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1520/1993 (30th November, 1993)

Industrial Relations Commission Decision 1520/1993; [1993] 1520 IRCommA

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AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

[Industrial Relations Act 1988](#)
[s.113](#) application for variation

Printing and Kindred Industries Union

and

Production Packaging Industries and
Stirling Office Equipment
(C No. 31778 of 1992)

PRINTING INDUSTRY SUPERANNUATION AWARD 1988
(ODN C No. 05658 of 1987)
[Print H6898 [P179]]

Printing employees

Printing industry

COMMISSIONER FOGGO

SYDNEY, 30 NOVEMBER 1993

Labour-on-costs - superannuation - exemption - employers who were members of  **the Brethren**  sought exemption from contribution to the award superannuation fund on religious grounds - union subsequently agreed to exempting employers from provisions of award - award varied.

DECISION

This matter involves an application pursuant to [section 113](#) of the [Industrial Relations Act 1988](#) (the Act) by Production Packaging Industries and Stirling Office Equipment to vary the Printing Industry Superannuation Award 1988.

The application seeks to insert the following clause into the above award:

"3 - APPLICATION OF AWARD

The provisions of this award will not apply to respondents and their employees who are members of the religious fellowship known as **the Brethren** who contribute to an approved occupational superannuation fund at a rate equal to or exceeding that provided by this award."

Mr Joyce, for Production Packaging Industries and Mr McKay, for Stirling Office Equipment, are both members of the religious fellowship known as **the Brethren** and base their application on two grounds.

1. On the basis of Christian conscience neither the applicants nor **their "Brethren"** employees could join in a common fund with persons with whom they did not partake of the Lords supper, and
2. That they do not object to the principle of Superannuation but rather seek to pay the levels required by the Printing Industries Superannuation Award, 1988 into a separate fund for their employees.

Following the substantive hearing on 27 October 1992, I wrote to all major employer groups in the printing industry advising them of this matter and urging them, pursuant to section 110(4) of the Act, to submit written arguments in this matter. Written submissions were received by the Metal Trades Industry Association (MTIA) and Mr Joyce for Production Packaging Industries.

I subsequently wrote to Mr McKay, an applicant in this matter, pursuant to s.110(4) of the Act requesting formal written submissions by him. (On 9 December 1992 written submissions by Mr McKay confirmed the support given previously for the submissions of Mr Joyce and the joint application of Production Packaging Industries and Stirling Office Equipment in this matter).

In arguments supporting his application, Mr Joyce relied upon the Scriptures which are central to his beliefs as a member of **the Brethren** and in particular to the authority of Scripture in the Holy Bible, particularly in the belief that **as Brethren** "they should be not unequally yoked together with unbelievers" (2 Corinthians, Chapter 6, Verse 14).

Mr Joyce and Mr McKay indicated during hearings that they both met the levels for superannuation as specified in the Printing Industry Superannuation Award 1988. Further they indicated that no deductions were made from beneficiaries contributions for administration purposes for auditing of the fund.

The applicant relied on the decision of The Furnishing Trades (Superannuation) Award, 1988 [Print H1379 [F115]] particularly the award clause inserted by Commissioner Turbet which was in precisely the terms which are the subject of this application for variation of the award.

In supplementary written submissions, the applicants submitted the clauses in seven federal awards which provide **for Brethren's** conscience in

relation to superannuation award provisions, specifically the National Building and Construction Industry Award 1990 [Print J4733 [N122]], The Furnishing Trades (Superannuation) Award, 1988; Australian Workers' Union Construction and Maintenance Award 1989 [Print J0179 [A516]]; Plumbing Industry (Qld & W.A.) Award 1979 [Print E1939 [P090]]; Plumbing Trades (Southern States) Construction Agreement, 1979 [Print E2721 [P092]]; Plumbing Industry (New South Wales) Award 1983 [Print F2180 [P111]]; The Sprinkler Pipe Fitters' Award, 1975 [Print C6628 [S091]] and the Transport Workers Award, 1983 [Print F2076 [T140]].

