The Waterfront Dispute: Of Vendetta and the Australian Way

Braham Dabscheck*

Abstract

In the latter part of 1997, and the first half of 1998, Australian industrial relations was dominated by a major recognition dispute on the waterfront. Patrick Stevedores sacked its Maritime Union of Australia workforce on 7 April 1998, employing labour supplied by a National Farmers Federation subsidiary. The sackings precipitated mass picketing around Australian ports. The Federal Court issued an interlocutory injunction, which in essentials was upheld by the High Court 6-1, ordering reinstatement of the workforce because of the possibility that Patrick, the National Farmers Federation and the Australian government had conspired to thwart the Freedom of Association provisions of the Workplace Relations Act 1996 (Comm.). The dispute is further complicated by an unsuccessful attempt to train former and current military personnel as stevedores in the port of Dubai. This article examines and analyses major twists and turns associated with this dispute.

1. Introduction

For those of us who are interested in such things, the Waterside Workers Federation[1] is almost an ideal union. It is sufficiently small for there to be a real relationship between the leadership and the membership of that union. It has been so successful that the members don't mind paying a very high level of union dues in order to sustain the union because of the small numbers. The great majority of WWF members, something in

* Associate Professor, School of Industrial Relations and Organisational Behaviour, University of New South Wales

https://doi.org/10.1177/103530469800900201 Published online by Cambridge University Press

> excess of 90 percent, generally vote in union elections, so that ratbag officials accurately reflect the ratbag members (Houlihan, 1989, 25).
>
> It is very interesting that [section] 298K [of the *Workplace Relations Act 1996* (Comm.)], together with the law of conspiracy, seems to place very considerable impediments in the way of any employer doing just about anything, if it does it for a prohibited reason. Indeed, it may be that an employer who said "I want to get out of this business because I cannot deal with the unions", cannot do it. That may be the effect of a literal construction of the section. It would be one of life's ironies if, against the tort of conspiracy which was used to hinder, if not seriously damage the trade union movement in the 19th century, is now, in combination with 298K, to be used against employers in the last decade of the 20th century ([Mr Justice McHugh] Transcript, 27 April 1998, 19).

On 4 May 1998 a majority of the High Court of Australia (Patrick Stevedores 7) upheld an interlocutory order of Mr Justice North, of the Federal Court of Australia, restraining the Patrick group of companies from terminating the employment of its stevedoring workforce (Maritime Union 2), all of whom were members of the Maritime Union of Australia (MUA). This decision, in effect, brought an end to an attempt by Patrick, the government of the Commonwealth of Australia and the National Farmers Federation (NFF) to deunionise Patrick, if not the Australian waterfront. This recognition dispute, this attempt to 'smash the MUA', dominated Australian industrial relations in the last months of 1997 and the first half of 1998.

In June 1995 John Howard, who at the time was leader of the Opposition, delivered a speech entitled 'The Role of Government: A Modern Liberal Approach'. At one stage he said 'Mainstream government means making decisions in the interests of the whole community, decisions which have the effect of uniting, not dividing, the nation'. Elsewhere he said 'For Liberals the role of government should always be strategic and limited' (Howard, 1995, 4 and 7).

On 23 May 1996, Peter Reith, the Minister for Industrial Relations – he subsequently became the Minister for Workplace Relations – in his second reading speech introducing the *Workplace Relations and Other Legislation Amendment Bill* 1996 (Comm.) said 'The bill I introduce today represents a break with a system of industrial relations that has been based on a view that conflict between employer and employee is fundamental to the relationship and that an adversarial process of resolving disputes is appropriate to the relationship and inevitable.' He also said that 'The principal object of the proposed Workplace Relations Act expresses our intention to estab-

https://doi.org/10.1177/103530469800900201 Published online by Cambridge University Press

lish a framework of cooperative workplace relations' (Hansard, Representatives, 23 May 1996, 1295 and 1297).

The actions and behaviour of the Howard Liberal and National Parties Coalition government in this dispute was the antithesis of the sentiments expressed in these speeches. Its involvement in the campaign against the MUA and its members was 'active' and 'directly interventionist', rather than 'strategic and limited'. It adopted a 'confrontationist' and 'adversarial' stance which was nationally 'divisive'. Reith was both 'ring master' and 'cheer leader' in the campaign against the MUA.[2]

During 1996 and 1997 Patrick, the Australian government and the NFF, and their respective legal advisers and consultants, considered various options to replace Maritime Union labour with an alternative workforce. In September 1997 it was decided to put into place, what will be described here as a 'grand plan'. The plan involved a corporate restructuring whereby companies employing MUA labour in the Patrick empire could be 'easily' placed in receivership, and the said workforce dismissed. A corollary of such dismissals was the obtaining and training of an alternative workforce.

Prior to implementing the 'grand plan' Patrick, and its allies, made two attempts to obtain such labour. The first occurred in December 1997 when the Fynwest company sought to train and certify stevedores in Dubai, in the United Arab Emirates. Permission for such training was withdrawn following representations from the MUA and the International Transport Workers' Federation (ITWF). A second and more successful attempt commenced on 28 January 1998 when Patrick leased part of its Webb Dock in Melbourne to Producers and Consumers Stevedores (PCS), an NFF subsidiary.

On Tuesday 7 April 1998, at approximately 10.50pm, Patrick sacked its 1400 strong MUA workforce at its various locations across Australia. It replaced them with 350 plus contract workers, including, mainly, persons in the employ of PCS. Security guards, some of whom were dressed in balaclavas, and guard dogs were deployed by Patrick to secure their facilities. The sackings precipitated a wave of picket lines at Patrick ports, providing a dramatic backdrop to the various legal proceedings which ensured. Those on either side of the picket lines accused each other of various acts of intimidation and violence.

Section 298K(1),[3] which is in Part XA, or the Freedom of Association provisions,[4] of the *Workplace Relations Act 1996* (Comm.) states

> 'An employer must not, for a prohibited reason, or for reasons that include a prohibited reason, do or threaten to do any of the following:
>
> a) dismiss an employee;

https://doi.org/10.1177/103530469800900201 Published online by Cambridge University Press

b) injure an employee in his or her employment;

c) alter the position of an employee to the employee's prejudice;

d) refuse to employ another person;

e) discriminate against another person in the terms or conditions on which the employer offers to employ the other person.'

Section 298L(1) defines a 'prohibited reason to include '(a) is, has been, proposes to become or has at any time proposed to become an officer, delegate, or member of an industrial association'. The Federal Court, under Section 298U, is granted extensive powers to remedy breaches of Part XA of the *Workplace Relations Act 1996* (Comm.) and Section 298V places the onus of proof against those whom conduct for a 'prohibited reason' is alleged. Mr Justice North's interlocutory order was based on a possible conspiracy in breach of Section 298K(1) (Maritime Union 2).

Controversy surrounds the attention paid to Section 298K(1) by Patrick, the Australian government, and the NFF and their respective retinues of consultants and legal advisers in the construction of their 'grand plan'. One view is that they all overlooked the possibility that the MUA would mount legal defences on the basis of Section 298K(1). They believed that the MUA would pursue industrial action, willy-nilly, which would render it bankrupt and defenceless following actions for common law damages and secondary boycotts under Sections 45D and 45E of the *Trade Practices Act 1974* (Comm.).[5]

In the months preceding the sackings, and the immediate period thereafter, both the MUA and the Australian Council of Trade Unions (ACTU) consistently stated that they would conduct a disciplined and targeted campaign to avoid possible actions and damages claims. For example, on 20 December 1997, MUA National Secretary John Coombs, after the failure of the Dubai training venture (see below) said 'The legislation prohibited us from taking any industrial action at all. In the past this is a situation we would have met ... That's what we have always done, and we have won or lost, or reached a consensus ... But I can't do that now without risking the $22 million in assets that my predecessors have built up to back the union' (The Australian Financial Review (AFR) 20/12/97). Following the sackings by Patrick on 7 April 1998 Coombs again indicated that the MUA would pursue a cautious, legally disciplined campaign. He said, 'We cannot fight this the way we used to fight ... We have to fight them the new way, the intelligent way, and discipline it ... They [Patrick Stevedores] are banking everything on us taking wildcat action and being sued into the ground in the Federal Court. We [won't] fall for that' (The Sydney Morning Herald

https://doi.org/10.1177/103530469800900201 Published online by Cambridge University Press

(SMH) 11/4/98). Notwithstanding these statements, the MUA, on occasion, was prepared, in the words of John Coombs to 'take a bit of illegal industrial action' (SMH 18/2/98). It employed such action in Melbourne following Patrick's leasing of facilities at Webb Dock to PCS at the end of January 1998, ignored an order of Mr Justice Beach of the Victorian Supreme Court over the placement of newspaper advertisements related to picketing in April 1998, and faced potential action by the Australian Competition and Consumer Commission (ACCC) following its reaction to the sackings by Patrick (see below).

While the MUA needed to be industrially disciplined to avoid playing into Patrick's hands, this was not something that was crucial to the success of Patrick and its allies' 'grand plan' of deunionisation. The core ingredient of their 'grand plan', the 'innovation' they sought to bring to Australian industrial relations, was the corporate restructuring they implemented in September 1997. Success or failure in this dispute would turn on how the courts would view such restructuring. Patrick and its allies gambled and lost that its corporate restructuring (or corporations law) would override Section 298K(1) of the *Workplace Relations Act 1996* (Comm.).

This article will provide an account and analysis of the major moves associated with this recognition dispute. The next section provides background information on how the MUA (and its predecessor the Waterside Workers Federation (WWF)) had become a particular target of conservative, anti-union forces in Australia. Section three will outline details of Patrick's corporate restructuring. The following section will examine various attempts to acquire an alternative workforce to MUA labour. The various industrial and legal manoeuvres of Patrick and the MUA, between the leasing of Webb Dock to PCS, on 28 February, to the mass sackings, on 7 April 1998, will be examined in section five. The penultimate section will provide information on various decisions by the courts and the final wash-up of the dispute. The final section will draw out the broader lessons, or implications, of the dispute for the operation of Australian industrial relations.

