

CCI Lawyers
Workplace Law
486 Albert Street
East Melbourne VIC 3002
Australia
Tel: +61 (0)3 8662 5400
Fax: +61 (0)3 8662 5401
www.ccilawyers.com.au

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Federal court finds that employer could not rely on policy to summarily dismiss employee

CCI Lawyers were recently involved in a significant case before the Federal Court, which held that a trucking company was unable to rely on its vehicle policy to summarily dismiss an employee truck driver for refusing to consent to weekly deductions from his wages to pay for damage caused to the company owned truck. While the employee was delivering goods his vehicle struck a bollard at the entrance of the loading dock.

Sean Millard, Principal
Ph: 03 8662 5210
smillard@ccilawyers.com.au

By coincidence on this same day, the employer had issued a policy directive stating that drivers who had negligently caused damage to company vehicles were required to authorise weekly deductions of \$100 until repair costs were recouped failing which they would be dismissed. This policy directive was aimed at ensuring safety in the workplace and eliminating the ‘crash and bash’ culture that had developed among truck drivers resulting in high costs to the employer.

Natalie Novak, Solicitor
Ph: 03 8662 5412
nnovak@ccilawyers.com.au

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The employer believed that the employee had been negligent in the incident and requested that the employee sign a deduction authorisation form permitting deductions of a minimum of \$100.00 per week until the total debt of \$4,016.70 was repaid. The form further provided that “[f]ailure to repay the cost of the damage may result in the employee’s termination”.

The employee refused to sign the deduction authorisation form and the following day his employment was summarily terminated. The case provides guidance as to how a court will construe the terms and conditions of employment from various employment documents.

Company Handbook

The Court held that the employer’s Handbook, which contained the various policies and procedures, was a determinative factor in

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considering whether the employer was entitled to dismiss the employee for refusing to authorise the deductions from his weekly wages.

The Court found that certain clauses of the Handbook constituted part of the employee's employment contract. Clause 4 of the Handbook, titled 'Company Policy and Procedures', stated that the policies and procedures described therein were a condition of employment for all employees and adherence to them was expected.

The Court, however, held that clause 4.20, which was titled 'Vehicle Policy', did not have contractual force in so far as it provided only a summary of the vehicle policy and not specific terms and conditions.

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The Court held that the statement "*costed to the employee*" did not contain the necessary detail and certainty to have contractual force. As such, it was found to be "*insufficient to give rise to a contractual term, such that a breach thereof could lead to summary dismissal*".

Vehicle Policy Directive

The Court found that the Vehicle Policy directive issued to employees on the day of the incident differed in some instances to the terms summarised in the Handbook. The Vehicle Policy directive provided that an employee "*may be required to meet part or all of the cost of repairing any damage caused to a Company vehicle*" and did not state as provided in the Handbook that "Negligent damage will be costed to the employee".

The Court held that as the Handbook and related policy document were inconsistent, no obligation was imposed on the employee to make repayments and he was entitled to refuse to agree to the deduction.

The Court held that the policy directive of 11 February 2009 could not be relied on to dismiss the employee because the employer should have taken appropriate action before 11 February 2009 to ensure that its employees were made aware of the Vehicle Policy and how the employer intended to exercise its rights under the policy.

Employment Contract

The employee had not signed a comprehensive written employment contract with the employer. As such the Court considered various documents that might be construed as forming

the employee's contract of employment. In the absence of a term stipulating how employment might be terminated, the Court held that a term of reasonable notice of termination was to be implied. Although it was found that the employer was not entitled to summarily dismiss the employee as it had done, the Court determined that the award of damages was to be based on an implied term entitling the employer to terminate the employee on reasonable notice.

The Court found that eight weeks would have constituted reasonable notice in the circumstances.

Conclusion

This case illustrates the importance of ensuring that obligations and entitlements set out in company policies and employment contracts are consistent with one another and that thorough consideration is given to which obligations and entitlements the employer wishes to provide as contractually binding. Furthermore, it emphasises the necessity for employers to ensure that policy detail is brought to the attention of employees.
