The Queensland Government

Industrial Gazette

PUBLISHED BY AUTHORITY

PP 451207100086 **Annual Subscription $297 + GST** ISSN 0155-9362

Vol. 165 FRIDAY, 8 SEPTEMBER, 2000 No. 2

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
CA376/00	Islamic School of Brisbane - Certified Agreement 2000	18/8/00	CA765/97
CA377/00	Hillcrest Christian College - Certified Agreement 2000	18/8/00	CA396/98
CA379/00	Panther Bricklaying Pty Ltd - Certified Agreement	18/8/00	CA543/99
CA381/00	Bell Contracting (Qld) Pty Ltd – Certified Agreement	18/8/00	
CA382/00	Upfront Scaffolding Pty Ltd - Certified Agreement	18/8/00	
CA383/00	ID & KJ Barker & Son's Demolition t/a Queensland Country Recycle Timber - Certified Agreement	18/8/00	
CA384/00	Tilt-Up Pty Ltd - Certified Agreement	18/8/00	
CA391/00	Royal National Agricultural & Industrial Association of Queensland - Certified Agreement 1999	18/8/00	
CA393/00	Siteline Contracting Pty Ltd - Certified Agreement	18/8/00	
CA394/00	AJ Samuels t/a AJ Samuels - Certified Agreement	18/8/00	
CA395/00	Viking Construction Pty Ltd - Certified Agreement	18/8/00	
CA399/00	Cleaners Employed by the Department of Education - Certified Agreement 2000	23/8/00	
CA387/00	Princes Fabricare - ALHMWU - Certified Agreement 2000	28/8/00	

E. EWALD
Industrial Registrar

INDUSTRIAL COURT OF QUEENSLAND

WorkCover Queensland Act 1996 – s. 509 – appeal against decision of industrial magistrate

Carmel Patricia Lackey AND WorkCover Queensland (No. C38 of 2000)

PRESIDENT HALL 29 August 2000

DECISION

On 17 December 1996 the appellant bent down to pick up inserts under a table, lost her footing on a rubber mat and hit her left thigh on the steel table leg. The incident caused an area of bruising on the lateral side of her mid thigh which became very painful. Her claim for benefits under the *Workers' Compensation Act 1990* was allowed. She was paid benefits over the period 24 December 1996 to 4 November 1997. On 25 March 1998 WorkCover Queensland issued the appellant with a certificate under the *Workers' Compensation Act 1990* in respect of the injury to her leg. On 27 July 1999 the appellant sought a damages certificate in respect of psychological injuries. She was examined by each of two psychiatrists, Dr Mulholland (on 30 September 1999) and Dr Larder (on 11 October 1999). On 17 November 1999 WorkCover declined to issue the damages certificate. On 25 January 2000 WorkCover delivered an amended statement of reasons for declining to issue the certificate. There was an appeal to the Industrial Magistrate's Court at Brisbane which was dismissed on 19 May 2000. This is an appeal from that decision.

It is common ground that the applicant did not suffer a psychological injury contemporaneously with the injury to her leg, and common ground that since the injury to her leg she has developed what might conveniently be described as an anxiety condition. It is common ground also that assessed on the AMA Guide to Impairment the appellant did have an impairment which was an injury for the purposes any relevant statute if otherwise within the relevant definition of injury. The genesis of the anxiety state is not common ground. It is a matter of some considerable disputation, and, I should add, significance.

In its original form the *Workers' Compensation Act 1990* required that the employment had to be a "contributing factor" to a personal injury before the personal injury might be classified as an "injury" for the purposes of the Act. However, by amendment, from December 1994 the adjective "significant" was added so that the relevant definition was "injury means personal injury arising out of, or in the course of employment if the employment was a significant contributing factor to the injury.". The *Workers' Compensation Act 1990* was, of course, repealed and replaced by the *WorkCover Queensland Act 1996.* Materially, as from 1 February 1997 the particle "the" was substituted for the particle "a" in the definition of injury and the adjective "major" was inserted immediately before "significant". Henceforth, the following definition was to apply "an 'injury' is a personal injury arising out of, or in the course of, employment if the employment is the major significant factor causing the injury.". Subsequently, by the *WorkCover Queensland Amendment Act 1999* which, materially, commenced on 1 July 1999 the particle "a" was substituted for the particle "the" and the adjective "major" was deleted. Henceforth, the definition was "an 'injury' is a personal injury arising out of, or in the course of, the employment if the employment is a significant contributing factor to the injury.". However, by s. 561 of the *WorkCover Queensland Act 1996* (including amendments up to Act No. 42 of 1999) provides, materially, that the definition applicable prior to 1 July 1999 continues to be applicable to an injury sustained by a worker before 1 July 1999. Summarised, if the anxiety condition began at any time between 1 February 1997 and 1 July 1999, it was necessary for the appellant to show that the anxiety condition arose out of or in the course of, her employment and that the employment was the major significant factor causing the injury.

It is plain that the symptoms of anxiety, frustration and anger had developed prior to 1 July 1999. It is also clear that the factors to which the anxiety, frustration and anger were attributable, i.e. the pain, the appellant's physical disability, the alterations to her family life, her inability to go to work and to socialise at work, the change in financial position, her feeling of being left high and dry by the doctors in consequence the lack of diagnosis and treatment and the way in which she was treated by WorkCover, had all occurred well before 1 July 1999. I am satisfied that the anxiety state was in place prior to 1 July 1999. The onset of the disorder is another matter. It is contended by Ms Treston of counsel who appears for the respondent that on the evidence the onset of the condition occurred at or about the time that she consulted Dr McCombe. It may be concluded that it was at or about that time that the appellant started to feel that she could not cope. I accept the submission of Mr Newton of counsel for the appellant that the condition did not develop overnight and that if the appellant feels unable to cope on or about 14 April 1997 the onset of the anxiety condition was somewhat earlier than that. However, notwithstanding that one of the psychiatrists, Dr Mulholland, places great weight on the pain flowing from the physical injury as a stressor causing the anxiety condition and that the pain was present from the outset, it would be pure speculation to assert that the condition developed so quickly that it developed over the period between the date of the injury to the appellant's leg (17 December 1996) and the material commencement of the *WorkCover Queensland Act 1996* (1 February 1997). In those circumstances it seems to me that the physical injury must be tested against the definition applicable during the period 1 February 1997 and 1 July 1999.

The Industrial Magistrate came to the conclusion that the appellant's employment had not been a significant factor contributing to her condition. On the view which I have taken of the genesis of the condition, His Worship applied the wrong test. However, if His Worships conclusion of fact was correct, the appeal cannot succeed. Plainly if the employment was not a significant contributing factor the employment could not be the major significant contributing factor.

It is contended by Mr Newton that the Industrial Magistrate was led into error by the evidence of Dr Larder. It was the assertion of Dr Larder that an injury which had no temporal connection with the employment could not be said to arise out of the employment. The assertion is plainly wrong. Both in the United Kingdom and in Australia early legislation in the nature of Workers' Compensation legislation required that the injury "arise out of and in the course of" the employment. The history of the substitution of "or" is outlined by Sykes and Yerbury, *Labour Law in Australia*, volume 1, second edition, 1980 at para 1319 whereat the learned authors described the change as "revolutionary". With respect to Dr Larder to insist upon a temporal as well as a causal nexus with the employment is to revert to the old formula. I accept Mr Newton's submission that the test posited by the words "arising out of" is wider and than that posited by the words "caused by" and that the former phrase, although it involves some causal or consequential relationship between the employment and injury, does not require the direct or proximate relationship which would be necessary if the phrase used were "caused by", compare *State Government Insurance Commission v. Stevens Brothers Pty Ltd* (1984) 154 CLR 552 at 555 and 559 and *Dickinson v. The Motor Vehicle Insurance Trust* (1987) 163 CLR 500 at 505. In any event, all of the factors pointed to in the evidence, the pain, the physical disability, the alterations to the appellant's family life, the absence of the opportunity to go to work and to socialise at work, the feeling of being left high and dry by the doctors by lack of diagnosis and treatment and the treatment metered out to her by WorkCover, are immediate consequences of either the physical injury to her leg itself or financial consequences flowing from that physical injury. I rather think the stressors could be said to be "caused by" the injury to the appellant's leg and certainly "arose out of" the injury to her leg.

The same reasoning leads inevitably to the conclusion that the employment was "the major significant factor causing the injury". The decision in *Stewart v. WorkCover Queensland* (1999) 160 QGIG 172 is distinguishable. In that case, the worker was held to have left his employment prior to suffering any injury at all. He later developed a psychological disorder. It was necessary to determine whether the psychological disorder was traceable to the employment or to certain events which had occurred after the employment ended. Here, there was a physical injury before the appellant separated from

her employment, and all of the factors which had occurred since flowed from that physical injury. In the case in which there was no assertion that the various stressors described above had any source other than the physical injury to the appellant's leg I fail to see that the Industrial Magistrate had any advantage in being able to see and hear the witnesses.

Subsection 4 of definition of "injury" which applied during the period 1 February 1997 to 1 July 1999, and in particular paragraph (c) thereof, which unlike paragraphs (a) and (b) does not employ the adjective "reasonable", poses major problems of construction. It is not necessary to consider the problems here. On any view of the evidence the symptoms and the factors to which the symptoms were said to be attributable were in place before WorkCover Queensland took any step at all. Indeed, as I understand it, the contrary is not contended.

The appeal is allowed.

The appellant is to have his costs of and incidental to the appeal assessed as costs are assessed in a Supreme Court matter. With respect to the appeal to the Industrial Magistrate's Court I certify that the attendance of both counsel and solicitor was necessary and that an additional witness allowance is reasonable because of the special circumstance of the doctor called being a specialist under the *Medical Act 1939*. Taking into account the complex nature of the issues it seems to me that costs should be allowed at 1.5 times what would otherwise be the appropriate rate. I therefore order the respondent to pay to the appellant the sum of $7,322.50 in respect of the appeal to the Industrial Magistrate.

Dated this twenty-ninth day of August, 2000.

D.R. HALL, President.

Released: 29 August 2000

Appearances:–
Mr C. Newton instructed by Carter Capner Solicitors for the appellant.
Ms R. Treston instructed by Hopgood and Ganim for the respondent.

