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Robbarts v Silver Fern Farms Ltd (Auckland) [2016] NZERA 719 (29 February 2016)

Last Updated: 17 December 2021

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND		
		[2015] NZERA Auckland 60
		5580684
	BETWEEN	ROEDOLF ROBBARTS Applicant
	AND	SILVER FERN FARMS LIMITED Respondent
Member of Authority:	Eleanor Robinson	
Representatives:	Eska Hartdegan, Counsel for Applicant Tim Cleary, Counsel for Respondent	
Investigation Meeting:	26 February 2016 at Whangarei	
Submissions received:	24. & 29 February 2016 from Applicant 25. & 29 February 2016 from Respondent	
Date of Oral Determination:	29 February 2016	
Date of written determination	01 March 2016	
ORAL DETERMINATION OF THE AUTHORITY		

Employment Relationship Problem

[1] The Applicant, Mr Roedolf Robbarts, claims that he was unjustifiably dismissed on the grounds of serious misconduct by the Respondent, Silver Fern Farms Limited (SFF), Mr Robbarts is seeking reinstatement.

[2] Mr Robbarts also claims that he was unjustifiably disadvantaged in his employment by reason of suspension.

[3] Mr Robbarts also claims that he was unjustifiably disadvantaged by the issue of a final written warning (the Final Written Warning) in May 2015 on which SFF relied when it dismissed him.

[4] Mr Robbarts also claims a contractual breach on the basis that SFF breached its Harassment Policy.

[5] Mr Robberts also claims that SFF breached the duty of good faith it owed him pursuant to [s.4](#) of the [Employment Relations Act 2000](#) (the Act).

[6] SFF denies that Mr Robberts was unjustifiably dismissed and claims that he was justifiably dismissed for serious misconduct.

[7] SFF further denies that Mr Robberts was unjustifiably disadvantaged in his employment, or that it breached the duty of good faith it owed him, or that there was a breach of the contractual Harassment policy.

Issues

[8] The issues for determination are whether or not:

- Mr Robberts was unjustifiably dismissed by SFF
- Mr Robberts was unjustifiably disadvantaged by SFF:
 - > Suspending him from employment
 - > Issuing him with a final written warning in May 2015
- There was a contractual breach of contract by SFF
- SFF breached the duty of good faith it owed to Mr Robberts
- Mr Robberts should be reinstated to his position.

Background Facts

[9] SFF is a cooperative servicing farmers throughout New Zealand. It processes and markets sheep meat, beef, venison and associated products.

[10] Mr Robberts commenced employment as a Shift Engineer at the Dargaville SFF plant (the Plant) site in November 2011.

[11] He was provided with an individual employment agreement dated 8 November 2011 (the Employment Agreement) which contained the following clauses:

3.1 While you are employed by us you must:

- ...

- comply with the policies, rules and procedures (our policies) that we promulgate from time to time. This agreement overrides our policies if they conflict.

6.6 Termination for serious misconduct: *We may terminate this agreement immediately without notice for serious misconduct.*

6.7 Power to suspend: *In the event that we decide to instigate an investigation into whether or not disciplinary action should be taken against you, we may suspend you from your duties until we make a decision as to what further action, if any, is appropriate in the particular circumstances. We will give you written notice of any suspension and, in that notice, may include such conditions on you as we think fit.*

[12] The SFF Harassment Policy stated that: “All who work in or use the Silver Ferns facilities have the right to be free of fear or concern of being harassed” and “Harassment of any kind, if proven, constitutes unacceptable behaviour and can be dealt with thorough the company disciplinary procedure”. Harassment is defined as:

Harassment may include forms of violence that can range from physical assault / verbal abuse through to intimidation, demeaning and low level threatening behaviour.

Harassment is any such behaviour that makes a person feel offended and humiliated or intimidated and frightened or uncomfortable at work or leaves them feeling that their morale or work effectiveness has been affected, then it may constitute unlawful discrimination.

