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# THE JOURNAL OF INDUSTRIAL RELATIONS

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# Work Value[1]

J. R. KERR

*Sydney*

THE concept of "work value" is a very difficult one and decisions about "relative work value" are hard to make and harder to defend. Indeed George Bernard Shaw, the great defender of complete equality in incomes for all, stoutly maintained that such decisions were impossible to make and to defend. To test the position he took the case of the village blacksmith and the village clergyman (*The Intelligent Woman's Guide to Socialism*) and said,

> "Never mind what they get at present: you are trying to see whether you can set up a new order of things in which each will get what he deserves. You need not fix a sum of money for them: all you have to do is settle the proportion between them. Is the blacksmith to have as much as the clergyman? or how much more or less? It is no use saying that one ought to have more and the other less: you must be prepared to say exactly how much more or less in calculable proportion."

He then added:

> "The clergyman is able to read the new testament in Greek; so that he can do something the blacksmith cannot do. On the other hand, the blacksmith can make a horse-shoe, which the parson cannot. How many verses of the Greek testament are worth one horse-shoe? You have only to ask the silly question to see that nobody can answer it."

The whole process, as Shaw says, is like saying that "an ounce of archbishop or three ounces of judge is worth a pound of prizefighter".

He said in *Everybody's Political What's What*:

> "Differences in character and talent cannot be assessed in terms of money: for instance, nobody can suppose that because Mr. Joseph Louis, world champion heavyweight boxer, can earn more in fifteen three-minute rounds than Einstein in fifteen years, his exertions are a hundred and eighty thousand times as valuable as Einstein's. Nobody challenged to fix the incomes of the two on their merits could do so."

Despite Shaw's warning I am nevertheless going to try to address myself to the title of this paper.

The object of this paper is to look at the concept of "work value" and to examine what is involved in the so-called "work value" case in order to pinpoint for discussion certain current problems in relation to the

notion of work value in industrial arbitration. This will necessitate examining, in particular, recent cases affecting professional occupations because it is in this field today that the "work value" approach is of particular importance. However, the study will not be limited to these cases but will include some observations on the intrusion of questions connected with work value into the judgments of the Commonwealth Conciliation and Arbitration Commission in recent Metal Trades Margins Cases.

It is proposed to begin by dealing shortly with the Professional Engineers Base Grade Case in which judgment was delivered in 1961. This case was the work value case par excellence, and it is the starting point for an examination of the current situation with regard to work value. As we all know the comparative work value of engineers and other professional and administrative groups has been the subject of continuous controversy ever since this judgment was handed down. The final resolution of these controversies has not yet been reached. The struggles about the relative positions in the salary scale of professional engineers and other professional and administrative groups is still going on. It will doubtless take several more years to resolve.

In its judgment (*Print A.7855*) at p. 31 the Commission said that this case was essentially a "work value" case. It is, of course, notorious that the A.P.E.A. sought to alter the relative position in the salary scale of professional engineers, a position which the Association regarded as unjustly and excessively depressed having regard to the value of the work of engineers.

The judgment states (p. 55) that part of the opposition of the States and their instrumentalities to the claim of the A.P.E.A. for a "national minimum" was an apprehension that it would have "disturbing and irritating repercussions upon the salaries of others of their employees which are at present related directly or indirectly to the salaries of Professional Engineers". This question of the possible repercussive effects of its judgment was dealt with by the Commission by saying (p. 80) that it was not left without indications that the Associations would seek to extend to other professional officers any increases which might flow from the decisions in the Engineers Case. The position was that every such case would have to be considered on its merits. The Commission said:

> "The decisions we are making are related to the profession of engineering and have been arrived at on the evidence relating to that profession, but not without some evidence and suggestions as to how the work of the profession compares with that of other professions" (p. 80).

The Commission then went on to give an illustration of the comparative material it had before it. It referred to the evidence of two witnesses who had qualified both as engineers and doctors and who expressed the view that the courses of training required equivalent work and intelligence or, according to one doctor, a higher degree of intelligence for engineering. The Commission said that it had had regard to this evidence and added that some evidence as well as some assertions in the course of argument were directed towards comparisons with legal practitioners, dentists, Repatriation medical officers, architects and other professions "but what we have already said concerning the medical profession also applies to them" (p. 81). This would appear to mean that the engineering student has to do at least as much work, and requires at least as much intelligence, as students in these fields and perhaps more. However, there was not a detailed comparison of the courses of training and the work of the various professions. At p. 93 in the judgment the question was raised whether a professional engineer may soundly be compared with a medical officer. The Commission said that a medical officer and a professional engineer have only one element in common, that each is a member of a profession. The Commission then said that despite the fact that of the academic courses for doctors and engineers the former were more difficult, yet the commencing rate for medical officers was much higher than for engineers. It found, however, that the medical officer's duties were *dissimilar* from those of an engineer and that the comparison was too tenuous to be of assistance.



