

Mr the applicant
informing him of the

Business



Mr Maxwell that he was employed unjustifiably dismissed by Taranaki Sawmills Ltd. 1 II Facts (Mr. Maxwell (the applicant), an employee of Taranaki) for three and a half years as a sawmill operator until he was dismissed on 6 May 1999 for eating another employee's biscuits without consent. 2 The incident that caused Mr Maxwell's dismissal occurred on 6 May 1999.

Mr Maxwell was in the cafeteria and the applicant noticed, and without thinking, ate an open packet of biscuits. Without thinking he ate biscuits. He did not realise that the biscuits belonged to another employee, Mr. Sinclair. After speaking to other employees present when Mr Maxwell ate Mr Sinclair's biscuits, Mr. Sinclair lodged a formal complaint with Taranaki. 3 Following the complaint, the respondent.

This led to an investigation by the Health and Safety Manager, Mr. Kearns, who investigated the incident. Mr. Kearns interviewed Mr Maxwell and held an interview with the applicant informing him of the allegation and that it could result in dismissal under his contract of employment agreement. 4 During the meeting Mr Maxwell the applicant admitted he ate the biscuits and provided the explanation that he did so without thinking and that he regretted doing so.

III Contract of Employment 5 Mr Maxwell The dismissal was summarily dismissed for serious misconduct. Serious misconduct is defined in "Taranaki Sawmills Limited Company Information, Standing Instructions and Rules", forming part of the contract, as including being in possession of another

employee's personal property without permission (the House Rule). IV

Claims The Applicant 6 Mr Maxwell claims his dismissal was unjustified.

Mr Maxwell submitted that The applicant claims that even if Taranaki the respondent had followed adhered to a fair process procedure in its investigation, and was entitled to conclude that he the applicant had taken the biscuits without permission breaching and therefore breached the House Rule, summary dismissal was not an appropriate or proportional

response. The Respondent 7 Taranaki The respondent claims that it was open to it to find that Mr Maxwell the applicant had breached the House Rule. Therefore, Taranaki claims it was rule against possessing another

employee's property, and that it was therefore justified in dismissing Mr Maxwell for serious misconduct as it had lost all trust and confidence in

him the respondent under clause 10. V Issues 8 The issues for determination were raised by this case are: (a) (a) Whether Mr.

Maxwell's dismissal was justified? (a) If not, what are the appropriate

remedies? VI Whether Mr. Maxwell's dismissal was justified? (b) If not,

what if any remedies should be awarded? (c) What if any costs should be

awarded? Was Mr Maxwell's dismissal justified? The test of justification 9

The test as to whether a dismissal is unjustifiable is set out in section 103A of the Act. The test is whether the employer's actions were what a fair and

reasonable employer could have done in all the circumstances at the time the dismissal or action occurred. 2 This requires the Authority authority to

objectively assess Taranaki's actions were what a decide whether the process of the dismissal was fair and reasonable employer could have done in all the

circumstances at the time Mr Maxwell was dismissed, and whether

<https://assignbuster.com/mr-the-applicant-informing-him-of-the/>

the employees conduct was worthy of dismissal. 3 10 When assessing justification, the Authority must also have regard to Taranaki's compliance with its good faith obligations in s 4(1A) of the Act. 4 Section 4(1A) of the Act requires Taranaki to provide Mr Maxwell with access to relevant information and an opportunity to comment on that before he was dismissed.

5 11 Throughout Mr Kearns' investigation Mr Maxwell was informed of the complaint and evidence against him. He was also given a fair opportunity to respond with an explanation. Based on the facts I accept Taranaki has complied with its good faith obligations. A Procedural fairness 12 Section 103A of the Act also sets out the minimum considerations the Authority must consider in relation to procedural fairness requirements. 6 The employer must have sufficiently investigated the allegations against the employee before dismissal, 7 given the employee a chance to respond, 8 and genuinely considered the employee's explanation in relation to the allegations against the employee before dismissing or taking action against the employee. 9 The Authority may also take into consideration any other appropriate factors.

10 13 After The respondent seems to have met some of the requirements under section 103A(3) for procedural fairness. On receiving the complaint, allegation from Mr. Sinclair, Mr. Kearns carried out an investigation. This included informing Mr Maxwell the applicant of the allegation and of the possibility of summary dismissal, and giving him an opportunity to respond. Mr. Kearns also interviewed other employees who saw the incident witnesses the respondent's conduct.

14 However, Mr. Kearns did not genuinely consider Mr Maxwell's explanation of his conduct. Upon admission of guilt by the respondent, Mr Maxwell, Mr. Kearns dismissed him.

the respondent. He did not give any consideration to the lack of intent on the part of Mr Maxwell. the respondent in taking the biscuits. This seems to be an important factor in determining the correct penalty for breaking the House Rule. rules specified in the contract (see above).

The penalty is subjective. Breaking the House Rule, may result in summary dismissal. However, Mr. Kearns did not take the explanation into account, and therefore did not give Mr Maxwell the genuine consideration required by law under section 103A(3). 15 However, the lack of consideration is not sufficient by itself, being only one component of procedural fairness, to conclude Taranaki's the respondent's investigation and actions were not procedurally fair. Substantive justification B

Justifiability 16 Serious misconduct is conduct which fundamentally undermines the trust and confidence which is inherent in an employment relationship. 11 Conduct of this sort is generally conduct that is wilfully or deliberately dishonest, and breaks the obligations of good faith.

