of 1936. No 12

IN THE HIGH COURT OF AUSTRALIA.

A.J.Swain & Co.Ltd., and Colton Palmer & Preston Ltd.

V.

The Australian Saddlery, Leather, Sail, Canvas, Tanning, Leather Dressing and Allied Workers Trades Employees Federation.

REASONS FOR JUDGMENT.

Judgment delivered at Melbourne

on 25th September, 1936.

H. J. GREEN, Government Printer, Melbourne.
C.5060.

A.J.SWAIN AND COMPANY LTD. V. THE AUSTRALIAN SADDLERY ETC EMPLOYES FED'N

COLTON PALMER & PRESTON LTD. V. DITTO.

JUDGMENT STARKE J.

Summonses under sec. 21AA of the Commonwealth Conciliation and Arbitration Act 1904-30 were issued by A.J.Swain and Co. Ltd. and Colton Palmer and Preston Ltd. respectively to determine the following questions:

(1) Whether (so far as concerns the applicant) a certain alleged industrial dispute submitted to the Commonwealth Court of Conciliation and Arbitration by the said Federation on or about the 6th March 1936 in the proceedings numbered in that Court No 28 of 1936 or any part of such alleged industrial dispute exists or is threatened or impending or probable as an industrial dispute extending beyond the limits of any one State, within the meaning of the Commonwealth Conciliation and Arbitration Act 1904-30.

(2) Whether (so far as concerns the applicant) His Honour Chief Judge Dethridge had, at any relevant time, any jurisdiction to refer the said alleged industrial dispute to the Commonwealth Court of Conciliation and Arbitration.

The Federation is registered under the Act as "The Australian Saddlery Leather Sail Canvas Tanning Leather Dressing and Allied Workers'Trades' Employees' Federation", and is known as The Leather Canvas and Allied Trades Federation. The Branches are composed of two sections in each State - (1) Saddlery Leather and Canvas section, (2) Tanning and Leather Dressing section. The Federation has obtained awards in each of these sections from the Arbitration Court. The Federation prepared a Log of Wages and Conditions of Work for employees engaged in the Saddlery Leather and Canvas section of the industry, and served this log upon employers in the States of Victoria, New South Wales, Queensland, South Australia, and Tasmania. The South Australian employers were served early in 1936, but did not accede to the log; the applicants on these summonses made no reply whatever to the demands ~~served~~ made upon them. Chief Judge Dethridge summoned a compulsory conference under sec. 16A of the Act, but no agreement was reached, and, in pursuance of sec. 19(d) , the Chief Judge referred the dispute to the Arbitration Court, "that is to say the dispute existing between the said organisation and its members employees of the said employers of the one part, and the said employers of the other part as to the matters set forth" in the Log of Wages and Conditions of Work. As a matter of fact, the Federation ceased, in 1923, to function in South Australia in relation to the Saddlery Leather

and Canvas section of the industry. In that year, the Arbitration Court refused to make any award in that section against South Australian employers. (See Australian Saddlery etc Federation v. Carter Paterson and Coy. 17 C.A.R. 588). The members of the Federation engaged in the Saddlery Leather and Canvas section all became unfinancial, and though, apparently, not struck off the list of members, they paid no dues and took no part in the business or affairs of the Federation. They became members of a State Union called the South Australian Saddlery and Leather Workers' Trades' Employees' Association, and made their contributions to its funds. They worked under determinations of Wages Boards made under the Industrial Acts of South Australia. The Federation, however, continued to function in South Australia in the Tanning and Leather Dressing section of the industry, and I gather that awards of the Arbitration Court are in force in South Australia in reference to that section.

It is difficult, in the circumstances above stated, to understand how any dispute arose between the Federation and the South Australian employers engaged in the Saddlery Leather and Canvas section of the industry, who did not employ any of the Federation members and whose workmen were governed by and had been working under Wages Board determinations of South Australia for thirteen years without any complaints or any expression of dissatisfaction. A letter, dated 11th March 1936, from the Secretary of the Federation to one Ellis, who was Secretary of the Federation in South Australia, explains the origin of and reasons for the claims made upon the South Australian employers. It is, so far as material, in the following terms:

"Well...the unexpected has happened as no doubt you will say when you get this letter. The old proverb - the mountain would not come to Mohommet so Mohommet hiked it to the Mount.