[13] The Harassment Policy made provision for mediation:

Investigation – *After investigation, and if the complaint is justified, Silver Fern Farms will if appropriate attempt to resolve the complaint by mediation, or reconciliation between the complainant and the person whose behaviour or language is the subject of the complaint.*

Final Written Warning

[14] The position description issued to Mr Robberts states under the subheading: 'Communications & Relationships' :

- *Communicates effectively in both individual and group situations.*
- *Uses appropriate interpersonal styles and communication methods to work effectively with business partners (e.g. peers, functional partners, team members, etc) to meet mutual goals and objectives.*
- *Demonstrated ability to establish and maintain effective working relationships.*
- *Deals proactively with conflict(s)*
 - *Persuasiveness – the ability to explain and create understanding in a consultative manner.*

[15] Mr Robberts said that he had been issued with three warnings following a disciplinary meeting held on 26 May 2015, culminating in his having been issued with the Final Written Warning.

[16] Mr Lance Warmington, Plant Manager, said he had carried out an investigation in relation to several matters involving Mr Robberts in May 2015. These had been (i) Mr Robberts having to be instructed to wear hearing protection by Mr Francis Kelly, SFF Health and Safety representative, and thereby showing a total disregard for the SFF Health and Safety Policies; (ii) the associated incident on 21 May 2015 between Mr Kelly which resulted in Mr Robberts swearing and making an obscene gesture at Mr Kelly, and (iii) failure to follow Maintenance procedures.

[17] Mr Warmington had advised Mr Robberts of the issues to be discussed with him in a disciplinary meeting to be held on 26 May 2015 by letter dated 25 May 2015. In the letter Mr Robberts was advised that the allegations as outlined in the letter were serious and had the potential to place his employment at risk. The letter recommended that Mr Robberts seek representation.

[18] Mr Warmington said that Mr Robberts had not been suspended at that time as he was off-shift for a few days and therefore not in the workplace so there was no possibility of interaction with the complainants and no requirement for suspension.

[19] Following the disciplinary meeting held on 26 May 2015, Mr Robberts was issued with the Final Written Warning, as confirmed in a letter dated 26 May 2015 which stated:

Dear Roedolf;

As discussed in our disciplinary meeting today, there are three issues we feel that you have failed in your obligations/responsibilities and therefore you need to be held accountable as a result.

They are:

- *Failure to adhere to Company H&S policies/procedures i.e. failure to wear hearing protection on the Secondary Butchery on Thursday 21st May 2015.*
- *Failure to control temper i.e. giving the single fingered salute and verbal abuse: fuck the person who made these rules....*
- *Failure to follow Maintenance procedures in relation to equipment logs & parts requisition process.*

As a result, I therefore issue a warning for each instance, escalating you to a final warning.

This warning will remain in place for twelve months from the date in this letter, and therefore expires on the 26th May 2016.

I need to make you aware that should you fail to follow Company policies or procedures you risk your future employment.

[20] Mr Warmington said Mr Robberts had not disputed the Final Written Warning in May 2015, and he had not been aware that he was disputing it until he received a Personal Grievance letter dated 9 September 2015.

[21] Mr Robberts said he had responded to a call to adjust a light fitting above Pre-Trim in the factory area where Ms Marama Dunn, Quality Assurance Controller, worked. There was a somewhat terse exchange of comments between Ms Dunn and Mr Robberts about his execution of the light fitting task.

[22] Mr Robberts said Ms Dunn had verbally abused him, he had repeated asked her to stop doing so, and when she did not, he had walked away.

[23] Mr Robberts said he had felt agitated and frustrated after the interchange with Ms Dunn which had followed an incident earlier that day in which Ms Dunn had also been offensive to him about a door he had been asked to repair.

[24] Mr Robberts had entered the Primary Butchery Office where Ms Betty-Jo Southan, Quality Assurance Controller, and Mr Morgan McKenzie, Night Shift Team Leader, were working.

[25] Ms Southan said Mr Robberts had directed his comments to her and said: *"Your other lady supervisor needs to know when to shut her mouth. She is lucky I didn't stick my size 11 boot up her ass"*.

[26] Ms Southan said that it was obvious that Mr Robberts was in an agitated state, she had felt the comment to be intimidating and it had made her feel anxious for Ms Dunn.

[27] Mr McKenzie said that he was accustomed to employees making comments in the office as means of venting their frustration. He had been working on a computer across the office from Ms Southan and had heard Mr Robberts say that: *"... he would stick his size 11 boot up her ass"*.

[28] Mr McKenzie advised Mr Robberts not to repeat the comment to Ms Dunn, and said Mr Robberts had assured him he would not do so.

