

Employer bitten by poorly-defined anti-gossip policy

In a ruling that underlines the need for clear definitions of workplace behaviours that warrant dismissal or disciplinary action, FWA has compensated a childcare worker who was sacked for breaching a "no back biting" policy.

A Victorian child care centre summarily dismissed the worker last year for breaching the policy, after she allegedly said one worker was lazy and that another wasn't a competent carer.

The policy says: "Back biting is NOT TOLERATED at Hippity Hop Childcare; it is unacceptable and can lead to the breakdown of unity between staff within the centre, making it an unpleasant place to work. Any staff member caught back biting may result in immediate dismissal."

Commissioner John Ryan said the policy didn't define "back biting" and that the evidence before him "suggests that there was not a common understanding of the term" within the centre.

He said the Macquarie Dictionary defined backbite as: "1. To attack the character or reputation of secretly. 2. To speak evil of the absent; gossip."

The centre argued that back biting was making a negative comment about a person, behind their back.

Commissioner Ryan found the policy was "an extremely blunt instrument" that meant that any "back biting" by an employee would render them liable to instant dismissal.

He said the policy "makes no distinction between malicious and untrue comments made behind a person's back with the clear intention of destroying the person's reputation and comments made behind a person's back which are true and which would not result in serious damage to the employee's reputation".

The "very bluntness of [Hippity Hop's] policy means that a mere breach of the policy cannot constitute a valid reason for dismissal", Commissioner Ryan said.

He said the nature and intent of the "back biting" needed to be considered.

He said the comments lacked the "necessary odiousness" to justify dismissal and that some form of disciplinary action "well short of dismissal" would have been more appropriate.

Commissioner Ryan took into account that the policy was aimed at encouraging employees to bring issues and complaints to management rather than back biting.

But he noted that when the worker complained to the centre's director about conduct by an employee (who was the director's sister) that allegedly threatened the safety of the children, nothing was done.

He said the evidence led him to conclude that the centre simply didn't have the machinery in place to deal with complaints by staff.

Commissioner Ryan also identified shortcomings in the procedural fairness of the dismissal and criticised the centre for "concocting" a letter a month after the dismissal that added two further reasons for her sacking.

He ordered the centre to pay the employee \$9,480 in compensation.