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LawTalk Blog



Sacked for swearing at the boss?

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At Andersons, we work closely with many clients who have been sacked because of alleged misconduct in the workplace. Sometimes this conduct relates to poor performance, to [bullying](#), to engaging in [unsafe practices](#) as well as dishonesty (for example, stealing from the employer).

But sometimes terminations occur because discussions between the worker and boss become heated and even aggressive, and some bosses do not like the idea of their staff back-chatting them.

As a lawyer who has always advocated for [workers' rights](#), I have always maintained that workers should not have to tolerate aggressive and disrespectful conduct from their employer. But if a worker responds to their boss in an equally aggressive and disrespectful manner does that put the worker at risk of instant dismissal?

*"The worker then responded with words to the effect of 'you owe me money you old c****'."*

This situation arose recently in the Fair Work Commission where a worker called the Chief Executive of the company an 'old c****'. Ordinarily, the use of such profanities in a workplace context (particularly when referring to the boss in such a manner) would give rise to a justifiable termination of the worker's employment. However, we still need to be mindful of the overall circumstances, and assess each situation on a case-by-case basis.

In this case, evidence was provided that the worker contacted the boss due to unpaid overtime. The worker's request to be paid was entirely reasonable.

The boss then responded in an extremely aggressive and offensive tone, full of expletives directed at the worker. The worker then responded with words to the effect of 'you owe me money you old c***'.

The boss took great offence at those comments from the worker, and wrote the worker a text message saying: '*the old man here. Do not come back tomorrow*'. The boss had effectively terminated the worker's employment via a text message.

But when assessing the case as a whole, Deputy President Asbury showed sympathy to the worker, and found that the dismissal was indeed unfair. In her ruling, the Deputy President rightly pointed out that 'it takes two to tango'.

The Deputy President concluded that not only was summary dismissal unjustified in the circumstances given the boss's prior conduct, but the termination via text message did not afford the worker procedural fairness and a right to respond to the reasons for the dismissal. Furthermore, the Deputy President found that the boss's response to the worker's reasonable query about the unpaid overtime was totally inappropriate.

This case demonstrates that if an employer engages in disrespectful, aggressive and offensive communications with its staff, it cannot then simply terminate a worker who happens to respond in an equally disrespectful, aggressive and offensive way. After all, it always takes two to tango.

If you feel that you have been unfairly dismissed from your workplace, or are experiencing any other industrial problems, please contact today's blog writer, Associate in Civil Litigation, [Michael Irvine](#).

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