

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Caroline Barrett (Applicant)
AND Air New Zealand Limited (First Respondent)
REPRESENTATIVES Timothy Oldfield, Advocate for Applicant
Andrew Caisley, Counsel for Respondent
MEMBER OF AUTHORITY R A Monaghan
INVESTIGATION MEETING 4 and 5 August, 7 September 2005
SUBMISSIONS RECEIVED 9, 16 and 21 September 2005
DATE OF DETERMINATION 4 November 2005

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Caroline Barrett says she was unjustifiably dismissed by her former employer, Air New Zealand Limited (“Air New Zealand”). She seeks reinstatement. The dismissal was for serious misconduct involving her failure to comply with the requirements for sending personal cargo pursuant to a staff concession.

[2] Ms Barrett has raised a second personal grievance on the ground that an unjustified action of her employer’s affected her employment to her disadvantage. The action complained of was the issue of a final written warning. The warning followed complaints about Ms Barrett’s behaviour towards a younger colleague.

The dismissal

[3] Qualifying Air New Zealand staff members have access to a heavily discounted rate for sending personal cargo on international services. The applicable policy includes restrictions on what can be sent, and says dangerous goods may not be sent. Ms Barrett sought to exercise her privilege in February 2005, as she wanted to send a gift package to family members in Samoa.

[4] On 5 February 2005 Ms Barrett went to the home of her cousin, Ivy Tafa-Petero, to make up the package. Ms Tafa-Petero was not at home, so Ms Barrett went ahead and did the packing herself. She left the package where it was, phoning Ms Tafa-Petero to say she had finished and asking Ms Tafa-Petero to bring it to the airport. Ms Barrett told her cousin the package was too heavy for her to lift herself.

[5] Ms Tafa-Petero brought the package to the airport on 9 February. That morning, and without advising Ms Barrett, she had opened the package and added further items including two cans of aerosol spray. Ms Tafa-Petero did not know that aerosols are classified as dangerous goods.

[6] Aside from the policy on the carriage of staff cargo, there are numerous general restrictions and procedures applicable to the carriage of dangerous goods. Pursuant to these, when any cargo is presented for carriage the shipper must complete a form named 'Instructions for the Despatch of Air Cargo' ("IFDAC"). Among other things the form requires the shipper to describe the nature and quantity of the goods being shipped. If no dangerous or hazardous goods are included in the shipment, the shipper ticks the appropriate box and signs a declaration on the IFDAC form to that effect. Alternatively, if dangerous goods are present they must be properly described and otherwise dealt with in accordance with relevant regulations. Thus the IFDAC form also includes a declaration to the effect that the consignment contains dangerous goods, and the goods have been dealt with as required.

[7] The back of the IFDAC form contains a list of dangerous goods and requires the shipper to tick the box next to any of the listed items included in the shipment. The first item on the list is 'aerosols (of any type)'. There follows a list of 'security' questions, including:

- "a. Are you carrying the property of another person?
- b. Are there any items in your bags/parcels that you did not pack yourself?
- c. Could anyone have placed something in your bags/parcels without your knowledge?
- d. ..."

[8] Ms Barrett's completed form did not identify the presence of the aerosol cans, and the answer 'no' was marked as the answer to all of the security questions. In reality the answer to (b) and (c) at least should have been 'yes'. The box next to the statement that no dangerous goods were included was ticked, when in reality that was not correct. The goods being consigned were described as '1 x bicycle' and 'personal effects'. Ms Barrett signed the form.

[9] The aerosols were detected during a routine x-raying of Ms Barrett's consignment. The air waybill identified Ms Barrett as the shipper, and the matter was reported to the Cargo Operations Manager, Gregory Sullivan. Ms Barrett was employed in the cargo section as an airline cargo clerk. She reported to Mr Sullivan.

[10] By letter dated 13 February 2005, Mr Sullivan asked Ms Barrett to attend an interview about the discovery of undeclared dangerous goods in her consignment. The letter included a warning that disciplinary action, including the termination of employment, could follow.

