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securities deposited by a party to the guarantee itself. The authority to release is, however, general in its terms, and is not controlled by reference to other authority contained in the same clause. The promise alleged by the appellant therefore contradicts the terms of the guarantee, which must prevail.

The appeal should be dismissed.

Appeal dismissed.

Solicitors for the appellant, *McMaster, Holland & Co.*

Solicitors for the respondent, *Minter, Simpson & Co.*

J. B.

[HIGH COURT OF AUSTRALIA.]

AMALGAMATED ENGINEERING UNION . APPLICANT;

AND

THE METAL TRADES EMPLOYERS' ASSOCIATION AND OTHERS . } RESPONDENTS.

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SYDNEY, *Aug.* 8; *Sept.* 4-6.

EVATT J.

Industrial Arbitration (Cth.)—Industrial dispute—Award—Parties—Employees' organization—Employers' organization—Persons who joined employers' organization after the dispute—Jurisdiction of the Court to bind those persons—Commonwealth Conciliation and Arbitration Act 1904-1934 (*No.* 13 *of* 1904—*No.* 54 *of* 1934), sec. 29.

The Commonwealth Court of Conciliation and Arbitration has jurisdiction to make an award binding present and future members of an employers' organization party to a dispute, in respect of members of an employees' organization, party to the same dispute, employed by them.

Burwood Cinema Ltd. v. *Australian Theatrical and Amusement Employees' Association*, (1925) 35 C.L.R. 528, applied.

SUMMONS under sec. 21AA of the *Commonwealth Conciliation and Arbitration Act* 1904-1934.

A summons was taken out under sec. 21AA of the *Commonwealth Conciliation and Arbitration Act* 1904-1934 by the Amalgamated Engineering Union for a decision by the High Court on a question of law which arose in an industrial dispute (No. 427 of 1933) in which the Metal Trades Employers' Association and others, the respondents to the summons, were the claimants and the Amalgamated Engineering Union and others were the respondents.

The question for the decision of the High Court was :—

Whether the Commonwealth Court of Conciliation and Arbitration has jurisdiction in dealing with such alleged industrial dispute to make an award affecting or binding or purporting to affect or bind (*a*) the Amalgamated Engineering Union in respect of its members employed by the claimants or by any of them in the State of Queensland ; and (*b*) the members of the Amalgamated Engineering Union employed by the claimants or by any of them in the State of Queensland.

The material facts are set forth in the judgment hereunder.

De Baun, for the applicant.

O'Mara, for the respondents.

EVATT J. The question for determination in this summons is to what extent a number of employers carrying on the engineering trade in Queensland may lawfully be made parties to an award of the Commonwealth Court of Conciliation and Arbitration in settlement of an inter-State industrial dispute (No. 427 of 1933) which was created by the refusal of the union to accede to a log of demands made by the Metal Trades Employers' Association in November 1933. The main facts of the case are as follows :—The Metal Trades Employers' Association and the union are both organizations duly registered under sec. 55 of the *Commonwealth Conciliation and Arbitration Act*. Throughout 1933 the Metal Trades Employers' Association had a number of members who carried on their trade n Queensland as well as in New South Wales. In May 1933 the

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award to which both organizations were parties expired, but it was continued in force by virtue of sec. 28 (2) of the Act. In March 1933 a number of individual Queensland employers in that trade, who were not members of the Metal Trades Employers' Association, had signed a document in the following terms: "We the undersigned hereby appoint Siegfried Benjamin to be agent and representative for us and with power and authority of representing us in making application for an extension of the above matter" (i.e., the metal trades award of the Commonwealth Court of Conciliation and Arbitration) "to other employers and to do all such acts, matters and things in the premises as he may deem expedient."

Siegfried Benjamin mentioned in this document was the secretary of a local association of employers known as the Ironmasters' Association of Queensland.

On or about 14th June 1933 a log of demands reproducing the conditions of the existing award, continued in force as I have described, was served on the union by the assistant secretary of the Metal Trades Employers' Association, purporting to act on behalf of the individual Queensland employers as well as on behalf of the Association and its members. On 24th October 1933 Judge *Beeby* made an Order of Reference, referring into Court the industrial dispute said to have been created by non-compliance on the part of the union with such log. But no further proceedings have ever been taken in relation to the supposed industrial dispute so referred.

Later in the year, in November, a new log of demands, for wages and conditions much more favourable to the employers than those laid down by the existing award, was served on the union by the Metal Trades Employers' Association acting on behalf not only of its members but also of the individual Queensland employers.

In March 1934 Judge *Beeby* made an order referring into Court this second dispute (No. 427 of 1933) created by the union's non-compliance with the demands contained in the log of November. In March 1934 a number of employers in Queensland, not then members of the Metal Trades Employers' Association, including most of those who had signed the document of March 1933, signed a further document in the following terms:—"We wish to become parties to

the metal trades Federal award and for that purpose will join in the application to the Federal Arbitration Court to have the award made applicable to Queensland."

Upon these facts the first question for decision is: Were the individual Queensland employers, i.e., those who were not members of the Metal Trades Employers' Association in 1933 parties to the industrial dispute referred into Court by Judge *Beeby* in March 1934 and relating to the log of November 1933?

