

Sharabhron Ardeshiran v.  
Robe River Iron Associates

*John Hyde*

It has often been the case in the development of justice among the English speaking peoples, that better instruction has come from the findings of the judges and their equivalents than from the laws and the Hansards of the Parliaments. The Human Rights and Equal Opportunities Commission of WA is in essence a court---that is, its responsibility is to establish the facts of particular cases and to interpret the laws as they stand. Nevertheless, its Commissioners are in an excellent position to discover the causes of injustice, and the reasons they give for their determinations can be important sources of instruction for both legislators and public.

The 'Reasons for Decision' of Sir Ronald Wilson, President of the Commission, and formerly a High Court judge, in the complaint of Sharabhron Ardeshirian against Robe River Iron Associates ought to encourage the legislators to make changes to the law.

The essence of Mr Ardeshirian's complaint, or as much of it as Sir Ronald was prepared to consider, was that he was wrongfully dismissed in that his dismissal was by reason of race, colour or national origin. Sir Ronald found against Robe, requiring them to pay Ardeshirian \$10,000 in compensation for wrongful dismissal---that is what the Act required. But his criticism is almost entirely reserved, not for Robe, but for the Australian Metal Workers and Shipwrights Union (AMWSU) and other unions, whom he plainly sees as the real villains in the piece.

I do not find this at all surprising. When I was a politician I had very few examples of harassment based upon race brought to my attention---Australians are, on the whole, pretty tolerant. But the few examples that I can recall concerned unions, academics, policemen and school children, but not employers. The reason why employers are seldom involved in racial discrimination is straight forward. An employer who discriminates against,

say, Aboriginal or Maori shearers, Vietnamese taxi drivers, or Indian secretaries must select employees of lower quality and thus deny himself a competitive edge and profits. On the other hand, unionists and academics who discriminate on grounds of race drive their competition from the market, thereby increasing their own earnings. If racial 'insiders' can force the employer's hand so that the employer discriminates against the employment of racial 'outsiders', then, of course, the insiders gain a considerable economic advantage.

First, let us consider Sir Ronald's findings as to the facts of this case:

"...the complainant attracted a significant degree of hostility in the workplace because he came from Iran and because he was black...some of it was crude, hurtful and occasionally malicious. It cannot be dismissed as the kind of robust treatment which a worker in that environment must expect to receive.

"The racist problems encountered by the complainant were exacerbated by his personality and life style. He did not get drunk. He did not approve of the rowdy and sometimes lawless behaviour of his fellow-workers in their off-duty hours. In the workplace, he was hardworking and conscientious, qualities that did not endear him to his fellows.

"The role of the unions in the respondent's [i.e. Robe's] operations is of critical importance in the resolution of the complaint...In practice, the unions were supreme.

"...the respondent was unable to take any remedial action which was not supported by the unions. The complainant was a member of the AMWSU but to the extent that he was offside with the membership, to that extent he would lack union support."

Sir Ronald goes on to give an account of some rather objectionable baiting of Ardeshirian which led to a verbal contretemps. And then says this: "Any confidence I could have in the fairness of the inquiry conducted by the general foreman...as a result of which the complainant was dismissed, is affected by the role of the unions. Two shop stewards together with a union convener and a *de facto* union official were present at the inquiry...The convener expressly agreed with the decision. He had earlier refused to allow the complainant to use a tape recorder to record the inquiry...I do not doubt had the unions supported the complainant there would have been a different outcome to the inquiry."

Now think about the implications of this passage from Sir Ronald's determination: "It is submitted by the complainant that I should declare...that the respondent [Robe] has engaged in conduct rendered unlawful by the

Act and should not repeat or continue such unlawful conduct. But in July 1986, shortly after the dismissal of the complainant, the respondent successfully challenged the supremacy of the unions and assumed a proper responsibility in the workplace. For this reason I do not believe it is appropriate to make such a declaration." (emphasis added by me) The event in July 1986 to which Sir Ronald referred was the justly-famous Robe River dispute.

What Sir Ronald seems to me to be saying, is that, where issues of racial discrimination (and possibly other forms of unwarranted discrimination as well) arise, employers are obliged to stand up to union bullies. Victims of the sort of treatment that Mr Ardeshirian suffered certainly deserve redress. Nevertheless, it strikes me as more than a bit unreasonable to expect all managements to display the fortitude that Robe's management did in dealing with its unions, and to punish shareholders should they not do so. The unions are very powerful and the industrial tribunals are unlikely to assist employers who try to stand up to them. Indeed, as the Robe River dispute itself demonstrated, the employer will probably have to resort to the ordinary courts--an expensive undertaking.

Of course, the fault does not lie with Sir Ronald. His determination was, as it had to be, based upon the law as it stood. He did what he could to redress the balance by giving reasons for his decision which make it plain who should bear the real odium for an event that most people will agree was not just. The fault lies in the legislation which, though intended to redress the consequences of prejudice, itself enshrines prejudice--anti-business prejudice.

*John Hyde is Executive Director of the Australian Institute for Public Policy*

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