

# WINE NEWS

## Coles employee takes legal action over deal that 'leaves workers worse off'

By National Reporting Team's Dan Oakes and Sam Clark

Updated Tue 6 Oct 2015, 6:11pm

**A Coles supermarket worker has taken legal action to stop an employment agreement between the supermarket giant and the union representing retail workers, claiming it would leave tens of thousands of supermarket employees out of pocket.**

Duncan Hart, who works at a Coles supermarket in Brisbane, has lodged an appeal with the Fair Work Commission, asking it to reconsider its approval of the enterprise bargaining agreement which would cover 77,000 Coles employees across Australia.

The agreement, negotiated between Coles, the Shop Distributive and Allied Employees Association (SDA) and other unions, mandates a higher hourly base rate for supermarket workers, but cuts penalty rates for weekends and nights.

Mr Hart argued this left a substantial proportion of Coles' workforce worse off than if they were paid under the existing award.

---

Do you know more about this story? Email [investigations@abc.net.au](mailto:investigations@abc.net.au).

---

"I thought it was absolutely outrageous. I found it mind-boggling that so many workers would be worse off compared to the base local minimum," Mr Hart said.

"For me personally it means \$60 less a week. To give people a sense, it's about 20 per cent cut to what I'd be earning under the award compared to agreement.

"So it's a pretty big deal for low-wage workers."

Mr Hart's appeal is based largely on research by Joshua Cullinan, who is an official in the National Tertiary Education Union but undertook the analysis in a personal capacity.

Earlier this year, Mr Cullinan raised concerns about the status of young and casual workers under the proposed agreement.

The commission then asked Coles and the union to alter the agreement to address these concerns.

However, Mr Cullinan and Mr Hart contend these changes did not address a larger issue: that of Coles' permanent ongoing employees.

By law, any employee covered by an enterprise bargaining agreement must be better off than under the award.

After Mr Hart launched his appeal, the commission asked Coles to provide Mr Cullinan with rosters from two stores in the Melbourne suburb of Northcote and the Victorian town of Benalla, which Mr Cullinan used to calculate the employees' total pay based on the new agreement in comparison to the existing award.



PHOTO: The agreement cuts penalty rates for weekends and nights. (William West: AFP)

I can't imagine a union that considers itself a union and considers itself doing a good job could reach an agreement that has that level of deficiency.

Joshua Cullinan, researcher

For the Coles store in the Melbourne suburb of Northcote, Mr Cullinan calculated that two-thirds of the permanent employees would be financially worse off by an annual total of \$55,000. He then extrapolated this across 770 Coles stores Australia-wide.

"On a basic arithmetic that we can see there is about \$60,000 if all the workers at Northcote that were adults that were ongoing, \$60,000 just at that store for a year," Mr Cullinan said.

"We could translate that to \$40 [million] or 50 million a year in wages not paid to workers compared to if they had of been working under the award.

"Any analysis by a union should have been able to identify these problems, they are bread and butter issues, and every union should be endeavouring to ensure that all their members are better off under the agreement.

"I can't imagine a union that considers itself a union and considers itself doing a good job could reach an agreement that has that level of deficiency."

## 'Union not encouraging workers to stand up'

As part of the bargaining process, Coles provided the commission with sample rosters to demonstrate that no employee would be worse off under the agreement.

However, Mr Cullinan argued those rosters were not representative of typical permanent employee, as they featured few weekend or evening hours.

"Unfortunately, some of the issues that we've now exposed at Coles simply weren't brought to the attention of the Fair Work Commission and they should have been," Mr Cullinan said.

"And so if the commission has made a judgment based on information that wasn't provided, that would be one way.

"The other way was just a flaw in the system which allowed for this agreement to be navigated through the commission and made law when really it should have been held up much earlier."

Coles has argued that Mr Hart should not be allowed to appeal against the agreement being passed, claiming that Mr Cullinan is the real appellant and that he is "simply using Hart as a vehicle to pursue his own personal agenda".

Both Mr Hart and Mr Cullinan dispute this. Mr Hart is a former SDA shop steward who has publicly criticised the union hierarchy over its conservative stance on issues such as marriage equality and the standard of representation it offers its members.

"[The union] is not actually trying to organise the workers to stand up for their rights," Mr Hart said.

"The fact that this could even be a question that their award would be better than the agreement, that really speaks to a big problem that's going on now with retail, and shows that the union isn't doing its job of organising workers to stand up for their rights."

It was revealed earlier this year by Fairfax Media that the union pays Coles and Woolworths up to \$5 million a year in "administrative costs" to deduct union dues from employees' pay packets.

A hearing will be held next week to decide whether Mr Hart should be given leave to appeal the decision.

Spokesmen for Coles and the union said neither would comment while the legal process was going on.

## Coles case studies

Employee	Pseudonym	Location	Employment status	Weekly wage under award	Weekly wage under 2015 EBA	Difference per week	Per annum

Employee	Pseudonym	Location	Employment status	Weekly wage under award	Weekly wage under 2015 EBA	Difference per week	Per annum
T	Tom	Northcote	Permanent Part-Time	\$713.07	\$639.61	-73.46	-3,827.27
JJ	Jenny	Northcote	Permanent Part-Time	\$300.99	\$262.15	-38.84	-2,023.56
U	Andrew	Northcote	Permanent Part-Time	\$1,000.32	\$849.30	-151.02	-7,868.14
G	Jasmine	Benalla	Permanent Part-Time	\$963.21	\$901.21	-62.00	-3,230.20
Q	Daniel	Benalla	Permanent Part-Time	\$287.12	\$251.66	-35.46	-1,847.47
AA	Katie	Benalla	Permanent Part-Time	\$733.98	\$618.72	-115.26	-6,005.05

**Topics:** retail, industry, business-economics-and-finance, work, brisbane-4000

First posted Tue 6 Oct 2015, 4:01pm

Contact Dan Oakes