



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

JUSTICE HATCHER, PRESIDENT

AM2023/11

s.158 - Application to vary or revoke a modern award

**Application by Secker
(AM2023/11)**

Social, Community, Home Care and Disability Services Industry Award 2010

Sydney

2.00 PM, THURSDAY, 15 JUNE 2023

PN1

JUSTICE HATCHER: Good afternoon, I'll take the appearances. Mr Secker, you are the applicant in this matter? Can you hear me, Mr Secker? All right, can we just hold on while we see what's happening with Mr Secker.

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MR S SECKER: Hello, yes. I am unable to hear you, but there's nothing – my microphone is on, my speaker is on a hundred per cent, so I don't know why the problem – do you want me to go on the phone instead?

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JUSTICE HATCHER: Okay.

ESTABLISHING CONNECTION FOR APPLICANT

[2.09 PM]

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JUSTICE HATCHER: Mr Secker, you're on the phone. You're the applicant in this matter; correct?

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MR SECKER: That's correct.

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JUSTICE HATCHER: All right. I will take the other appearances. Ms Wills, you appear for the Australian Services Union?

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MS V WILLS: Yes, your Honour.

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JUSTICE HATCHER: Ms Barry, you appear for the united Workers Union?

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MS C BARRY: Yes, thank you, your Honour.

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JUSTICE HATCHER: Ms Bhatt, you appear for the Australian Industry Group?

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MS R BHATT: Yes, your Honour.

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JUSTICE HATCHER: Mr Scott and Mr Roper, you appear for Australian Business Industrial?

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MR K SCOTT: Yes, your Honour.

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MR L ROPER: Yes, your Honour.

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JUSTICE HATCHER: All right. Well, Mr Secker, you are the applicant in this matter so you have sought a variation - - -

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MR SECKER: Yes.

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JUSTICE HATCHER: - - - to the relevant award. As an applicant it's up to you to persuade the Commission that the variation that you seek should be made to the award. You have set out in your application a fairly detailed explanation of the variation you seek and why you seek it. What, if any, additional evidence or submissions might you want to make in support of the application?

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MR SECKER: Well, an example in support of that was - - -

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JUSTICE HATCHER: Mr Secker, I am not asking you to give me an explanation now. I'm just simply asking you - - -

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MR SECKER: Yes, okay, okay.

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JUSTICE HATCHER: - - - down the track do you wish to make any further submissions or provide any evidence in support of your application?

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MR SECKER: I would like to add a little bit of information.

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JUSTICE HATCHER: So what might that constitute?

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MR SECKER: Sorry?

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JUSTICE HATCHER: What might that be made up of? For example, are you in a position to file a witness statement about some personal experiences that you or anybody else has which supports the application or do you want to make a submission which further explains why you say the application should be granted?

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MR SECKER: I would like to add to my submission in terms of something else which shows why the submission should be accepted.

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JUSTICE HATCHER: All right. Well, if we did that in writing how long might you need to do that?

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MR SECKER: Probably 15 minutes.

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JUSTICE HATCHER: Fifteen minutes, all right. Well, I'll come back to that. I think we can be a bit more generous in time than that, but we'll see. Perhaps I'll go to the unions first, starting with the ASU. What is the ASU's attitude towards the application, Ms Wills?

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MS WILLS: Thank you, your Honour. The ASU has come to observe the conference regarding the application as we didn't precisely understand the nature and the issues that – what the application was about as well as we would like to, I suppose, before considering it and consulting with members. It did sound like it had an issue to do with paid and unpaid travel time, perhaps the broken shift allowance, also with an interaction with social security entitlements perhaps, but we would just need a fair bit of further information about it to be able to consult with our ASU members.

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JUSTICE HATCHER: Yes.

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MS WILLS: ASU has got priorities for members that we're balancing, such as recently issuing the information about the Fair Work Commission annual wage review increases and so on. Look, the ASU would be happy to have a discussion with the applicant if Mr Secker would like to contact the ASU and the best way would be to reach out to the branch in WA, Mr Secker. Yes, your Honour, we need to consult members extensively of course and once we have better information perhaps a period of two months to consider and consult with members. Thank you.

