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Hungry Jack's caught in Fair Work debacle

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Hungry Jack's has had to wait a year for its first national agreement to be approved in what has become a debacle for the workplace tribunal after a Coalition appointee was heavily criticised for his extraordinary failures in dealing with the case.

A full bench of the Fair Work Commission blasted deputy president Gerard Boyce's lack of explanation in ratifying the workplace deal as "entirely unsatisfactory" and found he had not even read all the submissions when he held that the fast-food deal left 16,000 workers better off than the industry minimum.



The Hungry Jack's agreement could have been determined 10 months ago, the bench has said.

The lack of reasons "wholly vitiated" the deputy president's decision and forced the bench to reconsider and ultimately approve the deal itself, though only after securing commitments from Hungry Jack's to increase staff pay.

"It is obviously highly regrettable that the agreement may only now be approved almost a year after the application for its approval was lodged," the bench led by vice-president Adam Hatcher said.

The case comes at a sensitive time for the commission as big employers from McDonald's to Bunnings [quit the enterprise bargaining system](#) because of increasing uncertainty over approvals and industry groups call for reform. The full bench said the circumstances surrounding the approval of Hungry Jack's agreement, overwhelmingly supported by staff, were "unusual, to say the least" and that "things went badly astray".

Deputy president Boyce approved of the agreement in December, five months after its first hearing, but never issued his reasons despite promising to do so.

'Fundamental error'

In March, more than three months after the decision and nine days before an appeal hearing, he released a statement [disagreeing with his own decision](#) on the basis the name of the corporate entity on the agreement was incorrect.

The bench found the deputy president, [a barrister appointed by the Morrison government in 2018](#), "fell into fundamental error by issuing a decision without reasons in circumstances where he clearly had not finished his consideration of the matter".

He also took an "excessive amount of time" and a "meandering course" in dealing with the case, involving "widely interspersed hearings" in July, September, October and November.

That was despite the bench finding he could have determined the case by early July, "had the file been carefully considered".

Even the anomaly over the corporate name, a "not incurable" error in the bench's view, was "eminently detectable" from a diligent reading of the file" and "should not have gone unnoticed".

Indeed, Hungry Jack's, which was criticised for its "lack of care" in drafting the agreement, had highlighted the issue in a submission from September.

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It is apparent that he failed to read the submission at this time or at any time before he issued the decision," the bench said, adding he "perhaps had not read other submissions".

The Hungry Jack's agreement was supported by 93 per cent of voting employees, or more than 10,000 workers.

However, the Retail and Fast Food Workers Union, representing just two workers, hotly contested its approval on the basis it paid some supervisors below the award, other staff only slightly above and removed fixed rosters for part-timers.



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The bench said there had been serious issues with the agreement and the better off overall test (BOOT) from the start but it was impossible to identify how the deputy president was satisfied they had been resolved.

"The absence of reasons and the incapacity otherwise to readily identify any logical grounds for the deputy president's conclusion as to the BOOT render the decision an arbitrary one."

The bench ended up approving the agreement after accepting undertakings from Hungry Jack's to increase loadings for staff working late nights or weekends.

However, it largely rejected RAFFWU's objections to the agreement, finding they did not constitute "a detriment" relevant to the award.

The case is the third major fast-food or retail agreement deputy president Boyce has failed to deliver reasons on.

Big W is still waiting on reasons for the approval of its agreement seven months ago while the deputy president has refused to give reasons for rejecting Krispy Kreme's agreement in November, despite promising to do so.

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