

## LEGAL UPDATE: Seasonal workers' rights continue under collective agreement

On 6 October 2016 the Court of Appeal released its decision<sup>1</sup> in AFFCO's appeal of the Employment Court judgment holding that AFFCO had unlawfully locked out union members and breached good faith.<sup>2</sup>

The Court of Appeal disagreed with the Employment Court that the employees were engaged on indefinite employment agreements which were not terminated between killing seasons but agreed that they had been unlawfully locked out.

### Background

Meat workers are employed under a collective agreement to work killing seasons. At the end of each meatpacking season, the employees cease working at the plant and their employment terminates. The employees are then hired back at the commencement of the new season strictly according to seniority.

The collective employment agreement expired on 31 December 2013. The employees continued to be employed under IEAs with the same terms and conditions as the expired collective agreement. Before the start of the 2015/2016 season, AFFCO advised employees it would not re-engage them for work unless they accepted terms and conditions of employment in new IEAs it was offering.

The Union challenged this in the Employment Court. It found there was a continuous employment relationship during the off-season and that the employees were unlawfully locked out when AFFCO refused to re-engage them in employment at the commencement of the 2015/2016 killing season other than on terms and conditions of employment contained in IEAs offered by AFFCO.

### The Court of Appeal Decision

The Court of Appeal disagreed that there was a continuous employment relationship in the off-season. It found that the Employment Court had failed to adopt the correct starting point for contractual interpretation of the collective agreement - the long standing understanding that employees would

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<sup>1</sup> [2016] NZCA 482.

<sup>2</sup> [2015] NZEmpC 204.

not be employed in the off-season. This was confirmed by the case law and practice of the parties. In failing to understand that point, the Employment Court failed to interpret the collective agreement correctly and found ambiguity where there was none.

Instead the Court of Appeal found that the collective agreement provided for inter-seasonal termination of employment and that many clauses in the collective agreement were only explicable if the parties intended to terminate employment at the end of each season.

However, this decision was not decisive in the determination of the appeal. This was because the Court of Appeal agreed with the Employment Court that the employees had been (unlawfully) locked out. The question as to whether there was a 'lockout' hinged on whether the workers whose employment had been terminated for the off-season were "*employees*" within the meaning of section 82 of the Employment Relations Act 2000 which governs lockouts.

The Court of Appeal agreed that the meat workers fell within the definition of "*employee*" in this section because the collective agreement created ongoing enforceable contractual rights and duties including the obligation to re-employ employees according to seniority. It considered the application of section 82 to employees who had continuing obligations owed to them during the off-season was "*obvious*".<sup>3</sup>

The Court of Appeal was also critical of AFFCO. It stated that it was:

*"obvious that AFFCO's objective was to undermine or compromise the parallel process of negotiating a collective agreement which was then underway with the union. The company's purpose was to fragment the future bargaining strength of the workforce by isolating individual workers. By this means it took advantage of the inherent inequality of its relationship with the seasonal workers who were members of its captive workforce..."*<sup>4</sup>

## **Conclusion**

The Court of Appeal concluded that although the collective agreement contemplated that employees' employment would terminate in the off-season, the unlawful lockout provisions in section 82 extend to and protect former employees who enjoy existing contractual rights to an offer of re-employment.

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<sup>3</sup> [2016] NZCA 482 at [63].

<sup>4</sup> At [66].