



Industrial Relations Commission of  
New South Wales

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**CITATION:** Dowling -V- CardCall Pty Ltd [2005] NSWIRComm 1137

**PARTIES:** APPLICANT Shane  
Francis Dowling  
RESPONDENT CardCall  
Pty Ltd

**FILE NUMBER:** 2586 of 2005

**CORAM:** Cambridge C

**CATCHWORDS:** Unfair dismissal - termination of employment - occupational and public health and safety - interim Orders made under sections 89(8) and 162(2)(i) - respondent employer Ordered to take all reasonable action to address health and safety concerns.

**LEGISLATION CITED:** Industrial Relations Act 1996[NSW]

**HEARING DATES:** 18/08/2005

**DECISION DATE:** 25/08/2005

**REPRESENTATIVES:** APPLICANT  
Applicant in person

RESPONDENT Mr T Bors, Barrister  
SOLICITORS FOR RESPONDENT  
Hassett Dixon

# INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

COMMISSIONER CAMBRIDGE

25 August 2005

Matter No IRC 2586 of 2005

**Shane Francis Dowling -v- Cardcall Pty Ltd**

Application by S Dowling re unfair dismissal pursuant to section 84 of the Industrial Relations Act 1996.

## STATEMENT AND INTERIM ORDERS

[2005] NSWIRComm 1137

- 1 The Commission issues this Statement and Interim Orders in the interests of the health and safety of employees and customers of the respondent employer, CardCall Pty Ltd, (CardCall). CardCall is apparently a Queensland based division of Telecorp Limited (ABN 84 091 707 970).
- 2 This unfair dismissal claim is part-heard, the evidence from the applicant, Shane Dowling, was completed during the Hearing held on 18 August and further Hearing is scheduled for 6 September next.
- 3 During the presentation of evidence on 18 August, an issue arose regarding the alleged contamination of plastic promotional flags used by CardCall. It is unnecessary to provide a detailed account of the type and use of the plastic promotional flags at this time. The flags are widely distributed by CardCall sales representatives and the use and

distribution of these and similar flags is presumably not confined to the CardCall company. From personal observation there is widespread use of these or similar plastic promotional flags displaying (usually) telephone card and transport card point of sales information at retail outlets such as newsagencies and post offices .

- 4 The applicant complained about the odour that was emitted from the plastic flags particularly if the flags were stored in a confined space under raised air temperature, for example a motor vehicle parked in the sun. Some scientific tests were conducted on the plastic flags and evidence in this matter included certain test results.
- 5 In brief, the test results appear to indicate the presence of elevated levels of two particular solvents, Cyclohexanone and Isophorone. These solvents are toxic and can be harmful depending upon the concentration to which a person is exposed.
- 6 The first test results were provided by a commercial laboratory, Packaging Inks (Aust) Pty Ltd and, in summary, showed that the plastic flags had concentrations of Cyclohexanone at 193 Mg/m.2 and Isophorone at 704 Mg/rnz. The total retained solvent level was reported to be 1530 Mg/mz and this was described as "*unusually high*".
- 1 These test results were reviewed by a Senior Workplace Health and Safety consultant from the Department of Commerce, Queensland. This consultant doubted the accuracy of the test results, in particular the 1530 Mg/rri2 figure. Instead of 1530 milligrams per square metre he suggested that "*1530 micrograms per square metre may be more believable*". If, however, the figures were accurate the consultant recommended certain action including " *...to cease distribution of these flags forthwith and advise your sales executives and your clients to only handle these with rubber gloves... and/or to wash hands thoroughly after handling*".

- 8 The plastic flags were subsequently tested by Queensland Health Scientific Services and an analytical chemist from that Government Department, Mr William Gore, was called by CardCall to give evidence as a witness in this matter. Mr Gore gave evidence on 18 August 2005. Mr Gore's laboratory report is annexure "B" to Exhibit 1.
- 9 The results of the analysis undertaken by Mr Gore showed that the plastic flags had concentrations of Cyclohexanone at 2,800 Mg/mz and Isophorone at 4,000 Mg/mz. The total volatile component level was reported to be 12,000 Mg/mz.
- 10 Although the laboratory report provided by Mr Gore showed that the concentrations of Cyclohexanone and Isophorone in air during the handling of the flags in a ventilated situation, were well below the exposure limits published by the Australian National Occupational Health and Safety Commission, the concentrations of these solvents in the flags must represent a serious concern.
- 11 It was therefore disconcerting to discover during evidence provided on 18 August from CardCall managers, that no advice had been issued to CardCall employees and/or customers about the potential hazards that may be presented by elevated concentrations of solvents in the plastic promotional flags. At very least, in such circumstances, an employer should have provided its employees with information about the issue of elevated concentrations of solvents in the flags and implemented further investigation into the safe handling protocol for flags that have elevated concentrations of solvents such as Cyclohexanone and Isophorone.
- 12 Consequently the Commission has decided to Order that CardCall take all reasonable action to properly address the health and safety concern presented by elevated concentrations of solvents in plastic

promotional flags. The making of such Orders is in no way determinative or indicative of the primary determination of this unfair dismissal claim. These Orders are of an interim nature and in no way whatsoever determine the substantive question regarding the alleged unfair dismissal of the applicant.

## ORDERS

1. The Commission Orders, pursuant to sections 89(8) and 162(2)(i) of the Industrial Relations Act 1996 [NSW], that CardCall take all reasonable action to properly address the health and safety concern presented by elevated concentrations of solvents in plastic promotional flags used and distributed by CardCall. Such action shall include but not be limited to;

(a) notification to Workcover New South Wales with formal documentary request for assistance in further scientific testing of plastic promotional flags aimed at establishing appropriate safe handling protocols, and,

(b) written communication to all employees and customers who may be likely to handle plastic promotional flags advising of concerns regarding elevated concentrations of solvents in plastic promotional flags and suggesting that until conclusive safe handling protocols are established care should be exercised with the handling of the flags. In particular, the care that should be exercised with handling the flags may include the use of protective rubber gloves and/or thorough washing of hands after contact. Additionally, all persons handling the flags should avoid inhalation of fumes emitted from the flags and generally flags should only be handled in well ventilated situations.

2. The Commission Orders, pursuant to sections 89(8) and 162(2)(i) of the Industrial Relations Act 1996 [NSW], that CardCall implement the terms of paragraphs (a) and (b) of Order 1 above within 7 days after this Statement and Orders are issued and published.

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