

ACTUS WORKPLACE LAWYERS

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***TWU v Toll* – effect of resignation when contracts are won and lost**

A recent decision of Deputy President Coleman of the Fair Work Commission ([\[2025\] FWC 80](#)) highlights the advantage for employers of requesting resignations from employees when a commercial contract with a client concludes and the employees accept offers of employment with the incoming service provider.

The case involved a transport contract between Coles and Toll. When that contract ended, a new contract was entered into between Coles and Linfox. The relevant employees of Toll resigned from Toll and accepted offers of employment with Linfox after submitting their resignations.

The TWU argued that the employees were terminated at the initiative of the employer when they left Toll to take up employment with Linfox. Coleman DP rejected the TWU's argument and decided that the terminations were at the initiative of the employees because they had submitted resignations, as requested by Toll. Given this fact, the employees were not entitled to redundancy pay, and there was no need for Toll to apply to the FWC for an order that it had found acceptable alternative employment.

For advice on any transfer of employment, transfer of business, or redundancy matters, please contact Stephen Smith, Principal of Actus Workplace Lawyers, on 0418 461 183 or email: stephen.smith@actuslawyers.com.au.