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No. 13

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999
Industrial Court Rules 1997

NOTICE

The following Agreements have been certified by the Commission:-

No/s	Title	Date certified	Cancelling
CA160/99	Iplex Pipelines Australia Pty Limited (Strathpine Qld) - Certified Agreement 1999	4/5/99	
CA406/99	Sunrise Restaurant (Mackay) - Certified Agreement 1999	3/12/99	
CA407/99	Palm Beach Currumbin Private Hospital Enterprise - Nursing Staff – Certified Agreement 1999	3/12/99	
CA547/99	The Mount Isa Memorial Garden Settlement For The Aged - Certified Agreement	17/12/99	CA471/97
CA590/99	Baptist Community Service Nursing Staff - Certified Agreement 1999	17/12/99	
CA28/00	Ports Corporation Of Queensland Employees' - Certified Agreement 1999	29/2/00	CA574/98
CA298/99	Green Papaya - Certified Agreement 2000	16/3/00	
CA184/00	Australian Workers Union and Austral Bricks Pty Ltd - Certified Agreement	5/6/00	CA725/97
CA254/00	Bendemere Shire Council – Certified Agreement	9/6/00	CA794/97
CA235/00	Transit Australia Pty Ltd Trading As Townsville Sunbus - Certified Agreement 1999	14/6/00	CA477/98
CA289/00	Brisbane Market Corporation (Operational Employees) Certified Agreement – 2000	19/6/00	CA706/97
CA300/00	Manly Concrete Services Pty Ltd - Certified Agreement	26/6/00	CA120/97
CA301/00	Brisbane Concrete Pumping Pty Ltd t/a Meals Concrete Services - Certified Agreement	26/6/00	CA217/97
CA302/00	Scape Shapes Landscaping Pty Ltd - Certified Agreement	26/6/00	
CA303/00	Callfence Pty Ltd t/a Commercial Landscape Constructors - Certified Agreement	26/6/00	

No/s	Title	Date certified	Cancelling
CA306/00	Glenzel Pty Ltd - Certified Agreement	26/6/00	
CA307/00	Bentleigh Signs (Qld) Pty Ltd - Certified Agreement	26/6/00	CA529/99
CA308/00	Visual Pollution Technologies Pty Ltd - Certified Agreement	26/6/00	
CA309/00	B & S Solid Plastering Pty Ltd - Certified Agreement	26/6/00	
CA188/00	Credit Union Settlement Services Ltd - Certified Agreement	29/6/00	
CA209/00	Sigma – Certified Agreement 2000	29/6/00	CA323/98
CA217/00	QUT Student Guild - Certified Agreement 1999-2001	29/6/00	CA638/97 CA639/97
CA310/00	Bundaberg Sugar Ltd Babinda Sugar Mill Enterprise Bargaining - Certified Agreement 2000	29/6/00	CA273/98
CA311/00	Skylink Formwork Pty Ltd – Certified Agreement	29/6/00	CA108/96
CA312/00	M.A.N. Rigging & Construction Pty Ltd – Certified Agreement	29/6/00	
CA313/00	Dave Billington T/A Foremen's Pick Industrial Detailing - Certified Agreement	29/6/00	CA750/97
CA314/00	Improved Concrete Pumping Services Pty Ltd - Certified Agreement	29/6/00	CA283/97
CA315/00	Citicrete Pty Ltd - Certified Agreement	29/6/00	
CA294/00	Hornibrook Bus Lines Pty Ltd - Bus Drivers - Certified Agreement	30/6/00	CA432/97
CA295/00	Hornibrook Transit Management Pty Ltd - Bus Drivers – Certified Agreement	30/6/00	CA431/97
CA316/00	Gladstone City Council Combined – Certified Agreement 2000	30/6/00	CA616/95 CA369/97
CA290/00	Officeworks North Queensland Retail - Certified Agreement 2000	4/7/00	

The following Agreement has been extended by the Commission:-

	Date extended
CA263/99 Sunstate Fuel Townsville Terminal - Certified Agreement (Extended to 20/6/2001)	29/6/00

The following Agreements have been amended:-

	Date amended
CA260/98 Toowoomba Catholic Education - Principals' - Certified Agreement	22/6/00
CA409/99 Australian Building Services Association - Queensland Division - Certified Agreement 1999	30/6/00
CA136/00 Shalom Christian College - Certified Agreement 1999	5/7/00

E. EWALD
Industrial Registrar

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INDUSTRIAL COURT OF QUEENSLAND

Industrial Relations Act 1999 – s. 341(1) – appeal from decision of industrial commission

**MIM Holdings Limited and The Australian Workers' Union of Employees, Queensland AND
Automotive, Metals, Engineering, Printing and Kindred Industries Industrial
Union of Employees, Queensland (No. C32 of 2000)**

PRESIDENT HALL

7 July 2000

REPORT ON DECISION (as edited)

In giving his decision from the Bench on 30 June 2000, President Hall stated:-

“This appeal arises out of a decision of Commissioner Baldwin given 29 June 2000 and out of certain orders made by the Commissioner on the same day. It is convenient to set forth those orders.

The appeal is, of course, limited to error of law and excess of jurisdiction. A decision to issue injunctive relief is a quintessential exercise at a discretion which is vested in the Commission and not in the Court. It is rare to set aside such a decision on the ground of error of law. However, I consider this to be a case in which that step should be taken.

First, a perusal of the decision of 29 June 2000 shows that no attempt was made to marshal up the various factors which go to the exercise of the discretion to grant interim or interlocutory relief. If that step had been taken it would have become apparent that it was extraordinarily difficult to identify any injury which might flow to the respondent to the appeal if the interim orders were not granted.

It is apparent that the appellants suffered an immediate injury in that they were denied the opportunity to do that which they wished to do. It is true that in the absence of the interim orders, if the materials are despatched to the various employees at Mt Isa and if ultimately certification is refused on the ground that the AMWU is not a party to the agreement, the appellants will suffer the loss of time and the loss of money. That is entirely a matter for them. It seems to me to be inappropriate to make an order to protect people against injuring themselves.

If the matters had been marshalled up, it would have become apparent that there was inconvenience caused to the appellants by the making of the interim orders because the appellants were denied the opportunity to transmit materials as they saw fit.

It is not apparent how the failure to make the orders would inconvenience the respondent. A submission has been put that, in the absence of the interim orders, the employees at Mt Isa might ultimately be inconvenienced because the making of the certified agreements could be delayed.

As against that, it must be born in mind that, if the orders are made, they will be inconvenienced because agreements to which the AMWU are not entitled to be a party will be delayed.

No attempt was made to weigh up the strength of the respondent's case. For myself I think the respondent's case is arguable but I do not think it has such a high probability of success as to outweigh the other factors.

The second reason why I would take the view that the interim orders involved an error of law is because of their terms. The Commission has traditionally, and should be, loath to make interim or interlocutory orders on the basis of part heard cases where no final view has been formed as to the facts or of the law. That is particularly so in the case of mandatory injunctive orders of which orders 3 and 4 are a type.

I additionally notice the width of orders 3 and 4. They are not restricted to employees in the mining or metallurgical plant areas of Mt Isa. They apply to any case in Queensland where Mt Isa Mines or the Australian Workers' Union seek to promote an agreement covering employees of Mt Isa Mines Ltd to which the AMWU is not a party.

In fairness to the respondent, I note that the relief order by the Commissioner exceeded that which was ever sought.

I am concerned also about the duration of the orders. The document is headed 'Interim Injunction Order'. The introductory line asserts, 'This Commission doth order, on an interim basis, that until further order.'

Normally, one would expect an interim injunctive order to nominate the day on which it is to lapse. One would expect an interlocutory order to nominate the event, typically the final determination of the matter, on which the order will lapse.

In the Commission, of course, because of the power to reopen, in a sense every injunctive order would operate until further order. With the greatest of respect, it seems to me that the orders made are actually final orders rather than interim orders.

The question then is whether I should set aside the decision and the orders or alternatively, substitute a further order in lieu. Given that which I have said in talking about the convenience, injury to be avoided and strength of the respondent's case, I am not disposed to make an order in lieu.

There is a second reason why an order in lieu should not be made. The matters before Commissioner Baldwin arose out of an application filed on 23 May 2000 by which the Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland sought certain injunctive relief, the effect of which would have enabled that union to become a party to a proposed certified agreement at Mt Isa relating to the mining or metallurgical plant areas of Mt Isa Mines Ltd.

Three threshold arguments were raised. Firstly, it was put that because of an order made under s. 45 of the *Industrial Relations Act 1999* and certain alterations to the rules of the AMWU made in consequence of that decision that the AMWU might not become a party to the proposed certified agreement and was incompetent to make the application.

There was a further threshold argument that, in any event, having regard to the s. 45 order the matter should be dismissed in the public interest under s. 331.

All those matters, I should say, were raised before me. Additionally it was contended that there was no scope to make an order under s. 277 of the *Industrial Relations Act 1999* in that there was no prospect of any contravention of any section of the Act.

It is apparent from Commissioner Baldwin's decision that a decision on those threshold points is imminent. My expectation is that if there were to be an appeal, and it seems to me to be likely that whoever is unsuccessful will appeal, that it could be disposed of before 12 July which, on the materials, is a day being suggested as a day for the ballot.

I have referred previously to the caution which should be exercised in making interim orders on incomplete facts and incomplete argument. I do not consider this to be a matter where there is such urgency that such orders should be made.

I have considered dealing with the substantive issues myself. The difficulty that I have with that is that the matter is before Commissioner Baldwin. It is not a case where, in order to deal with the matter of the interim injunction I have to deal with the question of whether those proceedings are properly on foot. It seems to me that one should take the course of allowing the case to follow the normal orderly path.

I notice also that on one argument before Commissioner Baldwin under s. 331 there is an issue of fact as to the true purpose which the AMWU seeks to achieve.

