



# GREG REIFFEL CONSULTING

HUMAN RESOURCES & INDUSTRIAL RELATIONS

## Employee Relations Newsletter

Edition 76

1 May 2018

*"My business grows by referrals. I would appreciate it if you would let me know if you have any colleagues, clients or associates who could benefit from my skill-set."*

See <https://www.gregreiffelconsulting.com.au> for further information.

To subscribe to my newsletters please do so through [gregreiffelconsulting.com.au](https://www.gregreiffelconsulting.com.au).

### Quote of the Edition

*"Divide and rule, a sound motto. Unite and lead, a better one." Johann Wolfgang von Goethe.*

### Introduction

In this Edition, I focus on a complex (38 pages), but ultimately simple decision relating to "labour hire" employment, in which the Deputy President observed:

*"The prevalence of genuine independent contracting as well as labour hire (or on-hire) workers alongside direct employment and contractors are features of the modern economy".*

This is no more evidenced than a full-page advertisement (no doubt, national newspapers) calling for tenders from labour hire companies for the major Regional Rail project.

I have also included at the end, a link to an article on the role of a "Support Person".

### Multiple Names x 2 Employers x 2 Unfair Dismissal Applications = No Jurisdiction

**Mr Constantinos Trakas v BPL Adelaide Pty Limited. (U2017/11251) [2018] FWC 1530 & Mr Constantinos Trakas v Ready Workforce (A Division of Chandler MacLeod) Pty Ltd T/A Chandler MacLeod (U2017/11252). Anderson, DP. 16 March 2018.**

As mentioned in my introduction, this was a long-winded decision (38 pages) which provided the Applicant with a great deal of latitude and (arguably a written reference from the DP), but predictably failed for want of jurisdiction (casual/minimum employment period).

The applicant was employed as a casual employee with labour hire firm Chandler Macleod, which assigned the Applicant to Baiada Poultry.

The Applicant went by two names: firstly, his birth name was Anastasios Karrasoulous, secondly, he then changed his name (to honour his father's adopted family) to Constantinos Trakas and finally



returning to his birth name Anastasios Karrasulous. The name changes were all undertaken lawfully, however he was prone to use the names interchangeably depending on the circumstances at hand (or as the DP put it “naively”).

His explanation for the two names was accepted by Chandler Macleod, and he was assigned to work at Baiada Poultry.

The Applicant, whilst still under assignment from Chandler Macleod, applied directly with Baiada Poultry for work. The applicant was successful in his application and was offered employment, to which the Applicant accepted.

At this point the DP accepted that the Applicant was employed under two contracts of employment: one with Chandler Macleod and the other with Baiada Poultry; making the following observations:

*“The principles governing an employment relationship are well established. They are drawn from contractual principles, including the existence of offer, acceptance, valuable consideration and intention to create legal relations.*

Also citing a full bench decision, *FP Group v Tooheys*:

*“In the context of a genuine labour hire arrangement - that is, one involving a labour hire company genuinely in business on its own account - the fact that a worker supplied by the labour hire company works under the direction of the hirer is not necessarily inconsistent with the proposition that the worker’s contract is with the labour hire company and not the hirer.”*

Find further:

*“I do not consider there to be a legal foundation on which a claim of joint employment in respect of the same work can be made or sustained under Australian law. I adopt the observations of Hampton DP in *Costello v Allstaff Industrial Personnel (SA) Pty Ltd* and the later observations of a full bench of this Commission in *FP Group v Tooheys* on this point where it was said:*

*“the application of a concept of joint employment to labour hire arrangements would involve a very considerable development of the common law...we do not consider that the Commission’s role as a statutory tribunal extends to engagement in the development of the common law. That is a matter for the courts.”*

Returning to the case at hand, upon finding of the Applicant had differing names, Baiada Poultry withdrew the offer of employment. This was due to Baiada Poultry having been found previously to have lacked due diligence in its hiring practices.



Chandler Macleod subsequently assigned the Applicant to another company, but he walked out after two hours, still hurting from the Baiada Poultry rejection.

The Applicant then filed two applications for unfair dismissal – one for each “employer”. Despite protestations by both respondents, the DP insisted that the matters be heard as one.

The DP providing broad concessions to the Applicant, including holding of the five-day hearing in the afternoons to accommodate the applicant’s new employment arrangements.

Then providing a (non) opinion, the DP opined (or in my opinion provided a written reference for a person unknown to the DP):

*Firstly, whilst I received evidence on merits and on remedy, I have self-evidently not been in a position, given my jurisdictional findings, to make a decision on matters of fairness. Lest the parties, including Mr Trakas, interpret this decision as a statement about whether relevant conduct was or was not fair, I make it clear that no such conclusion has been made.*

*“Secondly, there are matters which emerged from the evidence which should be a cause for reflection for all three parties, Mr Trakas, Baiada and Chandler MacLeod. It is not the Commission’s role to provide gratuitous advice and I decline to do so.*

*“Thirdly, given the public nature of this decision and its accessibility to a prospective employer I highlight my finding that Mr Trakas, despite the unusual circumstance in which he naively operated under two names, did not set out to deceive or mislead. When he changed his name he lawfully did so. He disclosed that fact to his employer Chandler MacLeod prior to being employed on 23 March 2017. He disclosed that fact to Baiada when offered direct employment in September and October 2017. **I also draw attention to my finding that Mr Trakas was a hard-working, reliable and productive process worker** evidenced by the fact that he was offered direct employment by the host business after six months of satisfactory service as a labour hire worker. His former employer, Chandler MacLeod, also held that view”. [My emphasis].*

### Interesting reading from the web:

#### Role of the Support person

<http://www.worklogic.com.au/employment-policies/dealing-with-support-people-in-workplace-investigation-interviews/>

Until next time....

**Greg Reiffel**

Principal Consultant