

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2019] NZERA 59
3044112

BETWEEN	TROY ANDERSON Applicant
AND	METAL WORKS INNOVATION LIMITED Respondent

Member of Authority:	Vicki Campbell
Representatives:	Beverley Edwards for the Applicant Penny Swarbrick for the Respondent
Investigation Meeting:	7 February 2019
Oral Determination:	7 February 2019
Record of Oral Determination	8 February 2019

RECORD OF ORAL DETERMINATION OF THE AUTHORITY

A. Mr Anderson's application is declined.

B. Costs are reserved.

Employment relationship problem

[1] Mr Anderson worked for Metal Works Innovation Limited as a Fabricator/Welder from 5 June until 21 December 2017. Mr Anderson had previously been employed from 8 June 2014 to 23 December 2016.

[2] Metal Works is an aluminium manufacturer. At the time the events described in this determination arose it was building specialised trailers for large boats. In

December it had CCTV cameras installed at four sites inside and outside the workshop area. Mr Lesley Coenraads is a director and shareholder of Metal Works. I have accepted his evidence that the cameras were installed on or about Tuesday 19 December 2017.

[3] Mr Anderson claims he was dismissed on 21 December 2017 and the dismissal was unjustified. Metal Works denies there was a dismissal and says Mr Anderson left of his own accord.

Issues

[4] In order to resolve Mr Anderson's employment relationship problems I must determine the following issues:

- a) Was Mr Anderson dismissed on 21 December?
- b) If the answer to a) is yes was the dismissal unjustified and if so what if any remedies should be awarded?

[5] As permitted by s 174E of the Act this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made as a result. It has not recorded all evidence and submissions received.

Mr Anderson's employment relationship

[6] At the investigation meeting Mr Anderson told me that while he enjoyed working at Metal Works for about a month, by December he did not like working there. He told me he did not enjoy the work and things were stricter than during his previous time at Metal Works in terms of getting jobs completed, the timelines and how busy the business was.

[7] Adding to that Mr Anderson told me he was left in charge of the workers when Mr Coenraads was not there. Mr Coenraads disputed that Mr Anderson was left in charge of the workers. When Mr Anderson started back with Metal Works his work was supervised by a Foreman who left in October 2017. At that time Mr Coenraads told the staff he would be undertaking the foreman duties himself. Mr Coenraads left

on a family holiday for ten days in October a week after the foreman left. Before he left Mr Coenraads told me he made another worker the point of contact in his absence. I have accepted Mr Coenraads evidence as being more likely than not because during his previous employment Mr Coenraads had asked Mr Anderson if he wanted to be Foreman and Mr Anderson had declined as he did not want that role. Further, the other worker was responsible for timesheets and rosters which is consistent with having responsibilities over the staff.

[8] A week before 21 December at a toolbox meeting Mr Coenraads had advised staff of the working arrangements during the Christmas/New Year period. Metal Works employs four employees apart from Mr Coenraads. Two of the four employees had pre approval to take leave during the period and that left only two employees or 50 percent of the staff to work. At that meeting Mr Anderson indicated a desire to take a day's leave without pay during the Christmas/New Year period. This was declined by Mr Coenraads. The business was busy and he needed the two employees to be working.

[9] It was a rule that employees were not to use their cellphones while working. Despite this, Mr Anderson told me that he would have his phone with him while working and would stop working if he needed to use it.

Events of 21 December

[10] On 21 December Mr Anderson was working when Mr Coenraads left the workshop at about 1.10pm. When Mr Coenraads returned to the workshop at about 1.30pm Mr Anderson left for his lunch break.

[11] Mr Anderson says that when he returned to the workplace at about 2.00 pm Mr Coenraads approached him and in front of other employees berated him for messing around for 20 minutes doing nothing and annoying other staff, told him to f*#k off, confirmed that this was the end and told him his final pay would be sorted out.

[12] Mr Coenraads told me that when he returned to the workplace he attended his office. The CCTV operation was new and he wished to get to grips with it so he logged in and watched footage from the morning. He observed Mr Anderson standing in a corner using his phone. When Mr Anderson returned to work from his lunch break he approached Mr Anderson and explained what he had observed on the video

footage and told Mr Anderson not to use his phone at work while he was supposed to be working. Mr Anderson had previously been told that using his phone while he was meant to be working was not acceptable.

