



05 AUG, 2021

Court rejects casual staff back pay bid

Age, Melbourne

Page 1 of 3

Court rejects casual staff back pay bid

Nick Bonyhady
David Estcourt

Employers have scored a major win in the High Court after it effectively shut down what could have been a pathway for long-term casuals to claim they were part-time or full-time workers with rights including paid leave.

The federal government had estimated that if the case – which was cited as a major reason for its industrial relations reforms earlier this year – had gone the other way it could have cost businesses as much as \$40 billion nationally in back pay without law changes.

Sam Shayler, manager of The Herbert Cafe in Northcote, was not opposed to casual staff eventually getting leave entitlements but said small businesses had little ability to shoulder the costs because of the pandemic. “Considering the time that we’re in right now, it would have definitely been a big hit to back-

pay the staff,” he said. “I feel like it would definitely sink us for sure.”

The court’s unanimous ruling yesterday gives businesses certainty but means most long-term casual staff who want to go permanent will have to rely on the federal government’s new law, which lets some casuals doing regular shifts convert to permanent status after a year of employment. Small businesses are exempt from the law.

That law also included a new definition of casual work and ruled out “double dipping” back pay claims, confining the main impact of yesterday’s decision to a series of large class action cases that were already under way against coal mining labour-hire companies.

But labour law experts said the decision also signalled a shift in the

way courts have been told to think about employment rights, emphasising what is in workers’ contracts over the reality of how they end up working.

A casual mine worker, Robert Rossato, brought the case against labour-hire firm WorkPac and won in the Federal Court last year.

Mr Rossato worked full-time hours based on rosters sometimes set a year in advance, which the Federal Court said made him a permanent worker with rights to back pay even though his contract described him as a casual.

The High Court disagreed yesterday, ruling Mr Rossato’s contract made clear he was a casual and that how his employment worked out in practice was not as important.

Casuals are typically paid 25 per cent more than permanent staff instead of paid holidays, sick leave and redundancy payments, though that is not always the case in the mining industry where differences in pay deals can mean casuals receive lower wages than permanent staff.

Hospitality worker Lukas Matovinovic, 22, said there seemed to be a trend towards a casual workforce, which without leave entitlements prompts many to feel compelled to work while sick. “It’s more the psychological side of it, you don’t feel like you’re able to take sick leave. It’s like the work I’m doing isn’t worthy of sick leave,” he said.

The miners’ union said the court and the federal government, which intervened in the case, had dashed its members’ hopes.

“Thousands of casual coal miners have lost an avenue to claim entitlements and the hope of an end to endless casualisation of permanent jobs,” general president Tony Maher said.

Major industry associations such as Ai Group, the Australian Chamber of Commerce and Industry, mining group AMMA and the company at the heart of the case, WorkPac, all welcomed the decision.

Innes Willox, the Ai Group’s chief executive, said the decision should prompt Labor to move on from its opposition to the government’s industrial relations overhaul and prompt the withdrawal of the class action claims.

Not likely, said Labor’s industrial relations spokesman Tony Burke. “A Labor government will overturn the government’s scheme, ending the rorts and restoring rights to workers,” he said.

University of Technology Sydney labour law professor Joellen Riley Munton said the decision suggested employee advocates may have to look at rules against sham contracting if they wanted to challenge what unions see as illegitimate casual employment arrangements.

‘It’s like the work I’m doing isn’t worthy of sick leave.’

Lukas Matovinovic, hospitality worker



05 AUG, 2021

Court rejects casual staff back pay bid

Age, Melbourne



Hospitality worker Lukas Matovinovic (left) and Sam Shayler, manager of The Herbert Cafe in Northcote. Photos: Jason South



05 AUG, 2021

Court rejects casual staff back pay bid

Age, Melbourne

