

# WINE VVS

## Coles workers should not be able to appeal against union deal, lawyers argue, amid claims deal could leave thousands worse off

By the National Reporting Team's Dan Oakes

Updated Wed 14 Oct 2015, 1:12am

**Coles should not give a worker the right to appeal against the deal that potentially leaves tens of thousands of employees financially worse off, lawyers for the supermarket giant have argued.**

Queensland Coles employee Duncan Hart is seeking leave to appeal against the enterprise bargaining agreement negotiated between Coles and the Shop Distributive and Allied Employees Association — the union representing retail workers.

The agreement essentially raises the hourly rate of pay, but cuts night time and weekend penalties.

Mr Hart, 23, argued the agreement, which is already in force, potentially leaves up to 50,000 of Coles' 70,000 workforce worse off than the existing award, with permanent, adult Coles employees being the most affected.

By law, no worker covered by an enterprise bargaining agreement (EBA) should be worse off than under the award.

Mr Hart has accused the union of selling out its members by agreeing to the deal, saying it was more interested in cementing its power within the Labor Party.



**PHOTO:** The agreement essentially raises the hourly rate of pay, but cuts night time and weekend penalties. (William West: AFP)

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### Key Points:

- Deal raises hourly rate of pay, but cuts penalties
- Coles employee seeking leave to appeal deal
- Lawyers say he should not be able to appeal
- Coles to be 'severely affected' if deal passes

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At a hearing in Melbourne on Tuesday, Stuart Wood, QC for Coles, said it did not matter whether the commission made an error in approving the agreement, as the decision was made based on the information it had before it at the time.

He said Mr Hart was not a party to the original bargaining, having devolved that responsibility to the union, which is also challenging Mr Hart's right to appeal.

Mr Wood said Mr Hart was relying on analysis of Coles rosters by Joshua Cullinan, who is an official of the National Tertiary Education Union, but undertook the analysis in a personal capacity.

Mr Wood said Mr Cullinan was the real appellant, and was using Mr Hart as a "vehicle" to further his own aims.

## Coles to be 'severely affected' if deal passes

In addition, Mr Wood said Coles would be severely affected financially if the appeal went ahead and was successful, as it had already made substantial changes to rosters and other arrangements on the basis of the new agreement, and these would have to be reversed.

Warren Friend, QC for the retail union, said that nobody had adequately demonstrated that Fair Work Commissioner Geoff Bull made a mistake in ushering the agreement through, and that the union also disputed that its members would be worse off under the deal.

However, Siobhan Kelly, representing Mr Hart, said it appeared Commissioner Bull ignored the analysis of Mr Cullinan, which was submitted to the commission before the deal was signed off on.

She said Mr Cullinan's analysis was more credible than that presented by Coles to the commission, which was based on an unrepresentative sample of rosters.

Ms Kelly also said Coles was obliged to explicitly tell its employees they would be worse off under the new agreement, and that it was unrealistic to expect a supermarket workforce to intimately examine the detail of an EBA, and then try to halt the process.

Ms Kelly said there was "huge public interest" in allowing Mr Hart's appeal to go ahead, and that there had been a "substantial injustice" done by the ratification of the agreement.

She said that any financial detriment suffered by Coles as a result of the appeal was insignificant compared to that suffered by low-paid supermarket workers.

Ms Kelly also noted that Coles' lawyers had insisted Mr Hart fly from Queensland to Melbourne to be cross-examined at Tuesday's hearing — then changed their minds.

In a statement released after the hearing, a Coles spokesman said: "We spent considerable time with our team members negotiating this agreement, which delivers an average 3 per cent annual wage increase — that's well ahead of inflation.

"It also includes a raft of additional allowances and benefits that are not included in the Award, such as additional compassionate leave and support for families.

"We are proud of this agreement and will continue to respect the process of the Fair Work Commission."

The commission has reserved its decision until a later date.

**Topics:** industrial-relations, industry, food-and-beverage, work, unions, law-crime-and-justice, retail, business-economics-and-finance, australia, qld

*First posted Tue 13 Oct 2015, 6:01pm*

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