

Fair Work Commission - Judgment on Email

Date : April 12, 2017

Background

In the Fair Work Commission decision of *Georgia Sologinkin v Cosmetic Suppliers Pty Ltd*, the Fair Work Commission upheld the dismissal of an accounts manager for making offensive comments about clients in an email she accidentally sent to them.

Facts

In essence:

- a cosmetic company employer summarily dismissed their key accounts manager who had worked for them for 15 years and who had no prior misconduct warnings, for breaching the employer's employment law policies (being their code of conduct and IT policies)
- the accounts manager had written an abusive email about the employer's clients which she had intended to send to a contractor, who was also her friend, however, the clients were accidentally copied into this email
- the chief executive of a client contacted the employer's sales director demanding that there be consequences for the employee's actions and that he would no longer deal with any company represented by that accounts manager
- although she apologised for sending the email and sharing the client's details, she explained that she had accidentally sent the email to the client because she was having "recent issues with concentration and focus"
- she also claimed that she was suffering post-traumatic stress disorder, having performance difficulties, and had inadequate support from management in implementing organisational change

Decision

The Fair Work Commission stated:

- the account manager's actions constituted a valid reason for dismissal
- the employee's actions breached the employer's employment law policies (ie, the code of conduct and IT user conduct policies)
- that even if the comments were not emailed to clients, her comments were "entirely inappropriate", particularly because it was her job as accounts manager, "to manage relations with key customers"
- the fact that the email was sent to clients "greatly multiplied the gravity of the misconduct"
- the employer had taken appropriate action to the incident in allowing the account manager to respond by email when she was too unwell to attend a meeting and then taking her explanation into account (and this included paying the employee in lieu of notice because

she did not mean to send the clients the email)

- that although the employee had apologised for her actions and had been with the company for 15 years, these factors did not “outweigh the gravity of the misconduct so as to render the dismissal harsh

Workplace 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 where they have a similar workplace matter
- draft proper employment law policies governing workplace conduct
- as necessary include conduct provisions in an employment contract and ramifications for breach
- train staff about those employment law policies
- ensure compliance with employment contracts and employment law policies
- fairly, properly, consistently and lawfully respond to breaches of employment contracts and employment law policies (ie, on a case-by-case and factual scenario basis)
- understand what conduct provisions may be contained in an applicable modern awards or enterprise agreement that need to be taken into account and complied with

More Information

For further information regarding any matter to do with workplace law, 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.