The vast bulk of the evidence in the case was concerned with the duties and work of the professional engineer, not with a comparison of that work and of the value of that work with the work of other professions and the value of the work of other professions. The Commission set out to value the work of professional engineers, not to make an assessment of the value of the work of the various professions and to arrange them in a hierarchy of relative values. It came to the conclusion that professional engineers had been substantially underpaid, but expressed no view about the salaries of other professions or their relative position vis-à-vis the professional engineer. It dismissed the comparison with the medical officer instead of finding whether the work of the engineer was more or less valuable. The mere fact that things are different does not mean that their relative value cannot be assessed.

At p. 96 of its judgment the Commission discussed the possible inflationary effects of its judgment due to the suggested inevitable spread to other employees of the substantial salary increases involved. It repeated that its fixations had been made after a full enquiry into the work of the engineering profession and added that there was—

> "no sound ground for a belief that there should be a consequential review of the remuneration of other employees whether professional

> executive or clerical and even though, in the case of professionals, employed on similar work" (p. 96).

The Commission then said that other classes of employees were not as of right to be related to Professional Engineers and that they were required to make claims for salary increases dependent upon proper proof of work value. It then offered the opinion that if inflationary effects followed they would not be due to the Commission but to those who misunderstood or disregarded the basis on which its decision had been made. This question of possible repercussive effects of arbitral decisions is very closely connected not only with decisions based on general economic grounds but also with important "work value" cases.

A technique has, however, been worked out in relation to work value cases for mitigating or controlling, indeed for preventing a work value case from having repercussive effects.

In the course of the passage of the judgment on p. 96, the Commission quoted in support of its position the well-known passage from the judgment of the Industrial Commission of N.S.W. in the *Metalliferous Miners Case,* 1928 *A.R.* at p. 471:

> "It must always be remembered that the rate of pay awarded in one industry is not to be accepted as a guide to the rate to be awarded in another unless the tribunal is satisfied the work is fairly comparable. Even when similarity of work has been established it is not enough to look merely at the rates awarded apart from the other conditions of the award in which they are found. It is also necessary to have regard to the circumstances under which the award in question was made and to examine and consider carefully the principles upon which those rates and conditions were fixed in the particular award."

This famous passage will be considered in some detail in this paper. At this stage it is enough to say that, looking at the Engineers Case alone, it is apparent that the Commission, after deciding to award substantial increases to the engineers, sought to hedge its decision in by saying that other types of employees would be entitled to be dealt with upon the basis of the engineers' award as a guide only if they could show that their work was *fairly comparable* with that of engineers. The quotation from the Metalliferous Miners Case appears to indicate that the Commission held the view that work is only *fairly comparable* if it is *similar*. The Commission itself had said at p. 80 that it had not been "without some evidence and suggestions as to how the work of the professions *compares* with that of other professions". Yet it refused to compare the work of the engineers and the doctors because of dissimilarity.

It can hardly be said that the work of legal practitioners, dentists, doctors and architects is similar to that of engineers or one to the other.



However, a *comparison* of the work, though it would doubtless show the work not to be similar in kind, might show it to be of *similar* value, or it might show that the work of one profession is more or less valuable than that of another. In other words a thorough comparison of the work of the various professions might make it possible to arrange their work values in a hierarchy or scale. This, of course, was not done in the Engineers Case and on the established view of the meaning of the Metalliferous Miners case it is asserted that it cannot be done at all. In other words, it is only if, on comparison, *similarity* of the actual work itself is found to exist that the rate for one type of work can be used as a guide to the value of another type of work.

But the question is—Is it not the case that, even if on comparing the work it is found to be dissimilar, it is possible to use the rate fixed for one type of work as a guide in valuing another type of work? Though dissimilar, it may be possible to say that it is worth the same or more or less than the first-mentioned work. In other words, an important question to consider is whether or not the detailed comparison of two different types of work may not enable an assessment of relative values to be deliberately and consciously made. After all, this is the rule with regard to the classifications within an award. It is frequently the case, within a particular award, that comparisons are made between quite different types of work in order to determine whether one type is worth more or less or the same as the work in another classification. Indeed detailed award-making on a work value basis, classification by classification, is based to a large extent on this type of comparison between dissimilar classifications.

If it were otherwise and rates for one type of work could be used as a guide to the value of another type of work only when the work is found to be similar, then all work value cases would have to take place in intellectual isolation and the scale of wages and salaries would be a completely fortuitous thing emerging by accident from a number of insulated decisions. It could never emerge from a series of deliberate decisions based upon comparison and comparative evaluation of different types of work. It remains to be seen how these problems have been handled since the Engineers Case.

