



[3] When he met Mr Munroe, Mr Munroe's supervisor, Janine, asked them to enter the building to view the sanitising units. It was alleged that Mr Munroe had failed to carry out the servicing of the units.

[4] Mr Robinson was told that Mr Darren Pyne, the Regional Operations Manager, had previously visited the site to look at the units.

[5] When he looked at the units Mr Robinson identified what he believed to be a health and safety issue, which he reported to Janine. Janine and Mr Robinson looked at a gap in the flooring under which was a ducting pipe. Mr Robinson took photos. Mr Robinson said that he would not step over the gap to service the units and neither should Mr Munroe. The risk was that a person could fall and injure himself. Mr Munroe serviced the bathroom but not the units.

[6] Mr Robinson spoke to Mr Munroe about the disciplinary action and then returned to work.

[7] A couple of hours later Ms Taylor phoned saying she had been asked to investigate why he had been on the Les Mills premises. He told her he had been invited by Janine.

[8] Mr Munroe phoned Mr Robinson and told him the disciplinary meeting had been rescheduled to Friday 26 September. At 2pm Mr Robinson told Ms Taylor he was leaving to attend the meeting, which lasted about 45 minutes. After the meeting he spoke to Mr Munroe and the union organiser, Mr Kyriazopoulos. He left about 3.45pm. That day a service meeting was being held and Mr Robinson had been sent a reminder about the meeting. Mr Pyne said important issues were to be discussed at that meeting, which had been arranged in response to concerns raised by the union. The meeting was to deal with health and safety issues and leave. The meeting had started about 3.15pm.

[9] Mr Robinson told Mr Munroe to go to the meeting but he continued to discuss the disciplinary action with Mr Kyriazopoulos. Their conversation finished about 3.45. Mr Robinson decided it was not worth going to the meeting – he was due to finish work at 4pm – and went to the pub.

[10] In the evening Mr Robinson injured his right arm and shoulder and was on sick leave until 20 October.

[11] On Friday 10 October Mr Pyne delivered a letter to Mr Robinson's home asking Mr Robinson to attend a meeting with him and the supervisor upon his return to work. The letter states the company wanted to discuss two issues:

- a. *The issuing of a directive to an employee not complete a service due to your interpretation of a Health & Safety risk and not following correct procedures when identifying a new hazard; and*
- b. *Your non-attendance at the Service Meeting on Friday 26 September 2008 between 3.00pm and 4.00pm and your timesheet reflecting that you were present at work until 4.00pm.*

[12] On 13 October Mr Robinson went to the Collard Place depot and met with Mr Pyne. Mr Pyne told him the matter would be dealt with formally upon his return to work but Mr Robinson continued the conversation. Mr Robinson said he was very clear that he did not enter Les Mills without an invitation by Janine; and that he did not advise Mr Munroe to forgo a service but did advise him to avoid proceeding with an action that could put his personal safety at risk. He said he had not attended the service meeting on 26 September as he was having a discussion with the union organiser. If his time sheet was inaccurate for Friday 26 there had been no intent to defraud.

[13] On 30 October he received a letter asking him to attend a meeting with Mr Pyne and Ms Taylor on Monday 3 November. The issues to be discussed were those set out in the earlier letter. He was told he could bring a representative and that disciplinary action including dismissal could result.

[14] The meeting was attended by Mr Pyne and Ms Beverley Grindley, another supervisor, as Ms Taylor was on leave. Mr Robinson did not bring a representative. When Mr Pyne asked about a representative Mr Robinson said he did not need one. The notes from this meeting indicate that Mr Robinson did instruct Mr Munroe not to service the units. Mr Robinson accepted he had not gone to the service meeting and

that he had gone to the pub. With regard to the time sheet Mr Robinson said it was a one off.

[15] On 5 November Mr Pyne sent Mr Robinson a letter advising him that he was to attend a meeting on 7 November. This meeting was to discuss the findings of the investigation and to propose an outcome. He was invited to bring a representative but again chose not to. The letter reiterated that disciplinary action including dismissal could result.

[16] At the meeting Mr Pyne again asked if he wanted a representative. He declined because he did not appreciate the seriousness of the situation. Given that the letter refers to the possibility of dismissal and that Mr Robinson was a union delegate this is surprising.

[17] Mr Pyne asked whether Mr Robinson wished to comment on the finding that that he had issued a directive not to complete the service and that he had not contacted the site safety officer or an appropriate supervisor to advise that a hazard had been identified.

[18] Mr Robinson was asked whether he wanted to comment on that or whether he wanted to hear the three findings. Mr Robinson's preference was for the latter.

[19] Mr Pyne said Mr Robinson had not attended the Service Meeting and did not seek permission not to attend it or tell anyone about his absence and that he stated he did not think it worth attending the remainder of the meeting.

[20] The third issue was the time sheet matter and Mr Robinson had said it was an isolated incident. However, this was not correct as the GeoSmart readings, a satellite navigation system, had been reviewed for each of the preceding four weeks (excluding those when Mr Robinson was away) and that there was an average variance of two to two and a half hours between what was claimed on the timesheets and what the readings showed.

[21] Mr Robinson said as far as he was concerned health and safety procedure had been followed and it was all a bit petty. Mr Pyne said Mr Robinson had accepted he

had issued an instruction to stop the service and that that was in breach of company policy and Mr Robinson should have rung the Health and Safety Officer. No company policy was shown to Mr Robinson. What was produced to the Authority was a two page document regarding health and safety procedures which dealt with employee participation in health and safety communications. This was dated 30 March 2006.