12 Careless action or negligent conduct typically do not have this effect.

13 17 Taranaki identified the sort of behaviour it considered would be fundamentally destructive of the employment relationship by setting out examples of serious misconduct in its House Rule. The House Rule is expressly incorporated into Mr Maxwell's terms and conditions of employment. 18 Taranaki has the onus of establishing on the balance of

probabilities that it held a genuine view based on a reasonable grounds that Mr Maxwell's behaviour amounted to serious misconduct. Taranaki must also establish that its conclusion about that was one that a fair and reasonable employer could have reached in all the circumstances. 19 Mr Maxwell applicant was in possession of another employee's possessions.

This fact is not disputed by Mr Maxwell the applicant. On the face of it, this is a breach of the House Rule set out in the contract of employment. I accept that it was reasonable for Taranaki the respondent to conclude Mr Maxwell the applicant was in breach of this rule.

I also accept that upon a breach of this rule Taranaki the respondent may dismiss an employee for serious misconduct under clause 10. 20 However, an important aspect of this rule is the subjectivity of the penalty. The rule clearly states that dismissal is not the only possible result. The issue to be decided is whether this dismissal is justified in the circumstances. 21 Taranaki The respondent claims that they made it clear to employees that issues of theft were taken very seriously. It contends that a fair and reasonable employer could have concluded that upon breaching the House Rule, Mr Maxwell the applicant could be dismissed from employment. However, it is on this point I am not convinced.

17 A dismissal will be justified where the employer's actions were what a fair and reasonable employer could have done in all the circumstances. 14A fair and reasonable employer will act in good faith as required under section 4 of the Act. 15 18 A dismissal may be justified where the conduct of an employee deeply impairs the basic confidence or trust that forms the basis

of the employment relationship. 16 Conduct of this sort is generally conduct that is willfully or deliberately dishonest, and breaks the obligations of good faith. 17 Careless action or negligent conduct typically do not have this effect.

18 Abusing a supervisor or the abuse of paid sick leave are common examples of this type of conduct. 19 20 22 Mr Maxwell the applicant ate the biscuits without considering his actions. He had no intention of dishonesty. In other words, he did not decide to steal anything from another employee or from his employer. He simply ate biscuits which were unnamed, and left on a public table within the cafeteria. It is hard to say his actions were anything beyond an honest mistake.

It therefore think it is a tenuous link to say these actions undermined the confidence and trust of the employment relationship. 23 In support, Mr Maxwell the applicant has a near exemplary employment history with Taranaki. the respondent. There is no evidence of any previous instances of misconduct in the three and a half years Mr Maxwell the applicant has worked for Taranaki. the respondent. 21 Based on these factors, I believe a fair and reasonable employer could not have reached the conclusion reached by the respondent to dismiss the applicant. 24 A fair and reasonable employer would consider the subjective nature of the rule.

Such an employer would have exercised discretion in determining the appropriate response to Mr Maxwell's the applicant's actions. Dismissal for an act as trivial as eating another employee's biscuits is sufficiently disproportionate as not to what a fair and reasonable employer would do.

A fair and reasonable employer would have taken alternative action, for example, identifying the wrongdoing and informing the employee that the conduct was serious and would not be tolerated. 25 Therefore, the dismissal of Mr Maxwell the applicant was not a conclusion that a fair and reasonable employer could have reached. Outcome D Conclusion

26 Summary dismissal was an overreaction in the circumstances of the case.

The penalty was not proportionate to the wrongdoing, and was not a penalty a fair and reasonable employer could have imposed. 27 Mr Maxwell The applicant has therefore made out this case for unjustifiable dismissal. 1 Employment Relations Act 2000, s103(1). 2 Employment Relations Act 2000, s103A(2). 3 Air New Zealand v V 2009 ERNZ 185. 4 Section 4(1A). 5 Section 4(1A)(c).

6 Section 103A(3). 7 Section 103A(3)(a). 8 Section 103A(3)(i).

9 Section 103A(3)(d). 10 Section 103A(4). 11 BP Oil New Zealand Ltd v Northern Distribution Union (1992) 1 NZELR 259 (CA) at 1. 12 Cowles v Balance Agri-Nutrients Ltd 2017 NZERA Christchurch 125 at 67. 13 At 80. 14 15 16 BP Oil New Zealand Limited and Ltd v Northern Distribution Union, (1992) 1 NZELR 259 (CA) at 1.

17 Cowles v Balance Agri-Nutrients Ltd 2017 NZERA Christchurch 125 at 67. 18 At 1. 19 Griffith v Sunbeam Corp Ltd (EC Wellington WC 13/006, 28 July 2006).

20 Dodd v DE & LM Spence Ltd t/a Pak N'Save 2002 2 ERNZ 572. EEP1 Do you want to change this? EEP2 I think also the severity of the loss is greatly outweighed by the severity of the punishment - work on this bit.