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A Review of Industrial Relations 1968/9*

A. E. WOODWARD, Q.C.
Melbourne

THE PAST year has been a poor one for industrial relations in this country. I choose the adjective carefully because, although the year was bad by measurable standards, there were unusual pressures operating and we could not say today that industrial relations are at a particularly low ebb or that very deep scars have been left by the year's events.

On the other hand there have been some unhealthy developments over the period which could lead to really serious problems before long. I shall deal with these in their appropriate places.

DISPUTES

Reliable statistics of stoppages for the last calendar year are not yet available; but judging by the figures for the first three quarters and what we know of the last quarter, it seems clear that the total of man-days lost was about 50 per cent above that for 1967. This means that the year was easily the worst we have experienced since 1956. The high level of stoppages attracted over $100,000 in fines in the Commonwealth Industrial Court. This represents one-third of all the fines imposed over the last eighteen years.

The chief factor in the high level of time lost was the number of stoppages in the metal trades, in the early part of the year, over the absorption issue. Efforts to enforce a "flow-on" of the metal trades increases into other industries also led to heavy losses. This was certainly true of the building and railways industries. The high level of time lost in the stevedoring industry has been a source of regret to me personally. Some of it has resulted from difficulties thrown up by the complete reorganization of the industry due to the introduction of permanent employment. Some of it was caused by extraneous problems such as the Melbourne heat-wave in the first quarter of the year. Some of it was, in my opinion, caused by the deliberately disruptive tactics of a few union officials seeking to achieve some personal or political advantage. Some of it was caused by poor industrial relations on the part of employers.

A fairly close association with the causes of stoppages in this and other industries in recent years has led me to the firm conclusion that strike statistics by themselves tell you little. As with road accidents, it is very difficult in many cases to identify causes. But unless the attempt is made it is impossible to draw any worthwhile conclusions about the state of industrial relations. For example, there was one instance recently in which the real cause of a serious stoppage was that a union officer and an employer's representative lost their tempers in a telephone conversation.

The minor matter which led to their conversation would have been readily resolved if they had kept their tempers. How should that stoppage be classified? And what useful conclusion can be drawn about it?

Last year I had something to say about more and less responsible stoppages. One view I put was that stoppages unconnected with industrial issues can never be justified in a democratic society. As long as parliament and the press provide forums for public debate, and political questions can be determined by the ballot box, there can be no room for the use of industrial pressures to force a particular solution to a political problem.

One disturbing development in the last twelve months has been that responsible politicians have, on at least two occasions, urged unions to refuse to do a particular job for reasons unrelated to industrial issues. One of these occasions involved the question as to where Melbourne's extended sewerage system should have its outfall; the other, the question whether merino rams should be exported. The instances were comparatively unimportant in themselves, but they created a most dangerous precedent.

However, a much more serious development in industrial relations this year has been the number of major stoppages designed to reverse decisions of the Arbitration Commission. The stage was, I suppose, set by the wave of metal trades stoppages sponsored by the A.C.T.U. over the absorption issue. But, be it noted, those stoppages were not designed to defeat an award. The result sought was contrary to the intention underlying an award, but not to the award itself. Indeed it could be argued that in that decision the Commission had sought to interfere in an area where it had no right to do so. It could be argued that, because of the varied history and nature of over-award payments, the Commission should not have prescribed wage increases in the expectation or belief that over-award payments could or should be absorbed.

Be that as it may, it is unfortunately true that there have been several instances in the last year of industrial pressure being used to have an award changed. Not all attempts in this direction have succeeded, but a number have.

This is a development which must be nipped in the bud before it becomes acceptable or even standard practice. If it did become normal practice to try to improve upon those awards which did not reach union expectations, it would mean that the Arbitration Commission had become merely one factor in the process of settling industrial disputes. The final arbiter would be industrial strength.

How then is such a development to be avoided? What is a union expected to do if the Commission hands down what seems to its members to be a completely unjust decision?

The first answer is that arbitrators should not give decisions which they would not expect reasonable union leaders and members to accept. Since the object of their work is to settle industrial disputes, they should not give decisions which cannot reasonably be expected to achieve that result. They work within a framework of industrial realities and should never consciously go beyond that framework in pursuit of some alleged principle, of wage fixation or otherwise.

