

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 148/07  
5084441

BETWEEN                      JOHN COFFEY  
   Applicant

AND                              THE            CHRISTCHURCH  
   PRESS, A DIVISION OF  
   FAIRFAX NEW ZEALAND  
   LIMITED  
   Respondent

Member of Authority:      Helen Doyle

Representatives:            Tony Wilton, Counsel for Applicant  
   Raewyn Gibson, Advocate for Respondent

Investigation Meeting:      13 September 2007 at Christchurch

Submissions:                19 September 2007 from Applicant  
   7 November 2007 from Respondent

Determination:              6 December 2007

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     The applicant, John Coffey, was employed by the Christchurch Press from 1963, having joined as a 16 year old cadet journalist.

[2]     Mr Coffey was dismissed from his employment on 22 March 2007. Mr Coffey had attended a disciplinary meeting on that date to discuss allegations arising out of an exchange he had with the sports editor Coen Lammers on Friday 9 March 2007 at about 8.30pm.

[3]     On 9 March Mr Lammers incorrectly edited a cricket story of Mr Coffey's by adding the words to the story *New Zealand's youngest in a decade*. He should have

said *New Zealand's youngest in over half a century*. Mr Coffey has a very high standard in terms of accuracy and attention to detail. When he saw the changes before the story went to print he immediately picked up the mistake and said that he was appalled and outraged by it. He said that it could have made him look stupid if the story had gone to print.

[4] Mr Lammers wrote a note to the editor of the Christchurch Press, Paul Thompson and said that he would like to report an incident of inappropriate behaviour on 9 March 2007 by Mr Coffey that he felt clearly breached the outlines of Mr Coffey's warning around behaviour and language.

[5] He wrote in his note amongst other matters:

*Naturally, John picked up the mistake but his reaction was completely inappropriate. He used the F word several times in his tirade, telling me to leave "his f-ing copy alone", that I "always f... it up" etc. He then added that I shouldn't feel too bad because "they" - pointing at the editors office - "also fuck things up" - saying he was still waiting for his February review.*

[6] Mr Lammers admitted in the note that he had made a mistake with Mr Coffey's copy but said Mr Coffey's response was totally uncalled for. He said that he had not received an apology. He also recorded that *John has been very civil in recent months, but Friday's brain explosion to me demonstrated that he has not changed at all when things get a bit touchy.*

[7] Mr Thompson wrote to Mr Coffey on 14 March 2007 and asked him to attend a disciplinary meeting on 16 March 2007 to discuss the incident. Mr Coffey did not receive the letter.

[8] Mr Thompson became aware of this when Mr Coffey did not attend the meeting at the appointed time. He wrote a further letter to Mr Coffey dated 16 March 2007. The earlier correspondence was attached to that letter which included Mr Lammers' note. Mr Thompson set out in his 14 March 2007 letter that he required Mr Coffey's formal response to the allegation that he had again expressed contempt for, and had directed offensive and disrespectful language towards others. The particulars of the allegations were set out, being the matters referred to in Mr Lammers' note.

[9] Mr Thompson said in the letter that Mr Coffey had previously received two formal warnings about his unacceptable and disrespectful use of language towards or about others. The second of those, it was said in the letter was expressed as final, and made clear that any further substantiated, similar incident may result in the termination of Mr Coffey's employment.

[10] Mr Coffey attended a disciplinary meeting to discuss the allegation referred to in Mr Thompson's letter with his union representative, from the New Zealand Amalgamated Engineering, Printing and Manufacturing Union (Inc), Ged O'Connell.

[11] Mr Thompson attended the meeting with Rosalind Webby who is the Human Resource Manager for The Press and Fairfax New Zealand Limited's wider South Island region.

[12] At the disciplinary meeting on 22 March 2007 Mr Coffey did not accept that he had said to Mr Lammers *you always fuck it up*, but accepted he had said *you have fucked this up*. He said that that sort of language was used around the building. He is recorded as having accepted on the notes that were taken during the disciplinary meeting that he told Mr Lammers to leave his copy alone. Mr Coffey in his evidence at the Authority investigation meeting accepted that he could have said *leave my fucking copy alone*. He accepted that he pointed to the then editor of the Christchurch Press, Mr Thompson's office, and probably said *things up that end get fucked up*. He explained that this was in the context of his review not having been undertaken at the agreed time.

