IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

CA 86/09
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	BETWEEN	PHILIP TERENCE WALKER Applicant
	AND	SAFE AIR LIMITED Respondent

Member of Authority:	Helen Doyle
Representatives:	Mike Hardy-Jones, Counsel for Applicant Tim Cleary, Counsel for Respondent
Investigation Meeting:	1 May 2009
Determination:	22 June 2009

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Philip Walker commenced his employment with Safe Air Limited (Safe Air) in Blenheim as a storeperson in August 2007. He was appointed to the role of purchasing officer in August 2008. On 10 February 2009, after an investigation into breaches of company email and internet policies, Mr Walker was dismissed for reasons that related to inappropriate email activity.

[2] Mr Walker says that his dismissal was unjustified and that he was not treated on an equal footing with other employees who also had forwarded inappropriate emails. Mr Walker initially asked for an order for interim reinstatement. During a telephone conference between counsel and the Authority on 4 March 2009, it was agreed that the matter would proceed by way of a substantive investigation meeting on 1 May 2009. Mr Walker seeks reinstatement into his former position, recovery of any lost wages and compensation for hurt and humiliation together with costs.

[3] Safe Air says that Mr Walker's dismissal was justified because an analysis undertaken of his computer at Safe Air which revealed emails of an inappropriate nature being sexually explicit or otherwise offensive. Safe Air says that Mr Walker had a full opportunity to explain the allegations during a meeting on 3 February 2009 at which he was represented by a solicitor. It says there was then a further meeting on 10 February 2009 at which the results of the investigation were put to Mr Walker before his employment was terminated.

[4] Safe Air does not accept that Mr Walker was treated in a disparate way because the material that Mr Walker acknowledged sending was of a more sexually explicit nature, the quantity of emails was greater and Mr Walker was not remorseful when compared with other employees who received lesser disciplinary consequences.

Test for justification set out s.103A of the Employment Relations Act 2000

[5] Section 103A of the Employment Relations Act 2000 requires the question of whether a dismissal was justifiable to be determined, on an objective basis, by considering whether the employer's actions, and how the employer acted, were what a fair and reasonable employer would have done in all the circumstances at the time the dismissal occurred.

The issues

- Did Mr Walker's actions that were relied on by Safe Air in reaching a decision to dismiss him amount to serious misconduct?
- Was the decision of Safe Air to dismiss Mr Walker justifiable in all the circumstances?
- If Mr Walker's dismissal was unjustified then what remedies should he receive, is reinstatement practicable and are there issues of mitigation?

Did Mr Walker's actions that were relied on by Safe Air in reaching a decision to dismiss him amount to serious misconduct?

Background to the company discovering the inappropriate material on Mr Walker's computer

[6] In May 2008 the previous General Manager of Safe Air asked Joanne Birnie, who was then Human Resources Operations Manager at Safe Air, to investigate some

unrelated concerns about another employee in terms of information transmitted from a single source computer. Ms Birnie was asked to take a snapshot in time of the Outlook box on the computer and it was when this was examined that Ms Birnie's attention was drawn to non-work and inappropriate material transmitted via email to different addresses.

[7] A general investigation was then undertaken to see where the inappropriate material had been sent. Ms Birnie reviewed the Outlook box of the computer receiving the message and reviewed the email traffic of the computer, including viewing emails sent and received.

[8] In September 2008, investigation meetings were held with employees who were in some way connected with the web of email activity on the computer audited for unrelated reasons. As a result of the initial interviews undertaken with the relevant staff, it became apparent to the Materials Business Manager at Safe Air, Wayne Price, that a wider group of employees was also implicated in storing and transmitting inappropriate material by email.

[9] A second audit completed on printed email from the first audit produced another list of employees whose computer use required further investigation. Mr Walker was one of those employees.

