

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Anthony John Robinson (Applicant)
AND Avis Rent A Car Ltd (Respondent)
REPRESENTATIVES Anthony John Robinson In Person
Martin Hill, Margaret Wise for the Respondent
MEMBER OF AUTHORITY James Crichton
INVESTIGATION MEETING 19 April 2005
DATE OF DETERMINATION 6 May 2005

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant Tony Robinson (Mr Robinson) alleges that he was unjustifiably dismissed by the respondent Avis Rent A Car Limited (Avis) from his role as a lead vehicle service agent at Christchurch Airport.

[2] Avis deny those allegations and say that the employment of Mr Robinson was terminated for just cause and in a procedurally fair manner.

[3] The parties attended mediation but were unable to resolve their differences.

Mr Robinson's Duties

[4] Mr Robinson was a lead agent in Avis' grooming bay at Christchurch Airport and had been employed by Avis since 2001. As such, he supervised a staff of fulltime groomers and a pool of casual groomers.

[5] The nature of Mr Robinson's work was that he worked on a roster and so he effectively shared the lead agent role with one other senior employee who worked alternative roster slots when Mr Robinson was not working.

[6] The work is labour intensive. Essentially Avis need to have clean cars to rent to their customers and they need to achieve that on budget and with a level of quality which meets Avis' high standards.

[7] A key task for Mr Robinson then was to arrange the required number of staff to deal with the cleaning of the number of cars that were to be cleaned or were expected to need cleaning.

[8] This often involved calling on a pool of casual employees who work on an “as and when required” basis.

The Employer’s Initial Concerns

[9] Margaret Wise (Ms Wise) is the branch manager for Avis at Christchurch International Airport. She has worked for the company in a variety of roles at Christchurch Airport for around 18 years. Mr Robinson’s position reports ultimately to Ms Wise.

[10] Ms Wise took a period of leave and returned to duty on the 17th of May 2004. From various management indicators that were available to her on her return, she became concerned that something was amiss.

[11] For instance, cars were being fuelled up well before the end of the working evening (which suggested that the evenings were finished earlier than the scheduled time because that was the last job usually done) and yet there was still a large number of casual staff being called in, which suggested that the depot was very busy.

[12] Because those 2 pieces of information did not fit together, Ms Wise became more interested and she prepared a spreadsheet. A copy of that spreadsheet was filed with the Authority.

[13] In essence, what that spreadsheet shows is that there is a disjunct (to use the modern parlance) between the hours worked (or perhaps more accurately claimed to have been worked) and the other information such as what time cars were fuelled up.

[14] Ms Wise sought a written explanation from Mr Robinson and then another piece of information came to her notice. She realised that she could get from Avis’s security company a printout of the times that the alarm was set at night and so she obtained that information. That information was put to Mr Robinson as part of the package requiring his response.

[15] When Ms Wise received Mr Robinson’s written explanation, she found it did not satisfy her and so she summoned Mr Robinson to a meeting.

The Custom and Practice Argument

[16] At that meeting, Ms Wise put to Mr Robinson an allegation that Avis considered there may be discrepancies between the hours claimed to have been worked (and for which payment was sought and made) and the hours actually worked both by Mr Robinson himself and by the casual employees that reported to him.

[17] Ms Wise told Mr Robinson that on the face of it what he was doing was ‘unethical’ because he was allowing or encouraging staff to clock off later than the time they actually worked to.

[18] Mr Robinson’s explanation was that this was the way he always did things when he worked at the railways and he also claimed that this kind of “job and finish” situation was the custom and practice with Avis as well.

[19] I put this to Ms Wise who as I mentioned earlier had worked for over 18 years at the Christchurch Airport site for the respondent and she told me that she was absolutely clear that what Mr Robinson described as “custom and practice” had never happened at Avis’ Christchurch Airport site.

[20] Ms Wise added that in one of her previous roles with Avis at Christchurch Airport, she had been what was then called a Duty Manager and that she would have been in an ideal position to know if there was such an arrangement.

[21] When Martin Hill the Human Resources Advisor for Avis gave his evidence, I asked him about this “job and finish” arrangement in other parts of the Avis network. He gave unequivocal evidence that there was no ‘job and finish’ anywhere throughout New Zealand in the Avis network.

[22] For his part, Mr Robinson contended that as well as the ‘job and finish’ arrangement applying at Christchurch Airport it also applied at Auckland Airport. Mr Hill’s evidence as I have just mentioned was contrary to this.

[23] I am absolutely satisfied by Avis’ evidence that there was no ‘job and finish’ arrangement at their Christchurch Airport facility other than the one promulgated at the wash bay by Mr Robinson and others and there was no historical precedent for that arrangement which Mr Robinson could seek to rely upon.

Avis’s Procedure

[24] The meeting that I have just referred to between Ms Wise and Mr Robinson was held on 1 June 2004. Also present at that meeting was another Avis person taking notes. That initial meeting was really designed to establish if there was a “case to answer”.

[25] Ms Wise for Avis told me that she was dissatisfied with the nature of Mr Robinson’s explanation particularly because he placed reliance on a “custom and practice” argument for which there was no precedent in the company.

[26] That being the case, Mr Robinson was asked to attend a disciplinary meeting on 4 June 2004. He was told that he had the opportunity to bring a support person (and did so). He was told who would be present from Avis. He was told what the purpose of the meeting was, told that the allegations were regarded as serious, told that dismissal was a possible outcome of the process if Avis was dissatisfied on reflection with the explanations that he might offer.

[27] The meeting of 4 June then proceeded.

[28] Avis established with Mr Robinson at the beginning of the meeting what the meeting was all about and the nature of the disciplinary procedures that the company adopted.

[29] Mr Robinson apparently read out his explanation to the matters complained about.

[30] Amongst other things, he frankly admitted ‘...allowing casual employees to round off their book off times to the half hour’.

[31] In addition, Mr Robinson’s statement to that meeting (which was provided to me in evidence) also confirmed that he was closing up the wash bay earlier than the scheduled time if he considered all the work was done.

[32] In considering those comments, Avis seems understandably to have been motivated by a concern that Mr Robinson had no authority whatever to make the kinds of decisions that he admits having made.

[33] In the result, after a period of reflection, Avis determined to dismiss Mr Robinson for serious misconduct that serious misconduct being disclosed in two separate ways namely his decision from time to time to close the wash bay before the scheduled time of 10 pm and his decision to pay casual workers notwithstanding that their work was not required.

[34] Both of these 'offences' had the effect of requiring the falsification of time sheets or time keeping records and that is a specific instance of serious misconduct as identified in the Avis company handbook.

[35] Accordingly, I find that Avis was entitled to terminate Mr Robinson's employment for cause and that it acted in doing so in a procedurally fair manner.

Determination

[36] Mr Robinson alleges that his termination is unsafe because what he did was no more than follow the custom and practice that had applied in the past and thus the offence, which was not denied, was or ought to have been condoned by Avis.

[37] I cannot accept that view. I have found as a fact that there was no evidence whatever of a history of the 'job and finish' situation that Mr Robinson claimed and that being the position, his argument on that head fails.

[38] I am satisfied also that Avis conducted a robust and thorough inquiry applying proper employment law principles.

[39] It follows that Mr Robinson has no personal grievance because Mr Robinson's dismissal was justifiable and the procedure used to effect that dismissal robust and fair.

[40] Costs are reserved.

James Crichton
Member of Employment Relations Authority