



Industrial Relations Commission of Australia

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1766/1995 (11th August, 1995)

Industrial Relations Commission Decision 1766/1995; [1995] 1766 IRCommA

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AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

[Industrial Relations Act 1988](#)

[s.99](#) notification of industrial dispute

Construction, Forestry, Mining and Energy Union

and

A Aarons Waterbed Centre and others

(C No. 32602 of 1994)

Various employees

Furnishing industry

Employer argued against making of award - claimed religious beliefs of employer would be offended - claimed employees did not come within scope of award - Commission held no evidence produced to warrant alteration of dispute finding - held constitutional right to freedom of religion not absolute but should be seen in the context of the laws of an orderly society including making of awards - removing right of entry provision of no consequence by virtue of [s.286](#) of the Act - not inclined to restrict operation of preference clause which is generally consistent with objects of the Act - employer sought removal of superannuation provision - held superannuation provision excluded members of religious organisation - roping-in award made.

DEPUTY PRESIDENT WATSON

MELBOURNE, 11 AUGUST 1995

DECISION

In a decision of 20 June 1995 [Print M2883] the Commission approved the making of a roping-in award in respect of parties to a dispute finding in matter C No. 32602 of 1994. However, that decision left unresolved the question

of the making of a roping-in award in respect of two groups of companies: first Nuwood Quality Furniture, Bentley House and Criterion Industries, the proprietors of which are members of the religious fellowship known as  **the Brethren**  and certain named members of the Tasmanian Chamber of Commerce and Industry. The determination of an application by the Construction, Forestry, Mining and Energy Union (CFMEU) for a roping-in award binding these companies was adjourned for further proceedings.

This decision deals with the first group of companies: Nuwood Quality Furniture, Bentley House, and Criterion Industries. In my decision of 20 June 1995, I stated in respect of these companies:

"In respect to Nuwood, Bentley House Furniture and Criterion Industries, I have heard submissions from each of those companies. During the course of those submissions, they brought to my attention a consent arrangement entered into by another union and another company with similar circumstances in Print K9682. The CFMEU is not in a position to respond immediately to the potential for a similar consent arrangement to be reached. Accordingly, what I have decided to do with the support of the CFMEU and the companies, is to ask the CFMEU to consider that arrangement or any like arrangement and whether there is any potential for overcoming the concerns of the companies on that or a similar basis.

I will discuss that possibility with the CFMEU. In the event that there is no possibility of such a consent arrangement being entered into, the CFMEU will provide written reply submissions in respect to the submissions put on behalf of Nuwood, Bentley House Furniture and Criterion Industries. Upon receipt of those submissions which I will then forward to Nuwood Bentley House Furniture and Criterion Industries, provide them with seven days to provide to me any reply submissions should continuation of the contested position eventuate." [Print M2883]

On 8 June 1995, the CFMEU advised me that it would not consent to an arrangement similar to that reflected in the position reflected in Print K9682 (a decision of Commissioner Foggo reflecting a consent position reached between the Printing and Kindred Industries Union and a company whose proprietor was a member of the religious fellowship known as  **the Brethren** ).

It stated, inter alia:

"This is to advise that we have given the provisions in that decision (Print K9682) serious consideration and have to inform you that we are not prepared to agree to providing the same exemption.

We will prepare and forward written submissions on the employers' verbal submissions as instructed upon receipt of

transcript from that hearing."

On 13 July 1995, I received written submissions by the CFMEU. The CFMEU advised that it had decided not to pursue having Criterion Industries made respondent to the Award. Accordingly, no issue remains in respect of Criterion Industries. It also provided submissions in respect of Nuwood Quality Furniture and Bentley House.

A copy of those submissions was forwarded by me to each of those companies on 13 July 1995 providing them with a period until 21 July 1995 to provide written reply submissions.

No issue remains for determination in relation to Criterion Industries. Accordingly, it is necessary only to decide the application for a roping-in award in respect of Nuwood Quality Furniture and Bentley House.

There is commonality between the two companies in that their proprietors are members of the christian fellowship known as  **the Brethren**  the religious beliefs of which do not allow its adherents to recognise or have dealings with trade unions. The objection to an award roping them into the terms of the Furnishing Trades Award, 1981 (or aspects of that award) was directed to removing any obligation of the two employers to have dealings with the respondent union, the Construction, Forestry, Mining and Energy Union (CFMEU).

