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Tonkin + Taylor looks to punish employee for lawful expression

Good afternoon,

1. The Free Speech Union is a registered trade union with a mission to fight for, protect, and expand New Zealanders' rights to freedom of speech, conscience, and intellectual inquiry. We believe that freedom of speech is not only a legal principle, but a social good that allows for people in modern liberal democracies to peacefully, freely advocate for the causes they care about without risking unjust retribution.
2. We write in response to Tonkin + Taylor's public statements and apology following the conduct of one of your employees during an exchange with the Rt Hon Winston Peters at Wellington Train Station yesterday morning. Mr Peters, alongside the Hon Chris Bishop, was speaking to media regarding the Government's investment in rail services. One of your employees, apparently commuting to work, briefly engaged with Mr Peters in a heated exchange involving mutual disparaging comments.
3. Following media coverage of the incident, a spokesperson for Tonkin + Taylor issued a public apology to Mr Peters, Minister Bishop, and other attendees "*for the disruption caused.*" The statement also confirmed that the matter is being investigated "*in line with our code of conduct*" and reiterated that the company does not "*condone behaviour that falls short*" of that standard.
4. We wish to raise two key concerns. First, this matter does not warrant internal investigation. The interaction occurred in a public space, outside of working hours, and did not appear to involve any reference to the employee's role at Tonkin + Taylor. The exchange was caught on video and widely reported; both parties participated willingly. While we do not endorse rudeness directed at elected officials, such encounters, especially those involving robust, if undiplomatic, expressions of political sentiment, are a long-standing feature of democratic life. Had he not been wearing a lanyard or otherwise associated with Tonkin + Taylor, we suspect the incident would have passed without any internal investigation or public comment.
5. Second, we are concerned by the tone and implications of Tonkin + Taylor's public response. Employers should be cautious not to create the impression that employees can be disciplined, or publicly disavowed, for lawful expressions of political opinion in their private capacity. Public apologies or denunciations may be appropriate where an employee has clearly represented the company or where reputational harm is directly caused. That does not appear to be the case here. In the absence of such

factors, issuing an apology risks chilling employees' willingness to speak freely, and sets a troubling precedent for employer overreach into the private political expression of staff.

6. Should the employee involved seek our support, we would be open to assisting them in any resulting employment process. We raise this not as a challenge, but to underline our concern that disciplinary action in this context risks setting a troubling precedent. When employees are held accountable for personal political expression made outside of work and unrelated to their professional duties, it sends a broader message that such expression will be punished, even when lawful. We encourage Tonkin + Taylor to approach this matter in a proportionate and rights-respecting manner, consistent with the values of a democratic society.
7. We would appreciate your response to the concerns outlined above.

Yours faithfully,

Free Speech Union (New Zealand) Inc.



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