As the doctrine in the Metalliferous Miners Case was born in the Industrial Commission of N.S.W., it is fitting that its recent history should have unfolded in that Commission. In the last year or so Scientific Officers, Forestry Officers, and Academic Officers have there been seeking wage increases in cases in which the work value concept has been meticulously examined and the position of the Engineers Case and other work value cases has received careful attention

The first of these cases was the Scientific Officers Case, judgment in which was delivered on 16th October, 1962. Counsel for the Public Service Association in that case said that it was presented as a "work value" case (p. 28 of transcript of judgment). He argued that rates of salary paid to other employees in the Public Service would provide no guide as to what should be awarded in the absence of proof of comparability of work. He submitted that such proof was lacking in the case. Counsel for the Association placed no reliance on the actual salary rates awarded to professional engineers and, having regard to his primary submissions, it was obviously not open to him (as the Commission said) to rely on the engineers' rates as any guide for the purposes of the scientific officers (pp. 29-30). This statement by the Commission apparently proceeded upon the assumptions (i) that actual similarity of work as between scientists and engineers would need to be shown before the engineers' salaries could be used as a guide and (ii) that no form of enquiry would be permissible into the comparative worth of the differing types of work. In any event the applicant Association made no attempt to show by evidence, or in any other way, any basis of comparison, nor to make out a case that actual comparison of the work of scientists and engineers would show that the work of the former, though different from the work of the latter, could be seen, on comparison, to be *worth* as much. The theory of the applicant's case and indeed of the judgment was that the work value of scientists and engineers must be considered in isolation and that it is accidental and fortuitous if one turns out to be worth more than the other. In taking the course it did, the Association was doubtless influenced by the knowledge that the Industrial Commission of N.S.W., when it talks about comparability of work, means similarity of work.

In the Scientific Officers Case, it was the respondent which raised a "comparability" argument but in a different form. It argued that the P.S.A. in seeking a determination based on work value alone assumed there was some way of valuing work "in a vacuum". It also argued that, despite the Metalliferous Miners Case, there was a stream of cases dealing with the relevance of "public service standards" in cases where salaries of public servants were being fixed. It was submitted that the Commission could look at the general pattern of professional remuneration in the Public Service, not comparing jobs with jobs, but in order to get some guidance as to what had been happening throughout the whole service on professional remuneration. It was submitted that the Commission would not be deterred from accepting some guidance from that standard or pattern by reason of the fact that it had not compared the actual jobs of particular professional groupings with one another, but would look to see what the general pattern in the Public Service was, getting help from it but not being controlled by it.



It can thus be seen that not only did the applicant shun the task of actually comparing the work of one professional group with that of another or other groups, but the respondent also refrained from trying to do this. The applicant did not seek to show by evidence or in any other way that scientists are worth as much as engineers and the respondent did not seek to show by evidence or in any other way that scientists are worth no more than other professional groups in the Public Service.

The respondent's argument about Public Service standards was rejected. In the process of doing so certain analogous views of the President, Mr. Justice Taylor, were disagreed with. These views had been expressed in the Clerks Case (1960 *A.R.* 217) and the Steel Case (1960 *A.R.* 723). He had relied upon "the general standard of values in the community" and "community values", which he said could be found in Federal awards and in the "marginal rates being paid throughout the community". It was said by the Industrial Commission that these notions of the President, like the concept of "a standard of public service salaries", were not meaningful concepts. The Commission noted the fact that in 1956 in the Meat Inspectors Case (1956 *A.R.* at p. 399) it had said that after doing certain things for the purpose of fixing the salaries it "would then have to determine whether the present salaries fail to accord with the general standard of remuneration prevailing today in the N.S.W. Public Service". But it went on to say that although this passage might imply that such a standard could be ascertained, the Commission was of the opinion that no such general standard could be ascertained. It then went on to say (p. 52):

> "We are firmly of the view that the cases where reference has been made to 'public service standards' provide no ground for saying that a new doctrine has developed warranting departure from the principles of the Metalliferous Miners Case. That those principles apply to cases dealing with the salaries of public servants has been affirmed on a number of occasions and we affirm it again. It is a sheet anchor of the system which we are not prepared to let go."

The Commission continued by quoting another passage from the judgment of Taylor J. in the Clerks Case. In that passage Taylor J. had attempted to distinguish the Metalliferous Miners Case by saying in effect that that case might apply where an attempt was made, by looking at the rates in one award, to increase the rates in another award. But Taylor J. had argued that where there had been a very general movement in marginal rates and consequently in the values placed on work, it would be obvious that these would have taken place in so many awards that no valid comparison of the work done under those awards could be made. He had said (1960 *A.R.* at p. 224):

changes and fixes award rates on the basis of the value of the work without regard to what general values are. . . . In my view a Court proceeding on the basis of valuation of work is not performing its function if it disregards community values as shown by awards of other wage-fixing bodies."

