ACTUS WORKPLACE LAWYERS

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No extra claims clauses in enterprise agreements present major risks for employers

A 3 December 2024 decision ([2024] FWC 3354) of Deputy President Roberts of the Fair Work Commission (FWC) has once again highlighted the risks for employers of including no extra claims clauses in enterprise agreements.

The case related to some changes that Valmet intended to make to the payment of a team leader allowance and its payment of wages arrangements.

The relevant enterprise agreement contained a 'no extra claims' clause which stated: *"The persons covered by this Agreement will not pursue any extra claims"*.

Roberts DP largely decided that the changes that the company intended to make were 'extra claims' for the purposes of the 'no extra claims' clause. The decision refers to some relevant Federal Court judgments relating to Toyota and NSW Trains.

The decision of Justice Flick of the Federal Court in the *NSW Trains v RTBU* [2021] FCA 883 highlights the risks for employers, and in this case the broader community, when no extra claims clauses are included in enterprise agreements. NSW Trains sought declarations from the Court regarding its ability to issue directions to employees as to the operation of a new fleet of trains (the Mariyung Fleet). Flick J decided that the proposed directions would involve the making of 'extra claims' and were hence not permitted under the relevant enterprise agreement. The Mariyunga Fleet finally began operation on 3 December 2024 – more than three years later – after extensive modifications were made to the fleet at a cost of more than $260 million, given the RTBU's bans on NSW Trains' intended method of operation.

No extra claims clauses can be traced back to the 38-hour week settlement in 1981-82 between the Metal Trades Industry Association of Australia (now Ai Group) and the Metal Trades Federation of Unions. The relevant clause in the metal industry settlement prevented *unions* making extra claims.

No extra claims clauses, as originally formulated, were not intended to prevent employers from introducing workplace changes. However, over the years the unions have succeeded in convincing many companies to include wording in enterprise agreements which prevents all parties making extra claims.

No extra claims clauses in enterprise agreements that prevent all parties making extra claims are highly problematic for employers because they can prevent the introduction of important workplace changes. Employees cannot take protected industrial action during the nominal life of an enterprise agreement and, therefore, it is unnecessary for an employer to include a no extra claims clause in an agreement.

For further advice or assistance on any enterprise bargaining issues, please contact Stephen Smith, Principal of Actus Workplace Lawyers on 0418 461 183 or Email: stephen.smith@actuslawyers.com.au.