



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

1058482

**JUSTICE ROSS, PRESIDENT**

**AM2020/103**

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

**Application by  
(AM2020/103)  
Award Flexibility – Hospitality and Retail Sectors**

**Restaurant Industry Award**

**Melbourne**

**11.00 AM, THURSDAY, 4 MARCH 2021**

PN1

JUSTICE ROSS: Good morning. I see that I've got Mr Ward and Mr Song for the Restaurant and Catering Industry Association, Mr Redford for the United Workers' Union, Ms Durbin for the Department. We've received a request from Mr Murray Wilson from the Financial Review to observe the conference. Can I deal with that issue first? Is there any objection to that request?

PN2

MR WARD: Not from us, your Honour.

PN3

JUSTICE ROSS: Thank you. Mr Redford?

PN4

MR REDFORD: No, your Honour.

PN5

JUSTICE ROSS: Thank you. Can I also indicate that since we last met, a number of documents have been published on the Commission's website in respect of this matter. The first is correspondence from the Attorney-General's department regarding the arbitral history in relation to exemption rates and the awards in which they presently operate. We received correspondence on 26 February dealing with the relevant - for this section of the proceeding - earnings of chefs compared with the relevant award minimum rates. All that correspondence has been posted on the relevant part of the website. Perhaps if I go to you, Mr Ward - if you can give me an update? I should also let you know that the hospitality matter that was the subject of a conference at 9.30 - there is to be a further conference in respect of that matter on Monday 22 March at 9.30.

PN6

That time period is to enable the parties to give further consideration to the three matters that are progressing in respect of that award. Mr Ward.

PN7

MR WARD: Thank you, your Honour. Can I indicate to the Commission that we have been having the benefit of further discussions with the United Workers' Union. I'm always cautious as to inappropriately characterising them but I will do my best: we are optimistic that we are moving to a position of agreement on the classification proposal. It would be wrong to say that we have reached the position of agreement but we have a very high level of optimism from our side about that. In relation to the exemption proposal, I have to say that the discussions have been very constructive and as we have refined who and how that proposal works that has aided the level of those discussions progressing, we are anticipating some material from the United Workers' Union shortly in response to the exemption proposal.

PN8

Again, we have a sense of optimism that we might be able to reach a position of agreement on that and if not a position of agreement at least agreement on some elements of it. The third element that understandably is somewhat more involved

- that is the - it's been described as an industry allowance but might be better described as an all-up allowance to substitute for other allowances. We have on a without-prejudice basis tabled with the United Workers' Union dollar amount proposals for that. That matter is nowhere near as advanced as the others. I sense from my client that there seems to be some conceptual understanding of what we're trying to achieve but the challenge at this stage is in identifying dollar amounts that that might satisfy the concerns that the United Workers' Union have understandably raised about the proposal.

PN9

So that matter is still the subject of discussion but nowhere near as advanced as the other two. We are trying to secure a further meeting with the United Workers' Union early next week and Mr Redford in relation to the matters and we're optimistic that we'll make further progress. From our perspective we've identified to the United Workers' Union that we're not advancing this as an all-or-nothing proposal. We are endeavouring to take a more measured approach and if we can reach a consent position on something or some things, we would be more than amenable to move on those matters by agreement and have the award varied, subject to the Commission accepting what we are proposal in its final form and then to further discuss and program anything that is residual. So we're not trying to do this as a take-it-or-leave-it proposal. We are prepared to do it incrementally. I don't want to put words into Mr Redford's mouth but we get a sense that the United Workers' Union are themselves adopting a similar approach to that as well, which is to be commended.

PN10

For our part, we probably sense that we probably needed an extra week from when we last spoke to the Commission and our anticipation at this stage is we will most likely be in a position to file a further amended application by the end of next week, which should in large measure identify whether or not there is areas of agreement or not. As to the further programming of the matter after we filed an amended application, we would seek shortly thereafter a conference which also could be a directions hearing and in relation to it also being a directions hearing we would seek at that stage to be able to identify to the Commission and hopefully United Workers' Union would do if we can move on anything by consent. To the extent that the other matters can't be, we would at that stage also then write to program how they would be dealt with by arbitration as required. That's where we are today.

PN11

As I say, the client's perspective we believe we are making appropriate and reasonable progress in the matter but we are not there yet on any of the three matters.

PN12

JUSTICE ROSS: All right, thank you, Mr Ward. Mr Redford.

PN13

MR REDFORD: Your Honour, that is a fair summary of where we're at. I don't take issue with any of that or have anything to add.

PN14

JUSTICE ROSS: What do you say about the timeframe and when we should come back for a combination of a conference and mention?

PN15

MR REDFORD: I think the timeframe suggested by Mr Ward, your Honour, if it suits the Commission, is a sensible timeframe so that would be - we would plan on ourselves meeting early next week. That hopefully should put the organisation in a position to file something at the end of next week, which would then allow us to have a conference as described the following week.

PN16

JUSTICE ROSS: Can I leave it on this basis, that you're meeting next week and you anticipate when you file. Mr Ward, when you do file, if you can indicate at that point - perhaps provide two options after discussion with Mr Redford about a conference timeframe that would suit both of you. Then we will list that for the following week.

PN17

MR WARD: Can I approach your Honour's associate for that?

PN18

JUSTICE ROSS: Yes, certainly. That will just give you a bit of flexibility. What I don't want to do is, say, list the mention conference for the following Tuesday but then find us in the position in a day or so of extra discussion would in fact bring you closer together. So I think at this sort of point in the exercise, I'll leave it to both of you to essentially decide the time and date of the conference and I will accommodate that. You can probably take it that if you pick it at 1 o'clock on any of the days then I should be fine.

PN19

MR WARD: Thank you, your Honour.

PN20

JUSTICE ROSS: All right? You're content with that course too, Mr Redford?

PN21

MR REDFORD: Yes, thank you, your Honour.

PN22

JUSTICE ROSS: If there is any further information or assistance that either of you require that might facilitate your discussions - either information or anything else - then don't hesitate to get in touch with me directly. I'll adjourn until we next week and you will advise me as to when that is. Thank you for your attendance.

PN23

MR WARD: Thank you.

PN24

MR REDFORD: Thanks, your Honour.

**ADJOURNED TO A DATE TO BE FIXED**

**[11.10 AM]**