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No. 14

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999
Industrial Relations (Tribunals) Rules 2000

NOTICE

The following Agreements have been certified by the Commission:—

No/s	Title	Date certified	Cancelling
CA267/01	Warwick Shire Council Enterprise - Certified Agreement Number Three	9/7/01	CA292/00
CA239/01	Hauser Painters Pty Ltd t/a Faux Finishes - Certified Agreement	10/7/01	CA321/95
CA240/01	Cougar Constructions Qld Pty Ltd Civil Industry - Certified Agreement	10/7/01	
CA246/01	Elder Scaffolding and Specialized Services Pty Ltd – Certified Agreement	10/7/01	CA562/97
CA247/01	All High Rise Pty Ltd - Certified Agreement	10/7/01	CA565/97
CA249/01	QCL Gladstone 2000 - Certified Agreement	10/7/01	CA62/99
CA253/01	Peter De Boer t/a De Boer Bros. Painting Contractors – Certified Agreement	10/7/01	
CA254/01	Mark Hurst t/a Steelaway Industries - Certified Agreement	10/7/01	
CA265/01	Queensland Glass Pty Ltd - Certified Agreement	10/7/01	
CA270/01	Associated Developments Pty Ltd t/a J & B Labour Hire - Certified Agreement	10/7/01	
CA271/01	Eureka Building and Construction Services Pty Ltd - Certified Agreement	10/7/01	
CA272/01	Dowells Building Services Pty Ltd - Certified Agreement	10/7/01	
CA273/01	Bluechip Concrete Services Pty Ltd - Certified Agreement	10/7/01	
CA274/01	Eureka Building and Construction Services Pty Ltd t/a Ebac. – Certified Agreement	10/7/01	
CA275/01	Jason Wellington-Stones t/a Industrial Cranes & Rigging - Certified Agreement	10/7/01	
CA276/01	Australian Trades & Labour Hire Pty Ltd - Certified Agreement	10/7/01	CA254/97
CA186/01	Skylift Services Pty Ltd - Certified Agreement	12/7/01	
CA187/01	Linddales Pty Ltd T/A Linddales Concreting - Certified Agreement	12/7/01	

No/s	Title	Date certified	Cancelling
CA188/01	Savcor Pty Ltd - Certified Agreement	12/7/01	
CA269/01	St. Vincent's Private Hospital Toowoomba Enterprise - Certified Agreement 2000	16/7/01	CA431/98

E. EWALD
Industrial Registrar

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INDUSTRIAL COURT OF QUEENSLAND

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

Roma Town Council AND Dale Latemore, No. 2, (No. C21 of 2001)

PRESIDENT HALL

16 July 2001

DECISION

In delivering a decision in this matter on 19 June 2000, see 167 QGIG 175, I reserved the question whether the matter should be remitted to the Commissioner who had heard it at first instance or remitted to the Commission to be re-heard by a different Commissioner. Counsel for the appellant and counsel for the respondent have now made written submissions upon that issue.

It may be accepted that the Commissioner who dealt with the matter at first instance has not formed an intractable view about the credit of any witness or about any issue upon which he would be called to form a view if the matter were remitted to him. Indeed, the appellant has enjoyed success primarily because of questions which were not considered. There is, however, the question of perception. The Federal Court has adopted a general rule that where an administrative decision is set aside for error and remitted for a re-hearing, it should be heard and decided again by a differently constituted tribunal because such an order will generally seem fairer to the parties, compare *Northern NSW FM Pty Ltd v Australian Broadcasting Tribunal* (1990) 26 FCR 39 at 42 to 43 per Davies and Foster JJ; *Vaitaiki v Minister for Immigration and Ethnic Affairs* (1998) 150 ALR 608 at 615 per Burchett J; and at 623 per Whitlam J, *Commonwealth of Australia v Human Rights and Equal Opportunity Commission* (1997) 76 FCR 513 at 531 per Drummond J (note that Mansfield J would have sent the matter back to the same Commissioner, at 550). That seems to me to be an eminently sensible general rule.

Here there are two additional factors. I declined to deal with the matter as a re-hearing on the record because there were questions of credibility which could not properly be resolved upon a trial on a transcript. The Commissioner who heard the matter at first instance at one time had an advantage in that he had heard and observed the witnesses. With the passage of what is now quite a considerable time, that advantage has greatly diminished. Second, as counsel for the respondent fairly concedes, the possibility that an application might (successfully) be made to lead further evidence is real. The tradition of the law, admittedly worked out in the context of trying separate issues and shaken greatly by modern systems of case management, has been to favour general trials rather than limited trials upon a remitter, compare *Pateman v Higgin* (1957) 97 CLR 521 at 527 per Kitto, J. In my view, if the hearing of additional evidence became necessary, there would be a real risk of injustice because of the temporal distance between the hearings.

Counsel for the respondent is correct in observing that it is regrettable that the costs of a small matter have so blown out. That has more to do with the *Appeal Costs Fund Act 1973* than any issue ventilated in these proceedings.

I order that the matter be remitted to the Queensland Industrial Relations Commission to be heard by a Commissioner other than the Commissioner who dealt with the matter at first instance.

Dated this sixteenth day of July, 2001.

D.R. HALL, President.

Appearances:-

Mr K. Watson instructed by Freehills for the appellant.

Mr A.K. Herbert instructed by Sciacca's Lawyers and Consultants for the respondent.

Released: 16 July 2001

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999

s. 287 – application for declaration of general ruling

s. 288 – application for declaration of policy

The Australian Workers' Union of Employees, Queensland AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (No. B797 of 2001) and Queensland Council of Unions AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (No. B904 of 2001);

PRESIDENT COMMISSIONER HALL
VICE PRESIDENT LINNANE
COMMISSIONER BECHLY

18 July 2001

DECLARATION OF INTENT

On 2 May 2001 the Australian Industrial Relations Commission published its decision in what is colloquially known as Safety Net Review – Wages – 2001. On 2 May 2001 The Australian Workers' Union of Employees, Queensland filed with the Industrial Registrar an application which, amongst other things, sought to flow the decision of the Australian Industrial Relations Commission into Queensland Awards. On 23 May 2001 the Queensland Council of Unions filed a similar application.

