Article Information

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Caffeine collusion: fraudulent use of the company account to fund a caffeine habit can be a valid reason for dismissal

Could an employer really dismiss an employee for charging a few coffees to the company account? According to a recent decision in the Fair Work Commission, the answer is 'yes'.
The decision demonstrates the willingness of the Fair Work Commission to determine that that a dismissal is valid when an employee engages in untruthful or fraudulent conduct, no matter how small the monetary value that is misappropriated. The Commissioner noted that untruthful conduct by employees operating in industries requiring a high level of integrity, such as the financial services sector, must be promptly addressed.

In *Ajax v Credit Union Australia Ltd* [2021] FWC 3165, Commissioner Hunt considered a case where a customer service specialist (**Ms Ajax**) at the Brisbane branch of Credit Union Australia Ltd (**CUA**) used the CUA coffee account with a local café to purchase approximately **$101.70** worth of coffees for herself and another colleague over a three month period.

Commissioner Hunt undertook a detailed examination of the coffee account and considered the evidence of eight witnesses, including the coffee shop manager, before concluding that Ms Ajax had engaged in serious misconduct by misusing the coffee account.

In coming to her decision, Commissioner Hunt found that Ms Ajax and her colleagues understood that the coffee account should only be used to purchase coffees for customers who stayed at the Brisbane branch for extended periods of time.

Ms Ajax's manager noticed the unusual activity on the coffee account in June 2020. Between March 2020 and May 2020, the COVID-19 pandemic resulted in a dramatic reduction in the customers visiting the Brisbane branch, but during this period there were still unusually high charges on the coffee account.

Ms Ajax's manager gave evidence that when she approached the coffee shop manager and asked if she could get the invoices for CUA's account starting in January 2020, the coffee shop manager said:

> "I warned them, I told them that during COVID it would be obvious that they were using the [coffee] account."

The coffee shop manager was reluctant to name the person to whom she was referring. Ultimately, after Ms Ajax's manager said "I need to know who it is you are accusing.", the coffee shop manager replied "It's the girls", being Ms Ajax and her female colleague.

Commissioner Hunt called Ms Ajax's integrity into question a number of times. When considering whether there was a valid reason for the dismissal, Commissioner Hunt concluded that not only did Ms Ajax misuse the coffee account, she then attempted to deceive the Commission about her coffee intake. Commissioner Hunt gave significant weight to the integrity required of financial services sector employees and stated:

> "Ms Ajax worked in an industry requiring demonstrated high levels of integrity. The financial services sector cannot afford to have an employee in its midst who might be untruthful over transactions of only around

$100; there is the opportunity for further misadventure if it is not promptly addressed."

When considering whether there were any other matters relevant to Ms Ajax's dismissal, Commissioner Hunt found that Ms Ajax covertly recorded two meetings with her colleagues after being informed that she was not permitted to do so, and determined that this act in and of itself constituted misconduct.

The Commissioner was comfortable that CUA followed a proper process during the events leading to the termination of Ms Ajax's employment. Ms Ajax was provided with a "show cause" letter and was given the opportunity to respond to the allegations made against her in a series of four meetings. Ms Ajax chose to respond to the allegations via three emails and one letter and had the support of the Financial Services Union. Commissioner Hunt was satisfied that CUA gave genuine consideration to all responses given by Ms Ajax.

When considering whether to dismissal was harsh, unjust or unreasonable, Commissioner Hunt had regard to:

- Ms Ajax's six years of service with CUA and her otherwise exemplary employment record;
- Ms Ajax being a single mother of two children, and that income from her job was her sole source of income; and
- the relatively small amount of money involved.

However, when balanced against the conduct, Commissioner Hunt determined that the dismissal was not harsh, unjust or unreasonable and dismissed the application.

The decision indicates that the Commission may be willing to determine that misappropriation of employer funds (of any amount) by an employee amounts to serious misconduct, particularly in industries requiring a high level of integrity, such as the financial services sector. Importantly Commissioner Hunt also found that Ms Ajax was properly notified of the allegations and given an opportunity to respond.

If this type of conduct arises in your workplace it is still crucial that before an employee is dismissed, proper procedure is followed in accordance with the *Fair Work Act 2009 (Cth)* and any relevant Award or Enterprise Agreement. This includes properly investigating the allegations and putting the allegations to the employee for response.

If you would like specific advice on employee misconduct and the potential dismissal of an employee, please contact a member of Piper Alderman's Employment Relations team for assistance.