

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1988

s.99 notification of industrial dispute

The Australasian Meat Industry Employees Union

and

Morex Meat Australian Pty Ltd and others

(C No. 40176 of 1991)

Meat workers

Meat industry

DEPUTY PRESIDENT RIORDAN

SYDNEY, 22 MAY 1992

Award - Log of claims - industrial dispute - dispute finding - parties to dispute - AMIEU served log of claims on officer of MATFA and companies - MATFA objected to any finding of dispute being made - application pursuant to s.111(1)(g) Industrial Relations Act 1988 subsequently made - whether Commission justified not to proceed further pending finding by Full Bench relating to Meat Industry Inquiry - there is a real prospect of confusion arising if a final decision were to be made at this stage - also real problems exist as to identifying parties to alleged dispute - apparent deficiency in service of claims noted - Commission to continue inquiries to ascertain the real parties to the alleged industrial dispute prior to any exercise of discretion pursuant to s.111(1)(g)(iii).

DECISION

The Australasian Meat Industry Employees Union (AMIEU) has served a log of claims on an officer of the Queensland Division of the Meat and Allied Trades Federation of Australia (MATFA) as well as a number of named companies at several establishments at which the business undertaken is the slaughter and/or processing of animals for the production of meat and by-products. These establishments are situated in the States of Queensland, New South Wales and South Australia.

It is important to observe that the claims have been served on each of the companies at the respective meatworks so that, superficially at least, there appears to have been multiple service on certain companies. In addition, it is suggested that the claims served on the MATFA officer in Queensland are intended to be claims against all of the members of MATFA who are engaged in business within the scope of the log of claims.

The letter of demand which accompanied the log of claims was extremely brief and succinctly made the claims in the following terms:

"Having been duly authorised to make these demands, I demand on behalf of the Australasian Meat Industry Employees Union that you observe the terms and conditions of employment detailed in the attached Log of Claims with respect to persons employed by you whether members of the above organisation or not.

I require you, within seven (7) days of the date of this letter, to observe the said terms and conditions. No reply to this letter within seven (7) days will be treated as a refusal of the demands and the Union will consider itself to be in dispute with your organisation."

The letter was signed by Messrs L.A. Day and T.R. Hannan, the Federal President and Federal Secretary of the AMIEU respectively.

There are several issues which have arisen in respect of this matter which need to be determined at this stage.

The first relates to an objection by MATFA to the effect that there should be no finding at this stage of the existence of an industrial dispute and that further consideration should be adjourned until after the finalisation of the proceedings at present before a Full Bench of the Commission relating to proceedings known as the Meat Industry Inquiry.

At the outset it was made clear that this was not an application made pursuant to Section 111(1)(g) but towards the end of proceedings the submission was altered so that MATFA made "an application under Section 111(1)(g)(iii) that further proceedings in this matter are not necessary or desirable in the public interest for the reasons that were given on the first day of the proceedings".

The argument advanced is that the AMIEU had made it clear in the proceedings before the Meat Industry Inquiry that it was intended to achieve a new single award covering all of the abattoirs in Queensland. Reference was made to the submission made by the AMIEU in the Meat Industry Inquiry proceedings in which the AMIEU sought an award covering Queensland meatworks (see Exhibit D73). It was stated that the log of claims served in respect of this matter represented the foundation for what was being sought by way of an award covering the meat processing industry in Queensland. The result sought to be awarded, it was argued, would if granted be the result of two separate findings of the existence of an industrial dispute about the one set of issues with the possibility of confusion and conflict being created.

It was argued that in respect of the present proceedings there was no real and genuine dispute in existence, although Commissioner Harrison in his report referred to a suggestion by MATFA that a finding of dispute in certain specified terms would be justified. The argument is that as this matter is part of the reserved decision no further action would be justified pending the publication of the decision of the Full Bench. To do otherwise, it was suggested, would be contrary to the public interest.

Obviously there is a good deal of merit in MATFA's proposition, although it must also be observed that the log covers operations in States other than Queensland. There could not, however, be two awards made as a result of two alleged disputes without causing real difficulty in the workplace. On the other hand, the AMIEU could be creating a jurisdictional base for the award it is seeking from the Full Bench. It would be entitled to do so.

There is no doubt that it is within the discretion of the Commission not to proceed further pending the finding by the Full Bench. Such a course is authorised by Section 111(1)(g) (See Re The Australian Bank Employees Union; Ex parte Citicorp Australia Limited - (1989) 167 CLR 513)). The question which must be decided, however, is whether such a course is justified.