[29] Ms Dunn said she had entered the office sometime after Mr Robberts, spoken to Ms Southan and Mr McKenzie about her altercation with Mr Robberts and Ms Southan had repeated his comment to her.

[30] Ms Dunn said she had felt upset and demeaned by Mr Robberts' comment, and threatened by it. She had made a complaint about Mr Robberts to Mr Bryan Hinton, Night Shift Processing Manager, and the next day spoke with Mr Peter Wilson, Chief Engineer, who was Mr Robberts' Manager. Mr Wilson had asked her to put her complaint in writing.

[31] Ms Dunn said she had not known that Mr Robberts was on a Final Written Warning at that time.

[32] Ms Dunn's written statement was provided to Mr Warmington. In the statement dated 21 July 2015 Ms Dunn reported the interchange of comments between herself and Mr

Robberts stating:

I said to him, "Hey, it's not fixed properly". He replied "The problem is that you're too short and you can't fix it yourself".

I said it's not that I'm too short, it's that you haven't fixed it properly. He then said well it's not an engineer's job, it's a sparky's job. I then said, nobody asked you to respond. He told me to shut my mouth. I continued to say that if he didn't want to fix it properly then he should just piss off. He just kept saying don't talk to me, don't talk to me. As I continued to say, the trouble with you is that you have excuses for Africa.

...

Now that some time has passed and I have had time to reflect on things that were said I do feel that I could have handled things better, however what does concern me is the comment he made about putting his boot up my butt.

[33] Mr Warmington said he had first become aware of the incident between Mr Robberts and Ms Dunn when he had read her statement. He had asked Mr Hinton to ask Ms Southan and Mr McKenzie to also write out statements.

[34] As Mr Robberts was off shift for a few days, the first opportunity Mr Warmington had to speak to him was on 27 July 2015. In the meeting which was also attended by Mr Andrew Miers, and Mr Wilson, he had read out the statements from Ms Dunn, Ms Southan and Mr McKenzie, and instructed Mr Robberts not to approach them during the investigation process.

[35] Mr Robberts said he had been summarily suspended during the meeting without having been asked for his comments.

[36] Mr Warmington said he had suspended Mr Robberts during the meeting in accordance with clause 6.7 of the Employment Agreement as he had felt suspension was appropriate in the circumstances.

[37] Mr Warmington had suggested that Mr Robberts obtain legal representation, and advised him in a letter dated 27 July 2015 that a meeting would be held on 30 July 2015. Mr Warmington confirmed the allegations which were concerning Mr Robberts' interaction with Ms Dunn and his subsequent comment to Ms Southan and Mr McKenzie in the Primary Butchery Office; and the possible outcome of a finding of serious misconduct.

[38] Mr Warmington stated in the letter:

As you are aware, you have been taken through formal disciplinary process for similar issues back in May 2015 and placed on a final warning.

It was very clear in that documentation if there was a repeat of failing to follow Company Policies & procedures that your future employment would be at risk.

[39] Later that day, 27 July 2015, Mr Warmington said he had spoken to Ms Dunn, Ms Southan and Mr McKenzie about the statements they had made.

[40] Ms Southan said that Mr Robberts had approached her prior to the meeting with Mr Warmington and said words to the effect that: *"I've been listening to gossip. I've read your statement thank you very much; you should watch what you say about people."* Ms Southan said the comment had made her feel uncomfortable and she had been relieved there had been other employees in the vicinity when it had been made.

[41] Mr Warmington said he had been concerned when Ms Southan told him that Mr Robberts had spoken to her prior to their meeting, especially as he had instructed him not to do so.

[42] Mr Warmington said he had also taken a statement from Mr Robberts which he had incorporated into the investigation. In his statement Mr Robberts described the incident with Ms Southan stating:

... I first put my finger to my lips indicate that she must stop talking to me, with no response, then I said to her that she must shut her mouth, still did not work and I repeat with my finger on my lips for several times, and then know I need to walk away from the scene.

I went from there to the P/B office where J Southan and Morgan McKenzie was and told them how anoid (sic) I was with Marama's behaviour towards me, by saying that I felt like putting a No 10 boot up her ass but rather walked away to be a better person.

[43] Mr Warmington said he had been contacted by Ms Hartdegan and had provided her with a copy of Ms Dunn's statement.

Meeting 5 August 2015

[44] The meeting held on 5 August 2015 was attended by Mr Warmington, Mr Wilson, Mr Robberts and Ms Hartdegan.

