

GRIEVANCE DEBATE

Workplace Relations

Speech to Parliament October 2005

By Dr. Craig Emerson MP -

In a statement with the Orwellian title 'WorkChoices', released yesterday, the Howard government indicated that it sees the future of Australian workplaces as lying in individual contracts. It asserts that these contracts are and will be negotiated genuinely and in good faith between employers and individual job applicants.

I have a copy of an individual contract. It is an offer of employment by Boating, Camping and Fishing, which I am advised is a subsidiary of Autocheap, and it is made to Jason Towers. I will not go through the full details of this contract but I am sure that members of this house will be interested in some of them. In relation to hours of work, it says:

It is expected that in this position you will be required to work a minimum of an approximately 45 hour week to perform the duties and responsibilities effectively.

You will be expected to complete these hours during BCF's normal working hours. You may, however, need to work outside these normal working hours as reasonably necessary to complete or perform your duties, which may include overtime/weekends/public holidays or night work and will not incur any additional payment.

So the document is saying there may be a requirement to work on public holidays or at night, overtime or at weekends but there will be no additional payment. It goes on to say in relation to leave:

Please note you are not entitled to any leave loading as it has already been factored into your base salary.

I am advised that you cannot take leave loading out of contracts and you cannot take public holiday rates of pay out of individual contracts, yet that is what this document does.

Another set of provisions relates to inventions, because this is a boating, fishing and tackle business. In relation to any inventions that the employee might create, it says:

... and the inventions will thereafter be the sole and exclusive property of BCF.

b) You will immediately deliver to BCF full particulars concerning the inventions ... and to assign to BCF all rights which may be acquired by it in relation to them and to vest title in them in BCF absolutely.

So any intellectual property, any new ideas that the employee comes up with are immediately then the property of the employer. This is a very sad story. We are now witnessing employers being emboldened by this government's statements and its exhortations to employers to put people on individual contracts.

It is such a ridiculous claim to say that these contracts are in fact negotiated. I say that because I have now a letter from the same person, Jason Towers and I want to quote parts of that letter:

At the end of the day at 6:15pm Mark [who is the employer] gave me the contracts to take home and read and said I want them back tomorrow. But on the contract it states:

Please review the enclosed documentation carefully, and in order to signify your agreement to the offer of employment, return a signed copy of the enclosed Terms and Conditions of employment to head office at your earliest convenience.

Should you wish to discuss any matters resulting from our discussions or contained in this offer, please do not hesitate to contact me.

So the contract says, 'Take your time, have a good look over the contract. If you have any queries, let's come and have a discussion and a genuine negotiation.' That is what it says in the document. But Mark said to Jason, 'I want you to take the contracts home, read them and bring them back tomorrow.'

Jason goes on in his letter to say:

Mark approached me and asked if I had brought the contracts back signed, I said, "no I have left them at home so I can review them tonight as I was sleepy last night and I had not had enough time to read and fully understand what was written in the contract and that I would give the contract to him tomorrow and talk about it then.

Mark then raised his voice to me and said "I told you to bring the contracts back today, how far away do you live", I replied "not far 10 minutes away". Mark then told me to go home at lunch time and get the contracts and bring them back, I nodded yes feeling intimidated.

Jason goes on further to say:

Mark then told me to have some lunch first then go home and get my contracts, I replied and said that I am not ready to sign them yet I want to read them through more. Mark said angrily "I heard you say that this morning you don't have to tell me twice, now go home and get the contracts", he said to me as I walked away from him avoiding confrontation. I immediately left without lunch on my lunch break to go home and get the contracts as he angrily demanded I do.

Jason goes on to say that he requested a phone call to Wayne Faulkner, whose name was on the contract, to talk over this clause No. 16 on inventions. The upshot is that he asked Mark if he could take home the contracts, read through them carefully again and think about it some more. The letter states that Mark:

... strongly replied "the answer is NO".

I was given 5 minutes to read through both contracts in the lunch room and to make a final decision. With the way I was being treated by Mark, I couldn't make phone calls out to anyone and I didn't have a mobile phone with me.

I felt I was being forced into the contract without me having my own amount of time to think it over, this is not my earliest convenience that right had been taken from me. I had to sign the contract that day or I didn't have a job.

He goes on to say:

Mark took a small tape recorder out from behind some books on his desk and asked for my decision only a man can make. I replied "I won't sign the contracts, so I resign". ...

Jason then says:

I was not made aware the meeting was being recorded nor was I asked if it was alright by me to do so.

Is this the Australia to which we aspire? This was supposed to be a negotiation, but there was no negotiation in relation to this contract. Employers right through Australia will be emboldened and encouraged by the Howard government to adopt this sort of behaviour toward employees and job applicants.

The government has said time and time again that individual contracts are negotiated and that they are the basis of negotiations for working out flexible working arrangements between employer and employee. Where is the flexibility in this? There was no flexibility whatsoever. There was no scope for negotiation whatsoever—simply a demand that Jason sign this contract and the threat that, if he

did not sign the contract, there would then be consequences. Jason decided that he was not going to sign the contract and that he was going to resign.

The truth is that, in coming forward, this man Jason is rare amongst working Australians. There are innumerable cases where this same sort of treatment is meted out to employees and to job applicants, but in their cases, if they are in employment, they feel intimidated. They feel that if they come forward and say what has actually happened to them they will then lose their jobs—and who will look after them then? That is how the government has been able to get away with this approach in relation to its favoured form of individual contracts, AWAs. These are non-reviewable, secret documents. If AWAs are so terrific, if they are so great for working Australians, why is there secrecy with them? This answers that question.

I am not asserting that this is an AWA—it does not have ‘AWA’ written on it—but it certainly is an individual contract that was not subject to negotiation. There is plenty of evidence here that the employee was put under enormous pressure to sign that contract, but in the end he did not do so. This is the ‘brave new world’ of workplace relations under the Howard government: employers being encouraged to treat employees like dirt.

Surely this is not the Australia to which reasonable people would aspire. No \$100 million of taxpayer funded propaganda will convince the working people of this country that arrangements such as this are good for them—arrangements where the employee has little or no say in working conditions; arrangements that appear, at least on the face of it, to be in breach of the laws of the land. The advice to me is that this particular contract is in breach.

Where is the enforcement? This government has an inspectorate but it does not utilise that inspectorate, because it does not want to shine a light on this sort of behaviour. This cannot be the future of Australian industrial relations. It cannot be the future for our country.

This government should be condemned for encouraging this sort of contract, for encouraging intimidation and for encouraging the loss of basic pay and working conditions for working Australians—all in the name of some mad, right-wing ideology, some zealotry regarding an article of faith of the Liberal Party. The Liberal Party is absolutely determined to erode the working conditions of Australians and to smash the trade union movement in this country; it will not succeed. We will win this argument in the court of public opinion, and the government will rue the day that it ever came up with the stupid idea of bringing in this Orwellian legislation that encourages appalling behaviour such as this.