

ALLEGATIONS

On 15 August 2006 a member of the public made verbal allegations that trucks collecting recyclable material from multi unit complexes were also collecting material from commercial premises and delivering combined loads to the Materials Recovery Facility (MRF) and representing the loads as being domestic which were accepted at no charge to

The member of the public further alleged that were taking recyclable material to the landfill.

On 21 August 2006 the above allegations were repeated in writing.

ACT NOWASTE ACTIONS

In accordance with Departmental procedure, ACT NOWaste referred the matter to the Senior Executive Responsible for Business Integrity and Risk.

In order to test the validity of the allegations it was decided to undertake covert surveillance of selected trucks. This commenced on 2 September 2006 and ceased on 12 September.

Surveillance outcomes regarding allegations

Allegation: collecting commercial recyclable material with domestic recyclables and delivering combined loads to the MRF as being domestic.

Excerpts from the surveillance log for 6 September 2006 follow:

"About 6:32 am Tony Fenech observed the vehicle 830 registered arriving at and collecting several bins from the Drop of centre in Bailuei Street in Mitchell. Video obtained."

"About 7:11 am the truck was followed to the vicinity of Temperley Street in Nicholls and entered an apartment complex known as The Gardens. Operative Sean entered the complex and obtained video of the truck as it emptied the contents of three large green coloured wheelie bins with yellow lids in to the truck. **Video exposed.**"

"About 7:19 am the truck departed the area and we resumed mobile surveillance. About 7:30 am Tony Fenech observed the vehicle 830 collecting bins from the Huntingdale apartment's in Kaleen. **Video exposed.**"

"About 7:53 am the truck was followed to the vicinity of 20 Beissel Street, Belconnen and entered an apartment complex known as the Shores. Operative Sean entered the complex and obtained video as the truck emptied the contents of two large green coloured bins with yellow lids in to the truck. **Video exposed.**"

Surveillance of vehicle 830 collecting bins from Drop of centre in Mitchell, Nicholls, Kaleen, Belconnen, Huntingdale

Sean Fenech

"About 9:32 am Sean Robson observed the truck emptying several green and yellow
hoppers at a unit complex at 68 Hardwick Crescent, Holt. **Video exposed.** "

"About 10:36 am the vehicle was followed to the vicinity of the Tuggeranong Vikings
Sports Club in Roland Reese Crescent. Operative Sean entered the service
entrance/loading dock and obtained video of the driver with a receipt book, and later as
a number of all blue and green-coloured wheelie bins were emptied in to the truck.
Video exposed. "

"About 10:37 am Sean ... observed the truck emptying several wheelie bins full of glass
from the rear of the Vikings Rugby Union Club in Tuggeranong. **Video exposed.**"

"About 10:59 am the truck was followed to the vicinity of Chewings Street, Page and
entered an apartment complex. Operative Dennis obtained video as the truck emptied
several green wheelie bins with yellow lids in to the truck. **Video exposed.**"

*→ North of
Holt.*

"About 1:13 pm operative Dennis recorded the truck as it headed towards the Theiss
Services No Waste recycling centre in Mugga Lane. **Video exposed.** "

"About 1:16 pm operative Dennis recorded the truck as it departed the recycling centre
area in Hume. **Video exposed.** "

MRF weighbridge records show that entered the MRF at 13.21 with a load
recorded as commingled recyclables from Run #802 .

Allegation: are taking recyclable material to the landfill.

Excerpts from the surveillance log for 5 September 2006 follow:

"About 7:00 am operative Sean contacted operatives Dennis and Tony that
was sighted in the Braddon region and was presently pursuing the vehicle. Operatives
Dennis and Tony immediately proceeded to that region. "

"About 8:44 am the vehicle was followed to the vicinity of Fraser Primary School in
Tillyard Drive Fraser and reversed parked to the bin enclosure area. Operative Tony and
Sean then obtained video as the truck emptied the contents of all-blue coloured bins in
to the truck. **Video exposed.** "

"About 8:56 am operative Dennis the vehicle was followed to the vicinity of Evatt Primary
in Heydon Crescent Evatt and all operatives recorded the truck as it emptied the
contents of all blue coloured wheelie bins in to the truck. **Video exposed.**"

"About 9:12 am the truck was followed to the vicinity of the Holly Spirit Primary School in
Anne Clarke Avenue Nicholls and parked in the car park area.