However, the Commission rejected this approach because, in its opinion, "rates or values existing generally", "general values" and "community values" do not exist and cannot be ascertained. The Commission then went on to say that no principle of wage fixation has been more consistently applied than the principle in the Metalliferous Miners Case. It noted that it had been approved in the Professional Engineers Case. Accordingly it rejected the argument that it could have regard to rates of pay for other scientists and for professional workers in the Public Service as furnishing, in the absence of evidence of comparability of work, guidance as to the rates which should be awarded to the scientific officers. In doing so the Commission said:

"We can readily believe that, if the Board (that is the Public Service Board) were itself determining salaries for its various classes of professional officers, it would seek to achieve consistency, so far as practicable, between the salaries to be paid to the various classes. It might seem strange that the Commission should have to approach its task in a way different from that which would be adopted by a prudent and fair-minded employer. But the Board is in a position to know the details of the work of all its varying classes of officers; the Commission is not, and can deal with only one case at a time. It is compelled by a principle which is of cardinal importance to the orderly functioning of the system to discard considerations of consistency within the Service in the absence of material as to comparability of work" (p. 54).

It must therefore be accepted that so-called standards, whether general or public service standards, are as such of no assistance to the Industrial Commission. But what would be the position if an attempt were made to put the Commission in a somewhat similar position to the Public Service Board? Suppose a thoroughgoing comparison were to be made, by evidence or in some other way, of the work of, say, the engineers and the scientists, in order to support an argument that their work though different could be significantly compared as to its value. Would the Commission still refuse to use that sort of guidance because it was not based upon comparability, i.e. similarity of work? As things stand the answer is clearly—yes.

So we see the dilemma emerging. When one group of employees, whose salaries have been traditionally or for many years in an established relationship to the salaries of other groups, succeeds in breaking out of that relationship as a result of a work value case all those other groups are then forced, if they wish to try to re-establish that relationship, themselves to undertake work value cases. Hence a succession of



simply stated. Should the relative positions of the professions in the salary scale be disturbed? This can only be answered by making some kind of comparison. However, the doctrine of the Metalliferous Miners Case seems to stand in the way of this sensible approach to the problem. It prevents comparison between the dissimilar. It permits comparison only of the similar. The scientists had to acquiesce in this situation and present a case in which they really wanted to argue that their work was just as valuable as the work of the engineers. But they were prevented by principle from being able to mention that argument or to seek to substantiate it from the beginning to the end of the case.

The next case of importance on this question of work value and comparisons of work values is the Forestry Field Officers Case, judgment in which was delivered on 14th June, 1963.

In the Forestry Officers Case the President, Mr. Justice Taylor, had fixed rates of pay to be paid as minima. It was argued for the Public Service Board on appeal that he fell into error because, in his function of fixing rates of pay, he had not restricted himself to valuing the work of the forestry officers, and had said that he was "not now specifically limited to considerations of work value". The P.S.A. argued that in fixing wages the statute did not require the Commission to fix them only for work done.

The Commission examined the history of the concept of valuing work in the cases in the Federal jurisdiction and said that the earlier Federal authorities had spoken of the wage-fixing function as involving the valuation of work but "their function had always been regarded by them as one which permitted them to take into account, when making their assessments, considerations not strictly confined to work done" (p. 21). Examples given of things taken into account were the special economic position of an industry and its potential prosperity. The Commission then went on to say that in the 1959 Metal Trades Case (1959, 92 *C.A.R.*) 793) the Commonwealth Conciliation and Arbitration Commission had used the valuation concept in a rather different way and its statements brought the phrase "work value" into vogue. "It has certainly been used much more frequently since 1959 than ever before" (p. 21). The Industrial Commission then quoted the following passages from the 1959 Margins Case:

"The difference between margins in an award occurs because the award maker has decided that there is a difference in the amounts to be awarded for skill, arduousness and other like factors proper to be taken into account in fixing a secondary wage. In origin, at least, relativities in margins are merely an expression of relative work values and there is before us no evidence of such present values.

"We are therefore in this position. We have the 1954 award, which

> industry. In these proceedings, the real criterion for relativities, namely, work values, does not fall for decision. We have been asked on the one hand to go behind the 1954 decision and to restore the relativities which that decision changed and on the other hand to extend the reasoning of the 1954 judgment to margins which the Court was not then prepared to reduce.
>
> "In all the circumstances we are not prepared to accede either to the unions' submissions or to the employers' submission in this regard . . .
>
> "The question of relativities in margins in the Metal Trades Award, based on work value, is thus still open" (p. 805)

and later—

> "We do not regard the method of adjusting margins by percentages as a satisfactory one in all cases. In these proceedings, however, not having before us the question of work values which in most cases is an important factor in assessing margins and having decided not to alter the 1954 relativities it is inescapable that the increases granted be capable of being expressed as a percentage" (p. 813).

The judgment in the Forestry Officers Case then made the following points:

(a) "Work value" as thus used refers to a value arrived at by considering evidence of the nature of the work and the differences between the work of different classifications.

(b) It refers to a value arrived at differently from the method which was actually adopted in the 1959 Metal Trades Case, namely, a consideration of whether economic considerations justifies an alteration.

(c) "Work value" as used in the 1959 Case was a term extensively used in the Base Grade Professional Engineers Case.

(d) The Commonwealth Commission, particularly since 1947, has adjusted wage levels in the light of the tribunal's view of the state of the economy and of its capacity to meet higher wage levels and the adjustments to the margins of employees in the metal trades have been followed by like adjustments to the margins in most, if not all, of the industries regulated by Federal awards.

