

N. 4 of 1948
IN THE HIGH COURT OF AUSTRALIA

HOWARD SMITH LIMITED & ORS

V.

THE STEVEDORING INDUSTRY COMMISSION
& ORS.

ORIGINAL

REASONS FOR JUDGMENT

Judgment delivered at Melbourne
on Monday, 5th. April, 1948.

HOWARD SMITH LIMITED & ORS.

v.

THE STEVEDORING INDUSTRY COMMISSION
& ORS.

JUDGMENT.

RICH J.

THE STEVEDORING INDUSTRY COMMISSION
& ORS.

JUDGMENT.

RICH J.

In this case I assume that I have jurisdiction under sec. 75(v) of the Constitution to grant an injunction on the footing that the members of the Committee are officers of the Commonwealth pro hac vice, although it is true that counsel for the plaintiffs placed the jurisdiction on a more dubious ground and contended that sec. 75(iii) applied.

The application is for an injunction restraining the defendants from enforcing or in any way giving effect to the determination or direction made on the 18th December 1947 by the Commission that the driving and management of motor lorries used for the purpose of conveying certain goods unloaded from the vessels into such lorries from the ship's side on the wharf to dumps in the wharf yard was waterside workers' work and should only be performed by registered waterside workers, and from enforcing or in any way giving effect to the determination or direction to the same effect given by the Waterside Employment Committee for the port of Brisbane on 12th February 1948 and from applying or extending the said determination or direction to the conveying of goods unloaded from vessels in the port of Brisbane or other ports.

It seems somewhat doubtful whether the Committee has made a decision. But assuming it has made a decision, the decision is one which under the ~~Stevedoring Industry Commission~~ Act concerns a matter which can be decided, not only by the Commission on appeal, but by any court in which it is sought to enforce the decision. It is a decision made under an assignment or delegation from the Commission. It obtains its operation and takes its force from the Act and is enforceable by

a penalty under sec. 17 of the Act. The enforcement does not lie either with the Commission or the Committee. From a decision of the Committee an appeal lies to the Commission under sec. 39. In these circumstances it is material to know what unlawful act the Committee threatens or intends. Interim injunctions are not granted except to restrain some specific act which creates such a situation of jeopardy to the plaintiff's interests as makes it desirable to preserve ^{THE} until the hearing ~~the~~ status quo. The evidence is somewhat vague as to what will happen and I am at a loss to know what specific act it is that requires restraining. The existence and validity of the Committee's decision can be tested in any proceedings to enforce it and can be examined on appeal to the Commission. The ground on which it is claimed to be invalid and outside the jurisdiction of the Committee is that it concerns operations that are not ^{OR WATERSIDE WORKERS} stevedoring operations within the meaning of that expression in sec. 5(1) of the Act. I am far from saying that the plaintiffs' contention on this matter of substance is not well founded. Indeed, my opinion inclines to the view as at present advised that the operations ^{STEVEDORING OR WATERSIDE WORKERS} complained of are not ~~stevedoring~~ operations within the meaning of sec. 5 of the Act. But that is not in itself sufficient to warrant my granting an injunction. No doubt it is true that the granting of an injunction is a matter of discretion, but in my opinion there are no circumstances that would justify the court interfering at this stage in granting one. For these reasons I refuse the application and make the costs defendants costs in the cause.