

IN THE WARDEN'S COURT
HOLDEN AT SYDNEY
ON 19TH JUNE, 1987
BEFORE J.L. McMAHON.

BELMONT COLLIERY PTY. LIMITED
CARRINGTON HOLDINGS PTY. LIMITED
CARDIFF COAL COMPANY

v.
NORTHERN (RHONDDA) COLLIERIES PTY. LIMITED

JUDGMENT ON THE QUANTUM OF COSTS

Part VIII to the Coal Mining Act provides that a Mining Warden may assess compensation in respect of losses incurred or likely to be incurred arising out of the activities of the holder of a title under that Act.

Such an application came before me on 22nd and 23rd September, 1986, there having been some history in the matter of dispute between the parties and following upon discussions on 22nd and 23rd September, Mr. Coombs, Q.C. on behalf of the applicants for the assessment of compensation, Belmont Colliery Pty. Limited, Carrington Holdings Pty. Limited and Cardiff Coal Company, withdrew the application. Mr. Robb of Counsel of behalf of the Respondent, Northern (Rhondda) Collieries Pty. Limited, successfully sought costs on behalf of his client.

The question then arose as to the means by which those costs were to be settled. The Registrar of the Warden's Court at Sydney is an officer of the Department of Mineral Resources and as such is inexperienced in taxing costs. Further, costs are a matter of discretion vested in the Warden by the Coal Mining Act and the Mining Act, the latter Act attracting the District Court scale. However, a Bill of Costs was prepared by the solicitor for the respondent which was filed with the court, and 22nd May, 1987 was set aside as a day upon which those costs would be settled by me, allowing argument on each item.

This course was obviously satisfactory to the parties and took place over some four hours. I find a total of \$14,104.80, as sought by the respondent, would be allowed, less \$3,715.82 as taxed off by me leaving \$10,388.98. I find the figure of \$500 satisfactory for skill, care and responsibility which is included in the \$10,388.98, and I find a figure of \$10,615.80 due to the respondent in lieu of \$16,124.84 for disbursements. I total these amounted figures being \$10,388.98 and \$10,615.80 making a total of \$21,004.78.

It was indicated to me on 23rd September, 1986 that proceedings would be commenced in the Equity Division of the Supreme Court of N.S.W. and I was assured by each attorney for the respective parties, Messrs. Anicich and Voss, that these proceedings had only recently been commenced. Mr. Anicich was kind enough to hand me a copy of the Statement of Claim in that matter and I note that it was filed on or about 18th May, 1987. As had been put in the proceedings before me, especially when the question of costs was argued between Messrs. Coombs and Robb and latterly between Messrs. Anicich and Voss, that I should allow only those costs which had been thrown away and that a certain allowance should be made by the Warden's Court for the fact that costs in the Supreme Court proceedings will be saved because they had already been incurred and allowed at the Warden's Court level. The question however is how much of these costs were so affected?

Doubtless, some of the work already done does not need to be done again but on the other hand much of it will need to be updated before the Supreme Court hearing goes to trial. Furthermore, there could be a change in counsel and attorneys, different issues would be argued and even the question of lack of jurisdiction in the Warden's Court to assess compensation between the parties which was extensively explored by the respondent is now not an issue

which would be likely to arise before the Supreme Court. So it seems to me that while there are costs which could be saved in the Supreme Court proceedings, as they have already been incurred in respect of preparation for the Warden's Court hearing, the great majority of them are costs which are lost to the successful respondent in this matter. I feel that as far as percentages are concerned, that 80% of the costs taxed and allowed herein are costs which are lost to the respondent. 80% of \$21,004.78 taxed above is \$16,803.82 and the costs in this matter are assessed at \$16,803.82.