



Learnings from the Employment Relations Authority about the Disciplinary Process

In a recent Employment Relations Authority case, Peter Clarkson contested his dismissal by the Glenlyon Trust, his employer, alleging unjustifiable dismissal and claiming outstanding holiday pay. The case sheds light on several key issues surrounding employment termination and the duty of good faith.

The following provides details of the case from the Authority's determination (dated 16 February 2024), as well as considerations for employers, regarding some of the key issues that this case identifies.

Background

Peter Clarkson had been employed by the Glenlyon Trust since 1985, managing Glenlyon Station, a farm owned by the Trust. Prior to his employment he had worked for another Trust, on the same farm, since 1978. Clarkson was also a trustee of the Glenlyon Trust, alongside his brothers. In September 2020, Clarkson was terminated for alleged misconduct, triggering a legal dispute over the validity of his dismissal and his entitlement to holiday pay.

Claims

Clarkson argued that his dismissal was unjustified and that he was owed significant holiday pay. He contended that a final written warning issued to him was unjustified and challenged the Trust's

actions, including commissioning a report on the farm without his knowledge.

Authority's Investigation

The Authority considered evidence from both parties, including witnesses and documentation related to Clarkson's employment and dismissal. Key issues examined included whether Clarkson was unjustifiably disadvantaged in his employment by the issuing of the final written warning, whether Clarkson was unjustifiably dismissed, and whether the Trust was obligated to provide holiday pay.

Findings and Remedies

The Authority noted the impact of a breakdown of the relationship between Clarkson and his brothers on the employment relationship and the growing animosity throughout the processes undertaken. Health and safety concerns had been raised, and Clarkson was informed that he must immediately cease all quad bike and motorbike activities, which he said was very stressful as they were, in his view, an absolutely necessary part of his work.

Letters to Clarkson were said to include adverse findings, and the Authority commented that they appeared to be written without his input. The Authority criticised the processes followed, including that there appeared to be "no proper discussion" with Clarkson regarding certain matters. Clarkson raised allegations of bullying and abuse of the employment relationship. Clarkson had not received a copy of his signed employment agreement.

The Authority found that Clarkson's final written warning was unjustified, highlighting a lack of proper investigation and a strained relationship between Clarkson and his brothers, who were also trustees of the Trust. That Authority noted there was evidence of "a

high degree of predetermination” and “never any proper investigation”. Additionally, the Authority deemed Clarkson’s dismissal unjustified, emphasising the Trust's failure to provide a fair and reasonable opportunity for Clarkson to address the allegations against him.

Clarkson was awarded compensation for loss of dignity, injury to feelings, and humiliation, along with outstanding holiday pay and payment for time worked on public holidays as follows:

- \$8,168.11 as reimbursement for lost 3 months wages following his dismissal (instead of the 6 months claimed);
- Compensation for loss of dignity, injury to feelings, and humiliation pursuant to s 123(1)(c)(i) of the Act, of \$20,000.00;
- Outstanding holiday pay in the sum of \$74,375.00;
- Payment for time worked on public holidays, together with 321 days of alternative holidays in the sum of \$120,375.00.

Interest on the sum owing was not awarded.

Advice for Employers

This case highlights the importance of adhering to fair and transparent employment practices, particularly in disciplinary matters. Employers should ensure thorough investigations into allegations of misconduct, provide employees with a genuine opportunity to respond, and maintain accurate employment records, including holiday pay.

The determination in this case emphasises the following for employers:

- Conduct fair and impartial investigations into allegations of misconduct, avoiding any perception of bias or predetermination.

- Ensure employees have the opportunity to have a support person or representative in disciplinary investigation meetings, even if that requires a reasonable delay, to allow the employee's chosen representative or support person to attend.
- Provide employees with clear and reasonable opportunities to respond to allegations, fairly and thoroughly consider all information provided, and address concerns, before making any decisions regarding allegations and disciplinary outcomes.
- Take correct steps to address any potential health and safety concerns, including concerns about mental well-being, potential risks, and when an allegation of bullying is raised. Initially, consider whether additional control measures are appropriate, while the matter can be investigated further.
- Maintain accurate employment records, including wage and time records, holiday and leave records, to ensure compliance with legal obligations and to facilitate resolution of disputes.

By upholding these principles, employers can mitigate the risk of disputes and maintain positive relationships with their employees.

There are many requirements when undertaking employment investigations, and as a registered investigator I can carry out investigations or provide advice about the steps required. Do not hesitate to reach out to me if you have any questions about the details of this case, investigations, or employment matters in your business or organisation.

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