We have perused the decision of the Australian Industrial Relations Commission. We are conscious that in 1997, 1998 1999 and 2000 comparable Safety Net Review (Wages) decisions of the Australian Commission were flowed into State Awards by way of a declaration of a general ruling. We have decided that we should direct our mind to the question whether, as the Queensland Council of Unions and The Australian Workers' Union of Employees, Queensland submit, we should flow the Safety Net increases and increases in allowances approved by the Australian Commission into the Queensland system by way of a declaration of general ruling. We make it plain that we have not decided to do so at this stage. The purpose of this declaration is to discharge the duty cast upon us by s. 287(2).

A copy of this declaration is to be published in the *Queensland Government Industrial Gazette*. A copy of the declaration will be given to all persons, natural and artificial, upon whom the initiating applications were served. If any person who has not previously participated in these proceedings communicates an intention to make submissions about the (possible) general ruling, they are at liberty to do so. An outline of any such submission should be filed with the Industrial Registrar no later than 4.00 p.m. on 30 July, 2001. We shall at a date to be fixed hear such oral submissions as are necessary.

Dated this eighteenth day of July, 2001.

D.R. HALL, President.

D.M. LINNANE, Vice President.

R.E. BECHLY, Commissioner.

Released: 18 July 2001

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 331(b)(ii) –refrain from hearing application

**Agforce Queensland Industrial Union of Employers
AND The Australian Workers' Union of Employees, Queensland (No. B391 of 2001)**

PRESIDENT HALL
COMMISSIONER EDWARDS
COMMISSIONER THOMPSON

20 July 2001

DECISION

In order to understand the application now pressed upon the Commission, it is necessary to say something about cases past.

During the course of 1999 each of three cases, viz No. B1943 of 1998, No. B1944 of 1998 and No. B538 of 1999, were before Commissioner Blades. The proceedings were approached with great industry both by the parties and by the Commission. Fifty-two witnesses were called. They were called from a total of twenty-one different properties and regional centres. The Commissioner and the parties visited the properties and regional centres to take the evidence. The process took twenty-one days. Much of the time was spent in driving motor vehicles. In the result, all matters were settled. Numerous, novel and industrially significant amendments were made to the *Shearing Industry Award –State*. The claims advanced in No. B538 of 1999 were withdrawn.

Within a week of being informed of the settlement, Commissioner Blades was informed that the matter had not been settled at all. Commissioner Blades was informed that the industrial advocate who had informed The Australian Workers' Union of Employees, Queensland and the Commission of Agforce Queensland Industrial Union of Employers' agreement to the settlement conveyed the information without authority. There were proceedings before Commissioner Blades on that claim. On 4 February 2000, by a decision now reported at 163 QGIG 111, Commissioner Blades found that the industrial advocate had had actual authority from the Chief Executive Officer of Agforce Queensland Industrial Union of Employers to enter into the settlement and to inform the Commission about it. It was not disputed that the Chief Executive Officer might delegate such authority. In the circumstances the Award was amended according to the terms of settlement with the date of operation of 1 January 2000. There was no appeal.

On 28 February 2001 Agforce Queensland Industrial Union of Employers filed an application for amendment of the *Shearing Industry Award – State*. On 18 April 2001 The Australian Workers' Union of Employees, Queensland filed a response. Some claims are admitted and agreed. Others were denied and opposed. An analysis of the claim and the response shows that overwhelmingly the claims which are denied and opposed are claims which would reverse the consent orders made by Commissioner Blades or, alternatively, re-litigate claims made in No. B538 of 1999 which were withdrawn as part of the settlement. In those circumstances, it is the submission of The Australian Workers' Union of Employees, Queensland that the Commission should, pursuant to s. 331(b)(ii) dismiss the cause, or refrain from hearing, further hearing, or deciding the cause, because further proceedings by the Commission are not necessary or desirable in the public interest.

It is contended for Agforce Queensland Industrial Union of Employers that it has a right to be heard.

There is scant authority upon s. 331(b)(ii). However it is not dissimilar to s. 43(1)(d)(iii) of the (now repealed) *Conciliation and Arbitration Act 1904 (Cwth)*. It is similar, though in a very different statutory setting, to s. 111(1)(g)(iii) of the *Workplace Relations Act 1996 (Cwth)*. We consider the decisions upon the Commonwealth provision to be a useful point of reference.

The seminal decision is of course the decision of the High Court of Australia in *Re: Queensland Electricity Commission; ex parte Electrical Trades Union* (1987) 72 ALR 1. At 5, the majority of the Court (Mason CJ, Wilson and Dawson JJ) while acknowledging that the settlement of industrial disputes was a fundamental concern of the Commonwealth Commission observed “. . . it is necessary to remember that the importance the Act places upon the settlement of industrial disputes cannot of itself dictate the exercise of the discretion given by s. 41(1)(d)(iii). That paragraph itself recognises that it may be in the public interest to leave an industrial dispute unresolved.”. Similarly, s. 331(1)(b)(ii) recognises that in a particular case the public interest may displace a litigant's normal right to have a case heard and determined.

In all the circumstances of the case we do not find it necessary to determine whether, as the majority in *Re: Queensland Electricity Commission; ex parte Electrical Trades Union* (1987) 72 ALR 1 held, that the discretion is all about balancing the interests (often competing public interests in the circumstance of a particular case) or, whether as Deane J (at 13) held an applicant seeking to induce the Commission not to exercise jurisdiction carries

an onus. In the circumstances of this case we are affirmatively of the view that we should for the time being, compare *Health Inspectors Association of Australia v Freemantle Corporation* (1953) 762 CAR 32 at 40 to 41, refrain from hearing the application filed 28 February 2001.

