



DETERMINATION

Fair Work Act 2009

s.739 - Application to deal with a dispute

CPSU, the Community and Public Sector Union

v

Australian Broadcasting Corporation T/A ABC
(C2017/1867)

ABC ENTERPRISE AGREEMENT 2016 - 2019

(ODN AG2016/6768) [AE422629]

Commonwealth employment

COMMISSIONER JOHNS

SYDNEY, 19 JUNE 2017

Alleged dispute about matters arising under the enterprise agreement.

Background

[1] On 7 April 2017 the Community and Public Sector Union (**CPSU**) filed an application for the Fair Work Commission (**Commission**) to deal with a dispute in accordance with the dispute settlement procedure in the *ABC Enterprise Agreement 2016-2019* [AE422629] (**Agreement**).

[2] The Australian Broadcasting Corporation (**ABC**) is the respondent to the application.

[3] The Agreement was approved by the Commission on 12 December 2016. It commenced operation on 19 December 2016. It has a nominal expiry date of 30 June 2019.

[4] In or around September 2016 (at the time that the Agreement was being voted on by employees) the ABC sent a letter to employees titled “*Staff Proposal – Enterprise Agreement 2016-2019.*” (**Side Letter**).

[5] In short, there is a dispute about whether the ABC has complied with its obligations under Part L (Managing Change) and Part M (Redundancy) and the Side Letter.

[6] The:

- a) CPSU alleges that the ABC has not, and
- b) ABC maintains that it has,

complied with the ABC’s obligations under the Agreement and the Side Letter.

[7] Notwithstanding the dispute the CPSU and the ABC remain committed to the Agreement and the Side Letter.

[8] The application was listed for hearing today.

[9] A determination of the matter by the Commission would require a consideration of various matters for interpretation arising under the Agreement. A number of the relevant phrases and clauses to be considered are arguably ambiguous. It is by no means certain whether the preferred interpretation of the CPSU or the ABC would prevail.

[10] Noting that the dispute arose within four months of the Agreement commencing operation, the CPSU and the ABC bear responsibility for the drafting of the Agreement that allowed the present dispute to arise. It would be preferable for the parties to resolve the issues in dispute and any ambiguity in the Agreement as between themselves in the course of enterprise bargaining (without resort to side letters). However, the Agreement does not expire until 30 June 2019.

[11] Following the discussions in conference the CPSU and the ABC have agreed to the Commission issuing the following Orders by consent.

Determination

[12] Having regard to the above, the Commission Orders, by consent, that where individuals are to be selected for redundancy from a class of employees the following must occur:

a) **Class of employees:**

- i. the ABC will make a preliminary identification of the class of employees from which redundancies will occur (**Likely Affected Class**),
- ii. the ABC will consult with the Likely Affected Class (and their representative) about the class of employees from which redundancies will occur, and
- iii. the ABC will determine and publish the class of employees from which redundancies will occur (**Affected Class**).

b) **Number within the class:**

- i. the ABC will make a preliminary identification of the number of employees within the Affected Class,
- ii. the ABC will consult with the Affected Class (and their representative) about the number of employees within the class to be made redundant, and
- iii. the ABC will determine and publish the number of employees within the Affected Class to be made redundant.

c) **Expressions of interest:** (where more than 15 employees may be made redundant under a change proposal under Part L of the Agreement) the ABC will,

- i. expressly communicate to the Affected Class, and
- ii. notify employees within the Division within which the Affected Class operates,

its preparedness to consider a Comparable Substitute for individual employees who are selected on an initial basis for redundancy at step [12](e) (**Affected Employees**).

Nothing in this Order requires the ABC to accept a Comparable Substitute. The final decision in relation to substitution rests with the ABC.

d) Selection Criteria:

- i. the ABC will draft a Selection Criteria (**Draft Selection Criteria**) to determine which employees within the Affected Class will be selected for redundancy,
- ii. the ABC will consult with the Affected Class (and their representative) about the Draft Selection Criteria, and
- iii. the ABC will determine and publish the Selection Criteria.

e) Application of Selection Criteria:

The ABC will apply the Selection Criteria to the Affected Class.

[13] Timing: Steps [12](a) – (d):

- a) may occur concurrently, but must occur before step [12](e), and
- b) will ordinarily be concluded within 14 days.

[14] Definitions:

“**Comparable Substitute**” means an employee:

- a) within the Affected Class, and or
- b) outside the Affected Class, but one who meets the Selection Criteria, has the relative competency, experience and efficiency, and is within the Division within which the Affected Class operates.

Nothing in the Order limits the ABC’s ability to canvas interest for substitution at its discretion.

“**Publish**” means provide in writing to the Affected Class (and their representatives).

[15] Operation of Determination: This Determination operates in respect of change proposals under Part L of the Agreement announced on or after 19 June 2017.

[16] The Commission will now close its file in this matter.



COMMISSIONER

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