



Dismissal for Leaving Accident Reasonable

Date : September 12, 2017

Employment Law – Background

The Fair Work Commission has ruled that a mining worker who was involved in an accident and failed to follow his employer's incident management procedures by reporting the accident immediately was not unfairly dismissed.

Employment Law – Facts

In essence:

- Mr Edgar was employed by Swick Mining Services as an underground diamond driller.
- In April 2017, the light vehicle he was driving underground at the mine site collided with a wall, causing major damage to the vehicle. However, he changed a damage vehicle's tyre and drove it up to the surface before reporting the incident.
- After investigation, he was dismissed for breaching Swick's incident management procedure
- In dismissing him, Swick took into account Edgar's three prior warnings and the fact the client would not accept him back on site.
- Edgar argued that whilst he had hadn't followed procedure, employees had not been dismissed for other safety incidents. He also claimed that he was exhausted at the time of the accident, and his request for the night off prior to the accident was refused.
- Edgar further argued that Swick's prior warnings were designed to make him resign following his workplace compensation injury and that during a meeting discussing outcome of the investigation he he was given a pre-prepared letter of termination.

Employment Law – Fair Work Commission Decision

The Fair Work Commission:

- found that Mr Edgar's breach of process was a valid reason for dismissal
- noted Swick's evidence that Edgar's leave request was denied as he told his supervisor he was fit for work and that Mr Edgar's statement on the day of the accident didn't mention falling asleep or being tired
- there was no evidence that the warnings were designed to make Edgar to resign
- highlighted whilst the pre-prepared termination letter was a "reason for concern", the outcome would have been unaffected
- concluded that the termination was not harsh, unjust or unreasonable

The decision is available for you to read through the hyperlink:

[*Nicholas Edgar v SMS Operations Pty Ltd T/A Swick Mining Services \[2017\] FWC 3826*](#)



Employment Law – Tips for Employers

Our **Matthews Folbigg Workplace Solutions** employment law team recommends employers:

- review this Fair Work Commission decision
- fairly, consistently and lawfully respond to breaches of employment contracts and employment law policies
- ensure employment contracts and employment law policies comply with relevant employment laws, Fair Work Commission decisions, common law employment law principles and contractual obligations
- seek the assistance of an employment lawyer to understand the impacts of this Fair Work Commission decision
- raise any employment law questions with an employment lawyer

Employment Law – 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.