About 9:13 am operatives Dennis and Tony recorded the truck as it emptied the contents
of blue coloured wheelie bins in to the truck. **Video exposed.**"

About 9:28 am Tony Fenech observed the vehicle placing three blue bins in the rear of the vehicle from Nichols Primary School. We maintained our observations. **Video exposed.**

"About 10:06 am the truck was followed to the vicinity of Majura Primary School in Knox Street, Watson and reversed back up the driveway area. Operatives Dennis and Tony then obtained video as the contents of one larger sized green coloured plastic wheelie bin with a yellow lid were emptied in to the truck. **Video exposed.**"

"About 2:09 pm the white Scania truck arrived in the vicinity of the Mugga Lane tip/landfill area and operative Dennis later recorded the truck as it emptied its load onto the ground. **Video exposed.**"

(The schools mentioned above participate in the Waste Wise Schools program which encourages recycling and use the bins for storing recyclable material).

Mugga Lane Resource Management Centre weighbridge records show that entered the landfill at 14.15 p.m. with the load classified as household garbage with no charge recorded.

Other outcomes of surveillance

collecting commercial garbage and presenting it at the landfill as domestic garbage.

Excerpts from the surveillance log for 5 September 2006 follow:

"About 7:20 am Tony Fenech observed the Scania truck registered departing a commercial property in Dickson, located behind O'Neils Pub. TONY FENECH maintained observations. **Video exposed.**"

"About 8:09 am Sean Robson observed the male reversed into the rear of the Kippax Shops and emptied several wheelie bins before departing from the area. **Video exposed.**"

"About 9:39 am the vehicle was followed to the vicinity of the Gungahlin Marketplace and reversed in to the rear of the Big W loading dock/garbage area. On this occasion we were unable to obtain video of the bins being emptied. Operative Dennis obtained brief video of the location for verification purposes. **Video exposed.**"

"About 10:23 am the truck was followed to the vicinity of the CSIRO building in Limestone Street in Reid and operative Sean obtained video as the driver manually emptied the contents of two green coloured wheelie bins with yellow lids in to the truck. **Video exposed.**"

"About 11:00 am the vehicle was followed to the vicinity of Kembla Street, Fyshwick and operatives Dennis and Sean obtained video as the vehicle reversed into Fyshwick Square at 19-25 Kembla Street. Further video also shows the male driver as he departed from the Telstra shop and proceeded to load his truck with cardboard pieces

and a green coloured wheelie bin with a yellow lid he had retrieved from a storeroom adjacent to the Telstra shop. **Video exposed.** "

"About 2:09 pm the white Scania truck arrived in the vicinity of the Mugga Lane tip/landfill area and operative Dennis later recorded the truck as it emptied its load onto the ground. **Video exposed.** "

Mugga Lane Resource Management Centre weighbridge records show that entered the landfill at 14.15 p.m. with the load classified as household garbage with no charge recorded.

Following the surveillance, it was decided that an audit of operations be undertaken.

Audit

The audit made several recommendations including that ACT NOWaste should:

- Investigate the reasons for dumping both household waste and household recyclable material before 7 a.m. to ensure that are complying with the contract.
- Investigate the \$700 - \$1,000 variance in "tipping account" as noted in letter of 20 October 2006.

Our letter of 9 November 2006 requested to provide the method used to determine the amounts in the second dot point above, as yet no such information has been received.

Subsequent allegations

ACT NOWaste has received a letter signed by a number of people who state that that they witnessed commercial waste being placed in a front lift truck which was used to service units, with the waste being charged to the dedicated waste account at landfill. This letter has been substantiated by two written statements from former employees.

ACT NOWASTE REQUIREMENTS

ACT NOWaste wants to settle this matter and requires to:

- Acknowledge that the allegations are correct.
- Carry out an investigation to determine the extent of the fraudulent activities.
- Report back to ACT NOWaste on the findings of that investigation.
- Offer restitution to ACT NOWaste for their losses of landfill revenue and increased costs associated with processing material at the MRF due to

increased throughput by delivering commercial material as domestic.

- Offer to reimburse ACT NOWaste the costs of the surveillance.
- Provide written assurance that, in future, no commercial recyclable material will be taken to the landfill and treated as waste.



