



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

JUSTICE HATCHER, PRESIDENT

AM2024/15

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

**Application by Hay
(AM2024/15)**

Sydney

9.30 AM, FRIDAY, 31 MAY 2024

Continued from 12/04/2024

PN70

JUSTICE HATCHER: I will take the appearances. Mr Hay, you continue your appearance as the applicant?

PN71

MR D HAY: Yes.

PN72

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

PN73

MS R BHATT: Yes, your Honour.

PN74

JUSTICE HATCHER: Mr Roper, are you there?

PN75

MR L ROPER: I am, your Honour.

PN76

JUSTICE HATCHER: Can you turn your camera on, please.

PN77

MR ROPER: It is on.

PN78

JUSTICE HATCHER: Okay. Just hold on. Yes, sorry, we can see you now. Thank you. And, Ms Gill, you appear for United Workers' Union? Ms Gill, your microphone is off.

PN79

MS GILL: Sorry, Commissioner. I'm here only in an observational capacity today.

PN80

JUSTICE HATCHER: Okay. You can turn your camera off then, please.

PN81

MS S GILL: Thank you.

PN82

JUSTICE HATCHER: So, Mr Hay, you filed everything you want to file in support of your case; is that correct?

PN83

MR HAY: Yes.

PN84

JUSTICE HATCHER: Can I just ask you one question, Mr Hay. Clause 25.5(f) only applies where a rostered service has been cancelled.

PN85

MR HAY: Yes.

PN86

JUSTICE HATCHER: And earlier in the same clause, this is 25.5(c), there's a provision which says that the employer is not required to display a roster for casual employees. Do you work according to a roster?

PN87

MR HAY: Yes, I used to, but I'm on - yes, I am.

PN88

JUSTICE HATCHER: So you receive a roster which allocates shifts to you over a period of time, do you?

PN89

MR HAY: Yes.

PN90

JUSTICE HATCHER: And so you're talking about a shift which is on your roster which has been cancelled?

PN91

MR HAY: Yes.

PN92

JUSTICE HATCHER: Thank you. I just want to clarify that. All right. I will let you go next, Ms Bhatt. What steps should we take next?

PN93

MS BHATT: Your Honour, we oppose the application and the variations that have been proposed. So we would seek an opportunity to file a submission in writing opposing the application. I think we need a period of four weeks to do so, assuming that there's no other material to be filed in support of the application by Mr Hay or by anyone else, which would appear to be the case.

PN94

JUSTICE HATCHER: Yes, all right. Just with the exchange I just had with Mr Hay I am just wondering - as I said the clause says that the employer does not have to display a roster for a casual, but I am just wondering if the employer chooses to work a casual employee according to a roster over the roster period whether that might make any relevant difference. That is if you are on a roster and the roster shift is cancelled why would a casual be treated differently.

PN95

MR HAY: According to the - - -

PN96

JUSTICE HATCHER: I am asking Ms Bhatt a question, Mr Hay.

PN97

MR HAY: Sorry. Sorry.

PN98

MS BHATT: Your Honour, I say two things about that. The first is that to answer your question properly I think I would need to refresh my memory on the examination of the client cancellation clause that was undertaken during the four yearly review. I just haven't (indistinct) get that decision for the purposes of today's proceedings. Dealing with - - -

PN99

JUSTICE HATCHER: That's sufficient, Ms Bhatt. I am just raising the question. You might want to address that in your - - -

PN100

MS BHATT: I will. The only thing I say today is that some employers might have a practice of communicating to casual employees the work that is being offered to them, or the shifts that are being offered to them by way of a roster. But that doesn't necessarily attach or come with the same significance as it does where rosters are prepared for full-time and part-time employees, and then there are various rules in the award as to the extent to which that roster can be changed, and in this case the circumstances in which shifts can or can't be cancelled and what entitlements flow from that.

PN101

JUSTICE HATCHER: All right. So four weeks. Mr Roper?

PN102

MR ROPER: Thank you, your Honour. Our client's position is similar to that of the AiG and we would be likely opposing the application on the basis of the materials provided to this point. In terms of a right of response to the submission we would be comfortable with a period of four weeks, obviously again presuming that no further materials are filed.

PN103

JUSTICE HATCHER: Thank you. Mr Hay, is there any reason why I shouldn't allow the employer interests a period of four weeks to file any material they want in opposition to the application?

PN104

MR HAY: Well, I don't know. I'm all new to this, so I've got no idea what's happening really. I just believe that where I used to get paid two years ago and now I'm not, so - yes.

PN105

JUSTICE HATCHER: Just so you understand under the procedure which is adopted you have been given an opportunity to file a submission which explains why you say the change should be made.

PN106

MR HAY: Yes.

PN107

JUSTICE HATCHER: Ms Bhatt and Mr Roper representing employer interests are opposed to the change that you seek. So all I am proposing is that they be given an equivalent opportunity to file a submission in response. What I would suggest is I would then give you a further two weeks to respond to what they have said, and then we should be in a position to determine the matter. Is that fair enough?

PN108

MR HAY: Yes.

PN109

JUSTICE HATCHER: All right. Okay, so we will take that course. What I will do is I will issue directions allowing the employer interests to file any material in opposition to the application which they wish to file within four weeks. I will give Mr Hay a further two weeks to file anything in reply. I will then call the matter on for a further directions hearing to confirm whether the matter requires a hearing or can be dealt with on the material filed. If there's nothing further we will now adjourn.

ADJOURNED TO A DATE TO BE FIXED

[9.48 AM]