(e) The N.S.W. Industrial Commission prior to the 1959 amendment, being limited to fixing minimum rates, had no choice but to limit its function to assessing the value of work.

The judgment in the Forestry Officers Case then states that the concept that wage-fixing involves valuing work has therefore been used in two very different senses. The point is made that the Scientific Officers Case was a work value case in the same sense as the Professional



Engineers Case was a work value case. But nothing said in the Scientific Officers Case was to be taken as restricting the wage-fixing power to ascertaining "work value" in the narrower of the two senses referred to above. Work may also be valued in the light of economic considerations. There is, since the 1959 amendments, no reason why the Industrial Commission of N.S.W. cannot take economic factors into account, if it thinks proper, in the same way as the Commonwealth tribunal.

Valuation of work is, therefore, not restricted to valuation in the sense to which the Industrial Commission's jurisdiction was limited before 1959. However, in particular cases, the wage-fixing functions may be exercised in the way in which this had to be done before 1959. The Scientific Officers Case was such a case because the material there presented was material limited to work value. Nevertheless, if in a particular case it appears to the Commission that increments should be awarded on some basis other than "work value", then jurisdiction so to award exists. The jurisdiction is not limited to the ascertainment of work value as it was understood before 1959.

The Forestry Officers Case has made it perfectly clear that the jurisdiction of the N.S.W. Industrial Commission is now in effect the same as the jurisdiction of the Commonwealth Conciliation and Arbitration Commission and both Commissions may deal with a case simply as a "work value" case, or on broader economic grounds or by a combination of both. It will still, however, be very important to see exactly what is being done. In each type of case the work is being valued. In one type it is valued by examining in detail the actual nature of the work and assessing its value on that basis. In another type of case the nature of the work is assumed to be the same as it was on some previous occasion, and it is revalued in the light of economic factors such as general economic conditions, economic conditions in the industry in question, changed value of money, increased productivity and so on.

It can be seen, therefore, that at the very time when the Commonwealth Arbitration Commission and litigants appearing before it were discovering or rediscovering the importance of the narrower type of "work value" case, the Industrial Commission of N.S.W. was discovering that the 1959 amendments to the State Act enable it to engage in the wider type of work evaluation in which economic considerations could play a part. To engage in cases in which the issues are confined to economic issues the parties have to accept existing relativities in the wage scale. If they refuse to accept these but wish to have them disturbed, they are forced to set up a work value case of the narrower kind and to demonstrate that their work is underpaid apart from

are disturbed then other groups traditionally related to them are in their turn forced into "work value" cases and as a result of this series of cases a new scale of relativities is gradually constructed. It is, however, as things now stand, constructed blindly. It is the accidental result of a series of isolated, unrelated cases in which the relative value of the several kinds of work involved is never consciously, openly, and effectively compared and evaluated.

The Academic Officers Case in which judgment was given by the Industrial Commission of N.S.W. on 26th June, 1963, is of some significance in relation to work value problems. In that case the judgments of McKeon J. and Perrignon J. proceed along similar lines but the judgment of Taylor J. makes quite a different approach to the problem. McKeon J. after stating that in his view the Scientific Officers and Forestry Field Officers Cases were correctly decided went on to consider the relevance of the Professional Engineers Case and the Scientific Officers Case to his task in assessing the work value of the academic officers. He once again reaffirmed the Metalliferous Miners Case and quoted a passage from the Steel Industry Awards Case (1958 *A.R.* 603 at 621) which restates the principle involved. This passage from the Steel Industry Cases makes the point that the work done must be fairly comparable and goes on:

> "If similarity of work be established it is then necessary also to consider in detail
>
> (i) the comparative conditions of employment,
>
> (ii) the circumstances in which the award relied on was made, and
>
> (iii) the principles upon which the rates and conditions prescribed by the award relied on were made."

McKeon J. then considered the Engineers Case and decided that it failed to fulfil the first requisite which the Metalliferous Miners Case prescribes . . . "namely there must be similarity between the two categories of work, the work in each must be fairly comparable". He found the work of the academic officers to be totally different from that of the engineers. As to the Scientific Officers Case, McKeon J. said: "A reasonably full statement of the work of the various scientific officers appears in the reported judgment in that case and it seems to me not possible to compare university tertiary academic work with the work of scientific officers in the Department of Agriculture". There is no doubt that if the Metalliferous Miners Case is to be applied this is quite a correct statement. However, if it is possible from the detailed statement in the judgment in the Scientific Officers Case to see that the work is different it is doubtless also possible to weigh *its value* against the *value* of the academic officers' work and to consider which is the more



valuable. In this way it is possible to ask the question—"Given that this work is different how do the two types of work compare in value?" But this is the type of enquiry that the Metalliferous Miners Case prevents. Nevertheless it is the very question that the academic officers really wanted to have answered. They wanted their work compared in value with the engineers' work and with the scientific officers' work. They really wanted a conscious decision to be made as to whether they are of equal value to or of different value from either of those professions.