Dear

Disciplinary Investigation – Direction to Attend Interview

Mr. _____, Manager Employee Relations wrote to you on Tuesday, 14 December 2010 advising of allegations of misconduct and charges against you. I am now writing to advise you that I am investigating the misconduct and also to detail the allegations and provide you with the opportunity to respond to the allegations.

It is alleged that you:

1. were, on a number of occasions including Monday 13 December 2010, absent from work without authorisation;
2. have claimed payment for time not worked regarding time absent from work without authorisation;
3. have purchased alcohol from Isabella Plains IGA store and transported this alcohol in an ACT Government vehicle;
4. were seen and in full view of members of the public, in a Department of Territory and Municipal Services (TAMS) uniform and vehicle, purchasing alcohol and transporting it to a private address;
5. have ingested an alcoholic beverage during the time you were absent from work without authorisation; and
6. parked a TAMS vehicle for periods of time greater than 30 minutes at _____ in full view of members of the public, during which time you knowingly should have been performing your duties.

The charges against you are that you:

1. failed to fulfil your duty as an officer of TAMS;
2. fraudulently claimed payment for time not worked;
3. brought TAMS into disrepute; and
4. breached your obligations as a public servant as set out in Section 9 of the *Public Sector Management Act 1994* (PSM Act) by:
 - (a) failing to act with probity by claiming payment for times that you were absent without authorisation (9(c));
 - (b) failing to act with reasonable skill and care by:
 - (i) consuming alcohol while rostered on for duty; and
 - (ii) failing to attend to your duties (9(a));

- (c) failing to comply with the PSM Act and Public Sector Management Standards (Standards) by:
 - (iii) consuming alcohol while on duty in breach of section 7(1) of the Standards;
 - (iv) carrying alcohol in a government vehicle without authorisation in breach of section 8(1) of the Standards;

- (d) failing to comply with lawful and reasonable directions given by a person having authority to give the directions (s 9(i)); and
- (e) making improper use of the property of the Territory, by using a TAMS vehicle other than in the course of your duties (s 9(o)).

In order to give you an opportunity to put your view and respond to the allegations, you are directed to attend a meeting at 10:00am on Monday, 20 December 2010. The meeting will be held at Macarthur House, 12 Wattle Street Lyneham and you should advise the receptionist of your arrival and that you have a scheduled meeting with me.

You are welcome to bring a support person to the interview and you should endeavour to do so.

The interview will be conducted in accordance with the discipline procedures set out in Section 187 of the *Public Sector Management Act 1994* (PSMA). A typed record of interview will be prepared and a copy provided to you for verification.

The PSMA provides that misconduct may occur where you fail to meet the general obligations set out in Section 9 of the PSMA.

It is alleged that you have breached your obligations as a public servant as set out in Section 9 of the *Public Sector Management Act 1994* (PSM Act) by:

- (a) failing to act with probity by claiming payment for times that you were absent without authorisation (9(c));
- (b) failing to act with reasonable skill and care by:
 - (v) consuming alcohol while rostered on for duty; and
 - (vi) failing to attend to your duties (9(a));
- (c) failing to comply with the PSM Act and Public Sector Management Standards (Standards) by:
 - (vii) consuming alcohol while on duty in breach of section 7(1) of the Standards;
 - (viii) carrying alcohol in a government vehicle without authorisation in breach of section 8(1) of the Standards;

- (d) failing to comply with lawful and reasonable directions given by a person having authority to give the directions (s 9(i)); and
- (e) making improper use of the property of the Territory, by using a TAMS vehicle other than in the course of your duties (s 9(o)).

Should it be determined that your actions constitute misconduct, the following disciplinary action may be taken:

- i. an admonishment; or
- ii. fine not exceeding \$500; or
- iii. reduction in salary for a 12 month period or less; or
- iv. a transfer to a different position at the same classification; or
- v. a transfer to a different position at the same classification and a fine not exceeding \$500; or
- vi. a transfer to a position with a lower classification; or
- vii. a direction that the officer be dismissed from the service.

A copy of Section 9 of the PSMA, which sets out the general obligations that apply to you as a public employee and the discipline procedures is attached for your reference.

Should you require support in relation to this matter, the Employee Assistance Program (EAP) provides employees and their family members with confidential and professional counselling and related services to assist in resolving work related or personal issues. The EAP, PPC Workwide, can be contacted on 1300 361 018.