We are prepared to accept from the Bar Table, and in fairness it has not been disputed, that the proceedings of 1999 were burdensome and expensive. The Australian Workers' Union of Employees, Queensland might legitimately feel aggrieved and that it had been ambushed, if the matters raised by the application filed 28 February 2001 were granted a prompt hearing. No case is presently developed that there have been such changes in the industry as to justify a radical revision of the terms on which the matter was brought to an end on 12 November 1999. We acknowledge that the *Industrial Relations Act 1999* seeks to ensure that industrial organisations registered under the Act are under the control of the members. It is an inevitable concomitant of membership control that industrial organisations will, from time to time, dramatically alter a policy or policies and/or seek to re-litigate matters long settled. Section 331(b)(ii) should not be exercised to frustrate the membership. However, there are conflicting interests. The interests of The Australian Workers' Union of Employees, Queensland and its members – who have been encouraged to have expectations – must also be considered. So also is the interest of the public in ensuring that the *Industrial Relations Act 1999* does not become a vehicle by which one party may lock another in the Commission until, by exhaustion or by exhaustion of funds, the other party capitulates. We acknowledge that the Award contains no extra claims clause which has now expired. Given the history of the making of the Award, the clause cannot fairly be construed as permitting a complete re-opening of the settlement twelve months after the date of commencement of the Award. It applied to new and further claims.

The Commission will refrain from hearing the application which triggered No. B391 of 2001 until 2003. We will mention the matter in December 2002 for re-consideration. We intimate to the parties that if at that time Agforce Queensland Industrial Union of Employers is able to point to industry changes which justify re-opening of the settlement and/or a genuine dissatisfaction with the changed Award after a legitimate period of trial or, indeed if Agforce Queensland Industrial Union of Employers persists with the claims, we may well be prepared to proceed to a hearing.

Commissioner Edwards will convene a conference about the original matters. It may be possible to sever those matters.

Dated this twentieth day of July, 2001.

D.R. HALL, President.
K.L. EDWARDS, Commissioner.
J.M. THOMPSON, Commissioner.

Released: 20 July 2001

Appearances:-

Mr W. Turner for Agforce Queensland Industrial Union of Employers.
Mr B. Swan for The Australian Workers' Union of Employees, Queensland.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

Cheryl Cannon AND Queensland Aboriginal and Torres Strait Islander Legal Services Secretariat (No. B1739 of 2000)

COMMISSIONER FISHER

16 July 2001

Application for Reinstatement – Attitude and management style – Secondment or resignation – Entitlements paid and received – Applicant denies receiving counselling – Applicant rejects demotion and salary reduction – Compensation awarded.

DECISION

Cheryl Cannon has filed an application for reinstatement to her former position of Manager, with the Queensland Aboriginal and Torres Strait Islander Legal Services Secretariat (QAILSS). Ms Cannon commenced work with QAILSS in March 1996 as a Social Worker. In July 1997 QAILSS received funding from ATSIC to monitor the State Government's implementation of the Royal Commission into Aboriginal Deaths in Custody. As a consequence of this funding, Ms Cannon was employed in the Deaths in Custody Monitoring Unit as a Researcher.

In April 1998 Ms Cannon was given the opportunity to work as the Acting Chief Executive Officer of the Goolburri Land Council. There is a dispute over whether this position was a secondment or whether Ms Cannon resigned to assume this role. This will be addressed in more detail later. It is agreed that Ms Cannon performed work in the acting position before resuming her former position of Researcher with the Deaths in Custody Monitoring Unit.

When the Manager of that Unit resigned due to ill health, Ms Cannon assumed that role. She continued in that position until her employment was terminated on 30 October 2000. The dismissal followed Ms Cannon's refusal to accept a demotion to a position of Researcher and to undergo training to allow her to resume management duties on satisfactory completion. This offer was made against a background of growing discontent by Ms Cannon's superiors and subordinates about her management style.

Ms Cannon persisted with a contention that she had been summarily dismissed until late into the hearing. This contention was based on confusion over entitlements paid on termination. The position was ultimately abandoned. The Commission has not approached consideration of this matter on the basis that the dismissal was summary.

The credibility and veracity of the witnesses is important to the determination of this matter. There are some fundamental issues in dispute, for example, the Goolburri appointment and whether Ms Cannon was counselled over her perceived failings as a manager. The only witness on whose evidence I believe I can rely is Mr Russell Belleair, the Chairman of QAILSS. His evidence was balanced and rational. I found the evidence of Ms Cannon's subordinates, Vern Hopkins and Mervyn Graham to be vague.

John Leslie, the National Coordinator of the National Aboriginal and Torres Strait Islander Legal Services Secretariat (NAILSS) and the Acting Coordinator of QAILSS until approximately February 2000, has a long family relationship with Ms Cannon as well as a working relationship. This enabled him to be insightful but also judgemental.

The evidence of Ian Delaney, the Coordinator of QAILSS after Mr Leslie, was imprecise and voluble. Except for Mr Belleair, the witnesses called by QAILSS mentioned were so disparaging of Ms Cannon that their credibility suffered. In addition a significant amount of their evidence could not be recalled from memory but only given after prompting from their witness statements. At times their oral evidence departed from their affidavits.

I found Ms Cannon gave credible evidence on some matters, however, there were occasions where I believe her to be deliberately vague and non-committal to protect a position she did not wish to reveal. From time to time under cross-examination, Ms Cannon became angry and heated, which gave complexion to the criticism of her management style.

Other witnesses were called by both applicant and the respondent. The evidence from those witnesses not mentioned I have found unhelpful. I should mention that one witness appeared on the last day scheduled for evidence as a result of an Attendance Notice issued by the Registrar that morning. The Commission expressed its concern to the Respondent about the late application before the Registrar. Under the *Industrial Relations (Tribunal) Rules 2000*, the Court, Commission and the Registrar have the power to waive the period of notice. The Rules are silent about the issuing of Attendance Notices during a hearing. An improvement would be for the Rules to provide for the Registrar to consult with the Commission during the conduct of a hearing before an Attendance Notice is issued.

I now turn to the various matters in contention.

The Goolburri Appointment

Mr Leslie was approached by Ray Robinson, the Chair of Goolburri Land Council and Deputy Chair of QAILSS when that organisation was experiencing some internal difficulties in April 1998.

