



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

JUSTICE HATCHER, PRESIDENT

AM2024/10

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

**Application by Australian Entertainment Industry Association T/A Live Performance
Australia
(AM2024/10)**

Live Performance Award 2020

Sydney

9.10 AM, MONDAY, 4 MARCH 2024

PN1

JUSTICE HATCHER: Good morning, I will take appearances. Ms Minster, you appear for Live Performance Australia?

PN2

MS S MINSTER: Yes, I do.

PN3

JUSTICE HATCHER: Mr Borgeest, you appear for the Media, Entertainment and Arts Alliance?

PN4

MR T BORGEEST: I do, your Honour, thank you.

PN5

JUSTICE HATCHER: All right. I note that there's been some proposed directions sent in, but before we go to those what's the attitude of the union to the application, Mr Borgeest; that is does it oppose the application, or what's the position?

PN6

MR BORGEEST: We do, but before explaining that, those directions are by consent, your Honour. I think your Honour referred to opposed directions.

PN7

JUSTICE HATCHER: Proposed.

PN8

MR BORGEEST: Excuse me, I misheard, my apologies. The union's position is that the union substantially accepts a part of the proposal. The variations proposed inserting liberty for employment under fixed term contracts for a number of categories of employee. With respect to one of those categories, that is weekly performance engaged for run of play or plays, which is - and there's a term proposed with respect to that category at 28.4 of the marked up varied term. If your Honour goes to page 5 of the application.

PN9

JUSTICE HATCHER: Yes, I have got that, yes.

PN10

MR BORGEEST: Yes. So 28.4 deals with 'A weekly performer or company dancer may' - subject to crossing out 'or company dancer' that term is substantially acceptable. The quibble is with sub-paragraph (b). So sub-paragraph (b) proposes a condition on the liberty to enter into contracts of a particular kind, and the condition is an anti avoidance term, so that the contracts may not be issued for a particular purpose. And the purpose is protective of an employee receiving a certain paid benefit, that is time paid in respect of lay off, and lay off is a concept articulated elsewhere in the award, and that's a period of time between a theatrical production moving from one performance location to another performance location.

PN11

The clause that's referred to there in (b), that is 33.1(a)(vii), is a term which - our ultimate submission will be that that's not capable of protection by an anti avoidance term, or not vest or not properly protected in that way, because that clause doesn't impose an obligation on an employer which could be avoided. It extends a liberty to an employer. So the union's submission in respect of that subject matter, that is protecting an employee's position with respect to lay offs, is that a different form of condition would be appropriately inserted in that place.

PN12

But subject to those two matters the concept which is advanced in 28.4 with respect to weekly performers engaged for run of play or plays is substantially accepted by the union. Otherwise the application for variation extends to other categories of employee or employment, namely weekly performers engaged other than for run of play or plays, and company dancers, and ensemble theatre performers and musicians. With respect to those matters the application is opposed. Thank you, your Honour.

PN13

JUSTICE HATCHER: Have the parties had discussions about this application yet?

PN14

MR BORGEEEST: The parties have had discussions. What I must say on behalf of the MEAA is that we have been late in confirming the MEAA's position. So the position that I have articulated to your Honour just now was only confirmed in correspondence at the end of last week, and that is notwithstanding the LPA having advanced a form of this application some considerable and reasonable time prior. So that's a matter which I must acknowledge at the outset.

PN15

JUSTICE HATCHER: All right. Ms Minster, I am just wondering before I launch into making directions for a full scale hearing whether it might be more useful perhaps for the Commission to conduct a conference in relation to the matter perhaps in a couple of weeks and endeavour to see that we can either hopefully resolve the differences, or at least narrow them so that there's a more discrete field that needs to be arbitrated.

PN16

MS MINSTER: Yes, your Honour, I think that's a really good idea and I was going to raise that, because we did put this position forward some time ago, early November, and we only had a (indistinct) vague outline response from MEAA at 4.30 on Friday. So we haven't really been able to sit down and flesh out what is acceptable or what are reasons are or are not, so I would agree to have a conference, yes.

PN17

JUSTICE HATCHER: All right. What I think I will do for the time being I will issue a listing for the conduct (audio malfunction) in approximately two weeks time. Obviously if the parties want to have direct discussions before that time they're at liberty to do so. But we will have the conference and see if we can

make some progress in terms of narrowing the differences. It doesn't seem to me like they're irreconcilable, so we will see what can be done. All right. Unless the parties have got any particular unavailability the week after next I will just pick a date and send you a listing.

PN18

MS MINSTER: Is that the week beginning 18 March?

PN19

JUSTICE HATCHER: Yes. Just give me a second. Perhaps we can do a bit better than that. Just hold on.

PN20

MS MINSTER: We do have a lot of travel commitments I have to say over the next couple of weeks. There is room, but limited.

PN21

JUSTICE HATCHER: Yes. What about on the 21st or 22nd?

PN22

MS MINSTER: The 22nd would be preferable. (Indistinct) will be travelling on the 20th to the 21st.

PN23

JUSTICE HATCHER: Mr Borgeest, would the 22nd be suitable?

PN24

MR BORGEEST: Yes. I will be in Sydney, but clear and available from that location.

PN25

JUSTICE HATCHER: Where are you located, Ms Minster?

PN26

MS MINSTER: I'm located in Melbourne, but it's probably easy enough for me to be in Sydney if that's all that's available. I think we're both located in Melbourne. Is that correct, Mr Borgeest?

PN27

MR BORGEEST: Yes.

PN28

MS MINSTER: So it could be another date in Melbourne. Alternatively I'm happy to go to Sydney.

PN29

MR BORGEEST: I'm in Sydney from the 19th to the 22nd inclusive, but otherwise in Melbourne.

PN30

JUSTICE HATCHER: I will be in Sydney on the 22nd. We can either do it remotely, Ms Minister, or I think it would be preferable if we did it in person, in which case if you could come to Sydney that would be great.

PN31

MS MINSTER: Okay. I think that I will be able to.

PN32

JUSTICE HATCHER: Yes, all right. The parties can expect to receive a listing for that in due course. All right, well thank you for your attendance. If there's nothing further we will now adjourn.

ADJOURNED TO A DATE TO BE FIXED

[9.20 AM]