



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

JUSTICE HATCHER, PRESIDENT

AM2021/72

s.158 - Application to make a modern award

**Application by Menulog Pty Ltd
(AM2021/72)**

Sydney

9.30 AM, FRIDAY, 25 OCTOBER 2024

Continued from 18/03/2024

PN1

JUSTICE HATCHER: Good morning. I'll take the appearances. Ms Sweatman, you appear for Menulog, the applicant?

PN2

MS K SWEATMAN: Yes, I do, your Honour. Thank you.

PN3

JUSTICE HATCHER: Mr Arndt, you appear for Australian Business Industrial?

PN4

MR J ARNDT: That's correct, your Honour.

PN5

JUSTICE HATCHER: Ms Paul, you appear for the Australian Industry Group?

PN6

MS V PAUL: (Indistinct).

PN7

JUSTICE HATCHER: And Ms Biviano, you appear for the Transport Workers Union?

PN8

MS L BIVIANO: Yes, your Honour. Thank you.

PN9

JUSTICE HATCHER: Well, I've called the matter back on for a report as to progress with the matter. This application has been on foot for some years now without actually getting anywhere, and I'm also interested now that there's been applications for minimum standards orders in the food delivery and parcel areas whether this matter should travel in conjunction with those, and perhaps as part of that be referred to the Road Transport Advisory Group for the right consideration and advice.

PN10

Ms Sweatman, what's the position from your client's perspective?

PN11

MS SWEATMAN: Thank you, your Honour. Yes, so the matter is certainly ongoing, notwithstanding that there has been little progress in the last 12 months, and the slowing down of progress is really reflective of knowing that the industrial reforms were on the horizon and that there would likely be some synergy between the anticipated applications for minimum standards orders and this application.

PN12

The application is certainly pressed. We think that there is still a need and a benefit for this proposed new modern award being made.

PN13

To the extent it's suggested – and I'm not saying that this is your suggestion, your Honour – that there's been no progress made, I don't think that we take that view.

PN14

McKinnon C did make some very good progress we believe in teasing out what the issues were for trying to reach a definition of the industry, and understand where the parties might look to try and reach a position about what the particular terms and scope of a modern award, or of the TWU's view as a schedule to the existing Road Transport Distribution Award, could look like and what it would need to capture, and we think that McKinnon C has done some very good work in that space in trying to help the parties to sort of think about what they should be thinking about to be able to progress the application.

PN15

Noting, however, the matter was timetabled, we did anticipate and see what's happened with the minimum standards orders applications. While Menulog has expressed concerns about the RTAG, which you have acknowledges and addressed in your statement last week in respect of those MSO applications, your Honour, under cover of those continuing concerns we do accept that it would be the sensible course for the same types of directions to be made as what you made yesterday, for the reasons that were set out in your statement last week in respect of this application as well.

PN16

JUSTICE HATCHER: Thank you. Mr Arndt?

PN17

MR ARNDT: Thank you, your Honour. Our interest in this, and particularly our involvement in the latest round of discussions, has been obviously more limited than the applicant parties.

PN18

We're comfortable with the proposal, or the (indistinct) assertion made by Ms Sweatman moments ago that if it was ordered or timetabled in the same way, or set up in the same way as the other matters, that would be acceptable to us.

PN19

JUSTICE HATCHER: All right. Ms Paul? Ms Paul, your microphone's not on.

PN20

MS PAUL: I'm sorry. I apologise. Your Honour, we probably have a slightly different view. We've maintained our position throughout the conciliation conference though participating in it around whether or not it is appropriate to have an award of the kind being proposed.

PN21

We don't have any specific objections around the matter being moved to the RTAG, but we are concerned as to whether or not there is much more that can be done in terms of that space.

PN22

So with that comment in mind, your Honour, if the parties are agreeable to have that move, then that is something that we don't have any specific objections to.

PN23

JUSTICE HATCHER: Thank you. Ms Biviano?

PN24

MS BIVIANO: Thank you, your Honour. Yes, the TWU also agrees that it would be appropriate for the matter to be referred to the Road Transport Advisory Group consistent with its powers under section 40E(2)(a).

PN25

In respect of the progress of the matter, we acknowledge that third point that Ms Sweatman makes that McKinnon C has certainly been engaged in ongoing discussions with the parties.

PN26

However, we do note, as Ms Sweatman also pointed out, that for some period, noting the potential changes to the legislation, that the matter hasn't been – not to say not progressed, but certainly there hasn't been ongoing discussions with a view to settling it.

PN27

In terms of the progress of the matter and the application on foot filed by the Transport Workers application in relation to food and beverage for a minimum standards order, further directions about the prioritisation of this matter having regard to the fact that the vast majority of workers engaged in the on-demand sector, to call it that, really are employed or engaged as employee-like workers in those circumstances, any minimum standards order in this space should, in our view, be the priority.

PN28

JUSTICE HATCHER: All right. Anything in response to any of that, Ms Sweatman?

PN29

MS SWEATMAN: No, and I guess the only thing that I would just want to clarify is, to the extent we're talking about referral to the RTAG, what we're contemplating is that the RTAG would be asked to provide a view about how they would deal with it.

PN30

It's certainly our view that the matter should substantively remain before the Commission and be a matter of submissions and evidence that a Full Bench would ultimately determine if we can't reach a consent position.

PN31

So we're not proposing a referral in the matter sort of holus-bolus, but on the basis that we're all talking apples and apples are comfortable with everything that's been noted.

PN32

In respect of Ms Biviano's comments just now, appreciate that Menulog is the only major platform at this point in time that wishes to engage in employment in this space, and so I understand the prioritisation of the MSOs, but we do maintain that there is a place for appropriate implement conditions in this industry, and we would say that the reason why there is a preponderance of employee-like workers, they're not employees, is because there's not an appropriate and suitable and sustainable implement framework, and that a new modern award in this space would still have a lot of work to do and that it should form part of the broader framework of regulation of conditions in this industry.

PN33

JUSTICE HATCHER: All right. I thank the parties for what's been put today. I'll consider the next course and I'll advise the parties appropriately within the next fortnight. If there's nothing we'll now adjourn.

ADJOURNED INDEFINITELY

[9.48 AM]