



Employment Law - Dismissal for Drug Test Refusal Invalid

Date : November 28, 2017

Employment Law – Background

The Fair Work Commission has held that a company who dismissed an employee for refusing to provide a blood sample for a drug test had no valid reason to do so.

Employment Law – Facts

In essence:

- Green was employed by Lincon Hire & Sales as a work platform operator
- On 1 March 2017, Lincon received anonymous information that the employee and others were using drugs
- Lincon’s drug and alcohol policy allows random drug testing, and asserts that refusal to partake will be considered a positive test, allowing for potential disciplinary action, including dismissal
- On 6 March 2017 all employees underwent a drug test. Green provided a negative sample. However, Lincon received further anonymous messages claiming that Green and others had used substitute samples
- On 7 March 2017, Green was informed he had to undergo a blood test because the previous tests had been “fudged”
- Employees, including Green, felt that a blood test was an invasion of privacy and Green offered to do a urine test instead
- Green failed to attend the blood test appointment organised by Lincon. A company representative informed Green that he would be dismissed if he failed to submit the test Green did not attend a second appointment
- Lincon attempted to contact Green and the other employees, however one employee told them they were “sticking together” and would not have the blood test. Green was dismissed the same day

Employment Law – Fair Work Commission Decision

The Fair Work Commission:

- found that Lincon’s policy did not specify the type of testing used and had no provision about blood samples
- found that Green was allowed to question the test method
- looked at evidence which showed that the urine collection process for the first test was closely supervised, and the fact there was “no suggestion, the sample was beyond the applicable temperature range or creatinine level, which could suggest it was not genuine”
- believed no satisfactory explanation was provided by Lincon as to why a blood test was

required

- established request made of Green to undertake a blood test was “not expressly permitted by the policy and was not a reasonable direction”
- held that there was no valid reason for dismissal
- awarded Green \$8150 in compensation or the equivalent of 8 weeks’ pay including notice, plus a 20% reduction for Green’s misconduct in secretly recording phone conversations with management

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

[Shannon Green v Lincon Logistics Pty Ltd T/A Lincon Hire & Sales \[2017\] FWC 4916 \(20 September 2017\)](#)

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 the an employment lawyer to understand the impacts of this Fair Work Commission decision
- ensure employment contracts and employment law policies comply with relevant employment laws, Fair Work Commission decisions, common law employment principles and contractual obligations
- fairly, consistently and lawfully respond to breaches of employment contracts and employment law policies
- ensure that drug and alcohol testing policies and procedures are well drafted and properly implemented
- 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.