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## Court action prompts FWC to butt out of Teys underpayment dispute

Wednesday, September 23, 2015, 3:24pm

A long-running dispute between the meatworkers' union and Teys Australia over pay and conditions at the company's Beenleigh abattoir has taken another turn, with the Fair Work Commission agreeing to hold off on arbitration until the Federal Court rules on the latest in a series of legal challenges by the company.

The Fair Work Commission had been set to begin hearing the union's claim that some 300 skilled workers at Teys Australia's Beenleigh meatworks have been underpaid since October 2013 when the company began applying a then FWC-approved 2013 enterprise agreement.

However, the FWC later twice quashed the [Tey Australia Beenleigh Pty Ltd/AMIEU Production Departments Enterprise Agreement 2013](#) on appeal, after the union successfully argued that a small group of workers should not have been ruled eligible to vote for its approval (see [Related Article](#)).

Tey Australia then failed in bids to challenge both full bench decisions in the Federal Court (see [Related Article](#)), with the full Federal Court ruling most recently ruling that the plant's wages and conditions remain covered by the previous 2010 agreement (see [Related Article](#)).

The AMIEU then sought to use the 2010 agreement's dispute resolution process to argue that Teys had underpaid the skilled workers by not applying the 2010 agreement and an accompanying remuneration document which allowed for incentive payments.

FWC Deputy President Ingrid Asbury was last week set to arbitrate when Teys sought a Federal Court injunction, arguing that the union and company had not worked through all the required dispute resolution steps to bring about arbitration.

Teys also argued that it required an opportunity to argue that the remuneration document relied on by the AMIEU had never been part of the certified 2010 agreement and should be set aside.

While ultimately declining to rule on the interlocutory application, Justice Mordy Bromberg said it would be more appropriate for the Federal Court to rule on the company's challenge to the incentive payment scheme ahead of the Fair Work Commission arbitration.

After receiving Justice Bromberg's reasons, Deputy President Asbury [agreed](#) to hold over the Commission's hearings, saying that the "history of litigation between the parties" meant that the current matter would be more efficiently dealt with by the Federal Court.

## Challenge to incentive payments could have wider application: Bromberg

After initially stating that Teys application to prevent the Fair Work Commission arbitration raised some "complicated questions", including some that had not been previously considered by a court, Justice Bromberg outlined several reasons why he thought the challenge to the remuneration document needed to be resolved by the Federal Court first.

These included the complexity of the issue and its potentially wider application given union evidence that incentive payment schemes are regularly added to certified agreements.

AMIEU Queensland branch assistant secretary Matt Journeaux told *Workplace Express* that additional documents outlining payment by incentives were features of old federal meat awards and are provided for in modern awards.

"Section 3.10.1 of the 2010 agreement provides for a payment by incentive scheme and it is now accepted that the 2010 agreement still applies," he said.

Justice Bromberg said his determination of this issue could affect "thousands of employees and a large number of employers" and possibly extend beyond the meat industry.

After a directions hearing yesterday, Justice Bromberg will begin hearing the Teys challenge on October 20.

### **FWC and AMIEU on standby to negotiate a new agreement**

While agreeing to adjourn the Commission's proceedings, Deputy President Asbury said the parties will still be in dispute regardless of the result of the Federal Court hearing.

"The parties will continue to be in dispute until they finalise an enterprise agreement setting out the terms and conditions of employment of the employees covered by the 2010 Agreement," she said.

"I know from discussions with employees and their representatives during the many iterations of the underlying dispute that this is what the employees want".

She said the Commission would remain available to assist negotiations for a new agreement.

Journeaux said the AMIEU had been ready to negotiate a new agreement "since the beginning".

"We just want to get back around the negotiating table and sort all of this out," he said.

A Teys Australia legal representative said no comment would be made while the case remained before the courts.

[Teys Australia Beenleigh Pty Ltd v Australasian Meat Industry Employees Union \[2015\] FCA 1033 \(16 September 2015\)](#)

[Order](#)

[Australasian Meat Industry Employees Union v Teys Australia Pty Ltd \[2015\] FWC 6489 \(21 September 2015\)](#)

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