



Adverse Action Claim against Qantas Upheld on Appeal

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Adverse Action Claim against Qantas Upheld on Appeal – Employee held to be adversely treated when he exercised a workplace right.

This employment law case demonstrates the onerous burden of proof employers bear in defending adverse action claims and, as a result, how carefully they must manage employees who have asserted workplace employee rights.

Background

Qantas has lost their employment law appeal before the Full Federal Court against a finding of adverse action involving a Qantas Licensed Aircraft Maintenance Engineer.

The engineer, also a member of the Australian Licensed Aircraft Engineers Association (ALAEA), was based in Brisbane but was serving a six week posting in Japan. As a result of the additional hours he worked while in Japan he made a claim for additional payment and for some time off on his return to Australia. Qantas rejected this claim.

Allegations

The engineer:

- had telephone conversations with his manager where it is alleged that he was told, "the guys who go away and accept the conditions that they are given are the ones who get asked to go away next time"
- sent an email to his manager wanting to initiate the dispute resolution process available to him under the Enterprise Bargaining Agreement
- the next day had all his overseas postings out of Brisbane suspended

What Is Adverse Action?

The Fair Work Act provides that adverse action must not be taken where an employee exercises or proposes to exercise a workplace right.

An issue in these employment law proceedings was whether the suspension adequately altered the engineer's position to his detriment as he had just been on a posting and had been placed on the bottom of the rotation list.

Findings



The Court held:

- as the overseas postings were suspended indefinitely, this was adverse to the advantages enjoyed by the engineer before he exercised his workplace employee rights
- the engineer had been threatened with the denial of future international postings in order to coerce him into abandoning the exercise of his workplace employee rights
- Qantas had issued the suspension because the employee had exercised a workplace right

Lessons for Employers

Employers need to be mindful that:

- the onus is on them as an employer to disprove adverse action claims once the allegation is made
- any decision which affects or has potential to negatively affect an employee must not be related to a "workplace right" of the employee
- unlike unfair dismissal there is no cap on the amount of compensation payable and the remedies available to employees in this jurisdiction are broad and include injunctive relief
- employment law allows fines of up to \$33,000 for companies and \$6,600 for individuals apply where breaches are substantiated

More Information

If you are unsure whether a considered course of action regarding an employee is lawful, or if you need employment law advice about how to dismiss an employee or about employment contracts, it is best to consult a employment lawyer Sydney about your issue.

Please call the leading employment lawyers in Parramatta, the **Matthews Folbigg Workplace Solutions** team on **9635-7966** to speak with one of our employment lawyers about your employment law issues.