

Summary of Decision

27 November 2014



The Australian Meat Industry Employees Union

V

Golden Cockerel Pty Limited

(C2014/5226)

[\[2014\] FWC FB 7447](#)

[1] The Australasian Meat Industry Employees Union (AMIEU, the Appellant) applied to the Fair Work Commission (Commission) under s.739 of the *Fair Work Act 2009* (the FW Act) for the Commission to deal with a dispute in accordance with the dispute settlement procedure in the *Golden Cockerel Certified Workplace Agreement 2012* (Agreement). The dispute concerned a decision by Golden Cockerel Pty Ltd (Respondent) to alter working hours' arrangements, in particular those affecting two employees consequent upon changes made to distribution processes by a major client of the Respondent.¹ The dispute was determined by Senior Deputy President Richards in favour of the Respondent for the reasons set out in his Honour's decision of 19 June 2014 (Decision [\[2014\] FWC 3972](#)).

[2] The AMIEU appealed the Senior Deputy President's decision. The Appeal Bench concluded that the decision of the Senior Deputy President was correct, that the Appellant had not identified any appellable error and that there were no public interest considerations which would warrant the grant of permission to appeal. Permission to appeal was refused.

[3] In the course of determining the appeal the Appeal Bench considered (at [19]-[40]) the principles to be applied to the interpretation of enterprise agreements. These principles are summarised at [41] of the Appeal decision, as follows:

1. The *Acts Interpretation Act 1901* (Cth) does not apply to the construction of an enterprise agreement made under the FW Act.
2. In construing an enterprise agreement it is first necessary to determine whether an agreement has a plain meaning or contains an ambiguity.
3. Regard may be had to evidence of surrounding circumstances to assist in determining whether an ambiguity exists.
4. If the agreement has a plain meaning, evidence of the surrounding circumstances will not be admitted to contradict the plain language of the agreement.
5. If the language of the agreement is ambiguous or susceptible to more than one meaning then evidence of the surrounding circumstance will be admissible to aid the interpretation of the agreement.
6. Admissible evidence of the surrounding circumstances is evidence of the objective framework of fact and will include:

- (a) evidence of prior negotiations to the extent that the negotiations tend to establish objective background facts known to all parties and the subject matter of the agreement;
 - (b) notorious facts of which knowledge is to be presumed;
 - (c) evidence of matters in common contemplation and constituting a common assumption.
7. The resolution of a disputed construction of an agreement will turn on the language of the Agreement understood having regard to its context and purpose.
8. Context might appear from:
 - (a) the text of the agreement viewed as a whole;
 - (b) the disputed provision's place and arrangement in the agreement;
 - (c) the legislative context under which the agreement was made and in which it operates.
9. Where the common intention of the parties is sought to be identified, regard is not to be had to the subjective intentions or expectations of the parties. A common intention is identified objectively, that is by reference to that which a reasonable person would understand by the language the parties have used to express their agreement.
10. The task of interpreting an agreement does not involve rewriting the agreement to achieve what might be regarded as a fair or just outcome. The task is always one of interpreting the agreement produced by parties.

[\[2014\] FWCFB 7447](#)

- ***This statement is not a substitute for the reasons of the Fair Work Commission nor is it to be used in any later consideration of the Commission's reasons.***

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For further information please contact:

Di Lloyd
Media and Communications Manager
Phone: 0427 097 628
Email: communications@fwc.gov.au

¹ AB214 – AB216 at [3] – [9]