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Volume 10 Number 3 November 1968

# The Journal of Industrial Relations

The Journal of the Industrial Relations Society of Australia

Articles



Sydney University Press

Registered at the G.P.O., Sydney, for transmission by post as a periodical

steel plant, management actively initiates and supports plant-sponsored training. With the exception of seven programmes, all attendance figures fell within the period 1962 through the first half of 1965. Trainees' jobs were classified according to the I.L.O. *International Standard Classification of Occupations*.

6. The term "trainee-position" was selected for reference to total figures because available data, which comprised a listing of all training programmes and the number of trainees attending each programme, did not allow us to know the total number of *individual* workers participating in a group of programmes.
7. Trainee-positions were classified *after* training, plant-sponsored training being considered equivalent to formal education in terms of raising skill level.



# Legislation and Decisions Affecting Industrial Relations

Editor: C. P. Mills

*University of Sydney*

## Apprenticeship System in New South Wales

We are indebted to officers of the Department of Labour and Industry for a document which contains the essentials of the conclusions and recommendations of the very detailed report by Mr Justice Beattie, the President of the Industrial Commission, on the functioning of the apprenticeship system currently practised in New South Wales. The inquiry was not limited to Sydney but embraced also a number of country centres from Wollongong to Broken Hill.

His Honour reviewed the whole apprenticeship system in great detail to ascertain whether enough skilled tradesmen are forthcoming to provide for the needs of an expanding economy. He found that, in spite of a vigorous immigration programme and upgrading of semi-skilled workers, the supply of skilled tradesmen did barely meet the demand, let alone the expected increased demand of the next decade. Changes in technology alone would account for an upsurge in the demand for highly skilled tradesmen which would not be met by the number of apprentices at present entering various industries.

He analyzed the position in the three best-documented trades—metal, building and printing—as well as in government departments and statutory bodies but the findings can be generalized.

His Honour stressed that apprenticeship is by far the best way to train skilled tradesmen and concluded his report with a number of recommendations which in his opinion should make apprenticeship more attractive to potential apprentices and employers alike.

He found that there is by and large a considerable interest by youth in apprenticeship, but that in general a reasonably high supply of applicants is met by an unreasonably low demand of employers. Some well-known trades, the glamorous ones such as the motor mechanics, receive an over-supply of applications and boys have to accept second choice, while other less popular trades, like boilermakers, have difficulties in filling their vacancies.

But, proportionately to the population, employers train now fewer apprentices than they did ten years ago. The reasons vary; it is either a question of straight-out costs, or the reluctance to accept long-term obligations in industry like building, where longish slack periods are quite feasible. Sub-contracting, a practice increasingly resorted to owing to a shortage of skilled tradesmen, with apprentices rarely accepted, also plays a large part.

Some big firms accept responsibility for intensive training while small employers, usually for economic reasons, lag behind.

The various government departments and statutory bodies experience the same excess of applications for the better publicized jobs and are also often given preference because they offer initially higher pay and security. But they, like other big employers, were found to be on certain levels too selective as far as educational attainments were concerned; they seem to rely heavily on private industry for apprentice training, the exception being Qantas, which does sterling work.

But all of these schemes are based on the apprentices having passed the School Certificate. His Honour is opposed to establishing these educational attainments as criteria. Not only will the bulk of apprentices still come from boys leaving in second and third year but it also places too heavy an emphasis on academic qualifications in an essentially practical calling. He also recommends that apprenticeship councils should be empowered to shorten terms of apprenticeship for apprentices, who perform satisfactorily, to 3½ years as incentive to do their best. As an alternative he proposes payment at tradesmen's rate of pay to apprentices who have completed 3½ years of a four-year term, who have passed a trade course at a technical college and have obtained there a certificate of trade competency.

In New South Wales the apprenticeship system functions as a part of the conciliation and arbitration system. The Apprenticeship Commissioner is one of the Conciliation Commissioners and constitutes, together with members of the Conciliation Committee established for an industry, the Apprenticeship Council. There are at present over one hundred such councils in New South Wales.

