

Bragg v Secretary, Department of Employment Education and Training (Federal) [1996] FCA 1536

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Facts

- Mr Bragg was accused of failing to perform his duties as a public officer
- It was found that he had pushed and sexually harassed a colleague
- In finding that he had committed the acts, the tribunal nonetheless refused to terminate his employment for reasons including that the proceedings had caused him immense stress and legal costs.
- The presiding judge's wife was a solicitor for the firm that represented Mr Bragg, albeit in a different section.
- An apprehension of bias was alleged.
- The appellant (the Department) also alleged that irrelevant matters had been taken into account, and the outcome was too lenient.

Issues

1. Did the fact that the judge's wife was a solicitor for Mr Bragg give rise to an apprehension of bias?
2. Did the tribunal consider irrelevant matters - specifically the stress and legal costs.

Held

- The Judge held that a reasonable, fair-minded person would understand that a judge may hear arguments from people s/he knows, but can put this aside to make an objective decision.
- The Court stated that the wording of the statute was to be interpreted broadly so as to allow a range of mitigating factors.
- However, in this case it had gone too far, as stress and costs were something that would affect nearly everyone, and should not have been taken into account.
- Nonetheless, the Court considered these errors of law to be minor and on balance, it was preferable to allow the decision to stand.
- Therefore the appeal failed.

Quotes

In my opinion, it is well understood, by fair-minded and reasonably informed non-lawyers, who think at all about the subject, that the work of many people requires them to make decisions which friends or

colleagues of their own friends and relations would like to go one way or the other, or which may in some indirect way advantage or disadvantage them, and that judges make such decisions all the time; that many people in private positions as well as public offices have the capacity in their work to do or not to do favours for friends of friends or of loved ones, but that a great many staunchly resist any temptation to do so, and that... for various reasons, judges perform very well in this regard [15]

As to appropriate matters to be taken into account in possible mitigation of penalty, the scope is broad... the DAC is to take into consideration evidence of "matters relating to the previous employment history and general character of the appellant". Plainly, those are words of wide import [46]

The Court has made it clear to the DAC and everyone else concerned that, while there is a very broad range of mitigatory matters which may be taken into account, there are limits to that range. The Court has identified two such matters [stress and legal costs] that are outside that range [57]

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