[45] During the meeting Mr Warmington said Ms Hartdegan had asked for a copy of the policies to which Mr

Warmington had referred in the letter dated 27 July 2015 and for a copy of the disciplinary policy.

[46] Mr Robberts said that Ms Hartdegan had stated she believed the Final Written Warning was not valid and should not be relied upon, and that the incident with Ms Dunn warranted nothing more than a first verbal warning.

[47] Mr Warmington said Ms Hartdegan had said she wanted her comments about the Final Written Warning being invalid noted, but did not request that any action be taken in regard to it.

[48] Mr Robberts said he acknowledged during the meeting that he would need to 'bite his tongue and walk away' if a similar incident occurred at work in the future, and asked for a second chance.

[49] Ms Dunn's comment that Mr Robberts had 'excuses for Africa' was mentioned as being racist.

[50] Mr Warmington said Ms Hartdegan had accused him of pre-determining an outcome, but he had denied this was the case. He had advised that the meeting was adjourned whilst he considered the matter, and Ms Hartdegan said that she would attend the subsequent meeting by telephone.

Meeting 12 August 2015.

[51] Ms Hartdegan attended the meeting held on 12 August 2015 by telephone. Also present were Mr Warmington, Mr Robberts, and Mr James Manson, Processing Manager.

[52] Mr Warmington said during the meeting Mr Robberts provided an explanation which he had considered. Mr Robberts again asked for a second chance.

[53] Following an adjournment Mr Warmington had decided that Mr Robberts should be dismissed, confirming the decision in a letter dated 12 August 2015 which stated:

Dear Roedolf,

As discussed to day with you and your lawyer (Eska Hartdegan), we have completed the investigation into the allegations of serious misconduct.

The disciplinary process had been completed and the outcome is we find the allegation is substantiated and therefore terminate your employment immediately.

As stated in the disciplinary meeting, the grounds for dismissal are you have failed in your responsibilities as outlined in your IEA and therefore regard this as serious misconduct.

> Clause 3.1 clearly states that you must:

- Comply with policies, rules & procedures (our policies) that we promulgate from time to time.*

We have an harassment policy that is clear and concise ...

Additional to this your IEA's position description is clear in relation to communications & relationships: ...

You were issued with a final written warning on the 26th May 2015 for similar offences which we regard as serious misconduct, but opted to issue a final warning in the hope that it would 'realign' your behavioural expectations.

We made you well aware that should there be any further issues within a twelve month period, it could well result in your employment being terminated.

As discussed, your dismissal is effective immediately.

Your suspension with pay ceases immediately and we will be paying yin lieu of notice (one month).

[54] Mr Warmington said he had endeavoured since his appointment two years earlier to ensure a positive culture at the Plant and he had decided dismissal was the appropriate

outcome because he considered Mr Robberts had breached the Harassment Policy and his obligation not to demean or threaten Ms Dunn by making his comment to Ms Southan and Mr McKenzie. This in turn had breached the Plant culture. He had considered Mr Robberts' behaviour to be unacceptable.

[55] He said he had considered the fact that the 'boot' comment had not been made directly to Ms Dunn, but concluded that it had been careless with every possibility that Ms Dunn would become aware of it. He had not considered that the slight difference in the expression as heard by Ms Southan and Mr McKenzie to have been more than semantics and not material as regards the intent of the comment.

[56] Mr Warmington said he had factored in Mr Robberts' opinion that he had been provoked by Ms Dunn, but he did not believe this had justified his reaction or the comment to Ms Southan and Mr McKenzie. He had however cautioned Ms Dunn about her part in the altercation which had preceded Mr Robberts' making of the comment to Ms Southan and Mr McKenzie.

[57] Mr Warmington said he would not have viewed the comment Mr Robberts had made about Ms Dunn as warranting dismissal if it had been an isolated incident. However it succeeded the Final Written Warning given to Mr Robberts two months earlier and which had reminded him of the consequences of not following SFF policies or procedures.

[58] He had provided Mr Robberts with a second chance following the Final Written Warning, and had not been prepared to offer another second chance as he had no confidence that Mr Robberts would not act inappropriately on another occasion.

