[HIGH COURT OF AUSTRALIA.]

GEDDES . . . . APPELLANT;
NOMINAL DEFENDANT,

AND

RICHARDS . . . . RESPONDENT.
PLAINTIFF,

ON APPEAL FROM A DISTRICT COURT OF NEW SOUTH WALES.

H. C. OF A. 1936.

SYDNEY, *April* 22, 30.

Starke, Dixon, Evatt and McTiernan JJ.

Financial Emergency—State employees—Remuneration—Statutory reduction—Rationing of employment—Application of reduction—Public Service Salaries Act 1931-1934 (*N.S.W.*) (*No.* 29 *of* 1931—*No.* 3 *of* 1934), *sec.* 4 (3).

Sec. 4 of the *Public Service Salaries Act* 1931-1934 (N.S.W.) provides, by sub-sec. 1 (*b*), for the reduction of salaries of State employees by percentages which are graduated according to the annual amount of the salary, and, by sub-sec. 3, that "where by rationing of employment reduction is made in the salary of any officer, the officer shall be given credit for the amount of such reduction as against the reduction to be made under this section."

Held that, by virtue of sub-sec. 3, a reduction in salary effected by rationing employment must be treated as a credit against future percentage reductions without any restriction by reference to fortnightly or other periods of payment. Until the credit is exhausted no percentage reductions may be made.

Quære whether in applying an unexhausted credit, each financial year, or other successive period for which the *Public Service Salaries Act* (*No.* 2) 1931 (N.S.W.) has been extended, must be treated separately.

APPEAL from a District Court of New South Wales.

Collis Richards, an employee in the Hume Weir Construction Branch of the Public Works Department of the State of New South Wales, brought an action in a District Court of that State against William Butler Geddes, as nominal defendant on behalf of the Government of the State, to recover the sum of £3 1s. 1d., alleged

to have been wrongly deducted from wages earned by him between 30th June 1934 and 20th June 1935. The plaintiff, a married man, was at all material times a member of the Amalgamated Engineering Union, and, as such, was entitled to be paid the rate of wages prescribed by the " metal trades " award made by the Commonwealth Court of Conciliation and Arbitration on 26th March 1930, as varied. By a variation of the award made on 17th April 1934, the State was authorized to make from the rates of wages so prescribed " reductions or deductions not greater than a statute of the State " might require to be made " generally in or from substantially similar rates of pay of employees of the State." The plaintiff was paid wages fortnightly at the hourly rate prescribed by the award for a welder. He was rationed in his employment one week in every four weeks during the periods extending from 30th June 1934 to 8th December 1934, and from 4th March 1935 to 20th June 1935 respectively. No deductions material to the action were made from the wages payable to the plaintiff for the time worked during those periods, but he was not paid for any of the weeks during which he did not work in consequence of the rationing. During the period extending from 8th December 1934 to 4th March 1935, the plaintiff was not rationed in his employment, but deductions amounting in all to £3 1s. 1d. were made by virtue of the provisions of sec. 4 of the *Public Service Salaries Act* 1931-1934, a " statute of the State " of New South Wales within the meaning of the award referred to above. Sub-sec. 3 of that section provides that " where, by rationing of employment, reduction is made in the salary of any officer, the officer shall be given credit for the amount of such reduction as against the reduction to be made under this section." The Government refused to give the plaintiff any credit for reduction in his wages due to rationing, despite the fact that he had thereby sustained a loss of £46 10s., and credit had not been given which exhausted the whole loss. The plaintiff claimed that in calculating the deduction allowed by the Act, an erroneous method had been pursued and that, as a result, he had been underpaid. Judge *Thomson* found a verdict for the plaintiff in the amount claimed.

From that decision the nominal defendant now, by special leave, appealed to the High Court.

H. C. OF A. 1936.

GEDDES v. RICHARDS.

