Determination Number: AA 107/01
File Number: AEA 202/01

Under the Employment Relations Act 2000

BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE

BETWEEN	Darryl Norris (Applicant)
AND	Partner Print Ltd (previously called Foreman Print Limited) Respondent
REPRESENTATIVES	Patricia Cole for Applicant Helen Thorpe for Respondent
MEMBER OF AUTHORITY	W R C Gardiner
INVESTIGATION MEETING	9 August 2001
DATE OF DETERMINATION	10 August 2001

DETERMINATION OF THE AUTHORITY

Some background material

Mr Norris' Statement of Problem was filed in the Authority on 9 April 2001. The Authority then experienced difficulties in obtaining a Statement in Reply from the Respondent. Eventually a Statement in Reply was filed on 6 June 2001.

The Applicant's Statement of Problem said of Foreman Print Ltd that:

> *"… the Respondent has advised the Mediation Service that he will not attend mediation."*

On 7 June 2001 I wrote a carefully couched four-page letter to Ms Cole and Mr Sommerville outlining the benefits of mediation and referring to the obligations set out in section 159 of the Employment Relations Act. Nothing in my letter would have been news to Ms Cole who from long experience readily accepts the role of mediation. My letter, while jointly addressed to her and Mr Sommerville, was really aimed at bringing enlightenment to the Respondent. Via the same letter, I directed the parties to mediation.

I contacted the Mediation Service, gave them a copy of my 7 June letter and asked them to contact Ms Cole and Mr Sommerville to arrange a mediation conference. This they did. I was subsequently advised that the Respondent did not front up at the scheduled mediation conference.

When a second date was put in place, the parties once again did not meet, apparently because of illness on the part of the officer of the company who was going to appear.

In the circumstances, Ms Cole sought to have the matter moved on to investigation and determination by the Authority. On 18 July I wrote to the parties as follows:

> *"The Mediation Service has endeavoured without success to arrange for mediation as directed by me. The situation is quite unsatisfactory.*
>
> *Accordingly, I have decided to set the matter down for investigation and determination by the Authority.*
>
> *A notice of meeting is attached.*
>
> *Mr Norris and Mr Sommerville seem to be the only people directly involved in the dismissal so they will both need to attend as witnesses. If either party has additional witness they believe can assist me in my investigation (Mr Foreman perhaps?) then those additional witnesses will also need to be present at 9am on Monday 30 July 2001.*
>
> *My determination in the matter will be issued to the parties in writing toward the end of the week of 30 July 2001."*

When I arrived at work on Monday 30 July I found a letter which Mr Steve Foreman (fellow director of the Respondent company) had faxed the prior day, Sunday 29 July 2001. It read as follows:

> *"Re: AEA 202/01 Darryl Norris v Foreman Print Ltd*
>
> *We are unable to attend the investigation meeting Monday July 30 2001 at 9:00, as Michael Sommerville will be absent from work and other duties due to sickness.*
>
> *However we are interested in resolving this issue due to a mediation process, so we ask for the matter to be postponed to a later date.*
>
> *Michael Sommerville is expected to be away for most of this week, so a meeting could with favour be scheduled in the week commencing Monday August 6."*

I contacted Ms Cole and arranged a new date (9 August) which fitted the time frame referred to in the final paragraph of Mr Foreman's letter.

I then faxed the following letter to Mr Foreman.

> *Dear Mr Foreman*
>
> ***Re: AEA 202/01 Darryl Norris v Foreman Print Ltd***
>
> *I have before me your fax dated Sunday 29 July 2001 in which you advise me that Mr Sommerville will be unable to attend the investigation meeting set down for 9am this morning due to sickness.*
>
> *It is difficult to accept that Mr Sommerville's state of health was such that notification to the Authority could not be made until as late as Sunday. What this means is that the ability of the Authority to use the date for hearing an alternative case involving different parties has been denied.*

I have now set the case down for investigation by the Authority for 9am Thursday 9 August 2001, which is during the week in which you say that Mr Sommerville will be available.