This matter was last before the Commission in December 1991. The result of the Meat Industry Inquiry matters has not yet been published. The range of matters raised by the parties in the Meat Industry Inquiry are complex and the issues are both substantial and numerous and have required a great deal of consideration.

There is a real prospect of confusion arising if a final decision were to be made about this instant matter at this stage. In addition, there are real problems about identifying the parties to this alleged dispute. I, therefore, do not intend to attempt a finding of the existence or otherwise of a real and genuine dispute at this stage. At the same time there are certain matters which require further inquiry in order to ascertain the real parties to any dispute which may exist as a consequence of the service by the AMIEU of its log of claims.

Leaving aside for the moment whether there should be a formal decision in respect of the proposed use of the discretion contained in Section 111(1)(g)(iii), there are two issues requiring attention, one of which should be investigated further and in respect of the other an indication given about an apparent deficiency in the service of the claims.

The first matter relates to the question of MATFA being an alleged party to the industrial dispute. There is no doubt that the log of claims was served not on the national body but on the director of the Queensland Division of MATFA which, in itself, may represent a defect in the procedure required for the creation of an industrial dispute with MATFA. Further, the letter of demand served on the Queensland Division's director appears to have been in identical terms to the letter of demand served on the individual employers. There is no reference in that letter to any demand against those potential or actual employers who are members of MATFA. These defects may be sufficient to prevent the finding of the existence of a dispute in so far as MATFA is concerned.

It is desirable to make the potential difficulty clear at this stage so that the AMIEU may give consideration to correcting such potential difficulties if it should have the intention, as was stated during proceedings, of requiring MATFA and its members in Queensland or elsewhere to concede the demands contained in the log of claims.

The other issue is potentially more difficult and involves the ascertainment of the identity of the parties to the industrial dispute, if one is eventually found to exist. This difficulty would remain irrespective of any finding by the Full Bench concerned with the Meat Industry Inquiry.

Certain of the employers of labour who are respondents to this log of claims appear to be clear, but in other cases this is not so.

The evidence given in the proceedings is that the log of claims was served on Morex Meat Australia Pty Ltd at three locations, there being the Lockyer Valley Abattoir at Grantham, the Roma Valley Abattoir at Roma and Mary Valley Abattoir at Maryborough. This particular company is selected for discussion in order to illustrate a potential difficulty which may arise in respect of other respondents.

Evidence given in these proceedings by the Industrial Officer of Frugalis Pty Limited is to the following effect: the employer of labour at each of the three Morex abattoirs referred to above is Frugalis Pty Ltd, the land on which the abattoirs are situated is owned by Fictor Pty Ltd, but the operator of the three abattoirs is Morex Meat Australia Pty Ltd which owns all of the plant and buildings in respect of each of the three abattoirs.

DECISION - MEAT INDUSTRY

Another company on which the log of claims was served is Thomas Borthwick and Sons Pty Ltd at its plants at Mackay and Bowen, but this company apparently has employees also at Cannonvale and Brisbane. It is not clear whether all of these establishments, including those at Cannonvale and Brisbane, are intended to be covered by the claims and if Thomas Borthwick and Sons should be found to be in dispute with the AMIEU in respect of the employees at all of its Queensland establishments. Prima facie it would appear that they should be so included.

The position of the Angliss Group appears to be clear in that each separate abattoir at which the claims have been served is operated by a separate trading company and that each of these companies is part of the Angliss Group of companies. Whether they have been served in their correct and proper name is, however, not clear.

In relation to some of the other respondents there are real doubts about which company may be the actual employer at certain of the abattoirs. This is particularly so in respect of those which appear to be part of the group known as Australia Meat Holdings Pty Ltd, having regard to the assertions made on behalf of the AMIEU during the proceedings.

It may be that service of claims on the proprietor of an abattoir and a refusal to accede to them is sufficient to create a dispute. (See R. v. Alley; Ex parte New South Wales Plumbers and Gasfitters Employees Union and Another - ((1981) 37 ALR 1 and 153 CLR 376); and Appeal - Royal Australian Nursing Federation and Private Hospitals' and Nursing Homes' Association of Australia and others - Print F8448). This argument, however, was not developed and there was no reference by either party to either of these cases, although I made a passing reference to the latter decision. It would, in the circumstances not be appropriate to deal with this aspect at this time. Indeed it would be impossible to deal with it on the evidence and material presently available.

I have decided, therefore, to continue my inquiries to ascertain who are the real parties to the alleged industrial dispute prior to determining whether the discretion contained in Section 111(1)(g)(iii) should be exercised. The matter will be re-listed for further hearing in the near future.