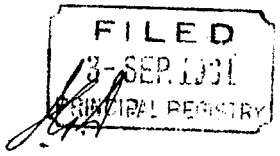
In the High Court of Australia

Australian Textile Workers Union and Alexandria Spinning Mills and others

Reasons for Judgment of Mr Justice Starke



AUSTRALIAN TEXTILE WORKERS' UNION AND ORS. V. ALEXANDRIA ETC MILLS LTD &ors

JUDGMENT STARKE J

Summons under Section 21AA of the Commonwealth Conciliation and Arbitration Act 1904-1930, for a decision on the question whether a dispute exists or is threatened impending or probable as an industrial dispute extending beyond the limits of any one State, between the Alexandria Spinning Mills Ltd and other employers on the one hand, and the Australian Textile Workers' Union and a large number of persons in the employ of the said employers on the other.

So far as the question involves any matter of law, the following propositions may now be regarded as settled:

1. The dispute must arise out of the disagreement of the parties concerning their own industrial relations.

2. The dispute must be real and genuine, and whether it be real and genuine is always a question of fact.

3. The dispute must exist in two or more States, or in other words extend over Australian territory comprised within two or more States (Collieries Case 42 C.L.R. 558).

The employers are engaged in the textile industry in New South Wales, and all have mills and factories there. The Amalgamated Textiles (Australia) Ltd., one of the employers, also established, in January 1931, a factory at Wodonga in the State of Victoria, and employs there a few person about nine or ten, all told. The other employers, however, have no mills or factories in Victoria, and no employees in any State but New South Wales. Altogether some 5,000 persons are employed by the New South Wales employers in the textile industry. The employees in New South Wales are working under awards made pursuant to the State Industrial Arbitration Acts 1912-17, whilst those employed by Amalgamated Textiles (Australia) Ltd at Wodonga are given the benefits of the same awards, though they do not extend to Victoria. In Victoria, Tasmania, South Australia, and Western Australia, employers and employees in the textile industry are working under awards made by the Commonwealth Court of Conciliation and Arbitration, except in the cotton section, which appears to be unregulated by any federal award. The awards of the State industrial tribunals of New South Wales prescribe wages and conditions of employment more onerous than those of the federal tribunal. And, in New South Wales, taxation and laws in relation to hours of labour, child endowment, and workers' compen-

tion, also press more heavily upon employers than is the case in Victoria. According to the evidence, the effect of these various provisions is to add approximately ten per centum to the wages bill in New South Wales, and thus place the employers there at a disadvantage as compared with their Victorian competitors. "The broad fact" as deposed to in the evidence, "is "simply that it will be impossible for the New South Wales manufacturers to "manufacture at a profit; it will be almost impossible for them to continue "at all, the loss as compared with Victoria will be such that it will not "be very long before they will have to go out of business". The employers are dissatisfied with the position, and desire equality with their competitors in Victoria and the other States. Consequently, they served a log of wages and conditions of employment upon all their employees, including those employed by Amalgamated Textiles (Australia) Ltd at Wodonga, and upon the Australian Textile Workers' Union, claiming practically the rates and conditions prescribed by the awards of the Federal tribunals. But, as this claim was refused, or not assented to, the employers asserted that an industrial dispute extending beyond the limits of a State had arisen, which might be settled by the award of one or other of the tribunals constituted under the Commonwealth Conciliation and Arbitration Act 1904-1930. In this way it was hoped that the awards in relation to the textile industry operating under the State law would become inoperative because inconsistent with the federal law (Cf ex parte McLean 43 C.L.R. 472). The substance, however, of the dispute, is that, in the textile industry, wages and conditions of employment in New South Wales should be brought into line with those prevailing in the other States. The whole character of the dispute as an interstate dispute therefore depends upon the inclusion within its ambit of the employees (present and future) of Amalgamated Textiles (Australia) Ltd. at Wodonga. Yet the wages and conditions of employment of the employees at Wodonga are wholly within the power of the Company itself: it can lawfully place all these employees upon the level of the employees working under the awards of the Federal tribunal. And it must be observed that the Wodonga factory was only established in order that Amalgamated Textiles (Australia) Ltd might take advamtage of the rates and conditions prevailing in Victoria under the Federal award. The General Manager of the Company was asked why certain machinery of the Company was removed from New South Wales, and this was his answer: "I discussed the

"matter with my Directors, and we decided that if the differences in the "rates between Victoria and New South Wales were to continue, we would "have to move, so far as Albury was concerned, to Wodonga. We have a site "already under option with a view to moving the whole thing there". To the question "Moving the whole of the Albury factory there?" he replied: "Yes; "we realise that we are in a better position in that respect than most of "the other manufacturers in New South Wales".

This evidence makes it clear to my mind that the paper demand or service of the log of wages and conditions of employment upon the Wodonga employees was conceived only as part of a proceeding requisite to enable the federal tribunal to regulate an industry in which a dispute relating to wages and conditions of employment in one State only was concerned.

The questions raised by the Summons are decided as follows:

1. No.

2. No.

The parties for whom Mr Menzies K.C. and Mr Lewis appear must pay the costs of the Summons.

Certify for Counsel.

.....