Perrignon J. also came to the conclusion that the work of the academic officers was not fairly comparable with that of the engineers. He said: "In my opinion the work is different". He said that the academics were not doing work "of the same nature" as the engineers. His opinion on these matters was similar to that of McKeon J.

Taylor J. adopted quite a different approach from the other two judges. He defended his judgments in the Clerks Case and the Steel Case from the attack made on them in the Scientific Officers Case. He then said:

> "It is also said in the Scientific Officers case that standards generally are incapable of determination because awards are made for different periods at different times. I am unable to accept this view. Indeed, experience in this Commission has been that any major alteration of standards is ascertainable, as for example when there occurred the application of the 2½ times formula to marginal rates, the application of the 28% formula, and the recent application of the 10% increase. As these increases were in each case made on the assumption that work values remain constant it has been easy to see that standards have changed and to determine the extent of the change. My view remains that the decisions of important bodies such as the Commonwealth Conciliation and Arbitration Commission are not to be followed as a matter of course but nevertheless they form part of the relevant material to be taken into account in fixing just and reasonable rates."

He then expressed the opinion that it was proper to take the Engineers Case into consideration. Finally he said:

> "Reference has also been made to the Metalliferous Miners case. I have previously set out my views (in the Steelworks decision) as to this case. I have nothing further to say except this, that if the excerpt in the Metalliferous Miners case to which reference is usually had is to be followed to its logical conclusion then you reach the position that you must have a completely identical set of circumstances before you can use the material in one case as being referable to another case. If it should happen that you meet the identical set of circumstances and there is complete identity then of course the same award would cover both cases. This, of course, is an absurdity."

It is quite clear from all this that the majority view is that the Metalliferous Miners Case prevents the Commission from comparing two types of work, finding them different yet deciding which is the more

In the Academic Officers Case, to make the whole problem more difficult, Taylor J., despite his completely different approach, awarded the same salaries as the other two judges. This tempts the cynic to wonder whether the reasons given in the judgments are very relevant to final determination of actual value. It suggests that it would be much better to make a comparison openly and to decide openly which is the more valuable type of work despite all the difficulties involved.

There can be no doubt that if the Metalliferous Miners Case is to stand the logic of the Scientific Officers Case and of the Academic Officers Case is unanswerable. No one has yet launched a full-scale attack on that case. Even Taylor J. accepts it as applicable in some types of cases, arguing merely that it should not prevent the N.S.W. Industrial Commission from having regard to general movements in margins, to general standards, community values and so on. He has not said that work of different kinds should be able to be compared and valued relatively. The real point, however, is that the N.S.W. Industrial Commission, which has now decided that it can have regard to general economic conditions, industry, prosperity, etc., should not, as I see it, hold itself back by the so-called sheet anchor of the Metalliferous Miners Case from having regard to general patterns and general award movements. It should also permit itself the flexibility of making conscious work value comparisons. It should accept the responsibility of saying openly, if that be its opinion, that the work of scientific officers and academic officers is not so valuable as that of engineers, or that the work of engineers has been over-valued in its opinion, or that the work performed by all these professional officers is of equivalent value, or whatever their considered opinion indicates to be the true position.

In the Federal system, despite what was said in the Professional Engineers Case, no more than lip service has ever been paid to the principle of the Metalliferous Miners Case, as the following passages quoted by Taylor J. in the Academic Officers Case clearly show:

> "(A1 Carrying Co. & others v. Transport Workers Union of Australia Current Review p. 38 March, 1960)
>
> "We reject the primary submission of the employers that no increase at all should have been granted to these employees. Although the Metal Trades Judgment in terms made it clear that it was not intended to apply to all industries and all awards automatically, its almost universal acceptance for margins within the range of those prescribed by this award, both by agreement and by arbitration, and then often without real opposition, has created a situation whereby margins have been lifted generally in industry. In our view, therefore, employees under this award are entitled to some increase."
>
> "(The Federated Engine Drivers and Firemen's Association of Australasia v. Adelaide Brick Co. Ltd. and others 46 *C.A.R.* at 563)



> "The question as to whether any wage increase, general or otherwise, should be awarded above rates previously prescribed for the occupations grouped in any particular industry, and, if so, the amount or amounts thereof, is a matter for determination in each particular case. In that determination the Court is bound to pay due regard to the movements of wages in comparable industries and occupations and also to the inescapable fact that a large number of wage-movements in various industries, not necessarily closely comparable from the technical point of view with the particular one with which it may be immediately concerned, will tend in time to produce a higher level of remuneration for industrial effort in general. It may, indeed, be impossible to fix any specific date as that from which such a tendency may be said to start or to have started. Consequently the question how far its effect has already influenced the wages scheme of any particular award, or whether, indeed, upon application for review any regard at all should, in the particular circumstances of a case, yet be paid to any such tendency, real or alleged, will be one to be answered by the Court in the course of its making of the assessment proper in each particular case."

