

“Casual Double Dipping” & Casual Conversion Clauses

CASUAL “DOUBLE DIPPING”

Casual ‘Double Dipping’ is where a casual employee is found to be a permanent employee and becomes entitled to paid leave entitlements and gets to keep their casual loading without any offset.

CASE STUDY: WORKPAC PTY LTD V ROSSATO (2020)

- **WorkPac (labour hire company) employed Mr Rossato between July 2014 and April 2018 as a casual.**
 - Mr Rossato was employed with six consecutive contracts of employment with Workpac.
 - Some containing rosters which allocated shifts up to 7 months in advance.
 - Most of the contracts contemplated payment of casual loading but Workpac did not simply pay Mr Rossato the casual rate provided in the EA, it paid Mr Rossato a higher rate of pay different to the EA rates.

THE DECISION

The Federal Court found that because Mr Rossato's employment was "regular, certain, continuing, constant and predictable", and he was given rostered shifts well in advance, he was eligible to entitlements that full time employees receive.

FURTHER CLAIMS

WorkPac claimed that this would amount to "double-dipping" — because Mr Rossato was not only getting paid a 25 per cent loading but would also be paid permanent employee benefits.

But the Federal Court disagreed, also knocking back the company's claim that if Mr Rossato was to be considered a permanent employee, he should have to forfeit his casual loading.

FURTHER CLAIMS

Workpac claimed that because it had paid Mr Rossato more than what he was entitled to under their EA, they were entitled to 'set off' the amount of the overpayment against any other entitlement that Mr Rossato was found to have.

It was decided that because Mr Rossato did not have an express casual clause in his employment contract, WorkPac was not entitled to make an off -set claim.

HOW DO I PROTECT MY BUSINESS?

Consider the real substance of an employee's work rather than the label attached to it.

1. Conversion

- Electrical Award (6 months)
- Regular and systematic casual employee
- Document conversion or rejection

2. Review roster system

- Not set too far in advance
- Allow for flexibility
- Change their shifts

HOW DO I PROTECT MY BUSINESS?

3. Review Employment Contracts

- Notice of termination
- Leave entitlements
- Guarantee work (set rosters)
- Restraint of trade
- Separately identifiable casual loading

HOW DO I PROTECT MY BUSINESS?

3. More Casuals

- Increase pool of employees
- Inform them of irregular and sporadic work