Safe Air's investigation process into Mr Walker's computer use

[10] Mr Price wrote a letter to Mr Walker dated 26 January 2009 inviting him to a meeting on 3 February 2009 to discuss emails of concern. Twenty six emails of particular concern were set out in the letter but a spreadsheet showing all emails of concern was attached. The letter had the following attachments:

- Company policies including the WE Guide;
- The employee's assistance programme brochure;
- The signed securities information declaration;
- Signed conditions of access to the internet;
- General Manager's update of 11 January 2007 attaching the WE Guide and email excerpts;

- Hard copies of the printable emails and attachments.

[11] Mr Walker was advised he could bring a representative to the meeting and that he could make comments, explanations or representations relating to the investigation into emails attributed to him. He was advised that the incident was serious in the letter and that it may result in disciplinary action being taken up to and including termination of his employment.

3 February 2009

[12] Mr Walker attended at the meeting on 3 February 2009 accompanied by his solicitor, Murray Hunt. Mr Price attended with Graeme Norton, Senior Legal Counsel at Air New Zealand, and Ms Birnie. Pip Langford attended as minute taker for the company.

[13] Mr Walker accepts that the notes taken of the 3 February 2009 meeting are, in the main, an accurate account of what was said. There was one sentence about whether Mr Walker had seen the WE Guide which contains the code of conduct and other policies and the email policy that he disagreed with. Mr Price said in his evidence that he interpreted Mr Hunt's statement about that matter to the effect that Mr Walker was saying he did not have/had not seen the WE Guide before it was provided as an attachment to the letter of 26 January 2009. That accorded with Mr Walker's evidence about what he explained about the WE guide.

[14] Mr Walker's explanations were in the main delivered by Mr Hunt and were set out in the thorough report of final findings that was prepared by Mr Price following the meeting of 3 February 2009.

[15] The specific company concerns that he was required to explain related to 425 emails of concern of which Mr Walker appeared to have forwarded all the emails over a six month period from his computer with 172 having been sent to email addresses external to the company. The six month period was between March and September 2008. Not all of the 425 emails were separate emails because the number of 425 included multiple actions in terms of forwarding the same email.

[16] The emails covered a full range of material from relatively less serious joke type emails to the 26 emails which were described as containing depictions of lewdness, nudity, genitalia and/or sex acts in contravention of company email and

internet policies. In the final findings report seven emails in particular were described as particularly serious concern.

[17] Mr Walker provided the following explanations himself or through his representative:

- He accepted that the record of emails provided was an accurate record of his computer use and that no one else was accessing or sending out from his machine.

- He confirmed that the external email addresses to which some of the emails were forwarded were his own home email address and those of his father, partner and other family he knew would not be offended.

- He said that the material was sent and received from company employees amidst a culture where the content was not likely to offend and was banter between colleagues.

- He said that the material was not considered by him to be of a bad nature and that if he had so considered he would not have forwarded it on. He clarified a bad nature as "graphic or offensive".

- He did not remember seeing the WE Guide that contained the email policy and could not find it with his induction folder. He acknowledged signing a document headed conditions of access to the internet agreement on 14 December 2007 and security declarations on 7 August 2007 and 14 December 2007. In these declarations Mr Walker declared that he would not disclose any confidential or commercially sensitive information belonging to or held by Safe Air. Mr Hunt said that there was an obligation to remind employees of the code of conduct and there had been no reiteration of the policy even after what had occurred in 2008.

- He said that he had sent the email with the google link *suspicious about your partners' whereabouts* and another email called *sex statistics for all o.i.p.* Mr Hunt said that Mr Walker at the time did not have a sense of the deeper thinking or reasons for policy or true appreciation of the boundaries of policy. As part of the explanation

there was also a concern that the company had not provided a specific reminder or reiteration of the policy in relation to email sending and receiving.

- Mr Walker did not deny his actions and had expressed through Mr Hunt a deep sense of regret about them.