2. 'On the Side of the Angels'

The antecedents of this dispute can be traced back to the anti-union and so-called deregulatory, economic rationalist policies espoused by the conservative side of Australian politics, since the mid-1980s. The Federal Coalition, the H.R. Nicholls Society and the Business Council of Australia, in different ways, have linked the problems of the Australian economy to

https://doi.org/10.1177/103530469800900201 Published online by Cambridge University Press

the existence and activities of unions; and have sought to reduce their role and influence, if not bring about their obliteration. They have also mounted attacks on, and have sought to downgrade the role of, industrial tribunals; and strengthen the role of equity or common law courts. The attraction of the latter is their ability to impose fines and damages on unions that become involved in illegal strikes or secondary boycotts under the *Trade Practices Act 1974* (Comm.) (See Dabscheck, 1989, 1990, 1993, 1995).

The MUA – and its predecessor, the WWF – has been signalled out for particular attention. On a number of occasions the Federal Coalition has mounted attacks on the MUA/WWF, and/or championed the necessity of waterfront reform (Kelly, 1992, 249 and 250; Fightback, 1991, 9, 19, 28, and 58; The Things That Matter, 1994, 14; Howard, 1995, 10). Meetings of the H.R. Nicholls Society have provided a forum for expressing criticisms and opposition to the MUA/WWF.

Graham Gilbert, a long time stevedoring manager/consultant addressed the H.R. Nicholls Society in February 1988. He complained 'that the ability to manage on the waterfront has been all but lost under the massive weight of union power entrenched by industrial legislation and the one-sided way that legislation is administered'. He looked forward to a time when 'a government will have the will and courage to address issues of union power and waterfront reform' (Gilbert, 1988, 41 and 47).

In a speech delivered in August 1988, David Trebeck, a consultant with ACIL Australia, advocated a tough stance being taken on the waterfront to break union monopoly power. He spoke of the need to adopt a bold approach, 'to seek to reshape the entire framework so as to achieve major change quickly, in some senses, it may be equivalent to going for broke?' Trebeck made reference to situations where employers had adopted a tough stance, using common law actions to defeat unions. He said

> a group of strongly motivated individuals, companies and/or organisations backed by a more contestable market environment and, where necessary, access to civil remedies under common law, can provide the strength and cohesion necessary to break the union power which currently exists; and when and if a specific contest does arise, a well-informed and reasonably objective media will have no difficulty in conveying to the wide public who is on the side of the angels (Trebeck, 1989a, 71 and 72; also see Trebeck, 1989b).

At the same meeting of the H.R. Nicholls Society, Paul Houlihan, a former industrial director of the NFF and, at the time, an industrial relations consultant, made a virtual call to arms against the WWF. 'If anything is to be done about the Australian waterfront', he said, 'the power of the union

https://doi.org/10.1177/103530469800900201 Published online by Cambridge University Press

has got to be broken. There is no escape from this imperative – the power of the WWF has to be broken. You will not reform the waterfront without changing the power relationships which exist on the Australian wharf.[6] It is not a question of more laws, it is foremost that we need a change of attitude. We can reform the waterfront, we can break the power of [the] WWF and we can start re-establishing Australia's reputation as a trading nation. We can do all of that with a change of attitude, with a determined attitude to do it'.

In an exhortation, which reflects a prescience of how events unfolded almost a decade later, Houlihan said

> Its no use notifying disputes and pleading with the [Australian Industrial Relations] Commission to save us. It's a lot better if we create the circumstances, where the Union is notifying the disputes, where the Union is in trouble and it wants assistance. If we can stand out there, if we can load grain next Saturday at Fishermans Island without waterside workers, let them notify the Commission they have a problem. We haven't got a problem ... In the Commission, we don't have to convince the Commission of the merit of our argument, but of our capacity and our willingness to fight. It is preparedness to fight which carries the most clout in the Industrial Relations Commission (Houlihan, 1989, 24 and 25).

At two meetings held in 1989, Ian McLachlan, a former President of the NFF and soon to be Liberal member of Federal parliament, also endorsed and foreshadowed action against the WWF. In December 1989 he told those in attendance, with respect to the waterfront, to 'watch the papers' (McLachlan, 1989a, 58; also see McLachlan 1989b, 42 and 43).[7]

The importance of Gilbert, Trebeck, Houlihan and McLachlan is that, in different ways, they were implicated in the plan to 'smash the MUA'. Graham Gilbert was recruited as a manager of PCS. In May 1996 Transport Minister John Sharp commissioned Trebeck to produce a report canvassing options for waterfront reform at a fee of $60,000. Part of this commission was sub-contracted out to Houlibhan. In mid 1997 Peter Reith commissioned a major report from Trebeck at a fee of $600,000.[8] Houlihan was the industrial relations director of PCS, and recruited Gilbert. McLachlan was Minister for Defence during the dispute.[9]

'Smashing the MUA' represented the end product of an ideological position which had been germinating in the minds of the opponents of Australian unionism for over a decade. Taking on and destroying the MUA, arguably one of Australia's strongest and most successful unions, would

https://doi.org/10.1177/103530469800900201 Published online by Cambridge University Press

have constituted a fundamental, if not irrepairable, blow to Australian unionism.

3. 'A Shell with a Hair-Trigger Contract as its Only Asset'

The Patrick group of companies is part of and is controlled by the Lang Corporation.[10] Prior to 23 September 1997 four Patrick companies – Patrick Stevedores No 1, Patrick Stevedores No 2, Patrick Stevedores No 3 and National Stevedores Tasmania – were in the business of providing stevedoring services in ports around Australia. These companies owned various pieces of plant and equipment and employed labour in the stevedoring industry. It might be useful to view these companies as combining both product and labour market functions. They obtained contracts from customers (product market) and employed, or provided, labour to service such contracts (labour market).

On 23 September 1997 the affairs of these companies were reorganised – in the case of National Stevedores Tasmania this was not finalised until March 1998 – which had the effect of separating their product and labour market functions. The product market or stevedoring services of the companies were sold to Patrick Stevedores Operations No 2 for a price of $314.9 million. These funds were used to discharge intra company loans and other debts, which a majority of the High Court subsequently described as, 'a significant amount' (Patrick Stevedores No 7, 6), and between $60 and $70 million was returned to shareholders. Patrick Stevedores No 2 owned the plant, equipment and other assets, and performed the product market functions of the companies listed in the above paragraph. The only function to be performed by these companies, following the 23 September 1997 reorganisation, was to supply labour to Patrick Stevedores Operations No 2. Through this reorganisation Patrick, and the Lang Corporation, outsourced labour to itself, and, in the process, stripped the companies which employed stevedoring labour of assets.[11]

A labour supply agreement governed the relationship between the stevedoring and labour hire companies. Three clauses of that agreement are relevant here. Clause 2.3h required labour hire companies to 'ensure that the performance of the Services are not interferred with or delayed or hindered for any reason'. Clause 13.1(b) stated that 'In the event of a breach of clause 2.3(h)' the stevedoring company 'may terminate this Agreement immediately'. Finally, under clause 13.3 'If an application is made to wind up either party, voluntarily or otherwise, or a receiver, receiver and manager, liquidator, administrator or controller (as defined in the Corporation

https://doi.org/10.1177/103530469800900201 Published online by Cambridge University Press

Law) is appointed over any assets of either party, this Agreement will terminate immediately'. Julian Burnside, who appeared for the MUA in proceedings before the High Court, described these arrangements as leaving the companies 'Reduced to a shell, with a hair-trigger contract as its only asset' (Transcript, 28 April 1998, 32).

Patrick did not inform its workforce, or the MUA, of the corporate restructuring of 23 September 1997. They did not find out about it until 8 April 1998, the day after the mass sackings. Under clause 43 of the *Stevedoring Industry Award 1991*, of which Patrick was a party, it was required to notify and discuss with employees and their union(s) where it had 'made a definite decision to introduce major changes that are likely to have significant effects on employees'.

On 15 August 1997 Pamela Williams of *The Australian Financial Review* published an article entitled 'Coalition's secret plan to break the docks union'. It provided the first public airing of meetings and discussions which had occurred between Australian government ministers, stevedoring companies, consultants and advisers, since the election of the Howard government in March 1996, to take on the MUA. Amongst other things, the article revealed that those concerned with waterfront reform had a problem with leaks; something which was to dog them throughout the dispute (see below).

At the ACTU Congress held in the first week of September 1997, Secretary Bill Kelty made an impassioned speech in support of the MUA. He warned the Howard government of massive union retaliation if it sought to break the maritime union. He said

> To weaken the MUA is to weaken the union movement as a whole. The day we give away that support is the day we rip out our own heart and leave it pumping in irrelevancy The only promise I make to John Howard is this – that if you seek to destroy the MUA we will be there. You will have the biggest picket that's ever been assembled in this country (AFR, 4 September 1997).

Those who are 'on the side of the angels' may have taken some heart from this speech. It may have confirmed that both the MUA and broader union movement would pursue the type of undisciplined industrial action which would render them liable to legal actions and damage claims. Kelty's warning concerning the use of pickets was in fact realised. The significance of the speech, however, is its reflection of the determination of the broader union movements' support for the MUA. ACTU Assistant Secretary Greg Combet worked closely with John Coombs throughout the dispute. This was a dispute which neither the MUA nor the ACTU were prepared to loose.

https://doi.org/10.1177/103530469800900201 Published online by Cambridge University Press

4. Cairns, Dubai and Webb Dock

Patrick, the Australian government and the NFF believed that the corporate restructuring of 23 September 1997 provided them with the means to rid themselves of the MUA. All that was needed to complete their 'grand plan' was to acquire and train an alternative workforce. Before examining their attempts to do so, however, it might be first useful to consider an event which occurred in Cairns in September 1997. It provided a foretaste of things to come.