Mr Robinson asked whether Ms Cannon would be available to assume the role of Acting CEO. Mr Leslie's evidence was that he was opposed to Ms Cannon's appointment as he did not believe she had the necessary skills to make an effective CEO, especially in such difficult circumstances. He discussed the matter with Mr Bellear, who also had reservations, but not to the same extent as Mr Leslie. Mr Bellear took the view that there is a limited pool of Aboriginal people who are capable of assuming managerial roles. As a result it is sometimes necessary for a person who does not possess all of the required skills to assume positions for which they might not be entirely qualified or suited. Such was his belief about Ms Cannon and the Goolburri position.

None of this concern was communicated to Ms Cannon. It appears the first she became aware of it was after her application for reinstatement was filed.

The parties agree that Mr Leslie raised the possibility of the appointment as a secondment for a period of approximately three to six months. Before accepting the position Ms Cannon wanted to ensure that her position on the Community Corrections Board could be retained. Confirmation that she was able to continue with this role was given.

The dispute arises over whether Ms Cannon accepted a secondment to the Goolburri Land Council or whether she resigned from QAILSS to take up the position. The issue needs to be resolved as the outcome may impact on her entitlements paid on termination.

By letter dated 1 May 1998 Mr Leslie wrote to Ms Cannon congratulating her on her secondment to the position of Chief Executive Officer of the Goolburri Land Council for the next three to six months. The letter confirmed that Ms Cannon's position with QAILSS would remain available to her upon the completion of the secondment. This letter was provided to Ms Cannon prior to her taking up the position.

Mr Leslie then said that shortly after handing Ms Cannon the letter she enquired about receiving her entitlements as she needed the money. Mr Leslie advised her the only way she could receive the entitlements was to resign her position from QAILSS. He said Ms Cannon agreed and provided a letter of resignation. A letter of resignation dated 30 April 1998 signed by Ms Cannon is attached to his affidavit together with a letter dated 1 May 1998 accepting the resignation.

Ms Cannon denied that she sought to resign. Although acknowledging it was her signature which appeared on the letter of resignation, Ms Cannon denied she prepared or signed such a letter. She said that she would not have written a resignation on QAILSS letterhead, moreover, she had no wish to resign as the Goolburri position was not permanent and she wanted to ensure her position at QAILSS remained available on completion of the secondment. Her family was going to remain in Brisbane while she commuted to Toowoomba each day. In addition Ms Cannon indicated she had no need for her entitlements to be paid; she was not short of funds at the time and the Goolburri position paid more than her research position at QAILSS. Ms Cannon said the first time she saw the letter of resignation was July 1998. She believed it had been prepared at the request of administrators who were then in QAILSS.

Mr Leslie said Peter Thomas, the Financial Officer, had been approached by Ms Cannon to pay out her entitlements. Mr Thomas was called to give evidence about Ms Cannon's final termination pay at a time when the applicant was arguing she had been summarily dismissed. He was not produced to testify about the Goolburri dispute. He was clearly available to give such evidence. The respondent also showed its willingness to produce witnesses at short notice to respond to matters raised in evidence. It seems to me this should be a case where the rule in *Jones v Dunkel* should apply. [(1959) 101 CLR 298]

Having said that, there is no dispute that the entitlements were paid. According to her evidence Ms Cannon queried the payment with Mr Thomas but was advised that as the secondment may extend beyond six months, the entitlements could not be held and needed to be paid out. While I harbour doubts about whether Ms Cannon tendered her resignation as claimed by Mr Leslie, I am satisfied the entitlements were paid and received. Ms Cannon was absent from QAILSS for a period of sixteen weeks. In all of the circumstances Ms Cannon cannot claim continuous service in accordance with Chapter 2, Part 6 of the *Industrial Relations Act 1999*.

Performance Management

Ms Cannon was criticised for her management style by those who reported to her and by her managers, Mr Delaney and Mr Leslie. They variously described her style as abrupt, aggressive and abusive. While a number of examples were given of her poor management style, the criticism was generally directed to her manner in dealing with staff in the preparation of the Deaths in Custody Implementation report. This is not to indicate that the other issues raised in evidence regarding her handling of the use of the organisation's vehicle and the purchase of computer equipment have been overlooked in the consideration of this matter; only that such issues stem from Ms Cannon's management style and are subsidiary to that. Reservations about Ms Cannon's ability to manage were also raised by Mr Leslie and Mr Bellear when the Goolburri Land Council secondment was mooted. According to their evidence, Ms Cannon experienced problems in managing staff during that appointment.

These concerns have to be considered in the context of a hostile working environment. The parties agreed that the workplace was characterised by infighting and personality clashes.

For her part Ms Cannon denied she managed staff in the manner described. She acknowledged becoming frustrated and angry with staff over the delays in preparation of the Deaths in Custody Report. She further acknowledged she had regular disagreements with her staff.

QAILSS had received funding from ATSIC to prepare this report. Its preparation included monitoring implementation by State Government Departments of the Recommendations of the Royal Commission into Black Deaths in Custody. All relevant witnesses commented on the difficulties and delays in receiving information from Departments which contributed to the delay in preparation of the report. In Ms Cannon's view, QAILSS staff were also being tardy in their work associated with the report. She constantly sought to remind them of the timelines and to hasten their work. She said their attitude towards her approaches was not helpful and at times resistant. Ms Cannon's evidence was that she constantly raised her frustrations with Mr Leslie and later Mr Delaney.

The evidence of Mr Hopkins and Mr Graham was that they objected to being abused and treated aggressively by Ms Cannon. It was her demeanour that caused some resistance from the staff. If their vagueness in answer to questions when giving evidence was any indication of the response Ms Cannon received when pursuing matters associated with the Report then it is clear why she became frustrated and angry with the staff.

The Report was due to be completed while Ms Cannon was employed with QAILSS. The organisation attributed the delay in finalising the Report to her attitude and approach to staff management. Yet the evidence revealed that the Report had not been printed at the time of hearing, some seven and a-half months after Ms Cannon's dismissal.

Mr Delaney and Mr Leslie acknowledged that Ms Cannon constantly raised her frustrations with staff with them. Mr Delaney stated when this occurred he would offer suggestions to Ms Cannon about the best way in which to respond to these matters. He referred to these discussions as counselling sessions and was adamant Ms Cannon would have realised she was being counselled about her own performance. He said he would counsel Ms Cannon approximately two to three times a week.

