

Your responses suggest that you may have a valid argument regarding the offer of employment

15A Meaning of *casual employee*

- (1) A person is a ***casual employee*** of an employer if:
- (a) an offer of employment made by the employer to the person is made on the basis that the employer makes no firm advance commitment to continuing and indefinite work according to an agreed pattern of work for the person; and
 - (b) the person accepts the offer on that basis; and
 - (c) the person is an employee as a result of that acceptance.
- (2) For the purposes of subsection (1), in determining whether, at the time the offer is made, the employer makes no firm advance commitment to continuing and indefinite work according to an agreed pattern of work for the person, regard must be had only to the following considerations:
- (a) whether the employer can elect to offer work and whether the person can elect to accept or reject work;
 - (b) whether the person will work as required according to the needs of the employer;
 - (c) whether the employment is described as casual employment;
 - (d) whether the person will be entitled to a casual loading or a specific rate of pay for casual employees under the terms of the offer or a fair work instrument.

Note: Under Division 4A of Part 2-2, a casual employee who has worked for an employer for at least 12 months and has, during at least the last 6 months of that time, worked a regular pattern of hours on an ongoing basis may be entitled to be offered, or request, conversion to full-time employment or part-time employment.

(Fair Work Regulations 2009)

2.03A Claims to offset certain amounts

- (1) This regulation applies if:
- (a) a person is employed by an employer on the basis that the person is a casual employee; and
 - (b) the employer pays the person an amount (the ***loading amount***) that is clearly identifiable as an amount paid to compensate the person for not having one or more relevant NES entitlements during a period (the ***employment period***); and
 - (c) during all or some of the employment period, the person was in fact an employee other than a casual employee for the purposes of the National Employment Standards; and
 - (d) the person makes a claim to be paid an amount in lieu of one or more of the relevant NES entitlements.

Note 1: This regulation is intended to apply if the person has been mistakenly classified as a casual employee during all or some of the employment period.

Note 2: For the purposes of paragraph (b), examples of where it may be clearly identifiable that an amount is paid to compensate the person for not having one or more relevant NES entitlements include in correspondence, pay slips, contracts and relevant industrial instruments.

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| | <ul style="list-style-type: none">(2) To avoid doubt, the employer may make a claim to have the loading amount taken into account in determining any amount payable by the employer to the person in lieu of one or more relevant NES entitlements.(3) This regulation does not affect the matters to which a court may otherwise have regard, at law or in equity, in determining an employer's claim to have the loading amount taken into account.(4) A reference in this regulation to a <i>relevant NES entitlement</i> is a reference to an entitlement under the National Employment Standards that casual employees do not have. |
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