

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Jeremy Brooker (Applicant)
AND ANZ National Bank Limited (Respondent)
REPRESENTATIVES Patricia Jones, Counsel for Applicant
Andre Lubbe, Counsel for Respondent
MEMBER OF AUTHORITY Ken Anderson
INVESTIGATION MEETING 9 February 2006
SUBMISSIONS RECEIVED 13 March 2006 and 28 March 2006
DATE OF DETERMINATION 18 April 2006

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

- [1] Mr Brooker claims that he was unjustifiably dismissed on 4 March 2005. He asks the Authority to find that he has a personal grievance and award him the remedies of loss of wages and compensation.

Background Facts and Evidence

- [2] Mr Brooker was employed by ANZ as a Mobile Mortgage Manager commencing employment on 27 September 2004. The position was based in Rotorua. As Mr Brooker lived in Mt Maunganui, he travelled from his home to Rotorua each day in an ANZ car. From the ANZ Rotorua base, Mr Brooker drove to wherever a customer that wanted to see him would be.
- [3] On 25 November 2003, Mr Brooker received a traffic infringement notice for exceeding 100 kilometres an hour. Fourteen days later, on 9 December 2003, Mr Brooker received a further infringement notice for the same offence. Then, on 1 March 2004, he received a third infringement notice, for exceeding 70 kilometres an hour. All of the infringements occurred while driving an ANZ car.
- [4] Prior to commencing his employment with ANZ, Mr Brooker had incurred two speeding infringement notices received on 27 October 2003 and 4 March 2004.
- [5] All of the above infringements had the outcome that Mr Brooker incurred 20 demerit points each time, so that when Mr Brooker infringed on 1 March 2004, that brought his total demerit points to a total of 100, hence, Mr Brooker would automatically lose his driver's licence.

- [6] Upon the realisation that he was about to lose his driver's licence, Mr Brooker conveyed this to his Branch Manager, Mr Tony Wolsey who subsequently informed the ANZ Sales Manager Mr Talauta Mimilo.
- [7] A meeting took place with Mr Brooker at the Tauranga Business Centre. In addition to Mr Mimilo, the Local Market Manager, Mr David Jones, and Ms Vicki McCardle, Human Resources, were present. Mr Brooker had a support person present. The pending loss of Mr Brooker's driver licence and his ability to perform his job was discussed. Mr Brooker indicated that he had spoken to his lawyer about obtaining an exemption for work. Mr Brooker also conveyed that he had some experience with this as he had lost his licence in 1999.
- [8] It was conveyed to Mr Brooker that apart from the impending loss of his driver licence, ANZ had a concern about a breach of the ANZ Code of Conduct and clause 6.1 of his employment agreement. The latter states, in part:

“6.1 Equipment

You will be provided with a Laptop PC and a Cellphone. You will also be provided with an ANZ Branded Tool of Trade Vehicle. The policy for Tool of Trade Vehicles is further detailed in the attached ANZ Policy *ANZ Provided Vehicles – Conditions of Use*. The vehicle, due to its branding represents ANZ Bank at all times both within and out of work hours it should therefore be driven in a manner befitting this

- [9] Amongst other things, the *ANZ Provided Vehicles – Conditions of Use* policy provides that employees driving ANZ vehicles; [“must have a current New Zealand Drivers Licence.” It is also provided that: “Any parking and speeding fines are to be paid by the employee.”
- [10] Clause 5 of the *NZ ANZ's Code of Conduct* states:

“Abiding by the law In all my actions I shall be law-abiding

- I shall not take any action, nor allow any omission, which will breach any law or regulation of the country in which I work.
- I shall report knowledge of any breaches to my supervisor or line manager or to my business unit compliance manager.”

