DECISION

Fair Work Act 2009
s.604 - Appeal of decisions

"Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union (AMWU)
v
Donau Pty Ltd
(C2016/500)

SENIOR DEPUTY PRESIDENT DRAKE
DEPUTY PRESIDENT LAWRENCE
COMMISSIONER CAMBRIDGE

SYDNEY, 15 AUGUST 2016

Appeal against decision [2016] FWC 638 of Commissioner Riordan at Sydney on 22 February 2016 in matter number C2015/3277.

DECISION OF SENIOR DEPUTY PRESIDENT DRAKE AND DEPUTY PRESIDENT LAWRENCE

[1] The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (AMWU) has lodged an appeal pursuant to s.604 of the *Fair Work Act 2009* (the Act) from a decision of Commissioner Riordan issued in Sydney on 22 February 2016 (the Decision). The appeal was listed before this Full Bench in Sydney on 3 May 2016.

[2] Ms L Saunders appeared for the AMWU. Mr B Ferguson from the Australian Industry Group (AiG) appeared for the respondent, previously Forgacs Engineering Pty Ltd (Forgacs), but now Donau Pty Ltd (Donau).

[3] By agreement between the parties, a question was put to Commissioner Riordan for determination concerning the application of the *Forgacs Engineering Pty Ltd Enterprise Agreement 2013* (the Agreement). The question was:

> "A number of permanent employees have prior contiguous periods of service as casuals. Do these prior contiguous periods of casual service count as service for the purposes of clause 21 (notice of termination) and clause 23 (severance payments)?"

[4] An Agreed Statement of Facts was provided to Commissioner Riordan.

> "Agreed Statement of Facts
>
> **Introduction**
>
> 1. This dispute arises under the Forgacs Engineering Enterprise Agreement 2013 **(the Agreement)**.

2. Forgacs is a large engineering and shipbuilding company, with locations around Australia. It builds blocks for Australian Submarine Corporation (ASC) as part of the Air Warfare Destroyer (AWD) program at the Tomago Shipyard. The AMWU represents a large majority of workers at this site.

3. Due to the completion of the contract with ASC, and the absence of other work, Forgacs is making a large proportion of its workforce at the Tomago Shipyard redundant.

4. There is no dispute between the parties that these redundancies are genuine, or, that the consultation requirements under the Agreement have been met.

Prior Casual Service

5. As at 9 July 2015, there were a number of persons employed by Forgacs on a permanent basis who had prior contiguous periods of service as casuals, working on a regular and systematic basis, with no break between these periods of service.

6. When these workers were employed as casuals, they were paid the wage rate of a permanent employee as specified in cl.28 of the Agreement, plus a loading of 25% in accordance with cl.14 of the Agreement.

7. The employment of a number of these individuals has been terminated or will terminate by reason of redundancy.

8. When calculating redundancy termination payments, Forgacs:

a. Recognise prior contiguous periods of casual service for the purpose of long service leave under the Long Service Leave Act 1955 (NSW);
b. Does not recognise prior contiguous periods of casual service for calculating notice under cl.21 of the Agreement; and
c. Does not recognise prior contiguous periods of casual service for the purpose of severance payments under cl.23.3 of the Agreement."

[5] Commissioner Riordan extracted and considered the relevant provisions of the Agreement. These are set out below:

"**6.0 RELATIONSHIP TO PARENT AWARD**
The terms of the Manufacturing and Associated Industries and Occupations Award 2010 ("the Award"), as varied from time to time, are incorporated into this Agreement. If an incorporated award term is inconsistent with an express term of this Agreement, the express term in the Agreement prevails over the incorporated award term to the extent of the inconsistency.

7.0 NO EXTRA CLAIMS
This Agreement is in full settlement of all claims, and possible claims, for the duration of this Agreement. No further claims will be made for changes in any terms or conditions of employment, or to this Agreement, during the period of operation of this Agreement.

8.0 NATIONAL EMPLOYMENT STANDARDS
The National Employment Standards (NES), as varied from time to time, will apply to this Agreement. In the event of any inconsistency between the NES and any term of this Agreement, the term of the Agreement will prevail provided that the Agreement entitlement is more favourable than the entitlements of the NES and provided that there will not be an additional entitlement under the NES.

