



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

JUSTICE HATCHER, PRESIDENT

AM2024/9

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

**Application by The Australian Retailers Association (260V)
(AM2024/9)**

General Retail Industry Award 2020

Sydney

10.50 AM, FRIDAY, 17 MAY 2024

Continued from 01/05/2024

PN1

JUSTICE HATCHER: Good morning. I will take the appearances. Mr Wilding, you appear with Ms Morris for the Australian Retailers Association?

PN2

MR S WILDING: Yes. Thank you, your Honour.

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JUSTICE HATCHER: Ms Carroll, you appear for the National Retail Association?

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MS L CARROLL: That's correct. Thank you, your Honour.

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JUSTICE HATCHER: Ms Bhatt, you appear for the Australian Industry Group?

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MS R BHATT: Yes, your Honour.

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JUSTICE HATCHER: Mr Petropoulos, you appear for Australian Business Industrial and Business NSW?

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MR P PETROPOULOS: Yes, your Honour.

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JUSTICE HATCHER: Ms Burnley, you appear with Mr May for the SDA?

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

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JUSTICE HATCHER: And Mr Cullinan, you appear for the Retail and Fast Food Workers Union Incorporated?

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MR J CULLINAN: Yes, your Honour, with Mr Kakogiannis.

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JUSTICE HATCHER: All right.

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So Mr Wilding, so I understand that, at least with respect to the SDA, there's agreed drafts about items N and M. Is that right?

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MR WILDING: Yes, your Honour.

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JUSTICE HATCHER: All right.

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Is that correct, Ms Burnley?

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MS BURNLEY: Yes. That is correct, your Honour. The only note we would wish just to, for future clarity in awards matters and things with regard to N, it's just that with the term of two weeks' cycle that the six-day provision applies, or just to be made clear that the earlier provision of a maximum of six days applies to any roster cycle. So if somebody decides to have a three-week roster cycle, we don't get into a debate about, well, this bit doesn't cover them, but the six-day provision would apply to them only.

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JUSTICE HATCHER: All right. Well, irrespective of that, the text of the proposed clause is agreed by you; is that right?

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MS BURNLEY: Yes. That's correct.

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JUSTICE HATCHER: All right. So have the other parties seen, I presume, the terms of the proposed variation? So I will start with - - -

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MR WILDING: Yes, your Honour, and I should say, your Honour, that we had circulated this proposal to the parties, I think all of the parties who are in the hearing today - and I apologise if I'm correct(sic) on that, incorrect on that - and that our understanding was that the drafting on N was agreed by each of those parties?

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JUSTICE HATCHER: On N?

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MR WILDING: On N, at least, your Honour.

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JUSTICE HATCHER: But not M. All right. Well, we will start with N. Is that confirmed that nobody would oppose the variation proposed in N?

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MS CARROLL: The NRA supports the variation, your Honour.

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JUSTICE HATCHER: All right, and what about M?

PN28

MR CULLINAN: I think there may be some confusion about RFFWU's position, your Honour. We don't object to M. We have just got our (indistinct) raised concern that the row 3 in the full-time should be in part-time, but we understand

that will be dealt with simultaneously with the question of whether those rostering principles apply to part-timers at the hearing. So we don't oppose to change M in its current form.

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JUSTICE HATCHER: All right.

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MR CULLINAN: We expect that we will deal with that other issue later.

PN31

JUSTICE HATCHER: All right. Well, those qualifications are noted. Unless anyone tells me otherwise, what I propose to do is this, that I will take the draft clause and I will have to run it past our internal award drafting team, but presume, if there's no difficulties, I think what we will do is we will publish a proposed variation with a provisional view that the variation should be made. We will allow parties, any party probably 21 days to comment and if there's no opposition from anyone else out there, we will make the variations. So does anyone oppose that course being taken?

PN32

MR WILDING: No. Thank you, your Honour.

PN33

JUSTICE HATCHER: All right. Now, with respect to the other matters or the other variations that dealt with the document the Commission prepared for discussion purposes, I simply want to know if there's any prospect of agreement being reached about any of those items. I'm not seeking any party articulate or defend their position. If they say there's no prospect I will just accept that and we will move to the next step. So who wants to speak about that?

PN34

MR WILDING: I'm happy to, your Honour. In respect of proposals H and I, I think it's clear that there's no prospect of agreement being reached. In respect of proposed variation O, I also think it's clear that there's no prospect of agreement being reached, however, I will say, your Honour, that it seems there is broad agreement on the structure of the proposed clause. The disagreement relates to the issue of whether weekend penalty rates should be included, and so I think in terms of what would be left to be arbitrated, I think it's really that fundamental issue, your Honour, that's in dispute, rather than the overall proposal.

PN35

JUSTICE HATCHER: And A?

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MR WILDING: In respect of A, your Honour, the parties have had discussions over the course of the past two weeks. I think we were expecting the SDA was going to respond to that today so I might leave Ms Burley to answer whether there's a prospect of agreement being reached on that.

