

MEDIA RELEASE

August 27, 2014

Unfair dismissal win for urinating truck driver latest in baffling Fair Work rulings

AMMA – Australia's resource industry employer group

IN ORDERING a trucking employer pay \$16,000 compensation to a former employee sacked for urinating on client property, the Fair Work Commission is again undermining managerial capacity to address clear cut workplace misconduct, says AMMA chief executive Steve Knott.

In [Cowan vs Sargeant Transport Pty Ltd](#), Commissioner Michelle Bissett found the former employee's conduct was 'unacceptable', 'unprofessional' and his termination valid, after the truck driver was caught on CCTV urinating outside the entrance to a Woolworths warehouse during a delivery.

However, the Commissioner upheld the employee's unfair dismissal claim and ordered compensation for lost income, citing concerns over the investigation process.

"It beggars belief that an employer could be found to have a valid reason to sack someone for clear misconduct and then be slapped with a \$16,000 penalty for unfair dismissal," Mr Knott says.

"This decision is just the latest example of the Fair Work Commission complicating and confusing matters involving clear breaches of community standards and company policies.

"Valid reasons for dismissal are being increasingly subjected to the discretionary whims of tribunal members, most of whom have little or no experience in running a business, seeking to substitute their decision for that of qualified business managers."

Other Fair Work rulings demonstrating this concerning trend include:

- Employer DP World ordered to reinstate an employee who seriously assaulted his supervisor.
- A ferry master being reinstated after crashing a passenger vessel and then failing a drug test.
- Ruling Australia Post employees were dismissed unfairly after distributing porn to co-workers.

Mr Knott says introducing a separate independent body to hear appeals of FWC decisions would deliver greater consistency and balance in tribunal decisions.

While the FWC President has publicly defended the Commission's existing appeals processes, this new jurisdiction would result in far less unmeritorious cases being brought before the Commission and fewer costly appeals.

"A properly separate, genuinely independent appeals jurisdiction would refocus the tribunal on simple, consistent determinations. Over time, this consistency would see far fewer employers having to defend claims which should never have made it to hearing in the first place," Mr Knott says.

"While AMMA represents many large employers, more than half of our members employ less than 500 people. For these employers, unnecessary business costs of this nature is revenue foregone which could otherwise have been invested in employment generating initiatives.

"An independent appeals body would reflect international best practice, such as in the UK. It would set clearer precedents for employers to follow, reduce the number of costly, unnecessary matters and further appeals, and restore confidence in our national employment tribunal."

MEDIA: Tom Reid, AMMA Media Manager, 0419 153 407 or Tom.Reid@amma.org.au.