



## HIGH COURT OF AUSTRALIA

Public Information Officer

7 August, 2003

RE MEMBERS OF THE FULL BENCH OF THE AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION, THE MARITIME UNION OF AUSTRALIA, THE AUSTRALIAN INSTITUTE OF MARINE AND POWER ENGINEERS, AND THE AUSTRALIAN MARITIME OFFICERS' UNION; EX PARTE CSL PACIFIC SHIPPING INC

The Australian Industrial Relations Commission had jurisdiction to consider an application to add the owners of a Bahamas-registered ship crewed by Ukrainians to an award governing the rates of pay and conditions of employment of crews of ship operating in Australian waters, the High Court of Australia held today.

CSL Pacific Shipping is incorporated in Barbados. The company and an Australian corporation, CSL Australia Pty Ltd, are members of the Canadian-owned CSL Group Inc.

In July 2000, CSL Pacific acquired a ship, River Torrens, from CSL Australia and renamed it *CSL Pacific* and registered it in the Bahamas. *CSL Pacific* recruited a crew in the Ukraine and traded in North Asia before returning to Australia in October 2001 under charter to CSL Australia. *CSL Pacific* did not hold a licence to engage in coasting trade but carried cargoes between ports around Australia under either continuing voyage or single voyage permits issued under the Navigation Act. The permits carried no conditions about crew pay rates, which were less than award rates.

The three unions applied to the AIRC to have CSL Pacific added to the award's schedule of employers. None of the crew are members of those unions. The Full Bench of the AIRC concluded it had jurisdiction to hear and determine an application to vary the award as the matter was an industrial issue under section 5 of the Workplace Relations Act. It allowed 15 working days to show cause why the award should not be varied to add CSL Pacific and to add a provision that the award applied to voyages within Australian waters, or while operating under a permit or licence granted under the Navigation Act, or on a voyage to or from an Australian port.

In the High Court, CSL Pacific sought constitutional writs to quash the AIRC decision and to prohibit any further proceeding on the unions' application to vary the award. CSL Pacific argued that the Commonwealth Parliament's constitutional powers did not authorise the making of laws regulating employer-employee relations when the employer has no presence in Australia and the employees are foreign seafarers.

The Court unanimously held that the Workplace Relations Act and the Navigation Act should be read together, the Workplace Relations Act did enable the varying of the award to cover *CSL Pacific* crew and the legislation was within power.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*