

Your job for a couple of cartons? It's a hefty price to pay

A recent decision of the Fair Work Commission ("the Commission") has upheld the decision of an employer to dismiss an employee for misuse, albeit of a relatively minor nature, of a corporate credit card. The decision was handed down in *James Farrelly v Seasonair Pty Ltd* [2015] FWC 2334.

The matter concerned a claim for unfair dismissal under the *Fair Work Act 2009* (Cth). Although councils are not within the scope of this Act, the provisions of the *Fair Work Act 1994* (SA) relating to unfair dismissal in South Australia are comparable. This matter did not, however, turn on the construction of the specific legislative provisions and hence has relevance for SA councils.

Facts

Mr Farrelly was employed by Seasonair as its Plumbing Manager. He commenced in that role in March 2014. Upon commencement with Seasonair, he was given an induction to Seasonair's policies and procedures and in July 2014 was provided with a corporate credit card and given a further, specific, induction regarding the use of that card.

In early December 2014, Mr Farrelly sought approval from the Managing Director to host a Christmas party for the plumbing department employees only. This request was refused on the grounds that there would be a single work Christmas party only and it would be for all Seasonair employees. Following this determination one of the plumbing department employees coordinated a private Christmas function for the plumbing department and Mr Farrelly was invited to this event. On 14 December 2014 he used his corporate credit card to purchase two cartons of beer for the event at a total cost of \$114.98. Mr Farrelly supplied the receipt of this purchase to the Office Manager, in accordance with standard company procedure. He recorded the purchase as "supplier gift".

Mr Farrelly was requested to attend a meeting with the General Manager on 16 January 2015. Mr Farrelly's employment was terminated during the course of this meeting. The General Manager advised that he had requested the meeting due to concerns he had over the use of the corporate credit card for unauthorised or inappropriate purchases by Mr Farrelly. Although there had previously been three small purchases on the card which were the result of accidental use, there was no dispute between the parties that the expenditure which led to the termination of Mr Farrelly's employment related to the beer purchase for \$114.98. During the meeting Mr Farrelly offered to repay the amounts for any unauthorised or inappropriate purchases.

Mr Farrelly brought the action against Seasonair asserting that his termination of employment lacked a valid reason and was procedurally unfair.

Decision

The Commission held that Mr Farrelly's conduct in purchasing the beer and subsequent attempts to hide the purchase by classifying it as a 'supplier gift' represented a valid reason for the termination of his employment. The Commission noted that whilst the process followed by Seasonair and the manner in which it effected the termination could give rise to some fairness concerns, on balance, Mr Farrelly failed to establish that the termination of his employment was harsh, unjust or unreasonable. The Commission found that Mr Farrelly was clearly made aware of the strict limitations on his use of the corporate credit card and, further, was aware that the General Manager refused to authorise a separate Christmas party for the plumbing department. This refusal to authorise logically extended to not authorising any expenditure associated with any such Christmas party.

This case highlights some important issues for councils which allow the use of corporate credit cards. The purchases made in this matter were not repeated and were not for excessive amounts. The Commission held that termination on the basis of one purchase totalling \$114.98 was appropriate in these particular circumstances. The Commission noted that the comprehensive and relevantly recent credit card induction, together with the clear instructions that Mr Farrelly had been provided regarding its use, were key factors in it reaching its conclusion.

In light of these findings, we advise that any council providing corporate credit cards to employees should ensure it has very clear policies in place with respect to the use of the card, and a comprehensive and clear induction regarding the use of it is provided upon issue of the card. Such policies should be clear regarding any limitations on expenditure and any requirement for authorisation prior to purchasing. For any employees using a corporate credit card, it is the employee's responsibility to ensure it is used in accordance with council policies and procedures and that all purchases made are properly accounted for. In turn, it is the employer's responsibility to monitor and enforce compliance, particularly because of the involvement of public funds in respect of council credit cards.

If you would like any assistance with the development or review of your policies, or any advice relating to employment matters, please contact Adam Crichton at acrichton@kellyjones.com.au or on 8113 7108.