[18] Safe Air found in assessing the content of the emails originating from Mr Walker:

- Mr Walker received and purposely forwarded a large number of personal non-work related emails with content ranging from jokes to explicit photography and animation of nudity, genitalia and sex acts in contravention of relevant company policy. It was found to be likely that these actions had negatively impacted on business productivity;

- Mr Walker knowingly allowed certain emails containing offensive and inappropriate material to continue to be sent into the company from an external associate computer through to his work computer and he then forwarded them on to others within the company;

- Mr Walker received other emails containing offensive and inappropriate material from people within the company and forwarded those within the company email system and externally;

- Mr Walker sent some emails containing offensive and inappropriate material to external addresses claiming that these people were family and his partner who would not be offended by the material. He did not consider what these people might do with the emails and that their further actions may have resulted in the risk of the company being bought into disrepute. The issue for the company was clarified to be not whether the recipients of emails might have been offended, but whether the action contravened the company policies.

10 February 2009

[19] On 10 February 2009 there was a further meeting at which the final findings of the email investigation were read out. Mr Walker was not accompanied at that

meeting by Mr Hunt but by his father, Gary Walker. Mr Price attended that meeting with Mr Norton and Ms Birnie. Mr Walker and his father were given an opportunity for comment. Mr Walker's father made a number of statements, some of which were critical about the company not providing guidelines about emails and that there was a culture which he stated was rife within the company. He said that Mr Walker was a young guy and was going with the flow.

[20] There was then an adjournment and, when the meeting resumed, Mr Walker was advised of the decision to terminate his employment. There was then some further discussion about the matter. The only contribution Mr Walker made I find is *I was not aware that it would go this far by my actions and I would very much like to keep my job. I apologise if I have done anything wrong.*

[21] I am satisfied that the reasons for Mr Walker's dismissal were those set out in the report of final findings and the letter of termination and that they related to inappropriate email use. Mr Price made the decision.

Serious misconduct conclusion?

[22] The procedure adopted by Safe Air to investigate the allegations was what a fair and reasonable employer would have undertaken. There was an initial complaint Mr Price had predetermined the outcome. I do not find that is made out. I find that Mr Price was prepared to listen to any further explanation, comment or representation at the meeting on 10 February 2009 even after he had delivered the decision that Mr Walker's employment was to be terminated. Mr Walker was given all the information that was relied on by Safe Air, he had an opportunity to provide an explanation to the allegations that I find were carefully considered before a decision was made.

[23] A fair and reasonable employer would consider the following matters in terms of whether there had been serious misconduct on the part of Mr Walker by receiving and sending emails internally and externally:

- The nature of Safe Air's workplace.
- The policies in place about emails.
- Mr Walker's knowledge of the required standards in terms of email use.

- The widespread sending and receiving of emails between a group of employees.

- Mr Walker's conduct in terms of his email quality, quantity and any remorse issues.

The nature of Safe Air's workplace

[24] Safe Air operates in the aviation sector and does emphasis integrity and security in terms of recruitment of its employees.

[25] A fair and reasonable employer would have considered that some of the emails that Mr Walker received and/or forwarded externally or internally contained inappropriate material in terms of nudity and/or other lewdness that was not in accordance with its policies. Mr Price said in his evidence that it had never been said as part of the disciplinary investigation that the emails were pornographic. A fair and reasonable employer would have been concerned that its name was on some of the emails sent externally by Mr Walker because Mr Walker had no control over where those emails were then sent.

The policies in place

[26] The email policy for Safe Air is contained in the WE Guide which contains all the key policies for employees of the Air New Zealand group. The email policy does not prohibit personal use of email by employees but does say:

> *You must not transmit, forward, circulate or store inappropriate material via email. "Inappropriate" includes, but is not limited to material that can be interpreted as:*
>
> - *Sexual or racial harassment;*
> - *Defamatory;*
> - *In breach of copyright;*
> - *Unsolicited bulk electronic mail advertisements, commercial or private messages (e.g. chain letters);*
> - *Pornographic or otherwise objectionable in nature.*

[27] It is further clear from the policy that the company's intention is to maintain the privacy of individual email communication but intervention will occur if the automatic scanning system discovers a possible email policy violation, company management suspect possible email policy violation or the needs of business dictate.