In all those circumstances, I order that the interim injunction order made by Commissioner Baldwin on 29 June 2000 be set aside. I remit the matter to Commissioner Baldwin to hear and determine the matter according to law.

I adjourn the Court."

Dated this seventh day of July, 2000.

By the Commission,
[L.S.] E. EWALD,
Industrial Registrar.

Appearances:—

Mr J. Murdoch, with him Ms Arnold, instructed by Minter Ellison for the appellant.

Mr A. Herbert, with him Mr B. Swan for The Australian Workers' Union of Employees, Queensland.

Mr P.D.T. Applegarth, instructed by Reidy and Tonkin for the respondent.

Released: 10 July 2000

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INDUSTRIAL COURT OF QUEENSLAND

Workplace Health and Safety Act 1995 – s. 152 – appeal against decision to issue an Improvement Notice

Golden Video Pty Ltd AND Chief Executive, Department of Employment, Training and Industrial Relations (No. C26 of 2000)

PRESIDENT HALL

11 July 2000

DECISION

On 26 May 2000 Golden Video Pty Ltd filed an appeal against an Improvement Notice which had been issued under the *Workplace Health and Safety Act 1995*. The Industrial Registrar made arrangements for the matter to be heard on 28 June 2000, and issued a directions order requiring Golden Video Pty Ltd to serve a copy of the appeal and the directions order upon the respondent. For whatever reason, that did not occur. Indeed, there was no appearance by either party on 28 June 2000. In those circumstances, the Industrial Registrar set the matter down for hearing on 30 June 2000, issued a further directions order requiring service by the appellant and took the precaution of himself forwarding the documentation to the respondent. Within 24 hours of receipt of the documentation the respondent revoked the Improvement Notice.

The appeal is brought pursuant to s. 152 of the *Workplace Health and Safety Act 1995*. The powers of the Industrial Court in deciding an appeal pursuant to s. 152 are set forth at s. 157 which provides:—

“Powers of court on appeal

157.(1) In deciding an appeal, the Industrial Court may –

- (a) confirm the decision appealed against; or
- (b) vary the decision appealed against; or
- (c) set aside the decision appealed against and make a decision in substitution for the decision set aside; or
- (d) set aside the decision appealed against and return the issue to the decision maker with directions the court considers appropriate.

(2) If on appeal the court acts under subsection (1)(b) or (c), the decision is taken, for this Act (other than this part), to be that of the chief executive.”.

No provision of s. 157 is opposite where, as here, the decision appealed against has been set aside. That is hardly surprising. It is contrary to principle to entertain an appeal against an administrative decision in circumstances where because of repeal or amendment of legislation or a change in policy, a decision can produce no foreseeable consequence for the parties, compare *Gardner v Dairy Industry Authority (NSW)* (1978) 52 ALJR 180 at 188 per Mason J with whom Jacobs and Murphy JJ agreed and at 189 per Aickin J, *Johnco Nominees Pty Ltd v Albury Wodonga (NSW) Corporation* (1977) 1 NSWLR 43 and *Ainsworth v Criminal Justice Commission* (1991-92) 175 CLR 564 at 582 per Mason CJ, Dawson, Toohey and Gaudron JJ. The proper course is to dismiss the appeal. In my view the power to do so arises from s. 331 of the *Industrial Relations Act 1999*. By Schedule 5 “industrial cause” is defined to include “an industrial matter” and by s. 7 an “industrial matter” is a matter that affects or relates to, *inter alia*, work to be done. On its face, the Improvement Notice related to work to be done.

The appellant asks for costs. The appellant has spent some \$6,000 on professional fees in an attempt to reverse a decision which the respondent abandoned so soon as it became aware that it was to be challenged on appeal.

The appellant relies on s. 331(c) and s. 335(1)(a) of the *Industrial Relations Act 1999*. (Some reliance was placed on Rule 131 of the Rules of Court. The reliance is misplaced. The Rules of Court cannot enlarge upon or diminish rights and duties vested by the Act.) In my view, the relevant provision is s. 335. Section 335 refers expressly to “legal and professional costs and disbursements”. Section 331(1)(c) vests a power to “order a party to the cause to pay another party the expenses including witnesses expenses, it considers appropriate”. It is settled that provisions of general application give way to specific provisions when conflict arises, compare *Refrigerated Express Lines (Australasia) Pty Ltd v Australian Meat and Livestock Corporation* (1920) 29 ALR 333 at 347 and *Commercial Radio Coffs Harbour v Fuller* (1986) 66 ALR 217 at 219 per Gibbs CJ and Brennan J. In any event, s. 335 is the latter section.

Section 335 vests limited power. Because it is contained in Part 6 of Chapter 8 in relation to proceedings generally in the Court and the Commission rather than in Chapter 9 which deals with appeals, argument has at times been advanced that it applies only when the Industrial Court of Queensland is exercising original jurisdiction. The circumstance that the section refers to “an application” rather than “an appeal” is said to give some support to that view. I must say that inclusion in the “general” chapter seems to me to indicate availability in all circumstances. The noun “application” is an appropriate generic word to use when speaking both of Court proceedings and Commission proceedings. In any event, assuming that an appellant may be treated as an applicant and an appeal may be treated as an application, Golden Video Pty Ltd was the party who brought the application. An applicant may recover costs under s. 335 only where in an application for reinstatement the other party caused costs to be incurred because of an unreasonable act or omission connected with the conduct of the application. Plainly, I am not dealing with an application for reinstatement.

I dismiss the application.

I dismiss the application for professional costs.

I consider that s. 331(c) does authorise the award of expenses other than professional costs, eg filing fees. The suspicion is that the amounts involved here would be so small as not to warrant pursuit. Lest I be wrong in that, I reserve the question of expenses pursuant to s. 331(c).

Dated this eleventh day of July, 2000.

D.R. HALL, President.

Appearances:-

Mr G. Allen of Counsel instructed by Livingstones (Australia).

Mr S. Habermann for and on behalf of the Chief Executive, Department of Employment, Training and Industrial Relations.

Released: 11 July 2000

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 278 – unpaid wages

Department of Employment, Training and Industrial Relations AND Hunter Security Services Pty Ltd
(Nos. W48, W49, W50 and W51 of 2000)

COMMISSIONER BLOOMFIELD

3 July 2000

Unpaid Wages – Security Industry – Witness evidence from Industrial Inspectors – Admissibility of Evidence – Alleged failure to warn Respondent that it could refuse to produce wages records if it had a lawful excuse – No obligation to warn Respondent – Evidence admitted – Arbitrated Matter – Applicant failed to establish that the Security Industry (Contractors) Award–State applied to Respondent *and* that the employees were performing work which is covered by that Award – Applications dismissed.

REPORT ON DECISION (as edited)

The matters before the Commission were applications by Mr Cary Owen O'Brien, of the Department of Employment, Training and Industrial Relations for Orders under s. 278 of the Act that Hunter Security Services Pty Ltd pay unpaid wages to Andrew Tattis (W48 of 2000), Richard Tyzack (W49 of 2000), Rocco Masci (W50 of 2000) and Chris Fletcher (W51 of 2000).

A "Response to Application" for all four applications was filed by Freehill Hollingdale & Page on behalf of the Respondent on 27 June 2000 and stated *inter alia*:-

"Take notice that I, Michael Coonan of Freehill Hollingdale & Page being authorised to represent Hunter Security Services Pty Ltd states that:

1. The Respondent reiterates its position before Commissioner Fisher that the onus is on the applicant to prove each element of its case.
2. The Respondent will not call any witness evidence. The Respondent will put the applicant to proof on each element of the claim.
3. The Respondent states that the Statements and evidence upon which the Applicant intends to rely are not admissible as they were improperly obtained due to the failure of the Inspectors to comply with Section 351(1)(c) of the Act including the obligation to inform the Respondent of his rights under Sections 354(5) and 356(4) of the Act."

At the hearing before Commissioner Bloomfield on 3 July 2000 Mr C. O'Brien appeared for the Department of Employment, Training and Industrial Relations and Mr M. Coonan, of Freehill Hollingdale & Page, appeared with Mr A. Hunter for Hunter Security Services Pty Ltd.

Evidence was taken from Mr Colin John O'Neill and Mr Gary Krishna, Industrial Inspectors from the Department of Employment, Training and Industrial Relations. After the evidence was taken Mr Coonan applied for the evidence of both Mr O'Neill and Mr Krishna to be struck out on the basis that the evidence established that the inspectors had not warned Mr Hunter that he could decline to provide time and wages records if he had a lawful excuse.

In giving his decision from the Bench in relation to that matter Commissioner Bloomfield said:-

"The applications before the Commission today are made pursuant to s. 278 of the *Industrial Relations Act 1999* by Mr Carey Owen O'Brien. It is clear under that section, particularly s. 278(3)(e) that, as an inspector, Mr O'Brien is entitled to bring the applications.

It is also clear from s. 278(8) that on hearing the application the Commission must act in accordance with section 320.

It is clear, on a combined reading of s. 320(1) and (2) that the Commission is not bound by technicalities, legal forms or rule of evidence when dealing with s. 278 applications. That is not to say that the Rules of Evidence or natural justice are simply thrown out. The rules would continue to be relevant – particularly those dealing with rights of natural justice.

It is also clear from s. 320(5) that, in making any decision, the Commission must, at all times, be aware of the objects of the Act.

It is clear that the Act requires employers to pay its employees in accordance with the provisions of any applicable industrial instrument that might cover those employees.

It is also clear, in order to ensure that that obligation can be policed, that employers are required to keep a series of records pursuant to s. 366 of the Act.

It is equally clear that s. 371 of the Act allows inspectors to inspect the time and wages records which the employer is required to keep pursuant to the earlier section.