##

INDUSTRIAL COURT OF QUEENSLAND

Industrial Relations Act 1999 – s. 341(2) – appeal against decision of industrial magistrate

Roslyn Joy Thiele AND Harry John Davis (No. C21 of 2000)

PRESIDENT HALL 29 August 2000

DECISION

On 19 October 1999, Roslyn Joy Thiele made a complaint under s. 666 of the *Industrial Relations Act 1999* against Harry John Davis. The complaint alleged that Harry John Davis committed an offence under the *Industrial Relations Act 1999* in that Millboro Enterprises Pty Ltd, a company incorporated under the Corporations Law and being an employer within the meaning of the *Industrial Relations Act 1999*, failed to pay wages payable under an industrial instrument, viz the Furniture and Allied Trades Award – State, to an employee namely Mark James Gilman employed by it as an upholsterer when at the time of the above offence Harry John Davis was an executive officer of the corporation Millboro Enterprises Pty Ltd for the purpose of s. 673 of the *Industrial Relations Act 1999*. The matter was called in the Industrial Magistrate's court on 5 April 2000. The solicitor for Harry John Davis raised as a preliminary point that the proceedings had been commenced outside the time limited by s. 683(7) in that the proceedings had not been commenced within 6 months after the offence came to the complainant's knowledge. No submission was made as to when Roslyn Joy Thiele acquired actual knowledge of the commission of the offence. The contention was –

(a) The complainant Roslyn Joy Thiele was an industrial officer and employed within the Department of Employment, Training and Industrial Relations; and

(b) Martin Bock was an industrial inspector employed within the Department of Employment, Training and Industrial Relations; and

(c) Martin Bock had knowledge of the commission of the offence more than 6 months prior to 19 October 1999 when the complainant Roslyn Joy Thiele made the complaint; and

(d) Mr Bock's knowledge should be attributed to Ms Thiele.

The Industrial Magistrate accepted the submission and dismissed the complaint. His Worship was wrong to do so.

Section 683(7) is not a provision which extends the normal limitation provision. Section 683(7) imposes two limitation periods. It requires the proceedings to be commenced (1) within six months after the offence comes to the complainant's knowledge and (2) within six years after the offence was committed. In those circumstances Harry John Davis carried the onus of proving that the complainant had knowledge of the offence more than six months before the proceedings were commenced, *Morgan v. Babcock and Wilcox Ltd* (1930) 43 CLR 163 at 175 per Knox CJ and Dixon J and 180 per Isaacs J. All that Mr Davis had was a letter. For the purpose of the appeal the letter is admitted to be signed by Mr Bock and to demonstrate that the offence had come to Mr Bock's knowledge more than six months prior to 19 October 1999. The letter was supplemented by a statement seriously made from the bar table by Mr Borghero, an industrial inspector, employed by the Department of Employment, Training and Industrial Relations. The statement did not go directly to the office practice at any material time. However, it did emerge that Ms Thiele had been acting in Mr Borghero's place and that if Mr Borghero's office system had been observed what Mr Bock knew at the time of writing the letter would not have come to Ms Thiele's knowledge until considerably later when she was evaluating whether to launch a prosecution. On that evidence, an inference that the complainant (Ms Thiele) had actual knowledge six months before the proceedings commenced is simply not open.

It is not appropriate to deal with the matter on that narrow basis. The matter will have to be returned to the Industrial Magistrate's court. Mr Davis will once again be entitled to raise the defence at s. 683(7). If he succeeds in showing that Ms Thiele had actual knowledge [x] of the commencement of the offence six months prior to the commencement of the proceedings, he will be entitled to succeed. The apprehension is that rather than seeking to show actual knowledge on the part of Ms Thiele he will seek to show constructive knowledge by Ms Thiele. [[x] On proof that a reasonable complainant would have known, an inference that the complainant knew may be appropriate.]

The complaint has not been made by the Department of Employment, Training and Industrial Relations. Indeed, the Department is not a jurisdict person. The complaint has been made by Ms Thiele. There is nothing in the *Industrial Relations Act 1999* which glosses the ordinary meaning of complainant which is, of course, the person who makes the complaint. There is nothing in the *Industrial Relations Act 1999* which requires the attribution to Ms Thiele of the knowledge of Mr Bock or Mr Bock and various other employees within the Department. There is nothing absurd in the proposition that in

its application to proceedings instituted by a complainant who is a natural person s. 683(7) applies to knowledge actual in the mind of the complainant only. It is perfectly understandable for the legislature to have adopted such a scheme. It is a scheme which has enabled the Department of Employment, Training and Industrial Relations to corral the mind of the natural person making the decision to proceed on a complaint from the opinions, impressions and views of all other employees of the Department.

The appeal is allowed. The matter will be remitted to the Industrial Magistrate at Holland Park to hear and determine according to law.

I reserve the question of costs. Submissions on the question of costs are to be made in writing within 14 days of the date of release of the decision by the appellant, within 21 days by the respondent and, if anything further needs to be said, by the appellant in reply within 28 days.

Dated this twenty-ninth day of August, 2000.

D.R. HALL, President.

Released: 29 August 2000

Appearances:–
Mr R. Bain QC and Mr L.J. Ryan instructed by the Crown Solicitor for the appellant.
Mr R.M. Treston instructed by Norman and Kingston Solicitors for the respondent.

##

INDUSTRIAL COURT OF QUEENSLAND

Industrial Relations Act 1999 – s. 341(2) – appeal from decision of industrial magistrate

Sharon Nicholson AND WorkCover Queensland (C33 of 2000)

PRESIDENT HALL 29 August 2000

REPORT ON DECISION (as edited)

In giving his decision from the Bench on 24 August 2000, President Hall stated:–

> "At all material times the appellant, by her litigation agent, has been pursuing a claim for workers' compensation and a claim in respect of personal injuries relating to certain employment connected events said to occur in 1997.
>
> Regrettably while the National Union of Workers Queensland Branch took up the cudgels in the case of the claim for compensation under the *WorkCover Queensland Act 1996*, the claim for personal injuries was pursued by a firm of solicitors. In the end result the National Union of Workers decided that the claim for compensation had poor prospects of success and decided to withdraw its assistance to the appellant.
>
> As it happened, that occurred at or about the time the matter was listed for a callover in the Industrial Magistrates Court on 18 April 2000. What occurred next is a matter of some dispute. It is clear there were conversations between the National Union of Workers and the firm of solicitors acting in the personal injury matter. It is not clear what was said, although it does seem clear that the firm of solicitors made known to the National Union of Workers that they had no instructions to act in the compensation matter.
>
> The matter was called on 18 April 2000. There was no appearance by the appellant who on any view of the evidence, did not know the matter was to be called, or alternatively did not know that the National Union of Workers would not be appearing. The Industrial Magistrate chose to strike the matter out for want of prosecution.
>
> On becoming aware that the matter had been struck out the appellant acted promptly. The Chief Stipendiary Magistrate relisted the matter in the Industrial Magistrates Court at the request of the appellant. Ultimately, when the matter was next mentioned, it was found that there was no jurisdiction to take that course.
>
> At that stage the appellant promptly sought relief in this Court. It may be conceded that by that stage the appellant was approximately 13 days out of time, but that flowed from the unsuccessful attempt to relist the matter in the Industrial Magistrates Court.
>
> It is true that the notice of appeal did not seek an extension of time. There has subsequently been an amendment. In all the circumstances, I regard that matter as trivial.
>
> In my view the explanation given for what has occurred is entirely understandable. It is one of those things that happens in the course of litigation from time to time. The appellant has acted promptly. There is no prejudice to the respondent.
>
> I would like to be able to express a view about the appellant's prospects of success, but it is plain there will be a substantial trial on questions of fact and be substantial medical evidence. All I can say is, if the outline of evidence presented is accepted, and I make that comment not having seen any other evidence, I would have thought that she had a meritorious case.
>
> I think the proper course in those circumstances is to grant the extension of time to allow the appeal to proceed and having become seized of the matter, exercise the power at section 331 of the *Industrial Relations Act 1999*, to set aside the decision of the Industrial Magistrate of 18 April 2000 dismissing the matter for want of prosecution.
>
> The matter will be remitted to the Industrial Magistrates Court in order it may be dealt with according to law. WorkCover Queensland are entirely innocent of fault. On any view of it the appellant does seek indulgence. I do not see that there is any justification for not ordering that the appellant pay the respondent's costs of and incidental to the appeal.
>
> The costs should be assessed in the way they would be assessed if this was a Supreme Court matter. However, because of the nature of the matter, the issues and the length of time that it has taken, it seems to me that those costs should be assessed on the basis that it was a Chamber application rather than an appeal proper.
>
> I adjourn the Court.".

Dated this twenty-ninth day of August, 2000.

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

Appearances:–
Mr D. Kent instructed by Watling Roche for the appellant.
Mr P.H. Major instructed by WorkCover Queensland for the respondent.

Released: 29 August 2000

##

INDUSTRIAL COURT OF QUEENSLAND

Industrial Relations Act 1999 – s. 341(2) – appeal from decision of industrial magistrate

WorkCover Queensland AND Anthony Lyle Soblusky (C3 of 2000)

PRESIDENT HALL 29 August 2000

REPORT ON DECISION (as edited)

In giving his decision from the Bench on 24 August 2000, President Hall stated:–

> "After hearing Mr Rhead of counsel for the appellant and Mr Long of counsel for the respondent and by consent of the parties I set aside the order of this Court of 22 May 2000. In lieu thereof I order that the decision of the Industrial Magistrate of 16 December 1999 dismissing the complaint that on the 26th day of November 1998 in the Magistrates Court District of Cairns in the State of Queensland Anthony Lyle Soblusky made a statement to WorkCover which he knew was false and misleading in the material particular be set aside. In lieu thereof I find the respondent guilty of the said charge.
>
> Having considered the submissions of Mr Rhead and Mr Long on 22 May 2000 I continue to be of the view that this is an appropriate case in which to act under section 31 of the *Penalties and Sentences Act 1992*. Subject to the respondent appearing at the registry of the Industrial Magistrates Court at Bundaberg within 14 days and entering into a recognisance in the amount of $300 to keep the peace and be of good behaviour for a period of 12 months, no conviction will be recorded in this matter.
>
> I adjourn the Court.".

Dated this twenty-ninth day of August, 2000.

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

Appearances:–
Mr G. Rhead instructed by WorkCover Queensland for the appellant.
Mr G. Long appearing *de bono* for the respondent.