If you require any additional information prior to the interview please feel free to contact me on 6207 5766.

Yours sincerely

Senior HR Advisor
Human Resources
Ph: 6207 5766
Email:

December 2010



Dear :

Notification of Investigation

I am writing to inform you that I have received allegations of possible misconduct against you and that a formal investigation will be undertaken into this allegation. It is alleged that on multiple occasions over the past 9 months you have been absent from work without permission and you have claimed payment for time not worked. This time has been spent at

It is further alleged that on these occasions you have purchased alcohol from Isabella Plains IGA store and transported this alcohol in an ACT Government vehicle.

It is also alleged that this conduct has brought the Department of Territory and Municipal Services (TAMS) into disrepute by parking a Government vehicle at a private residence for extended periods during working hours.

The Department of Territory and Municipal Services treats allegations of misconduct seriously and I have therefore requested an investigation be conducted by TAMS Human Resources (HR). At this point, no judgement has been made as to the truth or otherwise of the allegations.

The investigation will be conducted in accordance with Section G – Misconduct and Discipline, as provided for in the *Department of Territory and Municipal Services Enterprise Agreement 2010-2011* (TAMS EA) (copy of **Section G Attached**).

If the above allegations are proven, this may constitute misconduct under the TAMS EA which provides that misconduct may occur where:

- The employee fails to meet the general obligations set out in Section 9 of the *Public Sector Management Act 1994* (**Attached**);
- The employee engages in conduct that has, or is likely to, bring TAMS or the ACTPS into disrepute.

If misconduct is found to have occurred, disciplinary action as outlined in the TAMS EA may be taken against you.

You will be given an opportunity to respond to the allegations either at interview or in writing during this investigation. You are entitled to bring a support person with you to this meeting.

TAMS HR will write to you regarding the interview arrangements and to outline the allegations in more detail in due course.

The TAMS Employee Assistance Program (EAP) provides employees and their family members with confidential and professional counselling and related services which I encourage you to utilise should you require support in relation to this matter. The EAP (PPC Worldwide) can be contacted on 1300 361 008.

If you have any queries regarding this matter please contact Mr
Employee Relations, TAMS on 620 73943.

Manager

Yours sincerely

Tom Elliott
Executive Director
Transport and Infrastructure Division

December 2010



ACT
Government

Territory and Municipal Services

MINUTE

SUBJECT: Investigation of ACTION employee

To: Executive Director Roads and Public Transport Division

Director Human Resources

Manager Employee Relations

25/5/11

25/5/11

25/5

Purpose

To:

- Inform you about the investigation into alleged misconduct of ACTION employee;
- Advise that you are the Delegate for the investigation;
- Request that you sign the Notification of Investigation letter to (Attachment A); and
- Request that you authorise TAMS Employee Relations team to undertake an investigation.

Background

is a permanent fulltime bus driver at the Tuggeranong Depot, who has been employed by ACTION since

It is alleged that : has failed to cash in over an extended period resulting in her misappropriating over \$1000.00.

Issues

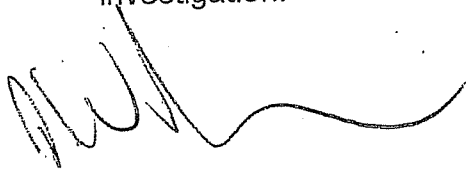
This conduct falls into the definition of serious misconduct under the *Fair Work Act 2009*.

It is recommended that , be suspended without pay pending finalisation of this matter.

Recommendations

That you:

1. sign the attached Notification of Investigation and suspension letter to
and
2. authorise TAMS Employee Relations team to undertake the
investigation.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end.

Senior Advisor, Employee Relations
Human Resources

26 May 2011



ACT
Government

Territory and Municipal Services

Dear

Disciplinary Investigation - Direction to Attend Interview

Mr Paul Peters advised you on 25 May 2011 that allegations of misconduct against you had been referred to Territory and Municipal Services Human Resources (TAMS HR) for investigation. I am now writing to detail the allegations and provide you with the opportunity to respond to the allegations.

