



ISSUE

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a regular newsletter for clients of
mcphail gibson & zwart ltd

Client Services:

- General advice in relation to all employee-related issues
- Resolving Personal Grievances and Workplace Disputes
- Employment Agreements - drafting and negotiation
- Employment Relations Authority/Employment Court and Mediation Representation
- Employment Relations Strategies
- Training
- Monthly newsletter

Cautionary Tales - Christmas Edition

Christmas party season is here and we would like to share with you some cautionary tales, starting with ERA case, *Townsend v Prospace Designz Limited*.

Prospace Designz Limited (Prospace) was owned and run by George Russell. Mr Townsend was employed by Prospace as a spray painter.

Mr Russell developed a number of concerns with Mr Townsend's performance and attitude towards work, and he discussed these with Mr Townsend. Mr Townsend was issued with what was effectively a final written warning for his behaviour.

Shortly thereafter, the company Christmas party took place. At one point during the party, Mr Townsend was splashed in the face with water and ice by another employee. Mr Townsend decided to retaliate by later attempting to 'dunk' the employee into the drinks bucket, which was filled with ice. The other employee resisted and as a result his legs were badly scraped on the sharp edges of the bucket. His shoulder was also injured when he was forced to the floor. It is important to note that Mr Townsend was sober at the time. Mr Russell witnessed this incident and decided to shut down the Christmas party.

Following this, Mr Russell received a call from a client who claimed that Mr Townsend had either not delivered its work or not arranged for it to be picked up. When Mr Russell went to collect the work to make arrangements, he found a sign posted by Mr Townsend, which contained a mobile phone number and stated "*due to excessive drinking may not respond (burp)*".

Additionally, Mr Townsend had begun a relationship with Mr Russell's administration clerk/receptionist, which Mr Russell considered was inappropriate.

At 1pm one day Mr Russell telephoned Mr Townsend and asked him to come to a meeting that day at 3pm. He did not tell Mr Townsend what the meeting was about, nor did he give Mr Townsend the opportunity to seek legal advice or have a legal representative/support person present at the meeting.

Mr Russell also asked the administration clerk to attend the meeting. During the meeting, Mr Russell:

1. Told Mr Townsend and the clerk that he was not happy about their relationship; and

Christmas Shutdown



The offices of MGZ Employment Law will be unattended from the close of business on Wednesday 20 December 2023 and will officially reopen on Monday 15 January 2024. We will have a skeleton team working from Monday 8 January 2024. For urgent matters during this holiday period please refer to our contact details overleaf.

Disclaimer:

This newsletter is not intended as legal advice but is intended to alert you to current issues of interest. If you require further information or advice regarding matters covered or any other employment law matters, please contact **Dean Kilpatrick, Jane Taylor, Deborah Hendry or Jane Jarman.**

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2. Discussed the Christmas party incident and said that Mr Townsend's actions were inappropriate and aggressive; and
3. Told Mr Townsend that the note left on Mr Townsend's door was unprofessional; and
4. Discussed other matters that were the subject of the previous disciplinary process.

Mr Russell terminated Mr Townsend's employment at the end of the meeting and confirmed this in writing the following day. He did not undertake any further investigation into any of the issues raised with Mr Townsend. Mr Townsend raised a personal grievance for unjustified dismissal.

Mr Russell's lawyer argued that no investigation into the Christmas party incident was needed as Mr Russell personally witnessed the matter. The Authority disagreed, noting that in this case Mr Townsend's motive for his actions was important. While Mr Russell could have investigated this, he chose not to. Further, Mr Townsend was not dismissed purely because of the Christmas party incident.

The Authority found that Mr Russell had decided to dismiss Mr Townsend before the meeting. The Authority held that, while Mr Russell's reaction to Mr Townsend's behaviour was "*no doubt borne out of frustration*", it was in breach of accepted standards and Mr Townsend's dismissal was unjustifiable.

Mr Townsend was awarded \$4,330.55 in lost wages and \$6,000 compensation (note, this case was from 2003, so this would have been an above-average compensation award). However, given Mr Townsends actions at the Christmas party, the Authority considered that a 50% reduction in remedies was appropriate.

This case serves as a good reminder that no matter how badly employees behave, it is important to undertake a fair and robust process before taking any disciplinary action. While Mr Townsend's contribution to the situation resulted in decreased remedies, Prospace had to spend time and legal fees defending the matter before the Authority.

We would now like to share some internet Christmas party stories. Needless to say, we do not condone such behaviour, nor can we establish the veracity of the statements made. Of course if any such behaviour occurs at your own Christmas party, we are happy to assist.

How to get a Raise

"My former boss got drunk, sat me down at the bar and said that he was giving me a raise to [less money than he was currently paying me]. Whoops!"

Playing with Fire

"I used to own a bar in D.C. We had a company rent out a space for a holiday party one year. They were getting pretty smashed — it was an open bar — and we suddenly started smelling smoke. I sent a waitress to find out what was going on and she reported that the men in the party were having a hairy chest contest and the hairiest one lit his chest hair on fire, apparently on a dare. Needless to say, we threw a few folks out."

Wrong Brownies

"A place that I worked at about eight years ago had a huge party. One of the managers brought brownies and the director of operations (let's call him Jack) was the first to try them as we were setting up the food table.

"About half an hour later, as we were finishing up, Jack starts giggling and talking about how tall he feels. The guy who brought the brownies grabbed the wrong plate as he left the house and accidentally brought pot brownies.

"Needless to say, we gathered as many of the stoners as we could to clear that plate before anyone else got to them and tried to keep Jack away from other management."

Tupperware

"I had a coworker once come to our holiday party with armfuls of BIG Tupperware containers. She filled them all with free food and left. She even took a bottle of wine!"

Secret Santa Fail

"It's nice to be able to have a laugh with your boss, but at our party the CEO bought the project manager a 'Project Management for Dummies' book as a secret Santa gift. Unfortunately, she didn't see the funny side, and actually left the room crying!"

