



Casuals call adds up to billion-dollar bill

EWIN HANNAN

WORKPLACE EDITOR

Workers on regular shifts will be entitled to seek paid leave under a Federal Court ruling which exposes employers to billions in back-pay claims and has prompted the federal government to flag legislative changes.

Attorney-General Christian Porter said on Wednesday that the government would consider employer pleas to change the Fair Work Act after the full Federal Court upheld a ruling that casuals who had worked regular and predictable shifts — and been paid a 25 per cent loading — were entitled to paid leave.

In a major win for the union movement, the full Federal Court rejected the bid by labour hire firm WorkPac to have a former employee, Robert Rossato, declared a casual employee and not entitled to paid leave.

The three judges also found the company was not entitled to restitution of the casual loading built into Mr Rossato's hourly rate.

They upheld an earlier ruling that casual truck driver Paul Skene was not a casual because of the regular and continuous nature of his work on a fixed roster and was entitled to receive accrued annual leave pay.

Mr Porter said the government would consider intervening if the

decision was appealed. "What appears fairly obvious on the face of the decision is that it has immediate practical implications for the bottom line of many Australian businesses at a time when so many have taken a huge hit from the COVID-19 pandemic," he said.

"Given the potential for this decision to further weaken the economy at a time when so many Australians have lost their jobs, it may also be necessary to consider legislative options."

ACTU secretary Sally McManus said the decision was a win for all workers suffering because of "systemic casualisation".

"It's time for employers to accept that finding new ways to

make permanent jobs casual has to end," she said. "We should be working together as a country to reduce the number of insecure jobs — it has got out of control and, unfortunately, too many people are now feeling the harsh reality of having no job protections during the pandemic."

Australian Mines and Metals Association chief executive Steve Knott said the court had taken the "remarkable" position in multiple decisions that an employee could sign a casual employment contract and be paid a casual loading but later claim to be owed permanent entitlements. "This position is highly damaging to business

Continued on Page 2

Ruling on casuals sparks back-pay fears for employers

Continued from Page 1

confidence and will see more internationally funded class-action law firms, many with obscenely large contingency fees, circling Australian businesses like sharks," he said.

In their decision on Wednesday, the three judges found casuals who worked stable, regular and predictable shifts were entitled to paid

annual leave, paid personal carers' leave and paid compassionate leave.

They found WorkPac was not entitled to restitution of the casual loading, which it claimed was included in the hourly rate it paid to Mr Rossato, who was employed as a casual under six consecutive contracts between 2014 and 2018.

WorkPac sought declarations that Mr Rossato could not make claims for paid annual leave, personal/carer's leave and compassionate leave because he was a casual employee. It also sought

restitution for the casual loading

paid to him if the court found he was not a casual employee.

Finding Mr Rossato was not a casual employee, the court found he and WorkPac had "agreed on employment of indefinite duration which was stable, regular and predictable such that the postulated firm advance commitment was evident in each of his six contracts".

It found WorkPac was not entitled to restitution of the casual loading that it claimed was included in the hourly rate it had paid to Mr Rossato.

Australian Industry Group chief executive Innes Willox said the decision highlighted the need for urgent legislative change to prevent double-dipping claims by casuals who had been paid extra remuneration in lieu of the entitlements of permanent employees. "With unemployment and underemployment rapidly increasing during the COVID-19 crisis, employers need to be encouraged to retain and take on casual employees — not deterred from doing so," he said.

CFMEU national president

Tony Maher said the "fantastic decision puts an end to the 'permanent casual' rort that has become a scourge in the coalmining industry and across the workforce. It's a decision that passes the pub test on what it means to be a casual and is consistent with community expectations that casual work is irregular and intermittent.

"Employers must now stop with the nonsense that calling a worker a casual makes them so.

"When a job is full-time, regular and ongoing, it is permanent, and deserves the security and entitlements that come with permanent work."

Labor industrial relations spokesman Tony Burke welcomed the decision.



The Australian, Australia

21 May 2020, by Ewin Hannan Place

General News, page 1 - 327.00 cm²

National - circulation 94,448 (MTWTF)

ID 1277876154

BRIEF AMMA

INDEX 1

PAGE 2 of 2

“Companies that use casual contracts for jobs that are in fact permanent are taking advantage of their workers. This behaviour deliberately robs workers of the security, protections and entitlements of permanent work,” he said.

Mr Skene said he was “delighted” with the decision, which he said “shows how casuals have been ripped off and treated like second-class citizens”.