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LEGISLATION AND DECISIONS AFFECTING INDUSTRIAL RELATIONS:

Some of the Events of the Past Year in Retrospect

V. WATSON

Sydney

1960 was a year which saw no significant legislative changes in either the Federal or State spheres affecting industrial relations in New South Wales.

It was a year, however, when the changes made at the end of 1959 in the structure and powers of industrial tribunals under the New South Wales Industrial Arbitration Act operated for the first time.

An important feature of the amending legislation was the abolition of appeals from single members of the Industrial Commission except as to jurisdiction. The way was thus left open for differences in matters of principle, in particular in the application of the new legislative formula included in the amended legislation for the fixing of rates of wages which requires the fixing of such rates of wages as the Commission deems just and reasonable in all the circumstances of the case.¹ In the result unappealable decisions of single judges emerged in relation to rates of pay which were seemingly irreconcilable and of conflicting guidance to conciliation committees in applying the same legislation. (See the decisions reviewed by the President of the Commission *Re Iron and Steel Works (A.I. & S.)* and other Awards 23/12/60² and *Cook J. Re Butchers Wholesale (Cumberland) Award 12/10/60.*³)

The amending legislation of 1959 retained a right of appeal (exercised in a number of cases during the year) from Conciliation Committees to the Industrial Commission constituted by a single member.⁴ The Commission's powers to suspend awards of committees pending the hearing of appeals, to prohibit the proceedings of committees and to vary of its own motion awards of committees were, however, removed. This situation has been interpreted, however, as not cutting down the power previously exercised by the Industrial Commission, "in special circumstances",⁵ of taking up a matter already before a Conciliation Committee and exercising the powers of the Conciliation Committee under s. 30 of the Industrial Arbitration Act. In the particular case, however, *Re Butchers Wholesale (Cumberland) Award*,⁶ the Commission (*Cook J.*) declined to exercise the committee's jurisdiction.⁷

MOVEMENTS IN WAGE RATES

Of by far the greatest importance during the year because of the impact on wage levels generally, was the repercussive effects of the decision of 27th November, 1959, of the Commonwealth Conciliation and Arbitration Commission increasing margins in the Federal Metal Trades Award by 28%.⁸ In the Federal sphere, subject to certain exceptions, e.g. the journalists and public service group, almost all Federal awards applying in New South Wales were varied following that decision either by granting the full 28% increase over 1954 margins or some portion thereof where previous fixations had been made later than 1954, e.g. waterside workers.⁹ In some cases the full increase of 28% was granted on margins fixed much later in time.

In the State sphere the substantial number of employees whose rates of pay were regulated by New South Wales State awards and industrial agreements were to benefit during the year by the same wave of marginal increases. At first, rates for tradesmen and counterparts awards with some relation to Federal awards were varied. These were followed, in many cases by consent, by adjustment of rates in State awards which had no relationship whatsoever with the Federal Metal Trades Award or other Federal awards. In some cases decisions were made refusing to re-open awards and, in one case, a variation based on the Metal Trades decision was set aside.¹⁰ The effect of the Metal Trades decision became as widespread as in the Federal sphere.

The matter which remains for conjecture is whether these various awards which hitherto had no relationship historically or otherwise with Federal awards will in the future be reviewed on application for new awards as required by the New South Wales legislation and further adjusted in rates of pay or whether they will move in some consonance with wage movements in the Federal sphere. No doubt many unions will endeavour to obtain for their members the benefits so far as they can of both the State and Federal systems.

Under a system where all awards are not normally reviewed together or where rates of wages in different industries are considered at different times, some must lag or get ahead of others in wage movement. If, however, a gain can be enjoyed prior to a general change in wage levels with a further enhancement to the new level whenever a general change also occurs, employees under the award adjusted more frequently must obviously benefit as compared with those moving only when the general change occurs, i.e. under present circumstances when the Federal Metal Trades award is varied as to margins.

