



POLICE VETTING—GETTING IT RIGHT

Making a job offer subject to receiving an acceptable police vetting report can be problematic. A recent case involving a warehouse storeman who concealed his full criminal history highlights how important it is for employers to be careful about finalising a decision, says Paul Robertson.

IT IS COMMON TO OBTAIN A police vetting report before appointing staff. There can be backlogs in getting this report so a job offer may be made subject to an acceptable police vetting report being received.

If the report comes back with adverse information, this places the school/an employer in a difficult position. A decision of the Employment Relations Authority decision explains the problem.

THE BACKGROUND

Mr King was employed as a temporary storeman in a Christchurch warehouse. He was employed through an agency, but then applied for a permanent position. He completed a form for the warehouse where he had to disclose his previous convictions.

Mr King had a long criminal history including receiving stolen property and had been to prison three times. He only disclosed minor offending carried out in his youth. The form stated that any job offer was subject to completing a security check to the warehouse's satisfaction.

For reasons that are unclear, Mr King was offered permanent employment and worked in the warehouse for two months before his extensive criminal history was discovered.

The HR manager then arranged for him to be sent home for the day without giving any explanation. He was walked to his car. The next day he was called to a meeting without being given a clear understanding of what the meeting was about, and was handed a letter dismissing him because of his criminal convictions.

UNJUSTIFIED DISMISSAL?

Mr King argued that his dismissal was unjustified. The agency that originally employed him had undertaken a police vet and he had disclosed his convictions to senior staff members at the warehouse. He also complained about the delay.

Mr King was successful with his complaint that he had been unjustifiably dismissed. The Authority concluded that:

1. The suspension was not procedurally correct; he was

- not given an opportunity to give his view of whether or not he should be suspended.
2. The process leading to his dismissal was not procedurally correct; he did not know what the meeting was about and he was not asked for his explanation before being dismissed. The outcome had been predetermined.

When considering remedies the Authority focused on the fact that the dismissal was substantively justified. Mr King's most recent conviction for dishonesty was less than two and half years before he began working for the warehouse, and convictions for dishonesty were relevant to his role.


The Authority said that it was one thing for a prospective employee to have prior convictions and to disclose them, but was quite another for the employee to fail to disclose them when required to do so. The Authority refused to order any remedies because Mr King contributed to his situation by concealing his full criminal history.

AND THE LESSON IS ...

Obtaining a police vet report before making an offer of employment is the safest option. If a job offer is made in the meantime, it should be subject to a 'clean' police vet report.

Whether employment should be continued when the report reveals a criminal record involves careful consideration.

Offences related to child safety will normally disqualify a candidate in a school, for instance, but less relevant offences may not be problem. The failure of the employee to disclose relevant offending may be important.

An employer needs to be careful before finalising its decision. The warehouse was lucky. It was not required to pay compensation, but that may not always be the outcome. 

King v Linfox Logistics (NZ) Ltd [2015] NZERA Christchurch 167

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