



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

JUSTICE HATCHER, PRESIDENT

AM2021/57

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

**Application by The Australasian Meat Industry Employees Union (007V)
(AM2021/57)**

Meat Industry Award 2020

Brisbane

10.20 AM, FRIDAY, 1 DECEMBER 2023

Continued from 13/11/2023

PN1

JUSTICE HATCHER: I will take the appearances. Mr Swan, are you there?

PN2

MR B SWAN: Yes. Good morning, your Honour. Swan, initial B. I appear for the applicant, national industrial officer.

PN3

JUSTICE HATCHER: Do you have your camera on?

PN4

MR SWAN: There you are, your Honour. Apologies.

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JUSTICE HATCHER: So why are we late, Mr Swan?

PN6

MR SWAN: Your Honour, I wasn't aware that there was a directions hearing this morning. My apologise. I can't recall receiving the notice. It won't happen again.

PN7

JUSTICE HATCHER: Thank you. Ms Bhatt and Ms Beasley, you appear for the Australian Industry Group?

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MS R BHATT: Yes. We do, your Honour.

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JUSTICE HATCHER: Mr Ash, you appear for JBS Australia?

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MR W ASH: Yes, your Honour.

PN11

JUSTICE HATCHER: The position is that the AMIEU's application in this matter was the subject of an attempted conciliation process conducted by McKinnon C. I understand that that didn't make any progress in the matter. So if the application is pressed it will need to be the subject of arbitration. So Mr swan, what course do you propose to be taking with respect to your application?

PN12

MR SWAN: Your Honour, with respect we have attempted to conciliate the matter. We haven't made progress as your honour has identified. The AMIEU propose the matter to be set down for arbitration. Now, as the AMIEU has alluded to in prior correspondence with your Honour's chambers ad with the opposing parties, we have had some level of difficulty in obtaining expert evidence. We are satisfied with the expert evidence that we have received and this of a higher quality in the applicant's view, but we would respectfully seek the Commission in this case to conduct some kind of inquiry or review into the matters that the union raises. I

PN13

In the event that that isn't possible, then perhaps we could continue down the standard path of arbitration whereby both parties continue to field expert evidence and the matter is simply arbitrated, your Honour.

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JUSTICE HATCHER: All right. Well, Mr Swan, obviously as you know, the Commission conducted a review extending over some eight years into all of its awards and the Meat Industry Award was one of those awards and it was settled. So with the greatest respect, I am not inclined for the Commission of its own initiative to, as it were, reopen that and conduct its own further self-initiated review into the award, unless you can indicate that there has been some radical change in circumstances since that review ended? Is there any particular reason why a new review of the award is now required?

PN15

MR SWAN: Your Honour, I can't speak historically. I wasn't with the union at that time. However, with respect to what - the matters that that the applicant raises, arguably they should have been raised earlier in time. Probably around the period of modernisation as I am instructed by my colleagues at the union and it simply wasn't pressed at the time and that is why partially that the matter remains pressed now, so that we can get over these hurdles that are in the award. You know, we've got significant confusion, ambiguity as the union puts it, and if your Honour isn't inclined to go down that part, then that's your Honour's prerogative and we accept that, of course.

PN16

So, your Honour, we're in your hands as to the direction that you want to take this. However, all I can note is that we have had difficulty in obtaining some level of expert evidence. We've got a high level of expertise in the people that we've got, however part of the challenge that we've had is we've had individuals who have been conflicted, who for example may have acted for the parties, for JBS or AiG in the past in various disputes who haven't been able to - who have said, 'No, look I can't provide a report or expert evidence on that basis.' We've got other individuals who are - you know, their CEOs or their boards haven't allowed them to provide evidence in the matter unless they are subpoenaed, which we do intend to facilitate throughout the process, at least one subpoena.

PN17

So it's a challenging position that we find ourselves in to a degree. The matter will remain pressed, regardless, because the matters that we raised have extensive merit for the most part.

PN18

JUSTICE HATCHER: Mr Swan, if I make a direction for you organisation to file all the evidence upon which it intends to rely, plus an outline of submissions, how long would you need to do that, realistically?

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MR SWAN: Your Honour, that will depend on whether we are able to find further evidence. If your Honour is not inclined to go down the review path, then

we will be pressing further to find further expert evidence, but I would be anticipating for the submission - if we are unable to find further expert evidence, then the expert evidence is ready to go now. In the event that we are, I would anticipate potentially the middle of February next year.

PN20

JUSTICE HATCHER: All right.

PN21

MR SWAN: I would like to be pushing this forward. I think the matter has been put to one side for too long and while I have carriage of it, I'd like to be pressing it forward.

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JUSTICE HATCHER: All right. So, middle of February. Let me just have a look. So let's tentatively say - - -

PN23

MR SWAN: Potentially late February, your Honour.

PN24

JUSTICE HATCHER: Let's say the week ending 1 March. How does that sound?

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MR SWAN: Yes. That's suitable, your Honour. Thank you.

PN26

JUSTICE HATCHER: Ms Bhatt, what do you say should happen?

PN27

MS BHATT: We oppose large parts of the application. So far as the conciliation process was concerned, I think there were a very small number of matters about which there might be some agreement. Really they are correcting typographical errors and the like. We support the course of action your Honour has outlined to the extent that you've proposed that directions be issued for the filing of material. We would seek a period of at least three months from the time that the applicant union files its material foreshadowing that from our perspective too that might include some expert evidence which we've not gone about preparing as yet.

PN28

JUSTICE HATCHER: Mr Ash?

PN29

MR ASH: Your Honour, I agree that three months is an appropriate period of time, which is the period of time that the union has from now until the date you mentioned, so perhaps 1 June for the respondents to file their material.

PN30

JUSTICE HATCHER: I will just take the closest Friday. That will be the week ending 28 June.

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MR ASH: That's suitable.

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JUSTICE HATCHER: And then I think I will list it for report back to program for hearing at that point. The matter will be referred to a Full Bench. My inclination would be to include McKinnon C on that Full Bench because she has acquired knowledge of the matter as a result of her participation, but that would be subject to any objection by any party who thinks they might be prejudiced as a result of participation in the conciliation. I won't ask for an instant response, but if any party objects to McKinnon C participating in the Full Bench, can they advise my chambers by close of business on Friday next week? Again, no reasons are required, you just either do or don't object. Is that a suitable course?

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MS BHATT: Yes, your Honour.

PN34

JUSTICE HATCHER: Is there anything else I can deal with at this stage?

PN35

MR SWAN: No, your Honour.

PN36

JUSTICE HATCHER: Thanks for your attendance. We are now adjourned.

ADJOURNED TO A DATE TO BE FIXED

[10.29 AM]