Affco New Zealand Ltd v New Zealand Meat Workers and Related Trades Union Inc

[2017] NZSC 135

New Zealand law establishes a right to lockout employees if the lockout is lawful as described in the Employment Relations Act 2000. There are a range of legal remedies available if the lockout is unlawful.

On 7 September 2017, the Supreme Court ruled that Affco had unlawfully locked out seasonal meat workers from its processing plant, and as a result, ordered it to pay the New Zealand Meat Workers and Related Trades Union Inc (the Union) costs of $35,000, plus reasonable disbursements.

Unlawfully locked out employees may be entitled to remuneration. What this result will mean in terms of compensation for the workers is, as yet, unclear.

Background

Affco operates a number of meat slaughtering and processing plants. Slaughtering is seasonal work so most workers are not required to work all year round. However, for the most part, Affco re-hires the workers for the following season.

Affco had a collective agreement with the Union. This expired in December 2014 and, as no replacement collective agreement had been agreed upon, Affco employed the workers for the remainder of the season on individual employment agreements with the same terms as the collective agreement.

At the beginning of the 2015/2016 season, Affco told its seasonal workers it would not take them on for the new season unless they signed new individual employment agreements. The workers complained that those agreements were substantially less favourable than their previous collective agreement, and that Affco was unlawfully locking them out. The Union and the workers issued proceedings on that basis.

Issue

The issue was whether the workers who were set to begin work at the beginning of the 2015/2016 season were "employees" for the purposes of the lockout provision. If they were, the lockout was unlawful because, as accepted by the parties, the lockout did not relate to bargaining for a collective agreement that would bind each of the workers (it related to bargaining for individual employment agreements), and Affco had not given workers the required notice.

To prove their case, the Union and workers had to establish that the seasonal workers were "employees". They could establish this by either:

- showing that they fell within the general definition of "employee" under s 6 of the Employment Relations Act; or
- showing that the qualification to s 6 applied, that is, that the context otherwise required "employee" to be defined more broadly.

Workers could be employees under s 6 if either:

- they were people intending to work (being people who had been offered, and who had accepted work as employees); or
- they had ongoing employment relationships with Affco that *continued* during the off-season (rather than discontinuous employment where workers were not employed during the off-season).

If s 6 was not met, the Union and workers required a broader definition of "employee" to be applied in relation to the lockout provision. This would mean that "employee" could extend to cover people who are subject to a current employment agreement, *or* people who are *seeking* employment. This would cover seasonal workers even if the employment relationship was discontinuous.

Prior proceedings

The Employment Court held that Affco had a continuous employment relationship with its workers, even in the off-season because of the terms of the collective agreement, and the context in which it operated. The seasonal workers were therefore employees within the meaning of s 6, and the lockout was unlawful.

The Court of Appeal agreed that the lockout was unlawful, but did not agree that the workers were employees within the meaning of s 6. Instead, it accepted that the broader definition applied in respect of the lockout provision, and the workers were employees within that broader meaning.

Supreme Court decision

The Supreme Court dismissed Affco's appeal, upholding the Court of Appeal's decision. This meant that Affco had unlawfully locked out its workers.

While the workers were not employees under s 6 — because their employment was discontinuous and it would be a stretch to describe them as having been offered and accepted work as employees given that they had no obligation to present themselves to work the following season — they were nevertheless employees under the broader definition.

The relationship between Affco and the workers was sufficiently close to bring the workers within the scope of this broader definition because the workers were not, in contractual terms, strangers to the employer. They had previously worked for Affco, and Affco owed them a number of continuing obligations — including re-hiring for the following season — despite the fact that their employment had terminated at the end of the season.

Comment

While this case confirms the Court of Appeal's finding that "employee" may have varying definitions under different sections of the Employment Relations Act, this flexibility is likely to have strict limits. The Court has made it clear that

where there is a defined statutory meaning subject to a context qualification, only strong contextual reasons can justify departure from the defined meaning. This "context" is limited to the context of the relevant statute, and its purpose.

Significant factors in this case were the previous relationships of seasonal employment, the parties' desire to engage in further seasonal employment, as well as the enduring contractual rights to re-employment that survived outside the current employment relationship. It will be interesting to see whether the decision in *Affco* will have implications that extend beyond those specific facts.

Hannah Stanford, Law Clerk, DLA Piper