

In the matter of the *Conciliation and Arbitration Act 1904-1950*

and of

JAMES EDWARD TAYLOR, INDUSTRIAL REGISTRAR  
Applicant

and

EDWARD CHARLES ROACH  
Respondent

(Misc. Nos. 13 and 14 of 1951).

*Contempt of Court—Publication of circular and article and cartoon  
in "The Maritime Worker"—Jurisdiction—Penalty imposed.*

The respondent, Edward Charles Roach, was called upon to answer charges that he had been guilty of contempt of Court.

*HELD* (Foster J.) that it is of paramount importance that the authority, prestige and standing of the Court as an instrument of public and social welfare should not be disparaged and destroyed for any purpose.

*HELD* (Foster J.) that if the Court finds a person guilty of contempt it must determine what is necessary to be done in order not only to protect the Court against the attacks of the defendant himself, but to deter others of a like mind from believing that they can distort or destroy the Court without suffering the consequences which the law provides.

1951.  
Sydney,  
Feb. 28;  
Mar. 1.

Foster,  
Dunphy and  
Wright JJ.

On 14th February, 1951, summonses were filed on behalf of James Edward Taylor, Industrial Registrar, calling upon Edward Charles Roach to answer charges that he had been guilty of contempt of the Court in that he did cause to be published a circular and in a newspaper named "The Maritime Worker" certain words, figures, captions and a certain cartoon which were intended and calculated to embarrass the Court in arriving at its decisions, to detract from the authority and influence of its judicial decisions, to lower the authority of the Court as a whole and that of its Judges, to impair the confidence of the people in the Court's judgments, and to cause misgivings as to the integrity, propriety and impartiality brought to the exercise of the judicial office of the Court in matters litigated before it.

Application numbered Miscellaneous 13 of 1951 came on for hearing before the Court (Foster, Dunphy and Wright JJ.), in Sydney, on 28th February, 1951.

S. G. Webb, K.C. and H. Snelling, of counsel, for James Edward Taylor, Industrial Registrar.

S. Isaacs, K.C., and F. Paterson, of counsel, for Edward Charles Roach.

On 1st March, 1951, the Court directed that application numbered Miscellaneous 14 of 1951 be heard concurrently with application numbered Miscellaneous 13 of 1951 and the hearing proceeded accordingly.

## JUDGMENT—CONTEMPT OF COURT (EDWARD CHARLES ROACH).

[*The Court.*]

On the the latter day the following judgments were delivered by the Court:—

*Foster J.:*

This matter has given the Court and each of its members very great concern and our minds have been engaged on the problems which are involved in the discussion that has taken place at the Bar both on behalf of the respondent and on behalf of the Registrar. We come now with a mind assisted by that discussion and by those considerations and the opportunities we have had for further consideration. We are unanimously of the opinion that a conviction should be recorded. That is now done.

The respondent is the same person as was convicted in 1949<sup>(1)</sup> for a similar offence, sentenced to twelve months imprisonment, and who, after having made an affidavit and application to the Court, was released after having served some part of that sentence. That being so, the Court now has to consider the character and nature of the contempt exposed by the circular and by the newspaper. In what I am now saying I am taking both cases together. The former relates to the circular and the latter relates to the publication of the newspaper.

There is not any doubt in the minds of the Court of the responsibility of the defendant for the publication of the circular and for the publication of the newspaper. Weatherby's evidence is of a conclusive nature in that respect.

I think we all agree with Mr. Webb's suggestion that this is one of the most serious contempts that this Court has been subjected to in its long history of almost fifty years. We cannot overlook the fact that for that time, almost half a century, this Court has been the instrument of the people of Australia for the solution of its industrial problems, and has won a place apparently unchallenged, because no Legislature has ever dared or ever wanted, perhaps, to abolish this Court. It is therefore of paramount importance that its authority, its prestige and its standing as that instrument of public and social welfare should not be disparaged and destroyed for any purpose. This newspaper and the articles and the circular were a deliberate and malicious attempt to influence a special section of the community most likely to be affected by it, directed to the end of destroying the authority, prestige and influence of the Court. There can be no doubt about it. We have listened with care and attention to what Mr. Isaacs has said but, do what he could, he could not take from the character of the whole of this publication the evil effects and consequences to which I have referred.

(1) 64 C.A.R., p. 835.

## JUDGMENT—CONTEMPT OF COURT (EDWARD CHARLES ROACH).

*Foster J.]*

One finds it hard to understand why there is any group of workers in this community which should seek to destroy an institution which has meant so much and done so much for the adjustment of their industrial relations with their employers. That they do want to do it is clear from this newspaper, but why, passes my understanding. One could go further and take the articles to pieces and analyse and display the malicious, direct intention exposed by the contents and circumstances of its publication. I do not think that is needed to be done and I do not propose to do it now. If it becomes necessary the Court will consider the need at some subsequent time to publish more fully the reasons for its present action. However, it does regard it as of extreme importance that prompt action be taken to protect the Court.

The contempt in this case is of a twofold character. Not only is it an attack upon the Court, but it is a method of intimidation deliberately undertaken for the purpose of dissuading, if possible; Mr. Justice Kirby, from doing his public duty in the administration of his section of this Court.

I do not propose to deal with Mr. Isaacs' attack on the jurisdiction of the Court or his challenge to it. That may be done on a later occasion and it is unimportant in the discussion I am now undertaking. The Court's next function is to estimate if it can what is necessary to be done in order not only to protect the Court against the attacks of the defendant himself, but to deter others of a like mind from believing that they can distort or destroy this Court without suffering the consequences which the law provides. It is admitted that the defendant was convicted of just this offence before. It is admitted that on that occasion he was sentenced to twelve months imprisonment. It is also admitted that by some process which it is not now necessary to consider, he won his release after having served only some weeks of a twelve months sentence. This is a second offence. If the first offence merited twelve months, this certainly does also. The sentence is twelve months imprisonment, to be undertaken in terms of the law, on each charge, to be concurrent.

*Dunphy J.:*

I agree with every word uttered by my brother Foster and have only these observations to add.

The contempt proceedings have, in this particular jurisdiction, the function of preserving democracy. If Courts were to be influenced by power politics then democracy would be destroyed, and as trade unions have their birth in that democracy, and trade union leaders pledge themselves to it, the offence of this particular trade union leader is infinitely worse in his approach to this particular matter and his attempt to influence his members' minds against the Court.

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*Dunphy J.*]

It would be just impossible for a democratic system to operate if, within such a system, certain sections of the community could get their way by the use of power. It would be anti-democratic in the sense that those who had no power would get nowhere and only those who had the power would get what they wanted. This is absolutely contrary to the democratic way of life which the arbitration system is intended to support. Accordingly this particular approach to the Court is anti-democratic and contrary to all the understandings that I have of trade union principles.

Further, a Judge of this Court, particularly in this specialised jurisdiction, has to have intimate contact at times with workers, and this particular Judge has been commended on more than one occasion for his democratic approach and for his capacity to meet the workers on their own ground. This contempt would destroy any possibility he would have of doing his duty and he could not possibly mix with the workers on the intimate terms that his duty directs and necessitates if this sort of thing is allowed to be perpetrated.

Under those circumstances I think the only penalty is the one announced by Foster J.

*Wright J.:*

I concur in the decision as announced by my brother Foster.

*The Court:*

*Order:—*

That the respondent Edward Charles Roach be committed and he is hereby committed to His Majesty's Prison near Long Bay in the State of New South Wales or such other prison as is determined by the Attorney-General for the State of New South Wales to serve a term of twelve months imprisonment therein.