

[3] The Radio Network denies the dismissal was unjustified and says that Mr Dryden was dismissed following a fair and full enquiry into allegations of serious misconduct.

[4] The issues for this determination are whether Mr Dryden's dismissal was justified or unjustified. If the dismissal was unjustified what, if any, remedies are available.

Was the dismissal justified?

[5] Section 103A requires the Authority to have regard to all the circumstances at the time of the dismissal, including the contractual obligations between the parties and the resources available to the employer (*Toll New Zealand Consolidated Ltd v Rowe*, AC39A/07, unreported, 19 December 2007, Shaw, J).

[6] Although the Authority does not have unbridled licence to substitute its decision for that of the employer (*X v Auckland District Health Board* [2007] 1 ERNZ 66) it may reach a different conclusion from that of the employer. Provided that conclusion is reached objectively, and with regard to all the circumstances at the time the dismissal occurred, such a conclusion may be a proper outcome (*Air New Zealand v Hudson* [2006] 1 ERNZ 415).

[7] Mr Dryden's written employment agreement provides for termination without notice for serious misconduct. The agreement also provides for Mr Dryden to be bound by TRN's policies including the Employment Policy. The Employment Policy contains a code of conduct which sets out the expected standards of behaviour including examples of conduct which constitute serious misconduct. Obscene, abusive or threatening language or behaviour, deliberate refusal to carry out duties or obey lawful and reasonable instructions, and bringing the company into disrepute or damaging the image and reputation of TRN are three examples set out in the list.

[8] The letter of dismissal sets out the reasons for Mr Dryden's dismissal. Those reasons were that Mr Dryden had failed to act in a professional and appropriate manner; that his actions brought TRN into disrepute; and that Mr Dryden had failed to follow a lawful and reasonable instruction from his Manager.

Did Mr Dryden fail to act in a professional and appropriate manner?

[9] This employment relationship took place within the small community of Tokoroa. The radio station has three employees. Mr Dryden and his Manager, Ms Jennifer Shattock, are two of the three employees. Ms Shattock, holds several additional roles within Tokoroa. She is a Justice of the Peace and is in her fourth term as a Councillor for the South Waikato District Council. She is also the Deputy Mayor.

[10] Mr Dryden's demise began when he attended a meeting of the South Waikato Achievement Trust (SWAT) on 2 October 2007. The Achievement Centre is a former sheltered workshop providing a place where people with disabilities can work in a supported environment. During 2007 Mr David Foote was appointed as the new Chairman of the SWAT Board. Following his appointment, Mr Foote began to implement a number of controversial changes.

[11] A meeting, called by parents in July 2007 to discuss the direction the centre was taking, was attended by approximately 400 people. The Mayor of Tokoroa, Mr Neil Sinclair, chaired the meeting, the purpose of which was to gather questions from those present, record those questions and forward the questions to the SWAT Board for consideration and response. Both Mr Dryden and Ms Shattock attended the July meeting.

[12] Following that meeting Mr Dryden invited the Mayor to be interviewed at the Radio Station the day after the meeting. Prior to that interview being broadcast Mr Dryden and Ms Shattock met and discussed the meeting of the previous night.

[13] The meeting on 2 October was the SWAT Annual General Meeting and was also the meeting at which the questions raised in July were to be answered. Mr Dryden and Ms Shattock were both present at the meeting together with about 150 other local citizens.

[14] During the course of the meeting Mr Foote asked the Mayor about the costs associated with an auditors report for Council. The Mayor politely refused to discuss Council expenditure, at which stage Mr Dryden called loudly for the Mayor to answer

the question. By all accounts until this point in the meeting, the meeting had been progressing in an orderly, but contentious fashion. Mr Dryden loudly repeated his calls for the Mayor to answer the question without providing the opportunity for the Mayor to do so.

[15] Ms Shattock says she was extremely embarrassed by Mr Dryden's actions as people around her were recognising him and associating him as working with her at the Radio Station.

[16] At the end of the meeting Ms Shattock approached Mr Dryden and told him they needed to have a good relationship with the Mayor (the Mayor at that time was a valued client of TRN). Ms Shattock chastised Mr Dryden for the way he had spoken to the Mayor. Mr Dryden responded angrily and says that Ms Shattock asked him for his keys.

