

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2020] NZERA 261
3074512

BETWEEN PAUL WILLIAMSON
 Applicant

AND GORE DISTRICT COUNCIL
 Respondent

Member of Authority: Philip Cheyne

Representatives: Mary-Jane Thomas and Jennifer Forrest, counsel for the
 Applicant
 Andrew Shaw and Giuliana Petronelli, counsel for the
 Respondent

Investigation Meeting: 17 & 18 March 2020 at Invercargill

Submissions Received: 24 & 31 March 2020 from the Applicant
 25 March 2020 from the Respondent

Date of Determination: 29 June 2020

DETERMINATION OF THE AUTHORITY

A. The claim is dismissed.

B. Costs are reserved, subject to the timetable set for submissions.

Employment relationship problem

[1] Paul Williamson worked for the Gore District Council from 2011 until he was dismissed on notice by letter dated 28 February 2019. Mr Williamson raised personal grievances of unjustified dismissal and unjustified disadvantage on 15 March 2019, lodged in the Authority in September 2019. Mr Williamson seeks compensation,

reimbursement of lost wages and costs. The Council says it justifiably dismissed Mr Williamson. Despite mediation, the parties did not reach an agreement.

[2] Mr Williamson abandoned the unjustified disadvantage claim.

[3] This determination resolves Mr Williamson's employment relationship problem.

Background

[4] The purpose of Mr Williamson's position as a Roothing Officer then a Senior Roothing Officer, set by his job description, was to assist the Roothing Manager with the management of the Council's rooding network.

[5] The Council keeps a data log of reports which it calls Customer Request Management Enquiries (CRMs). There are two CRMs dated 11 June 2018 about the condition of Lady Charlton Road, a rural road. Both report mud on the road, one describing it as "very slippery" and the other as "on a blind corner and very dangerous". The reports refer to truck movements involving baleage and silage, with one of them saying this was near Reaby Road. Both are timed about 12.30pm. The reports were assigned to Mr Williamson for follow up. Mr Williamson attended the site promptly and directed the cartage contractors to clean the road. Mr Williamson says he re-inspected the site on 13 June, deemed the road satisfactory with no other work required. The data log shows the CRMs were both closed on 15 June.

[6] On Saturday 16 June, the son of local residents (Mr & Mrs Parish) driving on Lady Charlton Road lost control, causing damage to his car. This was reported to Police. The location was given as near Reaby Road. Police requested Council to clean the road. There is a note of an after-hours call to the Council on 17 June.

[7] On about 19 June Mr Williamson, during a call from Mr Parish, agreed to meet him and Mrs Parish at the collision site to discuss the state of the road. They met the next day. Mr Williamson was not made aware that Mrs Parish was recording their discussion at the site. Mrs Parish initially sought damages from the cartage contractor working on Lady Charlton Road on 11 June. The contractor contacted Mr Williamson who confirmed he had inspected the road on 13 June and found it to be in acceptable condition. The contractor's public liability insurer also contacted Mr Williamson. Mr Williamson confirmed in a return email that he had inspected the site

and found it to be in reasonable condition. The contractor's insurer declined liability for the damage to the car.

[8] Meantime, Mrs Parish also engaged with the Council directly. There was a meeting and exchanges between her and Mr Sharma, the General Manager for Infrastructure. The exchanges included Mrs Parish saying that "Paul's report to you [is] totally at odds with what he has told us on at least two occasions... and we wish to make a formal complaint about his behaviour." Nothing specific came of this complaint. In an email on 14 August Mr Sharma advised Mrs Parish that the Council accepted no liability for the collision and damage to her son's car. Mrs Parish next engaged with the Council's Chief Executive Mr Parry. There was an email exchange on 21 August, with Mr Parry standing by Mr Sharma's decision that the Council was not liable.

[9] Mr Williamson was involved in providing information to the Council as it responded to the approaches from Mrs Parish. Mrs Parish eventually made a presentation to the Council at a Council meeting on 18 September. In her presentation, Mrs Parish highlighted discrepancies with what Mr Williamson had said and stated at different points. One of the inconsistencies concerned the date Mr Williamson claimed he inspected the road after requiring the contractor to clean up the mud.

