

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

**BETWEEN** Tarrai Jogh (Applicant)  
**AND** G L Bowron & Co Ltd (Respondent)  
**REPRESENTATIVES** Tarrai Jogh In person  
Sue Hurst, Advocate for Respondent  
**MEMBER OF AUTHORITY** Helen Doyle  
**INVESTIGATION MEETING** 1 February 2006  
**DATE OF DETERMINATION** 27 February 2006

**DETERMINATION OF THE AUTHORITY**

***The Employment Relationship Problem***

[1] The applicant, Tarrai Jogh commenced his employment with the respondent company in mid-April 2005 as a factory worker.

[2] The respondent G L Bowron & Co Limited (“G L Bowron”) is involved in the processing of sheepskins for domestic and export markets. Mr Jogh performed sheepskin processing functions on the permanent evening shift from 3.30 pm to 11.15 pm.

[3] Mr Jogh was a member of the NZ Meat Workers and Related Trades Union (Inc) (“the union”). His work was covered by a collective agreement between G L Bowron and the union which was for the term 30 March 2003 until 1 April 2006.

[4] Mr Jogh was summarily dismissed on 29 August 2005.

[5] G L Bowron says that Mr Jogh was justifiably dismissed for serious misconduct because he threatened another employee, Elisa, with a knife during an incident on 25 August 2005. The company says that there was a fair and full investigation into the incident.

[6] Mr Jogh does not accept that he threatened Elisa with a knife and says that dismissal was unjustified and the process was unfair.

[7] Mr Jogh lodged an application for interim reinstatement with the Employment Relations Authority on 21 November 2005. The parties had attended mediation prior to the lodging of the application but the matter had not resolved. During a telephone conference with the Authority it was agreed that there would be an investigation meeting to deal with the substantive application on 1 February 2006 rather than proceeding to deal with the application for interim reinstatement.

[8] Mr Jogh sought reinstatement, reimbursement of lost wages and compensation for hurt and injury to feelings.

[9] I heard evidence that there had been a recent restructuring at G L Bowron. As a result there have been 78 redundancies and the evening shift was disestablished. Mr Jogh was aware that if I needed to consider remedies the restructuring may have some bearing on the practicality of reinstatement.

### ***The Issues***

[10] I need to determine whether Mr Jogh's dismissal was justified. This involves consideration of the employer's actions and an assessment of what a fair and reasonable employer would have done in all the circumstances at the time the dismissal occurred. I also need to consider whether there was adherence to the process in the collective employment agreement.

### ***The reason for the dismissal***

[11] Mr Jogh was dismissed following a disciplinary committee meeting which was convened under clause 15 of the collective employment agreement on 29 August 2005. The relevant part of clause 15 which is headed Disciplinary Procedures provides:

***b) Those Employed Over Three Months:***

***Serious Misconduct:***

*For any of these actions or for any other action which is deemed to be serious misconduct, a person may be suspended by their Manager or Shift Supervisor.*

...

*In all cases of serious misconduct, the circumstances shall be considered as soon as practicable by the persons nominated by Management and the duly authorised Employee Representatives who make up the Disciplinary Committee. When an employee appears before the Disciplinary Committee, they may be represented by a person of their choice. The Committee's considerations may lead to dismissal, an unpaid suspension, a written warning, a verbal warning, or whatever penalty the Committee sees fit. Should agreement not be reached by the Committee, the appropriate Executive Member reserves the right to make the decision.*

[12] The reason that was given to Mr Jogh when he was told that his employment was terminated on 29 August 2005 was that he breached the serious misconduct code because he threatened Elisa with a knife. I heard at the investigation meeting that the ground in clause 15 of the collective employment agreement relied on under examples of serious misconduct was *wilful actions likely to cause injury to themselves or another employee*.

[13] Threatening someone with a knife is conduct that is capable of amounting to serious misconduct.

[14] It is necessary for me to now turn to consider whether the disciplinary committee had reasonable grounds for their belief that there had been such misconduct on Mr Jogh's part and whether the investigation into the alleged misconduct was adequate and fair.

[15] In this case what occurred on 25 August 2005 is relevant.

***The incident on 25 August 2005***

[16] The evening shift at G L Bowron cleans up between 11.00 and 11.15pm.

