

R v Federal Court of Australia; Ex parte WA National Football League (1979) 143 CLR 190

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Facts

- The respondent, Adamson, was a young Indigenous Australian who played football in Victoria, South Australia and Western Australia. He wanted to play football professionally.
- In 1973, he lived in the recruitment area assigned by the Western Australian National League to the West Perth Club ("**the Club**"). He registered as a player with the Club. He trained with the Club from 1973 and played successfully in its senior team. He was paid by the Club a fee for each match that he played but had no formal contract of employment. Adamson also played in the WA state team in the National Australian Rules competition conducted by the Australian National League.
- Adamson was made an offer to play with the Norwood Football Club in South Australia. He accepted and moved his to South Australia. But he could not play with any club playing Australian Rules other than the club with which he was registered unless he had the National League's consent, expressed through a "*clearance*".
- Norwood would be penalised in competition points in the competition conducted by the National League if the respondent played in one of its teams without a clearance. The clearance would be refused if the Club objected to its grant. On some occasions a clearance would be granted if the player paid the club to which the player was registered.
- Adamson was refused a clearance and could not play with Norwood. He applied to the Federal Court of Australia for orders against the State League and the Club which, if granted, would compel the grant of a clearance and allow the respondent to play at the Norwood Club. Adamson alleged that the State League and the Club in refusing the clearance were acting in breach of the provisions of the *Trade Practices Act 1974-1977* (Cth) ("**the Act**").
- The respondent's claimed that the WA State League and the Club are trading corporations formed within Australia bound by the provisions of the Act and are in breach of the Act by refusing to provide the clearance.

Issues

- Were the Club and WA State Leagues trading corporations within the meaning of section 51(xx) of the *Constitution*?

Held

- "*Trading activities*" are those that involve some form of buying and selling, and generate revenue, regardless of whether carried out at a profit.

- "*Trading corporation*" does not mean a corporation which trades exclusively or in which trading is the dominant activity. A trading corporation may also be a sporting, religious, or governmental body. As long as the trading is not insubstantial, the fact that trading is incidental to other activities does not prevent it being a trading corporation.
- Murphy J held that foreign corporations may include syndicates or joint ventures, entities which are common in Europe or other legal systems whose incorporation laws are based on principles different from those of Australia and the United Kingdom.

Quotes

"Even though trading is not the major part of its activities, the description, "trading corporation" does not mean a corporation which trades and does nothing else or in which trading is the dominant activity. A trading corporation may also be a sporting, religious, or governmental body. As long as the trading is not insubstantial, the fact that trading is incidental to other activities does not prevent it being a trading corporation. For example, a very large corporation may engage in trading which though incidental to its non-trading activities, and small in relation to those, is nevertheless substantial and perhaps exceeds or is of the same order in amount as the trading of a person who clearly is a trader. Such a corporation is a trading corporation and is the subject of the legislative power in s. 51 (xx.). That power is subject to the Constitution and may be limited by other provisions, for example, s. 116 would protect a religious body which was a trading corporation from laws which would prohibit the free exercise of religion. The corporations power may be used not only to protect persons who trade with trading corporations, but also to protect trading corporations in regard to those who deal with them."

(Murphy J)

Full Text

The full text is available here:

<http://www7.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1979/6.html>

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