

TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

44697-1

**JUSTICE GIUDICE, PRESIDENT
VICE PRESIDENT WATSON
SENIOR DEPUTY PRESIDENT ACTON
COMMISSIONER HARRISON
COMMISSIONER CARGILL**

AM2011/20

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

**Australian Municipal, Administrative, Clerical and Services Union
and
Jobs Australia Limited
(AM2011/20)
Social, Community, Home Care and Disability Services Industry Award 2010**

**(ODN AM2008/79)
[MA000100 Print PR991066]]**

Melbourne

9.37AM, MONDAY, 11 APRIL 2011

PN1 JUSTICE GIUDICE: Yes, Ms Lowson.

PN2 MS P. LOWSON: Yes, your Honours, Commissioners, I seek leave to appear in these proceedings on behalf of the applicants.

PN3 JUSTICE GIUDICE: Yes. We've only listed the application to vary at the moment.

PN4 MS LOWSON: Yes. Your Honours, this is a matter which has some history, as I'm sure your Honours and Commissioners are aware of.

PN5 JUSTICE GIUDICE: Yes. We might just conclude the appearances, Ms Lowson.

PN6 MS LOWSON: Yes.

PN7 JUSTICE GIUDICE: Yes, Mr Pegg.

PN8 MR M. PEGG: Yes, Pegg, initial M., for Jobs Australia thank you.

PN9 JUSTICE GIUDICE: Thank you, Mr Pegg.

PN10 MR R. WARREN: Yes, with permission, for the Australian Federation of Employers and Industries.

PN11 JUSTICE GIUDICE: Mr Warren.

PN12 MR M. MEAD: Mr Mead, Commissioner, on behalf of Australian Industry Group.

PN13 JUSTICE GIUDICE: Yes, Mr Mead. Any other appearances? Yes, Ms Lowson.

PN14 MS LOWSON: Yes, certainly. Your Honour, I note that the matter was read as an application on behalf of the ASU. I think it's actually - - -

PN15 JUSTICE GIUDICE: Joint application, yes.

PN16 MS LOWSON: Joint application with Jobs Australia.

PN17 JUSTICE GIUDICE: Yes.

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MS LOWSON: And I understand that Mr Warren's client is not opposing the application before you, and neither is Mr Mead's.

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JUSTICE GIUDICE: Yes.

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MS LOWSON: Just as some context for the application.

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JUSTICE GIUDICE: Well, it appears there's no opposition.

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MS LOWSON: That's right. You will recall during the proceedings establishing the modern award in this industry that there was an extension of time for the introduction of wages in the initial award. The commencement date of the award, or the wage (indistinct) part of the award, was extended to 1 July 2011. There was then a subsequent application in June 2010 by Jobs Australia to slowly extend the time in respect of the introduction other than wage related features of the award, such as penalties, and his Honour - - -

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JUSTICE GIUDICE: Watson VP.

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MS LOWSON: Watson VP, it was, yes, who heard and determined that matter and agreed to the extension of the penalty also (indistinct) now, the circumstances are, as this full bench are aware, that the driving force for the delay was this application and a desire on the part of the parties to avoid any more than a single-day process for employers to deal with the introduction of new salary rates, new penalty (indistinct) as they transferred across costs from the various state and federal instruments to the modern award. In relation to that (indistinct) last year, with the federal election and subsequent state elections, that we are now only just finalising the equal remuneration for our application. In light of the five-week delay in getting a decision in that matter, this application has been made to extend the date for wage-related aspects of the award until 1 January 2012, and with consequential further extensions as reflected in the award. I have a draft determination - - -

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JUSTICE GIUDICE: Yes, thank you. Yes, Ms Lowson.

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MS LOWSON: I just note MR BRIGGS is here, your Honour, you can take his appearance.

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JUSTICE GIUDICE: Do you wish to appear, Mr Briggs?

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MR BRIGGS: Yes, your Honour, I do apologise (indistinct)

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JUSTICE GIUDICE: Have you had an opportunity to consider the application, Mr Briggs?

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MR BRIGGS: Yes, your Honour.

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JUSTICE GIUDICE: Do you oppose it?

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MR BRIGGS: Partially.

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JUSTICE GIUDICE: Yes, very well. Well, Ms Lawson, perhaps you'd better - - -

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MS LAWSON: Your Honour, I have no idea, we've had no communication from ABI, what that might involve. Your Honour, I didn't intend to go into the detail that - - -

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JUSTICE GIUDICE: No, I understand that.

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MS LAWSON: (indistinct) on the last occasion. I can indicate, as I'm sure you're aware, of course, the one difference between now and June last year, or July last year, when the matter was heard by his Honour, is that the employers who were utilising the division 2B awards since 1 February this year have moved onto NAPSAs. But by and large, that doesn't really affect the complexities that were outlined by I think by Mr Fell on that occasion with Jobs Australia and by Mr Harvey on behalf of the applicant on that occasion.

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JUSTICE GIUDICE: Yes.

