



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

JUSTICE HATCHER, PRESIDENT

AG2023/1511

Sch. 7, Item 30(4) - Application to extend default period for enterprise agreements made during the bridging period

**Application by Payfam Enterprise Pty Ltd T/A Ravenshoe IGA Everyday
(AG2023/1511)**

Sydney

11.00 AM, THURSDAY, 8 JUNE 2023

PN1

JUSTICE HATCHER: Good morning, Mr Payton, so you're appearing for the applicant in this matter; is that correct?

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MR L PAYTON: Yes, that is correct.

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JUSTICE HATCHER: All right. Do you have a copy of your application with you?

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MR PAYTON: It will be on screen. I'd have to pull it up.

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JUSTICE HATCHER: This is a fairly technical matter, but in section 2.1 of the application you've marked the box to extend the default period for an agreement made during the bridging period, but I think in fact you should have ticked the first box, that is - I understand this is all very technical - an agreement-based transitional instrument, because it was made by the Workplace Relations Act was in operation. Unless you tell me otherwise I am going to assume that we're on the proceeding on the basis that you should have picked the first box rather than the third box.

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MR PAYTON: Yes. Thank you very much.

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JUSTICE HATCHER: All right. Mr Payton, I'm getting some background noise somewhere.

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MR PAYTON: I can put the earplugs in - - -

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JUSTICE HATCHER: That's all right, we will just do the best we can. Mr Payton, under the legislation about zombie agreements there's only two bases upon which we can extend them.

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MR PAYTON: Right.

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JUSTICE HATCHER: The first is that employees would be better off overall if the agreement stayed in effect rather than under the relevant award, which in this case I assume would be the Retail Award.

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MR PAYTON: Yes.

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JUSTICE HATCHER: Or the second is that you've commenced bargaining for a new enterprise agreement. I wasn't clear from your application which of those two things, if either of them, you were selecting.

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MR PAYTON: Well, we believe under this agreement that our employees would be better off, if they remained under this agreement, because we pay a higher rate of wages all the time. The amount of times that they are actually working outside in a different penalty area would probably be - they'd be better off because it's only a very short period of time, and if they are receiving the higher amount they get it all the time, if you know what I mean.

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JUSTICE HATCHER: All right. If I understood from your application - just hang on a sec, I will just pull it up - so, what, there's flat rates which apply during a whole week. Is that how it works?

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MR PAYTON: Yes. So they get paid one flat rate, and unless it's a public holiday we don't deviate from that rate.

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JUSTICE HATCHER: So if I'm an adult casual - so all the employees are casual; is that right?

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MR PAYTON: Yes, correct. We only have 14 staff.

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JUSTICE HATCHER: Yes, all right. So just so I understand it if I'm an adult casual I will get \$29.98, let's say \$30, per hour for any hours Monday to Sunday at any time of the day?

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MR PAYTON: Correct.

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JUSTICE HATCHER: All right. Mr Payton, our normal practice when we get an application which contends that employees are better off overall is that we get our Commission staff to do their own independent analysis of that. We provide that to the applicant, and then give you an opportunity to comment. Have you got any objection to us taking that course?

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MR PAYTON: No, not at all. I did send a second rate change, because we have a rate change in July, so from 1 July.

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JUSTICE HATCHER: That's your updated wage table. All right.

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MR PAYTON: Yes. I don't have the actual rate change at the moment. I have been told that they are looking for 5.75 per cent. I've made (indistinct) with .85 per cent, because I looked at what effect it would have, and that seemed to be an area where we would cover most of the other hours. One of the things I want to stay away from, and it's happening a lot in businesses, is where you have a staff that will only work on a weekend, and that means that they get a larger amount of money, and, you know, there's very little in the way of loyalty. You don't use your other staff, and seriously I don't want to go down there, and I must admit it makes it a lot easier for me if I can charge one rate all the time.

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JUSTICE HATCHER: So you've only got one rate of pay for all the employees. So what job functions are they doing, because we need to compare with a classification in the Retail Award, so we just need to make clear what functions they're doing.

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MR PAYTON: Well, there's check-out operators, there's grocery - - -

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JUSTICE HATCHER: Shelf stacking I assume.

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MR PAYTON: Yes, produce, which is putting out fruit and veg. There's the putting out meat into the meat department, and basically that's it.

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JUSTICE HATCHER: Yes, all right.

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MR PAYTON: All the office work in that type of work I do myself. So there's nobody that's involved in any of those areas.

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JUSTICE HATCHER: Okay, Mr Payton. Well, what we will do is we will get that comparison prepared. We will send it to you when it's done, and then once you've had a chance to look at it we will give you an opportunity to give a response before we proceed any further.

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MR PAYTON: Just one other thing that I have to mention is that I've spoken to the staff and told them that this is the track that we might be following, but I've said along the road that if they decide that they want to go in the other direction then we would go down that direction. So if we have an opportunity to offer them two situations, and if your assessment comes up that it's not going to be viable then we'll only have one option.

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JUSTICE HATCHER: Okay. I think what we will do is, the first step is to see whether it does pass the better off overall test. If the answer to that is 'No' then

that's really the end of it. If the answer is 'Yes' then we will take a further step of seeking the views of employees about whether - - -

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MR PAYTON: And that sounds good.

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JUSTICE HATCHER: All right. So we will just leave it at that, Mr Payton. So we will send that to you directly when it's ready, and once that's done we will either give you a chance to respond and you can elect to either do that in writing or we can have another appearance like today, or we can do a bit of both.

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MR PAYTON: Thank you very much.

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JUSTICE HATCHER: All right. Thank you for your attendance, Mr Payton, we will now adjourn.

ADJOURNED INDEFINITELY

[11.11 AM]