Baird v Queensland [2005] FCA 495

1) Reference Details

Jurisdiction: Federal Court of Australia
Date of decision: 19 August 2005

2) Facts

The applicants, Mr Baird and seven others, all Indigenous people, claimed that between 1975 and 1986, they had been employed on mission by the Queensland government, and they had been paid below the level paid to other persons employed by the Government performing similar work, and/or below the levels established by applicable industrial standards. The applicants claimed that such differential treatment constituted racial discrimination prohibited under sections 9 and 15 of the Racial Discrimination Act 1975.

3) Law

Section 9 Racial Discrimination Act 1975 (right to equal enjoyment of human rights and fundamental freedoms)

Section 15 Racial Discrimination Act 1975 (right to non-discrimination in employment)

Aborigines Act 1971

Community Services (Aborigines) Act 1984

4) Legal Arguments

The State

The State argued that the amount of money granted to individuals was based on individual circumstances and more generally, on the amount of money that the State was able to grant to the Church for particular missions. Thus there was no racial motivation in the difference in wages between those working on mission and other workers.

The applicants

Further, they argued that those living and working on missions were almost inevitably indigenous (thus raising an implicit claim of indirect discrimination).

5) Decision

The Court held that section 15 on discrimination in employment was not applicable because the applicants were employed by the Church, (which was funded by the Government to run missions) but not by the Government itself. The Court also rejected the claim that there had been

discrimination under section 9, finding that although the difference in pay was probably due to the provisions on grants and reserves under the Aborigines Act 1971 and the Community Services (Aborigines) Act 1984, there had been no "particular act which offended against section 9". In its judgment, the Court seemed to confine successful claims of discrimination under the Racial Discrimination Act to "particular acts" which are discriminatory. In this particular case, it would have been necessary for the claimants' to identify a "particular Cabinet decision" or "Government payment" as the discriminatory subject of proceedings. The Court asserted that without such identification, it was impossible for the Court to take a general approach and find all wage payments made as discriminatory.

Dowsett J further held that even if it were possible to take a "generic" approach, there would still be no breach of section 9. He opined that the alleged discrimination lay in the disparity between wages paid to the claimants which under the national law was calculated by amounts derived from grants and other non-indigenous workers whose wages were unrelated to grants and therefore higher, but that this differentiation in treatment was a result of several factors that were not racially motivated. He stated that "[i]n these proceedings the applicants complain of discrimination against them as employees, not that they failed to receive a fair share of public resources generally." His Honour held that any differentiation which occurred towards the applicants was based on the fact that they lived and worked on the missions rather than the fact that they were indigenous. Furthermore, he stated that in order for section 9 to be engaged, the discriminatory act must also have had "the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing" of an applicant's rights to equal pay.

Dowsett J held that the implicit thrust of the applicants' claim was that the amount given in grants to the Church for people working on mission was insufficient. In considering this point, Dowsett J opined that the question was whether the word "act" in section 9 includes omissions to act. He held that there was no evidence in the Racial Discrimination Act that such an interpretation was intended. Where "acts" were intended to include omissions, this had been made explicit under the Act as evidenced by section 15.