[HIGH COURT OF AUSTRALIA.]

AUSTRALIAN TIMBER WORKERS' UNION . APPELLANT ; INFORMANT,

AND

STEWARTS LIMITED . . . . . RESPONDENT. DEFENDANT,

ON APPEAL FROM A COURT OF PETTY SESSIONS OF NEW SOUTH WALES.

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SYDNEY, *April* 23, 30.

Starke, Dixon, Evatt and McTiernan JJ.

Industrial Arbitration (Cth.)—Award—Breach—Unapprenticed boys—Prescribed rates of wages—Boy, not member of union.

The respondent did not pay to an unapprenticed boy employed by it the minimum rate of wages prescribed by an award of the Commonwealth Court of Conciliation and Arbitration for unapprenticed boys of his age. Both the informant union and the respondent were parties to the award, but the boy was not a member of the union or otherwise a party to the dispute settled by the award. On the hearing of the information charging the respondent with a breach of the award the logs of demand out of which the dispute settled by the award arose were not put in evidence. The information was dismissed.

Held that in the absence of evidence as to the ambit of the dispute the validity of the material clause of the award must be assumed ; upon the construction of the award, the material clause applied to all unapprenticed boys employed in the industry, whether members of the union or not, and, therefore, a breach of the award had been proved.

Metal Trades Employers Association v. *Amalgamated Engineering Union*, (1935) 54 C.L.R. 387, referred to.

APPEAL, by way of case stated, from a Court of Petty Sessions of New South Wales.

In an information laid by John Culbert on behalf of the Australian Timber Workers Union, it was alleged that the defendant, Stewarts

Ltd., did commit a breach of an award of the Commonwealth Court of Conciliation and Arbitration, by which both the union and the defendant were bound, in that the defendant did for the week ending 26th September 1935 employ and work at its place of business at Blacktown, New South Wales, an unapprenticed boy and did not pay to him the minimum rate of wages provided by the award to be paid to an unapprenticed boy of his age.

The award was made on 23rd January 1929 (*Timber Merchants and Sawmillers Association* v. *Australian Timber Workers Union* (1)).

Relevant provisions of the award are set forth in *Culbert* v. *Clyde Engineering Co.* (2). Other material provisions are as follows:—8. (*a*) "The maximum ordinary working hours of employees shall be 48 hours per week throughout the industry." 10D. "The minimum rates for junior labour shall be as in clause 13 hereof." Par. 15 of the form of apprenticeship indenture prescribed by the award provides: "It is specially agreed and declared between the parties hereto that this deed of apprenticeship may be cancelled by agreement between the State branch of the Australian Timber Workers Union and the employer by reason of the misconduct of the apprentice or upon proof that he is unfitted for the work with the right of the apprentice or the union or the employer to appeal to the board of reference against either the granting or refusing of consent to cancel such deed of apprenticeship."

The evidence showed that the boy concerning whom the information had been issued attained the age of 19 years on 28th October 1934, and that he had been employed by the defendant since April 1935, "labouring about the mill," for which he was paid the sum of £1 5s. per week. The boy was unapprenticed, and was not a member of the union nor in any way bound by or subject to the award. The minimum wage prescribed by clause 13B of the award for unapprenticed boys 19 to 21 years of age was £3 per week.

The logs of demand out of which the dispute settled by the award arose were not put in evidence.

An information also was laid by the informant against the defendant, in respect of another boy, in which similar facts were alleged.

(1) (1929) 27 C.A.R. 577.

(2) (1936) 54 C.L.R. 544.

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The magistrate dismissed both informations on the ground that they were not sufficiently supported by the evidence.

From those decisions the informant now appealed, by way of case stated, to the High Court.

The question reserved for the opinion of the Court was whether the magistrate's determination was erroneous in point of law.

J. A. Ferguson (with him *R. M. Kidston*), for the appellant. The question is whether a union can as against an employer, party to an award, enforce its provisions in respect of a boy employed by him who is not a member of the union or otherwise a party to the award. The principles laid down by the majority of the Court in *Metal Trades Employers Association* v. *Amalgamated Engineering Union* (1), and by the Court in *Long* v. *Chubbs Australian Co. Ltd.* (2), apply to this case. The provisions of the award as to boys are of general application, and apply irrespective of whether the particular boy is a member of the union. Although the boy concerned in this case was lawfully employed on the work he was engaged at, he was underpaid therefor. The award distinguishes between "boys" and adults. The former are not, and the latter are, required to be members of the union. Nevertheless boys and adults come within the scope of the award.