Having regard to the issues that have been aired during the course of today by Mr Coonan, it is particularly relevant that the provisions of s. 371 do not contain any requirement for the inspector to warn an employer about the potential consequences of a failure to produce a record if the inspector requires the employer to produce that record. In that regard, the provisions of s. 371 should be compared, for example, to the provisions of s. 356, in particular subsection (2).

Mr Coonan, on behalf of his client, has complained that the material obtained by Mr O'Neill should not be admitted because the respondent, in this case, was not warned that he need not produce the material which was required if he had a reasonable excuse not to produce it.

I have considered the submissions of Mr Coonan in light of the evidence which has been produced and in light of the provisions of the Act. I propose to rule to allow the material that has been advanced to be admitted and I propose to rule to allow the evidence which has been given to stand.

On my reading of the Act, s. 351 is a general provision setting out the general powers and obligations of an inspector.

Sections 353 and 354, on my hearing of the evidence, are not applicable.

Section 355 is obviously relevant. It clearly states that an inspector may require a person to produce for inspection at a reasonable time and place nominated by the inspector a document relating to employees, including, for example, a time sheet or pay sheet.

Having regard to the arguments advanced by Mr Coonan, it is particularly relevant that there is no qualification to that provision. The inspector may require the production of, for example, a time sheet or pay sheet without indicating to the employer that the employer may refuse to produce that record if the employer has a reasonable excuse.

It is also noteworthy, in my view, that s. 355 is very comparable to the provisions of s. 371.

However, s. 356 is a different provision. It indicates that an inspector may '(1)(b) require the employer or person to give the inspector information to help the inspector ascertain whether (the) Act, or a relevant industrial instrument, permit or order are being, have been or will be complied with, or should be given operation in relation to the calling.'

If s. 351(1)(c) had the meaning contended for by Mr Coonan there would be no need for a provision such as that which appears at s. 356(2).

I have had occasion to look at the explanatory notes which were produced by the Minister at the time that the Industrial Relations Bill was introduced and they say in relation to clause 356:

'Clause 356 preserves section 384 of the *Workplace Relations Act 1997* and provides the matters about which an inspector is allowed to question an employer or other person. It specifies that an inspector must warn the employer or other person that it is an offence to fail to answer such questions without reasonable excuse . . . '.

In my view, the reference to 'information', mentioned in the first line of s. 356(1)(b) is suggestive of something which is different, for example, to a document or a time sheet or something similar.

It suggests to me that in going about his or her function the inspector is permitted to ask questions of either an employer or employee(s). If the question is relevant to the inquiries which are being made, the inspector is required to advise the employer or the employee(s) of the consequences of their failure to provide the answer to the question.

The evidence does not suggest that anything like that has occurred here. The evidence suggests that the disclosure of the material was voluntary, albeit that it may have followed a discussion in which Mr O'Neill might have mentioned his 'requirements'. But it seems to me that to adopt the interpretation argued for by Mr Coonan would be to put too much fine emphasis on some obscure, unintended, technicality and thereby defeat the entire purposes of the Act.

If the inspectorate was required to warn every employer prior to an inspection that the employer could refuse to provide the time and wages records required to be kept by the Act if they had a justifiable reason, then we would find that no employer might necessarily be prepared to take the risk by providing their records.

It would be an absurd outcome if that could occur, given that the Act places an obligation on employers to keep time and wages records and permits those time and wages records to be inspected by an inspector. It would also seem to be at odds with the clear wording of s. 355 and s. 371 of the Act.

In the circumstances, Mr Coonan, I repeat, I propose to allow the material which has been advanced to remain. I also propose to allow the evidence which has been given to stand."

Following the Commission's decision on that point Mr Coonan made a submission that the respondent had no case to answer. After hearing from Mr O'Brien Commissioner Bloomfield said:-

"Whether I be right or wrong in my interpretation about the relevance of s. 320 in s. 278 proceedings it is nonetheless clear that even in a 'balance of probabilities' case it is an accepted position that an applicant must prove its case.

In this case the applicant is inviting the Commission to make two fundamental assumptions. The first assumption is that Hunter Security Services Pty Ltd is engaged in the type of work that the Security Industry (Contractors) Award – State covers. The second assumption is that each of Mr Tattis, Mr Tyzack, Mr Masci and Mr Fletcher is performing work that is covered by that Award.

Whilst there is a strong inference, from mention of the classification 'security officer' in the wages records produced, that each of the four persons is performing work which *may* be covered by the Security Industry (Contractors) Award – State there is no evidence before the Commission to support that position.

There is also no evidence before the Commission to support the contention that Hunter Security Services Pty Ltd, in respect of its engagement of these four persons, is covered by the Security Industry (Contractors) Award – State.

In the circumstances, I am left with no alternative other than to dismiss each of the four applications on the basis that the applicant has failed to establish, as is required, that the Security Industry (Contractors) Award – State applied to Hunter Security Services Pty Ltd *and* that the employees were performing work which is covered by that Award.

That having been said, it would seem from the nature of the employer's records which have been made available to the Commission that at least some of the employees may be covered by a QWA. If they are covered by a QWA then it would be necessary to look at the terms of the QWA to see whether or not there has been an underpayment.

If a QWA does not apply then it would seem that the employer may be in breach of s. 366 of the Act because the employer has failed to keep a wages record which includes (as required by s. 366(1)(c)(ii)) the name of the industrial instrument or permit under which the employee is working. I note that failure to maintain such a record leaves the employer open to a penalty of a maximum of 40 penalty points.

I think that the inspectorate needs to go away and consider the decision that has been issued as to proof. But it is clear on the material that has been presented to the Commission today that I could not find in favour of the applicant for the reasons I have outlined. With that I formally dismiss each of the four applications and adjourn the Commission.”.

Dated this third day of July, 2000.

By the Commission,
[L.S.] E. EWALD,
Industrial Registrar.

Released: 11 July 2000

Appearances:-

Mr C. O'Brien for the Department of Employment, Training and Industrial Relations.

Mr M. Coonan, of Freehill Hollingdale and Page, with Mr A. Hunter for Hunter Security Services Pty Ltd.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 74 – application for reinstatement

Stephen Wayne Stephenson AND Thiess Contractors Pty Ltd (Case No. B283 of 2000)

COMMISSIONER BLADES

7 July 2000

Unfair dismissal – Section 77 *Industrial Relations Act 1999* – Redundancy – Alleged termination invalid reason – Redundancy requested by applicant – Change of mind after decision made by Company – WorkCover certificate sought and obtained – Dismissal occurred while on WorkCover – Decision maker unaware of issue of certificate – Chosen for redundancy partly on basis of capacity or performance – Not consulted – Notice not given – Dismissal not for invalid reason – Lack of notice – Lack of consultation – Compensation

DECISION

The applicant worked for Thiess Contractors Pty Ltd on the Pacific Motorway project from his appointment on 27 April, 1999 to his dismissal on 11 February 2000. The Company claims that his position was made redundant. The applicant claims that the dismissal was harsh, unjust or unreasonable in that procedural fairness was not accorded to him, he was given no notice, was given no opportunity to respond to claims about his shortcomings, no attempt was made to assist his rehabilitation after injury suffered during his employment and that he was in fact dismissed for an invalid reason, namely temporary absence because of injury within the meaning of section 35 of the Regulation.

The applicant was injured on 27 July, 1999 when a vehicle in which he was a passenger came into collision with another vehicle. He applied for WorkCover, which was granted, but only medical expenses were ever claimed. It seems that the short periods he had off work (initially 3 – 4 days), were claimed as sick leave. Dr Abrahams, regularly used by the Company, certified him totally unfit for work from 17.11.99 to 24.11.99, then fit to return to work on 25.11.99 but “requires treatment from 24.11.99 to 15.12.99 – physio”. He took those few days as sick leave. The last certificate expired on 8 January 2000. (It would appear that the applicant has a claim for damages for personal injuries which would of course include loss of wages, pain and suffering from the Third Party Insurers of either vehicle involved in the accident).

The applicant made some assertions in his written statements on oath that he failed to substantiate. He stated he was aware that others who had been injured in the accident had been treated in the same manner as himself. He subsequently identified only one person, Shaune Russell. The respondent's evidence was not then contradicted that Mr Russell contacted the Company by letter dated 18 February 2000 after a conversation with Mr Murdock, Safety Coordinator on 8 February requesting that “if Thiess is planning to downsize the project workforce through retrenchment/redundancies that I be considered for that program”. That evidence hardly supports applicant's allegations that others were dismissed because of injury. It is more supportive of the respondent's evidence.

There was other apparently inconsistent evidence. The respondent alleges that about 8 February the applicant requested to be put on the list for a redundancy, provided he received redundancy pay. On the other hand, the applicant produced a medical certificate dated 9 February, which certified him totally unfit for work because of the July accident, for the period from 9.2.00 to 9.4.00. Those two pieces of evidence send inconsistent messages but in the end, I think there is an explanation.

Mr Stephenson denied that he sought the redundancy package, but I reject that evidence on the balance of probability. Mr Mitchell, the Rehabilitation Coordinator, said he spoke to him on either 6, 7 or 8 February after Mr Stephenson had a meeting with WorkCover Officers on site. Mr Stephenson was then not on the books of WorkCover: that is, his file was not active. Mr Mitchell said that the applicant had told him he wanted to get his neck fixed, that he did not want to quit his job because he was fearful of losing his redundancy payment but that when he did leave he intended to go back to Townsville to be closer to relatives. Mr Mitchell told him not to worry about the redundancy because he would fix it so that he would not lose it. Mr Mitchell told him to think about it for 24 hours. The following day, Mr Mitchell said the applicant told him he had decided to go.

The redundancy payment was due only to those who had been employed for more than 12 months and who did not leave voluntarily. Applicant had been employed for less than 12 months.