A North American owned firm International Purveyors shipped goods to the Freeport mine in Indonesia, out of Cairns. Stevedoring services were supplied by a unionised firm Northern Shipping and Stevedoring. In approximately the second week of September 1997 International Purveyors announced its intention to discontinue its contract with Northern Shipping and Stevedoring. International Purveyors would employ its own staff on individual Australian Workplace Agreements.[12] The decision involved the dismissal of seven full-time and twenty causal workers, all of whom were members of the MUA.

A former employee of Northern Shipping and Stevedoring – a Peter Wilson – was employed as an adviser to Workplace Relations Minister Peter Reith. A spokesperson for Reith said that the minister's office was aware of International Purveyors and had provided it with advice concerning various aspects of the *Workplace Relations Act 1996* (Comm.) (The Australian (AUS) 11 September 1997). Reith defended, if not championed, the actions of International Purveyors. He said its decisions were consistent with government policy to allow 'people to make choices about what's the best way and most efficient way of managing their workforce. There's no reason why other companies around Australia can't do this today whether or not it happens in Cairns' (AUS, 17 September 1997).[13]

The MUA accused the Howard government of being prepared to risk a massive industrial dispute because of its ideological obsession of destroying the union. John Coombs said 'The Government have been bleating ever since they got into office that they were going to destroy my union' (AFR, 19 September 1997). He also made it clear that 'There's no way we are going to give the Federal Government or the company any excuse to take legal action' (AUS, 17 September 1997).

The MUA decided to isolate the dispute to Cairns and install a picket line. It allowed goods to be trucked into the port, so as to avoid legal retaliation. The crucial part of its strategy was to call on the ITWF for help.[14] The MUA asked the ITWF to have discussions with the owners of *Java Sea*, soon to arrive in Cairns, not to use non-union labour. John Coombs

https://doi.org/10.1177/103530469800900201 Published online by Cambridge University Press

explained that as government legislation made it impossible for the MUA to take industrial action 'We had no option but to seek the support of our colleagues overseas' (AUS, 19 September 1997).

The owners of the *Java Sea* were based in New Orleans. Peter Wilson and Peter Reith phoned the owners, seeking to convince them that they should use non-union stevedoring labour (AFR, 31 August 1998). This is something they refused. They did not want to put at risk their relationship with American unions. In the words of John Coombs the company had 'good relations with the Longshoremen's Union and the US maritime union'. The MUA members were reinstated, which the union hailed as a major victory. Peter Reith said the government 'remains firmly and steadfastly committed to waterfront reform and we will not be in any way resiling in our determination to see major improvement in the nation's ports' (AUS, 19 September 1997).

In late July 1997 Dr Ian Webster, a consultant to Reith, acted as a go-between in arranging a meeting between Patrick's Chief Executive Officer Chris Corrigan and Mike Wells, a former army (commando) officer, who was now involved in security work (SMH, 6 May 1998). (Again!) In September 1997 representatives of the NFF became involved in the various meetings and discussions between Patrick and the Australian government concerning the MUA. Among other things, they discussed the possibility of the NFF setting up its own stevedoring operation. In late January 1998, following the leasing of space of Patrick's Webb Dock site in Melbourne to PCS, James Ferguson, the NFF's Deputy Executive Director, Industrial Relations revealed that the Federation had first thought about establishing its own operation ten years earlier (SMH, 29 January 1998). Paul Houlihan (see above) pointed out that waterfront reform had been a concern to farmer organisations since the late 1970s, and that 'We first looked at setting up a stevedoring operation in 1982' (AUS, 31 January 1998).

On 18 September 1997 a crucial meeting occurred between Reith, Sharp (and their retinue of advisers), Corrigan and representatives of the NFF over the finalisation of action against the MUA. A sticking point in the discussions was the funding of redundancy payments for sacked MUA members (AFR, 31 August 1998).[15] Corrigan wanted an undertaking of help from the government for such payments, which were anticipated to be in the order of $250 million. The Australian government eventually agreed to provide loans to Patrick to ease the burden of such redundancy payments (SMH, 30 January 1998).[16]

A matter which confronted Corrigan in implementing the 'grand plan' was to decide on the actual mechanics of obtaining an alternative labour

https://doi.org/10.1177/103530469800900201 Published online by Cambridge University Press

supply. The choice lay, apparently, between the NFF establishing a stevedoring operation – which they were apparently keen to do (see above) – or to run with Mike Wells. For reasons which are not clear, it was decided to use Wells to recruit and train an alternative workforce. Wells, together with another ex-military person Peter Kilfoyle, established a company called Container Terminal Management Services – though it later changed, or also operated under the name of Fynwest. An advertisement appeared in *The Army* of 30 October 1997 seeking 'trade specialists with 20 years service to be trained as training instructors' (AFR, 31 January 1998). The trainers of the alternative workforce would comprise former and current serving military personnel.

These 'recruits' would be trained in Dubai in the United Arab Emirates, away, so it was thought, from the glare of publicity in Australia. Secrecy was of the essence. Unfortunately for Wells, Kilfoyle, and Corrigan details of the Dubai operation were leaked by two informants to the MUA.

On 3 December 1997 Labor Opposition Transport spokesperson, Lindsay Tanner, released details of the 'industrial mercenaries' being trained in Dubai to ferment major industrial dislocation on the Australian waterfront (AFR, 4 December 1997). The Australian government, Corrigan and the NFF denied any knowledge or involvement in such training. Ian McLachlan, however, supported the training of former and current Australian army personnel in Dubai. He said 'I'm all for it. As long as these people are not breaking the law, the competition and reward it will bring to Australia will be supported by most Australians' (AUS, 5 December 1997). One of the Dubai recruits revealed that he had been informed that he could expect to start working on the Melbourne waterfront in March 1998 (SMH, 10 December 1997).

John Coombs flew to London to drum up support from the ITWF concerning developments in Dubai. In due course representations were made to officials of the United Arab Emirates. They were told that Dubai would suffer an international union blockade if the training of Australian 'industrial mercenaries' took place. In the circumstances, the United Arab Emirates decided to suspend the training pending an inquiry. There was talk of the Dubai trainees relocating to another port, somewhere in Asia. Nothing came of this. Mike Wells said he would hold talks with the NFF of providing workers for a possible non-union port in Australia (AFR, 15 December 1997; AUS, 15 December 1997; SMH, 15 December 1997).

The failure of the Dubai venture was associated with a falling out between Corrigan, and Wells and Kilfoyle, concerning financial and other commitments to each other. In the ensuring months Wells and Kilfoyle

https://doi.org/10.1177/103530469800900201 Published online by Cambridge University Press

threatened to leak, leaked and provided information concerning the involvement of Patrick and the Australian government in plans to take on the MUA. Such action not only served to undermine Corrigan and Reith in their dealings with the MUA and ACTU, but also in the broader public relations war that was now raging.

Dubai had been a failure, if not a disaster. In December 1997 Corrigan and the NFF resumed discussions. In early 1998 the latter decided to enter the stevedoring business. Its subsidiary PCS would lease berth number 5, which was lying idle, at Patrick's Webb Dock in Melbourne. Berths number 3 and 4 were being worked by MUA labour (Berth number 5 at Webb Dock would have been leased to Fynwest if the Dubai venture had not fallen through). On the night of 28 January 1998 20 security guards moved on to Webb Dock berth number 5 to secure its operation. It now seemed only a matter of time before the 'grand plan' could be implemented.

5. 'A Game of Chicken'

In the period between the leasing of Webb Dock and the mass sacking of MUA members – 28 January to 7 April 1998 – Patrick and the MUA engaged in a series of industrial and legal manoeuvres as they jockeyed for advantage. At one stage Chris Corrigan likened his struggle with the MUA as 'a bit like the game of chicken' (AFR, 26 March 1998).

An immediate problem which confronted PCS was that it did not have appropriate equipment – cranes and such like – to begin operations. Until such equipment was delivered Patrick maintained security personnel at its number 3 and 4 berths at Webb Dock. MUA members refused to work in the presence of such personnel, claiming that they were locked out. Following the leasing of berth number 5 on 28 January 1998 MUA members were asked to leave the amenities area at Webb Dock, and no work was scheduled over the weekend of 31 January/1 February 1998 (Patrick Stevedores 2, 25). Security personnel vacated Patrick facilities on 3 February, following the delivery of equipment to Webb Dock berth number 5.

Behind the scenes tensions emerged between Corrigan and a Fynwest operative. The operative threatened to expose Corrigan's involvement in the Dubai venture. In an attempt at damage control Corrigan decided to admit that he had had prior discussions about leasing Webb Dock to the Dubai venturers (AFR, 1 September 1998). He made such admissions on ABC Television's *7.30 Report* on 3 February 1998.

The MUA seized on these comments, initiating strike action at Patrick's Webb Dock site. In response, Patrick sought a Section 127(1) order from

https://doi.org/10.1177/103530469800900201 Published online by Cambridge University Press

the Australian Industrial Relations Commission under the *Workplace Relations Act 1996* (Comm.). If and when such orders are breached Section 127(b) of the Act empowers a Court to grant injunctions on such terms as it thinks fit. More significantly for the analysis here, it provided Patrick with the 'trigger' it needed to terminate its contracts with the labour hire companies (see above). Corrigan, Reith and their allies, undoubtedly would have felt content about the way in which events were unfolding.

Proceedings commenced before Vice President Ross on 5 February. Surprisingly, the MUA subpoeanaed Chris Corrigan to give evidence on its behalf! The MUA's reasoning was that Corrigan would provide evidence that the leasing of Webb Dock was part of Patrick's plan to foment industrial action and replace its workforce. Deputy President Ross agreed to the MUA's request. He said 'It is notorious that Mr Corrigan has been reported as making public comment in respect of the industrial action which is the subject of these proceedings. I am satisfied Mr Corrigan is in a position to give evidence which may be relevant to the determination of the matters before me' (Patrick Stevedores 1, 7).

In his evidence Corrigan denied that Patrick or the Lang Corporation had any financial involvement in the recruitment of persons involved in Dubai (Patrick Stevedores 2, 22). On the basis of documents that were subsequently released by Fynwest, it is arguable that Corrigan committed perjury before the Australian Industrial Relations Commission (SMH, 13 May 1998; AFR, 13 May 1998).

