Employment Law

Name

[Name of the Institution]

*Workplace harassment- the case of Wendy*

Sexual harassments have always been a major problem in the Australian workplaces. According to the static provided by the Australian Human right Commission that sexual harassment is among the frequently happening incidents in the Australian workplace and it badly impacts the performance of an employee (“SEX DISCRIMINATION ACT 1984,” n.d.).

Despite the negative effect of the incident on the productivity of the employees, the concerns of Australia’s Federal, State and Territory legislation has done little about this issue. The federal laws have banned it in certain Workplaces. Sexually harassments have been defined in the Sex Discrimination Act 1984 – SECT 28A that a person is harassed if the person receives any request for sexual favors or the person is asked to be the part of act of sexual in nature and the law also says the making any sexual statement also comes under sexual harassment and the stamen is made in written or verbally.

The section 28B of the Act says that the sexual harassing of a person is unlawful and it is unlawful for the person who is an employee of an organization or who is seeking to be one. It is also unlawful to discriminate a commission agent or any contract worker as well. The Act further highlights that it is unlawful for a partner to harass another partner when they are working in a partnership and it is highly unlawful to sexually harasses a person who is working in the same workplace(“SEX DISCRIMINATION ACT 1984,” n.d.)

The video also shows a sexual harassment incident in the workplace and Wendy is being victimized by one of the stakeholders and she did not get any response from her manager when she complains about the incident. In fact, the manager harassed her back by offering her night out with him and touching her hands. She was asked to be friendly if she wanted to increase her points in the organizational the manager behavior was very weird and he has been very demanding. He yelled at Wendy and started humiliating her at every point because of the fact that she was not ready to go out with him. In such circumstances, Wendy had no option but to complaint to an external manager about the incident and request for help.

This incident is a pure example of Workplace Harassment and bullying. The anti-discrimination act 1977 Section 22 C prohibits any kind of harassment in the workplace between the employees. It says that it is unlawful to harass a co-worker in a workplace by offering any service in return of that. Section 22B defines the workplace as a place where participants work or otherwise build up a connection to become a workplace participant. The participants mean that the employees or employer, a commission, a partner or a Volunteer who is delivering unpaid service (“ANTI-DISCRIMINATION ACT 1977 - SECT 1 Name of Act,” n.d.).

According to the Australian Human Right Commission act ---Division 3, section 26 says that penalties should be taken against a person who does not want to keep an employee on the bases then that person had made a complaint to the commission or to another party. The equal opportunity Act 1984 prohibits workplace harassment but still, employees like Wendy got harassed and bullied in the workplace. (“HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION ACT 1986,” n.d.).

So the manager of Wendy is asking the external manager to strike her off from the organization because she is making a false accusation and she thinks she is being harassed. The manager is under penalty according to the Human Right and Equal opportunity Act 1986. Sexual harassments and victimizations are tried to be controlled by the help of Acts like the Fair Work Act 2009 and its section 577 says that this act is responsible for promoting productive and corporative workplace relations and is also responsible for solving disputes (“FAIR WORK ACT 2009 (NO. 28, 2009) - SECT 12 the Dictionary,” n.d.). Wendy has a right being the employee of an organization to have a peace of mind and an ethical environment to work.

The Serious offender Act 2018 under the Victorian legislation purpose is to provide protection to the general public against offenders who have conducted severe sex offenses and who will harm an individual in the community and it also aims to do some inportan6 amendments in the Serious sex offender Acts (“SERIOUS OFFENDERS ACT 2018 (NO. 27 OF 2018) - NOTES,” n.d.).

The act has defined eligible offender under its section 8 of Part 2 and says that a person is considered an offender if the person is over 18 years of age. This act gives went the authority to file a case against her Manager and her manager could be examined for the harassment caused. Wendy has been given legal rights by Fair work Regulation 2009 that she is the responsibilities of the organization and should be protected (FAIR WORK REGULATIONS 2009).

Wendy could go to the Victorian Equal Opportunity and Human Right Commission. This commission is an independent body that facilitates people who have complaint some incident of sexual harassments. Sexual discrimination, victimization, and religious or racial vilification. The purpose of this commission is to reach up to a dispute-free agreement among the candidates. It also educates the victims about their rights.