[17] At about 11.05 pm Mr Jogh was folding a bag full of skins. He recalled using his work knife, a large craft knife, to free the bag from nails at the top of the rack where it was held. The leading hand, Blair Poland told me that he had seen workers make a small incision to release the bag from the nails in these circumstances.

[18] Elisa made some comments to Mr Jogh about what he should be doing at cleaning up time. Mr Jogh became upset about this. He said that he had been provoked by Elisa on several occasions but had not previously reacted to her.

[19] Mr Jogh and Elisa started shouting at each other and there was some swearing. Mr Jogh accepts that he had the knife in his hand but does not accept that during the exchange he used it in a threatening way or that he pointed it. Although he could not recall where his arms were he did not think that there were many movements.

[20] Another employee, Alicia, moved between Mr Jogh and Elisa during the exchange. Mr Poland heard the shouting and came over from where he was on a machine about 10 metres away from Mr Jogh and Elisa. In a signed statement Mr Poland provided on 26 August to the company and union he said:

*Terri was over by his fadge bag and Elisa was in front of him and what looked like to be in his face shouting at him. ... Elisa immediately said "he threatened me with his knife". I looked over at Terri as Elisa started saying "come on come on" as if to say what are you going to do about it.*

[21] Mr Poland told Mr Jogh and Elisa that they had to go to see the foreman who was then Glen Fisher. All three went immediately to see Mr Fisher. Mr Poland told Mr Fisher that there had been a disagreement on the floor between the two concerning a knife. He told Mr Fisher about the accusation by Elisa that Mr Jogh had threatened her with a knife.

[22] Mr Fisher provided a statement on 26 August 2005 to the company and union. It was written without punctuation and I set it out below as follows:

*I asked Elisa if Terry had raised the knife to her and threatened her with it in any way Elisa replied no but he had it in his hand I asked her if he verbally threatened her in any way Elisa said no.*

*I asked Terry if he had pulled a knife on Elisa he said no it was in his hand while he was working I repeated this to both of them with the same answers. But Terry had issues with Elisa telling him what to do and when to do it.*

*I said to Elisa this is a serious allegation to make because he had a knife in his hand while working with it. Blair said to Elisa she shouldn't be telling people what to do this is how disagreements start I asked if they had any more concerns they would like to talk about they both replied no. I asked if they were both happy to go back on the floor and*

*work together they said yes I said are you willing to put this behind you and move on both of them said yes they both shook hands.*

[23] By the end of the meeting with Mr Fisher it was time for Mr Jogh and Elisa to go home. As it happened they never worked together again.

### ***The subsequent investigation into the incident***

#### ***Friday 26 August 2005***

[24] On Friday 26 August Elisa told the union that she did not like the outcome following the meeting with Mr Fisher and wanted further investigations of the incident undertaken.

[25] Mr Jogh was asked to work in another part of the factory that day.

[26] The site delegate for the union, Trevor Rangihuna talked to management and it was agreed that there would be further investigation. One of the supervisors, David Ferguson with an employee representative, Michael Haddock, took statements from Elisa, Mr Jogh and three other employees, Nati, Alicia and Jeremy. After Mr Jogh made his statement he was briefly shown Elisa's statement. He did not see the other statements.

#### ***Monday 29 August***

[27] On Monday 29 August Mr Rangihuna spoke to the management of G L Bowron. It was agreed after consideration of the statements that there would be a disciplinary committee meeting convened under clause 15 as soon as possible that day.

[28] Mr Rangihuna said that he left a message on Mr Jogh's voice mail about the meeting on Monday 29 August. Mr Jogh said that he did not receive such a message and I think that Mr Rangihuna was probably mistaken about leaving a message.

[29] Mr Consedine left a message on Mr Jogh's voice mail on 29 August 2005 telling him to come to work half an hour earlier at 3.00pm to talk about the incident the previous week. Mr Jogh went to work early and went to Mr Consedine's office to talk about the incident. Mr Consedine told Mr Jogh that he was suspended until the matter was resolved and that he should see the union representatives.

[30] Mr Jogh went to talk to Mr Rangihuna and Mr Haddock. He talked to them about what had happened during the incident on 25 August. I find that there was some discussion about the make up of the committee. It was to be made up of Mr Rangihuna, Mr Haddock, Ron Lister, a manager and Mr Consedine as chairperson. There were two observers present.

