



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

**JUSTICE HATCHER, PRESIDENT**

**AG2023/1163**

**Sch. 7, Item 30(4) - Application to extend default period for enterprise agreements made during the bridging period**

**Application by Patterson Enterprises Pty Ltd  
(AG2023/1163)**

**Sydney**

**10.30 AM, TUESDAY, 2 MAY 2023**

PN1

JUSTICE HATCHER: Good morning, Mr Patterson. You're representing the applicant in both of these applications. Is that correct?

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MR G PATTERSON: Good morning, your Honour. That's correct. I am the owner and manager of the business, the company.

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JUSTICE HATCHER: Do I understand the applications correctly, that the main basis upon which the applications are being advanced is that employees under the agreements are better off overall than they would be under the applicable award?

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MR PATTERSON: Most certainly, your Honour. That's my belief.

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JUSTICE HATCHER: Can you tell me a bit about your business? So you provide labour, casual labour, to other industries. Is that right?

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MR PATTERSON: I do, your Honour. The company was formed in 1995 in preparation for, I believe, the super funds that were introduced by the government. I managed several workshops in that interim period, and probably from about 1998 there was an opportunity to supply supplementary staff, as I term them, on a labour hire basis.

PN7

As things have evolved, I'm still doing that, employing personnel on a casual basis, for the mine site located at Greenbushes in the sou-west of Western Australia. It was originally a tin, tantalum alluvial deposit which has progressed into a lithium deposit, which is a drill and blast operation, but they are also re-treating the mineral sand tails, which has been a result of 30 years of mineral processing, and it's a substantially large ore body in the tailings.

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JUSTICE HATCHER: So this would be work covered by the mining industry modern award.

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MR PATTERSON: I would think so. I think on my agreements, your Honour, is that these - mineral sands award is probably what was applicable at the time here in the sou-west. There's mineral sands mines which are gradually phasing out. I do notice on the paperwork it's got the coal industry, but we're not in any way related to the coal industry. The coal industry is located in Collie, which is about 80 Ks from us, but I've got no connection with the coal industry.

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JUSTICE HATCHER: One of the things that the Commission would usually do, unless you have an objection, is to do an analysis - we have some experts who do

this - of the agreement compared to the award to test the proposition that employees are better off.

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Would you have any objection that as a first step in this matter we would undertake the analysis, provide it to you for comment and then come back after that is done? We think that would take a few weeks, but no more than that.

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MR PATTERSON: Certainly. Is there any information I can give you at the time, or that's not the - - -

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JUSTICE HATCHER: I'm not the one undertaking the analysis, but we can request information from you if we need it. What sort of hours are these casual employees working, typically?

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MR PATTERSON: We do a fortnightly pay run, so it varies, but the industry probably runs on a 12-hour shift basis and it varies from - there's some personnel doing a seven-off, seven-on roster, which is irregular. They can work whatever hours they want. There's no obligation for them to work, but if they were on a roster in a certain department - we do maintenance shutdowns with trade assistants which is on a three-weekly basis.

PN15

They might work four, perhaps five shifts in that week over the fortnight, and then we do a lot of just - I suppose it's operator level entry, cleaning up around the process plant, spillage around, to keep moving parts, conveyor rollers and that, clear of any debris. It's just hosing down, safe workplace.

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JUSTICE HATCHER: Have you talked to or consulted with your employees about this application? That is, are you able to say anything about their views about it?

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MR PATTERSON: No. I just sort of came across it when I was doing some research in anticipation for negotiating new rates with the client in hopefully around June and some idea of the minimum wage rise will be, given our inflation rate, so I can get some idea. I've come across this on the agreement and realised that I'm involved and so addressing it. The fact is that we've had it in place since 2009.

PN18

With the employees, your Honour, it's very much a transitional workforce. For example, if I can give you - we've put 72 people - I hope this is relevant. We put 72 people through the payroll this year. I would think of those people we've probably got 10, maybe 12, that have been there longer than 12 months.