[13] Mr O'Connell said at the disciplinary meeting that Mr Coffey had made progress since he was given a final written warning on 21 December 2006 for calling Mr Lammers a *fucking idiot*. Mr Coffey had joined a gym, taken some holidays and had made an effort which was confirmed by Mr Lammers in his note, to be civil.

[14] Mr O'Connell explained that the incident on 9 March 2007 was prompted by a very significant error/inaccuracy. Mr O'Connell said that he did not believe it [the exchange] was abusive to Mr Lammers and that Mr Coffey insisted that he did not direct the phrase at Mr Lammers personally. Mr O'Connell referred to Mr Coffey's 44 years of service and said that he came from the original school of hard knocks.

[15] Mr Thompson asked Mr Coffey and Mr O'Connell to come back for a decision at 5.15pm that same day. Mr Thompson advised at that time that

Mr Coffey's employment was to be terminated. Mr Coffey was required to finish on 22 March 2007 but was advised that notice would be paid out. I find that Mr Coffey was dismissed on notice but I shall return to that matter later in the determination.

[16] At the time of the dismissal Mr Coffey was a senior sports journalist and covered rugby league, cricket, boxing and yachting. Mr Coffey says that his dismissal was unjustified. He seeks reinstatement, reimbursement of lost remuneration, compensation of \$10,000 and costs.

[17] The Christchurch Press which is a division of Fairfax New Zealand Limited says that Mr Coffey's dismissal was justified and was a decision that a fair and reasonable employer would have made.

[18] Mr Coffey's employment at the material time was covered by the Journalists' Collective Agreement 31 March 2006 – 1 April 2007 between the Christchurch Press and the Engineers Union.

### **The test in s.103A of the Employment Relations Act 2000**

[19] Section 103A requires justification for a dismissal to be determined by evaluating the actions of the Christchurch Press at all stages of the process, including the decision that misconduct has occurred and the decision to dismiss, against the objective standard of what a fair and reasonable employer would do.

[20] Although the Authority may, on an objective analysis, reach a different conclusion from that of the employer, the test does not give the Authority unbridled licence to substitute their view for that of the employer - *Air New Zealand Ltd v. Hudson* [2006] 1 ERNZ 415.

### **The issues**

[21] The issues for the Authority to determine in this matter are:

- What were the reasons for Mr Coffey's dismissal;
- What were the two previous warnings for;
- Did the Christchurch Press conduct a full and fair investigation of Mr Coffey's conduct on 9 March 2007;

- Did Mr Coffey's conduct on 9 March 2007 amount to misconduct;
- Was the decision of the Christchurch Press to dismiss Mr Coffey justifiable in all the circumstances;
- If the decision to dismiss was not justifiable in all the circumstances then what remedy is Mr Coffey entitled to and are there issues of contribution.

### **What were the reasons for Mr Coffey's dismissal?**

[22] I find that the reasons for Mr Coffey's dismissal were those set out in the letter of Andrew Holden dated 3 April 2007. Mr Holden was the Deputy Editor of the Christchurch Press at that time. He wrote the letter in response to a letter from Mr O'Connell for reasons for Mr Coffey's dismissal because Mr Thompson was absent.

[23] The relevant parts of the letter are as follows:

*John Coffey was dismissed, on notice, for directing offensive and disrespectful language towards another staff member. John had received a warning for a similar offence on 14 August 2006, and a final warning for a similar offence on 21 December 2006. In each case, John directed his comments to his supervisor or another senior member of the department's management team. Behaviour of this kind is considered by the company to amount to misconduct.*

### **What were the previous warnings for?**

[24] Mr Coffey received a formal written warning on 14 August 2006.

[25] Mr Thompson determined that in the handling of a particular story Mr Coffey was disrespectful to a news editor and Mr Coffey's threat to *wring the fucking neck* of the sub-editor who had changed the story was highly offensive and bullying in nature.

