

but because he did not report the accident to his employer as required. Mr Main said he was not aware he had had the accident and that was why he did not report it.

[4] The issue is whether the employer carried out a fair and reasonable investigation and reasonably concluded, on the evidence before it, that it was entitled to terminate Mr Main's employment.

[5] Mr Aidan Lovelock is employed as South Island Transport Manager by Linfox. He began his career with the New Zealand Police in late 2002. In March 2005 he became Auckland Transport Supervisor, managing drivers and general freight deliveries in the upper North Island. In 2006, when he moved into a role as Accounts Manager, he became Mr Main's manager.

The 23 April incident

[6] Mr Lovelock said that on 23 April at about 9.30am he received a complaint from Mr John Hewlett that a Linfox vehicle had reversed into his son's vehicle which had been parked on the side of the road on Kellow Place in Manukau. Mr Lovelock ascertained that the only Linfox vehicle with deliveries in the area was vehicle number plate ACC163 driven by Mr Main.

[7] He went to the scene of the incident at Kellow Place and completed a scene examination. He provided sketches of diagrams he had made at the scene. He also determined that the damage to the car was not pre-existing because the car had been shunted about 20cm into the kerb and the broken plastic was still wedged between the kerb and the car.

[8] Mr Lovelock then spoke to the father of the car owner who worked nearby. He obtained details of the car and ownership, informed him that the company would take liability for the accident and asked him to obtain some quotes for repair.

[9] Mr Lovelock then went and spoke to the witnesses to the accident. The witnesses were two women who worked at a print shop about 20 metres from the parked car. They told him they were outside at the time and heard reverse beeping from the truck and then a loud crunch. When they turned around they saw the Linfox vehicle pull forward a bit, stop, and the driver got out and had a look. He walked to the back of the truck to inspect the collision and then got back in and drove away.

One of the women then told the owner's father, who was the proprietor of a neighbouring business, and Mr Hewlett then called Linfox.

[10] The witnesses said that the driver at no time attempted to identify the owner of the vehicle or to talk with anybody in the vicinity.

[11] Mr Lovelock then returned to the office and filled in the standard accident form as best he could. He decided to give Mr Main the benefit of the doubt in case he was flat out with deliveries or the mobile phone was broken and he intended to report the incident at the end of the shift. However, at the end of the shift Mr Main parked his vehicle and went home without reporting any accident. Mr Lovelock checked that with his immediate supervisor and the Fleet Manager.

[12] After Mr Main had gone home, Mr Lovelock checked his vehicle for damage. He found a small bit of white paint transfer on the hydraulic ram at the back of the truck.

24 April

[13] Mr Main was due to start work at 6am the following morning 24 April so Mr Lovelock went in early to see him. He told Mr Main that he had the right to have a support person or representative present and suggested that as there were two other drivers in the meal room he could have them present. However, Mr Main declined.

[14] Mr Lovelock told Mr Main what had been reported the day before and went through what had happened with him. He told him what the witnesses had said. He also told him he was the only vehicle in the area. Mr Lovelock asked Mr Main if he had had an accident and he told him he was not aware of any. Mr Lovelock asked about the manner of his driving, that he had driven forward before getting out of the truck to inspect it, and he had no explanation. Mr Main did also mention at some point that there may have been some problem with the steering on his truck.

[15] Mr Lovelock told Mr Main that the incident required further investigation and that a formal disciplinary meeting would be held on that Thursday at 11am. He told him to have someone present as failing to report an accident was serious misconduct. Mr Main was also told that Mr Lovelock had made a decision to stand him down from duty until completion of the investigation.

[16] Mr Lovelock wrote up a letter formally inviting Mr Main to the meeting. The letter outlined the allegations rights to representation and the fully paid stand down from duty. He then gave the letter to Mr Main and explained it to him, reiterating the serious nature of the incident and recommended that he had a representative present.

[17] In the days before the disciplinary meeting, he checked with the Fleet Manager to see if there were any defects or complaints about the vehicle, in particular the steering, that Mr Main had mentioned. He was informed that the truck was operating correctly.

Disciplinary Meeting 26 April

[18] At the disciplinary meeting, Mr Main and Mr Lovelock and Mr Louis Buckingham were present as representatives of Linfox management. Mr Buckingham is employed by Linfox as Compliance Manager.

[19] Mr Main declined to have a support person or representative present at the meeting. Mr Lovelock and Mr Buckingham reiterated that it was a serious matter and recommended that he have representation. They told him they were willing to suspend the meeting until he could arrange for a representative. However, Mr Main declined.

[20] Mr Lovelock showed Mr Main the sketches and photos made taken at the accident site. Mr Main provided a statement setting out his explanation. A discussion followed.

[21] Mr Lovelock said he felt that Mr Main's story did not add up. Mr Main said that he had reversed and then pulled forward about 10 metres but then Mr Lovelock told him it was a 10 metre long truck and the road was only 13 metres wide. He then said he had only pulled about 1 metre forward. Mr Main also said he did not feel the impact with the car and yet witnesses standing 20 metres away heard what they described as a crunch. They then looked at the diagram and asked why Mr Main had not used a different type of manoeuvre when reversing and he offered no explanation except that he just did not know. The spent about half an hour discussing issues.

