Dismissals in the #MeToo Era

It was only a matter of time before #MeToo shifted the workplace relations landscape and had an impact on the outcomes of unfair dismissals and other disputes. As a former StarTrack Express employee recently learned, the movement has led to little tolerance or excuse for inappropriate conduct.

After being sacked for making racial slurs against a co-worker, which included “row your canoe back home you f***ing black c**t”, “towel head” and “coconuts”, the former employee brought an unfair dismissal claim on the basis that the comments weren’t actually racist (um…) but just normal workplace banter that nobody complained about.

Citing the #MeToo movement, the Commission rejected the employee’s claim that his racist slurs were somehow justified in the absence of any previous complaints. The Commission recognised the natural hesitation of victims of discrimination to come forward, comparing the absence of previous complaints in this case to what we’ve seen recently with #MeToo.

The Commission also praised StarTrack for carrying out what sounds like a faultless dismissal. StarTrack had conducted a “fair, thorough and balanced investigation”, followed by a “measured and careful show cause process” which was “without any procedural deficiency.” Props to StarTrack.

The case is a sad reminder that in cases of discrimination there’ll often be no history of complaints because victims feel powerless to do anything. Employers need to be wise to this. While #MeToo will likely support tougher stances on inappropriate conduct in the workplace, it also won’t be long until it results in higher penalties against employers for failing to take action even in the absence of a complaint. You don’t want be the first example.

Questions. Give us a call.