THE QUEENSLAND POWER WORKERS ASSOCIATION & ORS

v.

THE ELECTRICAL TRADES UNION OF AUSTRALIA

JUDGMENT

MASON J.

Oral: 11 June 1986

THE QUEENSLAND POWER WORKERS ASSOCIATION & ORS

v.

THE ELECTRICAL TRADES UNION OF AUSTRALIA

This is an application for an order for a stay of proceedings in the Australian Conciliation and Arbitration Commission ("the Commission") pending the hearing and determination of an application for writs of prohibition, certiorari and mandamus which I directed, pursuant to Ord. 55, r.2 of the High Court Rules, should be made by notice of motion to a Full Court of the High Court in the Brisbane sittings commencing on 23 June 1986.

The proceedings in the Commission arise out of the service by The Electrical Trades Union of Australia ("the ETU") of a log of claims and its non-acceptance by the South East Queensland Electricity Board ("SEQEB") and other employers in the electrical power industry. The ETU is an organization of employees registered under the Conciliation and Arbitration Act 1904 (Cth) ("the Act").

In essence the ETU seeks the making of a federal award governing the terms and conditions of employment in the electrical power industry by way of replacement of the State

award which has hitherto governed the industry in Queensland. SEQEB and other parties have sought an order dismissing the ETU's application for an award or, alternatively, an order that the Commission refrain from further hearing the application on the ground set down in s.41(1)(d)(ii) and (iii) of the Act.

The present applicants sought leave to intervene in that application and their application was refused by the Commission. The proceedings for prerogative relief to be heard by a Full Court relate to that application, the present applicants asserting that the Commission was bound to grant it, on the footing that its refusal amounted to a denial of natural justice.

The present application for a stay in the s.41(1)(d) application invokes an exercise of the Court's inherent jurisdiction. According to the affidavits filed in support of the application for a stay, the s.41(1)(d) proceedings have been adjourned to 17 June 1986. It is expected that they will continue for some three weeks and that they will entail the calling of witnesses by the applicant electricity authorities and the ETU. The present applicants have sought a further adjournment of the proceedings pending the

ultimate determination by this Court, but the Commission has refused this request.

In support of the present application it is urged that the parties will be put to unnecessary expense and inconvenience if the Commission proceeds with the hearing on 17 June. It is said that, in the event that the determination of a Full Court is favourable to the present applications, the hearing which will take place before the Commission will be abortive or, at the very least, that the proceedings will need to be reopened or restructured so that the present applicants may be given the opportunity of cross-examining witnesses already called and of presenting their own case. All this, it is urged, will result in considerable inconvenience and expense to the Commission, the parties and particularly the witnesses who have already given evidence and will be required to attend and give evidence once again. And finally, it is submitted that the matter before the Commission is not urgent because there has been great delay already.

There are, however, powerful countervailing considerations. The present applicants are faced with no easy task in endeavouring to obtain the prerogative relief

which they seek. Moreover, even if the present applicants succeed in obtaining that relief, it is quite possible that a Full Court may be able to reach a decision at the conclusion of the argument in Brisbane or within a very short time thereafter, in which event the continued hearing in the Commission in the meantime will not involve much additional expense or inconvenience. The claim that the proceedings in the Commission are not urgent is disputed by counsel for the ETU who points out that the proceedings have already been interrupted by two applications made to this Court. The issue whether the proceedings in the Commission are urgent is one that I find very difficult to determine and it seems to me that the determination of that issue is best left in the hands of the Commission itself.

Another factor which I take into account is that the grant of a stay would disturb the Commission's projected sittings. It may not be easy for the members of the Bench to make alternative arrangements at this late stage for an early resumption of the s.41(1)(d) application if the present date is to be vacated, as it would be if I grant a stay. A deferment of proceedings in the Commission at this time can only be achieved at some cost in terms of inconvenience and expense.

In the result, I refuse the application for a stay.

IN THE HIGH COURT OF AUSTRALIA

The Queensland Power Workers Association

& Ors

v.

The Electrical Trades Union of Australia

REASONS FOR JUDGMENT

Judgment delivered at Canberra

on 11th June 1986

Mason J. (Oral)

RM74/30574

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