



WORKPLACE RELATIONS & SAFETY

Bullying and harassment – what could it cost your business?

Monday, 8 February 2010

The issue of how best to deal with allegations of bullying and harassment in the workplace is one of the most vexed problems facing many businesses.

A recent decision of Fair Work Australia (FWA), the Federal industrial relations tribunal, illustrates the dangers of failing to take such allegations seriously, and the importance of conducting a proper investigation when such allegations are made.

***Harley v Aristocrat Technologies Australia Pty Ltd*¹ – the background**

The applicant, Mr Harley, had been employed by Aristocrat as a Business Development Executive (BDE) since mid 2004. Mr Harley resigned from his employment on 1 July 2009.

However, prior to his resignation Mr Harley, on 30 June 2009, received a letter from Aristocrat's General Manager Australia and New Zealand requesting Mr Harley to show cause why his employment should not be terminated on 1 July 2009.

The letter alleged that the company had raised serious issues regarding Mr Harley's performance over the previous few months. The letter also noted that Mr Harley had raised allegations of bullying and harassment against one of his senior managers, Mr Brown, and that "*these allegations have been investigated and have been found to be unsubstantiated*".

The letter went on to inform Mr Harley that he was not required to attend work prior to the meeting and that he was required to return his company laptop and Blackberry immediately.

Commissioner Deegan's findings

Commissioner Deegan, the presiding FWA member, found that Mr Harley was effectively forced to resign. In particular Commissioner Deegan found that the letter of 30 June 2009 made it apparent that a decision to terminate Mr Harley's employment had already been made.

In relation to the claim in the letter that Mr Harley's allegations of bullying and harassment against Mr Brown had been investigated and found to be unsubstantiated, Commissioner Deegan found the following²:

A proper investigation should also have been conducted into the applicant's allegations about Mr Brown. It was clear on the evidence of Ms Duncan [the company's HR Manager] that she was either uninterested in investigating the complaints properly or had no idea how to conduct such an investigation. That Ms Duncan notified senior management that the applicant's claims were unsubstantiated having interviewed no-one (including the applicant and Mr Brown) about those claims is beyond belief. The very odd survey of other BDEs that she did conduct (concerning their relationship with Mr Brown) was of no assistance and could not have enabled her to reach such a conclusion.

Commissioner Deegan also found that in relation to the performance matters raised by Mr Brown and detailed in the letters to Mr Harley from the company prior to his

termination, almost all were either unsubstantiated, minor, or otherwise unreasonable.

The decision

Commissioner Deegan ultimately found that the termination of Mr Harley's employment was unfair. She further found that as a result of the issues relating to the relationship between Mr Harley and Mr Brown, it would be inappropriate to reinstate Mr Harley to his previous position.

In reaching her decision Commissioner Deegan noted that "*the respondent has dedicated human resource management specialists and, again, has no excuse for the appalling manner in which this entire matter was handled*³".

While Mr Harley's claim for reinstatement was rejected, Commissioner Deegan awarded him the maximum compensation available under the *Fair Work Act 2009*, being six months salary, reduced by any amount earned by Mr Harley prior to the date of the Order.

Be prepared, seek advice

This case illustrates the potential costs and risks that a business (even one with dedicated HR expertise) can face if it fails to properly deal with allegations of bullying and harassment in the workplace, especially where the employee making the allegations is then subject to performance management or dismissal.

¹ [2010] FWA 62 (7 January 2010)

² At paragraph 47

³ At paragraph 54

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