

No. C4736

IN THE AUSTRALIAN CONCILIATION AND ARBITRATION  
COMMISSION

In the matter of the *Conciliation and Arbitration Act 1904-1975*

and of

the *Public Service Arbitration Act 1904-1973*

and of

**NATIONAL WAGE CASE-OCTOBER 1975**

and of

THE METAL INDUSTRY AWARD, 1971

(C Nos 1128 and 1853 of 1971)

(C No. 1933 of 1974)

and of

THE METAL INDUSTRY AWARD, 1971-PART II-DRAUGHTSMEN,  
PRODUCTION PLANNERS AND TECHNICAL OFFICERS

(C No. 1909 of 1967)

(C No. 1978 of 1974)

and of

POSTAL TELECOMMUNICATIONS TECHNICIANS ASSOCIATION  
(AUSTRALIA)

Claimant

v.

THE AUSTRALIAN BROADCASTING CONTROL BOARD and others

Respondents

(C No. 3619 of 1974)

and of

THE PROFESSIONAL OFFICERS ASSOCIATION COMMONWEALTH  
PUBLIC SERVICE and others

Claimant

v.

THE PUBLIC SERVICE BOARD and others

Respondents

(C No. 3620 of 1974)

*Variation of awards and determinations-Rates of Pay-Effect of movement in the Consumer Price Index, September 1975 quarter-Conciliation and Arbitration Act 1904-1975 s. 34 Public Service Arbitration Act 1904-1973 s. 15A-Decision issued.*

On 17 and 28 October 1974 applications were filed by the Electrical Trades Union of Australia (C No. 1933 of 1974) and the Association of Architects Engineers Surveyors and Draughtsmen of Australia (C No. 1978 of 1974) for orders varying the above awards.

On 21 and 24 October 1974 applications to vary Determinations No. 2 of 1939 (C No. 3619 of 1974) and Nos 19 of 1961, 245 of 1967 and 42 of 1965 (C No. 3620 of 1974) were lodged by the Postal Telecommunication Technicians Association (Australia) and The Professional Officers' Association Commonwealth Public Service and others.

On 30 April [167 C.A.R. 18] and 18 September 1975 [171 C.A.R. 79] the Australian Conciliation and Arbitration Commission (Mr Justice Moore, President, Mr Justice Robinson, Mr Justice Ludeke, Deputy Presidents, Mr Deputy President Isaac, Mr Public Service Arbitrator Taylor and Mr Commissioner Portus) issued decisions in connection with the above applications.

The applications again came on for hearing before the Commission, as constituted above, in Melbourne on 28 October 1975.

*R. A. Jolly and J. Marsh* for the Australian Council of Trade Unions.

*W. Richardson* for the Association of Architects Engineers Surveyors and Draughtsmen of Australia.

*R. L. Gradwell and D. Eynon* for the Postal Telecommunication Technicians Association (Australia).

*B. Holdorf, W. L. Millford and F. Byer* for The Professional Officers' Association Commonwealth Public Service.

*B. J. Maddern*, of counsel, for the Metal Trades Industries Association of Australia and others.

*T. Orange* for The Australian Public Service Board.

*R. L. Gradwell* for the Council of Australian Government Employee Organizations (intervening).

*W. Richardson* for the Australian Council of Salaried and Professional Associations (intervening).

*J. R. Andrews* for the Australian Public Service Federation (intervening).

*B. Holdorf and G. D. John* for the Council of Professional Associations (intervening).

*J. Luckman* for the Master Builders Federation of Australia (intervening).

*R. E. McGarvie, Q.C., and J. Kennett* for the Minister for Labor and Immigration (intervening).

*J. A. Keely, Q.C.*, of counsel, for Her Majesty the Queen in right of the State of Victoria and others (intervening).

*J. W. Johnston* for Her Majesty the Queen in right of the State of Queensland

*P. Powell, Q.C.*, for Her Majesty the Queen in right of the State of New South Wales (intervening).

*L. E. Smith and L. E. Boylan* for Her Majesty the Queen in right of the State of Western Australia (intervening).

*D. E. Packer* for Her Majesty the Queen in right of the State of South Australia (intervening).