Secondly, the right of appeal should be freely available wherever there is, or is likely to be, a genuine sense of grievance. It is certainly in the public interest that a union or a group of employers suffering under a strong sense of injustice should have speedy access to an Appeal Bench of the Commission and should have a full hearing.

The present position is that the vast majority of decisions made by the Commission are well within the bounds of what is reasonable. In other words, if an impartial observer, or even the parties to the dispute, were asked truthfully to lay down the range within which they expected a decision to fall, they would seldom be wrong. And if the decision is at the wrong end of the range for one party, then the system requires—unless a right of appeal is exercised—that the decision must be accepted. And the right to appeal must be freely available to all parties free of industrial pressure. Otherwise there is no system.

The attitude that must be encouraged by all who believe in the ultimate value of our system is one which says, "Well, we lost that round. We accept the umpire's decision even though we don't agree with it. We must try to get a different or better result next time."

In the nature of things it is more likely to be a union which refuses to accept an arbitrator's decision and tries to have it changed or bypassed by industrial pressure. It is difficult to say in advance that no such action can ever be justified. But I think we can say that, except in quite exceptional circumstances, such pressures should be resisted by the Commission and by employers. In any particular case it may be easiest to give in to the pressures, but if examples multiply the whole structure of our system will be undermined.

One thing which Commissioners should, in my opinion, avoid at all costs is arbitration by instalments. Anything which shows which way an arbitrator's mind is tending, but gives time and opportunity to change it, is dangerous. Announcing a decision without making a formal order invites last-minute protests and pressures to change the decision. It is true that in some complicated cases an opportunity must be given to make submissions about the form of an order, but this should be avoided where possible and any unavoidable delay should be kept to a minimum.

The Unions

The struggle for control of the A.C.T.U. is nearing resolution. In a few months the issue of the presidency will be determined and with it will go one of the main reasons for the differences that have reduced the effectiveness of the A.C.T.U. executive in the last two years.

It seems clear now that there will only be two candidates for the position. It would not be appropriate for me to discuss here the relative abilities of the candidates, even if I were in a position to do so. But there are I think two points which can usefully be made without any reference to personalities.

The first is the danger of discussing such an election in terms of labels. To say that one candidate and the group supporting him represent the left wing and the others the right wing may be convenient but it tells us very little. Some of the best-known members of the so-called militant or left wing are very responsible union leaders and staunch members of the A.L.P.; some of the so-called moderate or conservative right can be very militant and uncompromising when they see the need.

The second point I wish to make is the tremendous importance of maintaining united, strong and forward-looking leadership for the trade union movement. There is no likelihood of the executive being able to exercise dictatorial powers over member unions, nor would it be desirable. But it is important that the persuasive authority of the executive be clearly established so that, for example, no union would think of defying a request that it attend an inter-union conference sponsored by the A.C.T.U.

The leadership must be forward-looking if the unions are to play their proper part in the development of this country and the protection of the workers' interests.

There are better ways of protecting the real earnings of the worker than by the frequent use of the industrial bludgeon. It is a remarkable thing that the worker's share of national productivity has remained very stable in spite of varying levels of economic activity and of industrial disputes. This suggests that if employers, including governments, could be persuaded, without strike action, to concede the same level of wages as they do following strike action, employees would achieve the same proportion of a larger national cake. This could only be done by intelligent and informed bargaining round the table and by the use of the media of public communication to prepare the ground. All this will call for the employment by the unions of skilled professional assistance and for the necessary drive from the top.

Already steps have been taken in this direction during the last year with the appointment by the A.C.T.U. of an industrial officer last November and of an education officer in March and with the foreshadowed appointment of a public relations specialist. But this is only a start. It is obviously sensible for such services to be centralized so that individual unions which cannot justify the employment of full-time professional staff can still have access to such services when they need them. There is a long way to go yet.

While dealing with the trade union movement generally, it is interesting to note the continuing trend towards union amalgamation and co-operation. Developments noted over the last two years have continued slowly and in the last few weeks exploratory talks between the Waterside Workers' Federation and the Storemen and Packers' Union have been announced. There have also been discussions between the Clothing and Allied Trades Union and the Textile Workers' Union.

This trend is very desirable and, I think, inevitable. But progress will always be slow because of the natural conservatism of the Australian worker, and the unavoidable contrary interests of some union officials.

Even without these it would be expected that negotiations and formalities would take many months. So far it has seemed that such mergers must be allowed years to mature.