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JUSTICE HATCHER: All right. Ms Barry, what does the UWU say about it?

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MS BARRY: Thank you, your Honour. We would also like to hear more detail about the application and then have some time to consult with our members, as well.

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JUSTICE HATCHER: All right. Ms Bhatt?

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MS BHATT: Your Honour, based on the outline that is contained in the application, Ai Group would oppose variations to the award that would give effect to the apparent intent. Can I suggest that perhaps the applicant is directed to file a draft determination or a specific variation that is proposed to the award that might aid the union's consultation process, but also our consideration of the application.

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I should also note that similar issues were considered quite extensively during the four yearly review of modern awards in major Full Bench proceedings. I anticipate there will be some intersection between this matter and the issues that were considered then.

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JUSTICE HATCHER: Certainly a draft determination would be useful, Ms Bhatt, but take into account Mr Secker's capacity to do that. Anyway, I will come back to that. Mr Scott and Mr Roper, what do you want to say?

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SPEAKER: Thank you, your Honour. I think we are largely in a similar position to Ms Bhatt, but also both the union parties. From my perspective it's a little bit unclear precisely what variation the applicant is seeking, so whether it be a draft determination or some other form of wording or specific proposal to vary a particular clause of the award would assist us just to try and properly understand precisely what is being sought. I suspect then some form of conference where the parties can discuss the proposed variation would assist to ventilate the issues, but otherwise my client is keen to participate in the process. We would likely file submissions.

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We want to understand a little bit more about precisely what is being sought before we express a position on the application, but, as Ms Bhatt said, there is quite an extensive background to this specific issue that was canvassed over a number of years as part of the four yearly review process, so I think a conference in due course would assist to try and flesh out precisely what is being sought.

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JUSTICE HATCHER: All right. Mr Secker, you have heard what the union and employer parties have said. This might be a slightly legal task, but would you be in a position to identify in a document the specific clauses that you want to change and set out how you want them to be changed?

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MR SECKER: Yes, I would, your Honour.

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JUSTICE HATCHER: So, for example, if your concern is about clause X, you could say, 'Look, I want clause X to be reworded this way.' Do you think you could do that?

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MR SECKER: I am fairly sure I can do that, thank you, your Honour.

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JUSTICE HATCHER: All right. Well, look, I think what the other parties are saying is that they are in some state of doubt as to what precisely is being sought in the application, although for myself I think I at least understand the first two issues identified. What I propose is to give you a period of four weeks to file a document. We'll call it a draft determination, but it's a document which specifies

how you want the award to be changed, and together with any further submissions that you might want to make in support of your application. Would you be in a position to do that within that time frame, Mr Secker?

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MR SECKER: That would be plenty of time.

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JUSTICE HATCHER: All right. Then what I'll allow the parties to do, and they could do this either in writing or by arranging a meeting or a Teams conference - is give the parties the opportunity to confer. That is, have private discussions with Mr Secker in the first instance about the application. I'll leave it to the parties to the extent to which they wish to take advantage of that opportunity, but it's up to them to arrange it with Mr Secker, then I will have the matter brought back for a further directions hearing and conference.

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I'll make directions to that effect and I'll provide the parties with a listing in approximately eight weeks for a further directions hearing/conference. Is that a suitable course so far as everyone is concerned?

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MR SECKER: Yes, it is so far as I'm concerned. Thank you.

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JUSTICE HATCHER: Yes, all right. If there is nothing else anybody wishes to raise, thank you for your attendance this afternoon and we will now adjourn, which means you can simply disconnect from the call.

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MR SECKER: Could I just ask one question?

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JUSTICE HATCHER: Yes, you may.

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MR SECKER: Contact for the other people in terms of me being in contact with them or them being in contact with me, how do we go about that?

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JUSTICE HATCHER: All right. What we'll do is we can provide each party's email addresses - unless they consider there is some privacy issue - and the parties can exchange emails when they're ready to do so. Is that suitable, Mr Secker?

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MR SECKER: That's suitable with me. Thank you, sir.

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JUSTICE HATCHER: All right. We will now adjourn.

ADJOURNED TO A DATE TO BE FIXED

[2.25 PM]