FEDERAL COURT OF AUSTRALIA

Victorian Xray Group Pty Ltd v Ho [2020] FCA 27

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| Appeal from: | Industrial Division of the Magistrates’ Court of Victoria (J13120311/2019, Orders of 20 August 2019)  |
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| File number: | VID 1008 of 2019 |
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| Judge: | **STEWARD J** |
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| Date of judgment: | 24 January 2020 |
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| Catchwords: | **PRACTICE AND PROCEDURE** – appeal from decision of magistrate sitting in the Industrial Division of the Magistrates’ Court of Victoria – notice of objection to competency – whether appeal lies to the Federal Court by reason of s. 565 of the *Fair Work Act 2009* (Cth) – whether the magistrate was exercising jurisdiction under the *Fair Work Act 2009* (Cth) – whether matter simply concerned contractual enforcement  |
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| Legislation: | *Acts Interpretation Act 1901* (Cth) s. 2B*Fair Work Act 2009* (Cth) ss. 113, 565, 570*Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)*Judiciary Act 1903* (Cth) s. 39*Magistrates’ Court Act 1989* (Vic) s. 4  |
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| Cases cited: | *Bannon v. Nauru Phosphate Royalties Trust* [2019] VSCA 303*Elders Ltd v. Swinbank* (2000) 96 FCR 303*Maughan Thiem Auto Sales Pty Ltd v. Cooper* (2013) 216 FCR 197*Moorgate Tobacco Co Ltd v. Philip Morris Ltd* (1980) 145 CLR 457*Plancor Pty Ltd v. Liquor Hospitality and Miscellaneous Union* (2008) 171 FCR 357*Treasury Wine Estates Vintners Ltd v. Pearson* [2019] FCAFC 21*Tucker v. State of Victoria* [2019] VSC 481 |
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| Date of hearing: | 18 December 2019 |
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| Registry: |  |
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| Division: |  |
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| National Practice Area: |  |
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| Category: | Catchwords |
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| Solicitor for the Appellants: | Webb Korfiatis Commercial |
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| Counsel for the Respondent: | Mr R. A. Millar |
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| Solicitor for the Respondent: | Capree Lawyers |

ORDERS

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|  | VID 1008 of 2019 |
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| BETWEEN: | VICTORIAN XRAY GROUP PTY LTDFirst AppellantVICTORIAN XRAY GROUP (FRANKSTON) PTY LTDSecond Appellant |
| AND: | STELLA HORespondent |

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| JUDGE: | STEWARD J |
| DATE OF ORDER: | 24 JANUARY 2020 |

THE COURT ORDERS THAT:

1. The respondent’s Notice of Objection to Competency filed on 14 October 2019 be dismissed.
2. The matter be referred to mediation before a Registrar of this Court on a date to be fixed.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

STEWARD J:

1. On 20 August 2019, a magistrate, sitting in the Industrial Division of the Magistrates’ Court of Victoria, gave judgment in favour of the respondent (in the sum of $45,493.27, plus interest and costs). The respondent, who had been employed by either the first or second appellant, had claimed that she had been underpaid in breach of her contract of employment. That claim was upheld. The appellants seek to appeal that decision to this Court. The respondent objects to the competency of that appeal.

## Legislative Provisions

1. The operative provision here is s. 565 of the *Fair Work Act 2009* (Cth) (the “*FW Act*”). It relevantly provides as follows:

**Appeals from eligible State or Territory courts**

*Appeals from original decisions of eligible State or Territory courts*

(1) An appeal lies to the Federal Court from a decision of an eligible State or Territory court exercising jurisdiction under this Act.

(1A) No appeal lies from a decision of an eligible State or Territory court exercising jurisdiction under this Act, except:

(a) if the court was exercising summary jurisdiction—an appeal, to that court or another eligible State or Territory court of the same State or Territory, as provided for by a law of that State or Territory; or

(b) in any case—an appeal as provided for by subsection (1).

*Appeals from appellate decisions of eligible State or Territory courts*

(1B) An appeal lies to the Federal Court from a decision of an eligible State or Territory court made on appeal from a decision that:

(a) was a decision of that court or another eligible State or Territory court of the same State or Territory; and

(b) was made in the exercise of jurisdiction under this Act.

(1C) No appeal lies from a decision to which subsection (1B) applies, except an appeal as provided for by that subsection.