[59] Mr Warmington said he had given some consideration to the possibility of mediation or reconciliation in accordance with the Harassment Policy provision, however had not considered it appropriate in this case

[60] Mr Robberts raised a personal grievance on 9 September 2015 and a Statement of Problem was filed with the Authority on 25 September 2015.

Determination

Was Mr Robberts unjustifiably dismissed by SFF?

[61] Mr Robberts was dismissed on 12 August 2015 for serious misconduct. The test of justification in s103A of the Act states:

S103A Test of Justification

- i. *For the purposes of section 103(1) (a) and (b), the question of whether a dismissal or an action was justifiable must be determined, on an objective basis, by applying the test in subsection (2).*
- ii. *The test is whether the employer's actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred.*

[62] The Test of Justification requires that the employer acted in a manner that was substantively and procedurally fair. SFF must establish that the dismissal was a decision that a fair and reasonable employer could have made in all the circumstances at the relevant time.

[63] The implication of the test of justification in s 103A was considered by the Employment Court in *Angus v Ports of Auckland Limited*¹. The Employment Court stated:²

The legislation contemplates that there may be more than one fair and reasonable response or other outcome that might justifiably be applied by a fair and reasonable employer in these circumstances. If the employer's decision to dismiss or to disadvantage the employee is one of those responses or outcomes, the dismissal or disadvantage must be found to be justified.

[64] The test for serious misconduct is set out in *Northern Distribution Union v BP Oil New Zealand Ltd*³. In that case the Court of Appeal in defining what constituted conduct justifying summary dismissal stated:⁴

Definition is not possible, for it is always a matter of degree. Usually what is needed is conduct that deeply impairs or is

destructive of that basic confidence or trust that is an essential of the employment relationship.

[65] At the time of the investigation into the complaint made against him by Ms Dunn, Mr Robberts was subject to a Final Written Warning.

[66] The Final Written Warning letter makes to clear that there were three separate issues involving misconduct against Mr Robberts for each of which a warning was issued, and that the three offences culminated in a Final Written Warning.

1 [\[2011\] NZEmpC 160](#)

2 *Angus at para [23]*

3 [\[1992\] NZCA 228](#); [\[1992\] 3 ERNZ 483](#)

4 *Ibid* at p.487

[67] I note that all these issues were instances of Mr Robberts having failed in his obligations and responsibilities as regards SFF policies and procedures.

[68] I find that whilst an employer may issue a number of cumulative warnings there is no prohibition on an employer issuing a final written warning or making a decision to dismiss without previous warnings having been issued in circumstances in which the allegations involve misconduct regarded as being sufficiently serious.

[69] Mr Robberts did not raise a personal grievance in connection with the First Written Warning at the time it was given to him.

[70] There is evidence that Ms Hartdegan raised the matter of the Final Written Warning being invalid at the meeting on 5 August 2015, however there is no evidence that she stated she was raising a personal grievance in connection with it.

[71] The leading case on the interpretation of this section of the Act is *Creedy v Commissioner of Police*.⁵ In this case, Chief Judge Colgan stated:

[36] It is the notion of the employee wanting the employer to address the grievance that means it should be specified sufficiently to enable the employer to address it. So it is insufficient, and therefore not a rising of the grievance, for an employee to advise an employer that the employee simply considers that he or she has a personal grievance or even by specifying the statutory type of the personal grievance as, for example, unjustified disadvantage in employment as Mr Barrowclough did on Mr Creedy's behalf in this case. As the court determined in cases under the previous legislation, for an employer to be able to address a grievance as the legislation contemplates, the employer must know what to address. I do not consider that this obligation was lessened in 2000. That is not to find, however, that the raising cannot be oral or that any particular formula of words needs to be used. What is important is that the employer is made aware sufficiently of the grievance to be able to respond as the legislative scheme mandates.

[72] Whether the grievance has been specified sufficiently to enable the employer to address it, is to be assessed objectively i.e. from the standpoint of an objective observer⁶.

[73] I do not find that what was discussed regarding the validity of the Final Written Warning at the meeting on 5 August 2015 could be considered as raising a personal grievance in terms of the legislative requirements; it was rather the stating of an opinion.

5 *Creedy v Commissioner of Police* [\[2006\] NZEmpC 43](#); [\[2006\] ERNZ 517](#)

6 *Winstone Wallboards Ltd v Samate* [\[1993\] 1 ERNZ 503](#)

[74] The raising of a Personal Grievance must be within the statutory 90 day time period specified in 114 of the Act. The letter raising a Personal Grievance on behalf of Mr Robberts and referring to the Final Written Warning was dated 9 September 2015. It is therefore outside the statutory 90 day time period. There is no application to raise a late grievance in relation to the Final Written Warning and SFF does not consent to the late raising of the personal grievance.

