



REASONS FOR DECISION

Fair Work Act 2009
s.739—Dispute resolution

Australasian Meat Industry Employees Union, The

v

Teys Australia Pty Ltd
(C2015/5846)

DEPUTY PRESIDENT ASBURY

BRISBANE, 21 SEPTEMBER 2015

Alleged dispute about any matters arising under the enterprise agreement and the NES;[s186(6)].

[1] The Australasian Meat Industry Employees Union (AMEIU) has made an application to the Fair Work Commission under s. 739 of the *Fair Work Act 2009* for the Fair Work Commission (the Commission) to deal with a dispute in accordance with a dispute settlement provision in the *Teys Australia Beenleigh Pty Ltd/AMIEU Production Departments Enterprise Agreement 2010* (the Agreement). The dispute concerns clause 3.10.1 of the 2010 Agreement and a remuneration arrangement purportedly made under that clause. The Respondent is Teys Australia Beenleigh Pty Ltd (Teys).

[2] By virtue of clause 2.1.14 of the Agreement the parties have empowered the Fair Work Commission to deal with an industrial dispute or claim arising concerning any aspect of the terms and conditions of employment or engagement under the Agreement.

[3] The Commission commonly deals with such disputes including disputes concerning rights and liabilities arising under enterprise agreements. A conference in relation to the AMIEU application was held on 7 September 2015 by the Commission as presently constituted. At that conference Teys foreshadowed an application to the Federal Court in relation to the issues in dispute.

[4] The Commission indicated that unless and until that application was made and the Court made an interlocutory order preventing the Commission from exercising its jurisdiction the dispute would proceed in the normal way. Directions were issued on 7 September 2015 and the parties were required to file and serve their material. The matter was listed for hearing on 18 September 2015.

[5] By an email sent to the Commission at 9.08 pm on Thursday 10 September 2015, Solicitors for Teys (who had not then filed a Notice of representative commencing to act) corresponded with the Commission seeking an adjournment of the dispute on a number of grounds including that an application had been made that day to the Federal Court in relation to the substantive matters in the dispute.

[6] By email received on 11 September 2015 at 7.38 am the AMIEU advised the Commission of its opposition to the adjournment and pointed out that the application said to have been filed in the Federal Court on 10 September 2015 and forwarded to the Commission at 9.06 pm on that date, was not stamped and had no court return date.

[7] I caused my Associate to correspond with the parties to advise that the matter would remain listed and that the issues raised in the correspondence from solicitors for Teys would be dealt with at the hearing listed for 18 September 2015.

[8] The application to the Federal Court was dealt with by His Honour Justice Bromberg who issued Reasons for Judgement on 16 September 2015.¹ His Honour set out six matters upon which he based his conclusion that the interests of justice favoured the determination of the substantive question by the Court before the matter proceeds in the Commission. His Honour declined to make an Order restraining the Commission from dealing further with the dispute, but indicated that the Commission had not foreclosed a further application by Teys for an adjournment and that such an application could now be considered with the benefit of the Court's Reasons.

[9] I have considered those Reasons. In my view the history of litigation between the parties is such that the matter currently in dispute would be more efficiently dealt with by the Court. For that reason I have decided to adjourn the dispute.

[10] However, I am also of the view that regardless of the ultimate outcome of the present application before the Court, the parties will still be in dispute. The underlying dispute arises from the fact that the parties have not reached agreement about a replacement for the 2010 Agreement. This underlying dispute has been before the Commission on a number of occasions by way of applications made by both parties.

[11] The parties will continue to be in dispute until they finalise an enterprise agreement setting out the terms and conditions of employment of the employees covered by the 2010 Agreement. I know from discussions with employees and their representatives during the many iterations of the underlying dispute that this is what the employees want.

[12] The Commission is and has been available to assist the parties to negotiate and finalise an enterprise agreement. It remains my view, as expressed on many occasions to the parties in the on-going disputation between them, that such an agreement is the best way for all concerned to resolve the underlying dispute.

[13] In the circumstances I adjourn the dispute proceedings. Either party is at liberty to apply should they seek to have the matter relisted.



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¹ *Teys Australia Beenleigh Pty Ltd v Australasian Meat Industry Employees Union and Fair Work Commission* [2015] FCA 1033.