[11] The interview went ahead on 16 February. By then Ms Tafa-Petero had written a letter saying she had put the offending aerosols into the package without Ms Barrett's knowledge. Her letter was produced at the 16 February meeting. Otherwise the meeting was largely concerned with detailed questioning of Ms Barrett about the packing of the consignment, other aspects of the contents of the consignment, and the completion of the IFDAC form.

[12] There was a further meeting on 28 February. There was more detailed questioning, covering among other things:

- (i) which parts of the IFDAC form Ms Barrett completed herself and which parts were completed by the staff member who accepted the consignment, Sue Nuttall;
- (ii) what, if any, instructions Ms Barrett gave to Ms Tafa-Petero about the package; and
- (iii) Ms Barrett's knowledge of the remainder of the contents of the package, with particular reference to the ownership of the bicycle (since the concession was available only for

gifts and personal property) and to the presence of foodstuffs (with reference to the description 'personal effects').

[13] Further to any instructions Ms Barrett gave to Ms Tafa-Petero, Ms Barrett was asked whether, after she had finished her own packing, she had told her cousin nothing more was to be added. The meeting notes indicate her response was that she did not recall saying so, only that she told Ms Tafa-Petero 'that's it' when she finished packing. They also record Ms Barrett as saying she had the impression her family understood they were not to add anything to the package. Both Ms Barrett and Ms Tafa-Petero made a point in their evidence of saying Ms Barrett had warned Ms Tafa-Petero that dangerous goods could not be included in the package. When she was asked about whether she said so to Mr Sullivan, Ms Barrett said she did but Mr Sullivan may not have heard her. I consider that unlikely, and find the account recorded in the meeting notes is more likely to be an accurate record of her response.

[14] From the information he had gathered, Mr Sullivan reached a number of conclusions adverse to Ms Barrett regarding her preparation and presentation of the consignment, and the completion of the IFDAC form. However he also said in evidence that the primary concern was with the serious safety risks arising from shipping undeclared dangerous goods, with the consequences of a culture of non-compliance being catastrophic. He said further that:

"The carriage of dangerous goods is a part of the daily work and cargo operations and cargo management would not be meeting one of its fundamental responsibilities if it were to accept anything but a zero tolerance for non-compliance with dangerous goods requirements."

[15] Ms Barrett's presenting for carriage a consignment containing undeclared dangerous goods was, in Mr Sullivan's view, a failure to comply with dangerous goods and security requirements. He believed Ms Barrett had not taken her responsibilities sufficiently seriously, pointing out that even at the investigation meeting she had sought to characterise the matter as minor. He considered that she had not taken all reasonable steps both to secure the cargo from tampering and ensure the declaration on the IFDAC form was correct. She had not told her relatives that they were not to add any items to the package, or taken steps to ensure they understood they were not to do so. Mr Sullivan was also concerned that Ms Barrett had attempted to shift responsibility for the matter to her cousin and to Ms Nuttall – as indeed she had when giving her explanations.

[16] Because of the seriousness of the safety risk, Mr Sullivan did not consider it appropriate to impose any disciplinary sanction other than dismissal. He viewed the matter as serious enough to warrant dismissal without notice, but because of Ms Barrett's long service he decided she was to be dismissed with four weeks' payment in lieu of notice.

[17] A further meeting with Ms Barrett went ahead on 31 March 2005. Mr Sullivan had prepared a detailed report on his findings, which he read out. He concluded by saying Ms Barrett was dismissed for: failure to comply with dangerous goods requirements; failure to comply with the requirements of the staff cargo concession; and signing three declarations that were incorrect or inaccurate.

The justification for the dismissal

[18] Ms Barrett says her dismissal was unjustified because:

- (a) dismissing a long-serving employee because of an inadvertent error was not justified;
- (b) the safety risk was minimal, given the presence of backup procedures such as x-raying;

- (c) Ms Barrett did not knowingly sign a false IFDAC;
- (d) the consignment qualified for the staff cargo concession; and
- (e) another employee who accidentally included dangerous goods in a staff cargo consignment was not dismissed, amounting to unfair disparity of treatment.