Released: 29 August 2000

##

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 287 – application for a declaration of a general ruling

STATE WAGE CASE (Nos. B615 of 2000 and B620 of 2000)

PRESIDENT HALL
VICE PRESIDENT LINNANE
COMMISSIONER EDWARDS 29 August 2000

Application for Declaration of General Ruling – Application for Exclusion of Part of an Industrial Instrument – Economy of Sugar Industry Reviewed – Slump in World Price of Sugar – Inclement Weather – Low Sugar Content – Pestilence and Disease – Difficulty in Harvesting – Nature of Increase Examined – Exclusion of Minimal Benefit – Application Rejected.

DECISION

On 8 August 2000 we made a General Ruling which, in short form, granted a wage increase of $15 per week to all full-time adult employees whose wages are controlled by the system established by the *Industrial Relations Act 1999*. The General Ruling also provided for an increase of 3.1% to all existing allowances in awards that relate to conditions or to work which had not changed and to service increment payments. The General Ruling is to operate from 1 September 2000. The full terms of the General Ruling are reported at 164 QGIG 373.

Each of the Queensland Cane Growers' Association Union of Employers and the Queensland Mechanical Cane Harvesters Association, Union of Employers seek the exclusion of *Division 2 Field Sector – Sugar Industry Award – State* from the Declaration of General Ruling. In both cases the application is based on the parlous financial position of the Field Sector of the Sugar Industry.

We accept that a compounding series of events, namely low sugar price, poor weather, pestilence and disease have placed great financial pressure on cane growers.

With very much higher than normal rainfall the sugar content of cane has significantly decreased. Some crops were swept away by flood. Growers incurred the cost of replanting and fertilising again. Growers whose crops were not swept away by flood experienced difficulty in getting machinery into the paddock to harvest cane. Ratoons were damaged. There was excessive dirt in the cane delivered to the mills. Standover cane became a habitat for rats and was damaged by those creatures. Queensland's most significant variety of cane, *viz* Q124, has succumbed to orange rust disease. Because the disease (which affects the sugar content of cane) is likely to persist, it has been necessary for farmers to embark upon extensive ploughing and replanting exercises. That said, Q124 will be a variety of cane much harvested in the season of 2001. Because of the cost, both in time and money in ploughing and

replanting, large tracks of Q124 will be permitted to ratoon. We have been told, for example, that in the Mackay district, the expectation is that 65% of the cane harvested in 2001 will be of the Q124 variety. Further, the varieties of cane being used to replace Q124 are not new varieties. They are varieties which have been used in the past and which were discarded because, unaffected by disease, Q124 was more productive. Certain of the varieties are being planted in circumstances in which it is speculative whether they are suited to the soil and the climate. It goes without saying that in the battle with orange rust paddocks are not being permitted to fallow as they should.

Responses to the weather damage, pestilence and disease etc, has caused an explosion of production costs at a time, when in consequence of an over-supply of sugar on the world market, a decrease in the quantum of cane delivered to the mills and a fall in the sugar content of cane, incomes have been in freefall. The estimate is that between 1997 and 2000 gross revenue will fall by nearly 45%. (The Herbert Region is expected to experience a fall of 57%.) At the level of the individual farmer there are cases of acute hardship, particularly where the farmer has capital commitments and is highly geared. Indeed, there is evidence that a significant number of farmers will not, at any time, be able to service their existing level of debt. There is expert evidence, which we accept, of farmers cutting back on cultivation, spraying of weeds and use of fertiliser, etc. There is a risk that by the time the industry recovers its productive capacity will be irreparably damaged.

The position of cane harvesters who are employers, and the bulk of cane harvesters employ at least seasonal labour, is perhaps even more difficult. Because of the poor crop to which we have previously referred, the cane harvesters have to harvest many more hectares than usual to fill the bins allocated by the mill on any particular occasion. We have heard stories of teams working 6-day rather than 5-day weeks, and working 14 hours a day rather than 8 to 9 hours a day. The overtime has to be paid for. Because of the parlous situation of the growers which we have previously described, it may be doubted that there is capacity to pass on costs, and in any event contract prices were negotiated at the commencement of the harvest when, with hindsight, an unduly optimistic view of the forthcoming season seems to have been entertained by all.

In those circumstances it is necessary to say something of the increases in wages and allowances which, if exclusion be not granted, will flow from the Declaration of General Ruling to employees engaged under *Division 2 Field Sector – Sugar Industry Award – State*. In fact, the increases were the increases granted by the Australian Industrial Relations Commission in what is colloquially known as the Safety Net Review – Wages – May 1999, see 95 IR 63. The increases were safety net increases. In setting the level of the increase the Australian Industrial Relations Commission, at para [37](f), *sectoral effects*, observed:–

> "The fact that a safety net increase will impact differently across sectors and firms is also a factor to be taken into account in determining the level of safety net adjustments to be awarded.".

That is to say, there has already been some diminution in the level of the increase because it is to operate in impoverished sectors. We notice also that the Australian Industrial Relations Commission took account of the circumstance that the safety net increases in 1998 and 1999 had been effected by forecasts of economic slow-down that did not eventuate, compare para [37](a). The level of increase was intended, in part, to address that earlier suppression of wages. We notice also that at para [26] the Australian Industrial Relations Commission accepted a submission of the National Farmers' Federation that there should not be a two-tiered wage system with different rates in metropolitan and rural areas. We agree with that proposition. It is a proposition of some significance here. It would trivialise the significance of the case to say that in the case of a seasonal employee, and the bulk of the few employees in the field sector are seasonal employees, would, if the general ruling is permitted to apply in the ordinary way, receive approximately a grand total of, in the Mackay area $60, and in the other areas $60 or perhaps marginally more between 1 September 2000 and the end of the crushing season. The case ultimately made was not for deferral of the increase but for the exclusion of Division 2 Field Sector of the *Sugar Industry Award – State*. It is the impact in the 2001 crushing season which the applicants' members fear. However, on the applicants' evidence, assuming favourable weather conditions, there is no room for optimism that the 2001 season would be better that the 2000 season. If the case now made succeeds, there will inevitably be a comparable case in 2001 seeking exclusion both of the current state-wide increase and any state-wide increase which might be granted in the year 2001. The building blocks for the creation of a sub-class of (very) low-wage workers in the field sector of the sugar industry may not be in place, but they are certainly available for assembly. When all those factors are taken into account it is difficult to justify denial of the increase to those employed under *Division 2 Field Sector – Sugar Industry Award – State*.

Cane farmers are not big employers. We have been told, and we accept, that in recent straitened financial times there has been reduction in employment opportunities on cane farms. We think it likely that there will be further reductions in employment or at least conversion of full-time employees to casual employment before the crisis runs its course, but that grant or denial of the increase will have no impact on that process. The employee organisation with coverage of the bulk of the workers in the field sector of the sugar industry opposes the application. It is that organisation which is the custodian of the industrial interests of the relevant categories of employees. Weight must be given to the organisation's expressed view. And we should return to the noun "bulk". Some of the cane harvesters who are employers employ tradesmen to care for their machinery. If the application of the Queensland Mechanical Cane Harvesters Association, Union of Employers were granted, the tradesmen would not be denied the benefit of the state-wide increase. Success of these applications would have the effect that employees in the field sector of the sugar industry, and nobody else, receive no increase. Success of the application by the Queensland Mechanical Cane Harvesters Association, Union of Employers would also have the effect that some sugar industry employees, eg the tradesmen referred to, would receive an increase whilst other sugar industry employees serving the same employer would not receive the increase. All considerations of equity work against grant of that application.

In the circumstances described we dismiss the applications for exclusion.

Dated this twenty-ninth day of August, 2000.

D.R. HALL, President.

D.M. LINNANE, Vice President.

K.L. EDWARDS, Commissioner.

Released: 29 August 2000

Appearances:–
Mr G.J. Trost for the Queensland Cane Growers' Association Union of Employers for the applicant.
Mr J.G. Powell for the Queensland Mechanical Cane Harvesters Association, Union of Employers.
Mr J.V. Sharpe for The Australian Workers' Union of Employees, Queensland.

##

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 287 – application for declaration of general ruling
s. 288 – application for declaration of policy

Queensland Council of Unions AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (No. B615 of 2000)

The Australian Workers' Union of Employees, Queensland AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (No. B620 of 2000)

PRESIDENT HALL
VICE PRESIDENT LINNANE
COMMISSIONER EDWARDS 22 August 2000

DECISION (Correction Of Error)

The Decision reported at 164 QGIG 373 is amended by deleting the name Local Government Association of Queensland (Incorporated) from the fifth paragraph.

Dated this twenty-second day of August, 2000.

D.R. HALL, President.
D.M. LINNANE, Vice President.
K.L. EDWARDS, Commissioner.

Released: 24 August 2000

##

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

William Wood AND Westaff (Australia) Pty Ltd (No. B203 of 2000)

COMMISSIONER SWAN 25 August 2000

Reinstatement application – Oral notification of Resignation – Short extensions of employment granted by employer – Overt attempts by employer to finalise employment contract – Resignation accepted by employer – Application dismissed.

DECISION

Through his application, Mr William Wood seeks relief from the Commission for his allegedly unfair dismissal from Westaff (Australia) Pty Ltd (Westaff), a company he had worked for as a Sales Consultant from 21 April 1997 to 28 January 2000.

The crux of the dispute between the parties in this matter relates to whether Mr Wood had resigned his position with the employer or whether he was dismissed on 28 January 2000.

Mr Wood claims to have spoken occasionally in the workplace of his pending retirement "when he had sold his house" in Townsville. The employer, and some fellow employees, however, claim that Mr Wood had explicitly stated to a meeting of management and employees in late 1998 that he would resign by June 1999.

As it transpired, Mr Wood had not ceased his employment, nor had he sold his house, by June 1999. Beyond that date, and up until 28 January 2000, a series of events had occurred which, I believe, added more confusion to the situation.

Mr Beckett, Manager of Westaff's North Queensland Branch at the time of Mr Wood's employment, stated that, subsequent to Mr Wood's announcement of retirement scheduled for June 1999, he had employed Mr Wood's replacement in a casual position from August 1999 following Mr Wood's request to extend his retirement date on a monthly basis.

Notwithstanding the fact that Mr Beckett had granted monthly extensions of employment to Mr Wood, he claimed that Mr Wood had lost interest in his job and that by 8 November 1999 he had advised Mr Wood that his resignation would be effective from 24 December 1999. Mr Beckett claimed that he told Mr Wood that he was not prepared to grant him any further extensions of employment.

