



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

JUSTICE ROSS, PRESIDENT

AM2014/267

s.156 - 4 yearly review of modern awards

Four yearly review of modern awards

AM2014/267 – *Fast Food Industry Award 2010*

AM2014/271 – *Hair and Beauty Industry Award 2010*

Melbourne

9.30 AM, WEDNESDAY, 8 NOVEMBER 2017

PN1

JUSTICE ROSS: Can I have the appearances, please, in Melbourne first?

PN2

MS K BIDDLESTONE: If the Commission pleases, Biddlestone, initial K, appearing on behalf of the SDA.

PN3

JUSTICE ROSS: Thanks, Ms Biddlestone. In Sydney?

PN4

MS R BHATT: Yes, if the Commission pleases, Bhatt, initial R, of the Australia Industry Group for the Hair and Beauty Australia Industry Association.

PN5

JUSTICE ROSS: Thank you, and in Newcastle?

PN6

MS K O'BRIEN: If it please the Commission, O'Brien, initial K, appearing for the Australian Industry Group.

PN7

MS M TIEDEMAN: If it pleases the Commission, Tiedeman, initial M, for the ABI and the New South Wales Business Chamber.

PN8

JUSTICE ROSS: Thank you. Let's deal firstly with the fast food award. I think there was a summary document that was published on 8 March 2017. If I can start with AI Group for the moment - - -

PN9

MS BIDDLESTONE: Sorry, your Honour - there was an updated summary of submissions of proposed variations on 11 September.

PN10

JUSTICE ROSS: Yes, it's the same one. It's just got the incorrect date at the bottom of the second page, I think. It's got 11 September on the front page but 8 March on the bottom.

PN11

MS BIDDLESTONE: Yes.

PN12

JUSTICE ROSS: Can I just go to Ai Group - do I take it you still are proposing or do you adhere to the views expressed on 7 October in your document, "Outline of proposed variations to the fast food award?" There you indicated you were seeking changes to the laundry allowance and proposing you would call one to two witnesses, the evening penalty end time, clause 25.5, Saturday work and rest breaks, is that right?

PN13

MS O'BRIEN: Yes, your Honour. There will also shortly be an additional claim in relation to the part-time clause. That claim hasn't been filed with the Commission on the basis that we've provided it to the SDA and we'd like to aim to have a combined, consented approach before that additional claim is filed.

PN14

JUSTICE ROSS: All right. The SDA is seeking some changes in relation to hours of work and rostering, is that right?

PN15

MS BIDDLESTONE: That's correct, your Honour.

PN16

JUSTICE ROSS: And in relation to - - -

PN17

MS BIDDLESTONE: Classifications.

PN18

JUSTICE ROSS: Yes, what are you seeking there?

PN19

MS BIDDLESTONE: In relation to classifications?

PN20

JUSTICE ROSS: Yes.

PN21

MS BIDDLESTONE: That claim is in relation to wording to insure that employees aren't required to wearing clothes that are of a revealing or indecent manner.

PN22

JUSTICE ROSS: Right - is that a claim that is common to other awards?

PN23

MS BIDDLESTONE: It's common to the hair and beauty and also the general retail.

PN24

JUSTICE ROSS: Would it make sense to have a common bench dealing with that claim in relation to those three awards?

PN25

MS BIDDLESTONE: Yes.

PN26

JUSTICE ROSS: All right. Well, I think Ai Group has indicated they've got probably all up two to three witnesses, is that right?

PN27

MS O'BRIEN: Your Honour, probably all together four.

PN28

JUSTICE ROSS: Right, and the SDA - if we take out the classification one, and that will go - we'll deal with that separately in the three awards, you then have I think public holidays. You were contemplating reserving your position and contemplating referring it to the public holidays full bench?

PN29

MS BIDDLESTONE: Yes, for hair and beauty and the fast food industry award we're actually withdrawing that claim.

PN30

JUSTICE ROSS: All right.

PN31

MS BIDDLESTONE: I'm not sure that the correspondence was clear.

PN32

JUSTICE ROSS: That's fine.

PN33

MS BIDDLESTONE: But we didn't want to make that for any other award so for those two awards its' been withdrawn.

PN34

JUSTICE ROSS: That then leaves us with the hours of work clause.

PN35

MS BIDDLESTONE: Yes.

PN36

JUSTICE ROSS: What can you tell me about that, about how long or how many witnesses you might require for that one?

PN37

MS BIDDLESTONE: It wouldn't be many witnesses in relation to those claims. They're more in relation to ambiguities and technicalities.

PN38

JUSTICE ROSS: So it's more likely to be dealt with on a merits basis - - -

PN39

MS BIDDLESTONE: Merits, yes.

PN40

JUSTICE ROSS: Which is the same as a number of Ai Group's claims.

PN41

MS BIDDLESTONE: Yes.

PN42

JUSTICE ROSS: Well, can I go to you, Ms O'Brien? I want to schedule this matter, otherwise these things will still be with us in two years' time. How soon can you file your witness statements?

PN43

MS O'BRIEN: Your Honour, following the last directions we were of the understanding that the matter would be listed for conference between the parties.

PN44

JUSTICE ROSS: It may be, sure, we'll have a conference but when are you going to be in a position to file your witness statements?

PN45

MS O'BRIEN: We would estimate 12 weeks.

PN46

JUSTICE ROSS: 12 weeks?