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JUSTICE HATCHER: All right.

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Ms Burnley.

PN39

MS BURNLEY: Yes. Thank you, your Honour. I can confirm we have been having discussions with the parties over the last two weeks with respect to the issue of the evening penalty rates not being included in that proposal, not the weekend penalty rates, but that's in a broader application also with the ARA regarding that change that they're seeking. So we do not agree with that variation so I think that one will be needed to be arbitrated.

PN40

JUSTICE HATCHER: Yes.

PN41

MS BURNLEY: The actual context of what the words say is not as important as what actually applies to workers. With respect to variation A, we did have some talks yesterday. The employees gave us feedback yesterday afternoon. We haven't fully digested it. We may or may not be able to do some further work on that provision, but that would be the only ones, I would suspect, out of the ones that we have been working through that we might be able to do some further work on.

PN42

JUSTICE HATCHER: All right. Does any other party take a substantially different view about this?

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MR CULLINAN: Just for your benefit, your Honour, we don't have an issue with the proposed A.

PN44

JUSTICE HATCHER: Ms Bhatt, you, at various stages have foreshadowed the possibility of an AiG application to vary the Retailers Award. Where is that up to, and I'm only asking that because, on one view, I could simply start programming the ARA's application for hearing now, but I would like it to move forward together with any other applications that might be floating about and there might even be an SDA application? So what's your organisation's thinking about that at the moment?

PN45

MS BHATT: I'm not sure that I'm in a position today to articulate a position about that, but I might be able to, within a relatively short order, once I have had an opportunity to seek some instructions, for example, within the next say week or two at the very least.

PN46

JUSTICE HATCHER: Yes.

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MS BHATT: I'm also conscious that some of the issues that we might seek to ventilate through any such application if made, and issues that are being ventilated through the ARA's application, also overlap to some extent with matters we ventilated through the Award Review, and that process is not entirely complete in the sense that the Commission has not yet published its report and I'm not sure whether there is any scope for further conferencing through that process, for example, or if the Commission might be contemplating any such further steps. I think we would want to give some thought to that too and how that might overlap with the programming of the ARA application as it moves forward.

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JUSTICE HATCHER: All right.

PN49

Ms Burnley, did you, at some stage, foreshadow that the SDA might make an application?

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MS BURNLEY: No. We haven't foreshadowed any application at this stage.

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JUSTICE HATCHER: All right.

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MS BURNLEY: It is something which is on our agenda to review, but we have, I think also through the Award Review process streams, raised various issues and concern and matters that we think should be addressed in the job security and the working care streams. So we are also a little bit like the Ai Group. We have been heavily involved in that proposal so we're trying to work our way as to where we should, and seeing where those reviews do end up before finalising where we may or may not go with the GRIA matters.

PN53

JUSTICE HATCHER: All right.

PN54

Well, Mr Wilding, I must say I'm inclined, as a first step, at least to make a direction that your client put on its evidence and submissions. How long might you need to do that?

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MR WILDING: Your Honour, I had understood that perhaps there was a preference that the Award Review report would come down first so that there was going to be - so that the parties would have the benefit of that before progressing to the next steps. Just so I understand, is your Honour suggesting that the ARA should put its evidence on before that Award Review comes in?

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JUSTICE HATCHER: I'm not saying before. I'm just asking you, if I made that direction, how long would you need?

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MR WILDING: I think we would be seeking two months, your Honour.

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JUSTICE HATCHER: All right. Well, I will take that into account. I'm inclined to submit to do that as a first step and then call the matter back on for further directions. If we took two months I anticipate that that would be after the review report has been issued, but I'm not clear about that. All right. Well, I might take that into account.

PN59

MR WILDING: Can I just indicate, your Honour, we were, I think, prepared to wait for that report to be issued before programming the next steps, if the Commission thought that that was a more efficient way of dealing with there being multiple proceedings on foot.

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JUSTICE HATCHER: All right. Well, I will consider that. Is there anything else any party wishes to raise now?

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MS BHATT: I'm just reflecting further on the question that your Honour asked me. I think that, to some degree, we too might be better positioned to make an assessment as to whether there's any application we wish to pursue once we have seen the Commission's report in the Award Review, and that might be a question that's relevant to the programming of the matter more generally, as your Honour has raised with me today.

PN62

JUSTICE HATCHER: All right. I will have to undertake a further examination of the overlap between this application and the review issues. Well, I will simply consider what's been put and think about the next course.

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If the parties want any further assistance in their discussions about item A they're quite welcome to ask the Commission, otherwise I would simply encourage you to continue to confer, but if an agreement can be reached, then we will take the same course as with items N and M. All right. Well, if there's nothing further, we will now adjourn.

ADJOURNED TO A DATE TO BE FIXED

[11.03 AM]