



HIGH COURT OF AUSTRALIA

16 October 2014

CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION v BHP COAL PTY LTD

[2014] HCA 41

Today the High Court by majority held that the respondent's termination of the employment of an employee, who was a member of the appellant, was not an action taken for a reason which is prohibited by the *Fair Work Act 2009* (Cth) ("the Act").

The appellant, Construction, Forestry, Mining and Energy Union ("the CFMEU"), is an industrial association which has members employed by the respondent, BHP Coal Pty Ltd ("BHP Coal"). One of the CFMEU's members, Mr Doevendans, participated in a lawful protest organised by the CFMEU, in the course of which he held up and waved a sign at passing motorists, which read "No principles SCABS No guts". Mr Doevendans' employment with BHP Coal was subsequently terminated.

The CFMEU brought proceedings in the Federal Court of Australia, claiming that the termination of Mr Doevendans' employment contravened the Act. Section 346(b) of the Act prohibits an employer from taking adverse action against an employee, which includes terminating the employee, because the employee has engaged in industrial activity. Section 347 of the Act provides that a person engages in industrial activity if the person, among other things, participates in a lawful activity organised or promoted by an industrial association, or represents or advances the views, claims or interests of an industrial association. The primary judge accepted evidence given by BHP Coal's officer as to the reasons for the termination of Mr Doevendans' employment. Nonetheless, the primary judge concluded that s 346(b) had been contravened. This conclusion was reversed by a majority of the Full Court of the Federal Court. By special leave, the CFMEU appealed to the High Court.

By majority, the High Court dismissed the appeal. A majority of the Court held that the reasons found by the primary judge to actuate the decision to dismiss Mr Doevendans did not include his participation in industrial activity, or his representing the views of the CFMEU, but rather related to the nature of Mr Doevendans' conduct and what it represented to the officer about Mr Doevendans as an employee. The termination was, therefore, not contrary to s 346(b) of the Act.

- *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.*