On 11 February 1998 the MUA commenced proceedings before Mr Justice North of the Federal Court that the leasing of Webb Dock was part of a conspiracy by Patrick and the NFF – it later enjoined the Australian government – to replace MUA members at Patrick's ports. This application seems to have had some influence on Vice President Ross' decision of 13 February.

The Vice President found that 'Patricks management had deliberately misled its employees and union officials as to the existence of an agreement to sub-lease berth 5' at Webb Dock. He said, however, 'There is insufficient evidence before me to support a conclusion that Patricks, and in particular Mr Corrigan, has embarked on a strategy towards provoking industrial confrontation and then replacing its labour force'. During the hearings Patrick had given an undertaking that all current employees would continue in employment, despite the sub-lease; subject, amongst other things, to 'the retention of current levels of business'.

The MUA maintained that the sub-leasing breached Clause 43 (introduction of change) of the *Stevedoring Industry Award 1991* (see above),

https://doi.org/10.1177/103530469800900201 Published online by Cambridge University Press

and Clauses 6 and 8 (both of which were concerned with job security) and the disputes procedure of the *Patrick Melbourne Enterprise Agreement 1996*. Vice President Ross found that Patrick's conduct had been 'in contravention' of the Agreement's dispute procedure. He noted the MUA's claims before the Federal Court concerning breaches of both the Award and Agreement. 'This', he said, 'is the appropriate means of addressing such issues, not the pursuit of industrial action'. He rejected the MUA's contention that Patrick had initiated a lock out. He did acknowledge, however, that its actions between 28 January and 3 February associated with the delivery of equipment to berth number 5 (see above), 'created confusion amongst its workforce and their unions about whether work was to proceed normally'. He said industrial action since 3 February cannot 'be said to be a reasonable and proportionate response to Patrick's conduct' (Patrick Stevedores 2, 15 and 24-26).

MUA members at Patrick's East Swanston Dock in Melbourne went out on strike on 16 February for 48 hours in protest against Vice President Ross' decision. After returning to work for one day, they went out for a second 48 hours strike beginning on 19 February. These were two occasions where the MUA was unable, or felt disinclined, to maintain industrial discipline. Patrick again sought a Section 127(1) order from the Australian Industrial Relations Commission, though this time before Senior Deputy President Polites. Not to be outdone the MUA sought to subpoeana Corrigan, Paul Houlihan and David Trebeck in their continuing quest to establish that the MUA was the target of a conspiracy (AUS, 19 February 1998). Patrick decided to drop its Section 127(1) application. Instead, it sought an interlocutory injunction before the Supreme Court of Victoria against the MUA's strike.

Patrick's application was a 'general one' against the MUA at both its Melbourne facilities – Webb Dock and East Swanston. The MUA maintained that the Supreme Court of Victoria lacked jurisdiction to hear the case as Vice President Ross' order only applied to Webb Dock, where strike action had stopped, and not East Swanston. Mr Justice Beach rejected this line of reasoning. He found damage caused by the strike 'not only to Patricks, but to producers, exporters, importers shipping lines and the community generally' were not so much substantial but 'alarming'. Patrick's application, he said, 'is not sought in relation to the past behaviour of the defendants. It seeks to restrain the defendants from persisting with what Patrick contend has been behaviour in the past'. Moreover, Mr Justice Beach said, given Vice President Ross's earlier decision 'it does not follow that the Court has no jurisdiction to hear that aspect of the action'.

https://doi.org/10.1177/103530469800900201 Published online by Cambridge University Press

On 29 January 1998 the MUA had given notice under Section 170MI of the *Workplace Relations Act 1996* (Comm.) of its intention of initiating bargaining periods at various Patrick enterprises/ports. Under Section 170ML of the Act unions (and employers) are protected against legal action in the event of a strike (or lock out) during the negotiation of such enterprise deals. The problem for the MUA in the proceedings before Mr Justice Beach was that the *Patrick Melbourne Enterprise Agreement 1996* (finalised in November of that year) had a three year term (Clause 3). Section 170MN of the *Workplace Relations Act 1996* (Comm.) does not allow industrial action to be taken until after the expiry date of an agreement. Mr Justice Beach pointed out to the MUA that 'it is arguable that any strike action taken by the defendants or to be taken by them hereafter is not protected action'. He granted an interlocutory injunction against the MUA striking at Webb Dock and East Swanston (Patrick Stevedores 3, 79 IR 269, 271, 272, 274 and 275). The MUA called off it's strike at East Swanston.

While an enterprise agreement existed in Melbourne, Patrick had not bedded down similar deals in other ports. This enabled the MUA to initiate bargaining periods and make use of protected industrial action in maintaining pressure on, and disrupting Patrick's cash flow. A two, and two seven, day strikes were held at Botany Bay, and a four day strike at Fisherman Island and Maritime Wharves. It is unclear if the non-finalisation of such agreements by Patrick prior to embarking on its campaign against the MUA was an oversight, or they were left open to provide a means for 'triggering' the termination clauses of the labour hire contracts. Alternatively, Patrick may have discounted the cash flow problems of such disputes as a short term cost to be set against the perceived longer term benefits which would result from a victory against the MUA.[17]

In the negotiation of an enterprise agreement which was apparently occurring at Port Botany – it appears that neither side, in all probability, had an interest in reaching an agreement – the MUA decided to impose an overtime ban. Peter Reith drew Patrick's attention to Section 187AA of the *Workplace Relations Act 1996* (Comm.), which says employers must not make payment to employees if they are involved in industrial action. Section 4 of the Act defines industrial disputes to include 'the performance of work in a manner different from that which is customarily performed' and 'a ban, limitation or restriction in the performance of work'. Patrick informed the Port Botany workforce they would not receive any pay until the overtime bans were lifted. The workers concerned maintained their bans, receiving no pay for work performed in non-overtime, or normal, hours. The MUA had received advice that legal action would recover

https://doi.org/10.1177/103530469800900201 Published online by Cambridge University Press

monies owed to its Port Botany members (SMH, 19 and 20 March 1998; AFR, 19 and 20 March 1998; and AUS, 19 March 1998).

In the latter part of March the MUA received a visit from a James Meek. He was a PCS trainee. During his training he had been kept under surveillance, with his phone calls tapped, by PCS; things which he found himself resenting. He told the MUA that PCS superiors had informed him that Tuesday 14 April 1998 – the Tuesday after Easter – was 'D-Day'. Patrick would lock out the MUA and PCS strikebreakers would move in. He also said that former SAS officers were in charge of security at Webb Dock, and they were prepared for violence (AUS 31 March and 1 April 1998; AFR 2 September 1998).

Alarmed at Meek's revelations the MUA initiated action before the Australian Industrial Relations Commission. It sought an undertaking from Patrick that it was not intending to sack its workforce during April. Patrick refused to give such an undertaking, stating that it was aware of its obligations under the award. Commissioner Mahon said

> a recommendation in the terms sought by the MUA is unnecessary because of the obligations contained both in the Award and Act. In regard to termination of employment provisions, Patricks, as an employer, would be expected to meet those obligations Failure to do so would leave Patricks open to action in the Federal Court regarding award breaches and/or action in the Commission including action pursuant to S.170GA [which empowers the Commission to make orders where employers fail to consult unions about terminations] of the Act (Maritime Union 1, 2).

Following Commissioner Mahon's decision the MUA, who in February had started proceedings in the Federal Court, on 6 April 1998 sought an interim injunction against Patrick from sacking its workforce, pending a full trail. The hearing was listed for Wednesday 8 April – the Wednesday before Good Friday.

This application may have created a dilemma for Patrick, its allies and their advisers. It seems highly unlikely that Patrick would have sacked MUA members during the hearing of the application. It also seems unlikely that it would have admitted, during the hearing, that it was involved in a conspiracy to sack its workforce. Some thought may have been given to providing similar undertakings or acknowledgment of its obligations as had been provided to Vice President Ross and Commissioner Mahon of the Australian Industrial Relations Commission. What was the point, however, of shilly-shalling around with a formula of words in providing another undertaking? It also seems unlikely that thought had not been given to the

https://doi.org/10.1177/103530469800900201 Published online by Cambridge University Press

likelihood that Mr Justice North would stay the dismissals, pending the hearing of the interim injunction.[18] Patrick believed, or had received advice, that its corporate restructuring, where administrators engaged in the actual actions of dismissal, was legally sound (see above). At 10.50 pm on Tuesday 7 April 1998, on the night before the scheduled hearing, Patrick put into place the final part of its 'grand plan' and dismissed, or rather administrators dismissed, its MUA workforce.

South Australian Premier John Olsen and Tasmanian Industrial Relations Minister Ron Cornish – both of whom, incidentally, where members of Liberal state governments – criticised Patrick over the sacking of MUA members in their respective states. Neither could understand Patrick's actions given that ports in both of their states were the most productive in the nation (SMH, 9 April 1998). Prime Minister John Howard was asked on Channel Nine's *A Current Affair* why such workers at Patrick's ports had been sacked, if the waterfront dispute was about productivity? 'Well', he explained, 'they're all part of one union' (AFR, 11 April 1998).

6. The Chickens Come Home to Roost

The MUA, and the broader union movement, responded to the sackings by maintaining mass picket lines at Patrick ports, and calling, again, on help from the ITWF. The picket lines were of the order promised by Bill Kelty at the September 1997 ACTU Congress (see above). Picket line activity and Patrick's use of security personnel and guard dogs provided a continuing sense of drama and high dudgeon to a flurry of legal actions which now ensued.

Patrick's corporate restructuring involved administrators dismissing the workforce of the labour supply companies once the contracts with the stevedoring companies had been terminated (see above). The MUA only became aware of this restructuring on 8 April 1998, the day after the sackings in the hearing before Mr Justice North. Administrators were restrained from dismissing the workers concerned, until a hearing of the MUA's interim injunction commencing after Easter on 15 April.

