



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

JUSTICE HATCHER, PRESIDENT

AM2023/22

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

**Application by Pelena Pty Limited T/A Pelena Energy
(AM2023/22)**

Manufacturing and Associated Industries and Occupations Award 2020

Sydney

9.30 AM, WEDNESDAY, 25 OCTOBER 2023

PN1

JUSTICE HATCHER: I will take the appearances. So, Mr Lynch, you appear for the applicant Pelena Pty Ltd; is that right?

PN2

MR P LYNCH: Yes, that's correct.

PN3

JUSTICE HATCHER: Ms Abousleiman, you appear for the CEPU?

PN4

MS Y ABOUSLEIMAN: Yes, that's correct.

PN5

JUSTICE HATCHER: Ms Presdee, you appear for the Australian Manufacturing Workers' Union?

PN6

MS K PRESDEE: Yes, your Honour.

PN7

JUSTICE HATCHER: Mr Giordano and Mr Duncalfe, you appear for the Australian Workers' Union?

PN8

MR A GIORDANO: That's correct.

PN9

MR Z DUNCALFE: Yes, your Honour.

PN10

JUSTICE HATCHER: Mr Pefanis, you appear for the United Workers' Union?

PN11

MR N PEFANIS: Yes, your Honour.

PN12

JUSTICE HATCHER: And, Mr Chang, you appear for the Australian Industry Group?

PN13

MR C CHANG: Yes, your Honour.

PN14

JUSTICE HATCHER: All right. I will start with you, Mr Lynch. So as I understand it your application seeks a variation to the Manufacturing Award so that in respect of casual school students doing after school work the minimum engagement period will be reduced from four hours to two hours; is that correct?

PN15

MR LYNCH: That's correct, your Honour.

PN16

JUSTICE HATCHER: Yes, all right. I just want to get the responses of the parties. I might start off with you, Mr Chang. What's the AiG's attitude to this application?

PN17

MR CHANG: Thank you, your Honour. The Australian Industry Group supports the application in principle. We have attempted to contact Mr Lynch prior to today's directions. We haven't received a response, but we remain open to discussing the application with the applicant if he so wishes. In respect of the timetabling of the matter we would seek a three week window following the applicant's material to file any submissions in support. That would avoid any unnecessary overlap between the two submissions and also to get a fulsome understanding of these Act variations that Pelena Energy would seek, and the basis upon which we'd support it.

PN18

Secondly, a sufficient opportunity to reply to any union material filed, or material filed in opposition. We'd envisage a three to four week window be sufficient. And then following the filing of materials a further directions hearing be listed to consider whether the matter can be dealt with on the papers or set down for hearing.

PN19

JUSTICE HATCHER: Mr Chang, would it be the intention of the Australian Industry Group to file any evidence?

PN20

MR CHANG: I don't have any instructions that that would be the case at the moment.

PN21

JUSTICE HATCHER: Can I just ask you to note this, that there's been some previous award decisions this year which have raised a difficulty of individual employers and employees who advance applications to vary industry awards, but only adduce evidence which go to their own circumstances, not the circumstances of industry generally. I'm concerned that this might be another case that falls into that category unless in supporting the application the AiG would be inclined to provide evidence as to an industry perspective, not just the perspective of the applicant.

PN22

MR CHANG: Yes. I note your comments there, your Honour. At this time we don't envisage that we'd file any evidence at all, and that directions wouldn't need to account for the filing of evidence in support.

PN23

JUSTICE HATCHER: All right. I might start with you next, Ms Presdee, what's the AMWU's attitude towards the application?

PN24

MS PRESDEE: Thank you, your Honour. We oppose it. In terms of timetabling we of course would appreciate - a three week timeframe would probably be ample to put submissions on after the application, being evidence in favour has been put forward, but our position is opposition in principle. Basically we don't believe that the facts on an industry-wide basis would support such a variation to the award, but we would welcome any further opportunity. And the proposed timetable put forward by Mr Chang sounds fairly reasonable.

