OPINION

Fair Work Act 2009
s.739—Dispute resolution

Australian Salaried Medical Officers Federation
v
Mater Misericordiae Limited T/A Mater Hospital Brisbane and Mater Misericordiae Mothers' Hospitals
(C2018/3507)

COMMISSIONER SIMPSON BRISBANE, 12 JULY 2018

Alleged dispute about any matters arising under the enterprise agreement and the NES;[s186(6)] .

[1] On 27 June 2018 The Australian Salaried Medical Officers' Federation, Queensland Branch (ASMOFQ) made an application under s.739 for the Commission to deal with a dispute in accordance with clause 1.9 of the *Mater Health Services Senior Medical officers' Enterprise Agreement 2015* (the Agreement) with Mater Misericordiae Limited (Mater).

[2] The dispute was alleged to relate to Clause 10.2 of the Agreement. Clause 10.2 reads as follows:

"**10.2 Supplementary Benefit (previously known as Right of Private Practice)**

10.2.1 Upon appointment, Senior Medical Officers will be offered a contract which will provide a Supplementary Benefit and which will outline private practice arrangements as appropriate. This Supplementary Benefit does not form part of this Agreement.

10.2.2 Where there is organisational requirement to participate in private practice and a Senior Medical Officer is able to participate in private practice, then the Supplementary Benefit will be paid in accordance with conditions and formula detailed in the supplementary benefit contract.

10.2.3 The formula for calculation of Supplementary Benefit payments do not form part of this Agreement and will be negotiated. Any proposed changes to Supplementary Benefit payments will be subject to Mater undertaking a consultation process with Senior Medical Officers as per clause 1.11"

[3] The Mater has raised an objection to the application on the basis that it outside the jurisdiction of the Commission. In the course of a private conference before the Commission conducted on 12 July 2018 after giving the parties an opportunity to make a brief submission

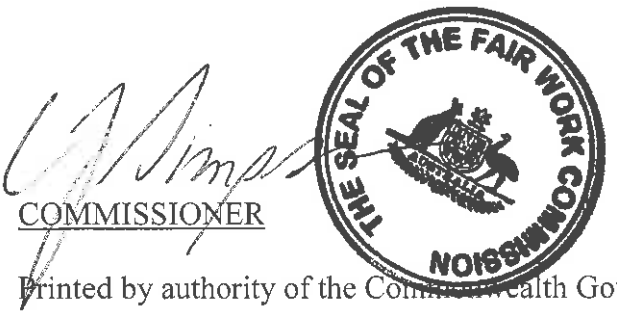
on the question of jurisdiction, I decided in the interests of efficiency to express an opinion on the matter and undertook to also reduce that opinion to writing for the benefit of the parties only.

[4] It is my view that the plain words of Clause 10.2 make clear that any proposed changes to the Supplementary Benefit payments are subject to the Mater undertaking a consultation process as per clause 1.11. To the extent that there exists a dispute between the parties as to whether or not the Mater has complied with the requirement to consult as per clause 1.11 of the Agreement, that is a dispute that relates to a matter arising under the Agreement as defined in Clause 1.9.1, and that is a dispute within the jurisdiction of the Commission.

[5] However I am not inclined to the view that the Commissions jurisdiction under the Agreement extends to negotiations as described in the first sentence of Clause 10.2.3. That is because the expression "will be negotiated" forms part of the first sentence of Clause 10.2.3 which expressly states that the formulae for calculation of Supplementary Benefits that "will be negotiated" does not form part of the Agreement.

[6] It is counterintuitive to read that sentence as if it were intended to bring the wider concept of negotiations concerning the Supplementary Benefits that are expressly excluded from the Agreement, within the scope of being a matter arising under the Agreement, when read in the context of the following sentence that expressly brings within the scope of the Agreement a narrower concept of consultation about any proposed changes to the excluded benefit.

[7] On the basis of the above it is my view that the application is within jurisdiction to the extent set out above. The application is adjourned pending advice from the application as to whether it wishes to have the matter relisted.



COMMISSIONER

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