On 17 April the NFF, Patrick and the Australian government mounted an action before Justice Gaudron, of the High Court, challenging the Federal Court's jurisdiction to hear the MUA's claims. They, or more correctly, the NFF maintained that the MUA's conspiracy claim should be heard by the High Court. In her decision, Justice Gaudron drew attention to the fact that, while Patrick and the Australian government were parties to the proceedings, they had not made any submissions on the claims before the Court.

https://doi.org/10.1177/103530469800900201 Published online by Cambridge University Press

She found that there was nothing in the NFF's application which involved 'any contentious question of principle. Rather it is simply a question of "practical judgment" and one which, should be determined, at least in the first instance, by the Federal Court' (PCS Operations, 6).

Patrick initiated action against the ITWF in the United Kingdom – the ITWF being London based. Mr Justice Thomas of the High Court of Justice, Queens Bench Division granted Patrick an interlocutory injunction on 9 April, and again on 15 April. The injunction was opposed by the ITWF in a hearing on the night of 16 April. On the following morning the injunction was discharged, with Mr Justice Thomas publishing his reasons on 21 April.

His decision was based on two grounds. First, while the ITWF had informed and asked affiliates to help their Australian colleagues, it had asked them to act legally. Patrick had not provided any evidence that the proposed actions of various affiliates contravened the laws of their respective nations. Mr Justice Thomas said that for the court to act Patrick would first need to persuade it of 'the unlawful nature of the action which it is said is taking place in the ports of the world', Second, he concluded that the orchestration of the sackings by Patrick had involved 'very careful planning'. He maintained that an interlocutory injunction, as distinct from a full trial, placed the ITWF at an 'unfair' (my term) disadvantage. Mr Justice Thomas said

> the action against the MUA employees and the action against the IT[W]F had been planned within Patrick (as opposed to being planned with the involvement of their lawyers here and in Australia),[19] it would have been right to give the IT[W]F a full opportunity to put on evidence ... the difficult areas of fact and law involved. An adjournment of at least two or three weeks would have been needed. It would therefore be palpably unjust to continue to afford to Patrick the benefit of a presumptive strike which they obtained by careful planning' (Patrick Stevedores 4, 4, 22 and 29).

Back in Australia Patrick initiated action against picketing occurring at its ports before various state supreme courts. On 20 April 1998 Mr Justice Beach of the Supreme Court of Victoria ruled on picketing at Melbourne ports. He referred to his earlier decision of 23 February where he had found the impact of MUA strike action at Webb Dock and East Swanston was 'alarming' (see above). Mr Justice Beach said that finding 'has proved to be no overstatement or exaggeration of the situation'. He concluded that many of the pickets 'have been guilty of serious criminal behaviour'. Mr Justice Beach rejected arguments that proceedings in this case should be cross-vested to Mr Justice North of the Federal Court. He said the 'Federal

https://doi.org/10.1177/103530469800900201 Published online by Cambridge University Press

Court is not being asked to deal with what is generally occurring at the docks in question' but with the legitimacy of Patrick's termination of contracts with the labour supply companies.

He also rejected arguments that Patrick had got itself into its present situation because of its 'own unlawful conduct'. He found that there was no evidence for this supposition, and 'even if they [Patrick] have, it is no justification for what on the face of it, has been the criminal behaviour of a number of persons picketing the docks'. Mr Justice Beach also rejected the MUA's claim that a restraining order should only be confined to the named defendants 'and not extended to cover unnamed persons manning the picket line'. In making this order 'against the world' he also required the MUA to take out advertisements in leading Melbourne newspapers[20] stating that it would desist from such picketing and observe orders of the court, on 22 April 1998 (Patrick Stevedores, 5, 79 IR 276, 277, 278 and 280). This is something the MUA decided it was not prepared to do; thereby exposing itself to an action in contempt of court. On 21 April 1998 Mr Justice North handed down his decision on the MUA's request for an interlocutory injunction.

On two occasions the MUA had tried to convince the Australian Industrial Relations Commission that Patrick was planning to sack its workforce. Patrick deflected such claims by furnishing undertakings or saying it was aware of its award obligations (see above). For Mr Justice North, the opposite was the case. Patrick had dismissed its workforce the very night before he was scheduled to hear the MUA's claim for an interim injunction.

In his decision Mr Justice North quotes from a briefing paper circulated at a meeting held with Workplace Relations Minister Peter Reith on 12 March 1997. The briefing paper outlines plans for sacking MUA members. Mr Justice North also found that there was evidence which suggested that Chris Corrigan 'had a role in facilitating the training of a new waterfront workforce in Dubai'. He concluded that Patrick's corporate restructuring was designed to facilitate the sacking of MUA members and that 'there is a serious question to be tried'. Mr Justice North said

> It was contended by Patricks that the ... termination could ... only be achieved by a decision of the administrators and that decision would not be made for a prohibited reason but for the reason that the employers were insolvent. I do not accept this approach for the purposes of this interim application. It is arguable that the conduct alleged to be in breach of S298K(1) was undertaken so that the administrators would have no option but to dismiss the workforce. The conduct was arguably designed so that the termination would be the probable outcome. The threatened

https://doi.org/10.1177/103530469800900201 Published online by Cambridge University Press

> termination was the effect of the conduct in breach of S298K(1). It does not matter that the final act was to be the act of the administrators, if that act was intended and likely to occur as a result of the prior conduct of the employers.

On the question of the balance of convenience Mr Justice North ordered Patrick to reinstate MUA members. He said

> At a final hearing the Court may determine that the employees should be reinstated. If orders are not made now, it will be practically impossible for the Court to make such orders later because there will be so many irreversible changes flowing from the employees' absence from the workplace. In a practical sense, the failure to grant orders now will deny the employees the possibility of the remedy which they seek and as to which they have raised a serious question to be tried. The passage of time and events would defeat this remedy (Maritime Union 2, 13-15).

Mr Justice North's decision was influenced by undertakings furnished by the MUA that it would not continue its industrial action, and its members would sacrifice salaries to enable the administrators to trade out of insolvency (Maritime Union 2, 16 and 17). Mr Justice North's orders restored the status quo prior to the sackings of 7 April 1998.

Patrick sought leave to appeal this decision before the Full Court of the Federal Court. Justices Wilcox, von Doussa and Finkelstein stayed Mr Justice North's decision pending hearing of the appeal. They said 'We stayed those orders, not because we had any view about their merits – at that stage we had not even seen North J's reasons – but simply because it seemed to us undesirable to run the risk of the chopping and changing that would occur if the orders were allowed to operate for a short time and were then set aside on appeal'.

On 23 April they handed down their decision in the early evening televised live across the nation. They said 'we have read, and carefully considered the whole of North J's reasons for judgment but we find them free from appellable error'. One of the issues they considered was the tone of personal relationships on the waterfront. The justices said 'Incidents have occurred, on both sides of the dispute, that reflect little credit on those involved. They have engendered hostility and, in some cases, justifiable fear'. They went on to add, however, 'Threats made in anger, however vile, are usually just that; they subside when the cause of the anger is removed. Vendetta is not the Australian way' (Patrick Stevedores 6, 4, 5 and 12).

Patrick now sought relief in the High Court. The Full Court of the Federal Court's decision was stayed by Mr Justice Hayne. The High Court handed down its decision on 4 May. Before that, however, the Court of Appeal of

https://doi.org/10.1177/103530469800900201 Published online by Cambridge University Press

the Supreme Court of Victoria ruled, on 28 April, on an appeal of Mr Justice Beach's 'against the world' picketing order. This decision will be examined first.

A number of current and former Labor politicians appealed against Mr Justice Beach's decision. President Winneke and Justices Brooking and Charles overturned Mr Justice Beach's 'against the world' picketing order. They said 'Injunctions cannot be directed at the world at large. They must be directed to an identifiable person or persons'. In doing so, however, they endorsed Mr Justice Beach's findings that MUA picketers were involved in serious criminal behaviour. They also noted that the MUA had not taken out the newspaper advertisements, per Mr Justice Beach's orders of 20 April. They said 'this Court was entitled to take the view that the MUA appellants were not only prima facie in contempt of the Court's order, but that this conduct constituted positive defiance of the authority of the Court'. Elsewhere in their decision, they said that the MUA 'on the material before the learned judge and this Court [has] taken the view that [it is] entitled while challenging the actions of the Patrick group of companies in the Federal Court to blockade Patricks' premises and to act as they have against those employed and the security personnel inside those premises'. They added, 'Insofar as the pickets can now be called a peaceful one, that is simply because Patricks is no longer attempting to bring containers or other material through the picket and into Patricks' premises, nor is seeking egress from those premises for any containers for delivery elsewhere' (Maritime Union 3, 14, 17 and 19).

The High Court handed down a split, or rather, three separate decisions on 4 May. The majority – Chief Justice Brennan and Justices McHugh, Gummow, Kirby and Hayne – amongst other things, examined the nexus between corporations and industrial relations legislation. They said

> When one law – the *Corporations Law* – deals with the constitution, administration and assets of a corporation and another law – the *Workplace Relations Act* – deals with relationships between employers and employees or conduct in which persons engage qua employer or employee, there is not likely to be any general inconsistency between them. Corporations, like natural persons, can be subject to laws governing relationships and conduct. A law of the Commonwealth which governs the relationship of employer and employee does not purport to alter, and would not be construed as intending to alter, a State law prescribing a general regime for the administration of the assets of insolvent companies or the assets of companies which are, or are likely to become, insolvent (Patrick Stevedores 7, 15).

https://doi.org/10.1177/103530469800900201 Published online by Cambridge University Press

The majority found that Mr Justice North's orders fettered the discretion of administrators as to whether or not hire companies should continue trading, and altered his orders accordingly. They said

> orders which might properly be made by the Federal Court ... ought not to interfere with the exercise by the Administrators of their powers in respect of the employer companies provided the Administrators act lawfully. Relevantly, that means that the Administrators cannot dismiss the employees for the reason, or for reasons which include the reason, that they are members of the MUA (Patrick Stevedores 7, 16).