Both trade unions and employers in general advocated at the inquiry the retention of the Industrial Commission as a final arbiter on apprenticeship matters, the only dissent coming from the Industrial Registrar and the representative of the Technical Education Department.

Mr Justice Beattie strongly recommends the establishment of a new State agency, "The New South Wales Apprenticeship Advisory Council". This new body should consist of—

(a) "The Director of Apprenticeship" as Chairman.
(b) The Director of Technical Education or his nominee.
(c) The Director of Education or his nominee.
(d) Part-time representatives of employers and employees (four each) who should be representatives of different trades.

The Minister should make the appointments after consultation with the Labour Council of New South Wales or with appropriate employers' organizations. The Chairman should have a deliberate and casting vote.

The Council should—

(i) keep under review:
  (a) the requirements for skilled tradesmen;
  (b) the availability of such men;
  (c) the arrangements for training skilled workers by means of apprenticeship and otherwise;
  (d) the adequacy and appropriateness of such arrangements; and
  (e) measures to be taken to promote apprenticeship;
(ii) conduct the relevant research;
(iii) make recommendations to the Industrial Commission and apprenticeship councils with regard to training of skilled workers; and
(iv) report to the Minister annually or at such other times as it thinks fit to keep him informed so that he may introduce legislation to improve the system.

The Advisory Council should also look into the present lack of a State-organized system for workshop training. In-plant training schools, well established in many European countries, are generally restricted here to the metal trades. They are not meant to replace the technical education provided by the Department of Technical Education.



The Advisory Council should be enabled to initiate proceedings before the Industrial Commission or before an apprenticeship council. At present the Commission has no original jurisdiction in relation to apprenticeship matters.

The office of the Director of the Advisory Council would be quite distinct from that of Apprenticeship Commissioner; Apprenticeship Councils should continue with the Apprenticeship Commissioner as chairman of all councils.

The idea, although good in theory, that all apprentices should be required to submit themselves at the end of their apprenticeship to a test of trade skill, is not attractive to those interested in apprenticeship in New South Wales.

Since it appears that an adequate supply let alone the desired increase to the work force from conventional sources cannot be expected, His Honour recommends the following as possible remedies:

(1) the acceptance of youths above the age customary for the commencement of apprenticeship, as is already done in some of the metal trades;
(2) the creation of opportunities for females equal to those of males to train for and perform suitable work in trades.

The latter step presupposes the creation of suitable social climate by encouraging girls to seek apprenticeships and employers to provide appropriate work opportunities, both by means of extensive publicity campaigns.

Lastly, appropriate legislation should prepare the ground for admission of females to suitable trades without discrimination by awards.

—A.K.

## The Flight Crew Officers' Industrial Tribunal

What appears on the surface to be a simple industrial issue often turns out to be a compound of most complex differences between the parties and, in the Australian context, we have come to learn that what are only relatively simple factual situations can involve the most complex problems of constitutional law.

If an airline company is insisting that its pilots fly a plane with a flight crew of only two, while the pilots are demanding a crew of not less than three, the lay observer might be pardoned for thinking it beyond doubt that here was an industrial dispute capable of settlement by the processes of conciliation and arbitration. But the decision of the High Court in *Australian Federation of Air Pilots* v. *Flight Crew Officers Industrial Tribunal*[1] has demonstrated that a careful analysis of the situation is required before such a conclusion may be reached, and the facts may be open to a number of different interpretations:

(a) The pilots' terms of employment may require them to fly the plane with a crew of only two, and they are demanding that these terms be varied so that the minimum is raised to three. This would be an industrial dispute, amenable to settlement by arbitration.

(b) The pilots' demand may be that considerations of safety require a minimum crew of three, and they are insisting that this standard be observed in the interests of travelling public. This might be a dispute, but not an industrial one, hence not arbitrable, even though the pilots' insistence on observance of the safety standard brings flying operations to a standstill.

(c) The pilots' demands may be based on their understanding of the meaning of their contract of employment and the Air Navigation Regulations, while the airline company insists that its requirement of the pilots is in accord with the proper interpretation of the contract and of the regulations. This is not an industrial dispute, because it does not relate to an industrial matter.

