

Wednesday, 1 June 2011

Decision clears way for minority to make maximum disruption

Resource industry employer group AMMA today expressed its disappointment at a [decision](#) handed down today by Fair Work Australia.

AMMA Chief Executive, Steve Knott, said the Full Bench of Fair Work Australia had rejected AMMA's appeal against a decision concerning the ability of unions to apply to take protected industrial action before bargaining with an employer has commenced.

"The Full Bench today paved the way for a minority of a workforce to perpetrate industrial carnage by taking protected industrial action against the wishes of the majority of a workforce," Mr Knott said.

"AMMA's concern with today's decision is not limited just to the fact it paves the way for a small group of union members to wreak havoc at a workplace.

"The way the legislation is being interpreted means while a minority of employees are now able to take protected action before bargaining begins, employers are not able to take protected industrial action or 'employer response action' against it - because employers can only take such action during the bargaining process.

"Such a situation is manifestly unfair to employers and flies in the face of the assurances given to employers when the Government first introduced its changes to the nation's industrial legislation.

"AMMA is keen for the Minister to clarify this issue as a matter of priority. Is such a situation created by design, or is it because the legislation is actually poorly designed?," Mr Knott said.

In the original [decision](#) involving waste management company JJ Richards & Sons Pty Ltd and the Transport Workers Union (TWU) handed down in November 2010, Commissioner Greg Harrison upheld the union's right to apply to take protected industrial action despite bargaining not having commenced.

Mr Knott said a subsequent Full Bench appeal upheld Commissioner Harrison's findings but said the union would have to re-apply for a secret ballot order due to a technicality.

The union re-applied and a [decision](#) handed down in February this year granted the union's ballot application.

"AMMA, together with JJ Richards, filed an appeal against that decision," Mr Knott said.

"Today the Full Bench rejected this latest appeal - finding had the legislature intended a protected action ballot order not be available until an employer agreed to bargain, the wording of the Fair Work Act would have made that clear.

"The decision also found there was no need for unions to seek majority support determinations or other orders from the tribunal before embarking on industrial action based on the whim of the minority," Mr Knott said.

ENDS

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