



HIGH COURT OF AUSTRALIA

13 December 2017

REGIONAL EXPRESS HOLDINGS LIMITED v AUSTRALIAN FEDERATION OF AIR
PILOTS
[2017] HCA 55

Today, the High Court unanimously dismissed an appeal from a decision of the Full Court of the Federal Court of Australia. The High Court held that an industrial association registered under the *Fair Work (Registered Organisations) Act 2009* (Cth) ("the FWRO Act") is entitled to represent the industrial interests of a person, within the meaning of s 540(6)(b)(ii) of the *Fair Work Act 2009* (Cth), where that person is eligible for membership of the industrial association pursuant to its eligibility rules but is not a member of the industrial association.

The respondent is an industrial association registered as an organisation of employees under the FWRO Act. The appellant sent a letter to a number of persons to the effect that any person who completed its cadet programme and insisted on his or her workplace right to appropriate accommodation during layovers would not be given a position of command. The respondent alleged that the letter contravened various civil remedy provisions of the *Fair Work Act* and applied to the Federal Circuit Court of Australia for pecuniary penalty orders. The persons to whom the letter had been sent were not members of the respondent. The appellant applied to have the claim summarily dismissed on the basis that the respondent lacked standing because it was not an industrial association "entitled to represent the industrial interests of" the persons who had received the letter as required by s 540(6)(b)(ii) of the *Fair Work Act*. The primary judge dismissed that application, holding that, because the persons to whom the letter had been sent were eligible for membership of the respondent, the respondent was entitled to represent their industrial interests within the meaning of s 540(6)(b)(ii) of the *Fair Work Act*.

The appellant appealed to the Full Court of the Federal Court. The Full Court dismissed the appeal, holding that an historical survey of legislative development of the expression "entitled to represent the industrial interests of" in s 540(6)(b)(ii) of the *Fair Work Act* demonstrated that it had been legislatively deployed and understood as allowing an industrial organisation to represent the industrial interests of employees who are eligible for membership of the organisation.

By grant of special leave, the appellant appealed to the High Court. The Court held that, in the case of an industrial association which is registered as an organisation under the FWRO Act, the fact that a person is eligible for membership of the association in accordance with its eligibility rules is sufficient to make the association "entitled to represent the industrial interests of" that person within the meaning of s 540(6)(b)(ii) of the *Fair Work Act*. This construction was consistent with the context of the provision both within the *Fair Work Act* and against the background of its legislative history. Accordingly, the Full Court did not err in their construction of the expression and the appeal was dismissed.

- *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.*