14. CASUAL EMPLOYEES
At the time a casual Employee is engaged they will be given a letter of engagement which nominates that the Employee's services will be required during a particular project or series of projects, and their tenure will expire at the completion of those projects.

The Award conditions will apply to the transition of casual Employees to permanent employee status after six (6) months of continuous employment, should there be a foreseeable continuity of work. If an Employee is invited to join the permanent workforce, and declines that invitation, there will need to be an exit strategy from the casual status agreed of no longer than one month's further employment at casual rates. This exit strategy could include a move to permanent status, or termination of casual employment.

The wage rates for casual employees will be based on the permanent employee rates specified in Clause 28 plus a casual loading of 25%.

21. NOTICE OF TERMINATION
21.1.3 A Casual Employee is not entitled to notice set out in this clause.

23. REDUNDANCY
23.6 The Company will not be required to make severance payments or notice payments set out in this clause where an employee is redeployed under Clause 23.1 or where the Employee would not be entitled to notice or redundancy pay in accordance with the NES."

[6] Commissioner Riordan considered the submissions of the AMWU. He rejected the submissions of the AMWU regarding the application of the Agreement. He found that those employees who had been employed by Forgacs as casuals for prior contiguous periods of service, before being appointed to permanency, were paid a loading to compensate them for the notice and redundancy payment entitlements which attach to permanent employment. He found that that prior contiguous service did not count towards the calculation of the period of service with the respondent for the purpose of notice and redundancy pay.

[7] In reaching his conclusion Commissioner Riordan considered the plain and ordinary meaning of the clauses of the Agreement and past authority, with particular emphasis on the *Metals Casual Case.*[1]

[8] The AMWU sought permission to appeal on the following grounds:

"8. The AMWU contends that it should be granted permission to appeal for the following reasons:

a. The appeal raises important issues about the operation of s.117 and 119 of the FW Act which have not been considered by a Full Bench before;

b. These issues are, through the operation of s.55 and s.56 of the FW Act, issues of general application as they relate to minimum entitlements, and as such the appeal attracts the public interest;

c. It is in the public interest that there be certainty about how an employee's period of service is calculated for the purposes of ss.117 and 119 of the FW Act;

d. The decision is affected by error, and it is in the public interest that this be corrected."[2]

[9] The AMWU identified the errors on which it relied as follows:

"10. The AMWU submits that in reaching his conclusions, the Commissioner erred by determining either:

a. That s.22 provides a definition of *'service'* and *'continuous service'* which excludes period of casual service, and applied that to ss.117 and 119 (grounds 1 and 2); or

b. That the phrase *'period of continuous service'* in ss.117 and 119 had a meaning different to and unaffected by s.22 (ground 3).

11. The Commissioner further erred by determining that cl.21 and 23 of the Agreement should be given an effect that derogated from the NES insofar as they operate to calculate an employee's period of service. This decision is inconsistent with ss.55 and 56 of the FW Act and as such outside power per s.739 (5) (ground 4). This ground is only pressed if one or more of grounds 1-3 succeed.

12. In determining this dispute, the Commissioner was required to interpret and apply sections of the FW Act. This is a non-discretionary decision. On appeal, the task for the Full Bench is to determine whether the Commissioner's conclusion was correct, not whether it was reasonably open to him."[3]

[10] It was agreed by both parties that the terms *year of service, period of service and length of service* as they appear in the Agreement have the same meaning as *years of continuous service* in s.117 (required for notice of termination or payment in lieu) and s.119 (redundancy pay) of the Act.

Conclusion

[11] This decision is about the proper construction of the Agreement. However the issue also turns on the interpretation of the Act because the Agreement incorporates the provisions of the National Employment Standards.

[12] The key section of the Act is s.22, which defines service and continuous service for the purpose of the Act and therefore the Agreement.

[13] Section 123 of the Act precludes a casual employee from accruing any entitlement to redundancy pay. This is a section of the Act dealing with the entitlement of employees at the date of cessation of employment. Applying that section of the Act, employees engaged by Donau as casual employees at the date of termination of their employment would have no entitlement to redundancy pay.

[14] Clause 23.6 of the Agreement also confirms that there is no entitlement to redundancy pay pursuant to the Agreement if the employee would not be entitled to redundancy pay in accordance with the National Employment Standards.