Mr Foreman, I also need to say to you that the papers filed by the company indicate that both you and Mr Sommerville were involved in the decision to dismiss Mr Norris. I put you on notice that either you or Mr Sommerville are equally competent to represent Foreman Print Ltd at the investigation meeting now to be held on 9 August.

For the avoidance of doubt (I refer to paragraph 2 of your letter of 29 July) the matter is to be investigated and determinated by the Authority, previous attempts at arranging mediation having been unsuccessful.

In the meantime, nothing prevents you phoning Mr Norris' representative (Patricia Cole (09) 473 8015) to explore with her the interest you express in your letter in resolving the issue.

Mr Foreman, you will be aware that when the matter was first set down for a mediation conference, nobody from the company turned up. When next set down for mediation, Mr Sommerville apparently became sick.

On 18 July the company was advised by me that the matter was to be the subject of an investigation meeting today, 30 July. I must assume that Mr Sommerville's health was restored during the period 18 July to Friday 28 July in that during that time no advice was received from Foreman Print Ltd to the effect that Mr Sommerville was again unwell.

While I for my part tend to take the word of people on trust until they give me reason not to, the reality is that I have broader responsibilities. I refer here to the Applicant in this matter, to other parties whose places in the queue are being affected, and to the Employment Court should a good faith report concerning this case be required by the Court. For all of these reasons, I issue the following Direction of the Authority.

Direction of the Authority

Foreman Print Ltd, by Wednesday 1 August 2001, is to file in the Authority at Auckland a medical certificate in respect to Mr Sommerville establishing that during the week 30 July 2001 – 3 August 2001 Mr Michael Sommerville is unfit to attend work and unfit to attend a meeting at the Employment Relations Authority."

Happily, everyone turned up for the investigation meeting on 9 August. By that stage the Respondent had engaged an experienced representative to assist them, Ms Helen Thorpe.

The medical certificate was not filed on 1 August, but one was supplied at the investigation meeting on 9 August.

Concerning the failure of the Respondent to attend mediation, I record here that in submissions presented at the investigation meeting Ms Cole said that:

> *"The Authority's attention, in the context of costs, is drawn to the fact that on two occasions July 5 and July 18 the Respondent having consented to attend mediation failed to attend. There was no notice to mediation services. The Applicant and his representative on both occasions had presented themselves at the appointed room. It was left on both occasions to Mediator Patricia Reynolds to establish contact with the Respondent only to be told that on that first occasion the lack of attendance of was to enable the seeking of legal advice the second occasion was due to an illness of Director Sommerville. Director Foreman declined to attend as a replacement to his fellow director Sommerville."*

Respondent's Name

Mr Norris commenced work with the Respondent in late January 2000. It is common ground that he was dismissed on 26 February 2001. Throughout that time, the Respondent was called Foreman Print Ltd. Recently the name of the company has been changed to Partner Print Ltd. With the agreement of the parties, I have amended the entituling for this case accordingly.

Mr Norris' Problem

In his Statement of Problem Mr Norris complained that:

> *"… on 26 February 2001 the Respondent summarily dismissed the Applicant from its employment."*

It is common ground that Foreman Print Ltd dismissed Mr Norris. In the Respondent's Statement in Reply, Mr Michael Sommerville recorded that:

> *"DN arrived seven minutes late to work on Monday morning February 26. He did not come to apologise and it didn't appear to us that he intended so at all. We hereby decided to dismiss DN from his employment with our company…"*

Mr Norris' problem is what the law describes as a personal grievance. Mr Norris claims to have been unjustifiably dismissed.

Remedies Sought by Mr Norris

In his Statement of Problem, Mr Norris said that he would like the problem to be resolved as follows:

(a) Reinstatement.

(b) Wages lost as a result of the termination.

