The Amalgamated Engineering Union v. J Alderdice & Company Pty Ltd and Others

44 Hour Week Case

(1927) 24 CAR 755, 24 February 1927

Bench: Dethridge CJ, Beeby J, Lukin J

Summary

In this decision the Arbitration Court decided to reduce ordinary weekly working hours in one industry from 48 to 44 by arbitration. It led to a gradual and more general reduction of hours across industries, and was one of the first test case decisions outside the issue of the minimum wage. As the decision records, there were already some industries working less than a 48 hour week including clerical, building trades, boot trades, waterside workers, flour-millers and shearers, some storemen and packers, shop assistants, rubber workers, clothing trades, and printing.

This case reduced weekly working hours in the engineering industry from 48 to 44 in the engineering industry.

This case consists of three separate judgments. Dethridge CJ and Beeby J formed the majority which granted the claim. Lukin J dissented.

The following passage from Justice Beeby's decision sets the background:

> Prior to the adoption by Australia through its State and Federal Parliaments of the prevailing system of industrial regulation, the recognized hours of employment in normal industries were 48 per week. The classification of industries was different from that of to-day, and employees in a great number of callings and occupations worked longer hours than those of the normal group. But mainly through awards of industrial tribunals, these exceptions to the standard were eliminated, until for all practical purposes, 48 hours as a maximum of working hours became universal. [p.865]

Chief Justice Dethridge distilled the basic tension:

> If the product now being obtained by working a 48 hour week is being distributed so as to give the employers and capitalists only a fair share, employees cannot reasonably hope to obtain greater leisure at the expense of the employers. If, on the other hand, the employers or capitalists are taking an unduly large share, the workers are entitled to complain; and it would, perhaps, not be unnatural for them to say that, instead of attempting to obtain a larger share of the product for themselves, they would prefer to procure substantial justice by working fewer hours and thus by reducing the total production of

> wealth for the community deprive the employers and capitalists of their unfair surplus, and at the same time gain greater leisure for themselves. [p.764]

The Chief Justice continued:

> Close examination of the evidence submitted did not elicit anything suggesting that excessive profits are being made in these trades as a whole ... In other industries of a monopolistic nature the profits may be sufficiently large. But there seems to be a widespread sincere belief among employees that the profits of employers generally are unduly large. And there seems to be a popular belief, equally sincere, that if the length of the working week be reduced the cost of the reduction will be borne by the employers ... Whether the reduction of working hours be just or unjust, the cost, if any, must substantially be paid by the public at large, and the extent of that cost is therefore a matter for very serious consideration. The existence, however, of the belief that employers take very excessive profits should not be ignored; it breeds suspicion and discontent, which have an evil influence on industry. [p.766]

In speculating on the impact of granting the claim, the Chief Justice provided a cautionary note on relying on analogous experiences:

> We endeavoured to obtain evidence of the result in actual experience of the working of the 44-hour week. General prognostications of disaster on the one hand, or of uninjured prosperity on the other, are of little or no value. Nor do we get much assistance from the fact that when in Great Britain the daily working hours were reduced to ten, and then to nine, employers and others strenuously opposed the change and made woeful predictions, which proved to be wrong. Those predictions were made either ignoring or overlooking facts now admitted to be of essential importance. The facts that an unduly fatigued worker is an uneconomical worker, that the methods and mechanical appliances of industry continue to improve, and that Great Britain had at that time a long lead over other nations in the industrial race by reason of having been first in the field, were not given due weight. But the mere fact that these predictions were wrong should not induce us to allow our view of present conditions to become coloured. It is certainly not clear that the 48-hour week system, as now worked in industry, fatigues the workers so as to make it unprofitable, and it is certainly clear that Australia is behind other competing countries in her industrial development. [p.775]

Of workers, it was asserted that:

> influenced by what they conceive to be a just resentment because the boon is being withheld, they have become slack in their work, and predictions were made that if [the claim] be granted they will use more energy, and assist in increasing output. [p.789]

Dethridge CJ held:

