

Friday, 3 August 2018

Weekly Employment Law Selected Bulletins covering Employment

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Executive Summary (1 minute read)

Directed Electronics OE Pty Ltd v OE Solutions Pty Ltd (No 2) (FCA) - judgment and orders - interlocutory injunction - application to restrain second respondent from supplying audio visual unit to company, and software and accessories it licenced to company - application dismissed

Tucker v State of Victoria (VSC) - pleadings - transfer of proceeding - joinder - summary judgment - determination of applications

Glenister v Wayne Horne Earthmoving Pty Ltd (VSC) - judicial review - challenge to Magistrate's dismissal of charge alleging contravention of s21 *Occupational Health and Safety Act 2004* (Vic) - inadequately explained failure to exercise statutory right of appeal - relief refused on discretionary grounds

Hine v Macquarie Bank Limited (VSC) - summary dismissal - pleadings - employment contract - summary dismissal refused except in respect of certain parts of statement of claim - parts of statement of claim struck out - leave to replead

Safework SA v Adelaide Mobile Lunch Services Pty Ltd (SASCFC) - industrial law - employment - erroneous cancellation of notice under *Long Service Leave Act 1987* (SA) - appeal allowed

Summaries With Link (Five Minute Read)

[Directed Electronics OE Pty Ltd v OE Solutions Pty Ltd \(No 2\) \[2018\] FCA 1097](#)

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Federal Court of Australia

Beach J

Judgments and orders - interlocutory injunction - applicant sought interlocutory injunction restraining second respondent from 'certain conduct' - applicant contended certain respondents (Hanhwa parties) developed 'audio visual unit' and entered contract with company to supply it together with accessories and software - applicant contended audio visual unit was developed 'using its know-how, resources and confidential information' which sixth respondent and applicant's former employee had misappropriated - applicant sought to restrain second respondent from supplying the audio visual unit, and accessories and software it licenced to company - prima facie case - prejudice - delay - held: Court not satisfied to grant interlocutory injunction - application dismissed.

[Directed Electronics](#)

[From Benchmark Friday, 3 August 2018]

Tucker v State of Victoria [2018] VSC 389

Supreme Court of Victoria

McDonald J

Pleadings - transfer of proceedings - summary judgment - plaintiff sought relief concerning investigations into misconduct he allegedly engaged in while employed by State Revenue Office - sought to amend statement of claim and to join further defendant in capacity of Commissioner of State Revenue - plaintiff also sought transfer of proceeding to Federal Court of Australia under *Jurisdiction of Courts (Cross-vesting) Act 1987* (Cth) - defendant sought summary judgment, contending proceeding had no real prospect of success, or was abuse of process - held: plaintiff's application for leave to amend statement of claim allowed in part - leave granted to join further defendant - plaintiff refused leave to plead breach of s50 *Fair Work Act 2009* (Cth) - application for transfer of proceeding dismissed - application for summary judgment dismissed.

[Tucker](#)

[From Benchmark Friday, 3 August 2018]

Glenister v Wayne Horne Earthmoving Pty Ltd [2018] VSC 390

Supreme Court of Victoria

McDonald J

Judicial review - plaintiff brought two charges of contravention of *Occupational Health and Safety Act 2004* (Vic) (OHSA) against first defendant - one charge was abandoned - Magistrate dismissed second charge - plaintiff did not exercise right of appeal under s272 *Criminal Procedure Act 2009* (Vic) (CPA) within time - plaintiff sought judicial review under O56 *Supreme Court (General Civil Procedure) Rules 2015* (Vic) - plaintiff sought to quash Magistrate's dismissal of second charge - held: Magistrate erred in finding that second charge, which alleged breach of s21 OHSA, was misconceived. - Magistrate erred on face of the record but error was 'within jurisdiction' - application for relief was to be determined in accordance with *Kuek v Victoria Legal Aid* [2001] VSCA 80 - plaintiff had not exercised its statutory right of appeal under s272 CPA - no adequate explanation for failure to exercise statutory right of appeal - judicial

review grounds raised were identical to those which could have been advanced by appeal - relief refused on discretionary grounds.

[Glenister](#)

[From Benchmark Friday, 3 August 2018]

Hine v Macquarie Bank Limited [2018] VSC 411

Supreme Court of Victoria

Ierodionou AsJ

Summary dismissal - pleadings - plaintiff employed by defendant - plaintiff made claims against defendant including that it repudiated employment contract and breached code of conduct - defendant sought summary dismissal of plaintiff's further amended statement of claim or to strike it out - whether nexus between allegations and breaches 'clearly pleaded' - whether policies formed part of contract - whether pleadings embarrassing - held: summary dismissal refused except in respect of parts of claim in respect of 'membership fees term, wrong address claim and computer problems claim' - parts of claim struck out on grounds they were embarrassing - plaintiff granted leave to file second further amended statement of claim.

[Hine](#)

[From Benchmark Friday, 3 August 2018]

Safework SA v Adelaide Mobile Lunch Services Pty Ltd [2018] SASCFC 64

Full Court of the Supreme Court of South Australia

Kourakis CJ; Lovell & Doyle JJ

Industrial law - employment - Safework SA issued notice to respondent, requiring it to pay long service leave to former employee - respondent sought review of notice under s12(2) of *Long Service Leave Act 1987 (SA)* - Full Bench of the South Australian Employment Tribunal confirmed Industrial Magistrate's decision to cancel the notice - Magistrate had accepted respondent's contention that employee 'overpaid herself' in sum exceeding entitlement to long service leave - whether set-off claimed by respondent was proper ground to refuse long service leave payment - statutory construction - held: power to cancel notice could not be exercised for setting-off purposes against an amount to which employer was entitled - appeal allowed.

[Safework](#)

[From Benchmark Friday, 3 August 2018]



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Above the Dock

By: T. E. Hulme

Above the quiet dock in mid night,
Tangled in the tall mast's corded height,
Hangs the moon. What seemed so far away
Is but a child's balloon, forgotten after play.

https://en.wikipedia.org/wiki/T._E._Hulme

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