Non-employer may be a party to an industrial dispute

By Imogen de Almeida, Freehills

On 24 September 2001, Justice Boulton of the Australian Industrial Relations Commission (the AIRC) made it clear that the AIRC is prepared, in certain cases, to use its award making powers against entities that are not direct employers.

The facts

On 13 September 2000, Justice Boulton made a dispute finding between the various airline unions and Ansett over union claims for redundancy entitlements and threatened redundancies. The need for consultations with respect to job prospects of Ansett employees and methods of alleviating the effect of the redundancies were also dispute matters.

The Australian Municipal, Administrative, Clerical and Services Union (ASU), and the Transport Workers' Union of Australia (TWU), submitted that the AIRC should also make a dispute finding with Air New Zealand Limited (ANZL), even though that company was not the employer of the affected Ansett employees.

It was submitted by the ASU that ANZL was intimately involved in the operation of the Ansett companies and therefore should be made a party to the dispute. If it were to be made a party to the dispute, the AIRC would be empowered to make orders directly against ANZL and/or Ansett.

The decision

Justice Boulton found that ANZL was a party to the industrial dispute regarding Ansett workers. The three main reasons for Justice Boulton's findings were:

- As the ultimate holding company, ANZL played a "significant hands-on-role" in the operation of the Ansett companies.
- the Ansett Group's Human Resource functions were centralised under ANZL's control.
- There were suggestions that ANZL had responsibilities in relation to Ansett debts, including as a result of undertakings it had given to the Ansett companies.

As a result of the decision that it was a party to the dispute, ANZL was ordered by the AIRC to attend a compulsory conference with the Unions, and representatives from Ansett and the Commonwealth government. This decision also provided the jurisdictional basis upon which the AIRC could make an award binding on ANZL. Such an award would only be limited by general arguments as to merit and the scope of allowable award matters.

Implications for employers

- Unions can pursue non-employees in the respect of the operations of controlled entities.
- Non-employers may be drawn into disputes to which they are not a party. This is especially likely where the non-employer has some type of corporate control or interest in the activities of the principal party to the dispute. For example, a member of a group of companies may be unable to rely upon the "corporate veil" to avoid AIRC intervention.
- Non-employers may be ordered to attend compulsory conferences or even made subject to specific financial obligations and/or awards.

Summary

- Non-employers can be drawn into disputes to which they are not a party.
- This has significant future implications, for employers which may be conducting operations using separate entities, or where there is an ability to control the conduct of one party to a dispute.

Australian Young Lawyers' Awards 2001

The Young Lawyers' Section publication
'Thriving and Surviving'- Employment Practices and Achieving a Healthy Balance - guidelines for employers, employee solicitors and articled clerks in Victoria,
was recently awarded the Law Council of Australia Young Lawyers' Award
for a program relating to professional issues.

Congratulations to Victoria Strong, Radhika Kanhai, Anthony Beck-Godoy, Jane Libbis, Katie Coghlan, Catherine Dwyer and the other members of Young Lawyers' Professional Development Committee who helped to develop this publication.

Copies of 'Thriving and Surviving' can be printed from the Law Institute website at
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