Print C6856

IN THE AUSTRALIAN CONCILIATION AND ARBITRATION COMMISSION

Conciliation and Arbitration Act 1904-1976

In the matter of an appeal by the State Energy Commission, Western Australia, against an award made on 30 March 1976[1] and known as

THE MUNICIPAL OFFICERS' (STATE ENERGY COMMISSION WESTERN AUSTRALIA–SALARIED OFFICERS') SALARIES AWARD, 1976

(C No. 554 of 1976)

On 12 May 1976 the Commission (Mr Justice Coldham, Justice Gaudron and Mr Commissioner Heffernan) issued the following decision:

On 30 March 1976 Mr Commissioner Vosti made the Municipal Officers' (State Energy Commission Western Australia Salaried Officers') Salaries Award, 1976 giving effect to his decision of 26 February 1976.

That award, from which the State Energy Commission now appeals, replaced the Municipal Officers' (State Energy Commission Western Australia–Salaried Officers') Salaries Interim Award, 1975 made by consent on 6 August 1975 operative for a period of three months.

The making of the interim award by the Commissioner followed proceedings under Section 41 (1) d of the Act, and merely gave federal effect to existing salary rates. However negotiations which followed the interim award failed to produce agreement on salaries and the matter proceeded to arbitration. After extensive inspections in the States of South Australia and Western Australia and argument, Mr Commissioner Vosti decided that the salaries should be assessed in the context of those already determined federally as appropriate in the industry of electricity undertakings, and his award, from which this appeal is brought, increased salaries in the interim award by amounts varying from 3 per cent to 5 per cent.

The grounds of appeal were directed to three main areas:

(a) that the salary increase was contrary to current National Wage principles,

(b) that the Commissioner erred in breaking a nexus with the Public Service in the State of Western Australia,

(c) that the Commissioner erred in awarding increases retrospectively from 6 February 1976.

The detailed argument advanced on the first main area, that current National Wage guidelines, or the concepts contained therein, apply equally to the original assessment of award rates as to any prescribed increase in previously determined wage rates, or alternatively that the subject award could not be regarded as an original federal prescription, were but faintly put to the Commissioner in the last sentence of a lengthy submission:

> Finally, we submit that the applicant's case must fail because of the principles contained in 7 (a) and (b) and principle 8 of the indexation guidelines which have to be adhered to, if the Commission pleases'.

This lack of emphasis, when considered with a statement by the parties on the making of the interim award that they would further confer on salaries and with the subsequent negotiations which in fact occurred to the knowledge of the Commissioner, may well be sufficient to dispose of this aspect of the appeal. However the broader issues require consideration.

---

[1] 187 C.A.R. 785

The salaries contained in the interim award evolved over a period of some thirty years as a result of agreements between a State union and the predecessors of the State Energy Commission. There was no evidence of any formal arbitration during that period. Additionally, in 1975 the State union was found to lack constitutional coverage for many of the employees concerned. That constitutional deficiency legally deprived the employees concerned of the State award coverage. We have already referred to the stated intention of the parties to confer on salaries. In these circumstances it would be artificial to regard the subject award other than as an initial assessment made in accordance with normal arbitral procedures.

Having decided, as he was entitled to do, that salaries should be aligned with those already prescribed in federal awards regulating employment in this industry, and in the absence of unqualified consent, it was the obligation of the Commissioner to ensure that provisions of the award complied, as nearly as practicable, with standards already established. In doing so he set no new salary level.

The first area of appeal must therefore fail.

We turn to the second main area of appeal.

Although there had existed a definite relationship between some salaries in the State Energy Commission (and its predecessors) and the State Public Service, that relationship was not uniform. The salaries of Power Station Operating Staff had, as early as 1972, been fixed by industry comparisons with their counterparts employed by the Electricity Trust of South Australia and the State Electricity Commission of Victoria. In 1975 technical staff acquired a relationship with tradesmen rates as prescribed from time to time by the Industrial Commission of Western Australia.

It was in our view both proper and desirable for the Commissioner to replace those multiple relationships with a salary structure providing proper internal relativities, based on federal awards operating in the industry of electricity undertakings.

As to retrospectivity we consider that, had the Commissioner made a prospective award, he must have elevated the subject salaries by the amount of the National Wage movement of 15 February 1975 to establish levels commensurate with salaries prescribed in awards relating to the Electricity Trust of South Australia and to the State Electricity Commission of Victoria. He did not adopt this procedure, but achieved the same result by aligning the subject salaries with those in South Australia and Victoria as prescribed prior to that movement.

For the above reasons, we dismiss this appeal which in our view satisfies the requirements of section 35 (3) of the Act. We also discharge the stay order made on 28 April 1976.

Order accordingly