

APPLICATIONS BY THE COMMONWEALTH STEAMSHIP OWNERS' ASSOCIATION AND THE AUSTRALIAN COMMONWEALTH SHIPPING BOARD FOR THE CANCELLATION OF THE REGISTRATION OF THE FEDERATED SEAMEN'S UNION OF AUSTRALASIA AND FOR THE CANCELLATION OF THE AWARDS MADE IN RESPECT TO THAT UNION.

(Miscellaneous Nos. 17 and 18 of 1925.)

(Nos. 124 of 1923; 131 of 1923 and 301 of 1923; Nos. 95 and 96 of 1925.)

1925.
MELBOURNE,
May 21, 22 and
29; June 1, 5.

Webb, D.P.

*Cancellation of registration of organization—Determination of awards
—Strike—Job control—Refusal to obey order of Court.*

On the 1st May, 1925, Deputy President Sir John Quick, at the request of the Commonwealth Steamship Owners' Association and the Australian Commonwealth Shipping Board, granted orders nisi calling upon the Federated Seamen's Union of Australasia to show cause why its registration should not be cancelled. On the 1st May and 5th May, 1925, the Australian Commonwealth Shipping Board and the Commonwealth Steamship Owners' Association lodged applications to vary the awards made in favour of the Seamen's Union so as to determine them. The orders nisi and applications came on for hearing before Mr. Deputy President Webb in Melbourne on the 21st May, 1925.

Owen Dixon, K.C., and R. G. Menzies (of counsel) for the Australian Commonwealth Shipping Board.

Owen Dixon, K.C., J. G. Latham, K.C., and R. G. Menzies (of counsel) for the Commonwealth Steamship Owners' Association.

T. Walsh for the union.

June 5.

On the 5th June, 1925, Mr. Deputy President Webb delivered the following judgment:—

The matters with which I am dealing are as follows:—

1. An application by the Australian Commonwealth Shipping Board to cancel the registration of the Federated Seamen's Union of Australasia (an organization registered under the Act).
2. An application by the Commonwealth Steamship Owners' Association (an organization registered under the Act) to cancel the registration of the said union.

3. An application by the Commonwealth Steamship Owners' Association— 1925.

In re THE
FEDERATED
SEAMEN'S
UNION OF
AUSTRALASIA.
Webb, D.P.

(a) To vary the awards of this Court made in matters Nos. 124 of 1923, 131 of 1923, and 301 of 1923,⁽¹⁾ by altering the period for which they remain in force.

(b) To determine the awards.

(c) To order that the award shall not be binding on the Australian Commonwealth Shipping Board.

4. An application by the Commonwealth Steamship Owners' Association—

(a) To vary the period for which the award is to remain in force.

(b) To order that the award shall not be binding on the Commonwealth Steamship Owners' Association.

The grounds on which such applications are made by the Australian Commonwealth Shipping Board are as follows:—

1. The applicant craves leave to refer to and rely upon the grounds recorded in support of the application by the Commonwealth Steamship Owners' Association for the cancellation of the registration of the above union.

2. The union, its branches and officers (including officers of branches) and members have committed breaches of the above Act and of awards of the Court by striking.

3. The union, its branches and officers (including the officers of branches) and members have resorted to and exercised "job control" in connexion with ships owned by the applicant.

4. The union, its branches and officers (including the officers of branches) and members have acted and continued to act in a manner inconsistent with industrial peace and the orderly and efficient working of that portion of the shipping industry which is carried on by the applicant.

5. The union, its branches and officers (including the officers of branches) and members have disregarded the orders of the Supreme Court of New South Wales and the High Court of Australia.

6. The union, its branches and officers (including the officers of branches) and members have pursued a fixed policy of holding up or preventing for no lawful or good reason the regular sailing of vessels owned by the applicant, and have evinced an intention not to permit the business of the applicant to be carried on by the applicant in accordance with the industrial laws of the Commonwealth.

7. The continued registration of the said union has thereby become inconsistent with the attainment of the expressed objects of the Commonwealth Conciliation and Arbitration Act.

1925.
In re THE
 FEDERATED
 SEAMEN'S
 UNION OF
 AUSTRALASIA.
 Webb, D.P.

The grounds on which such applications are made by the Commonwealth Steamship Owners' Association are as follows:—

1. The union, its branches, the officers and members have for a considerable time past refused to observe the existing awards of the Court or to permit the shipping industry to be carried on thereunder.

2. The union, its branches, the officers and members have for a considerable time past sought to control the units of the shipping industry by the exercise of "job control" in respect of particular ships owned by respondents to the said awards.

3. The union, its branches, the officers and members have committed breaches of the said awards and of the above Act by striking for the purpose of enforcing industrial conditions beyond those prescribed by the Court.

