

Fair Work Australia confirms rights to incentive payments each time an offer of VR is made

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Date : 7 January, 2014

On 6th January Fair Work Australia handed down a decision which confirms that employees offered VR have a right to incentive payments at each offer of redundancy, and that the right to the payments does not lapse if a first or subsequent offer is turned down.

Background

In November 2013, the Australian Services Union, the Australian Rail Tram and Bus Industry Union and the Association of Professional Engineers, Scientists and Managers lodged a dispute with the Fair Work Commission over the Rail entities' refusal to abide by the terms of Clause 47 of the 2010 Enterprise Agreement (the 'EA').

Clause 47 of the EA provides that:-

“During the life of the Agreement, reduction in staffing levels will be achieved through natural attrition, redeployment or voluntary redundancy in accordance with RailCorp’s Redeployment and Separation Policy and Procedure applying at the date of certification of this Agreement.”

Despite the incorporation of the 2009 policy into the Agreement, the Rail entities refused to abide by the terms of the policy and most importantly, its enforceability via its incorporation into the 2010 EA.

The 2009 Redeployment and Separation Policy and Procedure which the parties agreed to incorporate into the Agreement does not restrict the offer of an incentive bonus to the first offer of VR that is made. The words of the Policy clearly state that:-

“Employees covered by this procedure are entitled to the following after they have accepted an offer of redundancy:-

? Incentive bonus-range from 20-24 weeks (depending on length of continuous services. This offer is available if the offer of redundancy is accepted within 2 weeks of the offer being made...”

Despite the clear words of the 2009 policy and its incorporation into the RailCorp 2010 EA, the Rail entities refused to abide by the 2009 policy and sought to use policies from 2005 and 2008 to deny the incentive bonus to employees who refused the first VR offer, but who accepted a subsequent offer.

The FW Commission adopted the Unions' submission that extrinsic materials, such as previous policies or subjective interpretations of the intention or purpose of the parties may not be used to disregard or rewrite the written terms of a registered Agreement.

This is an important 'win' for the members who accept subsequent VRs after being on a redeployment list for a time.

It is also a very important win for the whole Rail union membership whether they have considered VRs or not.

This decision has confirmed, once again, the importance of ensuring that employer policies which impact employee's wages , conditions and employment rights, are dealt with via bargaining processes and incorporated into enforceable industrial instruments.

Our rights at work are too important to be left to the vague intentions and capricious decisions of managers whose prime responsibility is the Minister of the day.