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Fair Work Act no barrier to incentive pay arrangement: Court

Friday, January 22, 2016, 11:34am

In what is understood to be the first test of a Fair Work Act provision permitting incorporation of external documents into an enterprise agreement, the Federal Court has rejected an employer's claim that it wasn't bound by an incentive payment scheme struck in 2009.

Justice Mordy Bromberg said there was no basis to meat processor Teys Australia's claim that the incentive payment system — which the company applied to the wages of its Beenleigh abattoir workers from 2010 to 2013 — had not been validly incorporated into its 2010 enterprise agreement.

His ruling clears the way for the Fair Work Commission to arbitrate the union's claim that 300 skilled workers have been underpaid millions of dollars since October 2013, when the company began applying its then-approved 2013 enterprise agreement (see [Related Article](#)).

Deputy President Ingrid Asbury agreed to hold off on those proceedings until the ruling on Teys' challenge to the validity of the incentive payment scheme, which it argued wasn't allowed under [s257](#).

The long-running dispute centres on the Teys Australia Beenleigh Pty Ltd/AMIEU Production Departments Enterprise Agreement 2013 which has twice been approved and then quashed as a result of union appeals (see [Related Article](#)).

Teys has also twice failed to overturn the Commission full bench decisions in the Federal Court (see [Related Article](#)), with the full Federal Court ruling in August that the plant's wages and conditions continued to be covered by the previous 2010 agreement (see [Related Article](#)).

In October, Teys withdrew a High Court special leave application that had been due to be heard later that week (see [Related Article](#)).

Justice Bromberg said if he accepted the company's new position, from August last year when it denied "for the first time" that the incentive payment system had been incorporated into the 2010 agreement, it would mean a "fairly radical departure from how the parties had historically conducted themselves".

He accepted evidence by AMIEU Queensland branch assistant secretary Matthew Journeaux that there is a "not insubstantial history of Teys paying its employees purportedly pursuant to incorporated incentive payment systems, including in the immediately-previous round of agreements".

He said Teys was now trying to argue that s257 only allows the authorised incorporation of "material contained in an instrument or other writing" that was in existence at the time the agreement was made".

Justice Bromberg said, however, that incorporation of material into an enterprise agreement is not solely dealt with by s257 and the Commission has the power under other sections of the Act to approve variations to approved enterprise agreements as long as they don't "materially compromise the genuine agreement, BOOT, or content objectives".

The judge described the legal battle between Teys and the union as a "saga of litigation".

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