

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 62/09
5159831

BETWEEN

LANCE GREGORY
COLEMAN
Applicant

AND

RICK ARMSTRONG
MOTORS PEUGEOT LIMITED
Respondent

Member of Authority: Helen Doyle

Representatives: Simon Graham, Counsel for Applicant
Penny Shaw, Advocate for Respondent

Investigation Meeting: 8 May 2009

Determination: 11 May 2009

**DETERMINATION OF THE AUTHORITY ON APPLICATION FOR
INTERIM REINSTATEMENT**

Identity of respondent

[1] Mr Graham and Ms Shaw agreed to an amendment to the name of the respondent from Armstrong Motor Group to Rick Armstrong Motors Peugeot Limited.

Employment relationship problem

[2] The applicant, Lance Coleman, was summarily dismissed from his employment with Rick Armstrong Motors Peugeot Limited (Rick Armstrong) on 19 March 2009.

[3] A statement of problem was lodged with the Authority on 24 April 2009. Mr Coleman seeks interim reinstatement under s.127 of the Employment Relations Act 2000 to his position with Rick Armstrong as a Service Foreman.

[4] I dealt with the application for interim reinstatement on the basis of the affidavits lodged and served by the parties and submissions that I heard during the brief investigation meeting. An undertaking as to damages was provided by Mr Coleman. The parties attended mediation before the investigation meeting but the Authority was advised that mediation was unsuccessful.

[5] I advised Mr Graham and Ms Shaw that I would be able to deal with the substantive matter either at the end of June or early July 2009.

Facts not in dispute

[6] The following facts are not in dispute from my reading of the affidavits and documents. The documents relied on are either annexed to the affidavits or attached to the statement of problem or statement in reply.

[7] Mr Coleman was asked to attend a meeting on 19 March 2009 by way of letter dated 18 March 2009 from the Service Manager of Rick Armstrong, Steve Pook. The letter was to discuss a Warrant of Fitness procedure on a personal vehicle. Mr Coleman was invited in the letter to bring a support person with him to the meeting.

[8] A meeting took place at 9.30am on 19 March 2009. Mr Coleman attended the meeting alone. Mr Pook attended together with the Director and Dealing Principal of Rick Armstrong, Matthew Barr and Human Resources Assistance for Rick Armstrong, Deborah Browne.

[9] The allegation put at the meeting was that Mr Coleman had carried out a Warrant of Fitness inspection on his own vehicle at home. Mr Coleman did not dispute that he had undertaken some of the inspection for a Warrant of Fitness at his home.

[10] After hearing from Mr Coleman at the meeting on 19 March 2009 there was adjournment taken during which a decision was made to terminate Mr Coleman's position with immediate effect on 19 March 2009.

[11] A letter of termination dated 19 March 2009 which was sent to Mr Coleman provided:

Dear Lance

I am writing to confirm the outcome of our meeting on 19 March 2009 which was held for the purpose of obtaining your explanation in respect to your alleged conduct as follows:

- 1. That on Saturday 14 March 2009 you issued yourself with a WOF for your personal vehicle; and*
- 2. That subsequently on Monday 16 March 2009 you retrospectively completed the paperwork associated with the WOF in the Peugeot workshop booklet.*

During the course of our meeting you acknowledged that this alleged conduct had occurred and provided an explanation for your actions.

After giving careful consideration to your explanation we reached the view that your conduct amounted to serious misconduct for the following reasons:

- (a) Your conduct constitutes a failure to comply with Company rules and procedure, a failure in your position as a qualified WOF inspector to carry out a WOF as per the guidelines with the Land Transport/Armstrong Motor Group by issuing yourself a WOF on a personal vehicle without testing the vehicle onsite.*
- (b) Your conduct had the potential to place the company at risk of losing its WOF "site authorisation" and agency.*

The nature of your conduct on this occasion was completely inconsistent with commonly accepted standards of behaviour in the workplace, particularly taking into account the senior nature of the role which you occupy.

In these circumstances I confirm that a decision was reached to terminate your employment with immediate effect on 19 March 2009.

You will be paid up to Thursday 19 March 2009 and any holiday pay due and owing to you.

Yours faithfully

*Matt Barr
Dealer Principal*

[12] I am required to consider whether there is an arguable case or serious issue to be determined on the substantive issue whether or not Mr Coleman's dismissal was justified. Ms Shaw submitted that there is no arguable case of unjustified dismissal because the conduct alleged by Rick Armstrong is admitted and that Mr Coleman acknowledged that he knew his conduct was wrong.

[13] I find that there are serious and arguable issues from the untested affidavit evidence. There is an issue as to whether or not Mr Coleman was advised prior to the meeting on 19 March 2009 that a possible outcome of that meeting could be that his employment would be terminated.

[14] There is an issue about whether the allegations set out in the letter of termination under 1. and 2. were admitted to by Mr Coleman at the meeting on 19 March 2009. Mr Graham in a letter to Mr Barr dated 6 April 2009 sets out that Mr Coleman categorically disputes issuing a Warrant of Fitness for his personal vehicle on Saturday 14 March 2009 and retrospectively completing paperwork associated with the Warrant of Fitness on Monday 16 March 2009.