[19] Reference was also made to the final written warning which is the subject of Ms Barrett's disadvantage grievance. I do not accept the submission that the dismissal was unjustified because it relied on the existence of the warning. Mr Sullivan noted the existence of the warning in the course of a disciplinary process that was as thorough as any I have seen. I do not accept the reference indicates he relied on the warning in reaching the decision to dismiss, and accept his evidence that he did not.

1. Inadvertent error

[20] I do not accept that this is a simple matter of the dismissal of a long-serving employee for an inadvertent error. In the knowledge of the importance and significance of the procedures relating to the carriage of dangerous goods, Ms Barrett was very careless in her preparation of the gift box for her family. She left it at her cousin's home, where it could easily be accessed without her knowledge, for several days. She failed to warn her cousin not to put anything more into the package, and did not warn her cousin against placing any dangerous goods in the package.

2. Safety risk minimal

[21] The existence of back-up procedures such as routine x-raying does not excuse the failure to follow an acceptable procedure in the first place.

3. False IFDAC form not signed knowingly

[22] Ms Barrett was not dismissed for knowingly completing a false form. The real problem was with the lack of care leading to the completion of a form containing incorrect or inaccurate declarations. That was the basis for the dismissal.

4. Consignment qualified for the staff concession

[23] The company's disciplinary investigation extended to the ownership of the bicycle and whether certain foodstuffs included in the consignment could properly be called 'personal effects'. While Mr Sullivan was not satisfied with the answers, those were not primary reasons for the dismissal. Accordingly, the question of whether the consignment qualified for a concession in those respects is not determinative of the justification for the dismissal.

5. Disparity of treatment

[24] Consistently with his 'zero tolerance' approach, in June 2005 Mr Sullivan dismissed another employee in the cargo department for attempting to ship cargo containing undeclared dangerous goods. Again, the items had been placed there by a family member and without the employee's knowledge. The Authority determined the associated personal grievance in **Fuiava v Air New Zealand Limited** (AA 422/05, J Wilson, 20 October 2005).

[25] The disparity on which Ms Barrett relies concerns an employee working in an Air New Zealand call centre which takes passenger reservations by telephone. In March 2005 family members had placed aerosols among items being shipped on behalf of family members, without the employee's knowledge. The consignment also included paint the family believed to be water-

based, but which was acrylic (hence flammable and dangerous). The employee had begun to supervise the packing of the consignment, but did not stay for its completion because she was recuperating from major surgery and needed to rest. Inevitably, the IFDAC form she completed did not disclose the presence of the aerosols and wrongly described the paint. The employee received a written warning in April 2005.

[26] According to an affidavit from the human resources manager who assisted in the disciplinary process, relevant considerations included the employee's exemplary work history, the high regard in which she was held, the seriousness with which she took the matter and her remorse over it. The warning letter expressly took into account the genuineness of the error and the employee's effort to pack her own cargo. At the same time it considered the reasons given for the inaccurate documentation to be not good enough, and referred to the employee's awareness of cargo regulations and the need for accurate security declarations.

[27] There is a prima facie case of disparity of treatment, and the onus is on Air New Zealand to explain the disparity. Its explanation was in effect that the call centre employee was not being held to as high a standard as the cargo employees because detailed appreciation of and adherence to shipping requirements was not as fundamental to her position as it was to theirs.

[28] Both parties relied on the decision of the Court of Appeal in **Samu v Air New Zealand Limited** [1995] 1 ERNZ 636. The Court said:

"... if there is an adequate explanation for the disparity it becomes irrelevant. Moreover, even without an explanation disparity will not necessarily render a dismissal unjustifiable. All the circumstances must be considered. There is certainly no requirement that an employer is forever after bound by the mistaken or overgenerous treatment of a particular employee on a particular occasion." (p 639)

[29] In principle a particular class of employees could be held to a higher standard than others when it comes to meeting the same set of obligations, although if that is to be the case then the basis for the difference should be justifiable and clearly understood. Here, as cargo operations manager, Mr Sullivan has held cargo staff to a higher standard than the call centre manager required of her staff member regarding their use of the staff cargo concession. I have a reservation about that in that the safety risk is the same regardless of whether the employee concerned is a member of the cargo staff, and the safety risk was said to be the primary concern. On the other hand I accept that a detailed appreciation of and adherence to shipping requirements is fundamental to cargo staff members' positions, but not necessarily to call centre staff members' positions.