[17] Ms Shattock says she advised Mr Dryden they would meet the next morning to discuss his behaviour and told him that it may lead to disciplinary action but denies ever asking Mr Dryden for his keys.

[18] Mr Dryden then approached Mr Foote and invited him to be interviewed on his breakfast show the next morning. Ms Shattock overheard Mr Dryden extending the invitation and instructed him not to interview Mr Foote the next day. Mr Dryden told Ms Shattock he had interviewed the Mayor the morning after the last meeting so interviewing Mr Foote the next morning would provide a balance. Ms Shattock then advised Mr Foote that he would be interviewed but that it would not be the next day.

[19] Ms Shattock then instructed Mr Dryden not to talk about the meeting on air the following morning until they had had an opportunity to meet and discuss it. Mr Dryden became very loud and angry, told her he would be talking about the meeting and told Ms Shattock that she was "...a joke, just a joke." Mr Dryden told Ms Shattock he believed she had a conflict of interest and that if she didn't want the interview to proceed she should call Mr Brian Jennings, the General Manager and that Mr Jennings would have to contact him. Ms Shattock reminded Mr Dryden that she was his manager and that it was her decision and he was not to interview Mr Foote. Ms Shattock then turned and walked away from Mr Dryden.

[20] Mr Dryden continued to loudly exclaim to Ms Shattock that he would talk about the meeting the next day and that Ms Shattock was a joke.

[21] As Mr Dryden was leaving he got stopped by Mr Jim Howland OBE, ex Mayor of Putaruru and Patron of the Achievement Trust. Mr Howland put his umbrella out to indicate to Mr Dryden that he wished to speak with him. Mr Howland approached him, pointed to his Forestland logo on his jacket and told Mr Dryden he needed to learn some manners. Mr Howland told Mr Dryden that if he was an advertiser with TRN he would be cancelling it first thing in the morning. Mr Dryden's response was "...is that so?"

[22] Ms Shattock was so upset by the interactions with Mr Dryden that on her way home she called into the station and called Mr Jennings. Mr Jennings advised Ms Shattock to sleep on things and to call a meeting with Mr Dryden in the morning to discuss the events of the evening and Mr Dryden's conduct.

[23] Contrary to Ms Shattock's instructions not to talk about the meeting or interview Mr Foote, Mr Dryden did so the next morning. The live interview at 7.30am that morning was heard by both Ms Shattock and the Mayor.

[24] The Mayor wrote a strongly worded letter of complaint to TRN concerning Mr Dryden's conduct at the meeting. The Mayor viewed Mr Dryden's conduct as "...unprofessional..." with the potential to "...destroy the previous very good relationship between the office of the Mayor and Radio Forestland." The Mayor paid for an interview slot each week and was therefore a valued client of TRN. The Mayor advised TRN that he would find it difficult to have any degree of confidence in the impartiality and honesty of TRN's announcer. The Mayor also relayed to TRN that he had witnessed Mr Dryden publicly yelling at Ms Shattock and calling her a "joke".

[25] At the end of Mr Dryden's shift Ms Shattock invited him into her office. She asked him for an explanation for his behaviour the previous evening but Mr Dryden refused to discuss it on the basis that he was there on his own accord and not there to work.

[26] Ms Shattock asked Mr Dryden why he had deliberately ignored her instruction not to talk about the meeting on air, or to interview Mr Foote until they had spoken. Mr Dryden's response was that he had not received a call from Mr Jennings to say he couldn't and therefore he felt he could. Mr Dryden reiterated his view that Ms Shattock had a conflict of interest given her position on Council.

[27] Ms Shattock reminded Mr Dryden that she was his manager and that it was her decision. Mr Dryden then became loud and angry and after repeating that he had had the Mayor on the air following the last meeting he walked out of the office.

Did his actions bring the Radio Network into disrepute?

[28] An employees conduct out of working hours, can impact on an employees employment where the conduct is manifestly injurious to the interests of the employer (see *McDougall v Van Allen & Co Ltd* (1909) 19 OLR 351; *Mussen v NZ Clerical Workers Union* [1991] 3 ERNZ 368).

[29] This is particularly so where there is a clear relationship between the conduct and the employment and the conduct has the potential to impact on the employers business (see *Smith v Christchurch Press Co Ltd* [2000] 1 ERNZ 624 (CA)).