[15] There is an issue from the untested affidavit evidence as to whether Mr Coleman falsely recorded that he had undertaken the required tests on his vehicle.

[16] In the third affidavit provided to the Authority Mr Coleman deposes to completing a Warrant of Fitness on 16 March 2009 and issuing a Warrant of Fitness for his personal vehicle the same day. A copy of the Warrant of Fitness sticker from the vehicle is annexed to the third affidavit of Mr Coleman and is dated to expire 16 September 2009. The issue as to when the Warrant of Fitness was issued is at this stage on the basis of the untested affidavit evidence is a matter in dispute.

[17] I have no difficulty in this case in finding on the untested affidavit evidence that there is an arguable case and serious issues to be investigated.

[18] Interim reinstatement is a discretionary remedy and I need to make some assessment of the positions of the parties until I can deal with the substantive matter. I need to consider the balance of convenience and in doing so weigh up the relative hardship to Rick Armstrong as a result of the grant of interim relief as if it were later found to be justified in acting as it did, with the relative hardship to Mr Coleman if interim relief is not granted and it is later determined that he has a case that his dismissal was unjustified.

[19] Ms Shaw submits that the balance of convenience favours the respondent. She submits that Mr Coleman is a senior employee and a leader of a team of other employees. In those circumstances she submits that given Mr Coleman's actions Rick Armstrong cannot trust him to work autonomously and that he would need to be closely supervised. Ms Shaw submits that Mr Coleman had shown by his action that

he would ignore requirements as they relate to safety. She further submits that his behaviour places Rick Armstrong at risk because of the standards demanded by others, including Subaru and Peugeot in terms of the issuing of Warrants. Ms Shaw refers to existing difficulties within the team, that there were already some performance issues with respect to Mr Coleman and the fact that Mr Coleman has not provided evidence that he would be disadvantaged if an order reinstating him was not made.

[20] Ms Shaw has expressed concerns on the part of Rick Armstrong that I need to carefully consider and weigh up. Against the concerns I take into account the following. In terms of the lack of affidavit evidence as to any inconvenience that Mr Coleman would suffer if he was not reinstated, there is no dispute from the documentation that Mr Coleman asked for reinstatement back to his position shortly after dismissal. He made it clear that reinstatement was a remedy he would seek through the Authority if it was not provided earlier. His occupation is described in his affidavits as unemployed.

[21] I have also taken the likely dates for the substantive meeting into account. The date provided to the parties is still some weeks away and then account will have to be taken of the time for determining the matter as well. I am not satisfied in this case when those two matters are considered, the time until a substantive meeting and, the very clear early indication that Mr Coleman wanted to be reinstated, that this is a situation that can be retrospectively remedied by an award of damages at a later date.

[22] One of the matters that I have placed weight on is that when Mr Coleman became aware on 16 March 2009 that there was some concern about the Warrant of Fitness for his personal vehicle, he asked another inspector to test the vehicle and issue a Warrant of Fitness for his car. That inspection differs in some respects and the significance of that will have to wait for evidence to be given at the substantive meeting, but there is no dispute that Mr Coleman's vehicle was passed by that inspector when he undertook the Warrant of Fitness test. The untested affidavit evidence does not show that the car was passed as a result of Mr Coleman's inspection when it should not have been.

[23] Mr Coleman deposed in his second affidavit that he has no knowledge of others in the team having issues with him and I cannot place weight on those matters

in these circumstances. Mr Coleman deposed in his second affidavit to it being his position that he has the respect of all of his team members.

[24] In weighing up the respective hardships that might arise in the refusal of grant of interim relief, I find that the balance of convenience favours Mr Coleman.

[25] I now stand back and look at the overall justice of the case and have regard to it in a more general way. I consider the following factors. I have found that there are arguable and serious issues. There needs to be a careful assessment of the evidence related to the process and substance of dismissal. In terms of an assessment of the relative strengths of the parties' cases I am not able to say that Mr Coleman's claim his dismissal was unjustified, is a case that is unlikely to succeed. Importantly reinstatement is a primary remedy in the Employment Relations Act 2000 for an unjustified dismissal. The concerns with respect to future adherence to policy and procedure can be dealt with as a condition of reinstatement. I am satisfied that when I stand back and consider the overall justice of the case in this particular matter, it favours Mr Coleman.

[26] I make an order for the interim reinstatement of Mr Coleman to his position as a Foreman in the Service Team at Rick Armstrong by Wednesday 13 May, on the condition that he adhere strictly to any policy and procedure that Rick Armstrong has in relation to its business and which applies to Mr Coleman's work.

Costs

[27] I reserve the issue of costs and they will be dealt with following the determination of the substantive matter.

[28] I shall ask the Support Officer to arrange with Mr Graham and Ms Shaw for a telephone conference at which a date for the substantive meeting can be finalised and timetabling orders can be made in terms of that meeting.