

Coles to face legal action over unfair pay deal

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Coles employee takes legal action over deal that 'leaves workers worse off'

A Coles supermarket worker has taken legal action to stop an employment agreement between the supermarket giant and the union representing retail workers, claiming it would leave tens of thousands of supermarket employees out of pocket.



Duncan Hart, who works at a Coles supermarket in Brisbane, has lodged an appeal with the Fair Work Commission, asking it to reconsider its approval of the enterprise bargaining agreement which would cover 77,000 Coles employees across Australia.

The agreement, negotiated between Coles, the Shop Distributive and Allied Employees Association (SDA) and other unions, mandates a higher hourly base rate for supermarket workers, but cuts penalty rates for weekends and nights.

Mr Hart argued this left a substantial proportion of Coles' workforce worse off than if they were paid under the existing award.

"I thought it was absolutely outrageous. I found it mind-boggling that so many workers would be worse off compared to the base local minimum," Mr Hart said.

"For me personally it means \$60 less a week. To give people a sense, it's about 20 per cent cut to what I'd be earning under the award compared to agreement.

"So it's a pretty big deal for low-wage workers."

Mr Hart's appeal is based largely on research by Joshua Cullinan, who is an official in the National Tertiary Education Union but undertook the analysis in a personal capacity.

Earlier this year, Mr Cullinan raised concerns about the status of young and casual workers under the proposed agreement.

The commission then asked Coles and the union to alter the agreement to address these concerns.

However, Mr Cullinan and Mr Hart contend these changes did not address a larger issue: that of Coles' permanent ongoing employees.

By law, any employee covered by an enterprise bargaining agreement must be better off than under

the award.

After Mr Hart launched his appeal, the commission asked Coles to provide Mr Cullinan with rosters from two stores in the Melbourne suburb of Northcote and the Victorian town of Benalla, which Mr Cullinan used to calculate the employees' total pay based on the new agreement in comparison to the existing award.

For the Coles store in the Melbourne suburb of Northcote, Mr Cullinan calculated that two-thirds of the permanent employees would be financially worse off by an annual total of \$55,000. He then extrapolated this across 770 Coles stores Australia-wide.

"On a basic arithmetic that we can see there is about \$60,000 if all the workers at Northcote that were adults that were ongoing, \$60,000 just at that store for a year," Mr Cullinan said.

"We could translate that to \$40 [million] or 50 million a year in wages not paid to workers compared to if they had of been working under the award.

"Any analysis by a union should have been able to identify these problems, they are bread and butter issues, and every union should be endeavouring to ensure that all their members are better off under the agreement.

"I can't imagine a union that considers itself a union and considers itself doing a good job could reach an agreement that has that level of deficiency."

'Union not encouraging workers to stand up'

As part of the bargaining process, Coles provided the commission with sample rosters to demonstrate that no employee would be worse off under the agreement.

However, Mr Cullinan argued those rosters were not representative of typical permanent employee, as they featured few weekend or evening hours.

"Unfortunately, some of the issues that we've now exposed at Coles simply weren't brought to the attention of the Fair Work Commission and they should have been," Mr Cullinan said.

"And so if the commission has made a judgment based on information that wasn't provided, that would be one way.

"The other way was just a flaw in the system which allowed for this agreement to be navigated through the commission and made law when really it should have been held up much earlier."

Coles has argued that Mr Hart should not be allowed to appeal against the agreement being passed, claiming that Mr Cullinan is the real appellant and that he is "simply using Hart as a vehicle to pursue his own personal agenda".

Both Mr Hart and Mr Cullinan dispute this. Mr Hart is a former SDA shop steward who has publicly criticised the union hierarchy over its conservative stance on issues such as marriage equality and the standard of representation it offers its members.

"[The union] is not actually trying to organise the workers to stand up for their rights," Mr Hart said.

"The fact that this could even be a question that their award would be better than the agreement,

that really speaks to a big problem that's going on now with retail, and shows that the union isn't doing its job of organising workers to stand up for their rights."

It was revealed earlier this year by Fairfax Media that the union pays Coles and Woolworths up to \$5 million a year in "administrative costs" to deduct union dues from employees' pay packets.

A hearing will be held next week to decide whether Mr Hart should be given leave to appeal the decision.

Spokesmen for Coles and the union said neither would comment while the legal process was going on.

Follow link below to see graph of wage losses under alleged better pay deal:

Later [Developments](#):

Queensland Coles employee Duncan Hart is seeking leave to appeal against the enterprise bargaining agreement negotiated between Coles and the Shop Distributive and Allied Employees Association — the union representing retail workers.

The agreement essentially raises the hourly rate of pay, but cuts night time and weekend penalties.

Mr Hart, 23, argued the agreement, which is already in force, potentially leaves up to 50,000 of Coles' 70,000 workforce worse off than the existing award, with permanent, adult Coles employees being the most affected.

By law, no worker covered by an enterprise bargaining agreement (EBA) should be worse off than under the award.

Mr Hart has accused the union of selling out its members by agreeing to the deal, saying it was more interested in cementing its power within the Labor Party.

At a hearing in Melbourne on Tuesday, Stuart Wood, QC for Coles, said it did not matter whether the commission made an error in approving the agreement, as the decision was made based on the information it had before it at the time.

He said Mr Hart was not a party to the original bargaining, having devolved that responsibility to the union, which is also challenging Mr Hart's right to appeal.

Mr Wood said Mr Hart was relying on analysis of Coles rosters by Joshua Cullinan, who is an official of the National Tertiary Education Union, but undertook the analysis in a personal capacity.

Mr Wood said Mr Cullinan was the real appellant, and was using Mr Hart as a "vehicle" to further his own aims.

Coles to be 'severely affected' if deal passes

In addition, Mr Wood said Coles would be severely affected financially if the appeal went ahead and was successful, as it had already made substantial changes to rosters and other arrangements on the basis of the new agreement, and these would have to be reversed.

Warren Friend, QC for the retail union, said that nobody had adequately demonstrated that Fair

Work Commissioner Geoff Bull made a mistake in ushering the agreement through, and that the union also disputed that its members would be worse off under the deal.

However, Siobhan Kelly, representing Mr Hart, said it appeared Commissioner Bull ignored the analysis of Mr Cullinan, which was submitted to the commission before the deal was signed off on.

She said Mr Cullinan's analysis was more credible than that presented by Coles to the commission, which was based on an unrepresentative sample of rosters.

Ms Kelly also said Coles was obliged to explicitly tell its employees they would be worse off under the new agreement, and that it was unrealistic to expect a supermarket workforce to intimately examine the detail of an EBA, and then try to halt the process.

Ms Kelly said there was "huge public interest" in allowing Mr Hart's appeal to go ahead, and that there had been a "substantial injustice" done by the ratification of the agreement.

She said that any financial detriment suffered by Coles as a result of the appeal was insignificant compared to that suffered by low-paid supermarket workers.

Ms Kelly also noted that Coles' lawyers had insisted Mr Hart fly from Queensland to Melbourne to be cross-examined at Tuesday's hearing — then changed their minds.

In a statement released after the hearing, a Coles spokesman said: "We spent considerable time with our team members negotiating this agreement, which delivers an average 3 per cent annual wage increase — that's well ahead of inflation.

"It also includes a raft of additional allowances and benefits that are not included in the Award, such as additional compassionate leave and support for families.

"We are proud of this agreement and will continue to respect the process of the Fair Work Commission."

The commission has reserved its decision until a later date.

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