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MS LAWSON: Really, I can't further assist in relation to ABI's position until I know what it is.

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JUSTICE GIUDICE: Yes. Yes, Mr Briggs.

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MR BRIGGS: Thank you, your Honour. You'll have to bear with me.

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JUSTICE GIUDICE: Yes.

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MR BRIGGS: ABI supports deferment of the transitional wages, penalties and loadings until 1 February 2012. That is, it defers transitional phase to 60 per cent. ABI does have a concern with a 1 January transition pay. Importantly, it needs to be the first pay period on or after. However, consistent with the division 2B transition process, perhaps 1 February would be a more agreed date, to avoid complexity over the Christmas period and New Year period.

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The second stage of the transitioning - that is, to the 40 per cent phase - ABI does not support this amendment proposed. ABI believes it should be consistent with other awards, from 1 July 2012, that second phase. ABI submits that whilst it's consistent with Fair Work Australia's original decisions to postpone the first phase, due to commence on 1 July 2011, to provide for the outcomes of this case, the equal remuneration case, it is difficult to see how the postponement of the 1 July 2012 to 1 January 2013 would help further this cause.

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ABI sees there are two possible outcomes of the equal remuneration case: that is, an order is made that likely disposes of wages in transition completely and makes it redundant; or that if an order is not made, there's no need to postpone transitioning in this second phase, and that employees should progress to modern award rates if employers choose to do so, and that shouldn't be unnecessarily postponed. Those are my submissions, your Honour.

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JUSTICE GIUDICE: So, Mr Briggs, looking at what's proposed by the applicants, instead of 1 January 2012 for the proposed first adjustment, ABI supports 1 February 2012?

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MR BRIGGS: The first pay period thereafter.

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JUSTICE GIUDICE: Yes. In relation to the second instalment, the proposal that it be 1 January 2012 by the joint applicants - - -

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MR BRIGGS: 2013, your Honour.

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JUSTICE GIUDICE: Sorry?

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MR BRIGGS: 2013.

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JUSTICE GIUDICE: 2013, rather. You propose 1 July 2012. Is that right?

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MR BRIGGS: Yes, maintaining the original date.

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JUSTICE GIUDICE: So you want to delay the first instalment by a month, but - - -

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MR BRIGGS: If I can make it clearer, your Honour, we're looking to postpone the next one that was due 1 July this year.

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JUSTICE GIUDICE: Seven months?

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MR BRIGGS: For seven months.

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JUSTICE GIUDICE: Yes.

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MR BRIGGS: To allow for the outcome of the remuneration case.

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JUSTICE GIUDICE: Yes.

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MR BRIGGS: But then have no further changes to transitioning - - -

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JUSTICE GIUDICE: Yes.

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MR BRIGGS: We do support postponement of wages, penalties and - - -

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JUSTICE GIUDICE: Yes. The only differences are those two operative dates?

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MR BRIGGS: Or maintaining one of the dates, but therein - - -

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JUSTICE GIUDICE: Yes.

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MR BRIGGS: Yes.

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MS LOWSON: Yes, your Honour, that's been assistance. As I understand, the request for the February date (indistinct) administrating these sorts of changes over Christmas, when people are on holidays and (indistinct) staff aren't necessarily available. We have no difficulty with that being 1 February. In relation to the second matter, we also have no difficulty with that being 1 July 2012. In other words, we don't oppose (indistinct) the suggested (indistinct)

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JUSTICE GIUDICE: Yes. Very well, Ms Lowson. Are there other - Mr Pegg?

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MR PEGG: Your Honour, just briefly, we support the application by the union. It is a matter of practicality, and as Ms Lowson has outlined, it's based on the same considerations that were considered by Watson VP in the earlier application. So it's a matter of practicality.

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JUSTICE GIUDICE: Yes. Well, what do you say about Mr Briggs' proposed alterations?

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MR PEGG: We have no objection to that February date. It makes sense because there is an issue around the Christmas period.

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JUSTICE GIUDICE: Yes. The second proposal?

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MR PEGG: The second proposal also, we have no objection.

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JUSTICE GIUDICE: Very well. Mr Warren, do you wish to say anything about - - -

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MR WARREN: I've just received some instructions, your Honour. It appears that AFEI would not oppose the amendments suggested to the order.

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JUSTICE GIUDICE: Very well. Mr Mead?

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MR MEAD: No, we support the approach.

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JUSTICE GIUDICE: Very well. Are there any other submissions? Well, we intend to grant the application in accordance with the suggested amendments, to which there appear to be no opposition. Ms Lawson, we'll ask you to resubmit the draft, if you would be kind enough, with the amended dates on it.

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MS LOWSON: Yes.

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JUSTICE GIUDICE: We will make that determination in due course.

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MS LOWSON: Thank you, your Honour.

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JUSTICE GIUDICE: Yes. The main proceedings are listed for 10.00 out of caution, in case there are people coming at 10 o'clock who aren't interested in this application. We'll adjourn and then commence again at 10 o'clock.

<ADJOURNED INDEFINITELY

[9.50AM]