



# Discrimination in the Workplace – Questionable Decision of the Fair Work Commission

**Date :** November 23, 2016

A homophobic and Islamophobic driver of a BHP-Bilton subsidiary was reinstated by the Fair Work Commission after being dismissed by Mt Arthur Coal for discriminatory conduct. The driver lost five months' worth of wages for making homophobic slurs and derogatory comments based on race and religion over a chat radio channel for workers.

He made sexually explicit comments such as referring to a colleague's book as '50 ways to eat cock' and disclosed intentions to attend a Reclaim Australia rally due to a 'complete gutful' of how Muslims 'think they can run the whole show'. The employee's actions were in no doubt, breach of his employment contract, employment and workplace law, and the Racial Discrimination Act 1975 (Cth).

Commissioner Leigh Johns has criticised Commissioner Saunder's ruling for failing to properly characterise the severity of the driver's misconduct and the totality of his actions including adverse effects of discrimination in the workplace.

Luckily for the driver, a strong employment record, his remorse and 'fatigue' were mitigating factors in the Fair Work Commission's decision to reinstate his position.

## Tips for Employers

Despite this particular decision, it is still strongly advised for employers to:

- **incorporate** discrimination, dispute resolution and grievance clauses into their employment contracts
- **seek advice** from a workplace lawyer in order to ensure that you have policies and systems in place, to recognise when an employee may require extra support
- **promote** a workplace free from discrimination and a workplace compliant with workplace and employment law to guarantee fair work conditions for employees

## Questions/Assistance

If you would like more information about this article or if you would like any assistance in other employment law matters, from an employment lawyer in Sydney, please feel free to speak with or email one of our specialist employment lawyers on **(02) 9635 7966** or [info@matthewsfolbigg.com.au](mailto:info@matthewsfolbigg.com.au)



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