

Federal Court targets 'sham' EBAs

David Marrin-Guzman

In the first judicial ruling against so-called "sham" enterprise agreements, the Federal Court has overturned a major labour hire deal voted on by just three workers but which later covered more than a thousand in the mining industry.

The precedent ruling against One Key Resources, which is one of the biggest labour providers in the black coal industry, could mean the end of a common practice for labour hire firms that unions argue undercuts wages and conditions.

Justice Geoffrey Flick found One Key Resources' 2015 enterprise agreement was invalid because three workers with limited job experience could not genuinely agree to a deal that covered 11 job classifications extending well beyond mining and construction and into road

transport, clerks and hospitality, saying "such an agreement would lack 'authenticity' and 'moral authority'."

The court heard One Key Resources hired three employees between March and August 2015 and then got its executive assistant to read out a proposed agreement to them before the employees voted for it.

Immediately after the Fair Work Commission approved the agreement the employer increased its staff dramatically and by January 2017 was employing 1118 casual employees in the black coal industry.

The CFMEU argued the agreement was a "sham" that locked in employees to a deal that removed award prohibitions on casual employment in return for rates just \$1 a week above the award minimum.

On appeal, Justice Flick said "there is

no difficulty in a small number of employees voting in favour of an enterprise agreement which has the potential to 'cover' a large number of future employees". But he said there was "considerable difficulty" in the idea that "three employees with a very confined employment experience (and covered by a limited number of awards) could approve an agreement that would 'cover' employees falling within such a diverse range of awards".

He concluded One Key Resources "unquestionably" secured consent to the agreement with the intent that it would "preclude a genuine bargaining process or any 'industrial action' throughout the duration of the agreement".

One Key Resources, which engages former Australian Rugby League captain Darren Lockyer as its public face, is a major labour provider for BHP Billiton

and Glencore in NSW and Queensland. The company pays its workers at market rates higher than the agreement, but the agreement's lower minimum pay gave it a competitive edge by allowing it greater flexibility over its tender price.

CFMEU legal director Alex Bukarica said the decision was the first of its kind under the Fair Work Act and "put an impediment in the way" to broad-coverage agreements voted by just a few workers.

"There are serious ramifications too [for One Key Resources]," he said. "It could potentially have to pay annual leave and sick leave to those employees."

The extra entitlements could also constitute backpay because the court's decision meant the agreement was not in effect from 2015 and the employees had been covered by the award's prohibitions on casuals.

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foolhardy trying to start a business in Uganda. But it just made sense. Chicken farms were something the community understood and it was a business that could fit within the grounds of the school. What made sense to us was, 'we don't have money to give you, but we have a business'."

\$14m missing at Adelaide Brighton

Simon Evans

Forensic accountants from KPMG have been called in by cement maker Adelaide Brighton to investigate up to \$14 million of financial discrepancies stemming from what the company believes may be "deliberately hidden underpayments" by customers for products they have received.

The company said it involved a small number of customers and an investigation has begun into the matter that may include "the possible involvement of an employee" of Adelaide Brighton.

It foreshadowed a hit of up to \$14 million to its earnings before interest and tax for calendar 2017, which may come down pending the amount of recoveries that could be made as it takes action to claw some back.

The company outlined that it would make a provision for doubtful debts of \$14 million because of the discovery of the irregularities.

The company said it appeared there "may have been deliberately hidden