IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

Attention is drawn to the order prohibiting publication of certain information

[2014] NZERA Auckland 131
5435060

BETWEEN	A Applicant
A N D	B LIMITED Respondent

Member of Authority:	T G Tetitaha
Representatives:	R McCabe/C Abaffy, Counsel for Applicant A Caisley, Counsel for Respondent
Investigation Meeting:	1-2 April 2014 at Auckland
Submissions Received:	26 March and 2 April 2014 from Applicant 24 March and 2 April 2014 from Respondent
Date of Determination:	11 April 2014

DETERMINATION OF THE AUTHORITY

A. The applicant was not unjustifiably dismissed.

B. The application for personal grievance is dismissed.

C. Costs are reserved. If either party seeks an order for costs a memorandum shall be filed and served 14 days from the date of this determination. The other party shall have 14 days to file and serve a reply.

Employment relationship problem

[1] The applicant was employed by the respondent as a pilot until summarily dismissed on 26 September 2013. His dismissal occurred following investigation into a complaint by a flight attendant that he had sexually harassed her during an overnight stay on Norfolk Island.

Non-publication order

[2] There are non-publication orders currently in place. There is an interim non-publication order made by the Employment Court until further order of the Court. The order prohibits publication of the names of the parties and the complainant employee and any particulars that may lead to their identification.[1] By consent the Authority made a similar order.[2]

[3] A further non-publication order has been issued by the Authority in respect of any evidence or pleading which may lead to the identification of another employees file relating to another sexual harassment allegation.[3] For the purposes of this determination he shall be referred to as PM.

Issues

[4] The following issues arise:

(a) Could a fair and reasonable employer conclude the applicant's conduct was misconduct justifying dismissal;

(b) Was the process leading to dismissal of the applicant what a fair and reasonable employer could have done in all the circumstances?

(c) If the dismissal was unjustified, what remedies should be granted?

Facts leading to dismissal

[5] The applicant was employed as a pilot on 14 March 2005. He was First Officer and second in command of the Airbus A320 type aircraft. Only the Captain had a higher ranking. All other crew members, including flight attendants, were subordinate to the applicant. At the time of the incident he was 50 years old.

[6] The complainant started work as a flight attendant on 1 August 2013. At the time of the incident she was 19 years old. The flight to Norfolk Island was her first involving an overnight stay or layover. Layover's occurred to ensure crew were rested before working the return flight to New Zealand.

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1 Minute dated 17 January 2014 ARC 3/14
2 A v B [2014] NZERA Auckland 18
3 Minute dated 7 March 2014

[7] Neither complainant nor applicant knew each other prior to the flight.

[8] On 17 August 2013 the crew including the complainant and applicant arrived in Norfolk Island. Some went to a wholesale liquor store to purchase alcohol. The applicant and complainant had a conversation about their home towns. All of the crew arranged to go to dinner later in the evening at the local RSL.

[9] During dinner, the complainant was seated next to the applicant. He offered her sips of wine from his glass. At one stage he briefly touched her leg.

[10] After dinner the complainant and three flight attendants congregated in one of the hotel rooms to watch 'chick flick' DVD's. The applicant asked to join them. He sat in a chair. The complainant sat on the bed.

[11] The following day, the complainant and two flight attendants went for a hike up Mt Pitt. They returned to the hotel and met the applicant by the pool. The complainant made a comment about not wanting to go for a swim because she would scream. The applicant accepts he may have said something along the lines of he would like to see that.

[12] At some stage, the applicant left to go for a drive. Upon his return he noticed the complainant was no longer in the pool area. The crew all had adjoining rooms opening out onto a deck area and the pool. The rooms were studios with the bed in the lounge area, table and chairs and a separate bathroom. Due to the heat, the crew kept their doors open. The complainant's room was two doors down from the applicant.

[13] The applicant went to the complainant's room. The door was open and she was on her bed watching television. The applicant came into her room and spoke to the complainant. He then came to her bed, tapped her twice on the shoulder and asked her to move over. She moved and he got onto her bed. A blanket ended up draped over the applicant.

[14] The applicant then touched the complainant's leg. The complainant made a comment which he did not hear. Shortly thereafter the applicant got up and left the room to get a glass of water. The complainant left shortly after to join the other flight attendants by the pool. When they later moved into one of the rooms, the complainant told them about the incident with the applicant.

