Case Study – BSBMGT502B

This is Assessment 3 for this Unit

In this Webinar we will cover:

- The situation that happened leading up to the dismissal of Sam
- The unfair dismissal claim
- Discussion on the judgement
- What could have been done to avoid the situation
- What should be done in the future to avoid such a situation
Summary

- Sam (Samantha) is a programmer.
- She has missed deadlines.
- She is not familiar with the new programming language.
- As Sam’s manager you have been managing her more effectively.
- In a meeting with Sam to discuss her not meeting her latest deadline she:
  - Physically struck you,
  - walked out of the office, and
  - has not returned.
Summary (continued)

• Sam contacted her Doctor after the meeting and was given a sick leave certificate for 7 days.
• This was sent to the HR Dept. and Sam called and verified receipt.
• 3 days after your meeting with Sam you advised your Supervisor that Sam had struck you and had reported ill.
• Meeting with HR held and Sam was dismissed.
• Sam filed for unfair dismissal with the AIRC (now Fair Work Australia).
• Sam’s claim for unfair dismissal was found true by AIRC.
Reasons given by A IRC

- The employer failed to follow a formal disciplinary process.
- There was no impartial investigation carried out.
- There were no records of any notes provided by the employer to back the claims that there had been meetings and reviews. The only written evidence produced was the termination letter.
- The original version of the medical certificate was not produced in the hearing by the company.
Reasons given by AIRC (continued)

• Sam produced a verified copy of her medical certificate in the hearing along with email evidence from the Human Resources department confirming that the medical certificate had been received by the organisation and entered into its files.

• No documented evidence of any meetings, coaching sessions had been kept by the employer.

• No performance management review or development plans were presented by the employer.
Reasons given by AIRC (continued)

- There were no copies of signed agreements reviewing Sam’s progress (performance reviews and development plans) submitted by the employer.
- No written documents outlining timelines were given for monitoring or reviewing Sam’s progress were submitted by the employer.
- No formal disciplinary hearings had taken place prior to Sam’s dismissal.
- Sam was not formally stood down while an investigation was carried out.
Reasons given by AIRC (continued)

- There was no physical evidence to support the serious misconduct claim that the manager has been struck as no witnesses were called to verify whether an attack had taken place.

- No senior managers or Human Resource department specialists were present in any meeting where Sam was being warned of poor performance.
Reasons given by AIRC (continued)

- There was no evidence to support the claim of misconduct by Sam. The manager had not documented any written warnings in Sam’s file. The only agreements that had been reached between Sam and the manager were verbal.

- Sam was awarded costs of approximately $5000 for lost salary and wages and a further $5,000 for emotional distress.
Follow-up

- Rob (Senior Human Resources Manager) wants a written report on his desk giving the background and reasons why the decision went in Sam’s favour against the organisation.
- Rob would like to see a completed risk assessment identifying:
  - areas that the organisation needs to address and implement in order to prevent this type of situation occurring again
  - report will guide whether the organisation will pursue an appeal.
Follow-up (continued)

Based on the findings of your report, Rob decides not to proceed with an appeal but to develop and implement a new Performance Management System.

- Rob recommends that the organisation follow two processes to handle:
  - Performance Reviews for all staff
  - Disciplinary Hearings
Follow-up (continued)

a) Performance Reviews for all staff
Follow-up (continued)

b. Disciplinary Hearings
Assessment

- Prepare a report that outlines the reasons as to:
  - why the organisation lost its case, and also
  - what it ought to have been doing for it to have successfully defended its position against Sam’s claim of unfair dismissal.
In your report:

- Critically analyse the case and develop a discussion paper (report) as to why the organisation lost the case.
- Your analysis should include a risk analysis of the case and strategies to mitigate future risks should similar situations arise.
- Using examples from Sam’s case, describe the conditions under which misconduct and serious misconduct may be deemed to exist.
- List any legislation that applies and any internal policies and procedures that may have applied in situations similar to Sam’s case.
Discussion

Examples of risks identified:

- Lack of, or no disciplinary or termination process followed
  - Solution: access to relevant policies and procedures

- No meeting notes recorded or discussions
  - Solution: access to relevant policies and procedures

- No records of verbal warnings placed on HR information system
  - Solution: documenting meetings, coaching sessions, verbal and written warnings with the Human Resources department
Examples of risks identified (continued):

- No development or training plans put in place
  - Solution: providing documentation of training plans
- No consultation from Human Resources personnel or senior managers
  - Solution: knowledge of when to involve Human Resources personnel or senior managers to help guide process and provide specialist help
Examples of risks identified (continued):

- lack of awareness of legislation
  Examples (varies with jurisdiction):
  - Workplace Relations Act 1996
  - Workplace Health and Safety Act 1996
  - Awards/Enterprise Bargaining Awards/Unregistered Certified Agreements.

- lack of awareness of AIRC
  - Solution: access to relevant legislation and awards
Assessment (continued)

- Develop policies and procedures that an organisation would need to implement to avoid a similar situation occurring and to ensure that disciplinary hearings and terminations are considered to be fair and reasonable.
- Outline what documents would have to be developed for the organisation to evidence that it has implemented a process to support non-performing employees?
Discussion

- **Solution: Review Policies and Procedures:**
  - Organisational policies and procedures
  - code of conduct
  - job descriptions
  - performance management plans
  - coaching notes.
Assessment (continued)

Using examples from Sam’s case, describe the conditions under which misconduct and serious misconduct may be deemed to exist.

- Misconduct, not reporting back to office, failing to meet necessary standards after coaching and monitoring was initiated.
- Serious misconduct – striking an employee.

However, in both cases evidence of misconduct is required.
Using Sam’s case as an example, describe how all steps of the performance review process and disciplinary hearing process (given to you by Rob) should have been performed as per legal requirements and the organisational policies you have developed. Include:

- What should have been done at each stage
- when and where assistance from HR specialists would have been appropriate
- What support services could have been deployed in Sam’s case
- What documentation would have been appropriate at each stage
Discussion

The disciplinary process may have the following steps:

- incident or misconduct identified
- investigation into matter
- employee stood down while matter is investigated according to organisational policy and procedure
- investigation outcomes – meeting with employee (and if appropriate employee support person) and HR representative or senior manager
- disciplinary actions applied and monitored over specified timeline
- regular reviews with employee
- if performance has not improved (after three written warnings) or termination is necessary (serious misconduct)
- conduct termination hearing
- document termination hearing outcomes.
Case Study – BSBMGT502B

In this Webinar we covered:

- The situation that happened leading up to the dismissal of Sam
- The unfair dismissal claim
- Discussion on the judgement
- What could have been done to avoid the situation
- What should be done in the future to avoid such a situation
- You should now be able to complete Assessment 3 for this Unit
Questions?

Thank you