



HIGH COURT OF AUSTRALIA

Public Information Officer

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AUSTRALIAN COMMUNICATION EXCHANGE LIMITED v DEPUTY COMMISSIONER OF TAXATION

The High Court of Australia today held that the superannuation guarantee charge paid by an employer of casual workers under a specific award was required to make superannuation deductions from wages payable for work performed during ordinary working hours.

Australian Communication Exchange operated a national telephone relay service for people with hearing or speech impairments. Relay officers acted as a medium, converting typed messages to voice and vice versa. The company provided the service 24 hours a day under an agreement with the federal government. It operated call centres in Melbourne and Brisbane, but the appeal related to workers at the Brisbane call centre only. The workers, all casual, were paid according to Queensland's Clerical Employees Award.

The company paid the employer superannuation guarantee charge (then three per cent of pay for the period in question between June 1, 1995, to June 30, 1998) based on rates for ordinary hours, while the Australian Taxation Office claimed the contribution was also payable on hours worked in excess of the 38-hour standard week. Under the relevant legislation, the Superannuation Guarantee Charge Act 1992 and the Superannuation Guarantee (Administration) Act 1992, employers' obligations with respect to deductions depended upon the terms used in and the language of the award. The outcome of the appeal essentially depended therefore upon the construction to be placed on the award.

In the Federal Court, Justice John Dowsett found in favour of the company. The ATO appealed to the Full Court of the Federal Court, which adopted a compromise between the parties' positions by unanimously holding that the contribution was owed on the ordinary hourly rate paid for overtime but not on the overtime loading. The company appealed to the High Court and the ATO cross-appealed.

The High Court, by a 4-3 majority, allowed Australian Communication Exchange's appeal, reinstating Justice Dowsett's decision, and dismissed the cross-appeal. The majority held that the contribution should be calculated on ordinary time earnings only and not on any component of overtime pay.

- *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.*