[15] The crew were to meet for dinner later that evening. The other flight attendants agreed to help separate the complainant from the applicant during dinner. One of the flight attendants slept in the complainant's room that evening.

[16] The complainant was told by the other flight attendants to make a complaint to Captain Gary Bridger. Captain Bridger was the highest ranking officer amongst the crew. The next day the complainant told Captain Bridger what had occurred. He was shocked and concerned. He asked if the complainant was in a fit state to continue working and offered to stand her down. She just wanted to get home. It was agreed the complainant would work in the back of the aircraft to prevent any interaction with the applicant.

[17] Upon her return to New Zealand on 20 August 2013, the complainant made a complaint by email attaching a written statement. Captain Bridger notified the deputy fleet manager of the complaint and telephoned the applicant. Captain Bridger told him about the complaint and that it was completely inappropriate to enter a flight attendants room, which the applicant agreed with. He then advised the applicant to contact his Union, the Fleet office and not to contact the complainant.

[18] The applicant called Captain Bridger later that day advising he had been told by the Union lawyer to ask for the complainant's phone number to apologise. Captain Bridger told him the A320 Fleet Office was handling the matter and he would have to make the request of them.

[19] The applicant drafted an initial statement for his Union lawyer on 21 August 2014.

[20] Hugh Pearce, A320 Fleet Manager, conducted interviews with the complainant, flight attendants and Captain Bridger between 23 and 26 August 2013.

[21] Mr Pearce sent a letter to the applicant on 27 August 2013 advising the respondent's concerns about his behaviour. Copies of the Code of Conduct, policies and written statements and transcripts of the notes from the meetings with witnesses were provided to the applicant. The applicant's explanations were sought and he was advised the outcome of the investigation may be dismissal.

[22] Mr Pearce met with the applicant on 29 August 2013 to discuss suspension. Following that meeting, a decision to suspend the applicant was made. This was confirmed by letter dated 30 August 2013.

[23] An investigation meeting was held on 5 September 2013. At that meeting the applicant gave explanations for his conduct then provided a written statement dated 4 September 2013 as well as his comments upon the witness statements and transcripts.

[24] On 12 September 2013, Mr Pearce re-interviewed the complainant and Captain Bridger. A copy of the transcripts from interview notes were given to the applicant who provided further comments thereon.

[25] A second interview was undertaken with the applicant on 16 September 2013. Further information was provided by the applicant. The investigation was adjourned for Mr Pearce to consider the information received and make findings.

[26] On 26 September 2013, a final meeting was held to advise Mr Pearce's findings. He found the applicant's conduct constituted sexual harassment. The recommendation was dismissal. The applicant gave submissions on the outcome. The meeting was adjourned to consider the submissions. It was reconvened and Mr Pearce advised the applicant's employment was to be terminated effective immediately. This was confirmed by letter dated 1 October 2013.

[27] On 2 October 2013, the applicant raised a personal grievance by email from his Union counsel. He sought immediate reinstatement.

[28] On 7 October 2013, the respondent advised it believed his dismissal was justified and did not agree to the remedies sought but was prepared to attend mediation.

[29] Mediation was unable to resolve this matter and a statement of problem was filed in the Authority's Christchurch Registry on 28 November 2013. A teleconference was held, following which the matter was transferred to Auckland.

[30] The file was received in Auckland on 6 December 2013. At a teleconference on 13 December 2013, the applicant sought a non-publication order. The order was granted in part but was to lapse at 3pm on 20 January 2014. A substantive hearing

date was set down in Auckland on 1-4 April 2014 with timetabling directions for filing evidence.

[31] On or about 17 January 2014, the applicant applied for and was granted a further interim non-publication order by the Employment Court. The order was to be reviewed at a further hearing on 24 February 2014. A decision is yet to issue.

[32] On 7 March 2014, the applicant sought disclosure of another employees file relating to a sexual harassment allegation. The Authority declined the application for disclosure. It directed the filing of two documents. The employee, PM, was granted a non-publication order in respect of any evidence or pleading which may lead to his identification[4].

[33] The matter is now before the Authority for final determination.

Could a fair and reasonable employer conclude the applicant's conduct was misconduct justifying dismissal?

