



HIGH COURT OF AUSTRALIA

Public Information Officer

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STEPHEN BLACKADDER v RAMSEY BUTCHERING SERVICE PTY LTD

An Australian Industrial Relations Commission (AIRC) order for reinstatement of an employee required the employer to provide actual work to the reinstated employee, the High Court of Australia held today.

Mr Blackadder, a boner at Ramsey's abattoir in Grafton, was sacked in September 1999 after he refused to undertake hot neck boning instead of his usual hindquarter boning of pre-chilled carcasses. Hot neck boning involves freeing meat from the bones from the neck to the ribs and requires greater rotational force of the elbow and wrist than general boning. Mr Blackadder had an old injury to his right elbow affecting movement in that arm. He refused to do hot neck boning because he had no experience or training in it. He may therefore have been a danger to himself and others in undertaking that work.

In March 2000, AIRC Commissioner Bob Redmond found the termination to be unfair, harsh and unreasonable. He ordered that Mr Blackadder be reinstated with all his entitlements and that his lost salary and entitlements be restored. Ramsey wrote to him to say he was required to have a medical assessment before resuming physical work. When Mr Blackadder refused to undergo the examination, because he said Commissioner Redmond's order did not require it, and he was ready, willing and able to resume his previous boning work, Ramsey stopped his wages. In July 2000 Mr Blackadder commenced action in the Federal Court of Australia to enforce the AIRC orders. Ramsey resumed paying him but refused to provide him with work and arranged a medical examination, to which he was prepared to submit, for February 2001. However the doctor refused to examine him because Mr Blackadder insisted on his wife being present. Ramsey again stopped his wages. Mr Blackadder eventually underwent a medical examination in April 2001. Ramsey resumed paying him but still refused to provide him with work.

In the Federal Court in May 2001, Justice Rodney Madgwick held that reinstatement included giving Mr Blackadder his usual work and ordered Ramsey to let him resume chilled boning work. The Full Court of the Federal Court, by majority, allowed in part an appeal by Ramsey. It held that an employer had no obligation to provide work unless a contract of employment specifically required it. The Full Court left the reinstatement order intact except for specifying that he was to work as a boner in the chilled boning room, meaning he could be directed to do hot neck boning.

The High Court unanimously allowed an appeal by Mr Blackadder. It held that to pay him, but not to restore him to his usual position in the workplace, was not to reinstate him. The AIRC had power under the *Workplace Relations Act* to make an order requiring the employer to provide a reinstated worker with actual work to do and the Federal Court had power to enforce an order. The Court held that Mr Blackadder had to be given back his job, performing the same duties on the same terms and conditions, and that reinstatement was not conditional on a medical examination.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*