Phillip Trestrail v City of Karratha: A Lesson in Workplace Accountability

By Adam Watts

In a recent decision on workplace misconduct involving the City of Karratha (**City**), *Phillip Trestrail v City of Karratha* 2024 WAIRC 00870, the Western Australian Industrial Relations Commission (**WAIRC**) upheld the City's dismissal of Mr Phillip Trestrail, a senior employee of the City, although we note the WAIRC's decision is currently under appeal.

The primary issue concerned whether Mr Trestrail's entry into a pay arrangement constituted conduct repugnant to the employment relationship, such that it would warrant his summary dismissal.[1] Ultimately, the WAIRC dismissed both applications, made by Mr Trestrail, finding that his dismissal by the City was not harsh, oppressive or unfair and Mr Trestrail's conduct was found to be repugnant to the employment relationship.[2] Mr Trestrail's contract entitled him to a payout only in circumstances of termination without cause. Since the termination was for serious misconduct, the WAIRC found that Mr Trestrail was not entitled to $245,419 in lost wages.

Background and the Nature of the Pay Arrangement

The background circumstances of the case are summarised as follows –

1. Mr Trestrail was employed by the City from 2012 to 2023 and reached Director of Corporate and Legal Services.
2. Mr Trestrail implemented a deferred pay arrangement in 2019, which postponed his salary increases with the intention of receiving a back payment at a later time.
3. The deferred pay arrangement was undocumented and only known to Mr Trestrail, the City's HR Manager (a friend and long-time work colleague of Mr Trestrail) and a payroll officer of the City.
4. The deferred pay arrangement only came to light following an anonymous complaint in March 2023, which prompted an investigation by the City's CEO.
5. The City's CEO, conducted the initial investigation internally by consulting both Mr Trestrail and the HR Manager.
6. Following the initial investigation by the City's CEO, on 23 March 2023, the investigation was extended outside of the City by a report submitted to the Public Sector Commission (**PSC**).
7. On 28 March 2023, the City's CEO gave Mr Trestrail a formal letter in respect of suspected minor misconduct, which officially initiating a misconduct investigation.
8. On 4 April 2023, the PSC referred the matter to the Corruption and Crime Commission ('CCC') for review.
9. Whilst awaiting the CCC's decision, the City's CEO formed an investigation panel including the CEO, the Acting Mayor and the CEO of the City of Perth and Mr Trestrail was notified of that panel composition.
10. On 27 April 2023, the CCC referred the matter back to the PSC with a finding that the CCC was unable to form a reasonable suspicion of serious misconduct because it did not identify corrupt intent.
11. On 28 April 2023, Ms Miltrup sent Mr Trestrail a "Show Cause" letter stating the City's preliminary view was the situation constituted misconduct, and they requested his response. Mr Trestrail responded on 4 May 2023.

12. On 5 May 2023, the PSC referred the matter back to the City.
13. On 11 May 2023, the City's CEO issued a letter to Mr Trestrail stating his conduct amounted to serious misconduct warranting termination.
14. On 16 May, Mr Trestrail responded to the City's letter.
15. On 22 May 2023, the City's Council held a Special Meeting and endorsed the CEO's recommendation for termination of Mr Trestrail's employment with the City. The following day, Mr Trestrail was notified of his immediate termination.

Issues in Dispute

Mr Trestrail argued the pay arrangement was a personal savings strategy ahead of retirement and not deceitful. He noted his full salary appeared in records and likened it to common practices like PAYG tax withholding or purchased leave. Admitting it was "ill-advised," he attributed it to an error in judgment—failing to document it or seek CEO approval.

The City countered that the secretive, undocumented arrangement was deliberate and bizarre, breaching multiple laws and exposing the City to governance risks. The City further argued Mr Trestrail's actions, plus his breach of confidentiality by discussing the matter with Councillors during the investigation, justified dismissal.

Breaches of Employment Contract and Industrial and Superannuation Laws

The pay arrangement was found to breach Mr Trestrail's employment contract, the *Local Government Officer's Award 2021*, the *Fair Work Act 2009* (Cth) and later the *Minimum Conditions of Employment Act 1993* and *Superannuation Laws*. Primarily, the breaches were due to Mr Trestrail not receiving his full salary at least fortnightly, and the arrangement affecting taxation and superannuation contributions.

Procedural Fairness

Mr Trestrail argued that the City's CEO conducted an unfair inquiry, misrepresented the independence of the review panel and withheld pertinent information and documents from the Council in the Special Council Report recommending his dismissal.[3] However, WAIRC held that Mr Trestrail was given multiple opportunities to respond, the City conducted a reasonable inquiry and the decision to terminate his employment was based on the City's genuine and honest belief in serious misconduct.[4]

Failure to Follow a Lawful Direction

Mr Trestrail contacted Councillors about his disciplinary proceedings despite a clear directive not to discuss the matter with anyone other than a family member or legal advisor. His reason for discussing with Councillors was that he did not understand the direction as it was internally inconsistent.[5] The WAIRC found that this action alone could justify dismissal.[6]

The Relationship between Mr Trestrail and HR Manager

The HR Manager was the subordinate of Mr Trestrail's for nearly a decade and implemented the deferred pay arrangement under his direction. The HR Manager was promoted to that role in 2013 with the influence of Mr Trestrail and the HR Manger described their relationship as a professional friendship, but rarely challenged him. The WAIRC highlighted this power imbalance – the HR Manager approved the deferred pay arrangement without questioning its legality or escalating it, which was influenced by Mr Trestrail's authority. On account of the HR Manager's involvement, the HR Manager was also dismissed by the City in May 2023, which underscores the risks of blurred boundaries in hierarchical workplaces.

Legal and Industrial Relations Implications

The *Trestrail* case holds significant implications for employment law and industrial relations, particularly in public sector governance. Regardless of seniority, all organisational employees must be held to high standards of accountability. The risks of informal and undocumented arrangements can be profound, potentially leading to breaches of employment contracts, industrial laws, and tax regulations. Employers and employees must ensure that any financial deviations, no matter how large or small they appear, are properly documented to avoid legal and compliance risk.

The WAIRC's decision reinforces that seniority does not provide an exemption from accountability – all employees must adhere to applicable standards to maintain trust and compliance.

The information contained in this article should not be relied upon without obtaining further detailed legal advice in the circumstances of each case. For any comments or questions on this article please contact Adam Watts (awatts@mcleods.com.au).

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[1] [14]-[15].

[2] [198].

[3] [12(e)].

[4] [164]-[177].

[5] [25(uu)-(xx)].

[6] [193].

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