Both Nuwood Quality Furniture and Bentley House argued against a roping-in award, in part, on the basis that they did not engage labour within the scope of the Furnishing Trades Award, 1981. This is a position which was adopted by each of them in the dispute finding stage of that matter and proposition supported by statutory declaration. However, neither company wished to subject the material contained in statutory declarations to cross examination at the dispute finding stage. As a consequence, Print M3716 decided to make each of the companies a party to an industrial dispute in C No. 32602 of 1994. In my view the argument as to the absence of employees engaged within the scope of the award, or the eligibility of the CFMEU, is a matter to be addressed in the context of the dispute finding. There is no basis on the material presently before me, to alter my decision in relation to a dispute finding in Print M3716. Should Nuwood Quality Furniture and/or Bentley House wish to review their opposition to a dispute finding on the ground now advanced and are prepared to provide appropriate evidence, they can apply to vary or revoke the dispute finding pursuant to s.101.(1) of [Industrial Relations Act 1988](#) (the Act).

Mr Fysh, for Nuwood Quality Furniture, argued that the application of the terms of the Furnishing Trades Award, 1981 would in some respects offend his conscientious beliefs. When pressed to identify what was sought by Nuwood Quality Furniture, he sought that something be inserted into the award that gives exemption to  **the Brethren**  from contact with the union specifying

as particular concerns preference for unions, superannuation and right of entry.

Mr Nipper, for Bentley House argued that it opposed the making of the roping-in award on the basis that aspects of the award would prevent the free practice of religion by the proprietors of the company and offend [s.116](#) of [the Constitution](#). It raised the question of right of entry in particular and requested that the company benefit from a provision similar to that reflected in a decision of Commissioner Foggo in Print K9682. In that decision Commissioner Foggo recorded a position reached, by agreement, between the Printing and Kindred Industries Union (PKIU) and Woolston Printing which provided in effect that any right or function under the award of a union or employer organisation or obligation on an employer to communicate with a union or employer organisation, be fulfilled in the case of employer respondents belonging to  **the Brethren**  through the Industrial Registrar or the Deputy Industrial Registrar of the Australian Industrial Relations Commission or Federal Inspectorate Officers.

The CFMEU, in writing, submitted that Nuwood Quality Furniture, was already a respondent to the Furnishing Trades Award, 1989. Consequent upon the making of the Furnishing Trades (Roping-in No. 1) Award 1988 [Print H8266] effective 20 December 1988. It submitted that the application of a roping-in award in respect to Nuwood Quality Furniture, was directed to recording the correct current address of the company, with the address having changed since the roping-in award of 1988.

It submitted that nothing put by Bentley House should lead the Commission not to make it party to a roping-in award. It submitted that nothing had been put other than reliance of the religious beliefs of  **the Brethren** .

The CFMEU submitted in relation to both companies that the religious beliefs of its proprietors or employees should not remove their obligations to any current or future employee through being made a respondent to the appropriate Federal award. It submitted that such religious beliefs are not an appropriate criteria for determining whether a roping-in award should be made. It submitted that the appropriate criteria are found in The Australian Building Construction Employees' and Builders Labourers' Federation and Montvale Developments Australia and others [Print F1808]

DECISION

In written reply submissions, Bentley House put further submissions in relation to its submission that it did not employ persons within the scope of the Furnishing Trades Award, 1981.

In its written reply submissions, Nuwood Quality Furniture submitted that the existing award should be varied to remove Nuwood Furniture Products of Dandenong Road, Dandenong on the grounds that the company did not exist. It

made no specific submissions as to the relationship of that company to Nuwood Quality Furniture. It further argued that Nuwood Quality Furniture should be removed as a party to the dispute because, inter alia, it has no employees covered by the proposed award. It reiterated that its opposition to the making rests on its proposition that it employs no one within the scope of the Furnishing Trades Award, 1981.

The making of a roping-in award

(a) General

Having regard to all of the submissions put, I am satisfied that in part settlement of the dispute in C No. 32602 of 1994 both Nuwood Quality Furniture and Bentley House should be bound by the terms of the Furnishing Trades Award 1981.

I am satisfied that the terms of the Furnishing Trades Award, 1981, an award determined by the Commission in accordance with [the Act](#) and the prevailing principles of wage fixation for application to the furniture industry, is appropriate for application to Nuwood Quality Furniture and Bentley House in respect of any employees engaged by them in that industry. In my view the application of the terms of that award would constitute an appropriate part settlement of the dispute in C No. 32602 of 1994 in respect of those companies.

On the material before me the Furnishing Trades Award, 1981 already applies to Nuwood Furniture Products by virtue of a 1988 roping-in award made in Print H8266. On the material before me I am not able to reach any conclusion as to its relationship, if any, to the company, Nuwood Quality Furniture, in the current proceedings.

(b) Alleged non-employment of employees within the scope of the Furnishing Trades Award, 1981

I am not satisfied that an award should not be made on the basis of the submission put by the companies that they do not employ labour within the scope of the Furnishing Trades Award, 1981. As noted above this is an argument relevant at the dispute finding stage. I have decided in Print M3716 that a dispute should be found in relation to each of the companies. There is no further material now before me which would lead me to revoke or vary that dispute finding. It is open to either company to apply pursuant to [s.101](#).(1) of [the Act](#) to vary or revoke the dispute finding if prepared to bring additional material or evidence available to support such an application.