Cook, for the respondent. The case of *Long* v. *Chubbs Australian Co. Ltd.* (2) is distinguishable. In that case it was admitted that a minor had been engaged contrary to a clause of the award which definitely prohibited the employment of minors except under contracts of apprenticeship framed in conformity with the award. The question whether the award was not wide enough to prohibit the entering into relationships with non-unionists except on certain terms was not argued. The judgment in *Metal Trades Employers Association* v. *Amalgamated Engineering Union* (1) was in conformity with the principles laid down in *Long's Case* (2). The points that arise in this case are (*a*) whether there is anything to show that there was a dispute as to what wages were to be paid to a non-unionist boy, and (*b*) assuming such a dispute, assuming that the award does

(1) (1935) 54 C.L.R. 387 (2) (1935) 53 C.L.R. 143.

confer a right on a member of a union to the extent that the employer is prohibited from entering into a contract of service with a non-unionist boy, it would operate to the disadvantage of a unionist boy or, in other words, whether the Arbitration Court, in this case, has in fact seen fit to confer a right on one of the disputants, that is to say, the unionist boy. It is valid for the Court so to prescribe but there is nothing to show that the Court did so prescribe (see *Amalgamated Clothing and Allied Trades Union of Australia* v. *D. E. Arnall & Sons*; *In re American Dry Cleaning Co.* (1)). The Court in its award did not purport to make a uniform wage. Apart from the construction of the award, there is nothing to show that the ambit of the dispute settled by the award was wide enough to cover clause 13B.

[DIXON J. referred to *Walsh* v. *Sainsbury* (2).]

In construing an award, assuming its validity and binding force, the commencing point must be a prima facie construction. The nature and extent of the dispute settled by the award now under consideration are shown in *Timber Merchants and Sawmillers Association* v. *Australian Timber Workers Union* (3). It was not part of the dispute that, for the purpose of creating uniformity, the award should apply to non-members as well as to members of the union. The definition of "employee" indicates that, so far as employees are concerned, the award applies only to members of the union. That definition does not draw any distinction between adult and junior employees. At most the dispute was as to the number of boys allowed in the industry and the nature of the work upon which they might or might not be employed. The power of a Court other than the Arbitration Court to consider the validity of an award of the Arbitration Court was discussed in *Australian Journalists Association* v. *Daily Telegraph Pictorial Ltd.* (4). Even assuming the validity of the award, in construing clause 13B regard should be had to the fact that prima facie it is part of a scheme designed to benefit the members of an organization, and also to the definition of "employee" linked up with junior labour as a class of employee under the award. Sub-clause 5 of that clause is merely

(1) (1929) 43 C.L.R. 29.
(2) (1925) 36 C.L.R. 464, at pp. 470, 471.
(3) (1929) 27 C.A.R. 577.
(4) (1929) 28 C.A.R. 463, at pp. 468, 469.

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a fixation of wages for unapprenticed boys, which, prima facie, means members of the union. Each sub-clause should be construed independently.

J. A. Ferguson, in reply. The respondent's interpretation of the word " employee " is too narrow, and, if applied, would give rise to inconsistent and conflicting results. The definition in the award of the word " boy " does not include a requirement of membership of the union. As so defined, " boy " refers to minors, or juniors, whether members of the union or not. It is significant that the minimum rates prescribed in clause 10D is for junior " labour," not junior " employees." The regulation of junior labour is very important to members of unions (*Long* v. *Chubbs Australian Co. Ltd.* (1)). There is no rule to the effect that in the construction of awards they must be regarded, prima facie, as designed to affect only the benefit of members of unions, and, therefore, to be confined to conditions applying to such members. Par. 15 of the indenture is reconcilable with a general potential interest given to the union with regard to all indentures, whether the boys concerned are members of the union or not. The union is regarded as the guardian of all the boys in the industry.

Cur. adv. vult.

