

RE JOHNSON AND THE AUSTRALIAN BANK
EMPLOYEES UNION;

EX PARTE A.N.Z. CAPITAL MARKETS
CORPORATION LIMITED AND ORS

JUDGMENT
(Oral)
15/8/86

DAWSON J.

EX PARTE A.N.Z. CAPITAL MARKETS CORPORATION
LIMITED AND ORS

In this matter application is made for orders nisi for writs of prohibition and mandamus directed to Mr Commissioner Johnson of the Australian Conciliation and Arbitration Commission and to the Australian Bank Employees Union arising out of the Commissioner's refusal to exercise jurisdiction under s.41(1)(d) of the Conciliation and Arbitration Act 1904 (Cth) ("the Act") before any dispute has been found pursuant to s.24 of the Act. I am prepared to grant the orders nisi.

Application is also made for a stay of the proceedings in the Conciliation and Arbitration Commission ("the Commission") pending the hearing and determination of these matters in this Court. The application is made pursuant to Order 55 Rule 10 of the Rules of Court and, it is said, the inherent jurisdiction of the Court. I very much doubt whether the latter jurisdiction arises in this case but, since I have determined to grant orders nisi, it would add nothing to the power which I have under the Rules. The exercise of that power, it has been pointed out many times, is discretionary.

In support of the submission that I should exercise my discretion to order a stay, it has been urged upon me that the parties to the alleged dispute in the Commission are numerous and that to embark upon the enquiry required by s.24 will be a costly and time-consuming exercise. The Commissioner has indicated that, unless stayed, he intends to commence his inquiry. It is said that no harm, other than delay and cost in already lengthy proceedings, will result if I order a stay.

On the other hand, the applicants have already instituted proceedings to appeal against the Commissioner's ruling to a Full Bench of the Commission and has been refused a stay of proceedings upon application made to that Bench. Two things may be said about this. First, the incomplete proceedings by way of appeal in the Commission must weaken the case of the applicants for discretionary relief in this Court. I have not thought it appropriate (if indeed I am able to do so) to take that into account in determining whether to grant the orders nisi. But clearly it is relevant to the question of entitlement to ultimate relief. Secondly, the refusal of a stay in the Commission means that a strong case must be made out before me in order to justify my departing in effect from the course which the Full Bench, in its discretion, determined

was the appropriate one. Brennan J. pointed out in Re Merriman (1984) 53 A.L.R. 440, at pp.442-443, that in matters such as this it is ordinarily desirable that proceedings be completed in the Commission, it being the more appropriate forum for the initial determination of the issues. Clearly that observation, with which I respectfully agree, extends to the question of any stay of proceedings before that tribunal and a stay having been refused by the Commission in these proceedings, I should be reluctant to take a different course.

I therefore refuse the application for a stay. In that event, the applicants asked that I give an appropriate direction for a speedy hearing of these matters. I do not think I should give such a direction, whatever efficacy it might or might not have, without knowledge of the relative urgency of other matters pending before the Full Court. However, the applicants are free to make such representations as they desire to the Registrar and those representations will no doubt be given proper consideration when the relevant list is fixed.

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REASONS FOR JUDGMENT

Judgment delivered at MELBOURNE
on 15th August 1986
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