[31] There is a dispute as to whether Mr Jogh knew it was to be a disciplinary committee. I find that even if the word disciplinary was mentioned Mr Jogh did not appreciate that one of the consequences of the meeting could be dismissal. Mr Jogh was reassured by Mr Rangihuna *not to worry about it*. Mr Rangihuna said that he made that comment in the context of going through the process. It is understandable however that Mr Jogh would have taken comfort from the words and I accept his evidence that he was not concerned about the meeting.

[32] At the commencement of the meeting Mr Consedine explained to Mr Jogh that the meeting was convened in terms of the collective agreement. Mr Jogh was advised that the incident on 25 August 2005 was being treated as serious misconduct because of the knife involved.

[33] Mr Jogh was asked to explain what happened during the incident on 25 August 2005 to the committee. He did this for a few minutes. Notes were taken at the meeting by the employer and were typed up subsequently into minutes. Mr Jogh said that the minutes taken about his explanation during the meeting was largely accurate. He did not accept that he had said that he was agitated as the minutes reflect. Mr Jogh said to me that he thought agitated meant nervous. He said that when Mr Consedine asked him whether he was agitated he did not respond because he was not sure what that meant. The minutes reflect that in terms of the allegation Mr Jogh said:

*He said that there was probably about 3 metres between himself and Elisa. He said he thinks he went to her when she provoked him. He said they were probably about 1 metre apart from each other then. He said he was holding the knife and he was agitated. He said they were shouting at each other and his body was moving. He said he didn't have any intention to use the knife and didn't say anything threatening. He said he said "bloody stupid woman and don't tell me what to do." He said he didn't say very much. He said that when they were shouting Alicia Ringdahl told them to shut up and go to the office. He said that because he was using the knife it was in his hand and he didn't bring it out of his pocket.*

[34] The minutes reflect that Mr Jogh said he didn't know why the knife was in his hand. Mr Jogh said that when he was asked the question by Mr Lister that was his response but after he left the room he recalled the reason why he had the knife.

[35] Mr Jogh was then asked to leave the room and wait in the canteen. He thought he had been in the room for between five and ten minutes.

[36] The committee then heard from Elisa.

[37] Elisa told the committee that Mr Jogh waved the knife in front of her and that she got scared and said to him that he was not supposed to do that. She said Alicia told Mr Jogh he was not supposed to point the knife. Elisa's evidence about what happened in Glen Fisher's office was not altogether consistent with Mr Fisher's statement. She said that when she told Mr Fisher that Mr Jogh was pointing the knife at her Mr Fisher told her she was taking it wrong.

[38] Elisa did not appear to have been asked whether Mr Fisher asked her if Mr Jogh raised the knife and threatened her with it and whether she had said no to that. Elisa told the committee that she was scared of Mr Jogh and that he was very close when he had the knife. She said *it was a deliberate act straight towards her*. Elisa's evidence appears to support Mr Jogh's evidence that he was using the knife when he was folding the bag.

[39] The committee then heard from Alicia.

[40] Alicia's statement to the committee was inconsistent in one main respect to the statement she provided on 26 August. On 26 August the witness interview notes say that *Alecia intervened and told Terry he should not wave his knife at people. Terry response to this was "why not?"*

[41] To the committee Alicia said she went between them because they were close and she *told them to stop fighting and swearing as they are not allowed to do that*. That also was inconsistent with Elisa's statement to the committee about what Alicia said and more consistent with what Mr Jogh recalled Alicia saying. Alicia also told the committee that she thinks she heard Tarrai swearing and saw him shaking his hands in front of her [Elisa] with the knife that was used for shaping.

[42] Another employee Nati spoke to the committee.

[43] He said that Elisa told Mr Jogh *don't do that*. Nati indicated to the committee that he was doing **that** (in Elisa's face) with the knife. He said that Mr Jogh said *why not*. It seemed that Nati was referring to Alicia not Elisa.

[44] The witnesses were not able to say if the blade of the knife was in or out.

[45] Mr Poland also gave evidence. He told the committee that Mr Fisher had asked if either had been threatened and had Mr Jogh threatened Elisa and they both said no. Mr Fisher was not asked to speak to the committee.

[46] These statements were not put to Mr Jogh for comment.

[47] The committee then had a short discussion. Mr Rangihuna had to leave and told me that he was not present when the decision was made to terminate Mr Jogh's employment although that did not appear to have been reflected in the minutes.