Nevertheless, the advantages of industry unions are so great that I am sure they will come in time. Take the case which I have mentioned concerning waterside workers and storemen and packers. I can think of no good reason why all persons concerned with container handling—whether it be filling or emptying the container, checking the contents, carrying it on a fork-lift truck, driving the crane that lifts it on or off the ship, or assisting in any of these activities—should not be members of the one union. The truck drivers who take the container to and from the wharf area could also be included if they are employed by the container or shipping interests and not by the general transport industry or the industry which produces the goods being carried in the container. In the long run it is only the formation of a single union to cover all these activities which will avoid the wasteful demarcation disputes which have occurred in the last twelve months, and secure comparable wages and conditions for all those employed in the "sea cargo and container transport" industry.

The other important argument in favour of amalgamations is the necessity for reasonable size to enable the payment of adequate salaries to union officials and the maintenance of the necessary advisory services and research projects already referred to.

Wage Fixation Theory

As was to be expected, the metal trades decision pointed the way to a long series of claims for reassessment of "work value" in other industries. But many of the wage increases which resulted could not really be said to have involved a reassessment of the value of individual jobs in those industries. These cases would be more accurately described as "comparative wage justice" cases. The unions were saying, in effect, "Look what the Commission did, across the board, for skilled, semi-skilled and trained workers in the metal trades industries; the employers or the Commission should now do as much for us." And since the reasons given for the increases in the metal trades were sufficiently general to have application in many other industries, the claim has proved very hard to answer. As more and more industries have fallen more or less into line, it has become increasingly difficult for any to be left aside.

All this has led to a serious blurring of the meaning of a "work value" case. In the *National Wage Case* 1968 the employers urged that the expression should be dropped altogether and that there should now only be *National Wage Cases* and "Classification" cases in which the relativities of particular jobs could be looked at.

Certain it is that the continuing industry reassessments every two or three years, with their clear expectation of general increases, are cutting across any objective of making *National Wage Cases* the only occasions for the increase of wages based on increased productivity.

The developments of the last few years seem to have produced the result that award wages in the metal trades industry must now lag behind most others. If all increases in the metal trades are to flow elsewhere, whether intended to or not, and if other industries are to receive additional increases periodically, there must be a tendency for workers in those other industries to move ahead of the metal trades. This tendency may be restrained in those industries where there is a clearly identifiable tradesman who is traditionally equated with the metal tradesman. But the only way of compensating for it in other cases is by the existence of greater over-award payments in the metal trades industry. This would seem to provide another reason why the Commission should not again make a deliberate attempt to subsume such payments in its awards.

The whole concept of "work value" was attacked by Professor Keith Hancock in a most important paper which he delivered last year at the annual conference of the Victorian Industrial Relations Society. This is not the time to debate further the several telling points which he made. I am content to accept for the moment that work value is a difficult concept to apply. Certainly, as I said to you last year, the metal trades decision dealt a blow to the development of the concept. This was not because of the words that were said, but because of the form that the decision took.

There is now a clear need for the Commission to return again in some appropriate case to the question of wage differentials and to spell out its reasons for those differentials and the relevant factors in measuring them. Unfortunately it is not likely to get much assistance in its task from the parties appearing before it. So far the organized employers and the trade union movement have shown little interest in any wage fixation theories going beyond catch-cries such as "prices and productivity", "increased skill and responsibility" and "comparative wage justice".

Another problem in wage fixation theory which has arisen this year has been that of retrospectivity of awards. Some employers and some Commissioners have been generous with retrospectivity, but two weeks ago a Full Bench of the Arbitration Commission strongly reaffirmed the old principle that retrospectivity should only be granted in exceptional circumstances. I would suggest an addition to this rule: that it should never be granted before a hearing has concluded.

The Arbitration System

The major cases heard by the Commonwealth Commission in the last twelve months have been the *National Wage Case* 1968, the *Professional Engineers Case* and the *Equal Pay Case*. Only the first of these has been completed. It resulted in a flat increase of $1.35 to all wage-earners, but the members of the Bench were apparently unable to agree on such vital underlying questions as the role of the Commission in economic cases, the use of a prices and productivity formula, the importance of price stability in the Commission's deliberations, and the meaning and testing of economic capacity. A definitive statement on these matters is now

overdue. The public is still confused by the dissent within the Commission which became apparent between 1964 and 1966. It is to be hoped that these matters will be dealt with in an authoritative way this year.

