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## Law Awards Finalist!

We are pleased to announce that Goldstein Ryder is a finalist in the New Zealand Law Awards in the category of Specialist Employment Law Firm of the Year. The winners will be announced on 15 November 2018. Fingers crossed!



## Goldstein Ryder News

Goldstein Ryder has also welcomed a new Accounts Administrator, Ange Soper, to the team. Ange will deal with the accounts and administration matters for the firm. We are very pleased to have her on board.

## Disciplinary Investigations - *Hines v Eastland Port Limited*

The Employment Court has recently released a judgment that comments on the requirements for disciplinary processes. This case involved a Captain who worked at Eastland Port in Gisborne.

The maritime rules require a "pilot" of a ship to be on board that weighs more than 500 gross tonnes when the ship arrives at or leaves the Port. Captain Hines was the pilot on duty at Eastland Port when two incidents occurred. The first was when a fishing trawler, *Seamount Explorer*, hit an ice tower on one of the wharves at the Port. The second was when a cruise ship, *Emerald Princess*, left the port without a pilot on board.

The Company conducted an internal disciplinary investigation and summarily dismissed Captain Hines for serious misconduct. Captain Hines raised a personal grievance for unjustified dismissal. The Court held that Captain Hines was justifiably dismissed and did not award him any remedies.



### The Court noted the following:

1. There were no terms of reference for the investigation. The Court found that everybody knew what was being investigated, therefore not providing terms of reference was not an issue in this case.

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2. There were some minor errors in the report provided, for example incorrect dates and incorrect reference numbers, however these were held to be insignificant in terms of the substance of the report.
3. The Court reiterated the principle that “one-off acts of inadvertence, oversight or negligence can, depending on the overall circumstances, amount to serious misconduct justifying dismissal.”
4. Some photos that the Company relied upon were given to the employee with the dismissal letter. The Court noted that the employee should have been invited to comment on the photos prior to the decision to dismiss him. However this did not mean the employee was treated unfairly and the Court held that the investigation was sufficient.

### What does this mean for you?

Minor defects in an investigation that do not result in the employee being unfairly treated will not make an employer’s process unfair or unjustified. The Court reiterated the principle that “what is looked at is substantial fairness and substantial reasonableness according to the standards of a fair-minded but not over-indulgent person.” **BUT** “if an employer’s process is fundamentally flawed, the substantive conclusion cannot be taken to be reliable.”

### Important things to remember when you conduct a disciplinary investigation:

- Clearly set out the allegations against the employee and invite them to a meeting;
- Provide all relevant information to the employee with the initial letter;
- Allow the employee an opportunity to comment on all information before a decision is made;
- Allow the employee to have a representative or support person present at any disciplinary meetings.

**If you need assistance with a disciplinary process please call us on 03 343 4419. You can also contact us for advice about:**

- Employment agreements;
- Trial periods;
- Collective bargaining;
- Disciplinary investigations;
- Restructuring and redundancy;
- Dismissal claims
- Workplace policies
- And more...