- [11] Following a further meeting on 4 March 2005, Mr Brooker was notified of his dismissal. The grounds for the dismissal and the matters discussed, are best summarised in the letter of 4 March 2004 to Mr Brooker from Mr Mimilo:

“SERIOUS MISCONDUCT RESULTING IN DISMISSAL

Today a meeting took place to discuss concerns relating to a traffic offence, which is likely to result in the loss of your drivers licence. This took place on Level 1, ANZ Business Centre, 53 Spring Street, Tauranga at 9:00am. In attendance were: myself, Vicki McCardle (People Capital Consultant), David Jones (BOP Local Market Manager), your representative Karen and yourself.

You had been advised of the meeting and its purpose in advance and offered the opportunity to bring a representative, which you accepted. You were also notified that the outcome could include disciplinary action up to and including dismissal.

During this meeting you disclosed that you have received a total of three traffic offences (due to speed) during the 5-month period that you have been employed by ANZ. All three of these offences occurred while driving an ANZ branded Tool of Trade vehicle. You also advised us that the most recent offence, due to the accumulation of demerit points, will result in the confiscation of your driver's

licence. While discussions took place surrounding your inability to perform your role without a current driver's licence and the possibility of you applying for, and being granted, a work licence, you were also advised of your potential breach of the ANZ Code of Conduct, which could result in disciplinary action, including termination of employment.

After time was taken to consider your views and explanations, we met with you for a second time, where we advised you that we felt you had clearly breached the ANZ Code of Conduct by not abiding by the law while driving an ANZ branded vehicle and had put the Bank in disrepute. You were also advised that ANZ, as a corporate citizen, could not support your application for a work licence given that this would be seen to be endorsing the driving behaviour that you have displayed while employed by ANZ, and previously. You were also told that it had appeared that you had no remorse for your actions.

You were advised that given the discussions of our first meeting, dismissal was being considered and you were given the opportunity to convince us to take an alternative course of action. You told us that there was nothing you could say in response. After a short break we reconvened and you were advised that your behaviour had resulted in the decision to terminate your employment, effective immediately.”

[12] Mr Brooker had his driver's licence confiscated on 11 June 2005.

Analysis and Conclusions

[13] Essentially, it is submitted for Mr Brooker that his breach of the Code of Conduct was not of sufficient seriousness to warrant his dismissal.

[14] Having analysed the evidence available, the role of the Authority is to determine on an objective basis, whether the dismissal of Mr Brooker was justified. The Authority is required to consider whether the decision of ANZ to dismiss Mr Brooker was one that that a fair and reasonable employer would have taken in all the circumstances at the time the dismissal occurred.

[15] The evidence is that ANZ were faced with an employee who was in the habit of speeding in an ANZ branded car, and incurring infringement notices on a regular basis – three times during his five months of employment with ANZ, along with two earlier speeding infringements prior to commencing his employment.

[16] The ANZ Code of Conduct is specific in regard to the requirement of employees to abide by the law and while ANZ does not take the position that it has a zero tolerance approach, given that Mr Brooker had breached traffic law three times during such a short period of employment, I have to conclude that the decision of ANZ to dismiss Mr Brooker was one that a fair and reasonable employer would have taken given those circumstances.

[17] Mr Mimilo also says that Mr Brooker did not show any remorse for what had occurred, and while in his defence, Mr Brooker says that he immediately brought the fact of his infringements to the notice of his employer, it was only the last one that he saw fit to mention. He did see fit to report the previous two infringements as required by the Code of Conduct.

[18] While ANZ also believed that Mr Brooker had brought the Bank into disrepute by breaking the law in an ANZ branded car, there is no evidence of that. Nonetheless, there is some merit in the submission of Mr Lubbe that there was a distinct possibility that the public may have seen the ANZ car pulled over by the Police.

Determination

[19] For the reasons given above, I find that the dismissal of Mr Brooker was justified. He does not have a personal grievance and hence the remedies that he seeks are not available to him.

Costs

[20] ANZ has submitted that should the Bank's position be upheld, costs are not sought, therefore costs will lie where they fall,

Ken Anderson
Member
Employment Relations Authority