QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 287 – application for declaration of general ruling – application for exemption

The Australian Workers' Union of Employees, Queensland AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (No. B797 of 2001)

Queensland Council of Unions AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (No. B904 of 2001)

Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers AND The Australian Workers' Union of Employees, Queensland and Others (No. B1448 of 2001)

PRESIDENT HALL
VICE PRESIDENT LINNANE
COMMISSIONER BECHLY 29 August 2001

General ruling re wages – Application for phasing in – Incapacity to pay – Evidence failing scrutiny – Application for exemption rejected.

DECISION

On 2 May 2001 The Australian Workers' Union of Employees, Queensland, filed an application by which it sought a Declaration of a General Ruling pursuant to s. 287 of the *Industrial Relations Act 1999* in order to flow into the Queensland Industrial Relations system certain wage increases allowed by a Full Bench of the Australian Industrial Relations Commission on 2 May 2001, in a case colloquially known as the 2001 Living Wage Case Claim by the Australian Council of Trade Unions, see Print PR002001. On 23 May 2001 the Queensland Council of Unions filed an application in similar terms. During the course of the hearing the Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers (QCCI) intimated that pursuant to s. 287(4) it sought partial exemption for the industry governed by the *Fruit and Vegetable Growing Industry Award – State*. The matter was severed from the hearing of the applications for a Declaration of a General Ruling. The hearing was set for 21 August 2001. Subsequently, on 17 August 2001 the QCCI made written application for the partial exemption previously referred to. We doubt that the filing of the further application was necessary but are content to rely on s. 320(1)(a) of the *Industrial Relations Act 1999* and hear the matters together.

The case for the partial exemption was argued as if it was governed by Principle 13 of the Commission's Statement of Principles, see 167 QGIG 353 at 356. In truth, the application for exemption was not governed by Principle 13. The Principles are guidelines for the disposition of matters by Commissioners sitting alone. Principle 13 applies where, a Full Bench having issued a Declaration of Policy allowing a general wage movement on an award by award basis, a single Commissioner processing the application to vary a particular award is asked to exempt a particular employer (whether temporarily or permanently or whether in whole or in part). Principle 13 has no application to an application for exemption from a Declaration of General Ruling. Only a Full Bench may grant such an exemption. The wide discretion at s. 287(1) and (4) may not be limited or constrained by Principles declared by the Commission. That said, where in fact the application for exemption is based on an alleged incapacity to pay, there can be no doubt that the testing of evidence should be just as rigorous as the testing on an application to a single Commissioner pursuant to Principle 13. The material relied upon by the QCCI does not withstand rigorous scrutiny.

The application was always going to be difficult to argue. It sought to phase in what would be a $13 a week increase by way of an increase of $6.50 from 1 September 2001 and a further $6.50 increase from 1 March 2002. In the decision upon the applications for a Declaration of a General Ruling, 167 QGIG 350 at 351, we drew attention to the circumstance that the Australian Industrial Relations Commission traditionally takes into account that some industries are not performing as well as others and that the impact of a wage increase may vary from industry to industry. Granted that in a general way regard has already been had to the circumstances of the broader agricultural industry, we have difficulty in declaring ourselves satisfied that for a period of 6 months it is appropriate to fine tune the decision by an amount of $6.50 in the case of one part of that industry. Certainly, the materials relied upon in this case would not justify the formation of such a view. There were two sources of the material about increases in costs. One was a survey based on a sample of three growers. The other source was data compiled by the Australian Bureau of Agriculture and Resource Economics for agriculture as a whole, supplemented by a submission that cost increases for fruit and vegetable growing would be higher because the industry is more "labour and input intensive". The evidence about changes in prices is more satisfactory, but even if one assumed an overall increase in costs and an overall decrease in prices, in the absence of any evidence about productivity changes, it is difficult to make a judgement about changes in profitability and impossible to make a judgement about capacity to pay. We add that the materials about price increases suggest that some growers – the application relates to the entire industry – are very well placed to pay. The application for exemption is simply not made out.

We dismiss the application for partial exemption of the *Fruit and Vegetable Growing Industry Award – State*.

Dated this twenty-ninth day of August, 2001.

D.R. HALL, President.
D.M. LINNANE, Vice President.
R.E. BECHLY, Commissioner.

Released: 29 August 2001

Appearances:–
Mr M. Smith for Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers.
Mr B. Swan for The Australian Workers' Union of Employees, Queensland.