Submission
No 14

INQUIRY INTO IMPACT OF COMMONWEALTH WORKCHOICES LEGISLATION

Organisation:

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Date Received: 25/05/2006

Theme:

Summary

Mrs Maree Filipczuk
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26 May 2006

The Hon J Burnswoods MLC
Chairperson
Standing Committee on Social Issues
Legislative Council
New South Wales Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Ms Burnswoods,

RE: NEW SOUTH WALES LEGISLATIVE COUNCIL INQUIRY REGARDING THE IMPACT OF THE WORKCHOICES LEGISLATION

SUBMISSION

I make this submission to the Committee as a former shop assistant who was recently dismissed by my employer for querying my pay and entitlements.

I have read the inquiry's terms of reference and understand that the Committee is interested in the impact of the Commonwealth WorkChoices legislation, particularly with respect to the ability of workers to genuinely bargain, focusing on groups such as women, youth and casual employees and the impact upon wages, conditions and security of employment.

I hope that my experience will provide members of the Committee with a glimpse of how this hostile legislation may be used by ruthless employers against ordinary workers and their families.

I am a widow and the sole income earner in a household with two teenage daughters, aged sixteen and nineteen, living in Western Sydney.

On 8 December 2005 I returned to work for the first time since raising my daughters. I commenced full-time employment in Penrith working for a small chain of jewellery shops trading under various names including House of Cillini. It is important to note for the purpose of this inquiry that my employer was Princess World Pty Ltd, a "constitutional corporation", and that my terms and conditions of employment were governed by the Shop Employees' (State) Award (NSW).

I worked between 38 to 45 hours per week including weekend work. On some occasions I worked up to 64 hours in a single week.

I emphasise that I found the work very satisfying and enjoyable. I also enjoyed working with my Manager, Sam, and the co-workers at the store. I did, however, experience a number of difficulties with my pay and conditions of employment during this time. I endeavoured to resolve these concerns directly with management.

The concerns included pay slips, meal breaks, rostering conditions, penalty rates for weekend work and unpaid superannuation. I raised all these matters with the relevant Store Manager and a Company Director and at various times drew their attention to the relevant industrial laws which required them to observe these entitlements.

It was not until March that I received my first payslip.

That payslip, received on 15 March 2006, indicated that funds had been deposited into my REST superannuation account.

On 29 March 2006 I prepared a written request to Marco Hwezawe, the Company Director and Current Company Secretary, for unpaid penalty rates and unpaid superannuation owed since 8 December 2005 when I commenced employment. I gave the letter to the Store Manager, Sam, and requested that it be passed on to Marco.

I had further conversations with both Sam and Marco over the following weeks seeking my award and superannuation entitlements, but to no avail, although some adjustments were made during this period. I still believed, however, that I was being incorrectly paid and was still owed money.

On 12 April 2006 I unsuccessfully sought assistance from the payroll officer at head office regarding concerns I had about calculation of hours over the holiday period. Following this conversation, Marco called the store later that day. After explaining my earlier concern I raised my query regarding the roster. He insisted that the roster was correct but from now on I would work a four day 38 hour week from Monday to Thursday. Having resolved this issue I asked Marco to explain what was happening with my superannuation. He responded angrily that it had all been fixed up. I asked if it had been paid into my super fund account and he replied, "Yes, I think so." When I asked if that included superannuation owing to me since December 2005, he said, "Maree, is Sam there." I replied that he was and then Marco said, "Put Sam on the phone please."

Sam spoke briefly with Marco, then hung up and said to me, "Maree, I'm sorry, but Marco said you're to finish now and he wants you to leave immediately."

I replied that I was entitled to 2 weeks' pay in lieu of notice. Sam said that he didn't know and asked if I wished to call Marco back. I replied I didn't. I then asked Sam to remove my store purchases from the safe and to place them in a sealed bag. I also collected my personal belongings and asked Sam to check my bags before I left. He agreed, reluctantly.

Due to the commencement of the federal WorkChoices legislation on 27 March 2006, I have been advised by my Union, the SDA, that I am no longer entitled to bring an unfair dismissal application against my employer in the New South Wales Industrial Relations Commission, as I am now covered by the federal jurisdiction. I am also, however, precluded from bringing similar proceedings against my former employer in the federal jurisdiction because my employer is a constitutional corporation with less than 100 employees.

I feel deeply cheated by this legislation. As working mother re-entering the workforce for the first time in almost 20 years, I find it incomprehensible that I cannot easily seek redress for what is so blatantly an unfair dismissal.

I have been advised by the SDA that there is an arguable alternative action available relating to the employer's breach of the freedom of association provisions of the federal Act. The Union is currently assisting me to commence proceedings in the Federal Court for this purpose. Without the resources and backing of the Union this type of action would be well beyond my means.

In my short experience with House of Cillini I was surprised at how little observance of the Award occurred. I am concerned for the many other young people and women in the retail industry who may not be receiving their just entitlements if this experience reflects the attitude of other retailers.

Given the recent impact of the WorkChoices legislation on my employment security, I appeal for the Committee members note the following.

1. The removal of the opportunity to seek redress for unfair dismissal before an independent umpire will only encourage unsavoury behaviour and poor management practices by callous employers;

2. Workers are entitled to be protected by fair laws from such behaviour; and

3. Until unfair dismissal laws are universally accessible once again, without this flawed and arbitrary restriction on the basis of 100 employees, I believe that many other young workers and women in the retail industry will suffer the same fate.

I wish the Committee the very best in it's inquires and urge the Committee to recommend implementing any measures which can alleviate the impact of this legislation on NSW workers and their families.

Yours sincerely,
Maree Filipczuk
26 May 2006