

Fair Work | Case Study

General Protections - Case Study 2

Richard is a store person working at Don's company in outer Melbourne. Richard raises with Don his concern regarding unsafe practices in the warehouse. Richard indicates he will make a complaint to WorkSafe if Don does nothing about the matter. The next day Richard finds that his roster is changed with the result that he is no longer working the overtime that he has regularly worked for the last 2 years.

The protection under s 340 of the Fair Work Act 2009 (Cth) (FW Act) extends to an employee's proposal to initiate a process under a workplace law. A workplace law includes a law dealing with occupational health and safety matters. Section 73 of the Occupational Health and Safety Act 2004 (Vic) provides that when an issue concerning health or safety arises at a workplace and the issue is not resolved within a reasonable time, any of the parties attempting to resolve it may ask WorkSafe to arrange for an inspector to attend at the workplace to enquire into the issue.

An employee initiating such a process, or proposing to do so, is protected from adverse action. Adverse action includes any injury to the employee in his employment or discrimination between the employee and other employees of the employer because of his what he has done or proposed to do.

In this case, it is not known why Don changed Richard's roster. However, if Richard made an application to FWA or a general protections court application alleging that Don took this action because of his proposed complaint to WorkSafe, then s 361 of the FW Act operates such that it is presumed that Don took the action for that reason unless Don proves otherwise.

In addition to seeking a penalty and compensation from Don and his company in a general protections court application, Richard could ask the Court to grant an injunction to restore Richard's roster to what it was before the change and to prevent Don changing it again for a certain period.



Find out more at:
www.fairworkassist.com.au