



HIGH COURT OF AUSTRALIA

11 July 2012

PUBLIC SERVICE ASSOCIATION OF SOUTH AUSTRALIA INCORPORATED v INDUSTRIAL RELATIONS COMMISSION OF SOUTH AUSTRALIA & ANOR

[2012] HCA 25

Today the High Court granted special leave to appeal, and allowed an appeal, from a decision of the Full Court of the Supreme Court of South Australia, which had held that its supervisory jurisdiction did not extend to judicial review of determinations of the Industrial Relations Commission of South Australia ("the Commission") that the Commission lacked jurisdiction.

In 2010, the applicant, Public Service Association of South Australia ("the PSA"), notified the Commission of two disputes, each of which was said to be an "industrial dispute" about an "industrial matter" as defined in s 4(1) of the *Fair Work Act* 1994 (SA) ("the Act"). In both disputes, the PSA requested the calling of a voluntary conference under s 200 of the Act. However, the Commission held that in each of the disputes, it had no jurisdiction to determine these matters.

The PSA appealed the decision under s 207 of the Act to the Full Commission. The Full Commission dismissed both appeals. The PSA, by way of judicial review, then issued proceedings in the Supreme Court of South Australia seeking an order quashing the decision of the Full Commission. The Court granted permission to proceed, and the matter was heard by the Full Court. The Full Court dismissed the application on the ground that it lacked jurisdiction to make the orders sought. Section 206 of the Act provides:

"(1) A determination of the Commission is final and may only be challenged, appealed against or reviewed as provided by this Act.

(2) However, a determination of the Commission may be challenged before the Full Supreme Court on the ground of *an excess or want of jurisdiction*." (emphasis added)

The primary submission by the PSA in the High Court sought to apply the decision in *Kirk v Industrial Court (NSW)* (2010) 239 CLR 531 with the result that s 206 of the Act was invalid to the extent to which it denied the jurisdiction of the Full Court to review decisions of the Commission for jurisdictional error. The majority of the High Court held that the question of invalidity did not arise because, on its proper construction, s 206 did not deny the authority of the Supreme Court to intervene where the Commission had erred in deciding that it lacked jurisdiction. Heydon J held that s 206 did purport to do so but to that extent was invalid as the PSA contended. The result was that the High Court unanimously set aside the decision of the Full Court and remitted the PSA's application for judicial review for determination by the Full Court.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*