



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

JUSTICE HATCHER, PRESIDENT

C2023/1

s.285 - Annual wage review

**Annual wage review
(C2023/1)**

Sydney

9.00 AM, MONDAY, 1 MAY 2023

Continued from 13/04/2023

PN1

JUSTICE HATCHER: I will take appearances. Mr Clarke, you appear for the ACTU?

PN2

MR T CLARKE: Yes, that's right, your Honour.

PN3

JUSTICE HATCHER: Ms Bhatt for the Australian Industry Group?

PN4

MS R BHATT: Yes, your Honour.

PN5

JUSTICE HATCHER: Ms Lawrence for Busways North West Pty Ltd, ABI and NSW Business Chamber?

PN6

MS T LAWRENCE: Yes, your Honour.

PN7

JUSTICE HATCHER: And Ms Tinsley for the Australian Chamber of Commerce and Industry?

PN8

MS J TINSLEY: Yes, your Honour.

PN9

JUSTICE HATCHER: All right. Pursuant to the directions the Commission has received two documents identifying certain Copied State Awards which are said to exist. Is there any challenge to the categorisation of the CSAs in either of those submissions; that is can the Commission simply proceed on the basis that there are in existence CSAs as identified in those submissions? Mr Clarke, your microphone is on mute.

PN10

MR CLARKE: Sorry about that, your Honour. There appears to be either an omission, an error in ours or an error in the Ai Group's one in relation to the Transdev John Holland. We have got them covered by one Copied State Award. Ai Group have got them covered by a different one. They're probably covered by both, but the dates don't align in terms of whether it's the 20 issue of the award or the 2021 issue of the award, and I can try and get to the bottom of that with the RTBU and Ms Bhatt and maybe provide some updated information as soon as possible.

PN11

JUSTICE HATCHER: That would be useful, but at the end of the day it may not matter. That is if it's accepted that the entity is covered by a Copied State Award as suggested it may not matter, subject to the next question I'm going to ask. Does any other party wish to challenge the (indistinct) raised by Mr Clarke as to the existence of those Copied State Awards? All right.

PN12

My second question is directed to you, Ms Bhatt. Insofar as you've identified the Transdev Copied State Award does AiG wish to advance any submissions specific to that Copied State Award?

PN13

MS BHATT: Yes, we do, your Honour. We seek leave to file submissions and potentially some evidence as well.

PN14

JUSTICE HATCHER: I see. I mean there were directions made for this to be done a long, long time ago. Why should we allow that to be reopened now?

PN15

MS BHATT: Your Honour, as I submitted on the last occasion we appeared before you and other members of the panel. It was our understanding that those proceedings concerned only the approach that the Commission intended to take generally in relation to Copied State Awards. Now that a specific Copied State Award has been identified, and we are instructed to advance submissions and evidence, I can indicate that the position in relation to that Copied State Award is not dissimilar to that of Busways. What I mean by that is that they are in the process of negotiating an enterprise agreement, but it is not clear that an enterprise agreement will be made prior to 1 July.

PN16

JUSTICE HATCHER: All right. And how long would you need to do that?

PN17

MS BHATT: A period of at least three weeks, your Honour.

PN18

JUSTICE HATCHER: Just hold on a second. So when does that take us to?

PN19

MS BHATT: The 22 May. It's three weeks from today.

PN20

JUSTICE HATCHER: What do you say about that, Mr Clarke?

PN21

MR CLARKE: Well, I think as I said towards the conclusion of the hearing in relation to this I don't know that it's necessary or appropriate for leave to be given for additional material to be filed at this late stage. This is an issue that's been on the radar - well, we would say - since 2014, but certainly very clearly since the decision in the annual wage review at the end of June last year. There's a limit to how many opportunities need to be given, and I think we've probably reached that.

PN22

If the Commission is against me on that point I would merely say that 22 May to put that material in and get new responses in doesn't leave a lot of time, given that

generally speaking if we're not making submissions on the March quarter national accounts you'd expect a decision to be done and dusted somewhere between the end of the first and end of the second week of June. I think if material is going to be filed we can maybe get a bit of a wriggle on in relation to that rather than do it in three weeks.

PN23

JUSTICE HATCHER: All right. Given the timeframe, Ms Bhatt, that's too long. I will allow you to file new material relating to Transdev by 11 May.

PN24

MS BHATT: If it pleases.

PN25

JUSTICE HATCHER: And, Mr Clarke, any cross-examination of witnesses or submissions in reply can be dealt with at the consultation sessions on 16 and 17 May. So any reply submission can just be made orally at those consultations.

PN26

MR CLARKE: Understood. Thank you, your Honour.

PN27

JUSTICE HATCHER: All right. Apart from that does any party wish to be heard further in relation to the issue of Copied State Awards? All right. I thank you for your attendance. We will issue directions in that respect, and we will now adjourn.

ADJOURNED TO A DATE TO BE FIXED

[9.12 AM]