

### **FAILURE TO 'DOB IN' A CO-WORKER JUSTIFIES SUMMARY DISMISSAL**

*Woodman v The Hoyts Corporation Pty Ltd*  
Australian Industrial Relations Commission

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In *Woodman v the Hoyts Corporation Pty Ltd*, the Australian Industrial Relations Commission ('the Commission') held that a failure by a worker to 'dob in' a fellow employee justified the summary dismissal of the former.

#### **BACKGROUND TO THE MATTER**

Mr Woodman ('Woodman'), was employed Hoyts Corporation Pty Limited ('Hoyts'), as a casual employee.

On 22 July 1999, an off-duty employee, Mr Wentworth ('Wentworth'), visited the Hoyts complex where Woodman worked and took two choc-top ice creams, without paying for them, whilst the Woodman was at the candy bar.

Woodman was later asked to attend a meeting with two cinema supervisors who questioned him about the choc-top ice creams. Woodman said that they had been paid for by Wentworth. However, during the meeting he was informed that Wentworth's employment had been terminated for theft of the choc-tops.

Woodman then admitted that the choc-top ice creams had not been paid for but he had 'okayed' Wentworth to take them.

Woodman's employment was terminated at once for misconduct because he had allowed Wentworth to take the choc-top ice creams without paying for them.

#### **THE DECISION**

After hearing all of the evidence the Commission held that:

1. Woodman as an employee of Hoyts, had a responsibility to tell other employees not to take company goods without paying for them; and that the actions of Woodman in allowing a fellow employee to take ice cream, and then lying about it to management amounted to serious misconduct and there was therefore a valid

reason for termination of his employment;

2. Woodman was notified of the reasons for his termination, albeit at the conclusion of the meeting with the cinema supervisors;

3. Woodman was given an opportunity to respond to complaints made by the cinema supervisors;

4. it was not necessary for Woodman to be warned about any unsatisfactory work performance because the conduct itself was serious enough to justify instant dismissal. Accordingly, the Commission held that the termination of Woodman's employment was not harsh, unjust or unreasonable.

#### **COMMENT**

Employees have a general duty at law to act in good faith and with fidelity towards their employers. That means that employee's have to take into account their employer's interest when discharging their duties at the workplace. Watching a fellow employee take goods without payment is a breach of that duty. Termination of an employee who allows that taking to occur is not unfair as the employee has breached his or her duty. Employers and employees should be aware of this general duty. Standing aside and not getting involved will not always be sufficient. This duty could impact not just in situations of theft but in other instances such as occasions involving fraud and dishonesty, assault and intoxication.

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