1. In essence, the question for me to determine for the purposes of s. 565 is whether the Magistrates’ Court was “exercising jurisdiction under” the *FW Act*. If the Magistrates’ Court did not exercise jurisdiction under the *FW Act*, the appeal to this Court is incompetent. If the Court did exercise such jurisdiction, but did so exercising “summary jurisdiction”, an appeal may be made *either* to this Court or to an eligible State court.
2. Section 12 of the *FW Act* relevantly defines an “eligible State or Territory court” as follows:

***eligible State or Territory court*** means one of the following courts:

(a) a District, County or Local Court;

(b) a magistrates court;

(c) the Industrial Relations Court of South Australia;

(ca) the Industrial Court of New South Wales;

(d) any other State or Territory court that is prescribed by the regulations.

1. Section 2B of the *Acts Interpretation Act 1901* (Cth) (the “*Interpretation Act*”) defines a “court of summary jurisdiction” as follows:

***court of summary jurisdiction*** means any justice of the peace, or magistrate of a State or Territory, sitting as a court of summary jurisdiction.

1. Section 2B replaced another definition of the term “court of summary jurisdiction” in former s. 26 of the *Interpretation Act*.
2. There are a number of provisions of the *Magistrates’ Court Act 1989* (Vic) (the “*Magistrates’ Court Act*”) to which I should refer. Section 4(2A) provides:

The Court has an Industrial Division.

1. Section 4(2B) of the *Magistrates’ Court Act* provides:

The Industrial Division has such of the powers of the Court as are necessary to enable it to exercise its jurisdiction.

1. Section 4(3C) of the *Magistrates’ Court Act* provides:

The Industrial Division must exercise its jurisdiction with the minimum of legal form and technicality.

## Judgment Below

1. By a Notice of Complaint dated 7 November 2018, the respondent pleaded that the appellants were in breach of her contract of employment when they failed to pay her accrued long service leave and the balance of her accrued annual leave. These liabilities were said to have arisen upon the respondent ceasing to be employed by the first appellant (or, in the alternative, the second appellant) on 1 March 2018. The respondent pleaded, as an alternative case, that the appellants were in breach of the *Health Services Union of Australia (Private Radiology – Victoria) Award 2003* (the “pre-modern award”). Paragraph 16 of the Notice of Complaint is as follows:

Alternatively, in breach of the pre-modern award, the Defendant (s) has failed to or neglected to pay the Plaintiff’s accrued long service leave.

1. The appellants, by their Notice of Defence, denied that they were in breach of the respondent’s contract of employment. They also pleaded that the pre-modern award ceased operating from 13 September 2011, thus denying the respondent an alternative basis for being paid accrued long service leave. In her Notice of Reply, amongst other things, the respondent contended that s. 113 of the *FW Act* preserved her entitlements under the pre-modern award. At para 1.4, the respondent pleaded as follows:

1.4. Her long service leave entitlements under the pre-modern award are preserved by virtue of section 113 of the *Fair Work Act 2009* (Cth) (‘*FWA*’).

**Particulars**

A. The pre-modern award outlined the long service leave terms in relation to the Plaintiff, and as provided in section 113(1) of the *FWA*, the Plaintiff is entitled to long service leave in accordance with those terms (namely, clause 34.2 of the pre-modern award).

B. Under section 113(3) and (3A) of the *FWA*, the test time was 31 December 2009 as the *FWA* commenced on 1 January 2010.

C. The *Health Professionals and Support Services Award 2010* (‘modern award’) did not apply at the test time. Further, the modern award does not deal with long service leave, other than to clarify that the ‘...*State and Territory long service leave laws or long service leave entitlements under s.113 of the Act, may require an employer to pay an employee for accrued long service leave on the day on which the employee’s employment terminates or shortly after [at 20.3, Note 3]*’.

D. The pre-modern [award] also existed on 1 January 2010.

E. Paragraphs 436 to 444 of the Explanatory Memorandum of the *Fair Work Bill* *2008* pertained to long service leave. Under paragraph 438, the Division ‘*preserves long service leave entitlements in pre­modernised awards (referred to as applicable award-derived long service leave terms [in the FWA]*).