[34] The applicant submits the alleged sexual harassment was neither serious nor persistent. It was a single event and at a low level. The complainant's evidence was inconsistent and had been embellished. There was insufficient investigation of her inconsistencies and the respondent ought to have asked the complainant about her view on outcome. The respondent failed to make a finding that there was harassment of a serious nature or persistent or detriment to the complainant. This conduct was therefore inappropriate touching as opposed to sexual harassment. The lack of detriment was evidenced by the complainant's ability to continue working after the incident and the fact that she did not ask for any assistance. It was offered by the other flight attendants and the respondent instead. He also submitted the Authority ought to take into account the definition of sexual harassment in s.108(1) Employment Relations Act 2000 in determining the application of the harassment policy.

[35] It is accepted the applicant's employment was terminated. Accordingly the evidential onus falls upon the respondent to justify whether its actions *"were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred"* (s.103A(2)). In applying this test, the Authority must consider the matters set out in s.103A.

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4 Minute of the Authority dated 7 March 2014

[36] The Authority must not determine the dismissal unjustifiable if the procedural defects were minor or did not result in the employee being treated unfairly (s.103A(5). A failure to meet any of the s.103A(3) tests is likely to result in a dismissal being found to be unjustified[5].

[37] The employment relationship is governed by a collective agreement between the respondent and the Airline Pilots' Association (ALPA). Both parties agreed the Fleet Procedures Manual, Disciplinary Policy, Procedures and Guidelines and the We Guide including the code of conduct and harassment policy applied to this relationship. The harassment policy defined harassment as:

> *Harassment is verbal … visual or physical conduct in relation to … sex … and is:*
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> - *Unwelcome or offensive to the recipient;*
> - *Of a serious nature or persistent to the extent that it has a detrimental effect on the individual's employment, job performance, opportunities or job satisfaction.*[6]

[38] The definition of sexual harassment in s108(1) is relevant to a personal grievance. The applicant is not raising a personal grievance he was sexually harassed. Mr Pearce was only required to consider the policies relevant to their employment relationship.

[39] Serious misconduct:

> *… will generally involve deliberate action inimitable to the employer's interests … [it] will not generally consist of mere inadvertence, oversight, or negligence however much that inadvertence, negligence, or oversight may seem an incomprehensible dereliction of duty"*[7]*. It is conduct which "deeply impairs or is destructive of that basic confidence or trust that is an essential of the employment relationship"*[8].

[40] In determining whether conduct was sexual harassment, the Authority must determine whether a decision-maker had clear evidence upon which a reasonable employer could safely rely and conducted reasonable inquiries, which on the balance of probabilities, gave grounds for believing the employee was at fault. Even if the

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5 *Angus v. Ports of Auckland Ltd* [2011] NZEmpC 160 at [26]
6 See above document 15: We Guide key policies for employees, Harassment policy 10
7 *Makatoa v Restaurant Brands (NZ) Ltd* [1999] 2 ERNZ 311 (EmpC) at 319
8 *Northern Distribution Union v BP Oil NZ Ltd* [1992] 3 ERNZ 483

evidence of the employer's inquiries reasonably led to a finding of misconduct, the Authority must determine whether decision to dismiss was justifiable applying the test under s.103A of the Act[9].

[41] The respondent's conclusions are set out in a findings report prepared by Mr Pearce.[10] The findings record the evidence Mr Pearce relied upon and how he reached his conclusion of serious misconduct justifying dismissal. The evidence relied upon were statements and interviews of the complainant, applicant, three other flight attendants and Captain Bridger.

[42] There was a conflict between the complainant and applicant's statements. Mr Pearce directed himself to determining which version of events was more likely to be accurate. He found the complainant and applicant's statements agree up to the moment he entered her room and sat on her bed.

[43] The first factual dispute was whether the applicant was invited by the complainant into her room. The applicant said he knocked on her open door, asked to come in and she said "yeah". The complainant cannot recall him knocking but denied he was invited into her room. Mr Pearce noted although the applicant stated the reason for going to her room was concern for the complainant's well-being, he offered no context why he thought her well-being was in question. Even if he was concerned, Mr Pearce noted the applicant had no explanation for why then he chose to enter the room and get on the bed. The applicant had told Captain Bridger in two telephone conversations the incident was *"a bit of light hearted fun"*. He did not say he was concerned about the complainant's welfare. Mr Pearce determined it was inexplicable for the applicant to enter a flight attendant's room and then position himself on her bed in these circumstances.