Mr Mitchell's evidence was corroborated by Mr Hyvonen, the General Superintendent. He confirmed that on Tuesday 8 February Mr Mitchell approached him regarding Mr Stephenson, advising him that Mr Stephenson wanted to go back to Townsville and that if people were being considered for redundancies, Mr Stephenson was prepared to go on the list on the understanding that his redundancy entitlement was protected. Mr Hyvonen said that this would have required some bending of the rules. He also confirmed that there was general knowledge around the site that Mr Stephenson wanted to return to Townsville. (There is some inconsistency with these dates but I think it unimportant).

I regard it as highly unlikely and improbable that a senior member of the Company would involve himself in some sort of conspiracy, as it must have been, had Mr Mitchell's evidence of the conversation with the applicant been a fabrication. The issues involved were not serious enough to warrant such improper conduct, if ever they could be. Mr Stephenson denies that a redundancy was ever mentioned. He said he was aware they were considering dismissal but all that was mentioned was a pension of some type, not identified further. His evidence is difficult to accept considering that Dr Abrahams' certificate in November had certified the applicant fit for work, subject only to physio. Mr Stephenson did not identify any particular type of pension that might be appropriate.

I have no doubt that a genuine decision was made in January to downsize the workforce. Some staff were terminated in early January. There was a meeting between the General Superintendent and the Project's Traffic Supervisor on 2 February where it was identified that the size of the crew for which Mr Stephenson worked was surplus to operational requirements and that 6 and not 8 could carry out the work efficiently. It was at that meeting that Mr Stephenson was identified as one of the two employees being considered.

It was Company Policy that anyone on WorkCover would not be made redundant. The Policy was to keep the employee at work. I accept this evidence. It was corroborated by the fact that the Company called WorkCover to the site on 8 February, in company with a Physiotherapist to confirm the status of seven or eight workers. Mr Stephenson was interviewed by WorkCover. Mr Mitchell was not present at that interview but was advised by WorkCover that Mr Stephenson was not currently considered injured or under treatment. I accept the evidence of Mr Mitchell. Mr Mitchell then had the conversation with Mr Stephenson about redundancy. I consider that the evidence that the Company called WorkCover to the site to establish what that status of employees was, to have been inconsistent with the allegation that the applicant, and other employees, had been dismissed because of the receipt of WorkCover or because of injury.

The applicant had a conversation with Ms Ridley of WorkCover who told him that he could not be helped unless he was on full WorkCover. He then visited a Dr Peter Hawes on 9 February who issued a certificate for two months. The Certificate asserts that Dr Hawes first saw Mr Stephenson on 9 February, a fact which was inconsistent with Mr Stephenson's evidence wherein he stated he had seen Dr Hawes twice before. The certificate was of course inconsistent with the certificate of Dr Abrahams. Needless to say the applicant stated that he was not happy with the certificate of Dr Abrahams who did not take into account that he might require time off work to recover. That may well have been correct because the Physiotherapist confirms that the applicant complained to her of ongoing problems.

On the probabilities, I am satisfied that even though applicant sought the certificate on 9 February, he did tell Mr Mitchell that he wanted a redundancy provided the redundancy payment was made to him. I am further satisfied that after that conversation and after the interview with WorkCover representatives at about that time, he changed his mind and decided to obtain a WorkCover certificate as apparently suggested by Ms Ridley and perhaps also by the Physiotherapist, Ms Renison.

There was a written report supplied to the company on 10 February by Ms Renison. That report says that "traffic duties are not longer available for Stephen as the company is downsizing". It can be inferred that redundancies were either strongly rumoured or had been discussed with her. It is some added support for the allegation that the applicant was concerned about losing his redundancy payment if he left voluntarily as against the alternative proposition that it was a pension that was spoken of.

Some further evidence which tends to support the evidence of the Company that the applicant sought the redundancy was that he was paid a redundancy payment to which he would otherwise have not been entitled, had there not been some "bending of the rules" as referred to by Mr Hyvonen.

I accept the evidence that a decision was made on 2 February that the crew was to be downsized by two and the applicant had been identified as one of those. The ultimate decision was that of Mr Johnson the Construction Manager. The names of the employees were forwarded to Mr Johnson for formal approval and it was Mr Johnson who determined that some personnel on the list were WorkCover recipients and their names were deleted from the list. The list was supplied to Mr Johnson about 3 or 4 February. He would later have been advised that Mr Stephenson's WorkCover file was non-active after the WorkCover visit. Mr Johnson's decision was made on 11 February, effective that day. The fact of the issue of a new WorkCover certificate on 9 February would appear not to have been communicated to him. I am unable to conclude anything sinister in these happenings which appear to me to have been an unfortunate coincidence, probably assisted by Mr Stephenson's request to be considered for redundancy. I am satisfied on the balance of probabilities that the applicant was not dismissed because he was in receipt of WorkCover or because of injury or absence.

Whilst the applicant denied saying at any time that he had decided to leave the organisation, there was evidence that he had spoken about leaving and going back to Townsville. This evidence came from Mr Pitzinger and Mr Hyvonen, both senior employees of the Company and I am satisfied of its veracity.

The applicant handed in the certificate of 9 February to Mr Daly who was aware applicant had been earmarked for retrenchment and who attempted to speak with him about the certificate. However, according to Mr Daly, the applicant, who had his wife in the car waiting, said he had to go. I accept that evidence on the probabilities. Whilst that evidence was disputed, the applicant did at least confirm that his wife was in the vehicle waiting. I thought the evidence of Mr Daly to have been more likely. Mr Daly then went on holidays and Mr Murdock, who took over, endeavoured to contact Mr Stephenson. He could not do so. Further efforts were made to contact Mr Stephenson regarding the dismissal to no avail. The dismissal letter was subsequently posted to him by registered mail. Mr Daly was unaware of when Mr Johnson finally signed off on the redundancies. Mr Stephenson, when he obtained the certificate on 9 February was not to know that a decision was to be made by the Company on 11 February.

Section 77 of the *Industrial Relations Act 1999* provides that in deciding whether a dismissal is harsh, unjust or unreasonable, the commission must consider :-

- whether the employee was notified of the reason for dismissal;
- whether the dismissal related to the operational requirements of the employer's undertaking or the employee's conduct, capacity or performance;
- if the dismissal related to the conduct, capacity or performance, whether the employee had been warned about the conduct, capacity or performance or whether the employee was given an opportunity to respond to the allegation;
- any other matters the commission considers relevant.

I am satisfied that the applicant was notified of the dismissal only by registered letter which was received about a week after the dismissal. He was paid in lieu of notice. In *Liu v. Windsor Smith* AIRC Print Q3462, relied upon by learned Counsel, the Full Bench expressed concerns at lack of notice even where the Company explained its failure by reference to its fear of sabotage and/or violence. Such fears were not present in this case. The expressed reason for the failure to give notice to any employee was the effect on productivity and attitudes in the work place, the significant cost of capital tied up in plant and machinery and the unique nature of the construction industry. Those reasons would appear to be insufficient, especially when considering the impact on this employee and his relationship with WorkCover. There is no evidence before the Commission that there was any agreement by the employees or a relevant Union to a waiver of notice.

I am satisfied that the dismissal related to the operational requirements of the employer's undertaking. There were ten other redundancies, none of whom were receiving WorkCover benefits at the time.

The criteria used by the Company to establish those to be made redundant included - a commitment to complete the project; a knowledge of skills necessary for the job; possession of lateral thinking; skills of the individual; team work; ability to operate unsupervised. I accept on the probabilities that the applicant was chosen more so because of what were mental attributes rather than physical attributes. No complaints had been made to him about performance and no warnings had been issued to him.

I am satisfied that the injury or the absence from work played no part in the reasons for his dismissal. He was however, not consulted about the redundancy and was given no opportunity to address his alleged shortcomings.

A complaint was made about the Company's failure to institute rehabilitation procedures for the applicant. However, it seems to me that the applicant should accept some responsibility for his own rehabilitation. He told the Commission that he had some physiotherapy before 8 February, however he told the Physiotherapist that he had no treatment since the accident, although this had been recommended by his Doctor. He told the Physiotherapist that he had not had any treatment because he was concerned about taking time off work and had a bad experience with his initial physiotherapy treatment. As far as the Company was concerned, time off work was never a problem. When the applicant stated that he wanted time off because his neck was sore from physiotherapy, he was sent to Dr Abrahams who issued the certificate in November, giving him a number of days off, certifying him fit for work from 25.11.99 subject to physiotherapy. There is other evidence that the applicant ignored the advice to undertake physiotherapy. When it was discussed with Mr Mitchell about his taking a redundancy, he indicated he still had a sore neck and Mr Mitchell told him that it would be unlikely his neck would be fixed without physio. The applicant appeared to me to have been unwilling to undertake the necessary recommended treatment and this prolonged the injury. This was not the fault of the Company.

This is somewhat of an unusual case. I am satisfied that the applicant was chosen for a genuine redundancy, partly because it was his desire. After communication of that desire to the Company, and after his discussion with officers of WorkCover, he probably had second thoughts about redundancy and he attended upon a Doctor and was given two months off work. He handed the Certificate in to the Company unaware that a decision had already been made to terminate his services in accordance with his expressed wishes. That Certificate had been forwarded on to the Company's Office prior to termination, but does not seem to have been brought to the attention of Mr Johnson. Had the Company carried out a consultation process with the applicant before selection and/or termination, the decision maker would have been aware of the issue of that certificate before the decision was put into operation. Part of the reason for his selection comprised capacity or performance issues. The applicant was not consulted about these and was given no opportunity to defend himself against those assessments. The following passage in *Windsor Smith* was also relied upon by learned Counsel:-

"We take the true position to be that where employment is terminated on redundancy grounds it is a question of fact whether the employees selected for redundancy were selected for a reason related to the operational requirements of the employer's business, for a reason related to the employee's capacity or conduct, or for reasons of both kinds. Where the reason for selection is related solely to the operational requirements of the employer's business, it is not necessarily significant if no opportunity was given to employees to comment on the basis for their selection. Where the reason for selection is related to the capacity or conduct of the employees or includes such a reason and no opportunity is given to the employees to respond to that reason, that is a factor which the Commission must take into account."

