

Latest News

▶▶▶ **Telstra worker sacked for out-of-hours sex with colleagues reinstated after AIRC finds lack of illegal harassment or indecency**

Tuesday 14th August 2007 9:13 am EST

The AIRC has ordered Telstra to reinstate a former Sydney shop sales officer who was sacked for sexual harassment after having consensual s-x in the presence of colleagues after a work-related party.

In his [decision](#), Senior Deputy President Jonathan Hamberger found that Telstra did not have a valid reason for dismissing the Sydney sales shop officer under [s652\(3\)\(a\)](#) of the Workplace Relations Act.

He said he would order her reinstatement to a different but nearby store, and for Telstra to pay her compensation equivalent to any remuneration lost as a result of her dismissal under [s654\(2\)\(c\)](#).

But Senior Deputy President Hamberger rejected the sacked worker's argument that there was an insufficient nexus between her conduct and employment, saying "allegations of sexual harassment must be taken seriously by employers. Indeed they may be held liable for sexual harassment by their employees even where this occurs out of hours and away from the workplace".

"Because of the nature of the allegations. . . and the potential vicarious liability of her employer, it is not appropriate to conclude that there was no valid reason for the termination of her employment on the grounds that there was an insufficient connection between her conduct and her employment," he said.

He referred to the cases of *Lee v Smith & Ors* (see Related Article), *Leslie v Graham* and *South Pacific Resort Hotels Pty Ltd v Trainor* (see Related Article), where employers were found vicariously liable for sexual harassment out of working hours because it was in connection with the employment.

While finding the employee had lied and that her behaviour was "inappropriate and inconsiderate to her fellow employees", Senior Deputy President Hamberger found it did not constitute sexual harassment under the Sex Discrimination Act (SDA) or indecency under the NSW Crimes Act, as Telstra claimed.

He said Telstra had "greatly exaggerated the seriousness of [the employee's] misconduct, particularly the suggestion that she committed a criminal act of obscenity. Moreover, I have found most of the behaviour complained of either did not constitute sexual harassment as defined by the SDA or only did so in a relatively marginal way."

Senior Deputy President Hamberger noted that "the less direct the relationship with the workplace, the more serious the misconduct would need to be to justify termination of employment. Most of the impugned behaviour occurred well away from the workplace, after rather than during a work function, in a hotel room that was booked and paid for privately."

"In all the circumstances, [the employee's] conduct was not so serious as to constitute a valid reason for the termination of her employment," Senior Deputy President Hamberger concluded. "On the whole I consider she is a woman '*more sinned against than sinning*'".

In deciding to order reinstatement, he said he had favourably considered the employee's four

SESSION ACTIVE

LOGOUT ▶▶

SETTINGS ▶▶

National Industrial
Relations Conference
11 September 2007

**Restoring
the balance**

Brisbane |
Registration Information

years of service with Telstra and her obtaining of new employment, and was satisfied there would be no detrimental effect on the business's viability under s654.

He distinguished the case from the full bench's ruling in *McIndoe v BHP Coal*, saying the employee's dishonesty about her conduct should not "be regarded as likely to destroy the necessary relationship of trust between an employer and employee," including because of evidence from a manager that there was "no reason to believe [the employee] was dishonest when it came to stock or cash."

Senior Deputy President Hamberger directed the parties to confer on the terms before making the precise order.

[Carlie Streeter v Telstra Corporation Ltd \[2007\] AIRC 679 \(10 August 2007\)](#)

PRINT PAGE 

 **Further Information**

Related Article	Defence and three employees to pay more than \$400,000 to sex assault victim
Related Article	Island resort liable for employees' sexual harassment: Federal Court

 **Advanced Search**

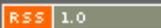
Search for		
Within the Last		
Display	25	10
Words		
Articles		



The source for IR/HR news





[Latest News](#) | [HR Stream](#) | [IR/HR Jobs](#) | [What's On](#) | [Resources](#) | [About Us](#)
[Free Trial](#) | [Subscribe](#) | [Feedback](#) | 

Specialist News

© Specialist News 2007