[30] In addition the call centre employee was an exemplary employee who acknowledged her error and was remorseful. Here Ms Barrett had a patchy employment record, and throughout the employer's disciplinary process - as well as the Authority's investigation process - she continued to maintain that her error was minor. In doing so she sought constantly to minimise the safety risk. Her taking that approach reinforced Air New Zealand's concern that it could not have the necessary trust and confidence in her. For these reasons I do not believe any possible disparity is sufficient to render her dismissal unjustified.

[31] Overall, the decision to dismiss was open to a fair and reasonable employer in all of the circumstances. Accordingly I find Ms Barrett's dismissal was justified.

The final written warning

[32] By letter dated 6 May 2004 Ms Barrett was issued with a final written warning for her 'unacceptable behaviour towards a younger colleague'. The colleague was Rhiannon Hedley.

[33] Ms Hedley and Ms Barrett first worked together in 2001. It seems they did not get on well, but in 2002 Ms Barrett was moved to another area for unrelated reasons. In 2003 the two began working together again, and the old irritants soon surfaced. They included mutual complaints about one not acknowledging the other by saying 'good morning' for example, and concerns on Ms Hedley's part that Ms Barrett was too quick to complain to the management about simple and easily corrected errors of Ms Hedley's.

[34] Later in 2003 Ms Hedley sought a transfer, but was told she would have to wait. Then on 25 December 2003 Ms Barrett completed an OSH incident report about the loudness of the music Ms Hedley played on her radio. Ms Hedley's radio was an ongoing irritant to Ms Barrett. For her part, Ms Hedley was becoming distressed by her observation that Ms Barrett was constantly complaining about her to the management – usually about minor matters which, with the exception of the noise from her radio, were not taken further.

[35] A meeting between Ms Hedley and Ms Barrett was convened in an attempt to sort out their differences, but the outcome was that Ms Hedley told Ms Barrett she did not like her and did not wish to work with her. The evidence about the timing of the meeting was vague, but I understood it occurred in early January 2004.

[36] By some time in January 2004 Ms Hedley had become upset about Ms Barrett's treatment of her to the point that she took time off work. Ms Hedley's parents were very concerned about their daughter's state of mind. On 27 January 2004 Mrs Hedley accompanied her daughter to complain to Mr Sullivan about Ms Barrett's behaviour. The complaint did not concern any single, major incident, rather the cumulative effect of relatively minor matters of the kind to which I have referred.

[37] Mr Sullivan decided to investigate the matter. He advised Ms Barrett in a letter of the same date that he had received a complaint from Ms Hedley that Ms Barrett's behaviour towards her over a considerable period of time was unacceptable and was causing her stress. Mr Sullivan would be investigating Ms Hedley's complaint under the harassment provisions in the company's disciplinary procedures.

[38] Ms Barrett's immediate response was to write a letter of complaint about Ms Hedley, dated 3 February 2004. She said she was experiencing stress and unhappiness because of Ms Hedley's behaviour towards her, referring to the differences of opinion over the volume of the music played on Ms Hedley's radio as well as saying Ms Hedley was aggressive and interfered in Ms Barrett's work. She ended by saying she had been harassed and intimidated by Ms Hedley and wanted Ms Hedley's behaviour investigated.

[39] Ms Barrett further alleged in evidence that Ms Hedley's complaint was 'payback' for Ms Barrett's complaint about Ms Hedley's radio. The allegation was unfounded, and I do not accept it.