Mr I. Chisholm, Managing Director of Westaff, claimed to know from Mr Beckett that Mr Wood had intended resigning from Westaff in June 1999.

Mr Chisholm believed that, from an assessment of Mr Wood's performance since the announcement of his pending retirement, Mr Wood's contribution to the productivity of the business had been somewhat lessened.

The action then taken by the employer was slightly odd. While the local Manager, Mr Beckett, had given notice to Mr Wood that he was unprepared to grant him any more employment extensions (post his alleged resignation date of June 1999), the employer advised Mr Wood that it would conduct a Performance, Planning, Coaching and Evaluation review on 28 January 2000. It was on that day that Mr Wood's employment ceased.

In order to understand the employer's perspective as to why it undertook this somewhat convoluted process in finalising Mr Wood's employment, Mr Beckett's evidence needs detailed consideration.

Mr Beckett states that in December 1998, while Mr Wood was on holidays, Mr Wood visited the Westaff office and asked Mr Beckett and other available staff to go to the lunch room as he had something of significance to say to them. Mr Beckett claims that Mr Wood unambiguously told those present that he had spoken with his wife and had decided to retire by June 1999 at the latest.

Following this disclosure, Mr Beckett advised staff, sometime in February 1999, to put forward names of persons who might suitably fill Mr Wood's position (an unchallenged fact). Mr Wood nominated a long-term friend, Mr Billingsley, who commenced work as a casual with Westaff in August 1999, whilst awaiting Mr Wood's retirement.

Around November 1999 (after being granted a number of extensions of employment), Mr Beckett claims to have spoken to Mr Wood about his retirement, advising him that he wished Mr Wood to retire by Christmas 1999. It is alleged that Mr Wood said that he would have to discuss the matter with his wife overnight. On the following day, Mr Beckett states that Mr Wood said that he was not going to retire.

Mr Beckett also claims that he was a fair employer in that "I have acknowledged this by allowing him to stay on as an employee even though he had resigned and had presented an ever-deteriorating work performance after tendering his resignation in December of 1998". As well, Mr Beckett contends that during Mr Wood's employment, Mr Wood suffered illnesses and was afforded a significant period of time off work on full pay.

Mr Wood did not recall being at the meeting where he is alleged to have announced his intended date of retirement. I am unable to accept Mr Wood's recollection of events on this point. It goes against the very strong evidence of Mr Beckett, Ms A. Flood, and Ms S. Wood (both employees of Westaff). The evidence of Mr Billingsley also accords with the evidence of the aforementioned group of people inasmuch as Mr Billingsley claims that his friend, Mr Wood, asked him to submit a resume "to replace him (Bill) as Sales Manager for Westaff Townsville as he was retiring in June to travel around Australia". I accept this evidence as being truthful.

Having accepted as fact that Mr Wood did announce his retirement to be operative from June 1999, it is now necessary to consider the events which occurred after the expiry of that date to ascertain whether a dismissal of employment subsequently occurred, whether an extension of a period of employment for a particular period of time merely came to an end, whether it was a combination of both, and what the ramifications thereof might be.

Had it not been the case that the employer went through a series of convoluted actions (ie reviews etc. culminating in a formal notice of termination of employment) regarding Mr Wood's employment post June 1999, it would have been relatively easy to have determined the issue – ie, that Mr Wood was merely granted a period of grace during which to finalise his employment with Westaff. This view is ultimately adopted by me, however the reality of what occurred after June 1999 is of significance as well to the outcome of the matter.

I accept Mr Beckett's evidence that he granted extensions of employment to Mr Wood. From the perception gained of Mr Beckett during the course of his evidence and from his actual evidence, I have found him to have been a fair and compassionate employer. I believe, however, that it was these very attributes which may have, regrettably, led to the unusual events to which I have previously referred. The evidence of Mr Wood shows that he was not prepared to end his employment with Westaff, even after being granted a number of extensions of time and, notwithstanding his oral notice of resignation, he simply stayed on until Mr Beckett was forced to take overt action to ensure that Mr Wood honoured his earlier resignation. Ultimately, the employment relationship ended on a sour note for Mr Wood, but, from my perspective, it was to end in any event. The fact that the employer ultimately finalised the employment contract by way of formal correspondence terminating the services of Mr Wood does not derogate from the fact that a resignation by Mr Wood had been tendered and accepted. In the end, the course of action taken by the employer appears to have been the only option open to it.

I have duly considered submissions from Mr Wood's advocate concerning Mr Wood's work performance over the period of time since June 1999, but believe that these issues are secondary to the issue of Mr Wood's resignation scheduled for June 1999.

I am unable to find that Mr Wood could have been led to believe that his continued employment with Westaff was on the same footing as it was prior to June 1999. Certainly, his active involvement in finding his replacement supports most strongly this fact. I accept that Mr Wood was given extensions of employment by Mr Beckett to be reviewed, albeit informally, on a continual basis. In the end, Mr Beckett was unable to grant any further extensions of employment to Mr Wood.

In conclusion, I find that Mr Wood orally resigned his position with Westaff to be effective from June 1999, and at that time, at the request of Mr Wood, Mr Beckett was prepared to grant short extensions of time until such a time as the company sought to finally act upon the resignation. I find there existed an understanding between Mr Wood, Mr Beckett and other employees to this effect, but that over time Mr Wood found it hard to leave Westaff. The employer should not be held liable for this. As well, the plight of Mr Billingsley needed to be addressed. He had left secure employment to fill Mr Wood's position at Westaff. This unchallenged fact speaks for itself in terms of Westaff's ultimate decision to enforce Mr Wood's resignation.

I find that Mr Wood resigned from his employment with Westaff and that the short extensions of periods of employment granted by the employer were enacted in good faith to assist Mr Wood, rather than to alter the employment arrangement between the two parties after June 1999.

The application is dismissed.

Dated this twenty-fifth day of August, 2000.

D.A. SWAN, Commissioner.

Released: 25 August 2000

Appearances:–
Mr L. Nicholson, of Gibson-Nicholson Consultants Pty Ltd, for the Applicant.
Mr J. O'Donnell, of Michael Owens & Associates, for the Respondent.

##

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1997 – s. 218(3) – application for extension of time
Industrial Relations Act 1999 – s. 720 – application for reinstatement

Gregory McMahon AND Department of Natural Resources (No. B891 of 2000)

COMMISSIONER BLADES 28 August 2000

Reinstatement application – Application 412 days out of time – Principles – Length of delay significant – Application refused – Costs application refused.

DECISION

This is an application for an extension of time within which to file an application for reinstatement. The application is brought under the provisions of s. 218(3) of the *Workplace Relations Act 1997*, applying s. 720 of the *Industrial Relations Act 1999*. The dismissal occurred on 20 April, 1999 and the application was filed 26 June, 2000.

The applicant was retrenched from the Public Service, more particularly from the Department of Natural Resources (DNR). He had held the position of Special Project Officer, Metropolitan Region and in about July, 1998, this position was made redundant. His deployment status was discussed orally with him on 4 September, 1998 and confirmed by letter dated 23 October, 1998 from DNR.

Mr McMahon was registered with the Deployment Unit, Office of the Public Service (OPS) and was to be considered for deployment to service-wide vacancies for an initial period of 6 months from 19 October, 1998. The letter of 23 October provided him with copies of OPS Directives *Voluntary Early Retirement* No 1/98, *Retrenchment* No 2/98 and *Deployment and Redeployment* No 4/98. In December 1998, he rejected a Voluntary Early Retirement package (VER) in favour of deployment.

OPS Directive 4/98 provides that surplus employees who reject a VER are to be provided with transfer at level (deployment) and/or redeployment (appointment to a lower level) and reasonable retraining opportunities for a period of not less than 6 months. At clause 5.2, it is provided:

> *"At the conclusion of this deployment period, where the Chief Executive is satisfied that no viable transfer and redeployment opportunities exist in any Department, the Chief Executive may seek approval from the Public Service Commissioner to apply the provisions of the Directive 2/98,* Retrenchment.".

Clause 5.3 provides:

> *"The Chief Executive may continue the deployment period at his or her discretion.".*

On 20 April, 1999, the Director-General wrote to the Public Service Commissioner seeking approval to terminate the employment of Mr McMahon in line with Directive 2/98. By letter dated 20 April, 1999, the Public Service Commissioner wrote to the Director-General to the effect that he was satisfied that the requirements of Directive 4/98 had been complied with and approved the retrenchment of Mr McMahon which was subsequently put into place.

It was not until November, 1999, after suggestions made by "unknown persons", that a Freedom of Information application (FOI) in respect of files in Government Departments other than DNR was considered to be possibly productive of relevant information.

One such application was made on 15 December 1999. Another was made on 18 March 2000 to Queensland Treasury. The FOI application to Treasury revealed that a job application to Treasury for Manager, Business Development, was still on foot as at 16 April 1999 and that Mr McMahon was short-listed and would be interviewed within 1–2 weeks of that date. The document obtained through FOI would indicate, it was claimed, a knowledge by OPS that there was at least that position (and possibly some others) that Mr McMahon had applied for and was still to be assessed or interviewed.

It was submitted that there were public sector job applications pending and known to OPS and DNR which ended by the unfair exercise of the discretion and that the "exceptional circumstances" referred to in clause 8.1 of the Directive 2/98 did not exist. Clause 8.1 of that Directive reads:

> *"The Public Service Commissioner shall approve the retrenchment of public service employees, other than Senior Executive officers, only in exceptional circumstances, upon the recommendation of the Chief Executive, of the department in which the package is to be offered.".*

It was also claimed that because of another file note (Exhibit L) discovered through FOI, dated 26/3/99, the necessary implication was that a month prior to the retrenchment, steps were in place, no matter what, to ensure retrenchment occurred.

What all of this means is simply that the applicant may have an arguable case. The respondent has refrained from joining in the argument based on the merits. However, the inferences that the applicant seeks to draw may subsequently prove to be less helpful than he might wish. For example, even if OPS and DNR were aware of a current job application before Treasury (as would appear to be the case), Mr McMahon had unsuccessfully applied for about 26 positions. Because of the number of previously unsuccessful applications, the Chief Executive may well have been satisfied that "no ***viable*** transfer and redeployment opportunities exist currently". On what the applicant has alleged, at best it can be said that the case is not without merit.