[44] The applicant did not dispute he approached the complainant on her bed and nudged her twice on the shoulder, to move over to make room for him. He then sat on the bed. Mr Pearce notes a dispute about how and where the applicant touched the complainant's leg. The applicant states while positioning himself on the bed, he accidentally touched the outside of the complainant's leg with the back of his right hand. In contrast, the complainant states she was perplexed by him entering her room. When nudged on the shoulder to move over, she moved to the far side of the bed

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9 *C v. Air Nelson* [2011] NZERA 207 at [51]

10 Affidavit Applicant sworn 28 November 2013 (Affidavit) Document 24

thinking *"what's he doing in my room?"* Mr Pearce found if the complainant had positioned herself on the far side of the bed the applicant's version was less credible because she would have had to have been near him for an accidental touch to have occurred.

[45] Mr Pearce notes there are variances about how the applicant ended up under the blanket and what he did after. The applicant alleges when the blanket was vacated by the complainant, it ended up draped over his waist and leg. The complainant alleges the applicant covered himself with the blanket then lifted it up and indicated for her to join him. Mr Pearce noted the inconsistency with the complainant's initial interview where she alleged he lifted the blanket and said *"come on"*, but determines it did not significantly undermine her truthfulness.

[46] At this point, the complainant alleges the applicant reached across and in quick succession stroked her left inner leg from approximately 10cm below her knee to approximately 10cm below her groin in a manner that was, to her, clearly sexual and very deliberate. The applicant disputed that, saying the only touch that occurred was while he positioned himself on the bed, was accidental, and on the outside of her leg.

[47] Mr Pearce found it implausible that a flight attendant, some 30 years his junior and on her first overnight duty, was comfortable having a relative stranger sit on her bed with her while alone in her room, and sufficiently close that an accidental touch could have occurred. The applicant submitted the complainant had her legs drawn up so a touch on her inner leg was implausible. Mr Pearce rejected that argument because the complainant stated said she did not always have her arms hugging her legs. This seems logical if the applicant asked her to move because she would have had to have used her arms and legs to do so. After the touch the complainant said "don't even try". The applicant heard her mumble something but did not hear her. He left her room soon after. She left and told her flight attendant colleagues what occurred.

[48] Mr Pearce noted her colleague's statements about the complainant's demeanour. She had been chatty and outgoing prior to the incident. After the incident she was unusually quiet and withdrawn, at one stage sitting *"huddled with her hands across her knees."* This indicated something more serious than accidental touching had occurred. When she told Captain Bridger the following day, he considered her story to be a straightforward, unblemished recall of what happened.

He believed the complainant's account of events was accurate. She was upset at times and on the verge of tears.

[49] Mr Pearce also referred to events leading up to the incident - the applicant's apparent focus on the complainant, sharing wine with her from his own glass, and his comment about seeing her go for a swim. He considered those facts alone would not support any conclusion the complainant's version should be upheld, but did provide relevant context.

[50] Overall, Mr Pearce accepted the complainant's version of events and rejected the applicant's. He concluded that the applicant's actions towards the complainant were uninvited, unwelcome and offensive and constituted sexual harassment, a breach of the company code of conduct and amounted to inappropriate behaviour while on a tour of duty falling below the behavioural expectations of a pilot. He recommended summary dismissal.

[51] The findings evidence careful consideration of the evidence from the complainant, applicant, flight attendants and Captain Bridger.

[52] The applicant's evidence was at times illogical. I accept Captain Bridger's evidence at hearing there was an "unwritten rule" you don't enter another employee's room. This logically fits with employee expected behaviour during overnight stays. For the applicant to have entered the complainant's room, he should have had an immediate welfare concern or explicit invitation.

[53] The applicant first raised any concern about the complainant's welfare as the reason he went to her room on 4 September 2013. This was based upon the fact he did not see her at the pool and a previous trip where a flight attendant had a sore ear. His evidence does not ring true. The complainant was not the only flight attendant missing from the pool. The complainant had exhibited no illness or other affliction that required immediate and direct enquiry by the applicant. Welfare concerns about a flight attendant should have been raised with their inflight service manager, Debs Carr. No concerns were raised at the time. There was no evidence before Mr Pearce justifying the applicant's concern about the complainant's welfare.

[54] He had only met the complainant the day before. They had a conversation about their home towns and wine. This evidence of rapport does not logically support his entry into the complainant's room and getting onto her bed. There was no

evidence of any invitation to do so. The applicant should have known this was not the expected behaviour of an employee.

