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High Court dismisses Catholic school employer backpay challenge

The High Court of Australia (HCA) has refused to grant special leave for Queensland Catholic employers seeking to appeal a decision that two former teachers were entitled to pay increases contained in new collective agreements despite resigning before the new agreement took formal effect with approval by the Fair Work Commission (FWC), the Independent Education Union – Queensland and Northern Territory (IEU-QNT) Branch said today.

IEU-QNT Branch Secretary Terry Burke said Toowoomba Catholic Education and Downlands College unsuccessfully sought to challenge a decision of the full court of the Federal Court in its appellate jurisdiction, which found that former staff who resigned before a new collective agreement formally became operative were entitled to back-dated pay increases contained in the agreement.

“The HCA’s decision to refuse special leave to hear the appeal is a victory for common sense and confirms our union’s correct interpretation of the law,” Mr Burke said.

“Their Honours wrote in the joint decision of barely 100 words that ‘the proposed appeal lacks sufficient prospects of success to warrant the grant of special leave to appeal.

“It was a bizarre and shameful move by employers to bother pursuing this matter in the HCA after last December’s full court decision.

“It is almost mind-boggling they bothered pursuing the appeal, given the estimation of legal fees the employers would have accrued compared to the modest sums of employee back pay of barely \$2000 at stake.

“As part of the decision, costs were awarded to our side, meaning the employers must reimburse our union for legal fees spent throughout the High Court matter.

“The Federal Court will now determine what penalties to impose on the employers for breaching the collective agreement by failing to pay employees their full entitlements.

“Meanwhile, our union will pursue the employers to ensure they pay the full amounts of backpay owed to all the other members who have been denied their rightful backpay,” he said,

Mr Burke said the IEU-QNT advanced the case on behalf of two teachers: Member A, who was employed by Downlands College, Toowoomba and Member B, who was employed by Toowoomba Catholic Education.

"Our interpretation of the agreement was that the members were eligible to receive the higher rates of pay applicable from 1 July 2019, despite submitting their resignation prior to 2 December 2020, when the new collective agreements officially came into operation, because they worked beyond the applicable July 2019 date," Mr Burke said. "The primary judge initially ruled in the employers' favour, a finding we strongly disagreed with.

"Our union appealed this decision, and a full court of Federal Court judges in its appellate jurisdiction has found the former teachers were entitled to pay increases contained in the new agreements despite resigning before the agreement took formal effect with approval of the agreement by the FWC.

"The successful appeal clarifies the legal position that clauses in a workplace agreement can include backdated conditions to have effect prior to the agreement's approval and that these conditions can be found to apply to former employees employed at the earlier time.

"It is an important victory for Australian workers.

"The ruling clarifies a previously murky and contested area of law regarding the definition of 'applicable' employees and entitlement to provisions where the operative date predates formal approval of the agreement.

"While awarding the two teachers directly involved a combined "relatively modest" amount of \$2171, the full court decision noted that behind these "alleged arrears lurks an industrial law issue concerning entitlement, if any, to back pay after collective agreements come into formal operation if the agreement contains an earlier operative date.

"It's also a positive outcome for the Catholic employers involved.

"Rather than spend tens and tens of thousands of dollars on a High Court hearing, they can now use those dollars to support staff and students in their schools.

"This is what they should have done all along," Mr Burke said.

ENDS

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The Independent Education Union – Queensland and Northern Territory (IEU-QNT) represents more than 17,000 teachers, school support staff, principals, early childhood education and VET and RTO employees across Queensland and the Northern Territory.
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