mr West. The clear reasons for this change to standard procedure were, I find, that the others wanted to help Mr West and as Mr West's fellow placement consultant was leaving, she was no longer concerned about getting every placement she was involved with put under her name.

8. On 1 April 2004 Ms Mackie found out about Mr West accepting credit for two of the three placements. The third had fallen through. Ms Mackie approached Mr West's fellow placement consultant who, after some hesitation, confirmed that she had given Mr West some of her jobs, for which she apologised. Ms Mackie then raised the matter with Mr West, who told her that he had been "set up". Ms Mackie advised Mr West that the matter would be dealt with at a formal meeting on 6 April. Mr West was told that this meeting would be attended by Workbridge's Human Resources Manager, Ms Anne Dobie. Mr West was also told that what he had done could constitute serious misconduct and that he was advised to bring a representative to the meeting.
9. Mr West accordingly took steps to ensure that he was properly represented at the meeting by a PSA organiser, Ms Margaret Takoko. He also studied the Code of Conduct, which contained a section on serious misconduct as well as other matters relating to the relationship between Workbridge and its employees.
10. The meeting was then held on 6 April at which Mr West was told that his job was at risk, as the notes of the meeting indicate. Mr West was asked to explain why he was taking credit for placements which he had not been involved with. Mr West stated that the transferring of placements between consultants was a common practice in the office and one that was accepted by Ms Mackie. Mr West also stated that he had made no secret about his behaviour in the office. It was all done openly because it was common practice. Mr West declined, however, to give any examples of when this practice had occurred before, because he did not want to 'name names'.
11. There was also some lengthy discussion about Mr West's knowledge about the performance levels required and how he had performed in this regard. The meeting concluded by Ms Dobie advising that she would type up the notes of the meeting and circulate them to all concerned.

12. As the notes of the meeting state “*she advised that we (Workbridge) would consider his explanation of events and get back to him as soon as possible*”. However, no other meeting dates were proposed.
13. Mr West and his representative not unreasonably took the view that Workbridge was going to investigate his claim about it being common practice that placements were shared between consultants and put those conclusions to Mr West before Workbridge drew its own conclusions about this matter. This is not in fact what occurred. Workbridge investigated through its computer systems whether such transfers occurred, but could find no evidence of it. Ms Mackie maintained that she had no knowledge of such a practice and would not have approved of it. On that basis, Ms Dobie concluded that no further investigations on this matter were required and that Mr West’s claim was wrong.
14. Ms Dobie therefore determined that Mr West should be dismissed for serious misconduct and prepared a letter for signature by the Chief Executive, Ms Ruth Harrison, accordingly. That letter states as follows:

“I am writing further to your meeting with Natasha Mackie and Anne Dobie on 6 April. Margaret Takoko from the PSA represented and supported you at that meeting. Anne Dobie took notes.

The principal issue was the fact that you had entered jobs in the computer system, under your name, that had been achieved by another employment consultant. Your continued under performance in achieving targets was discussed.

You were invited to provide any information which you felt was relevant to the issues.

You agreed that you had entered jobs on the computer system as your own when they had been placed by another consultant. Your justification for this was that ‘this has happened before’ and that this was normal practice in Napier office. You were not prepared, however, to cite another example of such conduct.

We do not accept your claim that taking credit for jobs placed by another is normal practice in the Napier office, and is condoned by the Manager.

The Workbridge Code of conduct provides that falsification of documents or claims constitutes serious misconduct. Your action in falsifying computer records falls squarely within the definition of serious misconduct the sanction for which is instant dismissal.

Nothing in the explanation which you have provided to us has led me to conclude that the Code of Conduct should not be applied to your case. This letter serves to confirm

our oral advice to you that your employment with Workbridge is terminated effective immediately.

Given your dismissal the issue of your non performance need not be addressed. We record, however, that we do not accept the explanations given.”

15. This letter was approved of and signed by the Chief Executive before the next meeting between the parties, despite Ms Dobie having been delegated the responsibility of making decisions on Workbridge’s behalf over this disciplinary issue.
16. Mr West, along with his representative, had prepared for the meeting set for 28 April by getting at least one statement from a previous staff member of Workbridge stating that he believed that jobs could be transferred between placement consultants. Mr West was prepared to provide this information at the meeting on 28 April.
17. Events took a different course, however. Ms Dobie arrived at the meeting with Ms Mackie with the pre-prepared dismissal letter from the Chief Executive in hand. At the commencement of the meeting Ms Dobie advised Mr West that Workbridge had considered his responses, that it had decided that he had committed serious misconduct and the decision had been made to terminate his employment. Mr West’s representative asked whether Workbridge had that in writing, with a copy for her as well. Ms Dobie produced the pre-prepared letter. Mr West’s representative indicated that she had a signed affidavit from a previous employee but that obviously the decision had been made and there was no point in producing it. They therefore left the meeting without ever providing that information.
18. Mr West then raised a personal grievance with Workbridge. Despite the matter having been to mediation and there being extended discussions between the representatives, no resolution of this matter has been able to be achieved. It therefore falls to the Authority to provide a determination.
19. I have found the facts as above on the basis of the balance of probabilities, i.e. what was more likely than not. In most cases where there is a dispute between the witnesses there is some written evidence to show what was more likely than not and I have relied on it. In cases where there is no documentary information, I have relied on the evidence of Ms Takoko and Ms Mackie, who appear to be less personally involved in these matters and gave the most balanced evidence.

