

Employee's Dismissal for Bullying and Harassment Upheld by the Fair Work Commission

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A recent decision of the Fair Work Commission, in favour of the employer, has reiterated how important it is for employers to:

- put in place relevant bullying and harassment policies, in line with applicable workplace law;
- ensure employees are trained in those policies; and
- follow a procedurally fair process when terminating employees for breaches of workplace policies.

In *Mr R and Mr Y v Toll Holdings Ltd T/A Toll Group*,[\[1\]](#) it was held that the dismissal of two employees ('**Mr R and Mr Y**'), who had bullied and harassed a fellow employee ('**Mr A**'), was not unfair or a breach of employment law under the *Fair Work Act*.

Facts:

Mr A made a workplace complaint alleging that Mr R and Mr Y had:

- given him a derogatory nickname which was used over a number of years, both to his face and behind his back;
- physically assaulted Mr A, by pushing him over into a truck; and
- made sexual remarks towards Mr A, whilst restraining him, which conveyed the impression to Mr A that they were about to sexually assault him.

In response to the ongoing bullying and harassment Mr A:

- started to miss work and as a result was issued a show cause by the employer regarding his absences and behaviour;
- felt suicidal and eventually went to the employee assistance workplace provided counsellor; and
- subsequently reported the conduct to the employer, after receiving support from the counsellor to do so.

The employer undertook investigations into the complaint made by Mr A and found that:

- on the balance of probabilities the conduct had occurred; and
- Mr R and Mr Y had breached the Toll Workplace Behaviours Policy and the Code of Practice (in which they had been trained) and their employment contracts.

As a result of these investigations, the employer terminated the employment of Mr R and Mr Y, as it believed termination of employment was justified under workplace law.

Held

The Fair Work Commission agreed and found that:

- the employer had a valid reason to terminate Mr R and Mr Y's employment; and
- the dismissal was not harsh, unjust or unreasonable in the circumstances.

Reasoning

The Fair Work Commission considered whether the dismissal was unjust, under workplace law, by having regard to the criteria found in section 387 of the *Fair Work Act*, including:

- whether there was a valid reason for the dismissal related to the person's capacity or conduct;
- whether the employees were notified of the reason; and
- whether the employees were given the opportunity to respond to the reason.

The Fair Work Commission determined that, in all of the circumstances, the dismissal was not harsh, unjust and unreasonable and that the conduct of Mr R and Mr Y warranted the sanction imposed.

Tips for Employers

This decision highlights the need for employers to:

- **ensure** they have up to date bullying and harassment policies in place, which are in line with workplace law;
- **train** their employees in the relevant workplace policies relating to harassment and bullying and have the employees sign a document confirming that they understand their obligations under these policies;
- if in doubt, **seek advice** from employment lawyers in Sydney, in order to determine whether an employee's actions, warrant dismissal or some other form of disciplinary response; and
- **ensure** that mechanisms are in place which allow employees to report any bullying or harassment in the workplace and that these mechanisms are in line with workplace law.

Questions/Assistance

If you have any questions in relation to this article or if you would like any assistance in other employment law matters including matters before the Fair Work Commission or if you require an immigration lawyer Sydney, please feel free to speak with or email one of our specialist employment lawyers on **(02) 9635 7966** or info@matthewsfolbigg.com.au

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[\[1\]](#) [2016] FWC 4140.