The file note of 26/3/99 is not conclusive against the respondent. It is a handwritten note by an unknown author, indicating the end of the deployment period and what is to be done on that date to effect the retrenchment. It indicates that the (presumably) letter of retrenchment is to be dated 20 April and to ensure that the appropriate person is available to sign the letter. It does not mean that the decision-maker had prematurely decided the issue adversely to Mr McMahon. At best, the note is ambivalent. It may equally be a note by a junior officer on how to process the retrenchment when the time came. Inferences are certainly available but they are not necessarily conclusive.

The cases cited in argument by the applicant included:

- *Korniki v. Telstra (1997) 42 AILR 3–547*
- *Korniki v. Telstra (1997) 42 AILR 3–590*
- *O'Toole v. Mount Isa Mines Ltd QIRC B1834/98*
- *Bosak v. Queensland Cricketers Club (1999) 45 AILR 9–148*
- *Wright v. Actek Engineering (1999) 46 AILR 4–154*

The following cases were cited by the respondent:

- *Christie v. Austotel Management Pty Ltd (1998) 159 QGIG 108*
- *Breust v. Qantas Airways Ltd (1995) 149 QGIG 777*
- *Erhardt v. Goodman Fielder Food Services Limited (1999) 163 QGIG 20*
- *Warry v. Speedy Corporation Pty Ltd (2000) 163 QGIG 441*
- *Petruch v. Davey Kinhill Fluor Daniel Joint Venture (1996) 153 QGIG 543*
- *Savage v. Woolworths (Qld) Pty Ltd (1999) 162 QGIG 353*
- *SPSFQUE v. DETIR (1998) 159 QGIG 41*
- *Wilder v. John Daniel trading as LJ Hooker Nundah (1997) 155 QGIG 1124*

The Act in s. 218(3) provides for an unfettered discretion in the Commission to allow an extension of time. The circumstances of each particular case must be considered but the statutory time limit must also be respected. Factors to be considered include the length of the delay, the explanation for the delay, the prejudice to the applicant if the extension is not granted, the prejudice to the respondent if the extension is granted and any relevant conduct of the respondent. An applicant should ordinarily provide at least *prima facie* evidence his application has some merit or his application runs the risk of being rejected as unmeritorious. Detailed examination of the circumstances of the dismissal is not necessary.

The then President observed in the case of *Petruch* at 543 that a delay of 6 weeks was a substantial delay in the context of the statutory requirement that a reinstatement application be lodged within 21 days of a dismissal.

This application was filed 433 days after the retrenchment and 412 days beyond the 21 day time limit. I agree with the remarks of Bougoure C in *Stanley v. Arnotts Biscuits Ltd (1995) 148 QGIG 239* that the longer the period of the delay, the more difficult it will be to provide an acceptable explanation for the delay.

The explanation in this case is gathered from the submissions and the affidavit of Mr Richards. At the time of the retrenchment, it was "reluctantly concluded" that the legal processes leading to retrenchment had been followed. Mr McMahon did not accept the fairness or legal validity of his termination and continued to investigate the possibility of legal redress. It was only Mr McMahon's perseverance that ultimately provided the applicant's representative with evidence that, it is alleged, cast doubt on the Public Service Commissioner's veracity and upon the fairness and legality of the procedures adopted. The evidence, which now enlivens the application, it is submitted, was only accrued slowly and by a process of following clues and possibilities, facilitated by several FOI applications. It is argued that usually, the circumstances of a dismissal are immediately revelatory of fairness or unfairness but in this case, the true processes were discrete and undisclosed and covered by a facade of proper process. It was further submitted that suspicion is not a sufficient ground to found an application to the Commission. Proof is necessary. The application was lodged immediately sufficient evidence probative of applicant's suspicions was discovered.

What however the Act requires is that the application be lodged within 21 days ***after the dismissal takes effect***. Had it been the intention of the Legislature that an application could be lodged within 21 days after the discovery of probative evidence, it may well have said so. For example, in s. 525 of the *WorkCover Queensland Act 1996*, proceedings for an offence must be started within 1 year after the commission of the offence or within 6 months after the commission of the offence comes to the knowledge of the chief executive officer. There is a similar provision in s. 165 of the *Workplace Health and Safety Act 1995.*

The suggestion that an applicant can delay the institution of proceedings to a time of his choosing has been rejected in *Christie* where Chief Commissioner Hall (as he then was) said that the applicant who lists in time and then seeks to defer complies with the policy of the Legislature. In this regard, there is clear evidence that the applicant regarded his dismissal with suspicion, even before the dismissal. On the day of the dismissal, his representative, The Association of Professional Engineers, Scientists and Managers, Australia, Queensland Branch, Union of Employees (APESMA) wrote to the Premier. On 17 May 1999, APESMA wrote to OPS seeking details of the "exceptional circumstances". On 26 May, 1999 APESMA wrote to OPS "expressing disbelief" in OPS assertions and claiming that "there were at least eight applications for positions within the Public Service outstanding and that the retrenchment was made with undue haste". As far back as 23 December 1998, Mr McMahon had written to DNR electing to participate in the deployment program "under protest . . . as a result of the Department's systematic mistreatment of me".

The applicant was aware that when the retrenchment occurred, there were outstanding job applications and he was aware of the provisions of the Directive No. 4/98, clause 5.2. Inferences were thus available to be drawn from those circumstances and inferences need only be drawn on the balance of probabilities. Proof by way of inference is all that is necessary, especially if any adverse inference is left unexplained by the other side; direct evidence of a fact is not required to base an application, nor for that matter in proof of a fact alleged.

It is clear that the applicant, at no stage, accepted the dismissal as valid or fair and the failure to lodge the application is a clear instance of delaying the institution of a proceeding to a time of his own choosing, to a time when he seems to have considered that the evidence he had garnered was irrefutable.

The respondent however, points to further instances of delay. There was evidence that the applicant had made numerous FOI applications during the course of his employment with DNR from 1996 onwards. Yet the first of the FOI applications referred to here was not made until 239 days after the retrenchment. That he delayed the FOI application until an "unknown person" suggested possible benefit is not understandable considering his suspicions and other objections raised at the time of the retrenchment. He should have known of the existence of records in his deployment and redeployment and of the records relevant to his job applications.

On 6 March 2000, DNR wrote to Mr McMahon advising him that certain files he sought might be inspected at DNR. Those files were not inspected until 11 May 2000. On 17 March 2000, DNR wrote to Mr McMahon and advised him that certain documents released to him could be inspected. The documents were not inspected until 11 May 2000. On 3 April 2000 a notification was sent from DNR advising that some further 182 documents were available for inspection. Again there was no inspection until 11 May 2000. On 18 March, 2000 a FOI application was made to Queensland Treasury. The decision to release documents was made on 7 April and again, there was no viewing of documents until 26 May 2000.

There is no explanation for those delays in the context of a 21 day time limit to lodge the unfair dismissal application. There is no acceptable explanation for the failure to lodge this application within 21 days and certainly no explanation for the delay of 412 days. If it happened to be excusable to delay the lodgment of the application until sufficient evidence had been gathered, a position which I do not accept, the applicant was required to search for the evidence with appropriate haste, especially in circumstances where he held concerns and suspicions even before the retrenchment. He was required to lodge the application and seek an adjournment or even perhaps discovery and inspection. FOI applications to appropriate Departments should have been lodged at a much earlier date and the applicant himself, experienced in FOI applications, was aware there were positions he had applied for and which remained unfilled. I adopt the submission of the respondent that the delay was "extraordinary".

A denial of this application will result in the applicant losing his right to seek reinstatement. Should he be successful in proving the dismissal was harsh, unjust or unreasonable, it is open to doubt whether he has any remedy in the Commission. His position was made redundant and he spent 6 months on deployment in an endeavour to find another position both in DNR and other Departments. It is doubtful that the Commission would order a reinstatement to a position that did not exist, although it was argued he could be reinstated to another position. The length of the delay itself is relevant to a reinstatement order. He has no chance of obtaining compensation from the Commission because of the amount of money paid to him already (49.2 weeks severance pay).

The applicant has, however, not lost his right to take proceedings in the civil courts for damages for wrongful dismissal, which is an action for the recovery of damage for salary that he has been prevented from earning. That action can be instituted at any time within 6 years of the cause of action arising – vide s. 10 *Limitation of Actions Act 1974.*

There is little if any prejudice to be suffered by the employer if the application was granted and this aspect was briefly passed over in submissions. There is no allegation or evidence of conduct on the part of the respondent which could impact upon this application.

The applicant relied heavily upon *Bosak.* However that case involved a respondent's application under s. 346 of the *Workplace Relations Act 1997* in regard to a dismissal application which had been filed within time, where a conciliation conference had failed to achieve a settlement and where the applicant took two years before she requested a hearing. I am unable to gain any assistance from the principles enunciated in that case.

There was also a submission by the respondent that the Commission lacked the jurisdiction to hear the application for reinstatement because of s. 463 and s.464 of the *Workplace Relations Act 1997* and their interaction with Directives and the exercise of discretion under s. 34 of the *Public Service Act 1996.* In that regard, reliance was placed on *SPSFQ v. DETIR* where Williams P answered "no" to the question "(D)oes the Commission have power to review the exercise of the discretion granted by Directive 19/97 or Directive 21/97?". The applicant appeared to be unprepared for an argument along those lines

and sought to argue that point at the hearing. Whilst the respondent's point remains attractive, there may be an argument that because the appropriate process was not followed, the discretion was not exercised in accordance with the requirements of the Directive, that is that the determination was not made in the way prescribed. However, in view of my attitude to the excessive delay, I consider that I need not formally deal with the submission.

In summary, it would appear that there may well be some merit in the application and had the applicant acted with promptitude, I may have been more sympathetic. An extension of time though does not depend upon the merit argument to the exclusion of other considerations except to say that if there were no merit in the application, the extension of time application would have no chance of success. The applicant's reasons for the very lengthy delay in this case do not, in my view, justify the grant of an extension of time. The explanation for the delay between the dismissal in alleged circumstances of suspicion and the lodging of the FOI application is not appropriately explained. The applicant exhibited a further remarkable lack of enthusiasm in viewing documents obtained under FOI, of the order of some 60 days. While the length of the delay is not conclusive and while the discretion in s. 218 is entirely unfettered, the longer the period of delay the more difficult it will be to explain the delay. Having said that, if the Legislative proscription is to be given any respect at all, I think there would be very few occasions when an extension would be granted to lodge an application so far out of time. This is not one of those occasions.