BASIC WAGES AND STANDARD HOURS

The year saw no movement in the basic wage or primary component of wage rates in the Federal sphere, an increase in the basic wage being refused by the Commonwealth Conciliation and Arbitration Commission in the 1960 Basic Wage Inquiry.¹¹ A claim for the restoration of quarterly adjustments was also refused. During the latter part of the year the Commonwealth Commission, on application by the Union concerned, abolished the country differential in the Federal Engine Drivers' and Firemen's Award.¹² The decision was not based on specific circumstances in that award and its effect will result in other lower rates for country districts where included in awards ultimately ceasing to apply. An application made by the South Australian Government and certain South Australian employers seeking an increased differential in the basic wage for Adelaide and country districts in South Australia as compared with Sydney was refused.¹³

Employees in New South Wales under State awards, as a result of legislative action in 1955,¹⁴ continue to enjoy the benefits of adjustments made each quarter in the basic wage component of their rates of pay in the light of the "C" Series Price Index numbers, an index which has been criticised as deficient and unsuitable for such a purpose.¹⁵ As a consequence the minimum award rate for an engineering fitter employed under the Engineers' (State) Award contains a basic wage component of £14.17.0 per week as against £14.3.0 per week if he were employed by an employer who was a respondent to the Federal Metal Trades Award (as at February, 1961).

Since the discontinuance of quarterly adjustments in the basic wage in the 1952-1953 Basic Wage Inquiry, the Commonwealth Conciliation and

Arbitration Commission has consistently set its face against their restoration for reasons stated in its various decisions on the question since.¹⁶ At the same time the State Legislature has shown no signs of abandoning the adjustment each quarter of a basic wage which the Commonwealth Commission has regarded as not a valid starting point for adjustment.^{17, 18}

To the extent that the disparity between this primary component in Federal awards and State awards and agreements continues, an extraordinary situation is developing which can hardly be regarded as conducive to industrial peace.

Following an application by the Metal Trades unions for three weeks' annual leave, a counter-claim was filed by various employer groups seeking the introduction of a forty-two-hour week on the basis of two hours additional ordinary pay to become part of the ordinary weekly wage on reversion to a forty-hour week at the end of five years, no alteration to be made to the basic wage and margins in the interim. These claims are being heard concurrently with the Basic Wage Enquiry, 1961.

The claim by the Metal Trades unions for three weeks' annual leave in the Metal Trades Award was the subject of a decision on 14th December, 1960, when the Commission refused to increase annual leave entitlements as being inappropriate at that time. The Commission made it clear, however, that the present amount of leisure was not the maximum which employees should ultimately achieve.¹⁹ (Three weeks' leave already applies in respect of workers generally in New South Wales, except for those under Federal awards, by virtue of the Annual Holidays Act, N.S.W., as amended in 1958.)

A claim for a thirty-five-hour week in the Coal Mining Industry was refused by the Coal Industry Tribunal (*Gallagher J.*) 28.11.60.²⁰ Leave entitlements were, however, increased by one week to four weeks per annum.

GRADUATE RATES

An important issue which has been the subject of consideration during the year by both the Federal and State tribunals is the appropriate rate to be paid to professional employees of graduate status—a very real common denominator amongst professional groups, allowing, of course, for variations between three-year trained, four-year trained and five-year trained graduates. Apart from one decision affecting Forestry Officers, the various cases before the Industrial Commission or Conciliation Committees are part heard or pending.

In the Federal sphere the Commission is dealing with a log of claims filed by the Association of Professional Engineers of Australia seeking a general minimum basic salary rate for qualified engineers with a further rate based on experience. This case has survived constitutional challenges affecting a substantial group of those affected and is nearer achieving what the applicant had previously failed in doing²¹ (as had the Association of Architects, Engineers and Draughtsmen before it²²)—namely, an effective general Federal award for professional engineers with wide coverage. The case is not, however, yet finalised.

In the meantime what might be claimed as an appropriate award rate for a graduate was not finally established in 1960.