[48] Mr Haddock, Mr Lister and Mr Consedine therefore made the decision to terminate Mr Jogh's employment. Mr Haddock said that the committee went through all the information and felt that the evidence supported that the knife was waved in Elisa's face. The committee felt that Elisa was threatened by the knife because it was close and that Mr Fisher had not conducted a proper investigation and had let Elisa down.

[49] Mr Haddock and Mr Rangihuna told me that anyone who threatens another employee with a knife at G L Bowrons has been dismissed in the past. Mr Rangihuna told me about an incident where an employee had previously been dismissed from G L Bowron. It was for restraining another employee and holding a knife against his throat which he had taken out of his pocket.

[50] The committee asked for Mr Jogh to return. Mr Jogh was told that his employment was terminated and he was then escorted off the premises.

### ***Determination***

[51] Many of the employees at G L Bowron use work knives in undertaking their daily activities. The company has a very firm view that any misconduct with knives is unacceptable behaviour. The company is perfectly entitled to view misuse of knives in the workplace as unacceptable conduct.

[52] What I am required to determine though is what a fair and reasonable employer would have done in the circumstances at the time of Mr Jogh's dismissal.

[53] There were several aspects of the process adopted by the employer that I find to be unfair.

[54] The employer did not advise Mr Jogh that he may be represented by a person of his choice when he appeared before the disciplinary committee as provided in clause 15 of the collective employment agreement. Mr Consedine simply referred Mr Jogh to the union shortly before the meeting on 29 August 2005.

[55] Whilst the employer is not responsible for this there was clearly a difficulty with the independence of the union representation for Mr Jogh. Both Mr Rangihuna and Mr Haddock had been supporting Elisa since 26 August 2005. Both men had formed a view that Mr Jogh upset Elisa

on 26 August 2005, when they were talking to her in the car park, by waving at her with a *cheesy smile* and staring at them as they talked. Mr Rangihuna described him as threatening although nothing was said to Mr Jogh at the time. Mr Jogh explained at the Authority investigation meeting that he was not being threatening at the time and said he was reading the newspaper.

[56] The union has now taken steps to ensure an employee in a similar situation is properly represented as it recognises that there can be difficulties in situations where the union represents two employees involved in a disciplinary setting where one is the complainant.

[57] Neither the union nor the employer advised Mr Jogh prior to the commencement of the disciplinary committee meeting that he could be dismissed as a consequence of the meeting. This led him to form a view that the meeting was informal and nothing to worry about. Mr Jogh said that he would have called a witness to the incident who probably observed the exchange and he would have wanted Mr Fisher there if he thought there was a possibility of dismissal. Mr Jogh was not provided with copies of the statements taken from other employees on 26 August that may have assisted in preparation for the meeting.

[58] There was also unfairness in the way the disciplinary committee conducted its meeting. Mr Jogh spoke first and was then asked to leave. None of the statements from other witnesses which contained material adverse to Mr Jogh were put to him. Mr Jogh was denied an opportunity to provide a proper response to the statements before the committee.

[59] Ms Hurst said that employees often feel unsafe giving evidence and that is why evidence is given to the committee without anyone else present. It was important though for Mr Jogh to have an opportunity to explain or contradict any allegations in the other employee statements. There were some inconsistencies in the evidence that other employees gave to the committee. It would be a difficult task for the committee to consider and weigh these statements properly without having the benefit of an explanation from Mr Jogh.

[60] Mr Poland told the committee that Elisa had answered *no* to a question from Mr Fisher as to whether she had been threatened immediately after the incident. He also made a comment to the committee that *Elisa likes to tell people what to do and he doesn't think that Tarrai likes that*.

[61] The committee did not talk to Mr Fisher as part of the process. It is difficult to see, in the absence of hearing from Mr Fisher, how the committee could have been armed with the full facts to make a proper assessment and decision. It does suggest to me that the matter may not have been approached with an open mind and that the committee closed its eyes to available evidence. It also suggests that the decision was perhaps rushed. Mr Fisher was clearly available because the committee asked him to bring Mr Jogh back to the meeting for the decision and then he was asked to escort Mr Jogh off the premises.