The general movements which take place in marginal levels in the Federal sphere demonstrate that when "economic" cases take place an attempt to rely on the principle of the Metalliferous Miners Case would be impossible.

All this means that arbitrators should not, in my opinion, shelter behind that doctrine in an artificial attempt to avoid the repercussive effects of what they are doing. The modern technique of trying to force everything into a work value case and then using the Metalliferous Miners Case to prevent spreading, is not realistic. First, it cannot succeed. At the best it can delay and distort. Secondly, it results in constant friction and strain resulting from tension due to the temporary upsetting of and attempts to re-establish traditional relativities. Thirdly, it is unjust because those long-established relativities should generally not remain disturbed except as a result of conscious comparative analysis. Fourthly, it enables tribunals to turn a blind eye to the likely repercussive effects of what they are doing. As they are entitled to have regard to general economic circumstances they should consciously weigh and take into account the likely consequences of "spreading" and the inflationary aspects of such spreading.

Until 1959 there was a distinct difference between the N.S.W. and the Federal system. The N.S.W. system was a "work value" system which successfully sought to prevent or control general movements in margins resulting from economic test cases. It could do this because of its limited jurisdiction. Now jurisdictional limits do not exist, but at the very time when the removal of its jurisdictional limits appears to be opening up the way for general "economic" marginal movements in N.S.W. State awards, the Federal system seems to be attempting to imitate the N.S.W. "work value" system. This is shown by the last

Margins judgment. In the 1963 Metal Trades Case the Commonwealth Arbitration Commission said:

> "In assessing margins it may be, of course, relevant to consider history, past expressions of principles of wage fixation and the economics both of industry generally and of the particular industry, but it is vital, in order to try to attain industrial justice where there is a contest, to have information about the work done and the conditions under which it is being done.
>
> "Despite the comment in the 1959 Margins judgment that the question of relativity based on work values was still open, since 1959 no party has attempted to bring to the Commission the question of work values in the Metal Trades industry and we are now faced with a case in which we have not been given all the information essential for a complete assessment of margins, some of which must relate to the work actually being done. The unions have chosen to argue a case which is based on history, general considerations of wage fixation and consideration of the economy generally with only one factor, namely, the incidence of over-award payments in the industry, which can be related solely to the Metal Trades industry itself. The material about hours worked in this industry to which we refer later was drawn to our attention by the Commonwealth. The employers have chosen to do nothing but oppose the unions' case. Whatever we do in this case must be considered in the light of the observations now made because in our view margins in the Metal Trades Award cannot be properly assessed either absolutely or relatively until this Commission in one form or another has before it an application which will enable it to deal with all aspects of marginal fixation."

This statement indicates how anxious the Commonwealth Commission is to work more frequently on a "work value" basis. It said in its 1963 judgment that it was not intended in 1959 and it is not intended now that the decision about margins in the metal trades should be applied automatically outside the metal trades. It remains to be seen just how automatic is the spreading of the 10% increase in point of fact.

There is, of course, a place for the general "economic" type of movement in margins and also for the specific work value type of movement. But the strength of the pressure for the first type of movement cannot in my opinion be controlled by artificial resort to the latter type of technique.

An interesting case to compare with the Scientific Officers and Academic Officers Cases is the case of the Commonwealth Legal Officers, dealt with by the Public Service Arbitrator in a decision given on 8th October, 1962. This was also a "work value" case. It was obviously an attempt by the legal officers in the Commonwealth Service to restore the relationship they had previously enjoyed with the engineers in that service. As that relationship had been disturbed by the engineers' "work value" case they were themselves forced to persist with such a case. They did so with a vast array of evidence which included evidence



others designed to show, in the fashion established by the engineers, the great importance of the law in society, of the work performed by the legal officers, the difficulties of legal courses and so on. It was, in other words, a classic "work value" case of the narrower kind aimed at an alteration in the scale of relativities which had emerged after the Engineers Cases. The Arbitrator in his decision (transcript p. 10) noted that the Association had relied to a great extent on the two Engineers Cases. The first way in which they had been relied on was to make the point that these cases had "established that professional standards of remuneration are to be determined for professional officers and that the salaries do not have to be fitted in with the classifications prevailing in the Commonwealth Public Service with respect to clerical and administrative positions where justice requires a departure from those positions." The case was a work value case and the Arbitrator was asked to adopt an approach similar to that in the Professional Engineers Cases. The Commonwealth Public Service Board accepted that it was a true work value case but that the Professional Engineers Cases could be distinguished. The Arbitrator said (p. 15):

> "The Association's Case, being based upon the importance of the profession of law, its role in society, and the qualities demanded of a lawyer as well as upon the merit of the particular functions performed, entertained an extraordinarily wide area and part of the design was that I should regard the profession in the same way as Full Benches of the Commission in 1961 and 1962 had regarded the profession of engineering."

By this statement the Arbitrator seemed to mean that he was being asked to regard the work of the legal officers as being as valuable as that of the engineers though he did not say this in so many words.

