No 15 of 1935

In the High Court
of Australia

Robinson & Ors
v.
Victorian Railways
Commissioners

Reasons for judgment
1. Knox CJ
2. Isaacs J.
3. Higgins J.
4. Rich J
5. Starke J.

ROBINSON & OTHERS V THE VICTORIAN RAILWAYS COMMISSIONERS.

Judgment. Knox C.J.

The question in this case turns on the construction of an agreement made between the Respondents and certain branches of the Coal & Shale Employees Federation for the purpose of regulating the conditions of employment of persons working in the Wonthaggi coal mines.

By clause 15 of that agreement it is provided that the minimum wage for efficient miners employed as coal hewers or brushers shall be 19/7 per shift.

Clause 9 of the agreement under the heading "Dirt Scale" provides by sub-clause (a) that certain refuse occurring in the seam

is to be paid for at specified rates, by sub-clause (b) for payment for dirt ordered to be filled out, by sub-clause(c) that the maximum quantity of dirt or foreign matter allowed in a skip without a fine shall be 17 lbs and that if that quantity be exceeded a fine of 3d. for each 7 lbs in excess shall be imposed and by sub-clause (d) for the method of payment where a small band of coal occurs in or under a dirt seam.

The question at issue is whether the respondents are entitled to make deductions under clause 9(c) of the agreement from the amount payable to a miner if the effect of such deduction is to reduce the nett amount payable to him below 19/7 per shift.

The Supreme Court by majority - Sfhutt & MannJJ ; Weigall J. dissenting - upheld the contention of the respondents.

I agree in the conclusion reached by Weigall J. and in the reasoning by which he supported that conclusion. He said " For the plaintiffs it was contended that these deductions are specified by clause 9 as factors which shall or may operate in ascertaining the workers' wage, and that, though in that clause called "fines" or "penalties" they are not such in any real sense, and are not enforceable or operative otherwise than as elements in ascertaining the wage earned. In my view this contention is correct. In the light of the evidence given at the trial the general effect of the agreement in question seems to me to be as follows - The wage earned by such workers as the plaintiffs in respect of each skip loaded by them is to be a sum to be calculated at the rates fixed by the agreement on the weight of the loaded skip, but to be diminished to the extent specified by clause 9 in respect of any excess over 17 lbs of dirt found

by screening to have been included in the load." x x x x x x x

"It ~~substantially~~ (the fine) is substantially no more than a deduction to be made from a gross sum before ascertaining the net sum representing the payment to be made to the worker in respect of the shift. If, as the result of such deduction, the worker is found to have earned in respect of such shift less than 19/7d. I think that clause 15 requires that for such shift the worker shall nevertheless be paid 19/7d. In other words, I think that clause 15 does not allow clause 9 to prevent the worker from receiving 19/7d. a shift as a minimum wage and in any event."

Agreeing as I do in this view of the ~~construction~~ meaning of the agre ment I am of opinion that the appeal should be allowed and the judgme of the County Court restored.

High Court of Australia
Burt Casey
(Ph 1 to 4)

ROBINSON

v

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JUDGMENT. .... MR. JUSTICE ISAACS.

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JUDGMENT. ..... MR. JUSTICE ISAACS.

This appeal turns on the true construction of part of clause 15 of the agreement, viz. the words "Minimum Wage/. / The minimum " wage for efficient miners employed as coal hewers or brushers ~~may~~ " shall be 19s. 7d. per shift. "

The rival arguments may be substantially stated thus.

The ~~appellants~~ appellants maintain that these words secure to them 19/7 per shift notwithstanding any fines under clause 9 of the agreement, while the respondent's contention is that the words secure to the appellants 19/7 per shift subject to those fines.

The matter must be determined by construing the crucial words in ~~xxxx~~ relation to the rest of the agreement.

Clause 15 of the agreement is headed Shift Rates, and there is a list of classified employees ~~with~~ varying rates attached to each. The list does not include coal hewers or brushers. Then, still as part of ~~xxx~~ clause 15 occur the words I have quoted. After those words provision is made for workers unable to gain the minimum wage for any class of work under the agreement. So far there would be a clear right of coal hewers and brushers to 19/7 per shift.

Clause 9 however makes provision for "Dirt scale". Paragraph ~~(x)~~ (a) relates to refuse over 2 inches thick and left standing

in a seam, and makes provision for a certain allowance to the workers. "Paragraph A" relates to stone or refuse falling with the coal and which cannot be kept up. A certain allowance is also made for that.

Paragraph (b) relates to dirt ordered to be filled out. Again an allowance is made for that.

It is paragraph (c) which in its relation to clause 15 gives rise to the rival contentions. It says:- "The maximum quantity " of dirt or foreign matter allowed in a skip without a fine "shall be 17lbs: from 17 lbs to 24lbs. a fine of 3d shall be "imposed and so on, an additional fine of 3d for every 7 lbs."

Then we find these words:-

"These penalties to apply only to the skip or skips in which "the dirt or foreign matter is found. The Management reserves the "right to ~~dismiss~~ dismiss any man for repeated offences " or serious offences."

I do not find it necessary to determine whether on the one hand the words "fine/ and offences"have a quasi-technical meaning /indicating contravention of rules and consequent punishment /or whether on the other they are merely strong words for causes of deductions from earnings. What is clear to me is that they show plainly both parties agreed that to exceed 17 pounds of dirt in a skip was inexcusable conduct on the part of the employee, and beyond the fair margin of efficient workmanship.