The respondent has applied for an order for costs. This application is dealt with under s. 225 of the *Workplace Relations Act 1997*. The trigger for an award of costs is that the applicant has made the application frivolously, vexatiously or without reasonable cause or caused costs to be incurred by the other party because of an unreasonable act or omission connected with the conduct of the application.

It seems to me from the material that the applicant has at all times acted on advice from APESMA. APESMA has alleged that there is a serious question to be tried and has sought the exercise of the Commission's discretion to extend time. It also relied heavily on *Bosak*. In those circumstances, I am unable to conclude that the application was made frivolously, vexatiously or without reasonable cause or that there was an unreasonable act as identified in s. 225. I do not consider in the circumstances that the trigger for an award of costs has been activated.

I would refuse the application for costs.

The application for an extension of time is refused. The application for reinstatement is dismissed.

The Commission orders accordingly.

B.J. BLADES, Commissioner.

Released: 28 August 2000

Appearances:–
Mr K.H. Richards of the Association of Professional Engineers, Scientists and Managers, Australia, Queensland Branch, Union of Employees, for the applicant.
Mr C.J. Murdoch, Counsel, with him Mr M. Smith, for the respondent.

##

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 278 – application to recover unpaid wages

Queensland Nurses' Union of Employees AND Bethlehem Nursing Home
(Nos. W19, W20, W21, W22 and W27 of 1999)

NURSES' AGED CARE INTERIM AWARD – STATE

COMMISSIONER BROWN 29 August 2000

DECISION

The Queensland Nurses' Union of Employees (QNU) filed the abovementioned applications on behalf of Kathleen Bressington, Carmel Adams, Monica Patterson, Carol Hudson and Tracey-Lee Frazier for recovery of wages from Bethlehem Nursing Home to compensate for not being paid the appropriate allowance for being required to remain on the premises during meal breaks on night duty.

All avenues to resolve the matters by negotiation were exhausted during the course of conferences chaired by the Commission and held during the course of preliminary hearings. These conferences took place with the agreement of the parties.

On 11 January 2000 the Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers (QCCI) filed an application on behalf of Bethlehem Nursing Home (the respondent) to strike out the applications citing public interest grounds. After hearing argument, the Commission handed down a decision on 29 February 2000 refusing the application but ordered the QNU:–

> "to provide further and better particulars with respect to how the employees, in the case of the night shift meal allowance, formed the view that they were 'required' to remain on the employer's premises and in the case of the supervisory allowance, how they were appointed to the position or why they concluded that they had been appointed.".

On the receipt of further and better particulars, the Commission determined that the matters should be heard and determined.

Mr S. Ross for the QNU called Hudson, Patterson, Adams, Bressington, Frazier, registered nurse Joyce Brophy and QNU research officer Gail McCaul to give evidence.

Mr S. Nance for the respondent elicited evidence from Narelle Parcell, Kathryn Bowen, Kathryn Gray, Maureen Black, Margaret Brown and Dianne Scroop.

The Commission was shown the layout and operation of the Bethlehem Nursing Home facility during inspections undertaken at the start of proceedings on Monday, 7 August, 2000.

Bethlehem is a 106 bed facility caring for 45 patients in the nursing section, with the remainder cared for in the hostel. There is a secure dementia block on the hostel side of the operation. The nursing care area is also able to be secured.

The parties agreed that the matters be heard conjointly, however, as proceedings progressed, it emerged that whilst the applications were similar in nature, the circumstances pertaining to each of the applicants differed to some extent.

In this light it is my intention, having regard to submissions and authorities referred to, firstly, to outline my decision as to how the clause should be applied and then, having regard to the individual circumstances, detail what entitlement, if any, exists in relation to each of the applicants.

As agreed between the parties the Award is the **Nurses' Aged Care Interim Award – State** and the provision in question is as follows:–

> "9(8)(b) *Meal Breaks – Employees on Night Duty* – The meal break for nurses on night duty shall be taken at a time, not to affect the continuity of work.
>
> Where an employee is required to remain on the premises during the meal break whilst engaged on night duty, the employee shall be paid an allowance of $6.00 per shift. Should the employee's meal break be interrupted by work or inquiries pertaining to work, then the meal break should be paid at the appropriate overtime rate.".

It was the contention of the QNU that the term "required" contained in the clause in question can be satisfied in ways other than by a directive from the employer that employees remain on the premises during the meal break. The QNU cited scheduled workloads, unforeseen work requirements (incidents or emergencies), concern for employee safety arising from security issues and the absence of advice from the employer that employees were free to leave during breaks as issues which, considered either individually or collectively, resulted in employees being required to remain on the premises for meal breaks during night duty thus satisfying the terms of clause 9(8)(b) of the Award.

The QNU further submitted that the word "required" as it appears in the clause is not qualified by any further comment such as "by direction of the employer".

Summarised, the QNU's view is that a range of circumstances, other than an employer directive, required employees to remain on the premises. The QNU also claimed that the evidence of some applicants was such that an employer directive did exist on occasions in addition to the circumstances mentioned above. This will be examined in detail later in the decision.

Mr Nance for the respondent submitted that the word "required", as it appears in clause 9(8)(b) should be interpreted as meaning "required by the employer".

Mr Nance stated that employees unable to take a meal break because of work requirements, scheduled or otherwise, were entitled to be paid overtime in line with clause 9(8)(b) of the Award which also deals with interrupted meal breaks.

He indicated that no claims had been received for this payment and that this should not be confused with the question whether or not a requirement to remain on the premises exists.

He also indicated that other than the claims of the applicants now before the Commission, no employee had claimed the allowance for being required to remain on the premises in the past.

He further submitted that no employee had been refused a request to leave the premises during a meal break.

Mr Nance submitted that the respondent was satisfied with staff levels on night shift and further satisfied that at no time would the levels drop below 1 registered nurse and 2 assistants in nursing or enrolled nurses during the 1.5 hours allocated for meals should an employee leave the premises during the meal break.

Mr Nance called evidence to support the matters contended above.

Mr Ross submitted that the decisions of Garlick DP in case No149 of 87 regarding Higher Duties and Marshall J. in VI 1514 of 95 also related to Higher Duties supported his submission that a directive to an employee from an employer was not the only method by which a requirement to remain on the premises during meal breaks could arise.

While it was apparent that a practice had evolved whereby employees remained on the premises during night duty meal breaks, this does not, in my view, give automatic rise to a right to claim the allowance under clause 9(8)(b) of the Award.

On the other hand I also have reservations regarding the employer's contention that only by a specific directive of the employer or the employer's representative can a right to the allowance arise.

After consideration of the evidence and material submitted, I am not inclined to accept in the circumstances that the word "required" in the context of clause 9(8)(b) can be satisfied by either an employee's personal assessment of what unforeseen problems may arise during the meal break or an employee's personal feeling of insecurity with respect to leaving the premises, especially where the employee has not advised the employer of their wish to leave being denied because of security concerns.

I have concluded that the word "required" as it appears in clause 9(8)(b) means:–

1. Required by the employer; or
2. Required by special circumstances prevailing at the time in the work place; namely an emergency or incident or series of incidents where the individual employee assesses that personal safety to residents is at risk or serious damage to property is likely.

In the case of 2. above, the decision as to whether or not the employee should remain on the premises because of circumstances referred to above would normally be taken by the person in charge. However, should this person be unavailable for whatever reason, it would be reasonable for the employee to make the decision based on their own judgment. In these circumstances the onus would be on the employee in question to bring the events to the notice of the employer as soon as possible and also to claim the allowance in question as soon as possible.

The QNU called Joyce Brophy, Registered Nurse, to give evidence on behalf of the applicants. She confirmed night duty staff remained on the premises during meal breaks and her preference would be that staff remain on the premises. However, she had received no directive, written or otherwise, to require staff to remain on the premises on night duty, had never asked any to remain and no occasion had arisen where she told staff that they were required to remain.

An employee electing or preferring to stay at work for reasons of convenience (i.e. no viable or practical alternative exists at that time of night) or perceived safety concerns does not establish in my view a right to claim for the allowance in question.

Regarding the issue of safety there was no evidence from the applicants that they had not notified the employer that they wished to leave the premises for meal breaks but were prevented from doing so because of safety concerns or a refusal by the employer to provide a reasonable level of security.

Indeed, evidence showed that the employer was aware of overall security and evidence of a number of security improvements was forthcoming.

I am not satisfied that the respondent knowingly allowed a safety or security problem to continue in order that employees would be forced to remain at work during night duty meal breaks, thus allowing the respondent to avoid the need to direct that employees remain on the premises.

Despite evidence of a directive that staff not leave the secure area (Nursing care) alone during working hours, I note that no evidence was presented suggesting that on the two occasions that staff did leave the premises, an escort or other security measures was requested. I further note that the directive was not to leave alone as distinct from not to leave.

An employee's personal belief that they would feel unsafe leaving the premises after midnight, whilst understandable, considering developments in society generally, does not in my estimation create an entitlement to the allowance in question.

That the respondent and residents could benefit through the ability to quickly call on the services of staff on a meal break is obvious in this case. The employee whose meal break is interrupted is entitled to claim the benefits of clause 9(8)(b) to pay for such work at overtime rates.

What is at issue here is whether or not the employee was "required" to remain on the premises during the meal break and not whether having chosen to remain, the meal was interrupted.

With respect to the issue of work load, witnesses for the applicants testified that work demands arising from both the scheduled duties and unforeseen duties were such that they felt that they were required to remain on the premises during breaks in order to fulfil a duty of care.

Evidence was adduced on behalf of the applicants of interrupted meal breaks and exhibits were presented supporting the contention that the emergency or non scheduled work load was unpredictable and could occur at any time.

Mr Nance for the respondent on the other hand submitted that they were satisfied that 4 staff (including the registered nurse) on night shift was sufficient and that during the period of meal breaks the registered nurse and 2 other staff were sufficient to meet requirements. The registered nurse is required to remain on the premises and is paid the allowance.

Mr Nance submitted that the applications before the Commission did not in any way relate to compensation for interrupted meal breaks.

I note there is no requirement relating to minimum staff numbers in Nursing Homes or Hostels contained in a regulation.

Correspondence from Bethlehem Nursing Home to the QNU dated 22 July 1998 made it clear that the employer did not require employees to remain on the premises during meal breaks on night duty and were not prepared to pay the allowance.

In applying the interpretation set out above and taking into account the evidence and submission of the applicants, I find as follows:–

Carol Hudson – There is no evidence that this employee was required to remain on the premises during the meal break on night shift during the period for which the allowance is claimed. This application is refused.

