

Court Avoids Hairy Situation

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A recent case of the Fair Work Commission has highlighted the overriding need to ensure that safety standards are not only applied, but complied with in the workplace, regardless of one's desire to retain their facial hair...

The decision has attracted significant interest including a special report of the case within the Queensland Law Society's publication of Proctor (July 2015 edition).

A workplace policy at BHP's Olympic Dam mine which demanded that employees be clean shaven came under scrutiny recently in the case of *Felton v BHP Billiton Pty Ltd* [2015] FWC 1838.

An employee who refused to comply with the clean shaven policy claimed his goatee beard and moustache (that he'd sported since he was 19) was a personal attribute and it was his "liberty of right" to refuse to shave.

The background was that the BHP uranium and other mineral mine introduced its clean shaven policy because employees were required to wear appropriate personal protective equipment (PPE), that being respirator protective equipment. The purpose of the masks were to protect employees from exposure to crystalline silica and other dusts, and the strict enforcement of the policy was introduced after BHP received advice of the carcinogenic qualities of some of the diesel particulate matter and radon decay products. The masks were also designed to protect against exposure to ammonia gas.

At that time 70 percent of the workforce had facial hair and after the policy was implemented, only Mr Felton turned up for a test fitting of the respirators *unshaven*.

His employment was dismissed and he made a claim of unfair dismissal on the basis that his dismissal was harsh, unjust and unreasonable.

The employee's desire to retain his facial hair was trumped by the stringent standard of health and safety in mining and his dismissal was upheld. The court at paragraphs 118 and 120 acknowledged that there was an impact upon individual rights and preferences of the employee, however in light of the actual hazards which that policy aimed to protect against the clean shaven policy was considered a lawful and reasonable direction.

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