



Court derails injunction bid for sacked delegate

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The private operator of Sydney's newest rail line has agreed to continue paying an RTBU delegate pending an expedited trial in July into allegations that it sacked him because he helped prepare for a majority support determination application, after the Federal Court today found serious questions to be tried.

Justice Alan Robertson today refused to grant the RTBU an interlocutory injunction to render "null and void" the March 27 dismissal of Metro Trains Sydney Pty Ltd customer journey coordinator Robert Car and order his reinstatement until his adverse action claim is determined (see [Related Article](#)).

But the judge said that, weighing up the potential damage to the position of the RTBU and possible loss and harm to Car, he "would have found the balance of convenience was in favour of the grant of the interlocutory relief" if Metro Trains had not proposed to pay his wages pending trial.

The union alleges that Metro Trains took unlawful adverse action by dismissing Car because of his engagement in, or to stop his engagement in, industrial activity, in the form of conducting preparatory work for the union's planned application for a majority support determination.

It further says the company dismissed its sole union delegate because he exercised his workplace rights when he participated in the process of developing the majority support application, collecting his colleague's signatures on petitions that he circulated.

Claiming that it doesn't now know the location of the petitions, the union claims it was "forced to stall its MSD campaign as Mr Car was no longer employed by [Metro Trains], could not access employees of the respondent, and was an integral part of the MSD campaign".

However, Metro Trains maintains that its chief staff officer – the decision maker who opted to dismiss Car – was motivated solely by his belief that the coordinator had dishonestly failed to disclose his sleep apnoea when completing a health assessment during his probationary period.

The company also maintains that the decision maker had no knowledge of Car's union activities.

Nor does Metro Trains accept that other union members are unwilling to perform the same tasks as Carr on the proposed MSD application because "they fear the same".

It further maintains that there is "little or no utility" in the union's quest for an MSD for the workers, claiming they are already covered by another deal that expires in August 2022.

Justice Robertson observed that Car had correctly completed an earlier health assessment and was deemed fit for duty after the "misstatement was apparently corrected", noting an "arguable tension" between the asserted conclusion of dishonesty and the possibility that it was a mistake.

He said there was also a "serious question to be tried in relation to whether [the chief staff officer] knew that Mr Car was a union delegate and was undertaking union activities at the time of his decision on 27 March 2019, and so could not have terminated Mr Car for that reason".

There was an "apparent inconsistency" regarding assertions about when the chief staff officer became aware that Car was a union delegate, he said.

A "further aspect of the matter is the close relationship of the dates of the important events", the judge observed, noting that the employer did not act on the non-disclosure of Car's sleep apnoea until just after he had collected signatures for a majority support determination.

Justice Robertson concluded that there was a "serious question to be tried whether the conduct undertaken by Metro Trains was undertaken for reasons that included that Mr Car was a delegate, engaged in industrial activities, or exercised workplace rights".

The judge said a final hearing date would be expedited, with a trial expected in July.

RTBU NSW branch director of organising Toby Warnes told *Workplace Express* today that the decision "only hardens our opinion that our delegate was targeted by Metro Trains Sydney for participating in union activities".

"The RTBU will continue to fight to ensure that Rob is reinstated to MTS to continue carrying on his important work of achieving an enterprise agreement for operation staff at Sydney Metro, Warnes said, adding the dismissal "shows why it is so important that we change the rules in this country".

Warnes said the union had also invited Metro Trains to meet and discuss the matter.

[Australian Rail, Tram and Bus Industry Union, NSW Branch v Metro Trains Sydney Pty Ltd \[2019\] FCA 546 \(18 April 2019\)](#)

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