Supreme Court of New Zealand
Te Kōti Mana Nui

7 SEPTEMBER 2017

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

AFFCO NEW ZEALAND LIMITED v NEW ZEALAND MEAT WORKERS AND RELATED TRADES UNION INCORPORATED AND ROBERTA KEREWAI RATU AND OTHERS

(SC 131/2016) [2017] NZSC 135

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest www.courtsofnz.govt.nz

The appellant, AFFCO New Zealand Ltd (AFFCO) operates a number of meat slaughtering and processing plants. Slaughtering at the plants is seasonal, and when one season ends, the workers are laid off until the new season starts, when most return to work. The first respondent, New Zealand Meat Workers and Related Trades Union Inc (the Union) had a collective agreement with AFFCO covering its plants. However, the collective ceased to apply at the end of December 2014, with the consequence that the second respondents and other employees at the plants (the workers) were employed for the remainder of the 2014/2015 season on the basis of individual employment agreements containing the same terms as the collective.

The workers claimed that, when they presented themselves for work at the beginning of the 2015/2016 season, AFFCO locked them out unlawfully because it required them to agree to new individual employment agreements containing terms that were substantially less favourable than those contained in the expired collective and carried over into their individual employment agreements. The Union and the workers issued proceedings.

A Full Court of the Employment Court upheld the unlawful lockout claim. The Court of Appeal also upheld the claim, although for different reasons than those adopted by the Employment Court.

This Court granted leave to appeal to AFFCO on the question whether the Court of Appeal was correct to find that AFFCO locked the workers out in terms of s 82 of the Employment Relations Act 2000 (the ERA) when it required them to enter new individual employment agreements before beginning work for the 2015/2016 season.

The essential question in the appeal was whether those who presented themselves for work at the beginning of the 2015/2016 season were at that time "employees" for the purposes of the lockout provision. If they were, it was accepted that there was an unlawful lockout.

This Court has unanimously dismissed the appeal.

The first issue was whether the workers were "employees" as defined in s 6 of the ERA. This Court has found that they were not. The Court considered that the workers were not under employment contracts of indefinite duration but rather, their employment was discontinuous, so that their employment terminated at the end of one season and they were re-employed at the beginning of the next. In addition, the Court said it preferred not to deal with the case on the basis that the workers were persons "intending to work" within the meaning of s 6(1)(b)(ii) as that argument had some difficulties.

Accordingly, the Court went on to consider whether the word "employees" in s 82(1)(b) (the lockout provision) bore the defined meaning in s 6 or whether the context required that some broader meaning be given to it. This was on the basis that the definition of "employees" in s 6 is expressly subject to the qualification "unless the context otherwise requires". This Court has found that the context indicates that the word "employees" in s 82(1)(b) carries a broader meaning than that provided for in s 6. This broader meaning includes persons seeking employment in certain situations where those persons are not, in contractual terms, strangers to the employer.

In this case, those seeking work had previously worked for AFFCO and were owed a number of continuing obligations as to re-hiring, even though their employment had terminated at the end of the previous season and they were seeking to be re-engaged for the new season. This meant that the relationship between AFFCO and the workers was sufficiently close as to bring the latter within the scope of the word "employees" in s 82(1)(b).

Accordingly, this Court has found that AFFCO locked the workers out unlawfully.

Contact person:
Kieron McCarron, Supreme Court Registrar (04) 471 6921