FEDERAL COURT OF AUSTRALIA

Lee v Fair Work Commission [2020] FCA 733

|  |  |
| --- | --- |
| Review of: | *Mr Jeremy Lee v Superior Wood Pty Ltd T/A Superior Wood* [2018] FWC 4762 |
|  |  |
| Appeal from: | *Jeremy Lee v Superior Wood Pty Ltd* [2019] FWCFB 2946 |
|  |  |
| File numbers: | QUD 356 of 2019  QUD 385 of 2019 |
|  |  |
| Judge: | **REEVES J** |
|  |  |
| Date of judgment: | 6 February 2020 |
|  |  |
| Catchwords: | **PRACTICE AND PROCEDURE –** application under s 39B of the *Judiciary Act 1903* (Cth) to quash a decision of the full bench of the Fair Work Commission (the Commission) – whether it is in the interests of justice to allow the proceedings to continue – application dismissed  **PRACTICE AND PROCEDURE** – application for judicial review of a decision of the Fair Work Commission (the Commission) – whether it is in the interests of justice to allow the proceedings to continue – application dismissed |
|  |  |
| Legislation: | *Fair Work Act 2009* (Cth)  *Federal Court of Australia Act 1976* (Cth)  *Judiciary Act 1903* (Cth) |
|  |  |
| Cases cited: | *Jeremy Lee v Superior Wood Pty Ltd* [2019] FWCFB 2946  *Mr Jeremy Lee v Superior Wood Pty Ltd T/A Superior Wood* [2018] FWC 4762 |
|  |  |
| Date of hearing: | 6 February 2020 |
|  |  |
| Registry: | Queensland |
|  |  |
| Division: | General Division |
|  |  |
| National Practice Area: |  |
| **QUD 356 of 2019** |  |
|  |  |
| **QUD 385 of 2019** | Administrative and Constitutional Law and Human Rights |
|  |  |
| Category: | Catchwords |
|  |  |
| Number of paragraphs: | 4 |
|  |  |
| **QUD 356 of 2019** |  |
| Counsel for the Applicant: | The Applicant appeared in person |
|  |  |
| Solicitor for the First to Fourth Respondents: | Ms J Lye of Australian Government Solicitor |
|  |  |
| **QUD 385 of 2019** |  |
| Counsel for the Applicant: | The Applicant appeared in person |
|  |  |
| Solicitor for the First and Second Respondents: | Ms J Lye of Australian Government Solicitor |

ORDERS

|  |  |  |
| --- | --- | --- |
|  | | QUD 356 of 2019 |
|  | | |
| BETWEEN: | JEREMY LEE  Applicant | |
| AND: | FAIR WORK COMMISSION  First Respondent  **DEPUTY PRESIDENT SAMS**  Second Respondent  **COMMISSIONER MCKINNON**  Third Respondent  **DEPUTY PRESIDENT GOSTENCNIK**  Fourth Respondent | |

|  |  |
| --- | --- |
| JUDGE: | REEVES J |
| DATE OF ORDER: | 6 February 2020 |

THE COURT ORDERS THAT:

1. The originating application filed in QUD 356 on 2019 on 1 June 2019 is dismissed.
2. There be no order as to costs.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

ORDERS

|  |  |  |
| --- | --- | --- |
|  | | QUD 385 of 2019 |
|  | | |
| BETWEEN: | JEREMY LEE  Applicant | |
| AND: | FAIR WORK COMMISSION  First Respondent  **COMMISSIONER JENNIFER HUNT**  Second Respondent | |

|  |  |
| --- | --- |
| JUDGE: | REEVES J |
| DATE OF ORDER: | 6 February 2020 |

THE COURT ORDERS THAT:

1. The originating application filed in QUD 385 of 2019 on 13 June 2019 is dismissed.
2. There be no order as to costs.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

EX TEMPORE REASONS FOR JUDGMENT

REEVES J:

1. Mr Jeremy Lee has filed two proceedings in this Court. Proceeding QUD 385 of 2019 sought judicial review of the decision of Fair Work Commissioner Hunt made on 1 November 2018. Commissioner Hunt’s decision dismissed Mr Lee’s unfair dismissal application ([2018] FWC 4762). The other proceeding, QUD 356 of 2019, sought relief under s 39B of the *Judiciary Act* *1903* (Cth) to quash the decision of the Full Bench of the Fair Work Commission made on 1 May 2019 ([2019] FWCFB 2946). That decision: upheld Mr Lee’s appeal against Commissioner Hunt’s decision; quashed that decision; determined that Mr Lee’s dismissal by Superior Wood Pty Ltd, his erstwhile employer, was unfair; and remitted the matter to Fair Work Commissioner Simpson to determine the appropriate remedy.
2. The brief details of the history of Mr Lee’s unfair dismissal application thereafter are as follows. On 22 July 2019, Commissioner Simpson determined, for the purposes of s 390(3) of the *Fair Work Act 2009* (Cth) (the FWA), that reinstatement of Mr Lee was inappropriate and that Superior Wood should pay compensation to him in the amount of $24,117.08 (less tax) together with a 9.5% superannuation contribution ([2019] FWC 5095). That order was to come into effect on 22 July 2019 and was to be paid within 14 days. Mr Lee informed me at an earlier case management hearing that those monies had been paid to him. On 9 August 2019, Mr Lee lodged an application with the Fair Work Commission for permission to appeal Commissioner Simpson’s decision, under s 604 of the FWA. That application was granted by a Full Bench of the Commission on 2 October 2019. A second Full Bench appeal was then heard on 10 December 2019. The Full Bench’s decision following that hearing remains reserved.
3. Having regard to this background, I do not consider it is in any interest of justice, or consistent with the overarching purpose of civil litigation in Part VB of the *Federal Court of Australia Act* *1976* (Cth), to allow these proceedings to continue in this Court. In proceeding QUD 385 of 2019, the decision of Commissioner Hunt has been quashed and no longer has any effect. In proceeding QUD 356 of 2019, the decision of the Full Bench has been overtaken by subsequent events, namely, the hearing before Commissioner Simpson and the subsequent appeal from Commissioner Simpson’s decision to a second Full Bench.
4. I therefore order that:

1. The originating application filed in QUD 385 of 2019 on 13 June 2019 is dismissed.

2. The originating application filed in QUD 356 of 2019 on 1 June 2019 is dismissed.

3. There be no order as to costs.

|  |
| --- |
| I certify that the preceding four (4) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Reeves. |

Associate:

Dated: 27 May 2020