[30] Mr Dryden says that his conduct at the meeting was in his personal capacity as a citizen of Tokoroa and could not be viewed as representing Radio Forestland and therefore could not have an impact on his employer.

[31] However, Mr Dryden is a public figure who lives and works in a small community and is strongly associated with TRN. Further he was dressed in clothing clearly branded with the Radio Forestland logo.

[32] Mr Dryden, during the disciplinary interview confirmed he was recognisable as being from Radio Forestland after Mr Jennings had asked him about an article published in the local paper about the meeting and identifying Mr Dryden as being from the Radio Station. Mr Dryden told Mr Jennings that it wasn't the jacket that identified him as being with the Radio Station, the association would have been made anyway.

[33] After hearing from Mr Dryden at two disciplinary meetings and after considering statements received from witnesses at the SWAT meeting, Mr Jennings concluded:

I acknowledge that varying accounts of that meeting have been provided, and also accept your contention that certain witnesses may have political preferences which impact on their perception of events. However, the vast majority of the statements provided consistently indicate that your conduct at that meeting was inappropriate, disrespectful, and brought TRN and the Radio Forestland brand into disrepute.

...I find that the general public perception of your presence was that you were there in the capacity as a Radio Forestland representative. You acknowledged during the course of our 10 October meeting that this association would naturally be made, and your actions in standing with other media representatives and wearing Radio Forestland branded clothing cemented this.

[34] I concur with Mr Jennings conclusions. Mr Dryden was clearly recognisable as being the Breakfast host on Radio Forestland. Apart from wearing his Forestland Jacket Mr Dryden was located with other media personnel at the meeting. It was therefore not too long a bow for a local person to unwittingly to draw that Mr Dryden was attending the meeting as a representative of the Radio Station.

[35] Mr Dryden's conduct toward the Mayor may not of itself have been inappropriate and unprofessional, however, those that witnessed Mr Dryden's conduct toward Ms Shattock when she approached Mr Dryden about his comments to the Mayor certainly viewed his conduct as being inappropriate and unprofessional. Mr Howard's approach to Mr Dryden confirmed that others, apart from Ms Shattock were concerned at Mr Dryden's conduct.

[36] I find Mr Dryden's conduct toward his manager to have been disrespectful and inappropriate in a public forum. His conduct was conduct which could bring TRN into disrepute.

Did Mr Dryden fail to follow a lawful and reasonable instruction?

[37] For an instruction to be lawful and reasonable in the employment context it must:

- Not be illegal in the sense of not requiring the servant to perform any act contrary to law.
- Be within the scope of the servant's contractual obligations;
- Not be demanding the performance of any impossible and dangerous task.

(Wellington etc Clerical IUOWv College Group Ltd [1984] ACJ 315)

[38] Ms Shattock had instructed Mr Dryden several times that he was not to talk about the meeting on air or interview Mr Foote until such time as they had had an opportunity to talk about the meeting.

[39] During the disciplinary process Mr Dryden maintained his view that Ms Shattock's instruction to him was biased in light of her connections with Council. He maintained through the process that on that basis he was entitled to disregard her instructions.

[40] Mr Dryden also maintained during the disciplinary process that Ms Shattock had arrived at work at 07.15am. Given that she had heard the broadcast from him at 6.30am that he intended to interview Mr Foote at 7.30am that morning, she could have addressed that with him when she arrived and could have stopped the interview then.

[41] Ms Shattock explained to the Authority that there is a clear unwritten rule in a radio station that if the "on air" light is on outside the studio then no interruptions are allowable. Ms Shattock's unequivocal evidence is that when she arrived at work Mr Dryden, who acknowledged that Ms Shattock's interpretation of the rule is correct, had the "on air" light on. She was therefore unable to interrupt him.

[42] At the disciplinary meeting on 31 October Mr Dryden conceded that Ms Shattock was entitled to make such decisions and accepted that he had breached a direct instruction. Mr Dryden would not go so far as to accept that the instruction was reasonable.

[43] Mr Dryden was instructed by his Manager, Ms Shattock not to discuss the meeting on air or interview Mr Foote until after they had met and discussed it. Mr Foote was also aware of the instruction. However, Mr Dryden proceeded to disregard Ms Shattock's instruction. Mr Jennings concluded Mr Dryden was not entitled to refuse Ms Shattock's instruction.

