
EMPLOYMENT

QANTAS INDUSTRIAL ACTION GROUNDED

NOVEMBER 2011



Rob Towner
PARTNER
rob.towner@bellgully.com

The announcement by Qantas on Saturday of immediate plans to lock out striking employees and ground its fleet worldwide attracted much media attention.

Flights resumed on Monday after Australia's workplace relations tribunal, Fair Work Australia (FWA), granted the Government's application for an order terminating all industrial action by the airline, its employees and relevant trade unions.

FWA ordered the protected (lawful) industrial action to cease on the basis that the lockout and grounding of the airline would cause significant damage to the Australian aviation and tourism industries. The evidence suggested that the cost to Qantas alone was AUS\$20 million per day.

The airline's lockout and global grounding followed a long-running industrial dispute with unions representing pilots, aircraft engineers, baggage handlers and caterers. The combined effect of strikes and overtime bans by the employees in relation to claims for job security and wage rates had resulted in the cancellation of 600 flights, grounding of 7 aircraft and AUS\$70 million in losses.

The parties have 21 days (which can be extended by a further 21 days) in which to reach a settlement. If there is no agreement, FWA can arbitrate the dispute.

Can the Courts in New Zealand terminate lawful industrial action?

The short answer is no. The employment institutions here (Employment Relations Authority and Employment Court) have no equivalent power to terminate or suspend lawful industrial action on public interest (or any other) grounds.

The Employment Court does have exclusive jurisdiction to determine an injunction application to stop a strike or lockout that is *unlawful*. However, if the Court finds that the industrial action in question is lawful, it must dismiss the proceedings.

Alternatively, a party to collective bargaining who experiences serious difficulties in the negotiations can apply to the Authority for a reference to facilitated bargaining. During facilitation, collective bargaining continues subject to a process devised by the Authority. However, industrial action can continue during facilitated bargaining.

The Authority can only accept a reference for facilitation where:

- There has been a serious and sustained breach of good faith which has undermined the bargaining;

To view all our publications or update your details please visit our website: www.bellgully.com

For further information, please contact your usual Bell Gully adviser or:

Rob Towner

64 9 916 8902
rob.towner@bellgully.com

Tim Clarke

64 9 916 8347
tim.clarke@bellgully.com

- The bargaining has become unduly protracted and extensive efforts have failed to resolve the difficulties;
- There has been a protracted or acrimonious strike or lockout; or
- A proposed strike or lockout is likely to affect the public interest substantially, because it is likely to endanger the life, safety or health of individuals, or it is likely to disrupt social, environmental or economic interests and the effects of the disruption are likely to be widespread, long term or irreversible.

In the event of a serious and sustained breach of good faith in relation to collective bargaining, and all other reasonable alternatives for reaching agreement have been exhausted, the Authority can fix the provisions of the collective agreement being bargained for.

Limitations apply to strike and lockout action in “essential services” (specified in Part A, Schedule 1 of the Employment Relations Act 2000) to prevent instantaneous industrial action. The Act requires organisers of industrial action in essential services, which include air transport services, to give no less than 14 days’ clear notice of an intention to strike or lockout employees.

Disclaimer: This publication is necessarily brief and general in nature. You should seek professional advice before taking any further action in relation to the matters dealt with in this publication.

All rights reserved © Bell Gully 2011