



Menu

Employer bodies spared costs for failed CFMMEU merger appeal

Tuesday, February 12, 2019, 3:35pm

An FWC full bench has dismissed the CFMMEU's application for costs against the AMMA and MBA for their unsuccessful appeal against last March's merger creating the mega-union, finding the employer bodies' case "not unworthy of consideration".

Having in June [upheld](#) (see [Related Article](#)) Deputy President Val Gostencnik's [approval](#) of the amalgamation of the CFMEU, MUA and TCFUA (see [Related Article](#)), Vice President Adam Hatcher, Senior Deputy President Jonathan Hamberger and Commissioner Michelle Bissett today denied the CFMMEU another win when they identified aspects of the appeal that had required "detailed" analysis.

Today's decision – delayed pending the [outcome](#) of a judicial review that ultimately did not upset the FWC rulings (see [Related Article](#)) – weighed the CFMMEU's arguments that the appeal had no reasonable prospect of success and was made without reasonable cause.

Specifically, the union contended AMMA and the MBA made no attempt to "reconcile the 2015 finding in [Commonwealth of Australia v Director, Fair Work Building Industry Inspectorate](#) with their submission that civil penalty proceedings pending against the CFMEU at the time of the first decision were not to be regarded as civil proceedings for the purpose of [s73\(2\)\(c\)](#) of the Fair Work (Registered Organisations) Act".

Nor, said the CFMMEU, was any suitable effort made to explain why the treatment of *Cth v FWBII* in the first decision was wrong.

Lastly, said the union, AMMA and the MBA "were on notice of the comprehensive and detailed reasoning in the first decision but still chose to institute the appeal which on any objective view was 'manifestly untenable', and/or 'groundless', and/or 'so lacking in substance as to be not reasonably arguable'."

The bench, however, rejected the union's primary argument, observing that consideration of the case required a "detailed and complex" analysis of [s73\(2\)\(c\)](#), "and not simply just the application of *Cth v FWBII*".

"The arguments advanced by the appellants in that connection, although not accepted, were not unworthy of consideration," the bench continued.

"We note that in [rejecting](#) the appellants' application for a stay, Vice President [Adam] Hatcher found that the appeal was arguable with some reasonable prospects of success (see [Related Article](#)).

"We also note that the appellants were successful in obtaining the grant of permission to appeal.

"For these reasons we are not satisfied that the appeal had no reasonable prospect of success or that it was made without reasonable cause [and] the CFMMEU's costs application must accordingly be dismissed."

[Australian Mines and Metals Association Inc; Master Builders Australia Limited v Construction, Forestry, Maritime, Mining and Energy Union \[2019\] FWCFB 649 \(12 February 2019\)](#)

RELATED CONTENT

AMMA's challenge to CFMMEU merger 28 years late: Full Court

Bench rejects challenge to CFMEU-MUA-TCFU merger

Employers considering options after anti-merger case rejected

LATEST JOBS

Compliance & Enforcement Manager - Labour Hire Authority

Lawyer

Workplace Relations Adviser

Legal Adviser - Labour Hire Authority

Federal Industrial Officer

[About us](#) · [Contact us](#) · [Terms of use](#) · [Privacy policy](#) · [FAQs](#) · [RSS / XML Feed](#)

Specialist News

Copyright © Workplace Express 2019. Workplace Express is a Specialist News Pty Ltd publication - ABN 33 093 580 413.