

Employment & Industrial Case Note

June 2007

Acworth and Boeing Australia Limited [2007] AIRC413 **Termination for Operational Reasons - Not This Time! (Again)**

This is a decision of the Australian Industrial Relations Commission delivered on 25 May 2007 by Senior Deputy President Richards. The case involved an assessment of section 643(8) dealing with termination for genuine operational reasons.

Mr Acworth was employed by Boeing as a Software Engineer. The employment was "terminated" on 12 February 2007. The employee Mr Acworth apparently resigned and the employer accepted the employee's apparent resignation. Putting aside that language and situation the discussion in the case centred around termination for operational reasons.

The employer argued that Mr Acworth had refused a new role or assignment given that Mr Acworth's current role was concluding. Therefore the employer argued that there was no work that the employee Mr Acworth could undertake.

Apparently Mr Acworth had been offered two other positions but refused to accept what were put as "comparable" roles. It appears to have been generally accepted that via the employment contract assignment of employment was available given projects started and then finished.

The employee Mr Acworth was therefore in a position where he refused to accept the reassignment and the Commission had to decide whether such refusal of reassignment was a "genuine operational reason" set out by section 643(8).

Importantly in assessing the position of Mr Acworth and Boeing Australia Limited the Commission found that had Mr Acworth accepted the reassignment then he would still be employed by Boeing.

The Commission found as a result that there was not an operational reason for the termination of the employment and what had occurred was a termination as a result of the employee not accepting the direction of the employer to undertake the required reassignment.

Of course the question remains whether the employee would be successful in overcoming arguments that the termination was justified in any event and was not unfair.

As a result of the decisions in Village Cinemas, Priceline and now Acworth the Commission has focused on what is an operational reason and employers and employees and their advisers can be better guided as to interpretation of s.643(8) on genuine operational reasons.

For further information about termination issues please do not hesitate to contact our Employment & Industrial Team on 07 3223 6400