I thought that early this year was going to have the pleasure of personally being invited to have a drink with you, but up to date I have not been able to get across. I was to come over and endeavour to get those bone heads to join up with us, but things have been moving too rapidly here of late, that I have not been able to catch up with the amount of work I have in hand. However I hope to be over before the year is out.

I suppose you are beginning to say to yourself "What on now". Well I want your assistance, and I am writing you because I know that anything you can do will be gladly done. I am going to the Court for a new award. I have already served a new Log on the various employers in Victoria, N.S.W., Queensland, Tasmania, and South Australia, no doubt you may have heard something of this over there. I have made an application for a compulsory conference, which is set down for the 31st of this month. (Am enclosing a copy of the Log). I believe we will be successful

in getting at least a 44 hour week, with a slight increase in pay, together with several other improvements.

Now we want particularly to rope in the firm of Swains, who are the biggest menace to the Eastern States, and our greatest obstacle will come from the South Aust.employers, through their Chamber, and my difficulty will be to prove membership. I have the cards of two chaps who went to Swains, but have heard that one has died on me.

I want you to try and do for me.....is to see if you can manage to sign up a few as members on the cards which I am enclosing, and return same to me at your earliest, or at least before the end of this month. I don't care if they are saddlers, harness makers, leather goods makers, canvas goods makers, or in fact anyone who does anything in connection with our industries.

When you approach anyone, make it clear to them that it is for the purpose of proving membership that I want their names on the cards , tell them it will not cost them anything at all, but in so signing up they will not only be helping me in my fight with the bosses, but if we are successful in getting an award against the South Aust. bosses, then it will be of material benefit to them, then and then only they can become paying members if they so desire.

I hope....I have made the position clear, and if you can manage to get me a name or two, I will be most grateful, I know you will do your best, you can sign up yourself and make one, and even if you cannot get anyone else that one at least will be very helpful....."

It is clear, from this letter and from the evidence given before me -

(1) That the dispute, so far as South Australian employers are concerned, rests solely upon the service of the log and the non-acceptance of its terms.

(2) That the log was put forward by the Federation mainly for the purpose of "roping in" the"firm of Swains,who are the biggest menace to the Eastern States".

(3) That the Federation had no members, or no financial members, in South Australia who were in any way behind the log or who had suggested or supported the terms which it demanded.

(4) That the Federation had no members, or no financial members, in South Australia who were employed in the Saddlery x Leather and Canvas section of the industry. Indeed, the request was to "sign up a few as members" for the purpose of proving membership,which would "not cost them anything", so as to make it appear that the Federation had members in South Australia who were supporting the demand.

Now it has been argued that the Metal Trades Case 54 C.L.R. 387 is a conclusive authority against the applicants in this case. But that case decided a matter of law: according to the Chief Justice, the Arbitration Act authorises the making of an award which, being limited to the ambit of an industrial dispute and conferring rights and imposing duties only upon parties to the dispute and to the arbitration proceedings, prohibits one set of disputants from entering into industrial relations with strangers, save and except upon specified terms. I have,

however, to decide a matter of fact, namely the questions raised by the Summonses. The Caledonian Coal Case (No 2) 42 C.L.R. at p 579, points out that a mere paper claim and demand does not necessarily constitute a dispute. "The service of a log would be the natural way in which an attempt to give jurisdiction would be made..Indeed, in ordinary circumstances, where the remaining materials were at hand for the manufacture of a real interstate dispute, it might be enough to create one. But in this case particular difficulties were inherent in the situation." So are they in the present case. The creation or establishment of an industrial dispute is inherently difficult when employers have no members of an industrial organisation in their employ, and when demands are made upon them merely for the purpose of "roping them in" and obtaining uniform conditions in Australia, although their employees are not behind and give no support to the demands. A claim made and refused in these circumstances does not constitute an industrial dispute, and I so find as a matter of fact.

The questions in each Summons are thus determined:

(1) No.

(2) No.

The Federation will pay the costs of each Summons.

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