



## EX TEMPORE DECISION

*Fair Work Act 2009*  
s.739—Dispute resolution

**Australian Workers' Union, The**

**v**

**Alcoa of Australia Limited T/A Alcoa World Alumina Australia**  
(C2019/7124)

COMMISSIONER PLATT

ADELAIDE, 24 DECEMBER 2019

*Alleged dispute about any matters arising under the enterprise agreement and the NES;[s186(6)].*

[1] The following decision, now edited, was issued during proceedings conducted on 16 December 2019 in Perth.

[2] This is an application made by the Australian Workers' Union (AWU) pursuant to s.739 of the *Fair Work Act 2009* (Cth) contending that Mr Pavlovic was covered by the *Alcoa World Alumina Australia WA Operations AWU Enterprise Agreement 2014* (the Agreement), and that he had access to the dispute resolution procedure, and in particular, a provision to review the proposed termination of his employment.

[3] Alcoa of Australia Limited T/A Alcoa World Alumina Australia (Alcoa) have raised a jurisdictional objection, contending that Mr Pavlovic was summarily dismissed and thus not entitled to the benefit of the review process under the Agreement and/or that Mr Pavlovic did not trigger the review in accordance with the Disputes Procedure.

[4] I have received witness statements and evidence in this matter from Mr McCaig, Mr Cooper, Mr Bacon and Mr McCormick. I have also received written submissions and reply submissions from the AWU and Alcoa. There does not appear to be any great dispute on the facts.

[5] In terms of the evidence I make the following factual findings.

[6] Mr Pavlovic was covered by the Agreement.

[7] On 24 October 2019, Mr Pavlovic was involved in a workplace incident.

[8] On 30 October 2019, Mr Pavlovic was issued with a show cause letter which contained the outcomes of an investigation and the proposed disciplinary outcome, that is, termination.

[9] On 6 November 2019, the AWU on behalf of Mr Pavlovic, sent an email which sought to invoke the review processes provided by clause 18 of the Agreement.

[10] An outcome meeting was scheduled for noon on 12 November 2019. The meeting started somewhere in between 12.20pm and 12.30pm. At 12.16pm, Alcoa sent an email to the Union advising that Mr Pavlovic would be dismissed. The AWU contends that it did not receive and/or read, the email before the meeting.

[11] At the commencement of the meeting on 12 November 2019, Alcoa read out a letter which summarily dismissed Mr Pavlovic and provided that information also in writing.

### **Consideration**

[12] The first issue in this matter is the meaning of clause 18, and more importantly, clause 18(i). Clause 18 concerns itself generally with discipline processes. The first few provisions concern that disciplinary action should be applied and implemented in a fair and reasonable manner. It provides for the application of certain disciplinary outcomes, and discussions with an employee and their representative, and other provisions concerning the investigation or the conduct of an inquiry. Clause 18(b) and 18(f) concern circumstances where it is proposed a person is to be dismissed. Clause 18(i) states that nothing affects the right of the company to dismiss an employee without notice for serious misconduct and in such cases payment will be made up to the time of the dismissal only.

[13] Alcoa contend that the effect of clause 18(i) is that the review processes provided by clause 18(e) and (f) do not apply to persons dismissed without notice for serious misconduct. The AWU contend that clause 18(i) should be read as to only concern itself with a payment of notice. I am advised that the provisions contained in clause 18(i) concerning notice though are replicated in other places of the agreement.

[14] In my view, reading clause 18, it can be reasonably construed as a clause that refers to the preceding paragraphs in clause 18 that deal with the issue of dismissal. I find that clause 18(i) has the effect that the company is entitled to dismiss any employee without notice of serious misconduct despite the contents of the preceding paragraphs concerning dismissal. As a result of this the review process contemplated in clause 18(e), (f) do not apply. In reaching this conclusion I taken in account the decisions that the parties provided in their written submissions and applied the principles of interpretation contained in *AMWU v Berri Pty Ltd*.<sup>1</sup>

[15] I have found that the Mr Pavlovic was dismissed for serious misconduct. Accordingly I find that Mr Pavlovic does not have access to the review provided by clause 18 as a result of clause 18(i), and as a result of that he is jurisdictionally barred from pursuing his s.739 application.

[16] I note that Mr Pavlovic has lodged an application pursuant to s.394 of the Act, and he will be entitled to continue those proceedings. I make no comments as to the merits of his claim.

[17] As a result of my findings in relation to clause 18, I do not need to determine whether or not the 6 November 2019 communication was sufficient to trigger the operation of clause 18(e) or (f). Nor do I have to consider the impact of the approval of the 2019 Alcoa Agreement in decision [2019] FWCA 8496.

[18] For the reasons detailed above the s.739 application is dismissed.



COMMISSIONER

*Appearances:*

*C.Young* on behalf of the Applicant.

*M.Vallence* of Counsel on behalf of the Respondent.

*Hearing details:*

2019.

Perth:

December 16.

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<sup>1</sup> [2017] FWCFB 3005