[75] I find that the Final Written Warning is valid and as such could be relied upon by SFF in the subsequent disciplinary action taken against Mr Robberts in August 2015.

[76] In conducting a disciplinary procedure, an employer is required to follow a fair procedure. In accordance with s 103A (3) of the Act I am asked to consider whether:

- (a) ... the employer sufficiently investigated the allegations against the employee ...*
- (b) ... the employer raised the concerns that the employer had with the employee ...*
- (c) ...the employer gave the employee a reasonable opportunity to respond to the employer's concerns ...*
- (d) ... the employer genuinely considered the employee's explanation (if any) in relation to the allegations against the employee ...*

[77] I find that Mr Warmington carried out a fair procedure: he interviewed Ms Dunn, Ms Southan and Mr McKenzie; Mr Robberts also provided a statement. These statements and the interview evidence were considered by him.

[78] Mr Robberts was advised of the concerns SFF had in the letter dated 27 July 2015. Mr Robberts was provided with an opportunity to explain in the meetings on 5 and 12 August 2015 in which he was represented by Counsel.

[79] I find that Mr Warmington genuinely considered Mr Robberts' explanation prior to reaching a decision that dismissal was the appropriate outcome.

[80] At the time of the investigation into Ms Dunn's complaint, Mr Robberts was on a Final Written Warning for failing to follow company policy and procedures. He had been advised in the letter dated 26 May 2015 confirming the Final Written Warning that any future failure to follow the policies and procedures would affect his ongoing employment.

[81] Mr Warmington considered that Mr Robberts had breached the SFF Harassment policy as a result of the incident with Ms Dunn on 20 July 2015.

[82] I find that dismissal was a decision a fair and reasonable employer could have reached in all the circumstances at that time.

[83] I determine that Mr Robberts has been justifiably dismissed by SFF.

Was Mr Robberts unjustifiably disadvantaged by SFF?

(i) Suspension

[84] SFF had a contractual right pursuant to clause 6.7 of the Employment Agreement to suspend an employee in the situation in which an investigation had been instigated.

[85] Mr Robberts had signed the Employment Agreement acknowledging in accordance with clause 3.1 that he would comply with all policies, rules and procedures.

[86] SFF had instigated an investigation as a result of Ms Dunn's complaint against Mr Robberts.

[87] I find that no consent was required from Mr Robberts in that situation.

[88] I determine that Mr Robberts was not disadvantaged by being suspended from employment.

(ii) The issuing of a Final Written Warning

[89] I have addressed this issue in the preceding paragraphs.

[90] I determine that Mr Robberts was not disadvantaged by the issuing of the Final Written Warning.

Was there was a contractual breach of contract by SFF?

[91] I have considered Ms Dunn's comment of: "*excuses for Africa*". I note that the expression is one in common usage and does not necessarily denote racism on the part of the person making it. Whilst Mr Robberts is a South African, there is no evidence that he

regarded the comment as being racist at the time it was made, nor did he report it as such under the Harassment Policy.

[92] As regards the option of mediation, as noted earlier, Mr Warmington had reached the decision to dismiss so mediation was not an appropriate outcome.

[93] I find no breach of the Harassment policy by SFF in regard to Mr Robberts.

[94] I determine that there has been no breach of the Harassment policy by SFF.

Did SFF breach the duty of good faith it owed to Mr Robberts?

[95] I find no breach of good faith by SFF in regard to Mr Robberts.

[96] I determine that there has been no breach of good faith by SFF.

Should Mr Robberts be reinstated?

[97] As I have determined that Mr Robberts was justifiably dismissed by SFF, reinstatement is not an issue for determination.

Costs

[98] Costs are reserved. The parties are encouraged to agree costs between themselves. If they are not able to do so, the Respondent may lodge and serve a memorandum as to costs within 28 days of the date of this determination. The Applicant will have 14 days from the date of service to lodge a reply memorandum. No application for costs will be considered outside this time frame without prior leave.

[99] All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence.

Eleanor Robinson

Member of the Employment Relations Authority

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