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Issue 191| February 2011

Employee Negligence Case - Reimbursement for Damage

Transmission NZ Ltd v. Jarred Steele **(ERA Wellington WA190/10)**

This case demonstrates that the Employment Relations Authority will sometimes look beyond the written terms of an employment agreement and invoke implied terms. In this case they did so to hold an employee liable for the cost of damage to company property through negligence. It is also an example of a circumstance where the employer considered the principle concerned so important that it is willing to spend a large sum of money to make its point.

Background

Mr Steele started work with Brake and Transmission Ltd (BNT) on 22 January 2008. On 18 January 2008 he signed an individual employment agreement accepting that the BNT general terms of employment would apply. BNT's general terms of employment include its code of conduct and its vehicle policy. The vehicle policy states:

"Note: Should an employee be involved in a motor vehicle accident in a company vehicle and be found to be at fault in such accident that employee shall be given a written warning to the effect that any further incident of a similar nature may result in that employee's dismissal without notice. The employee may also be liable to reimburse the company for any insurance excess payable in relation to any such at fault accident."

On 22 July 2009 Mr Steele backed into another vehicle while driving a work car, resulting in $686.25 in panel beating costs to repair. BNT at first elected to lodge an insurance claim, given the damage to the other vehicle. However, under the two insurance companies' "*knock for knock"* agreement BNT was only required to pay the panel beating cost for its vehicle. Therefore, rather than claim from its insurance company, given that it has an excess under its policy of $2,000, it chose to pay the costs directly. Mr Steele was asked to pay that sum but declined to do so, despite admitting responsibility for the accident. After agreement could not be reached at mediation, BNT filed an application with the Employment Relations Authority.

Decision of the Employment Relations Authority

The Authority noted that BNT's vehicle policy only provided that reimbursement was to be for any insurance excess payable. In the particular facts of this case there was no insurance excess payable, because for reasons of convenience BNT had chosen to pay the sum directly without claiming from its insurance company. While BNT submitted that the intention of the clause was to allow recovery of lesser sums to be made in lieu of a greater insurance excess, the Authority noted that the clause stated no such thing and found that BNT was unable to rely on the wording of its own agreement to recover the (admittedly lesser) costs from Mr Steele.

However, the Authority was of the view that Mr Steele could be held accountable to pay the sum of $686.25 as "*special damages*" for breaching an implied term of his employment agreement that "*an employee will exercise due care and diligence in his work*". It went on to say that, unless the implied term was contradicted or inconsistent with an express term, which in this case it was not, Mr Steele was liable to pay for the costs of the accident as special damages for breach of contract due to his negligence.

The Authority ordered Mr Steele to pay BNT the sum of $686.25 for the vehicle repair.

With respect to costs, the Authority noted that BNT had spent over $20,000 in legal fees and other expenses pursing the matter. It considered that an award was appropriate in the circumstances and ordered Mr Steele to pay BNT a further $1,270 for costs and expenses.

Unjustified Dismissal – Seriously ill employee dismissed prematurely

Helen Milner v Fonterra Co-operative Limited (ERA AA 492/10)

This recent case regarding a successful claim for unjustified dismissal serves as a warning to employers that they need to be careful when dealing with employees who have been on extended sick leave and deciding at which point they can justifiably dismiss them by "*fairly crying halt*".

Background

Ms Milner worked for Fonterra as a forklift driver from 14 August 2003 until 29 June 2007 when she was dismissed. At the time of her dismissal, she had been absent from work for four months due to ongoing health problems associated with the repeated collapsing of her lung, which resulted from an injury she suffered while at work. Shortly after her accident, she was admitted to hospital with a collapsed lung and had complications requiring three further hospital admissions and surgery. Ms Milner suffered continuing chronic pain and had not returned to any form of paid work since the accident. Fonterra's accident compensation providers Work Aon (WA) considered Milner's ongoing problems were not a result of the work accident and after four months' absence Fonterra terminated Milner's employment with two week's notice. Fonterra claimed that it could not keep Milner's position open "*indefinitely*" as neither Milner nor her medical advisors had provided it with information about her health or a likely return to work date.

Ms Milner claimed that she had clearly informed Fonterra that she would be disputing WA's assessment and provided it with supporting medical evidence. Fonterra claimed that it had given Ms Milner a week's grace to pursue a review of WA's assessment and commenced dismissal proceedings after three weeks' silence from her. Ms Milner's review application of WA's decision succeeded and she was placed on accident compensation. Ms Milner claimed that, as her injury resulted from a workplace accident, the terms of the collective agreement (CA) obliged Fonterra to either keep her job open or compensate her for redundancy under the terms of the CA. It was revealed during the hearing that Ms Milner's manager was *"personally ignorant of the provisions of the CA*". Fonterra argued that the cause of Milner's injury was irrelevant and that it could "*fairly cry halt*", as Ms Milner's failure to provide it with timely information meant the required medical and psychological assessments could not be made.

Decision of the Employment Relations Authority

The Authority agreed that Fonterra was not bound to keep Milner's job open indefinitely and that fairness to the employee needed to be balanced against the needs of the business. However, it was of the view that Fonterra was obliged to give Ms Milner an opportunity to provide all the relevant information and to properly consider it. The Authority found that Fonterra was not entitled to conclude that Ms Milner had caused delays or declined to provide it with information about her medical prognosis. Having heard Fonterra's submission that Ms Milner "*declined to cooperate to provide any information from her own doctor confirming her prognosis and in particular her likely return date*", the Authority said that it was: *"... unable to accept that there was any basis for this assertion. There is no evidence that any steps were taken [by Fonterra] to arrange the assessments it proposed or even that they were ever mentioned again after 16 May. Nor is there any evidence that it was ever suggested to Ms Milner that she should arrange the medical assessment [proposed and to be paid for by Fonterra] herself."*

The Authority considered that, given Ms Milner's poor state of health, Fonterra's expectation for weekly reporting to her manager was overly stringent. In the Authority's view, Fonterra failed to give Ms Milner clear advice on what information it required from her and it noted that, as large employer, it had kept other sick or injured employees' jobs open for longer periods that it did for Ms Milner. It also found that Fonterra was obliged to at least consider the effect of the CA on Milner's situation, as it contained terms relating to special sick leave on full pay for six months and a severance package if the employee could not return to work.

The Authority concluded that it was unreasonable and premature in circumstances for Fonterra to commence dismissal proceedings when it did and therefore Ms Milner's dismissal was unjustified. It found that Ms Milner was entitled to $2,685.80 in compensation for lost wages and $17,560 for loss of opportunity to pursue the benefits under CA. It also stated that, although Ms Milner's difficulties were largely caused by the injury itself, she was entitled to $5,000 for hurt and humiliation. It also determined that reinstatement was unsuitable given Milner's still fragile health.

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