[10] Mr Soper is the Council's Parks and Recreation Manager. He already had some familiarity with the Lady Charlton Road issue and was present at the Council meeting on 18 September during Mrs Parish's presentation. Mr Soper logged onto the Council's E-Road system which is used to record Council vehicle movements. Peter Standring is the Council's Transport Manager. He was also present. The records did not show Mr Williamson's Council allocated vehicle on Lady Charlton Road on either date mentioned by Mrs Parish in her presentation. After the Council meeting Mr Soper and Mr Standring reported this information to Mr Parry.

[11] Mr Parry asked Mr Soper and Mr Standring to report the E-Road vehicle tracking records for Council vehicles on Lady Charlton Road between 11 and 22 June. The managers wrote a report dated 2 October. The E-Road information did not report Mr Williamson's Council vehicle on Lady Charlton Road on either 12 or 13 June, the

two days referred to as when Mr Williamson had inspected the road after it was cleaned up. Mr Parry decided to initiate a disciplinary investigation.

Disciplinary Investigation

[12] In large part the investigation process was documented so the sequence is not in dispute.

[13] Mr Parry wrote to Mr Williamson on 5 October 2018. Mr Parry summarised events and referred to the intense scrutiny and review of Council's actions, including Mrs Parish's presentation at the full Council. The letter says "This report can find no evidence of your Council vehicle travelling along Lady Charlton Road on either 12 or 13 June to support your contention that you inspected the road following the contractor's cleaning operation." The letter stated that if Mr Williamson could not provide proof to counter the E-Road report it would strongly suggest that Mr Williamson had not been truthful throughout, which would severely erode Mr Parry's trust and confidence in Mr Williamson as a Council employee. A meeting was proposed. No issue arises with how the Council initiated the formal disciplinary process.

[14] Mr Williamson engaged counsel who sought his full employment file. Counsel subsequently requested the E-Roads data for Mr Williamson's Council vehicle and a copy of relevant pages from Mr Williamson's work diary. Information was provided. Counsel wrote on 29 October summarising Mr Williamson's response to the concerns raised, prior to the disciplinary meeting. The letter confirmed Mr Williamson's recollection that he inspected following the clean-up meaning that either he used another vehicle (either his own or another Council vehicle) or the E-Road data was not accurate.

[15] There was a disciplinary meeting on 30 October. There is a transcript of the meeting. It is not necessary for present purposes to summarise the exchange, other than to observe that the focus was on whether Mr Williamson inspected the site post clean-up using another vehicle, whether he used his Council vehicle without that showing in the E-Roads data or whether Mr Williamson had not re-inspected the road contrary to his assurances since June 2018. Away from the meeting, Mr Williamson showed Council managers some location information on his mobile phone to establish

that E-Roads data for 25 July for his vehicle was not correct and call into question the reliability of the E-Roads data for 13 June 2018.

[16] Mr Parry wrote to counsel on 9 November 2018. Further information was provided, including a transcript of the 30 October meeting, a note of a discussion between Mr Williamson and Mr Standing on 30 October and a memo in response to Mr Williamson showing his phone to the managers to support the point that E-Roads data was not necessarily reliable. Mr Parry reported that he had requested a copy of the recording made by Mrs Parish of her exchange on 20 June with Mr Williamson and would schedule a further meeting once it had been received. Mr Parry noted that that the phone information also did not place Mr Williamson at Lady Charlton Road on 13 June. This was described as the “primary concern”.

[17] By 14 December, the Council had obtained a copy of Mrs Parish’s recording. It provided a copy to counsel. Mr Parry in his letter that day summarised that the concerns were that Mr Williamson had offered four different dates when he had re-inspected the road during exchanges following the collision, the recording was “deeply concerning” because he had been recalling events “of a few days earlier”, it was a civil conversation rather than difficult as had been portrayed earlier by Mr Williamson and it highlighted an inconsistent statement about whether Mr Williamson got out of his vehicle to inspect the road. Mr Parry sought an explanation, given that the issue was one of trust and confidence. A meeting after the Christmas break was proposed.

