

HIGH COURT OF AUSTRALIA

Australian Railways Union

Vs.

Victorian Railways Commr.

(Isaacs C.J., Gavan Duffy, Rich, Starke and Dixon JJ.)

8 December 1930

Isaacs C.J.

I am of opinion that, consistently with the established practice of this Court, and having regard to the views already expressed and on record, there is no need, for the purpose of determining the questions submitted to us, for a fresh expression of opinion by the Court in the present case as to the constitutional or statutory validity of the awards. As to the validity of sec. 33, which involves the validity of sec. 34 of the Act, the latter being the Conciliation Committee's section, the majority of my learned brethren consider it permissible at this stage to state their conclusions as to the validity of sec. 33, and, consequently, also as to sec. 34. I therefore feel called upon to state my own. I am clearly and unhesitatingly of opinion that those sections are intrinsically valid, and at the least, by reason of sec. 3 of the *Acts Interpretation Act of 1930* (recently proclaimed), are valid to a sufficient extent to enable the Court to arrive at a definite determination in this matter. I shall be prepared to state my reasons at the earliest opportunity.

Gavan Duffy J.

My brothers *Rich*, *Starke* and *Dixon* have reached the definite conclusion that sec. 33 of the *Commonwealth Conciliation and Arbitration Act 1904-1930* is void. I am disposed to adopt the same view, but do not desire to express any final opinion at present. We are all of opinion, however, that the precise questions submitted by the summons cannot be answered without pronouncing upon the questions whether the awards of 25th March 1930, with which the order of the Court of Conciliation and Arbitration deals, were authorized by the *Conciliation and Arbitration Act 1904-1929* and the [Constitution](#), and are valid. This question the members of the Court, other than the Chief Justice, are not prepared to pronounce upon without argument. Unless one or other of the parties, within ten days, notifies the Principal Registrar of its desire that this question be argued, the Court will dispose of the summons without answering specifically the questions which it contains. The members of the Court will, in the meantime, defer giving reasons for their opinions upon the validity of [sec. 33](#).

The question came on to be argued at Sydney on 19th November 1930 and subsequent days. There was no appearance by or on behalf of the Victorian Railways Commissioners, but an application for leave to appear was made on behalf of the States of Victoria and South Australia.

Questions answered accordingly.

Solicitors for the Australian Railways Union, Maurice Blackburn & Tredinnick.

Solicitor for the Commonwealth, W. H. Sharwood, Crown Solicitor for the Commonwealth.

Solicitors for the Railway Commissioners, Moule, Hamilton & Derham.

Solicitor for the State of Victoria and the State of South Australia, F. G. Menzies, Crown Solicitor for Victoria.

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