

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996
s.113 applications to vary awards
s.108 references to a Full Bench

IN THE MATTER OF:

APPLICATIONS TO VARY VARIOUS AWARDS
RE REDUNDANCY
C No. 2002/4087 and others

WITNESS STATEMENT

On 9th April 2003, I, JOHN BENSON of 17 William Street, Brighton in the State of Victoria say:

1. I am employed by the University of Melbourne as Associate Professor in the Faculty of Economics and Commerce. I have held this position since 1997. I am also the Director of the Centre for Human Resource Management at the University of Melbourne.
2. I hold the following qualifications:
 - Ph.D. (University of Melbourne): based on dissertation "*Shop Stewards in the La Trobe Valley*"
 - Master of Arts – Industrial Relations (Melbourne)
 - Master of Education (Monash)
 - Bachelor of Economics (Monash)

Annexed and marked "A" is a true copy of my curriculum vitae.

3. In October 2002, I was commissioned by the Australian Industry Group ("Ai Group") to undertake a survey of member companies to ascertain their views on the claim by the Australian Council of Trade Unions ("ACTU") to vary the terms and conditions governing termination of employment due to redundancy under federal awards. Subsequently, members of the Engineering Employers' Association of South Australia ("EEASA") were included in the survey.
4. The extent of the commission was to conduct an independent survey of the termination practices adopted by a sample of member companies and their responses to the ACTU claim.
5. On 12 February 2003, the survey was mailed to a randomly selected group of member companies of Ai Group and EEASA. Annexed and marked "B" is a true copy of the survey questionnaire.
6. The survey questionnaire was accompanied by a letter jointly signed by Mr Stephen Smith (Director - National Industrial Relations, Ai Group) and Mr Stephen Myatt (Director, EEASA). The letter briefly outlined the ACTU claim, ensured confidentiality of responses and stressed the need for a good response. Annexed and marked "C" is a true copy of the letter.
7. Survey participants were asked to send the completed questionnaire directly to myself via the reply paid addressed envelope provided.
8. On Friday 21 February 2003, a follow-up letter was sent to all participants in the survey re-iterating the need for a good response and thanking those employers who had already returned the questionnaire. The letter was also signed by Mr Stephen Smith and Mr Stephen Myatt. Annexed and marked "D" is a true copy of the letter.

9. On Tuesday 25 February 2003, a telephone follow-up of all companies that had received the questionnaire commenced. This activity was carried out by Prestige International Public Relations, a professional telemarketing firm. To ensure uniformity and reduce the possibility of influencing the results a telephone follow-up protocol was developed. This provided a structure for the call and stressed the need for the same format and words to be used in each call and warned against any attempt to influence the responses. Annexed and marked "E" is a true copy of the telephone follow-up protocol.
10. By the end of the survey period (18 March 2003), 305 questionnaires had been returned. This represented a response rate of 28.0 per cent; a rate considered quite acceptable for a mail questionnaire.
11. Following the end of the survey period, I prepared a report that sets out the results of the survey. The report is dated 9 April 2003 and entitled *Termination of Employment due to Redundancy: A Report on a Survey of Ai Group/EEASA Members on Current Practices and Implications of the ACTU Redundancy Pay Claim.*

TO BE SWORN IN THE WITNESS BOX



Survey – 2003

This survey is designed to ascertain your current practices and views on potential changes to the terms and conditions governing termination of employment due to redundancy that could arise from the ACTU claim to vary hard conditions.

Your response is **essential** to ensure a representative sample of member companies and to provide proper representation of your views to the Australian Industrial Relations Commission.

All responses are **anonymous** and **confidential**.

The survey is being conducted by Associate Professor John Benson of the University of Melbourne. Please return the completed questionnaire directly to him.