EQUAL PAY FOR FEMALES

Unions are moving very slowly in seeking to take advantage of the amended legislation providing for equal pay in certain circumstances for females.²³ No doubt this reluctance is due to strongly held doubts that

the legislation can benefit many groups of female employees. A large number of applications which were hastily filed early in 1959 have remained dormant, although one application was successful in part during the year.²⁴ This was the first contested application to be dealt with following the judgment of interpretation in relation to the Clerks (State) and other awards delivered by the Commission at the end of 1959. The case in question concerned domestic staff in five major metropolitan hospitals, the Commission deciding that the section was applicable to female cooks and awarded equal margins with male cooks, the basic wage component to be adjusted ultimately to equal the male basic wage. The section was held inapplicable in respect of wardmaids and other domestic staff in the hospitals.

LONG SERVICE LEAVE

The year saw some important decisions in relation to long service leave. In one case, *Lamb v. Cockatoo Dock and Engineering Company*,²⁵ the District Court had allowed a claim for long service leave benefits under the Ironworkers' State Award made by an employee whose conditions of employment generally had been regulated by the Federal Metal Trades Award up to the cessation of his employment prior to 5th November, 1955, when the Long Service Leave Act, 1955, commenced to operate.²⁶ The view generally held prior to this decision was that workers under Federal awards were not entitled to long service leave benefits until the Long Service Leave Act, 1955, was passed extending long service leave to workers generally. The decision was upheld on appeal by the Supreme Court²⁷ and it is understood that no further appeal is pending.

Another decision²⁸ which dealt with the continuity of "service" on transmission of an employer's business, undertaking or establishment (s. 4 (11) of the Long Service Leave Act, 1955) disapproved and did not follow an earlier decision of a Full Bench of the Industrial Commission, *Thomson v. Sungrawure Ltd.*,²⁹ which had decided that the transfer of a former employer's staff or "establishment" without transmission of his business was sufficient to fall within the provisions preserving continuity.

AUTOMATION ENQUIRY

The enquiry by the Industrial Commission into technological changes in industry continued its hearing during the year, although a substantial part of the year was taken up by the members of the Commission holding the enquiry investigating technological changes and their effects abroad. A large number of industries have been the subject of investigation and as yet the enquiry is incomplete. No recommendations have therefore as yet been made to the Minister arising out of the enquiry.

STRIKES AND LOCKOUTS

The year was not free of industrial unrest and a number of strikes of short duration occurred culminating in a serious stoppage in the steel industry at Newcastle at the commencement of the new year. The year was, however, marked by an absence of any successful "legal" strike notified and carried into effect in accordance with the provisions of s. 99A of the Industrial Arbitration Act (introduced also in the 1959 amendments). In one case it transpired that the form and particulars to be notified had not been prescribed and the subsequent strike was held not to be within the section.³⁰ The form and requirements as to particulars to be notified were in due course gazetted.³¹

However, a later notified strike in the meat industry was not carried into effect, the matter being taken no further than the notification and a short

mentation before a member of the Industrial Commission. The notification included employees of a State instrumentality, a strike by whom remains illegal under the Industrial Arbitration Act.

It would seem in retrospect that a number of difficulties yet remain before confident use can be made by unions of the "legal" strike provisions. One question which arises is whether the issue in dispute is settled by a determination of a competent tribunal. If this is so and is done before the expiry of the period of notice, the strike would still be illegal.

Unions may well prefer in cases of dismissal or other changes by an employer affecting members, to rely rather (as was done in a number of cases during the year) on seeking the exercise of the power to make interim orders restoring the status quo pending investigation of the dispute, a power specifically prescribed by new s. 25 (5) (introduced in 1959), although a similar power has been exercised before and since by the Commission.

Space does not permit a review of all the various decisions affecting the relations of employers with their employees. One decision worthy of brief comment, however, is the decision of the Commonwealth Industrial Court in the *Aircraft Industry Case*³² which gives a reminder that the industrial relationship is based in contract to which as well as to relevant awards the parties must turn to resolve issues. In the particular case, despite an award provision for shift work, neither the contract nor the award in the case of employees engaged to perform day work, gave the employer the right to require such employees to change to shift work.