> The conclusion cannot be evaded that the continuance of the 48-hour week is likely to be accompanied by an increase slackening and reduction of output among these classes of workers, which will largely off-set the output derived from the extra four hours' work per week. [p.789]

The Chief Justice went on to discuss 'general fair treatment' across industries and reached a conclusion:

> Workers in industries whose conditions are similar to those of the members in general of the claimant union can put forward an equal claim for the shorter week; but others not subject to a like strain, confinement, monotony, unremitting concentration of attention, or equivalent disadvantages affecting the opportunity or capacity for rational enjoyment of leisure, have not the same right. A uniform standard number of hours in the working week in all occupations, whether it be 48 or 44, really involves an unfair sharing, as between the workers in one and those in another industry, of such leisure as is permitted by the inexorable need for the community to work in order to maintain itself ... It will be gathered from what I have said that, in my opinion, the general shortening of the 48-hour working week would be fraught with danger to the workers themselves. No sufficient margin of production, actual or potential, beyond our present needs has been shown to exist which would justify the Court in sanctioning an all-round easeup. But I have come to the conclusion that the circumstances of the engineering industry, and of other industries whose workers are at a similar real disadvantage in respect of leisure, warrant the adoption of the 44-hour working week of five eight-hours' days and one of four-hours' day as the normal standard in those industries ... [p.791]

Justice Beeby noted relevant features of economic history:

> that improvements of conditions of employment and of standards of living of working people have rarely been the result of concerted concession by employers. Proposals for industrial reform have usually been contested by those more engrossed in the material development of industry than in human problems. All epochal improvements of the past, the justice of which is not now disputed, have been the result of organized force or of legislation, not of voluntary concession. History is replete with prophecies of disaster which were to accompany legislative reductions of working hours, the regulation of child and women labour, the adoption of compulsory rules for better factory conditions, and other interferences with "freedom of contract". [p.867]

In the face of a one twelfth reduction in hours corresponding to a one twelfth reduction in output and proportionate flow on effects, his Honour referred to the ability for industry to adapt:

> the capacity of industries to adapt themselves to new standards was disregarded. It was assumed that none of the production lost through a shortening by four hours of the working week could be recovered by improved methods, the installation of more up-to-date equipment or better management ... Manufacturers in Australia do not dispute that they have much to learn and can always improve their plants and methods ... [p.886]

His Honour referred the momentum of the claim and the relatively minor costs:

> Again the matter comes down to a balancing of advantages. Is it not better to endure a slight increase of payment for services than to suffer loss in other directions by refusing to remove one of the most prolific causes of industrial unrest ... The community will, of course, have to meet the added cost, but the total cost will not be nearly as heavy as was alleged, and distributed over the whole body of consumers will not be serious. [p.899]

Justice Lukin dissented, holding a 'very strong opinion' on the topic and declaring:

> It is sufficient to say that in my opinion that great body of evidence indicates that the Australian manufacturer in this industry will be unable to withstand the further burden of a reduction of four hours with its accompanying decrease in output, its greater direct and indirect cost due to such reduced output and the lessened power to compete with overseas. [p.861]

Having considered the evidence in its entirety, Lukin J expounded that:

> The conclusion to be drawn from the evidence is that the reduction of the standard hours ... spells retrogression, or at the best stagnation and not progression. Although it may not mean "industrial paralysis" or "economic disaster" ... as a consequence of further increases in the cost of production, it certainly does mean in my opinion very serious injury to the community of Australia generally and to this industry in particular. It means an undoubted decrease in output when a substantial increase is absolutely necessary to this young country, a seriously increased cost directly or indirectly of such reduced output, the accumulative effect of which it is very difficult to estimate or to foresee ... And all for what purpose? Admittedly not for what is necessary to secure to the worker a limitation of hours necessary to prevent sweating or over fatigue or ill health but to secure to him extra leisure, reasonable I recognize, if it were not for the too serious attendant consequences which it must occasion the community as a whole and this industry in particular. [p.864]
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> I am of opinion that the proposed reduction should not be granted. [p.865]