Redundancy

Survey 2003

Strictly Confidential



AUSTRALIAN
INDUSTRY
GROUP



*Engineering Employers Association
South Australia*

Redundancy

Survey 2003

Strictly Confidential

INSTRUCTIONS

- Please read all instructions carefully to ensure you answer each question appropriately.
- All questions relate to **federal award** employees only.
- If you have terminated any employee you will need to **answer all sections**. If you have not terminated any employee then please only answer sections I and II.
- If your company is made up of a number of subsidiary companies please base your responses on the **largest** subsidiary company. A company with several divisions should be treated as **one** company.
- All figures and calculations should be based on the **last calendar year**, that is January to December 2002.
- If you have difficulty with a question please contact the **hot line** specifically set up to assist you with the questionnaire. Tel: (02) 9466 5589. The hot line will be staffed Monday to Friday from 9.00 am to 5.00 pm.
- Please post back the questionnaire in the enclosed reply paid envelope as soon as possible, but no later than **3 March 2003**.

Reply Paid 60057

Associate Professor John Benson

Department of Management

University of Melbourne

Parkville, 3010.

COMPANY PROFILE

- How many employees, in total, currently work for the company? (this figure should equal the total number of individuals for whom PAYE tax is usually deducted)

- What is the major activity of the company?
(Please circle only one response)

Manufacturing1
 Construction2
 IT&T3
 Labour Hire4
 Call Centre5
 Other (please specify)6

- How many of the following types of federal award employees work for the company?

Full-time employees _____
 Part-time employees _____
 Casual employees with less than
 12 months service _____
 Casual employees with more than
 12 months service _____
 Apprentices _____

- Has the number of casual employees with more than 12 months service increased over the last five years?
(Please circle only one response)

Yes1
 No2

If **yes**, explain why? _____

- What is the average length of service of your full-time employees? _____ years

- Do you currently have a redundancy agreement, that is an agreement that deals with severance pay?

(Please circle only one response)

Yes1
 No2

- If **yes**: (1) is the agreement part of an enterprise agreement?

Yes1
 No2

(2) is the agreement registered with the Australian Industrial Relations Commission?

Yes1

No2

(3) what year was the agreement last negotiated? _____

(4) does the severance pay exceed that given in Table 1 on page 4

Yes1

No2

7. If the severance pay in your redundancy agreement exceeds that given in Table 1, what are the **major** reasons for this?

(Please answer all questions by circling the appropriate response)

	Yes	No
Encourage early retirement among older workers ...	1	2
Gain employee support for restructuring	1	2
Achieve industrial peace	1	2
Supplement employees incomes while they search for alternative employment	1	2
Assist employees to begin an alternative career	1	2
Encourage retraining	1	2
Assist the employee to start a business	1	2
Maintain parity with other companies	1	2
Trade-off for other conditions	1	2
Other <i>(please specify)</i> _____	1	2

8. Is the demand for the company's major product expanding, stable or contracting? *(Please circle only one response)*

Expanding1

Stable2

Contracting3

9. What are the most crucial factors for the success of the company's major product?

(Please circle no more than two responses)

Price1

Quality of product or service2

Quality of workforce3

Responsiveness to customer's requirements4

Advertising/marketing5

Providing a distinctive product or service6

Location7

Reputation/past performance8

Other *(please specify)*9

10. How would you rate the degree of competition for the company's major product?

(Please circle only one response)

Intense competition1

Strong competition2

Moderate competition3

Some competition4

Limited competition5

11. What percentage of total costs in your company are accounted for by labour costs? Labour costs include wages and salaries, leave loadings, payroll tax, workers compensation premiums and superannuation contributions. *(Please circle only one response)*

Less than 20%1

21% - 40%2

41% - 60%3

61% - 80%4

More than 80%5

SECTION II:

AWARD COVERAGE

1. Do you employ any workers under any federal award? *(Please circle only one response)*

Yes1

No2

2. If **yes**, please specify the federal award that applies to the largest number of your employees.

Please now go to **Section III** and answer the questions in relation to the employees who are covered by this and any other federal award.

If no federal award employees are employed in your company then this is the end of the questionnaire. Thank you for your participation. Please return the questionnaire as soon as possible in the enclosed reply paid envelope.

