[HIGH COURT OF AUSTRALIA.]

SHAW . . . . . APPELLANT;
COMPLAINANT,

AND

UNITED FELT HATS PROPRIETARY LIMITED RESPONDENT.
DEFENDANT,

ON APPEAL FROM A COURT OF PETTY SESSIONS OF VICTORIA.

H. C. OF A. 1927.

MELBOURNE, *Oct.* 6.

Higgins, Gavan Duffy, Powers, Rich and Starke JJ.

Industrial Arbitration—Award—Minimum piece-work rates—Different rates for different employers—Successor, assignee or transmittee of business—Amalgamation of businesses—Commonwealth Conciliation and Arbitration Act 1904-1926 (*No.* 13 *of* 1904—*No.* 22 *of* 1926), *sec.* 29 (*ba*).

The defendant took over the hat manufacturing businesses of the D. Co. and the F. Co., both of which companies were bound by an award of the Commonwealth Court of Conciliation and Arbitration fixing minimum rates of payment for piece-work. By agreement the rates for finishing soft hats were fixed, for the D. Co., at 5s. per dozen, and, for the F. Co., at 4s. $4\frac{4}{5}$d. per dozen. The complainant was in the employment of the D. Co. when its business was taken over, and he remained in the employment of the defendant at the premises which had been occupied by the D. Co. until those premises were closed. While employed there he was paid 5s. per dozen for finishing soft hats. Subsequently the defendant removed the plant of the D. Co. to the premises of the F. Co., and shortly after the removal employed the complainant there. While there employed the complainant was paid only 4s. $4\frac{4}{5}$d. per dozen for finishing soft hats. He claimed that he was entitled to be paid at the higher rate.

Held, that it had not been established that the business in which the complainant was employed at the premises of the F. Co. was the business formerly carried on by the D. Co., and that the defendant was not bound, by sec. 29 (*ba*) of the *Commonwealth Conciliation and Arbitration Act* 1904-1926, to pay the complainant at the rate fixed for the D. Co.

H. C. OF A. 1927.

SHAW v. UNITED FELT HATS PTY. LTD.

APPEAL from a Court of Petty Sessions of Victoria.

At the Court of Petty Sessions at Northcote a complaint was heard whereby Joseph Shaw claimed against United Felt Hats Pty. Ltd. payment of the sum of 10s. for work and labour done. This amount was alleged to be due under an award of the Commonwealth Court of Conciliation and Arbitration, which prescribed minimum rates of payment for piece-work. The rates had been fixed by agreement between the employers and employees, and were not the same for all the employers. For "finishing soft hats" the award prescribed, in respect of Fairfield Hat Mills Pty. Ltd.: "Fur, soft, by hand throughout, 4s. $2\frac{3}{5}$d. per dozen . . . light colours (extra), $2\frac{2}{5}$d. per dozen,"—a total of 4s. $4\frac{4}{5}$d. per dozen. In respect of Denton Hat Mills Pty. Ltd. the rate fixed for "fur, soft, by hand throughout," was 4s. $9\frac{3}{5}$d. per dozen, with an extra payment for "light colours" of $2\frac{2}{5}$d. per dozen,—a total of 5s. per dozen.

The complainant was in the employment of Denton Hat Mills Pty. Ltd. when, in June 1925, the business of that company was taken over by the defendant. He continued in the employment of the defendant at the mills, which had been occupied by Denton Hat Mills Pty. Ltd. until 10th October 1925. On that date the Denton Mills were closed, and the defendant removed the plant to the mills of Fairfield Hat Mills Pty. Ltd., which, together with other similar businesses, had also been taken over by it. On 8th December 1925 the defendant employed the complainant at the Fairfield Mills. During his employment by the defendant at the Denton Mills the complainant was paid 5s. per dozen for finishing light coloured soft hats, but while employed at the Fairfield Mills he was paid only 4s. $4\frac{4}{5}$d. per dozen for the same work. For the week ending 14th April 1927 he received £3 13s. 7d. for $16\frac{7}{12}$ dozen hats, and he claimed a further 10s. as representing payment at the higher rate.

The Police Magistrate who constituted the Court decided that the complainant was not entitled to recover the amount claimed inasmuch as, in respect of the business carried on by it in the Fairfield Hat Mills, the defendant had complied with the award by paying to its employees in that particular mill the rates of pay fixed by

the award for Fairfield Hat Mills Pty. Ltd. The Police Magistrate accordingly dismissed the complaint with £5 5s. costs.

Against that decision the complainant now, by way of order to review, appealed to the High Court. On the hearing of the appeal counsel for the respondent stated that in the respondent's view an important question of law was involved, which it desired to have decided, and it did not contend that the appeal was not competent under sec. 39 (2) (*b*) of the *Judiciary Act* 1903-1926, and sec. 150 (5) of the *Justices Act* 1915 (Vict.), because of the fact that the amount of the claim did not exceed £5.

