



Summary of Decision

6 June 2013

Janusz Tymoszuk v ComfortDelgro Cabcharge Pty Ltd T/A Westbus Region 1

U2012/14542

1. Mr Janusz Tymoszuk (a bus driver) was dismissed from his employment with CDC 10 October 2012 for serious misconduct in using a mobile phone while in control of a bus. Mr Tymoszuk made an unfair dismissal application to the Fair Work Commission (the Commission). Deputy President Booth decided that Mr Tymoszuk had engaged in serious misconduct and that his dismissal was not harsh, unjust or unreasonable. His application was dismissed.
2. Mr Tymoszuk conceded that he had used the phone in the manner contended and that he knew he was breaching the respondent's mobile phone use policy and the road rules. He agreed that the employer had a valid reason for dismissing him but contested the allegation of serious misconduct and asserted that the dismissal was harsh, unjust and unreasonable. He contended that there were extenuating circumstances that gave rise to his use of the phone which did not present a safety risk.
3. Deputy President Booth found that his extenuating circumstances relating to concerns regarding the welfare of his adult son were embellished for the purpose of justifying his use of the mobile phone and his evidence was at times disingenuous.
4. Deputy President Booth concluded from the evidence that the applicant was putting the safety of himself, his passengers and road users at risk. He missed two bus stops that the bus was meant to stop at while using his mobile phone. He was seen to bring the bus into contact with leaves hanging from the branches of trees on the side of the road as he proceeded down the road in control of the bus while using his mobile phone. He was seen to stare down at the phone with his eyes off the road for a period of time.
5. In all the circumstances she concluded that the respondent's decision to dismiss Mr Tymoszuk should not be disturbed by the Commission.

[\[2013\] FWC 3507](#)

- *This statement is not a substitute for the reasons of the Fair Work Commission nor is it to be used in any later consideration of the Commission's reasons.*

- ENDS -

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