

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996

s.170CE application for relief in respect of termination of employment

Cheryl Gillam

and

Telstra Corporation Limited

(U2003/7250)

COMMISSIONER SMITH

SYDNEY, 6 MAY 2004

Termination of employment.

DECISION

Introduction.

[1] Ms Cheryl Gillam was dismissed by Telstra Corporation Ltd (“Telstra”) on 28 October 2003 after some 26 years service. Ms Gillam was dismissed for unacceptable behaviour. Specifically her failure to:

- adhere to the “Enhanced 000 Policy for V3 Emergency Call Persons Support”; and
- treat customers, the public and fellow employees with honesty, courtesy and respect.

[2] Ms Gillam had been employed by Telstra since June 1977 and at the time of her termination had been working as a “000” operator in Telstra’s Emergency Service Answer Point (“ESAP”). Ms Gillam had worked in that area for in excess of five years.

[3] On 13 November 2003 Ms Gillam lodged an application pursuant to s.170CE of the *Workplace Relations Act 1996* (“the Act”). An attempt was made to settle the matter by conciliation in December 2003 without success. Williams SDP issued a certificate on 12 December 2003, pursuant to section 170CF of the Act, and Ms Gillam elected to proceed to arbitration on 16 December 2003.

Background and Findings.

[4] The area in which Ms Gillam was employed was ESAP located in Windsor Victoria. This call centre operates 24 hours a day, seven days a week and provides the conduit to emergency services such as Fire Brigade, Ambulance and Police. It was submitted, and not seriously contested, that these call centres are vitally important to the public as they deal with time critical or life-threatening situations.

[5] In this connection, Telstra place great emphasis on the adherence to policies and procedures by the operators so that a reliable and efficient service is provided to the public in a way which protects both the callers of the “000” emergency line and the operators. A significant amount of material was put in the witness statement of Ms Davies,¹ the National Operations Manager of ESAP, which highlighted the need for employees in these call centres to adhere strictly to policies and procedures and I accept her evidence. The evidence of Ms Davies was that significant training resources are put into “000” operators. It is clear that the “000” area of employment cannot be an area where confusion, lack of consistency and/or failure to adhere to standard operating procedures could be tolerated. This conclusion forms the background to a consideration of the conduct of Ms Gilliam.

[6] On 12 June 2002 Ms Gillam was issued with a written warning in relation to not adhering to policy and procedure in relation to a "000" call.

[7] Telstra submitted:

“The call involved a woman stating that her baby was “having a fit” and Ms Gillam simply put (sic) the call through to the Police, in breach of the procedures set out in the 000 Policy. She breached the 000 Policy because she did not ask the caller, which ESO she wished to be put through to, and did not tell the caller to which ESO she had connected her after doing so.”²

[8] It was submitted that Ms Gillam should have asked the caller whether she required police, fire or ambulance, instead of simply connecting her to the police. This was said to be a serious breach of policy as it did not permit the caller to identify the emergency service needed and that by connecting the caller without interaction it left the caller, for a few seconds, not knowing if the call had been disconnected.

¹ Exhibit Telstra3

² Outline of submissions dated 23 February 2004 at para 5(a)

[9] The concern by Telstra arose as a consequence of a compliant received by the officer at the police station who had received the call. The matter was investigated and it was discovered that Ms Gillam was the operator involved. Following an interview with Ms Gillam by a team manager, Ms Davies issued a written warning.

[10] The warning issued made clear that it was in relation to not adhering to policy and procedure in connection with a “000” call.

[11] The written warning was as follows:

“This is to record that as a result of the interview on 7th June, 2002 for Not adhering to Policy & Procedure in connection of a “000” call, & call not being connected to the Emergency Service Organisation within the correct process, you are now being issued with a written warning.

