



HIGH COURT OF AUSTRALIA

4 May 2012

AUSTRALIAN EDUCATION UNION v GENERAL MANAGER OF FAIR WORK
AUSTRALIA
[2012] HCA 19

Today the High Court granted the Australian Education Union (“the AEU”) special leave to appeal from a decision of the Full Court of the Federal Court of Australia, but unanimously dismissed the appeal. The AEU had challenged the validity of the registration of the Australian Principals Federation (“the APF”) under the *Fair Work (Registered Organisations) Act 2009* (Cth) (“the FW(RO) Act”). The High Court held that, pursuant to s 26A of the FW(RO) Act, the APF is a validly registered organisation.

The FW(RO) Act establishes a system for the registration of associations of employers and employees and sets out standards which such associations must meet in order to gain the rights and privileges accorded to registered associations under that Act and the *Fair Work Act 2009* (Cth). The AEU is a registered association which represents teachers, principals and other educational staff in schools and colleges throughout Australia. The APF is an association which represents principals in schools and colleges in Victoria and Western Australia.

In 2003 the APF applied to the Australian Industrial Relations Commission for registration as an organisation under the *Workplace Relations Act 1996* (Cth) (“the WR Act”). The AEU objected to the application. The APF’s application was successful at first instance and an appeal by the AEU to the Full Bench of the Commission was dismissed. The AEU then applied to the High Court for constitutional writs and associated relief alleging that the decisions of the Commission at first instance and on appeal were affected by jurisdictional error. The proceeding was remitted to the Federal Court. The Full Court of the Federal Court held in *Australian Education Union v Lawler* (2008) 169 FCR 327 (“*Lawler*”) that the APF’s registration was invalid on the basis of a deficiency in the APF rules which meant it did not satisfy the criteria for registered associations set out in Sched 1B of the WR Act. The deficiency was the absence of a “purging rule” to terminate the membership of persons no longer qualified for membership by reason of their employment.

In 2009 substantial amendments were made to the WR Act, including changing the title of the Act to the FW(RO) Act. As part of those amendments, s 26A was inserted into the renamed Act to validate registrations prior to 1 July 2009 rendered invalid by reason of the absence of a purging rule. Section 26A was enacted in conjunction with a statutory purging rule in s 171A which applied to all associations from 1 July 2009.

Following the enactment of those amendments, the AEU brought further proceedings in the Federal Court claiming, among other things, a declaration that the APF was not, by operation of s 26A, an organisation within the meaning of the FW(RO) Act. The application was dismissed at first instance and on appeal to the Full Court of the Federal Court. The AEU then applied for special leave to appeal to the High Court. The application was referred for argument before the Full Court of the High Court as on an appeal.

The application raised two issues. The first was whether, as a matter of construction, s 26A operated to validate the registration of the APF. The second issue was whether, if s 26A did validate the APF's registration, it was constitutionally invalid as an impermissible usurpation of or interference with the exercise of Commonwealth judicial power by the Commonwealth Parliament. The applicant contended that, if s 26A was construed as restoring the APF's registration, it would in substance dissolve or reverse the orders of the Full Federal Court in *Lawler*, and that the reversal of a final judgment given in the exercise of federal judicial power was beyond the legislative competence of the Parliament.

The High Court unanimously granted the application for special leave but dismissed the appeal. The Court held that s 26A, on its proper construction, validated the purported registration of the APF. So construed it did not involve an impermissible usurpation of or interference with the judicial power reserved to courts exercising federal jurisdiction pursuant to Ch III of the Constitution. In no sense was s 26A a legislative adjudication of any right or question of law which had been at issue in *Lawler*.

- *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.*