In retrospect one final comment may be made on the major events of 1960—a comment highlighted by the refusal of the Commonwealth Conciliation and Arbitration Commission to increase either the basic wage in the 1960 Basic Wage Enquiry or annual leave entitlements.

It is a trite observation that, where award wages are increased, unions are reluctant to concede that any increase should be absorbed by reducing over-award payments. Equally evident is the reluctance on the part of many employers to absorb wage increases in profits. This is inevitable in the case of employers in fact unable to absorb further increases in costs. In other cases, where monopolistic advantages and price-fixing arrangements apply, management policy largely determines prices. In this situation increases in wages levels tend to be reflected immediately in both increasing average earnings and, more seriously from the point of view of real incomes and the exporter selling on world markets, rising internal price levels. The resulting inflationary process can therefore render the gains of a general wage movement in real terms largely illusory and can endanger the stability of the economy as a whole.

The dilemma for unions (as well as governments) is a real one. On the one hand it is seemingly imperative to get on the bandwagon of general wage movements so that as little loss in real terms is sustained for members. On the other hand, too sudden and complete an uplift in wages generally in the absence of restraint on both sides can only lead to one result. Certainly the effect of increases of the previous year was one of the factors which militated against the success of the claim for an increase in the basic wage and for increased leisure in 1960.

If our expanding economy and increased consumer spending do necessitate an increased level of imports, the fall in export income anticipated for the current financial year, and the resulting balance of payments problems, does not lessen the dilemma for 1961.

3. *Law Book Company Current Review* F. 93; 15 *Industrial Information Bulletin* 1167.
4. S. 24 (8) *I.A.A.*
5. *In Re Butchers Wholesale (Cumberland) Conciliation Committee*, 1950 A.R. 59.
6. 15 *I.L.B.* 299; 137 *N.S.W. Industrial Gazette* 73.
7. But see *Re Steel Works Employees' Award*, Beattie J., 7/6/60, *L.B. Co. C.R.* F. 76; 15 *I.L.B.* 618.
8. 14 *I.L.B.* 982A.
9. 14 *I.L.B.* 1238.
10. See note 3.
11. 15 *I.L.B.* 230.
12. 15 *I.L.B.* 1205.
13. 15 *I.L.B.* 1205—reasons published 1/3/61 (not yet reported).
14. S. 61-61M *I.A.A.*
15. See, e.g., 1957 *Basic Wage Inquiry* 87 *C.A.R.* 437, 444, 446-447.
16. See 77 *C.A.R.* 477, 496; 84 *C.A.R.* 157, 169-178; 87 *C.A.R.* 437, 1958 *Inquiry* Print No. A.6079, pp. 9-12.
17. See 1959 *Inquiry*, Kirby C.J., Print No. A.6618, p. 7; 1958 *Inquiry*, A.6079, p. 23; 87 *C.A.R.* 437, 444-5.
18. For a Table showing movements as affected by potato prices see 137 *I.G.* 502.
19. 15 *I.L.B.* 1207, 1214.
20. 15 *I.L.B.* 1151.
21. 75 *C.A.R.* 50.
22. 64 *C.A.R.* 1 and 71 *C.A.R.* 20.
23. S. 88b *I.A.A.*
24. *Hospital Employees (Metropolitan) Award*, 4/10/60, 15 *I.L.B.* 1050.
25. 137 *I.G.* 6.
26. As to the scope of this Act see *Collins v. Charles Marshall*, 92 *C.L.R.* 529.
27. 1/11/60, *C.R.* F. 101.
28. *Hayman v. Neil*, 1/9/60, *C.R.* F. 91; 15 *I.L.B.* 1052.
29. 1957 *A.R.* 199.
30. *Whitehead v. B.W.I.U.*, 29/2/60, 15 *I.L.B.* 301.
31. G.G. No. 28, 19/2/60, 136 *I.G.* 394.
32. 15 *I.L.B.* 670.

FOOTNOTES

1. S. 23a *Industrial Arbitration Act, 1940*, as amended.