The issue is a question of law, and hence one for judicial determination and not one to be settled by arbitration.

(d) If, contrary to the wishes of the pilots, an award is made in terms of the existing conditions of employment as to which the parties are not in any disagreement, but with the addition of a clause prohibiting the pilots' union from being concerned in any ban on the performance of work in accordance with the award, that award will be invalid, because it is not in settlement of any industrial dispute. The question whether an award should be made is not an "industrial matter"; a dispute over such a question is not an "industrial dispute"; hence no award can be made for the determination of that question, and the bans clause can only be enacted as part of an otherwise valid award, to protect the award as the settlement of an industrial dispute.

All of the propositions (and some others) emerged at various points of the judgments of the several High Court justices in this case. With Barwick C.J. and McTiernan J. dissenting, the majority adopted proposition (d) above as the principal ground for prohibiting further proceedings on the award made by the Tribunal (Professor J. E. Isaac). The majority argument that the award had settled nothing—indeed, purported to settle nothing—was unanswerable: the bans clause in the award had been directed to the interruption of the airline operations (i.e., the results of the dispute), while the remainder of the award dealt with matters on which the parties had earlier reached agreement and which were not the subject of any disagreement between the parties at any time up to the making of the award. Professor Isaac had said as much in the comments he made at the time of issuing the award: the award was being made only so that a means would be provided whereby the issue between the parties would be determined in the courts.

The attitudes of the parties in the proceeding before the Tribunal helped to confuse the issue, for they had asserted that the Tribunal had no jurisdiction to determine what they called the "safety issue". The airline operators had drafted something "that would look like an award", but which made no reference to the manning of the particular aircraft which was the subject of the real dispute. Both they and the Pilots' Federation had taken the stand that the manning question was to be determined by the Air Navigation Regulations, under which the pilot in command is to ensure that the "required" operating crew members are on board before take-off, and the Pilots' Federation had submitted that this meant "required by the pilot in command", whereas the operators contended that this meant the crew members as required under the regulations. There had, it seems, been no argument on the question that flying the aircraft with only two members in the flight crew would impose undue strain on the crew, nor was there any suggestion that the federation's claim was simply a form of featherbedding. The federation appears to have been singularly astute in keeping strictly industrial issues out of its arguments, while the airline operators, faced with the prospect of strike, acted with "quite amazing naivete" in the steps by which they sought to have the Tribunal deal with the strike.

One remarkable feature of the decision was the rather testy (and largely unnecessary) denigration by the Chief Justice of Professor Isaac's "lack of understanding of the fundamental doctrines of this branch of the law". His Honour adverted to this in several places in his judgment, and extended a similar criticism to the advocate who appeared for the airline operators in the proceedings before the Tribunal. This was unfair, because the case was not,



as His Honour characterized it, "a simple industrial situation". The fact that the High Court itself was divided three to two on the ultimate question whether prohibition should be granted illustrates its difficulty. Furthermore, there was no high degree of unanimity on the subordinate issues that the case threw up, and in any event His Honour's own reasoning in places is open to serious objection from the point of view of logic. The thread of his argument runs thus: if it is found ultimately that there was a relevant industrial dispute in existence, then it matters not what the parties to that dispute thought their dispute was, nor does it matter that the Tribunal misconceived what the dispute was, that the words in the award carry a meaning that the Tribunal did not intend, or that the Tribunal wholly misconceived the effect of its award—none of these things will invalidate the award, so long as it, upon its proper construction, is apt to settle the industrial dispute which actually exists and which is within the scope of the Tribunal's jurisdiction, and the Tribunal did think that it was settling an industrial dispute. This line of reasoning was not adopted by any other member of the bench.

The real issue as it had presented to the Tribunal, viz. the interpretation of the Air Navigation Regulations, did eventually get dealt with by the High Court, but only as side-issue in three of the judgments, all of which favoured the interpretation contended for by the employers.

## REFERENCE

1. (1968), 42 A.L.J.R. 44.