In addition there was a vast number of State awards submitted which also contained examples of clauses outlining exemptions for particular parties from industry superannuation fund.

In its submissions the union opposed the application to vary the Graphic Arts Award, 1977 [Print H6950 [G014]]. It relied heavily on the decision of Commissioner Donaldson in Printing and Kindred Industries Union and Australian Chamber of Manufactures in C No. 5658 of 1987 [Print H6349] and Graphic Arts Services Association and Printing and Kindred Industries Union in C No. 30995 of 1988 [Print H6349]. Mr Barker, for the union, emphasised that the decision by Commissioner Donaldson had decided that claims for exemption should be identified by the respondent employer organisations to the Printing and Kindred Industries Union and be the subject of discussions between the parties.

Commissioner Donaldson established the Printing Industries Superannuation Award, 1988. Subsequently in a case before Commissioner Lear, he made several decisions impacting on that award [Print J1663]. This case went particularly to applications for exemptions from the Printing Industries Superannuation Fund and was followed by a supplementary decision of Commissioner Lear on 5 July 1990 [Print J3335] which further clarified categories of exemptions from the Printing Industries Superannuation Award, 1988. Mr Barker submitted that discussions had not occurred between the parties in this case and referred to the decision of Commissioner Donaldson whereby if agreement cannot be reached then applications for exemption should be referred to the Commission for determination.

The union also expressed concern that if a variation to the award was granted an exemption given to respondents who were members of the religious fellowship known  as **Brethren**  that by virtue of  **the Brethren** 's belief that it should not have contact with organisations of employees or employers, that the funds would not be properly conducted in terms of having employer and employee representatives.

The union submitted that the Trust Deed of the Fund or the Certificate from the Superannuation Commission on the eligibility of the Fund to meet the guidelines had not been sighted. Mr Joyce indicated that he would make copies of these documents available to the Industrial Registry and in fact copies of these documents were handed to the Commission.

There are, as indicated above, a number of clauses in existence in federal awards which provide for specific exemption for members of  **the Brethren**  to participate in industry funds. There are no exemptions for employers to meet

the requirements concerning levels of superannuation contributions for employees. A prime consideration is whether the current clauses of the award already provide sufficient opportunity for exemption for the applicants. Another major concern expressed by the union is that by varying the award so that a type of employer is referred to generically, it becomes impossible to precisely determine the employer who seeks the exemption and impractical to ascertain which employees and award respondents are members of  **the Brethren** .

Following a number of proceedings before the Commission both in formal hearings and private conference, the Commission instigated a conciliation process in an attempt to resolve this matter. This process was assisted by the fact that one of the applicants in this matter withdrew an application for a section 113 application concerning right of entry in another matter [C No. 31777 of 1992] and all the parties were prepared to work with the Commission, as currently constituted, to resolve this matter.

On 18 June 1993, I convened a meeting with representatives of the Printing and Kindred Industries Union (PKIU) and The Printing and Allied Trades Employers' Federation of Australia (PATEFA) at which time the union agreed that the two applicants in this matter could be exempted from the provision of the Printing Industry Superannuation Award 1988 in relation to membership of the superannuation funds prescribed in the award.

A proposal to exempt Production Packaging Industries and Stirling Office Equipment was conveyed to those applicants on 20 August 1993 and advice received on 5 October 1993 that the proposal was acceptable.

In normal circumstances, this matter could have been quickly resolved. However, as referred to above, the parties were involved in other proceedings involving irreconcilable differences and this impacted on the ability to determine this matter on its merits and in an expeditious manner.

The proposal, which has been the subject of negotiation between the Commission and the parties on an individual basis, is reflected in an order of the Commission [Print L0214] issued on 30 November 1993 to take effect from the first pay period on or after 23 November 1993.

Appearances:

B. Barker with E. Snell for the Printing and Kindred Industries Union.

B. Joyce for Production Packaging Industries.

J. McKay for Stirling Office Equipment.

Dates and place of hearing:

1992.

Melbourne:

October 13, 27.

1993.

Melbourne:

February 10.

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