DECISION

Fair Work Act 2009
s.739 - Application to deal with a dispute

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing And Allied Services Union Of Australia - Communications Division - CWU Central Branch
v
Telstra Limited
(C2025/9201)

COMMISSIONER TRAN MELBOURNE, 17 AUGUST 2026

Alleged dispute about any matters arising under the enterprise agreement and the NES;[s186(6)]

[1] This is a decision about whether or not the Commission has jurisdiction to deal with a dispute filed by the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (**CEPU/applicant**) on behalf of its members Darren **Bishop**, Andrew **Forde**, Ty **Bernard** and Kendall **Nobbs** (collectively, **the affected members / employees)**.

[2] The respondent is Telstra Limited (**Telstra/respondent**).

[3] The dispute relates to whether the jobs of the affected members were made redundant within the meaning of clause 40.2 or clause 43 of the ***Telstra*** *Limited Enterprise* ***Agreement 2024-2027*** (or **Current Agreement**) when Telstra ceased managing, operating and maintaining the Hybrid Fibre Coaxial (**HFC**) Network, which delivered high-speed broadband and pay TV services to homes across Australia. In March 2025, Telstra announced to its staff that it had "successfully decommissioned the last remnants of the Telstra Hybrid Fibre Coaxial Network." But the final step in switching off the network was just that; the process had begun years earlier.

[4] The Current Agreement was approved on 27 August 2024 and began to operate on 1 October 2024.[1] Its nominal expiry date is 30 September 2027. The immediate predecessor agreement was the ***Telstra*** *Limited Enterprise* ***Agreement 2022-2024*** (or **2022 Agreement**). The 2022 Agreement was approved on 6 July 2022 and began to operate on 13 July 2022. Its nominal expiry date was 30 September 2024. There is no dispute that the relevant provisions in both agreements – coverage, clauses relating to redundancy, and the dispute resolution procedure – are identical.

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[1] [2024] FWCA 3123; AE525928, PR778683

[5] The crux of the respondent's arguments is that the uncontested evidence of the affected members is that their jobs were redundant prior to 1 October 2024, and so this dispute is about whether the affected members were redundant under an earlier, no longer operating enterprise agreement, being the 2022 Agreement. The respondent submits that where the dispute is about a matter under the 2022 Agreement, the Commission does not have jurisdiction to arbitrate it as that agreement ceased to operate on 30 September 2024, when it was replaced by the Current Agreement.

[6] The applicant's submission is that the affected members' jobs were redundant "from 2022 onwards" but it became "clear that every HFC job was redundant by March 2025, at the latest." Further, the applicant submits that the dispute arose when it took the first step in the dispute settlement procedure under the enterprise agreement. There is no dispute that the applicant first notified Telstra of a dispute in June/July 2025 and sought that the Commission arbitrate the dispute in October 2025, during the operation of the Current Agreement.

Basis of the Commission's jurisdiction

[7] There is no controversy about the source of the Commission's power to arbitrate disputes.

[8] Section 595 of the *Fair Work **Act** 2009* (Cth) provides that the Commission may deal with disputes only if it is expressly authorised to do so under or in accordance with another provision of the Act. Section 739 provides the Commission with the power to deal with a dispute where an enterprise agreement includes a term that provides a procedure for dealing with disputes under s 738(b). In exercising its dispute resolution powers, the Commission is exercising a power of private arbitration, conferred by statute and as defined by the terms of the agreement under which the dispute resolution procedure arises.[2]

[9] Section 51 of the Act provides that an enterprise agreement can only impose obligations or give entitlements when it applies to a person. Section 52 of the Act provides that an agreement applies if it is in operation, covers the employee, employer or organisation and no other provision of the Act provides or has the effect that the agreement does not apply to the employee, employer or organisation. Section 53 of the Act provides that an agreement covers an employee or employer if the agreement is expressed to cover the employee or the employer.