PN25

JUSTICE HATCHER: All right. Does any other union appearing today take any different position to the AMWU?

PN26

SPEAKERS: No, your Honour.

PN27

JUSTICE HATCHER: Well, I will turn to you, Mr Lynch. As you would have heard this application is contested, that is it would be opposed. In the normal course of affairs where the Commission deals with an application to vary an award which is contested it would involve the applicant and the other parties filing evidence and submissions in support of their respective positions. So in the first instance the normal course would be for the applicant, which is your company, to file in writing evidence, and that might be statements made by witnesses about a particular circumstance or other documents and submissions which address the requirements of the Fair Work Act as to varying awards. Are you in a position to do all of that as the applicant?

PN28

MR LYNCH: No, your Honour, definitely not. We're a tiny little manufacturing business in rural New South Wales. Our focus on applying for this amendment is simply to provide greater opportunities to get school age students into the manufacturing sector and provide opportunities for those. So if it's opposed by the unions and doesn't proceed then I will probably leave it at that. I don't have the capacity as a small manufacturing business to pursue this any further.

PN29

I however would very much appreciate the opportunity to work with unions and other interested parties to find a solution to how we address employment opportunities for school age students, because the current number of hours - and I'm just basically trying to work inside the award and certainly with the students that we have working here at the moment I had led them through the whole process so that they are legally employed; introduced them to tax file numbers and superannuation to give them a start to say this is how you should be employed in Australia, given them the full protection of not only workers' compensation, but the award so that they're on a good footing, not only in hopefully a manufacturing career, but also in their career as probably being an employee.

PN30

I am certainly very surprised that it's reached this point, and I apologise to Mr Chang for not replying to his email. I thought it was actually someone trying to get consultancy, so I ignored it. So my apologies, Mr Chang, for that. But, yes,

we just don't have the capacity to deal with this and I'm certainly interested in sovereign manufacturing and things like that.

PN31

JUSTICE HATCHER: Can I suggest this - sorry, it's echoing. Can everyone turn off their microphones, please. I don't know why there's an echo. All right. Mr Lynch, can I suggest this course, that perhaps you should in the first place have a discussion with Mr Chang, and I don't want to put words in Mr Chang's mouth, but the Australian Industry Group is the primary representative of employers under the manufacturing award. So I think it might be useful in the first instance if you have a discussion with Mr Chang about whether he can cooperate with you or provide assistance, or do something else with you in respect of their application.

PN32

And then in the second instance perhaps you and Mr Chang could arrange a meeting with the union representatives just to have a discussion about the application and the issues it raises, and then we can have the matter come back before me some weeks down the track once those things have been done. Would you be happy to (indistinct) that course?

PN33

MR LYNCH: Thank you for the offer. We just don't have the capacity. We're a tiny little rural manufacturing unit. I think for us the solution is just to work inside the current award and put a request to the union representatives that are here that we're certainly open to finding better solutions, but my business does not have the capacity to pursue this. We will just have to work out another way, and unfortunately that will certainly result in the reduction of opportunities for school age students for us.

PN34

JUSTICE HATCHER: All right. In those circumstances, Mr Lynch, can I suggest to you that the appropriate course then is to simply give an indication that you wish to discontinue your application and (indistinct) to be regarded as terminated?

PN35

MR LYNCH: Yes, your Honour, I wish to discontinue this and terminate this proposed amendment.

PN36

JUSTICE HATCHER: All right. Just for more an abundant of caution could I ask you to send a very short email to my chambers confirming that you wish to discontinue your application?

PN37

MR LYNCH: Certainly happy to.

PN38

JUSTICE HATCHER: Yes, all right. Unless there's anything further I think the application will be treated as discontinued and that will be the end of these

proceedings, unless anyone wants to suggest anything else. No. All right. Well, thank you all for your attendance. I will await your email, Mr Lynch, and once that's done we will confirm the application is discontinued. We will now adjourn which means you can simply disconnect (indistinct).

ADJOURNED INDEFINITELY

[10.00 AM]