That decision involved similar legislation in the Federal Act. The *Termination of Employment, Introduction of Changes, Redundancy Policy* of the Queensland Industrial Relations Commission (1987) 30 QGIG 1119 in clause C provides for the employers to hold discussions with the employees directly affected by redundancy terminations. There is an exemption at paragraph 10 where the employee has less than one year's service but in that instance, the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity and to take such steps as may be reasonable to facilitate the obtaining of suitable alternative employment. That was not done. To allow an employee to think, through rumour, he is being made redundant does not qualify.

Although the dismissal was based on the operational requirements, the selection was partly based on the applicant's conduct, capacity and performance in circumstances where he was given no opportunity to defend himself against those allegations. I am satisfied on the whole of the evidence that the dismissal was harsh and unjust. There was a lack of reasonable and proper consultation duly respectful of the status of employees as other than industrial serfs - see Madgwick J in *Lloyd v. R J Gilbertson (Qld) Pty Ltd* (unreported Industrial Relations Court of Australia No. 252 of 1996).

Reinstatement is not sought and is probably impracticable because the project is not that far off its conclusion. An award of compensation is sought. The applicant has been without work for five months but has been receiving Social Security benefits and I take that receipt of benefits into account. He received no payments of WorkCover because of the dismissal and his belief that his dismissal affected his WorkCover entitlement. I take into consideration that his termination was based partly upon his own expressed wishes, albeit a change of mind occurring. I also take into account that had the decision maker in the Company been aware of the issue of the WorkCover certificate, the applicant would have retained his employment for at least the next two months. I take into account that the applicant's employment may not have continued much beyond the expiration of that certificate. Having been selected once for redundancy, it is not unreasonable to expect he would have been selected again at the next batch some time after his WorkCover certificate expired. I take into account that the applicant was paid a redundancy payment and notice.

In all of the circumstances and in addition to the benefits already received, I consider that two months compensation to be appropriate.

I have found that the pay slip (Exhibit 4) to be unintelligible compared to the submissions by learned Counsel that applicant's pre-termination income was \$1220 gross per week. Whilst that submission was not challenged, the pay slip is evidence of a rate of \$15.8374 per hour. I leave it to the parties to determine the quantum of two months compensation and if that cannot be achieved, the matter will have to be referred back to the Commission. The amount of two months compensation subject to the usual taxation requirements is to be paid to the applicant.

The Commission orders accordingly.

B.J. BLADES, Commissioner.

Appearances:-

Mr R. Reed, instructed by Ms E. Chittenden of Stephens and Tozer, for the applicant.

Mr T. Coombs, with him Ms S. Pyziakos and Mr G. Arnold, of the Queensland Chamber of Commerce and Industry Limited Industrial Organisation of Employers, for Thiess Contractors Pty Ltd.

Released: 7 July 2000

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - s. 74 - application for reinstatement

Dianne Pannell AND Alan Taylor and Associates (No. B1485 of 1999)

COMMISSIONER BALDWIN

11 July 2000

Application for reinstatement - Applicant conveyancing clerk for 32 years - Workload increased with additional duties - Complaints received by respondent - Assistance with backlog of work given by respondent - Relationship broken down due to applicant's inability to master accounting package - Dismissed due to unsatisfactory work performance - Termination predictable and appropriate - Application dismissed.

DECISION

This is an application for reinstatement (and/or compensation) by Ms Dianne Pannell in the employ of Alan Taylor & Associates, Solicitors.

The respondent employed the applicant as a full-time Conveyancing Clerk on 4 January 1999, until it terminated her employment with a letter dated 19 October 1999. The letter outlined the background to its decision and mentioned that the issue of the applicant's unsatisfactory performance had been an ongoing concern to it. An extract from the letter read:-

"Accordingly, I have decided that the best thing is just to give you notice, and I now give you a week's notice of termination. We are terminating on the grounds of your unsatisfactory work performance and that you are effectively, unsuitable for the job.";

and later:-

"The tragedy of it all is that you are a good Conveyancer and have a real ability to deal with people effectively. For some reason, your performance with us has been well short of anything which is reasonable or acceptable and in the interests of our good name I have no alternative but to just dismiss you.".

From the applicant's perspective she had been working with various legal firms as a Conveyancing Clerk for 32 years. Mr Taylor had phoned her and offered her the position. After commencing in the position, the applicant had found that she had been expected to perform tasks, which in her experience, were not usually part of the Conveyancing Clerk role. She had found working for Mr Taylor "extremely frustrating" as she was "extremely busy and received little or no support."

The applicant's evidence was that when her office had been moved, Mr Taylor had left this task entirely to her to organise along with her ongoing work. She had enlisted her husband's help to achieve the move. Subsequently, she had found her workload increased with additional duties. Again, the applicant's evidence was that she had discussed this with Mr Taylor but that he offered no assistance preferring to criticise and belittle her. The applicant submitted that she was determined not to let Mr Taylor's attitude affect her.

Some time later, the applicant and Mr Taylor discussed a plan to cut through the work backlog. The applicant's evidence was as follows:-

"I did not want to have someone else to be brought in to "clean up Dee's mess" because I was afraid of my reputation being tarnished."

Subsequently, to address the backlog, the Applicant started work 45 minutes earlier each day and as work continued to be extremely busy, she enlisted the assistance of her friend, Joan Day. Ms Day had worked for Mr Taylor previously.

Mr Taylor informed the applicant that he had received complaints from clients but offered her no details. In evidence she said:-

"I felt that I had people pushing me from all directions and I did not know where to turn.";

and

"During the months of August and September 1999, I had changed considerably. I felt that I was not my usual self any more."

The events which then led to her dismissal included:-

- A curt Memo from Mr Taylor detailing performance issues;
- An episode where Jeff Conroy had told her:-
"Well, we want you to leave". I asked "When?" he shrugged and said "Whenever".
- A visit to her doctor in a state of distress that resulted in the doctor issuing a Medical Certificate until 19 November 1999;
- The applicant sending a fax explaining her illness to Mr Taylor;
- Mr Taylor leaving a message on her message bank informing her that her employment was terminated and finally;
- On 20 October 1999, the applicant received a letter of termination dated 19 October 1999.

Mr Taylor for the respondent stated that he had practiced law in Queensland since about 1989. His practice encompassed several small offices employing approximately 12 people. From his perspective the background to the applicant's employment was that the position required an experienced, competent, Conveyancing Clerk. He had required someone who could work without supervision and could handle matters from the first client contact through to the transaction's end. He had explained to the applicant during the initial interview that she would be expected to familiarise herself with the computerised accounting package such that she could perform her own data entry work.

Mr Taylor acknowledged being well aware of the difficulties he had experienced in successfully filling the Conveyancing Clerk role. His statement says:-

"37 . . . experienced conveyancers are hard to come by and I liked Dee.";

"51 We have been sympathetic and accommodating . . .";

"59 Conveyancers are hard to come by and not readily dismissed. At all times I have tried to be constructive with Dee and her problems because I have been conscious of the difficulty of finding a replacement for her . . .".

Mr Taylor submitted that he had talked regularly with the applicant and had on a number of occasions assisted her to clear a backlog of work. He had counselled her regarding the implications of her abandoning the established and required systems in favour of her own manual procedures. He agreed that his observation was that "she was failing to come to grips with our accounting system". By way of assistance Mr Taylor had brought the applicant into his office and demonstrated the required data entry procedures whilst explaining to her what he was doing and why.

By June 1999, Mr Taylor again became aware of a backlog of work and personally assisted by bringing files up to date and writing letters to clients apologising for the delays.

In August, to assist with the viability of his Building Society Agency at Palmwoods, the conveyancing department was shifted. Mr Taylor accepts that the applicant and her husband assumed responsibility for the move and that the office was "very busy".

By October 1999, when Mr Taylor examined the status of the work at the applicant's office, he found many important aspects of the job neglected. Again he directed his efforts towards rectifying the situation with the applicant. He acquiesced to her request that she be given an opportunity to sort the files out by working additional hours. However, he submits that in the end he fixed most of the files himself on his weekends and produced more letters of apology.

With respect to the level of difficulty involved in mastering the computerised accounting system, Ms Perren in giving evidence for the Respondent, said:-

"Basically its just common sense. Once you know the guidelines as to what you're supposed to do, and what keys you're supposed to hit, essentially, its pretty easy."

Commissioner:-

"And I guess you'd be a pretty confident sort of person, that you would have approached it, thinking that you'd be able to handle it?"

Ms Perren:-

"Yes. I must confess that in the first couple of days there, I chucked a hissy fit, and thought, Oh my God I'm not going to be able to handle this, but after I got over that little twitch I went onwards and upwards."

The background to the position had been that for a period of five (5) years from 1993 until her retirement because of ill health, another former employee, Ms Lyndal Judge had held the Conveyancing Clerk position. It was generally accepted that Ms Judge had been extremely effective in the role. The evidence was that after Ms Judge's departure, and both before and after the applicant's engagement various individuals had tried unsuccessfully to attain the required work standard.

With that background, I found the evidence of the position's present incumbent, Ms Heather Perren, credible. She presented as a confident, competent person who was on top of the work.

Conclusions:-

On the evidence of both parties I find that the applicant had failed in the position.

In summary, the applicant blamed Mr Taylor's approach as well as his management style and organisational methods for her failure in the position. In the applicant's view these factors led him to have unreasonable and unrealistic expectations of her in the circumstances. The applicant also submitted that the way in which the termination was carried out made it harsh, unjust and unreasonable.

