



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

JUSTICE HATCHER, PRESIDENT

AM2023/26

s.160 - Application to vary a modern award to remove ambiguity or uncertainty or correct error

**Application by Construction, Forestry, Maritime, Mining and Energy Union (105N)
(AM2023/26)**

Ports, Harbours and Enclosed Water Vessels Award 2020

Sydney

10.30 AM, FRIDAY, 1 DECEMBER 2023

PN1

JUSTICE HATCHER: I'll take the appearances. Mr Keats, you appear with Ms Carr for the CFMMEU.

PN2

MR N. KEATS: I do, your Honour.

PN3

JUSTICE HATCHER: Mr Niven, you appear for the Australian Institute of Marine and Power Engineers.

PN4

MR N. NIVEN: Yes, I do.

PN5

JUSTICE HATCHER: And Ms Cerche, you appear for Maritime Industry Australia Limited.

PN6

MS S. CERCHE: Yes. Thank you, your Honour.

PN7

JUSTICE HATCHER: All right. Well, I'll come straight to the point, Mr Keats. Look, subject to what the other parties may say, it seems that their application has identified an obvious error in the schedules to be aboard but the difficulty we have is that we don't understand how your client's calculated the rates for Sundays and public holidays. They don't seem to be correct unless there's some methodology that we've missed.

PN8

MR KEATS: I've got a feeling from talking to Sarah Cerche this morning that there might be an issue with some of the maths and it might be that it might useful either for the parties or for the Commission to redo the calculations.

PN9

JUSTICE HATCHER: All right. Does any other party wish to say anything about this from the calculation issues?

PN10

Ms Cerche?

PN11

MS CERCHE: No, I've already had the opportunity in the waiting room. We did have a conversation and we think the Commission might benefit if the parties go away and perhaps present an alternate schedule having recalculated. I think from our perspective, we agree that there is an error in what's currently presented, but we're not sure that the current application quite cures that error.

PN12

JUSTICE HATCHER: All right.

PN13

Mr Niven, do you wish to add anything?

PN14

MR NIVEN: No, I support what's been put by both sides.

PN15

JUSTICE HATCHER: Well, Mr Keats, I think the most straightforward way given, as I've said that it's pretty obvious there is an error in the award, is that the Commission will publish a statement setting out a provisional view that your client is correct in identifying the error and then setting out a draft termination which provides for the rates to correct the error and in doing so, we'll try to address the mathematical which I raised but will allow the parties a period of time to respond and if there's no response, we'll simply make the variation. Is that the most faithful way to deal with the matter?

PN16

MR KEATS: I think it is, your Honour.

PN17

JUSTICE HATCHER: All right. Does any other party object to that course?

PN18

MS CERCHE: No, your Honour.

PN19

MR NIVEN: No. No, your Honour.

PN20

JUSTICE HATCHER: All right. well, that's the approach we'll take. So the parties can expect within the next week that that statement will be published for the draft variation and we'll proceed as we've indicated. Would it be sufficient to allow 14 days to respond (indistinct).

PN21

MR KEATS: I think that's more than sufficient.

PN22

JUSTICE HATCHER: Yes. I think that will allow the matter to be wrapped up before Christmas. All right. Well, that's the course we'll take. I think the parties for their attendance, we'll now adjourn.

PN23

MR KEATS: Thank you.

PN24

MR NIVEN: Thank you.

PN25

MS CERCHE: Thank you, your Honour.

ADJOURNED INDEFINITELY

[10.39 AM]