

HIGH COURT OF AUSTRALIA

Federated Engine Drivers & Fire

Vs.

Broken Hill Proprietary Co.Ltd.

(Griffith C.J., Barton, Isaacs and Higgins JJ.)

7th April 1913

Griffith C.J.

This Court may permit anyone to appear before it. But, if the secretary of the association has the right under sec. 27 of the *Commonwealth Conciliation and Arbitration Act 1904* to appear before this Court as representing the association, Mr. *Duffy* and Mr. *Mitchell* cannot appear without his consent. This would be an absurd result. This Court has determined that this Court is a distinct Court altogether from the Arbitration Court. In this Court we proceed according to the practice as laid down in the Rules of Court. But every Court can allow anyone to appear, and we allow the secretary, not as of right, to appear in this case.

Barton J.

It is entirely in our discretion to say whether we will hear the secretary or not. The Court does not ordinarily allow parties to appear except by counsel or in person. If the secretary is not the association appearing in person, he has no right to appear. It is not for me to say in what way the association could appear in person. It could appear by counsel, and that would be in accordance with the usual practice. A party not appearing in person or by counsel can only appear in any other way by special permission of the Court. I think such permission may be given in this instance without impropriety.

Isaacs J.

I also think that the secretary has not an absolute right to appear for the association in this Court. Sec. 31 of the *Commonwealth Conciliation and Arbitration Act 1904* allows the President of the Court to state a case in writing for the opinion of the High Court. There are two different Courts; and although the President must be appointed from amongst the Justices of the High Court, Parliament might, in its wisdom, at any time remove that condition, and then the matter would be so clear as to be beyond argument: the President, not being then a Justice of the High Court, would state a case for the opinion of the High Court, and that case would, of course, be determinable according to the practice of the High Court, and sec. 27 of the *Commonwealth Conciliation and Arbitration Act 1904*, which relates to representation before the Court of Conciliation and Arbitration, would have no reference, nor has it, in my opinion, any reference, to appearance before this Court. As far as the right of appearance is concerned, besides the litigant himself Parliament has by secs. 49 and 50 of the [Judiciary Act 1903](#) said who shall have the right to practise in a federal Court, namely, certain barristers and solicitors and the Crown Solicitor for the Commonwealth. Therefore I agree with what has been said, that there is no right in the secretary to the association to

appear on behalf of the association in this Court.

But, on the other hand, [sec. 27](#) has, in my opinion, a very important bearing in this way: that it is a recognition by Parliament that it is a very convenient and proper thing for the secretary to represent an organization in the Arbitration Court, and, on an application being made in this Court by such representative to be heard, it is a weighty consideration for this Court in the determining whether it will or will not accede to the application. In this case it seems to me a very proper thing to accede to the application, and, while there is no right to appear, I quite agree that the secretary should be permitted to appear in this case.

Higgins J.

I should like to reserve my opinion as to the right of the secretary to appear in this Court; but, of course, no one can contend that [sec. 27](#) gives him the right. A litigant is under no obligation to employ counsel; the organization cannot appear before the Court physically; and to say that a duly authorized secretary cannot put its views before the Court seems to involve a denial of justice to an impecunious organization. In this case the rules of the association provide that "The General Secretary shall be the officer to sue and be sued on behalf of this association."

I am not prepared, however, to dissent from my brethren on this point, especially as they see their way to allow, in this case, the secretary to express the views of the organization without expense.

Questions answered as follows: 1. Yes, on the basis that the plaintiff first validly came into existence on 24th November 1911. 2. Yes, so far as the Corporation is engaged in trading operations. 3. No.

Solicitors, for the respondents, Derham & Derham.

Solicitor, for the Commonwealth, Gordon H. Castle, Crown Solicitor for the Commonwealth.

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