Mr Leslie also gave evidence about the counselling of Ms Cannon regarding her attitude to staff. He said prior to Ms Cannon taking up the Goolburri appointment he would talk to her two to three times per month. This continued on her return.

The approach adopted by Mr Leslie in counselling Ms Cannon was low key and informal. Like Mr Delaney however, Mr Leslie was confident Ms Cannon understood she was being counselled. He said that he identified problems and suggested ways of improvement. The confidence of Mr Delaney and Mr Leslie was sadly misplaced.

Ms Cannon denied receiving counselling from either Mr Delaney or Mr Leslie. She agreed she regularly met informally with Mr Delaney or Mr Leslie and raised her concerns. Ms Cannon described these meetings as management discussions about problems being experienced with staff. At no stage did she realise that it was her management style being criticised or commented on.

Ms Cannon refuted the discussions being characterised as counselling sessions. Ms Cannon had completed a Masters Degree in Social Work. Through her education Ms Cannon was conscious of what counselling was. She had also completed a human resources management subject as part of her course so was familiar with counselling in a human resource setting. Ms Cannon said that her discussions with Mr Leslie or Mr Delaney did not fall into either framework.

Ms Cannon also referred to disputes in the QAILSS office between other staff which had resulted in mediation. This was a formal process including the involvement of staff members to take notes. Ms Cannon suggested that if management had such concerns with her performance then the organisation was able to institute a formal process if required.

The response of QAILSS to this aspect of Ms Cannon's evidence was to draw distinctions between processes adopted for white staff and which involved personality clashes between the individuals. Through the evidence of Mr Delaney and Mr Leslie it was submitted that such formal processes or adherence to protocols are not part of black culture and would not be utilised in the type of circumstance being experienced with Ms Cannon.

The Commission is prepared to accept the evidence of Mr Leslie and Mr Delaney that formal processes are foreign to black culture. It is evident however, that formal processes have been used in a black organisation to resolve issues, albeit with white staff.

Generally, employees are entitled to have a reasonable expectation to be treated fairly, equally and consistently. Where such approaches are not applied, for whatever reason, organisations leave themselves open to criticism and complaint.

There is agreement that Ms Cannon was not counselled in any formal way. The question is whether the discussions referred to by Mr Leslie and Mr Delaney could be construed in any way as counselling in human resource terms.

The Commission rejects Mr Delaney's evidence that he counselled Ms Cannon two to three times per week. He may well have exchanged opinions and given advice – a process which meets a dictionary definition of "counsel" – but to consider this process and its frequency as counselling in human resource terms is improbable. Counselling refers to a process where the employer advises an employee that problems with performance or conduct have been identified, a discussion occurs about those problems and a plan for improvement is established. The process need not be elaborate nor overly formal but to avoid confusion and misconception should be clearly outlined for what it is to an employee. Even making allowances for the informality in process in a black organisation, the discussions between Mr Delaney or Mr Leslie and Ms Cannon do not meet the standard of counselling. On this point it is interesting to contrast the evidence of Mr Bellear. He commented that he would discuss matters with Ms Cannon which would touch on her management style and provide feedback to her. Mr Bellear acknowledged that these discussions – which appear to be similar in substance to those described by Mr Delaney and Mr Leslie – could not be construed as counselling.

The Commission is not satisfied that Ms Cannon was completely ignorant of her managers having problems with her management of staff within the Unit. Any manager, particularly one who holds professional qualifications and who was constantly relaying concerns to his or her superiors, should have reflected on the reasons the problems were arising and their own management performance. Reflection is an essential component of the work of any professional. As Ms Cannon said in her evidence, she holds a Masters Degree in Social Work and has completed a subject in human resource management. Her qualifications in Social Work ought to have equipped her with the professional skills to identify and resolve problems. While not absolving her managers of any responsibility to more formally raise their concerns and undertake more formal counselling, Ms Cannon was better placed than many to recognise concerns were being raised about her performance. Indeed the regularity of the discussions should have alerted her to this. Having reviewed all of the evidence I am satisfied that Ms Cannon was abrupt and aggressive with staff on occasion and constantly demanding of their performance. This management style would naturally have caused resentment and complaint from the staff.

The evidence of Mr Bellear and Mr Leslie was that concerns existed about Ms Cannon's attitude to staff for many years, including prior to and during her appointment at the Goolburri Land Council. On her return to QAILSS, Ms Cannon was appointed as Acting Manager of the Deaths in Custody Unit after the resignation, due to ill health, of the incumbent. Mr Leslie expressed in evidence his concern held at the time of Ms Cannon's ability to assume the position because of her attitude towards staff. Despite these concerns continuing and according to the evidence of Mr Bellear, Ms Cannon was confirmed in the position of Manager.

The Commission can accept that appointments might be made to positions of staff who are not considered completely suitable because of the unavailability of an adequate pool of qualified staff. Such appointments allow the employee to gain experience and, with adequate support and explanation of the reason for the support, obtain the necessary competence. In this case Ms Cannon was perceived to be deficient in particular skills for many years. Yet Ms Cannon was given greater responsibility both within and external to the organisation. At no stage when these appointments were being made was Ms Cannon advised that areas of weakness were perceived and moreover that support would be provided to allow her to reach the required standard of performance. In my view if the deficiencies were as severe as identified by Mr Leslie in particular then Ms Cannon was entitled to be afforded adequate formal support to ensure she could fulfil the roles to which she was being appointed. This should be essential at any time when an organisation realises that it does not have a sufficient pool of competent people to assume the various roles required and is consistent with the view expressed by Mr Bellear. The informal discussions and feed-back offered to Ms Cannon were inadequate given the problems of which the senior officers of the organisation were aware.

Given Ms Cannon was not advised of her managers' long held concerns, their token efforts of support and Ms Cannon's inability to recognise that some of the performance issues in the Unit were attributable to her, it is not surprising that matters came to an unfortunate end.

