



ISSUE

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a regular newsletter for clients of
mcp h a i l g i b s o n & z w a r t l t d

Honey, Honey, How He Fires Me . . .

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
- Training
- Monthly newsletter

Evans v Manuka Mountain Limited, a recent Employment Relations Authority case, serves as a bitter reminder of the cost of procedural defects in employment processes.

Manuka Mountain produced honey from beehives that were placed on land owned by various people (in agreement with the landowners). Mr Evans was employed as a Site Relations Manager, which required him to liaise with landowners and residents of properties about the placement of hives, as well as scout out other suitable hive locations. This was very competitive as other beekeepers in the area were also seeking suitable hive sites.

Manuka Mountain had the following concerns about Mr Evans' conduct:

- He allegedly was unable to meet requirements laid out in his job description;
- He consistently wrote inaccurate start and finish times on his timesheet;
- He was often hard to contact by both management and landowners (where Manuka Mountain's beehives were placed);
- He was secretly running All Terrain Solutions Limited for the purpose of soliciting hive placements in competition with Manuka Mountain;
- He exhibited dishonesty towards Manuka Mountain Management and Manuka Mountain considered that in the circumstances his continued employment during a notice period would be unreasonable.

These are serious issues that, if substantiated, would be grounds for dismissal without notice and potentially claims for damages for breach of Mr Evans' employment agreement.

The Field Relations Manager, Mr Schmidt, invited Mr Evans to a disciplinary meeting to discuss the above issues. He did this by visiting Mr Evans' house and advising that the Managing Director, Mr Whitehead, wished to speak with Mr Evans the next day. Mr Schmidt had previously been investigating two of the issues, however did not disclose this or any of his findings to Mr Evans prior to the meeting.

At the meeting, Mr Schmidt and Mr Whitehead went through each concern and waited for Mr Evans to comment. Mr Evans did not respond until the end, only to say that he had completed his own business contract the previous week. Mr Whitehead then handed Mr Evans a pre-prepared termination letter, dated the day after the meeting was held.

Unfortunately, for Manuka Mountain, while they had raised serious issues, they did not:

- Advise Mr Evans that the meeting was of a disciplinary nature or that it could result in his dismissal; or
- Advise Mr Evans of his right to have a legal representative or a support person present; or
- Allow Mr Evans to seek legal advice before responding to Manuka Mountain's concerns.

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 **Dean Kilpatrick, Jane Taylor or Deborah Hendry.**

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Each of the above are fundamental in any disciplinary process where an employee's employment at risk. For Manuka Mountain, not only did they represent breach of the requirements of procedural fairness, they amounted to breaches of the duty of good faith. Mr Evans raised a personal grievance for unjustified dismissal.

The Authority held that:

Even on the most sympathetic reading of the actions of Mr Schmidt and Mr Whitehead in arranging and carrying out the 29 April disciplinary meeting, they fell well short of the statutory threshold of fairness in their treatment of Mr Evans that day.

The Authority held that Mr Evans was not entitled to lost wages because he was injured and receiving ACC compensation at the time of his dismissal. By the time the Authority heard the case, Mr Evans was not sufficiently healed to return to work. The Authority did award Mr Evans \$25,000 in distress compensation, though this was reduced as a result of Mr Evans' actions, discussed further below.

Subsequently Discovered Misconduct

In certain circumstances, evidence of misconduct discovered after dismissal can affect the remedies awarded to an employee who has grounds for a personal grievance. The misconduct must be reasonably connected to the reason(s) for dismissal.

After Mr Evans was dismissed, Manuka Mountain made a number of further allegations against Mr Evans, including:

- Mr Evans had taken honey from Manuka Mountain and given it away or sold it privately;
- Mr Evans took drums of burnt honey without permission;
- Mr Evans had provided information to other beekeeping businesses that he had gained through his employment, that was not in the interests of Manuka Mountain to have disclosed, and that he obtained a private benefit for disclosing;
- Mr Evans had arranged for some landowners' lease fees to be paid into his own bank account, without Manuka Mountain's knowledge or approval.

The Authority found that there was insubstantial evidence of many of the above allegations. The Authority did find, however, that there was evidence that Mr Evans had provided information to other beekeeping businesses, arranged a site finding fee for himself from one of those businesses and made arrangements for payments to some landowners in a way that did not accord with standard commercial practice. This conduct was in conflict with Mr Evans' duties of fidelity and good faith to Manuka Mountain. Mr Evans' remedies were therefore reduced to \$18,000 as a result.

Though his remedies were reduced, this is still a steep price for Manuka Mountain to pay because the company did not follow a fair process. If you have issues with any employees, no matter how small, please contact us so that we can guide you through the process.

Minimum Wage Increase

The minimum wage is set to increase to \$21.20 per hour from 1 April 2022.

The starting-out and training minimum wage will also increase from \$16 to \$16.96 per hour from 1 April 2022.



ER Seminar

Our first 2022 Employment Relations Practice Course has been set down for **Tuesday 29 and Wednesday 30 March 2022.**

Topics covered will include:

- Pre-employment
- Dealing with absences from the workplace
- Discipline and Termination
- Performance Management
- Holidays Act/Parental Leave
- Negotiations and Good Faith
- Redundancy and Restructuring
- Introduction to Health and Safety
- Policies/Legislative Updates

Further information in regard to the course content and registration details can be found on our website – www.mgz.co.nz/training If you wish to enroll simply email your registration and contact details to carey@mgz.co.nz