[40] Mr Sullivan met Ms Barrett on 5 February 2004 to discuss Ms Hedley's complaint. By this time Ms Hedley had been referred to an occupational health manager, who had advised Mr Sullivan the problem appeared to be one of workplace bullying by Ms Barrett, rather than harassment. To the extent there was no evidence the behaviour complained of was within the definition of harassment in the company's written harassment policy, this was appropriate. For that reason Mr Sullivan advised Ms Barrett he had decided to treat the problem as one of 'behaviour' rather than one of 'harassment'.

[41] The discussion went on to cover issues such as Ms Hedley's radio, whether Ms Hedley said good morning to Ms Barrett, and some disagreements over work practices. The latter concerned Ms

Hedley's willingness to take 'guidance' from Ms Barrett on certain workplace procedures. According to a note of the meeting, Ms Barrett believed Ms Hedley was:

"... defensive where she believes Caroline picks up errors but Caroline scared to say anything and has only gasped in surprise at major issues involuntarily.

Has gone to T over missing health certs expecting urgent transfer to aircraft but was told didn't matter and would just have to wait until the next flight.

...

Felt T was defending Rhiannon against Caroline where Carolines concern was just to ensure documentation was correct. No issues with T otherwise.

...

Caroline Concerned as how she could continue to work with Rhiannon under the current stressful atmosphere. Rhiannon refuses to speak or deal with Caroline. Can not understand why when Caroline has made such an effort and is only concerned with work standards and does not criticise Rhiannon."

[42] The same day Mr Sullivan interviewed two other employees about Ms Hedley's and Ms Barrett's behaviour. Both were critical of aspects of Ms Hedley's behaviour - including her manner, her personal appearance and her willingness to accept assistance - although neither was critical of Ms Barrett.

[43] Mr Sullivan met with Ms Hedley again on 9 February. The meeting note indicates he sought her responses to the concerns raised about her, with particular reference to the issues with her radio and her willingness to accept assistance. Indeed he subsequently accepted Ms Hedley had her faults, but believed they were of a general nature and not directed at any person or group. He also concluded that Ms Hedley's behaviour was not markedly different from that of many young people in the workplace, and what accentuated her negatives was her perception of Ms Barrett's unfair treatment of her.

[44] Further to the 9 February meeting, Ms Hedley tabled a document setting out her own concerns in more detail. The document covered incidents going back to 2001, and ended by saying Ms Hedley refused to work with Ms Barrett any more. For her part, during the 5 February meeting Ms Barrett had expressed reservations about continuing to work with Ms Hedley.

[45] Towards the end of February Mr Sullivan interviewed two more employees about Ms Barrett and Ms Hedley. These two were critical of aspects of Ms Barrett's behaviour, and were essentially supportive of Ms Hedley. A theme of their concerns was that Ms Barrett was critical of new or younger people and hard on people who made mistakes.

[46] In an internal document of 5 March 2004 Mr Sullivan set out his formal recommendation on the complaint about Ms Barrett. He took into account the information he had obtained as part of his investigation, as well as his knowledge of the work history of both women. The recommendation was that Ms Barrett be dismissed. The recommendation relied in part on a final written warning given to Ms Barrett in December 1999 in respect of 'the quality of her relationships with others'. Because of the age of the warning, Mr Sullivan was advised that dismissal may not be appropriate.

[47] No further meeting with Ms Barrett was sought until 28 April, and even then the meeting did not go ahead until 5 May 2004.

[48] At the 5 May meeting Mr Sullivan advised he was considering the issue of a formal final written warning. In response, Ms Barrett's representatives raised the delay in reaching that view, challenged the relevance of the December 1999 warning, and said more staff supportive of Ms Barrett should have been interviewed. Mr Sullivan replied that he was obliged to consider Ms Barrett's work history, and he had considered but not acted on the December 1999 warning. Mr Sullivan also explained that he had obtained sufficient information from the employees he

interviewed, and did not wish to risk creating two ‘camps’ in the workplace by interviewing any more. He did not comment on the delay in arranging the meeting and could not explain it at the investigation meeting.

