

Important Court decision on Casual Status

A contract miner who disputed his status as a Casual employee has been awarded access to annual leave entitlements in a recent decision of the Federal Magistrate's Court.

The case is important for the security industry, because the court found that despite clearly being engaged as a casual, the worker's pre-set defined shift roster was "stable, organised" and had "a certainty of working hours" more indicative of permanent full-time employment.

The Federal Magistrates court in Perth heard that the miner had a regular pattern of 12-hour shifts, two weeks on and one week off for a period of 13 months at the time his was terminated.

His contract stipulated that he was a casual employee and set out a flat hourly rate which included a casual loading, as well as outlining his roster.

The miner argued that although his contract labelled him as a casual employee, the regular, predictable and systematic basis, of his shift structure meant he didn't fall within the definition of a casual employee in the Workplace Relations Act.

The employer argued that there was no set definition of a casual employee in the Act, and that the miner acknowledged that he read, understood and signed his casual employment contract, he had never been given any advance commitment to continuing work.

However, Federal Magistrate Toni Lucev said the miner had regular work, and consistent starting and finishing times, which didn't suggest a casual employment relationship.

"This was not a case of an employee working for short periods of time on an irregular basis with hours varying from day to day and week to week."

He said there was also, in his view, a mutual expectation from both parties of continuity of employment for the miner.

Magistrate Lucev added that it was clear from various sections of the Workplace Relations Act that an employee did not become casual simply

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because of the payment of the casual loading.

The magistrate said he considered that miner was, in view of both the facts and the relevant legislation, not a casual employee, and therefore entitled to annual leave entitlements.

He added that whatever these entitlements amounted to, the employer was able to offset the amount by calculating the total identifiable loading paid in lieu of annual leave to the miner during his employment.

Security employers engaging casuals on regular and systematic work may be exposure to these types of claims.

[Williams v Macmahon Mining Services Pty Ltd \[2009\] FMCA 511 \(28 May 2009\)](#)