

Employment & Industrial Case Note

June 2007

Dean Rawolle –v- Don Mathieson & Staff Glass Pty Ltd **Termination For Operational Reasons – Not This Time!**

This is a decision of Commissioner Lewin of 11 April 2007. The decision deals with termination for operational reasons and whether there were in fact such operational reasons for the termination of Mr Rawolle.

Mr Rawolle had been employed for just over 12 months from 4 December 2005 until 20 December 2006.

Mr Rawolle gave evidence as follows:

- He was called to a meeting with his supervisor with no prior warning;
- The Human Resources Manager was present at the meeting;
- He was informed that the employer's business was expanding and as a result there would be more qualified tradespersons hired;
- Mr Rawolle did not have any qualifications as a tradesperson;
- Mr Rawolle was informed that the *employer would be letting him go and that his position was being made redundant*;
- Mr Rawolle was not aware of other employees made redundant at the same time or around the same time.

The Human Resources Manager for the employer made submissions that the employer was seeking to employ people with:

A greater scope for us to operate our production areas, greater scope in terms of hours worked, wage rates. We also have a greater flexibility in this, in our classification structure, no RDOs. There is a whole range of areas where our operations are going to be more effective.

The Human Resources Manager then gave evidence about the redundancy position and gave evidence that Mr Rawolle was employed under a collective bargaining agreement with the CFMEU and the reason for the termination of employment was *fundamentally the desire to implement a long term goal of restructuring within the respondent's organisation.*

The Human Resources Manager gave further evidence that future employees would be offered an Australian Workplace Agreement and such an AWA would create greater flexibility in the terms and conditions of its employees and that the *operational reason* for Mr Rawolle's termination was because of the inflexible working conditions in his collective bargaining agreement.

The Commissioner found that the desire to use Australian Workplace Agreements was not an operational reason as defined by the Act. The Commissioner also commented that such a reason would probably breach the Act in other ways for example termination because of membership of a Union or an employee under a collective agreement.

Finally the Commissioner commented that if the company was recruiting employees there was a question as to whether the redundancy was a *sham*.

Comment

Clearly the employer had a view of operational reasons which is different to decided law for example by Village Cinemas and the Priceline decisions. The employer could only lead evidence that it wanted to enter into AWAs and there was no evidence led about operational reasons for redundancy that is economic reasons and then evidence about those economic reasons. Clearly to rely upon operational reasons the way the employer did opened the employer up for criticism for breaches of other sections of the Act and for a specific comment that the dismissal was harsh, unjust and unfair.

For further information about operational reasons please do not hesitate to contact our Employment Industrial Team:

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