

Menu

FWC cures Teys underpayment mistake, orders backpay

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The FWC has ordered abattoir operator Teys Australia to backpay thousands of dollars to meatworkers for incentive scheme underpayments during a long period of "confusion" and "uncertainty" about the operation of its enterprise agreement and an associated incentive payment system.

Meat processor Teys must now backpay the 300 skilled workers at its Beenleigh abattoir, estimated to have been underpaid millions of dollars from October 2013 until now, because it stopped paying them under the [Teys Bros \(Beenleigh\) Pty Ltd/AMIEU Production Departments Enterprise Agreement 2010](#) remuneration document following a prolonged and protracted dispute about the validity of the proposed [2013 agreement](#).

While the FWC twice quashed the 2013 agreement on appeal, Federal Court Justice Mordy Bromberg said in his binding [January judgment](#) that there was no basis to Teys' claims that the incentive payment system — which the company applied to the wages of its Beenleigh workers from 2010 to 2013 — had not been validly incorporated into its 2010 agreement and still applied (see [Related Article](#)).

Deputy President Ingrid Ashbury determined the outstanding amounts because there was a "wide range of variables" to consider and calculating back-pay for the disputed period and reaching consensus was likely a near "impossible task" for Teys and the AMIEU.

This included the union challenging Teys auditing firm's methods, used to determine if workers were entitled to backpay, causing further delays to employees' claims.

"If the task is not impossible, the time and effort which will be required from both Teys and the AMIEU and the complexity of the litigation that they will have to engage in to get an outcome, will likely result in a further significant delay to employees accessing any back pay to which they are entitled.

"Such an exercise will also result in costs for the parties which will exceed those associated with complying with this order," she said.

The deputy president likened the process to "unscrambling an egg" because payments were based on various components, including the input weight of carcasses and the numbers of employees in a base team, which is set on a daily basis.

She also said that Teys records during this period were inadequate and unable to assist in reconstructing the incentive payment system under the remuneration document, making it "difficult if not impossible" to retrospectively calculate the payments owed.

Deputy President Ashbury said that it was time to call an end to the nearly three-years of disputation and litigation between Teys and the union and that it was in the best interests of the AMIEU, its members and employees to resolve the matters without further "expenditure of time, effort and money".

"Any delay in employees receiving back pay is a cost to them because of the lost opportunity to use the money for their immediate needs. In short, a bird in the hand is worth two in the bush," she said.

She ordered the meat processing business pay the outstanding amounts from October 4, 2013 up until the approval and commencement of the 2016 agreement.

The deputy president determined the amounts to which workers were entitled based on considerations of the "competing views of the parties" because this provided a "quick, efficient and fair outcome for all employees with outstanding claims".

She said this was the most "practical solution" to the "almost insurmountable problems" and delays that Teys and the union would face, if they continued to pursue their claims in the courts.

Deputy President Ashbury said the amounts were determined according to employees' classifications and were payable to employees with outstanding or unsettled claims with Teys.

Under the orders, Teys must back-pay its fully competent boners (BC1) and its fully competent AAO's, A slaughterers and graders (K1) \$8,500, its fully competent slicers (BC2) \$7,500 and its fully competent B slaughterers \$6,500.

An AMIEU spokesperson said that the deputy president's decision was a sensible resolution for both the union and Teys and provided an opportunity for the parties to move forward.

"The matter has been ongoing since 2013 and so after three years of litigation, this result is very positive for workers," the spokesperson said.

Meanwhile, the [Teys Beenleigh Production Agreement 2016](#) has been approved by the Commission, after it was accepted by a 65% majority vote.

The agreement removes the piece rates system contained in the previous agreement and sets a base hourly rate at \$30.20.

Teys provided up to 15 undertakings under [s193](#) to satisfy the BOOT, including setting minimum hours for part-time shifts and restricting the amount of Saturdays an employee can work to 20 a year.

[Australasian Meat Industry Employees Union, The v Teys Australia Pty Ltd \[2016\] FWC 2477 \(19 April 2016\)](#)

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