CFMEU public interest role praised as Court finds against Rio Tinto

Date: Sunday June 26, 2016

The Federal Court has found in favour of six workers who were denied access to their personal leave entitlements while working at the Hail Creek Mine, run by Rio Tinto. Supported by their Union, the Court has found in their favour, highlighting the importance of workers' rights and the CFMEU's public interest role.

The CFMEU alleged that, across a period of over two years, Rio Tinto had incorrectly appropriated annual leave, or failed to pay any leave at all, despite being required to pay personal leave under the Enterprise Agreement signed with workers and the Union.

Justice Logan agreed with the argument advanced by Hall Payne Lawyers on behalf of the CFMEU, finding that Hail Creek had contravened the Agreement. In considering whether a civil penalty would apply, his Honour reflected on the purpose of these penalties, and where and when they should be paid.

This case was associated to the earlier decision of the full court in*Construction, Forestry, Mining and Energy Union v Hail Creek Coal Pty Ltd*[2015] FCAFC 149. Even after having the benefit of the Full Court's construction of the relevant clause in the Enterprise Agreement in this earlier decision, Hail Creek continued to assert there had not been a contravention. Despite the fact that Hail Creek belatedly re-credited annual leave or paid out previously denied sick leave in the wake of that decision, Justice Logan found that these actions were not "truly indicative either of insight or remorse," and that they instead laid the foundation for an unmeritorious defence.

In considering the misappropriation of annual leave that characterised the majority of the contravention, Justice Logan spoke of the importance of the entitlement to annual leave:

"… annual leave entitlement forms part of the balance between recreation and labour for which provision is made in the Enterprise Agreement. As to that balance, it is now almost two centuries since the English socialist, Robert Owen, promoted, in 1817, the ideal

that workers should enjoy,"8 Hours Work, 8 Hours Recreation, 8 Hours Rest" ("888"), an ideal taken up in Australia in 1856… To recall this history is to highlight that conduct by an employer which diminishes the provision for a worker's recreation struck in an industrial bargain is not to be trivialised."

His Honour went on to agree with the parties that where a penalty was to be paid, it should be paid to the Union. In making this decision Justice Logan reflected on the importance of the Union in securing compliance with the obligations placed on employers. His Honour commented that this case was "an example of how in modern times a trade union may continue to serve both the public interest and the interests of its members." Accordingly, the Court ordered that the penalty arising for this contravention was to be paid to the CFMEU.

HPL Principal Luke Tiley described the decision as "further confirmation that a union that commences breach proceedings is acting in the public interest and should ordinarily have any civil penalty paid to it rather than the Commonwealth."

"The decision stands in stark contrast to recent Federal Circuit Court decisions in which similar penalties were ordered to be paid to the Commonwealth rather than the union," Tiley added.

Hall Payne Lawyers have more than 25 years of experience in protecting workers' rights, and have specialist Industrial Relations experience and associated litigation. If you require assistance with any associated IR issue and want to achieve the best possible outcome, we can help. Please contact HPL Principal Luke Tiley (Brisbane) or HPL Associate Joseph Kennedy (Sydney), available on 1800 659 114 or via our contact page.