O'Mara, for the appellant. The question is: What period of time should be considered in applying sec. 4 (3) of the *Public Service Salaries Act*? On the facts of this case the amount of money lost by the respondent over the whole period by rationing was greater than the amount of money he would have lost if the Act had been applied to him during the whole of the time he worked. Benefits, or credits, do not accumulate under the Act. The period to be considered is the fortnightly pay period, and each period must be considered independently of any other period. Both deduction and credit is to be made only in respect of the particular pay period, and when made the matter is finalized. Credits not within the period cannot be taken into account. If the period were of, say, twelve months duration many practical difficulties would arise. As a matter of law the respondent did not suffer by the rationing, because being employed on an hourly basis he was not entitled to wages during the time he did not work. The deduction fixed by the Act is to be made at each pay period: it is on that time that something is to be done and credit for rationing given. In other words, the pay period is to be considered both for the purpose of ascertaining the amount of deduction and the amount of credit: when this has been done the matter is then finalized. It was intended that the deduction should be made in respect of every period during which the employee was actually rationed, that is, while there was a system of rationing in force. There was to be no "carrying over" where the amount lost by rationing exceeded the amount of the deduction. If a period which exceeds the pay period is to be taken, it should be restricted to a period when rationing was actually taking place. During the period when there is rationing, an employee is not to be required to suffer by rationing and also by deductions. Here rationing ceased in December 1934. The section has no reference or application to the case where there is no system of rationing in force. No significance is attachable to the fact that the Act has a term of twelve months, or that its expiry date is at a particular date.

E. M. Mitchell K.C. (with him *De Baun*), for the respondent. The scheme of the *Public Service Salaries Act* is to ensure equality of

sacrifice, and that it shall be brought about either by way of rationing or by way of deductions, but not both at the same time. The accounting period is in each case the period during which the particular Act was in force, and if, in considering that period an employee is found with a credit, and an unexhausted credit, showing the extent to which he has borne his share of sacrifice, he is entitled to credit, so long as the Act is in force, for the loss he has sustained. Each Act should be considered on the basis that it was not intended to enact a further Act. The respondent is worse off than if he had worked the whole year and suffered reductions. The accounting period is the period while the Act is in force (see sec. 4). The contention that a pay period should be taken leads to absurdity. An employee gets nothing at all if he is a fortnight on and then a fortnight off work. The first fortnight he is on he suffers deductions, the second fortnight he receives no pay and there is no deduction; he is again just as he started and the Act does not operate at all. There is no reference in the Act to the inclusion of periods during which the system of rationing is in force.

O'Mara in reply. The Legislature did not intend that the period of the Act should be taken as the accounting period. However long the period is, whether it be the period of the Act or not, if the rationing is in the second period of the employment, the employee does not get as much benefit from the provisions of sec. 4 (3) of the Act as he would if the rationing were in the first period of employment.

Cur. adv. vult.

April 30.

The following written judgments were delivered:—

STARKE J. The appellant Geddes was sued in the District Court at Sydney, as a nominal defendant on behalf of the Government of New South Wales, by the respondent Richards, who was an employee of the Government, for certain wages under an award of the Commonwealth Court of Conciliation and Arbitration known as the metal trades award. The District Court gave judgment

H. C. OF A. 1936.

GEDDES v. RICHARDS.

Starke J.

in favour of the respondent, and special leave to appeal to this Court was obtained on behalf of the Government.

Under the metal trades award, the Government was authorized to make, from the rates of pay prescribed by the award, reductions or deductions not greater than a statute of the State might require to be made "generally in and from substantially similar rates of pay of employees of the State." The *Public Service Salaries Act* 1931-1934 of New South Wales makes provision for the reduction in salaries of officers in the service of the Government of New South Wales. But employment was also rationed: employees were directed to remain away from work for various periods of time, in order that they might share the work available equally, or over an extended period of time. (See Act 1930 No. 53, sec. 4). The position of an employee whose wages or salary were reduced and who was also rationed is dealt with in the *Public Service Salaries Act* (No. 2) 1931, sec. 4 (3): "Where, by rationing of employment, reduction is made in the salary of any officer, the officer shall be given credit for the amount of such reduction as against the reduction to be made under this section." The respondent was rationed in his employment one week in every four during the periods extending from 30th June 1934 to 8th December 1934, and from 4th March 1935 to 20th June 1935, and he was not paid for any of the weeks in respect of which he was rationed. His loss of wages amounted to £46 10s. The respondent was not rationed for the period from 8th December 1934 to 4th March 1935, but reductions, amounting in all to £3 1s. 1d., were made by virtue of the provisions of the *Public Service Salaries Act*. The Government refused to give the respondent any credit for reduction in his wages due to rationing, despite the fact that he had thereby sustained considerable loss, and credit had not been given which exhausted the whole loss. The Government contends that the credit allowed by the Act can only be claimed in respect of a pay period during which rationing has taken place, or else in respect of a period during which a system of rationing has taken place. It would follow that for the period 8th December 1934 to 4th March 1935 the respondent could not claim the benefit of the provisions of the *Public Service Salaries Act* (No. 2) 1931, sec. 4 (3), although he had sustained a loss in wages, due to

rationing, for the period extending from June to December 1934, not exhausted as a credit against reductions in wages under the Act.