SECTION III:

**TERMINATION OF EMPLOYMENT
DUE TO REDUNDANCY**

1. How many federal award employees have been **made redundant** (that is, you no longer required their job to be done) in the **last calendar year** (Jan to Dec 2002)? _____

If no federal award employee was made redundant in the last calendar year then please go to Section IV.

2. If employees were made redundant what was the major reason? (Please circle only one response)

- Technological change1
- Company restructuring2
- Loss of contracts3
- Decline in demand4
- Financial difficulties5
- Other (please specify)6

SEVERANCE PAY

3. For those federal award employees made redundant was severance pay made in accordance with the standard federal award provision? (See Table 1 below)

- Yes1
- No2

Table 1: Standard federal award provision for severance pay

Severance Pay		
Length of Service	Companies with less than 15 employees	Companies with 15 or more employees
less than 1 year	nil	nil
1 to 2 years	nil	4 weeks
2 to 3 years	nil	6 weeks
3 to 4 years	nil	7 weeks
over 4 years	nil	8 weeks

Note: a small number of federal awards do not provide an exemption for companies that employ less than 15 employees.

4. Was the payment per week calculated in accordance with the standard federal award provision? (standard federal award provision is normal weekly rate excluding shift loadings and weekend penalties)

- Yes1
- No2

EMPLOYEE CONSULTATION

5. Did you consult with the relevant unions and employees over these redundancies?

Consulted with the **union (s)**

- Yes1
- No2

Consulted with the affected **employees**

- Yes1
- No2

JOB SEARCH ENTITLEMENTS

6. Are job search entitlements currently being provided by your company in accordance with the standard federal award provision? (standard federal award provision allows an employee up to one days' time off without loss of pay for the purpose of seeking other employment during notice period)

- Yes1
- No2

If **yes** were these entitlements used by employees?

- Yes1
- No2

EMPLOYEE ASSISTANCE

7. Did the company assist employees in other ways to find alternative work?

(Please answer all questions by circling the appropriate response)

- | | Yes | No |
|--|-----|----|
| Notification to CES / other employment agencies1 | 2 | 2 |
| Offer of work in different location1 | 2 | 2 |
| Employment by associated companies1 | 2 | 2 |
| Employment by sub-contractors1 | 2 | 2 |
| Recommendation to other employers1 | 2 | 2 |
| Retraining1 | 2 | 2 |
| Extra time off to search for work1 | 2 | 2 |
| Other (Please specify)1 | 2 | 2 |

8. Did the company provide any of the following services to retrenched employees?

(Please answer all questions by circling the appropriate response)

	Yes	No
Personal counselling	1	2
Financial advice	1	2
Relocation expenses	1	2
Bank / Credit Union notification	1	2
Training in job interview/search techniques	1	2
Other (Please specify)	1	2

9. Following any redundancy in the last calendar year (Jan to Dec 2002) did you face a claim for unfair dismissal? (Please circle the appropriate response)

Yes1
No2

If **yes**, did this result in further monetary payments?

Yes1
No2

If yes:

(1) How many extra weeks' pay did this amount to?
_____ weeks

(2) Briefly explain the details.

SECTION IV:

ACTU CLAIM

The ACTU has lodged a claim with the Australian Industrial Relations Commission that seeks changes to the terms governing termination of employment due to redundancy.

The claim includes:

- enhanced severance payments for those employees declared redundant,
- abolition of the exemption for firms employing less than 15 employees,
- an extra 25 per cent severance pay for those employees over 45 years of age,
- severance pay for those casuals who are not employed on a short-term basis,
- inclusion of allowances, loadings and penalties into severance pay calculations,
- provision of professional services and counselling, and
- requirement to consult with employees.

We would like you to calculate the extra costs you would have paid out in the last calendar year (Jan to Dec 2002) if the ACTU claim had been the standard federal award provision and to point out any problems you can foresee if the claim is successful in whole or in part.

