

## **Dek v PrixCar Services Pty Ltd (A60/2005)**

### **1) Reference Details**

Jurisdiction: Victorian Civil and Administrative Tribunal, Australia

Date of Decision: 26 April 2005

Link to full case:

<http://www.austlii.edu.au/au/cases/vic/VCAT/2005/738.html>

### **2) Facts**

PrixCar's workplace at its Altona site had about 75 employees of whom around 40 are permanent workers, with the balance being casual workers. The complainant started as a casual worker for PrixCar at Altona in October 2003. As a casual worker, the complainant needed to phone the guard at the security gate at the Altona workplace between 6 pm and 7 pm each day to see if he was needed for the next day. This was the system for all casual workers at the Altona workplace. Throughout the 11 months that the complainant worked for PrixCar, he made himself available for work on each work day, and received regular casual work. The complainant worked an average of 30 hours' casual work per week during his 11 months with PrixCar. The most he worked in a week during this period was 35 hours and the least he worked was 14 hours.

After 11 months as a casual employee of the respondent, the complainant applied to become a permanent employee of the respondent. During the interview he was told that if his application to become permanent was successful, he might have to do tasks that he had not previously performed. He replied that he might have some restrictions because of a previous injury. His application for a permanent position was not successful, and though he continued to make himself available for casual work, he soon found that he was being offered no casual work.

On 12 October 2004, the complainant lodged a claim with the Equal Opportunity Commission of Victoria (EOCV) alleging discrimination on the basis of impairment in the area of employment.

### **3) Law**

- Section 8 of the Equal Opportunity Act 1995 (definition of direct discrimination)
- Sections 13 of the Equal Opportunity Act 1995 (discrimination against job applicants)
- Section 14 of the Equal Opportunity Act 1995 (discrimination against employees)

### **4) Legal Arguments**

#### *The Complainant*

The complainant alleged unlawful discrimination on the basis of impairment in the area of employment. The complainant alleged that due to unlawful discrimination, his application for permanent employment was not properly assessed. The complainant also alleged that due to unlawful discrimination, the respondent decided to stop offering him casual work.

### *The Respondent*

The respondent denied any unlawful discrimination against the complainant and suggested that the reason Mr Dekretser's casual work had petered out was because new work for PrixCar from DaimlerChrysler had commenced later than expected.

### **5) Decision**

The Tribunal considered that no adverse inference can be drawn from the complainant's negative answer to the question on the respondent's Application for Employment Form as to whether the complainant had "any medical condition (or injury) that would prevent you from carrying out the duties of the position applied for." Despite noting the unsatisfactory nature of the interview process, the Tribunal was not satisfied that it amounted to discriminatory conduct. However, it found that the complainant was treated less favourably than other casual workers because of the attribute of impairment, and that the real reason why the complainant's casual work petered out – and why his name was removed from the list of casual employees – was because of his previous WorkCover claim. The Tribunal ordered that the respondent pay the complainant \$5,000 sum to compensate the Complainant for pain and suffering caused.