(c) [s.116](#) of [the Constitution](#)

I do not accept the submission of Bentley House that it would be unconstitutional, by reference to [s.116](#) of [the Constitution](#), not to

release  **the Brethren**  from award obligations inconsistent with their religious beliefs. In my view, that submission rests on the section of the [Constitution](#) that "the free exercise of any religion" is not to be prohibited. That Constitutional right, like other "freedoms" provided for by [the Constitution](#), is not absolute but should be seen in the context of the laws of an orderly society, including the making of awards applying generally to employers within an industry. I do not accept that the making of a roping-in award, as sought by the CFMEU, is inconsistent with [s.116](#) of the [Constitution](#).

(d) The decision of Commissioner Foggo in Print K9682

In the proceedings, Bentley House sought the application of an agreement entered into by the PKIU and Woolston Printing which was reflected in the decision of Commissioner Foggo in Print K9682. During the course of proceedings I explored with the CFMEU whether or not it was prepared to enter into a similar arrangement with respect to Nuwood Quality Furniture and Bentley House. By letter of 8 June 1995, the CFMEU indicated that it was not prepared to do so.

I am not prepared to impose by arbitrated decision and order of the Commission an arrangement of the type reflected in Print K9682 in the circumstances of the current matter. The arrangement between the PKIU and Woolston Printing was entered into by agreement. That arrangement settled a particular dispute on the basis of the acceptance, by agreement of the parties, of a particular arrangement and does not in my view support an arbitrated decision an order which would diminish award rights of the CFMEU, particularly so in the context of statutory rights of the CFMEU, provided by [s.286](#) of [the Act](#).

For the reasons stated above the Furnishing Trades (Roping- in No. 1) Award 1995 [Print M2562] arising from my decision in Print M2883 should be varied to add as a respondent Bentley House.

Particular provisions of the Furnishing Trades Award, 1981 raised by Nuwood Quality Furniture and Bentley House

(a) Right of entry

Nuwood Quality Furniture and Bentley House sought relief from contact with the CFMEU which might arise from clause 40 - Right of Entry of Union Officials of the Furnishing Trades Award, 1981. In my view an order which had the effect, as sought, of removing from the CFMEU its right of entry otherwise available pursuant to clause 40 of the Furnishing Trades Award, 1981, would be inconsistent with the right of entry provided by [s.286](#) of the Act. More significantly, however, the existence of [s.286](#) of the Act creates a situation whereby even if relief from an award provision in respect of right of entry were granted, the CFMEU would retain a right of entry by virtue of [s.286](#) of the Act. Hence provision of such relief would

not achieve the objective of Nuwood Quality Furniture and Bentley House, even if such an application was justified on merit.

(b) Preference

Nuwood Quality Furniture also objected to the application of the preference clause of the Furnishing Trades Award, 1981 (clause 33) on the basis of the religious beliefs of its proprietor. Any relief from the preference provision is not necessary to allow Nuwood Quality Furniture to employ members of its own faith in light of the terms of s.122.(3) of the Act and the availability of such employees of certificates subject to the requirements of s.267 of the Act. In practical terms the immediate issue is whether Nuwood Quality Furniture should be exempted from an award provision applying generally to employers respondent to the award in respect of the choice for employment between a unionist and non-unionist, neither of whom are members of  **the Brethren**  who have obtained a certificate pursuant to s.267 of the Act. I am not inclined to restrict the operation of a clause within the award which operates generally consistent with the object of the Act of encouraging organisations on the basis of the submissions put in these proceedings.

(c) Superannuation

Nuwood Quality Furniture also objected to the application of the superannuation provisions of the Furnishing Trades Award, 1981 (in clause 57) on the grounds of their religious beliefs. In my view there exists no basis for variation of the terms of clause 57 as they would apply to Nuwood Quality Furniture and Bentley House. I have reached this conclusion because paragraph 57(b)(iv) already provides an exemption in respect of members of  **the Brethren**  making appropriate contributions to an approved fund. Specifically clause 57(b)(iv) provides:

"The provisions of this clause 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 clause."

I am not satisfied that there should be any departure from the existing terms of the Furnishing Trades Award, 1981 for the purpose of application to Nuwood Quality Furniture or Bentley House in respect of any of the particular provisions raised by them. Conclusion

I have decided that I will vary the Furnishing Trades (Roping-in No. 1) Award 1995 to add as respondents Nuwood Quality Furniture and Bentley House. Orders giving effect to this decision will have effect from 11 August 1995 and remain in force for a period of six months.

BY THE COMMISSION:

DEPUTY PRESIDENT

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