

Buck v Comcare [2012] AATA 327 (31 May 2012)

Key Points

- In his first decision since *Reeve v CBA*, Deputy President Hotop has applied the reasonable administrative action exclusion finding that the interaction between a manager of the ABC and Ms Buck, by which the ABC wanted Ms Buck to sign a new job plan, was both administrative action, and reasonable.

Background

The relevant administrative actions comprised:

- An email to the applicant from her manager sent on the day of the applicant's return from 7 months long service leave, which included a new personal job plan in respect of her job.
- Two telephone conversations between the applicant and her manager in which certain statements were made in relation to the new job plan.
- A follow up email from the manager to the applicant which stated *"This must be hard for you to come back to lots of changes but I do think that the job plan reflects your skills and capabilities completely ..."*
- An email from the People and Learning Manager to the applicant (who had requested the Managers assistance in resolving the dispute regarding her new job plan). The email indicated it would escalate the dispute to a higher level unless the applicant indicated she was now prepared to agree to the plan.

The Law

The applicant submitted that none of the above actions were administrative because they did not involve disciplining the employee or taking steps under her contract of employment. The applicant relied upon the Full Federal Court's decision in *CBA v Reeve* in making this submission.

Deputy President Hotop expressly rejected this argument. He found that none of the actions involved action of an operational nature in the sense that it related to the activities of the business (here referring to the reasons of Gray J in *CBA v Reeve*) or action forming part of the everyday duties or tasks that the applicant performed in her employment or job (here referring to the reasons of Rares and Tracey JJ).

Instead, Deputy President Hotop stated:

"Rather, in the Tribunal's opinion, each of the actions referred to in paragraph 41 above involved "action taken in respect of the administration of the relationship of employer and employee" as between the applicant in her capacity as employee and the ABC in its capacity as employer (Reeve at [33], per Gray J). Accordingly, each of those actions constituted "administrative action taken ... in respect of the [applicant's] employment", within the meaning of s 5A(1) of the SRC Act."

Deputy President Hotop then went on to find that each of the actions were reasonable. He quoted from the Macquarie Dictionary definition of the word "reasonable" noting that it referred to

“agreeable to reason or sound judgment ... not exceeding the limit prescribed by reason; not excessive”. Similarly, The New Shorter Oxford English Dictionary “In accordance with reason; not irrational or absurd ... Within the limits of reason; not greatly less or more than might be thought likely or appropriate; moderate”

Having referred to these definition, he noted that the determination of whether the relevant actions were reasonable or taken in a reasonable manner *“is a matter of objective judgment; it is not a matter of mere subjective belief or opinion”*.

Conclusion

Having regard to all of the evidence, he found that even though the applicant may have had a perception subjectively formed that the actions were unreasonable, the evidence did not convince the Deputy President that this was so.

He found that even though the applicant’s manager wished the applicant to sign the new job plan and encouraged and urged her to do so, she had not directed her to do so. If this had occurred, Deputy President Hotop considered that such actions would have been unreasonable.

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