Historic win for contract workers employed by Spotless

Date: Wednesday April 18, 2018

In a significant win for contract workers, the Federal Courtrecently foundthat Berkeley Challenge Pty Ltd, a part of the Spotless Group, contravened sections 117 and 119 (and therefore 44) of the Fair Work Act 2009 (Cth). Sections 117 and 119 are part of the National Employment Standards.

The breaches concerned a failure to provide notice of termination of employment and a failure to provide severance pay upon redundancy, when the company lost its contract to provide cleaning and security services at the Sunshine Plaza Shopping Centre. Acting for United Voice, we alleged that the company breached the Act in those ways, and the Court agreed. As a consequence of its breaches, the company was ordered to pay compensation and interest to the affected employees of over $209,000. The United Voice members affected by the breaches will also be put back in the same position that they would have been in if not for the breaches.

The s.119 aspect of the case was the most notable. The company sought to rely on the “ordinary and customary turnover of labour” exception to the obligation to pay severance upon redundancy. The Court closely examined the history of that provision dating back to the TCR Case. The Court analysed the company’s evidence about its practices, and the practices of other companies in the Spotless Group, upon the loss of a contract to provide services (whether cleaning, security, catering or similar).

Ultimately the Court was not persuaded that the retrenchment of the employees upon the loss of a contract was the ordinary and customary practice for the company. On that basis the company failed to discharge its onus and the exception was not made out. As a result, United Voice’s s.119 claim was successful.

We expect that the case will be an important precedent in future s.119 cases. It is hoped that the case will arrest the industry-wide practice of failing to pay severance upon redundancy caused by loss of contract. Further, in any subsequent litigation concerning the ordinary and customary turnover of labour exception, the Court will be required to examine the practices of the employer, not of other companies in its corporate structure.

The s.117 aspect of the case turned on the proper construction of a notice distributed by the company with respect to the loss of contract. The Court found, as we argued, that the company had not discharged its obligations to provide the employees with notice of termination as required by s.117.

The Court has not yet determined the question of penalty, which will be dealt with at a further hearing in June 2018.

The outcome of the proceedings is a significant victory for United Voice and its members. The decision of United Voice to commence the proceedings has been vindicated.

Hall Payne Lawyers has unrivalled experience in acting for unions in proceedings for breach of the National Employment Standards.Contact us via our contact page, or on 1800 659 114 for a consultation today.