[18] Mrs Parish’s recording was transcribed for Mr Williamson’s counsel.

[19] The meeting was on 23 January 2019. It too was transcribed. For present purposes, a brief summary is sufficient. Mr Williamson said he had always stated that he had inspected the road before the collision. He acknowledged an error in a written report which had referred to 12 June as the inspection date. By way of explaining his reference to “Friday” or “Thursday” (15 or 14 June) to Mrs Parish at the site meeting, Mr Williamson described conduct by Mrs Parish’s that put him under pressure, saying that the conduct was not apparent in the recording. He said that it was a phone exchange with Mrs Parish during which she put words into his mouth which got heated, not the roadside meeting. Mr Williamson said he did not get out of the car but probably told Mrs Parish he did. He said that some inspections you get out for and

others you do not. This was characterised by counsel as follows: “he may have misspoke when he said to her, just probably to shut her up...” The meeting ended with Mr Parry to consider whether there was serious misconduct before further discussion about an outcome.

[20] On 31 January Mr Parry wrote again to counsel including a copy of their meeting transcript and an account given by Mr Williamson to Mrs Parish on 13 September 2018 in response to her official information request. Mr Parry noted that it was quite a detailed account of Mr Williamson’s visit on 11 June given three months later, compared to his recollection of the 13 June inspection visit given during the disciplinary investigation.

[21] Counsel response on 5 February discounted the contrasting recollections, and referred to the brief inspection visit on 13 June, recollection of which had not been requested until after September.

The decision to dismiss

[22] Mr Parry concluded that Mr Williamson had not inspected Lady Charlton Road on 13 June 2018. He set out reasons in his letter of 11 February 2019. Mr Parry said that Mr Williamson had not provided any evidence to support his contention that he inspected the road on 13 June. The E-Roads data did not place Mr Williamson’s or other Council vehicles there on 13, 14 or 15 June. Mr Williamson’s mobile phone did not place him there on any of those dates. Mr Parry accepted that 12 June had been noted in error so put that aside from his decision. However, Mr Parry did not accept that Mr Williamson’s reference to 14 and 15 June as dates of his inspection in the 20 June site meeting with Mrs Parish reflected a difficulty in recalling the date of the inspection visit. Mr Parry said he was surprised that Mr Williamson claimed he could not recall what vehicle he used for the inspection as Mr Williamson usually used the allocated Council vehicle for work duties. Mr Parry also questioned the frequency of mud incidents as an explanation for the lack of recall, as the Lady Charlton Road entry was the only road inspection diary entry for 13 June. These factors, taken with the untruthful statement to Mrs Parish, caused Mr Parry to conclude on balance that Mr Williamson did not inspect Lady Charlton Road on 13 June and misled Council Managers, Mr Parry, the Mayor and Councillors. Mr Williamson’s report to Mrs Parish’s insurer caused it to deny the claim but the unreliability of his statements put

the Council in a position where it was forced to settle Mrs Parish's claim against the Council. Mr Parry decided that Mr Williamson had committed serious misconduct.

[23] In response to an invitation to make submissions about what sanction should result, counsel disputed that the conclusion was available and requested documentation regarding the decision to settle the Parish claim. Counsel's letter referred to Mr Williamson's clear disciplinary record since 2011, positive comments in several performance appraisals and his promotion to Senior Roading Officer. While not accepting the conclusion that Mr Williamson lied, counsel referred to stress caused by the difficulty of dealing with Mrs Parish and stress from a personal circumstance (which need not be detailed). Mr Williamson had continued to work normally without incident throughout the disciplinary investigation. It would be difficult for him to find replacement employment. The Council was asked not to dismiss Mr Williamson.

[24] Mr Parry acknowledged the correspondence, provided the requested documentation (Mrs Parish's presentation and minutes of the Council in committee discussion) and deferred his decision to allow an opportunity for any response to the documentation.