As your Manager, I expect that there will be no further instances of not adhering to Policy & Procedure in connection of a “000” call and call not being connected to the E.S.O. within the correct process by you. Further instances of not adhering to Policy & Procedure in connection of a “000” call and call not being connected to the E.S.O. within the correct process will lead to further action which may eventually result in termination of your employment.”³

[12] On 5 December 2002, Ms Gillam received a second and final written warning for again not following policy and procedure. This matter related to a caller being concerned about the location of fires in Canberra, where she lived. The fires referred to were the serious and devastating fires in the ACT. Ms Gillam had engaged the caller in conversation and advised that, in her view, it wasn’t worth waiting on the line for the fire brigade, as that would take approximately six minutes. Instead, Ms Gillam suggested to the caller that she should “watch the Channel 10 news”⁴ to ascertain the location of the fire.

[13] As to this matter, it was the evidence of Ms Gillam that she had engaged a person in discussion who simply wanted information and that her actions were reasonable in all the circumstances.

³ Exhibit Telstra3, para 29

⁴ Ibid paragraph 33

[14] It was the evidence of Ms Davies that this conduct was inappropriate because Ms Gillam should not have engaged the caller in dialogue; should not have discouraged the caller from being put through to the fire brigade; used a delay time as a reason which could not have been reasonably known and encouraged the caller to watch the news, despite the caller stating that she was “*in a precarious area*”.⁵

[15] Ms Gillam was stood down on full pay while this matter was investigated.

[16] The second and final written warning contained the following paragraph:

“As your Team Manager, I expect that there will be no further instances of not following policy & procedure and I strongly recommend that you take this opportunity to improve your call handling. Your team manager will work with you to develop an action plan to enable you to correctly connect calls on the Emergency Service Answer Point product. This will be your accountability to ensure that this process is followed.

*Any further instances of incorrect call handling may result in termination of your employment.”*⁶

[17] Mr Alan Moore - a team manager at the call centre, oversaw the action plan that was put in place. Mr Moore gave evidence that both he and other team managers conducted approximately 20 coaching sessions⁷ with Ms Gillam. It was the evidence of Mr Moore that these coaching sessions consisted of the managers sitting down with Ms Gillam and either listening in on a “live” call, which Ms Gillam was handling, or listening to recordings of calls which Ms Gillam had handled. Following these calls, the relevant manager then gave feedback as to how the call was handled and suggested ways that the call handling could be improved. It was submitted that the coaching was not punitive, but rather it was remedial in its focus. As a consequence, no errors made during this period of time were relevant to the subsequent decision to terminate.

[18] On 19 October 2003 Ms Gillam was overheard making, what Telstra considered to be, unnecessary and rude comments to a caller. A recording of this call was played at the hearing and the transcript is as follows:

⁵ Ibid, para 33

⁶ Ibid, para 38

⁷ Exhibit Telstra2, para 12

Ms Gillam: *Police, fire, ambulance.*

Caller: *(speaking to someone at the end of the phone) you don't hit a woman...*

Ms Gillam: *Police, fire, ambulance.*

Caller: *(speaking to someone at his end of the phone).. listen, I know the law mate, you don't have to tell me the policy ...*

Ms Gillam: *When you've finished shouting and yelling in the background, who are you wanting?*

Caller: *Hello? Can I have the police please?*

Ms Gillam: *Yeah, well you know it is common courtesy to speak to the operator instead of yelling and screaming.*

Caller: *Yeah, sorry I couldn't hear ya...(speaking to someone at his end of the phone) if you touch her again man, I'm telling ya ...*

Ms Gillam: *Okay yeah listen, can you give me the courtesy of just shutting up?*

Caller: *Yes...yes...hello?*

Ms Gillam: *Right, what town please?*

Caller: *Ah, ah, Newtown ...ah Newmarket ...*

Ms Gillam: *Not Newtown, Newmarket?*

Caller: *Yes.*

Ms Gillam: *So, Newmarket, as in Melbourne?*

Caller: *That's correct.*

[Ms Gillam dials police station]

