



Fair Work full bench overrules 'unfair' 10-beer sacking decision

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A Fair Work Commission full bench has quashed one of its unfair dismissal rulings for being "unsafe" because it found a worker was harshly sacked for drinking 10 beers the day before his shift.

The resources industry has welcomed the decision as a shift away from so-called "social judgments" that award payouts for harshness, and has called for the removal of the commission's discretion over serious safety breaches.

Farstad Shipping, which supplies the offshore oil and gas industry, sacked its master captain for failing its zero-

tolerance alcohol policy before he was due to board a vessel in Karratha, Western Australia.

Fair Work commissioner Michelle Bissett found the employer had a valid reason to sack the captain but that the dismissal was unfair because an "unfortunate chain of events" had led him to drink too much.

The captain had started drinking what became 10 full-strength beers the day before his shift to cope with anxiety after encountering a former colleague who was involved in an unresolved workplace incident.

The commissioner said sacking was harsh after taking into account the captain's 16-year service and Farstad's failure to consider a lesser penalty.

But on appeal, the bench said "it would be unsafe to allow the decision to stand". It found commissioner Bissett failed to consider the captain's failure to self-report his drinking and had not given proper weight to his previous safety breaches. The commissioner's observations that the captain worked a senior role in a "safety-critical industry" when refusing him reinstatement applied with "equal force" when considering whether his dismissal was unfair, it said.

The bench quashed the decision, which had yet to determine compensation, and referred the case to a different commissioner.

The Australian Mines and Metals Association had warned the original decision would "absurdly" act as an incentive for employees who breach safety rules to seek financial compensation. AMMA chief executive Steve Knott said employers were "hopeful" that the latest decision was "a step in the right direction and stops the undermining of workplace health and safety protocols".

"When it comes to safety there can be no compromise. That's why AMMA is calling for the removal of this discretionary power where a serious safety breach has occurred and is proven.

"Sadly, sometimes you don't get a second chance when it comes to safety."



Offshore oil and gas a "safety-critical industry". PHOTO: AP