(c) $10,000 compensation pursuant to section 123(c)(i) of the Act.

At the investigation meeting, Mr Norris advised me that he had commenced a new job on 26 March 2001 and that he no longer sought to be reinstated with the Respondent.

The remedies he sought become reimbursement for lost remuneration covering the period from date of dismissal (26 February 2001) until he commenced his new job on 26 March 2001, and compensation pursuant to section 123(c)(i) of the Act.

Some comments addressed essentially to Mr Sommerville and Mr Foreman

When I read the statement in reply document which was written by Mr Sommerville, two things were immediately apparent to me.

(1) That Mr Sommerville fervently believed that the dismissal, which he had carried out, was fully justified.

and

(2) That the circumstances, as described by Mr Sommerville, demonstrated that the dismissal was in fact clearly unjustified.

Neither Mr Sommerville nor his business partner, Mr Steve Foreman, is a lawyer or an advocate with specialised knowledge of employment law. For that reason, I am going to set out for the Respondent how the law addresses personal grievance cases such as that of Mr Norris. I do so in the hope that Mr Sommerville and Mr Foreman will better understand why I find Mr Norris to have been unjustifiably dismissed.

I commence by quoting what I have always considered to be the best advice offered to employers by the Employment Court. In a case involving The Northern Clerical Union and Beachlands Engineering Ltd, Judge Travis suggested that:

> *"A useful guide is for employers to ask themselves how they would reasonably like to be treated, as a matter of fairness, if they were the employee."*

Next, I need to make clear the approach of the Authority in determining personal grievance cases such as this.

In a case involving Lealofisa Tupu and Romano's Pizzas, the Chief Judge of the Employment Court set out the task of a decision maker (such as myself) in the following terms:

> *"It is most important in settling personal grievances that, as a starting point, a decision should be made by the Tribunal whether the employer honestly and reasonably concluded that serious misconduct warranting dismissal had taken place following a fair inquiry by the employer into that question. I would call this the fundamental question decisive of a personal grievance based on a dismissal ostensibly made for misconduct."*

and

> *"In the absence of a fair inquiry, the employer has not answered the employee's complaint that she has been dismissed unjustifiably."*

and

> *"The Employment Tribunal's proper task was to adjudicate upon the employee's*

grievance against her former employer and not, primarily, upon that employer's complaints against her. The Tribunal should first ask itself whether there has been a fair inquiry. If, but only if, the answer to this question is yes, can the Tribunal go on to ask whether the employer in fact formed a view about the employee's guilt and, if so, whether that view was honestly held. If the answer to that question is also yes, the Tribunal can ask itself whether it is satisfied by the employer that the view that it reached was a reasonable one. That means a view that a fair-minded employer could reach on the evidence that the fair inquiry produced, if the employer was disposed to believe that evidence. Down to this point, there is still no need or authority for the Tribunal to decide whether she did what she was accused of doing.

It is undesirable, as this Court has previously held, for the Tribunal unnecessarily or prematurely to make findings about what the employee actually did instead of confining itself to deciding the employee's personal grievance. It is the employer and its handling of the dismissal that is on trial, not the employee."

and

"What the employee did may become relevant later to the issue of remedies but the first inquiry must be into whether the dismissal was groundless or, on the contrary, the product of an honest and reasonably held belief following a fair inquiry that the employee had been guilty of conduct warranting dismissal. It is not enough that the belief seems reasonable if it was not held by the employer at the time of dismissal. It is not enough that the belief was passionately held if there was no rational basis for it. And neither seemingly reasonable (as it may have turned out) nor honest belief can exist or be relied upon or avail the employer if there has been no fair enquiry ..."

I now need to point out to Mr Sommerville and Mr Foreman that the law does not allow an employer to sack a worker who is deemed to be in breach of a company rule, without first alerting the worker to the grave situation he/she faces, and inviting input from the worker before any final decision is made.

