

# Adverse Action - Employee Wins Their Job Back and Back Pay!

**Date :** March 20, 2019

Following an initial decision in 2018, the Federal Circuit Court has ordered that a company:

- reinstate a senior executive
- pay him almost \$1,000,000 in back pay

after it had dismissed the executive for making complaints about a lower level employee.

The Court rejected the company's arguments that:

- it was inappropriate to reinstate the employee because his role had been filled
- no other vacancies existed within the company's organisation

## The Facts

In essence:

- the employee was a South Pacific and South-East Asia Regional Leader
- the employee began experiencing difficulties with the region's HR Manager who regularly disregarded his reasonable instructions and was uncooperative and hostile towards him
- the employee complained to the company's senior management who blamed him for his devolving relationship with the subordinate HR Manager
- the HR Manager placed the employee on a performance improvement plan
- the company subjected the employee to an ethics investigation and ultimately dismissed him on performance grounds
- the employee alleged that the performance improvement plan, ethics investigation and dismissal were motivated by his complaints about the HR Manager
- the company sided with the HR Manager

## Court's Comments

The Court:

- heavily criticised the company for the way it failed to address the dispute
- said the company allowed the HR Manager to believe she was superior to the employee and *"abandoned support for the [employee], preferring instead to support his underling"*

- said the company "*sloughed off [the employee's] concerns in a perfunctory and dismissive manner*" and showed "*poor leadership by their disdain for his concerns*"
- found the company had been motivated to initiate the performance improvement plan, to commence disciplinary proceedings, and ultimately to dismiss the employee, because the employee had made complaints about the HR Manager's behaviour
- found such actions constituted adverse action taken because of the employee's exercise of workplace rights in contravention of general protections laws

## Lessons for Employers

The decision makes clear:

- a Court can order reinstatement in response to a dismissal in contravention of the general protections laws (and not just in unfair dismissal proceedings)
- the Court may not be swayed against making a reinstatement order simply because the order will be impractical or difficult for the employer
- unlike unfair dismissal proceedings, the amount of compensation able to be ordered in the context of a general protections proceeding is not capped to the amount that applies in unfair dismissal matters
- employers should seek legal advice prior to making the decision to dismiss any employee (especially if the employee has recently made complaints about their working conditions)

## More Information

Please call the leading employment lawyers in Parramatta, the **Matthews Folbigg Workplace Solutions** employment law team on **9635 7966** to speak with one of our employment lawyers if you require any assistance or advice.