PN19

However, the important factor is that I believe there's about 18 of those personnel have been transferred to the client on a full-time basis. That's one of the big problems I face, and that's why we're continually recruiting to supply their needs, and yet they regroup - or they recruit from my ranks, and so that's it.

PN20

So, no, I haven't made the application in - honestly, we advise them on the time of employment. They've got an employment letter, they're covered under a workplace agreement, but I will be perfectly frank, in the 15 years no one has asked what the agreement is, but that's the standing I believe I had in running my business, is that in our community, which is in the sou-west, we're well known in the area and we're looked at as an entry into the mine site for people to get employment and we continue to do that.

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JUSTICE HATCHER: (Audio malfunction).

PN22

MR PATTERSON: Yes, so that's really our - I think you asked me how many hours they work. I try and work, I think, 12 hours. We try and work on providing people, if they want the work, eight 12-hour shifts a fortnight, spread across the full fortnight, from a Monday to Sunday over a fortnightly period.

PN23

So that equates to 96 hours max. That would give them 38 hours and then some extra overtime hours if they wish it. Some of them only want four shifts, some of them want seven shifts, whatever. If they don't want to work - they might go away for three months and come back.

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JUSTICE HATCHER: That's all day work, is it?

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MR PATTERSON: No, your Honour. It's a 24-hour operation. So as part of the agreement that we've got in place is that their 38 hours can be accrued over basically the seven days from 6.00 in the morning through till 6.00 - over the 24-hour period, and I pay the hourly rates to ensure that they're getting covered. I try and calculate a 38-hour week normal rate and they get a loading on that hourly rate. Best to describe it, I suppose, is that the average would be about \$36 an hour.

PN26

JUSTICE HATCHER: We'll undertake that analysis that I've discussed. We'll send that to you, then I'll call the matter back on in a few weeks, once you've got that and had a chance to look at it, and we can take the matter from there. Does that suit you?

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MR PATTERSON: It most certainly does, your Honour, yes.

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JUSTICE HATCHER: Yes, all right. That's all I want to deal with today, unless there's anything further you want to tell me at this stage.

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MR PATTERSON: No. I haven't really thought much about it if the agreement's - I put in an application for four years, to extend the agreement. I would hope that will see me out of my working career and that I'll be looking at retiring. That's the reason for the four years, is to get everything in place.

PN30

If the agreements default or sunset, I would probably need to look at some other sort of coverage, employment contract letters. The employees - as we've done over the years, is that we just offer employment, and so at this stage, yes, I would hope the agreements continue for that reason.

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May I say, actually, if I've got the time - - -

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JUSTICE HATCHER: Yes.

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MR PATTERSON: To give you an understanding, is that I've just done some calculations. I've probably employed maybe between 12 or 13 hundred people over the journey of the last 15 - since 2009, all on a casual basis.

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My experience is that 95 per cent of those people just want to go to work. They have the same social problems as we all do. They have to get fuel in the car, they have the kids going to school excursions, they need to pay the rent and the mortgage, et cetera, and my experience is that 95 per cent of those people go to work to do a great job and be recognised for that work.

PN35

In saying that, there is a percentage of people that no matter the incentives, they will never swim towards the light. They will stay, if you like, without being derogatory, at the bottom of the pond. No incentive. The higher they rise, the more responsibilities, the more they have to apply themselves, and in their lives things never go wrong. It's always someone else's problem.

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We have that element that we're going to employ, so I say to you, your Honour, the idea of these instruments is to protect me, so that we've got minimum conditions, and in doing that I can confidently then offer work and the opportunity for employment for the majority of the personnel that come across our books.

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It gives me some sort of security, knowing that I've got an instrument in place, that we're doing the right thing. It gives me a lot of reassurance that we've got something in place.

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JUSTICE HATCHER: All right.

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MR PATTERSON: Yes.

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JUSTICE HATCHER: If there's nothing further, thank you for your attendance this morning, Mr Patterson, and we'll get back to you as soon as we've had that analysis prepared.

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MR PATTERSON: Thank you very much, your Honour. Thank you.

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JUSTICE HATCHER: Thank you.

**ADJOURNED INDEFINITELY**

**[10.47 AM]**