Monica Patterson – There is no evidence that this employee was required to remain on the premises during the meal break on night shift during the period for which the allowance is claimed. This application is refused.

Carmel Adams – This applicant was given a directive to work in the dementia wing for a period of 4 months. She was further directed by Sonia Wilson, then Nursing Superintendent, not to leave the block for the entire shift. I find that she was required to remain on the premises for her meal break throughout this period.

I order the parties to determine the exact number of shifts worked during the 4 month period in question and in line with the undertaking given by Mr Nance pay the appropriate compensation to this applicant.

Kathleen Bressington –There is no evidence that this employee was required to remain on the premises during the meal break on night shift during the period for which the allowance is claimed. This application is refused.

Tracey-Lee Frazier – The evidence of this applicant was that she was given a directive to remain on the premises during meal breaks on night duty by Vicky McCabe, former Nursing Superintendent, upon her commencement of employment at Bethlehem. Further, her evidence was that this instruction was never rescinded.

I order the parties to determine the number of night shifts worked by this applicant from her commencement of employment up to 22 July 1998 and to calculate and pay to her the amount that should have been paid for being required to remain on the premises during meal breaks on night duty.

D.K. BROWN, Commissioner.

Appearances:–

Mr S. Ross, with him Ms G. McCaul for the Queensland Nurses' Union of Employees.

Mr S. Nance for the Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers, on behalf of Bethlehem Nursing Home.

Released: 29 August 2000

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 278 – application for recovery of wages

Erica Anne Lewin, Denise Thompson and Robyn Marie Evans AND Seair Trading Co Pty Ltd (Nos. W91, W92 and W93 of 2000)

COMMISSIONER BECHLY 24 August 2000

Applications for recovery of wages – Preliminary issue – Subject matter of claims alleged to be also subject of claims before Industrial Magistrate under s. 399 of Act – Whether claims could be dealt with by Commission in light of s. 278(11) of Act – Consideration of s. 666 – Relevant matters before Industrial Magistrate withdrawn prior to raising of preliminary issue – No impediment to Commission dealing with substantive application – Costs awarded against respondent.

DECISION

Applications under s. 278 of the *Industrial Relations Act 1999* (the 1999 Act) have been filed by Ms Erica Ann Lewin, Ms Denise Thompson and Ms Robyn Marie Evans for recovery of unpaid wages.

The matters were listed for preliminary hearing together on 17 July 2000. On that date Mr M. Loane for the respondent Seair Trading Co Pty Ltd (Seair) raised a threshold issue as to whether the Commission was able to deal with the matters. It was his allegation that applications had been filed under s. 399 of the Act for the same matters and, as a result, s. 278(11) of the Act prevented the applicants from making applications to the Commission on the matters. Section 399 enables applications to be made to an Industrial Magistrate for recovery of alleged unpaid wages.

The respondent sought costs for the proceedings.

The matters were complicated by the fact that a number of applications had been filed in the Industrial Magistrates Court by the applicants seeking a variety of outcomes and action had been taken to seek to withdraw some of these matters part heard before the Industrial Magistrate.

Details of the various actions were not available at the preliminary hearing. The matters were stood over until 10 August to enable the threshold matter to be dealt with. On that date it became clear that no actions had been initiated by the applicants pursuant to s. 399 of the Act.

What in fact had occurred was that the applicants had initiated various actions under the previous legislation, the *Workplace Relations Act 1997*, and the present Act, for alleged breaches of both award and legislative requirements.

Separate complaints seeking the imposition of penalties were filed against Ms Lani Rae, Mr Michael Goldsmith and Seair Trading Co Pty Ltd ACN 002 789 844 trading as Gold Coast Telebet Centre for breach of s. 394(1) of the 1997 Act for failing to keep time and wages records.

Later complaints were then filed under s. 666 of the *Industrial Relations Act 1999* seeking penalties for failure to pay wages together with an order available under s. 666(6)(b) for payment of any amount of wages the magistrate finds to be payable to the applicants.

It appears that the respondent relies upon the relief available under s. 666(6), being the order a magistrate may make with respect to an amount found to be payable to an employee, to support the argument that the Commission is excluded from dealing with the application now before it under s. 278.

Section 278 of the *Industrial Relations Act 1999* gives the Commission the power to hear and determine applications for recovery of unpaid wages up to a value of $20,000, except where an application for the same matter has been made to an industrial magistrate under s. 399.

Section 278(11) relevantly provides:–

> "A person can not make an application under this section if an application has been made under section 399 or 408 for the same matter.".

The superseded legislation, the 1997 Act, at s. 423, also made provision for recovery of unpaid wages through action taken in the Industrial Magistrates Court. No action has been taken by the applicants under that section of the 1997 Act for recovery of alleged unpaid wages.

The power given to this Commission to deal with recovery of unpaid wages is new to the 1999 Act. Had an action been taken under s. 423 of the 1997 Act there may have been some basis for an argument that s. 278 of the 1999 Act should be read as to also exclude the Commission's power to deal with applications for recovery of unpaid wages made under s. 423 of the 1997 Act.

The issue to be decided is whether s. 278 should be read as to exclude the Commission from dealing with applications for unpaid wages where an action has also been taken under s. 666 by way of complaint with respect to an offence attracting a penalty and where recovery of amounts found to be owing is available.

The 1999 Act is specific. It excludes the Commission from exercising any power only where other action has been taken under s. 399 for unpaid wages or s. 408 for recovery of unpaid superannuation payments.

Action taken under s. 666 is action of quite a different character from that provided for in ss. 399 or 408. In *Clyde v Carter* (155 QGIG 128) de Jersey, P commented:

> "Charging an offence raised a proceeding of quite a different character from the quasi-civil proceedings for the recovery of money *simplicter*. It is a proceeding which, in the event of conviction, can have much more serious consequences for the respondent than a mere order, as it were, for the payment of moneys.".

Notwithstanding the difference in character of the actions available under s. 666, a recovery of unpaid wages is available whether the magistrate finds the defendant guilty or not guilty.

Section 666(6) provides:–

"A magistrate may hear and decide a complaint for an offence under this section, and in addition to any penalty that the magistrate may impose –

(a) if the magistrate finds the defendant guilty – must order the defendant to pay the employee the amount the magistrate finds to be payable to the employee; or
(b) if the magistrate does not find the defendant guilty – may order the defendant to pay the employee the amount the magistrate finds, on the balance of probabilities, to be payable to the employee.".

On a plain reading of the 1999 Act the Parliament has legislated that both courses, i.e. an application to the Commission for unpaid wages and an application to an Industrial Magistrate for penalty and recovery, be available to an applicant. In such a case, if recovery was first effected through the Commission, it would be open to the Magistrate only to determine the guilt or otherwise of the defendant based on criminal law and the appropriate penalty. If the matter proceeded first to the industrial magistrate and recovery ordered there, then no action would be open to the Commission.

It is clear, on a plain reading of the legislation, that there is no bar to the present applications proceeding before me.

COSTS

Both parties have sought an order for costs.

On 17 July 2000 the respondent made an application to have the matters before me struck out, and that costs be awarded on the basis that the applicants have proceeded vexatiously, without reasonable cause and have caused the respondent to incur unnecessary costs.

The applicants argued that s. 278(11) of the 1999 Act did not, by reason of the nature of the applications filed in the Industrial Magistrates Court, prohibits me from dealing with the matters. The matters were adjourned to 10 August to enable that application to be dealt with. I have commented above that the adjournment was granted to enable the application to be fully argued because I was informed by the respondent that action had been taken by the applicants under s. 399 of the 1999 Act. As indicated above no such action had been taken by the respondents.

The applicants now apply for costs with respect to the application to strike out. Section 335(1)(a) enables the Commission to order a party to an application to pay costs incurred by another party only if satisfied:–

"the party made the application vexatiously or without reasonable cause.".

On the material before me there was no reasonable cause for the application to strike out. Costs incurred by the applicants with respect to proceeding on 10 August 2000 are ordered to be paid by the respondent, Seair Trading Co Pty Ltd. If the parties are unable to reach an agreement as to quantum of costs an application may be made for an appropriate order.

Dates for hearing of these matters at Southport Court House will be set at a time convenient to the parties and the Commission.

R.E. BECHLY, Commissioner.

Released: 30 August 2000

Appearances:–
- Ms A. Petie, Articled Clerk, of Reidy and Tonkin, Solicitors, for the Applicants.
- Mr M. Loane of Herriott & Associates, for the Respondent.

##

QUEENSLAND INDUSTRIAL REGISTRAR

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

Queensland Teachers Union of Employees (No. Q27 and Q29 of 2000)

REGISTRAR EWALD 25 August 2000

Request for Conduct of Elections – Prescribed Information – Methods of Elections – Electoral Commission to Conduct Elections.

DECISION

On 4 and 14 August 2000, the Queensland Teachers Union of Employees lodged in the Registry under s. 481 of the *Industrial Relations Act 1999*, the information prescribed in s. 53 of the *Industrial Organisations Regulation 1997*, in relation to the conduct of elections by the Electoral Commission of Queensland for the following positions of office:

Office	*Number of Positions*	*Method of Election*
Q27/00		
State Council Representative of a Branch		Direct vote by Members of Branch
Barron Branch	1	
Q29/00		
General Secretary	1	Collegiate vote by Members of the State Council
Deputy General Secretary	1	

Timing of Elections

The Rules prescribe that nominations shall be called by advertisement in the "Queensland Teachers' Journal" with the closing date of nominations no earlier than twenty-one days after the date upon which such notice first appears in the Journal. I am advised that the next Journal is to be printed on 31 August 2000. The Rules have no clear date for the opening of nominations for election to assist in determining the "prescribed date" as referred to in

s. 53(4) of the *Industrial Organisations Regulation 1997*. Accordingly, a date is not definable. Notwithstanding, I have exercised my discretion under s. 481(2) of the *Industrial Relations Act 1999* and extended the prescribed time for filing of such information to 4 August 2000 for the State Council Representative of a Branch (Q27/00) and 14 August 2000 for the other positions (Q29/00).

Methods of Election

I am satisfied that the methods of election are as stated above.

Conduct of Elections

I have considered the requests and find that the elections being sought are for positions of office within the meaning of the Act.

Therefore, under s. 482 of the *Industrial Relations Act 1999*, I am making arrangements for the elections of the above named positions to be conducted by the Electoral Commission of Queensland.