Justification for the final written warning

[49] The warning was said to be unjustified because:

- (a) Ms Barrett was not fully informed of the allegations against her, contrary to the company’s disciplinary policy;
- (b) Ms Barrett was not given the results of Mr Sullivan’s interviews of other employees, nor given an opportunity to comment on them, contrary to the company’s disciplinary policy;
- (c) Mr Sullivan did not interview all of the people Ms Barrett asked him to, while interviewing some employees who had no real knowledge of the problem and one employee to whom neither Ms Hedley nor Ms Barrett had referred;
- (d) Mr Sullivan was biased against Ms Barrett;
- (e) Mr Sullivan wrongly took into account the December 1999 warning;
- (f) There was an inordinate delay between Mr Sullivan’s recommendation of 5 March and the meeting with Ms Barrett of 6 May; and
- (g) The behaviour complained of was trivial.

1. Breaches of Air New Zealand’s disciplinary policy

[50] Air New Zealand’s disciplinary policy included a ‘Disciplinary Procedure for Misconduct’. It contained a set of guidelines for the conduct of an initial interview, including the presentation to the employee of all relevant information collected by the manager concerned and providing the employee with a reasonable opportunity to comment on the information. If the initial interview was adjourned to allow further investigation, the result of that investigation was to be advised to the employee for input and explanation.

[51] Ms Barrett said she was not provided with a copy of the document Ms Hedley tabled on 9 February until after the warning had been issued. I accept her evidence on that. There was no record of the document being provided to Ms Barrett by post under a covering letter, for example, and the meeting of 5 May was held to advise Ms Barrett of the outcome of the investigation rather than to continue the investigation. While the existence of the document was referred to on 5 May, the meeting note makes no reference to a copy being provided.

[52] Similarly, there is no indication that the content of the interviews of late February 2004 was put to Ms Barrett. The contents were instead referred to during the 5 May meeting in the context of the information Mr Sullivan had considered in reaching his conclusions.

[53] Further to the content of the 9 February document, Mr Sullivan discussed with Ms Barrett the issue about the radio and some of the problems with workplace practices anyway. However he also took into account Ms Hedley’s statements about feeling intimidated by what she felt was an unfriendly stare, or being watched, and feeling uneasy by the behaviour towards her of Ms Barrett and a colleague when only the three of them were present. These statements were not put to Ms Barrett.

[54] A further matter Mr Sullivan took into account was the length of time for which, according to Ms Hedley’s document, there had been a problem with Ms Barrett. However the record does not

indicate there was a full investigation of that aspect, and nor was it put to Ms Barrett in any more than broad and superficial terms.

[55] Although I accept that the comments of the people interviewed in late February are capable of raising serious concerns, particularly in respect of Ms Barrett's treatment of new or younger colleagues and her allegedly divisive behaviour, they were weighed against Ms Barrett without her having had the opportunity to answer them. The same is true of the extent of Ms Hedley's own feelings of intimidation. Even in the absence of a written disciplinary policy such failures would be significant. The material referred to should have been put to Ms Barrett before the decision was made about what, if any, disciplinary action would be taken.

2. The identity of the interviewees

[56] I do not agree that Mr Sullivan was obliged to interview the people Ms Barrett suggested, rather any failure to do so ran the risk of a subsequent finding that his investigation was inadequate or incomplete.

[57] Here two people suggested by Ms Barrett, but apparently not interviewed, were the duty manager and a supervisor who had been involved in attempts to resolve the issues between Ms Barrett and Ms Hedley in 2003 and early 2004. They should have been interviewed. During the Authority's investigation meeting Mr Sullivan said there were interviews other than those referred to in his reports and in this determination. I asked him to provide notes from all interviews other than those already in evidence, but I did not receive any. Nor was I provided with any further details of the content of any additional interviews.

[58] I was told in submissions on behalf of Air New Zealand that not only did Mr Sullivan's investigation include 'discussions' with the duty manager, but Mr Sullivan considered a report the manager prepared about an incident of 11 January 2004 between Ms Hedley and Ms Barrett. This is unsatisfactory and does not help the company's case for justification. The report was not produced in evidence, the duty manager did not give evidence, and there was no reference to the 'discussions' or the report in the material made available to Ms Barrett during the company's investigation.

