



RAIL TRAM & BUS UNION

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ATTENTION ALL MEMBERS

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BIG WIN FOR TRAMMIES IN IMPORTANT CASE

On 6 February 2019, the Fair Work Commission handed down its decision in the unfair dismissal case of Brunswick Depot Driver, Charlie Nguyen. Yarra Trams had disgracefully dismissed Charlie after nearly 40 years of service because it said he was permanently unfit under the National Standard for Health Assessment of Rail Safety Workers. In a major victory, the Commission's decision not only found that Charlie was unfairly dismissed, but was also highly critical of Yarra Trams.

By way of background, Charlie was on personal leave when he was directed by Yarra Trams to attend a triggered medical assessment under the National Standard. Charlie underwent several assessments. One doctor assessed Charlie as permanently unfit after having earlier assessed him as temporarily unfit. However, after Charlie and the RTBU disputed the assessment, Charlie was re-assessed by a different doctor who assessed him as temporarily unfit and recommended that he be reviewed in 3 months' time.

Outrageously, Yarra Trams ignored the doctor's recommendation and asked Yarra Trams' Chief Medical Officer (CMO) to conduct a "paper review", which did not involve him actually examining Charlie. This is not in accordance with the requirements of the National Standard. On the basis of the "paper review", the CMO agreed with the doctor that had assessed Charlie as permanently unfit. Yarra Trams then gave Charlie a ridiculous 7 days to provide Yarra Trams with a specialist report for the CMO to reconsider his opinion before terminating his employment a short time later.

The RTBU supported Charlie throughout his case, briefing our lawyers, Gordon Legal, and a barrister. We engaged expert witnesses to successfully establish that Charlie was not permanently unfit when he was terminated by Yarra Trams.

In its decision the Commission was highly critical of the medical evidence relied on by Yarra Trams and its treatment of Charlie leading up to his dismissal, particularly the absurdly unfair short time Charlie was given to obtain specialist advice. There will now be a separate process to determine the remedy for Charlie.

This is a very significant victory in the context of Yarra Trams' misuse of the National Standard to attack its employees. The RTBU will not put up with Yarra Trams' disgraceful tactics and will continue to fight and win.



Tarik Koç
Secretary



Mario Mizzi
Assistant Secretary