



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

JUSTICE HATCHER, PRESIDENT

AM2024/26

s.160 - Application to vary a modern award to remove ambiguity or uncertainty or correct error

**Application by Hicks
(AM2024/26)**

General Retail Industry Award 2020

Sydney

9.30 AM, FRIDAY, 28 JUNE 2024

PN1

JUSTICE HATCHER: Good morning, everyone, I will take appearances. Mr Hicks, you appear on your own behalf as the applicant?

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MR A HICKS: I do, 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: Ms Carroll, you appear for the National Retail Association?

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MS L CARROLL: Yes, your Honour.

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JUSTICE HATCHER: Ms Morris, you appear for the Australian Retailers Association?

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MS L MORRIS: Yes, your Honour.

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JUSTICE HATCHER: And, Ms Burnley, you appear for the SDA?

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MS S BURNLEY: Yes, your Honour.

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JUSTICE HATCHER: Yes, all right. Mr Hicks, I have read your application. The purpose of this morning is simply to discuss how we should go ahead and deal with your application. I suspect the answer is no, but have you had discussions about your application with anybody?

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MR HICKS: I haven't, your Honour, no.

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JUSTICE HATCHER: It's a matter for you at this stage, but my inclination would be to direct the parties to confer about your application, which is fairly technical in nature, before we take it any further, and we can provide everybody's contact details with you to facilitate that. What do you think about that as a matter going forward?

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MR HICKS: I think that's probably the best way to start, your Honour.

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JUSTICE HATCHER: Yes, all right. What do other parties want to say about how we should deal with this matter procedurally?

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MS BHATT: Your Honour, can I say two things. The first is that we don't oppose the course that your Honour has proposed. That is that the parties be directed to have some discussions. It might be, depending on how those discussions unfold, that one or more of the parties seek the assistance of the Commission, if the Commission is prepared to do so.

PN17

The second issue I just very briefly wanted to raise is that there is some context to this matter, which I just very briefly seek to bring to your Honour's attention, and that is that some of the issues that arise from Mr Hick's application were the subject of a decision that was issued by Lim C earlier this year on 30 May 24.

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JUSTICE HATCHER: Sorry, just slow down, Ms Bhatt. Commissioner Lim - what was that date again?

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MS BHATT: The 30 May of this year.

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JUSTICE HATCHER: Yes. Have you got the - - -

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MS BHATT: I do. It's 2024 FWC 1425.

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JUSTICE HATCHER: What was the effect of that decision?

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MS BHATT: The decision concerned a dispute that Mr Hicks had brought against Woolworths. In particular the dispute concerned what would be the appropriate classification level under the award for an employee engaged as a duty manager. The dispute was dismissed on the basis of evidence led by Woolworths to this effect, that it does not have any duty managers.

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The position of a duty manager is not part of its operating model or its organisation structure, and that by extension Mr Hicks was not employed as a duty manager, and so one of the grounds upon which it was dismissed was that the dispute was sort of a hypothetical one, if I may.

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I am not suggesting that Mr Hicks as a result doesn't have standing to bring this application or anything of that nature, but there might be submissions we ultimately put about the weight that can be attributed to matters that are presented by Mr Hicks in this matter, depending on how the matter unfolds. But I just

wanted to bring that issue to your Honour's attention, that there's some context to all of this. Having said that very happy to engage in discussions with Mr Hicks.

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JUSTICE HATCHER: Thank you. Ms Carroll?

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MS CARROLL: Your Honour, I agree that conferencing is the best first step.

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JUSTICE HATCHER: Ms Morris?

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MS MORRIS: Yes, your Honour, thank you. The ARA also thinks there's value in attending a consultation conference with the parties first.

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JUSTICE HATCHER: All right. And, Ms Burnley?

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MS BURNLEY: Yes, your Honour, we have got nothing further to add to this matter.

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JUSTICE HATCHER: All right, thank you. Do you want to add anything, Mr Hicks?

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MR HICKS: All I can say is that, you know, it was dismissed for want of jurisdiction. There was nothing said about the substance of the dispute. Commissioner Lim found that the Commission didn't have the power to deal with it under the dispute clause. I'm not seeking to have a spat about a duty manager at Woolworths. It's obviously to do with the award, and uncertainty exists there. It's not specific to Woolworths, the matter that I'm seeking to litigate here. So any suggestion that I'm only concerned with Woolworths (indistinct) this dispute done again through this channel is not correct, and I don't agree with that.

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JUSTICE HATCHER: Are you employed as a duty manager?

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MR HICKS: I'm not employed as a duty manager, no. I have performed higher duties in the past as a duty manager, but my substantive position is not duty manager.

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JUSTICE HATCHER: All right. On the basis of what's been indicated I propose to list the matter for report back in approximately 10 weeks time. I will direct the parties to confer. Mr Hicks, if you need information about contact details I will arrange that to be provided to you in an appropriate way. I grant liberty to apply in the event that a consensus is reached by the parties, that some assistance by the

Commission might be helpful. Is there anything further? No. All right, we will adjourn. Thank you for your attendance.

ADJOURNED INDEFINITELY

[9.51 AM]