[13] It was common ground, in reference to the CCTV system, that during their discussion Mr Anderson asked Mr Coenraads if he had recorded him. Mr Coenraads said he had. Mr Anderson objected to being recorded.

[14] Mr Coenraads told me that after the discussion about the phone the two worked together for about 10 minutes when Mr Anderson purposely dropped a metal plate on the floor. He dropped it just in front of Mr Coenraads who had to step back to avoid it landing on him. Mr Coenraads says Mr Anderson told him he quit and left to get his toolbox.

[15] It was common ground that the two men then had an exchange about holiday pay. Mr Anderson was told that this was a matter best discussed with Ms Kerry Able who had responsibility for payroll issues. Ms Able is Mr Coenraad's wife and a shareholder in Metal Works.

[16] It is common ground that Mr Anderson then collected his toolbox and other belongings and left the premises.

Events following 21 December

[17] On 22 December another employee approached Mr Coenraads with a bag of items belonging to Mr Anderson and asked if Mr Coenraads wanted him to drop them off to Mr Anderson. Mr Coenraads wished to speak with Mr Anderson so he told the employee he would drop it off.

[18] Mr Coenraads had sought advice about the situation on 22 December and as a result of that advice, on 24 December Mr Coenraads visited Mr Anderson's residence. At the time Mr Anderson was in his front yard working on his car. Mr Coenraads says he got out of his car and enquired of Mr Anderson as to whether he was intending to return to work and if he wasn't could he return the workshop keys. Mr Anderson denies Mr Coenraads got out of his car and says he sat in his car looking angry and did not enquire as to whether Mr Anderson intended to return to work.

[19] It is common ground that Mr Anderson retrieved the workshop keys and handed them to Mr Coenraads.

[20] Mr Coenraads told me he then made arrangements with Mr Anderson for the return of his belongings which he dropped just inside the carport at Mr Anderson's residence on 26 December.

[21] Mr Anderson told me he found the bag on the front steps but could not recall when he found it.

[22] In cases such as this where the evidence is equally poised Mr Anderson bears the onus of proving he was dismissed.¹ Mr Anderson says he was sent away, Mr Coenraads says he left of his own volition and when asked if he intended to return simply returned the workshop keys with no further discussion.

[23] Having listened to and observed the witnesses and considered all the evidence and surrounding matrix of events I have been unable to conclude with any certainty whether it is more probable than not that Mr Anderson was dismissed by Mr Coenraads. I have concluded that Mr Anderson has not met the onus of proof.

[24] The balance of probabilities is settled in favour of Metal Works. I find it is more likely than not that Mr Anderson did not enjoy his work, had been declined leave during the Christmas/New Year period and had just been told off for using his cellphone when he should have been working and that all of this contributed to him deciding he no longer wished to work at Metal Works.

[25] Mr Coenraads evidence is consistent with his view that Mr Anderson had walked off the job. After Mr Anderson left the workplace he told the other staff that Mr Anderson had walked off the job, then on 22 December, as recorded in his diary, he sought advice about what to do when an employee walks off the job. Mr Coenraads told me Mr Anderson is highly skilled and was a highly valued employee. The business was very busy and could ill afford to have one less employee working over the Christmas/New Year period when already 50 percent of the staff would be away.

¹ *New Zealand Woollen Workers IUOW v Distinctive Knitwear Limited* [1990] 2 NZLR 438 at 447.

[26] Accordingly Mr Anderson's application is declined.

Costs

[27] Costs are reserved. The parties are invited to resolve the matter. If they are unable to do so Metal Works shall have 28 days from the date of this determination in which to file and serve a memorandum on the matter. Mr Anderson shall have a further 14 days in which to file and serve a memorandum in reply. All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence.

[28] The parties could expect the Authority to determine costs, if asked to do so, on its usual "daily tariff" basis unless particular circumstances or factors require an adjustment upwards or downwards.

Vicki Campbell
Member of the Employment Relations Authority