

[HIGH COURT OF AUSTRALIA.]

NEWCASTLE COAL COMPANY LTD. AND }  
OTHERS . . . . . } APPELLANTS ;

AND

THE FIREMEN'S UNION (INDUSTRIAL UNION }  
OF EMPLOYEES) AND OTHERS . . . . . } RESPONDENTS.

ON APPEAL FROM THE SUPREME COURT OF  
NEW SOUTH WALES.

H. C. OF A.  
1908.

August 10.

Griffith C.J.,  
Barton,  
Isaacs and  
Higgins JJ.

*Appeal—Special leave—Recommendation by Industrial Court—Appointment of members of Wages Board—Ministerial proceeding—Prohibition—Industrial Disputes Act 1908 (N.S.W.) (No. 3 of 1908), secs. 14-17.*

The Supreme Court having refused to grant a rule *nisi* for a writ of prohibition against further proceeding on a recommendation to the Governor by the Industrial Court for the appointment of the members of a Wages Board under sec. 17 of the *Industrial Disputes Act* 1908, on the ground that the proceeding in the Industrial Court for the appointment of a Board was not a judicial proceeding, special leave to appeal from that decision was refused by the High Court on the ground that the decision was right.

Special leave to appeal from the decision of the Supreme Court (*Ex parte Newcastle Coal Co.*, (1908) 8 S.R. (N.S.W.), 335), refused.

MOTION for special leave to appeal from a decision of the Supreme Court of New South Wales.

Secs. 14 and 17 of the Act No. 3 of 1908 as far as material are as follows :—

14 (1). On application to the Industrial Court by . . . (c) an industrial union whose members are . . . employers or employés . . . the said Court, if satisfied either by oral evidence or affidavit that the application is *bonâ fide*, may recommend to the Minister that a Board be constituted for an industry or group of industries, and thereupon the Minister shall direct a Board to be constituted accordingly.

17. The members of a Board shall be appointed by the Governor. The appointment of the members other

than the chairman shall be made on the recommendation of the Industrial Court from persons elected by the employers and employés respectively of the industry or group of industries, and the provisions of Schedule two shall apply to such election. Provided that in any case which the Industrial Court considers to be one of urgency ; . . . any such appointment may be made by the Governor, on the recommendation of the said Court, without election, in which case the person so appointed shall be the person recommended by the said Court.



The applicants were a number of colliery companies carrying on operations in the Newcastle district. The respondents, an industrial union of employés, applied to the Industrial Court under sec. 17 of the *Industrial Disputes Act* 1908 for the appointment of a Wages Board without election for the industry of engine-drivers, firemen, and pumpers employed in the Newcastle collieries. The colliery companies of the district took the objection that the Industrial Court had no jurisdiction to recommend the appointment of a Board for that section of the coal mining industry. The Court held that it had jurisdiction and postponed the matter for further consideration. The companies then moved the Supreme Court for a rule *nisi* for a prohibition restraining the Court and the union from further proceeding in the matter of a recommendation to the Governor. The Supreme Court refused to grant a rule on the ground that the proceeding in the Industrial Court was not a judicial proceeding.

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From this decision the colliery companies now moved for special leave to appeal.

*J. L. Campbell*, for the appellants. The application for a Board was made upon notice in accordance with the regulations made under sec. 61, sub-sec. (k) of the *Industrial Disputes Act* 1908. The Board asked for was not a Board within the Act, and, therefore, the Industrial Court had no jurisdiction to make any recommendation with respect to it. The applicants were neither an industry nor a group of industries under the Act. The Act contemplated only one Board for the colliery employés in the Newcastle district, not one for each branch of those employés: see Schedule 1. "Industry" is any occupation in the second column of the Schedule: sec. 4. Under the heading "Board" there is "Newcastle Collieries," and opposite that in the second column is a comprehensive enumeration of all persons employed in coal mines. The scheme of the Act is one Board for one industry. [He referred to sec. 5.]

[GRIFFITH C.J.—Would not *quo warranto* be the proper remedy, as soon as a Board, or so-called Board, not authorized by this Act, attempts to exercise the functions of a Board? What judicial proceeding is there to be prohibited?]



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The decision to recommend a Board without election is judicial. It is arrived at after hearing the evidence of both parties. The persons affected are entitled to come for a prohibition at the earliest opportunity if the Court is assuming a jurisdiction which the Act has not conferred upon it.

[GRIFFITH C.J.—You are not entitled to a decision until the question has really arisen. Why should we assume that the Industrial Court will do otherwise than recommend a Board for the industry in accordance with the Statute?]

It has already decided that there may be sectional Boards. By that decision the appellants are seriously prejudiced. A multiplicity of Boards will be an intolerable burden to employers.

[HIGGINS J.—The result of these proceedings before the Industrial Court would not be to order you to do anything.]

The Minister is bound to appoint a Board if there is a recommendation, and if a Board is appointed it is to be presumed to have been legally appointed: sec. 24.

[GRIFFITH C.J.—That only applies if it is a Board. If a Board attempts to do something not allowed by the Act, or if a Board not lawfully appointed attempts to exercise the functions of a Board, you can apply for prohibition or *quo warranto*.]

The appellants are entitled to prevent that stage being reached: *Reg. v. Local Government Board* (1). The Industrial Court has no jurisdiction to entertain such an application.

GRIFFITH C.J. We are all of opinion that the proceeding sought to be restrained, which is merely a recommendation by the Industrial Court to the Governor, cannot be regarded as a judicial proceeding. If the recommendation is unauthorized by law, and the Governor purports to create a Board which he is not authorized by the Statute to create, there are other remedies open to the appellants.

We agree with the Supreme Court that this is not a case for prohibition, and special leave to appeal must be refused.

*Special leave refused.*

Solicitors, for the appellants, *Sparke & Millard* by *Sparke & Angus*.  
C. A. W.