[28] Ms Birnie said the WE Guide was provided as part of the induction folder contents and it would be unusual that Mr Walker was not provided with a copy of the guide. Nevertheless, Safe Air does accept that it cannot establish Mr Walker did in fact receive a guide because there is no signed acknowledgment of the same.

[29] The company also relies on Mr Walker's individual employment agreement dated 16 April 2008 which took effect from 5 May 2008. Clause 4 of that individual employment agreement is headed up *Company Policy* and provides:

> *4.1 The company issues new or amended company policies from time to time. You should read and ensure that you understand the company policies that apply to the employment relationship between yourself and the company.*
>
> *4.2 The company may change matters contained in company policy manuals and these changes may be made without your agreement.*

[30] The company relies on a document that Mr Walker signed called the *Conditions of Access to the Internet* on 14 December 2007. Mr Walker signed this document which also drew employees attention to various IT policy documents. I accept Mr Hardy-Jones' submission that the internet access document was not dealing specifically with email that may be sent.

[31] It was concluded that Mr Walker should have been aware of company policies on internet and email use. That conclusion, whilst open to a fair and reasonable employer, given the individual employment agreement provision, does require wider consideration in the particular circumstances of this matter where there was found to be widespread inappropriate email use.

[32] Mr Walker accepted that he was generally aware that his work computer was not to be misused in terms of accessing pornographic websites, long periods of personal usage and shopping online.

[33] Mr Walker and/or Mr Hunt on his behalf explained at the disciplinary meeting on 3 February 2009 that he did not consider the emails inappropriate at the time or he would not have forwarded them on. He did accept, however, at the Authority investigation meeting that they were inappropriate or at least some were.

[34] Mr Walker's explanation for forwarding the emails externally was that he did not have a sense of the deeper thinking or reason for the policy or true appreciation of

the boundaries of the policy. It was accepted by Safe Air that the emails sent externally from Mr Walker were sent only to his partner or family members but, understandably, the concern from Safe Air's perspective was what those people might do with the emails and that their further actions may bring the company in to disrepute because the Safe Air name was on the email.

[35] In *Chief Executive of the Department of Inland Revenue v. Buchanan* [2005] ERNZ 767, it was held by the Court of Appeal that where, as in that case, an employee did not comply with the code of conduct because of ignorance rather than wilful disobedience there was no presumption that this could not constitute serious misconduct. In *Buchanan*, unlike this case there had been training sessions on the new code of conduct which the employees in question had attended and they had acknowledged receipt in writing both that they had received the code of conduct and that they had attended at the training on the new code of conduct.

Mr Walker's knowledge of standards in all the circumstances.

[36] Mr Walker explained that there was a culture of sending emails between colleagues at Safe Air, including emails being sent from an employee who was more senior than him. Mr Walker said that these people would not be offended. There are about 30 employees who had received and/or forwarded inappropriate emails at Safe Air. Some employees had not actively done anything with emails received, but some had also forwarded them on internally and/or externally. Some employees had been investigated and some had not. It was not part of the disciplinary investigation that those who had received emails from Mr Walker were offended by them. The issue of concern was that there was a breach of company policy.

[37] Safe Air did not condone or indeed know of the forwarding of the emails considered inappropriate. Safe Air was clearly very disappointed that it was happening. A fair and reasonable employer, in these circumstances, would have considered very carefully whether Mr Walker properly understood the company standards, given the nature of the emails being sent between a significant group of employees at Safe Air.

[38] Considering the matter objectively, a fair and reasonable employer would have concluded a very real likelihood in the circumstances, Mr Walker's behaviour and appreciation of the company standards in terms of appropriate emails was shaped by

what other employees were doing. Mr Walker received some sexually explicit and inappropriate emails from other employees. He also forwarded some sexually explicit and inappropriate emails to other employees and externally.

