



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

COMMISSIONER WILSON

C2022/5683

s.739 - Application to deal with a dispute

**United Firefighters' Union of Australia
and
Fire Rescue Victoria
(C2022/5683)**

Melbourne

4.00 PM, THURSDAY, 9 MARCH 2023

Continued from 08/03/2023

PN1

THE COMMISSIONER: Good afternoon, parties, thank you for joining once again and I note the appearances, that Mr O'Grady returns. So, parties, the conference which was held yesterday identified the desire on the part of the UFU to say some matters on the record, and also possibly the Minister, depending on whether or not they had instructions by today or not. Now, what I will do this afternoon I propose to turn to Mr Dixon shortly to allow him to put forward such matters as he wishes, and then I will turn to the other parties, the FRV and the intervenor, the Minister, to either say what they wish as well or if it's not suitable to you to say things today, but you would like an opportunity at some date in the future, but not too far away, then we will talk about what that might look like. So unless there's anything further I will turn to you, Mr Dixon, to put forward the issues you want to refer to.

PN2

MR DIXON: Thank you, Commissioner. I'm just checking I am able to be heard. Yes.

PN3

THE COMMISSIONER: You are indeed, yes, and seen.

PN4

MR DIXON: Thank you for the opportunity, Commissioner. Now, on the last occasion on Tuesday 27 February when the parties were in private conference before the Commissioner I had indicated that the UFU would put its position as to the status of this matter 5863 on the record in light of the jurisdictional point that was taken on behalf of the Minister.

PN5

Since that occasion there have been a couple of developments that I wish to put on the record. On 3 March the UFU's solicitor received a letter from the Minister's solicitors setting out a response to the matters that I had first raised in private conference. In that letter the Minister states that she will not agree to concede jurisdiction in this matter. The Minister also states that the Minister will not agree to a variation as proposed by the UFU, and I'm referring to a draft application to vary the extant interim agreement to deal with any issues of jurisdiction.

PN6

The Minister in the letter refers to those two matters, that is the concession of jurisdiction and the variation proposal, as preconditions. That particular issue is dealt with in a letter sent in response to the Minister's letter dated 7 March. So on 7 March the UFU's solicitors sent a letter to the Minister's solicitors in reply. In that letter the UFU confirmed that the offer to bargain was not the subject of any precondition, and I confirm that here today on record. What was asked on 27 February was a show of bona fides, or I think the expression was used was (indistinct). From the parties the Minister and FRV to acknowledge the precarious position that UFU was placing itself in given the inertia in bargaining to date. I use the term 'inertia' as it's the term referred to by the Commissioner in paragraph 38 of the Commission's decision on intervention, which was delivered yesterday.

PN7

The UFU asked for an agreed avenue if the stalemate, the inertia, remained through no fault of the UFU. The Minister's response puts the UFU in a difficult position both with the FRV, its relationship with the FRV, and with its members, and I just want to identify some of the complications that arise as a result of the position now taken.

PN8

Before I do that I should also note that on 7 March, on the same date, the UFU sent to the FRV a letter in which it set out what had been agreed to in bargaining, and I'm referring in particular to the draft productivity clause. It provided examples of the lengths that the UFU had gone to, to bring its members along on the path of reform and harmonisation, and the UFU also put some questions to the FRV given the impact on the status of bargaining and the status of the UFU's participation in that reform and harmonisation process.

PN9

The UFU's position is that the insistence on strict legal rights here is inapposite, and more importantly I think counterproductive. For example the notion that the proposed variation cannot be supported because for example it would require the draft productivity clause to be looked at in isolation ignores over a year, well over a year of intense bargaining in good faith where the parties have avoided retracing their steps where matters have been agreed, and that particular matter had been agreed for over 12 months now.

PN10

The insistence on the adoption of strict legal rights also ignores the industrial reality that there are many clauses in the interim agreement that have been the subject of processes of harmonisation on the understanding that the benefits would flow to the workers. That was the evidence that was to be led in this matter by the UFU. The agreement was referred to in the UFU's written opening submissions and in its evidence filed along with its opening written submissions. That issue, the issue that there was an agreement, was not cavilled with in reply by the FRV.

PN11

Now, if the message is that this quid pro quo aspect of the agreement is not to be honoured then the UFU members will rightfully ask why they have participated in processes that have seen some of their more important and lucrative entitlements reduced in the name of the greater good. For example there are some efficiencies which have been realised, and which have necessarily departed from the strict terms of the interim enterprise agreement, but which have not given rise to any allegations of contravention. I just want to identify some of those examples to demonstrate what the cooperation of the parties has achieved, but entirely contingent on the recognition that it was part of a quid pro quo. The quid pro quo aspect is now being challenged by the FRV, the Minister of course.

PN12

So the first example is relocation assistance. So in clause 92.16.1.5 in Division B that clause gives the employee the benefit of a payment of the actual cost of stamp duty as part of relocation assistance. There was a major change implemented

which restricted the payment of stamp duty payable to such employees who are transferred to fire stations located further away.

PN13

A further change was the restriction in the ability to claim the entitlement by substantially extending the distance required for a move in order to meet that entitlement. So these changes have resulted in significant monetary entitlements - sorry, changes to the monetary entitlements payable to employees, and that has resulted in a windfall to the FRV. None of the current processes or procedures are in the EBA.