April 30. The following written judgments were delivered :—

STARKE J. The respondent was charged on information that it did in breach of an award of the Commonwealth Court of Conciliation and Arbitration employ and work an unapprenticed boy, and did not pay him the minimum rate of weekly wages provided by the award for an unapprenticed boy of his age. The award was binding upon the appellant union and its members, and also upon the respondent, but the boy was not a member of the union nor in any way bound by or subject to the award. He neither acquired rights nor incurred obligations under the award. But this Court has held, erroneously as I think, that the Arbitration Court may make awards prescribing wages which must be paid to persons who are

(1) (1935) 53 C.L.R., at p. 150.

neither parties to the proceedings in which the award is made nor to the dispute upon which those proceedings were founded (*Metal Trades Employers Association* v. *Amalgamated Engineering Union* (1)). Now the award in question here prescribes that the minimum rates of weekly wage to be paid to unapprenticed boys shall be as there prescribed. The boy was unapprenticed, and he was not paid the wage prescribed. So, unless the award is bad or beyond jurisdiction, the contravention is clear. The case is thoroughly unsatisfactory from my point of view, for the Court does not know the ambit of the dispute the foundation of the award, nor the claims made before the Arbitration Court. Prima facie, we must treat the award as valid (see *Commonwealth Conciliation and Arbitration Act* 1904-1934, sec. 31), and give English words their plain and ordinary meaning. The question stated by the magistrate for the opinion of this Court is whether his determination dismissing the information was erroneous. Actually I do not think it was, but I am bound by the decision of this Court to say that it was and that it should be set aside.

The appeal should be allowed.

DIXON, EVATT AND MCTIERNAN JJ. The appellant complains of the dismissal of an information under sec. 44 of the *Commonwealth Conciliation and Arbitration Act* 1904-1934.

The information was for committing a breach of an award by employing an unapprenticed boy and failing to pay him the minimum rate of wages prescribed by the award for unapprenticed boys of his age.

The term of the award alleged to be broken is a sub-clause devoted to the subject of unapprenticed boys. It simply provides :—" The minimum rates of weekly wage to be paid to unapprenticed boys shall be as follows." Then is set out a scale of wages graduated according to age.

The respondent did employ an unapprenticed boy and did not pay him the wage appropriate to his age. But the boy was not a member of the organization entitled to the benefit of the award. The respondent contends that the provision said to have been

(1) (1935) 54 C.L.R. 387.

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contravened does not apply except to boys who are members of the organization.

The logs of demand out of which the dispute settled by the award arose were not put in evidence. Since *Metal Trades Employers Association* v. *Amalgamated Engineering Union* (1) it cannot be denied that a dispute may exist which under the Constitution and the Act would justify an award requiring the employers to pay a prescribed wage to employees who are not members of the organization entitled to the benefit of the award and who are not otherwise parties to the dispute settled by the award. As this decision removes the objection, otherwise open, that in law such a dispute could not exist or warrant the award and as the ambit of the dispute in fact has not been the subject of investigation and proof in the proceedings in the Court below, the validity of the material clause of the award must be assumed for the purpose of our decision.

The question whether the clause extends to boys, not members of the organization, must, therefore, be dealt with as one of construction. It depends altogether on the meaning of the award ascertained by a consideration of the whole document. The provisions of the award which prescribe rates of wages for adult employees are restricted to men who are members of the organization. The restriction arises from the definition of the word " employee," which means, according to the award itself, any person who after a specified date is or becomes a member and is employed by employers, parties to the award. But there is no express restriction on the prima facie meaning of the language prescribing wages for unapprenticed boys. Its purpose, moreover, is altogether different. It forms part of a clause relating to unapprenticed juvenile labour. The preceding sub-clauses of the clause are clearly directed to dealing with the possible employment of juvenile labour to the prejudice of the employment of the more highly paid adult labour of members of the organization. The sub-clause relating to the pay of boys, in our opinion, pursues the same purpose. It provides that boys shall not be paid less than the prescribed rates, not merely in the interests of the boys, but because it is prejudicial to the adults to allow the employment of boys at an inadequate wage. There is not, in our opinion, any reason for

(1) (1935) 54 C.L.R. 387.

restricting the meaning of the unqualified language of the clause and there is good reason for giving it its natural meaning.

We think a breach of the award was committed. The appeal should be allowed; the order of dismissal set aside and the information remitted to the magistrate.

Appeals allowed. Determinations set aside. Remit each matter to the magistrate with the opinion of this Court that his determination was erroneous. The respondent to pay to the appellant one set of costs only in respect of these appeals.

Solicitor for the appellant, *V. P. Ackerman*, Hunters Hill, by *G. G. Tremlett*.

Solicitors for the respondent, *Ferguson & Vine Hall*.

J. B.