

Standard Hours Inquiry, 1947

40 Hour Week Case

(1947) 59 CAR 581, 8 September 1947

Bench: Drake-Brockman CJ, Foster J, Sugarman J

Summary

In this decision the Arbitration Court decided to reduce the ordinary weekly working hours across the economy from 44 to 40. The decision was specifically economy wide in its application, although some industries were to be exempted for a period, and there was flexibility in timing of any reductions in hours of work. A large number of awards were varied as a direct result of the decision, and more awards were varied later following this decision.

In 1945, the Printing Industry Employees Union of Australia applied for a reduction of standard hours from 44 to 40 per week.

The Full Court recognised the impetus for the claim for a shorter week:

No realist for a minute thinks that a rejection by the Court in these cases would bring about industrial harmony or would abate for an instant the demand for the shorter week. History has shown how persistent in the past have been such claims. There is no reason to suspect that the future will differ. The claim is expressive of a world movement sanctioned by the International Labour Organization and already achieved in some countries. [p.590]

After noting that the matter affected 'the whole economic future of the continent' and the 'standard of living of every man, woman and child in Australia' [p.592], the Court remarked that the 'popular will' should not be ignored, and hence:

The facts therefore that four States ... have pressed the Court to settle all these disputes by granting forthwith a 40-hour week in each case are matters of the greatest import. [p.588-9]

The employers outlined a number of concerns with the granting of a 40 hour week. A major concern related to shortages in 'almost all commodities'. The Court accepted that:

Explanations of these shortages are easy enough; the war and the diversion of our resources to that supremely wasteful enterprise, the accumulated housing shortage never overtaken since the 1930 depression, progress in the conception of what constitutes adequate housing, the fall in the birth rate during the depression which now results in fewer young people of employable age which aggravates the labour shortage ... The disorganisation of the economy due to the transition from war to peace. The unsettlement of the workers after a war. The loss of six years in training of our labour force. The greatly increased marriage rate which took many women out of industry and put them in the market for

homes. The fact that shortages are a relative matter - a relation between supply and demand - and there has been a greatly enhanced demand without a corresponding increase in supply. The wasteful results of bottlenecks and uneven flow of goods. [p.594]

It concluded:

We do not regard these shortages in all the present circumstances as a reason for refusing the claims now ... [p.595]

In assessing the effects on production the Court accepted statistical and economic evidence that:

in terms of a percentage loss of production overall ... was not more than 5 per cent ... to trace the effects of that lost production through the community by way of the cost price structure ... the overall price rise should not exceed 4 per cent. [p.598]

Before concluding that:

the fall in production will be less than feared by employer witnesses and will be fairly rapidly overtaken. [p.599]

In terms of increased costs to the community the Court noted that 'if the community desires any change which adds to costs, it must be prepared to bear them'. Further:

The Court must assume the Australian Government has, by its support of these claims, in effect informed the Court that it is not alarmed about the financial burden. [p.602]

The Court examined the economy:

All criteria of an active virile progressive economy are present to-day. Our population has increased and all are working. Our sources of power are taxed to their limit and that limit [is] higher than ever before. Business is showing a continuous unsatisfied demand for products of all kinds. Orders sufficient to maintain activity at the highest levels are booked for years ahead over a wide range of industry. Many industrial undertakings are expanding their capital to a total extent of millions of pounds and prospectuses indicated very good prospects. Overseas companies are finding in Australia increasing opportunity for further extension and development of their enterprises, while the reports of local companies are generally optimistic. The profit rate continues at high levels and substantially above the relation to gilt edge securities usually expected. [p.599]

It held:

the appropriate time to add burdens to industry or, from another angle, to give ourselves added benefits, is when industry is booming and when nature is bountiful. [p.599]

The claim was granted. The rural industry was exempted as they were 'unsheltered producers and [were] to be the main bearers of any cost increase occasioned'. However, the Court pointed out 'that ultimately they may be adjusted to fall more closely into line', as cost increases should 'be comfortably carried because of the very greatly enhanced prices of rural products ... which look[ed] like being maintained for a substantial period of years'. [p.602]

The Court acknowledged that a period of adjustment would be needed:

An absolute rigidity might well hamper a swift and orderly transition by the creation of temporary bottlenecks thus resulting in undue prolongation of the period of shortage, and by rendering difficult or impossible such redistribution of man-power resources as the introduction of a standard working week of 40 hours may necessitate. The exigencies of continuous shift work may in particular require the working of somewhat longer hours than 40 for some time to come. It is for such reasons as these and not in any spirit of compromise or evading the real issue ... that we propose to introduce into our order certain provisions with respect to the working of overtime. [p.609]