

Friday, 14 September 2018

Weekly Employment Law Selected Bulletins covering Employment

[Follow @Benchmark Legal](#)
Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

Executive Summary (1 minute read)

EZY Accounting 123 Pty Ltd v Fair Work Ombudsman (FCAFC) - industrial law - appellant "involved in" contraventions of *Fair Work Act 2009* (Cth) - declaration of contravention in respect of 'meal breaks' and 'rest breaks' set aside - penalty varied - appeal otherwise dismissed

Energy Australia Yallourn Pty Ltd v Automotive, Food, Metal, Engineering, Printing and Kindred Industries Union (FCAFC) - industrial law - enterprise agreement - dispute resolution - estoppel - jurisdiction - costs - no error in primary judge's decision to set aside application - appeal against costs order allowed

Goonewardena v Secretary, Department of Social Services (FCA) - administrative law - social security - appeal against decision to pay applicant reduced rate of disability support pension and to 'raise and recover a debt' for overpayment - appeal dismissed

Hossain v Restuccia (FCA) - summary judgment - claim alleging breaches of *Fair Work Act 2009* (Cth) and tax fraud - respondents granted summary judgment

D&V Services Pty Ltd v SA Power Networks (SASCFC) - negligence - - appellant's employee disturbed respondent's buried cable causing 'earth leakage detector' to trip, damaging respondent's equipment - appellant liable - appeal dismissed

Summaries With Link (Five Minute Read)

[EZY Accounting 123 Pty Ltd v Fair Work Ombudsman \[2018\] FCAFC 134](#)

Full Court of the Federal Court of Australia

Flick, Bromberg & O'Callaghan JJ

Industrial law - appellant was firm of accountants - respondent identified contraventions of *Fair Work Act 2009* (Cth) by company (Blue Impression) - Blue Impression sought assistance from appellant to rectify contraventions - further contraventions occurred - employee of Blue Impression sought respondent's assistance - respondent commenced proceedings against Blue Impression and appellant - Blue Impression admitted contraventions - appellant denied liability - Federal Circuit Court found appellant was "involved in" contraventions of s45 of the Act and therefore had itself made the contraventions under s550 of the Act - respondent conceded primary judge had not given reasons for finding contraventions in respect of 'meal breaks' and 'rest breaks' - appellant contended there was no basis for finding it "involved in" the contraventions - held: no error in factual findings - no error in finding that appellant was "involved in" contraventions - appeal dismissed except to extent that declaration of contravention in respect of meal breaks and rest breaks set aside and penalty varied.

[EZY](#)

[From Benchmark Friday, 14 September 2018]

Energy Australia Yallourn Pty Ltd v Automotive, Food, Metal, Engineering, Printing and Kindred Industries Union [2018] FCAFC 146

Full Court of the Federal Court of Australia

Rares, Flick & Barker JJ

Industrial law - estoppel - Commissioner of Fair Work Commission approved Enterprise Agreement (Yallourn agreement) under s185 *Fair Work Act 2009* (Cth) (Fair Work Act) - Commissioner satisfied that requirements of s186, including for dispute resolution procedure in respect of disputes arising under Yallourn agreement, were satisfied - appellant sought, pursuant to ss19 & 21 *Federal Court of Australia Act 1976* (Cth) and ss562 & 564 Fair Work Act, declaration concerning manner of remuneration of casual employees under agreement - union sought to set aside originating application for want of jurisdiction - primary judge set aside application on basis Court did not have jurisdiction because parties' dispute had been resolved by Full Bench of the Commission as arbitrator appointed under Yallourn agreement - primary judge ordered appellant to pay unions' costs - primary judge found s570 Fair Work Act did not apply because of finding that Court lacked jurisdiction under Fair Work Act - held: no error in primary judge's decision to set application aside - proceeding 'concerned a matter arising under the Fair Work Act' - s570(1) applied - appeal on question of costs allowed.

[Energy Australia Yallourn](#)

[From Benchmark Friday, 14 September 2018]

Goonewardena v Secretary, Department of Social Services [2018] FCA 1387

Federal Court of Australia

Bromberg J

Administrative law - social security - respondent's delegate decided to pay applicant a reduced rate of disability support pension (DSP) and to 'raise and recover a debt' from applicant for

overpayment of DSP - Administrative Appeals Tribunal upheld decision of Administrative Appeals Tribunal's Social Services and Child Support Division to affirm delegate's decision - applicant appealed - whether 'termination payment' made in respect of redundancy was "ordinary income" for the purposes calculating DSP entitlement - applicability of amendments made by *Social Services and Other Legislation Amendment Act 2014* (Cth) in relation to working out "ordinary income" for certain period - held: appeal dismissed.

[Goonewardena](#)

[From Benchmark Friday, 14 September 2018]

Hossain v Restuccia [2018] FCA 1383

Federal Court of Australia

Bromwich J

Summary judgment - interlocutory application - applicant made claim alleging breaches of *Fair Work Act 2009* (Cth) and tax fraud - tax fraud allegations made without particulars - respondents sought proceeding's dismissal - respondents, under s31A *Federal Court of Australia Act 1976* (Cth) and r26.01 *Federal Court Rules 2011* (Cth) (Rules), sought summary judgment - respondents, under r16.21 of the Rules, also sought orders striking out originating application and statement of claim - respondents also sought default judgment under r5.23 of the Rules on basis of applicant's failure to comply with Court's 'timetabling orders' - whether applicant had 'reasonable prospect' of successful prosecution of proceeding or part of proceeding against respondents - held: respondents granted summary judgment against applicant.

[Hossain](#)

[From Benchmark Friday, 14 September 2018]

D&V Services Pty Ltd v SA Power Networks [2018] SASCFC 92

Full Court of the Supreme Court of South Australia

Kourakis CJ; Kelly & Lovell JJ

Negligence - - appellant's employee disturbed respondent's cable while excavating trench - disturbance caused 'earth leakage detector' to trip, damaging respondent's equipment - employee was not told of possibility of cable's presence - respondent sued appellant in negligence for repair cost - trial judge found appellant liable in negligence and awarded repair cost to respondent - appellant challenged primary judge's finding that it breached duty of care - s31 & 32 *Civil Liability Act 1936* (SA) - 'reasonable precautions' - whether correct identification of risk - held: appellant erred in identification of risk, an error which constituted a 'fatal flaw' in respect of all appeal grounds - no error in decision of primary judge - appeal dismissed.

[D&V](#)

[From Benchmark Friday, 14 September 2018]



Benchmark

The Crocuses

By: Frances Ellen Watkins Harper
They heard the South wind sighing
 A murmur of the rain;
And they knew that Earth was longing
 To see them all again.

While the snow-drops still were sleeping
 Beneath the silent sod;
They felt their new life pulsing
 Within the dark, cold clod.

Not a daffodil nor daisy
 Had dared to raise its head;
Not a fairhaired dandelion
 Peeped timid from its bed;

Though a tremor of the winter
 Did shivering through them run;
Yet they lifted up their foreheads
 To greet the vernal sun.

And the sunbeams gave them welcome,
 As did the morning air—
And scattered o'er their simple robes
 Rich tints of beauty rare.

Soon a host of lovely flowers
 From vales and woodland burst;
But in all that fair procession
 The crocuses were first.

First to weave for Earth a chaplet
 To crown her dear old head;
And to beauty the pathway
 Where winter still did tread.

And their loved and white haired mother
 Smiled sweetly 'neath the touch,
When she knew her faithful children
 Were loving her so much.



https://en.wikipedia.org/wiki/Frances_Harper

[Click Here to access our Benchmark Search Engine](#)