[HIGH COURT OF AUSTRALIA.]

THE WATERSIDE WORKERS' FEDERATION OF AUSTRALIA . . . } COMPLAINANTS;

AGAINST

THE COMMONWEALTH STEAMSHIP OWNERS' ASSOCIATION AND OTHERS } RESPONDENTS.

EX PARTE THE COMMONWEALTH STEAMSHIP OWNERS' ASSOCIATION AND OTHERS.

H. C. OF A. 1916.

MELBOURNE, *Sept.* 8.

Griffith C.J., Barton, Isaacs, Higgins, Gavan Duffy, Powers and Rich JJ.

Industrial Arbitration—Award—Breach—Minimum wages—Refusal to accept employment—Commonwealth Conciliation and Arbitration Act 1904-1915 (*No.* 13 *of* 1904—*No.* 35 *of* 1915), *sec.* 48.

Where an award of the President of the Commonwealth Court of Conciliation and Arbitration provided that the minimum wages to be paid to members of a certain organization of employees by employers who were bound by the award should be at a certain rate per hour, but did not impose upon the employees any obligation to accept employment,

Held, that it was not a breach of the award for members of the organization of employees to refuse to accept employment.

CASE STATED.

On a plaint in the Commonwealth Court of Conciliation and Arbitration by the Waterside Workers' Federation of Australia against the Commonwealth Steamship Owners' Association and a number of other persons, firms and companies who were owners of steamships, the President made an award on 1st May 1914 and orders varying it on 18th December 1915 and 23rd June 1916. On an application by the Commonwealth Steamship Owners'

Association and certain of its members against members of the Federation to compel compliance with the award, the President stated a case for the opinion of the High Court which was substantially as follows :—

1. An application has been made by the above-named Association and certain of its members against members of the above-named Federation at Mackay to compel compliance with an award made in this dispute.

2. The award was made on 1st May 1914, and orders were made varying it on 18th December 1915 and 23rd June 1916.

3. Since the said award and orders waterside workers who are members of the above-named Federation at Mackay refused to accept employment from shipping companies members of the Association to load or unload vessels at Flat Top unless they were paid at the rate of 2s. 4d. per hour not only for the time of actual work but for meal hours at Flat Top, in which they did not work.

4. Subsequently they waived this demand for payment during meal hours, but refused to accept employment as aforesaid unless the companies conveyed them to Mackay for their meals and back to Flat Top.

5. Flat Top is about seven miles from Mackay at the entrance of the channel on which Mackay stands, and the channel is at low tide impracticable for navigation.

I state this case for the opinion of the High Court upon the following questions, which in my opinion are questions of law :—Were the members of the Federation who refused to accept employment as aforesaid guilty of a breach or non-observance of any term of the award—(*a*) in refusing to accept employment unless they were paid for meal hours in which they did not work ; (*b*) in refusing to accept employment unless the companies conveyed them to Mackay for their meals and back to Flat Top for work?

The only material provisions of the award were that a minimum wage at the rate of 2s. 4d. per hour should be paid to members of the Federation at the port of Flat Top in Queensland, and that time during which employees might be travelling from and to the town of Mackay to and from Flat Top should be treated as time of duty in addition to the time of actual working.

H. C. OF A. 1916.

WATERSIDE WORKERS' FEDERATION OF AUSTRALIA v. COMMONWEALTH STEAMSHIP OWNERS' ASSOCIATION.

Griffith C.J.

H. I. Cohen, for the Waterside Workers' Federation of Australia.

GRIFFITH C.J. We are told that an award was made by which minimum wages were fixed. At a port called Flat Top, in Queensland, the minimum wage was payable in respect of the time during which employees were going to and coming from Mackay, a distance of about five miles by a river which is almost dry at low water. The award did not in terms impose upon the employees any duty or any obligation to accept employment. Some men refused to accept employment unless they were paid for meal hours while they were not working. Alternatively, they refused to accept employment unless they were carried to the town of Mackay for their meals and back to Flat Top and paid at full rates during the transit. The question is whether they were guilty of a breach of the award by such refusal to accept employment. As the award is absolutely silent as to any duty to accept employment, it is a mere truism to say that they were not guilty of a breach of it. An award might be drawn up in such a form as to impose mutuality of obligation upon employees as well as employers. As this award does not do so, there cannot be any breach of it by the employees.

BARTON J. No obligation is imposed upon employees to accept employment even by implication. That being so, there can be only one answer to the question.

ISAACS J. I agree. As there is no obligation, there is no breach of the award. Also it cannot be too strongly borne in mind that the President cannot make an award except on a matter in dispute.

HIGGINS J. I may add that the award did not impose a maximum wage, and that, if it had done so, it would have been beyond the Court's jurisdiction, because the only thing in dispute was a minimum wage. I am very glad to have the opinion of my learned brothers upon a matter which, to my mind, was obvious, but which unfortunately has been made the subject of frequent discussion and bitter controversy.

GAVAN DUFFY J. I agree with what has been said by the learned Chief Justice.

POWERS J. I also agree.

RICH J. I concur in the judgment of the Chief Justice.

Question answered in the negative.

Solicitors for the Waterside Workers' Federation of Australia, *Farlow & Barker.*

B. L.

Appl Rimar Pty Ltd v Pappas 160 CLR 133

Foll Rimar Pty Ltd v Pappas 64 ALR 9

[HIGH COURT OF AUSTRALIA.]

PALMER . . . . . APPELLANT;

AND

THE PUBLIC TRUSTEE . . . RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

Bankruptcy—Life assurance policy effected by bankrupt—Protection from creditors—After-acquired property—Life, Fire, and Marine Insurance Act 1902 (*N.S.W.*) (*No.* 49 *of* 1902), *secs.* 4, 5, 7—*Bankruptcy Act* 1898 (*N.S.W.*) (*No.* 25 *of* 1898), *secs.* 3, 10, 52.

Sec. 4 of the *Life, Fire, and Marine Insurance Act* 1902 (N.S.W.) provides that "The property and interest of every person who has effected, or shall hereafter effect, any policy for an insurance *bonâ fide* upon the life of himself . . . , or for any future endowment for himself . . . , and the property and interest of the personal representatives of himself . . . in such policy, or in the moneys payable thereunder or in respect thereof, and in the