[10] The principles of interpretation of enterprise agreements are well settled. Recently in *HSU v Mercy Hospitals Victoria Ltd*,[3] the Full Bench reiterated a distillation of the principles from an earlier Full Bench[4] of the Full Court of the Federal Court in *James Cook University v Ridd*.[5] The principles have also been comprehensively set out by the Full Bench in *AMWU v*

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[2] *CFMEU v AIRC* [2001] HCA 16; (2001) 203 CLR 645 at [31]; see also *SC Hydro Pty Ltd v CFMEU and Another* [2026] FWCFB 27 at [43]

[3] *HSU v Mercy Hospitals Victoria Ltd* [2024] FWCFB 235 at [112]

[4] *AMA (Victoria) Ltd v The Royal Women's Hospital* [2022] FWCFB 7 at [29]

[5] *James Cook University v Ridd* [2020] FCAFC 123; (2020) 298 IR 50 at [65]

Berri Limited,[6] and by the Full Court of the Federal Court in *Workpac Pty Ltd v Skene*.[7] There is no controversy about the principles that apply to the construction of enterprise agreements, and I do not repeat them extensively here.

[11] The starting point for interpretation is the ordinary meaning of the words, read as a whole and in context. Account should be taken of the purpose of the provisions. Relevantly, a narrow or pedantic approach to interpretation should be avoided.

[12] In relation to the principles for interpreting dispute settlement procedures, the Federal Court has said:[8]

> The terms of a procedure for resolving disputes should not themselves be construed in a manner that turns them into an instrument for generating disputes as to whether the procedure itself has been followed. Such provisions must be construed having regard to their evident purpose as providing a mechanism by which to encourage discussion and resolution. They should be interpreted 'practically and with an eye to common sense' having regard to the context in which they will be applied so that they can be implemented 'in a clear way on a day-to-day basis at work sites'.

Terms of the Current Agreement's dispute resolution procedure

[13] The dispute resolution procedure is contained in clause 27 of the Current Agreement. Clause 27.2 deals with what disputes are covered by the procedure:

> The *Parties* want to avoid disputes about things covered in this *Agreement* or about the *NES*. But if disputes occur, this is how they must be resolved.

[14] The italicised words are defined terms in Section 14 – Dictionary of the Agreement, but there is nothing controversial about their definition. Relevantly, Agreement is defined as the Current Agreement.

[15] The balance of the clause is not controversial. Clause 27.3 allows for representation at any step of the process. Clauses 27.4, 27.5 and 27.6 deal with steps about resolving the dispute at the workplace, escalating from talking about the dispute with the affected employee's manager, then the manager's manager (the 2-up manager), then the Executive – Employee Relations in People, Culture and Communications. There are timeframe requirements in each step. Clause 27.7 provides that if the dispute is not resolved the affected employee, the union, or the company may refer the dispute to the Commission for conciliation.

[16] Clause 27.8 provides that

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[6] *AMWU v Berri Limited* [2017] FWCFB 3005 at [114]

[7] *Workpac Pty Ltd v Skene* (2018) 264 FCR at [197]

[8] *Maersk Crewing Australia Pty Ltd v CFMMEU (No 2)* [2020] FCA 1694 at [86]

> If conciliation does not resolve the dispute, you or your union/representative or the Company may ask the Fair Work Commission to arbitrate the dispute and the Fair Work Commission must do so.

[17] Clause 27.9 provides for other rules relating to disputes, which are not presently relevant.

Consideration

[18] I am satisfied that the Commission does have jurisdiction to deal with this dispute.

[19] *First*, this is not a matter about whether the affected members have standing to bring the application. The Current Agreement applied to the union and the affected employees at the time that they asked the Commission to arbitrate the dispute in October 2025.

[20] This matter can be distinguished from ***Battye*** *v John Holland Pty Ltd*.[9] In *Battye*, the applicant lodged a dispute relating to his classification and whether he was entitled to a multi-skilled allowance during the operation of an enterprise agreement and while he was employed. The Commission held a conference. After that conference, the applicant resigned from his employment. He later asked the Commission to arbitrate the dispute but at the time that he asked the Commission to arbitrate, the agreement under which he had lodged his dispute was replaced. The new agreement did not apply to him as his employment ended prior to its commencement. The new agreement did not have any savings provisions relating to unresolved disputes. Further, the language of the dispute resolution procedure in the agreement under which he had lodged his dispute separated the conciliation and arbitration functions of the Commission. In short, Mr Battye was able to ask the Commission to conciliate his dispute, and the Commission did conciliate the dispute. But at the time that he asked the Commission to arbitrate the dispute the agreement was no longer in operation and no longer applied to him as he was not an employee.

