

What staff do in their own time

Three recent examples confirm that what staff do outside of working hours may be relevant to their work and may even result in loss of the job. The question is what impact the conduct has on the employer's business. But as always, the employer must have sufficient evidence to rely on.

Kim v Thermosash Commercial Ltd ([2011] NZERA Auckland 276, 27 June 2011)
Mr Kim suffered a back injury while playing basketball outside of work. A series of medical certificates ruled him unfit for work for about 3 months. The company told Mr Kim that if he was unable to return to work when his latest medical certificate expired then they would terminate his employment. He was fit for light duties but the company had no light duties for him so terminated his employment. The dismissal was justifiable.

Jiang v Kunlun New Zealand Ltd ([2011] NZERA Auckland 281, 29 June 2011)
Staff were instructed to have nothing to do with four clients who were in dispute with the company about payment. Mr Jiang asked whether this applied to personal contact – it did. Mr Jiang dined three times with one client. He was told again that the restriction included personal contact as well as business contact but he then attended a Chinese New Year function with the client. He was justifiably dismissed for failing to follow instructions. The instruction was lawful and reasonable in the circumstances of the dispute, because the personal friendship arose out of the business connection and there was a risk of collusion or conflict of interest.

C v Air Nelson Ltd [2011] NZEmpC 27, 29 March 2011)
When a flight was unable to leave due to fog, the male Captain ("C"), male First Officer, and 19-year-old female Flight Attendant had to stay overnight in a hotel. They purchased and consumed alcohol and C had sexual relations with the Flight Attendant. He said that was consensual but she complained of sexual harassment. There was no breach of the company's rules about consumption of alcohol but the company manager considered consumption had been excessive. The company manager also concluded that sexual harassment had occurred, relying on the Flight Attendant's distress in the morning for which there were possibly other explanations. The Employment Court found that the company could not reasonably reach its conclusions on the available evidence, so C's dismissal was unjustifiable.



Lesley Brook

Direct 03 467 7764

Email lesley.brook@andersonlloyd.co.nz

Mobile 0274 345 295