1. The written submissions filed by the respondent squarely raised a case that was primarily anchored in contractual claims. That may be accepted. However, contrary to the submission of the respondent, it was not exclusively based on those claims. Her written submissions before the Magistrates’ Court state as follows:

[Ms Ho’s] claim is brought in contract – there is in addition a statutory underpinning of both claims, but it is unnecessary for the Court to determine the matter on that basis as the contractual claims are clear and determinative.

…

As noted above, quite apart from the contractual claim, there is a statutory underpinning for the claim. Section 113 of the *Fair Work Act* provides for the ongoing operation of long service leave provisions in Awards in the present circumstances. The Plaintiff does not however need to rely on her statutory rights – the contractual analysis is sufficient.

1. The learned magistrate heard the case within the Industrial Division of the Magistrates’ Court of Victoria. The magistrate did not deliver written reasons for decision. However, a transcript recording the magistrate’s decision was before me. That transcript reveals that the magistrate accepted the respondent’s claim of breach of contract and did not need to decide the claims made under the pre-modern award. In that respect, the magistrate said:

The plaintiff’s claim was set out in contract and there was a letter of offer which was accepted by the plaintiff from the first defendant. That is the basis upon which I’ve made by [sic] ruling.

1. The magistrate found that the appellants’ defence “had no basis whatsoever”. It followed that s. 570 of the *FW Act*, which concerns the awarding of costs in “proceedings … in relation to a matter arising under” the *FW Act*, did not apply.
2. The appellants seek to appeal that decision to this Court. For the moment, it is unnecessary to set out the proposed grounds of appeal.

## Notice of Objection to Competency

1. The respondent objected to the competency of the appeal on the following grounds:

1. The judgment appealed from, of the [Magistrates’] Court of Victoria on 20 August 2019, was not a decision in which the learned Magistrate was exercising jurisdiction under the *Fair Work Act 2009* (Cth) (‘the Act’), and no appeal lies to this Honourable Court under section 565(1) of the Act.

2. The learned Magistrate was not otherwise exercising jurisdiction under any law of the Commonwealth, but was determining a contractual claim between the parties under section 100 of the [*Magistrates’*] *Court Act 1989*  (Vic), with any appeal being to the Supreme Court of Victoria by reason of section 109 of that Act, rather than to this Honourable Court.

## Disposition

1. There are two issues that should be considered for the purposes of s. 565 of the *FW Act*:
	1. did the learned magistrate exercise jurisdiction under the *FW Act*; and
	2. if so, was the court exercising “summary jurisdiction”.
2. As already mentioned, I am satisfied that the learned magistrate decided the case against the appellants on the basis of breach of contract only. As such, the respondent’s submission would appear to have substantial merit. In the absence of binding authority I would have accepted it. In my view, there is much to be said for the proposition that to exercise jurisdiction under the *FW Act* requires a court to dispose of rights and obligations pursuant to the *FW Act*, in whole or in part.
3. However, binding authority suggests otherwise. The case of *Moorgate Tobacco Co Ltd v. Philip Morris Ltd* (1980) 145 CLR 457 concerned an application of s. 39(2) of the *Judiciary Act 1903* (Cth) which was and is, so far as relevant, in the following terms:

(2) The several Courts of the States shall within the limits of their several jurisdictions, whether such limits are as to locality, subject-matter, or otherwise, be invested with federal jurisdiction, in all matters in which the High Court has original jurisdiction or in which original jurisdiction can be conferred upon it, except as provided in section 38, and subject to the following conditions and restrictions:

(a) A decision of a Court of a State, whether in original or in appellate jurisdiction, shall not be subject to appeal to Her Majesty in Council, whether by special leave or otherwise.

…

(c) The High Court may grant special leave to appeal to the High Court from any decision of any Court or Judge of a State notwithstanding that the law of the State may prohibit any appeal from such Court or Judge.