Demotion and Dismissal

It was Mr Bellear's evidence that he decided some decisive action needed to be taken about Ms Cannon after an incident occurred at a meeting which he and Ms Cannon attended, along with other QAILSS staff and representatives of a number of other organisations, including State Government Departments. It was a significant meeting held over 16 and 17 October 2000 to negotiate a Justice Agreement about indigenous peoples rights and treatment in prisons and watch houses. At this meeting an altercation occurred between Mr Bellear and Ms Cannon over the use of the organisation's vehicle.

Without going into detail about the issue, the dispute was over whether an employee of QAILSS should use a car to take a Social Work student to visit Cherbourg or whether Ms Cannon could use it to attend a District Health Council meeting. Attendance at that meeting was not associated with Ms Cannon's employment. She had been appointed to the Council prior to her appointment to QAILSS and the organisation had allowed her to continue her attendance. Ms Cannon drove the car to and from work and garaged it at her residence. She regularly used the vehicle to attend the District Health Council meeting, however, the organisation's priority was for the vehicle to be used for QAILSS business.

There is a dispute in the evidence of Mr Bellear and Ms Cannon about the altercation, particularly in relation to the time and location and which of them lost their temper and raised their voice to the other. Each levels that accusation at the other. Mr Bellear did admit he was abrupt with Ms Cannon as he thought the time and manner in which she raised the matter to be most inappropriate. He said others attending the meeting were within earshot and her unprofessional behaviour reflected poorly on the organisation.

Given he had been constantly been made aware by Mr Leslie and Mr Delaney of Ms Cannon's attitude problem and also had some personal knowledge, this incident prompted him to realise that action had to be taken in a formal way to address the issue. After consultation with Mr Leslie and Mr Delaney, the decision was made by Mr Bellear that Ms Cannon could not continue in the role as Manager and she would be offered a temporary demotion to the position of Research Officer for a period of six months. This would mean a reduction in salary of \$10 000 per annum as a result of budgetary constraints. Ms Cannon would also be offered the opportunity to undertake training to assist in improving her relations with staff. Should she satisfactorily undertake the training then consideration would be given to reallocating managerial responsibility to her.

After the incident at the meeting above, Ms Cannon become very upset and distressed. Ms Cannon took sick leave for the balance of the week and annual leave for the week of 23 October. During that week she had intended to visit relatives in western Queensland.

On 21 October (a Saturday) Ms Cannon received a telephone message from Mr Delaney to contact him. She spoke to him later that day. In that conversation Mr Delaney advised Ms Cannon she was required to attend a meeting at work on 23 October. After some prompting about the reason for the meeting, given her annual leave arrangements, Mr Delaney advised of the decision to demote her temporarily. Ms Cannon disputed the reasons for the demotion and took objection to the salary reduction. Later that afternoon she contacted Mr Delaney again to advise of her rejection of the offer.

Despite this, Ms Cannon attended work on 23 October. She initially met with Mr Delaney to discuss the matter. Some time later Mr Leslie arrived with a letter signed by Mr Bellear. It conveyed the offer being made and the reasons for it. Although said to be a Board decision the evidence revealed the decision was made by Mr Bellear and only confirmed by the Board after the delivery of the letter. The letter also advised that her further employment with the organisation would have to be considered in the event the offer was declined. Ms Cannon advised Mr Leslie she would not accept a demotion as she had not received any warnings nor had she done anything wrong. Ms Cannon also attempted to clarify the type of training she was being required to undertake. There is a dispute in the evidence about whether the type of training was particularised. I am satisfied Ms Cannon was advised it was in relation to people skills and that she would be allowed time off work to attend.

Ms Cannon told Mr Leslie she wanted to discuss the matter with Mr Bellear. Until the incident of 16 October, Ms Cannon and Mr Bellear had enjoyed a good working relationship. In discussion with Mr Bellear, Ms Cannon restated her concerns. She suggested she be retained as Manager on her present salary but undertake the required training. She negotiated an extension to her response time in light of her absence on annual leave. Mr Bellear said the extension was granted to allow both parties to consider their positions.

On her return to work on 30 October, Mr Leslie gave Ms Cannon a further letter from Mr Bellear which restated the Board's concerns and offer. The letter indicated her suggestion had been considered as it advised that the Board "remain definite about the need for you to be redeployed to another non-managerial position . . . at a salary equal to that payable in that non-managerial position.". The letter invited Ms Cannon's immediate response "so that appropriate arrangements for the redeployment and for the training courses can be made without delay".

Mr Leslie sought Ms Cannon's response. She said she would give it directly to Mr Bellear and contacted him to advise that the demotion was rejected. Some time later Mr Leslie provided Ms Cannon with a letter from Mr Bellear terminating her employment. She was directed to return her keys and mobile telephone then escorted from the premises. Notice and other entitlements were paid to her before the end of the day.

In my view the organisation's offer to provide access to formal training came far too late given Mr Bellear's and Mr Leslie's clearly stated position in evidence that for a considerable period Ms Cannon lacked appropriate human resource management skills. The opportunity to undertake training or some form of mentoring should have been made available to her on her appointment as Acting Manager of the Deaths in Custody Monitoring Unit. Her appointment should also not have been confirmed in that position had those concerns been as serious as expressed in evidence. Had she remained as Acting Manager, the dismissal might not have occurred. It would have simply been a matter of removing Ms Cannon from an acting capacity. Clearly the organisation must accept a significant amount of responsibility for the position in which it found itself.

The demotion of an employee with a consequent loss of income is a serious step for an employer to take. In the range of disciplinary penalties, a demotion would be considered to be more severe than a reprimand or a warning and a step above a dismissal. Even a demotion for a limited period and

accompanied by training is a serious penalty. Ordinarily, a demotion would follow other formal processes including counselling and warnings which have been documented and acknowledged by both the employer and the employee. That the employer is contemplating such action should also be made known to the employee.

In this case the proposal to demote was communicated in writing when until that time no concerns had been addressed formally with Ms Cannon. The taking of formal action is at odds with the informality said to be the culture of a black organisation. Any organisation which is selective about how, when and to whom formal actions are to apply does not convey consistency and certainty to its employees.