[22] Mr Robinson did not comment further regarding his non attendance at the meeting.

[23] There was a dispute about whether Mr Robinson had seen the GeoSmart readings. He was not given copies but I am satisfied that he had sighted the documents.

[24] At this stage the meeting was adjourned. Upon his return he was told that the company did not accept that he did not know the correct reporting procedures for hazards and that he did not have the authority to direct that a service not be carried out. His explanation regarding the meeting was unacceptable and he was deemed to have failed to follow a lawful instruction. The timesheet discrepancy for that day was not an isolated incident. The accumulation of those matters constituted serious misconduct, the company had lost trust and confidence and was proposing to dismiss him.

[25] Mr Robinson responded by saying "You are joking!"

[26] He was asked if he had anything further to say. Mr Robinson handed Mr Pyne a pamphlet headed "If it's not safe don't do it", Mr Pyne thanked him.

[27] Mr Robinson said he did not think that turning up or not turning up at the service meeting was a big thing. The notes of the meeting state that Mr Robinson referred to the timesheet issue and accepted that the company had gone back a month and said he was not the only person who did that. Mr Robinson denied saying that but I am satisfied he did make that admission. Mr Robinson said dismissing him was taking it a bit far and he should have got a written warning. He would be speaking to the union.

[28] Mr Pyne said he had really wanted him to have a representative and he should contact the union. Mr Pyne terminated his employment. He was paid his notice but did not have to work it.

[29] The dismissal was confirmed by letter of 12 November for the following reasons:

- Mr Robinson did not have the authority to direct an employee not to complete his duties; and
- he had not followed correct reporting procedures when he identified a new hazard and that he was aware of those procedures; and
- his explanation regarding his non-attendance at the service meeting was unacceptable and he had not followed a lawful instruction; and
- the claim that the timesheet discrepancy was an isolated one was inaccurate; and
- the company had lost trust and confidence.

### **Justifiability**

[30] The test is that set out in s103A Employment Relations Act 2000.

### Health and safety matter

[31] What is described as the health and safety policy requires an employee who discovers a hazard to notify the Site Safety Officer (“SSO”) and the health and safety representative. The matter will be discussed at a monthly health and safety meeting. The SSO assesses and takes action to reduce or resolve the issue. The issue can either be resolved at the location or the Health and Safety Co-ordinator is to be contacted and the matter is put on the agenda at the Group Health and safety management Committee when a decision is made and communicated to the location and the employees.

[32] Clearly, leaving what might be an urgent matter until a monthly meeting is held is not acceptable.

[33] The hazard identified by Mr Robinson was notified to Mr Munroe's supervisor, Janine.

[34] Curiously, Mr Pyne had seen the hole in the floor probably the day before Mr Robinson saw it. Mr Pyne said he had spoken to the manager at Les Mills and explained that it was a potential hazard. The manager had said he was putting a board over the hole. Mr Pyne also contacted the SSO. Clearly, no action had been taken in regard to placing a board over the hole when Mr Munroe and Mr Robinson viewed it the following day.

[35] Mr Pyne said no instruction had been issued that further servicing was not to take place as he had raised it with the manager at the site and said it was unsafe. Given that Mr Pyne accepted that the hole in the floor was unsafe it is very difficult to understand why he had a problem with Mr Robinson saying it was unsafe and with Mr Munroe not servicing the units, which would have required him to step across the hole, which had not been covered.

[36] Mr Pyne's answers to my questions tended to show that the issue was as much, if not more, that Mr Robinson should not have been on the Les Mills site as his failure to follow the correct procedure. Mr Robinson told Mr Pyne that Janine had invited him inside. Mr Pyne said he had talked to Janine and had some notes but was unsure if he had shown them to Mr Robinson, who said he had not seen them.

[37] The health and safety matter did not constitute serious misconduct.

#### Service meeting attendance

[38] Mr Mitchell said Mr Robinson had not been directed to attend the service meeting. While I accept there was not an express, specific direction to attend, attendance at the meeting was part of Mr Robinson's normal duties. In the normal course of events he should have attended the meeting. As a union delegate he was entitled to represent Mr Munroe at his disciplinary meeting and also to discuss the matter with the union organiser.

[39] Mr Robinson was not entitled to decide that he would not go to the remainder of the meeting, which was an important meeting.

[40] However, this was not failure to obey a lawful instruction. To fail to go to the remainder of the meeting was foolish but was not sufficiently serious misconduct to warrant termination.

#### Timesheet issue

[41] Mr Mitchell submitted that concerns about the weeks ending 2 November, 26 October, 21 September and 28 September 2008 were raised as a response to his explanation but were not put to him as allegations. There was no basis to use GPS alone to determine whether he was working or not. While it might provide an accurate measure of when the van was started and moving that was not a measure of whether he was working.

[42] Whether the concerns about the other timesheets were put as allegations or not becomes irrelevant in light of Mr Robinson's admission that he had falsified timesheets but that others did it as well.

[43] This constitutes an admission of behaviour that is serious misconduct and does justify dismissal.

[44] The dismissal was justified.

#### **Costs**

[45] 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 applicant should file a memorandum in reply within 14 days of receipt of the respondent's memorandum.

Dzintra King

Member of the Employment Relations Authority