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An employer is entitled to dismiss an employee, as long as the employer can show that there was “justification” for the dismissal. In each of the cases below, was the employer’s action justified?

1. Tina works for a company called Enron Ltd. She is the senior accounts manager, with access to and control of all the company’s money. She is in charge of a team of 3 other accounts managers, some of whom also have access to some of the financial software operated by the company. In March 2016, a sum of \$869,000 goes missing from the company’s main transactional account. Hank, the CEO, is assigned to investigate. It’s not clear how the money has gone missing. One day while playing golf Hank talks to Geo, who is a senior manager at Eastpacthat she’s fired.
2. Jim and Jane both work for Ace Insurance Brokers (AIB). Jim is 45 and is married with 3 children. Jane is 26 and single. One Friday night AIB has an office drinks party. Jim has quite a lot to drink and so does Jane. Everyone else leaves. Jane and Jim start dancing together. One thing leads to another, although Jim is very reluctant and Jane is the main ‘play maker’. They are near the windows, in full view of a large crowd of people in a pub opposite the AIB offices on Papanui Road. After about half an hour, they both get dressed and go home. They have no idea that their encounter has been witnessed. Over the weekend a “social media storm” erupts, with footage of the incident published all over the internet. The footage clearly shows AIB’s signage on the building. On Monday morning, the senior partner of AIB calls Jane and Jim into his office and tells them they are to pack up their stuff and leave because they’re both fired.
3. Jerry works for a construction company. One Saturday night he goes to a party. He drinks a lot, and he also eats two cupcakes given to him by the host which have some cannabis in them. On Monday, he goes to work as normal. After lunch, the boss asks Jerry and three other employees to do a drug test. Jerry fails the drug test and as a result he is fired on the spot. The boss reminds Jerry that the company has a very strict policy against drug use. Jerry explains that it must have been the cupcakes he ate on Saturday night, but that he



## Section 103A – Test of justification

- (1) For the purposes of [a personal grievance claim relating to an allegedly unjustified dismissal or action], the question of whether a dismissal or an action was justifiable must be determined, on an objective basis, by applying the test in subsection (2).
- (2) The test is whether the employer's actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred.
- (3) In applying the test in subsection (2), the Authority or the court must consider –
  - (a) whether, having regard to the resources available to the employer, the employer sufficiently investigated the allegations against the employee before dismissing or taking action against the employee; and
  - (b) whether the employer raised concerns that the employer had with the employee before dismissing or taking action against the employee; and
  - (c) whether the employer gave the employee a reasonable opportunity to respond to the employer's concerns before dismissing or taking action against the employee; and
  - (d) whether the employer genuinely considered the employee's explanation (if any) in relation to the allegations against the employee before dismissing or taking action against the employee.
- (4) In addition to the factors described in subsection (3), the Authority or the court may consider any other factors it thinks appropriate.
- (5) The Authority or the court must not determine a dismissal or an action to be unjustifiable under this section solely because of defects in the process followed by the employer if the defects were –
  - (a) minor; and
  - (b) did not result in the employee being treated unfairly.

