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▶▶ Offer of alternative employment not acceptable, says FWA; Pluto crane drivers vote up strike action; and Unions NSW call for additional public holiday

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[Offer of alternative employment not acceptable, says FWA](#)

[Pluto crane drivers vote up strike action](#)

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Offer of alternative employment not acceptable, says FWA

FWA has rejected an employer's bid to reduce its redundancy payment to two workers on the grounds that it obtained acceptable alternative employment for them.

The two employees - who represented themselves in the hearing - were truck drivers with metal goods manufacturer Vicstaff Pty Ltd, which has a plant in Kilsyth, Victoria. The company offered them shift operator positions in February after deciding to contract out its delivery work.

Both employees, however, refused the offer of production jobs. They gave evidence that they wanted to continue as truck drivers, not machine operators, with one saying he'd been "in and out of trucks ever since thirteen".

Under [s120\(b\)](#) of the Fair Work Act, an employer can apply to FWA to reduce redundancy pay owed if it obtained "other acceptable employment for the employee". Vicstaff sought its payment be reduced to "nil" or an amount FWA deemed appropriate.

It argued that the work it obtained for the two was of a comparable nature to their previous roles, for a comparable or better rate of pay, with similar hours and within their competences. It said that both the truck driving roles and the production roles involved basic numeracy and literacy skills and both workers - who had previously done production work - could undertake the new roles.

But Commissioner Michelle Bissett said the test was not whether the employees could undertake the role, it was whether the work was of a like nature, "as enunciated in *Derole* and *Hot Tuna*". There must be a sufficient correlation between the relevant indicia of the current work and the alternative employment, she said.

In comparing the truck driving to production jobs, she said she did not accept that the "like nature of the work" as identified in *Derole* could be reduced to a consideration of the "value of the work" as proposed by Vicstaff. To do so reduced the consideration to one of work value and ignored the nature of the work performed.

"I find that the employment offered by Vicstaff does not have a sufficient connection to the skills of the divers in their jobs as drivers," she said.

"On the basis of the material before me I find that the employment offered is too far removed in terms of hours and the nature of the work currently (prior to the jobs being abolished) being performed. In addition, whilst I note that the employees would remain on their current rate of pay there are questions over the difference in wages that would be received taking into account that overtime."

Commissioner Bissett said it was incumbent upon Vicstaff to demonstrate that the alternative employment was acceptable, taking into account all relevant matters.

"Had the alternative work been considered acceptable to the individuals one imagines they would have accepted the work offered."

[Vicstaff Pty Ltd t/a Stratco v Bradley May and Malcolm McFerran \[2010\] FWA 3141 \(21 April 2010\)](#)

Pluto crane drivers vote up strike action

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Crane drivers employed by contractor Mammoet on the Pluto site in Karratha, WA, have voted to take protected strike action - including 28 days of consecutive stoppages - from next Wednesday, after negotiations for a new agreement broke down.

Eight of the twelve eligible workers (CFMEU members) voted in the [secret ballot](#), with all in favour of striking for periods including two hours, 48 hours, seven days and 28 days.

According to secretary Kevin Reynolds, they are seeking a 7% annual pay rise over the next four years.

The union secured a majority support determination covering the contractor's workers in an FWA decision last month (see [Related Article](#))

Unions NSW call for additional public holiday

The NSW Business Chamber has urged the State Government to reject a bid by Unions NSW to grant the State's workers an extra annual public holiday.

The peak union body's executive last night voted unanimously for the proclamation of a new public holiday - to be known as "Family and Community Day" - to "ensure parity with other States".

According to secretary Mark Lennon, NSW currently has one less public holiday than Victoria, Queensland, South Australia, the NT and the ACT.

"If eleven public holidays is good enough for Queensland and Victoria, it should be good enough for NSW," he said.

"We're all working longer hours than ever, that's why we're asking the State Government to proclaim an additional public holiday so that working people in NSW aren't worse off than those in other States," he said.

He said the "Family and Community Day" suggestion was based on the ACT's nearly created public holiday.

The Premier Kristina Keneally today said the Government was discussing the proposal, but the NSW Business Chamber called on her to reject it, saying it would cost the NSW economy \$800m.

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