[HIGH COURT OF AUSTRALIA.]

FEDERATED ENGINE-DRIVERS' AND FIREMEN'S ASSOCIATION OF AUSTRALASIA } APPLICANT;

AND

A1 AMALGAMATED . . . . . RESPONDENT.

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SYDNEY, *Dec.* 11, 12.

KNOX C.J., Isaacs, Gavan Duffy, Powers, Rich and Starke JJ.

Industrial Arbitration—Award—Jurisdiction of Commonwealth Court of Conciliation and Arbitration—Award of rate of wages lower than those being paid under existing award—Ambit of dispute — Surrounding circumstances—Commonwealth Conciliation and Arbitration Act 1904-1921 (*No.* 13 *of* 1904 — *No.* 29 *of* 1921), *sec.* 24.

High Court—Practice—Costs—Application for declaration of existence of dispute—Commonwealth Conciliation and Arbitration Act 1904-1921 (*No.* 13 *of* 1904—*No.* 29 *of* 1921), *sec.* 21AA.

An industrial dispute arose out of the non-compliance by a number of employers with a demand by an organization of employees made by a log which set out (*inter alia*) certain specified rates of wages which were in fact higher than the minimum rates of wages payable or being paid, under an existing award of the Commonwealth Court of Conciliation and Arbitration, to the members of the organization by the respondents to that award.

Held, that that Court in making a new award had power to prescribe minimum rates of wages lower than those so payable or being paid.

Per Isaacs J.: The Court had such power in this case only because the demand was not merely a claim for additional remuneration but a claim for reconsideration of wages on an independent basis.

Held, by *Rich* J., that in a proper case an order for payment of the costs of an application under sec. 21AA of the *Commonwealth Conciliation and Arbitration Act* 1904-1921 will be made.

REFERENCE.

On 20th December 1921 the President of the Commonwealth Court of Conciliation and Arbitration made an award in a dispute in which the Federated Engine-Drivers' and Firemen's Association of

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Australasia was claimant and Albany Bell Ltd. and a number of other employers (including A1 Amalgamated) were respondents. By the award minimum rates of wages were ordered to be paid by the respondents to members of the claimant employed by them, the rates of wages varying according to the class of work done (*Federated Engine-Drivers' and Firemen's Association of Australasia* v. *Albany Bell Ltd.* (1)). A variation of this award was made on 26th April 1922. In 1923 the Association sent to a large number of employers a log of wages and conditions containing the following claim as to wages: "The following wages shall, with the exceptions hereinafter mentioned, be paid to employees who are members of the Federated Engine-Drivers' and Firemen's Association of Australasia, according to their several classifications and duties, as set out hereunder, as and from 1st January 1924." Then followed rates of wages, which varied according to the classification of work to be done and duties to be performed, and which were in each case higher than the rates fixed for the same class of work or duties by the award of 26th April 1922. The demands in the log not having been acceded to, the Association instituted a plaint, claiming the matters set out in the log, in the Commonwealth Court of Conciliation and Arbitration against A1 Amalgamated Ltd. and a large number of other employers. Many of the respondents to this plaint were not respondents bound by the then existing award. On 22nd August 1924, Sir John Quick, Deputy President of the Court, made an award which fixed minimum rates of wages, varying according to the class of work done. Those rates were, in a number of instances, lower than those payable under the previous award and its variation in respect of the corresponding classes of work.

On 27th October 1924 the Association, by summons under sec. 21AA of the *Commonwealth Conciliation and Arbitration Act*, sought the determination of a Justice of the High Court of the following question :—

> Had Sir John Quick, Deputy President of the Commonwealth Court of Conciliation and Arbitration, jurisdiction in making the said award to prescribe minimum rates of pay lower than those payable and/or being paid to their

(1) (1921) 15 C.A.R. 883.

employees by respondents to the said award at the time of the coming into operation of the rates fixed by the award ?

The summons came on for hearing before *Rich* J., who referred the above question to the Full Court.

Robert Menzies, for the claimant. Looking at the existing award, the demand made by the log must be taken as a demand for higher rates of wages than those then being paid or payable under the existing award. Any employer who received the log would understand that he was being asked to pay higher rates of wages. The refusal of the demands in the log cannot be taken to be a counter-demand for a lowering of the rates of wages. The Association, when it served the new log, should not be taken to be challenging the whole of the old award. If the dispute is as to whether employees shall be paid rates of wages higher than those being paid and no higher than those claimed in the log, the Arbitration Court has no jurisdiction to go outside those limits. [Counsel referred to *Merchant Service Guild of Australasia* v. *Commonwealth Steamship Owners' Association* (1).]

Bavin A.-G. for N.S.W. and *Street*, for the respondent, were not called upon.

