

EMPLOYEES - SUMMARY DISMISSAL

On author has said that unless "an employee has a job as a mattress tester or a similar occupation, sleeping on duty is neglect of duty".

It is clear that employers may summarily terminate a contract of employment without notice in certain circumstances. Incompetence is, of course, a sufficient ground upon which to exercise a right of summary dismissal. The legal basis for such action is twofold, namely, an express or implied representation by the employee that he was competent to undertake the task, and secondly, actual incompetence.

Other bases for dismissal include wilful disobedience of lawful orders, neglect in the performance of duties, and misconduct. Indeed, on one view, "misconduct" is the umbrella under which all other grounds of summary dismissal are included.

Obviously, it is not possible to categorise various forms of human conduct to pre-determine what will amount to misconduct. It is in all instances a question of fact. For example, the use of insulting and objectionable language may constitute misconduct. So, too, may drunkenness. Immorality may be sufficient. Dishonesty in the course of employment may, if sufficiently serious as a single act, justify instant dismissal.

Summary dismissal is a swift and effective remedy available to an employer where the circumstances warrant it. It requires neither due notice nor the payment of wages in lieu. It is, in short, a right of immediate self-help.

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DISMISSED MANAGER WINS HIGH PAYOUT

- Tony Thomas

Compensation for unfair dismissal is increasing dramatically as new precedents are being set

A new chapter has been written in the saga of determining suitable compensation for a senior executive who has been unfairly dismissed. The decision, by a deputy president of the Industrial Relations Commission of Victoria, Brian Lawrence, concerned a case brought by Colin Bunnett. Bunnett was sacked in August 1988, when he was general manager of the automotive suspension group of Hendersons Federal Springs Works. Bunnett, 45, had been on a salary of \$92,000, with other benefits taking his package to \$110,000. He had been with the company 16 years and had responsibility at Hendersons for four factories and 450 workers.

All of Bunnett's superannuation contributions were paid by the employer and when he left the company he was paid his entitlement of \$153,000. The deputy president rejected his employer's argument that this was a partial substitute for longer notice of dismissal.

Lawrence also dealt with the extent to which a senior executive should see the risk of dismissal as part of his lifestyle. He said:

"At senior management levels in some firms and industries, organisational change will be endemic.

Changes could take place as a result of internal company reorganisations, or following acquisitions by the employer, or by the employer selling off part of its business, or consequent upon control of the employer passing into the hands of another company. Mr Bunnett was in such an environment."

But Lawrence went on to argue that since Bunnett had been unfairly dismissed, he should get at least as good a payout as if he had been made blamelessly redundant. This led him to award an extra amount of quasi-severance pay of two weeks per year for Bunnett's 16 years of service.

In another interesting stand, Lawrence said Bunnett's base pay of \$92,000 was the relevant figure and not his total package of \$110,000. In all, Bunnett got \$95,000 (54 weeks' pay) as compensation. In November 1988, he found another job, at a package of \$75,000-\$80,000.

Lawrence said the jurisdiction of the commission to award compensation had only recently been recognised, although he might well have added that the commission conferred the power on itself. The relevant section 34(5) does not mention compensation, only making up of lost wages, but the commission's new power has been affirmed by the Victorian Supreme Court. The NSW Industrial Commission has power only to restore lost wages, not to give compensation, but the SA commission can and does award compensation.

"It was not a pleasant or easy experience," Bunnett told BRW. "It was the principle of getting justice that kept me going. The case took from August 1988 to July 1989. I think the deputy president was aware that he was creating a precedent and that's why he went into such detail. I had four days in court with a barrister and it cost me a large amount - well over \$10,000. Each party has to pay its own costs in the industrial commission regardless of who wins. I think that is an unfairness that needs to be addressed."

In July 1987, Hendersons took over National Springs to become Australia's main supplier of car suspension parts. Hendersons was taken over in November 1987 by Natcorp Investments and Natcorp, in turn, was taken over this year by its affiliate, National Consolidated, and is now part of the web of companies in John Spalvins' Adsteam group.

The Natcorp executives got rid of various Hendersons senior executives, including Bunnett, who was sacked allegedly for incompetence and given a month's pay in lieu of notice. He did not have a service agreement. Other Hendersons managers who went - but with a good handout via their service agreements - were the managing director, John Collingwood, the director of finance, Michael Helstrom, and the corporate development manager, Fergus Stewart, who all left on 4 July 1988.

Large-company personnel managers who have studied the judgment say that Natcorp management does not emerge from the case in a good light. Personnel managers