1. Enhanced Severance Pay and Abolition of Exemption for Small Firms

Table 2 on page 6 provides a comparison of the standard federal award provision with the ACTU claim.

If you currently operate under a Redundancy Agreement or Award that exceeds the standard federal award provision then the extra cost will be the difference between your current provisions and the ACTU claim.

A For employers employing **15 or more** employees:

(1) Extra cost over last calendar year (Jan to Dec 2002)
\$ _____

(2) What other problems, if any, are there in providing increased severance pay? (Please limit your response to the two most important problems for your company)

Administrative problems.....	1
Lack of equity / fairness.....	2
Lost productivity	3
Inability to borrow from lending institutions / finance problems.....	4
Reduced employment.....	5
Inappropriate employee behaviour.....	6
Other (please specify)	7

B For employers employing **less than 15** employees:

(please do not answer this question if you have answered A above)

(1) Extra cost over last calendar year (Jan to Dec 2002)
\$ _____

If no employee was made redundant in the last calendar year then please mark N/A and go to question (2) below.

(2) What other problems, if any, are there in providing increased severance pay? (Please limit your response to the two most important problems for your company)

Administrative problems.....	1
Lack of equity / fairness.....	2
Lost productivity	3
Inability to borrow from lending institutions / finance problems.....	4
Reduced employment.....	5
Inappropriate employee behaviour.....	6
Other (please specify)	7

Table 2: Standard federal award provision for severance pay compared to ACTU Claim (weeks)

Length of Service	Severance Pay			
	Standard Federal Award Provision		ACTU Claim	
	Companies with less than 15 employees	Companies with 15 or more employees	Employees 45 years or less	Employees over 45 years
less than 1 year	nil	nil	nil	nil
1 to 2 years	nil	4 weeks	4 weeks	5 weeks
2 to 3 years	nil	6 weeks	7 weeks	8.75 weeks
3 to 4 years	nil	7 weeks	10 weeks	12.5 weeks
4 to 5 years	nil	8 weeks	12 weeks	15 weeks
5 to 6 years	nil	8 weeks	14 weeks	17.5 weeks
and more years	nil	8 weeks	16 weeks	20 weeks

All companies regardless of size should answer all the remaining questions in this section.

2. Employees Over 45 Years of Age

For employees over 45 years of age who are made redundant the employer, in addition to the payments made above, must pay an extra 25 per cent in severance pay. Details are presented in column 5 of Table 2.

(1) Extra cost over last calendar year (Jan to Dec 2002)
\$ _____

If no employee was made redundant in the last calendar year then please mark N/A and go to question (2) below.

(2) What other problems, if any, are there in providing increased severance pay for those over 45 years of age? (Please limit your response to the two most important problems for your company)

- Administrative problems.....1
- Disincentive to hire older workers2
- Lack of equity / fairness.....3
- Lost productivity4
- Inability to borrow from lending institutions / finance problems.....5
- Reduced employment.....6
- Inappropriate employee behaviour.....7
- Other (please specify)8

3. Casual Employees

Casual employees who are **not employed on a short-term basis** are eligible to receive severance pay. In this case please calculate the extra cost of providing severance pay to this group of employees. For the purposes of this questionnaire please include any casual that has been employed for a period of **more than 12 months**.

(1) Extra cost over last calendar year (Jan to Dec 2002)
\$ _____

(2) What other problems, if any, are there in providing increased severance pay for this group of employees? (Please limit your response to the two most important problems for your company)

- Administrative problems.....1
- Lack of equity / fairness.....2
- Lost productivity3
- Inability to borrow from lending institutions / finance problems.....4
- Reduced employment.....5
- Inappropriate employee behaviour.....7
- Other (please specify)7

4. Allowances, Loadings and Penalties to be included in Normal Weekly Pay

All **allowances, loadings, and penalties** shall be included in the weekly wage calculations for severance pay. (The standard federal award provision currently excludes allowances, loadings and penalties). These calculations should be based on the employee's ordinary hours of work (exclude overtime hours).

