

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA41/10
5288426

BETWEEN JOHN HENRY BROMLEY
 Applicant

AND GEOTECH LIMITED
 Respondent

Member of Authority: Philip Cheyne

Representatives: John Bromley, the Applicant in person
 Anthony Black, Advocate for the Respondent

Investigation Meeting: 26 February 2010 at Greymouth

Determination: 1 March 2010

DETERMINATION OF THE AUTHORITY

[1] John Bromley worked for Geotech Limited from about September 2008 until he was dismissed in July 2009 for serious misconduct. Mr Bromley says that he was unjustifiably dismissed and he wants to be reinstated or compensated. Geotech says that it justifiably dismissed Mr Bromley after an investigation into an incident between him and another person.

[2] To resolve this problem I will outline the incident before explaining what was done by Geotech to investigate it. I will then apply the law relating to justification for a dismissal.

The incident

[3] Geotech has a contract with Solid Energy New Zealand for mining services and employs staff such as Mr Bromley to fulfil its contract. Mr Bromley worked as part of a secondary support team at Spring Creek underground coal mine. The

principal work of the secondary support crew was megabolting, a process to help support the mine roof. Phil Cate was the crew supervisor.

[4] Early in his employment Mr Bromley had an altercation with Allan Spriggs who is engaged by Geotech as a contractor at Spring Creek but not as part of Mr Cate's crew. Mr Bromley did not make any formal complaint about this so it was never dealt with by Geotech as a disciplinary matter.

[5] For various reasons there was some tension within Mr Cate's crew. Mr Bromley and possibly others had some antipathy towards Jimmy Kennedy, a crew member who is an experienced miner. According to Mr Bromley the feelings were mutual. In addition, there developed some concern about their security of employment since they thought Geotech's contract was up for renewal.

[6] On 16 June 2009 Mr Kennedy was showing another contractor's employees how to do megabolting. Mr Black's evidence, which I accept, is that Mr Kennedy did nothing improper by doing so, as far as Geotech was concerned. Mr Bromley and others in his crew took exception to this since they thought it might give the other contractor an advantage over Geotech and place their continued employment at risk. Mr Cate went and got Jimmy to come back to where the rest of the crew were in order to *have a chat* and *clear the air*. On Mr Cate's account, there was a lot of yelling and insults being traded including by Mr Kennedy. Mr Spriggs happened along. He intervened telling Mr Bromley to stop abusing Mr Kennedy. There was some abuse between Mr Bromley and Mr Spriggs and a scuffle developed. It ended with others pulling Mr Bromley off Mr Spriggs. Mr Spriggs departed and reported the incident to Solid Energy' under-manager, which resulted in Mr Bromley being stood-down from the site.

[7] I have not dwelt on the differences in accounts of the incident but I will explain more fully Mr Bromley's account. He says that Mr Spriggs turned up *cracking jokes* and interrupting their meeting. Mr Bromley asked him to *please fuck off* to which Mr Spriggs replied *Or what?* Mr Kennedy then started abusing Mr Bromley who returned the abuse. Mr Spriggs intervened saying *Leave him alone Bromley you mongrel*. There is then a divergence between Mr Bromley's written account and his oral evidence. He told me that Mr Spriggs grabbed him by the shoulder and turned him around. However, in his written account Mr Bromley was the first of the pair to touch the other by pushing Mr Spriggs in the shoulder. Mr

Spriggs then said that he was going to get Mr Bromley dismissed and Mr Bromley responded by grabbing Mr Spriggs by the coat saying *Do you want me to make it worthwhile then?* At that point others then grabbed Mr Bromley and the incident ended.

[8] I have been given a copy of Mr Spriggs' written complaint. His account differs from Mr Bromley's in that he did not abuse Mr Bromley until after being shoved on the shoulder, grabbed by his clothing and shoved and then shoved again. He also says that he was grabbed again, swung around and forced to the floor against the rib with Mr Bromley standing over him and holding him down while continuing with the abuse before the other men pulled Mr Bromley off him.

[9] Mr Spriggs was shaken and his clothing torn but not otherwise harmed according to Mr Black whose evidence on the point I accept.

The investigation

[10] Anthony Black is Geotech's principal. He was working up at Stockton at the time but quickly heard of the incident. Mr Black stood-down Mr Bromley on pay while the matter was investigated. Sherida Lee is an administrator for Geotech. Mr Black tasked her with talking to those involved. Mrs Lee met with three of the crew and also received written statements. The statements (including Mr Spriggs') were provided to Mr Bromley and Mrs Lee also met with him to hear his side of the incident. Mrs Lee reported these events to Mr Black and a meeting was arranged for Mr Black to hear directly from Mr Bromley.

[11] After listening to Mr Bromley, Mr Black decided that he should dismiss him for serious misconduct. That decision was conveyed by email and letter on 6 July 2009. The letter says that the incident is classed as an assault even though Mr Spriggs was not going to make a complaint to police; that assault is serious misconduct and reflects badly on Mr Bromley, the company's reputation, staff morale and safety; that Mr Bromley's willingness to take a suitable anger management course would not resolve the interpersonal issues; and that transfer to another crew was not possible.