[55] Mr Pearce was aware the applicant had attended a course which set out the parameters for appropriate employee behaviour.[11] Mr Pearce believed it was improbable the applicant would "unconsciously" enter her room and get onto the bed in view of his age, knowledge and experience.

[56] The applicant's evidence also prevaricated. In his first statement dated 21 August 2013 he is unsure whether he touched her leg or hip.[12] By 4 September 2013 he says the outside two fingers of his right hand brushed her once on the outside of her leg.[13] At hearing he told me *"I did not see where I touched her"*.[14]

[57] During the investigation, Captain Bridger made comment that the applicant had a history of this behaviour. The applicant made a statement to Mr Pearce *"I do not have a history of this behaviour before joining [the respondent]."*[15] As a result Mr Pearce did not investigate those allegations any further. Prior to hearing, the applicant admitted he had been dismissed from employment for sexually harassing a student with whom he had a relationship.[16]

[58] The applicant alleged at hearing the complainant had lied about the touching. There was no evidence of her motivation to lie. She had never met the applicant before. Making a false complaint could have been highly detrimental to her career.

[59] The applicant raised possible inconsistencies about whether she was touched once or twice on the leg or inner thigh. Her written and oral statements to her colleagues were consistent. The applicant went to her room, got on her bed uninvited then touched her leg. She was re-interviewed on 12 September and clarified there was only one "attempt" where he touched her, took his hand away and touched her again. Captain Bridger and Debs Carr statements attest to her making consistent statements to them about being touched on the inner thigh. The others only state her leg was touched. Captain Bridger was re-interviewed and confirmed his earlier statements. There was no evidence of embellishment. This submission was speculative at best.

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11 Oral evidence H Pearce 02/04/14 about applicants attendance at "Business in the Sky" course
12 Affidavit Document 7
13 Affidavit Document 18
14 Oral evidence the applicant at hearing 01/04/14
15 Affidavit Document 21
16 Witness statement H Pearce dated 11 March 2014; Statement of Applicant in Reply dated 14 March 2014.

There were sufficient enquiries made about this issue for Mr Pearce to determine whose version he believed.

[60] There was no necessity for Mr Pearce to enquire about the complainant's view on outcome. It was not relevant Mr Pearce's decision whether the conduct was sexual harassment or not. This was never raised by the applicant before the decision to dismiss. It is speculative what effect it could have had on the dismissal decision.

[61] The factual findings leading to the finding of sexual harassment implied the touching was of a serious nature. There was no unfairness to the applicant if the findings did not explicitly state the touching was of a serious nature. This was obvious from the facts. Detriment only needed to be shown where there is persistent conduct under the harassment policy. Even if detriment was required, there was evidence of detriment to the complainant's employment before Mr Pearce. The incident occurred during her employment. She was on a layover in Norfolk Island. She could not go home or easily avoid the applicant. She became quiet and withdrawn. She avoided the applicant at dinner. She accepted a flight attendants offer to sleep in her room, worried the applicant may enter her room again that night. She was required to continue working to get home or risk being stuck on the Island with the applicant until a relief crew arrived. She worked at the rear of the aircraft to avoid contact with the applicant. She accepted a "pairing restriction" to avoid working with him. She was stood down for a period of time. She was offered and utilised the employment assistance programme.

[62] This conduct could have deeply impaired the confidence and trust an employer would have in its employee. The nature of the applicant's job required overnight stays 66% of the time.[17] The respondent needs to be able to trust its employees to behave towards each other in an appropriate manner at all times, especially while working away from their home base. Employees are entitled to have a workplace that is free of sexual harassment. The applicant's position as the second in command of the aircraft required him to maintain high standards of behaviour. He was well aware of the legal requirements about appropriate employee behaviour. The respondent's trust in his judgment and behaviour on overnights with other employees would be impacted by this conduct.

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17 Oral evidence H Pearce 02/04/14

[63] There was sufficient evidence and investigation for Mr Pearce to reasonably conclude serious misconduct justifying dismissal had occurred on the balance of probabilities.

Was the process leading to dismissal of the applicant what a fair and reasonable employer could have done in all the circumstances?

[64] The applicant's primary submission was Mr Pearce failed to genuinely consider his responses. This was allegedly evidenced by his antagonistic demeanour during interviewing, closed questioning and more favourable treatment of other interviewees. Even if there was misconduct, it was at the lower end of the scale and did not justify dismissal. He points to disparity of outcome between his situation and another employee PM. His conduct was less serious than PM who received a written warning.

