

H. C. OF A.  
1918.

IN RE TRADE  
MARK OF  
RYAN LEWIS  
& CO. PRO-  
PRIETARY  
LTD.

EX PARTE  
AUTOTONE  
Co.

for all purposes without further proof of the seal or signature or of the judicial, official or other character of the person before whom the affidavit is sworn and taken. [Counsel also referred to *Evidence Act* 1905, sec. 12; *High Court Procedure Act* 1903, sec. 22.] An affidavit purporting to be sworn before a foreign notary public may, at common law, be received in evidence without further authentication (*Brooke's Notary*, 6th ed., p. 26).

There was no appearance in opposition to the motion.

GAVAN DUFFY J. I allow the affidavit to be filed.

Solicitors, *Braham & Pirani*.

B. L.

[HIGH COURT OF AUSTRALIA.]

THE FEDERATED SEAMEN'S UNION OF }  
AUSTRALASIA . . . . . } APPLICANTS ;

AND

THE BELFAST AND KOROIT STEAM }  
NAVIGATION COMPANY LIMITED } RESPONDENTS.  
AND OTHERS . . . . . }

H. C. OF A. *Industrial Arbitration—Organization—Membership, how constituted—Condition*  
1918. *precedent—Payment of entrance fee.*

MELBOURNE,  
March 21, 22,  
26.

Higgins J.

IN CHAMBERS.

The rules of an organization provided that the entrance fee should be one pound together with the first quarter's contribution of six shillings and one shilling for a book; that a person might become a probationary member upon application to a branch secretary and upon satisfactory proof of competence to perform his work and of good character; that he might be rejected within six months for certain offences, and, if not rejected within six months, would then become a full member.

*Held*, that payment of the entrance fee was not a condition precedent to membership.



*United Grocers, Tea and Dairy Produce Employees' Union of Victoria v. H. C. OF A. Linaker*, 22 C.L.R., 176, distinguished. 1918.

*Held*, that under the rules a person who had a book which he had signed as a member, had paid the quarterly contributions and had been treated as a member and had acted as such for more than a year, was a member of the organization.

*Australian Workers' Union v. Pastoralists' Federal Council*, 23 C.L.R., 22, followed, as to the proof of a dispute.

FEDERATED  
SEAMEN'S  
UNION OF  
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ASIA  
v.  
BELFAST  
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#### SUMMONS.

This was a summons under sec. 21AA of the *Commonwealth Conciliation and Arbitration Act* 1904-1915 taken out by the Federated Seamen's Union of Australasia, an organization registered under the Act, for a decision on the question whether a dispute alleged to exist between that organization and the Belfast and Koroit Steam Navigation Co. Ltd. and 34 other companies, firms and persons, or any part thereof existed or was threatened, intended or probable as an industrial dispute extending beyond the limits of any one State.

The facts material to this report are stated in the judgment hereunder.

*P. H. Sullivan*, for the applicant organization.

*Stanley Lewis*, for a number of the respondents.

*Starke*, for the Marine Board of Hobart.

*Wollaston*, for the Port Phillip Pilot Service.

*Cur. adv. vult.*

HIGGINS J. read the following judgment:—

March 26.

Summons in Chambers under sec. 21AA of the *Commonwealth Conciliation and Arbitration Act*, for a decision on the question whether the alleged dispute or any part thereof exists, or is threatened, intending or probable, as an industrial dispute extending beyond the limits of any one State.

The dispute (alleged) has been referred into Court after a compulsory conference, in Chambers, by an order of 1st March 1917 made in pursuance of sec. 19 (d). There are 185 respondents, and most of



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them admit the dispute; but the summons has been taken out as against 35 respondents who do not admit.

It is admitted that the Union cannot prove a dispute with the North Huon Steamship Co. Ltd., A. Harrap & Sons, George E. Harrap, Huon Timber Co. Ltd., Ocean Steamship Co. Ltd., Coastal Shipping Co-operative Co. Ltd., Wye River Bluegum and Transport Co. Ltd., Port Phillip Pilot Service, Nambucca Shipping Co. Ltd., the Minister for Public Works for South Australia, the Chief Secretary for Western Australia. I find no sufficient evidence of dispute in the case of the Sorrento and Queenscliff Steamship Co. or F. Carpenter. There are certain difficulties in the cases of the Tasmanian respondents represented by Mr. *Starke* and by Mr. *Lewis*—difficulties with which I shall presently deal. As to the remainder of the respondents to the summons I find that the dispute exists as aforesaid.

Now, the question which I have to decide under the summons as to the Tasmanian clients of Mr. *Starke* and Mr. *Lewis* is whether a dispute exists with the Federated Seamen's Union—not with any particular employees; and, in accordance with the principles which I stated in the case of *Australian Workers' Union v. Pastoralists' Federal Council* (1), I am prepared to find a dispute with the Union if the Union tries to get certain conditions for its members and the employer refuses, and neither party yields. But it must not be a dispute in the air; I must find a dispute of real substance; and how am I to find such a dispute if the Union has no members in Tasmania? The first question to which I address myself is: Are there any members in Tasmania?