1. In *Moorgate* there had been a dispute in the Supreme Court of New South Wales over the ownership of certain trade names and a trade mark. The applicant’s case was based on contract, trust or fiduciary obligation and the tort of unfair competition. In its pleading, and in presenting its case, the applicant also sought declarations concerning the proprietorship of the names and the mark. The applicant’s case was dismissed based on contract, trust and tort. The Court considered that the question of proprietorship should be left for determination in opposition proceedings under the former *Trade Marks Act 1955* (Cth). The applicant sought conditional leave to appeal to Her Majesty in Council. The issue for determination was whether, for the purposes of s. 39(2), the Supreme Court had exercised federal jurisdiction in making its orders. It if had, no right of appeal lay to the Privy Council. The High Court decided that by raising for determination the issue of the ownership of the trade names and the trade mark under the former *Trade Marks Act 1955* (Cth), the Court had exercised federal jurisdiction for the purposes of that provision.
2. Relevantly, Stephen, Mason, Aickin and Wilson JJ. said at 476:

The cases establish that federal jurisdiction is attracted if the right or duty based in a federal statute is directly asserted by the plaintiff or defendant, but not if the federal question arises only in some incidental fashion. So too federal jurisdiction is attracted if the court finds it necessary to decide whether or not a right or duty based in federal law exists, even if that matter has not been pleaded by the parties. But the converse is not true. *If a federal matter is raised on the pleadings federal jurisdiction is exercised, notwithstanding that the court finds it unnecessary to decide the federal question because the case can be disposed of on other grounds*.

(Emphasis added.)

1. Ms Preston of Counsel, who appeared for the appellants, submitted that there is no reason to consider that the foregoing observations do not apply equally to a determination of whether the magistrate here was exercising jurisdiction under the *FW Act*. I respectfully agree. In other words, if a *FW Act* matter “is raised on the pleadings” the court will be exercising jurisdiction under the *FW Act* for the purposes of s. 565. And that will be so, whether or not the claim is or is not dealt with by the judge (or here, magistrate). Of course, the matter must be properly and expressly raised on the pleadings. The claim must also be genuine. It must not be so minor and incidental as to be of no consequence: c.f., *Elders Ltd v. Swinbank* (2000) 96 FCR 303 at 308 [16]-[17] per Drummond, Sundberg and Marshall JJ.
2. Ms Preston also made the following points:
3. *first*, she submitted that the respondent’s primary reliance on its contractual claim was not tantamount to an abandonment of the claim in relation to breach of the pre‑modern award; and
4. *secondly*, she submitted that had the magistrate formed a different view on the merits of the contractual claim, he would have been obliged to consider whether a breach of the pre-modern award had been established by reason of the “pleading (and the way the case was conducted)”.
5. Contrastingly, Mr Millar of Counsel, who appeared for the respondent, submitted that *Moorgate* was distinguishable. I am grateful to him for the assistance he gave the Court on this issue in supplementary submissions filed on behalf of the respondent. Mr Millar made the following points:
6. *first*, he submitted that *Moorgate* was concerned with a different issue, namely the extent of the Privy Council’s appellate jurisdiction over state courts in Australia. *Moorgate* was described by him as an important ruling “in the context of the evolving independence of the Australian judicial system”;
7. *secondly*, it was submitted that in *Moorgate*, federal jurisdiction had been clearly invoked with the trade mark claims. Here, the respondent’s claims were only based on her contract with the appellant(s). For the purpose of considering that contention, I was urged not to take “an overly technical view of the pleadings” because the case had been heard in the Industrial Division of the Magistrates’ Court (the role of that Division is discussed below);
8. *thirdly*, it was submitted that it was not enough that federal jurisdiction under the *FW Act* might have been attracted; rights under that Act must be “enlivened”. In that respect, it was submitted that the “decision” the subject of appeal to this Court must be one which involved the *FW Act*. Mr Millar referred the Court to *Maughan Thiem Auto Sales Pty Ltd v. Cooper* (2013) 216 FCR 197. In simple terms, s. 565, it was said, “requires the exercise of jurisdiction, not just its existence”.
