Sick Leave Entitlements won for CFMEU

Date: Monday November 2, 2015

n 2014 the CFMEU Mining and Energy Division Union became aware that some of its members at the Hail Creek Coal Mine had been denied paid sick leave entitlements by their employer, Hail Creek Coal Pty Ltd. The Union subsequently commenced proceedings against Hail Creek in the Federal Court alleging Hail Creek had breached the Hail Creek Agreement 2011.

Hail Creek argued that the sick leave clause of the Agreement only entitled the employees to the National Employment Standards minimum of 10 days per annum and that the employees were not entitled to be paid sick leave because they had used all of their NES entitlement. The Union argued the clause properly interpreted meant that employees were entitled to be paid for sick leave up to three months in one period after which time, any entitlement to sick leave would be at the discretion of the employee's manager.

The Court decided to proceed by way of determining whether the Union's interpretation of the clause or the Mine's interpretation of the clause was correct before turning to the question of whether the Agreement had been breached by Hail Creek. On 20 May 2015, His Honour Justice Logan decided in favour of Hail Creek that the clause provided for employees to be paid sick leave only for the period prescribed by the NES entitlement and that all sick leave in excess of that amount was at the manager's discretion. The Union appealed Justice Logan's judgment to the Full Federal Court.

In the appeal, the Union submitted to the Full Court that the surrounding circumstances of the Union and Hail Creek negotiating the clause and the common intention of the parties was not taken into account in the first instance judgment.

On 23 October 2015 the Full Court handed down its unanimous judgment in the Union's appeal finding that the sentence of the Agreement which provided "Employees, other than casuals, have access to paid sick leave on Total Salary when they are unable to work due to illness or injury" did not confer a discretion on the employee's manager and entitles employees other than casuals to be absent from work and paid for the period of the leave.

In reaching their decision, the Full Court gave consideration to the earlier iterations of the Agreement, most notably the 2003 Agreement which contained a sick leave clause in almost identical terms to the 2011 Agreement. On analysing the 2003 Agreement clause and the then legislative framework, their Honours found the clause provided for an entitlement to sick leave that was not merely discretionary reasoning the replacement of the 2003 Agreement with the subsequent 2007 and 2011 Agreements in virtually the same terms in respect of sick leave meant “the consistency of terminology points strongly to the conclusion, that no change in meaning, and certainly no change in the diminution of employee entitlements, was intended as the parties moved from one agreement to the next.”

Hall Payne Lawyers represented the Union in both the first instance and appeal proceedings. The decision is a vindication of the superior sick leave entitlements fought for by the Union and shows the importance of being a union member.

If you require any assistance in relation to entitlements and enterprise agreements please do not hesitate to contact HPL Principal Luke Tiley (Brisbane), HPL AssociateJoseph Kennedy(Sydney) or HPL AssociateWilliam Ash(Hobart), all available on Free Call 1800 659 114.