The Arbitrator devoted a section of his decision to the Professional Engineers Cases. He said that they were special and cannot be regarded as providing an *automatic* entitlement to improvement of salary standards for any other classification of labour. He also said that making a comparison based on past relationships involved real difficulties in appreciating the elements taken into account in bringing those past relationships about and difficulties associated with fixations at different points in time.

However, the Arbitrator then went on to say:

> "The past twelve months have provided a rare opportunity to have two detailed investigations running in parallel—both concerned with professional officers; both conducted upon a work value basis. A consequence of this, as I have been involved in both enquiries, is that such comparisons as are proper to be made may be made with the full knowledge that the material to be relied upon is current in respect of both legal officers and professional engineers."

vations of the Full Bench of the Commonwealth Arbitration Commission—

> "not only make it clear that relativities existing in the past within the engineering profession may now be inappropriate but infer that old relativities as between professions may be just as inappropriate. In coming to its decision the Full Bench took into account, and in some detail, the elements going to a "work value" assessment for various classes or grades of professional engineer, including:—professional qualification; experience; responsibility; management supervision and co-ordination of effort; nature of work undertaken; conditions in remote and rugged areas, etc.; questions of safety involving persons, plant and structures; financial implications; lack of opportunity for private practice; promotional chances; mathematical capacity; technological and other changes since 1936; necessity for continuing study and so on . . . 'in the light of the base grade scale prescribed last year as part of the concept of a national minimum salary for all employed Professional Engineers'. This is not exhaustive but merely illustrative of particular types of factor entertained.
>
> "It is evident that certain of the factors affecting the decision in the Professional Engineers' Case are appropriate to a consideration of Legal Officers and, no doubt other professional officers, but it is just as evident that other factors can have no bearing. Further, where there are common factors, the weights to be applied may differ materially."

These passages show a willingness to make comparisons between work of dissimilar types and to rely on knowledge and experience gained from the two cases of the engineers and the legal officers. They show that the type of approach adopted by the Industrial Commission of N.S.W. in the Scientific Officers and Academic Officers Cases of making a work value assessment in isolation and without any comparison at all with the engineers or any other groups was not followed. Differences were found on making the comparison between the legal officers and the engineers and these doubtless affected the rates awarded, though the decision does not set out the actual way in which any differences detected actually operated to produce the result obtained.

One point arising from the Legal Officers Case is very important. Even if the obstacle to comparison of dissimilar work constituted by the principle of the Metalliferous Miners Case were removed, there would be yet another very great obstacle in the way of unions in trying to effect comparisons between different kinds of professional work. The attempt to show that the work of scientists or academic officers or legal officers is just as valuable as the work of engineers would seem at first to involve detailed comparative evidence. This would make cases excessively long, and expensive, and would really involve presenting the evidence in each case again and again so that the comparison could be made. This is probably impracticable. The Commonwealth Public Service Arbitrator was able to make a comparison between the work of engineers and legal officers because he had sat on both tribunals more or less concurrently. It seems that there are only two ways in which



comparisons of this kind can be effectively made. First, if these professional groups could be dealt with by the one tribunal that tribunal could build up experience and knowledge of the work of the different professional groups, could make its own comparisons and could gradually evolve, on the basis of those comparisons, its own hierarchy or scale of relative professional work values. In doing this, however, it would be desirable for it to do so openly. It should refuse to follow the principles of the Metalliferous Miners Case. The second way of dealing with the problem is based upon the assumption that no special tribunal for the professional groups can be established, that they will continue to be dealt with by different tribunals and that the only basis for comparison will be the judgments. If a judgment has carefully set out the material upon which the assessment of work value is made then another tribunal is entitled to take that statement at its face value and compare the material in the later case with it. It is not a very satisfactory method but it is surely of some help in making a final work value assessment to do this rather than to make each work value assessment an exercise undertaken in a vacuum. The rates for one group do not control the rates for another. They are simply borne in mind and used as a basis of comparison. The conclusion may well be that one group is not thought to perform work as valuable as that of another group. If so, this can be simply and openly stated as one factor in the ultimate result.

Where this is not done and the assessments are made without admitted comparisons it is extremely difficult to get anyone to believe that the comparisons are really not made behind the scenes and the decision reached to award more or less than was awarded to the other group. The parties can be pardoned for believing that the refusal to compare, the refusal to allow what is awarded to one group to be considered when an award for another group is being made, is a mere pretence. The assertion that these work value assessments are in fact carried out in a kind of industrial vacuum is an arbitral fiction. It would be better if it were discarded. To discard it involves repudiating the Metalliferous Miners Case. This, however, seems to be sacred as things stand at present and beyond repudiation.

Perhaps in the long run it does not matter that the task of deciding relative work values must be performed blindfolded because, as Shaw says,

> "You must simply give it up, and admit that distributing money according to merit is beyond mortal measurement and judgment."

## FOOTNOTE

1. Presidential Address to the Industrial Relations Society, Sydney, 14th August, 1963.