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Quashing of meat deal upheld in bitter abattoir dispute

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The Federal Court has upheld the quashing of a controversial meat industry enterprise agreement, despite its view that a FWC full bench might have made mistakes in overturning a single member's decision to approve it.

The long-running saga began in July 2013 when Teys Australia Beenleigh Pty Ltd put a proposed deal to its workforce in the face of strong opposition from the AMIEU.

The agreement was voted up by a narrow majority, with 359 in favour and 343 against.

Deputy President Ingrid Asbury approved the agreement in October 2013, despite arguments from the union that 21 employees — including 17 who were training to be supervisors — were not eligible to vote.

The AMIEU appealed the approval, and in March last year a full bench comprising tribunal president, Justice Iain Ross, Deputy President Anne Gooley and Commissioner Leigh Johns found that the deputy president had made errors in her reasons for concluding that the 21 employees were entitled to vote.

But rather than rule they were not eligible, the bench sent the company's application back to the deputy president for her to determine in accordance with its reasons.

In the meantime, Deputy President Gooley quashed the original decision, stating that her order took effect from March 25.

Teys sought prerogative relief against the full bench's decision, while in separate proceedings the union asked for a declaration that the agreement had never operated and an agreement made in 2010 had therefore continued to apply throughout the whole period.

A full court of the Federal Court heard the two applications together, and handed down its decision this morning.

Delivering the main reasons, Justice Robert Buchanan said that Teys had to show that the full bench had made a jurisdictional error in finding mistakes in Deputy President Asbury's ruling.

He said the deputy president's principal conclusion was that the employees in the disputed roles were production workers, temporarily deployed to particular duties but not substantially engaged in non-production roles, who continued to be covered by the proposed agreement.

Justice Buchanan said he did not share the full bench's view that the deputy president's analysis was "based on any apparent error of construction or other legal error".

But he said he was unable to conclude that the full bench had made a jurisdictional error in the performance of its appeal functions.

"If it made an error, then that was an error within jurisdiction in my view," he said.

In a separate judgment, Justice Anna Katzmann agreed with this conclusion, while Justice John Logan said the case had been overtaken by events when Deputy President Asbury approved the agreement again in April last year.

As sought by the union, the full court declared that the effect of Deputy President Gooley's order was that the agreement did not operate from October 2013, and did not therefore displace the 2010 agreement.

The company had argued that the agreement operated from October 2013 until Deputy President Gooley quashed it on March 25 last year.

AMIEU Queensland assistant branch secretary Matt Journeaux told *Workplace Express* the union would be seeking substantial back pay for a number of workers under the 2010 agreement.

He said the union was also considering new penalty proceedings for breach of that agreement.

Journeaux said in a statement that it was time for the company "to stop wasting hundreds of thousands of dollars on legal fees, show some humility and get back to the bargaining table".

Teys appeals second full bench knock back

But the full court's ruling is unlikely to be the last word on the subject, as Deputy President Asbury's decision to approve the agreement for a second time was overturned by a separately constituted full bench in September last year, this time by a 2-1 majority (see [Related Article](#)).

Teys has appealed that full bench ruling, and is seeking interlocutory relief in the Federal Court next Thursday.

[Teys Australia Beenleigh Pty Ltd v Australasian Meat Industry Employees Union \[2015\] FCAFC 11 \(12 February 2015\)](#)

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