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Dec 2183/94 M Print **L6752**

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1988 s.99 notification of industrial dispute

Automotive, Food, Metals and Engineering Union

and

Philip Morris Ltd and another (C No. 33026 of 1994)

Metal workers Food, beverages and tobacco industry

COMMISSIONER SIMMONDS MELBOURNE, 21 NOVEMBER 1994

Industrial dispute - dispute finding - log of claims - log and letter of demand not properly authorised according to AFMEU's rules - retroactive ratification ineffective - no finding made.

DECISION

On 24 August 1994 the Automotive, Food, Metals and Engineering Union (AFMEU) notified the Commission of an alleged industrial dispute between it and Philip Morris Limited (Philip Morris) and Reckitt and Coleman Products. It was alleged that the dispute arose out of the failure of Philip Morris and Reckitt and Coleman Products to accede to a letter of demand and log of claims served by the AFMEU within the time specified in the letter of demand.

The relevant background to the service of the letter of demand and log of claims, and the notification of alleged dispute, on the basis of the information available to the Commission, is as follows:

. Purporting to act with the authority of the National Council, on 22 August 1994 Mr Graham Harris, an Assistant National Secretary of the AFMEU served a demand "as outlined in the Log of Claims contained in Schedule 'A' attached" with the request that the claim be granted to the employees of the addressed company.

. Purporting to act pursuant to a decision of the National Council of 10-12 March 1987 authorising full-time national officers and another to institute proceedings under Rule 13B, Mr Harris notified the dispute to the Commission on 24 August 1994.

The issue raised by these events, which is effectively a threshold issue in these proceedings, is whether or not Mr Harris was authorised to serve the letter of demand and log of claims on the two companies. A secondary issue is whether or not subsequent ratification of Mr Harris's action in serving the letter of demand and log of claims has the effect of validating that action.

The question of ratification can now be relatively easily disposed of. In a recent decision the High Court stated:

". . . On the other hand it has been held that where the act done without authority would, if done with authority, affect property rights, as in the case of a notice to quit, subsequent ratification will not be effective. The reasons given for this view do not always coincide. In the final analysis, ratification in these cases does not operate

retroactively because the act is required to be valid when it is done. That is the case with a notice to quit.

And, in our view, so it is with a letter of demand requiring acceptance of a log of claims, if non-acceptance of the log within a stipulated period after the making of the demand is to constitute an industrial dispute. Here what is in question is not merely the

validity of a notice to quit, but the existence of the jurisdiction of the Commission. Once it is accepted, as it must be, that jurisdiction depends on the existence of a dispute, and the dispute is said to be constituted by non-acceptance within seven days of the service of the log of claims, the existence of the dispute is conditioned upon the making of a valid demand, that is a demand that was valid and effective at the time it was made . . ." [Mason CJ Dawson and McHugh JJ: unreported decision Re Construction Forestry Mining Energy Union Ex Parte; W.J. Deane & Sons Pty Ltd 9 November 1994 F.C. 94/048]

In this case the purported ratification was attempted by a postal vote of the National Council pursuant to Rule 7 (5), commenced on 29 August 1994 and reported by the National Secretary on 12 September. As the decision of the High Court makes clear the attempt at retroactive ratification is ineffective.

That leaves the issue of whether Mr Harris was authorised to serve the letter of demand and log of claims in the first place. The rules of the AFMEU appear to be silent on the specific question of authority for the service of letters of demand and logs of claims. Mr Roe, for the AFMEU argued, correctly in my view, that the powers of the National Council were sufficient for it to authorise such service. According to Mr Roe the National Council had so authorised Mr Harris to serve claims when it adopted the following resolution by telephone hook-up on 12 August 1993:

3. Log of Claims

Brother Campbell reported on the implications of the SPSF decision and the need to meet the technical requirements of the Act and the Commissions rules in relation to Logs of Claims.

MOTION: Pursuant to rule 13 of the Rules of the Australian Industrial Relations Commission, National Council authorises the following Officers of the Union to provide such statements as from time to time may be required to accompany a notification of industrial dispute relating to a log of claims:

. . .

(ii) in respect of an industrial dispute affecting members of the Technical and Supervisory Division:

Graham Harris, Assistant Secretary/ Secretary, T&S Division;

. . .

National Council endorses the attached log of claims as being the standard ambit log of claims of the Union which may, subject to the rules of the Union, be served from time to time upon employers throughout the Commonwealth . [Exhibit R.2]

DECISION - FOOD, BEVERAGES AND TOBACCO INDUSTRY 3

Mr Wood, for Philip Morris, argued that the resolution was insufficient to give Mr Harris authority to serve the log of claims on the respondents in this matter as there was nothing in the resolution (or any other relevant resolution before the Commission in this matter) or the rules authorising that service, however widely they are read.

I agree with Mr Wood's submission. On its face, and giving the resolution the widest possible interpretation, it does no more than authorise the named officials to issue the statement required by the Commission's Rule 13 and endorse the log of claims as the standard log. Apart from subjecting such service to the union's rules, it does not set out the circumstances in which one of the named officers is to effect service. As already stated there is no specific rule governing this matter, and therefore service in the normal course of events would presumably flow from a decision of National Council to that effect, or if delegation is allowed by the rules, some other body or individual authorised by it. The rule covering the duties of national officers (rule 8) does not, in my view, give them, at least individually, the power to serve the log. Rather those rules require them to perform specific functions (which do not include deciding on whom to serve letters of demand and logs of claims) and to act "in conjunction" with each other to implement the policy of the union. No connection between the union's policy and the service of the log was established, no specific policy being advanced as supporting service, and furthermore, there is no evidence of the officers having acted in conjunction, at least prior to the service.

The one possible exception to this analysis of the rules is the National Secretary's power to "institute proceedings on behalf of the union". In the context of the whole of Rule 8 this rule appears

to be one enabling him to take the formal steps to give effect to specific decisions or policy. If I am wrong in this interpretation however, in this matter there is no suggestion that the National Secretary served the letter of demand and log of claims, nor is there any evidence of him delegating this power, assuming he is able, to Mr Harris.

In these circumstances I do not consider Mr Harris was authorised to serve the letter of demand and log of claims and therefore that service cannot give rise to a finding of dispute. The AFMEU does not rely on any other circumstance as justifying a finding of an industrial dispute within the meaning of the Act and there is thus no ground for the Commission to exercise jurisdiction.

Appearances:

J. Roe for the Automotive, Food, Metals and Engineering Union.

G. Smith and S. Wood of counsel with T. Maishan and D. Morris for Philip Morris Limited.

C. Roussos for the Metal Trades Industry Association of Australia on behalf of Reckitt and Coleman Products.

Hearing details:

1994. Melbourne: September 13; October 12, 21.

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