PN47

MS O'BRIEN: We are currently considering whether survey evidence would be required and given the nature of that, requiring expert evidence and running the survey that would take, given our experience in penalty rates, a cycle of 12 weeks to be able to file that evidence.

PN48

JUSTICE ROSS: Ms Biddlestone, you're not filing any evidence so yours is just submissions? All right. Is there anything else anyone wishes to say about fast good?

PN49

MS BIDDLESTONE: I did just have one point of clarification. I just note in relation to S16, which is Ai Group's claim in relation to when the penalty rate ceases following late evening, my understanding was that the award has been varied as a result of the penalty rates case.

PN50

JUSTICE ROSS: Yes, I think that's right. I think this issue came up in the penalty rates decision.

PN51

MS BIDDLESTONE: Yes, it did, so - - -

PN52

JUSTICE ROSS: Ms O'Brien?

PN53

MS O'BRIEN: We do agree that the ambiguity in the fast food award was clarified in the penalty rates decision as to what the end time was, which was confirmed in the penalty rates decision to be 6 am. However, we will still be pursuing the claim to vary that time to 5 am or alternatively have a facilitative provision.

PN54

JUSTICE ROSS: All right - nothing further in that? All right, I'll issue directions in relation to that matter. In relation to the fast food award - sorry, not the fast food, the hair and beauty award, Ms Bhatt?

PN55

MS BHATT: Yes, your Honour, I can confirm that the three claims that are outlined in the summary of submissions update on 11 September by Hair and Beauty Australia are still pressed. I don't mean to step ahead of your Honour, but if I may address you on how the matter might proceed.

PN56

Your Honour, it seems to me that, well, it is the case that all of the variations sought by Hair and Beauty Australia and two of the variations sought by the SDA relate to the rostering provisions.

PN57

JUSTICE ROSS: Yes.

PN58

MS BHATT: There seems to be a considerable amount of overlap in relation to the subject matter that those claims relate to. It's for that reason that I think Ms Ferguson put to you on the last occasion that we were before you, that we think there is considerable merit in at least a conference between the parties and we think that we would be assisted if it were facilitated by the Commission. We think that it may be premature to program the matter at this stage for this reason, and that is that the conciliation may have the effect of refining the claims to some degree.

PN59

When we were formulating the variations that we seek to the Hair and Beauty Award, it seemed to us - I say this on a without prejudice basis if I may, that there is some anomaly, at least on the face of it, as to how some of the rostering provisions work together. If there was an opportunity to ventilate those issues and thrash some of them out, that might have some substantive impact on the variations that are actually ultimately sought by the interested parties.

PN60

JUSTICE ROSS: All right. Ms Biddlestone, do you agree with that?

PN61

MS BIDDLESTONE: Yes, we would support that position.

PN62

JUSTICE ROSS: Then in relation for that matter, I will organise for it to be listed for conference.

PN63

MS BHATT: Your Honour, I'm sorry, may I raise one other issue?

PN64

JUSTICE ROSS: Sure.

PN65

MS BHATT: Your Honour has referred previously to a claim made by the SDA which I think Ms Biddlestone referred to as a variation sought in relation to clothing that an employee may or may not be required to wear.

PN66

JUSTICE ROSS: That's right.

PN67

MS BHATT: Our organisation has - if we put the merits of the claim to one side, there is some concern about whether or not jurisdictionally such a provision may be included in a modern award, and I mean that by reference to section 139 of the Act, of course. It may be that that matter too, could be the subject of some discussion between the parties before we race ahead and allocate it to a separate Full Bench. From our perspective, it seems that there might be some merit in that.

PN68

JUSTICE ROSS: I probably wasn't going to refer it to a separate Full Bench until the other matters are dealt with in the three awards and then deal with it probably in the second half of next year unless the SDA presses for an earlier time.

PN69

MS BHATT: All right.

PN70

JUSTICE ROSS: That might allow you an opportunity to formulate your claim and have discussions with the other parties.

PN71

MS BIDDLESTONE: I agree, I think there probably is merit in having a discussion about what it would look like within the award.

PN72

JUSTICE ROSS: Are you content with that sort of time frame that we will revisit it next year, but if it goes to arbitration, it's unlikely to be heard until the second half of the year.

PN73

MS BIDDLESTONE: Yes, your Honour, and in the meantime, we'll be in contact with the other parties concerned, to see if we can get some resolution.

PN74

JUSTICE ROSS: Thank you. Anything else Ms Bhatt?

PN75

MS BHATT: No, your Honour, thank you.

PN76

JUSTICE ROSS: Do you know anything about the Business SA plans?

PN77

MS BHATT: I don't, I'm afraid.

PN78

JUSTICE ROSS: I think they were indicating on the last occasion that they were consulting with their members and may pursue a proposal to vary. For the record I indicate if they are, then they should file an application and we'll deal with it when it's filed.

PN79

Nothing further? Ms Tiedeman, I forgot to check with ABI in relation to the earlier matter, the Fast Food Award, what your position was or whether you were pursuing any claims or whether you were support Ai Group's claims.

PN80

MS TIEDEMAN: Yes, your Honour, thank you. We are not pursuing any claims, but do intend to oppose and support a number of claims in both awards.

PN81

JUSTICE ROSS: All right, thanks. Nothing further?

PN82

Thanks very much, I'll adjourn.

ADJOURNED INDEFINITELY

[9.42 PM]