

Fair Work Commission: On-Hire Worker Unfairly Dismissed

Date : August 1, 2017

Employment Law - Background

In *Tasmanian Ports Corporation Pty Ltd t/a Tasports v Mr Warwick Gee*, the Fair Work Commission confirmed that labour hire companies cannot dismiss workers on the grounds that they have run afoul of a host employer.

Employment Law - Facts

In essence:

- A shiploader was dismissed by TasPorts in 2015 after his access to a site in Tasmania was revoked by his host employer, iron ore miner Grange Resources Limited
- Grange Resources accused the shiploader of misconduct and blocked his access to the port after he allegedly failed to follow reasonable work directions, breached reporting protocols and posted unauthorised photos of their assets on social media
- Tasports argued that there was a valid reason to dismiss the shiploader under s387(a) of the *Fair Work Act* as he no longer had the capacity to do the job and access the site

Employment Law – Fair Work Commission Decision

The full bench of the Fair Work Commission:

- Concluded that the Grange Resources removing the shiploader from a site was not a valid reason for their dismissal, utilising the principles set out in *Kool v Addeco* which established that the individual circumstances of the case determine whether there was a valid reason.
- They confirmed the approach taken in the *Addeco* and *Pettifer* cases, whereby “the contractual relationship between a labour hire company and a host employer cannot be used to defeat the rights of a dismissed employee” and that “labour hire companies cannot use such relationships to abrogate their responsibilities to treat employees fairly”
- Found that Tasports had failed to establish that the host employer had a legal right to remove the ship loader, or that it was unable to maintain his employment
- Criticised the fact that Tasports had failed to independently investigate whether the shiploader committed the alleged misconduct. They also failed to adequately consider alternatives for the shiploader’s redeployment
- Referred the matter back to the deputy president to consider the appropriate remedy

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
- update employment law policies in response to this Fair Work Commission decision
- train staff about this Fair Work Commission decision
- raise any employment law questions with an employment lawyer

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

[Tasmanian Ports Corporation Pty Ltd t/a Tasports v Mr Warwick Gee \[2017\] FWCFB 1714 \(18 May 2017\)](#)

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.