

**BLO2207 –EMPLOYMENT LAW**

**ASSIGNMENT**

**SEMESTER 2 - 2013**



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**Due Date-** Thursday 3 October 2013

## Introduction

Employment Law rights has gained tremendous popularity in the contemporary times. Industry experts and watchers regard satisfying the employees and protecting their rights as of paramount importance both to retain the best talents in the organization and also for maintaining the reputation of their respective organizations. Also, it is very vital for the employees to be comprehensively aware of their rights so that they can use the same to their advantage. This paper presents the case of Andrea Castle, an employee with Sage Marketing Direct Pty Ltd. who was terminated from her employment as she was deemed to have not followed the E-mail policy (IEP) of the organization. The paper presents and analyzes the given situation with a view point of supporting the employment rights of Andrea Castle.

The Common Law Australia and the Fair Work Act 2009 Australia has been used to present the argument in favor of Andrea Castle. The paper begins with a brief snapshot of the key points of the given case. Next, the Fair Work Act 2009 Australia and the Common Law Australia points have been applied to the given case. The last part of the paper identifies the possible recommendations to Andrea Castle and the likely possible outcome of her actions has been evaluated. The paper ends with a brief conclusion which ties the contents of the report together (Harris, 2008).

## Main Points of the given situation

The following are the key points in the given case study of Andrea Castle vs. Sage Marketing Direct Pty Ltd.:

- Andrea Castle was employed under an Enterprise Agreement which provided the clause that the employer had the right to terminate an employee without notice (which was the case in the given scenario), however the policy also pointed that the same was only in the case of serious breach of Employer's policies. It is point of argument whether the act by Andrea Castle was a real concern for the senior management of Sage Marketing Direct Pty Ltd. which led them to take such an extreme decision of terminating Andrea Castle from her employment. Andrea Castle can use this as a point in her case for justice (Davies, 2008).

- Andrea Castle's belongings got stolen from a friend house and she forwarded the details of the incident through e-mail to all the other employees of Sage Marketing Direct Pty Ltd. a day after. She referred to the thief as a person with "a coloured arm" which was deemed as offensive by her employers. It should be however noted that Andrea Castle had only one option of explaining the appearance of the thief and she did not deliberately tried to hurt and offend anyone or get into a racist behavior as alleged by the senior management of Sage Marketing Direct Pty Ltd.
- The employment agreement provided that the e-mail could have been used for personal use for a limited number of times and Andrea Castle did the same only and did not use it more than once (assumption from the given case study).
- Andrea Castle was only making her fellow colleagues aware of what happened with her last night so that they learn from her incident and the same was not an act of deliberation where she intended to use the e-mail for her private use and even did not hurt anyone's feelings from that e-mail (Baron, 2000).

### Applying the Fair Work Act 2009 in the given case

Australian government through Australia's fair work system initiated 'The Fair Work Act 2009' on 1<sup>st</sup> July 2009. The act was primarily designed to balance the needs of the employers, employees and the unions. The Fair Work Act 2009 came into full effect in January 2010 and created a new legislative framework for workplace relations in Australia. The effect was increasingly seen in the employee's performance as they felt more secured and at ease with the given introduction of this Act. The Act has also allowed Australia as a nation to be more competitive as it is able to attract the best talents and expatriates from around the globe (Corones, 2008).

The E-mail policy (IEP) of Sage Marketing Direct Pty Ltd. also provides a documented clause which reads the following: '*The use of email for personal, private or non business use should be only on a limited basis*'. Thus, it is seen that Andrea Castle did not forward the e-mail (which was not directly related to official purposes) a number of times. She was concerned about the safety of the other employees and only did this as she did not want other employees to go through the same and be more circumspect by learning from her experience (Bottomley, 2005).

Also, the fact the senior management of Sage Marketing Direct Pty Ltd. claimed *that Andrea breached its internet and email policy (IEP) because it referred to a "coloured arm"*. Andrea Castle had no other possible way of explaining the scenario of the theft as she neither saw the person who took away her bag/belongings; neither did she know anything else about that person (like name, physical appearance etc). Thus, it was by no means that she was offensive to any class or creed, that was the best information she had about that thief and she tried her best to let other employees know about that thief so that they also learn something about that mysterious person (Miller, 2008).

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