Female at Police number: *answers call "Police"*

Ms Gillam: *Yes go ahead please ... [connects caller to Police].⁸*

⁸ Exhibit Telstra3, para 43

[19] This conversation was overheard by a team manager, Ms Cathy Garner, who reported the matter to Ms Davies. Ms Garner advised that she had listened to the recording of the call and had decided to suspend Ms Gillam on full pay pending an investigation. Ms Davies then listened to the recording of the conversation and considered that:

- Ms Gillam should have treated the call as a no response call in accordance with policy and procedures,
- following the eventual request by the caller, Ms Gilliam should not have berated the caller for an apparent lack of courtesy but rather put the call through to the Police, and
- the attitude, language and tone was unacceptable and in breach of Telstra's code of conduct.

[20] Ms Davies decided to meet with Ms Gillam on 21 October 2003. At that meeting Ms Gillam was asked if she would like an observer present and was offered an opportunity to listen to the recording and/or read the transcript.

[21] It was the evidence of Ms Davies that Ms Gillam offered the following reasons for her conduct:

1. stress;
2. high workload;
3. pain in her arm; and
4. concern about a forthcoming hearing test.

[22] It was also the evidence of Ms Davies that Ms Gillam was asked if she had any questions or comments to which she relied "*No - I am just a stupid fool*" and later in response to another invitation to comment, "*No - I am just an idiot*".⁹

[23] Following the meeting, Ms Gillam's suspension with pay was continued to allow for further consideration of the matter. A further meeting was scheduled for 27 October but took place on 29 October 2003 at about noon. At that interview again the matters of concern to Telstra were put to Ms Gillam and she was asked if she had anything to put to Telstra that might constitute mitigating circumstances.

⁹ Ibid, para 46

[24] Ms Gillam referred to trauma, stress, tension, worry, anger and no knowledge of her future. Ms Davies stated that she would consider the position and advise Ms Gillam shortly. After about a 15 minutes break, Ms Davies returned to the meeting and advised Ms Gillam that her employment was terminated with notice. A letter dated 28 October was given to Ms Gillam signed by Mr Sean Pyper.

[25] Issue was taken with this letter because it was signed and dated the day before the termination. It was submitted that the meeting on 29 October was not a true opportunity for Ms Gillam to give her responses and that it was clear that a decision had already been taken. It was the evidence of Ms Davies that only employees at level 3 and above had the authority to sign notices of dismissal although Ms Davies could take the decision to dismiss. It was the evidence of Ms Davies that she prepared for the meeting by having a letter signed but that if Ms Gillam had provided a satisfactory response then she would have decided not to dismiss and would not have issued the notice of dismissal letter.

[26] Ms Davies was cross-examined¹⁰ on this aspect but her evidence was largely unchallenged. That said, I accept the evidence of Ms Davies that she had not made up her mind before the final interview and that Ms Gillam had an opportunity to persuade her that termination of employment should not occur. It was revealed in cross-examination and re-examination that Ms Davies also discussed the matter with her one-up manager during the brief break in the meeting. However, some reflection might be needed on this practice. On the surface there is an employee with over 25 years service whose conduct is given 15 minutes final consideration and then handed a letter of dismissal dated the day before. An employee who is dismissed for other than misconduct may reasonably perceive that their employment is of passing interest to Telstra. However, on the facts of this case and having seen Ms Davies in the witness box, I am satisfied that she did not treat this matter in a trivial way and that the decision was taken after difficult and proper reflection which took into account the history of the incidents giving rise to the dismissal.

¹⁰ Transcript PN1069-PN1073

Statutory Considerations and Findings.

[27] Section 170CG(3) of the Act sets out the relevant statutory considerations and I now turn to each of those matters.

- Was there a valid reason for the termination related to the capacity or conduct of the employee or to the operational requirements of the employer's undertaking, establishment or service?

[28] It is clear that Ms Gillam was terminated because of her capacity and conduct.