[65] There was no issue the concerns were properly raised with the applicant. He was given three occasions to address those concerns and provided feedback. The investigation undertaken was sufficient as noted above.

[66] Mr Pearce denied being antagonistic or asking closed questions. He admitted becoming frustrated during the second interview, took a break, returned and apologised to the applicant and asked if they could continue. The applicant agreed to continue. It was understandable these meetings would have been tense given the possible outcomes.

[67] The applicant was legally represented at the interview. At no stage did his representative raise bias or pre-determination by Mr Pearce because of his interviewing demeanour. The evidence of Mr Pearce's antagonistic demeanour was equivocal.

[68] From reviewing the interview transcripts, there is little evidence of antagonistic behaviour. The questions are primarily open questions. There are two incidences where a yes/no answer is requested. But otherwise the interview transcripts did not evidence inappropriate questioning. There is no evidence the other interviewees were treated more favourably either from Mr Pearce or the transcripts. This is speculative at best.

[69] Where there is alleged disparity of outcome with another employee, the Authority must consider:

(a) Is there disparity of treatment?

(b) If so, is there an adequate explanation for the disparity?

(c) If no, is the dismissal justified, notwithstanding the disparity for which there is no adequate explanation?[18]

[70] If there is an adequate explanation for the disparity, it becomes irrelevant. Even without an explanation disparity will not necessarily render a dismissal unjustifiable. All the circumstances must be considered[19].

[71] PM's circumstances were not before Mr Pearce at the time he made his decision. Mr Pearce gave evidence he had made enquiries with his human resources team and legal whether there were any sexual harassment cases. He was told there were not. The applicant raised PM's circumstances when he filed his application for reinstatement in the Authority.

[72] I directed a copy of PM's findings and the outcome documents be filed. There was no finding of sexual harassment. The finding was inappropriate touching on more than one occasion for which he received a final warning. It occurred in a public place, namely an aircraft where he in passing he touched various employees on the hips and stomach, and poked one in the lower abdomen. None of the touching was described as being in the genital area, albeit one was in the lower abdomen near the bikini line. There were no findings the touching was sexual in nature. PM's conduct and findings are distinguishable from the applicants. The only similarity between these matters was the fact of the allegation of sexual harassment.

[73] Even if there was disparity of treatment, the explanation for disparity would have to be the sexual nature and context they occurred. This incident was not in a public place. It was in a hotel room. The touching was found to be sexual. It occurred between a 19 year old inexperienced flight attendant and 50 year old pilot.

[74] Even if the explanation was insufficient, the dismissal of an employee for similar misconduct does not demonstrate disparate treatment. An employer cannot forever be bound by over-generous treatment of a particular employee on a previous occasion. [20] Each matter is to be determined on its own particular facts. There was

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[18] *Chief Executive of the Dept of Inland Revenue v Buchanan* [2005] ERNZ 767; (2006) 7 NZELC 98,153 (CA) at para 45

[19] *Samu v Air New Zealand Ltd* (1995) 4 NZELC 98,334; [1995] 1 ERNZ 636 at 639

[20] *Fuiava v Air New Zealand Ltd* [2006] ERNZ 806 at paras 62, 67

sufficient evidence for Mr Pearce to reasonably conclude the conduct was serious misconduct and could have resulted in dismissal. The fact PM may have been treated more generously does not bind this employer to treat the applicant the same way.

[75] In the circumstances, the Authority determines there was no disparity of treatment with PM. The Authority determines the process leading to dismissal was what a fair and reasonable employer could have done in all the circumstances. The application for personal grievance is dismissed.

[76] Given the above, there is no need to consider remaining issues pertaining to remedies.

[77] Costs are reserved. If either party seeks an order for costs a memorandum shall be filed and served 14 days from the date of this determination. The other party shall have 14 days to file and serve a reply.

[78] The parties shall be given a copy of the determination recording the parties names. In view of the Courts interim non-publication order, the Authority shall release a different determination for public dissemination with the names of the parties in the intitulment changed to "A" for applicant and "B" for respondent. Otherwise the parties are referred to as the applicant and respondent within the decision. The release of the determination for public dissemination shall occur on Friday, 11 April 2014.

T G Tetitaha
Member of the Employment Relations Authority