

# AFTERMATH OF THE JUDGMENT

THE future of the arbitration system and of the Australian wage structure have been thrown into confusion by events following on the decision of the Commonwealth Court in the recent Basic Wage and Standard Hours Case. The Court rejected the main body of the employers' claim for a reduction in wages and an increase in working hours, but decided to discontinue the system of quarterly cost-of-living adjustments.

Despite its limited constitutional authority and the fact that its determinations apply directly to less than half of Australian employees, the Commonwealth Court has held a position of unchallenged authority in the sphere of wage-fixing. The supremacy of the Court has been recognised by State governments and State industrial tribunals whose awards and determinations embrace nearly as many employees as the rulings of the Commonwealth Court itself. Under State laws it has been mandatory upon the N.S.W. Industrial Commission and the Victorian Wages Boards to incorporate in their determinations the wage rates contained in Federal awards to the extent to which they are applicable. The industrial authorities of the other States have also in the past followed fairly closely in the footsteps of the Commonwealth Court, although the more isolated States of Queensland and Western Australia have at times shown a disposition to pursue an independent course. Because of the dominance of Victoria and New South Wales in the industrial life of the Commonwealth, this show of independence, which might in any case be justified by special local circumstances, has not seriously threatened the broad uniformity of the Australian wage structure.

Thus, up to the present, despite divided jurisdiction and the existence of seven separate sovereign authorities in industrial matters, there has been maintained a remarkable degree of consistency in the national wages structure. This, of course, has been of inestimable benefit. The existence of wide disparities in wage levels in the different States and between State and Commonwealth awards would have wrought untold confusion in Australian economic life, and would have given rise to widespread industrial unrest and turmoil.

These advantages have now been threatened by the decisions of various State Governments and industrial authorities to disregard the ruling of the Commonwealth Court on the cost-of-living adjustment. In Victoria, for instance, the State Labour Government has continued to pay the latest adjustment to its own employees and, at the time of writing, is in the process of introducing legislation to amend the existing Shops and Factories Act to make it mandatory for State Wages Boards to continue to observe cost-of-living variations. The West Australian Government has introduced a bill to compel the State Court of Arbitration to continue quarterly adjustments in accordance with the Government Statistician's figures. The Queensland Industrial Court has also declined to observe the Commonwealth Court's ruling.

The long-recognised supremacy of the Commonwealth in the sphere of wage-fixing has thus been challenged. The refractory States have not offered one good or convincing reason for their refusal to abide by the Commonwealth Court's decision. *Clearly the action of the Labor Governments of the States concerned is based upon a crude, self-righteous appeal to their political and possible political supporters rather than on any sound economic or industrial argument.* The most serious aspect of their decision does not lie in the fact that it must tend to destroy the uniformity of the wage structure and to stimulate industrial dissatisfaction and unrest—although that is serious enough. The most disturbing feature of the whole matter is that it raises a vital issue of principle. It is this: Are wages to be determined by politicians on grounds of crude political expediency? Is the independence of wage-fixing authorities to be made subject to the dictates of governments? Or are wages to be settled by reference to the economic needs of the country and the capacity of the economy to pay after full enquiry by independent tribunals? Whether one thinks the Commonwealth Arbitration Court's decision was right or wrong, these are the real questions at stake.

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SOME opposition to the Court's judgment has arisen because of a fairly general belief that the basic wage represents a minimum "needs wage" and that any detraction from this, brought about through rising prices, reduces the basic wage-

earner below the standards acceptable in a civilised community. As the text of the Court's judgment is at pains to make clear this is a complete misapprehension. From 1913 the Court began to take cognizance of cost-of-living changes in fixing the minimum wage. In 1922 an amount of 3/- was added to the basic wage to compensate for the lag in adjusting wages to prices. In 1931 the "needs" basis for assessing the basic wage was dropped and the capacity of industry as a whole to pay became "the dominant principle in fixing the basic wage." In 1937 "prosperity loadings" averaging 5/- a week were granted on these grounds and were later incorporated in the basic wage. In 1946 the Court made an interim judgment adding a further 7/- to the basic wage and in 1950 the famous £1 increase was granted.

