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IN THE HIGH COURT OF AUSTRALIA

Edward McCamley & Sons Pty.Ltd.

V.

FREESTONE

ORAL REASONS

REASONS FOR JUDGMENT

Judgment delivered at Sydney

on Tuesday, 26th November, 1946.

H. E. Daw, Gov. Print., Melb.

C.12280/45

J U D G M E N T.

LATHAM, C.J.

This is an appeal from a decision of a Magistrate convicting the appellant for an offence against the National Security Act in that contrary to Regulation 14 (2) of the National Security (Boot Trades) Dilution Regulations, the appellant, being an employer, did fail to pay a Boot Trades apprentice serving him in the fifth year of his service not less than the wage namely £6. 6. 6. specified for a tradesman for a week.

These regulations relate to the dilution of employment in the boot trade, that is, to the introduction into the trade of persons to work therein who are not, in the words of the regulations, recognised tradesmen. These persons are described as added tradesmen.

In my opinion, under the Defence Power of the Commonwealth Parliament, there is federal power to legislate for dilution of labour in industry, and for the rates of wages to be paid in industry to which schemes of dilution are made applicable. Accordingly, there is, in my opinion, under the defence power, power to provide for the wages to be paid to apprentices under a dilution scheme in the boot industry.

The regulation, as it originally stood, was in this form - "Upon employing an added tradesman an employer shall pay to any boot trade apprentice serving him in the fifth or later year of service not less than the wage so prescribed (i.e. by an appropriate industrial award etc.) for a tradesman". The words "upon employing an added tradesman", were removed from the regulations by Statutory Rule 76 of 1945. In my opinion it is immaterial that this amendment was made; there was power to fix by federal legislation under the defence power in a dilution scheme the wages to be paid to apprentices. In my opinion these conclusions follow from the decisions of the Court in the Australian Woollen Mills Case and in the McKay and Massey Harris cases. They would also follow from a much more restricted view of the defence power.

The other point taken is this; it is said that the regulation requiring payment of what I will call adult wages to a boot trade apprentice serving in the fifth or later year of service really means that an obligation is imposed to pay adult wages in the final year of service. It has not been argued that the provision confers an option on the employer to pay in the case of either a fifth or a later year. The argument is that it means the final year, which may be the fifth or later year. The answer to the argument is simply, in my opinion, that the words used are not capable of the construction suggested. The words do not refer to the "final" year. They impose an obligation to pay tradesmen's wages to apprentices who are serving an employer in either the fifth or a later year of service. This apprentice was serving his employer in the fifth year of service. He was not paid tradesmen's wages. The offence was therefore proved, and in my opinion, the appeal should be dismissed.

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ORDER: The appeal is dismissed with costs.

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Edward McCarthy & Sons Pty Ltd v. Freestone

J U D G M E N T.

RICH J.

I agree that the appeal should be dismissed.

EDWARD McCAMLEY & SONS PTY. LTD.

v.

FREESTONE.

JUDGMENT. STARKE J.

I agree that the appeal should be dismissed. Many of the decisions in this Court upon regulations in connection with industry have been somewhat extravagant, but I have no doubt that these Boot Trades Dilution Regulations are within power.

EDWARD McCAMLEY & SONS PTY LTD. v FREESTONE

ORAL JUDGMENT DIXON J.

I think that, having regard to the interpretation adopted by this Court of the defence power, regulation 14 (2) of Statutory Rule No. 255 of 1942 was a valid exercise of the power at the stage of the war at which it was adopted. I do not think the amendment made by Statutory Rule no. 76 of 1945 went outside the power as at the date it was made namely 13th May 1945. The amendment made on 23rd January 1946 by Statutory Rule No.18 of 1946 does not appear to me to be material.

I agree with the construction the Chief Justice has assigned to Regulation 14 (2) as amended.

In my opinion the appeal should be dismissed.

EDWARD
McCAMLEY & SONS PTY. LTD.

v.

FREESTONE

JUDGMENT. McTIERNAN J.

I agree that the appeal should be dismissed. Reg. 14(2) in its original and amended form is in my opinion valid. In either form it is within the defence power as contemplated by the decisions, particularly the cases referred to by the Chief Justice. I agree with the interpretation which has been given of Reg. 14(2) as amended.