For a dismissal to be justified, it must satisfy two tests. First, there must be an adequate reason for the dismissal. The law calls this substantive justification and it is not a difficult concept to grasp. Workers cannot be sacked for small or trivial matters which at worst should attract admonition or a warning.

Second, the dismissal must be carried out in a fair manner. This is what the law calls procedural justification. Sometimes employers have complained that procedural requirements are "unreasonable" or "too onerous" but that is simply not so.

In a well-known case involving the NZ Food Processing Union and Unilever New Zealand Ltd, Chief Judge Goddard set out what he considered to be the minimum requirements of procedural fairness.

"The minimum requirements can be said to be:

1. *notice to the worker of the specific allegation of misconduct to which the worker must answer and of the likely consequences if the allegation is established;*

2. *an opportunity, which must be a real as opposed to a nominal one, for the worker to attempt to refute the allegation or to explain or mitigate his or her conduct; and*

3. *an unbiased consideration of the worker's explanation in the sense that that consideration must be free from predetermination and uninfluenced by irrelevant considerations."*

From his statement in reply document, I am now going to set out, using his own words, Mr Sommerville's description of his dismissal of Mr Norris and I invite Mr Sommerville to ask himself, to what extent (if at all) the minimum requirements listed by Chief Judge Goddard were met by the Respondent.

In the statement in reply document, Mr Sommerville described how he and Mr Norris had a disagreement about trimming dimensions for business cards:

> *"MS asked DN to take more care when trimming the business cards. DN replied back in an aggressive manner, that he didn't care about the opinion of MS. MS asked DN to repeat what he said in order to make sure of the answer from DN and DN then repeated that he didn't care about the opinion of MS. MS then went to his office and took notes of the conservation between DN and MS. MS then returned to the despatch area and finished packing the business cards in mention and the cards were then send by our delivery person to the customer.*
>
> *At 3PM DN left work as his hours were done for the day. He left without having apologised for his mis-behaviour to what was a fair and reasonable instruction by his manager at work.*
>
> *Our Company house rules clearly states, that carrying out a "conduct which violates common decency or morality" is regarded by the Company as a serious misconduct for which the penalty is instant dismissal. DN should be aware of such as he was already in possession of a set of the Company rules.*
>
> *However, MS and fellow director Steve Foreman decided upon having discussed and assessed the event between DN and MS on that Friday afternoon, that though in no doubt of DN's mis-behaviour was unacceptable and qualifying according to house rules for DN to be instant dismissed, that DN would be given the opportunity on Monday morning to take the initiative to apologise.*
>
> *DN arrived seven minutes late to work on Monday morning February 26. He did not come to apologise and it didn't appear to us, that he intended so at all. We hereby decided to dismiss DN from his employment with our Company in full accordance with the Company house rules as the consequence of DN indecent mis-behaviour as his reaction on Friday February 23 to a fair instruction.*
>
> *DN was called to the production office, where he was informed that due to his misconduct on Friday afternoon, which was in conflict with the house rules of the Company, he was instantly dismissed from his employment with Foreman Print Ltd."*

Finally, I invite Mr Sommerville and Mr Foreman to ask themselves how on earth Mr Norris, without being told, was supposed to know that his behaviour on Friday 23 February was considered by his employer to be "conduct which violates common decency or morality".

Friday 23 February 2001

It is common ground that around 2.40pm, Mr Sommerville approached Mr Norris and spoke to him about a fault, which had occurred with the trimming of business cards. Mr Norris accepts that the job was incorrectly cut.

I record here that, while this event is the genesis of Mr Norris' dismissal, he was not dismissed for poor performance or faulty workmanship.

It is common ground that when tackled about the faulty cutting, Mr Norris, by way of explanation, said that the guillotine was faulty. Mr Sommerville was not accepting of that. In his view the problem was one of operator error and he said so to Mr Norris. At that point, as is almost always the way of these things, the two men have a different recollection of precisely what was next said. Mr Norris says he told Mr Sommerville, *"I don't care what you believe, that's what the problem is."* Mr Sommerville says that what happened was that he was twice told, "*I don't care about your opinion.*"" Mr Sommerville says that he then went to his office and recorded the conversation, which had just occurred.

