

EMPLOYER HELD ACCOUNTABLE FOR DEFAMATORY COMMENTS ABOUT PAST EMPLOYEE

MAY 16, 2019 | WORKERS' COMPENSATION

A childcare centre worker was awarded \$237,970.22 against his former employer when, in an email to parents of children attending the centre about staff updates, he was described as having left for disciplinary reasons and being untruthful.

In Issue

- Whether the Plaintiff held himself out as holding a Certificate III in Early Childhood Education and Care.
- Whether comments made by the employer in the email were true or malicious.

The Background

The Plaintiff was employed by the First Defendant as an early childhood educator on about 16 July 2015 after a period of work experience. At the time he was offered employment he had not completed his course and was not qualified. His progress in his course became delayed due to recurrent illness and he was unable to complete all of the formal requirements for his placement.

In January 2016, the Second Defendant (the Director of the childcare centre) requested that he complete his Certificate III course within one month. There were various exchanges between the parties regarding rostering, which culminated in the First Defendant rostering the Plaintiff for a 40 hour week in March 2016. That was inconsistent with his initial contract of employment and continued studies, and so the Plaintiff resigned.

It was alleged that the First Defendant was under pressure to expand the business, and to ensure that it had the appropriate quota of qualified educators on its staff.

After the Plaintiff left the employ of the First Defendant, the Second Defendant forwarded an

email to parents of children attending the centre with the heading *Staff Updates* which said the Plaintiff had left due to disciplinary reasons and that he had not been truthful regarding his studies. Both aspects were disputed during the course of the trial.

The Plaintiff became aware of the email and sought medical attention.

The comment regarding the status of the Plaintiff's studies referred to the First Defendant's argument that the Plaintiff held himself out as holding a Certificate III qualification in Early Childhood Education and Care when the Plaintiff argued that he did not.

After the Plaintiff left, the First Defendant was disparaged in a Google review by an anonymous disgruntled ex-employee. The Second Defendant believed that material was posted by the Plaintiff and instructed lawyers to write to him, accusing him of posting the bad review. He denied it, sought legal advice, and subsequently brought proceedings for defamation in respect of the *Staff Updates* email.

A cross claim was brought by the First Defendant for overpaid wages based on the Plaintiff's alleged misrepresentation about his qualifications.

The Decision at Trial

During the trial the First Defendant attacked the Plaintiff's credibility and honesty but was unable to persuade the Trial Judge that the attack was warranted.

Judge Levy SC found for the Plaintiff. He found that the emails contained the imputations alleged by the Plaintiff, that their publication was actuated by malice and that no defence of truth or otherwise was established. He found the cross claim to be without merit.

Implications for you

Employment relationships can be difficult. It can be tempting to lash out over previous slights, but commenting on a former estranged employee to clients of a business, however frustrating the circumstances of their employment and departure may have been, typically serves no external purpose and is fraught with danger.

Bowden v KSMC Holdings Pty Ltd t/as Hubba Bubba Childcare on Haig & Chapman [2019] NSWDC 98

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