



Hall Payne wins ‘rare’ reinstatement for unfairly dismissed worker with 37 years’ service

Date: Friday February 16, 2018

Our client, Peter Brain, started working at Hobart Zinc Smelter now operated by Nyrstar when he was 20 years old. For over 37 years he worked hard in various roles, with an exemplary record. He was dismissed in 2017. Peter came to Hall Payne to investigate his unfair dismissal options.

Overview

Peter was sacked for a single safety breach. At no time was he invited by his employer to discuss the appropriate sanction for the safety breach.

[Indi Gunadasa](#), from Hall Payne’s Hobart office, represented Peter in his unfair dismissal case. He argued that Peter should be reinstated because his sacking was harsh and unfair.

Indi drew attention to the fact that Peter had a very particular and specialised skill set which he had acquired over his 37 years of loyal service. This very specialised skill set would hinder Peter in obtaining meaningful employment elsewhere after his termination.

The Commission’s Decision

The Commission agreed with Hall Payne. Deputy President Barclay held that the termination of Peter’s employment was harsh. The Commission criticised Nyrstar for failing to provide Peter with an opportunity to discuss the appropriate penalty before sacking him for the breach of safety.

Deputy President Barclay when considering trust and confidence in the employment relationship concluded that:

... In reality [Peter] was a good worker. He has, over the course of 37 years committed one serious disciplinary breach of policy and protocol. He was terminated because of the seriousness with which the [Nyrstar] regarded the breach. The evidence of the

deliberations in reaching a decision on sanction is scant... I am asked to accept that the trust and confidence built up over a very long time has been destroyed by one incident of a safety breach. I do not.

The Commission ordered that Peter be reinstated to his former position with Nyrstar.

Reinstatement in unfair dismissal claims is very rare. The Commission's [2016-17 Annual Report](#) states that **less than 0.01% of applicants** will receive a reinstatement order from the Commission.

Quick Facts:

- There were 14,135 unfair dismissal applications made to the Commission during 2016-17 period.
- Only 307 applications were resolved by order of the Commission.
- Only 25 applications resulted in reinstatement by order of the Commission.

This was a fantastic outcome for our client. Peter said:

"The way Indi handled my case, from the advice at the start and all the way to the end,... he was great! Me and my entire family are grateful for the result."

Get help from an employment lawyer

If you have an employment law or industrial relations matter and you're looking for advice and assistance, Hall Payne's expert advice can help. You can either get in touch directly with today's blog writer, [Indi Gunadasa](#) (Hobart office) or [contact us at our head office](#) for referral to an [employment lawyer](#) at any one of our other offices.

This article relates to Australian law; either at a State or Federal level. The information contained on this site is for general guidance only. No person should act or refrain from acting on the basis of such information. Appropriate professional advice should be sought based upon your particular circumstances. For further information, please do not hesitate to contact Hall Payne Lawyers.