

Kostal and Beyond

- What is a change in terms/conditions under s.145B?
- Implications for unions and employers

Andrew Burns QC



Collective Bargaining



"(1) A worker who is a member of an independent trade union which is recognised, or seeking to be recognised, by his employer has the right not to have an offer made to him by his employer if —

a. acceptance of the offer, together with other workers' acceptance of offers which the employer also makes to them, **would have the prohibited result**, and

b. the employer's **sole or main purpose** in making the offer is to achieve that result.

“(2) The prohibited result is that

the workers' terms of employment, or any of those terms,
will not (or will no longer)

be determined by collective agreement negotiated by or
on behalf of the union”.

Section 145D(2)

- On a complaint under section 145B it shall be for the employer to show what was his sole or main purpose in making the offers.

Section 145D(4)

- "In determining whether an employer's **sole or main purpose** in making offers was the purpose mentioned in section 145B(1), the matters taken into account must include any evidence —

- a. that when the offers were made the employer had recently changed or sought to change, or did not wish to use, arrangements agreed with the union for collective bargaining
- b. that when the offers were made the employer did not wish to enter into arrangements proposed by the union for collective bargaining,
- c. that the offers were made only to particular workers, and were made with the sole or main purpose of rewarding those particular workers for their high level of performance or of retaining them because of their special value to the employer".





Thank you

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