[39] At an early stage in the six month analysis of Mr Walker's computer, he was sent the email which was specifically referred to in the meeting on 10 February 2009 as one containing depictions of graphic and highly inappropriate sex acts and was considered to be extremely serious and of major concern from a more senior employee. Mr Walker forwarded that on to his partner and father and his own external address in or about April 2008.

[40] At the final meeting on 10 February 2009, Mr Walker's father made comments to the effect that responsibility for the situation, whereby Mr Walker continued to receive and forward on emails of this nature, without being told they were unacceptable was with Safe Air. Overall the approach taken at that meeting was less constructive that that taken by Mr Hunt at the meeting on 3 February 2009 I do find, however, that a fair and reasonable employer would conclude that Mr Walker was less likely to have properly comprehended the seriousness and inappropriateness of the emails that he sent and/or that they were in breach of company policy in circumstances where so many other employees were involved in the exchange of emails.

[41] Some support for this is found by the fact that Mr Walker, when he became aware in September 2008 that there was an investigation being undertaken in email use by Safe Air, he sent no further emails of this type. It was submitted on Mr Walker's behalf and there is no evidence to the contrary that there were no further inappropriate emails sent by him between 9 September 2008 and the date of the termination of his employment on 10 February 2009.

[42] On the available evidence, a fair and reasonable employer would not conclude that Mr Walker, in full knowledge of the email policy, the internet policy and the expected standards, forwarded inappropriate emails externally and internally. It is more likely that he did this in an environment where others were also behaving in that way and that he was not clear about the standards expected.

[43] In that way Mr Walker's conduct can be distinguished from that in *Arthur E Riley & Co Ltd v. Wood* [2008] 1 ERNZ 462 where Ms Wood had been warned twice

about forwarding emails and that was seen as a relevant circumstance in the seriousness of her conduct because there was knowledge of the standards expected by the company.

Quality, quantity and lack of remorse

[44] The quantity and quality of some of the emails sent by Mr Walker were seen as a factor that aggravated the seriousness of his conduct. His lack of remorse was also seen as a factor.

[45] An assessment of the quality would have to be fairly and reasonably undertaken in terms of the 26 emails considered to be of concern. Mr Walker did forward on some of these emails that he had received from external sources and some were received from other employees. I have also considered the seven emails that were seen as being of particular concern and set out as such in the final findings report by Mr Price. Four of the seven emails, the *farmer's daughter's video, camel toe video, stop illegal net fishing* and *suspicious about your partner's whereabouts* had been sent to Mr Walker from an external source and he had then forwarded them on to other employees at Safe Air.

[46] Three other emails *driftwood art at its finest, nostalgia* and a third email *sex statistics for all* had been sent from other employees of Safe Air to Mr Walker.

[47] The comparison between the quality of emails is a difficult measure as to their seriousness where they are sent within a group of employees. An employee who I shall call "N" forwarded *driftwood art at its finest* to Mr Walker. That employee was not dismissed although was investigated by Safe Air. Having identified that as one of the seven particularly serious emails in the final findings, Mr Price, in his written evidence, explained that the email was not in the most serious category, although very inappropriate, because it did not contain graphic sexual contents.

[48] It is however much in the same category as *stop illegal net fishing* forwarded by Mr Walker to other employees. They both contain nudity.

[49] In these circumstances, where a number of employees had forwarded to each other inappropriate emails of varying degrees of seriousness over a six month period, I am not satisfied that a fair and reasonable employer would consider Mr Walker's

emails were of more serious quality and nature than others and then use that as the basis that increased the seriousness of his conduct.

[50] The quantity has to be considered in terms of whether it is for more serious emails or whether it is the email number in total. It was open to a fair and reasonable employer to conclude that reading and forwarding on of the emails considered less serious was time wasting because it was not work related. Some personal use was still permitted under the policy. Although it was put to Mr Walker in the findings that it was likely that his actions negatively impacted on business productivity there was no evidence of a corresponding drop in his performance which was considered to be of a good standard. It is unlikely in all the circumstances that a fair and reasonable employer would have found these types of emails amounted to serious misconduct.

