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The dangers of 'status quo' clauses in enterprise agreements

A recent Federal Court decision highlights the dangers of 'status quo' clauses in enterprise agreements.

In [*Gulliver v Corporation of the Trustees of the Roman Catholic Archdiocese of Brisbane*](#) [2023] FCA 823, Logan J considered the effect of the following provision in the dispute settling clause in the relevant employer's enterprise agreement:

2.4.9 The status quo existing before the emergence of the grievance or dispute is to continue whilst the above procedure is being followed.

Over the years, unions have often made claims for 'status quo' clauses like the above but employers would be wise to reject such claims. The model dispute settling term for enterprise agreements in Schedule 6.1 of the *Fair Work Regulations 2009* does not include a 'status quo' provision.

The above case related to an employee (Mrs Gulliver) who was directed to show cause why her employment should not be terminated due to alleged misconduct. In response, the employee's legal representative notified the Fair Work Commission of a dispute under section 739 of the *Fair Work Act 2009*. The Commission held a conciliation conference and issued a recommendation to the parties that the employer provide further material to Mrs Gulliver about the alleged misconduct before making a final decision on whether to terminate her employment.

The employer subsequently decided not to follow the recommendation and proceeded to terminate Mrs Gulliver's employment.

Logan J decided that the employer had breached the dispute settlement term by interrupting the 'status quo':

42 What CathEd did do by the termination was to interrupt the status quo. I am well satisfied, not just on the balance of probabilities but to demonstration that, in the circumstances of this case, the contravention alleged has been proved. What has occurred here is that there has been a violation by termination of an employment of a status quo ordained by cl 2.4.9 of the Enterprise Agreement.

The judge called for further submissions on the penalty that should be imposed on the employer for breaching its enterprise agreement.

The case highlights why employers are unwise to agree to 'status quo' clauses in enterprise agreements. Such clauses can lead to important workplace changes being delayed for a lengthy period or an inability to terminate an employee until a potentially lengthy dispute settling process is completed.

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