The Government's contention cannot be supported. The section itself contains no reference to the periods suggested by the Government. It is designed to relieve against what may be called a double reduction of pay. It is not limited to any period of time, nor is there any apparent reason why it should be so limited. It may be that the right should be limited to the financial year of the Government, or the duration of the Acts, as was suggested by Mr. *Mitchell*, but this question does not arise in the present case, and therefore does not call for decision.

The appeal fails, and should be dismissed.

DIXON, EVATT AND McTIERNAN JJ. This is an appeal from a judgment of a District Court exercising federal jurisdiction. The judgment was given in an action brought by the respondent against the appellant as nominal defendant on behalf of the Government of New South Wales to recover a small sum alleged to be payable to the respondent for wages or salary under an award of the Commonwealth Court of Conciliation and Arbitration.

The respondent is employed by the State in an industrial pursuit governed by an award of the Commonwealth Court which fixes his rates of pay. But, as the result of a variation, the award contains a provision in the same terms as that dealt with by this Court in *Australian Tramway Employees Association* v. *Commissioner for Road Transport and Tramways (N.S.W.)* (1), permitting the State to make from the prescribed rates of pay deductions not greater than might be required by a State statute generally from the same or substantially similar rates of pay. In this case the validity of the provision is not impugned. Such a statute exists in New South Wales. It is the *Public Service Salaries Act* (No. 2) 1931. But the respondent contends that, in calculating the deduction allowed by the Act, an erroneous method has been pursued and that, as a result, he has been underpaid. The *Public Service Salaries Act* (No. 2) 1931 (N.S.W.) commenced on 7th August 1931. By sec. 6 it was to cease

(1) (1935) 53 C.L.R. 90.

H. C. OF A. 1936. GEDDES v. RICHARDS. Dixon J. Evatt J. McTiernan J.

to have effect on 5th August 1932. But, before it expired, that date was extended to 30th June 1933 (Act No. 14 of 1932). A similar provision has been made annually and the Act is now in force until 30th June 1936.

The purpose of the Act was to make reductions in the salaries payable to officers in the service of the State of New South Wales. Sec. 4 (1) (*b*) provides for the reduction of salaries by percentages which are graduated according to the annual amount of the salary. Sub-sec. 3 of the same section contains the following provision: "Where by rationing of employment reduction is made in the salary of any officer, the officer shall be given credit for the amount of such reduction as against the reduction to be made under this section."

During the first five months of the financial year beginning 1st July 1934, the respondent's employment was rationed so that in every four weeks he worked only three and lost one week's wages. He was similarly rationed for the last four months, but, during the summer months, he was not rationed. He was paid fortnightly.

In applying sub-sec. 3, the Government treated every fortnight as an exclusive accounting period. Whatever loss the respondent had incurred during that accounting period as a result of rationing was credited against the percentage reduction which, otherwise, would be made from the salary earned during that fortnight. But no credit was given in respect of any loss of wages arising from rationing in any previous fortnight. Thus at the end of the first five months of rationing he had accumulated a credit which was not afterwards applied in his favour. It is this method of applying sub-sec. 3 that is attacked in the present proceedings.

In our opinion the method is erroneous. Sub-sec. 3 contains no reference to any divisions of time. Its object is to bring the income derived from their employment by men who have suffered rationing nearer to an equality with that of men paid at like rates who have suffered only the percentage reductions authorized by the previous sub-sections. It directs, in effect, that a reduction in salary effected by rationing employment shall be treated as a credit against future percentage reductions. Until the credit is exhausted no percentage reduction is to be made. In calculating the credit it may possibly

be right to regard rationing as inflicting a loss only of the remuneration which would have been paid for the work forgone, that is to say, the salary calculated at the rates reduced by the appropriate percentage and not the original unreduced salary. It appears to be the practice so to calculate it. But, when it is calculated, it provides the employee with a notional credit which is to be used against future percentage reductions until it is exhausted. The question does not arise in the present case whether an unexhausted credit can be carried over beyond one of the dates at which the Act would have expired but for the annual extensions and then applied to the next period. It is possible that each financial year or other successive period for which the Act has been renewed must be treated separately. But, short of this, the application of sub-sec. 3 is not restricted in point of time.

For these reasons we are of opinion that the respondent's contention is correct and the appeal fails. It should be dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellant, *J. E. Clark*, Crown Solicitor for New South Wales.

Solicitors for the respondent, *Sullivan Bros.*

J. B.