



HIGH COURT OF AUSTRALIA

4 August 2021

WORKPAC PTY LTD v ROSSATO & ORS [2021] HCA 23

Today, the High Court unanimously allowed an appeal from a judgment of the Full Court of the Federal Court of Australia. The appeal concerned the nature of casual employment. The first respondent ("Mr Rossato") was employed as a production worker by the appellant labour-hire company ("WorkPac") under a series of six contracts, or "assignments", to perform work for one of WorkPac's clients. At all relevant times, WorkPac treated Mr Rossato as a casual employee, such that Mr Rossato was not paid the leave and public holiday entitlements owed by employers to non-casual employees pursuant to the *Fair Work Act 2009* (Cth) ("the Act") and the enterprise agreement which governed his employment.

On 16 August 2018, judgment was delivered in *WorkPac Pty Ltd v Skene* (2018) 264 FCR 536. In that decision, it was held that Mr Skene, who had been employed by WorkPac in circumstances similar to those of Mr Rossato, was not a casual employee. In reliance on that decision, Mr Rossato claimed that he was likewise not a casual employee, and was therefore entitled to be paid for untaken annual leave, public holidays, and periods of personal leave and compassionate leave taken during his employment. WorkPac denied his claims and filed an originating application in the Federal Court seeking declarations that Mr Rossato had been a casual employee for the purposes of the Act and the relevant enterprise agreement. In the alternative, WorkPac claimed to be entitled to a set off, or to restitution, in respect of payments it had made to Mr Rossato in compensation for, or in lieu of, the entitlements claimed by Mr Rossato.

The Full Court concluded that Mr Rossato was not a casual employee for the purposes of the Act and the enterprise agreement, and declared that Mr Rossato was entitled to the payments he claimed. The Full Court also rejected WorkPac's set off and restitution claims. By grant of special leave, WorkPac appealed to the High Court.

The High Court held that a "casual employee" is an employee who has no firm advance commitment from the employer as to the duration of the employee's employment or the days (or hours) the employee will work, and provides no reciprocal commitment to the employer. Where parties commit the terms of their employment relationship to a written contract and thereafter adhere to those terms, the requisite firm advance commitment must be found in the binding contractual obligations of the parties; a mere expectation of continuing employment on a regular and systematic basis is not sufficient for the purposes of the Act. Mr Rossato's employment was expressly on an "assignment-by-assignment basis". Mr Rossato was entitled to accept or reject any offer of an assignment, and at the completion of each assignment WorkPac was under no obligation to offer further assignments. That Mr Rossato was to work in accordance with an established shift structure fixed long in advance by rosters did not establish a commitment to an ongoing employment relationship beyond the completion of each assignment. In carrying out each assignment, Mr Rossato worked as a casual employee for the purposes of the Act and the enterprise agreement. On that footing, it was unnecessary to consider WorkPac's set off and restitution claims.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*