



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

JUSTICE HATCHER, PRESIDENT

AM2023/16

s.158 - Application to vary or revoke a modern award

**Application by Australian Industry Group, The (163V)
(AM2023/16)**

Vehicle Repair, Services and Retail Award 2020

Sydney

1.30 PM, THURSDAY, 13 JULY 2023

PN1

JUSTICE HATCHER: I will take the appearances. Ms Bhatt, you appear for the applicant in this matter, the Australian Industry Group?

PN2

MS R BHATT: Yes, your Honour.

PN3

JUSTICE HATCHER: Mr Hodges, you appear for the Victorian Automotive Chamber of Commerce?

PN4

MR D HODGES: Yes, your Honour.

PN5

JUSTICE HATCHER: And, Mr Gailbraith, you appear for the SDA?

PN6

MR M GAILBRAITH: Yes, your Honour.

PN7

JUSTICE HATCHER: All right. Ms Bhatt, what problem is this application trying to solve?

PN8

MS BHATT: Your Honour, the application deals with a small number of issues arising from the part-time provisions of the award. In part it seeks to make clear that clause 10.3 of the award, which deals with matters about which agreement must be reached upon engagement, relates only to the ordinary hours of work as opposed to all hours of work. And then there are various consequential amendments that flow from that, in part in relation to clause 10.2, which effectively defines or describes what a part-time employee is, and also clause 10.4.

PN9

Clause 10.4 also does two other things, or rather the amendments proposed to clause 10.4 do two other things. One is to clarify that any agreement reached to vary an employee's ordinary hours of work, whilst it must be in writing that can include electronic means. And lastly that that agreement can be ongoing or for a specified period of time. That is it might be for a limited period of time after which the arrangement reverts to what was previously in place by agreement.

PN10

Your Honour, we have had some brief preliminary discussions both with the SDA and with Mr Hodges previously before this application was filed. We anticipate that the application may not be hotly contested. There might be some concerns about perhaps the drafting or certain elements of the application. We are optimistic that it's one that might be able to be dealt with by agreement, at least in part if not entirely. And as we outlined in our written correspondence to your

Honour we therefore propose that the matter is listed for conference. If the Commission pleases.

PN11

JUSTICE HATCHER: All right. Just leaving aside the variation to 10.4 which I understand, clause 10.2 (indistinct) is part-time employees by definition engaged to work less than 38 ordinary hours per week. So I am struggling to understand why it's necessary to specify that the agreed hours are for ordinary hours. That must follow, mustn't it?

PN12

MS BHATT: It should follow. However the way clause 10.3 is framed it's not confined expressly to ordinary hours of work. The way it's expressed it appears on one view to relate to other hours of work, all hours of work. Now, we would say that the award can't practically work that way and that the various provisions of the award, including what your Honour has just taken me to, would not or cannot work together mechanically if the award was read in that way, but might not put that beyond doubt.

PN13

JUSTICE HATCHER: But this award doesn't have a span of hours even, does it? I can't see one. I could understand that if it had a span of hours there might be a question about whether you could have agreed hours outside the span, but I can't see that it's even got a span.

PN14

MS BHATT: I would have to take that question on notice, your Honour, as to the span of hours.

PN15

JUSTICE HATCHER: All right. In any case I will ask the other parties what their attitude is. So, Mr Hodges?

PN16

MR HODGES: Thank you, your Honour. I can confirm that we have had preliminary discussions with Ai Group regarding the proposed variation. Whilst we are yet to be convinced that the relevant provisions are and the (indistinct) are uncertain, we would agree the amendments proposed are clear and simple to understand and are consistent with VACC's understanding of the intent of application of the current provisions. So we would not have an objection to the matter being listed for conference and we would seek to participate in those discussions for the purposes of determining whether the matter can be dealt with by consent.

PN17

JUSTICE HATCHER: Thank you. Mr Gailbraith?

PN18

MR GAILBRAITH: Thank you, your Honour. Your Honour, we wouldn't oppose - sorry, your Honour, I'm standing in for my colleague Ms Burnley who has had some discussions with Ms Bhatt, so she is more familiar with this than I

am. Her instructions to me are that we don't oppose a conference, but we would like to explore this issue, and I note that you raised the issue of span of hours which I couldn't find in that award, but that was on a fairly quick review.

PN19

We note that a number of the awards that we checked don't include the word 'ordinary' in the part-time provision as suggested by Ms Bhatt for the Vehicle Award, and we would sort of seek further clarification as to what specific problem this is addressing. I am mindful that these words don't appear in other awards, but, your Honour, with the assistance of the Commission we would be happy to proceed with some conferences.

PN20

JUSTICE HATCHER: All right. Ms Bhatt, did this application arise out of some specific issue or dispute or something?

PN21

MS BHATT: Your Honour, I am not aware of any dispute that has arisen as such, but the genesis of the application is concerns have been raised by at least one member if not more covered by the Vehicle Award about the operation of these provisions.

PN22

JUSTICE HATCHER: All right. Anyway so you want the Commission to conduct a conference in relation to the application?

PN23

MS BHATT: Yes, your Honour.

PN24

JUSTICE HATCHER: I will accede to this course. I will arrange the conference at a time which I will find in my diary. I won't tell you that now, we will forward a proposed time and listing to the parties and perhaps the parties can confirm their availability and then we will issue a formal listing.

PN25

MS BHATT: Thank you, your Honour.

PN26

JUSTICE HATCHER: All right. I thank the parties for their attendance. You can now disconnect and we will adjourn.

PN27

MR HODGES: Thank you, your Honour.

PN28

MR GAILBRAITH: Thank you, your Honour.

ADJOURNED TO A DATE TO BE FIXED

[1.39 PM]