(1) Extra cost over last calendar year (Jan to Dec 2002)
\$ _____

(2) What other problems, if any, are there in including these payments in the calculations for severance pay?
(Please limit your response to the two most important problems for your company)

- Administrative problems.....1
- Lack of equity / fairness.....2
- Lost productivity3
- Inability to borrow from lending institutions / finance problems.....4
- Reduced employment.....5
- Inappropriate employee behaviour.....6
- Other *(please specify)* _____7

5. Professional Services and Counselling

The claim includes an obligation on employers to pay each redundant employee an amount of \$300 to enable the employee to obtain **professional services** for interviewing and job search techniques, and **counselling** for financial, social security, entitlements, re-employment programs or any other relevant issues.

(1) Extra cost over last calendar year (Jan to Dec 2002)
\$ _____

(2) What other problems, if any, are there in providing this payment?
(Please limit your response to the two most important problems for your company)

- Administrative problems.....1
- Lack of equity / fairness.....2
- Lost productivity3
- Reduced employment.....4
- Inappropriate employee behaviour.....5
- Other *(please specify)* _____6

6. Consultation

The claim includes a requirement that employers **employing less than 15 employees** must consult, as early as possible, with employees and the relevant union (if requested by any affected employee) on "measures to avert or minimise any proposed redundancies and measures to mitigate the adverse effects of any proposed redundancies on the employees concerned" such as finding alternative employment.

Only answer this question if your company employs less than 15 employees.

What problems, if any, are there in providing increased consultation? *(Please limit your response to the two most important problems for your company)*

- Administrative problems.....1
- Lost productivity2
- Inappropriate employee behaviour.....3
- Disruption to workplace4
- Other *(please specify)* _____5

7. Limits to Severance Pay

The standard federal award provision includes the following clause:

'The severance payment must not exceed the amount the employee would have earned if employment with the employer had proceeded to the employee's normal retirement age'.

Example: If the normal retirement age established within a company was age 65, and an employee was made redundant four weeks before his/her 65th birthday, then the severance payment would be limited to a maximum of four weeks' pay.

(1) How do you apply the term 'normal retirement age' within your company?

(2) The ACTU seeks to remove this limit to severance pay from the standard federal award provision. Do you see any problems for your company if this clause is deleted?

SECTION V:

IMPLICATIONS OF ACTU CLAIM

1. If the ACTU claim has a cost implication for your company which of the below, if any, would the company use to meet this obligation? *(Please answer all questions by circling the appropriate response)*

	Yes	No
Ordinary working capital	1	2
Use funds previously committed to further investment/expansion	1	2
Loans from financial institutions	1	2
Sale of business/part business/assets	1	2
Retrench more employees	1	2
Reduce workforce through natural attrition	1	2
Accept lower profits	1	2
Engage more casual/fixed task and fixed term staff in future	1	2
Engage independent contractors	1	2
Utilise labour hire firms	1	2
Other (please specify)	1	2

2. If there was a cost implication of the claim what impact would this have had on your company's profits for the last calendar year (Jan to Dec 2002)? *(Please circle one option only)*

Reduced yearly profits	1
Converted a profit into a loss	2
Further increased the yearly loss	3

3. If the ACTU is successful in their claim will this have an impact on enterprise bargaining negotiations within your company? *(Please circle the appropriate response)*

- Yes1
No2

If **yes** please explain.

4. Finally, are there any other implications for your company if the ACTU claim is successful?

This is the end of the questionnaire.

Thank you for your participation.

Please return the questionnaire as soon as possible either in the enclosed reply paid envelope or by sending a completed hard copy in an envelope addressed to the Reply Paid address.

Thankyou for
completing this
Questionnaire

Please post back the questionnaire in the enclosed reply paid envelope as soon as possible, but no later than **3 March 2003**.

Reply Paid 60057

Associate Professor John Benson

Department of Management

University of Melbourne

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