[44] Mr Jennings was also concerned about the fact that Mr Dryden then refused to discuss the matter with his Manager.

[45] I find Ms Shattock's instruction to Mr Dryden not to discuss the meeting on air, or to interview Mr Foote until such time as they had had an opportunity to discuss the meeting was a lawful and reasonable instruction in the circumstances. Mr Dryden and Ms Shattock had discussed the July meeting prior to interviewing the Mayor. I see no reason why the same process could not have been adopted after the 2 October meeting.

[46] Ms Shattock had not instructed Mr Dryden not to interview Mr Foote, indeed, her own advice to Mr Foote, in Mr Dryden's presence, was that he would be interviewed, just not the next day.

[47] I also find that Mr Dryden's refusal to adhere to his manager's instruction was deliberate and intentional. When Mr Dryden informed listeners at 6.30am that he was to interview Mr Foote that morning he publicly acknowledged that he was doing so even though he "...was not supposed to."

Was the process in dismissing Mr Dryden fair and reasonable?

[48] Ms Shattock updated Mr Jennings after her meeting with Mr Dryden. By this time she had also received the letter of complaint from the Mayor, which she forwarded to Mr Jennings. Mr Jennings decided that the issues were now more serious and required investigation. Mr Jennings asked Ms Shattock to provide him with a written statement outlining her view of what had occurred.

[49] On 4 October Mr Dryden was formally invited to attend a disciplinary meeting with Mr Jennings. The letter set out the full allegations against Mr Dryden and advised him of his right to representation. Mr Dryden was advised that his actions, if substantiated may result in his dismissal.

[50] Mr Dryden had legal representation at the meeting during which Mr Jennings asked a number of questions about the incident from the SWAT meeting and the aftermath. At the end of that meeting Mr Jennings undertook to make further enquiries.

[51] On 15 October 2007 Mr Jennings wrote to Mr Dryden through his representative and outlined the steps taken to make the further enquiries. Mr Jennings enclosed copies of all statements he had received including a copy of a further interview he had held with Ms Shattock. Also included in the documents was a letter signed by 41 employees of the South Waikato Achievement Centre and Residential Services. The letter is a formal complaint about the radio interview between Mr Dryden and Mr Foote which aired on 3 October.

[52] Mr Dryden provided a written response to Mr Jennings letter. In that letter, rather than addressing the questions asked of him, Mr Dryden raised issues as to Ms Shattock's credibility including asserting that she was a "proven liar".

[53] A second disciplinary meeting, at which Mr Dryden was also legally represented, took place on 31 October 2007. At this meeting Mr Jennings set out his concerns that Mr Dryden had not answered the questions from his 15 October letter and in his response Mr Dryden had raised questions of trust and confidence between Mr Dryden and his Manager. Mr Jennings also raised concerns about the apparent lack of respect Mr Dryden had shown Ms Shattock since the SWAT meeting on 2 October. These matters were not addressed to the satisfaction of Mr Jennings who then dismissed Mr Dryden for serious misconduct.

[54] The Employment Policies set out the items which constitute serious misconduct including deliberate refusal to carry out duties or obey lawful and reasonable instructions, and bringing the company into disrepute or damaging the image and reputation of TRN. When Mr Dryden accepted the terms of employment set out in his Employment Agreement, he also accepted that he could be dismissed without notice if, in the opinion of TRN he was guilty of serious misconduct. Mr Dryden's conduct constituted a clear breach of the standards set out in the Employment Policy.

[55] I find that in all the circumstances of this case, a fair and reasonable employer would consider Mr Dryden's conduct amounted to serious misconduct. I also find that an employer acting fairly and reasonably would decide to dismiss Mr Dryden. I therefore find the dismissal was justified. I can be of no further assistance to Mr Dryden.

Costs

[56] Costs are reserved. In the event that costs are sought, the parties are encouraged to resolve that question between them. If the parties fail to reach agreement on the matter of costs, the respondent may file and serve a memorandum as to costs within 28 days of the date of this determination. I will not consider any application outside that timeframe.

Vicki Campbell

Member of the Employment Relations Authority