Justification

[12] Whether Geotech's decision to dismiss Mr Bromley was justifiable must be determined objectively by considering whether Geotech's actions and how it acted were what a fair and reasonable employer would have done in all the circumstances at the time.

[13] Mr Bromley's only complaint about the process is that he believes that Mr Black should have personally interviewed those who witnessed the incident. Most of Mr Bromley's grievance complaint relates to the merits of the dismissal decision.

[14] Mr Black arranged for a disinterested person to gather together the various accounts partly to avoid any suggestion that he might be predisposed not to accept Mr Bromley's version of events because of his long term association with Mr Kennedy in particular; and partly to overcome crew members' reticence about talking openly with their employer.

[15] Once that material had been gathered and shared with Mr Bromley, Mr Black met with him to give him an opportunity to put his side of the story and mitigate his conduct. Having afforded Mr Bromley that opportunity and after considering other options Mr Black decided to dismiss Mr Bromley and notified him accordingly.

[16] Throughout this process Mr Bromley knew that he was facing an allegation of serious misconduct by reason of his assault on Mr Spriggs that might result in the termination of his employment.

[17] I do not accept that there was any unfairness caused by Mr Black getting Mrs Lee to do the initial information gathering. Despite Mrs Lee's inexperience in these matters she has done a reasonable job. The various accounts relied on by Mr Black were in writing so he knew exactly what others claimed to have occurred. Mr Bromley knew what these accounts said and had every opportunity to put his side of the story drawing attention to any support in these other accounts.

[18] A substantial part of Mr Bromley's complaint is that he was provoked or goaded into acting as he did towards Mr Spriggs by Mr Spriggs' behaviour towards him earlier in the employment and by the manner of Mr Spriggs' intervention in the exchange that day between Mr Bromley and Mr Kennedy. Mr Black formed the view that it was Mr Bromley who started and carried on the physical assault. Any

employer would have reached the same conclusion. That is what the other crew members said so far as they were prepared to describe that part of the incident, it is what Mr Bromley said at least during the disciplinary process and in writing to the Authority and it is what Mr Spriggs said.

[19] Mr Black rejected the notion that Mr Bromley was justified in his use of physical violence because of the verbal abuse that day from Mr Spriggs and the history of ill feeling between the two men. Rather, Mr Black decided that Mr Bromley's sudden violent behaviour created an unacceptable future risk to himself and others, especially given the working environment. These are conclusions that any reasonable employer would have reached.

[20] Another part of Mr Bromley's complaint is that Mr Cates (and therefore Geotech) had ignored the developing tension between Mr Bromley and Mr Spriggs and Mr Bromley and Mr Kennedy. For example, Mr Bromley says that, early in the employment, Mr Spriggs threw a spanner at him and accused him in abusive terms of stealing it. Assuming that to be true, if Mr Bromley wanted Geotech to do something about it he could have put his complaint in writing but Mr Bromley elected not to. The same can be said with respect to the complaints about Mr Kennedy. The essence of Mr Bromley's argument is that because Geotech did nothing about the source of the tensions, he was placed in the situation where he became angry and assaulted Mr Spriggs. Put that way, the fallacy is obvious. The problem was Mr Bromley's inability to control his anger not Geotech's failure to ease tensions. The point made by Mr Bromley (assuming it to be true) adds weight to rather than detracts from Geotech's conclusion that Mr Bromley could not be trusted in the future to keep his anger in check.

[21] The employment agreement provides for summarily termination of employment for serious misconduct. Assault is not mentioned in the agreement as an example of serious misconduct but it does refer to harassment of work colleagues and failure to adhere to safe working practices. I am referred to Solid Energy's disciplinary policy which does expressly mention assault as an example of serious misconduct. I do not doubt that Geotech is contractually required to ensure its employees comply with Solid Energy's requirements but there is no evidence that this provision was ever brought to Mr Bromley's attention. That does not undermine Geotech's ability to justify its decision to dismiss Mr Bromley. It has long been the

case that an assault at work can justify summary dismissal of the aggressor. Mr Bromley was judged to be the physical aggressor who assaulted Mr Spriggs. I note that Mr Bromley has never suggested that he was acting in self defence. Any employer would have dismissed Mr Bromley in such circumstances.

Conclusions

[22] For the reasons just expressed I accept that Geotech's actions and how it acted were what a fair and reasonable employer would have done in all the circumstances at the time. Mr Bromley was justifiably dismissed and he does not have a sustainable personal grievance.

[23] Costs are reserved. Neither party was legally represented but if Geotech has incurred any legal expenses in defending these proceedings and wishes to claim costs it should lodge a memorandum with details of any costs within 28 days. Mr Bromley may then lodge a memorandum in reply within a further 14 days.

Philip Cheyne
Member of the Employment Relations Authority