

Employment & Industrial Case Note

October 2007

ACWORTH AND BOEING AUSTRALIA LIMITED

The Full Bench Deals With Termination For Genuine Operational Reasons

This was an appeal to the Full Bench of the Australian Industrial Relations Commission by Boeing. The decision of the Full Bench was handed down on 3 September 2007. Of importance was further clarification of the vexed issue of termination of employment for genuine operational reasons.

In brief Boeing had terminated Acworth's employment following a process of discussions about his re-assignment to another project. Throughout his employment Acworth had worked on a number of projects each time being re-assigned at the conclusion of each project. On this occasion the project upon which Acworth was working was coming to an end and Boeing entered into discussions with him about his next assignment. Three roles in all were discussed and considered with the third being settled upon by Boeing as his next re-assignment. Acworth believed he was not qualified for much of the role. Boeing confirmed the assignment to this next project. Acworth formerly rejected the re-assignment and then was given 24 hours by Boeing to reconsider his decision. No response was then forthcoming from Acworth. Boeing then terminated Acworth's employment and escorted him from the premises with four weeks pay and no redundancy payment.

Acworth lodged an Application in the Australian Industrial Relations Commission for harsh, unjust or unreasonable termination. Boeing filed a Motion for Dismissal on the grounds laid out in s.643(8) that Acworth's dismissal was for genuine operational reasons or for reasons that included genuine operational reasons. The motion by Boeing was rejected by the Senior Deputy President at first instance and he declined to dismiss Acworth's Application.

At first instance the approach of the Senior Deputy President was to look at the cause of the termination. He focused on the chain of events leading to the termination – mainly Acworth's refusal to be reassigned. The Senior Deputy President concluded there was no genuine operational reason for the termination:

In my view, therefore, properly characterised, the reason for termination of the employee's employment was his refusal to carry out a reasonable and lawful direction, consistent with the terms of the contract of employment, given by the employer for purposes of a further assignment of duties and not the operational requirements of the business as such. From this dispute all else followed, consequentially.

The Full Bench noted that the termination was the result of a deliberate decision made by Boeing. It then went on to look at s.643(8) and the relevance of the evidence as to the reasons for that deliberate decision being what needs to be looked at under this section. It stated:

As we indicated earlier in referring to the decision in Priceline, the reasons for termination are the reasons of the employer and, in particular, the reasons of the decision maker. Where evidence is given by the employer of the reasons for termination, an analysis of the sequence of events is only relevant to the extent to which it tends to confirm or to undermine that evidence. In this case the starting point for the analysis should have been Boeing's evidence as to the reasons for termination.

The Full Bench then looked at the evidence of the decision maker of Boeing and Mr Robinson. That evidence comprised:

- Acworth's rejection of the reassignment was part of the reason for the termination decision;
- That there would be no role for Acworth to perform when his current assignment concluded;
- The role which Boeing offered Acworth was a good match;
- Acworth's decline of the reassignment indicated that he was no longer interested in employment with Boeing.

What needed to be then examined was this question – whether the reasons were or included genuine operational ones.

The Full Bench concluded that the reasons advanced by Boeing *clearly did include genuine operational ones*. It accepted that *Mr Robinson's belief that there was no suitable assignment was a genuine operational reason, even if it was not the exclusive reason, for the decision*. Being no suitable assignment able to be found is an operational reason – *the reason is structural in nature*.

The Full Bench commented that at first instance the analysis of the Senior Deputy President *focused on questions of cause and effect rather than on the evidence as to the reasons for Boeing's decision to terminate the employment*.

Comment

This decision re-emphasises the approach the Commission will take to applications for contest of terminations on the basis of genuine operational reasons – as outlined in the decision in Priceline and now in Boeing. Clearly the evidence of the reasons for the termination will be examined carefully. Each employer should when looking at terminations for genuine operational reasons or reasons that include genuine operational reasons consider the entire circumstances of those reasons and record those reasons and have

that evidence ready to be lead in the event of a contest. But remember the reasons or reason must be operational.

For further information concerning terminations and genuine operational reasons please do not hesitate to contact our employment and industrial team.

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Brisbane office: (07) 32236400
Sunshine Coast office: (07) 5413 9204
www.qmtlaw.com.au

quinlanmiller  treston
lawyers