



Dismissal for 'scab' abuse ruled unfair

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Workplace correspondent

Esso Australia unfairly fired a union delegate for abusing a contractor by calling him a "f---ing scab", the Fair Work Commission has ruled.

A full bench, headed by president Iain Ross, ruled Esso's sacking of Electrical Trades Union delegate Michael Hatwell at its Longford gas plant last year was "clearly" harsh as his scab comment was only one act of harassment.

The ruling overturns a previous decision that held calling a worker a scab was serious misconduct warranting "immediate dismissal".

Mr Hatwell was sacked following a suicide attempt by a contractor, known as 'Mr S.P', who left a note naming him and six others as employees who "incite(d) hatred, segregation, isolation between Esso workers and contractors".

The suicide attempt occurred in the middle of a year-long dispute sparked when Esso maintenance contractor UGL retrenched its unionised workforce and offered to hire them back on significantly lower pay and conditions.

Esso fired Mr Hatwell for giving "the cold shoulder" to workers who took up UGL's offer and telling one "you're working your rostered day off today, oh that's right, you f---ing trade it off, you don't have an RDO, you're a f---ing scab".

In its original decision, Fair Work deputy president Alan Colman upheld Esso's sacking after finding "use of such language is manifestly unacceptable in the workplace and amounts to serious misconduct".

But on appeal, despite backing "f---ing scab" as a valid reason for dismissal, the full bench said other factors meant the comment "warranted a disciplinary response which fell short of dismissal".

The bench highlighted that Esso's human resources manager had said she would not sack someone based on an "isolated example of an employee using the word 'scab' once".

The manager had also only given other employees first and final warnings for using "scab" and "grub", rather than dismissing them.

Other broader considerations included that the abuse occurred during protracted industrial action that had caused "significant tension" in the workplace.

Further, Mr Hatwell had worked at Esso for more than 10 years and, apart from a warning over a workforce walk-out, had "an unblemished disciplinary history".

The bench's decision contrasted with its rejecting of a claim by another Esso delegate, who was sacked because he excluded 'Mr SP' from the lunchroom for accepting UGL's offer. The bench held such behaviour was "serious misconduct".

ETU Victoria secretary Troy Gray said the decision was "a great victory for Mick Hatwell".

"This is one for the good guys," he said. "But it is only a small victory against the much greater battle that Esso are intent on waging against good, working people."

However, Australian Mines and Metals Association chief executive Steve Knott said the decision was "disappointing" for employers who believed in a zero tolerance approach to bullying and abusive language in the workplace.

"In this day and age most of the community would agree with deputy president Colman's description of such language and abuse as 'manifestly unacceptable'," he said.

"Where a valid reason for dismissal exists, as was the case here, it is discerning that the FWC, an administrative tribunal, seek to substitute their decision for that of experienced managers with direct business experience in such matters.

"The employer should have been backed in taking a strong stance against verbal abuse and harassment in the workplace."

An Esso spokesman said it was reviewing the decision.

For support contact Lifeline on 13 11 14 and beyondblue on 1300 22 4636.



Union members protested against workers who accepted UGL's offer of lesser conditions last year.