

**IN THE HIGH COURT OF AUSTRALIA
PERTH REGISTRY**

No. P38 of 2015

BETWEEN:

FAIR WORK OMBUDSMAN
Appellant

and

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QUEST SOUTH PERTH HOLDINGS PTY LTD
(ACN 109 989 531)
First Respondent

CONTRACTING SOLUTIONS PTY LTD
(ACN 099 388 575)
Second Respondent

PAUL KONSTEK
Third Respondent

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APPELLANT'S CHRONOLOGY

PART I: The Appellant, the Fair Work Ombudsman (FWO), certifies that this chronology is in a form suitable for publication on the internet.

PART II:

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Date	Event	Appeal Book Reference
Background Facts		
At all material times	Quest South Perth Holdings Pty Ltd (Quest) operates a serviced apartment accommodation business.	AB AJ ¹ [7]
40 2007	Quest employs Margaret Best (Best) and Carol Roden (Roden) as housekeepers.	AB AJ [7]

¹ Appeal Judgment.

Date: 18 September 2015

Filed on behalf of the Appellant
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Date	Event	Appeal Book Reference
18 March 2009	Quest employs Jessica Buttrum-Virco (Buttrum-Virco) as a part-time receptionist.	AB TJ ² [41]
10	<p>Quest enters into a "<i>Hiring Agreement</i>" with Contracting Solutions Pty Ltd (Contracting Solutions).</p> <p>Contracting Solutions carry on a contract labour hire business.</p> <p>Under the "<i>Hiring Agreement</i>", Contracting Solutions is to supply independent contractors to perform work for Quest.</p>	<p>AB AJ [18]</p> <p>AB AJ [8]</p> <p>AB AJ [18]</p>
20	From late October 2009 Contracting Solutions on behalf of Quest takes steps to " <i>convert</i> " the employees of Quest into independent contractors under Contracting Solutions' system.	AB AJ [21] and [23]
30 October 2009 or thereafter	Best and Roden each sign Contracting Solutions' " <i>Contractor Application</i> ".	AB AJ [25] and [31]
30	From 2 November 2009 Quest represents to Best and Roden that they are performing work at Quest as independent contractors under a contract for services with Contracting Solutions.	AB AJ [240] and [335]
40	<p>From 2 November 2009</p> <p>Best and Roden:</p> <ul style="list-style-type: none"> • continue to perform precisely the same work at Quest in exactly the same way as they had always done; • are, in truth, employees of Quest; • each work under a contract of employment with Quest, such contract being implied. 	<p>AB AJ [48]</p> <p>AB AJ [230] and [309]</p> <p>AB AJ [222] and [331]</p>
29 November 2009	Ashvin Luchmaya (Luchmaya), Quest's on-site manager, tells Buttrum-Virco that if she does not sign the " <i>Contractor Application</i> " she will not be paid.	AB TJ [47] and [54]

² Trial Judgment.

Date	Event	Appeal Book Reference
1 December 2009	Buttrum-Virco signs the "Contractor Application".	AB TJ [55]
10 From 1 December 2009	Buttrum-Virco is not offered any further shifts at Quest.	AB TJ [55] and [56]
28 November 2009	Best ceases working at Quest due to a non-work related injury.	AB AJ [44]
20 14 November 2010	After Luchmaya departs from Quest and a new owner takes over Quest's business, Quest decides that it will stop using Contracting Solutions and will in the future pay its housekeepers, including Roden, directly.	AB AJ [43]
The First Instance Proceeding		
27 May 2011	The FWO files an Application in the Federal Court of Australia.	
30 16 August 2011	<p>In its Amended Statement of Claim, the FWO claims (relevantly for the purposes of this appeal) that:</p> <ul style="list-style-type: none"> • Quest has breached s.357 of the <i>Fair Work Act 2009</i> (Cth) (FW Act) by making representations to Best and Roden that they would be (and later that they were) not its employees but independent contractors of Contracting Solutions. <p>The FWO further claims, amongst other things, that:</p> <ul style="list-style-type: none"> • Contracting Solutions and Paul Konstek (Konstek), who acted for Contracting Solutions in a managerial capacity, are liable as accessories for Quest's breach of s.357 by reason of s.550 of the FW Act; • Quest has breached s.358 of the FW Act by threatening to dismiss Buttrum-Virco, in order to engage her as an independent contractor to perform the same, or substantially the same, work under a contract for services; 	<p>AB ASOC³ [11] and [12] to [14(a)]</p> <p>AB ASOC [5], [14(b)] and [14A]</p> <p>AB ASOC [7] and [8(a)]</p>
40	<ul style="list-style-type: none"> • Luchmaya is liable as an accessory for Quest's 	AB

³ Amended Statement of Claim.

Date	Event	Appeal Book Reference
	breach of s.358 by reason of s.550 of the FW Act.	ASOC [8(b)]
10 16 to 18 October 2012 and 16 November 2012	Trial before McKerracher J in the Federal Court of Australia. Whilst Quest and Luchmaya file and serve a Defence in the proceeding, they do not appear at the trial.	AB TJ [35]
20 14 June 2013	Justice McKerracher delivers his reasons for judgment, in which his Honour found that: <ul style="list-style-type: none"> • Quest, Contracting Solutions and Konstek had not contravened s.357 of the FW Act because Best and Roden each became independent contractors voluntarily; • Quest and Luchmaya, as an accessory, had contravened s.358 of the FW Act in threatening to dismiss Buttrum-Virco in order to engage her as a contractor to perform the same work as a receptionist. 	AB TJ [255] AB TJ [252] and [253]
30 26 July 2013	Orders were made by McKerracher J: <ul style="list-style-type: none"> • declaring that Quest and Luchmaya had contravened s.358 of the FW Act; • listing the determination of any penalties to be imposed for directions; • otherwise dismissing the FWO's claim. 	AB
The Appeal in the Full Federal Court		
40 15 August 2013	The FWO files a Notice of Appeal in the Federal Court of Australia, which contends that: <ul style="list-style-type: none"> • Justice McKerracher erred in dismissing the FWO's application for a declaration that Quest contravened s.357 of the FW Act in relation to Roden and Best (ground 1); • as a consequence, McKerracher J erred in dismissing the FWO's application for a declaration that Contracting Solutions and Konstek were involved in Quest's contravention (grounds 2 and 3). 	AB AB
25 February	Justices North, Bromberg and Barker hear the appeal	

DATED: 18 September 2015

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