

TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

22777-1

**VICE PRESIDENT WATSON
SENIOR DEPUTY PRESIDENT ACTON
COMMISSIONER BISSETT**

AM2010/3

s.158 - Application to make a modern award

**Application by Media, Entertainment and Arts Alliance
(AM2010/3)**

Melbourne

3.16PM, WEDNESDAY, 27 JANUARY 2010

**THE FOLLOWING PROCEEDINGS WERE CONDUCTED VIA VIDEO CONFERENCE
AND RECORDED IN MELBOURNE**

PN1

VICE PRESIDENT WATSON: Can we have the appearances in this matter, please, commencing in Sydney.

PN2

MS C. MONTGOMERY: Yes, thank you, your Honour. My name is Montgomery, initial C, and I appear on behalf of the Media Entertainment and Arts Alliance.

PN3

VICE PRESIDENT WATSON: Ms Montgomery.

PN4

MS N. STREET: If the bench pleases, Street, initial N, appearing for Australian Industry Group.

PN5

VICE PRESIDENT WATSON: Ms Street. And in Melbourne?

PN6

MS: There are no other attendees here.

PN7

VICE PRESIDENT WATSON: Thank you.

PN8

MS E. McCOY: If the commission pleases, my name is McCoy, initial E, and I appear on behalf of the Australian Counsel of Trade Unions.

PN9

VICE PRESIDENT WATSON: Ms McCoy.

PN10

MS M. HOGAN: If it please the tribunal, my name is Hogan, initial M, for the AMWU.

PN11

VICE PRESIDENT WATSON: Ms Hogan. We have called this matter on for mention in the hope that we would get some clarification as to the level of involvement of various parties and the interests of parties affected in this matter, and to attempt to formulate an appropriate way of dealing with the application and addressing matters such as whether the matter should proceed by written submissions or oral hearing and steps in the process such as developing exposure drafts and those sort of matters. Could I ask initially, Ms Montgomery, whether you have a view as to those matters.

PN12

MS MONTGOMERY: Yes, we do, your Honour. I have had some discussion with Mrs Street representing interested parties. I will seek further instructions from my elected officials. However, we are happy to enter into discussions with AIG in relation to the interests that their clients have in the award. Mrs Street and I have actually discussed the timetable. If I might put that timetable to you.

PN13

VICE PRESIDENT WATSON: Yes, indeed.

PN14

MS MONTGOMERY: We have agreed that AIG submit their written submissions by close of business 24 February and the Alliance will respond four weeks after that on 24 March by written submission, and then, your Honour, we would seek to have the matter set down for perhaps a half-day hearing two weeks after that; that being about 7 April 2010.

PN15

VICE PRESIDENT WATSON: Is this a matter that can be dealt with after the end of March?

PN16

MS MONTGOMERY: It can be dealt with by the end of - I'm sorry, your Honour?

PN17

VICE PRESIDENT WATSON: Yes. Well, the award, if it's part of the original award modernisation process, the time for completion of that process is extended, I thought, only till the end of March. I wonder, given that the application was made under the - or prior to Christmas, that it might be caught by that time limitation. Is that a matter that - - -

PN18

MS MONTGOMERY: I apologise, your Honour. That's correct, so we should amend our dates.

PN19

MS STREET: Your Honour, it's Ms Street. May I brief - we were of the understanding that the application was made under the Fair Work Act under section 158. I know that the application was dated an earlier date. As such we are of the view that, given that this may be one of the first applications of this nature in comparison to the awards you have dealt with under the award modernisation administrative request, we are of the view that some time would be required to prepare some written submissions and to submit those by way of oral hearing. If there is a completion date of around 30 March then obviously we would abide by that but it's certainly our view to prepare some detailed submissions and to speak to those.

PN20

VICE PRESIDENT WATSON: Yes. I might have been under a misunderstanding. I was looking at the submissions filed by the MEAA which bears a date 22 December but it does appear that the application was made in January.

PN21

MS MONTGOMERY: I can actually help you with that, your Honour. That's right. I did file that application prior to 1 January and then in early January I was advised by the Fair Work Commission that I was required to refile the matter under section 158 of this - in an email from, I think it was Kate Lehn. Subsequently I refiled that application.

PN22

VICE PRESIDENT WATSON: Yes.

PN23

MS MONTGOMERY: That had been around the 20th. I would have to go back and have a look at my emails, your Honour, but I can be very precise about when I was asked to do that.

PN24

VICE PRESIDENT WATSON: Yes.

PN25

MS MONTGOMERY: (indistinct) 20 January.

PN26

VICE PRESIDENT WATSON: Yes. Well, that would explain why it has been given a 2010 number. It would also suggest that what I said about the time limitation might be misconceived. So perhaps if you continue with what you were saying about the timetable and we'll hear from all parties in relation to that. You were saying a combination of written submissions and oral submissions with a half-day hearing.

PN27

MS MONTGOMERY: That's correct, your Honour.

PN28

MS STREET: Yes, your Honour.

PN29

VICE PRESIDENT WATSON: Is there any issue or is it appropriate to take steps beyond simply publishing a notice of listing or directions on the web site to ensure that all relevant employers that might be bound by any such award are aware of the application?

PN30

MS MONTGOMERY: It probably would be.

PN31

MS STREET: We would agree, your Honour. I know from our organisation's perspective a large number of our members across a variety of industries would be affected by our MEAA proposed award and as such we would think it's of benefit for employers to at least be aware that this application is on foot.

PN32

VICE PRESIDENT WATSON: How best might that be done?