In the final paragraph of their decision the majority said

> The orders made by North J which are to be varied by this Court provide for the restoration of the Labour Supply Agreements that were in force before 7 April 1998 if the Administrators decide to resume trading. It is not the orders made but a decision to resume trading that may see the employees return to work. The courts do not – indeed they cannot – resolve disputes that involve issues wider than legal rights and obligations. They are confined to the ascertainment and declaration of legal rights and obligations and, when legal rights are in conflict, the courts do no more than define which rights take priority over others. In the orders which follow, priority is given to the powers of the Administrators of the employer companies but, subject to those powers, the orders seek to restore the position that existed prior to 7 April 1998 (Patrick Stevedores 7, 22 and 23).

Justice Gaudron dissented from the finding of the majority that Mr Justice North's orders fettered the discretion of administrators (Patrick Stevedores 7, 33 and 34). Her decision, in effect, was that the explicit alterations made by the majority where implicitly contained in Mr Justice North's original orders.

For his part Mr Justice Callinan would have allowed Patrick's appeal. He said

> There are sound reasons of public policy why courts should not make orders requiring the carrying on of businesses. Business affairs require mutuality in dealings. The pressure upon courts today is heavy. The role of the courts is the adjudication of cases, not the making, under the guise of supervisory orders, of de facto business decisions' (Patrick Stevedores 7, 52).

McCallum has commented that 'The problem with this approach is that it narrows the effectiveness of social legislation because aggrieved persons are unable to obtain injunctions to secure their rights' (McCallum, 1998,

https://doi.org/10.1177/103530469800900201 Published online by Cambridge University Press

218). Mr Justice Callinan's stance in this case seems to imply a 'nihilistic' role for courts and a Hobbesian state of nature.

Despite Justice Gaudron's dissent from the majority's variation of Mr Justice North's orders concerning administrators, the High Court ruled 6-1 in favour of the MUA. The decision forced Patrick to end its contract with PCS, thereby bringing about the dismissal of the alternative, or what the MUA regarded as the 'scab', workforce.

Following the High Court's decision, and the resumption of work by MUA members, under the control of administrators, Patrick and the MUA entered into negotiations concerning the future conduct of work at Patrick facilities. Despite the mistrust which existed on both sides they reached settlement, on what they referred to as a 'framework agreement', on 15 June 1998, approximately seven weeks after the High Court's decision.

Implementation of the agreement was conditional on 'all litigation related to the industrial disputes' being dropped. 'All' here meant litigation confronting the MUA, as well as Patrick. The labour supply companies would be wound up and employment of MUA members transferred to Patrick's stevedoring companies. Employment of MUA members would be deemed to be continuous, with various wage and other entitlements outstanding prior to 7 April, including the non-payment of wages to workers at Port Botany following their overtime bans (see above), paid in full.

The MUA agreed to over 600 of its members being made redundant and the outsourcing of maintenance work; with the rider that members made redundant would be given preference. The agreement established annualised salaries and a productivity bonus. The annual salary would be based on 35 hours of ordinary work plus a five hour overtime component per week. Overtime 'double headers' would no longer be worked, with such a provision to be deleted from the *Stevedoring Industry Award 1991*. Finally, the agreement stated that 'The placement of labour will be at the discretion of the company', and that there would be 'a target of 25 net crane moves per hour' (Agreement, June 1998).

The finalisation of litigation associated with the dispute was held up by an action of the ACCC. Its Chairman Alan Fels wanted that MUA to agree to a restraining order that it would not breach the secondary boycott provisions of the *Trade Practices Act 1974* (Comm.) against Patrick for two years. In addition, it wanted the parties (initially the MUA) to establish a damages fund for small businesses and exporters who suffered losses during the dispute. The MUA was unprepared to contribute to such payments – it would be tantamount to an admission of guilt.

https://doi.org/10.1177/103530469800900201 Published online by Cambridge University Press

The MUA decided to sit pat, leaving open the possibility of pursuing its conspiracy case; which, amongst other things would have involved the calling of Prime Minister John Howard and Workplace Relations Minister Peter Reith to the witness box. In the interim Patrick was required to pay the wages of more than 600 workers which it, and with the agreement of the MUA, wanted to make redundant. In early September 1998 Patrick agreed to pay up to $7.5 million into the ACCC's damages fund (AFR, 4 September 1998). The MUA provided the ACCC with an undertaking thereby bringing the litigation associated with the dispute to an end.

In a final twist to the legal manoeuvrings John Coombs, at a function of the Australian Chamber of Shipping, said that he had received legal advice that 'there was no guarantee there was any money in Lang Corp anyway, the banks would have moved by this time, the money would have gone and there was a constitutional question as to whether anybody, let alone the Maritime Union of Australia, could in fact successfully get damages from the Government as a result of a court case' (AFR, 17 September 1998).

It appears that Patrick and the Lang Corporation experienced substantial losses as a result of the dispute. It is estimated that Lang Corporation's market capitalisation fell by $34 million following the 7 April 1998 sackings – in the interim reporting period to 31 March 1998 it reported a $26 million loss compared to a profit of $15 million in the previous year; interest on $250 million of bank loans; Patrick incurred trading losses of $56 million; paid $13 million in legal and security fees; something less than $1 million to administrators; the MUA's legal bill of $1.8 million and $7.5 million to the ACCC[21] (SMH, 6 August 1998; AFR 13 and 16 June 1998). At a conference of the H.R. Nicholls Society in June 1998, Paul Houlihan said 'The union won this dispute, I don't quibble about that, I'm not going to gild the lily, we were done, we were beaten, they beat us' (AUS, 27 June 1998).

7. 'A Defining Moment in Australian Industrial Relations History'[22]

This was a very public dispute; a dispute which was played out in the glare of overarching media interest and publicity. It was a dispute where the parties were in possession of information and knowledge concerning the overall goals and tactics of each other. Protagonists only needed to keep an eye and an ear to the printed and electronic media to ascertain the practice and stance of their opponents. The MUA, in addition, enjoyed the advantage of receiving a continual stream of leaked information of the decision making

https://doi.org/10.1177/103530469800900201 Published online by Cambridge University Press

and tactics of Patrick, the Australian government and the NFF. The revelation of such information in the public domain served to undermine the latter three's position in the public relations battle associated with the dispute.

The Dubai venture, and its associated involvement of former and current military personnel, was a major tactical blunder by the MUA's opponents. The clandestine ('cloak and dagger') nature of the venture helped the MUA in its public relations campaign. In addition, following a falling out between Patrick and Fynwest, the latter continually leaked information to the media and MUA, much to the embarrassment of Patrick, the Australian government and the NFF.

The MUA was aware after the March 1996 federal election that it was a target of the Howard government. It was also aware of the dangers associated with pursuing industrial campaigns under the *Workplace Relations Act 1996* (Comm.), the *Trade Practices Act 1974* (Comm.) and the common law, and sought to cut its cloth accordingly. With the exception of strikes in Melbourne following Patrick's leasing of Webb Dock to PCS at the end of January 1998, the non-observance of an order by Mr Justice Beach concerning newspaper advertisements associated with picketing, and possible intervention by the ACCC it sought to ensure that it avoided actions and damage claims before the Courts. The MUA made use of its connections with the ITWF, at certain strategic points, in maintaining pressure on its opponents. It is doubtful, however, that a similar 'global option' will be available to other Australian unions which find themselves embroiled in major industrial disputes.

While the MUA had an abundance of information concerning the forces marshalling against it, it was unaware of the actual mechanism Patrick and its allies would employ to effect the mass sackings. The 'innovative' part of Patrick's 'grand plan' was its corporate restructuring. Patrick believed, or more to the point had received legal advice, that its corporate restructuring would survive legal scrutiny. Despite the MUA's generally disciplined use of industrial action it still acted in a way, unbeknown to itself, to 'trigger' the dismissal mechanisms contained in Patrick's corporate restructuring.

Patrick believed it had a fool proof device to rid itself of the MUA. The corporate restructuring was an 'ace' hidden up its sleeve. Given this belief all Patrick needed to do was simply sit back and wait out the time necessary to train an alternative workforce. The period between the leasing of Webb Dock to PCS and the sackings was one in which Patrick could play games; tease and prod the MUA prior to, what it believed would be, its final annihilation. Other than short term cash flow problems, which could be

https://doi.org/10.1177/103530469800900201 Published online by Cambridge University Press

discounted against future anticipated benefits, it is doubtful if Patrick was overly concerned with the MUA's industrial tactics prior to the sackings.

Patrick's 'ace' was 'trumped' by the Freedom of Association provisions of the *Workplace Relations Act 1996* (Comm.). The key to this dispute was the Federal Court's decision, upheld by the Full Court of the Federal Court, and 6-1 by the High Court that the corporate restructuring fell foul of Section 298K(1) of the Act. If Patrick's corporate restructuring had been upheld by the courts it seems more than likely that Australia would have been engulfed in a wave of union-busting exercises,[23] undoubtedly with the support of Peter Reith, of the ilk that has not been witnessed since the 1890s.

The courts saw through the subterfuge of Patrick's corporate restructuring, dealing a death blow to such arrangements being used as a means of union-busting. Since the High Court's 4 May 1998 ruling there have been two Section 298K/Freedom of Association type decisions handed down by the Federal Court, and one by the Australian Industrial Relations Commission (Australasian Meat; National Union; and Construction, Forestry).

This was a dispute about rights; in particular, the right of freedom of association. Australian industrial relations has become increasingly influenced, if not dominated, by precepts of the United States of America's industrial relations system (Dabscheck 1990; Bennet 1992; McCallum 1994; Naughton 1995). Klare maintains that America's system of labour law is based on contractualism. Contractualism abstracts itself from questions associated with the exercise and distribution of economic power. According to Klare[24]

> The central moral idea of contractualism was and is that justice consists in enforcing the agreement of the parties so long as they have capacity and have had a proper opportunity for terms satisfactory to each. Contractualist justice is, therefore, formal and abstract: within the broad scope of the legal bargains it is disinterested in the substantive content of the parties' arrangements (Klare, 1978, 295).

