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# Employment Law - Bupa Criticised for Disciplinary Process

Date : November 28, 2017

## Employment Law - Background

The Fair Work Commission has found that a vulnerable aged care worker was unfairly dismissed due to her employer, Bupa Aged Care, acted unconscionably. Bupa were criticized for their “unprofessional, discourteous and unfair” disciplinary process.

## Employment Law - Facts

In essence:

- Shahin Tavassoli, a refugee from Iran with limited English skills, was employed by Bupa
- On the weekend of 13-14 November 2016, a colleague secretly recorded her on his mobile singing “I can do anything better than you” following a heated exchange between a resident and a nurse and also allegedly laughing and joking at the death of two residents
- A second video, recorded the following day, allegedly captured her sitting in the TV room ignoring resident’s buzzers
- These videos were shown to David Brice, acting general manager of Bupa Mosman a Miriam Lyman, care manger
- On 16 November, Tavassoli attended work training. However, at 2pm Brice escorted her from the premises, only telling her that there had been serious allegations made against her and he was waiting for more documentation in a few hours.
- In the two hours Tavassoli allegedly sat outside the facility, she jumped to the conclusion that the allegation may involve beer that a resident offered her. Determined not be terminated for stealing, she asked a college for help drafting a resignation letter. Brice didn’t accept this resignation letter
- In a meeting with Tavassoli at 4pm, Brice read letters from Bupa containing allegations of misconduct and informed Tavassoli was being suspended on pay for an investigation
- She never received a copy of this correspondence or the video footage
- Brice also informed that unless she altered the date of her resignation, she was required to partake in the investigation. She then scribbled out the initial 4 weeks’ notice and gave the resignation back
- The next day, Brice sent her a letter accepting her resignation. However, the following day Tavassoli attended the facility to rescind her resignation which was refused

## Employment Law – Fair Work Commission Decision

### ***Resignation or constructive dismissal?***

The Fair Work Commission:



- found Ms Tavassoli was constructively dismissed, on the basis that Mr Brice should have taken additional steps to ensure she understood the investigation and the effect of her resignation
- believed Ms Tavassoli should have been “provided with copies of the letters and sent home to discuss them with her family”
- stated it was not “satisfactory to say Ms Tavassoli resigned at her own free will when Bupa knew of Ms Tavassoli’s poor language skills and her emotional state”
- found that Mr Brice suggesting an amendment to the resignation letter suggests that the termination “becomes one at the invitation of the employer”
- also believed that it was unconscionable for Mr Brice to escort Ms Tavassoli from the premises and advise her not to return for 2 hours, without providing a reason for such process.

### ***Was the dismissal unfair?***

The Fair Work Commission:

- found Bupa did not have a valid reason for dismissal on the basis that she hadn’t been acting in a disrespectful manner when she sung, nor had she laughed at the deaths of residents. It was found that she had also been on a break during the footage and had not been required to attend to residents buzzers
- were critical of Bupa’s disciplinary process, labelling them “unprofessional, discourteous and unfair” in finding that Ms Tavassoli was not given anything in writing, not shown the video footage and was not given a proper opportunity to respond.
- held that the dismissal was unfair, harsh and unjust
- ordered that Ms Tavassoli be reinstated and paid her base pay for November 2016 to July 2017

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

[\*Tavassoli v Bupa Aged Care Mosman \(U2016/14357\)\[2017\] FWC 3200\*](#)

### **Employment Law – Tips for Employers**

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

- review this Fair Work Commission decision
- seek the assistance of an employment lawyer to understand the impacts of this Fair Work Commission decision
- fairly, consistently and lawfully respond to breaches of employment contracts and employment law policies
- properly conduct workplace investigations when required
- ensure that employees are afforded procedural fairness when disciplinary action is taken against them
- raise any employment 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.