



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

**JUSTICE ROSS, PRESIDENT**

**AM2020/103**

**s.157 - FWC may vary etc. modern awards if necessary to achieve modern awards objective**

**(AM2020/103)**

**Registered and Licensed Clubs Award 2020**

**Melbourne**

**10.30 AM, WEDNESDAY, 31 MARCH 2021**

PN1

JUSTICE ROSS: Good morning. I'll just go through the appearances as I have them and then if I miss anyone, if you can let me know I've got Mr Redford from the UWU, Mr Kemppi from the ACTU, Ms Shaw from Clubs Australia Industrial, Mr Cooper from the Club Managers' Association of Australia, Ms Vicky Crow from the Professional Golfers' Association and Mr Reeves from the Attorney-General's Department. Have I missed anybody? No? All right. I might go to you, Ms Shaw. You've asked for the matter to be listed to discuss the next steps. You've filed draft determinations. We received a response from the AWU, opposing those. In the normal course, what I would have in mind - and you can think about this and then I'll hear from you as to what you want to do - I would organise for a short background paper on the effect of the proposed changes and enclosing any other relevant material to be published and we can also undertake to do whatever else research might assist the parties, perhaps - I don't know if it's relevant, usually not - but nevertheless - some sort of award history of the provision.

PN2

The Attorney-General's Department have previously provided a paper on the arbitral history of exemption rates and how they operate in awards and we could include that in a background paper for registered clubs. I would get that published fairly quickly - probably tomorrow - and the next step would probably be, subject to hearing from everybody, for a conciliation conference to be convened, probably before another member of the Commission to seek to bring the parties closer and identifying the areas of difference. That needn't be a protracted process. If there is no resolution then the approach we have adopted in other matters flowing from the Minister's correspondence is that the moving party - Clubs Australian Industrial in this case - would then file an application to vary and you would probably have a discussion in the conciliation conferences about the directions to accompany that matter.

PN3

So you would need to give some thought to whether you're going to call any evidence, what the programming should look like. But that's it in a nutshell, Ms Shaw. But that's really based on the experience with other matters that are before us at the moment. I thought it would be useful to give an indication that that's one option but I certainly don't have a closed mind about how to approach this matter. What would you like to say in relation to all of that?

PN4

MS SHAW: Thank you. Yes, I think those steps proposed we would be agreeable and I think could be useful, especially considering the changes to 18.4, if there could be a background paper prepared about the history of the award. We've read the AWU's submissions and I think there is considerable changes that have occurred to the definition of club managers throughout the award history, which is useful for that discussion. Then a conciliation conference - on that, we are proposing to file changes to the exemption rates for level four to six employees to just cover chefs now. So we'll be filing new draft determinations and we should be able to file those by hopefully tomorrow. So we will be

withdrawing the current proposal for just exemption rates for level four to six employees and just filing it in regards to chefs.

PN5

We have had brief discussions with the interested parties around that but there wasn't any movement anyway. But our proposal would be to draft that, file that tomorrow with the Commission and then look to have research paper provided by the Commission and then we would be interested to have that conciliation conference.

PN6

JUSTICE ROSS: Thank you, Ms Shaw. Two short points: (1) in the restaurant matter, we obtained some data from the Attorney-General's department regarding current salary levels for chefs. That might be of assistance. There is not a lot of data but they've provided whatever is available so we can include that. I don't have the award in front of me at the moment but which particular clause were you seeking to have an award history paper prepared in relation to?

PN7

MS SHAW: It would be around clause - it's 18.4 now, which I believe was 17.3 in the 2010 Registered and Licensed Clubs Award. The other provision that would be useful to have the history is the definition section regarding club managers because when it was first put in in 2010 that provision only covered kind of CEOs. Then there was an amendment made by the CMAA to have that to cover level A to E managers. So there have been some changes around that which I think is useful in trying to work out what the intention of clause 18.4 was.

PN8

JUSTICE ROSS: Yes, no problem. We can certainly get the award history in relation to clause 18.4 and in relation to the definition of club managers. We would probably wait - it would probably be useful to wait until your revised variation determination is filed. So by the time the award history stuff is done I would envisage the Commission research or background paper being published towards the end of next week and then looking to a conciliation conference the week after. Thank you, Ms Shaw. Who would - let me go to you, Mr Redford.

PN9

MR REDFORD: Yes, your Honour - we have no problems with the course of action that your Honour has outlined. We can indicate that the UWU will support the AWU's objection to the first draft determination, which relates to club managers and that the UWU would also oppose the second draft determination that has been filed but I understand that there will be a variation to that draft determination filed so we will consider that and form a position on it and in any event, your Honour, we'll participate in conciliation in good faith and see where we get to.

PN10

JUSTICE ROSS: Thank you, Mr Redford. Mr Kemppi, anything you wanted to add?

PN11

MR KEMPPI: Thanks, your Honour - just on the information paper there is one thing that jumps out at me about the award history, that I will take up with the AWU that I just wanted to flag right now. It may potentially be useful and I'll see what the AWU's view of this is. But it may be useful to also look at some of the history of the award provisions for some of the things that might be exempted by the exemption rate to see how some of those things may have changed since 2010 - just essentially to support that argument but even if there was some intent that may not have been captured in the words of the alternative there is quite a bit that will be undone by way of things that have come about since then. So I will speak to the AWU but just wanted to flag that there might be a few other things that might be necessary in that award history that they will come back to you on, if they need them.

PN12

JUSTICE ROSS: No, that's fine. Perhaps if you could let me know by no later than 12 noon tomorrow exactly which clauses of the current award you are seeking some information and over what period you want us to look at the award history. Look, I think that's useful because then parties will have an opportunity to comment on the background document. We can clarify any errors or anything like that so we're all sort of working off a common factual base. It will at least avoid having an argument about that. Thanks, Mr Kemppi. If you can let me know that would be great. Sorry?