I accepted the applicant's record of competence in similar roles with other firms over more than 32 years. Also, I regarded it as significant that the applicant had gained employment with another firm of Solicitors to fill a Conveyancing Clerk role soon after leaving Mr Taylor's employ. I note that Mr Taylor's Letter of Termination also alluded to the fact that this was a position the applicant was more than qualified to handle, and describes the decision he ultimately felt compelled to make as a "tragedy".

The evidence was that the applicant had a considerable burden to bear in the manner of a troubled daughter that had resulted in her own custody of her granddaughter. The applicant's evidence was that she handled these personal matters in her stride without their effects spilling over onto her work abilities and responsibilities. Mr Taylor's evidence was that this was not the case. In his view it did impact on her ability to perform in the job. For myself, I expect that there is always a limit to the level of stress one might endure before personal judgement becomes subject to impairment.

As to my conclusions about what factors led to the applicant's failure in the position, I find that the applicant's needs and expectations were a mismatch with Mr Taylor's needs and expectations. I do however, accept that Mr Taylor outlined his needs and expectations in sufficient detail to the applicant at the commencement of her employment such that in ordinary circumstances, she might have been expected to understand him. On the evidence, the duties entailed in the role of Conveyancing Clerk at Alan Taylor and Associates, were more extensive than at other firms. After a lifetime of Conveyancing practices, it was understandably difficult for the applicant to adapt herself to an environment where she was effectively on her own with few support services. However, I find that, understanding this fact, she accepted the position because, for her own reasons, the location suited her.

Having regard to Ms Perren's evidence outlined earlier, I have concluded that the applicant's attitude to the requirement that she "familiarise herself with the accounting package" was one of resistance which may well have stemmed from her own crisis of confidence about her abilities to learn the package. In any event the evidence was clear that the applicant failed to master the package. This was despite Mr Taylor's attempts to introduce her to it and to later show her how he handled it with explanations as to why he followed the various steps.

I found Mr Taylor's style to be a task oriented one. Although he worked weekends to assist clear the applicant's work backlogs on a number of occasions, I was not persuaded on the evidence that he had been, as he himself suggested, "sympathetic and accommodating". To the contrary, I was unable to find evidence of such behaviour. Where accommodations had been made I concluded they had been made through acquiescence in an appreciation of how difficult it would be to replace the applicant. In other words, I found such behaviour to be entirely self-interested. In light of whatever personal difficulties the applicant was contending with, perhaps some compassion expressed for her situation may have made the difference between success and failure in the job. Having said this, I have not found that Mr Taylor's approach was in any way an unacceptable approach. To reiterate my earlier finding, in my view it did not match the applicant's needs.

Although the applicant contended that she had been terminated by Mr Taylor's message on her answering machine, the evidence was that termination had been discussed with her the day before and it was only the details of how this would be effected that needed to be clarified. There was evidence of Mr Taylor's expressions of dissatisfaction with the applicant throughout her employment. I accepted his evidence that it appeared to him that the applicant had probably never coped with the job. This fact seemed self-evident to me, given her agreed inability to learn the computer package that underpinned the administration of her position.

In my view the relationship had broken down with the applicant's inability to learn the accounting package. Mr Taylor had detailed his concerns such that the applicant should have been aware that her position was in jeopardy if she did not rectify the issues raised. I find, that Mr Taylor, for his own

reasons and in his own interests, was slow to terminate the applicant's employment. In any event, he only did so when it became obvious to him that real damage was being done to the firm's reputation through the applicant's inability to cope with the workload.

In keeping with my earlier findings that Mr Taylor's approach lacked the attributes of "sympathy and accommodation" in respect of the applicant, the means by which the termination was completed was entirely in keeping with his overall approach. However, harshly done by the applicant may have felt, in my view her termination was predictable and appropriate in all the circumstances. On a technical level, I was unable to find the termination procedures adopted by the respondent in breach of s. 77 of the *Industrial Relations Act 1999*, nor was I able to find the outcome harsh, unjust or unreasonable in the terms contemplated in the Act.

I therefore dismiss the application.

The Commission orders accordingly.

D.B. BALDWIN, Commissioner.

Released: 11 July 2000

Appearances:-

Mr A.J. Carroll, of Carroll & Associates for the applicant.

Mr J. Conroy of Alan Taylor & Associates for the respondent.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 277 – application for injunction

Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland AND Mount Isa Mines Limited and The Australian Workers' Union of Employees, Queensland (No. B704 of 2000)

COMMISSIONER BALDWIN

6 July 2000

Decision on preliminary point of the applicant's legal standing – Finding for the applicant – Existing CA's require their participation as a party – Bound by award and s. 45 order – Not appropriate to exercise discretion in terms of s.331 – Unconvinced that in terms of s. 277 no prospect of any contravention of any section of the Act in view.

DECISION

This matter first came before me on 26 May 2000, when the applicant sought leave to make an application for interim injunctive relief pending a final determination of the matter. The concern was that MIM Holdings Limited (MIM) not proceed to circulate to segments of its workforce, a proposed Agreement that did not include the applicant, Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland (AMWU) as a party. The applicant submitted that such action was in contravention of the provision of s. 156 of the *Industrial Relations Act of 1999*.

Mr Murdoch for MIM argued that the matter "should not proceed past first base, (a) because of lack of legal standing in the applicant, and (b) because there's a very substantial case why, as a matter of discretion, you would not proceed under section 331.". Mr Herbert for The Australian Workers' Union of Employees, Queensland (AWU), argued a similar position. He said "this union does not have the right to industrially represent the interests of the persons in respect of whom they are now seeking injunctive relief. He referred the Commission to a s. 45 order of the Full Bench of the Commission that denies them the capacity to bring an application of this kind. Further, he stated that the application could have no purpose other than to represent the industrial interests of persons intended to be covered by the Agreements.

The parties agreed that the applicant had a right to be heard on the issue of their standing and the matter next came before me on 22 June 2000. It was agreed that the AWU be made a party. On 28 June 2000, I invited the parties to make further submissions on an issue it seemed to me had not previously been addressed and the parties made their further submissions that afternoon. Following this an interim injunction was granted in favour of the AMWU.

President Hall, on appeal by MIM and AWU set aside the interim injunction and remitted the matter to me to be heard and determined according to law.

On the material before me, the Award makes provision for preference between Unions at cl. 14(11). Also, the s. 45 Order created Representational Rights in line with this preference clause. Further, the three 1996 CA's recognised and incorporated the s. 45 Order but made all three parties the parties to all three (3) CA's.

After hearing the submissions on the preliminary matter I said that I had difficulty in accepting that the matter at issue was not the representational rights of the respective Unions. However, in reviewing the material, I was persuaded by the applicant's assurances that this was not about representational rights. They asserted it was about their right to be a party to the new Agreements under s. 156. On perusal of the existing Agreements, I noted that each CA at cl. 1.4 indicated an expiry date of 31 August 2000. At cl. 1.10 each states "the parties will commence work towards the extension or replacement of this Agreement three (3) months prior to the expiry of this Agreement."

I was not persuaded by Mr Murdoch's interpretation of the clause. Rather, I came to the view that the Agreement anticipated the parties to the existing Agreement would work together towards a replacement Agreement. I was of the view that the AMWU having been a party to the existing Agreement without representational rights could argue that they rightly expected they would continue to be a party under that circumstance in any replacement Agreement. Having regard to this finding, together with the fact that the AMWU is bound by the Award, and the s. 45 Order, I find that the AMWU has standing to come before the Commission in this matter.

It is further my conclusion that on the evidence before me, it is not an appropriate matter for the exercise of my discretion in terms of s. 331, that the matter not be heard.

I also find the argument that, in terms of s. 277, there was no prospect of any contravention of any section of the Act in view to be unconvincing.

Having regard to my findings on the preliminary points, I now invite submissions on the substantive application.

Dated this sixth day of July, 2000.

D.B. BALDWIN, Commissioner.

Appearances:-
Mr S. Reidy of Reidy & Tonkin, for the Automotive, Metals Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland.
Mr J. Murdoch, with him Mr N. O'Connor, on behalf of MIM Holdings Limited.
Mr A. Herbert, with him Mr B. Swan, on behalf of The Australian Workers' Union of Employees, Queensland.

Released: 6 July 2000

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 278 – application for orders

Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees AND National Cash Carriers Pty Ltd (W8 of 2000)

COMMISSIONER EDWARDS

5 June 2000

REPORT ON DECISION (as edited)

In giving his decision from the Bench on 5 June 2000, Commissioner Edwards stated:-

“The Commission has received evidence from Mr John Platten and from Mr Colin Struthers of the Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees. Consideration has been given to all factors contained in their affidavits. The Commission granted the application to proceed *ex parte* in accordance with the provisions of s. 329 of the *Industrial Relations Act 1999*.

On consideration of the evidence and all other factors, the Commission orders that National Cash Carriers Pty Ltd pay the amount of \$2,514.65 to Mr John Platten in accordance with the application as amended and filed on 22 March 2000.

The Commission orders accordingly.”.

Dated this fifth day of June, 2000.

By the Commission,
[L.S.] E. EWALD,
Industrial Registrar.

Appearances:-
Mr J. Martin of the Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees.

Released: 12 July 2000

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 278 – application for orders

Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees AND Gabriel Fallabella and/or Digabriele Family Management Trust (W42 of 2000)

COMMISSIONER EDWARDS

13 June 2000

REPORT ON DECISION (as edited)

In giving his decision from the Bench on 13 June 2000, Commissioner Edwards stated:-

“In accordance with the provisions of the *Industrial Relations Act 1999* the Commission accepts that the directions order has been served and accordingly the Commission, as indicated on previous occasions, is prepared to proceed even though there is no appearance on behalf of the respondent.

