

Horman v Distribution Group Limited (2001 FMCA 52)

1) Reference Details

Jurisdiction: Federal Magistrates Court of Australia

Date of Decision: 27 July 2001

Link to full case: <http://www.austlii.edu.au/au/cases/cth/FMCA/2001/52.html>

2) Facts

Between February and December 1997 the applicant worked for the respondent company at the Artarmon branch of its Repco Auto Parts business as a spare parts interpreter. During the course of her employment the applicant became pregnant. At the time of the complaint the applicant had been made redundant. The applicant claimed that she had been harassed on the basis of her sex and race and because of her pregnancy.

3) Law

- Section 7 of the Sex Discrimination Act 1984 (discrimination on grounds of pregnancy)
- Section 14(2)(d) of the Sex Discrimination Act 1984 (discrimination in employment)
- Section 28A of the Sex Discrimination Act 1984 (harassment)
- Section 105 of the Sex Discrimination Act 1984 (liability of persons involved in unlawful acts)
- Section 106 of the Sex Discrimination Act 1984 (vicarious liability)
- Section 18C of the Racial Discrimination Act 1975 (offensive behaviour because of race, colour or national or ethnic origin)

4) Legal Arguments

The Applicant

The applicant argued that she had been subjected to sexual discrimination in the form of unacceptable and inappropriate comments from her fellow workers, as well as some physical approaches. The applicant claimed that on one occasion the effect of discriminatory words said to her by a member of staff at the Repco branch was to cause a near miscarriage, and that the total of the acts of discrimination had severe psychological effects on her.

The Respondent

The respondent denied the allegations of sexual and racial discrimination, although it conceded that some "horseplay" occurred in the workplace. The respondent alleged that the applicant was a willing participant and instigator of much of this activity and that the proceedings had been brought as a result of the applicant being declared redundant and was not *bona fide*. The respondent argued that it had a properly constituted EEO policy and procedures and in the circumstances was not vicariously liable for the actions of its staff. The respondent also alleged that the applicant did not follow the company procedures in place relating to discrimination, making no complaint during her employment.

5) Decision

The Tribunal dismissed the claim that the applicant's employment had been unlawfully terminated, but held that she had been discriminated against on the basis of sex and race. The Tribunal opined that even if the applicant had initiated, participated in, or encouraged certain behaviour, it did not prevent other behaviour directed towards or in the presence of the applicant being unwelcome and constituting harassment.