Senate Standing Committee on Education Employment and Workplace Relations

QUESTIONS ON NOTICE
Supplementary Budget Estimates 2011-2012

Outcome 5 - Workplace Relations & Economic Strategy

DEEWR Question No. EW0506_12

Senator Abetz provided in writing.

Question

Mr Raimond Serafini v Holcim (Australia) Pty Ltd [2011] FWA 4214 (4 July 2011)

"Reference is made to Mr Raimond Serafini v Holcim (Australia) Pty Ltd [2011] FWA 4214 (4 July 2011) where an employee and TWU delegate that was sacked following three warnings for alleged unsafe driving and site safety breaches was reinstated.
1. Did the Government envisage the provisions of the Act working in this way?
2. Does the Government condone unsafe working practices? "

Answer

1. The matter of *Serafini v Holcim (Australia) Pty Ltd* [2011] FWA 4214 involved an employee who was reinstated by Fair Work Australia (FWA) after being dismissed for alleged unsafe driving and site safety breaches. The employer unsuccessfully sought leave to appeal the decision to the Full Bench of FWA (*Holcim (Australia) Pty Ltd v Serafini* [2011] FWAFB 7794). The Full Bench held that there was insufficient public interest or error in the original decision to warrant granting leave to appeal.

Section 387 of the *Fair Work Act 2009* requires FWA to consider a range of factors in deciding whether a dismissal was unfair. These factors include:

- whether there was a valid reason for the dismissal relating to the person's capacity or conduct (including its effect on the safety and welfare of other employees);
- whether the person was notified of that reason; and
- any other matters that FWA considers relevant.

In the decision, Commissioner Connor, at first instance, found that the only real issue in dispute was whether there was a valid reason for the employee's dismissal. It was not disputed that an appropriate process had been followed by Holcim in terminating Mr Serafini's employment.

In considering whether there was a valid reason for the dismissal, Commissioner Connor found that although he could conclude on the evidence before him that Mr Serafini was changing gears in an aggressive manner and *probably* speeding in the yard on 8 December 2010, that was not a sufficient level of certainty to discharge the required onus of proof. Further, Commissioner Connor was satisfied that over a period of nine years of employment, Mr Serafini had a satisfactory driving record, that Mr Serafini's concern about the amount of

paperwork he was required to complete was a concern shared by a number of drivers, and that Mr Serafini exhibited genuine remorse and contrition and provided undertakings to improve his attitude in the future.

On the basis of these conclusions, Commissioner Connor found that there was no valid reason for the dismissal relating to the person's capacity or conduct, including its effect on the safety and welfare of other employees.

FWA emphasised that it did not wish this decision to be seen to undermine the sensible and appropriate approach to safety that the employer had adopted, and made it clear to the employee that his continued employment was dependent upon strict observance of all reasonable and lawful directions in relation to safety at work.

Mr Serafini was not compensated for any loss of earnings during the period of his dismissal.

2. The Government places great importance on safety at work. This commitment is reflected in the requirement for FWA to consider the effect on the safety and welfare of other employees in determining whether there is a valid reason for a termination of employment. Further, there is no basis for this decision being interpreted as either FWA or the Federal Court condoning unsafe work practices.