

update

26 May 2008

Employment law: Duty of mutual trust and confidence

The recent case of McDonald v State of South Australia [2008] SASC 134 demonstrates that damages for past and future financial loss can be awarded to employees if employers breach the duty of mutual trust and confidence.

The South Australian Supreme Court on 21 May 2008 awarded damages to an employee of the South Australian Department of Education and Children's Services for breaching the duty of good faith and mutual trust and confidence. This decision has implications for employers throughout Australia.

The facts

The plaintiff, Mr McDonald, was employed by the Department and appointed as a teacher at Brighton Secondary School in 1997 until 2003.

Mr McDonald was trained and experienced in teaching business studies and economics. During his employment at Brighton Secondary School, he was asked to take on the role of network management of the computer systems in the school. This was in addition to teaching subjects as part of the curriculum, and it was a task for which he was not qualified.

Mr McDonald's health suffered as a result of being asked to undertake substantial additional work associated with the network management role.

The evidence before the court was that throughout Mr McDonald's employment, the school (among other things):

1. failed to provide Mr McDonald with computer networks training although it knew he had no such training;

2. allowed Mr McDonald to work excessive hours (including weekends) without addressing his workload complaints;
3. undermined his role and the authority of his position;
4. harassed and victimized him; and
5. did not provide Mr McDonald with the opportunity of being interviewed for a similar position.

Mr McDonald subsequently resigned from his employment claiming that he had no other option given the school's conduct.

The proceedings

Mr McDonald instituted legal proceedings in the Supreme Court of South Australia alleging:

1. the Department had an implied duty to provide a safe system of work;
2. the Department had an implied duty to conduct itself in a manner that would not destroy the mutual trust and confidence of the employment relationship;
3. the Department breached both implied duties, which amounted to a repudiation of the contract of employment;
4. Mr McDonald accepted the Department's repudiation by resigning from his employment.

Justice Anderson agreed and held that the school had breached both its duty to provide a safe system of work, and the implied term of mutual trust and confidence.

It was held that by breaching the implied term of mutual trust and confidence, the school had constructively dismissed Mr McDonald and he was therefore entitled to damages for breach of contract.

It awarded damages to Mr McDonald, including damages for past loss of earning capacity, future loss of earning capacity, and lost superannuation and long service leave entitlements, amounting to approximately \$370,000.

What does this mean for your business?

You need to carefully consider the impact of your business actions and decisions in managing your employees.

If you fail to do this, you could breach your duty of mutual trust and confidence and breach your employees' employment contracts – with significant financial consequences.

You need to ensure that your actions do not:

1. undermine an employee's role or authority;
2. exclude an employee from job opportunities; and
3. harass or victimize an employee.

You also need to ensure that you:

1. properly manage your employees' workloads;
2. appropriately deal with employee complaints and grievances; and
3. adequately train employees in circumstances where you are aware your employees are insufficiently trained.

For more information

For more information, please contact:

- Ross Levin, Partner on 03 9321 7838
rlevin@rigbycooke.com.au
- Cassie Williams, Senior Associate on
03 9321 7867
cwilliams@rigbycooke.com.au

To unsubscribe from this publication

If you do not wish to receive publications of this type from us in the future, please notify us by one of the following methods:

- Send an email to marketing@rigbycooke.com.au
- Send a fax message to "Attention: Rigby Cooke Marketing" on fax number +61 3 9321 7900
- Send a letter to "Attention: Rigby Cooke Marketing", GPO Box 4767UU, Melbourne Vic 3001

Your request to remove you as a subscriber should include the word "unsubscribe" and your full email address to allow us to correctly identify your removal from our lists.

Reprint Permission

Articles in this publication may be reproduced in whole or in part, provided that appropriate recognition is given to the author and the firm, and prior approval is obtained. To obtain approval, please contact Rigby Cooke on +61 3 9321 7852 or email marketing@rigbycooke.com.au.

Disclaimer

This publication contains comments of a general nature only and is provided as an information service. It is not intended to be relied upon, nor is it a substitute for specific professional advice. No responsibility can be accepted by Rigby Cooke Lawyers or the authors for loss occasioned to any person doing anything as a result of any material in this publication.

rigbycooke | lawyers

Level 13, 469 La Trobe Street
Melbourne Vic 3000
T 61 3 9321 7888
F 61 3 9321 7900

www.rigbycooke.com.au