

Employment & Industrial Alert

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Employers Beware - Dismissals can Backfire

Two recent decisions in the Australian Industrial Relations Commission and the New South Wales Industrial Commission highlight dangers for employers in not properly investigating grounds for dismissal and/or not properly preparing for a hearing on a dismissal case.

In a decision of 23 February 2007 in *Alsina v Capital Projects Qld Pty Ltd t/as ADF Protective Services*, Commissioner Lewin found the employer had not undertaken adequate investigations into the ground relied upon for the dismissal of Mr Alsina. The allegation was that Mr Alsina had, as a security officer, removed a dishwasher from a worksite – *was found to be removing a dishwasher from the site of which he was employed without authorisation*. If adequate investigations had been undertaken it would have been found that Mr Alsina had in fact been authorised by the owner of the dishwasher to assist with its removal. Mr Alsina had undertaken the task during his lunch break.

In the New South Wales Industrial Relations Commission decision of *Dixon v J & A Cook Pty Ltd t/as Saltwater Bermagui [2007] NSW IRComm 1005*, Commissioner Macdonald found that the allegations by the employer against the employee had not been proven. It found the employee's summary dismissal was harsh, unjust and unreasonable and awarded Mr Dixon compensation of \$13,000.00. Serious allegations had been made against Mr Dixon that he had threatened to kill the proprietors and the employees of the business together with a further threat to poison customers of the business. Mr Dixon disputed these claims.

The employer carrying the onus of proving, on the balance of probabilities, the allegations occurred needed to produce substantive evidence to undertake the necessary level of proof as to the allegations of threatening to kill and poison.

The employer did not call certain witnesses who may have been able to provide evidence about the allegations. Further matters were compounded in that Mr Dixon was not cross-examined on the serious claim he intended to poison customers of the business.

Lessons Learned

1. Adequate preparations must be undertaken into allegations and all investigations exhausted to ensure that a case for dismissal exists;
2. That if the matter reaches the Commission, enough evidence exists and the evidence is led and if allegations are made against an employee that the employee is tested and cross-examined on those issues.

For further information concerning dismissal provisions and termination of employment, please do not hesitate to contact our Employment and Industrial Team:

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