Rundle, for the appellant. The respondent is the successor, assignee or transmittee of all the businesses taken over by it, which are affected by the award, and it is bound by the award in respect of those businesses (*Commonwealth Conciliation and Arbitration Act* 1904-1926, sec. 29 (*ba*)). Therefore, in respect of its business at Fairfield, the respondent is under an obligation to obey the provisions of the award relating to both the Denton and Fairfield Mills. The fact that the award fixes different minima for those mills does not create any inconsistency, as the defendant can comply with the award by paying the higher rate: see *Australian Boot Trade Employees Federation* v. *Whybrow & Co.* (1). That case has not been overruled on this point. Alternatively, the evidence shows that the respondent transferred the business of the Denton Mills to Fairfield, and the employment of the appellant at Fairfield was a continuation of his employment in the Denton business. The respondent was the successor of the business of Denton Hat Mills Pty. Ltd., and, as such, was bound by sec. 29 (*ba*) to pay the appellant at the rate fixed for the Denton Mills.

Owen Dixon K.C. and *Flannagan*, for the respondent, were not called upon.

HIGGINS J. Shortly stated, the question raised by this order nisi to review is whether an employee, under an award of the Commonwealth Court of Conciliation and Arbitration, is to be paid

(1) (1910) 10 C.L.R. 266.

H. C. OF A. 1927.

SHAW v. UNITED FELT HATS PTY. LTD.

Higgins J.

4s. 4⅘d. per dozen, the minimum rate fixed in respect of the Fairfield Hat Mills for finishing soft hats, or 5s. per dozen, the minimum rate fixed in respect of the Denton Mills. The work done is precisely the same; but the Fairfield Mills employees agreed to a lower rate than the Denton Mill employees, and the Court of Conciliation is bound to accept the agreement.

Shaw, the appellant, was employed at the Denton Mills until the amalgamation of the mills in June 1925, and, subsequently, until those mills were closed. Then, from 10th October 1925 until 8th December 1925, almost two months, he had no work at the trade. So long as he continued at the Denton Mills, he was paid at the rate of 5s. per dozen. From 8th December he was employed at the Fairfield Mills, and both these concerns had been taken over in the amalgamation, together with other businesses, by United Felt Hats Pty. Ltd. The appellant says that while he was employed at Fairfield he ought to have been paid at the old Denton rates. As he was doing the same work under the same conditions at both places, this is a very natural thing for him to think; but if—whatever moral or other obligation there may be—there is no legal obligation to pay the higher rate, we must dismiss this appeal.

That brings us to the question of the effect of sec. 29 (*ba*) of the *Commonwealth Conciliation and Arbitration Act* 1904-1926, which provides: "29. The award of the Court shall be binding on . . . (*ba*) in the case of employers, any successor, or any assignee or transmittee of the business of a party to the dispute or of a party bound by the award, including any corporation which has acquired or taken over the business of such a party." United Felt Hats Pty. Ltd. is a corporation which has taken over the businesses of the Denton and Fairfield and other mills. The only way I can see of reading that section as applicable to the amalgamation is to adopt the principle of *reddendo singula singulis*, business by business. In other words, as some covenants run with land, so the obligation runs, as it were, with the business. The criterion is the business; and it appears to me that, unless there is evidence establishing that the business upon which the appellant is employed is the old Denton business, it must be assumed that the place is the criterion of the business; and, as he is not working at the Denton Mills but

is working at the Fairfield Mills, he must be paid at the Fairfield rate. I only say that that is the prima facie test, and I wish to guard myself against deciding that the Denton business could not, under certain circumstances, be proved to have been transferred bodily, without qualification or exception, to Fairfield. But there is no proof of that at all. The result is, in my opinion, that the appeal should be dismissed, and the order nisi discharged.

The proper remedy for the union and its members is to go to the Arbitration Court and to ask that Court to make such variation as may seem to that Court to be just. As I have already said, the award was based on an agreement by consent. The Arbitration Court cannot therefore be held responsible for the difficulties which have arisen.

GAVAN DUFFY J. I think it unnecessary to express any opinion as to whether the amalgamation which took place in this case comes within the provisions of sec. 29 (*ba*); but if it does, then I think it necessary for the complainant to show that he has been employed in the particular business in respect of which the rate in question was fixed. That admittedly has not been done in this case, and, therefore, the complainant cannot succeed. The result is that the order nisi must be discharged.

POWERS J. I agree that the appeal should be dismissed, for the reasons given by my brother *Higgins*; and I also agree with what he has said as to an application to the Arbitration Court. I would point out that, although the award has worked satisfactorily for so many years, it is now impossible to continue it satisfactorily to either of the parties without variation. An application should be made to the Arbitration Court to make the award apply to the circumstances existing since the amalgamation of the different businesses carried on when the award was made.

RICH J. There is no evidence in this case that Shaw was employed in the Denton business, and, assuming that sec. 29 (*ba*) applies to the case of an amalgamation, it must be read *reddendo singula singulis*. During the argument I pointed out that the Arbitration

H. C. OF A. 1927. SHAW v. UNITED FELT HATS PTY. LTD. Starke J.

Court was the appropriate tribunal to deal with this case. That suggestion has been strengthened by what has fallen from my brothers *Higgins* and *Powers*. The appeal should be dismissed with costs.

STARKE J. I rest my decision on the narrow ground that it is not established in point of fact that the complainant was employed in the business of the Denton Hat Mills to which the defendant succeeded.

Appeal dismissed with costs.

Solicitor for the appellant, *G. A. Rundle.*

Solicitors for the respondent, *Derham & Derham.*

E. F. H.