[26] Mr Thompson issued Mr Coffey with the written warning dated 14 August 2006 and noted in his letter *I have determined that the appropriate outcome in the circumstances is to issue you with a formal written warning. It is not acceptable (and in this case it has reflected poorly on your standards of professionalism) to direct threats, contempt or offensive language towards any of your colleagues, regardless of*

*the provocation. Any further instances of such behaviour may, if found to have substance, result in the termination of your employment.*

[27] Under a list of proposed actions and expectations which were part of the letter of 14 August 2006 it was specifically noted that one of the expectations was that Mr Coffey would show courtesy and respect to his colleagues. It was noted that he did not have to like them but did need to act professionally by being polite, not swearing at others, being conscious of the tone and volume of his voice, listening to colleagues points of view and moderating any feelings of anger or frustration. It was clear in the letter containing the warning that Mr Coffey could approach either Mr Thompson or Mr Lammers if there were ways in which he thought he could be assisted. An offer of confidential EAP counselling to be accessed through the Health and Safety Adviser was also set out in the letter.

[28] Mr Coffey was given a final written warning on 21 December 2006 for calling Mr Lammers *a fucking idiot*. Mr Thompson acknowledged in the letter of 21 December 2006 that contained the final written warning that Mr Coffey had recently returned from sick leave and may not have completely recovered from the surgery. Mr Thompson also acknowledged that the comment made was in the context of a discussion in which both Mr Lammers and Mr Coffey held conflicting views.

[29] The letter set out that Mr Coffey is to ... *refrain from directing offensive, contemptuous or threatening language at the sports editors or at any of your colleagues and be mindful at all times of the way you are engaging with others. ... Personally-directed, derogatory, contemptuous, threatening and/or offensive comments to any staff member, or dismissive behaviour or language to your supervisors, are not acceptable.*

[30] The final written warning provided that any further instances of such behaviour, if found to have substance, are likely to result in the termination of Mr Coffey's employment.

**Did the Christchurch Press conduct a full and fair investigation of Mr Coffey's conduct on 9 March 2007?**

[31] Mr Coffey understood the nature of the allegation he was facing before attending the disciplinary meeting on 22 March 2007. He also understood the serious consequences that could result, including the termination of his employment. The

final written warning was specifically referred to in the letter that Mr Coffey received with respect to attending a disciplinary meeting.

[32] Mr Coffey was represented at the disciplinary meeting on 22 March 2007 and was able to give a full explanation.

[33] Mr Coffey said that Mr Thompson appeared distracted because of some other matters that were unrelated to work. Having heard from Mr Thompson about this matter I do not find the evidence supports that Mr Thompson was distracted and could not carefully consider the explanations before making a decision.

[34] In conclusion the process adopted by the Christchurch Press to investigate the incident on 9 March 2007 was full and fair and what a fair and reasonable employer would have undertaken.

**Did Mr Coffey's conduct on 9 March 2007 amount to misconduct?**

[35] The Christchurch Press relied on previous warnings given to Mr Coffey in making its decision to dismiss. Mr Coffey was dismissed on notice and paid a sum equivalent to four weeks pay. The employment agreement provided for eight weeks notice for a senior journalist. The additional four weeks payment in lieu of notice was paid to Mr Coffey shortly after the Authority investigation meeting.

[36] I accept Mr Wilton's submission that payment of the sum in lieu of notice does not normally lower the threshold required to justify dismissal in situations where there has not been earlier warnings and it does not prevent the Authority from inquiring into the justification for a dismissal – *Wellington Road Transport etc Union v. Fletcher Construction* [1983] ACJ 653.

[37] The issue is whether the dismissal is justified under s.103A. The previous warnings form part of the circumstances to be considered in terms of the overall justification.

[38] Ms Gibson referred in her submissions to the Employment Court judgment in *Land Transport New Zealand v. V Mackay* (unreported) Couch J, WC14/06. In that case justification for dismissal was considered in the context of a final warning received by the employee. The Court noted the onus was on Land Transport New

Zealand to establish that Ms MacKay's actions were capable of being regarded as misconduct rather than serious misconduct [para.67].

[39] Mr Wilton submitted that even if there is a lower threshold in terms of what a fair and reasonable employer would do in the circumstances because of the previous warnings, the threshold was not reached in all the circumstances as a result of Mr Coffey's conduct on 9 March 2007.