KNOX C.J. In this case the Court is asked to answer the question whether the Deputy President of the Commonwealth Court of Conciliation and Arbitration had jurisdiction in making his award to prescribe minimum rates of pay lower than those payable and/or being paid to their employees by the respondents to the award at the time of the coming into operation of the rates fixed by the award. The answer to that question obviously depends on what was the ambit of the dispute in which the award was made. In the present case that ambit appears to be defined by the demand made by the log and the refusal to comply with the demand. Read literally and as it would present itself to anyone to whom it was addressed, that demand in no way specifies that the claim is for an increase

(1) (1920) 27 C.L.R. 560.

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KNOX C.J.

in wages over a certain standard; it demands a certain wage for each class of persons. I can see no reason in this case for holding that any such minimum standard should be implied in the demand, especially as the demand is addressed to, among others, a number of persons who had nothing to do with the previous award and the minimum standard suggested is the rate fixed by the previous award for similar work. The important point is, not what the organization intended to demand, but what it did demand. In my opinion the demand was not for the difference between the then existing award rate and the amount asked for, but for the amount asked for or such lesser amount as the Court should think to be just. For these reasons I think that the question should be answered in the affirmative.

ISAACS J. I agree that the question must be answered in the affirmative; and my reasons I can very shortly state. An industrial demand and an industrial refusal, if carried to the point where a dispute arises, must in my opinion be read and interpreted, not with the rigidity of legal pleadings, but with reference to the nature of the matter with which they are concerned, and I am prepared to read this demand remembering the nature of the demand, the men who are presenting it and the men to whom it is presented. I am also prepared to give a liberal interpretation to all that is sought to be done regarding it. For instance, there was no answer given to the demand, and I treat that in a business sense as indicating that it was a refusal to grant the demand as it stood and a leaving of the matter to the arbitration of any tribunal that had to consider it.

For the same reason I do not limit my consideration of the ambit or extent of the dispute merely to the document. I am prepared to consider it in relation to the surroundings, including the existence of the standing award. In considering the effect of the demand, it must also be remembered that both sides have to be fairly treated, and when the log is presented to an employer I ask myself what would an employer reasonably consider was the demand made upon him? It does, to my mind, make a material difference whether the demand is a repetition of the original award with variations in the amount of wages only or whether it is a reconstruction on an

independent basis of the relations between the parties. When I look at this document and at the previous award, I cannot arrive at the conclusion that it was a mere expression of a desire to let the old award stand with merely additional remuneration. That view is confirmed by the fact that, when I also look at the official report and the log upon which the original award was based, I find that the present claim bears a very strong resemblance to the former log with additions which may or may not be just or right—a matter that is out of my province to consider. The desires expressed in the new demand are mostly the desires expressed by the old log, and some of the demands made by the old log are passed by. I think that an employer who received the new log would look upon it as an intimation that the employees were not satisfied with the old award and wanted a reconsideration of the whole position, hoping, no doubt, that their position would be bettered. That being the position, I am unable to say that the limits of the dispute were, on the one hand, the new amounts claimed and, on the other hand, the old amounts mentioned in the old award, because the classification and the arrangements of duties and the qualifications, particularly when we take into consideration the definition clause, show me as a matter of fact that the whole thing is being presented on a new basis. That being so, I am unable to agree with the arguments put forward on behalf of the applicant.

GAVAN DUFFY J. I agree that the area of an industrial dispute is not necessarily limited to what appears in a log presented by one disputant to another. I also agree that in this case the words of the log have not by themselves the meaning which is sought to be put upon them by the applicant; and I do not think that there are any circumstances in the case which give them that meaning, or which indicate that the area of the dispute was other than that suggested by the words of the log.

POWERS J. I agree that on the facts in this case the question asked should be answered in the affirmative.

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RICH J. I agree in thinking that the Deputy President, in making his award in this case, had jurisdiction to prescribe rates of pay lower than those payable and/or being paid to their employees by the respondents to the award at the time it came into operation.

STARKE J. I agree with the answer of the Court to the question of law raised by the summons under sec. 21AA of the Arbitration Act. I wish, however, to express a doubt whether the Court should go into surrounding circumstances to ascertain the nature and extent of the dispute in cases in which the claimant makes his demand in writing and relies upon the fact that it was refused. That is then the dispute, and a consideration of surrounding circumstances only tends to confuse the matter—as it did in this case.

Question answered in the affirmative.

The summons then came before *Rich* J.

Robert Menzies. The summons should be dismissed without costs: it is not the practice to allow costs of a summons under sec. 21AA.

Jud. adv. vult.

RICH J. I have ascertained that there is no practice not to allow costs of these summonses. The summons will be dismissed with costs.

Summons dismissed with costs.

Solicitor for the applicant, *H. H. Hoare.*

Solicitors for the respondent, *Dawson, Waldron, Glover & Edwards.*

B. L.