

FWC Allows for Human Factor

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In the past two weeks there has been a review of defences available to bullying claims. Needless to say, various cases have allowed for a further explanation of what does and does not amount to a defence, and further expand what the legislation has to say on the matter.

The two limbs that must be considered in mounting a defence are the conduct involved in the “management action” and whether that conduct was reasonable.

What shall amount to management action may ultimately depend on the contract of employment, the circumstances of the dispute and the general nature of the organisation.

Similarly, the definition of “reasonable” may also be ambiguous. Having said this, the court is not closed minded to the frustration felt by employers when they are trying to meet targets or achieve goals for their clientele - particularly if those goals are not respected by an employee.

For example, in the 2014 case of Applicant v General Manager and Company C, the Fair Work Commission rule that forceful words and body language directed toward another employee were not necessarily unreasonable. In particular, the court acknowledged commercial pressures and how they could impact on managers’ emotions and ultimately lead to tense communications.

While of course this acknowledgement does not open the floodgates and permit employers and managers to treat their employees like second-rate citizens, it certainly does show an appreciation of the human factor in workplaces and acknowledges that the perception of one’s conduct does not always amount to true intention.

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Elspeth’s articles can be accessed on the Daily Mercury website at <http://www.dailymercury.com.au/topic/elspeth-ledwy/> or you can find Elspeth’s column “Mind Your Own Business” in the Daily Mercury newspaper each Wednesday.



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