It is alleged that between 22 March 2011 and 7 May 2011 you failed to cash in your daily takings as required. Specifically on the following dates you failed to cash in the amounts described below;

22 March 2011 - \$9.00
23 March 2011 - \$4.00
26 March 2011 - \$161.80
29 March 2011 - \$27.00
4 April 2011 - \$58.70
8 April 2011 - \$74.00
18 April 2011 - \$77.80
20 April 2011 - \$69.80
2 May 2011 - \$172.00
4 May 2011 - \$165.20
5 May 2011 - \$145.00
6 May 2011 - \$133.40
7 May 2011 - \$171.60

Total \$1269.30

It is alleged that you used this government money for personal purposes.

In order to give you an opportunity to put your view and respond to the allegations you are directed to attend a meeting at Level 6 Macarthur House, 12 Wattle Street, Lyneham, on Friday, 3 June 2011 at 10:30am.

The interview will be conducted in accordance with the discipline procedures set out in Section Q – Misconduct and Discipline of the *ACTION Union Collective Agreement 2007 - 2010* (Collective Agreement). You are welcome to bring a support person to the interview and you should endeavour to do so.

The interview will be manually recorded and a copy of the record will be provided to you for verification.

The Collective Agreement provides that misconduct may occur where:

-
- You fail to meet the general obligations set out in Section 9 of the *Public Sector Management Act 1994*;
 - Your conduct brings, or is likely to bring, the Agency or ACT Public Service into disrepute;

Should it be determined that your actions constitute misconduct, the following disciplinary action may be taken:

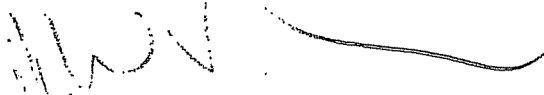
- (a) counselling;
- (b) a written admonishment;
- (c) a first or final written warning;
- (d) a financial penalty;
- (e) transfer to other duties (at or below current salary);
- (f) deferral of Increment
- (g) reduction in incremental point;
- (h) a temporary or permanent reduction in classification/salary;
- (i) termination of employment.

A copy of Section 9 of the *Public Sector Management Act 1994* which sets out the general obligations that apply to you as a public employee, and the discipline procedures contained in the Collective Agreement are attached for your reference.

Should you require support in relation to this matter, the Employee Assistance Program (EAP) provides employees and their family members with confidential and professional counselling and related services to assist in resolving work related or personal issues. The EAP (PPC-Worldwide) can be contacted on 1300 361 008.

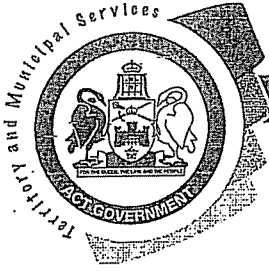
If you require any additional information prior to the interview you should contact me on 6205 8496.

Yours sincerely



Employee Relations Advisor
Territory and Municipal Services
Phone: 6205 8496

30 May 2010



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5

MINUTE

SUBJECT: Notice of Termination -

To: Executive Director Transport and Infrastructure Division
Director Human Resources
Manager Employee Relations

5/1/11

*5/1/11
Tom Elliott
confirmed prior
to Christmas
to terminate
Stewart*

Purpose

To:

1. Advise that a response has been received in relation to the Notice of Proposed Disciplinary Action sent to _____ and
2. Seek your agreement to sign the Notice of Termination of Employment.

Background

A disciplinary investigation commenced August 2010 in regard to allegations of misconduct against _____ which stated:

1. _____ failed to follow lawful and reasonable directions regarding correct cashing procedures and resolving cash discrepancies at the end of his shifts, noting that:
 - a. On 3 March 2010 he was reminded and directed to cash in at the end of each shift; and
 - b. On 2 August 2010 he was directed to have a Technical Officer Level 3 or Technical Officer Level 4 co-sign his cash in bag at the end of each shift to verify correct cashing-in procedures were followed and cash-in totals were correct.
2. _____ failed to exercise reasonable care and skill in that he has repeatedly failed to cash in at the end of his shifts, including but not limited to the shifts within the periods of:
 - a. 2 November 2009 to 29 November 2009;
 - b. 9 February 2010 to 11 February 2010; and
 - c. 9 March 2010 to 13 September 2010.



3. *made improper use of Territory property and took improper advantage of his position as a full-time ACTION bus driver in order to obtain a personal benefit, in that he:*
 - a. *Spent the daily cash takings from 7 August 2010, a total of \$140.60; and*
 - b. *Took proceeds from daily cash takings for personal benefit over a period of time during 2009 and 2010.*
-

4. *failed to exercise reasonable care and skill in that he has recurring discrepancies in amounts being cashed in at end of each shift.*

The Shared Services investigation found both allegations to be proven on the balance of probabilities.