9. After some hesitation, I respectfully disagree with Mr Millar’s submissions for the following reasons.
10. *First*, it was not really disputed that the claims made under the pre-modern award sought to invoke a jurisdiction arising under the *FW Act,* in particular s. 113 of that Act. Both parties accepted that s. 113 preserves the effect of long service leave terms in pre-modernised awards. Whether that provision would have applied as the only ground to enforce such terms raises potentially difficult issues concerning the enforcement of pre-modern awards by the *FW Act*. That is because, on one view, item 2 of Sch. 16 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) (the “*Transitional Act*”) may have been engaged in addition to s. 113. Item 2 provides that a person must not contravene a term of an “award‑based transitional instrument”. The pre-modern award here is such an instrument: see Sch. 3 to the *Transitional Act*. Item 16 of Sch. 16 confers on the Magistrates’ Court jurisdiction with respect to breaches of item 2 of Sch. 16. In any event, I need not decide whether either s. 113 or item 2 or both might have applied. It is sufficient to observe that either way, a claim was made under the *FW Act* on the pleadings.
11. *Secondly*, it is also my view that the invocation of the pre-modern award by the respondent was sufficiently “raised on the pleadings”, to use the language of *Moorgate*, to clothe the Magistrates’ Court with jurisdiction under the *FW Act*. I do not accept that no claim was made under the pre-modern award. The structure of the Notice of Complaint was to make a primary claim in contract, and then make an “alternative” claim under the pre-modern award. In the appellants’ defence, the application of that award was disputed. In her reply, the respondent expressly pleaded to the contrary. The claim was thus genuinely made and pursued, and the issue of the application of the pre-modern award was fully engaged before the Magistrates’ Court. As the respondent’s written submissions made clear, the contractual claims were not the only matters raised before the learned magistrate. In that respect, it may be accepted that the *FW Act* claims receded in importance as the claims in contract were found to have been soundly made. But it does not follow that they should be ignored.
12. *Thirdly*, I agree that the context in which *Moorgate* was decided was different. However, the decisive feature of the passage set out above from the judgment of the plurality is the proposition that a court exercises federal jurisdiction when a federal claim is before it. And it exercises such jurisdiction even when it has not made any decision concerning a federal matter. That conclusion is, in my opinion, compelled by the passage from *Moorgate* that I have set out above.
13. The decision of the Full Court of this Court in *Maughan Thiem Auto Sales* requires no contrary conclusion. That case stands for the proposition that a “decision” under s. 565 must be one in which orders have been made by a court that determines or disposes of a matter.
14. I also think that the recent decisions of Ierodiaconou As.J. in *Tucker v. State of Victoria* [2019] VSC 481 and of the Victorian Court of Appeal in *Bannon v. Nauru Phosphate Royalties Trust* [2019] VSCA 303 do not compel any contrary conclusion. Neither decision addressed *Moorgate*.
15. For these reasons, the magistrate was exercising federal jurisdiction under the *FW Act* when he decided the case pleaded by the respondent. The first and second grounds relied upon by the respondent are not made out. This Court has jurisdiction to hear this appeal.
16. As a matter of completeness, for the reasons which follow, I am of the view that the magistrate was exercising summary jurisdiction for the purposes of s. 565(1A) of the *FW Act* and that accordingly an appeal could also have been made to an eligible State court.
17. In *Plancor Pty Ltd v. Liquor Hospitality and Miscellaneous Union* (2008) 171 FCR 357, one of the issues for determination was whether an industrial magistrate sitting in the Industrial Relations Court of South Australia constituted a court of summary jurisdiction when determining whether to impose penalties for breaches of the former *Workplace Relations Act 1996* (Cth). Gray J. (Branson and Lander JJ. not deciding) considered an earlier Full Court decision in *John L Pierce Pty Ltd v. Kennedy* (2000) 104 FCR 225 and said at 365 [26]:

