



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

JUSTICE ROSS, PRESIDENT

s.602 - Application to correct obvious error(s) etc. in relation to FWC's decision

**CPSU, the Community and Public Sector Union
and
State Water Corporation T/A WaterNSW
(ADM2017/6)**

Melbourne

9.32 AM, TUESDAY, 31 OCTOBER 2017

PN1

JUSTICE ROSS: Could I have the appearances please, firstly in Sydney.

PN2

MS P LOWSON: Yes, my name's Lawson, initial P, appearing for the applicant the CPSU.

PN3

JUSTICE ROSS: Thank you.

PN4

MS A DeBOOS: Thank you, your Honour. My name's DeBoos - D-e-b-o-o-s - initial A. I appear on behalf of WaterNSW.

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JUSTICE ROSS: Thank you.

PN6

MR CLARKE: Mr Clarke from the Australian Council of Trade Unions.

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JUSTICE ROSS: Thank you. The matter's been brought on for mention but I might briefly set out my understanding of the application to let you know where or what I'm proposing by way of dealing with it. The CPSU has made an application under section 602 to correct what it's identified as an error in paragraph 699 of the 2016/17 Annual Wage Review decision, and in particular my understanding is the CPSU's application relates to employees of the New South Wales Department of Primary Industry who were transferred to a state owned corporation, WaterNSW, on 1 July 2016.

PN8

It would appear that as a result of that transfer, various New South Wales awards became copied state awards for those transferring employees and I think WaterNSW takes a view that under the formulation in paragraph 699 of the Annual Wage Review decision, the transferred employees are entitled to half of the full federal wage increase. That is, 1.65 per cent and the CPSU is proposing to - its case is that the relevant first dot point in 699 is an error and they've proposed a correction of that, which would then entitle the employees covered by the copied state award to the full increase from last year's decision.

PN9

There were a couple of matters I wanted to raise. One, to the extent that what's sought is a correction to last year's decision in relation to the wage increases to apply to those covered by copied state awards. The application would potentially go beyond WaterNSW, so on that basis once I've heard from you about how the matter might be dealt with from here, the Bench would issue a statement outlining the nature of the application and drawing its attention or the attention of those who may be affected by the application to it and invite them to make submissions as well.

PN10

Can I go to the how to deal with the application. It would seem on its face that it's a matter that can be dealt with by written submissions. That would also have the advantage that it could be dealt with more expeditiously than if an oral hearing was required, simply because the Annual Wage Review Bench would have to be constituted for the purpose of an oral hearing and it involves three part-time members, so I'd need to find out what their commitments are et cetera.

PN11

With that brief introduction, Ms Lawson, how do you propose or are you content with dealing with the matter by written submission and if so, how much time would you require to file your submission.

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MS LOWSON: Your Honour, that was the way forward that I was going to propose and I would have thought that we could have something prepared by the end of next week, which would be I think 10 November.

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JUSTICE ROSS: Right. I would probably give you a little more time, Ms Lawson, just so that - but thank you for the indication, but just so that once we put the statement out we can see whether there's anyone else with an interest. By the time we draw it to their attention we might give you slightly more time but okay, and in reply Ms DeBoos how much - do you require about a week or - - -

PN14

MS DeBOOS: If we could have two weeks, your Honour, that would be fantastic.

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JUSTICE ROSS: Right. We'll formalise this in a statement to go out tomorrow - I'll come to you in a moment Mr Clarke - but the proposal would be there'd be a statement setting out some of the background and the purpose of that is really we're not sure whether there are other employees affected. Because of the nature of these copied state award instruments they come to an end after a certain period of time but we don't know whether there have been any other transfers from state government to an entity in the last 12 months. So out of an abundance of caution and to make sure that everyone's afforded procedural fairness, we'd probably issue the statement tomorrow or on Thursday and then provide two weeks from that date for the CPSU and any entity supporting the CPSU's application to file any written submissions. We'd then provide two weeks for those opposing the CPSU's course and Ms Lawson, are you content then with anything you wish to say in reply one week after that?

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MS LOWSON: Yes, that's convenient.

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JUSTICE ROSS: The directions would be framed so there would be liberty to apply in the event that something unforeseen happens. Mr Clarke, was there anything you wanted to add to what I've outlined?

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MR CLARKE: Well I think maybe some of the issues that are involved have their origins in something we said or I wrote many years ago.

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JUSTICE ROSS: Is this a mea culpa time, Mr Clarke, or - - -

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MR CLARKE: Well, yes, I'm from the unions and I'm here to help but my only difficulty - I'm sorry, were you proposing two weeks after the statement for the CPSU - - -

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JUSTICE ROSS: Yes.

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MR CLARKE: Yes. Well I'm certainly content with that course, your Honour.

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JUSTICE ROSS: Right. Is there anything further?

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MS LOWSON: Your Honour, probably - - -

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JUSTICE ROSS: Yes.

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MS LOWSON: - - - probably as a matter of formality I should have sought leave as a legal representative to - - -

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JUSTICE ROSS: Look, that's fine, Ms Lawson and Ms DeBoos.

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MS DeBOOS: Thank you, your Honour.

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JUSTICE ROSS: It's a mention only and you don't need leave for the purpose of preparing a written submission to be filed in the proceedings under the rules, so all of that should be fine.

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MS LOWSON: Right, thank you.

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JUSTICE ROSS: Do you want to deal with it as a matter of record and do I take it that leave's sought by each of you, that the basis for the application is having regard to the complexity of the matter it will be dealt with more efficiently if leave was granted?

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MS LOWSON: Yes, that's the position.

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MS DeBOOS: Yes, your Honour.

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MS LOWSON: And I wouldn't oppose - - -

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JUSTICE ROSS: Yes. Permission is granted to both of you on that basis. This certainly is a matter that has a degree of complexity having regard to the nature of copied state awards, and we'll try and put some of that material that would probably be uncontentious in the statement. Is there anything further?

PN36

MS LOWSON: Thank you, your Honour. Can I just raise - could I just raise one further matter in relation to the statement?

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JUSTICE ROSS: Certainly.

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MS LOWSON: Was your Honour intending to require any party that is interested to notify the Commission within a timeframe, and then for the time to run from that, or simply to make the statement and then for people to put in submissions in due course?

PN39

JUSTICE ROSS: Yes, I think I'd probably just make the statement for people to put in submissions, there'd be liberty to apply in any event in the - look, if for example it only comes to someone's attention for whatever reason, we'll send it out to all of our subscribers and we'll put it on our website and no doubt the ACTU would make it known to its affiliates. But if there is an unforeseen thing and someone doesn't become aware of it until one day before the cut off, there'll be liberty to apply to deal with that matter.

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MS LOWSON: Yes, thank you, your Honour.

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JUSTICE ROSS: Nothing further?

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MS LOWSON: No, thank you.

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MS DeBOOS: No, thank you.

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JUSTICE ROSS: Thanks very much. I look forward to reading your submissions. I'll adjourn.

ADJOURNED INDEFINITELY

[9.41 AM]