PN14

Another example is the attendance of training provisions. I am now referring to clause 85.11 of Division A which sets out travel entitlements when attending training. These entitlements including travel time and kilometre allowances have been reduced. The changes include modifications to the amount of overtime paid and the travel penalties paid. Now, this was part of the process that was first recommended by Mr Julius Roe. Again these changes are not found in the interim agreement. They exist only because of the involvement of the parties to accommodate the processes of merger and harmonisation. Again a strict reliance on legal rights would give rise to a completely different arrangement to that now in place.

PN15

The special rosters provisions - I'm referring to for example clause 151 of Division B. There's also a (indistinct) clause in Division A. Again these changes were part of the matters that were looked at by Mr Julius Roe. The changes involved the introduction of Assistant Chief Fire Officers in the position of State Duty Officer on the 10/14 roster. So those officers are providing state-wide coverage on a standard 10/14 roster. That is without invoking or attracting the costly day worker roster or after hours special rosters. Again those changes involve narrowing the definition of disturbance as it is in the agreement, and work also on a special roster, and therefore limiting the monetary entitlements able to be received by FRV employees.

PN16

There were further changes involving more than 56 times, which is an interpretation of the special rosters, again all resulting in significant savings to the FRV, and there are other examples. I will limit it to three for the purposes of this mention. So these are all examples of conditions that do not benefit, the changes do not benefit FRV employees, but have nevertheless been achieved and savings realised as a result of the processes that were relied upon in this matter by way of efficiencies and cost savings to the FRV.

PN17

And again to the extent that the UFU was involved in marshalling and organising its members to act as I say in the greater good and not in respect of the benefits that would necessarily flow to any individual member, those matters were achieved on the understanding that it would be part of a quid pro quo where the benefits would flow ultimately to FRV employees. That is the reason why those

changes occurred and were supported as they were. The quid pro quo has been actively resisted.

PN18

The UFU indicated to the executive leadership team this week that it would undertake a structured withdrawal from its agreement to assist in the processes of harmonisation and merger on the basis that the FRV's part of the bargain has not been honoured, and those effects are already occurring. This week the UFU received an email from a person named Caz Laughton who is the FRV's manager of Workplace Relations, in which Mr Laughton invited three people from the UFU's branch Committee of Management to undertake further work on harmonisation. The email itself was headed 'Conditions of employment.' One might have thought a brave invitation in the circumstances, but as it turns out the UFU has not agreed at the moment to accept that invitation.

PN19

Commissioner, they're the matters I wanted to put on the record in order to indicate what the consequences beyond the strict legal interpretations might involve. There are ramifications to the decisions that have been made now, and I needed to set those out. So thank you for that opportunity. The only other matter that I wish to deal with was the status of the efficiencies matter, this matter itself. There is a bargaining conference tomorrow in the FRV's application. The UFU proposes to stand this matter over for a month, subject to the Commission's availability, for a mention or a call back so we can see whether and how far bargaining has advanced at that point in time. They're the matters, thank you, Commissioner.

PN20

THE COMMISSIONER: All right. Thank you, Mr Dixon, I hear you loud and clear in that submission. Mr Harding, do you wish to say anything at this stage?

PN21

MR HARDING: No, I don't, Commissioner.

PN22

THE COMMISSIONER: All right. Or Mr O'Grady?

PN23

MR O'GRADY: No, I don't either, Commissioner.

PN24

THE COMMISSIONER: In respect of your position, I could be wrong, but I thought I heard Mr Byrne yesterday to indicate that the Minister may wish to say some matters of generality. It had been understood certainly by Mr Dixon and Mr Byrne that the thing that occurred yesterday should have been a mention and she was looking forward to saying some things on the record. Just in respect of that issue do you or she wish to take up that opportunity?

PN25

MR O'GRADY: I don't have any instructions to seek to take up that opportunity.

PN26

THE COMMISSIONER: All right. In that case I will just turn to the points you made at the end, Mr Dixon, which is to refer to standing down this matter for a month and then returning I think for a mention. Was that how you put it?

PN27

MR DIXON: It was.

PN28

THE COMMISSIONER: All right. Would it be convenient to relist it on Tuesday 11 April?

PN29

MR HARDING: It's Easter Tuesday.

PN30

THE COMMISSIONER: That still exists, does it?

PN31

MR HARDING: No, it's in the diary and I'm just reading it out.

PN32

THE COMMISSIONER: I thought we had a Grand Final holiday instead.

PN33

MR HARDING: Yes, that's probably right. I shouldn't trust the diary, should I, Commissioner. Yes, that's fine for me at least.

PN34

THE COMMISSIONER: And Mr Dixon?

PN35

MR DIXON: Yes, Commissioner, that's fine.

PN36

THE COMMISSIONER: And, Mr O'Grady?

PN37

MR O'GRADY: Yes, Commissioner, I can do that.

PN38

THE COMMISSIONER: We will list it for 10 o'clock on Tuesday 11 April in person I think if that's convenient to you all. Well, except for you, Mr Dixon, but if your clients at least could be physically there.

PN39

MR DIXON: Yes, I'm sure that's fine, thank you.

PN40

THE COMMISSIONER: Okay. Thank you, everyone, we will now adjourn the matters and at least some of the people involved I will see tomorrow. All right, all the best, thank you.

ADJOURNED UNTIL TUESDAY, 11 APRIL 2023

[4.21 PM]