

PP CONSULTANTS PTY LTD V FINANCE SECTOR UNION [2000] HCA 59

FACTS

PP conducted a branch agency for St George Bank in conjunction with its pharmacy. Under the contract with the Bank, PP was required to collect deposits, transact withdrawals, open deposit accounts and process applications for personal for the Bank's customers. PP nominated Moffat who was a former employee of the bank to work at the bank branch agency.

All the Bank employees were entitled to the benefit under the St George Banking Industry Employees Award. The Union claimed that employees of PP were not the bank's employees and that PP as an assignee of part of the business of the bank under s149(1)(d) of the Workplace Relations Act 1996 was bound to accord to Moffat the benefits and entitlement conferred upon employees by the Award.

Section 149(1)(d) of the Act provides that an award is binding on any successor, assignee or transmittee (whether immediate or not) to or of the business or part of the business of an employer who was a party to the industrial dispute, including a corporation that has acquired or taken over the business or part of the business of the employer.

ISSUE

Was PP a successor, assignee or transmittee of the business of the Bank pursuant to s149(1)(d) of the Act and bound by the Award?

FINDING

PP had not engaged itself in the business of banking although it took over activities of the Bank in Byron Bay. In conducting the branch agency, PP was carrying on business of a bank agent and not a banking business.

The bank had not disposed of any part of its business to PP. It had merely changed the method by which it carried on its banking business in Byron.

Thus, the Bank's business or any part of its business had not been acquired by the PP, whether as a successor, assignee or transmittee under s149(1)(d) of the Act and the Bank would therefore have to accord to nominated employees at the branch agency.

QUOTE

Gleeson CJ, Gaudron, McHugh and Gummow JJ said:

“The question whether a non-government employer who has taken over the commercial activities of another non- government employer has succeeded to the business or part of the business of that employer will require the identification or characterization of the business or the relevant part of the business of the first employer.

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Secondly, is the identification of the character of the transferred business activities in the hands of the new employer.

Finally, is to compare if in substance they bear the same character. Then the employer has succeeded to the business or part of the business of the previous employer.”

IMPACT

An employer who has taken over the business or part of the business of another employer will be a successor, assignee or transferee of the former employer if the character of the transferred business activities is in substance the same. In this case the Court determined that PP was contracted as an agent of the Bank and was not carrying out any banking business in its own right.

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