4. The union, its branches, the officers and members have refused to obey the orders and awards of the Court, and have acted in disregard or contempt thereof.

5. The union, its branches, the officers and members have acted in breach of an undertaking given to the Court on their behalf, and have persisted in so acting.

6. The union, its branches, the officers and members have followed a settled policy of resorting to the Court and observing the orders and awards thereof only when and to the extent that on such resort, the orders and awards were consistent with the industrial demands of the union, and not otherwise.

7. The union, its branches, the officers and members have followed a settled policy of creating industrial disputes and avoiding industrial peace, and of transferring the control of the shipping industry from the ship-owners, as regulated by the Court, to those employed in the said industry.

8. The objects of the union, as disclosed by the conduct of the union, its branches, the officers and members, are not industrial, and are inconsistent with the objects of the Act under which the union is registered.

When these applications came on for hearing before me on 2nd May, I expressed doubts as to whether this Court had jurisdiction to deal with them, and, on the application of the parties, I decided to submit a case for the opinion of the High Court. In a matter of such great importance as that which is now under my consideration, I felt that I ought not to take any step except under conditions which left no doubt as to the validity of my act, and I decided that if it were possible to obtain the opinion of the High Court on any question which might be open to doubt, that it was my duty to endeavour to obtain such opinion.

The High Court treated the matter as one of urgency, and answered the case on the 29th May, 1925.

The answers do not leave it open to doubt that I have jurisdiction to make the orders which are asked.

Applications of a similar nature to those with which I am dealing were made to this Court at the end of last year, and, after a lengthy hearing, the learned President on the 6th February, 1925, dealt with these applications. Certain undertakings having been given by the union, the learned President decided that he would not grant the applications at that stage. In his judgment, however, he says—

“If the union cannot, or does not, for any reason through change of officers, or otherwise, carry out its undertaking, and job control by its officers or members is renewed and not stopped by the union, a similar application can be lodged and dealt with at once in the light of the late strike, these proceedings, and the undertaking.”⁽¹⁾

On the evidence before me in these proceedings, I am satisfied that the union has not carried out its undertaking. The affidavits filed by the applicants show that, amongst other things, there are two steamers belonging to the Commonwealth Line for which the union refuses to provide crews.

After the answers of the High Court were given on the 29th day of May last, I set this matter down for mention on Monday, 1st June. Mr. Dixon, K.C., then directed my attention to the fact that two ships—the *Eromanga* and the *Dilga*—were being held up by the union, and I pointed out to Mr. Walsh that I looked on such holding up as a serious matter and a matter of urgency, and stated that I would later decide on a date for the hearing of the matter. I put the cases down for further consideration this morning, and Mr. Walsh at the outset intimated that the union did not intend to oppose the applications. I pointed out to Mr. Walsh that it was my duty to endeavour to get these ships put into commission, and I ordered the union, through its representative, to take steps to provide crews for these ships. The transcript is as follows:—

His Honor.—I order you to supply crews for those two vessels.

Mr. Walsh.—With all due respect, I must decline to do so, or to advise the men to do so.

His Honor.—You hear my order that your union shall supply crews for those two vessels. You understand I am ordering you to do it, and you understand that you are declining?

Mr. Walsh.—We must decline.

His Honor.—You take the full responsibility of declining to comply with my order that you shall supply those two ships with crews?

Mr. Walsh.—We take all responsibility.

1925.

In re THE
FEDERATED
SEAMEN'S
UNION OF
AUSTRALASIA.

Webb, D.P.

(1) *Supra*, p. 25.

1925.
In re THE
 FEDERATED
 SEAMEN'S
 UNION OF
 AUSTRALASIA.
 Webb, D.P.

Mr. Walsh thus refused to obey the order of the Court, and intimated in a definite manner that crews would not be supplied. Such facts have no parallel in the history of this Court, and the duty devolves on me of deciding what the consequences of such conduct is to be.

The declared policy of the law of Australia is that industrial disputes are to be settled by arbitration, and it necessarily follows that it is impossible for a union to have the benefits of the law which has been made for the purposes of settling its disputes if it also abrogates to itself the right to resort to unlawful means for the purpose of enforcing its demands. The two things cannot live side by side. This principle has been enunciated and acted upon by the Judges of this Court since its inception.

There can be no doubt that the Legislature intended, where a union wilfully disobeys an order of the Court and places itself in defiance of the above principle, that such union is to be deprived of the privileges which it gains under the conditions which the Legislature has established for settling disputes by arbitration. It is not open to doubt that this union is acting in defiance of the principles of arbitration. It has, however, endeavoured to excuse itself by suggesting that the applicants in this case have endeavoured to evade the awards of the Court. It has not attempted to prove this in any way, and it is difficult in face of the facts to understand how such a contention could be substantiated.

