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Full court minces abattoir's arguments

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A Queensland abattoir has again failed in its bid to have a contentious enterprise agreement approved and previous orders by the FWC knocked out, after a full Federal Court rejected its appeal.

Teys Australia, one of the country's largest meat processors, has been involved in a long-running dispute since 2013 over the approval of an enterprise agreement with the AMIEU at its Beenleigh meatworks.

Despite the AMIEU vigorously opposing the agreement, it was accepted by a narrow majority of 359 votes to 343.

Deputy President Ingrid Ashbury then approved the agreement in October 2013.

The issue in contention was whether employees who participated in the ballot were eligible to vote.

The union argued that 21 of the employees who participated, including 17 who were training to be supervisors, were ineligible to vote.

The matter has since been fiercely contested by both Teys and the union (see [Related Article](#)), with the deputy president's ruling being overturned by FWC full bench decisions in September and December last year that found she was wrong to conclude that the employees were eligible to vote.

Teys took the matter to the Federal Court, arguing that a judicial review of the FWC full bench determinations was warranted.

In February of this year, a full Federal Court dismissed Tey's application and upheld the quashing of the agreement.

The full court also ruled that the 2010 agreement was not cancelled by the wrongful approval of the 2013 agreement.

Teys then sought to again have the decisions judicially reviewed by the Federal Court.

In the latest ruling, Justices' Christopher Jessup, Richard Tracey and Anna Katzmann concluded that Teys' grounds for judicial review were a mere "chimera".

"Teys was unable to point to any misunderstanding on the part of the majority as to the jurisdiction of the Full Bench or the nature of the opinions they had to form, to any misconception they had of their duty, or to any failure to apply themselves to the relevant statutory questions.

"Nor was Teys able to show that the majority had made any other error of law causing them to fall into jurisdictional error," said the full court.

Teys, in its most recent bid to overturn the FWC's orders, contended that both full benches had wrongly determined findings in their September and December decisions because each determination was affected by jurisdictional error.

In the [September decision](#), the majority of the full bench, consisting of Senior Deputy President Jennifer Acton and Commissioner Chris Simpson, found that Deputy President Ashbury had incorrectly applied the terms of the coverage clause and had failed to appreciate the relevance and importance of the evidence relating to the 21 employees in question.

Teys argued that the majority's "jurisdictional error" hinged on the full bench's "misunderstanding" and misapplication of [s182\(1\)](#) and [s186](#) and that the Commission was wrong to quash approval of the agreement because the necessary statutory prerequisites had been met.

Teys also contended the full bench was wrong to find that Deputy President Asbury had committed errors as none existed.

It argued the powers of a full bench on appeal can only be exercised if the primary decision maker is wrong. As there was no error, the bench had no jurisdiction to exercise power in this regard according to Teys.

The full court rejected Teys' argument, saying "the vice in Teys argument is that it erroneously treats the correct determination of error as a jurisdictional fact".

"The majority of the Full Bench did not misunderstand the nature of the jurisdiction. Nor did they misconceive their duty.

"They recognised that permission to appeal was required and that the Full Bench could only intervene for error. They considered the grounds of appeal and the arguments for both parties," said the full federal court.

In the [December decision](#), Teys offered two alternative undertakings to address the Commission's concerns and support its approval application.

However, Senior Deputy President Acton and Commissioner Simpson rejected Teys submissions, saying that the undertakings did not overcome the concerns identified.

The majority held that if it were to accept the proposed undertakings, this would effectively result in substantial changes to the agreement.

The agreement as a result would not have been genuinely agreed to under [s190](#) of the Act.

Teys argued that the effect of the undertakings was not a substantial change, rather it was a minor change and that the majority of the full bench had adopted an "erroneously narrow reading of [s190\(b\)\(1\)](#)).

Teys also claimed that the effect of its undertakings was to "clarify" that the trainee supervisors and others were carrying out work in classifications contained within the agreement at the time of the vote.

The full court rejected this argument, saying it was not a matter of "clarification" and that it was "both a tendentious and an inadequate characterisation of that undertaking".

In dismissing Teys application, the full court held that the FWC decisions were based on the tribunal members' construction of the agreement and analysis of the evidence.

"If the majority did err in these respects, their errors were within jurisdiction," it said.

[Teys Australia Beenleigh Pty Ltd v Australasian Meat Industry Employees Union \[2015\] FCAFC 105 \(31 July 2015\)](#)

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