The *Professional Engineers Case* which commenced last year has been delayed by the *Equal Pay Case*. It seems unfortunate that in spite of amendments to the Public Service Arbitration Act which are now before Parliament and which allow the appointment of Deputy Public Service Arbitrators, there is no provision for them to sit on a Reference Bench. Thus the position remains that only one reference concerning Commonwealth Public Service determinations can be heard at a time.

The *Equal Pay Case* has just got off the ground in the last week. The unions are seeking a flat rate of increase for all female workers who do not already enjoy equal pay. The Commonwealth Government, and, it may be, some employers, would be prepared to support the principle of equal pay for equal work. Other employers are certainly opposing the claim root and branch and maintaining that a wage differential based on social considerations is proper and should be retained. The outcome should be known before many weeks have passed.

A few weeks ago the metal trades employers expressed the considered view that all major strikes should be made the province of presidential members of the Commission rather than of Commissioners. Their reason for advocating this course was that the Judges "after all occupy the highest offices in the tribunal" and therefore (presumably) should accept the highest degree of responsibility.

I think this is an important suggestion which should be seriously considered. The main argument which I see in favour of it is the added significance which is given to the Commission's role by the allocation of a Judge to handle any particular problem. There is also the fresh mind which he could be expected to bring to it. It may also be that the Commissioner for the industry has been involved in some of the events leading up to the stoppage and so is in some way compromised as a truly unprejudiced conciliator or arbitrator for that particular issue.

On the other hand I see some disadvantages in the proposal as it has been put. In the first place, it may involve a Judge in having to deal with an industry with which he is unfamiliar, and to do so at short notice and in an atmosphere of crisis. Secondly, it cannot be claimed that all Judges are better equipped than all Commissioners to deal with such crisis situations. The ability to handle such disputes under pressure is as much a matter of personality and temperament as of training and experience.

What I would like to see tried is the use of the existing power of the President to appoint a Reference Bench in such cases. In his earliest annual reports the President referred to decisions on the appointment of Reference Benches being made within hours of a request being received. Today the use of such Benches has become a stately procedure in which, in the absence of agreement, the pros and cons are argued at some length and a decision may be deferred for weeks. This is not said in criticism

of the President; it is the way in which parties have come to expect the procedure to operate.

I would like to see two Deputy Presidents or a Deputy President and a Commissioner, specially chosen for the task, set aside for dealing with sudden crises whenever their assistance is sought by either party and the President, probably following a telephone conversation with the Commissioner for the industry, thinks it appropriate. They could join that Commissioner and bring their prestige and special skill and experience to the achievement of a cooling-down period and a method of dealing with the problem if it is not capable of quick solution. As usual, conciliation would be taken as far as possible before arbitration was resorted to. Any detailed working out could then be left to the Commissioner for the industry. The existing powers under the Act are adequate to enable such an "arbitral flying squad" to be set up. All that is lacking is the availability of the right people. This could also be overcome. Even though its members would not be fully occupied five days a week from 9 to 5 o'clock, they would be available to go wherever they were needed at short notice. I would be surprised if such an establishment did not fully justify itself in very short order.

News in Brief

There are a number of items which deserve fuller coverage than can be given to them in a one-hour discussion of the year's significant events. The most I can do, however, is to mention them.

The Victorian Government achieved complete acceptance by the Victorian Trades Hall Council and the relevant rebel unions of increases in the Service Grants and State Incremental Payments which represent the over-award payments of the wages employees of the Public Service. The increasing willingness of governments to negotiate in this field represents a welcome relief from the strains placed upon arbitral authorities by a rigid insistence upon arbitration.

The Victorian Government has also taken a lead in examining ways to increase the portability of superannuation benefits so that they will not represent an obstruction to the desirable mobility of labour.

Mr Justice Beattie has produced a widely acclaimed report on the subject of apprenticeship and the N.S.W. Government is now beginning to carry out his recommendations.

Salary increases granted by Commissioner Matthews to S.E.C. clerical officers and interim increases granted by Commissioner Portus to bank officers seem to have paved the way for general increases of 10 per cent or more in all white-collar salaries.

The Flight Crew Officers' Industrial Tribunal, in spite of some strictures passed upon it by the High Court, has had a most successful first year. And this is in spite of a heavy volume of difficult and contentious business and the limited availability of its part-time chairman. Its success is a tribute to him and to those who regularly appear before him.

