



# Sacking for scab taunt 'was too harsh'

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The Fair Work Commission has found Esso's sacking of a union delegate for calling another worker a "f..king scab" was harsh, overturning an earlier ruling and finding he was unfairly dismissed.

The commission's full bench upheld a ruling that a second Esso worker was not unfairly dismissed for excluding a contractor from a lunchroom.

The commission decision is the latest legal instalment in the long-running dispute between management and unions at ExxonMobil's Longford gas plant in Victoria.

Unions set up a picket more than a year ago in protest at a controversial but legal strategy by contractor UGL, saying it had reduced wages significantly and cut workers' condition at the plant.

UGL established a subsidiary, MTCT, and registered a new agreement approved by five workers in Western Australia. Unions said the Longford workers were told they would sign up to the lower-paying agreement.

Most of the 230 workers refused and MTCT employed a contract workforce that is engaged at Longford and offshore. The replacement workers have been regularly carried in buses with blackened windows through the picket, which has featured in the ACTU's "change the rules" campaign.

In May, commission deputy president Alan Colman rejected an unfair dismissal claim by Electrical Trades Union delegate Michael Hatwell, finding Esso had a valid reason for sacking him after he told another worker, who was working on his rostered day off, "you're a f..king scab".

A commission full bench, headed by president Iain Ross, found that Mr Hatwell's dismissal was harsh and the decision to reject his unfair dismissal application was manifestly unjust.

The full bench cited evidence by an Esso manager that the use of the word scab did not warrant dismissal. It found Mr Hatwell had been unfairly dismissed.

"In our view, the proper exercise of discretion at first instance was, on the evidence before the deputy president, so clearly in favour of a finding that the dismissal was harsh that the decision to dismiss Mr Hatwell's application for an unfair dismissal remedy was manifestly unjust."

The full bench said Mr Hatwell's conduct occurred in the context of a protracted industrial dispute that had resulted in significant tension in the workplace.

The case has been referred back to Mr Colman to determine whether Mr Hatwell should be reinstated.

Australian Mines and Metals Association chief executive Steve Knott said the full bench decision was "another example of the commission being out of touch with modern workplace and community standards".