

to be undertaken by Adecco to comply with the ethical and contractual obligations of the client/supplier relationship.

[4] Mr Paul Renaud, the Human Resources Manager for the respondent, said it was crucial for both the respondent and its clients that the prospective employees were fully and properly assessed as to their suitability for the proposed roles, as a failure to provide a suitably qualified or experienced person could have dire consequences for both the respondent and/or its client, including the safety of the client's own employees.

[5] Each prospective employee was required to complete and sign an application form. This form provides that the consultant is required to undertake certain processes, including the obtaining of two verbal referees, obtaining a report from the Ministry of Justice, undertaking a general health and safety induction and sighting licences and certificates.

[6] Ms Joanna Appleton, who had been employed by Adecco for approximately six years, became responsible in March 2005 for training, development and compliance. She had been responsible for undertaking the audits for each of the company's branches, and for determining compliance by the respondent's consultants with the company's procedural requirements.

[7] Ms Appleton deposed that both applicants had been provided with an induction and formal training.

[8] In August 2007 Ms Appleton undertook an audit of the Albany branch which involved a random selection of candidates' information and documentation that the applicants had obtained and completed and recorded in their assessments of prospective employees.

[9] On 3 August, as a result of the audit she had carried out, Ms Appleton sent an email to Mr Kumar, Mr Erinjery, Ms Aston and Ms Dinesh, the applicants' manager. Among other things this email noted:

Ref checks – where are they??!

These are easily generated from the system so the completed product is automatically saved against the candidate record. Adecco policy states two must be completed per candidate. At the very least one MUST be completed before a candidate goes out to work and if unable to secure (ie refugee etc) then client must be advised, comment made and fastrack and quality assessment completed with client at end of first week.

Unfortunately there were very few completed. Please ensure you complete these as a matter of priority.

So too with the OAS assessments – I will email the completed S/sheets through on Monday. You then have a month to update all files/the system.

Ensure if you are inactivating candidates you put a reason please so we all know why the candidate is no longer useable.

[10] The applicants contend that Ms Dinesh did not discuss this email with them and that therefore the company was condoning their subsequent breaches. Ms Dinesh said that when she commenced her role at Albany office she spent approximately 80% of her time with the applicants as she specialised in temporary recruitment. She emphasised the processes and procedures that Adecco required of them in their assessments and placements of employees on assignment.

[11] Before commencing at Albany on 6 August 2007 she had received a copy of the email 3 August 2007. She was very concerned by the apparent non-compliance. After starting she met with the applicants and told them of her concern regarding the results of the audit undertaken by Ms Appleton. She reconfirmed what was required of them in respect of the procedures and processes they were undertaking.

[12] Subsequently of her own volition she independently undertook a random audit of the company's employees who had been assessed and assigned by the applicants. She then raised with the applicants her concerns that that audit disclosed that there appeared to be a number of procedures they were failing to undertake. She re-emphasised to them that they had six compliance requirements which they were aware of as a result of their claiming in the general policy and procedures which were available through the company's internet system.

Ramset Non-Compliance issues

[13] In mid August 2007 Adecco's Albany Branch Manager, Ms Leighanne Dinesh, was advised by Ramset that as a result of the its internal audit, it appeared certain employees of Adecco placed on temporary assignment with Ramset did not hold the requisite qualifications for their assigned positions. Having received this advice, first of all Ms Dinesh and then Mr Renaud undertook an in-depth audit of the procedures and processes which had been undertaken in respect of the employees assigned to Ramset. The audit disclosed that there were serious and extensive breaches of the standards required and the compliance procedures required by Adecco. These included:

- (a) The placement of employees without the requisite qualifications for the role assigned with the client;

- (b) The failure to obtain and document evidence of the requisite qualifications for such assignment;
- (c) The failure to obtain a minimum of two references;
- (d) The failure to undertake health and safety inductions for such employees or validate them as having been completed;
- (e) The failure to complete and arrange for the signing of the employee's employment agreement with Adecco;
- (f) The failure to sign and complete the employee's application for employment.

[14] As a result she and Mr Malcolm Gawn then undertook an audit regarding certain people who had been placed on assignment by the applicants. She was shocked by the lack of compliance.

[15] The applicants were asked by Mr Renaud to meet with him and her to discuss the apparent non-compliance.