It is common ground that work then proceeded as normal. Mr Norris' shift ended at 3pm whereupon he left the building. At that stage Mr Sommerville approached him at his car and requested from Mr Norris his keys to the plant. Mr Norris advised Mr Sommerville that he had no such keys. Mr Norris shortly after departed for home.

Subsequent to the departure of Mr Norris, Mr Sommerville discussed what had occurred with his business partner Steve Foreman. Mr Norris was not a party to this discussion so he was unable to give evidence about it. I accept the evidence of Mr Sommerville concerning the discussion. I record here that the way the law works in personal grievance cases such as this is that the onus is on the Respondent to justify the dismissal.

Mr Sommerville told me that Mr Norris "left that day without saying he was sorry". Mr Sommerville says that he and Mr Foreman decided that Mr Norris' behaviour had been aggressive and challenging. They formed the view that what occurred represented "conduct which violates common decency or morality" which is one of some 16 items which are described in the company house rules as being serious misconduct.

Mr Sommerville went on to say to me that, "*We found we had to act in accordance with the house rule and dismiss him on Monday morning.*"

Mr Sommerville then told me that, "*We decided to give him one last chance on Monday morning. We decided that if Darryl came in and apologised he would be continued with us.*"

Monday 26 February 2001

Mr Norris arrived at work a little after his proper start time on Monday morning. The Respondent says he was eight minutes late. I will accept that that is so, but nothing turns on it, as Mr Norris was not dismissed wholly or in part for tardy attendance. In fact, and of course unbeknown to him, the decision to dismiss him had already been made on the prior Friday evening. All that now stood between Mr Norris and the sack was the possibility that he might think to apologise for the events of Friday. This though is certain, he was not told that an apology was sought or required.

In the event, Mr Norris just got on with the job as normal. Some minutes later (according to Mr Norris) he was required by Steve Foreman to come to the office. The Respondent says this occurred about 40 minutes after Mr Norris arrived and I am content to accept that that was so.

There is little between the parties concerning what next occurred. Present in the office were Mr Sommerville, Mr Foreman and Mr Norris. Mr Norris had no advance knowledge as to what the purpose of the meeting was. Nor, given that the purpose of the meeting was disciplinary, was he told that he could have a representative or a witness present.

Once in the room, Mr Norris was given a pre-prepared letter of dismissal and a cheque representing his final wages and holiday pay.

During the discussion, Mr Norris says he told Mr Sommerville and Mr Foreman that he wanted someone else to be present. At the investigation meeting, Mr Sommerville said he could not recall that request but accepted it may have been made. Mr Foreman told me that he recalled the request being made. I find that such a request was made but nothing came of it and the meeting proceeded on its predetermined course.

Why was Mr Norris dismissed?

Mr Norris was not dismissed for poor performance. Nor was he dismissed because he was late in arriving on Monday. Nor was he dismissed for failure to apologise although it seems that had he done so, the pre-determined dismissal would not have been proceeded with.

So, the answer to the question which heads this chapter of my determination is best answered by quoting the pre-prepared dismissal letter, which was given to Mr Norris on the Monday morning.

> ***"Re.: Termination of Your Employment***
>
> *On Friday February 23 at approx. 2:30 PM, I addressed you in a fair and descent (sic) manner, that the final trimming of the PM job no.: 20164 "Life Force B/cards", as performed by yourself, was of an inferior quality standard.*
>
> *Your response to me as addressed by you twice was: "I don't care about your opinion".*
>
> *When considering I am the person you report to in all employment matters, and though having given your response serious concerns over the recent weekend, I can not accept your behaviour to a matter which has to do with our core business of providing a correct product to our customers.*
>
> *Your misconduct in this matter is seen by management, as a conduct which violates common decency accordingly to our house rules.*
>
> *The penalty for a misconduct of this character is instant dismissal as listed in our house rules.*
>
> *You have left me with no other option, than to terminate your employment with Foreman Print Ltd instantly."*

The House Rules

It is common ground that the Respondent has a set of house rules. Mr Norris agrees that he was aware of the existence of the house rules and agrees that he was issued a set in mid January this year (2001).