It is urged by Mr. *Lewis* that the Tasmanian (alleged) members of the Union are not members at all; for they paid no entrance fee on admission. By rule 5 (a) it is provided that "the entrance fee shall be one pound (£1) together with the first quarter's contribution of six shillings (6s.) and one shilling (1s.) for a book." These men have their books, which they signed as members, have paid their quarterly contributions, have been treated as members and acted as such since 1st July 1916. It appears that the executive created an agency of the Victorian branch in Tasmania under branch by-law



No. 1, taking over the members of a Tasmanian union called the River Steamer and Ferry-hand Employees' Union; and, in exempting the transferred members from the payment of the entrance fees, the officers purported to act under the powers conferred by rule 6 (b). That rule is as follows:—"Transfers from other Organizations.—Members of other labor organizations in Australasia, and members of seamen's organizations outside of Australasia, who make provision in their rules for the transfer of members of this Federation without entrance fee, and give them the same advantage as their members, shall be entitled to the shipwreck donation and rule 50 allowance under the same conditions as new members. But no person shall be entitled to transfer who has not been at least six months a member of the Union from which he desires to transfer." These words do not expressly exempt members so transferred from payment of the entrance fees; and even if such an exemption can be implied from the context, there is no proof that the River Steamer and Ferry-hand Employees' Union did "make provision in its rules for the transfer" of members of the Federated Seamen's Union "without entrance fee." For this reason I cannot treat the exemption of these men from the payment of the entrance fee as being valid. Mr. *Lewis* then urges that according to *United Grocers, Tea and Dairy Produce Employees' Union of Victoria v. Linaker* (1) these men never became members of this Union, not having fulfilled what was a condition precedent to membership—payment of the entrance fee. But the words of the rules in *Linaker's Case* were very different from the rules here. They were (rule 4): "A candidate for admission shall fill in a nomination form, pay the entrance fee and *shall thereupon become a member.*" In *Linaker's Case* the payment was clearly a condition precedent. In this case the only conditions precedent to membership seem to be set out in rule 1 and in rule 4. Under rule 1 the man must be a sailor, &c.; and under rule 4 "any person may become a *probationary* member upon application to the branch secretaries or agents upon satisfactory proof that he is competent to perform the work required of him, and of good character." He may be rejected within six months for drunkenness, broaching

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cargo, &c. ; but, " if not rejected for any of the foregoing reasons or in pursuance of rule 29 " (acting against the interests of the Union, &c.) " before the expiration of six months, he shall become a full member." It will be observed that the phraseology used in rules 4 and 5 does not in any way favour the view that the payment of the entrance fee and of the first quarter's contribution is to be treated as a condition precedent to membership. Moreover, there is some indication in other parts of the rules that a man may be a member even if he has paid no contributions. For instance, in rule 51, relating to shipwreck donations and gifts, there is a note as follows : " Members who have passed in or got their books signed and *paying no contributions* shall not be entitled to the shipwreck donation or gift." This means that a man who has paid no contribution at all may be a member ; and yet if, under r. 5, the payment of the entrance fee has to be treated as a condition precedent to membership, the payment of the first contribution would also have to be so treated. For these reasons, I am of opinion that *Linaker's Case* does not apply to this case ; and I shall treat as members of the Union the (so-called) Tasmanian members.

Therefore, not only in Australia proper but in Tasmania the great bulk of the seamen are members of this Union ; and serious troubles are likely to arise, and stoppage of operations, if the claims of the Union for its members are not fairly considered. I am prepared to find an actual industrial dispute, within the meaning of the Act, between the Union and the Tasmanian employers, at all events if the employer has in his employment any members of the Union. It has been proved to my satisfaction that the Marine Board, Hobart, has at least one member in its employment ; also the River Tamar Trading Co. Ltd. and the Cygnet Steamship Co. Ltd., and I find that these respondents are parties to the dispute.

With more hesitation, I find, on the balance of the meagre evidence, that the Marine Board, Launceston, has members in its employment ; and the Hobart Timber Co. Ltd., James Rowe & Sons Ltd., the Huon Channel and Peninsula Steamship Co. Ltd., Henry J. Condon, Risby Brothers, the Launceston Shipping Co. Ltd., Robert Gardiner & Co. Ltd. In any case these respondents must employ, or be solicited to employ, members of the Union from



time to time, and I should be prepared to find an actual dispute with the Union as to the terms on which any Union members should be employed. I find that these respondents are in the dispute. The alternative would be to find a probable dispute, and such a finding would seem to give the Court of Conciliation the same jurisdiction.

The point has been taken that the Marine Boards of Hobart and of Launceston are essentially Government Departments, and that they should therefore be exempted from any award of the Court of Conciliation in accordance with the decision of the Full High Court in the case of *Federated Amalgamated Government Railway and Tramway Service Association v. New South Wales Railway Traffic Employees' Association* (1). There have been certain cases since that case which more or less qualify it; but I shall not decide the point now. My duty under the Act is simply to find whether an industrial dispute as defined in sec. 4 exists, and between whom; but it by no means follows that the Court of Conciliation will make an award purporting to bind these Marine Boards. The matter will have to be considered when the Court of Conciliation is asked to make an award; and I shall take care to do nothing in the meantime to prejudice the consideration of the matter. It is to be distinctly understood that I make no finding to the effect that the Marine Boards carry on any operations such as would justify an award. If the point should appear to the Court of Conciliation sufficiently serious and doubtful, it is very probable that it would seek the assistance of the Full High Court by stating a case for its opinion.

*Order accordingly.*

Solicitors for the applicants, *Sullivan Brothers*, Sydney.

Solicitors for the respondents, *Derham, Robertson & Derham*, for *Page, Hodgman & Seager*, Hobart; *Malleson, Stewart, Stawell & Nankivell*; *Smith & Emmerton*.

B. L.

(1) 4 C.L.R., 488.

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