Determination

20. The course of this disciplinary investigation did not run smoothly for a number of reasons. The first is that an investigation into alleged serious misconduct by Mr West was mixed into an investigation into performance concerns. It was argued on Mr West's behalf that this meant it was the performance concerns that were the real reason for dismissal. I do not accept this submission. It seems clear to me that Mr West was dismissed for the reasons given by Workbridge at the time, namely that he was dismissed for the falsifying of documents, namely computer records that recorded placements by the wrong placement consultant.
21. While the Chief Executive delegated the disciplinary process to Ms Dobie, the dismissal letter was prepared in advance for signature by the Chief Executive. It clearly reads as if the decision was made by the Chief Executive. This is what led to the claim, which I do not accept, that Mr West did not have access to the true decision-maker. I consider that the true decision-maker was Ms Dobie. Ms Dobie can not be criticised for keeping her Chief Executive informed of her conclusion and even seeking support for that conclusion. Workbridge did not help itself, however, by preparing a letter of dismissal signed by the Chief Executive as if the decision had been made by the Chief Executive. It is only because of my acceptance of Ms Harrison's evidence that I have reached the above conclusion, which flies in the face of the documentary evidence.
22. The real problem with this investigation was not so much the expectation given to Mr West that there would be further investigations into his explanation (as there were), but the implication that he would be involved in those investigations (which he was not). Essentially, Mr West was only given one opportunity to explain. He was not told that by not 'naming names' as he puts it, he would be given no further opportunity to comment on the issue as to whether or not the sharing of jobs was common practice in the Napier office. I find that at the very least it was implicit in the process adopted by Workbridge that he would have another opportunity to at least provide comment on the employer's conclusions about the nature of this alleged practice. Such an opportunity was not provided before he was dismissed. Even if Ms Dobie were correct in her claim that she asked Mr West for further explanation at the second

meeting, in the circumstances of the pre-prepared dismissal letter and Ms Dobie's opening remarks, this could not be seen as a fair and reasonable opportunity.

23. I find that Workbridge was required to do more, as a fair and reasonable employer, to allow Mr West to put his explanation forward in relation to the practice of sharing placements than simply the one opportunity at the one meeting when it could be reasonably expected that further investigations were going to be made. Mr West was entitled as a matter of law to be involved in those investigations before any final decision was made. He was not and on that basis his dismissal is unjustified.

Remedies

24. Mr West claims for lost wages of \$3,670.90 net which is made up of four weeks without income (\$2,280.90 net) and five weeks on the sickness benefit (\$1,390.00 net). Mr West gave evidence about the impact of his dismissal on him. He noted that his dismissal had devastated him and his family and that he was so stressed by his treatment that he was placed on medication by his doctor. No evidence was given by Mr West's doctor or his family, however, about the impact of his dismissal on him.
25. In all the circumstances of this case I am not prepared to accept that all the mental suffering that Mr West has been through arises solely from his dismissal by Workbridge. That relates also to his inability to work. I therefore consider that his lost remuneration is \$2,280 net and that he should be compensated under s.123(c) (i) at the level of \$5,000.
26. However, I also need to take into account his contribution to the situation that gave rise to the grievance. In this respect, I principally take account of the fact that Mr West knew that accepting placements from the other consultant would not have been approved, although whether that constituted serious misconduct is impossible to conclude in the circumstances because Workbridge was unable, due to its own actions, to balance the beliefs of Ms Mackie against those of other staff such as Mr West and former staff that the practice generally was acceptable. Furthermore, I was unable to so conclude either, given the element of deliberate intention required, on the conflicting evidence before me.

27. In Mr West's case, however, his was blameworthy behaviour as he had been clearly told that he was not to take work from his fellow consultant who was leaving, as Ms Mackie's letter of 10 March makes abundantly clear.
28. I therefore reduce the awards that would otherwise be paid to Mr West by the significant amount of 40%. I therefore order the respondent, Workbridge Incorporated, to pay to the applicant, Murray West, \$3,000 in compensation and \$1,368 in lost remuneration.

Costs

29. Costs are reserved.

G J Wood
Member of Employment Relations Authority