The Commission has been provided with documentation and has had the benefit of evidence, which verifies the details outlined in the application. On consideration of the evidence, the submissions, and the schedule attached to the application as amended by the document filed on 1 June 2000, the Commission orders that the respondent pay to Wayne Champs the amounts as set out in the schedule totalling \$16,601.61.

As outlined by Mr Martin, the amount so determined is a conservative estimate. The Commission accepts the submissions and the evidence that such is a conservative estimation of the amount owing.

In view of all the factors and in terms of the provisions of the *Industrial Relations Act 1999*, the Commission orders that the amount of \$16,601.61 be paid by the respondent employer as named in the amended application to employee, Mr Wayne Champs.

The Commission directs that such amount be paid within 21 days of the date of this hearing. Should a formal order be required the applicant union may apply to the Industrial Registrar for such order.

The Commission orders accordingly.”.

Dated this thirteenth day of June, 2000.

By the Commission,
[L.S.] E. EWALD,
Industrial Registrar.

Appearances:-
Mr J. Martin of the Australian Liquor, Hospitality and Miscellaneous
Workers Union, Queensland Branch, Union of Employees.

Released: 12 July 2000

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QUEENSLAND INDUSTRIAL REGISTRAR

Industrial Relations Act 1999 – s. 482 – arrangement for conduct of elections

Agforce Queensland Industrial Union of Employers (No. Q20 of 2000)

ACTING DEPUTY REGISTRAR SCOTT-HOLLAND

3 July 2000

Conduct of Election – Reason for Election – Prescribed Information – Rule Changes – Method of Election – Electoral Commission to Conduct Election.

DECISION

On 22 June and 30 June 2000, Agforce Queensland Industrial Union of Employers lodged with my Office under section 481 of the *Industrial Relations Act 1999*, the information as prescribed in section 53 of the *Industrial Organisations Regulation 1997* and supporting material in relation to its request for the conduct of an election by the Electoral Commission of Queensland for the following positions:-

<i>Office</i>	<i>Number of Positions</i>	<i>Method of Voting</i>
AGFORCE COUNCIL		
General President	1	Direct Vote by all Members
Vice-President	1	
Vice-President/Treasurer	1	
Council Member – Commodity Council Presidents		Direct Vote of Members of each Commodity Council (Rule 26.1)
Cattle Council	1	
Sheep and Wool Council	1	
Grains Council	1	
Council Member – Regional Representative		Direct Vote of Members of each Region (Rule 26.1)
Region A	5	
Region B	4	
Region C	5	
Region D	3	
Region E	2	
REGIONAL COUNCILS		
Regional President	1 for each Region	Direct Vote of Members of each Region
Regional Vice-President	1 for each Region	
Regional Vice-President/Treasurer	1 for each Region	
Regional Council Member		Direct Vote of Members of each Region
Region A	31	
Region B	21	
Region C	28	
Region D	24	
Region E	10	

Regions

The boundaries of the various regions have been determined by the Organisation. The Regional Councils have decided that the number of Regional Council Members is to be based on 1 person from each of the Branches within the particular Regions as follows:-

Region A: Agforce Far North Qld, Aramac, Barcaldine, Blackall, Boulia, Bowen, Burke Town, Charters Towers, Chillagoe, Cloncurry, Daintree, Georgetown, Hughenden, Ilfracombe, Ingham, Julia Creek, Longreach, Lower Burdekin, McKinlay, Mt Isa, Muttaborra, Nelia, Peninsula, Proserpine, Richmond, Stonehenge, Southern Cape York Peninsula, Townsville, Upper Burdekin, Winton, Yaraka. (Total 31 Branches).

Region B: Alpha/Jerico, Anakie, Belyando, Biloela, Blackwater, Calliope, Capella, Dingo, Emerald, Gindie/Fernlees, Gin Gin, Isaac/McKenzie River, Kilkummin, Mackay, Moura & District, Mt Coolon/Belyando Crossing, Nebo, Rockhampton, Rolleston, Springsure, Theodore. (Total 21 Branches).

Region C: Beaudesert, Bongeen, Brookstead, Cecil Plains, Clifton, Crows Nest, Dalby, Durong, Esk/Kilcoy, Fassifern, Central Burnett, Kilkivan/Cooloola, Jandowae, Karara, Kingaroy, Lockyer Valley, Lowood, Millmeran, Monto, Mundubbera/Eidsvold, Malu/Oakey, Pittsworth, Stanthorpe, Texas, Tiara/Woocoo, Toowoomba, Warwick, Yarraman. (Total 28 Branches).

Region D: Bendemere, Boolba, Chinchilla, Dunkeld, Eumamurrin, Glenmorgan, Goondiwindi, Hannaford/The Gums, Hebel, Inglestone/Meandarra/Flinton, Injune, Miles, Mitchell, Moonie, Muckadilla, Roma, Surat, Talwood/Bungunya, Tara, Taroom, Thallon, Toobeah, Wandoan, Yelarbon. (Total 24 Branches).

Region E: Augathella, Charleville, Cunnamulla, Lower Nebine, Lower Widgee, Morven, Quilpie, Tambo, Thargomindah, Wyandra. (Total 10 Branches).

Reason for Election

The Organisation advises that the term of office for the above named positions has expired.

Rule Changes

Recent changes to the Organisation's Rules specify that to nominate for the positions of General President, Vice President and Vice President/Treasurer, persons would have to have served on the previous year's Agforce Council. (Rule 26.1(2)(c)).

Timing of Election

No date is prescribed by the Rules for the opening of nominations to assist in determining the prescribed date for the filing of prescribed information and, after reading all rules, a date is not definable by me.

Taking into account the indefinable time frame for the opening of nominations for the purpose of lodgment of the prescribed information (ie. 2 months prior to the calling of nominations). I find that the information was not filed within the time frame prescribed by the Act.

Notwithstanding this, I have exercised my discretion and extended the prescribed time for filing such information to 30 June 2000.

Method of Election:

I am satisfied the election is to be conducted as stated above by way of a preferential voting system (Rule 47) by secret postal ballot of the members. The result of the election is to be decided as per Rule 63 of the Organisation's Rules.

Conduct of Election:

I have considered the request, supporting material, the Act, and the Rules of the Organisation, and am satisfied that an election is required to be held for these positions which are offices within the meaning of the Act.

Therefore, under section 482 of the *Industrial Relations Act 1999*, I am making arrangements for the conduct of the election for the above named positions by the Electoral Commission of Queensland.

Dated this third day of July, 2000.

P. SCOTT-HOLLAND,
A/Deputy Industrial Registrar.

Released: 3 July 2000

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QUEENSLAND INDUSTRIAL REGISTRAR

Industrial Relations Act 1999 – s. 482 – arrangement for conduct of elections

Retailers' Association of Queensland Limited, Union of Employers (No. Q21 of 2000)

REGISTRAR EWALD

6 July 2000

Conduct of Election – Prescribed Information – Exercise of Discretion – Late Filing Allowed – Reason for Election – Electoral Commission to Conduct Election.

DECISION

On 19 June and 3 July 2000 the Retailers' Association of Queensland Limited, Union of Employers lodged in the Registry under section 481 of the *Industrial Relations Act 1999* the information as prescribed in section 53(1) of the *Industrial Organisations Regulation 1997* in relation to the conduct of an election for the following positions of Office:-

<i>Office</i>	<i>Number of Positions</i>
President	1
Vice-President	2
Treasurer	1
Councillor	21

Timing of Elections

No clear opening of nominations for election date is prescribed by the Rules to assist in determining the prescribed date for the filing of prescribed information and, after reading all rules, a date is not definable by me.

Nominations are called by forwarding a notice to members at least 28 days prior to the Annual General Meeting which, this year is scheduled for 30 August 2000. Nominations are to be lodged with the Returning Officer 14 days prior to the Annual General Meeting.

Under the Rules there is no way for determining under section 53(4) "2 months before the first day on which a person may, under the rules of the industrial organisation or branch, become a candidate in an election."

Therefore, taking into account the indefinable time frame for the calling of nominations I find I cannot determine that the prescribed information was filed within the time frame prescribed by the Act.

I am prepared to exercise my discretion and extend the prescribed time for filing of such information to 3 July 2000.

Reason for Election

Rule 39 prescribes that all members of the Council retire annually and under rule 31 elections are held annually leading up to the Annual General Meeting.

Number of Councillors

Rule 31 prescribes that the number of Councillors is to be determined by the Association in general meeting and the Association advises that the number has been determined as 25.

Conduct of Election by Electoral Commission

I am satisfied that an election for the above named positions is required to be held under the Rules of the Industrial Organisation.

Therefore, under section 482 of the *Industrial Relations Act 1999* I am making arrangements for the conduct of election by the Electoral Commission of Queensland.

Dated this sixth day of July, 2000.

E. EWALD
Industrial Registrar.

Released: 6 July 2000

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QUEENSLAND INDUSTRIAL REGISTRAR

Industrial Relations Act 1999 - s. 482 – arrangement for conduct of election

Queensland Nurses' Union of Employees (No. Q22 of 2000)

REGISTRAR EWALD

10 July 2000

Conduct of Election – Timing of Election – Number of Councillors – Term of Office – Reason for Election – Electoral Commission to Conduct Election

DECISION

On 6 July 2000, the Queensland Nurses' Union of Employees lodged in the Registry under section 481 of the *Industrial Relations Act 1999* the information as prescribed in section 53 of the *Industrial Organisations Regulation 1997* in relation to its request for the conduct of an election by the Electoral Commission for the following Offices:-

<i>Office</i>	<i>Number of Positions</i>
Secretary	1
President	1
Vice President	1
Executive Members	4
Councillors	18

Timing of Election

No date is prescribed by the Rules for the opening of nominations to assist in determining the prescribed date for the filing of prescribed information and, after reading all rules, a date is not definable by me.

