



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

JUSTICE HATCHER, PRESIDENT

AG2023/1571

Sch. 3, Item 20A(4) - Application to extend default period for agreement-based transitional instruments

Application by Casey North Community Information and Support Service Inc (AG2023/1571)

Casey North Community Information & Support Service Enterprise Bargaining Agreement 2004

Sydney

11.30 AM, THURSDAY, 8 JUNE 2023

PN1

JUSTICE HATCHER: All right, good morning. Ms Small, Ms Hodges, you appear for Casey North Community Information Support Service, correct?

PN2

MS SMALL: That's right, yes.

PN3

JUSTICE HATCHER: All right – can you hear me clearly?

PN4

MS SMALL: Yes.

PN5

JUSTICE HATCHER: All right, so you're advancing this application on the basis that employees are better off overall under the existing agreement than under the relevant award, which is the SCHADS award, is that correct?

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MS SMALL: Yes.

PN7

JUSTICE HATCHER: I'll just tell you how I propose to proceed but before we do so, I just want to ask you a couple of questions. First of all, the actual agreement – it says in clause 3 that it's to be read in conjunction with the Social and Community Services Victoria Award 2000. I don't think that award exists anymore.

PN8

MS SMALL: No, but we have a copy that my predecessor – yes, that she always referred to it so she maintained that it was – you know, it still applied in certain instances but she also used the SCHADS award.

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JUSTICE HATCHER: All right.

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MS SMALL: So we've had this odd situation, that if we want to do something we look it up in our EA, we look it up in the old SACS award, we look it up in the SCHADS and whichever is best, we apply.

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JUSTICE HATCHER: Right. Well, I mean, just to raise this: that may be what you do in practice but that's not what the agreement actually says – that is the agreement makes no reference to the SCHADS award which didn't exist when the award was made. So that's not actually a provision of the agreement, so that we have to assess the better off overall test by referencing the agreement as to what it actually says.

PN12

MS SMALL: Okay.

PN13

JUSTICE HATCHER: The second thing is that according to the index to the agreement, it says that appendix 1 has a staff salary packaging policy and procedure and appendix 2 is the disciplinary policy but on the version I've got, when you turn to the end of the agreement, appendix 1 is the disciplinary policy and there is no other appendix – that is there's no pay rates in the agreement.

PN14

MS SMALL: No, and our version is exactly the same – we don't have one with pay rates in it. But this appears to be the copy that was – you know, approved.

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JUSTICE HATCHER: The difficulty we then have in terms of the better off overall test is how do we assess it in reference that doesn't actually have any pay rates? That is, it contains no entitlement to minimum pay at all?

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MS SMALL: Hm, yes, and we pay according to the SCHADS but as you say, it's not referenced in here.

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JUSTICE HATCHER: Yes. Okay, well, look, the usual procedure is that where an application to extend the term of a zombie agreement is advanced on the basis that it passes the better off overall test, we have someone in our staff do an analysis of that. We send it to you and then we give you an opportunity to comment. So is there any reason why we shouldn't adopt that course in this case?

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MS SMALL: Absolutely not – that would be very helpful, I think.

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JUSTICE HATCHER: All right. We'll get that analysis done, we'll send it to you as soon as it's done and then we'll give you an opportunity to comment upon it then and then we'll take it from there.

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MS SMALL: That would be great, thank you.

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JUSTICE HATCHER: Okay, is there anything else we need to discuss today?

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MS SMALL: No, I think you've covered everything.

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JUSTICE HATCHER: Okay, well, thanks very much for your attendance. We'll now adjourn, which means you can simply disconnect.

PN24

MS SMALL: Okay, thank you very much.

PN25

MS HODGES: Thank you.

ADJOURNED TO A DATE TO BE FIXED

[11.40 AM]