[16] After the meeting on 16 August Mr Erinjery did not return to work the following day. He advised Ms Dinesh that he was not well. On the same day Ms Dinesh was informed by Matthew Sanau, one of the temporary employees whose file the company had assessed as being non-compliant, said Mr Erinjery had visited him on site requesting a copy of his forklift licence and asking that he sign a new health and safety induction document.

[17] Ms Dinesh said that on the same day the second applicant telephoned Mr Keith Fairley, another of the temporary employees whose file was found to be non-compliant and asked if he would provide his new forklift licence.

[18] Ms Dinesh said that when she undertook her audit she found a couple of files which were fully compliant so it was evident to her that the applicants understood what it was that they were expected to do.

[19] All of the employees who had been recruited and placed on assignment with Ramset had been processed by the applicants, who were responsible for undertaking all the procedures required prior to employment and subsequent placement with Ramset.

16 August Meeting

[20] Mr Renaud met with each applicant separately on 16 August 2007 and advised them that there appeared to be a large number of breaches of mandatory compliance requirements. He did not give them any specific examples nor did he ask them to comment on the apparent breaches. They were advised that the company intended to undertake further investigations and as part of that process he asked for a formal meeting with them to consider the non-compliance.

[21] He pointed out that in his investigations to date, it appeared that there were serious and extensive breaches, which, if confirmed, would constitute serious misconduct and therefore might give rise to summary termination of their employment. He told both applicants to have a representative present at the meeting. He advised them that at that meeting he would give them the specific allegations.

20 August Meeting

[22] On 20 August 2007 Mr Renaud met with each applicant and their representative, Mr Whitehead. He said that at that meeting he first sought to explain to Mr Whitehead the manner in which the respondent undertook its business - supplying on assignment employees to its clients - so as to emphasise the importance of ensuring that all processes were undertaken.

[23] The issues he raised were to do with the procedures and processes undertaken, not as to whether data was being entered on to the employee's files. Mr Renaud said Mr Whitehead indicated that he had no interest in the manner of operation of Adecco. Mr Renaud said he was surprised by this attitude as the operational requirements needed to be understood so as to appreciate the seriousness of the alleged breaches.

[24] Mr Renaud said he then gave specific examples of what appeared to be breaches of the procedures and processes. He emphasised that even fundamental processes had not been undertaken in the initial employee applications.

[25] Mr Whitehead asked for examples. Mr Renaud said the most convenient way to do that was to look at the breaches on the computer in the Albany office where they were meeting. Mr Whitehead agreed to that arrangement. Mr Renaud said that he then made available numerous examples of the apparent breaches. Mr Whitehead asked for specific examples for each of the applicants. Mr Renaud suggested he provide hard copy examples of non-compliance in respect of four employees for each of the applicants, being eight in total. Mr Whitehead agreed with that suggestion.

[26] Mr Whitehead has contended that what Mr Renaud agreed to do was to provide four examples in total. It does not matter. Mr Renaud re-emphasised that they would be examples only because to date the investigations had discovered extensive evidence of non-compliance.

[27] Neither the applicants nor Mr Whitehead requested more examples. Had they done so Mr Renaud could have provided them.

22 August Meeting

[28] The next meeting was scheduled for 22 August 2007 to discuss the eight examples which had been provided. At Mr Whitehead's request Mr Renaud delivered those examples direct to the applicants. These comprised the eight applications, which disclosed 27 examples of non-compliance with the company's procedures. The documentation included an email dated 3 August 2007 and complete photocopied files for each of the eight candidates with each alleged breach highlighted in yellow fluorescent pen.

[29] At the hearing the applicants agreed that they had been given this documentation. Mr Renaud said the 27 examples of apparent non-compliance in respect of the eight employees fell into five categories.

- (a) The placement of temporary employees on assignments to drive forklifts, where the individual did not hold a forklift licence, held the wrong class of licence, or there had been no sighting or confirmation of the licence being held;
- (b) The application for employment had not been signed by the applicant to confirm that the matters required at interview had been undertaken by the applicant;
- (c) The employee's employment agreement had not been signed on behalf of the company;
- (d) The health and safety inductions had not been undertaken or there was no confirmation that they had been undertaken;
- (e) Reference checks had not been undertaken.

[30] At this meeting the applicants elected to respond only to the allegations in respect of the forklift licences. Mr Renaud said he was surprised because of the 27 allegations only six related to forklift licences. He emphasised that the allegations were not solely in respect of the forklift

licences. The basic issue was the failure to comply with the general requirements necessary when undertaking the employment and processing of an employee to be assigned to a client of Adecco.