[51] A fair and reasonable employer would then, in terms of quantity, separate out those emails from the emails that were considered to be of serious concern. Although quantity may in some circumstances be a measure of the seriousness of conduct, it is a more arbitrary measure when there is widespread sending of emails of similar seriousness by other employees.

[52] I do not find that a fair and reasonable employer would find that the quantity of emails in these circumstances would increase the seriousness of Mr Walker's conduct.

[53] The third matter relied on in terms of the seriousness and, to some extent the decision to dismiss, was that Mr Walker was not remorseful.

[54] Mr Walker did apologise but not in the way that the company and Mr Price felt was adequate for his actions. This was, however, against a background where his explanation was that he did not consider the emails inappropriate at the time or he would not have forwarded them and against the background where he was not the only employee sending these emails.

[55] In all the circumstances of this particular case, I do not find that a lack of or inadequate remorse can be a matter to increase the seriousness of Mr Walker's conduct.

Conclusion

[56] The test for considering whether Safe Air correctly concluded that Mr Walker's actions in terms of the emails amounted to serious misconduct is what would a fair and reasonable employer conclude in all the circumstances.

[57] There is no dispute that Mr Walker forwarded non-work related emails. Many were in the nature of jokes but some were specifically identified as offensive and inappropriate due to graphic nudity, lewdness and depictions of sex acts. That conclusion was one that was available to a fair and reasonable employer.

[58] The emails identified of that nature were a mix of emails forwarded to Mr Walker by other employees which he then in turn either forwarded on externally and/or internally and emails sent from external sources to Mr Walker which he then forwarded to other employees and/or externally. It was concluded that one email that was forwarded to Mr Walker by another senior employee was particularly offensive. Mr Walker forwarded that email to his father and partner.

[59] I find that a fair and reasonable employer would have to be satisfied before concluding the misconduct was serious that Mr Walker was clearly aware of the policies of Safe Air about emails and/or that his conduct was such that it should have been obvious to him that he was in breach of Safe Air's expected standards about emails. I am not satisfied that a fair and reasonable employer would have concluded Mr Walker was clearly aware of the email policies. As to whether it was obvious to Mr Walker that he was breaching Safe Air email standards I find in the circumstances of this case where there was widespread inappropriate use of emails a fair and reasonable employer would accept that Mr Walker was less likely to have comprehended the seriousness and inappropriateness of the nature of the emails.

[60] In all the circumstances, I do not find that a fair and reasonable employer would conclude that there was serious misconduct on the part of Mr Walker in terms of the inappropriate emails. There was misconduct for which Safe Air was perfectly entitled to impose a disciplinary action.

Was the decision of Safe Air to dismiss Mr Walker justifiable in all the circumstances?

[61] I have found that a fair and reasonable employer would not have concluded that there was serious misconduct on the part of Mr Walker. There was concern that

Mr Walker had been forwarding inappropriate emails but it was not conduct objectively assessed in all the circumstances of a type that impaired the trust and confidence in the relationship to such an extent that Mr Walker could not continue to work at Safe Air. It was not conduct that justified a dismissal.

[62] In all the circumstances, a fair and reasonable employer would have given Mr Walker a disciplinary outcome which fell short of dismissal.

[63] Mr Walker has a personal grievance that he was unjustifiably dismissed from his employment with Safe Air and he is entitled to remedies.

Remedies

Contribution

[64] I have to consider whether or not Mr Walker contributed to his dismissal under the Employment Relations Act 2000, and if I conclude that he has done, then I am required to reduce the remedy that he is entitled to.

[65] There is no doubt in my mind that Mr Walker did contribute in a blameworthy way to the circumstances that gave rise to his personal grievance. Although I have found that his behaviour had been shaped by what others were doing, he did forward on inappropriate emails which were not work related.

[66] In all the circumstances, I assess contribution in the amount of 50%.

Reinstatement

[67] Section 125 of the Employment Relations Act 2000 provides that reinstatement is a primary remedy. The Authority must, whether or not it provides any of the other remedies, provide, wherever practicable, for reinstatement as described in s.123(a) of the Employment Relations Act 2000.