Reading the document therefore as a whole I construe the relevant passages thus.

Efficient coal hewers and brushers are secured in a minimum wage of 19/7 per shift on the basis of their adhering to the other terms of the agreement.

These other terms, first secure to them stated allowances for the difficulties of existing dirt and refuse but not as sent up mixed with the coal. As appears from the evidence it is then "the duty of the miners to pick out the coal as far "as possible and load it into skips." At this point paragraph (c) operates. In recognition of the fairness of allowing some margin of refuse in the coal without complaining of negligence the parties agree on a limit of 17 lbs. per skip. That is to be the limit compatible with workmanlike care. Up to that quantity there is conventionally performance of the agreement, be beyond that there is conventionally a breach act by the miner, and for that breach of agreement there is proportionately to the extent of the breach an agreed measure of penalty.

The agreed minimum of 19/7 per shift assumes that the workman performs his contract as agreed, that is that he observes the conventional limit of care. The agreed minimum is therefore subject to the agreed measure of penalty for depar/ture from the conventional standard of workmanlike diligence in separating coal from refuse. That is the reasonable construction

on the face of the agreement. But a decisive test may in my opinion be applied. Suppose the negligence so great that nine-tenths of every skip in the shift is dirt so that the fines not only leave nothing to be paid in respect of any single skip but shew a balance owing for fines in respect of that skip could it reasonably be contended that a clear sum of 19/7 was nevertheless payable as the minimum wage for the shift and no sum payable as a fine ? In my opinion clearly not. But if not, it shews that the wage of 19/7 is subject to the provision as to fines.

The appeal should consequently be dismissed.

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on piece-

ment. Higgins J.

In my opinion, the judge of the County Court, was right, for the re the sons stated by him; but the difference of opinion is not surprising as to the 'um construction of an agreement so slovenly, if we put aside, as we must, what we may know of the ways of miners. Clause 9 of the agreement - with the heading "Dirt Scale" is inserted among the complicated provisions as to piecework earnings; it relates to those earnings only, and does not affect the shift rates for time wages, or the minimum wage provisions - all of which appear in the same clause 15. But for the fact that in clause 9 the words "fine""penalties""offences" are used, the case would not be arguable. These words, however, as is admitted by the majority of the justices of the Supreme Court, cannot be enforced otherwise than by deduction from the wages; the fines are not true fines, substantively enforceable. The position is similar with regard to fines for taking another man's tools (cl.21). Such a fine is expressly "to be deducted from his [the miner's] earnings"; but, from the nature of the offence, and the position of the provision after clause 15 as to minimum wage, I should think that the fine under clause 21 could be deducted even from the minimum wage. Fines under clause 9 are not for the mere purpose of discipline, of punishment; they are to a large extent a gauge of the value which the miner is giving by his piecework; and if his "dirt" is excessive, the remedy is dismissal (Cl.9(c)). I respectfully dissent from the view that the operation of clause 9 "depends entirely upon the volition of the workman himself". From the nature of the case, miners cannot avoid sending some dirt with the skips; but in order to prevent them from earning their piecework pay too easily, by sending up dirt instead of solid coal, they are limited to 17 pounds of dirt per skip "without a fine". Sometimes a man is put to work at a place where the dirt is excessive and without his fault; and the deduction of 3d, 6d, 9d, 1/- per skip is a kind of check on him, so that he may not earn more wages by sending up excessive dirt. At the same time, as a check on the employer, who has the selection of the place where the man must work, the man must receive at least 19/7d per shift. "The maximum wage for efficient miners employed as coal hewers or brushers shall be 19/7 per shift". That is to say, the net earnings of the man on piecework is to be measured with 19/7d per day, and if they fall short of 19/7d, the difference has to be made up to him. It is a mere case of piecework earnings with a timework minimum.

It has not been contended that this clause as to minimum wage applies

to any hewers and brushers who may be employed on time work, [illegible] been treated as a minimum wage provision for "efficient" miners on piece-work; and by "efficient" miners I understand those who are not under the special provision for men who are unable from any cause to earn the minimum rate. Probably this treatment is right; but if it had been contended as I suggest, the contention would have been more formidable for the miner to meet than the present. In my opinion, the appeal ought to be allowed.

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JUDGMENT. RICH J.

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v.

THE VICTORIAN RAILWAY COMMISSIONERS.

JUDGMENT. RICH J.

I agree with the conclusion arrived at by the majority of the Judges of the Supreme Court.

Clause 15 does not prescribe a standard wage in all eve It is not to be treated as isolated from the rest of the agreement. "Much turns in each case on the context. The document to be construed "must be read as a whole, and in interpreting particular words these cannot be read without reference to what comes before and after", Lord Haldane L.C. Toronto Cuburban Railway v. Toronto Corporation, 1915 A.C. 590 at p. 597

Reading then clauses 9 and 15 together the employers agreed to make the allowances in 9 (a) (aI) and (b) and the employees conceeded that dirt or foreign matter over a maximum quantity amounted to a failure to attain the requisite standard of efficiency. This plac the fine on a different plane from the minimum wage provision. The result of which is that there is no inconsistency between conceeding that

the miner is credited with 19/7 as a minimum wage and debited with the fine in respect of a particular skip.

The appeal should be dismissed.

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JUDGMENT STARKE J.

The judgment of the majority of the Supreme Court was, in my opinion, right. I have nothing to add to what was said by Schutt and Mann JJ. in that Court in support of their conclusion, and therefore simply concur in the reasons which they have so clearly expressed.