[25] Following the deferral, Mr Parry communicated his decision to dismiss Mr Williamson on notice by letter dated 28 February 2019. He acknowledged Mr Williamson's otherwise unblemished work record. Mr Parry said that the E-Roads data for 13 June showed Mr Williamson's car heading in the direction of Lady Charlton Road but then veering away towards the Council office. Only Mr Williamson could explain the reason for the travel path but had offered no adequate explanation. Mr Parry could not speculate about why Mr Williamson had lied about inspecting the road on 13 June. He did not consider any difficulties experienced with Mrs Parish could justify a Council officer being untruthful. Mr Parry did not accept the personal circumstance as explaining Mr Williamson's inability to recall details of the 13 June inspection, given his recall of the inspection on 11 June was not affected. Mr Parry did not consider reference to Mr Williamson's age and difficulty in finding other employment minimised the effect of the serious misconduct.

[26] Mr Parry referred to the statutory justification test. He viewed Mr Williamson's stance of maintaining that he had inspected the road on 13 June despite

overwhelming evidence to the contrary as obdurate. A lie to Mrs Parish was an aggravating factor. Council officers had placed absolute trust in Mr Williamson's account when the Parish complaint first arose, only for the trust to be proven to be completely misplaced. The Council considered it had to settle the Parish claim because of Mr Williamson's deceptive and misleading behaviour. Mr Parry had avoided contact with Mr Williamson, apart from the disciplinary exchanges, to avoid embarrassment for Mr Williamson. It had not been a normal working relationship during that time. The letter concluded setting out final arrangements, with Mr Williamson having the option to work or not during the notice period.

Test for justification

[27] To paraphrase,¹ the test is whether the employer's actions and how the employer acted were what a fair and reasonable employer could have done in all the circumstances at the time, determined objectively. As counsel for Mr Williamson submitted,² the Council is held to a high standard of investigation, given its resources.

[28] I must not determine a dismissal to be unjustifiable solely because of defects in the process followed by the employer if those defects were minor and did not result in the employee being treated unfairly.

[29] It is convenient to directly address some of counsel's submissions.

Relevant information not provided

[30] There is a submission that relevant information was not provided to Mr Williamson.

[31] On 30 October, Mr Williamson showed Council managers photos of a white vehicle on a bridge and location services history on his mobile phone, to support a contention that he and his vehicle there on 25 July. The E-Road data for his Council vehicle did not record it at that location on 25 July. The point was to show that E-Road data was not necessarily reliable.

[32] Mr Parry wrote on 9 November providing a memo from the IT manager setting out his exchange with Mr Williamson and the manager's view that the E-Road

¹ Section 103A Employment Relations Act 2000

² I am referred to *Edwards v The Board of Trustees of Bay of Islands College* [2015] NZEmpC 6

data was more accurate and reliable than the mobile phone data. Mr Parry wrote “The primary concern emerging... is that Paul could not place himself at Lady Charlton Road on Wednesday 13 June, when analysing his phone.”

[33] The information not specifically provided related to further Council inquiries about Mr Williamson’s contention that the photo showed his vehicle on 25 July. A manger thought it was not a Council vehicle. Inquiries about other Council vehicles and of the contractors were said to be “inconclusive”. I note that when Mr Williamson was questioned, his evidence was that he did not know if the vehicle shown in the photo³ was his Council vehicle. The photocopy of the image on the mobile phone screen is not sufficiently clear. The inquiries did not affect the point about the relative reliability and integrity of the E-Roads data as against the mobile phone data, or the fact that neither data record showed Mr Williamson at Lady Charlton Road on 13 July. Even if non-disclosure of these inquiries could be regarded as a process defect, it is minor and did not result in Mr Williamson being treated unfairly. E-Roads location data was known to be reliable and of greater integrity compared to mobile phone location data but neither data record placed Mr Williamson at Lady Charlton Road on 13 June.

[34] Following the dismissal, some further investigation by Council about the contract date in respect of the bridge work shown in the photo throws doubt on the date and photo. That was not known at the time of the dismissal, so I put it to one side.

[35] Mr Williamson in evidence identified material which he saw for the first time when it was included in the agreed bundle prepared for the investigation meeting. There are email exchanges between the Council and Mr & Mrs Parish in July, August and September before the Council meeting. Some exchanges between Mr Parry and Mrs Parish followed the meeting. Prior to the Council meeting, Mr Williamson was part of informing the Council’s response to Mr & Mrs Parish and was aware of the substance of the exchanges. In reliance on Mr Williamson⁴ Council disputed its liability and expressed its disagreement with Mrs Parish’s assertion that Mr Williamson’s report was at odds with what he had told her.

