



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

JUSTICE HATCHER, PRESIDENT

AM2021/63, AM2024/11

s.158—Application to vary or revoke a modern award

Applications by Australian Nursing and Midwifery Federation-Victorian Branch

Re Nurses Award 2020

Sydney

9.00 AM, THURSDAY, 12 SEPTEMBER 2024

Continued from 21/05/2024

PN1

JUSTICE HATCHER: Good morning. I'll take the appearances. Mr McKenna, Mr Hartley, you appear for the ANMF.

PN2

MR J McKENNA: If it please the Commission.

PN3

JUSTICE HATCHER: Mr Ward, do you appear for the joint employers?

PN4

MR N WARD: Thank you, your Honour.

PN5

JUSTICE HATCHER: And Ms Besemerer, if you're still there, you appear for the Commonwealth.

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MS C BESEMERER: That's correct, your Honour.

PN7

JUSTICE HATCHER: Can you turn your camera on, Ms Besemerer?

PN8

MS BESEMERER: Yes, I have now, your Honour.

PN9

JUSTICE HATCHER: Thank you.

PN10

All right. Look, this matter was listed for three days on the expectation that there was going to be a major case in opposition from the - what I'll call the private hospital interest, but that hasn't eventuated, so I'm just trying to work out what the programming of this matter is in respect of the material that - excuse me - has been filed. So firstly, the ANMF relies, I think, upon three witness statements. Is that correct, Mr McKenna?

PN11

MR McKENNA: That's correct, your Honour.

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JUSTICE HATCHER: So, Mr Ward, or Ms Besemerer, are any of those witnesses required for cross-examination?

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MR WARD: No, they're not, your Honour.

PN14

MS BESEMERER: No, they're not, your Honour.

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JUSTICE HATCHER: All right. All right. And then is there any evidence beyond that?

PN16

MR WARD: No, your Honour.

PN17

JUSTICE HATCHER: All right. So we're simply dealing with submissions. Where do we stand in terms of the - given there's a great deal of written material on, that's been filed. Where do we stand with the length of the hearing? I mean, my impression is that it shouldn't take more than a day, but I'll be guided by you.

PN18

MR HARTLEY: Your Honour, for the ANMF, we would certainly agree that it should not and would not take more than a day. Our position is that subject to a number of matters, it's in fact, capable of being determined on the papers. One of the matters that I was going to raise that might prevent that would be the requirement for cross-examination of witnesses. Your Honour's indicated that that falls away.

PN19

The primary reason why the expert panel may benefit from a hearing is if there are issues which the expert panel wishes to test with the parties and the other outstanding issue really is something that arises with respect to the joint employers' position on some wording for enrolled nurse supervision, which I can leave Mr Ward to address.

PN20

JUSTICE HATCHER: Mr Ward?

PN21

MR WARD: Your Honour, my clients would be content for the matter to be dealt with on the papers, again, subject to the question of whether or not the expert panel have anything they wish to test with the parties. There's a very small, discrete issue with enrolled nurses which has been agitated by my clients from the beginning, which is just the inclusion of some language to affirm that the enrolled nurses perform a broad role of supervision that of personal care workers. I don't believe it's a controversial matter.

PN22

I don't believe Mr McKenna's clients are allergic to including some words. If it was to be dealt with on the papers, we might simply be granted leave to provide some words which I suspect we can reach by agreement with Mr McKenna's client.

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JUSTICE HATCHER: All right.

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Ms Besemeres, do you wish to add anything?

PN25

MS BESEMERES: No, your Honour. I don't have any instructions on the question of whether the Commonwealth is content for the matter to be heard on the papers, but I'm just in the process of taking those instructions. But I very much expect that there's no objection.

PN26

JUSTICE HATCHER: All right. Just give me one second. Well, look, I'll confer with the expert panel about whether a hearing should go ahead or whether the matter should be determined on the papers. I will definitely set aside 17 and 18 September, so those dates are vacated. Can I ask the parties to keep 19 September in their diaries and I'll endeavour to advise as soon as possible whether that hearing date will be maintained or whether we will decide it on the papers.

PN27

MR McKENNA: Your Honour, could I just respond briefly to Mr Ward?

PN28

JUSTICE HATCHER: Yes.

PN29

MR McKENNA: Mr Ward's raised the prospect of agreeing the wording - some additional wording. Hopefully that may come to pass. In the event that it does not, that's obviously a matter that would need to be directed back to the expert panel. Now, whether that itself requires a full hearing or not, I don't know. We haven't seen the wording. One would hope that even if there is no agreement, it might be something that could be addressed by brief written submissions.

PN30

But we can't - having not seen the wording, we obviously can't say that there will be agreement as to that issue.

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JUSTICE HATCHER: Yes. All right.

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All right. Well, if there's nothing further, we'll now adjourn. As I've said, I'll advise the parties about the state of affairs as soon as practical.

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MR McKENNA: All right. Thank you.

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MR WARD: If the court pleases.

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MR McKENNA: If the Commission pleases.

PN36

MS BESEMERES: As the court pleases.

ADJOURNED UNTIL THURSDAY, 19 SEPTEMBER 2024

[9.18 AM]