PN33

MS STREET: Your Honour, that indication on the Fair Work Australia's web site, I believe, would be sufficient. As to how and where that is presented I'm not exactly sure but I believe that certainly if there were employees who were aware of this application there would be a high level of interest given that there are a large number of professional employees that could be affected.

PN34

VICE PRESIDENT WATSON: Yes.

PN35

MS MONTGOMERY: The only other option - - -

PN36

VICE PRESIDENT WATSON: Sorry, Ms Montgomery.

PN37

MS MONTGOMERY: Sorry, your Honour. The only other option I could think about was the updated - the original order has a residency list attached to it, and some years ago when I was working in this section of the union I updated the residency list for award modernisation. I don't know - - -

PN38

MS STREET: I think that - and also that this award may have potential for common law application.

PN39

MS MONTGOMERY: It does, in ACT and Victoria.

PN40

VICE PRESIDENT WATSON: Are there any potential employers in other states that might be award free at this stage?

PN41

MS STREET: In our view, your Honour, yes, there would be. There would be many. We understand that in Victoria and ACT there would be common law applications on the previous 2003 award, but certainly MEAA's proposed award is made under cover; a large number of employers in all states and territories.

PN42

SENIOR DEPUTY PRESIDENT ACTON: Is there NAPSAs in the area?

PN43

MS STREET: I'm sorry, your Honour?

PN44

SENIOR DEPUTY PRESIDENT ACTON: Is there former state awards in the area?

PN45

MS STREET: Not to our knowledge, your Honour. This was a federal award. I'm unaware of any NAPSAs covering - - -

PN46

MS MONTGOMERY: There are no NAPSAs. It was a federal award.

PN47

VICE PRESIDENT WATSON: Yes, all right. Ms Montgomery, you have indicated the timetable that you propose. Commencing with the employers, that's because you simply rely on the submissions and the drafts and the updated drafts that you have filed at this stage. Is that correct?

PN48

MS MONTGOMERY: I'm sorry, your Honour, I can't hear very well through the speaker. I'm sorry.

PN49

VICE PRESIDENT WATSON: Yes. You're proposing that employers would have the first opportunity to comment based on the material that your union has filed already.

PN50

MS MONTGOMERY: Yes, I am, your Honour, thank you.

PN51

VICE PRESIDENT WATSON: Yes, all right. Ms Street, what's your view?

PN52

MS STREET: Yes, your Honour. We are seeking that. As Ms Montgomery has confirmed, that all materials have been filed. We are prepared to respond to those submissions by way of our own written submissions in response by 24 February, being four weeks from today's date, and then a further four weeks for MEAA and other interested parties to respond by 24 March, following which AI Group and other interested parties may respond to reply submissions in preparation for a half-day hearing on or around what we have proposed, 7 April, subject to the tribunal's scheduling of course, so we think that there is an element of public interest in this matter given that it is one of the first applications to make a new award, and as such that's the timetable that we would respectfully submit and we have agreement with MEAA to do so.

PN53

VICE PRESIDENT WATSON: Yes, thank you. Ms McCoy or Ms Hogan, do you have a view about the timetable proposed?

PN54

MS McCOY: We're content to pursue that timetable if that's pleasing to the commission. We were also under the impression that this was a section 158 matter and in that case there are no limitations on when it could be dealt with. I also note that as it's a transitional instrument and continues to apply to employees there's not actually any urgency to deal with the issue so when it please the commission.

PN55

VICE PRESIDENT WATSON: Thank you. Ms Hogan?

PN56

MS HOGAN: Yes, your Honour. The timetable would suit the AMWU. I should just signal our interest in this matter is fairly small; one of potential overlap with the Graphic Arts Printing and Publishing Award. We had discussions with MEAA and the ACTU about that and the proposed draft submitted today just before the hearing today would seem to deal with that matter but, however, we may make a written submission on the point. If it please the tribunal.

PN57

VICE PRESIDENT WATSON: Yes, thank you. Is there anything further any of the parties wish to raise?

PN58

MS MONTGOMERY: If I might just raise, your Honour, it's more of a housekeeping - I submitted a draft of the Public Relations Industry Modern Award

to your associate and I had to amend clause 4.5. I inadvertently left the word "employer" in into that clause and I have now amended that and I will forward a clean amended copy to your associate when I get back to the office this afternoon.

PN59

VICE PRESIDENT WATSON: Thank you.

PN60

MS MONTGOMERY: Those two discussions we have had with the AMWU in relation to the classification levels - the classification descriptives in the Public Relations Industry Award and how that may affect the Graphic Arts Printing and Publishing Award and the unions have agreed to that to the certain exclusion and a clause into the coverage clause in the modern award that excludes an employee that is a designer. The issue was around the use of the word "design". In the Public Relations Industry Award we stated where design means to plan as opposed to a graphic designer who designs a campaign or things of that sort, and as my colleague from the AMWU advised me, we had discussions and we have reached a consent position on the insertion of that clause.

PN61

VICE PRESIDENT WATSON: Yes. I assume some public relations is designed or planned. Some other is unplanned.

PN62

MS MONTGOMERY: The definition is in the Public Relations Assistant definition.

PN63

VICE PRESIDENT WATSON: Yes. Yes, thank you for that. You can refile the amended documents and we will put that on the web site as well.

PN64

MS MONTGOMERY: Thank you.

PN65

VICE PRESIDENT WATSON: We thank the parties for their submissions. We will consider appropriate directions to be made in relation to this matter covering appropriate steps to ensure that all interested parties are aware of it and can participate in the process as well as the filing of material and hearings in due course. We will issue those directions and publish them on the web site in the near future. The tribunal will now adjourn.

<ADJOURNED INDEFINITELY

[3.33PM]