Dated this twenty-fifth day of August, 2000.

E. EWALD,
Industrial Registrar.

Released: 25 August 2000

##

QUEENSLAND INDUSTRIAL REGISTRAR

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

Master Painters, Decorators and Signwriters' Association of Queensland, Union of Employers (No. Q32 of 2000)

REGISTRAR EWALD 25 August 2000

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

DECISION

On 23 August 2000 the Master Painters, Decorators and Signwriters' Association of Queensland, 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 its request for the conduct of an election by the Electoral Commission of Queensland for the following Offices:–

Office	*Number of Positions*
President	1
Vice President	2
Treasurer	1
Councillor	Minimum of 6/ Maximum of 10
Trustee	2

Timing of Election

Rule 31(d) prescribes that the calling of nominations shall be by notice to all Members not less than forty-two days prior to the Annual General Meeting.

Under the Rules there is no way of determining the prescribed date under section 53(4) of the *Industrial Organisations Regulation 1997*, "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".

Rule 23 prescribes that the Annual General Meeting "shall be held in February of each year on such day and hour as may be determined by the Council". The Industrial Organisation advises that the Annual General Meeting will be held on 3 November 2000. The delay in calling the 2000 Annual General Meeting, as in previous years, is contrary to the presently registered Rules, but it has been recent practice to hold the AGM in September/October and this year it has been set for early November. Notwithstanding that, there is a greater public interest in ensuring the continuity of officials for registered Industrial Organisations and the election should proceed ensuring full terms of office are served.

Taking into account the indefinable time frame for the calling of nominations, the receipt of nominations and the holding of the election by the Returning Officer and the delayed Annual General Meeting, for the purpose of lodgement of the prescribed information (i.e. 2 months prior to the earliest date that a person can become a candidate) I find that the prescribed information was filed outside 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 to 23 August 2000.

Reason for Election

Rule 29 prescribes that "the whole Council shall retire annually". Rule 42 provides for two Trustees to be elected at the Annual General Meeting while Rule 23(3) provides for the election of Office-Bearers at the Annual General Meeting.

Method of Election

I am satisfied that the method of election is by a direct voting system by secret postal ballot.

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 positions of Office set out above.

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

Dated this twenty-fifth day of August, 2000.

E. EWALD
Industrial Registrar

Released: 25 August 2000.

##

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

Richard Thomas Quaid AND Woollard & Associates Pty Ltd (No. W29 of 2000)

COMMISSIONER SWAN 25 August 2000

ORDER

THIS matter coming on for hearing before the Commission at Brisbane on 22 May and 25 August 2000, this Commission, after having decided that Richard Thomas Quaid was underpaid wages and entitlements by Woollard & Associates Pty Ltd, in accordance with the provisions of the Engineering Award – State, doth order as follows:–

1. That Woollard & Associates Pty Ltd pay to Richard Thomas Quaid the amount of three thousand, one hundred and twenty-four dollars and fifty cents ($3,124.50) in respect of unpaid wages for the period between 7 January 1998 and 24 March 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 twenty-fifth day of August, 2000.

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

Operative Date: 25 August 2000
Order – Unpaid wages
Released: 25 August 2000

##

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 138 – application to amend an order

The State Training Council AND Motor Trades Association of Queensland Industrial Organisation of Employers (No. B1076 of 2000)

SUPPLY OF TOOLS TO APPRENTICES

PRESIDENT HALL
VICE PRESIDENT LINNANE
COMMISSIONER BROWN 18 August 2000

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 18 August 2000, this Commission doth order that the said Order be amended as follows as from the ninth day of June, 2000:–

By deleting the apprenticeship callings and attendant values and terms contained in Group 1 and inserting the following in lieu thereof:–

"GROUP 1

Apprenticeship Calling	Total Retail Value of Tools $	Annual Retail Value of Tools $	Nominal Term of Apprenticeship
Aircraft Maintenance Engineer – Avionics	1,800.00	450.00	4
Aircraft Maintenance Engineer – Mechanical	1,800.00	450.00	4
Aircraft Mechanics	1,800.00	450.00	4
Aircraft Mechanic – Structures	1,800.00	450.00	4
Automatic Transmission Specialist	1,800.00	450.00	4

Apprenticeship Calling	Total Retail Value of Tools $	Annual Retail Value of Tools $	Nominal Term of Apprenticeship
Automotive Diesel Fitter	1,800.00	450.00	4
Automotive Electrician	1,580.00 (Effective from 9 June 2000)	395.00	4
	1,800.00 (Effective from 1 September 2000)	450.00	
Bed and Mattress Making	–	–	4
Binding and Finishing	–	–	4
Boat Building	78.00	19.50	4
Boot and Shoe Repairing	All necessary tools to be supplied by employer		4
Brake Specialist	1,800.00	450.00	4
Bread Baking	–	–	4
Bread Baking / Pastrycooking	–	–	4
Bricklaying	880.00	220.00	4
Butchering	240.00	60.00	4
Cabinetmaking	1,200.00	300.00	4
Carpentry	2,400.00	600.00	4
Carpentry (Formwork)	2,400.00	600.00	4
Catering	–	–	4
Chair and Couch Making	–	–	4
Construction – Civil Operations (Plant)	–	–	3
Cooking	–	–	4
Coopering	All necessary tools to be supplied by employer		4
Dental Technician	–	–	2
Diesel Fitter	1,800.00	450.00	4
Diesel Fuel Specialist	1,800.00	450.00	4
Driveline Specialist	1,800.00	450.00	4
Electricity Supply Tradesperson	1,800.00	450.00	4
Engineering Tradesperson (Electrical)	1,800.00	450.00	4
Engineering Tradesperson (Electronics)	1,350.00	337.50	4
Engineering Tradesperson (Fabrication)	1,350.00	337.50	4
Engineering Tradesperson (Mechanical)	1,800.00	450.00	4
Engineering Tradesperson (Vehicle Building)	1,620.00	405.00	4
Engine Reconditioner	1,800.00	450.00	4
Farriery	855.00	213.75	4
Floor Finishing and Covering	240.00	60.00	4
Glass and Glazing	200.00	50.00	4
Graphic Pre-press	–	–	4
Greenkeeping	–	–	4
Hairdressing (Gentlemen)	40.00	10.00	4

Apprenticeship Calling	Total Retail Value of Tools $	Annual Retail Value of Tools $	Nominal Term of Apprenticeship
Hairdressing (Ladies)	40.00	10.00	4
Heavy Vehicle Mobile Equipment Mechanic (Plant/Earth/Moving/Agriculture)	1,800.00	450.00	4
Heavy Vehicle Road Transport Mechanic	1,800.00	450.00	4
Higher Engineering Tradesperson	2,250.00	450.00	5
Jewellery	–	–	4
Jockey (applies to Racing Industry only)	–	–	4
Joinery	2,400.00	600.00	4
Joinery Machinery	200.00	50.00	4
Leadlight Working	200.00	50.00	4
Light Vehicle Mechanic	1,800.00	450.00	4
Marine Equipment Installer	1,800.00	450.00	4
Marine Mechanic	1,800.00	450.00	4
Meat Retailing	240.00	80.00	3
Musical Instrument (Tuning and Repairing)	680.00 160.00/2nd yr 200.00/3rd yr 240.00/4th yr	80.00 1st yr	4
Motor Cycle Mechanic	1,800.00	450.00	4
Optical Mechanics	–	–	4
Outdoor Power Equipment Mechanic	1,800.00	450.00	4
Painting and Decorating	200.00	50.00	4
Panel Beater	1,620.00	405.00	4
Pastrycooking	–	–	4
Patisserie	–	–	4
Picture Framing	–	–	4
Plastering (Fibrous)	1,040.00	260.00	4
Plastering (Solid)	1,040.00	260.00	4
Plumbing and Draining	2,400.00	600.00	4
Polishing	–	–	4
Pottery	–	–	4
Printing Machining	–	–	4
Riding Saddle Making	All necessary tools to be supplied by employer		4
Sailmaking	–	–	4
Saw Doctoring	–	–	4
Screen Printing – Stencil Preparation	–	–	4
Shopfitting	–	–	4
Signwriting	400.00	100.00	4
Signwriting (Silk Screen Process)	–	–	4

Apprenticeship Calling	Total Retail Value of Tools $	Annual Retail Value of Tools $	Nominal Term of Apprenticeship
Soft Furnishing	–	–	4
Sprinkler Pipe Fitting	–	–	4
Stonemasonry	–	–	4
Tiling (Roof)	780.00	260.00	3
Tiling (Wall and Floor)	1,040.00	260.00	4
Upholstering	–	–	4
Vehicle Body Builder	1,620.00	405.00	4
Vehicle Painter	1,240.00	310.00	4
	(Effective from 9 June 2000)		
	1,620.00	405.00	
	(Effective from 1 September 2000)		
Vehicle Trimmer	1,240.00	310.00	4
	(Effective from 9 June 2000)		
	1620.00	405.00	
	(Effective from 1 September 2000)		
Watchmaking and Clockmaking	420.00	105.00	4
Wood Machining	–	–	4".

Dated this eighteenth day of August, 2000.

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

Operative Date: 9 June 2000
Amendment – Supply of Tools to Apprentices
Released: 25 August 2000

##

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999

Commissioner of Police

AND

The Queensland Police Commissioned Officers' Union of Employees

AND

Queensland Police "Union of Employees"

(No. IA49 of 1993)

POLICE SERVICE AWARD – STATE

Lateral Transfers

INDUSTRIAL AGREEMENT

REGISTRAR EWALD 17 August 2000

NOTICE OF RETIREMENT

To: The Industrial Registrar.

TAKE NOTICE that we, The Commissioner of the Police Service, The Queensland Police Commissioned Officers' Union of Employees, and the Queensland Police "Union of Employees" parties to the industrial agreement of 23 September 1993, Register No. IA49 of 1993, will retire from such agreement and cease to be a party thereto on 18 September 2000.

Dated 10 August 2000

Signed for Commissioner of The Police Service } J.R. O'SULLIVAN

In the presence of – I.C. FELS

Signed for The Queensland Police Commissioned }
Officers' Union of Employees } C.J. LICKORISH

In the presence of – P.L. FRASER

Signed for the Queensland Police }
"Union of Employees" } G.J. WILKINSON

In the presence of – S. MAHONEY

Filed at my Office this seventeenth day of August, 2000.

E. EWALD
Registrar

Filed date: 17 August 2000