

Employment & Industrial Case Note

April 2007

McAleer -v- The University of Western Australia [2007] FCA 52

Certified Agreement Breach - Penalty Imposition

This decision was handed down on 2 February 2007. The decision arose as a result of disciplinary action taken against an employee of the University of Western Australia. The applicant sought various orders but in particular a **penalty** against the employer for breaching the provisions of the Certified Agreement in respect of disciplinary proceedings.

The penalty was sought to be imposed through s178 of the *Workplace Relations Act 1996 (Cth)*. That section in an amended form but still relevant in respect of penalty, is contained in s719 as the legislation currently stands.

Interestingly the employer in its Defence and Counterclaim admitted it had breached the Certified Agreement over its obligation to give proper particulars of the allegations made against the employee. The University, tactically, decided that it would make those admissions and then seek to continue the disciplinary procedure pursuant to the 2006 Certified Agreement. The reason for this is the 2006 Certified Agreement set out a disciplinary procedure different to that set out in the 2004 Certified Agreement.

The Federal Court found the 2004 Certified Agreement had been breached and proper particulars of the allegations against the employee had not been provided as they should have been.

Siopis J decided a penalty should be imposed upon the employer University.

The Judge found the University's Counterclaim should not stand. The Judge made a declaration that the allegations of serious misconduct made against the employee were subject to the provisions of the 2004 Certified Agreement alone. For that reason there was no need for an injunction to prevent it from dealing with the allegations of misconduct under the 2006 Certified Agreement. The University had no standing to undertake that course.

A penalty of \$20,000.00 was imposed upon the employer University and the following order was made:-

The respondent is permanently restrained from taking any further steps to pursue the allegations of serious misconduct, made against the applicant in its letter to the applicant dated 6 January 2006, before the Misconduct Investigation Committee, appointed in February 2006 ...

LESSON

- All parties must clearly understand their obligations under agreements and ensure breaches do not occur as penalties can be sought and imposed pursuant to the provisions of the Workplace Relations Act.
- In undertaking a disciplinary process conducted pursuant to provisions of an agreement, that process should be followed appropriately and in accordance with the terms of the agreement.

For further information or explanations regarding agreements or agreement making, please do not hesitate to contact our Employment and Industrial Team:

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