The Respondent believes that Mr Norris took a set of house rules home with him on the Friday (23 February). Mr Norris does not accept that. I find that nothing turns on that. Even if Mr Norris had with him and studied a set of the house rules over the weekend, I do not accept that such an exercise could have alerted him to the fact that his exchange with Mr Sommerville on the Friday afternoon was *"conduct which violates common decency or morality"*.

Nor do I accept that such a study of the house rules would have alerted Mr Norris to the possibility that his employer had already decided to dismiss him.

Nor do I accept that such a study of the house rules would have alerted Mr Norris to the fact that his employer required an apology from him as a precondition for not proceeding with the pre-determined decision to dismiss.

Was the dismissal of Mr Norris justified?

The short answer to the above question is clearly "No" and I have said as much in the earlier chapter headed, "Some comments addressed essentially to Mr Sommerville and Mr Foreman".

Dealing with procedural aspects of the dismissal, I set out in that same earlier chapter the minimum requirements as enunciated by Chief Judge Goddard in the Unilever case. The first such requirement is:

> *"Notice to the worker of the specific allegation of misconduct to which the worker must answer and the likely consequences if the allegation is established."*

Mr Norris was not given notice of the specific allegation of misconduct. Nor was he told of the likely consequences if the allegation was established. Mr Norris was simply advised that the decision had already been made in his case and that he was sacked.

The second requirement is:

> *"An opportunity which must be a real as opposed to a nominal one, for the worker to refute the allegation or to explain or mitigate his or her conduct."*

None of that was afforded to Mr Norris. And nor of course was the third requirement met. That requirement is that:

> *"An unbiased consideration of the worker's explanation in the sense that consideration must be free from pre-determination and uninfluenced by irrelevant considerations."*

I turn now to the substantive reason for the dismissal. Mr Norris was dismissed for (I quote from the dismissal letter):

> *"Conduct which violates common decency according to our house rules."*

Mr Sommerville was entitled to be cross on the Friday afternoon, but it is not possible, (whoever's version of the exchange is accepted) to describe what occurred as violating common decency!

The determination of the Authority in this matter

The determination of the Employment Relations Authority is that the dismissal of Mr Darryl Norris by the Respondent was substantively and procedurally unjustified.

Remedies

Contribution

In Tupu v Romono's Pizzas [1995] 2 ERNZ 266 the Employment Court held that -

> "It is undesirable, as this Court has previously held, for the Tribunal unnecessarily or prematurely to make findings about what the employee actually did instead of confining itself to deciding the employee's personal grievance. It is the employer and its handling of the dismissal that is on trial, not the employee."

Having said that, the Court went on to hold that -

> "What the employee did may become relevant later to the issue of remedies ..."
> (my emphasis)

Section 124 of the Employment Relations Act 2000 provides as follows:

> ***"Remedy reduced if contributing behaviour by employee***
> *Where the Authority or the Court determines that an employee has a personal grievance, the Authority or the Court must, in deciding both the nature and the extent of the remedies to be provided in respect of that personal grievance, -*
> *(a) consider the extent to which the actions of the employee contributed towards the situation that gave rise to the personal grievance; and*
> *(b) if those actions so require, reduce the remedies that would otherwise have been awarded accordingly."*

Under section 124 of the Act, it is a mandatory requirement that the Authority consider the extent to which the actions of the employee contributed to the situation that gave rise to the personal grievance. The Authority is also obliged (in a remedies setting) to reduce the remedies that would otherwise have been awarded "if those actions so require."

