

17 June 1935

NO. 28 of 1935

v

THOMAS PLAYFAIR LIMITED

JUDGMENT OF HIS HONOUR, THE ACTING CHIEF JUSTICE

In this case an information was preferred alleging that the appellant was employed subject to an Award of the Commonwealth Court of Conciliation and Arbitration made on 8th September 1932 and alleging that his employer employed him in Sydney on Boxing Day to do certain work in a retail butcher's shop between the hours of 7 and 9 on that day, and that the defendant did not pay the employee for the work for the time he was on duty at the rate of double time.

The Magistrate dismissed the information and he was asked to state a case, which he proceeded to do. In the case, the Magistrate says that he determined that the facts which are stated were insufficient to support the Information. He held that sub-section (f) of section 20 of the Award provided that work might be done in butchers' shops between the hours of 6.30 and 9.30 on Boxing Day without extra payment beyond the weekly wage. He considered that no provision was made for double payment.

The question ^{is} ~~was~~ whether his determination was erroneous in point of law.

In the Award holidays are provided for by clause 20 (a). It entitles the employees to the specified holidays without deduction of pay. Amongst those holidays is Boxing Day. Then in clauses (c), (d) and (e) special provisions are made for work and pay in Queensland, and in (g) in Katoomba upon particular holidays. Clause (f) is introduced as a permissive or enabling clause, enabling work to be done in retail butchers' shops between the hours of 6.30 and 9.30 on, amongst other days, Boxing Day. One reason for the insertion of that clause was to obviate the inconvenience which would result from butchers' shops being closed

for a number of days, such as fall in Easter-time and Christmas-time. The clause prevents the operation of State law and enables a master-butcher to require the employees to attend the shop during those hours. Then, clause (i) begins by stating exceptions :-

" Except as hereinafter prescribed ". This, I take it, referred to the provisions with regard to Queensland and with regard to Katoomba. Then it goes on to say that an employee, other than a casual employee, who is required to work on any of the holidays therein prescribed is to be paid at the rate of double time - that is, at the rate of one day in addition to the weekly wage. That appears to me to entitle an employee, who is required to work on one of those holidays - in this case on Boxing Day - to ask for pay at the rate of a day's pay in addition to the weekly wage to which he is otherwise entitled.

In my opinion the appeal should be allowed with costs and the question answered in the affirmative and the case remitted to the Magistrate.

Starke, Dixon, Evatt and McTiernan JJ. concurred.

ORDER OF THE COURT : Appeal should be allowed with costs,
the question answered in the
affirmative and the case remitted
to the Magistrate.