[62] On the basis of the above the process was unfair and the dismissal unjustifiable. This is a case where it is unhelpful to draw a significant distinction between the procedural and substantive fairness. The committee did not hear evidence from Mr Fisher. I find that the committee had not carried out reasonable inquiries in circumstances where on the face of the statement from Mr Fisher Elisa had previously denied being threatened with the knife. I am not satisfied that the committee could form an honest and reasonable belief on the balance of probabilities that Mr Jogh had threatened Elisa with a knife so as to justify his summary dismissal.

[63] Mr Jogh has a personal grievance that he has been unjustifiably dismissed.

## ***Remedies***

### ***Reinstatement***

[64] Mr Jogh said in his final statement to the Authority that he was willing to stop insisting on reinstatement, given the fact that the evening shift of the department he was working in has been disestablished. On that basis and given my own views about the practicality of reinstatement following the restructure I have considered other remedies. I do not make an order reinstating Mr Jogh to his previous position.

### ***Contribution***

[65] I am required to consider under section 124 of the Employment Relations Act 2000 whether Mr Jogh's actions contributed toward the situation that gave rise to the grievance. I am of the view that Mr Jogh must have contributed to a degree toward the situation that gave rise to the grievance although not to the procedural unfairness that I have found. Instead of complaining to Mr Poland or Mr Fisher about Elisa, Mr Jogh chose to take the matter into his own hands. He shouted at Elisa and this was the start of an angry exchange. There was a direct causal link between that exchange and the personal grievance. This sort of unwise conduct in a workplace where an employee takes matters into their own hands can potentially be dangerous. Mr Jogh was working at this time with his knife and it was in his hand. I am of the view that a 20% reduction in monetary remedies is in order.

### ***Lost Wages***

[66] Mr Jogh is unemployed since his dismissal. I do not however intend to extend the reimbursement for lost wages beyond three months as he unsuccessfully applied for only a few jobs over the period.

[67] In the three weeks prior to dismissal Mr Jogh earned \$565.98 per week and for seven weeks prior to that \$563.35 per week. On that basis I am of the view it would be fair to award Mr Jogh reimbursement of lost wages for a period of three months from Monday 29 August 2005 to Monday 28 November 2005 at the rate of \$565.98 per week. That is thirteen weeks at \$565.98 per week which is a total of \$7357.74 gross. Taking contribution into account the final figure for lost wages is \$5886.20 gross.

[68] I order G L Bowron & Co Limited to pay to Tarrai Jogh the sum of \$5886.20 gross being the reimbursement of part of the wages lost under section 123 (1)( b) of the Employment Relations Act 2000.

### ***Compensation***

[69] I accept that Mr Jogh felt the process leading to his dismissal had been unfair and he was resentful and hurt about it. Mr Jogh had heard Elisa say no to a question about whether she was threatened with the knife to Mr Fisher. He was then summarily dismissed two working days later. He lost his means of income and his job was important to him. I am satisfied that there should be an award of compensation for loss of dignity, humiliation and injury to feelings. If there had not been contribution I would have awarded Mr Jogh \$7000.00. Taking contribution into account I reduce this sum to \$5600.00.

[70] I order G L Bowron & Co Limited to pay to Tarrai Jogh the sum of \$5600.00 without deduction being compensation for humiliation, loss of dignity and injury to feelings under section 123 (c)(i) of the Employment Relations Act 2000.

### ***Costs***

[71] Mr Jogh represented himself. While there is therefore no issue of costs Mr Jogh is entitled to reimbursement of his filing fee of \$70.00.

[72] I order G L Bowron & Co Limited to pay to Tarrai Jogh the sum of \$70.00 being reimbursement of the filing fee.

### ***Summary of findings and orders made***

- i. I have found that Mr Jogh was unjustifiably dismissed.
- ii. I have not ordered that he be reinstated to his previous position.
- iii. I have found that Mr Jogh contributed to his personal grievance and have reduced remedies awarded by 20%.
- iv. I have ordered G L Bowron pay to Mr Jogh the sum of \$5886.20 being reimbursement of part of lost wages.
- v. I have ordered G L Bowron pay to Mr Jogh the sum of \$5600.00 being compensation for humiliation, hurt and loss of dignity.
- vi. Mr Jogh was not represented but I have ordered G L Bowron pay to him \$70.00 being reimbursement of the filing fee.

Helen Doyle  
Member of Employment Relations Authority