The answer to this first question depends on whether such employers authorized the Metal Trades Employers' Association to make, and negotiate in reference to, the demands of November 1933. The evidence negatives any such authority. It shows that the demands to be made on behalf of these individual employers were for the extension to them of the terms of the award of 1930. It was contended that, upon non-compliance with the demands of June 1933, there arose a dispute between such employers and the Union. This is so, but such dispute was confined to Queensland because it is very plain that the Metal Trades Employers' Association joined in the log of June 1933 for conformity only and purely as a method of overcoming the difficulties of fellow employers in Queensland. Then it is said that, even so, this Queensland dispute remained unsettled in November 1933 when the second log was served, and that it can be rolled into the dispute which was created in that month upon the union's non-compliance with the Metal Trades Employers' Association's second log. In my opinion that is impossible. The dispute referred into Court by Judge *Beeby* in March 1934 was as to the matters in the log of November and not as to any other matters, and, in particular, not as to matters in the log of June 1933. It is not a mere question of different "ambits" of a single dispute. There were two distinct and disparate disputes, and the individual Queensland employers did not become parties to the dispute created upon non-compliance with the log of November. Obviously the log signed by such employers in March 1934 had no effect in making them parties to the dispute which had come into existence previously.

In examining the facts as to the individual employers, it will become unnecessary for me to distinguish between the general body

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of individual employers in Queensland and the Toowoomba Foundry Co., the director of which took a much more active part in the endeavour to obtain Federal conditions.

The second and more important question which arises is, whether, notwithstanding the fact that the individual Queensland employers were not properly made parties to the order of reference in March 1934, any of them may lawfully be included in any award made by the Commonwealth Court of Conciliation and Arbitration in pursuance of the power reserved by Judge *Beeby* in clause 29 (*c*) of the award of May 1935. The question concerns those employers who have since the date of service of the log of November 1933 joined the registered organization of employers. The Toowoomba Foundry Co. is one of such employers.

In November 1933 the industrial dispute which came into existence clearly extended to Queensland because some employers carrying on their trade in that State were then members of the Metal Trades Employers' Association. Accordingly, if and when an award is made in respect of Queensland, such members may lawfully be bound.

The governing factor in determining this summons is that in *Burwood Cinema Ltd.* v. *Australian Theatrical and Amusement Employees' Association* (1) this Court held that, where a demand as to wages and conditions of labour is made on behalf of its members by an organization registered under the *Commonwealth Conciliation and Arbitration Act* upon employers engaged in that industry, the fact that certain of those employers do not employ any members of the organization does not prevent the dispute constituted by non-compliance with the demand from being an industrial dispute to which these employers are parties and in respect of whom a binding award may be made by the Commonwealth Court of Conciliation and Arbitration.

In my opinion the principle of that case is decisive. It was concerned with a registered organization of employees, but must also cover the case of a registered organization of employers. The Act makes no distinction between the classes of persons who are to be represented by registered organizations. Consequently, if employers in Queensland have joined the Metal Trades Employers'

(1) (1925) 35 C.L.R. 528.

Association since November 1933 they may lawfully be bound by any award made in settlement of the dispute which came into existence in November 1933 between the Metal Trades Employers' Association and the union.

It has been suggested that the log served by the Metal Trades Employers' Association in November 1933 was intended to be a demand on behalf of its then members only. Theoretically, it is possible that a registered organization may limit its demands to the case of persons who are its members at the date of such demands, though such a policy is extremely unlikely, even if it is permissible under the Act. But, on a close examination of the demands of November 1933, the conclusion to which I have come is that they were not intended to be limited to those who were then members of the Metal Trades Employers' Association. No attempt was made in the covering letter nor in the log itself to make any such limitation in express terms, and I think that, prima facie, all demands by a registered organization should be regarded as being made on behalf of all those who are or who may become members of the organization. I think sec. 29 (*a*) of the Act supports the method of approach in the construction of the log.

In the *Burwood Cinema Case* (1) the form of log does not appear from the report, but I have sent for the papers and I find that the log there served on behalf of the registered organization of employees was not expressly stated to be on behalf of future members, but was a general demand on behalf of the members of the organization for improved wages and conditions.

I hold therefore that that decision, which binds me, should be applied in the present case to the registered organization of the Metal Trades Employers' Association.

In answer to the questions in the summons asked I make a a declaration as follows :—In dealing with the dispute No. 427 of 1933 : Firstly, the Commonwealth Court of Conciliation and Arbitration has jurisdiction to make an award binding the members of the Amalgamated Engineering Union employed in Queensland by members of the Metal Trades Employers' Association including members joining that organization after the dispute came into

(1) (1925) 35 C.L.R. 528.

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existence. Secondly, the Commonwealth Court of Conciliation and Arbitration has no jurisdiction to make an award binding the members of the Amalgamated Engineering Union employed in Queensland by employers not included in the membership of the Metal Trades Employers' Association.

In the case of the Toowoomba Foundry Co., I shall reserve liberty to apply in the event of that company ceasing to be a member of the Metal Trades Employers' Association.

Each party has partly succeeded and partly failed, and there will be no order as to costs.

O'Mara. Would the first declaration include some of those claimants who have not yet joined the Metal Trades Employers' Association but may subsequently do so ?

EVATT J. Yes, certainly, it includes all members of that registered organization, whether they were members in 1933 or have since joined the organization. I have applied the *Burwood Cinema Case* (1) to them. It will appear that some of the persons included *nominatim* in the present award should not have been so included by name, but so many of them as are now or may become members of the Association, may lawfully be included and be bound as members of the Association.

Declaration accordingly.

Solicitors for the applicant, *Blackburn & Tredinnick*, Melbourne, by *Sullivan Bros.*

Solicitors for the respondents, *Salwey & Primrose.*

J. B.

(1) (1925) 35 C.L.R. 528.