[22] At that stage, the meeting was adjourned so that Mr Buckingham and Mr Lovelock could discuss what they felt they could reasonably assume had happened. They felt there was no way Mr Main could not have known he hit the car

and upon inspection no way he could have missed the damage. They concluded that Mr Main had made no attempt to contact or identify the owner of the vehicle that he had struck.

[23] Mr Buckingham said he had had experience in driving the sort of truck that Mr Main had been driving. He himself had had an accident driving such a truck and had clearly felt the impact, even when his truck was fully loaded as Mr Main's truck had been. Mr Buckingham also spoke to Mr Mike Best, who was the New Zealand Australia Fleet Manager. Mr Best was a driver with over 30 years' experience and was considered very senior. He rang him because he wanted to discuss Mr Main's explanation with a senior driver prior to making a decision and he specifically asked whether he had ever heard of anyone driving forward before checking distances. Mr Best said he found the idea laughable.

[24] They went back in and outlined their factual conclusion and told Mr Main that they had to make a decision regarding the consequences. They then adjourned again. Mr Buckingham and Mr Lovelock reviewed whether it fell under serious misconduct. They felt it did by bringing the company into disrepute and failing to report an accident.

[25] Schedule 4 of the Linfox Drivers' Manual sets out the policy of serious misconduct. They determined that dismissal was appropriate.

[26] Mr Lovelock called Mr Brendan Rawlings who was the National Transport Manager to notify him as a member of senior management that they were intending to dismiss Mr Main. They then went back in and informed him that his employment was terminated.

Decision

[27] The issue is whether the employer acted as a fair and reasonable employer would have done in all the circumstances at the time the dismissal occurred.

[28] Mr Main contends that the employer improperly rejected his explanation regarding the accident by concluding that he had knowingly left the accident scene and not reported the accident.

[29] Mr Finnigan argued that the company's disciplinary procedures envisaged only one person, the manager, being involved in a disciplinary matter. However, both Mr Buckingham and Mr Lovelock were involved. However, Mr Buckingham, who had relevant human resources experience, said he was only assisting Mr Lovelock. The procedures state that they are guidelines and that "discussions will be held with all persons considered able to assist". Mr Buckingham's involvement does not vitiate the decision to dismiss.

[30] Mr Finnigan maintained that the witnesses were not properly interviewed. No witness statements were taken at the time and Mr Goldsmith was not interviewed. I agree with Mr Bevan that the company did not dismiss Mr Main because there were differences between his account and that of the witnesses. There was no dispute regarding what had happened; the dispute was about Mr Main's knowledge of his having had an accident. The decision to dismiss was based on an assessment of what Mr Main himself said.

[31] The applicant says that the company should not have taken a warning for an unrelated matter into account when making the decision to dismiss. The applicant referred me to Veisia Pulu v Guardian Healthcare Group Ltd, AA 27/07, R Arthur, 9 February 2007. In that case the Authority held that the employer could not rely on a previous warning for an unrelated matter. The dismissal was a minor matter and the warning for a serious matter. I agree with the respondent that the instant case is distinguishable. The matter for which Mr Main was dismissed was serious and the warning was given for a refusal to obey an instruction. Although this is not an identical matter a refusal to obey an instruction and a failure to report an accident when required to do so are not so disparate as to negate the decision to dismiss.

[32] Mr Main said he only went far enough to the rear of the truck to see that he would not be able to complete his turning manoeuvre. He only needed to glance at the white car to realise he would not make it. He said he was probably looking at it from towards the rear so any damage on the side would not have been immediately apparent to him.

[33] Mr Main said he did not believe that either Mr Lovelock or Mr Buckingham had any reason to doubt his honesty. Nothing in his employment history would have given them any cause to doubt that he had been frank with Mr Lovelock in answering his questions on 24 April. He felt that rather than considering it might be appropriate

to recheck the accounts of the witnesses to this incident, they appeared to have blindly accepted the assumptions of Ms Bennett that she thought Mr Main had seen the damage as a fact without testing the basis of that assumption or getting a full account of all the relevant facts.

[34] Messrs Buckingham and Lovelock said what they took into account in making the decision to dismiss was not what the witnesses thought but the fact that there was agreement between the witnesses and Mr Main as to what had actually happened, that is that he had reversed the truck, that he had stopped the truck, pulled forward, stopped, got out of the truck, walked to the back of the truck, got back into the truck, moved the truck forward, reversed it in the other direction and gone up to the end of the road and turned the truck around.

[35] Any decision that I make is not an indication of whether or not Mr Main did or did not realise he had the accident. The issue is whether the employer could have reasonably concluded that Mr Main knew he had had the accident and that he did not report it.

[36] In the circumstances, the employer could reasonably have concluded that Mr Main had had the accident and had not reported it. Given the previous warning, a decision to dismiss was not unreasonable.

[37] The dismissal was justified. Mr Main does not have a personal grievance.

Costs

[38] Costs are reserved. If the parties are unable to agree on the issue of costs, the respondent should file a memorandum within 28 days of the date of this determination. The applicant should then file a memorandum in reply within 14 days of receipt of the applicant's memorandum.

Dzintra King
Member of the Employment Relations Authority