The respondent shipowners are bound by a large number of awards of this Court. These awards are made at the instance of—

The Merchant Service Guild.

The Australian Institute of Marine and Power Engineers.

The Waterside Workers.

The Marine Cooks, Butchers and Bakers.

The Federated Marine Stewards and Pantrymen.

The Federated Ship Painters and Dockers.

The Federated Shipwrights, Ship Contractors, and Boat Builders.

The Amalgamated Society of Carpenters and Joiners.

Radio Telegraphists' Institute.

The Federated Engine-drivers' and Firemen's Association.

The Australian Clerical Association (for Tally Clerks).

The Amalgamated Engineering Union.

The Australian Society of Engineers.

The Federated Society of Boilermakers and Iron Ship Builders of Australia.

And, so far as I know, both parties—employers and employees—are faithfully carrying out the spirit of these awards. I cannot accept the suggestion that the owners have singled out one union from the long list of unions which I have enumerated for the purpose of

setting itself up in defiance of the awards of the Court. A careful consideration of the facts which have been submitted to me has forced upon my mind an inevitable conclusion that this union has entered upon a policy of defiance of the law, and that it is determined not to depart from it. Mr. Walsh's attitude in Court fully confirms this.

1925,
In re THE
 FEDERATED
 SEAMEN'S
 UNION OF
 AUSTRALASIA.
 Webb, D.P.

The policy which this union has adopted has involved all classes of people in serious loss and inconvenience. There is no doubt in my mind that a great deal of the unemployment and distress which exists amongst the workers to-day is due directly to the dislocation of industry which has been caused by the unlawful actions of this union. No one realizes more than I do the serious nature of the step which this union is forcing upon the court. Those who are going to be most hurt by the actions to which this union, at the instance of Mr. Walsh and Mr. Johnson, has committed itself will, in my opinion, be the workers of Australia. There are none who can do the workers of Australia a greater wrong than that wrong which is done by those who force the Court to take this step. The methods which they are adopting are foreign to the ideals of the great majority of the citizens of Australia, including the vast majority of those who have the ideals of bona fide unionism at heart.

I have done nothing in this matter in haste. I have given all the consideration that I can to its problems, and I have come to the conclusion that having regard to the course of conduct which has been followed by the union and having regard to Mr. Walsh's attitude in Court this morning, and also having regard to the clearly expressed intention of the legislation, there is no course open to me but to grant the applications.

It is with the deepest regret that I am making these orders.

The fine body of Australian seamen are, through the officers of their union, being deprived of their status and of the protection of the awards of this Court. The conditions under which the Australian seamen work are the best to be found in the world, and they have been obtained by constitutional methods and not by the methods advocated by Mr. Walsh and Mr. Johnson. Those methods have always signally failed in this country, and if our seamen choose to follow the foreign ideas of these men they must take the consequences.

As to the applications to vary and set aside the award—

This Court doth order:—

That the above-mentioned award as varied from time to time by this Court be and the same is hereby further varied in relation to all the parties thereto as follows:—

By striking out from clause 42 thereof all the words following "and shall continue in force until the 1st day of March, 1926, except

1925.
In re THE
 FEDERATED
 SEAMEN'S
 UNION OF
 AUSTRALASIA.
 Webb, D.P.

as to the rates set out in clause 1 to be paid to ordinary seamen (all ages) and attendants (all ages).

"This award shall continue in force so far as the rates awarded in clause 1 to ordinary seamen (all ages) and attendants (all ages) until the 30th day of June, 1924," and by substituting the following:—"and shall continue in force until midnight on the 5th day of June, 1925."

And this Court doth further order that so much of the said award as relates to the respondents on the North Coast of New South Wales, being Schedule "A" thereof, and so much of the said award as relates to the respondents as to colliers in New South Wales, being Schedule "B" thereof, and so much of the said award as relates to the respondents as to small colliers in Sydney coal trade, being Schedule "C" thereof, and so much of the said award as relates to the respondents trading in and around Hobart, and so much of the said award as relates to the respondents trading in and about Brisbane, and so much of the said award as relates to the respondents carrying on operations in Port Phillip Bay, and so much of the said award as relates to the respondent the Melbourne Harbour Trust, be and the same is hereby further varied by striking out in each case so much thereof as prescribes a future date where until the award shall continue in force and substituting therefor the words, "And shall continue in force until midnight on the 5th day of June, 1925."

And this Court doth further order that, after the expiration of the period so specified as aforesaid by clause 42 as varied by this order, viz., midnight on the 5th day of June, 1925, no portion of the said award shall continue in force in relation to any of the parties thereto.

As to the applications to cancel the registration of the organization—

This Court doth order:—

That the registration of the Federated Seamen's Union of Australasia as an organization be cancelled.
