

Medical clearance given so sacking unfair  
18/12/2008

Toyota wrongfully dismissed a psychologically ill worker for allegedly being unable to work as part of a team, with the AIRC finding he had been given medical clearance to return to work prior to being sacked.

The case ends a tumultuous employment relationship between the Sri Lankan born maintenance fitter and Toyota.

The worker had previously lost a discrimination case against Toyota in 2007, when a Victorian Tribunal had ruled the company had acted appropriately when advised he had been racially victimised and any further action against the perpetrators could have 'threatened' the worker's safety.

He had claimed he suffered with a chronic adjustment disorder caused by the racist taunts and graffiti.

After continuing complaints and disputes with his colleagues, the worker had a period of sick leave and a graduated RTW in 2008; however, he was informed in June that there was no other suitable duties within his RTW restrictions and that as he was still unable to fulfil the inherent requirements of his job (ie working as a part of a team) his employment would be terminated.

Harsh dismissal

Hearing the unfair dismissal action, Commissioner Anna-Lee Cribb found there was 'insufficient' medical evidence to show the worker could not perform the inherent requirements of his job and work in a team.

Further, it was found the worker had been given medical clearance to return to work before being dismissed.

'It is apparent that the applicant's (worker) presence in the workplace was not without its difficulties,' Cribb said. 'However, there was no assessment made by any of the psychiatrists that the applicant could not perform his normal duties.'

'Therefore, I find that there was not a valid reason for the termination of the applicant's employment on the basis that he was unable to fulfil the inherent requirements of his position as a maintenance fitter, due to his inability to work as part of a team.'

Money instead of reinstatement

However, Cribb declined to order reinstatement finding the employment relationship had completely broken down.

She ordered he be paid \$22,317 in lieu of reinstatement.