[15] We have considered the provisions of the Agreement and the Act which the Agreement incorporates. The Agreement contains detailed arrangements concerning the transition from casual to permanent employment. These arrangements are consistent with an agreed delineation between a period of regular and systematic casual employment and an immediately subsequent period of permanent employment. Specific arrangements are outlined. Nowhere in these detailed provisions is there any support for the proposition that a period of regular and systematic casual employment **contiguous** with the commencement of permanent employment would be excluded from the calculation of *year of service, period of service* or *length of service* and, as previously indicated, the parties agree that these phrases in the Agreement have the same meaning as *years of continuous service* in s.117 (required for notice of termination or payment in lieu) and s.119 (redundancy pay) of the Act. To be included in the calculation of *years of continuous service* the period of regular and systematic casual employment must be part of the period of employment from which an employee is being made redundant. There can be no break between the period of regular and systematic casual employment and the transition to permanent employment. It cannot include separate earlier periods of employment.

[16] This decision is not support for the proposition that employees who are casual employees at the date of termination of employment are entitled to redundancy payments.

[17] The terms *service* and *continuous service* are dealt with in s.s.22 (1) to 22 (4) of the Act. A period of service by a regular and systematic casual employee is not identified as one of the exclusions from a period of service or continuous service.

> *(1) A period of **service** by a national system employee with his or her national system employer is a period during which the employee is employed by the employer, but does not include any period (an **excluded period**) that does not count as service because of subsection (2).*
>
> *(2) The following periods do not count as service:*
>
> *(a) any period of unauthorised absence;*
>
> *(b) any period of unpaid leave or unpaid authorised absence, other than:*
>
> *(i) a period of absence under Division 8 of Part 2-2 (which deals with community service leave); or*

(ii) a period of stand down under Part 3-5, under an enterprise agreement that applies to the employee, or under the employee's contract of employment; or

(iii) a period of leave or absence of a kind prescribed by the regulations;

(c) any other period of a kind prescribed by the regulations.

*(3) An excluded period does not break a national system employee's **continuous service** with his or her national system employer, but does not count towards the length of the employee's continuous service.*

(3A) Regulations made for the purposes of paragraph (2)(c) may prescribe different kinds of periods for the purposes of different provisions of this Act (other than provisions to which subsection (4) applies). If they do so, subsection (3) applies accordingly.

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(4) For the purposes of Divisions 4 and 5, and Subdivision A of Division 11, of Part 2-2:

*(a) a period of **service** by a national system employee with his or her national system employer is a period during which the employee is employed by the employer, but does not include:*

(i) any period of unauthorised absence; or

(ii) any other period of a kind prescribed by the regulations; and

*(b) a period referred to in subparagraph (a)(i) or (ii) does not break a national system employee's **continuous service** with his or her national system employer, but does not count towards the length of the employee's continuous service; and*

(c) subsections (1), (2) and (3) do not apply."

[18] The Agreement states that the entitlement to redundancy pay is calculated by reference to the period of continuous service with the respondent. A period of continuous service as defined by s.22 of the Act includes a period of regular and systematic casual employment. There are no words in the Agreement or the Act excluding any period of regular and systematic casual employment from the calculation of service for the purposes of a redundancy payment. The respondent's submission is in substance a submission that the limitation should be inferred. The limitation is not in the express words of the Agreement. In considering the construction of an enterprise agreement made pursuant to the Act the following principles have been distilled in *Golden Cockerel.*

"1. The AI Act does not apply to the construction of an enterprise agreement made under the 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 aide 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." [4]

[19] Industrial justice might suggest that it is unfair for an employee who has received a casual loading for a period of employment to have that period of employment also count towards the accrual of severance payments. However, the Act does not exclude a period of regular and systematic casual employment from the definition of *service* or *continuous service* for the purpose of severance payments, and neither does the Agreement exclude that period of employment.

[20] Applying the principles distilled in *Cockerel* we are satisfied and find that the correct answer put to the Commissioner was yes. We have therefore concluded that the Commissioner was in error.

[21] We grant permission to appeal, allow the appeal and quash the decision of Commissioner Riordan.