In its latest judgment, the Court points out that the real purchasing power of the basic wage has been raised over 25% since 1934. It might be added that when the "needs" basic wage was established there was no such thing as child endowment; nor were there social cash benefits and services on the scale that now exists. It should not be forgotten, too, that in these days the pure basic wage-earner is almost a legal fiction. There are few workers that have not been able, through their unions, to persuade the Court that they possess some skill or suffer some occupational disability and have thus obtained loadings substantially in excess of the basic wage.

**I**N the light of present economic circumstances, the claim of State Labour Governments that in refusing to abide by the Court's ruling they are acting in the interests of the wage-earner looks so nonsensical that it comes perilously close to being hypocritical. It cannot be in the interests of the wage-earner or of anyone else that costs should continue to rise. All responsible opinion in Australia at the moment concurs in the view that costs are reaching dangerous levels. Although stressing this point in the case of the primary industries, the Court's judgment possibly does not give sufficient emphasis to it. But there is little doubt that the Court would agree that further increases in costs would be most undesirable and the Court does make clear that it considers the cost-of-living adjustment to have been an accelerating factor in the rapid inflation of prices in 1951 and 1952. It is indis-

putable that a continuance of the rising cost trend would constitute a threat to employment in important sections of industry. How, then, can it be in the interests of the wage-earners to take action which would tend to perpetuate this trend?

Should prices fall, the adherence of the States to the cost-of-living adjustment could prove to be seriously opposed to the immediate interests of the wage-earner.

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IT would seem an appropriate time to say a few words about the constitution of the Court. Whatever the relative merits and demerits of compulsory arbitration as compared with collective bargaining, the principle of arbitration is so deeply imbedded in Australian industrial thought and practice that it is difficult to conceive of any radical departure from it. *And while the system of arbitration continues, it is the clear duty of employers and trade unions, and even more of governments, to uphold the authority and prestige of its major instrumentality—the Commonwealth Court.* That is why the irresponsible actions of some State Governments since the Court's judgment was delivered is to be unreservedly condemned.

This, however, does not mean that some thought should not be given to the improvement of the system, and especially of the Commonwealth authority itself. A main point that must occur to any informed observer centres around the economic competence of the Court. Doubts on this score have been intensified rather than alleviated by the major judgments made since the war and the economic reasoning by which they have been supported. Some years ago a noted authority on wages policy and a prominent British economist, Mr. W. B. Reddaway, criticised the Court's use of statistical information, its disposition to accept data at its face value, and its defects in the field of economic interpretation. It is no criticism of the learned Judges of the Court to say that these weaknesses have been evident in its post-war judgments. In points of its present judgment the Court clearly shows a tendency to over-reliance on evidence furnished by witnesses. Some mechanism should exist to assist the Court to arrive at independent

evaluations of the more technical aspects of evidence placed before it. This was recognised in the Arbitration Act of 1947 where provision was made for the creation of an economic and statistical bureau to be attached to the Court.

For various reasons we believe it would be unwise to proceed with the appointment of this bureau. But whatever the means used, there is clearly need for the economic aspect of the Court's work to be strengthened. Judges are not economists but they are required to make decisions which must of necessity be primarily economic in nature.

There may be some case for reconstituting the Court as a Commission to permit of the appointment of one or two highly skilled and respected economists to the Commonwealth industrial authority. This would not of course preclude the retention of Judges—that would, in fact, be altogether desirable—but it would give the authority a nice blending of judicial experience and economic expertise which it, at present, lacks.

The I.P.A. has consistently maintained that in the modern world there are many matters of economic fact and of theory which can and should be put beyond the bounds of controversy, either political or industrial. Other countries are tending more and more in this direction—the United States through its expert President's Council of Economic Advisers, Britain through its Economic Secretariat to the Cabinet. If Australia were to follow in the footsteps of these countries, the Commonwealth industrial instrumentality, whether Court or Commission, would be able to refer to a body of high economic authority on matters on which it feels the need for greater enlightenment.\*—See article "A C.E.A. for Australia" ("Review"—May-June, 1952).