[31] Mr Whitehead contended that the applicants were of the view that it was only the forklift issues that were going to be addressed at this meeting. Given that they had been provided with documentation with breaches highlighted in yellow fluorescent pen I find this assertion surprising.

[32] Mr Renaud said that he knew that the applicants were aware that there were issues other than those pertaining to the forklift licences because Mr Erinjery produced a signed health and safety induction in respect of one of those employees which was dated several days prior to that temporary employee having applied for employment. When questioned about the date of the document, Mr Erinjery hurriedly withdrew it.

[33] Neither Mr Erinjery nor Mr Ramrakhiani gave any explanation or answer regarding the 21 allegations, other than to produce the belatedly signed health and safety induction.

[34] Mr Renaud advised that he would consider all of their responses. He advised that of the 27 allegations, only five had been answered with any substance, which left 22 allegations that the applicants had failed to answer. He then wrote to each of the applicants recording what he understood to be their responses to the allegations. Towards the end of that letter Mr Renaud stated:

It is also duly noted that you consider Adecco's allegations against you to be unfair, on the grounds that you consider your level of compliance is not uncommon within the organisation.

I shall be reviewing your response, the facts, and shall facilitate a meeting with you and your representatives to conclude this matter.

28 August Meeting

[35] A further meeting was held on 28 August 2007. Mr Renaud said that in the interim he undertook a further audit of the processes used by the applicants for the eight employees already produced, and ascertained that there were three further examples of non-compliance, making 30 in total. However some of the answers given by the applicants at the meeting on 22 August were correct and were accepted.

[36] At the meeting on 28 August the applicants sought to then claim that the allegations that Adecco had raised related solely to the entry of data. Mr Renaud said he was surprised by this apparent change in the direction of the applicants' responses. At that time he had not said that the

entry of data was the fundamental issue. The issue was that there was an endemic failure by the applicants to follow the procedures and processes required.

[37] Mr Renaud adjourned the meeting to consider the comments that had been made by the applicants and Mr Whitehead. He then met with each of the applicants and Mr Whitehead and advised that Adecco had determined that the serious and extensive acts of non-compliance were a gross dereliction of their basic duties as employees of Adecco. The company considered that those failures constituted serious misconduct for which warnings were not appropriate.

[38] Accordingly, the applicants were summarily dismissed on the grounds of serious misconduct.

Decision

[39] Adecco employs a compliance and audit manager whose role is to audit the processes and procedures of Adecco's employees. Adecco makes available manuals, operating procedures, guidelines and other information to enable consultants to undertake their work in a proper manner. Mr Renaud said that he was aware that Adecco had terminated other employees for failure to adhere to its processes and procedures. Ms Appleton also said that she was aware that over the past years, four consultants of Adecco had had their employment terminated because of their failure to adhere to the strict and mandatory procedures to be followed when assessing and assigning employees.

[40] There seemed to be a claim being made on behalf of the applicants that the company had condoned the practice of not recording all the data. Mr Renaud said it was not just a matter of inputting data. I find the company made it clear that the issue was non-compliance, the matters of concern were not restricted to the fork hoist issues and that it was not simply of matter of data input.

[41] I do not accept the applicants' evidence that Ms Dinesh did not discuss the email with them and did not run through the procedures that they were expected to complete.

[42] I accept the company's position that the email was not the catalyst for the disciplinary procedures. The catalyst was Ms Dinesh's visit to Ramset and the complaints that were made to her when she did so.

[43] The applicants raised concerns about the respondent advertising their positions prior to their employment being terminated. Ms Dinesh said that the company did not advertise specifically for the applicants' position on 15 August 2007. She said that Adecco was constantly placing advertisements to ascertain the state of the marketplace and the availability of consultants

[44] I am satisfied with the explanations I was given by the company for the advertisement.

[45] The applicants were dismissed because they did not carry out procedures with which they were familiar and in which they had been trained. Ensuring compliance was a very important matter for the respondent. I am satisfied that the applicants were given all the requisite information regarding the issues the employer was concerned about and that they had an adequate opportunity to respond to those.

[46] The dismissals were justified and the applicants do not have personal grievances.

Costs

[47] If the parties are unable to resolve the issue of costs the respondent should file a memorandum within 28 days of the date of this determination. The applicants should file a memorandum in reply within 14 days of receipt of the respondent's memorandum.

Dzintra King
Member of the Employment Relations Authority