DECISION OF COMMISSIONER CAMBRIDGE

[22] I have had the benefit of reading the Decision of Senior Deputy President Drake and Deputy President Lawrence which sets out the background and basis for this Appeal by the *"Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union (AMWU)* (the AMWU or the Appellant), against a Decision of Commissioner Riordan [2016] FWC 638. I must respectfully disagree with the majority Decision on Appeal, and concur with the Decision of Riordan C particularly in respect to the Commissioner's finding that "*…the prior casual service of permanent employees does not count towards the calculation of the period of service for purposes of notice and redundancy pay at Forgacs*."[5]

[23] The primary issue for determination of this Appeal involves a question of statutory interpretation, specifically the correct construction that should be given to s. 22 of the *Fair Work Act 2009* (the Act). Section 22, which has been set out in the majority Decision, provides, inter alia, for a general meaning of the terms "*service*" and "*continuous service*" which are terms that are found in various sections throughout the Act.

The Meaning of Service and Continuous Service

[24] The majority have held at [18] that; "*A period of continuous service as defined by s.22 of the Act includes a period of regular and systematic casual employment.* [because] *There are no words in the Agreement or the Act excluding any period of regular and systematic casual employment from the calculation of service for the purposes of a redundancy payment.*"

[25] Respectfully, I believe that the majority have adopted an erroneous approach to the interpretation of s. 22 which is reliant upon the absence of particular words within that section, rather than the adoption of a proper characterisation of the concept of "*service*" in the overall statutory scheme, and as would be properly understood by the words "*a period during which the employee is employed by the employer*" contained in subsection 22 (1).

[26] In my view, the words "*a period during which the employee is employed by the employer*" as contained in subsection 22 (1) of the Act, must logically be confined to what is described as permanent employment, as opposed to any casual employment, be that regular, systematic casual employment, or casual employment of any other arrangement. Any arrangement of casual employment, by its intrinsic nature, does not count as service, nor does it attract service related benefits unless terms of a specific instrument prescribe otherwise.

[27] If service is given the meaning which the Appellant and the majority adopt, there is no reason why it would be confined to regular and systematic casual employment, or even regular and systematic casual employment that was contiguous with permanent employment. Service in this sense would embrace whatever may have occurred prior to permanent employment which might encompass all manner of casual arrangements. As an example; if an employee who worked for seven years as a casual, usually engaged for one day each week (an arrangement that might he held to be regular and systematic), then became a permanent full-time employee, then immediately she or he would have seven years service. Similarly, if another employee had various periods of previous irregular casual employment during several

years before becoming permanent, that employee would then have service calculated from the commencement of the first period of casual engagement.

The NES

[28] The meaning of service has significant implications for a number of the minimum standards which constitute the National Employment Standards (NES), found at Divisions 3 to 12 of Part 2-2 of the Act. In the circumstances of the current Appeal, the focus has been on Division 11 of the NES which deals with notice of termination and redundancy pay. However, there are important ramifications for various Divisions of the NES if the meaning of service was to embrace a period of casual employment prior to permanent employment being established. It is instructive to examine certain terms contained in the service related Divisions of the NES, and contemplate the application of the meaning of service as urged by the Appellant.

[29] Approaching the service related aspects of the NES in the order that they appear in the Act, one firstly encounters terminology that specifically deals with entitlements for "*a long term casual employee*". Subsection 65 (2) within Division 4 prescribes the basis upon which an employee attains an entitlement to request flexible working arrangements. *A long term casual employee* is defined in s. 12 of the Act. If the meaning of continuous service embraced a period of casual employment, there would be no need to provide for the specific entitlement for *a long term casual employee* as set out in sub-clause 65 (2) (b).

[30] Division 5 of Part 2-2 of the Act, which provides for parental leave and related entitlements, also qualifies that certain entitlements apply for *a long term casual employee*. Subsection 67 (2) specifies particular requirements that enable *a long term casual employee* to access leave under Division 5.

[31] Division 6 of the NES provides for annual leave and s. 86 states that; "*This Division applies to employees, other than casual employees.*" However, if service is given a meaning that encompasses a period of casual employment prior to permanent employment being established, the entitlements to annual leave in s. 87 which are fixed for "*each year of service*" would mean that service as a casual prior to becoming permanent, would count as service for calculating an entitlement to paid annual leave. The practical effect of construing service to include prior casual employment (even if it was regular, systematic and contiguous) is that service related benefits (like annual leave), which are unambiguously not available to a casual employee, become retrospectively bestowed on a permanent employee for a period which would have not provided any entitlement for that benefit.

