

27 JANUARY 2010

## Fair Work Australia decides dismissal unfair despite valid reason

Fair Work Australia (**FWA**) has held that an employee was unfairly dismissed despite finding that the employer had a valid reason for terminating the employee and the employer providing the employee with an adequate opportunity to respond to allegations that he had breached the employer's drug and alcohol policy.

The employee had been employed as a truck driver and farm worker with the employer since June 2008. In around July 2009, as part of the employer's cartage contract with Tritton Mines (**Tritton**), the employee was to exclusively perform driving duties for the employer, carting materials from the mining site.

Both the employer and Tritton had drug and alcohol workplace policies and the employee acknowledged his awareness of such policies. On around 8 July 2009, the employee failed a drug test administered by Tritton and was, therefore, unable to enter the mine facility until he could be cleared as drug free.

After discussions between the employee and employer about the policy

breach, the employer decided to terminate his employment on the basis of his failure to pass the drug test and resultant inability to perform the driving work that had been allocated to him.

The employee applied to FWA for a remedy alleging that his termination was unfair. FWA held that the employee, in failing the drug test, in breach of the employer and Tritton's policies, policies of which he was aware, provided the employer with a valid reason to terminate his employment. FWA further determined that the employee had been notified of the reason for his dismissal, and had been provided with an adequate opportunity to respond. However, FWA considered that the termination of the employee was premature and that the employer could have utilised the employee on other duties or stood him down without pay.

FWA held that a two-week period would have been reasonable to allow the employee to provide clear drug test results and accordingly awarded the employee two weeks' compensation. FWA declined to reinstate the employee due to a lack of available work with the employer caused by the economic downturn.



# ARTICLE

This decision highlights the importance of seeking advice prior to terminating any employees as a valid reason will not always be sufficient to justify an employee's dismissal.

### Want to republish any of this article?

If you would like to republish any part of this article in your staff newsletter or elsewhere please contact our Marketing Team on **+61 3 9608 2168**

### Disclaimer

This Article is intended to provide general information on legal issues and should not be relied upon as a substitute for specific legal or other professional advice.



For further information  
please contact:

**Louise Houlihan, Partner**

Phone (direct) **+61 3 9608 2273**

Mobile **+61 409 835 809**

Email **[l.houlihan@cornwalls.com.au](mailto:l.houlihan@cornwalls.com.au)**

**Virginia Sadler, Senior Associate**

Phone (direct) **+61 3 9608 2106**

Mobile **+61 413 276 444**

Email **[v.sadler@cornwalls.com.au](mailto:v.sadler@cornwalls.com.au)**