

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Philip Te Kamo Lee (Applicant)
AND Castlecorp (a division of Rotorua District Council) (Respondent)
REPRESENTATIVES Philip Te Kamo Lee - In person
Ray Kearns - For Respondent
MEMBER OF AUTHORITY Ken Anderson
INVESTIGATION MEETING 9 March 2005
DATE OF DETERMINATION 26 April 2005

DETERMINATION OF THE AUTHORITY

The Employment Relationship Problem

- [1] On 17 May 2004, Mr Lee was dismissed from his employment as a Labourer. He says that the dismissal was unjustified. Mr Lee seeks that the Authority finds that he has a personal grievance and order that he be reinstated to his position, and award him loss of wages and compensation.

The employer, Castlecorp, a division of the Rotorua District Council, says that the dismissal was justified because Mr Lee falsified his time sheet. This was viewed as serious misconduct that warranted dismissal.

Background

- [2] On Saturday 15 May 2004, Mr Lee was working with Mr Namu Maranui. Both men were travelling in the same vehicle. As Mr Lee wished to go fishing for the afternoon, Mr Maranui dropped Mr Lee at his home at or about 12:30pm. Mr Lee then hooked up the trailer with his dinghy on it, to his car and proceeded to the boat ramp at Ngongotaha.
- [3] Mr Milton Jacobs also works for Castlecorp, in the position of Utilities Foreman. He is Mr Lee's immediate supervisor. Mr Jacobs had been out fishing that morning and had taken his boat out of the water at the boat ramp. He noticed Mr Lee preparing to launch his dinghy and spoke to him. Mr Jacobs was surprised to see Mr Lee, as he had expected that the job that Mr Lee and Mr Maranui were working on, would have occupied them for the whole day.
- [4] Following some discussion about the unsuitability of the conditions for Mr Lee's craft the two men went their separate ways. Mr Jacobs noted that the time then was 12:50pm.

- [5] On Monday morning, 17 May 2004, Mr Jacobs was processing the weekend time sheets and noticed that Mr Lee's time sheet recorded that he had finished work at 1:30pm. When Mr Lee arrived at work, Mr Jacobs presented him with the time sheet and asked him to record the correct hours that he had worked on Saturday 15 May.
- [6] The evidence of Mr Jacobs is that Mr Lee looked at the time sheet, gave it back to Mr Jacobs and said that the hours recorded were correct. Because Mr Jacobs knew that hours recorded were not correct, he discussed the matter with his Coordinating Foreperson, Mr Len Williams. Discussion about Mr Lee's time sheet also took place with the General Manager, Mr Mike Davies. It was discovered that Mr Maranui had filled in some parts of the time sheet and so Mr Lee was subsequently requested to fill in a new time sheet with the correct hours being recorded. Mr Lee did this but still recorded that his Saturday finishing time was 1:30pm.
- [7] Mr Lee and Mr Maranui were then interviewed regarding the Saturday finishing time. It was established that Mr Maranui had finished at 1:30pm as this was verified by the swipe card for the main gate into workplace. It was also established that Mr Maranui had written the 1:30pm finishing time into Mr Lee's time sheet and he received a verbal warning about that.
- [8] Upon being asked if the hours recorded on the time sheet were correct, Mr Lee confirmed his view that they were. Mr Davies then made an offer to Mr Lee to change the time sheet to the correct finishing time for Saturday 15 May but he declined. Mr Davies then informed Mr Lee that as he had been seen at the boat ramp at 12:50pm on Saturday it was not possible that he had worked until 1:30pm. Mr Lee was informed that he get his Union Delegate to represent him at a meeting with someone from the Human Resources Department later that day.
- [9] A meeting with Mr Lee took place at 2:30pm on Monday 17 May 2004. Mr Lee was represented by a Union representative. The matter of the finishing time on the time sheet was discussed. Mr Lee continued to maintain that it was correct despite having been seen by Mr Jacobs at the boat ramp at an earlier time.
- [10] The evidence of Mr Ray Kearns, the Human Resources Manager for the Council, is that despite Mr Lee being given the opportunity to correct the time sheet he had declined to do so. Furthermore, Mr Lee had received a final written warning for submitting an incorrect time sheet as recently as 17 October 2003. It was deemed that the actions of Mr Lee were serious misconduct and he was dismissed, effective from 4:00pm, 17 May 2004. This was confirmed in writing on 18 May 2004.

Determination

- [11] Mr Lee says that as Mr Maranui was his leading hand and had filled in the finishing time for the time sheet, he assumed that it must be correct and hence he was not prepared to change it despite being made aware that his employment was in jeopardy. Mr Lee was also aware that a current final warning still existed pertaining to the incident in October 2003 and that the time sheet entry was viewed as a wilful falsification of a time sheet under the written rules of conduct applying to his employment.
- [12] I find that the dismissal of Mr Lee was justified in all regards. All that was required to prevent the dismissal, was for Mr Lee to concede that the time recorded on the time sheet was wrong. I have to say that that it is astonishing, that despite being given at least two clear opportunities to change his time sheet to the correct finishing time and hence avoid any disciplinary action, Mr Lee resolutely refused to grasp the olive branch that was being offered to him by his

employer. To quote a well worn cliché, unfortunately, Mr Lee was the author of his own misfortune.

[13] Mr Lee does not have a personal grievance hence that remedies that he seeks must be declined.

Costs

[14] It does not appear that the Council has incurred any tangible costs in defending this matter and hence costs will lie where they fall.

Ken Anderson
Member
Employment Relations Authority