PN13

MR KEMPPI: Sorry, I was just going to say as to the rest of the preferred course of action is fine with us.

PN14

JUSTICE ROSS: Thank you. Mr Cooper.

PN15

MR COOPER: Yes, thank you, your Honour. The steps outlined we are agreeable to as well. The parties did have a meeting since our last session before you. I think it was productive personally to find out the aspects of concern by the other parties, particularly the AWU. We support their submission that they filed this week in regards to that. The parties were able to identify those difficulties as they would impact upon their respected membership. As far as the CMA is concerned, I think looking historically at the award is a good idea because there was an agreement with Clubs Australian Industrial that when we moulded all the clubs awards together during the first round in 2008 and 2009, that there would be a quarantining of club managers' conditions. If you go through the award even today you'll see that certain conditions relate strictly to club managers only.

PN16

That thread goes through to the exemption rates. So I think as it remains at the moment has worked effectively. What is being proposed through these discussions is we could end up with an award with four different exemption rates, which I don't think assists the process for an easy application of the award. You have the existing 20 and 50 per cent for club managers. You'd have another 20 per cent exemption, which is proposed to only cover chefs and then you've got the existing 33 per cent exemption for making some horticultural managers. It's all

over the shop, so to speak. So historically, we think the background papers will assist with the history of how the club managers fit into the award. We would like to maintain that position. Thank you, President.

PN17

JUSTICE ROSS: Mr Cooper, the matter you referred to at the outset - the quarantining - what can you tell me about that?

PN18

MR COOPER: You've got special provisions such as uniforms, even the annual holidays section - it refers to the qualifying five-week period of annual leave. It has a comma and says, "and includes a club manager." Particularly with rostered days off there is another special provision for club managers. I think there is about five or six individual clauses in the award which specify in quarantine, "These provisions shall only relate to club managers." So the definitions under clause 2 were increasingly important and also the maintenance of the clause 18.4(a)(i)(ii). At first blush we didn't have an initial problem with that, including those other managerial classifications for horticultural managers and lead golf professionals coming into that regime of a management classification. Well, we felt that currently, some boards determined those other positions, managerial positions, to be a club manager. So that solves one problem there. So in practice, it's sort of happening. But I think broadening it, removing this specification to club managers, tilts the balance of the application of the award as it has applied since 2010.

PN19

JUSTICE ROSS: I may have misunderstood what you had put, but I thought you were putting that there was an agreement that club managers would be quarantined in a particular way, and an agreement between your organisation and Clubs Australia Industrial. Have I misunderstood that, or is that - - -

PN20

MR COOPER: No, that's generally been the approach from day 1 when the award was in its creation. And there's different personalities in Clubs Australia Industrial now, but that was our starting point. And even if during the awards - - -

PN21

JUSTICE ROSS: Sorry, Mr Cooper. Yes, maybe I had misunderstood. I thought - well, at least it sounded to me like you were putting that there had been this agreement or understanding between the two organisations, and the proposed variation by Clubs Australia Industrial was somehow inconsistent with that understanding. Are you putting that there is some sort of formal understanding between the two organisations? Or are you putting that historically, it's been dealt with in a particular way, and this application is inconsistent with the way it's been historically dealt with?

PN22

MR COOPER: A bit of both, I suppose. The organisations have an understanding about club managers' conditions. And there's nothing in writing. But even during the award revoking application, if we were to go into the general Hospitality Award, Clubs Australia's position was that again, the managers'

conditions would be transported across from the Clubs Award into the Hospitality Award. And we didn't agree to that. But that was, again, an indication of the general understanding of how you approach club managers' conditions under the Clubs Award.

PN23

JUSTICE ROSS: It might be useful, just in case the nature of this understanding becomes an issue, if you can have a discussion with Ms Shaw after the conference to see if you can reach some agreement about how that proposition is to be captured. You've indicated there's nothing in writing. I'm just - I'm just trying to get some clarity around precisely what it is that's being pointed to. It's just to avoid there later being an issue about whatever this matter gives rise to. So perhaps if you could have that discussion, and we can return to it at a later date.

PN24

MR COOPER: Okay. Thank you.

PN25

JUSTICE ROSS: Thank you. Ms Crow. Ms Crow, for the Professional Golfers.

PN26

MS CROW: Sorry, Your Honour. Look, our position really is that obviously our membership would be affected by it if it fell between the levels proposed at levels 4 and 6, carrying a considerable amount of our membership in level 5. If it was only - if the new draft determination showed that it was only the chefs, we would have no further interest in the matter. So our position would be to wait and see Nicola's new draft determinations.

PN27

JUSTICE ROSS: No, that's fine, Ms Crow. It has been foreshadowed that that issue will be confined to chefs. So in that case, you may have no further interest in the matter. But in any event, you will be - you will be presumably a subscriber to the award notification service, so you'd be kept informed about developments.

PN28

MS CROW: Yes. Thank you. Thank you, Your Honour.

PN29

JUSTICE ROSS: Well, if there's nothing further, we will proceed as outlined. And I will organise for a background paper to be prepared along the lines that we have outlined, dealing with both the history of clause 18.4 of the current award and the definition of club managers, and whatever other provision Mr Kemppi, or for that matter, any other party wishes to identify by 12 noon tomorrow. And we will look to have a background paper published towards the end of next week. And then I will arrange for a commission member to organise a conciliation conference the following week. All right, well, thank you very much for your attendance, and we will await the next step.

PN30

MS CROW: Thank you, Your Honour.

**ADJOURNED INDEFINITELY**

**[10.48 AM]**