The letter of 23 October and the first letter of 30 October 2000 were couched in terms of an offer. This is the required process as the law is clear that it is not open to an employer to unilaterally vary the terms of the contract of employment. (*RS Components Ltd v Irwin* (1974) 1 ALL ER 41 @ 43). Unless there is agreement between an employee and employer to change the employee's duties and nature of employment, the employer can not lawfully do so. (See *Hodges v Buderim Ginger Ltd* (1995) 148 QGIG 644). In this case QAILSS were seeking Ms Cannon's agreement to change her contract of employment.

Such consent was not given and Ms Cannon was not demoted. Consequently the Commission rejects the applicant's contention that the demotion constituted the dismissal. The dismissal occurred after agreement was not given to the variation of the contract of employment. It remains to be determined whether in all of the circumstances, the dismissal was harsh, unjust or unreasonable.

Having regard to s. 77 of the *Industrial Relations Act 1999*, Ms Cannon was given written notification of the reason for her dismissal. She had not received any warnings about her performance or conduct. Nor had she received any formal counselling. The Commission has accepted that nature and extent of discussions between Mr Leslie, Mr Delaney and Ms Cannon and her own professional standing would have alerted a reasonable person the concerns held by her managers about her performance.

QAILSS argues that the dismissal was for operational reasons. It could not afford to pay Ms Cannon a managerial salary while she was either unable to perform all of the duties and responsibilities of that role or performed a lesser role. Underpinning that reason was dissatisfaction with conduct, capacity and performance.

This is a case where an organisation decided to place an employee in a position for which her management knew the employee lacked competency. Although the evidence of her incapacity became increasingly evident to her managers, her appointment to the position was confirmed. When the employee inevitably failed, the organisation initially decided to offer demotion and when this was rejected, perhaps also inevitably, the employee was dismissed.

While the Commission considers Ms Cannon must assume some responsibility, in my view the greater responsibility rests with the organisation which elected to promote the employee despite her failings and neglected to provide adequate support to allow her a reasonable prospect of being able to meet the required standards. To dismiss an employee in such circumstances, in the absence of prior formal processes or reasonable exploration of alternative solutions, is in my view, harsh, unjust or unreasonable.

Ms Cannon does not seek reinstatement and given the level of criticism meted out by her managers and subordinates, reinstatement clearly is impracticable. In addition, Ms Cannon's evidence was that she remains distrustful of Mr Leslie, who while not an employee of QAILSS, continues to enjoy influence in the organisation.

QAILSS submitted that in the event the Commission found against them, compensation should not be awarded because of Ms Cannon's actions later on the day she was dismissed. It is not disputed that following her dismissal Ms Cannon downloaded certain QAILSS information on to a computer disc and threatened to withhold it until her entitlements were paid. There is a dispute in the evidence about whether the return of the disc was prompted by Mr Leslie's threat to call the police.

Ms Cannon denied she was upset or in a rage about her dismissal. Her actions are not consistent with this. Given also her distrust of Mr Leslie it is unlikely she would have returned the disc on his word of ensuring the entitlements were paid. It is much more likely that a threat had to be issued to ensure return of the information.

QAILSS described these actions as gross misconduct warranting a summary dismissal. Ms Cannon's representative described the events as petty mischief. The correct representation lies somewhere in between. QAILSS had advised her that her entitlements would be made up and paid within the day. This task took some time to complete as the calculations involved salary sacrifice arrangements. Nonetheless, Ms Cannon received her entitlements that day. Moreover, and despite her distrust, Mr Leslie provided a personal cash advance to Ms Cannon to enable her to meet certain financial obligations that day. Considered in this light Ms Cannon's actions were inappropriate and unnecessary.

Although Ms Cannon was entitled to be upset and even angry about her dismissal, given the circumstances, it did not entitle her to remove information from the organisation without authority nor to issue her ultimatum. The unfairness of the dismissal is undone in part by her own actions. In my view her actions can not be characterised as gross misconduct. In *Callaghan v RSPCA* (1997) 156 QGIG 676, Bougoure C., set out a number of cases dealing with "misconduct" and considered what is meant by "gross misconduct". Relying on those considerations it would appear that Ms Cannon's actions do not fall within the meaning of gross misconduct.

Ms Cannon has sought compensation in the order of \$15,000 which is in excess of the loss she suffered. Ms Cannon was able to obtain employment from 9 January to 25 May 2001. Her actual loss was \$10,454.

The material before the Commission on which to assess compensation is not altogether satisfactory. The parties were given appropriate opportunities to address on this point but the amounts sought by the applicant is in excess of that which could be awarded on her best case while the respondent argues for no compensation based on the alleged gross misconduct; an argument which I have not accepted. The Commission was given no information on any attempts made by Ms Cannon to mitigate her loss prior to obtaining employment in January.

Doing the best I can on such limited information, the Commission has decided to award a global sum of compensation in the amount of \$5,000. Such amount takes into account the loss suffered, discounted for Ms Cannon's actions on the day of dismissal and absence of information about mitigation for which the applicant must be responsible. It considers the length of service (from the date of her return to QAILSS), her position in the organisation, the amount paid on termination and the circumstances of her dismissal. The sitting fees received as a result of Ms Cannon's appointment to the Community Corrections Board have not been taken into account. These fees were paid during Ms Cannon's employment with QAILSS and were additional to the salary received by her.

The Commission orders that the Queensland Aboriginal and Torres Strait Islanders Legal Services Secretariat Limited trading as QAILSS do pay to Cheryl Cannon compensation in the amount of \$5,000. Such amount is to be taxed according to law. The Commission further orders that such amount be paid within 22 days of the date of release of this decision.

Order accordingly.

G.K. FISHER, Commissioner.

Appearances:-
Ms K. Prior (Prior & Associates) for the applicant.
Mr J. Hodgens (Nicol Robinson Halletts) and with him Mr J. Robinson for the respondent.

