



HIGH COURT OF AUSTRALIA

Public Information Officer

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MINISTER FOR EMPLOYMENT AND WORKPLACE RELATIONS v GRIBBLES
RADIOLOGY PTY LTD AND HEALTH SERVICES UNION OF AUSTRALIA

GRIBBLES RADIOLOGY PTY LTD v HEALTH SERVICES UNION OF AUSTRALIA AND
MINISTER FOR EMPLOYMENT AND WORKPLACE RELATIONS

Gribbles Radiology was not the successor to a business so was not bound to pay severance pay to employees of that other business, the High Court of Australia held today.

Region Dell Pty Ltd operated a number of medical clinics including the Moorabbin Heritage Clinic in Melbourne. At some of those clinics it licensed part of the premises to radiology practices. Region Dell provided radiology equipment and the practice provided radiographers and consumables. At Moorabbin it licensed Gribbles in 1999 after the Melbourne Diagnostic Imaging Group licence ended. Gribbles obtained MDIG's permission to contact its Moorabbin staff and four radiographers accepted its offer of continued employment on the same award conditions, but in 2000 Gribbles closed its practice at Moorabbin and terminated the radiographers' employment.

The Health Services Union claimed Gribbles owed severance pay to the radiographers based on their years of service with MDIG and its predecessor Southern Radiology. Both MDIG and Southern Radiology were parties to the Health Services Union of Australia (Private Radiology – Victoria) Award 1993, but Gribbles was not. If Gribbles were a successor to MDIG then section 149(1)(d) of the Workplace Relations Act provided that it was bound by the award.

The union brought proceedings against Gribbles in the Federal Court of Australia for its alleged failure to pay severance pay in accordance with the award and claimed penalties for breaching the award. The Court ordered Gribbles to pay the severance pay plus interest and a \$50 penalty to the union. The Full Court of the Federal Court dismissed the appeal. Gribbles and the Minister, who had intervened in the Federal Court proceedings, each appealed to the High Court.

The High Court, by a 4-1 majority, allowed the appeals. It held that Gribbles was not a successor to any part of the MDIG business so was not bound by the award. Apart from contacting MDIG about recruiting staff, there was no evidence of any dealing between MDIG and Gribbles about Gribbles taking over the Moorabbin practice. No assets, tangible or intangible, were sold or transferred from MDIG to Gribbles. Gribbles did not negotiate with MDIG to take over the practice at Moorabbin but negotiated with Region Dell about the licence agreement. Both Gribbles and MDIG used Region Dell's equipment and premises and each had a separate licence from Region Dell. The fact that both conducted the same business activity – operating radiology practices – was not enough to satisfy section 149(1)(d).

- *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.*