³ Common bundle p 52

⁴ See for example pages 214 & 223 and page of the common bundle

[36] The material disclosed after the dismissal was incidental to the Council's disciplinary investigation. No unfairness resulted for Mr Williamson because the documents were not disclosed to him prior to the dismissal.

Mrs Parish's written presentation

[37] Another information failure referred to is the written presentation Mrs Parish made to a Council meeting on 18 September. Mrs Parish in her presentation sets out things said to her which supported her view that Mr Williamson had not properly inspected the clean-up of the road before her son's collision. Those involved in the work told her that nothing was carted after 12 June. The landowner told her that he does not use the gate. A number of named road users confirmed to Mrs Parish that the road remained in a dangerous state after the clean-up.

[38] The written presentation was provided to counsel on 15 February 2019 in response to her 13 February request, following mention in Mr Parry's 11 February letter that Council had settled with Mrs Parish because of the unreliability of Mr Williamson's statements. When providing the information and its context, Mr Parry said he expected to make a decision by the end of the next week but invited additional comment having regard to his letter's content and enclosures.

[39] Mr Williamson was questioned at the investigation meeting about whether he had evidence to show the condition of the road worsening after it was cleaned-up. Counsel for the respondent referred him to Mrs Parish's presentation. Mr Williamson did not dispute the information put to him, but said he did tell Mr & Mrs Parish that there may have been a tractor on the road. The submission is that the cross-examination must have been on the basis that Mr Parry placed reliance on Mrs Parish's assertions in the presentation despite his evidence that he did not. It is said that the assertions in the presentation were not properly raised with Mr Williamson and he did not have a reasonable opportunity to respond, prior to the dismissal.

[40] Mr Parry on 5 October said that Mrs Parish had presented to Council on 18 September seeking compensation, resulting in him being asked to report to Council so an informed decision could be made. That was the context for identifying that the E-Roads data did show Mr Williamson inspecting the road following the clean-up. The

lack of evidence to support Mr Williamson's contention that he inspected the clean-up was of extreme concern, leading to the strong suggestion that Mr Williamson had been untruthful. The concern for Mr Parry was not the adequacy of checking but whether Mr Williamson had been truthful when he said he had checked after the clean-up.

[41] I accept Mr Parry's evidence that the presentation was not relied on by him to decide that Mr Williamson had not been truthful. However, even if Mr Parry had been influenced by the information in Mrs Parish's presentation in concluding that Mr Williamson had been untruthful, it was disclosed and Mr Williamson expressly had an opportunity to respond to that information before the dismissal. I find that the opportunity given was reasonable in the circumstances.

Closed mind

[42] It is submitted that the respondent closed its mind at an early stage of the investigation to the possibility that the E-Roads data could be in error.

[43] The difficulty Mr Williamson faced was the integrity and reliability of E-Roads data, it not showing any Council vehicle at Lady Charlton Road to support his contention that he checked the clean-up, his mobile phone not showing him at Lady Charlton Road, him hardly ever using his own vehicle for work purposes, no approval or expense claim for use of his personal vehicle to visit Lady Charlton Road and his professed lack of recall of what vehicle he used.

[44] The steps taken by Mr Parry to thoroughly investigate the concerns and consider Mr Williamson's answers at various stages indicates that he did not have a closed mind.

[45] I find that Mr Parry did not have a closed mind.

Substantive justification

[46] Mr Parry in his 11 February letter said that he could not place a great deal of weight on the credibility or reliability of Mr Williamson. This was a response to counsel saying he should accept Mr Williamson's word, despite the absence of E-Road or other independent confirmation. To support his view about credibility, Mr

Parry referred to a “less than honest response” given to Mrs Parry during the 20 June roadside exchange.