You wrote to [redacted] on 14 December 2010 asking him to show cause as to why his employment should not be terminated.

Issues

[redacted] submitted a response to the Notice of Proposed Disciplinary Action on 22 December 2010.

The issues raised by [redacted] were:

1. [redacted]
2. He advised that taking these actions have resulted in him cashing in correctly at the end of each shift and therefore no longer performing any action that would breach Section 9.
3. He has a lot to offer ACTION as a bus driver and aside from this misconduct he has been hard working and reliable. He has made himself available on short notice and has undertaken weekend rosters.

[redacted] commenced employment on [redacted] and was issued with his first written warning on 4 March 2005. He has received several written warnings since this date with the latest being given on 2 August 2010. At this time [redacted] signed a statement advising that he clearly understood that any future issues would result in formal disciplinary action.

Despite this [redacted] failed to cash in on 3 and 7 August 2010.

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Based on prior behaviour it is felt that _____ disregard of previous warnings has displayed that a Final Warning will not change his behaviour in the short term and that the proposal to terminate stand.

Recommendations

That you consider this brief and if you agree, sign the attached Notice of Termination.

Senior Advisor
Employee Relations

4 January 2011



218
not delivered resignation
accepted
K
6/1/2011

Dear

Notification of Final Action – Termination of Employment

I refer to my letter of 14 December 2010 in which you were advised that I considered your actions of failing to follow lawful and reasonable directions regarding correct cashing procedures constituted serious misconduct. You were also advised that I intended to terminate your employment in relation to this misconduct.

You were invited to provide a written submission to me in relation to my findings and the proposed discipline actions. I received your written response to the proposed termination of 22 December 2010 and have given consideration to the matters raised therein.

At your interview you did not disclose your reasons for not cashing-in your daily takings; however

I understand that since this formal investigation commenced you have cashed in as appropriate and followed all lawful directions, however, it is clear that over approximately five years you did not respond appropriately to several written warnings you received (between 4 March 2005 to 2 August 2010).

Further, you stated in your response that you would now follow formal directions to cash in and understand that future issues would result in further disciplinary action including dismissal. I note on a number of occasions prior to this latest investigation that you have signed statements acknowledging that the formal disciplinary action could lead to your dismissal, but these have had little effect.

You have also requested that the proposed termination be changed to a Final Written Warning and that you would take it seriously.

After consideration of your response I find on the balance of probabilities that the alleged misconduct did occur and therefore confirm my original proposal to terminate your employment. I have determined that you will be dismissed with effect from close of business Friday, 7 January 2011. The reasons for my decision are detailed in **Attachment A**. You will continue to be suspended with pay until your employment is terminated.

Please note that the ACTION CA does not provide a right of appeal against a decision to terminate your employment. Any appeal against termination of employment is by application to Fair Work Australia in accordance with the *Fair Work Act 2009*.

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Whilst there is no obligation to provide you with *payment in lieu of notice* upon termination of your employment for Serious Misconduct, TAMS will pay you 4 weeks notice, calculated in accordance with section 117.3 of the *Fair Work Act 2009*.

If you require clarification or additional information in relation to this letter please contact
, Manager Employee Relations, TAMS on 6207 3943.

Yours sincerely

Tom Elliott

FOT

Tom Elliott
Executive Director
Transport and Infrastructure Division

5 January 2011

Statement of Reasons – Proposed Disciplinary Action against

Allegation 1 – You have failed to follow lawful and reasonable directions regarding correct cashing procedures and resolving cash discrepancies at the end of your shifts, noting that:

- a) ***On 3 March 2010 you were reminded and directed to cash in at the end of each shift; and***
- b) ***On 2 August 2010 you were directed to have a Technical Officer Level 3 or Technical Officer Level 4 co-sign your cash in bag at the end of each shift to verify correct cashing-in procedures were followed and cash-in totals were correct.***

Noting that you have subsequently failed to follow this procedure.

On the basis of the evidence presented in the Shared Services investigation report and by your admission, I am satisfied that these allegations are proven on the balance of probabilities.

