

Enforcing Safety Policies

Employers are obliged by health and safety legislation to take all practicable steps to ensure the safety of employees while at work. Sometimes dismissal is a necessary step if an employee breaches a safety policy.

A recent example is *Moukharris v Northland Waste Limited*¹. Mr Moukharris drove a rubbish truck for Northland Waste. One day he decided to collect rubbish from a steep street by travelling downhill. He occasionally crossed the centre line to pick up rubbish from the other side of the street (called "double siding"). This took him into the path of oncoming traffic.

Northland Waste's health and safety policy specifically outlawed double siding. There were some exceptions which had been suggested by drivers and approved by management; however this particular street was not one of the exceptions. Mr Moukharris had made no attempt to seek approval for an exception, either on this occasion (by phoning in to the office) or more generally.

Mr Moukharris claimed that double siding was safer for his runners because he was concerned about the condition of the clutch. If he missed a gear change the truck might have rolled back on to the runners behind. Northland Waste did not accept this excuse, stating that if there was a problem with the clutch the safest solution would have been to drive up the street without changing gears.

The Employment Relations Authority commended the company's "earnest commitment to health and safety principles," including active participation by the drivers in forming the policy. But the Authority was not impressed with an employee who chose to breach a known policy because he thought he knew best.

"Particularly in matters of health and safety, the employer must be entitled to make its rules and expect them to be enforced," the Authority added.

Mr Moukharris' claim failed entirely.

Make it easy to enforce safety policies by:

- Involving employees when forming safety policies, so that appropriate exceptions can be made to blanket rules; and
- Being open to employees phoning in to seek advice or approval for changes to operational practice in particular circumstances.

Employees are then unlikely to have any reasonable excuse for not complying.

¹ [2013] NZERA Auckland 24