

# Employment & Industrial Alert

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## ***Termination For Genuine Operational Reasons – The Priceline Decision:***

### ***A Cruickshank And Priceline Pty Ltd [2007] Airc 292***

This is a decision of Commissioner Eames delivered in Melbourne on 17 April 2007. The decision concerned the use of section 643(1)(a) of the *Workplace Relations Act* in dismissing an employee for genuine operational reasons, or reasons that included genuine operational reasons.

The decision has raised some controversy given the facts raised by the employee that his dismissal was a sham. The employee was terminated due to redundancy but he subsequently noticed that his job had been advertised. The Commissioner upheld the termination of employment.

The evidence produced by the employer related to its financial position. The employer produced evidence including:-

- It had discovered significant financial discrepancies in its accounts prior to reporting on the financial year 2005 – 2006;
- The employer had trading in its shares halted and then voluntarily suspended share trading on 12 July 2006;
- The employer announced a financial discrepancy on 14 August 2006 of approximately \$17.2 million;
- In October 2006 a review of the employer's structure and operations was initiated by the Chief Executive Officer. As a result of that review 32 positions were to be taken out of the business structure;
- The employer was a space planner and these positions were reduced from 4 to 2, given that two of these space planners were earning considerably in excess of the other two space planners – the employer came to the conclusion that significant cost savings were possible.

Of course the termination became complicated for the employee when it was discovered his position was then advertised – obviously to be employed on a lower income.

Both the employer and employee made reference to the Full Bench decision in *Carter v Village Cinemas Australia Pty Ltd* [PR 975821].

Commissioner Eames found:-

*I am satisfied that the Applicant's termination resulted from the Respondent's financial difficulties and the subsequent decision to reorganise its structure, and on that basis that was part of its decision to terminate the Applicant was for a genuine operational reason. I am not satisfied that there is any evidence to substantiate a "sham", or that the Applicant was targeted inappropriately.*

Commissioner Eames also noted that the concept of an operational reason is much broader than the idea of an operational requirement. He further confirmed that the Act, as it presently stands, is significantly different to what it was prior to 27

March 2006 and in particular the question of a valid reason is not to be considered in examining operational reasons.

Given the business was to be "rebuilt"/"rearranged"/"given a new structure", the termination was within the operational reasons provided in the legislation.

Commissioner Eames further pointed out that had the employer's financial situation been better, the termination was likely not to have occurred but given that a decision was made for a business restructure, then this directly impacted the employee and therefore there *was an economic and structural reason for their decision*.

#### **IMPACT**

The case has been commented on extensively in the media. Undoubtedly genuine operational reasons' provide employers with quite wide scope for terminating employees. However, evidence would have to be led that there were financial considerations of the business and that a restructure or rearrangement of the business was necessary because of the financial reasons. It is debateable whether a commission at some point will consider the extent of the financial concerns but it seems that given evidence can be led that there were financial concerns and that money can be saved by an employer by a restructure, even if it means terminating one employee and then employing another employee at a lesser amount, can in fact occur. Importantly for employers, they must be genuine in considering the restructure and their economic considerations.

For further information concerning operational reasons and termination of employees issues, please do not hesitate to contact our Employment and Industrial Team:

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