The evidence clearly shows the you have been given directions to cash in at the end of each of your shifts. You failed to do this regardless of the number of opportunities afforded to you.

You indicated you could not explain why you had not followed the directions given to you and that you stated that you felt it would be better to cash-in late with the correct amount as opposed to cashing-in with an incorrect amount.

You advised that you kept the printouts from each shift to ensure you knew how much money you owed.

Allegation 2 – You have failed to exercise reasonable care and skill in that you have repeatedly failed to cash in at the end of your shifts, including but not limited to, the shifts within the periods of,;

- a) ***2 November 2009 to 29 November 2009;***
- b) ***9 February 2010 to 11 February 2010; and***
- c) ***9 March 2010 to 13 September 2010.***

On the basis of the evidence presented in the Shared Services investigation report and by your admission, I am satisfied that these allegations are proven on the balance of probabilities.

You stated that you felt it would be better to not cash-in and have a negative cash balance at the end of the shift and to wait and then to cash-in the correct amount at a later date. This is a clear contradiction to the direction given to you by Mr McGlenn on 2 August 2010.

You continually failed to cash-in at the end of your shifts despite numerous reminders and directions to comply.

Allegation 3 – You made improper use of Territory property and took improper advantage of your position as a full-time ACTION bus driver in order to obtain a personal benefit, in that you:

- a) ***Spent the daily cash takings from 7 August 2010, a total of \$140.60; and***
 - b) ***Took proceeds from daily cash takings for personal benefit over a period of time during 2009 and 2010.***
-

On the basis of the evidence presented in the Shared Services investigation report and by your admission, I am satisfied that these allegations are proven on the balance of probabilities.

On 10 August 2010 you failed to cash in \$140.60, you advised Mr Bulley that you had not cashed in as you had spent the money.

You indicated that you had not advised Mr Bulley that you had spent the \$140.60 but that you had spent \$20.00. Either way you admitted to spending money which should have been cashed in.

You stated that you intended to borrow the money on a short-term basis and that this action had become a habit and had gone on for a long period of time.

Allegation 4 – You have failed to exercise reasonable care and skill in that you have recurring discrepancies in amounts being cashed in at the end of each shift.

On the basis of the evidence presented in the Shared Services investigation report and by your admission, I am satisfied that this allegation is proven on the balance of probabilities.

Records indicate that on many occasions you have repaid the outstanding amounts at a later date, however the majority of the repayments do not correspond with the outstanding amounts.

You indicated that you had a genuine belief that you had been repaying the exact outstanding amounts and advised that according to your records you were up-to-date with his repayments.

I have found that your actions constitute serious misconduct as provided by Regulation 1.07 of the Fair Work regulations 2009 and misconduct under Section 9 of the *Public Sector Management Act 1994*, namely:

A public employee shall in performing his or her duties:

- (a) Exercise reasonable care and skill;
- (i) Comply with any lawful and reasonable direction given by a person having authority to give the direction;
- (j) Comply with any lawful and reasonable direction given by a person having authority to give the direction;

HE

- (k) Not take, or seek to take, improper advantage of his or her position in order to obtain a benefit for the employee or any other person; and
- (o) Not make improper use of the property of the Territory.

Conclusion

In determining the appropriate discipline action, I have considered the following factors as required under clause 95.2 of the Agreement:

(a) The nature and seriousness of the misconduct

I am of the opinion that your misconduct was both wilful and deliberate. On numerous occasions you disregarded directives in relation to cashing in.

You knew what you were doing was wrong and continued the conduct despite repeated formal and informal warnings. Your conduct was of a nature that was likely, if allowed to continue, to cause damage to the reputation and profitability to ACTION.

(b) The degree of relevance to the employee's duties or to the reputation of the Agency

The degree of your conduct could, if it were to become public, have serious repercussions for ACTION. Your conduct has continued for a number of years, despite receiving previous final written warnings in 2005 and 2006 for similar conduct.

(c) The circumstances of the misconduct

Despite receiving final written warnings in 2005 and 2006 for similar conduct you have continued this behaviour relatively unchallenged and unchanged, until recently.

(d) Any mitigating factors

(e) The previous employment history and the general conduct of the employee

During your employment with ACTION you have been directed on numerous occasions to cash in at the end of each shift. Despite these directions and final warnings you have continued to disregard your obligations in relation to your employment with ACTION.