[47] During that exchange, Mr Williamson said to Mrs Parish “I had a look later and I was quite happy with it then.” Mrs Parish asked “Did you get out and have a look at the surface then though?” Mrs Parish in her 18 September presentation says that Mr Williamson’s answer was “Yeah – Nah I didn’t” and claimed that the statements were verified by her recording. However, by letter on 14 December, Mr Parry alleged “It is also noteworthy that when questioned by Mrs Parish about whether Mr Williamson got out and inspected the road, he confirmed that he did. This is in contrast to later statements... where Mr Williamson said on multiple occasions that he inspected the road from his vehicle and did not get out of the car.” The point is repeated as one of the reasons for Mr Parry being deeply concerned about the recording. The recording was sent to counsel around the time of the letter.

[48] Having received the recording, counsel for Mr Williamson arranged a transcript. According to the transcript, Mr Williamson responded “Yeah (inaudible).”

[49] Leading up to the disciplinary investigation Mr Williamson several times⁵ had described his post clean-up inspection as not including getting out of his vehicle. Mrs Parish’s presentation, available to Mr Parry in September, said that Mr Williamson told her he had not got out of the car (“Yeah, Nah”), but Mr Parry on listening to the recording alleged that Mr Williamson had told Mrs Parish that he had got out of the vehicle. Mr Williamson, without Mrs Parish’s presentation, but with the recording and transcript (“Yeah (inaudible)”) told Mr Parry during the 23 January disciplinary meeting that he did not get out of the car “But I probably told her [Mrs Parish] I did because thinking back... some you do get out, some you don’t...So it would’ve just been off the top of my head.” Counsel summarised that “My client’s willing to accept that probably, he may have misspoke... just probably to shut her up, I suspect.” The meeting transcript noting this admission was sent to counsel on 31 January. It was not disputed. Mr Parry concluded⁶ from this that the admission seriously undermined the reliance that could be placed on Mr Williamson’s word.

⁵ Common bundle pages 197 and 223.

⁶ Letter of 11 February 2019

[50] On receipt of the presentation, Mr Williamson had an opportunity to retract his admission during disciplinary meeting that he told Mrs Parish that he had got out of the car to inspect the road.

[51] I have listened to the recording. I find that an employer could reasonably take from the recording that Mr Williamson told Mrs Parish (“Yeah (inaudible)”) that he did get out of the car to inspect the clean-up work. I find that the recording together with the admission entitled Mr Parry to conclude that he could not place much weight on Mr Williamson’s word.

[52] The 11 February letter states that Mr Williamson had been unable to provide evidence to support his contention that he inspected the road on 13 June. Earlier, Mr Williamson’s diary had been offered as evidence. On 13 June is written “CHECK LADY CHARLTON”. There is a tick alongside. The diary was referred to during the 23 January meeting, in the context of the different days and dates that had been mentioned for the date Mr Williamson had checked the clean-up. I note that at counsel’s request on 19 October the diary had been copied. The adequacy of Mr Williamson’s inspection of the clean-up had been an issue since mid-June but Mr Williamson first referred to the diary entry after receiving the disciplinary allegation which put the fact of the inspection in question. In light of this, the diary adds nothing to Mr Williamson’s assertion that he checked the clean-up. Mr Williamson in evidence did not assert a standard diary practice of ticking completed tasks and the excerpts of his diary did not disclose one. No issue arises by Mr Parry not specifically explaining why he did not consider the diary as evidence.

[53] Mr Parry was questioned about his view of Mr Williamson’s inability during the disciplinary to remember which vehicle was used to inspect the clean-up of the road. He agreed that he thought Mr Williamson’s inability to recall meant that he lied about inspecting after the clean-up. The submission is that such a finding could not be made.

[54] In his 11 February letter, Mr Parry referred to Mr Williamson’s inability during the disciplinary process to recall details of the purported inspection on 13 June. The correspondence set out Mr Parry’s reasons why he considered Mr Williamson probably would have recalled the vehicle and other details of the clean-up inspection if it had actually happened. The reasons followed exchanges and discussions during

the disciplinary investigation. The inability to recall key details contributed to Mr Parry's conclusion that Mr Williamson did not inspect Lady Charlton Road on 13 June. No unfairness arises from taking account of this inability to recall key details in circumstances where Mr Williamson probably would have recalled such details if the inspection had actually taken place.