[40] The Christchurch Press, relying on two previous warnings about use of language, is required to establish that Mr Coffey's conduct on 9 March 2007 amounted to misconduct.

[41] The notes taken at the disciplinary meeting support that Mr Coffey's reaction on 9 March 2007 to the inaccurate change in the story was in the nature of an outburst.

[42] At one point Mr Thompson is recorded in the notes as saying *can understand if the mistake got into paper but it didn't. My question is did you not view it as 'bloody hell Coen'*. Mr Coffey responded *I think I exploded at the time*.

[43] Mr Wilton said in his submissions that Mr Thompson failed to distinguish between the words *you always fuck it up* and *you have fucked it up*. Mr Wilton submits the first is more serious than the second which he says is a statement of fact.

[44] Mr Thompson said that in making his decision the tone and intent of the exchange was more important to him than the actual words used. He said that whichever of the two was said it was still offensive and that Mr Coffey was open about his level of anger at the mistake Mr Lammers made.

[45] When there is an angry outburst by one person toward another it is quite possible that neither party recalls exactly what was said. The approach taken by Mr Thompson of considering the tone and intent of an angry outburst, together with the words that Mr Coffey accepted he used was what a fair and reasonable employer would have done.

[46] Mr Coffey said in his explanation that he was certain that he did not abuse Mr Lammers personally. It is recorded in the notes taken at the meeting on 22 March 2007 that Mr O'Connell said *don't believe abusive to Coen. Very strong words. Do*

*accept Coen may have felt humiliated, but that was as much about the size of the error.*

[47] Mr Lammers believed Mr Coffey's reaction was directed toward him as set out in his note to Mr Thompson.

[48] A fair and reasonable employer would conclude that Mr Coffey's outburst was directed at Mr Lammers in terms of *you have fucked it up and leave my fucking copy alone* rather than a simple statement of fact about the error.

[49] Mr Coffey's written evidence was that he had discovered the changes to his story by chance, which was consistent with the factual account of the problem in the statement of problem. Mr Coffey said in his oral evidence at the Authority investigation meeting that Mr Lammers had shown him the changes. That was consistent with Mr Lammers note to Mr Thompson and Mr Coffey's own written sequence of events [document 27] which Mr Coffey said he wrote shortly after the event. I conclude that is what happened. Mr Lammers showed the changes he had made to Mr Coffey's story to Mr Coffey. The confusion around that matter I think arose because Mr Coffey said at the disciplinary meeting that he very seldom worked on a Friday night and it was *good fortune* that he happened to be rostered on to pick up the mistake. He was not saying that the changes were not shown to him.

[50] Mr Thompson said that he accepted Mr Coffey could be annoyed or disappointed but that it was not acceptable to react in the way that he did.

[51] Mr Coffey was entitled to express his concerns in an appropriate way to Mr Lammers about his story being changed incorrectly. He had been warned to refrain from directing offensive and disrespectful language at colleagues including Mr Lammers and to be mindful of the way that he engages with others.

[52] Standing back and considering the exchange objectively I find that a fair and reasonable employer would consider the language used by Mr Coffey on 9 March 2007 as part of an angry outburst to be disrespectful to Mr Lammers and offensive. It was not an appropriate expression of annoyance or frustration at a mistake having been made particularly in terms of clear warnings that such behaviour and language was not acceptable to the Christchurch Press.

[53] Mr Coffey's conduct on 9 March 2007 considered objectively amounted to misconduct.

**Was the decision of the Christchurch Press to dismiss Mr Coffey justifiable in all the circumstances?**

[54] Mr Thompson said in his evidence that he agonised over the decision. Mr Coffey had made a very valuable contribution to the Christchurch Press as a journalist over a 44 year period. That is a matter that requires special consideration because it is unlikely that Mr Coffey would ever work again in a similar position. I am satisfied Mr Thompson took the length of service into account in terms of his decision making.

[55] A fair and reasonable employer would want to be very confident that the warnings given to Mr Coffey were clear in terms of what was expected from him about his behaviour and communication.

[56] Mr Thompson said that he considered the two warnings given to Mr Coffey in August and December 2006 and that he concluded that they were clear and comprehensive. A fair and reasonable employer would conclude that the warnings were particularly explicit in terms of what behaviour and language was unacceptable and the consequences if there was further similar conduct.

