

HUMAN RIGHTS COMMISSION
Discussion Paper No.2

'PAYMENT OF AWARD WAGES
ON ABORIGINAL RESERVES
IN QUEENSLAND

Draft prepared by: Dr John Hookey
Senior Assistant Secretary
Legal and Projects Branch

Date: August 1983

This is the second of the Human Rights Commission's Discussion series.

It is being circulated to encourage discussion of relevant issues and to assist the Commission in deciding what it should do about the payment of award wages on Aboriginal reserves in Queensland.

PAYMENT OF AWARD WAGES
ON ABORIGINAL RESERVES IN QUEENSLAND

The Problem

The Human Rights Commission has been told that award wages are not paid on Aboriginal reserves in Queensland to all Aboriginal Australians entitled to them and that the conditions in awards are not always observed. For example, sometimes it is said that workers are made to work overtime without being paid for it, and that to avoid paying award wages workers are called "trainees" even though they have done the job for quite a long time and are not really being trained at all.

2. Awards set out wages and conditions for different sorts of work. There are usually different award wages for different jobs; but, with some exceptions that have nothing to do with colour or race, everybody doing the same job should be paid the same, and have the same conditions of work.

The Human Rights Commission is interested in this matter because, under the Racial Discrimination Act 1975, it is unlawful to discriminate against people on the basis of race. So, if the right award wages for their jobs are not paid to Aborigines working on reserves in Queensland, then this amounts to racial discrimination against them if people of other racial and ethnic backgrounds are being paid the proper rate. This would be so even if on a reserve only Aborigines are working in a job to which an award applies, for, in most cases, awards apply throughout the State or a section of the State. And if Aborigines working on reserves are not getting the conditions in the awards that apply to them, then this, too, may amount to racial discrimination.

What Can be Done about Underpayment and Other Preaches Of Awards? - Conciliation Under the Racial Discrimination Act

4. Under the Racial Discrimination Act 1975, the Commissioner for Community Relations has the job of trying to solve disputes about racial discrimination. If a complaint is made that an Aboriginal person is not being paid the right award rate for the job, or that other conditions of the award are not being observed, the Commissioner for Community Relations will inquire into the matter and try and settle it. He can call upon the parties to the dispute to come together and talk about the problem at a compulsory conference. He can use other means to try and solve the problem. In the end, if conciliation fails, he can give a certificate to the person complaining so that the complaint can go to the courts to be solved.

How to make a Complaint

5. It is easy to make a complaint. No form is needed. You can write and tell the facts of your case in your own words. Or, simpler still, you can ring up. You do not even have to pay for the telephone call. Reverse charge calls will be accepted at the following number: (062) 434156. If you decide to write, or to get a friend to write for you, the address is:

Human Rights Commission
GPO Box 629
CANBERRA ACT 2601

6. A person working in a job covered by an award who is not being paid the right award wage for that job, or not being given the benefit of the award conditions, may have a choice of union action under Queensland industrial law, or legal action under Commonwealth law. Each of these two things will now be dealt with.

Union Action

7. In the Industrial Court of Queensland in 1979, the Court said that the State Building Trades Award applied in Aboriginal Reserves and that Aborigines working in reserves in the building trade were covered by that award. The principle in that case applies to other work covered by State awards. As a matter of Queensland law, it seems clear that there is nothing in the Aborigines Regulations of 1972 which takes away the right of Aboriginal people working on reserves to be paid the applicable award rates and get the benefit of applicable award conditions. However, it is probably true to say that in order to get the award wages and the award conditions each worker needs to be a member of a union and have the union bring the case.

Legal Action Under Commonwealth Law

8. In 1975 the Parliament of the Commonwealth passed the Aboriginal and Torres Strait Islanders (Queensland Discriminatory Laws) Act. This Act tries to help Aborigines and Torres Strait Islanders and to stop discrimination against them. One of the things it deals with is discrimination in employment. Section 11 of the Act says that;

"A person shall not employ an Aboriginal or Islander in Queensland (whether on a Reserve or elsewhere) unless the terms and conditions of employment are not less favourable than they would be required to be if the employee were not an Aboriginal or Islanders and, in particular, the employee shall be entitled to be paid wages at a rate not less than the rate at which wages would be payable to him if he were not an Aboriginal or an Islander."

This means that the Parliament of the Commonwealth has said that Aborigines should be paid the right award rates for their work; the same rates which are paid to people who are not Aborigines. If that law is not obeyed Aborigines can go along

to the courts and bring a case. This is so whether or not they work on a reserve or off it. However, in order to do this a lawyer is probably needed. One way of getting a lawyer is to go to one of the Aboriginal Legal Services.

Conclusion

10. The Commissioner for Community Relations is ready to help Aborigines if they make complaints to the Human Rights Commission. The Commissioner realises some people may not wish to make a complaint, for fear of what might happen to them. However, the Commissioner wants to tell people reading this paper that the Racial Discrimination Act protects people who make complaints. Section 27(2) of that Act provides that:

- "(2) A person shall not -
- (a) refuse to employ another person;
 - (b) dismiss, or threaten to dismiss, another person from his employment;
 - (c) prejudice, or threaten to prejudice, another person in his employment;
 - (d) intimidate or coerce, or impose any pecuniary or other penalty upon, another person,
by reason that the other person
 - (e) has made, or proposes to make, a complaint under this Act;
 - (f) has furnished, or proposes to furnish, any information or documents to a person exercising or performing any powers or functions under this Act; or
 - (g) has attended, or proposes to attend, a conference referred to in section 22."

Penalty: \$500.

In other words, anybody who sacks or threatens or frightens a person because a complaint has been made under the Racial Discrimination Act can be fined up to \$500.