

MERRILL CORPORATION



FairWork
Commission

TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

1051380-1

JUSTICE BOULTON, SENIOR DEPUTY PRESIDENT

RE2014/1564

s.507 - Application for action to be taken against permit holder

**DIRECTOR OF THE FAIR WORK BUILDING INDUSTRY INSPECTORATE
and
MR LUKE COLLIER
(RE2014/1564)**

Sydney

10.15 AM THURSDAY, 29 JANUARY 2015

Additional Estimates 2014-15
Education and Employment Committee
Document number: **5**
Date and time: **26/2 2.55PM**
Tabled by: **SENATOR MCKENZIE**

PN1.

JUSTICE BOULTON: Good morning. Can I have the appearances again, please?

PN2.

MS M FISHER: Good morning, your Honour. Yes, Ms FISHER for the Director.

PN3.

JUSTICE BOULTON: Good, thank you.

PN4.

MR I LATHAM: Your Honour, my name is LATHAM, initial I. I appear for the respondents. I also appear with Mr McCauley who I don't think has put in a notice of appearance yet, but undertake that he'll do that.

PN5.

JUSTICE BOULTON: Good, thank you. And I think permission to appear has been granted in the past. Yes. I apologise for the late commencement of the proceedings today. Even though it's a beautiful day, it doesn't mean on a beautiful day everything goes like clockwork. Ms Fisher.

PN6.

MS FISHER: Your Honour, as you're aware, this is an application pursuant to section 507(1) of the Fair Work Act 2009 to revoke the entry permit issued by the Commission to Mr Collier, the respondent. Your Honour, Mr Latham and I have been having some discussions before you came on the Bench. Mr Latham has an application that he'd like to make.

PN7.

JUSTICE BOULTON: Yes.

PN8.

MR LATHAM: Yes, your Honour. It's not a complicated one. We thought that it might be useful to have a conciliation in this matter and the applicant's in accordance with that view, obviously subject to the views of the Commission. But we could do that fairly soon and do that fairly quickly, we imagine.

PN9.

JUSTICE BOULTON: see. A conciliation. You discussed this with Ms Fisher?

PN10.

MR LATHAM: Yes.

PN11.

JUSTICE BOULTON: Has it been agreed?

PN12.

MR LATHAM: I understood so.

PN13.

MS FISHER: Your Honour, my client is conscious of its role as a model litigant and so my instructions are to consent to this course of action if you yourself think it has some utility. Those are my instructions, your Honour.

PN14.

JUSTICE BOULTON: It is anticipated that I conduct the conciliation?

PN15.

MR LATHAM: Yes, your Honour.

PN16.

JUSTICE BOULTON: I see. If the conciliation is not successful in the sense that it results in some agreed resolution of the matter, then do I assume that the parties won't object to me continuing?

PN17.

MR LATHAM: For our part, yes. I haven't spoken to my friend.

PN18.

MS FISHER: No, we won't object to your Honour continuing to hear the matter.

PN19.

JUSTICE BOULTON: I see. Well, I must say that in most matters I'm generally in favour of conciliation. But it didn't cross my mind that there might be a possibility of a successful outcome of conciliation in this matter. But if the parties are requesting it, then I'm not going to say no.

PN20.

MS FISHER: Your Honour, so just to put our position clearly, we, as a model litigant, are happy to pursue that course. That's all I have to say at the moment, your Honour.

PN21.

JUSTICE BOULTON: The other thing I should say is that, given that the matter has been listed for two days – I mean, we can make the judgment once we're in conciliation. But it would not be my expectation that the conciliation is going to go for too long if it doesn't appear that there's some reasonable prospect of making some progress in the talks.

PN22.

MR LATHAM: Yes, your Honour.

PN23.

MS FISHER: Yes, your Honour.

PN24.

JUSTICE BOULTON: Yes. On that basis, we'll go off the record. We'll adjourn the proceedings into a private conference.

OFF THE RECORD

[10.20 AM]

ON THE RECORD

[12.33 PM]

PN25.

JUSTICE BOULTON: We're back on the record now. Mr Latham.

PN26.

MR LATHAM: Yes, your Honour. Thank you for the time this morning. The parties have participated in a conciliation before the Commission. Arising out of that conciliation, there has been an agreement reached between the parties which has a number of aspects to it. Firstly, that the Fair Work Building Industry

Inspectorate have made allegations against Mr Luke Collier. Secondly, that the respondent does not oppose the suspension of the entry permit of Mr Collier for a period of 12 months from today's date on the basis of the allegations made against him in those proceedings. Thirdly, that there be no order as to costs. The respondent accepts that orders would be made under section 507 of the Fair Work Act having regard to the matters set out in the application and the accompanying untendered evidence, which is, as yet, untested.

PN27.

Secondly, the respondent would accept that this outcome resolves the matters set out in the application. Thirdly, that those orders would be made. And the respondent would also like to thank the Commission for its efforts in the conciliation process.

PN28.

JUSTICE BOULTON: Yes. Thank you. I just was - so the respondent is actually Mr Collier, is it?

PN29.

MS FISHER: Yes, your Honour.

PN30.

MR LATHAM: Yes, that's correct, your Honour.

PN31.

JUSTICE BOULTON: I just wanted to confirm that. Yes. Good. Thank you. Ms Fisher.

PN32.

MS FISHER: Thank you, your Honour. As Mr Latham has outlined, the parties have reached agreement. The Inspectorate of the Fair Work Building Industry, conscious of its role as model litigant, was more than content to participate in conciliation today and we thank the Commission for its time and its efforts in successful resolution of this matter. Thank you.

PN33.

JUSTICE BOULTON: Thank you. Yes. As has been reported, following the conciliation of this matter this morning, the Commission notes the following agreement between the parties: firstly, the Fair Work Building Industry Inspectorate has made allegations against the respondent, Mr Luke Collier; secondly, the respondent does not oppose the suspension of the entry permit for a period of 12 months from 29 January 2015 on the basis of the allegations made against him in these proceedings; and third, that there be no order made in relation to costs in these proceedings. Having regard to the matters set out in the allegations in the application and the accompanying untendered evidence, which was untested in the proceedings before me, and the matters set out in section 513(1) of the Act, I accept the agreement of the parties and consider that it is appropriate, having regard to all those matters, to make an order under section 507 of the Act to the effect that the entry permit of Mr Collier be suspended for a period of 12 months from today.

PN34.

As I indicated to the parties in conference, I'm pleased that the parties have been able to resolve this matter on an agreed basis. I believe that provides an

appropriate basis for the Commission making the order that I've indicated will be made, suspending the entry permit. That concludes the proceedings. The Commission will now adjourn.

ADJOURNED INDEFINITELY

[12.40 PM]