[32] Similarly, Subdivision A of Division 7 which provides for paid personal/carer's leave, does not apply to casual employees (s. 95), but if a casual is converted to a permanent then, on the Appellant's construction of service, each year of service generates an entitlement to 10 days of paid leave (s. 96). If the meaning of service includes the period of casual employment before the conversion to permanent, then an entitlement to paid personal/carer's leave will arise in respect to the period of prior casual employment.

[33] It should be noted that Division 9 of the NES which deals with long service leave, does not include any prescription as to entitlements, but refers to applicable award-derived long service leave terms. In many instances, long service leave is governed by State

legislation which may or may not specify entitlements in respect to periods of casual employment, however arranged.

[34] Division 11 of the NES was the relevant focus of the circumstances which were dealt with at first instance by Riordan C. Division 11 provides for notice of termination and redundancy pay, and it is constructed slightly differently to, in particular, Divisions 6 and Subdivision A of Division 7 which, at their commencement, state that they do not apply to casual employees (ss. 86 and 95). Instead, Division 11 contains a concluding Subdivision C, (s. 123), which sets out the limits on the scope of the Division.

[35] Subsection 123 (1) (c) states that the Division does not apply to a casual employee. This exclusion for casual employees is effectively the same exclusion stipulated by ss. 86 and 95. It was argued by the Appellant that once a casual employee had been converted to a permanent employee, the exclusion no longer applied. If this was correct, the exclusions provided by s. 86 in respect to annual leave, and s. 95 in respect to personal leave would similarly no longer apply.

[36] The Appellant sought to distinguish the nature of the benefits provided by Division 11, notice and redundancy, as compared with other service related NES benefits such as those provided by Division 6, annual leave, and Division 7, personal/carer's leave. It was asserted that because the former was not an accruing service related entitlement, but instead a service related entitlement that was contingent upon particular circumstances arising which involved termination of employment, it should be considered differently in respect to the application of the meaning of service as would be properly construed by s. 22.

[37] I am unable to accept that the contingency aspect of the benefits provided by Division 11 should somehow operate to give a meaning to service which might operate differently to service as it would be relevant to any other service related benefit provided by the NES, such as annual leave and personal/carer's leave. In my view, the attempt to make some distinction of this nature was an artificial contrivance advanced to avoid the logical implication that if service included service for prior casual employment in Division 11 circumstances (termination and redundancy), it would also apply to service for annual leave and personal/carer's leave. The prospect that a casual employee who became a permanent would have her or his annual leave entitlement calculated from the date of commencement as a casual exposes the folly of the interpretation of the meaning of service in s. 22, to include any period of casual employment.

Retrospective Activation of the Exclusion Provisions

[38] As mentioned above, the exclusion of a casual employee from any notice and redundancy benefits provided by Division 11 as established by subsection 123 (1) (c), was uncontroversial. The Appellant argued that once a casual employee was converted to permanent, the exclusion no longer applied. This proposition was also uncontroversial.

[39] The highly contentious proposition that the Appellant further extrapolated was that by virtue of the application of the meaning of service and continuous service, a period of employment as a casual which would have been excluded from any benefit available under Division 11, subsequently became included, and counted for the purposes of calculation of the particular benefits of notice and redundancy provided by Division 11. In my view, this retrospective activation occasioned by the conversion of employment from casual to

permanent, and which provided for a benefit in respect of a period of casual employment which would otherwise clearly not be available, would operate to defeat the unambiguous intention of subsection 123 (1) (c).

[40] Consequently, as a matter of proper statutory construction, the general meaning of service and continuous service contained in s. 22 must give way to the specific exclusion provided by subsection 123 (1) (c). An interpretation of the general meaning of service and continuous service derived from s. 22 cannot operate to defeat the specific exclusion established by subsection 123 (1) (c). Further, the specific exclusion found in the words; "*a casual employee*" must, in a practical sense, apply to any period of employment as a casual employee notwithstanding that there may be a subsequent conversion from casual to permanent employment. The removal of the exclusion applies only from the point in time at which the individual is no longer a casual employee.

