

Article Information

Authors: Ben Motro, Gemma Twemlow

Service: Employment & Labour, Employment Disputes & Litigation, Industrial Relations

Sector: Transport & Logistics

Drunken behaviour leads to dismissal

In the appeal of *Urso v QF Cabin Crew Australia Pty Limited t/as QCCA [2019] FWCFB 1322*, the Full Bench of the Fair Work Commission has confirmed that employees bear the responsibility of ensuring that their conduct remains appropriate and compliant with company policy, and that even unintentional misconduct can form the basis of disciplinary action.

In July 2018 the Fair Work Commission held that a flight attendant was not unfairly dismissed for his conduct outside of work hours after he failed to attend to work following a night out in New York.

The member of cabin crew, Mr Urso, appealed that finding. On 7 March 2019, the Commission handed down its decision in relation to that appeal, upholding the finding that he was not unfairly dismissed.

Background

Mr Urso was employed as an international flight attendant with QF Cabin Crew Australia Pty Ltd (**QCCA**), a subsidiary of Qantas Airways Limited. On 20 July 2017 Mr Urso commenced a 7 day Brisbane - Los Angeles - New York - Los Angeles - Brisbane flight schedule.

Whilst on the layover in New York, Mr Urso and a colleague attended a local bar. Mr Urso's colleague found him collapsed on the floor of the toilets with a blood alcohol reading of 0.205%. Upon being discharged from hospital the following morning, Mr Urso advised his manager that he was unwell and unable to attend work for the return flight to Los Angeles that afternoon.

QCCA paid \$20,000 in relation to Mr Urso's hospitalisation costs and Mr Urso flew home on a commercial flight two days later. Upon returning to Brisbane, an investigation into the incident took place resulting in Mr Urso being dismissed for misconduct in circumstances where he had consumed in excess of five standard drinks resulting in the following breaches of QCCA's policies and procedures:

1. Failing to ensure he was adequately rested whilst off duty and able to perform his next operational duty;
2. Failing to be ready, willing and able to perform operational duties the next day;
3. Failing to abstain from activity that would increase the risk of illness which would prevent performance of his duties at work; and
4. Consumption of excessive alcohol whilst "on slip".

The appeal

Mr Urso commenced an appeal on one fundamental issue - that he did not *intend* to consume excessive amounts of alcohol and become intoxicated. In considering the appeal, the Commission found that Mr Urso's "innocent explanation", namely that he had only consumed 5 drinks, was unsupported and "*inherently implausible and unbelievable*", particularly in circumstances where Mr Urso's accounts of the incident were ambiguous.

Whilst Mr Urso may not have positively intended to become intoxicated to the degree that he could not attend for work the following day, the Commission "did *not accept that intention is a necessary element of misconduct which might constitute a valid reasons for dismissal*". The Commission held that other forms of misconduct, such as breaches of safety policies and procedures, "*may be the result of recklessness, negligence or misjudgement*". In these circumstances, Mr Urso failed

in his responsibility to limit his consumption of alcohol to a degree which would have enabled him to attend for work the following day.

The Full Bench therefore found that Mr Urso's failure to attend for his scheduled flight was as a result of excessive alcohol consumption, and consequently held that this was sufficiently serious to constitute a valid reason for dismissal.

This decision reinforces the notion that employees can be validly dismissed where their conduct is inconsistent with work policies that concern their ability to properly conduct themselves at work, particularly those employees where safety is a critical component of their employment. Additionally, this decision makes it clear that depending on the misconduct that an employee is said to have engaged in, whether they intended to engage in some form of misconduct may be irrelevant.