

INDUSTRIAL RELATIONS UPDATE

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Employment for Project's Duration no Bar to Unfair Claim

When engaging employees for a specific project/commercial contract, many employers assume they are immune from unfair dismissal claims when the project comes to an end. This may not be the case though, according to a recent FWC appeal full bench, which found that an administrative manager was entitled to make a claim, because she wasn't employed to perform a "specified task," despite being engaged for a specific project.

The manager was employed by a construction service provider to work on a construction project. When the project began to wind down, the company terminated her employment, in accordance with the employment contract which had stated she would be engaged on that specific project

In the original decision, DP Asbury ruled that the manager was not unfairly dismissed because her employment contract clearly stated that she was employed specifically for the project and her position would be terminated "on demobilization from site, when the position was no longer required."

DP Asbury said that the meaning of "specified task" has been "synonymous with the terms role, job or project that an employee is employed specifically to perform as distinct from the employer's undertaking." This meant the employee was effectively barred from making an unfair dismissal claim.

On appeal though, the FWC full bench overturned DP Asbury's ruling, finding that she had been mistaken in her treatment of

"specified task" as being a "role, job or project". The full bench found that the manager was not employed to perform a "specified task." Despite being engaged on a project that would inevitably come to an end, there was nothing in the manager's contract that stated the nature of the work to be performed was task specific or for a fixed period.

It then went on to narrow the definition of specified task to mean "one which is completed when the employee finishes the work involved in it." The bench traced case law which made the distinction between an employee's specified task and an employer's project.

This meant the employee was entitled to make an unfair dismissal claim. However, the bench found that there was a valid reason for the dismissal, namely the project's completion, and hence dismissed the claim.

This decision clarifies an important distinction between an employer's task and an employee's task. It confirms that tying employment to a project is OK if there is a specified term (i.e. a definite end date) or a person is engaged to complete a specific task within the overall project. If neither of those circumstances exist, then terminating the employment at a time designed to coincide with the end of a project/commercial contract may be construed as a redundancy rather than the end of an agreed employment period or the completion of a task.

[Kirsten Dale v Hatch Pty Ltd \[2016\] FWCFB 922 \(15 February 2016\)](#)

Does a redundant position automatically mean termination of employment?

The answer could surprise you. In a recent Federal Circuit Court case, it was found where a senior commercial manager's role was made redundant, he was not entitled to redundancy or severance pay.

Due to corporate restructuring, the manager's position was made redundant. The company wanted to retain his services though and invited him to apply for a number of alternative senior roles. However, the manager argued that the alternative positions were unsuitable and so, in his view, he was entitled to redundancy and severance payments.

The company challenged the manager's stance by reminding him that his employment contract included a term allowing for his role, duties and responsibilities to be altered from time to time. This meant that the manager's employment continued, despite his redundant position, and therefore he was not entitled to any redundancy or severance payment.

The manager did not accept this though and eventually told the company he would no longer attend work. The company took the

view that he had abandoned his employment and paid him up until that point.

The court found that the manager had not been terminated because his position was made redundant. The judge accepted that the manager's contract provided for changes to his original job description and title. He also noted that the manager could not demonstrate that the alternative positions offered by the company were significantly different to his current role in terms of remuneration, status and responsibilities.

This case traversed the case law that the redundancy of a job or position does not necessarily mean that an employee's employment is terminated. Employers can include express terms in their employment contracts that clearly deal with changes to an employee's position, duties and responsibilities. By doing so, employees may avoid some of the confusion, as witnessed in this case, in relation to redundancy and termination of employment.

[Adcock v Blackmores Limited & Ors \[2016\] FCCA 265 \(12 February 2016\)](#)