The Victorian Equal Opportunity and Human Right Commission explain workplace victimization as a threating remark that someone gets in a workplace. Victimization in a workplace includes bullying or dismissal from employment and intimidation by colleagues in a workplace. The complaint can be submitted by an online form in the website of the Victorian Equal Opportunity and Human Right Commission is the part 4 of the Human right commission and its section 46 explains the responsibilities of the Victorian Equal Opportunity and Human Right Commission. The commission starts to inquire with a telephonic information on the discrimination and it does online delivery of information about the Equal Opportunity Act 2010, the Charter of Human Rights and Responsibilities and the Religious Tolerance Act 2001 and the offender comes to know about his or trial and then he / she is provided with consultancies by providing free and fair dispute resolution services. Seminars are also been deliver exploring the issue (“CHARTER OF HUMAN RIGHTS AND RESPONSIBILITIES ACT 2006,” n.d.).If Wendy contacted them then they will help to make her manager understand that his action is offensive and should stop doing that in order to build up a good workplace relationship. Wendy was being harassed by her manager and then the manager demanded to dismiss her from the job so the manager should be punished based on the Fair Work ACT 2009 as he was involved in unjust dismissal and workplace harassment.

*Unjust dismissal from an employment-the case of Benjamin Gigney*

The Fair Work Act was presented in order to have a productive and corporative workplace relation that will help to promote economic prosperity nationally and will also promote social inclusion by providing fair working laws. It was also meant to provide minimum terms and conditions through modern awards, and a minimum order of wages. The Act is also guaranteed to achieve fairness and productivity on a small enterprise level as well (“FAIR WORK ACT 2009 (NO. 28, 2009) - SECT 12 the Dictionary,” n.d.).Many organizations deal with legal issues in Australia and they present an application to the Fair Work Commission to tackle those issues legally. Benjamin Gigney also went through some legal obligations.

Mr. Benjamin Gigney presented an application to the Fair Work Commission against unfair dismissal. Mr. Gigney was the employee of Qantas Airways Limited and he was appointed as a baggage handler and he was dismissed from his position by an allegation submitted against him by a co-worker Mr. Alves.

 The first letter of the allegation that Mr. Gigney received says that he used sarcastic tone against Mr. Agostinho Alves and locked his way n a locker room. Grape him by his shirt and pressed him against the wall without his will. Mr. Agostinho’s right sleeve torn off in the incident and the loud sound of the dispute between them was heard by the majority of the staffs.

Mr. Gigney was asked to provide a response on the allegation and he provided his response in written form. He denied the entire allegation made against him and he completely rejected the dispute that happened between him and Mr. Alves. The second letter of the allegation was giving the outlines of the conduct policy. Mr. Gigney was asked to respond in written form and was also asked to attend a meeting. Mr. Gigney was found using abusive language against his co-worker and in his letter of response, he said that he is sorry for his actions and said that those verbal fight was never done in order der to hurt someone but was done on friendly bases. Mr. Gigney said that he had been victimized and bullied during the investigation. He said he reacted with sarcasm with Mr. Alves was nothing more than what happened between them and he said that he feels disappoints the way he behaved.

Mr. Gigney was not found guilty of any of the offenses but he was partly involved in the conduct so he was dismissed and the dismal was not unjust or harsh. According to the current scenario, Mr. Gigney claimed that he was falsely accused and he was bullied and victimized. Section six of the Fair Work Act 2009 talks about the right and responsibilities of the employers, employees and the overall organization. It discusses workplace protection and provides protection to employees against discrimination.

However, the incident of Mr. Gigney shows that the organization did not give him full protection and he was discriminated against his right of associations (“FAIR WORK ACT 2009 (NO. 28, 2009) - SECT 12 the Dictionary,” n.d.).

However, the Human Right Commission is a body that corporate with the perpetual succession and can be sued or it will on the name of the corporation. All the courts and the judiciaries should take judicial notice of the commission imprint common seal and the power relates to the president of the commission according to its section 20A and the section 32A (Australian Human Rights Commission Act 1986, n.d.).

 Section 26 of the Human Right Act says that a person should not be interfering with the person who is holding an inquiry against any action. A person threatened another person will get penalties of a huge range. The commission is also meant to inquiry any law that might discriminate an applicant from another and will announce an unjust result (Australian Human Rights Commission Act 1986, n.d.).If Mr.Gigney cause was dismissed by the Fair Work Commission then he should contact the Australian Human Right Commission. It will revisit the results announced by the FWC answers and will help him get fair results.