[57] A fair and reasonable employer would have placed some weight on Mr Coffey's conduct between the time he received his final written warning on 21 December 2006 and 9 March 2007. He had clearly made some changes in terms of belonging to a gym and taking a holiday and there had been progress in terms of his behaviour toward Mr Lammers. This would have to be balanced against whether that period was long enough for the Christchurch Press to be satisfied Mr Coffey could stop his unacceptable behaviour that had offended other employees. In the circumstances it was not such a long period without any unacceptable conduct to enable a fair and reasonable employer to conclude with certainty that the conduct would not be repeated.

[58] Mr Thompson said that he considered as part of his decision making the impact on Mr Lammers. This is a factor that I find a fair and reasonable employer would consider because it was the second time that Mr Coffey had used offensive and

disrespectful language to his supervisor. Mr Thompson said that he considered the impact on Mr Lammers to have taken a toll on him and that it was not fair for that to continue. If there was an apology from Mr Coffey there was nothing to support Mr Lammers had heard it.

[59] A fair and reasonable employer would consider whether there was another solution to dismissal. The notes taken at the 22 March 2007 meeting record Mr Thompson making the following statement:

*I'm interested in anything around solutions I have at my disposal.  
Wanting to hear anything else around about ways of resolving this.*

[60] The response to that was for Mr O'Connell to reiterate the progress that Mr Coffey had made since the last warning and that the error made by Mr Lammers was a serious one. Mr O'Connell also referred to the fact that it was an immediate reaction and to Mr Coffey's service.

[61] Mr Thompson said that he felt the solutions were exhausted and that Mr Coffey's behaviour was not going to stop. Mr Thompson in fact expressed this as recorded in the notes of the first meeting on 22 March 2007 when he said ... *How do I stop this as an editor? I've tried, I've really tried.*

[62] Mr Coffey had been offered EAP counselling when he had been warned on the two previous occasions. If Mr Coffey had thought that he required some assistance in managing his anger then there was an opportunity for that to be put forward at the first disciplinary meeting on 22 March 2007.

[63] Mr Thompson did what a fair and reasonable employer would do when he asked for other solutions that he may have at his disposal to resolve the matter.

[64] Mr Coffey had been very clearly warned about the way he communicated with others in the work place. The relationship that he had with Mr Lammers had not been an easy one. Mr Lammers had made an error in changing Mr Coffey's copy but had showed the changes he had made to Mr Coffey and the copy did not go to print.

[65] Mr Coffey had an angry outburst using offensive and disrespectful language to Mr Lammers. Mr Lammers was shaken and upset by the outburst.

[66] It was very sad that Mr Coffey's employment ended in the way that it did. I find that a fair and reasonable employer, where there was repeated conduct notwithstanding clear warnings that such conduct could result in termination, would have concluded that Mr Coffey should be dismissed on notice.

[67] A fair and reasonable employer would have made Mr Coffey's exit as dignified as possible in the circumstances where he had made such a valuable contribution to the Christchurch Press.

[68] I am satisfied the Christchurch Press did attempt to manage the situation in as fair and reasonable a way as possible.

[69] Mr Coffey was disappointed that he could not access his emails and/or take some cards of contacts.

[70] I do not find that this matter or the failure to pay the correct amount in lieu of notice vitiates an otherwise justified dismissal. Full payment in lieu of the notice has now been made.

[71] I do not find that the reference to Mr Lammers having been at the pub was relevant but was rather a matter between Mr Lammers and his employer if there were concerns.

### **Determination**

[72] I find that the Christchurch Press carried out a full and fair investigation into the allegation that Mr Coffey used offensive and disrespectful language to his supervisor Mr Lammers on 9 March 2007. As a result of the investigation conduct was disclosed that a fair and reasonable employer would regard as misconduct in the light of previous warnings about the unacceptability of such conduct and the consequences if such conduct was repeated.

[73] I find that the decision to dismiss Mr Coffey on notice was justifiable because it was what a fair and reasonable employer would have done in all the circumstances at the time of the dismissal. There is nothing further that I can do to assist Mr Coffey.

**Costs**

[74] I reserve the issue of costs.

Helen Doyle  
Member of the Employment Relations Authority