



HIGH COURT OF AUSTRALIA

10 September 2014

COMMONWEALTH BANK OF AUSTRALIA v BARKER

[2014] HCA 32

Today the High Court unanimously allowed an appeal from a decision of the Full Court of the Federal Court of Australia and held that a term of mutual trust and confidence should not be implied by law in employment contracts.

Stephen Barker's employment with the Commonwealth Bank of Australia ("the Bank") was terminated by reason of redundancy on 9 April 2009. On 2 March 2009, Mr Barker was told that his position was to be made redundant and that if he was not redeployed within the Bank, which was the Bank's preference, his employment would be terminated approximately four weeks thereafter. Having been deprived of access to his Bank email account and voicemail, Mr Barker was not informed about an alternative position within the Bank until 26 March 2009. He was not contacted by the recruitment consultant involved in facilitating the recruitment process for that position, nor was the possibility of retraining for that role discussed with him.

Mr Barker commenced proceedings against the Bank in the Federal Court of Australia. He alleged that the conduct of the Bank was in breach of an implied term of mutual trust and confidence and resulted in him being denied the opportunity of redeployment. The primary judge held that there was a term of mutual trust and confidence implied in the agreement between Mr Barker and the Bank and that the Bank's serious breach of its own redeployment policy amounted to a breach of that implied term. The Full Court, by majority, agreed that a term of mutual trust and confidence was implied by law into the agreement, but held that the primary judge erred in treating the term as co-extensive with an obligation to observe the redeployment policy. The majority held that the implied term required that the Bank take positive steps to consult with Mr Barker about alternative positions within the Bank and give him the opportunity to apply for them. By failing to make contact with him for a period which the primary judge had found to be unreasonable, the term had been breached.

By grant of special leave, the Bank appealed to the High Court. The question in the appeal was whether employment contracts contain a term of mutual trust and confidence implied by law that the parties will not, without reasonable cause, conduct themselves in a manner likely to destroy or seriously damage the relationship of trust and confidence between them. Allowing the appeal, the Court held that the proposed term was not necessary in the sense that would justify implying it by law into all employment contracts.

- *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.*