

COMMISSIONER OF POLICE v EATON & ANOR (S230/2012)

Court appealed from: New South Wales Court of Appeal
[2012] NSWCA 30

Date of judgment: 6 March 2012

Special leave granted: 17 August 2012

Mr David Eaton was a probationary police officer for two years until he was dismissed in July 2009. A delegate of the Commissioner of Police (“the Commissioner”) dismissed Mr Eaton pursuant to s 80(3) of the *Police Act* 1990 (NSW) (“the Police Act”). Section 80(3) provides that the Commissioner may dismiss a probationary officer at any time and without giving any reason. Mr Eaton then commenced proceedings in the Industrial Relations Commission of New South Wales (“the IRC”), claiming that his dismissal had been harsh, unreasonable or unjust under s 84(1) of the *Industrial Relations Act* 1996 (NSW) (“the IR Act”). The relevant part of the IR Act, Part 6 of Chapter 2 (“Ch 2 Pt 6”), expressly applies to members of the NSW Police Force. In the Police Act, s 218(1) provides that the IR Act is not affected by anything in the Police Act.

On 30 June 2010 IRC Commissioner Bishop upheld Mr Eaton’s claim and ordered his reinstatement as a probationary constable.

On 5 May 2011 the Full Bench of the IRC (Walton VP, Marks & Kavanagh JJ) (“the Full Bench”) upheld the Commissioner’s appeal. The Full Bench found that Ch 2 Pt 6 of the IR Act was incongruous with the Commissioner’s absolute power to dismiss under s 80(3) of the Police Act. The Full Bench held that s 80(3) impliedly repealed Ch 2 Pt 6. The IRC therefore lacked jurisdiction to deal with Mr Eaton’s claim. Mr Eaton then applied to the Court of Appeal for a review of the Full Bench’s decision.

On 6 March 2012 the Court of Appeal (Bathurst CJ, Handley & Tobias AJJA) unanimously upheld Mr Eaton’s application and quashed the Full Bench’s decision. Their Honours held that Ch 2 Pt 6 of the IR Act and s 80(3) of the Police Act could be read harmoniously. The Court of Appeal found that Parliament had given attention to the relationship between the Police Act and the IR Act (and its predecessor) on multiple occasions and it had not then excluded probationary constables from the unfair dismissal regime. Their Honours then remitted the Commissioner’s appeal to the Full Bench, which dismissed the Commissioner’s appeal on 24 March 2012.

The grounds of appeal include:

- The Court of Appeal erred in finding that the IRC had jurisdiction to hear and determine Mr Eaton’s unfair dismissal claim brought pursuant to Part 6 of Chapter 2 of the IR Act on the basis that, on its proper construction, s 80(3) of the Police Act did not preclude such a claim being made.