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MEMBER UPDATE

Industrial News

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Redundancy pay and notice - counting contiguous prior casual service

In the recent Full Bench decision in [AMWU v Donau \[2016\] FWCFB 3075](#), the Fair Work Commission (FWC) determined that contiguous prior casual service counts as "service" for the purpose of calculating redundancy pay and notice entitlements provided for by the National Employment Standards (NES) contained in the *Fair Work Act 2009* (FW Act).

It is important to note, however, that it was only because the relevant enterprise agreement (EA) specifically incorporated the terms of the NES that this contiguous prior casual service counted for the purposes of calculating such entitlements under the EA.

Each EA needs to be interpreted having regard to its own specific wording.

The implications of the decision for universities are as follows:

1. The terms of the redundancy provisions in your EA(s) need to be checked to see if they operate so as to include contiguous prior casual service for the purpose of calculating redundancy pay and notice entitlements. These terms need to read in the context of the EA as a whole, and AHEIA can assist with interpretation queries that your university might have.
2. In any given redundancy situation, an employee will be entitled to the greater of (i) the redundancy pay and notice entitlements specified by the applicable EA, and (ii) the redundancy pay and notice entitlements specified by the NES (which, according to the Full Bench decision in *Donau*, requires any contiguous prior casual service to be factored into calculations).
3. It would be prudent for the wording of future EA redundancy provisions to specifically address whether contiguous prior casual service is to count as service for calculating redundancy pay and notice entitlements.

It should also be noted that *Donau* is a highly contentious decision, with the Full Bench decision being a 2:1 majority appeal decision which overturned the [first instance decision](#).

Please contact Cathy Pugsley on (03) 8611 0514 if you have any queries in relation to this matter.

Regards

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