HIGH COURT OF AUSTRALIA

6 August 2025

HELENSBURGH COAL PTY LTD V BARTLEY & ORS
[2025] HCA 29

Today, the High Court unanimously dismissed an appeal from a decision of the Full Court of the Federal Court of Australia.

The first to twenty-second respondents ("the Employees") worked at a mine operated by the appellant ("Helensburgh"). As a result of an economic downturn, Helensburgh restructured its operations at the mine, thereby requiring fewer workers, and consequently dismissed the Employees. Helensburgh continued to deploy contractors to perform work at the mine.

The Employees applied to the Fair Work Commission ("the FWC") for remedies for unfair dismissal. Helensburgh objected to the applications on the basis that the terminations were cases of "genuine redundancy" under s 389 of the *Fair Work Act 2009* (Cth). Through a series of four decisions, the FWC ultimately held that the terminations were not cases of "genuine redundancy" because, applying s 389(2), it would have been reasonable in all the circumstances for the Employees to be redeployed to perform the work that was being performed by the contractors. In its decisions, the Full Bench of the FWC applied the *House v The King* (1936) 55 CLR 499 standard of appellate review. Helensburgh applied to the Full Federal Court for judicial review of the FWC decisions. The Full Federal Court dismissed the application.

Helensburgh's principal contention on its appeal to the High Court was that, in undertaking the inquiry under s 389(2) of the *Fair Work Act* as to whether it would have been reasonable in all the circumstances for a person to be redeployed within the employer's enterprise, the FWC was not permitted to inquire into whether an employer could have made changes to its enterprise so as to create or make available a position for an employee who would otherwise have been redundant.

The High Court held that the FWC could inquire into whether it would have been reasonable in all the circumstances for the Employees to be redeployed in Helensburgh's enterprise to perform work that was being performed by the contractors. The plurality of the High Court held that, on the correct construction of s 389(2), the FWC was permitted to inquire into whether an employer could have made changes to how it uses its workforce to operate its enterprise so as to create or make available a position for an employee who would otherwise have been redundant. The High Court held that it was unnecessary to decide whether the FWC was wrong to apply the *House v The King* standard of appellate review because the application of the wrong standard of appellate review would have been an error within jurisdiction in any event.