Industrial Commission curbs casual work

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A recent major decision by the Australian Industrial Relations Commission [AIRC] may greatly influence how working conditions are regulated for many Australians in, and beyond, this New Year. At the same time, reaction to it demonstrates just how far we have to go to achieve a genuinely balanced relationship between employers and their staff.

After a lengthy case in the metal industry, the AIRC has made important rulings on casual work that are likely to have major effects for all industry sectors and a large proportion of the Australian workforce. This certainly extends to librarians, many of whom are classified as casuals, despite the fact that legally the characteristics of their employment suggest otherwise.

Under the decision, casual employees must be offered the option of converting to permanent full-time or part-time status after six months 'regular and systematic service'. Employers must make the offer, in writing, within four weeks. Casual workers must then apply for change of status within four weeks of being advised, although there is a range of provisions for later change, subject to appropriate notice periods. Once casual workers have exercised the option to become permanent they may only revert to casual status with the agreement of the employer.

When they hire casual staff, employers will have to clarify the nature of the engagement by spelling out exact duties, actual or likely working hours and the precise rate of pay. If employment is for three weeks or more in any calendar month, and if continuing work is probable, employers must confirm this in writing and list provisions for termination of employment including notice periods. In recognition of improved benefits obtained by other staff (such as new forms of parental and carer's leave) casual loadings have been increased to twenty-five per cent. And a new requirement for casuals to be called in for a minimum of four hours per day has been introduced.

In making this judgement, the AIRC looked at the history of casual work in great detail and gave particular attention to the wide differences in its treatment from award to award. The Commission found that this type of employment had never been comprehensively reviewed; that casual employees are far more vulnerable than other workers in today's labour market; and that they are not well-represented in enterprise bargaining by comparison with permanent staff. The decision acknowledges that casuals have fallen behind other workers. As a result, this form of work has substantially increased and 'long-term' casuals have become much more evident than was previously the case. Use of casuals has become a fairly crude employer mechanism for cutting costs. This is strongly confirmed by the experience of many library workers.

For the moment, the decision applies only to workers in the metal industry, with effect from 1 March 2001. But the ACTU has indicated it will present a whole-of-industry test case this year designed to extend these new provisions to all parts of industry.

For some time now, impartial observers of Australia's labour market have been concerned by the rapid casualisation of the workforce. More than half of all Australian workers now work in non-standard employment. Despite some attempts to prevent people who are really part-time employees being treated as casuals simply to cut employer costs (provisions introduced in the *Workplace Relations Act*, for example), the casual workforce has doubled in the last ten years. Aligned with the use of independent contractor and labour hire company employment, the trend to casualisation has resulted in the OECD rating Australia as having the least stable and secure workforce of all developed countries. It was clearly time to consider whether this has all gone too far.

But employer reaction to the AIRC decision shows just what a problem we have in establishing a reasonable balance between employer interest and reasonable fairness for vulnerable employees. Far from demonstrating the 'acceptance of the independent umpire's decision' they routinely urge on recalcitrant trade unions, employer organisations have immediately savaged the AIRC judgement and advised how employers will take various steps to avoid its contents.

The recent case involved many weeks of hearings, numerous witnesses and a sizeable body of evidence. Employer groups willingly took part in it and made many submissions. These are the organisations which repeatedly call for order in our industrial relations system and the acceptance of decisions made within it. Can we seriously expect civilised workplace relationships and productive industrial negotiation when employer reaction to so significant a judgement on so obviously important a subject is to seek simply to subvert it? ■

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