[29] Mr Dircks submitted that in relation to the second and final warning the conduct did not breach Telstra policies and procedures because the dual requirements of the definition of a no response call were not satisfied. Mr Dircks argued that a no response call also included a caveat that there were no suspicious circumstances. This meant that any investigation of a breach of this aspect of the policy was in error. The evidence on this aspect was dealt with by Ms Davies where she accepted that there were suspicious circumstances,¹¹ but said that Ms Gillam still did not follow procedures.¹² Ms Davies evidence was consistent with the full policy on no response calls.¹³

[30] It was also submitted by Mr Dircks that Ms Gillam was communicating effectively and there was nothing in the Telstra's policies that required a clear script from which there could be no deviation. I am unable to agree with this contention. Whilst it may be true that a robotic response is not demanded and that any deviation from a predetermined script would not lead to disciplinary action, Ms Gillam took the interactions beyond the tolerances of Telstra policies and procedures. The policies and procedures of Telstra in this area are reasonable. Telstra must not only protect the public and the operators, but it must also have an eye to its own liability in circumstances where an inappropriate service may lead to the loss of life.

[31] I am satisfied that there was a valid reason for the termination of Ms Gillam due to her capacity and conduct.

¹¹ Transcript PN924

¹² Ibid, PN926

¹³ Section 9, attachment JD4 to Exhibit Telstra3

- Was the employee notified of the reason?

[32] I am satisfied that the employee was notified of the reasons which were being considered in relation to her termination of employment. The material attached to the witness statement of Ms Davies sets out all of the meetings and the matters raised at those meetings. Further, I am satisfied, having seen the evidence given by Ms Davies, that her approach was not a sterile, dispassionate one designed to achieve a pre-determined outcome of termination of employment.

- Was the employee given an opportunity to respond to any reason related to the capacity or conduct?

[33] On this matter the evidence is clear and the answer is that Ms Gillam was given an opportunity to respond.

- If the termination related to unsatisfactory performance by the employee - was the employee warned about that unsatisfactory performance before the termination?

[34] Again the evidence is clear on this matter. Ms Gillam was warned that a continuation of the conduct would lead to her termination. The records of interview show clearly that she both knew of, and understood, that fact.

- The degree to which the size of the employer's undertaking, establishment or service would be likely to impact on the procedures followed in effecting the termination.

[35] In the case of Telstra it is reasonable to examine this aspect of the statutory injunction by reviewing what steps it took which would overcome the need for termination of employment. A large and well-resourced company like Telstra would be expected to take steps to assist employees overcome any perceived shortfalls. This is particularly so in circumstances where an employee has had very long service. In this case there is significant training materials on the importance and operation of the "000" facility. I am also satisfied that Telstra took appropriate steps in placing a mentor with Ms Gillam for a period of time to assist her with policies and procedures.

[36] In addition, there is no evidence that Ms Gillam did not understand or indeed accept those policies. She recognised the errors and no sustainable complaint is made of any failure on behalf of Telstra to create a workplace where training and consideration of the stresses involved was not given.

- The degree to which the absence of dedicated human resource management specialists or expertise in the undertaking, establishment or service would be likely to impact on the procedures followed in effecting the termination.

[37] This is not a relevant consideration in relation to Telstra.

- Any other matters that the Commission considers relevant.

[38] There are four matters which, in my view, are relevant and should be considered. They are firstly, the concern Ms Gillam had in relation to her hearing, secondly, a pain in her arm, thirdly, the distress she was feeling in relation to the death of her husband and finally, Ms Gillam's length of service.

[39] In relation to the first matter, Ms Gillam was told that her hearing test produced a borderline result and that she would have to do another test. This news raised apprehension in the mind of Ms Gillam as to whether or not she would lose her job as a result of hearing loss. This was said to be on her mind at the time of the incidents.

[40] I am not satisfied that this matter warrants any consideration in relation to a mitigating factor. In cross-examination, Ms Gillam demonstrated that she knew that some operators do not have perfect hearing and that they are provided with hearing devices.¹⁴ Further, no restriction was placed on her performing normal duties.

