

Dignity of work: labour rights, human rights and the *Tristar* decision

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The recent Federal Court decision of *Unsworth v Tristar Steering and Suspension Australia Limited* [2008] FCA 1224 (13 August 2008) (*Tristar*) sets a worrying precedent for Australian workers and their right to work with dignity.

In *Tristar*, Justice Gyles found that it was not a breach of section 792 of the *Workplace Relations Act 1996* (Cth) ('the WRA') for a company to continue to employ workers in circumstances where a number had 'no work to do or no work of the kind for which they were qualified'.¹ His Honour also accepted that most, if not all, of the workers found the experience 'disturbing and stressful' and that some suffered 'lasting psychological trauma'.²

Human dignity is recognised at international law as a fundamental right that underpins numerous other human and labour rights. As the preamble in each of the two key human rights treaties, the *International Covenant on Civil and Political Rights*,³ and the *International Covenant on Economic, Social and Cultural Rights*⁴ states, the 'inalienable rights of all members of the human family... derive from the inherent dignity of the human person.' Both these instruments also recognise the 'inherent dignity... of all members of the human family'⁵ while the *Universal Declaration of Human Rights* recognises the 'dignity and worth of the human person' and speaks of each worker's right to 'an existence worthy of human dignity'.⁶

The *Declaration Concerning the Aims and Purposes of the International Labour Organization* states that 'all human beings, irrespective of race, creed or sex, have the

¹ *Unsworth v Tristar Steering and Suspension Australia Limited* [2008] FCA 1224 (13 August 2008) at 5

² *Unsworth v Tristar Steering and Suspension Australia Limited* [2008] FCA 1224 (13 August 2008) at 5

³ opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976). Ratified by Australia 13 November 1980, hereafter 'the ICCPR'.

⁴ opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976). Ratified by Australia 10 December 1975, hereafter 'the ICESCR'.

⁵ ICCPR, preamble; ICESCR, preamble

⁶ adopted 10 December 1948, GA Res 217A (III), UN Doc A/810 at 71 (1948), preamble and article 23.3

right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity'.⁷

But what do we mean by dignity and how does it relate to work?

The *Oxford English Reference Dictionary*⁸ defines dignity as:

'1 a composed and serious manner or style. 2 the state of being worthy of honour or respect. 3 worthiness, excellence (the dignity of work). 4 a high or honourable rank or position. 5 high regard or estimation 6. self-respect.'

The reference in this definition to work is significant for it is from one's employment that one often gains a sense of respect, both self respect and that of others.⁹ As Senator Hogg noted in his First Speech to the Senate in 1996, 'the first step to dignity [is] meaningful work'.¹⁰ Indeed, the common law has recognised that workers derive value from performing their duties and that payment for their efforts is not their only concern. As Justice Kirby noted in *Blackadder v Ramsey Butchering Services Pty Ltd* (2005) 221 CLR 539, not requiring an employee to actually perform work denies him or her 'the satisfaction of employment, the feeling of self-worth that it can generate and the maintenance of his [or her] skills to which their exercise would contribute.'¹¹

A person's employment, both in terms of his or her duties and in relation to the conditions under which he or she works, can have a significant impact upon his or her dignity.¹² A fulfilling job where a worker derives satisfaction from his or her tasks and where he or she works free from harassment and bullying is likely to enhance his or her sense of dignity. On the other hand, where an employee feels victimised or discriminated against or where he or she performs menial tasks or duties which are not commensurate with his or her experience, he or she may feel a diminished sense of dignity.

While there are numerous statutes that seek to prevent conduct in the workplace which is likely to negatively impact upon a person's dignity, such as bullying, discrimination and harassment,¹³ the dignity of the work itself appears to rely on the employer-employee relationship. That is, in large measure the right of an employer to direct an employee to undertake or not undertake certain duties or tasks can either augment or diminish a worker's dignity.

⁷ Article 2

⁸ J Pearsall and Bill Tumble (eds) second edition (1996)

⁹ See generally, Mordy Bromberg and Mark Irving, *Australian Charter of Employment Rights* (2007), chapter 2.

¹⁰ *Hansard* (Senate, Senator Hogg) 11 September 1996, 3316

¹¹ At paragraph 32. See also *William Hill Organisation Ltd v Tucker* [1999] ICR 291

¹² Mordy Bromberg and Mark Irving note the distinction between dignity at work (ie freedom from harassment) and dignity of work (the nature of the work): *Australian Charter of Employment Rights* (2007), 21-22.

¹³ For example, *Equal Opportunity Act 1995* (Vic); *Disability Discrimination Act 1992* (Vic); *Workplace Relations Act 1996* (Cth).

The *Australian Charter of Employment Rights*¹⁴ recognises the importance of dignity both at the workplace and in terms of the actual work performed. Article 2 provides that:

'Recognising that labour is not a mere commodity, workers and employers have the right to be accorded dignity at work and to experience the dignity of work. This includes being:

- *treated with respect*
- *recognised and valued for the work, managerial or business functions they perform*
- *provided with opportunities for skill enhancement and career progression*
- *protected from bullying, harassment and unwarranted surveillance.'*

The notion of dignity of work is also reflected in the Constitution of the International Labour Organization ('ILO'), which states that it is an obligation of the ILO to develop programs that will achieve:

*'the employment of workers in the occupations in which they can have the satisfaction of giving the fullest measure of their skill and attainments and make their greatest contribution to the common well-being.'*¹⁵

The ICESCR also provides that every human being has the right to work.¹⁶ Implicit in this right must logically be the right to carry out meaningful duties that is, to actually perform work.

Australia was a founding member of the ILO and has ratified numerous ILO Conventions including seven of the eight Conventions considered to be the 'fundamental conventions'.¹⁷ It has also ratified important human rights treaties, including the ICCPR and ICESCR.

The judgment in *Tristar* is thus a troubling development vis-à-vis Australia's international labour and human rights obligations. It suggests that the right to work extends no further than a right to receive payment for whatever duties one is directed to perform, no matter whether these are meaningful and productive and even where one performs no work at all. It thus allows for a situation which, as occurred in the case of the *Tristar* employees, is likely to cause serious trauma and stress for employees.

¹⁴ The Australian Charter of Employment Rights is a voluntary charter

¹⁵ Constitution of the International Labour Organization, Annex A, article 3

¹⁶ article 6

¹⁷ These are: *C29 Forced Labour Convention 1930*; *C87 Freedom of Association and Protection of the Right to Organise 1948*; *C98 Right to Organise and Collective Bargaining 1949*; *C100 Equal Remuneration Convention 1951*; *C105 Abolition of Forced Labour Convention 1957*; *C111 Discrimination (Employment and Occupation) Convention 1958*; *C138 Minimum Age Convention 1973*; *C182 Worst Forms of Child Labour Convention 1999*. Of these Australia has not ratified *C138 Minimum Age Convention 1973*.

This is a disturbing development in Australian labour law because it suggests that the dignity of work is not protected by the WRA. Urgent amendment of the WRA is thus required to ensure Australia's compliance with its international legal obligations. With the Federal Government set to implement a new industrial relations system in 2010, with draft legislation slated for introduction in September 2008, this is a matter that should be addressed as a priority.

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