[55] There is a further submission that Mr Parry was biased and pre-determined the issue because of his reliance on the E-Roads data. Through-out the disciplinary investigation, Mr Parry made it clear that the E-Roads data was regarded as reliable information. Mr Williamson had a reasonable opportunity to present technical or expert opinion to discredit the reliability of the E-Roads data, but did not do so. Mr Parry was open to the possibility that Mr Williamson used another vehicle to inspect the clean-up, but Mr Williamson did not produce information to support that as an explanation. I do not accept that Mr Parry could reasonably be described as biased or pre-determining the outcome.

Was the dismissal justifiable?

[56] The Council raised its concerns with Mr Williamson.

[57] E-Road data showed Mr Williamson's allocated vehicle (#700) driving and stopping on Lady Charlton Road on 11 June. Mr Williamson's vehicle was recorded on Lady Charlton Road on 18 June and again on 20 June. A council vehicle (#719) was reported on Lady Charlton Road on 13 June. Mr Williamson's vehicle was in use on 13 June and reported at various locations between 11.16 and 14.41. Between 13.03 and 13.27 the vehicle travelled in the direction of Lady Charlton Road but returned to the Council office without being mapped on Lady Charlton Road. In summary the data did not record Mr Williamson's vehicle being used to inspect the clean-up work on Lady Charlton Road, between 11 June and 18 June. The concern which arose was that Mr Williamson had not checked the clean-up work before the collision on 16 June, but claimed that he had. Mr Williamson made that claim to the contractor, the contractor's insurer, Mr & Mrs Parish and several Council officials.

[58] During the disciplinary investigation, Mr Williamson stood by his claim. He offered no reasonable explanation to refute the concern. Mr Parry concluded that Mr Williamson had misled him, causing his trust and confidence in Mr Williamson to be severely damaged.

[59] The Council thoroughly investigated the allegations. It carefully raised its concerns with Mr Williamson. It gave him a reasonable opportunity to respond. Mr Parry genuinely considered Mr Williamson's explanations. The conclusion that Mr Williamson had misled his employer and how it came to that conclusion were what a fair and reasonable employer could have concluded in the circumstances at the time.

[60] An employer must consider relevant factors when determining whether to dismiss, even if serious misconduct is established. Several points were raised for Mr Williamson.

[61] First, counsel made reference to Mr Williamson's work history. Mr Parry in response acknowledged Mr Williamson's previously unblemished record and the view that he was considered "...a great team player..." but "...in this case, he has let the Council team down badly."

[62] In his letter of 15 February, Mr Parry concluded that Mr Williamson did not inspect Lady Charlton Road and stated "I do not see any point in speculating on the reasons or motivation behind this omission." Counsel challenged this without accepting it was open to find that Mr Williamson did not inspect the clean-up. Counsel referred to the attitude of Mrs Parry and the personal circumstance (see above). In response, Mr Parry maintained the view that it was not for him to speculate on why Mr Williamson had "opted to lie about the road inspection".

[63] Counsel referred to Mr Williamson's continued work during the disciplinary investigation showing that trust and confidence existed, despite the "one off incident". The potential difficulty for Mr Williamson if dismissed was also mentioned. These matters were considered by Mr Parry, but for the reasons set out in his 28 February letter, he concluded that trust and confidence in Mr Williamson had been "...irreparably broken." Mr Parry balanced the points made against Mr Williamson's "obdurate stance... in maintaining he inspected the road... despite overwhelming evidence to the contrary...", the lie to Mrs Parish and the trust which had been placed in Mr Williamson when Mr Parish's claim first arose.

[64] I find that the Council's decision to dismiss Mr Williamson in all these circumstances was justifiable.

Summary and Costs

[65] Mr Williamson does not have a personal grievance against the Council so his claim must be dismissed.

[66] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[67] If they are not able to do so and a determination on costs is needed, any party seeking an order for costs may lodge and serve a memorandum on costs within 28 days of the date of this determination. The other party will then have 14 days from the date of service of that memorandum to lodge and serve any reply memorandum.

Philip Cheyne
Member of the Employment Relations Authority