



HIGH COURT OF AUSTRALIA

2 December 2015

FAIR WORK OMBUDSMAN v QUEST SOUTH PERTH HOLDINGS PTY LTD & ORS

[2015] HCA 45

Today the High Court unanimously allowed an appeal from the Full Court of the Federal Court of Australia. The High Court held that s 357(1) of the *Fair Work Act* 2009 (Cth) prohibits an employer from misrepresenting to an employee that the employee performs work as an independent contractor under a contract for services with a third party.

Quest South Perth Holdings Pty Ltd ("Quest") operated a business of providing serviced apartments and employed Ms Margaret Best and Ms Carol Roden as housekeepers. Contracting Solutions Pty Ltd ("Contracting Solutions") operated a labour hire business. Quest and Contracting Solutions purported to enter into a triangular contracting arrangement under which Contracting Solutions purported to engage Ms Best and Ms Roden as independent contractors under contracts for services, and then purported to provide the services of Ms Best and Ms Roden as housekeepers to Quest under a labour hire agreement. Quest represented to Ms Best and Ms Roden that they were performing housekeeping work as independent contractors of Contracting Solutions, despite the fact that they continued to perform that work for Quest under implied contracts of employment.

Section 357(1) provided that: "A person (the *employer*) that employs, or proposes to employ, an individual must not represent to the individual that the contract of employment under which the individual is, or would be, employed by the employer is a contract for services under which the individual performs, or would perform, work as an independent contractor."

The Fair Work Ombudsman commenced a proceeding in the Federal Court claiming, amongst other relief, pecuniary penalty orders against Quest for contraventions of s 357(1). The Federal Court ordered at first instance that the proceeding be dismissed so far as it related to that claim, and an appeal from that order was dismissed by the Full Court. The Full Court held that s 357(1) would only be contravened by an employer's representation to an employee which mischaracterised the contract of employment that existed between the employee and the employer as a contract for services made between the employee and the employer, not between the employee and a third party.

By grant of special leave, the Fair Work Ombudsman appealed to the High Court. The High Court unanimously allowed the appeal, holding that s 357(1) prohibited the misrepresentation of an employment contract as a contract for services with a third party. The Court declared that Quest contravened s 357(1) by representing to Ms Best and Ms Roden that the contracts of employment under which they were employed by Quest were contracts for services under which they performed work as independent contractors.

- *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.*