

APS Induction – Case Study

Sending an offensive email



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Sending an offensive email

An APS employee applied for review of a decision that, by sending a rather offensive email, he breached the APS Code of Conduct. The employee also sought a review of the sanctions imposed on him for that breach – a reprimand and reduction in classification from APS level 3 to APS level 2. The employee originally argued that he could not have breached section 13(3) of the Public Service Act, which provides that:

An APS employee, when acting in the course of APS employment, must treat everyone with respect and courtesy, and without harassment.

This was, he said, because he did not send the email to the person described in it and she may not even have become aware of the email. In effect, as she was not a party to that exchange, it could not be said that he ‘treated’ her without respect and courtesy, and without harassment, as required by section 13(3).

Review

In November 2004, the Australian Industrial Relations Commission said that sending disrespectful emails about another APS employee amounted to a prima facie breach of the Code of Conduct. In any event, the email in question was highly offensive and probably defamatory.

Generally, to make (without lawful justification) a derogatory statement about a person, lowering that person’s reputation in the eyes of reasonable members of the community, or leading people to avoid, ridicule or despise that person, or which has a tendency to injure that person’s reputation in office, profession, business or trade, is to defame them. To defame a person is to breach the laws of defamation. Not to comply with an applicable Australian law when acting in the course of APS employment is to breach section 13(4) of the Public Service Act.

In the Merit Protection Commissioner’s opinion, the suggestions the applicant made in his email about another APS employee were defamatory in that they ridiculed that person, were likely to make others think less of them, and might also have injured them in their employment. Consequently, even if, by sending that email, he did not breach section 13(3) of the Public Service Act, he breached section 13(4).



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Moreover, when the applicant sent that email, he also breached section 13(8) of the Act by failing to use Commonwealth resources in a proper manner.

The Merit Protection Commissioner determined the sanctions imposed were appropriate for such a serious breach of the APS Code of Conduct.

Outcome

As recommended by the Merit Protection Commissioner, the applicant's agency confirmed the decisions under review.