Equal opportunity Act gives Mr.Gigney the full right to appeal against the unjust results of the Fair Work Commission. The purpose of this act is to build up a law in order to get equal opportunity and the protection from victimization, discrimination, and sexual harassment. The Objectives of this act is to promote the equality that will help to get over unemployment and people will work in a pleasant environment ("Victorian Acts Reprints - Equal Opportunity Act 2010).

Equal opportunity Act is the part of the Australian discrimination law which is one of the federal legislation and it is based on racial discrimination, sex discrimination, disability discrimination and also highlights the Australian Human Right Act 1986. Section 7 of the Equal opportunity Act 2010 defines discrimination as an act that creates differences on the bases of attitude, race or sex of an individual working in an organization. Discrimination on the base of traits like a character that a person develops in a workplace or and a person is not giving up on that attitude. If the person uses that attributes to treat with another person then that becomes direct discrimination.

Section 14 of part 3 of the Equal opportunity Act 2010 talks about taking positive actions regarding sexual harassment, discrimination, and Victimization. Section 16 of this part of the law tells that when discrimination is prohibited and says that an employer must not discriminate against another person in the workplace by taking back his position due to disputes and by dismissing the employee ("Victorian Acts Reprints - Equal Opportunity Act 2010) The Equal opportunity acts do not allow any sort of discrimination against Mr. Gigney and give him the power to appeal against any discrimination that he had experienced due to the unjust decision of his company*.*

The Fair work Regulation 2009 has also set some responsibilities of the organization to protect the rights of the employees working there. Part 3 of the Fair Work regulation talks about the unfair dismissal of an employee. It says that. The person who is being dismissed should be given all of the benefits that he or she deserve. This action 3 of Part 4 of the regulation talks about the remedies to the unfair dismissal and makes the FWC responsible for paying the bills of the employee who is asked to attend the meeting that is conducted due to any allegation against him (FAIR WORK REGULATIONS 2009).

In case of Mr.Gigney, he was dismissed on the bases of false allegation, the organization should have investigated properly whether the other employees who have heard him arguing with his co-worker are saying the right thing about him or they are favoring Mr. Alves.Mr.Gigney told that he was bullied and victimized during the investigation process so he should appeal to the Fair work commission to act against the victimization and bullying he suffered from. Section 577 of the Fair Work Act 2009 says that the act is responsible to solve disputes against any employee in an organization or in any sort of workplace. It is the responsibility to promote a productive and cooperative workplace environment for the employees (“FAIR WORK ACT 2009 (NO. 28, 2009) - SECT 12 the Dictionary,” n.d.).

So according to this act, the company is responsible to provide fair investigation procedure to its employees and if Mr. Gigney has been victimized then according to the Fair Act 2009 section 577 the company is liable to Mr. Gingey and the law will act to protect the due rights of the victim.

Section 351 of the Fair Work Act 2009 says that an employee must not be taking any sever action against another person based on the employers on social origin or national extraction. The commission says that it is responsible to provide fair and non-discriminatory provision against the employee (“FAIR WORK ACT 2009 (NO. 28, 2009) - SECT 12 the Dictionary,” n.d.). So Mr. Gigney should appeal again to the Fair Act Commission by taking i9n mind that he has been victimized and bullied during the investigation. His intention was not to hurt any employee but his co-worker did not respond to him in a professional way and thus the dispute between them started.

The Fair Work Commission of Australia will consider whether the dismissal was harsh or unfair by taking in mind that whether there was a valid reason behind the dismissal. Whether the dismissal will give benefit to the other employee. Whether the employee was asked to change his actions before the dismissal or not. Whether the employee is given a chance to say something in his or her assistance and whether he or she has kept an external assistant to talk in his or her regards. The commission will check that if the employee is struck off due to his or her performance then he or she will be given a chance to improve his performance. The commission will also check that the company or workplace lack any dedicated human resource group or not and it will also check the role of this department in the upbringing of the employees (Police Federation of Australia, 2019).

Mr. Gingey will send an application to the Fair Act Commission and they will revisit the decision of the dismissal and will let him know that whether it is unfair or not. Mr.Gigney should also let them know about the victimization and bullying so that that the commission will take a fair step to solve this issue. The commission will process the application, will investigate it and will call the witness in court and will do the hearings. Mr.Gigney was victimized, bullied and dismissed from his job and the fair act commission think that their action was fair and just. The commission should revisit the case and should consider the victimization of the employee in concern and should make a fair fission making.

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