

WorkPac Pty Ltd v Rossato [2020] FCAFC 84

<https://lawcasesummaries.com/knowledge-base/workpac-pty-ltd-v-rossato-2020-fcafc-84/>

Facts

- Between 28 July 2014 and 9 April 2018, WorkPac Pty Ltd ("**WorkPac**") employed Mr Rossato and supplied his labour to companies within the Glencore Group. Mr Rossato was employed under 6 consecutive contracts during this period.
- In the Federal Court, WorkPac sought declarations that Mr Rossato could not make claims with respect to paid annual leave, personal/carer's leave, and compassionate leave entitlements under the National Employment Standards because he was a casual employee within the meaning of ss 86, 95 and 106 of the *Fair Work Act 2009* (Cth) ("**the Act**") or, as a casual employee, claim payment for public holidays under s 116 of the Act.
- WorkPac also sought declarations that Mr Rossato could not claim corresponding entitlements under the applicable enterprise agreement (the 2012 EA) because he was a "Casual Field Team Member".

Issues

- Was Mr Rossato a casual employee within the meaning of the Act?

Held

- The Court found that the presence or absence of the "*firm advance commitment*" may be assessed by regard to the employment contract as a whole, including by considering whether it provided for the employment to be regular or intermittent, whether it permitted the employer to elect whether to offer employment on a particular day, whether it permitted the employee to elect whether to work, and the duration of the employment.
- It also held that the description given by the parties as to the nature of their relationship is a relevant, but not a conclusive consideration. Simply labelling an employee as a "casual" does not necessarily make them so.

Full Text

The full text is available here:

<http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCAFC//2020/84.html>