[HIGH COURT OF AUSTRALIA.]

JOHN HEINE & SON LIMITED . . . APPELLANT;

AND

PICKARD . . . . . RESPONDENT.

H. C. OF A. 1921.

SYDNEY, *Nov.* 17.

Knox C.J., Rich and Starke JJ.

Industrial Arbitration—Award—Minimum rate of wages—Apprentices—Federal or State minimum.

By an award of the Commonwealth Court of Conciliation and Arbitration it was provided that "Except as provided in sub-clause (*g*) the minimum rates of wages to be paid by any respondent to apprentices shall be as follows:—" (Then followed certain sums per week for each year of service.) Sub-clause (*g*) provided that an employee who complied with certain conditions should be deemed to be an apprentice, and concluded: "And the minimum rate to be paid to him from time to time shall not be less than the minimum rate prescribed by or under the appropriate State law."

Held, that where the appropriate State laws prescribed for such an employee a minimum rate less than that prescribed by the Federal award he was entitled to receive payment at a rate not less than the minimum rate prescribed by the Federal award.

APPEAL from a Stipendiary Magistrate of New South Wales.

Before a Stipendiary Magistrate of New South Wales exercising Federal jurisdiction, an information was heard whereby Harry Pickard alleged that John Heine & Son Ltd., which was bound by an award of the Commonwealth Court of Conciliation and Arbitration of 14th June 1921, wherein the Amalgamated Society of Engineers was the claimant and the company (among others) was a respondent, committed a breach of such award by failing to pay to Arthur Stephen McNamara, an employee in its employ, the sum of £20 11s. 8d. for wages earned by him between 30th May 1921

and 10th September 1921, such non-payment being contrary to the award. A complaint by McNamara to recover the same sum from the company, as being money in respect of which the company was indebted to McNamara for the balance of wages payable in respect of the same period, was heard at the same time.

McNamara was, on 8th August 1916, apprenticed to the company for a period of five years in the trade of a fitter, by articles of apprenticeship which expired on 10th September 1921. By an award of the Court of Industrial Arbitration of New South Wales of 4th December 1919 as varied by an order of that Court of 22nd October 1920 (which applied to McNamara) the minimum rate of wages payable to apprentices during the fifth year of their service was fixed at 47s. 6d. per week, and during the period 30th May 1921 to 10th September 1921 McNamara was paid at that rate. By an award of the Commonwealth Court of Conciliation and Arbitration, made in a dispute in which the Amalgamated Society of Engineers was claimant and which award was binding on the company, which was one of the respondents, it was provided by clause 2 as follows (so far as is material) :—"(*a*) Except as provided in sub-clause (*g*) the minimum rates of wages to be paid by any respondent to apprentices shall be as follows :— . . . Fifth year—70s. . . . (*g*) Notwithstanding the premises any employee under 21 years in the employment of a respondent on 1st January 1921 on terms permitted by the appropriate State laws shall be deemed to be an apprentice if either (*a*) he has been bound before that date for a period not exceeding six years or if (*b*) within two months after the date of the award he become bound as an apprentice under a suitable indenture for five years' apprenticeship binding the employer in either case (*a*) or (*b*) to teach the employee one of the hereinbefore mentioned trades in or in connection with which the employee has been working. And the period of his working in or in connection with that trade before the date of the award shall be treated as part of the period of apprenticeship. And the minimum rate to be paid to him from time to time shall not be less than the minimum rate prescribed by or under the appropriate State law." The Magistrate held that the rate of wages payable by the company to McNamara for the period in question was that

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fixed by the award of the Commonwealth Court of Conciliation and Arbitration; and he therefore convicted the company of the offence charged, and fined it one shilling with costs, and he also ordered the company to pay to McNamara the sum of £17 1s. 8d., being the difference between the sum actually paid and that which should have been paid, with costs. On the application of the company the Magistrate stated a special case setting out the above facts (*inter alia*), and asking the question whether his determination was erroneous in point of law.

The special case now came on for hearing before the High Court.

Leverrier K.C. (with him *Ferguson*), for the appellant. The effect of sub-clause (*g*) of clause 2 of the Federal award is, in the case of the particular apprentices there referred to, to substitute the minimum fixed by the appropriate State law, that is, the State award, for that fixed by sub-clause (*a*) of clause 2. If the effect of sub-clause (*g*) is that the minimum rates prescribed by sub-clause (*a*) may be paid to the particular apprentices referred to in sub-clause (*g*) unless the minimum rates prescribed by the State award are higher than those prescribed by sub-clause (*a*), then sub-clause (*g*) is useless; for the State award in fixing a higher minimum than the Federal award is not inconsistent with that award within the meaning of sec. 30 of the *Commonwealth Conciliation and Arbitration Act* 1904-1920 (*Australian Boot Trade Employees' Federation* v. *Whybrow & Co.* (1); *Federated Engine-Drivers' and Firemen's Association of Australasia* v. *Adelaide Chemical and Fertilizer Co.* (2)), and would govern the rate to be paid.

Flannery K.C. (with him *Addison*), for the respondent. The language of clause (*g*) is clear, and means that the minimum rate which is to apply to the particular class of apprentices is the higher of the minima fixed by the Federal award and the State law respectively.

KNOX C.J. In this case I am clearly of opinion that the Magistrate's decision was right. It seems to me that the words of sub-clauses (*a*) and (*g*) of clause 2 are quite unambiguous, and we are

(1) 10 C.L.R., 266. (2) 28 C.L.R., 1.

not called on to find a solution of the question why they were put there. Looking at sub-clause (*a*) first, it deals with the minimum wages to be paid to apprentices and nothing else. Then it begins with an exception—"Except as provided in sub-clause (*g*)." The word "except" introduces necessarily so much of sub-clause (*g*) as relates to the minimum rates of wages and not to any other matter. Then, reading that into sub-clause (*a*), it is as follows: "*Except that the minimum rate to be paid to an apprentice from* time to time shall not be less than the minimum rate prescribed by or under the appropriate State laws, the minimum rates of wages to be paid by any respondent to apprentices shall be," &c. Reading the sub-clause that way, I can see no possible ambiguity, and where words in their ordinary sense are unambiguous it is not for the Court to raise an ambiguity by considering that if used in that sense they may have some unusual effect. In this case they have the effect of producing a discrimination whether read in the way for which Mr. *Leverrier* contends or in that for which Mr. *Flannery* contends, the only difference being that in the one case the discrimination would be in favour of one class of apprentices and in the other case against that class.

That being so, I can see no reason for saying that the Magistrate's decision was wrong, and in my opinion the appeal should be dismissed.

RICH J. I agree.

STARKE J. I agree. One of the arguments which Mr. *Leverrier* relied on was that the provision at the end of sub-clause (*g*) is useless or, at all events, unnecessary. The argument fails to observe, as was pointed out during argument, that the provision has the effect of making the obligation an obligation of the Federal award and not merely an obligation having the sanction of the State law. One result of that has been that a prosecution for a contravention of the Federal award has been launched and has succeeded. But for the provision in question it would have been impossible for such a result to have followed. This merely shows that the provision is not so useless or unnecessary as might be thought. On an examination of sub-clause (*g*) it appears that the provision in this sub-clause