This dispute is a reflection of, or has taken Australia one step further down the path of contractualism. Only those with deep pockets and lawyers at the ready will be able to act to protect and defend their rights. This is a system which bodes ill for those who are industrially and financially weak.

The MUA and broader union movement achieved a major victory in this dispute. They not only acted to protect the 'heart' of the union movement, to quote Bill Kelty, but also its 'body'. The courts found against Patrick's corporate restructuring as a means of union-busting. Conservative forces opposed to unionism will explore new avenues to bypass unions. Thought will be given to introducing new legislation to make it easier to take on, and

https://doi.org/10.1177/103530469800900201 Published online by Cambridge University Press

place restrictions on, unions; attacks will be mounted on the 'bias' of court members because they hand down decisions antipathetic to conservatives; ways and means to break picket lines; and the public relations dimensions associated with waging an intense and emotionally charged industrial, anti-union campaign. The jury is still out on whether or not vendetta is part of the Australian way.

Notes

1. The Waterside Workers Federation of Australia merged with the Seamen's Union of Australia on 3 May 1993 to form the Maritime Union of Australia.
2. It is not unusual for Australian governments – both state and federal – to become involved in industrial disputes. For examples see Iremonger, Merritt and Osborne (1973), Sheridan (1989) and Norington (1990). Also see Sheridan (1998) for an examination of the Menzies and Holt governments involvement in the waterfront during the 1950s and 1960s.
3. A precussor to this section was first placed in the *Conciliation and Arbitration Act 1904* (Comm.) in 1914, no. 18 of 1914. Also see Section 9 of the 1904 Act. It was Section 334 of the *Industrial Relations Act 1988* (Comm.).
4. One of the principal objects of the *Workplace Relations Act 1996* (Comm.) is – Section 3f – 'ensuring freedom of association, including the rights of employers and employees to join an organisation or association of their choice, or not to join an organisation or association'.
5. This is essentially the position of McCallum (1998).
6. In 1989 the Hawke Labor government, stevedoring companies and the WWF entered into a three year agreement to reform the waterfront. In November 1992, the Chairman of the Waterfront Industry Reform Authority provided a final report concerning such reforms. He said the agreement had been 'about improving the productivity and reliability on the waterfront and providing career path opportunities for people in the industry. This has been achieved and Australia is now well served by an efficient stevedoring industry, with performance within the range of efficient ports in other countries'. It was estimated that the reform process had brought about cost savings of at least $300 million, the work force had been reduced by 57%, containers handled per shift up by 127%, hourly container rates up 57%, turn around time down by 45%, at grain terminals manning down by 70% and costs reduced by 50%, and stevedoring charges had fallen by 20-25% in the last twelve months' (Waterfront Industry Reform Authority, 1992, 3, 9 and 10). For a comparison of waterfront reform in Australia and Britain see Turnbull (1992b). For further work on waterfront reform in Britain, Europe and New Zealand see Turnbull (1991, 1992a, 1994), Turnbull and Weston (1992, 1993), Turnbull and Wass (1994), Saundry and Turnbull (1996), and Revely (1997).
7. For other speeches critical of the MUA/WWF see Trace (1998), Baillie (1989), McKeown (1989), Barnard (1989, 1990), Finney (1990), Forward (1991), Boyd (1991) and Setchell (1991).
8. The Productivity Commission also produced two reports on the waterfront in 1998 calling for reform. See Productivity Commission (1998a, 1998b).

https://doi.org/10.1177/103530469800900201 Published online by Cambridge University Press

9. Peter Reith, John Howard and Treasurer Peter Costello had also delivered speeches to the H.R. Nicholls Society. Costello was an active member of the Society. See Reith (1989), Howard (1990) and Costello (1990).
10. The presentation of material here is drawn from the decisions of Mr Justice North (Maritime Union 2) and the majority of the High Court (Patrick Stevedores 7, 5-8).
11. According to Captain Jim Sweetenson, a former managing director of Australian Stevedores – a predecessor to Patrick Stevedores – Patrick's Chief Executive Officer Chris Corrigan had first thought of shifting assets out of employing companies in 1994 during a dispute at Sydney's Darling Harbour (AFR, 1 April 1998).
12. See Part VID of the *Workplace Relations Act 1996* (Comm.) concerning the operation of Australian Workplace Agreements. Such 'individual' arrangements are essentially a device to decollectivise industrial relations (tautologically) and reduce the influence and power of unions.
13. In mid March 1998 Peter Reith revealed that discussions had taken place between the Australian government and 'various groups' about setting up competitive stevedoring operations (SMH, 17 March 1998).
14. For a discussion of international co-operation, or action, by unions see Breitenfellner (1997).
15. On 21 September 1997 Transport Minister Ian Sharp, on Channel Seven's *Face to Face* program, criticised waterfront employers for their lack of courage in taking on waterfront unions. For details of his criticisms and reactions from Patrick and P and O see AUS 22 and 23 September 1997, AFR, 22, 23 and 27 September 1997, and SMH, 23 September 1997.
16. In due course the Australian government brought into being the *Stevedoring Levy (Collection) Act 1998* (Comm.), no. 87 of 1998; and the *Stevedoring Levy (Imposition) Act 1998* (Comm.), no. 88 of 1998. Under these two pieces of legislation up to a maximum of $250 million would be 'loaned' by the government to fund waterfront redundancies. The loan would be refunded or paid by a levy of up to $20 per container and $10 per vehicle loaded onto or of Australian ports. In his second reading speech introducing the legislation Peter Reith indicated that he would set the rate at $12 per container and $6 per vehicle by regulation (Hansard, Representatives, 8 April 1998, 2725). The two Acts received royal assent on 3 July 1998.
17. It might also be added here that such disputes do not seem to have dissuaded various banks advancing Patrick substantial loans – in the order of hundreds of million dollars – during the course of the campaign against the MUA.
18. It might be useful here to recall Paul Houlihan's belief that industrial tribunals, or legal forums such as industrial tribunals (this is my extension) would not thrawt tough and determined action in taking on unions.
19. Lawyers had been involved in the crafting of Patrick's 'grand plan'. Presumably, knowledge of their involvement was not well known at the time in London.
20. One of the papers was *The Australian*, a national daily.
21. It is also alleged that their losess also extend to a proportion of $27 million involved in the Dubai venture.
22. This was a statement made by Prime Minister John Howard immediately after Patrick sacked its MUA workforce on 7 April 1998 (SMH, 9 April 1998).
23. In February 1998 the recruitment firm Morgan and Banks predicted there would be 'more Patricks', when 75 per cent of 3,700 companies surveyed said they

https://doi.org/10.1177/103530469800900201 Published online by Cambridge University Press

wanted non-unionised workplaces (SMH, 11 February 1998). In mid April 1998 the Australian Chamber of Commerce and Industry's Executive Director, Mark Paterson backed the use of Patrick style corporate restructurings against unions if workers refused to lift their productivity (SMH, 18 April 1998).

24. For other commentaries on American industrial relations see Weiler (1983, 1984), Forbath (1989) and Rogers (1990).

References

Agreement Between Patrick Stevedores Holdings Pty Limited; The Maritime Union *of Australia; The Australian Maritime Officers' Union*; The Communications, Electrical and Plumbing Union and The Australian Council of Trade Unions (1998), 15 June (mimeo).

Australasian Meat Industry Employees' Union and Ors v Rashad Basha Aziz and Ors [1998] 925 FCA (5 August 1998). Mr Justice Marshall, Federal Court of Australia, VG 302 of 1998.

Baillie, B.W. (1989), 'Shipping and the Waterfront', in In Search of the Magic Pudding, Proceedings of the H.R. Nicholls Society, Volume V, Melbourne, 59-64.

Barnard, Peter (1989), 'Waterfront Reform at the Watershed: An Assessment of Recent Government Waterfront Policy Initiatives', in The Legacy of 'The Hungry Mile', Proceedings of the H.R. Nicholls Society, Volume 7, Melbourne, 27-32.

Barnard, Peter (1990), 'Waterfront Reform and Industrial Relations', in Back to the Waterfront, Proceedings of the H.R. Nicholls Society, Volume 9, Melbourne, 7-12.

Bennett, Laura (1992), 'The American Model of Labour Law in Australia', *Australian Journal of Labour Law*, August, 135-157.

Boyd David (1991), 'Waterfront from Singapore to Sydney', in The Law and the Labour Market, Proceedings of the H.R. Nicholls Society, Volume XI, Melbourne, 59-63.

Breitenfellner, A. (1997), 'Global Unionism: A Potential Player', *International Labour Review*, Winter, 531-555.

Construction, Forestry, Mining and Energy Union and Gordonstone Coal Management Pty Ltd, Commissioner Hodder, Australian Industrial Relations Commission, Brisbane 26 August 1998, G0751 Dec 1006/98 B Print Q4628.

Costello, Peter (1990), 'Back to the Waterfront: New IR Bill', in Back to the Waterfront, Proceedings of the H.R. Nicholls Society, Volume 9, Melbourne, 1-5.

Dabscheck, Braham (1989), *Australian Industrial Relations in the 1980s*, Oxford University Press, Melbourne.

Dabscheck, Braham (1990), 'Industrial Relations and the Irresistible Magic Wand: The BCA's Plan to Americanise Australian Industrial Relations', in Easson, Michael and Shaw, Jeff (eds) *Transforming Industrial Relations*, Pluto Press, Sydney, 117-130.

Dabscheck, Braham (1993), 'The Coalition's Plan to Regulate Industrial Relations', *The Economic and Labour Relations Review*, June, 1-26.

Dabscheck, Braham (1995), *The Struggle for Australian Industrial Relations*, Oxford University Press, Melbourne.

Fightback! It's Your Australia (1991), The Liberal and National Parties Plan to Rebuild and Reward Australia.

https://doi.org/10.1177/103530469800900201 Published online by Cambridge University Press

Finney, Nicholas (1990), 'Back to the Waterfront', in Back to the Waterfront, Proceedings of the H.R. Nicholls Society, Volume 9, Melbourne, 41-47.

