

Tips for Disciplinary Investigations

Are you confident that your disciplinary investigations would stand up to the scrutiny of the Employment Relations Authority? Here are some tips to help you, from a real life example.

Mr Waite and Mr Speechley worked for KiwiRail. Mr Speechley complained that someone had deliberately punctured the left rear tyre of his car and let air out of the left front tyre while it was parked in the staff carpark. After an investigation KiwiRail dismissed Mr Waite. Mr Waite challenged his dismissal in the Employment Relations Authority (the ERA).

- **Consider alternative explanations:** KiwiRail did not properly consider whether the air coming out of the left front tyre might have had nothing to do with the puncture in the side of the left rear tyre. And they did not consider whether either or both might have had natural causes rather than being done by someone deliberately.
- **Gather all relevant information:** KiwiRail should have asked Mr Speechley about the maintenance of the vehicle and how it handled on his way to work that day – because air might have been leaking from the front tyre over time, and the damage to the rear tyre might have occurred during the journey. The CCTV footage of Mr Speechley arriving in the carpark was also relevant.
- **Protect the evidence:** KiwiRail did not obtain and keep the full CCTV footage of the carpark that day, only a "highlights package" which showed Mr Waite crouching by Mr Speechley's vehicle. KiwiRail also allowed Mr Speechley to take away and dispose of the damaged tyre. The ERA said this was unsatisfactory. KiwiRail relied upon evidence from someone who had viewed the whole CCTV footage, that Mr Waite was the only person who approached Mr Speechley's vehicle, and a trained mechanical engineer working for KiwiRail had inspected the tyre before Mr Speechley took it away.
- **Consider possible motive:** It was relevant that earlier that evening Mr Speechley and Mr Waite had had an altercation and it was known that they did not have a good working relationships.
- **Consider credibility:** Who do you believe and why? Mr Waite claimed he crouched down to pick up money that fell out of his pocket when he was getting out his car keys. KiwiRail asked him to explain why he was carrying that much cash loose in his pocket and why he was still carrying his lunch bag while doing that, and Mr Waite had no answer.
- **Take the time you need:** KiwiRail's investigation took about four months from the incident on 20 July 2013 until the dismissal on 28 November 2013. There were four meetings with Mr Waite, who was represented at first by union officials and later by a lawyer. The process included giving Mr Waite the opportunity to respond to provisional conclusions.

Despite these deficiencies in KiwiRail's process, the ERA decided there was no resulting unfairness to Mr Waite. The dismissal was justifiable, a decision "that a good and fair employer could have made".

Please contact us if you need expert advice about your own disciplinary investigations.