

Employment Law - Employee Compensated After Award Obligations Ignored

Date : November 27, 2017

Employment Law – Background

The Fair Work Commission has compensated an employee who was unfairly dismissed because her employer failed to comply with their consultation obligations under the relevant award.

Employment Law – Facts

In essence:

- Carer's that Care (CTC) terminated Ms Morris' employment because it could not afford to pay her full-time wage after losing a significant number of clients
- Ms Morris argued that she hadn't received any warnings but was only told that CTC was shutting down and staff would be made redundant
- She also argued that she was not provided with the opportunity to respond, because the managing director refused to have any discussions with Morris
- Morris lodged an application for unfair dismissal

Employment Law – The Relevant Law

- Section 389 of the Fair Work Act ('The Act') states that a genuine redundancy occurs when an employee's position is no longer required and the employer has complied with any obligations under the modern award or enterprise agreement
- The Fair Work Commission will then examine whether the dismissal was harsh, unreasonable or unjust under s387 of the Act

Employment Law – Fair Work Commission decision

The Fair Work Commission:

- found that the employee's dismissal was not a genuine redundancy because the consultation obligations under the *Clerks-Private Sector Award* were not satisfied
- accepted that Ms Morris was dismissed because her role could no longer be performed due to operational changes
- found that the company had failed to consult with Ms Morris as required under the award was significant. Additionally, the company only verbally notified Morris of the dismissal
- consequently ruled that her dismissal was harsh, unjust or unreasonable.
- ordered compensation of \$5482

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



[Morris v Community Caring P/L t/a Carers That Care \(U2017/6386\) \[2017\] FWC 4433](#)

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
- ensure compliance with all employment laws including Fair Work Commission decisions, Awards and enterprise agreements
- understand what employment laws apply at your workplace including Awards and enterprise agreements
- ensure consultative processes are complied with as set out in industrial instruments
- apply a procedurally fair process where termination of employment is considered

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.