Forbath, William E. (1989), 'The Shaping of the American Labor Movement', *Harvard Law Review*, April, 1109-1256.

Forward, Ash (1991), 'Some Experiences of the Townsville Waterfront', in 'No Vacancies', Proceedings of the H.R. Nicholls Society, Volume 10, Melbourne, 53-60.

Gilbert, Graham (1988), 'Containerisation and the Industrial System: An Insider's View', in Back to Basics, Proceedings of the H.R. Nicholls Society, Volume IV, Melbourne, 41-47.

Hansard, Commonwealth of Australia, House of Representatives, Canberra.

Houlihan, Paul (1989), 'Some Vignettes from the Waterfront', in The Legacy of 'The Hungry Mile', Proceedings of the H.R. Nicholls Society, Volume 7, Melbourne, 23-26.

Howard, John (1990) 'Guest of Honour's Address', in 'Public Interest or Vested Interest?' Proceedings of the H.R. Nicholls Society, Volume 8, Melbourne, 47-50.

Howard, John (1995), The Role of Government: a Modern Liberal Approach, The Menzies Research Centre 1995 National Lecture Series, Parliament House, Canberra, June.

Iremonger, John, Merritt, John and Osborne, Graeme (eds), (1973), *Strikes: Studies in Twentieth Century Australian Social History*, Angus and Robertson, Sydney.

Kelly, Paul (1992), *The End of Certainty: The Story of the 1980s*, Allen and Unwin, Sydney.

Klare, Karl E. (1978), 'Judicial Deradicalization of the Wagner Act and the Origins of Modern Legal Consciousness, 1937-1941', *Minnesota Law Review*, 265-339.

Maritime Union of Australia and Patricks No. 1 Pty Limited and Patricks No. 2 Pty Limited, Commissioner Mahon, Australian Industrial Relations Commission Melbourne, 3 April 1998, S0283 Dec 407/98 M Print P9970 (Maritime Union 1).

Maritime Union of Australia and Others v Patrick Stevedores No. 1 Pty Ltd and Others [1998] 378 FCA (21 April 1998), Mr Justice North, Federal Court of Australian , No. VG 152 of 1998 (Maritime Union 2).

Maritime Union of Australia and Ors v Patrick Stevedores Operations Pty Ltd and Anor [1998] VICSC 52 (28 April 1998), President Winneke and Justices Brooking and Charles, Supreme Court of Victoria, Court of Appeal, No. 5463 of 1998 (Maritime Union 3).

McCallum, Ronald C. (1994), 'The Internationalisation of Australian Industrial Law: The *Industrial Relations Reform Act 1993*', *Sydney Law Review*, March, 122-135.

McCallum, Ronald C. (1998), 'A Priority of Rights: Freedom of Association and the Waterfront Dispute', *Australian Bulletin of Labour*, September, 207-221.

McKeown, Peter (1989), 'The Reality of the Waterfront', in the Legacy of 'The Hungry Mile', Proceedings of the H.R. Nicholls Society, Volume 7, Melbourne, 19-21.

National Union of Workers v Davids Distribution Pty Ltd [1998] 1094 FCA (24 August 1998), Mr Justice Wilcox, Federal Court of Australian , VG 382 of 1998.

Naughton, Richard (1995), 'Bargaining in Good Faith', in Ronfeldt, Paul and McCallum, Ron (eds), *Enterprise Bargaining: Trade Unions and the Law*, Federation Press, Sydney, 84-106.

https://doi.org/10.1177/103530469800900201 Published online by Cambridge University Press

Norington, Brad (1990), *Sky Pirates: The Pilots' Strike that Grounded Australia*, Australian Broadcasting Corporation, Sydney

Patrick Melbourne Enterprise Agreement 1996.

Patrick Stevedores No. 1 Limited, Patrick Stevedores No. 2 Pty Limited, Vice President Ross, Australian Industrial Relations Commission, Melbourne 6 February 1998, S0283 Dec 131/98 S Print P8680 (Patrick Stevedores 1).

Patrick Stevedores No. 1 Limited, Patrick Stevedores No. 2 Pty Limited, Vice President Ross, Australian Industrial Relations Commission, Melbourne 13 February 1998, S0283 Dec 131/98 S Print P8838 (Patrick Stevedores 2).

Patrick Stevedores No. 1 Pty Limited and Anor v Maritime Union of Australia and Others, Mr Justice Beach, Supreme Court of Victoria, 79 Industrial Reports 268 (Patrick Stevedores 3).

Patrick Stevedores Operations Pty Ltd v International Transport Workers Federation, Mr Justice Thomas, High Court of Justice, Queens Bench Division (United Kingdom), 21 April 1998, Date of Order, 17 April 1998 (Patrick Stevedores 4).

Patrick Stevedores Operations Pty Limited and Others v Maritime Union of Australia and Others, Mr Justice Beach, Supreme Court of Victoria, 20 April 1998, 79 Industrial Reports 276 (Patrick Stevedores 5).

Patrick Stevedores Operations No. 2 Pty Ltd and Ors v Maritime Union of Australia and Ors [1998] 397 FCA (23 April 1998), Justices Wilcox, von Doussa and Finkelstein, Full Court of Federal Court of Australia, VG 152 of 1998 (Patrick Stevedores 6).

Patrick Stevedores Operations No. 2 Pty Ltd v Maritime Union of Australia [1998] HCA (4 May 1998), Chief Justice Brennan, Justices Gaudron, McHugh, Gummow, Kirby, Hayne and Callinan, High Court of Australia, M29/1998 (Patrick Stevedores 7).

PCS Operations Pty Ltd v Maritime Union of Australia; Maritime Union of Australia v Patrick Stevedores No. 1 Pty Ltd; Ex Parte Attorney-General for the Commonwealth; Patrick Stevedores Operations No. 2 Pty Ltd v Maritime Union of Australia [1998] HCA 29 (21 April 1998), Justice Gaudron, High Court of Australia, Date of Order, 17 April 1998, M24/1998 (PCS Operations).

Productivity Commission (1998a), *International Benchmarking of the Australian Waterfront*, Canberra, April.

Productivity Commission (1998b), *Work Arrangements in Container Stevedoring*, Canberra, April.

Reith, Peter (1999), 'The Evolution of the Opposition's IR Policy', in No Ticket, No Start, No More, Proceedings of the H.R. Nicholls Society, Volume VI, 29-33.

Reveley, James (1997), 'Waterfront Labour Reform in New Zealand: Pressures, Processes and Outcomes', *The Journal of Industrial Relations*, September, 369-387.

Rogers, Joel (1990), 'Divide and Conquer: Further "Reflections on the Distinctive Character of American Labor Laws"', *Wisconsin Law Review*, 1-147.

Saundry, Richard and Turnbull, Peter (1996), 'Melee on the Mersey: Contracts, Competition and Labour Relations on the Docks', *Industrial Relations Journal*, December, 278-288.

Setchell, Richard (1991), 'WIRA and Weariness: Turning the First Corner', in The Law and the Labour Market, Proceedings of the H.R. Nicholls Society, Volume XI, Melbourne, 65-70.

https://doi.org/10.1177/103530469800900201 Published online by Cambridge University Press

Sheridan, Tom (1989), *Division of Labour: Industrial Relations in the Chifley Years 1945-1949*, Oxford University Press, Melbourne.

Sheridan, Tom (1998), 'Regulating the Waterfront Industry 1950-1968', *The Journal of Industrial Relations*, September, 441-460.

Stevedoring Industry Award 1991.

The Things That Matter: Coalition Goals, Supplementary Papers (1994), Liberal Party of Australia, Canberra, September.

Trace, Keith (1988), 'Australian Shipping and Stevedoring', in Back to Basics, Proceedings of the H.R. Nicholls Society, Volume IV, Melbourne, 35-40.

Transcript, High Court of Australia, Patrick Stevedores Operations No. 2 Pty Ltd and Ors v Maritime Union of Australia and Ors M29/1998, 27 and 28 April 1998.

Trebeck, David (1989a), 'Achieving Institutional Change in Shipping and the Waterfront', in In Search of the Magic Pudding, Proceedings of the H.R. Nicholls Society, Volume V, Melbourne, 65-73.

Trebeck, David (1989b), 'Ports and Shipping Reform in New Zealand', in The Legacy of 'The Hungry Mile', Proceedings of the H.R. Nicholls Society, Volume 7, Melbourne, 33-37.

Turnbull, Peter (1991), 'Labour Market Deregulation and Economic Performance: The Case of Britain's Docks', *Work, Employment and Society*, March, 17-35.

Turnbull, Peter (1992a), 'Dock strikes and the Demise of the Dockers' "Occupational Culture"', *The Sociological Review*, May, 294-318.

Turnbull, Peter J. (1992b), 'Waterfront Reform in Britain and Australia – in Practice and in Principle', *The Journal of Industrial Relations*, June, 229-246.

Turnbull, Peter (1994), 'Capitalist Restructuring and Socialist Strategies for the Port Transport Industry', *Capital and Class*, Autumn, 61-88.

Turnbull, Peter and Wass, Victoria (1994), 'The Greatest Game No More – Redundant Workers and the Demise of "Dock Work"', *Work, Employment and Society*, December 487-506.

Turnbull, Peter and Weston, Syd (1992), 'Employment Regulation, State Intervention and the Economic Performance of European Ports', *Cambridge Journal of Economics*, December, 385-404.

Turnbull, Peter and Weston, Syd (1993), 'Co-operation or Control? Capital Restructuring and Labour Relations on the Docks', *British Journal of Industrial Relations*, March, 115-134.

Waterfront Industry Reform Authority (1992), Final Report, Canberra, October.

Weiler, Paul (1993), 'Promises to Keep: Securing Workers' Rights to Self-Organization under the NLRA', *Harvard Law Review*, June, 1769-1827.

Weiler, Paul (1994), 'Striking a New Balance: Freedom of Contract and the Prospects for Union Representation', *Harvard Law Review*, December, 351-420.

https://doi.org/10.1177/103530469800900201 Published online by Cambridge University Press