On 3 November 1975 the Commission issued the following decision:

The present proceedings stem from the programme laid down by the September national wage decision. We set out the relevant passage:

*'Having considered all the factors involved, including the time factor which has resulted from the length of this hearing, and in the expectation that our guidelines continue to be observed we decide that the following timetable would best serve the interests of all concerned.*

- 1. After the publication towards the end of October of the C.P.I. for September, a brief hearing in accordance with the principles to decide how the Six Capitals figure should be applied to our awards. This will mean that award wages and salaries will be adjusted in relation to the September movement unless the Commission is persuaded to the contrary by those seeking to oppose the adjustments.'*

Principle 5 of the package presented in our April decision and confirmed in September is as follows:

*'No wage adjustment on account of the C.P.I. will be made in any quarter unless the movement in that quarter was at least 1 per cent. Movement in any quarter of less than 1 per cent will be carried forward to the following quarter or quarters and an adjustment will occur when the accumulated movement equals 1 per cent or more.'*

The movement in the Consumer Price Index for the September quarter was 0.8 per cent. The Australian Council of Trade Unions and other peak union councils have asked us to apply this 0.8 per cent to our awards despite Principle 5.

We set out the attitudes of the parties and interveners because we placed some reliance on them in our September decision. On this occasion the Australian Government said:

*'It (the Australian Government) regards the application of principle 5 in the normal run of things as an appropriate approach to quarterly wage adjustments in the wage indexation system. However, if the Commission chooses to award the adjustment of 0.8 per cent as from November 15 as requested by the union and to waive principle 5 on this one occasion in the light of the circumstances already outlined although retaining it as a principle for normal quarterly application, the government would be, sympathetic to this decision.'*

This submission of the Australian Government, which could not properly be described as an enthusiastic endorsement of the unions' position, was, supported by the South Australian Government. The Tasmanian Government said:

*'... the Tasmanian government confirms its support of the principles as set out in the decision of 30 April; that it has no objection to the request of the A.C.T.U. that principle 5 be waived for this quarter if the Commission considers that it would be proper to do so in these particular circumstances in which the consumer price index has been so dramatically adjusted.'*

It will be observed that all these submissions really throw back upon the Commission the responsibility for making a decision with which those Governments have said they would be prepared to agree.

On the other hand the other four State Governments which supported indexation in September opposed this application. A number of private employers including the Master Builders Federation of Australia were represented separately before us in September in support of indexation. But in these proceedings the only separate representation was for the various Master Builders Associations which now oppose this application. The remaining private employers also opposed this application. Therefore the pattern of support has quite changed and there is much less support for this current application than there was for our package in the September proceedings.

The reasons given by the A.C.T.U. in support of its claim are:

- . . . The delay in implementing the C.P.I. for the June quarter.
- . . . The underlying current rate of inflation is more than 0.8 per cent and has been masked by the adjustment of the C.P.I. due to Medibank.
- . . . The Commission's decision to consider the December C.P.I. and the future of the package early next year is likely to delay the application of the December C.P.I. beyond the middle of February notwithstanding Principle 3.

The A.C.T.U. contends that in view of these '*extraordinary circumstances*', the substantial compliance with Principles 7 and 8 and the state of the economy, it would be equitable to make the 0.8 per cent adjustment as from 15 November. Not to do so when indexation was still in its infancy and not yet permanently established would impair the credibility of indexation in the eyes of the workers. However, the A.C.T.U. added that it seeks to depart only for this quarter from what it contends is merely a precedural rather than a substantive principle.

The delay in implementing the June figures referred to by Mr Jolly was forecast by us in the same decision which produced the principles and therefore should not be seen as something which was unexpected or which worked unfairly. As to the effect of Medibank on the C.P.I., the likelihood of such an adjustment was anticipated and indeed was discussed in the early part of this year. Further the unions do not dispute the correctness of the principle adopted by the Australian Statistician.

The distinction sought to be made between procedural and substantive principles and the suggestion that adherence to the former is less important than to the latter, seem to us to be wrong. These principles were put forward as an integrated whole, described in our September decision as a 'fragile' package, and the effect of departing now from one must surely put all our indexation principles at risk. If one principle is departed from before the time set down for debate on the whole package, we are apprehensive that the same thing may happen to others in situations where it is argued that there are circumstances which are very special.

Members of this Commission sitting both as members of full benches and as individuals have complied with the principles including occasions where very special circumstances were argued. The principles as a whole have also received support from State tribunals.

Principle 5 was part of the A.C.T.U's original proposal for automatic indexation and was endorsed by it as recently as August as part of our package.

In our view, the whole package must remain unchanged until it is reviewed early next year.

Although in April we expressed our view that the proceedings last July might be lengthy and might delay the granting of an increase, we are aware that the delayed application of the Index for the June quarter caused concern. In order to avoid delay again, it is our intention that a first matter for discussion in the hearing early next year will be the question of a procedure to deal with this problem.

The present claims are dismissed.

*Hearings*

1975. Melbourne, Oct. 28, 29; Nov. 3.

Moore *J.*, Robinson *J.*, Ludeke *J.*, Isaac D.P., Arb Taylor, Commr Portus