The Full Court in *John L Pierce Pty Ltd v Kennedy* [2000] FCA 1729; (2000) 104 FCR 225 thought that informality of procedures, relative to the procedures of higher courts, was the key to the meaning of “summary” in s 26(d) of the *Acts Interpretation Act*. This is implicit in the reasons for judgment of Whitlam J at [23] and expressed in the reasons for judgment of Madgwick J at [28]. The presiding judge, O’Connor J, agreed with both …

1. Gray J. considered that an exercise of summary jurisdiction extended to both civil and criminal matters. In determining whether a court was exercising summary jurisdiction would depend, his Honour considered, on the nature of the judicial officer in question and the particular task of the court. At 366 [28], his Honour said:

Relative informality of procedures is not a test that gives certainty of meaning to the word “summary” in the definition in s 26(d) of the *Acts Interpretation Act*. In recent times, there has been a tendency for magistrates’ courts to model their procedures on those of superior courts, so as to produce more similarity than difference between magistrates’ courts and superior courts. If relative informality of procedures is the test, it is certainly satisfied in relation to the IRCSA. The provisions of s 154(1) make clear that the court is to act “without regard to technicalities, legal forms or the practice of courts”. Informality is obviously required …

1. Subsequently, in *Treasury Wine Estates Vintners Ltd v. Pearson* [2019] FCAFC 21, the issue for determination was whether an industrial magistrate sitting in the Industrial Court of South Australia, sat as a court of summary jurisdiction for the purposes of s. 565(1A) of the *FW Act*. Rares, Perry and Charlesworth JJ. said at [23]-[24]:

The *Fair Work Act* (Cth) does not define a court of summary jurisdiction or otherwise deal with such courts beyond what s 565(1A)(a) provides. However, s 2B of the *Acts Interpretation Act 1901* (Cth) defines “court of summary jurisdiction” as “any justice of the peace, or magistrate of a State or Territory, sitting as a court of summary jurisdiction.” The latter definition has the following features: *first*, it applies only to justices of the peace and magistrates; *secondly*, the justice or magistrate must be sitting as a court – that is, he or she must be exercising the judicial power of the Commonwealth invested in a court as such under s 77(iii) in Ch III of the *Constitution*; and *thirdly*, the nature of the proceeding must be that of a court “exercising summary jurisdiction”.

In *John L Pierce Pty Ltd v Kennedy* (2000) 104 FCR 225 at 232 [24], Whitlam J, with whose reasons O’Connor J (at 226 [2]) and Madgwick J (at 232 [26]) agreed, said that summary proceedings within the meaning of the expression “a court of summary jurisdiction”, in the now repealed s 26(d) of the *Acts Interpretation Act*, are not confined to summary proceedings that are criminal in nature but also “extend to proceedings under statute for the payment of money” in the exercise of civil jurisdiction. In his additional reasons, with which O’Connor J also agreed, Madgwick J said (104 FCR at 237 [46]) (at a time before s 2B was inserted into the *Acts Interpretation Act* with the current definition (and that in s 26(d) repealed)) that the expression should be “understood as including any court for the giving of civil relief which operates by way of summary, that is to say, relatively informal procedures”.

1. Their Honours emphasised that the key to the concept of “summary” in s. 565(1A) is the procedure used by the court. If the court adopts an informal procedure, it is probably exercising its jurisdiction summarily. At [27], the Court said:

The essence of the Parliament’s use of the adjective “summary” to describe a court’s jurisdiction is that it encapsulates a mode of procedure that the court applies in exercising its jurisdiction. Although, historically, courts of summary jurisdiction in England tended to be justices of the peace and magistrates hearing criminal matters, Australian courts of summary jurisdiction for over a century have made orders and judgments also in civil matters, as *Ex parte Mathews* (1918) 18 SR (NSW) 316 demonstrated.

1. The question thus for determination is whether the mode of procedure adopted by the magistrate below was or was not “relatively informal”. In my view, it was required to be relatively informal. That is because of s. 4(3C) of the *Magistrates’ Court Act*. That provision obliged the magistrate, sitting as he was in the Industrial Division of the Court, to exercise his jurisdiction “with the minimum of legal form and technicality”. In my opinion, that provision is decisively analogous with s. 154(1) of the *Fair Work Act 1994* (SA), as set out by Gray J. above. That provision required the Court in that case to act “without regard to technicalities, legal forms or the practice of courts”. Here, the key feature of s. 4(3C) is the obligation to act “with the minimum” of legal form. That required the Court to adopt the least formal “mode of procedure” that was possible. It follows that in doing so, the Court was exercising summary jurisdiction.
2. For these reasons it follows that the appeal to this Court is competent. As to the issue of costs, I note that the application of s. 570 of the *FW Act* forms part of the contest of this appeal. For the moment, nothing more should be said by me about that issue. I will otherwise direct that the matter be referred to mediation. With respect, the quantum of pay the subject of this dispute does not really merit any further lawyering in a court. Whilst I have considerable sympathy for the respondent, who also seeks summary judgment and wants a “swift” end to this dispute, mediation is still the best way forward, in my view.
3. I finally note that the respondent alleges that the appellants have not paid the amounts ordered by the Magistrates’ Court to be paid to her. If that is so, then the appellants have behaved disgracefully. I would certainly take that into account in the event that a costs order were to be made against them.

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| I certify that the preceding thirty-nine (39) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Steward. |

Associate:

Dated: 24 January 2020