Rule 20(f) provides as follows:

“(f) Elections for officers and members of the Council (other than Secretary) shall be conducted between the first day of September and the thirtieth day of October in each alternate year . . . , provided that the Returning Officer may call for nominations prior to the first day of September in the year of such elections.”

Therefore taking into account the indefinable time frame for the opening of nominations for the purpose of lodgment of the prescribed information (i.e. “2 months prior to the calling of nominations”) I find that the prescribed information was not filed within the time frame prescribed by the Act.

Notwithstanding that, I am prepared to exercise my discretion and extend the prescribed time for filing of such information.

Number of Councillors

Rule 20, Council, provides for the number of Councillors as follows:

“the Council shall consist of:

- (i) the President, Vice President and Secretary;
- (ii) four executive members (hereinafter referred to as ‘the executive members’); and
- (iii) such number of other members (hereinafter referred to as ‘Councillors’), no fewer than five or more than twenty as determined by Council – all of whom shall be elected in accordance with these Rules.”

The Industrial Organisation has declared that there are presently 18 Councillor positions for election.

Term of Office

Rule 20(c) prescribes that the Council (except the Secretary) shall hold office for a term of two years and shall be eligible for re-election for a further term of two years each.

Rule 20(e) prescribes that the Secretary shall hold office for a term of four years and shall be eligible for re-election for a further term of four years.

Method of Election

Rules 20 and 36 prescribe the conduct of elections by the Returning Officer as a direct vote by way of a secret postal ballot to every financial member of the Union entitled to vote.

Conduct of Election

I have considered the application, the Act and Rules, and I am satisfied that an election is required to be held under the rules of each of the above positions of Office.

Therefore, under section 482 of the *Industrial Relations Act 1999*, I am making arrangements for the conduct of the election of the above named positions by the Electoral Commission of Queensland.

Dated this tenth day of July, 2000.

E. EWALD
Industrial Registrar

Released: 10 July 2000

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QUEENSLAND INDUSTRIAL REGISTRAR

Industrial Relations Act 1999 – s. 53 – arrangement for conduct of elections

The Bacon Factories’ Union of Employees, Queensland (No. Q23 of 2000)

REGISTRAR EWALD

10 July 2000

Conduct of Election – Prescribed Information – Exercise of Discretion – Late Filing Allowed – Reasons for Election – Electoral Commission to Conduct Election.

DECISION

On 6 July 2000, The Bacon Factories’ Union of Employees, Queensland lodged with my Office under section 481 of the *Industrial Relations Act 1999*, the information as prescribed in section 53 of the *Industrial Organisations Regulation 1997* in relation to the conduct of an election by the Electoral Commission of Queensland for the following positions of office:–

<i>Office</i>	<i>Number of Positions</i>	<i>Reason for Election</i>
State Councillor/Branch Secretary		
– “Hans” Branch	1	Term Expired
– Kingaroy Branch	1	Position Vacant/Term Expired
– Willowburn Branch	1	Term Expired

Calling of Nominations

Rule 37(d) of the Industrial Organisation’s Rules prescribes *inter alia* that State Councillors shall be elected by their respective Branches for a period of 2 years and that each Branch shall conduct its election at the expiry of the term of its sitting Councillor.

Rule 41(b) prescribes that not later than 28 days prior to the Annual General Meeting, each Branch shall conduct its election for Councillor.

The Annual General Meeting has been set for 8 September 2000.

Under the Rules there is no way for determining under section 53 of the Regulation “2 months before the first day on which a person may become a candidate in the election under the organisation’s or branch’s rules”.

Taking into account the indefinable time frame for the calling of nominations for the purpose of lodgement of the prescribed information, I find that the prescribed information was filed outside the time frame prescribed by the Act. I am prepared to exercise my discretion and extend the prescribed time for filing of such information to 6 July 2000.

Conduct of Election

I have considered the application, the Act and Rules, and I am satisfied that an election is required to be held under the rules for the Offices as set out above.

Therefore, under section 482 of the *Industrial Relations Act 1999*, I am making arrangements for the conduct of the election of the above named positions by the Electoral Commission of Queensland.

Dated this tenth day of July, 2000.

E. EWALD,
Industrial Registrar.

Released: 10 July 2000

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 278 – order for unpaid wages and superannuation

**Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union
of Employees AND National Cash Carriers Pty Ltd (W8 of 2000)**

COMMISSIONER EDWARDS

5 June 2000

ORDER

THIS matter coming on for hearing before the Commission at Brisbane on 15 March, 15 May and 5 June 2000, this Commission doth Order as follows:-

- 1. That the Respondent pay to the Applicant a gross payment of \$2,514.65.
- 2. The Respondent to be responsible for the deduction of PAYE tax from the amount in paragraph 1.
- 3. Payment of the amount in paragraph 1 is made without any admission of liability of fault on the part of the Respondent and is made in good faith.

Dated this fifth day of June, 2000.

By the Commission,
[L.S.] E. EWALD,
Industrial Registrar.

Operative Date: 5 June 2000
Order – Unpaid wages
Released: 12 July 2000

#####

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 278 – order for unpaid wages

**Rodney James Whitson of the Department of Employment, Training and Industrial Relations
AND Hay-Ric Pty Ltd (No. W55 of 2000)**

COMMISSIONER BLOOMFIELD

10 July 2000

ORDER

THIS matter coming on for hearing before the Commission at Brisbane on 19 May and 10 July 2000, this Commission, after having decided that Greg James Adair was underpaid wages and entitlements by Hay-Ric Pty Ltd, in accordance with the provisions of the Food and Drug Store Employees' Award – Southern Division (Eastern District), doth order as follows:-

- 1. That Hay-Ric Pty Ltd pay to Greg James Adair the amount of nine hundred and four dollars and ninety-one cents (\$904.91) in respect of unpaid wages for the period between 17 August 1998 and 19 October 1998.
- 2. That the amount set out in paragraph 1 of this Order is to be paid within twenty-two (22) days of the date of this Order.

Dated this tenth day of July, 2000.

By the Commission,
[L.S.] E. EWALD,
Industrial Registrar.

Operative Date: 10 July 2000
Order – Unpaid wages
Released: 12 July 2000

#####

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 278 – order for unpaid wages

**Rodney James Whitson of the Department of Employment, Training and Industrial Relations
AND Hay-Ric Pty Ltd (No. W57 of 2000)**

COMMISSIONER BLOOMFIELD

10 July 2000

ORDER

THIS matter coming on for hearing before the Commission at Brisbane on 19 May and 10 July 2000, this Commission, after having decided that Georgina Rose Dolan was underpaid wages and entitlements by Hay-Ric Pty Ltd, in accordance with the provisions of the Food and Drug Store Employees' Award – Southern Division (Eastern District), doth order as follows:-

1. That Hay-Ric Pty Ltd pay to Georgina Rose Dolan the amount of four hundred and sixty-one dollars and four cents (\$461.04) in respect of unpaid wages for the period between 17 August 1998 and 5 October 1998.
2. That the amount set out in paragraph 1 of this Order is to be paid within twenty-two (22) days of the date of this Order.

Dated this tenth day of July, 2000.

By the Commission,
[L.S.] E. EWALD,
Industrial Registrar.

Operative Date: 10 July 2000
Order – Unpaid wages
Released: 12 July 2000

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 125 – application to amend award

**Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch,
Union of Employees AND Fitness Queensland (No. B780 of 2000)**

HEALTH AND FITNESS CENTRES AND INDOOR SPORTS AWARD – SOUTH EAST QUEENSLAND

COMMISSIONER SWAN

14 June 2000

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 14 June 2000, this Commission doth order that the said Award be amended as follows as from the fourteenth day of June, 2000:–

By inserting a new clause 2.7 (Introduction of Changes, Termination of Employment, in cases of Redundancy) as follows:–

“Except as provided for in clause 2.1 hereof, employers and employees to whom this Award applies shall observe the terms and conditions of the Statement of Policy of Termination of Employment, Introduction of Changes, Redundancy contained in the decision of the Full Bench of the Commission dated 16 June, 1987, and published in 125 QGIG 1119-1121, as amended, by 125 QGIG 1377 and 126 QGIG 188:

Provided that the provisions of Clause A – (Termination of Employment) contained in the aforesaid statement of policy shall not have application under this Award except in circumstances resulting from introduction of changes and/or redundancy as set out in Clauses B and C respectively of that Statement of Policy.

Each employer shall display a copy of the aforementioned decision of the Full Bench of the Commission in such a position as to be easily read by the employees.”.

Dated this fourteenth day of June 2000.

By the Commission,
[L.S.] E. EWALD,
Industrial Registrar.

Operative Date: 14 June 2000
Amendment – new clause
Released: 11 July 2000

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 125 – making, amending and repealing awards

**The Australian Workers’ Union of Employees, Queensland AND Queensland Chamber of Commerce and Industry
Limited, Industrial Organisation of Employers (No. B1218 of 1999)**

TOLL COLLECTORS ETC., EMPLOYEES AWARD – STATE

COMMISSIONER EDWARDS

29 June 2000

RESCISSION AND NEW AWARD
(Correction of Error)

Whereas an error occurred in the rescission and new award as published in the *Queensland Government Industrial Gazette* of 20 April 2000, Vol. 163, No. 16, pages 516-527, this Commission doth order that the following correction be made and to be effective from 8 November, 1999:

1. By deleting the fourth word “day” from clause 3.6 (Afternoon and Night Shift Penalty Allowances).
2. By deleting the tenth word “excluding” from subclause 4.5.2 of clause 4.5 (Part-time Work) and inserting the word “including” in lieu thereof.

Dated this twenty-ninth day of June, 2000.

By the Commission,
[L.S.] E. EWALD,
Industrial Registrar.

Operative Date: 8 November 1999
Rescission and New Award – C.O.E.
Released: 12 July 2000