



Employer's now have Complete Rights to Terminate a Worker for "Genuine Operational Reasons"

On 15 January 2007 a major decision was handed down by the Australian Industrial Relations Commission ("AIRC") which gives employers overriding rights to terminate workers for "genuine operational reasons".

This decision has dispelled any uncertainty in relation to the new Work Choices Legislation, which was introduced late March of 2006 regarding this subject. Importantly, and due to this decision, it is most unlikely that terminated employees can now successfully challenge terminations on the basis of operational reasons through the AIRC.

Village Cinemas Australia Pty Ltd and Carter (C2006/3107)

The Facts

Mr Carter was employed by Village Cinemas since December 1986 as Manager of the company's Doncaster Cinema. His employment was terminated after 19 ½ years of service.

On 15 June 2006 Village had received a Notice to Vacate its Doncaster complex and as a result, Village decided to close it, effective of 1 August 2006.

Mr Carter was told of these developments and that the prospective closure of the complex may cause his employment to be terminated.

Mr Carter subsequently suggested that he take 6 months Long Service Leave and see whether during this time he could be redeployed, however the application was rejected.

On 25 July 2006 Mr Carter was informed that his employment would be terminated and so he filed an application for unfair dismissal. Village then filed an application stating that the matter could not proceed, as Carter's employment was terminated for genuine operational reasons or for reasons that included genuine operational reasons pursuant to Section 643(8) of the *Workplace Relations Act 1996* ("the Act").

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First Instance

The matter proceeded before Commissioner Hingley who found that although Mr Carter was terminated as a direct consequence of the closure of the cinema complex, other reasons had to be considered, including the fact that Mr Carter was a long serving multi-skilled employee, was re-deployable, and he had never been asked to consider or accept a position of lower status. On this basis Commissioner Hingley held that Mr Carter's termination of employment was not for genuine operational reasons.

On Appeal

Village Cinemas appealed this decision to the Full Bench of the AIRC, which ultimately held that the reason for Mr Carter's termination of employment was in a genuine sense, real true and authentic.

The AIRC said that "the operational reason relied upon by the employer need only be a ground or cause for the termination of the employment of an employee".

And that "whether the employer could have done something other than terminate the employee's employment, will generally be irrelevant in deciding whether the termination was for genuine operational reasons, or reasons that include genuine operational reasons".

The AIRC went on to say that, "genuine operational reasons should be given its natural meaning, taking into account the context in which the words are used".

It was held that the termination of Mr Carter's employment was a direct consequence of the closure of the Doncaster cinema complex and there was no suggestion that his employment was terminated for any other reason.

Conclusion

In summary, the AIRC held that where it can clearly be established that the termination of employment was for operational reasons, it is not necessary to have regard to other matters in

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order to ascertain whether the reasons relied on by the employer for the termination of the employee were genuine.

This case clarifies the situation of whether an employer can terminate an employee on the basis of genuine operational reasons, which it can clearly now do.

Prior to this decision, and subsequent to the introduction of the Work Choices Legislation in March 2006, a number of cases held that although an employee could be terminated for genuine operational reasons, such other matters, including alternative employment being offered, had to be considered. These decisions held that after all factors were considered this will be the basis for decisions as to whether an employee's termination was harsh, unjust and unreasonable (see *Perry v Savills* already reported in previous case alert).

Now the only matter to be considered is genuine operational reasons.

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