[21] *Second*, this is not a matter about a dispute that arose and was notified to the Commission under an agreement that ceased to operate before the Commission had determined it, and so the authorities in *Simplot Australia Pty Ltd v AMWU*[10] and *CFMMEU & Ors v Falcon Mining Pty Ltd*[11] are not relevant. I consider that a dispute arises when the first step in the dispute resolution procedure is taken[12] and am satisfied that each of the affected members took relevant steps between May 2025 and July 2025 during the operation of the Current Agreement. This is, rather, a dispute about a matter in which facts that relate to the subject of the dispute occurred under an earlier, no longer operating enterprise agreement.

[22] *Third*, I understand that there is no controversy about whether the steps in the dispute resolution procedure were followed prior to the dispute being referred initially for conciliation and then for arbitration.

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[9] *Battye v John Holland Pty Ltd* [2019] FWCFB 8678, see particularly [23]

[10] *Simplot Australia Pty Ltd v AMWU* [2020] FWCFB 5054

[11] *CFMMEU & Ors v Falcon Mining Pty Ltd* [2022] FWCFB 93

[12] See *Davies v Australian Taxation Office* [2008] AIRCFB 676 at [22]

[23] *Fourth*, the real controversy is whether the dispute about whether the affected employees are redundant is "*about things covered in this Agreement*." There should be no controversy that these words in the enterprise agreement should be interpreted by considering their plain and ordinary meaning, but also practically and in a commonsense way. The respondents seek an interpretation that requires that "*things covered*" must have occurred during the operation of the agreement.

[24] The Agreement deals with many topics; I understand these to be the *things covered in this Agreement*. Of relevance to this matter are clauses 12 – Moving between jobs contained within Section 3 of the Agreement, and the clauses in Section 8 – Redundancy. Further I consider that *covered* is broader than, for example, *a matter arising under* (which is another common formulation of dispute resolution clauses). I am satisfied that the subject of the dispute is about *things covered* in the Current Agreement because it is about whether the respondents could use clause 12 to move the affected employees between jobs or whether the affected employees are redundant within the meaning of Section 8.

[25] I consider that it would defy industrial reality to require that disputes must be agitated only during the operation of the enterprise agreement when the relevant events occurred or when entitlement arose because relevant events may occur over a period of time and entitlements may crystallise but may also continue to accrue. It is common for employees' employment to span multiple agreements. Much will depend on what the dispute is about and the point in time when an entitlement accrues or crystallises but that does not mean that the Commission cannot consider facts relevant to that entitlement because those facts occurred under a no longer operative agreement. As Deputy President Asbury (as she then was) said in *AMIEU v Primo Foods Pty Ltd* at [83]:[13]

> That the dispute lodged under a dispute settlement term in a currently operative enterprise agreement involves an employee's continuous service under a previous agreement that is inoperative when the dispute is notified, does not deprive the Commission of power to deal with the dispute under the terms of an operative enterprise agreement, in a manner authorised by s. 739(4) of the FW Act, and the terms of the relevant agreement.

[26] This is particularly stark where the relevant clauses are identical. There is no different entitlement for the company to move particular workers between jobs under clause 12 nor for what redundancy means under Section 8 as between the 2022 Agreement and the Current Agreement. It may be a different matter if the affected members' employments had ended prior to the operation of the Current Agreement, but that is not this matter. The affected members remain employed. Their dispute arises during the operation of the Current Agreement, relating to a period of time that is under the Current Agreement and under an earlier agreement, but they have asked the Commission to arbitrate the dispute under the Current Agreement.

[27] *Fifth and last*, even if I were to accept the narrower interpretation advanced by the respondent, I am of the view that a submission, or an alternative submission, of the applicant is that, if a redundancy had not arisen earlier, it arose in March 2025 when the final step in switching off the HFC network occurred. That factual circumstance is undeniably within the operation of the Current Agreement.

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[13] *AMIEU v Primo Foods Pty Ltd* [2023] FWC 570 at [83]

Conclusion and next steps

[28] For the above reasons, I conclude that the Commission has jurisdiction to deal with the dispute and will shortly list a case management conference to program the matter for arbitration.

COMMISSIONER

Appearances:
Mr D Dwyer, on behalf of the Applicant.
Mr M Tamvakologos, of Seyfarth Shaw, with permission, on behalf of the Respondent.

Hearing details:
2026
Melbourne
19 February

Final written submissions:
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