



Minor Matter - Major Consequences ... a case of insubordination

Client Services:

- General advice in relation to all employee-related issues
- Resolving Personal Grievances and Workplace Disputes
- Employment Agreements - drafting and negotiation
- Employment Relations Authority/Employment Court and Mediation Representation
- Employment Relations Strategies
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In an employment environment where it seems that employees can get away with seemingly serious behaviour (for example, there have been a number of cases publicised where employees have received substantive compensation after telling the boss *'where to shove it'*) a recent case in the Employment Court provides a refreshing reminder that employees are still required to do what they are told.

In ***Goel v. The Director-General for Primary Industries*** [2015] NZEmpC 214 the employee, Mr Goel, was dismissed for serious misconduct, for what, on the face of it, may appear to be a relatively minor infringement.

Mr Goel was a Ministerial Co-ordinator in the Ministerial and Official Correspondence Team. His role involved co-ordinating responses to incoming Ministerial correspondence including formatting and proof-reading responses to formal Official Information Act requests.

His employment record prior to the incident that led to his dismissal was by no means exemplary, in fact he was subject to a written warning for disruptive behaviour at a team meeting.

The incident in question involved his actions surrounding a response to an Official Information Act request on behalf of Mr Gallagher, a Deputy Director-General. Mr Gallagher had a particular requirement that his correspondence be signed off "*Yours sincerely, Scott Gallagher, Deputy Director-General*". When it came to Mr Goel's formatting of the response, he included a different signature block which read "*Scott Gallagher, Deputy Director-General, Resource Management and Programmes*". Mr Gallagher's Executive Assistant, Ms Gordon, noticed this and asked Mr Goel to correct it. Mr Goel took the letter away, but soon returned it unaltered as to signatory block.

An argument developed between the two, and Mr Goel refused to make the change. A Mr Stewart, who was Mr Goel's manager's manager, became involved and instructed Mr Goel to make the change. Mr Goel still refused, and Mr Gallagher then became involved.

Ultimately, another employee was asked to make the change, and Mr Goel was sent home. He was later suspended and the matter was subject to two formal investigations, the second one being necessary after Mr Goel challenged aspects of the first investigation.

The investigator found that Mr Goel was guilty of both misconduct and serious misconduct, and after a meeting with the employer he was dismissed. The matter ended up before the Employment Court, which said:

"[53] Mr Scott-Howman, counsel for the defendant, accepted that in the face of such an absolute refusal by Mr Goel to make the change, it was reasonable to query why Mr Stewart did not take the document off Mr Goel at an early stage and make the change himself or simply have someone else attend to it. Mr Scott-Howman submitted that the "cogent answer" to this question was that, in the context of the job, "the team's function only works because people do what is asked of them." In this regard, counsel referred to the following passage from Mr Stewart's evidence:

"If you're going to have people dipping in and out of the process and randomly refusing minor tasks it's a recipe for disaster. I talked earlier about the fact the impact that Kunal's attitude was having on the team and I would not, and still would not, be comfortable with allowing that behaviour by taking jobs off that he just refused to do. The whole team has to function by actually people doing the job that they are asked to do. Kunal was not acting reasonably. Not at all."

Disclaimer:

This newsletter is not intended as legal advice but is intended to alert you to current issues of interest. If you require further information or advice regarding matters covered or any other employment law matters, please contact **Neil McPhail**, **Raewyn Gibson**, or **Peter Zwart**.

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"[56] It is a well established principle of employment law that employees are required to carry out lawful and reasonable instructions given by their employers in the course of carrying out their duties. Insubordination occurs when an employee wilfully disregards or fails to comply with such an instruction and, for obvious reasons, insubordination in the workplace cannot be tolerated or condoned."

"[57] In this case, no plausible explanation was proffered by Mr Goel for his blatant refusal to comply with the lawful and reasonable instruction Mr Stewart had given him regarding the required change to the signature block of the letter in question. In a concession which Mr Scott-Howman described as "bizarre", Mr Goel acknowledged, in answer to a question from the Court, that if he had been asked by his immediate Manager, Mr Spanhake, to delete the branch name from the letter, then he would have done so. Mr Goel was fully aware that Mr Stewart was higher in the managerial hierarchy at MPI than Mr Spanhake and his answer, that he would have obeyed Mr Spanhake but not Mr Stewart, simply defied all elements of rationality and logic."



The Court concluded:

"[58] As I have noted above, the investigation process carried out into the misconduct allegations against Mr Goel was exemplary in every respect and cannot be faulted. In all the circumstances, dismissal was certainly a fair and reasonable option open to MPI. For these reasons, I reject Mr Goel's claim and hold that his dismissal by MPI was justifiable."

Clearly, employees are still required to obey lawful instructions of the employer, even if the duty asked of an employee is relatively minor in nature. The principle is that lawful and reasonable instructions must be obeyed. As in all disciplinary issues, careful investigation of the circumstances is necessary before acting, as the employer did (twice) in this case.

Time for a Check-up?

On 1 April 2016, the various Acts amended by the Employment Standards Legislation Bill came into effect.

Individual Agreements provided to new employees must meet the new requirements, however for existing agreements (agreed before 1 April 2016) employers have until 1 April 2017 to ensure agreements are up to date. Changes may be need in the following areas:

- Hours of work
- Availability provisions
- Clause allowing deductions to be made from remuneration
- Cancelling shifts
- Restrictions on secondary employment

Collective Agreements must comply at the time they are next negotiated.

Contact the team at MGZ to ensure your employment agreements are not only up-to-date and compliant with the recent changes in legislation but also meet the needs of your business.