[68] Mr Price said that he could not have trust in Mr Walker again. He said it was not until the Authority investigation that Mr Walker admitted that the emails were inappropriate and he had not previously properly apologised for his actions. Mr Price said he did not want to micro-manage people in terms of their adherence to policy although he accepted that Mr Walker's work was good. Mr Price compared Mr Walker with other employees who were remorseful.

[69] I accept that it was most unfortunate that there was blame attributed to the company at the disciplinary meeting on 10 February 2009. Mr Walker, along with other employees, made the decision to send each other emails that objectively assessed were inappropriate and the responsibility for emails sent by Mr Walker must lie with Mr Walker.

[70] Nevertheless it is clear that Mr Walker, without the imposition of a warning or any direct discussion, stopped sending the sort of emails that caused the company concern in September 2008. Although it did seem to me that Safe Air regarded that as some sort of self-preservation on his part, the reality is that he stopped when he became properly aware that these sorts of emails would not be tolerated. That supports that Mr Walker will adhere to policies and to standards the company expects when they are clear.

[71] I am satisfied that Mr Walker can be trusted if reinstated. I am sure that this matter has caused him to think carefully about his employment and conduct in his employment. There is no good reason to conclude that reinstatement is not practicable. I find that it is.

[72] I order Philip Terence Walker be reinstated to his former position as Purchasing Officer at Safe Air Limited from Monday, 29 June 2009.

Compensation

[73] I find that Mr Walker's reinstatement will have gone a considerable way toward compensating him for a loss of dignity and injury to his feelings. Mr Walker obtained other employment of a seasonal nature after he was dismissed on 10 February 2009 and he worked in that role for some weeks. He was also paid on dismissal an ex gratia payment of one month's pay. Those matters would have gone some way to alleviating his financial concerns which he said contributed to his humiliation.

[74] In all the circumstances, taking into account the order made for reinstatement, I would have awarded the sum of $2,000. Taking contribution, into account I award Mr Walker the sum of $1,000 under s.123(1)(c)(i) of the Employment Relations Act 2000.

Lost wages

[75] There was some evidence provided to the effect that Mr Walker had not attempted to mitigate his loss. To the contrary, I find that he had attempted to mitigate his loss and obtained work promptly after his dismissal.

[76] Mr Walker is entitled to reinstatement of lost wages for the period between dismissal and reinstatement, taking into account the ex gratia payment of one month on dismissal and wages earned after his dismissal. A contribution will also have to be deducted from any sum owed for lost wages. The parties are to discuss that matter.

[77] I leave to the parties to determine the sum of lost wages, failing which, either party can return to the Authority to have lost wages determined.

Costs

[78] I reserve the issue of costs. The parties should attempt to reach an agreement on costs, failing which Mr Hardy-Jones has until 13 July 2009 to lodge and serve submissions as to costs and Mr Cleary has until 3 August 2009 to lodge and serve submissions in response.

Summary of findings and orders made

a. I have found that Mr Walker was unjustifiably dismissed.

b. I have made an order reinstating Mr Walker to his previous employment with Safe Air as a Purchasing Officer from Monday 29 June 2009.

c. I have assessed contribution by Mr Walker to the circumstances that gave rise to the grievance at 50%.

d. I have ordered Mr Walker to be paid the sum of $1000 compensation for humiliation and loss of dignity under section 123 (1)(c)(i) of the Employment Relations Act 2000.

e. I have found that Mr Walker should be paid for lost wages between the date of his dismissal and 29 June 2009 taking into account wages received during that period, the payment made to Mr Walker of a one month ex gratia payment and the contribution assessed. I have asked

the parties to calculate in the first instances the figure owing but have reserved leave to return to the Authority if there are difficulties in that regard.

f. I have reserved the issue of costs and failing agreement have set a timetable for an exchange of submissions.

Helen Doyle
Member of the Employment Relations Authority