[41] The next matter related to the pain in her arm. Again in cross-examination, it was revealed that Ms Gillam referred to the pain in her arm before she started work on 19 October and she was asked directly if she was alright to work, to which she replied - Yes.¹⁵ I am not satisfied that this is a mitigating factor which should have been given much weight by Telstra.

¹⁴ Transcript PN532 - 544

¹⁵ Ibid PN548-PN549

[42] The next matter raised by Ms Gillam was the death of her husband in 2000. The loss of a loved-one is of course devastating and can impact upon working lives. However I have not been assisted by any evidence which would indicate that medical intervention has been necessary to the extent that the grief felt by Ms Gillam was a direct contributor to work performance. I am not satisfied that this is a mitigating factor which should have been given undue weight by Telstra.

[43] The final matter relates to Ms Gillam's length of service. Ms Gillam started with Telstra on 2 June 1977. This is long service and an employee who achieves such service deserves deep consideration before they are terminated.

[44] In the recent Redundancy test case the following quotation was brought to the attention of the Full Bench:

“Australia is a country in which we define ourselves through our work. Within minutes of meeting one another, the question is asked: “What sort of work do you do?” Work puts us in a social context, defines the framework of our lives and gives each of us a sense of balance and meaningful purpose. Being without a job devastates not only personal finances, it exacts a heavy social and human toll. Albert Camus said: “Without work, all life goes rotten.”

Losing your job after two or three decades of continuous work is a major life event. It can be as devastating for some as the loss of a limb or even a family member. Employers must take seriously the need to manage redundancy in an orderly and humane way. The displacement of employees is handled well by some employers, but appallingly by others. The long term consequences are devastating for the individual and ultimately significant for the public purse.¹⁶

[45] Whilst this was directed towards redundancy, in my view, similar considerations apply when an employer is contemplating termination of employment for reasons other than misconduct. A decision is not to be taken lightly. In this case, Ms Gillam said that her work at Telstra “*was her life*”.

¹⁶ Dr Brendan Nelson in his foreword to the Parliamentary Committee Report, “Age Counts”, an inquiry into issues specific to mature age workers.

[46] It was the evidence of Ms Davies that she considered the length of service against the background of the warnings and the training and that she did not believe that it provided an adequate excuse for Ms Gillam's conduct on 19 October. Ms Davies was not cross-examined on this evidence.

[47] It was submitted by Telstra that many years of service could not provide some sort of blanket to flout proper requirements of employment and believe, or be entitled to expect, that given their many years of service, [that] conduct will not be met with the proper and appropriate response.¹⁷

[48] Telstra conceded that it was a question of balancing the various factors when an employee has long service and that Ms Davies had done that.

[49] There was no suggestion that Ms Gillam found the work difficult or that she sought a transfer from the work. That might be a relevant test to the reasonableness or otherwise of Telstra's actions. Indeed the evidence of Ms Davies was that the "000" area of work used relatively straightforward skills which were not easily transferable to another area. It was the evidence of Ms Davies that the only comparable area of employment would be the directory assistance role, but the work in this area was no longer being carried out by Telstra.

[50] It was also the evidence of Ms Davies that Ms Gillam's failure to adhere to policies and procedures would not give her the necessary confidence in relation to other positions.

[51] All in all I am satisfied that Ms Davies did give proper and serious consideration to Ms Gillam's length of service prior to making the decision to terminate her employment. Having seen Ms Davies give her evidence, I am content to give her consideration of these matters due deference. It follows that I find that the length of service of Ms Gillam, whilst important, does not outweigh the serious errors made against the background of proper support and warnings as to conduct.

Conclusion.

[52] Having considered all of the material and in particular the general statutory touchstone of "a fair go all round" I dismiss the application.

¹⁷ Transcript PN1614

BY THE COMMISSION:

COMMISSIONER

Appearances:

G Dircks, agent for C Gillam.

JD'Abaco, Barrister on behalf of Telstra Corporation Limited.

Hearing details:

2004.

Melbourne:

March, 17 and 18.

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