[41] The proper operation of the exclusion provision provided by subsection 123 (1) (c) is similarly applicable to the exclusion provisions provided in ss. 86 and 95. If this was not the case, a casual employee who converted to permanent employment would have her or his entitlements to annual leave and personal/carer's leave calculated from the date at which they commenced casual employment. I do not think that such an outcome can be seriously contemplated.

Some Historical Context for Casual Conversion

[42] The Decision of a Full Bench of the Australian Industrial Relations Commission in what is known as the "*Metals Casual Case*"[6] was referred to by Riordan C at first instance, and has also been mentioned by the majority above. This significant Decision introduced, inter alia, an Award prescription for casual to permanent conversion at a Federal level. Although the published Decision has been referred to, it is interesting to review the documentation associated with that case in respect to the question which is central to this Appeal, namely, whether a period of employment as a casual prior to conversion should be treated as service for the purposes of service related leave and other entitlements.

[43] The application in the "*Metals Casual Case*" which was filed on 12 August 1999, contained the following wording in respect to a proposed Award clause providing for casual conversion:

> "*4.2.3 (e) A casual employee, after four weeks of continuous employment as a casual employee, shall become a weekly employee. Any continuous engagement beyond four weeks from the date of engagement shall be treated for all purposes of this award as weekly employment.*"

[44] An amendment to the application in the "*Metals Casual Case*" was granted on 25 February 2000, and the relevant terms that dealt with the treatment of any period of employment as a casual before conversion were amended to read:

> "*4.2.3 (e) An employee who has been employed on a regular pattern of hours in 4 consecutive weeks shall after that time be engaged as a permanent employee if the employment on a regular pattern of hours continues into the next consecutive week. Any such employee shall thereafter be*

> *treated for all purposes of this award as a full-time or regular part-time employee, as the case may be.*"[7] [emphasis added]

[45] Although it is not determinative of the statutory construction question which is the subject of the contest arising in this Appeal, the historical context in which casual conversion was introduced as an Award prescription strongly suggests that there was an acceptance that any benefits conferred upon permanent employment would only commence from the time of the conversion. In my view, the interpretation of s. 22 of the Act as advanced by the Appellant is directly contrary to the position that the organisation acknowledged and adopted in the "*Metals Casual Case*".

[46] In fairness, I accept that organisational positions may alter over time. However, it may be more appropriate for any agitation of what might be considered to be a new, even radical claim[8], to be transparently promulgated and supported by an evidentiary foundation to justify the changed organisational position.

Conclusion

[47] In summary, I am of the view that the terminology used in s. 22 of the Act does not mention casual employment (of any arrangement), because service is intrinsically not derived from casual employment unless some particular terms of an instrument introduce a service related entitlement for a particular arrangement of casual employment. Further, I believe that as a matter of proper statutory construction, the exclusions for casual employees in respect to the benefits provided by Divisions 6 (s. 86), 7 (s. 95) and 11 (s. 123 (1) (c), operate to defeat the interpretation of s. 22 as contended for by the Appellant.

[48] For the above reasons, I would grant permission for the Appeal as the requisite public interest is attracted, and I would dismiss the Appeal and uphold the Decision of Riordan C.

SENIOR DEPUTY PRESIDENT

Appearances:
L Saunders for the AMWU.
B Ferguson of Australian Industry Group with *R Donker* for Forgacs Engineering Pty Ltd T/A Forgacs.

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[1] *Metal, Engineering and Associated Industries Award 1998 – Part 1, (2000) 110 IR 247 pns 178 to 183*

[2] Appellant 1 para 8

[3] Appellant 1 paras 10 - 12

[4] *The Australasian Meat Industry Employees Union v Golden Cockerel Pty Limited* [2014] FWCFB 7447

[5] "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union (AMWU) v Forgacs Engineering Pty Ltd T/A Forgacs [2016] FWC 638 @ [42].

[6] *Metal, Engineering and Associated Industries Award, 1998 – Part I* (2000) 110 IR 247.

[7] Ibid @ Exhibit AMWU 2.

[8] See transcript @ PN 278.