3. Bias

[59] The flaws in the disciplinary procedure, together with the references to Ms Barrett's work history, could understandably give the Ms Barrett impression that Mr Sullivan was disposed against her. However he did not accept Ms Hedley's views unquestioningly and made some criticism of her behaviour. He made enquiries about her complaints, and questioned her about Ms Barrett's complaints. Ultimately, after considering the information at his disposal, he found Ms Hedley's complaint to be persuasive. I am not persuaded he was biased.

4. The December 1999 warning

[60] Although Mr Sullivan had sought to rely on the December 1999 warning in support of his original recommendation that Ms Barrett be dismissed, he was advised, correctly, that it was stale. That does not mean he was obliged to disregard it entirely. He was entitled to note that Ms Barrett did not have a clean work record. As well as the December 1999 warning, there was an earlier warning in 1998 and a record of complaints by customers. The latter did not lead to disciplinary action, but did lead to Ms Barrett being moved from direct customer contact positions. In other words, there was a history of shortcomings in Ms Barrett's inter-personal skills.

5. The delay between March and May

[61] Some of the delay was explained by the difficulties in arranging a meeting, taking into account various rosters. However the delay was not fully explained. It is unsatisfactory, particularly given the serious nature of some of the allegations about Ms Barrett's behaviour towards Ms Hedley as well as the importance of addressing those promptly if they had substance.

6. The behaviour complained of was trivial

[62] I do not accept this submission. The complaints about Ms Barrett's overall behaviour towards Ms Hedley were serious, although some individual incidents were relatively minor when viewed on their own.

7. Conclusion

[63] The failure to put to Ms Barrett the information to which I have referred amounted to a breach of the company's disciplinary policy as well as of the general requirements of procedural fairness. The information not put to Ms Barrett for comment was significant. For that reason I conclude that she was disadvantaged in her employment by an unjustifiable act of the employer's. She has a personal grievance.

Remedies

[64] Ms Barrett said she was so upset after the May meeting ended that she went home. She took stress leave for a period of some 8 weeks.

[65] Ms Barrett was diagnosed with shingles on 24 October 2004. There was no evidence linking the diagnosis with the receipt of the warning. I do not infer any such link from evidence that was limited to a simple statement in the associated medical certificate that: "The main trigger for shingles is stress and being rundown", and a further reference to 'stress at work'. Accordingly I do not give weight to that information in the context of the remedies Ms Barrett seeks.

[66] At the same time there was a problem between Ms Barrett and Ms Hedley, and some of Ms Barrett's admissions lead me to conclude she was at least partly at fault. Aside from the problem with the radio, incidents supporting Ms Hedley's allegations of undue readiness on Ms Barrett's part to complain about some of Ms Hedley's work practices were put to her. Ms Barrett's answers suggested that aspect of Ms Hedley's concerns was well-founded, and I conclude such behaviour was reasonably capable of causing upset to Ms Hedley.

[67] There was no evidence of any loss of remuneration or benefits, so the available remedies are limited to compensation for injury to Ms Barrett's feelings. Bearing in mind what seems to have been a significant effect on Ms Barrett on the one hand, and the effect of her own behaviour on the other, Air New Zealand is ordered to pay to Ms Barrett the sum of \$3,000 as compensation for the injury to her feelings.

Summary

[68] My conclusions are summarised as follows:

- (a) Ms Barrett's dismissal was justified and she does not have a personal grievance in that respect;

- (b) The issue of a final written warning was not justified because of the extent to which relevant information was not put to Ms Barrett for comment before the decision was made, and she has a personal grievance in that respect;
- (c) Taking into account the extent to which Ms Barrett contributed to the circumstances of her grievance, Air New Zealand is ordered to pay her the sum of \$3,000 as compensation for the injury to her feelings resulting from the grievance.

Costs

[69] Costs are reserved. The parties are invited to reach agreement on the matter. If they seek a determination of the Authority they should file and serve memoranda setting out their positions.

R A Monaghan
Member, Employment Relations Authority