CHIEF INDUSTRIAL MAGISTRATE'S COURT

Coram: Miller C.I.M

Date: 18 March 1994

Case No: 93/1710

NSW FIRE BRIGADE EMPLOYEES UNION v NSW FIRE BRIGADES

Industrial Relations Act 1991 s. 166

JUDGEMENT

The informant alleges that the defendant on Sunday, 3 October, 1993 breached s.166 of the Industrial Relations Act, 1991 in that an employee covered by the New South Wales Fire Brigade Employees (State) Award being a permanent firefighter was directed to work in excess of 16 hours contrary to Cl 5 (vi) of the Award.

Mr Clinton Hanney, an officer of the Union appeared on its behalf. Mr G Bray of the Public Employment Industrial Relations Authority appeared for the defendant. A plea of not guilty was entered.

The evidence reveals that on Sunday, 3 October, 1993 at 0800 hours change of shift, Mr L Billinghurst, District Officer, "B" Platoon, South West Region, was informed by Station Officer Harrison, No. 5 Station, "B" Platoon that due to staff

shortage 5364 Senior Firefighter Edmiston, "D" Platoon was being retained.

As this staff shortage would have involved one full shift on overtime rates, due to the unavailability of spare firefighters in South West Region, Mr Billinghurst contacted the District Officers of the other regions, who reported that no spare firefighters were available. However, he was informed by District Officer, South Region that a relieving firefighter would become available at 1000 hours at No. 33 Station Engadine. Mr Billinghurst estimated the time of travel from Engadine to Newtown at one hour. He then contacted Station Officer Harrison at Newtown and asked him to obtain consent from Senior Firefighter Edmiston to his working in excess of 16 hours.

Senior Firefighter Edmiston had the choice to either work the additional hour and he be paid accordingly, or to work to 1000 hours and the station would then be taken off road until a relieving firefighter arrived. He consented to work the additional hour.

The relieving firefighter arrived at Newtown at 11:00 hours and Senior Firefighter Edmiston was dismissed at this time.

Sub Clause (vi) in Cl 5. Hours of Work provides:

> (vi) No employee shall be permitted to work in excess of sixteen hours straight except in the case of a call of fire or other emergency circumstances, when overtime rates shall be paid for the hours worked in excess of sixteen hours.

The issue for determination, as there was no call of fire is whether the above circumstances come within the meaning "or other emergency circumstances" as contained in Cl 5 (vi) or not.

The meaning of the words used in a document including an award is not merely the sum of the individual meaning of the words used, ascertained from dictionaries, it is the thought which the court must ascertain and apply. In doing this, it is of course, necessary first to determine what is the ordinary or natural meaning of the words used primarily, it is from that that the intention of the parties to the award is to be ascertained. See Provincial Insurance Australia Pty Ltd v Consolidated Wood Products Pty Ltd (Cl of A 14/8/91).

An "Emergency" is defined in the Concise Macquarie Dictionary "as an unforseen occurrence, a sudden and urgent occasion for action". The Union raised the issue of whether the "emergency" that occurred was foreseeable by the defendant. The Union alleged that the incident was a regular occurrence during school holidays where because of excessive granting of approved leave and firemen calling in sick, staff shortages occur.

The defendant on the other hand submitted it was an emergency as Mr Billinghurst was unable to maintain a minimum staff level and would in the circumstances without relief, have to close the station.

On a dictionary meaning such circumstances would constitute an "emergency" as the word is used in normal usage.

However, when one looks at the phrase in the context of the Award as a whole the draftsperson has drawn a distinction in the words used in Cl 5 (vi) to those in 5 (v) (a). Cl 5 itself provides extensive provisions for working hours, particularly in regard to the working of the 10/14 roster. Cl 5 (v) (a) provides for a departure from the roster "to meet an emergency due to sickness or other unexpected or unavoidable cause". This phrase is not repeated in Cl 5 (vi).

It seems to me that the intent of Cl 5 (vi) is that "no employee shall be permitted to work in excess of 16 hours straight except in the case of a call of fire or other emergency circumstances". In other words a prohibition against working more than a double shift other than in a real emergency. It was open for the draftsperson to draft the wording in Cl 5 (v) (a) (which would have covered the circumstances here) in Cl 5 (vi) but they have used a different phrase. It would appear, therefore, the draftspersons' intention was to change the meaning from that contained in Cl 5 (v) (a).

When ascertaining the meaning of the word "emergency" in Cl 5 (vi) regard must be had in the context in which it appears. A word of wide possible connotation will be limited by the context in which it appears. In my opinion this general word must be read in conjunction with "a call of fire". In such a context "other emergency circumstances" must be interpreted to mean "a real and serious emergency" to which the fire station must attend, not a manning problem as such. The decision of the then Industrial Commission of New South Wales in Fire Brigade Station Officers (State) Award (Industrial Commission - Cahill J 8/10/75 - unrep) reinforces my view.

I find the offence proven.

The maximum penalty for a breach of s.166 of the Act is $5000. This is not the most serious of breaches of s.166 to come before the Court. The worker has only been disadvantaged in respect of time. The defendant has no prior record in this jurisdiction.

Cahill J said in Fire Brigade Station Officers (State) Award, referring to double shifts, but equally applicable here:

> "There are obviously problems in providing a reliable system of relief for unexpected absences at the stations in question but it appears to me that the problems are difficult, not impossible, of resolution and call for the intelligent application of proper management techniques to that end".

I am confident the defendant will address this issue and not re-offend.

In all circumstances, I find the offence proven. Having regard to the circumstance I have decided not to inflict any punishment. Without proceeding to a conviction, the information is dismissed under the provision s.556A of the Crimes Act, 1900.

Costs of the informant, if any, are to be paid by the defendant. If they cannot be agreed the matter may be relisted.

G A Miller
Chief Industrial Magistrate