Stoppages and "go-slows" at Broken Hill were very serious during the year under review and there were heavy losses of both production and wages. The Broken Hill situation appears to be the nearest approach in Australia to the normal American experience of protracted stoppages every two or three years before a comprehensive new agreement is worked out. It does not commend itself for more widespread acceptance. Other stoppages in the mining industries during the year also gave cause for concern, both in themselves and as a portent of things to come in these rapidly expanding industries on which we are so dependent.

Concerted union action against two Melbourne tramwaymen in one case and a Sydney boilermaker in another case have left behind them an uneasy feeling in the community, thousands of dollars in lost wages and nothing effective achieved.

The press has been taken to task on several occasions for industrial reporting which tended to inflame rather than inform. With some notable exceptions the quality of industrial reporting and journalism in Australia is not as high as it should be. Too often the writer of a report has no knowledge of the background against which he is obtaining statements from those involved in a dispute. Too often the news media merely provide a platform for those in dispute without trying to obtain a proper balance of views, let alone making an informed impartial comment upon them. Where the fault for this lies is a major study in itself. I suspect a lack of interest or understanding at editorial level which, in view of the amount of space devoted to such matters, is hard to understand.

Planned redundancy is now occurring in the Victorian gas industry, the stevedoring industry, and in the case of tramway employees in Brisbane. Many other industries which should be planning to meet this problem do not seem to be doing so.

Finally, there appears to be a direct challenge to the penal provisions of the Commonwealth Act brewing, in the form of a refusal by several unions to pay fines imposed for contempt of the Commonwealth Industrial Court.

Summary

In an attempt to nominate the most significant developments of the last twelve months I would suggest—

(i) the predictable flowing on of the metal trades wage increases;
(ii) a high level of time lost through disputes—which should not be repeated in the current year unless stoppages over penal sanctions become rife;
(iii) a series of stoppages designed to reverse or vary Arbitration Commission decisions. These of course have most serious implications for the system;
(iv) more moves in the right direction towards a united and expert trade union movement; and
(v) an increasing need for the Commonwealth Arbitration Commission to give attention to the theoretical side of its task and to give more explicit reasons for the important practical decisions which it makes.

REFERENCE

* A paper read to the Eleventh Annual Convention of the Industrial Relations Society of N.S.W., Terrigal, May 3, 1969.

Equal Pay and Equal Opportunity[1]

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I

IN THE light of current moves over equal pay it is appropriate to consider the various factors which are responsible for wage inequality between the sexes, in that this should indicate those policies which would be most effective in ensuring complete justice for females in the Australian labour market.

The most frequent justification for the lower pay of females is their alleged efficiency gap relative to males, which is attributed to their lower physical strength and versatility, to their higher absentee and turnover rates, and to the legal restrictions on their hours of employment making them less useful employees. Consequently it is argued that businessmen are less eager to employ them than males and will only be prepared to accept their services at a discount. In many instances some of these factors do make female employees a less attractive proposition than males, and this is one reason why the call of the equal pay proponents is frequently expressed as "equal pay for work of equal value". Convention 100 of the International Labour Office is couched in terms of equal pay for work of equal value—implying not that male and female pay should necessarily be identical in all situations, but simply that female pay should be proportionate to female efficiency; that sex *per se* should not be a reason for wage inequality. The crucial question, though, is whether or not the various factors mentioned above are sufficient to account fully for the male/female wage differential that exists in any situation. Several bodies and individuals investigating this problem have in fact concluded that in many cases female pay has been discounted in excess of any relative inefficiency—for instance, the United Kingdom Royal Commission on Equal Pay, after a detailed assessment of all the influences mentioned above, concluded ". . . we think that there is a strong tendency towards the overlap areas (the areas where males and females work side by side in similar or identical jobs) being established at points at which the relative efficiency of men and women, account being taken of all the factors which we have enumerated, is roughly proportionate to their relative weekly wage-rate as determined by the general forces of demand and supply. . . . This tendency is, however, in our view qualified and thwarted by certain forces . . . so that in certain overlap areas the gap in time-rates . . . is probably greater than the gap in efficiency—*one special class of this divergence being that in which there is no clearly demonstrable gap in efficiency at all.*"[2] The view that the wage gap exceeds the efficiency gap is voiced far more strongly in the Memorandum of Dissent by three of the lady Commissioners.[3] In Australia Judge Foster has pointed out that the Women's Employment Board, when setting female