I recorded earlier that Mr Norris and Mr Sommerville have different recollections of the precise words which were used during their exchange on the afternoon of Friday 23 February.

Mr Norris says he said:

> *"I don't care what you believe, that's what the problem is."*

Mr Sommerville says that Mr Norris twice said to him:

> *"I don't care about your opinion."*

Neither response represents a tactful response from an employee to an employer and, on the probabilities, I accept Mr Sommerville's evidence concerning what was said.

From there on in of course the matter should have been handled completely differently by the Respondent from the way in which it actually was. Mr Norris, to an extent, contributed to the situation which gave rise to the personal grievance but the greater contribution for the unjustified dismissal clearly lies with the Respondent. Remedies which would otherwise have been awarded to Mr Norris will be reduced by 10% for contribution.

Lost Remuneration

It is common ground that Mr Norris worked a 40-hr week with the Respondent and that his hourly rate was $21 gross.

The period that he was without work and income following the dismissal was four weeks.

I am satisfied from Mr Norris' evidence that he made genuine endeavours (as the law requires) to mitigate his circumstances by finding replacement employment.

The lost remuneration equation is therefore $21 x 40 = $840 x 4 weeks	=	$3,360 gross
$3,360 reduced by 10% for contribution	=	$3,024
I intend to round that figure to		$3,000

The order of the Employment Relations Authority is that Partner Print Ltd (previously known as Foreman Print Ltd) shall pay Mr Darryl Norris $3,000 gross as reimbursement of lost remuneration.

Compensation

Mr Norris claimed $10,000 under this head of claim.

The origin of that figure may well be Michael Baguley v Coutts Cars Ltd unreported decision of the Employment Court AC 25/01 dated 3 April 2001, but this is not the Baguley case, this Respondent is not Coutts Cars Ltd and Mr Norris has not suffered anything like the consequences, said by the Employment Court to have been experienced by Michael Baguley.

Remedies are required to be fair, as between the parties, and I take into account the size and circumstances of the Respondent.

Except for an appropriate reduction for contribution, remuneration lost by Mr Norris has been made good to him by the preceding order of the Authority.

Mr Norris had a bad experience by his dismissal but he is a robust individual who has bounced back and has got on with life.

The appropriate order for compensation (already reduced for compensation) is $3,000.

The order of the Employment Relations Authority is that Partner Print Ltd (previously known as Foreman Print Ltd) shall pay Mr Darryl Norris compensation of $3,000 (without deduction). This sum is ordered pursuant to section 125(c)(i) of the Employment Relations Act 2000.

Some comments in closing

Mr Sommerville and Mr Foreman are doing one of the hardest jobs there is. They are, at the risk of their own capital, running a small business. The business provides employment and a livelihood for 10 or so people. The country needs every such enterprise to succeed and to expand. I say none of that casually or flippantly, I well understand the difficulties they spoke of during the investigation meeting of "dancing" to the tune their customers play, and of the intense competition which is such a feature of their industry.

But having said all of that, I also have to say that the dismissal of Mr Norris was clearly unjustified and I have endeavoured in this determination to explain why.

Nor is the personal grievance jurisdiction something new which an employer today can claim to be unaware of. Access to personal grievance rights first became available to workers in New Zealand almost 30 years ago.

Costs

I ask Ms Cole to confer with Ms Thorpe so as hopefully to resolve this matter as between the parties. If they are unable to bring it off I shall be sad but will then resolve the matter for them. If that is what it comes to, I make the following schedule available.

Ms Cole shall have 21 days from the date of this determination in which to file cost submissions with the Authority. I ask her to send a copy to Ms Thorpe at that time.

Ms Thorpe shall then have 14 days in which to file response submissions. I ask her to send a copy to Ms Cole at that time.

W R C Gardiner
Member
The Employment Relations Authority