Released: 16 July 2001

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 125 – application for amendment

Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers AND The Australian Workers’ Union of Employees, Queensland (Nos B1028, B1029, B1030 and B1031 of 2001)

ICE CREAM AND FROZEN CONFECTIONERY MANUFACTURING AWARD – STATE

MILK TREATMENT, MILK PRODUCTS MANUFACTURE, AND MILK, ETC., DISTRIBUTION AWARD –NORTHERN AND MACKAY DIVISIONS

MILK TREATMENT, MILK PRODUCTS MANUFACTURE, AND MILK, ETC., DISTRIBUTION AWARD – SOUTH-EASTERN DIVISION

SALT INDUSTRY AWARD – STATE

COMMISSIONER BROWN

19 July 2001

DECISION

These applications filed by the Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers (QCCI) and supported by Livingstones Australia on behalf of their affected members and clients sought to clarify the “Night Shift” definition inserted by consent of the parties into the abovementioned Awards operative from 20 April, 2001.

In submissions the QCCI claimed that the proposed amendment would eliminate any potential confusion between the penalty to be paid for “Night Shift” and overtime payable prior to the start of the normal day shift.

QCCI maintained the wording of the “Night Shift” definition, as it now stands, could lead to penalties being paid for what essentially could be classed as a day shift.

The Australian Workers’ Union of Employees, Queensland (AWU) opposed the amendment as sought and reminded the Commission the new definition of “Night Shift” was granted by consent of the parties at the last hearing on 20 April, 2001, only 11 weeks ago.

The AWU also maintained that, regardless of the times and wording proposed in the amended definition, the main focus of the provision concerned penalty payments for shift workers i.e. only employees working a roster of 2 or more shifts per day would be affected.

Both parties indicated there had been no problems experienced with the existing definition to date.

Having considered the submissions of the parties and other provisions of the Award, I find that the current definition does not need further clarification and I therefore refuse the applications. The parties are at liberty to reapply if genuine problems are experienced with the existing definition.

Order accordingly.

D. K. BROWN, Commissioner.

Appearances:-
Ms S. Rowe for the Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers.
Mr T. Whiltshire of Livingstones Australia for Pauls Limited.
Mr J. Sharpe for The Australian Workers’ Union of Employees, Queensland.

Released: 19 July 2001

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

David Francis Cox AND Louise Elsie O’Dea (No. W223 of 2000)

COMMISSIONER BROWN

19 July 2001

DECISION

David Francis Cox of the Department of Industrial Relations (the applicant) lodged an application for recovery of wages on behalf of Robyn Jean Schmidt (RS) against Louise Elsie O’Dea (the respondent).

Specifically the application sought an order that the respondent pay \$15,874.29 to RS.

The evidence showed that RS was employed, on a casual basis, by G & L Catering – the business name used by the partnership between Gregory Tuckey and the respondent – at Origins Bistro located at the Runaway Bay Junior Leagues Club from 15 April 1996 to 17 April 1998.

The work of RS was governed by the Clubs Etc Employees' Award – South East Queensland. RS was eligible to be paid at Level 2 under the classification structure of that Award.

The respondent conceded that money was owing to RS as a result of the incorrect wage Level being applied but disputed the total number of hours worked and the days of the week upon which RS claimed to have worked.

In essence RS claimed to have regularly worked Wednesday to Sunday each week.

RS claimed in evidence that she maintained dairies (EX 9) in which she recorded details of the days and hours worked and the payment received. These dairies, with the exception of some periods for which no entry was made, supported the claims of RS.

The respondent on the other hand claimed that RS worked Monday to Friday without exception. That RS worked for 20 hours per week at the start of her employment increasing to 25 soon after. Time and wages records submitted by the respondent (Ex 7) were signed by RS as having received wages. These records however did not display any information regarding the days worked or the hours worked each day, merely a total number of hours weekly.

RS and the respondent both acknowledged that time sheets were completed by RS that did record the days worked and the starting and finishing times. When questioned regarding these time sheets the respondent was uncertain of their whereabouts and not able to produce them. Predictably, both the respondent and RS claimed that the time sheets would have supported their version of events had they been available.

The evidence of Ms D. P. Carrol (inspector DIR) was that the claim was constructed using the information contained in RS's dairies and for the times that dairy entries were not made, by reference to the respondent's time and wages records.

RS's evidence was that she regularly worked more than 25 hours per week and that the hours in excess of 25 were paid cash in hand. These payments, it was submitted, have now been declared to the taxation authorities and the situation is being addressed.

The respondent denies ever having paid cash in hand. However, while the wage records show that predominantly RS worked 25 or less hours per week, the respondent's witness statement at paragraph 6 states:-

“Robyn Schmidt worked approximately 11am to 1pm and 6pm to 9pm Monday to Friday each week.”.

RS was never paid in excess of 25 per week.

As already noted the time and wages records showed no starting or ceasing times or days worked.

Having regard to the evidence of both parties I have concluded that the time and wages records presented as Ex 7 are not reliable.

I am now left to consider the reliability of the records presented in Ex 7 and the dairies of RS.

RS's claim that she recorded the details of days and hours worked in her dairies withstood cross-examination and, it is my view, the dairies can be relied upon particularly noting the absence of any hard evidence to the contrary.

In light of the foregoing , I find that unpaid wages are owed to RS. In determining the amount of such underpayment I am obliged to take into account the cash bonuses paid to RS as detailed at paragraph 10 of Ex 12 and not contested during the hearing. I am further satisfied that the method used in the calculation of the amount is sound.

The Commission orders that Louise Elsie O'Dea pay the amount of \$15,424.29 to Robyn Jean Schmidt within 22 days of the date of release of this decision.

D. K. BROWN, Commissioner.

Appearances:-
Mr D.F. Cox for the Department of Industrial Relations.
Ms L. E. O'Dea for the respondent.

Released: 19 July 2001

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

Johanna Wills AND Fairholme College (No. B13 of 2001)

COMMISSIONER THOMPSON

16 July 2001

REPORT ON DECISION (as edited)

In giving his decision from the Bench on 16 July 2001, Commissioner Thompson stated:-

“An application was filed in the Queensland Industrial Relations Commission on 12 July 2001 by the applicant in case number B13 of 2001 seeking an adjournment of the application itself to a date to be fixed and further, that the affidavit of Mr J.S. Klan in the matter, sworn on 10 July 2001, not be accepted as evidence.

Following collover, this matter went to a preliminary hearing on 3 May 2001 over the issue of legal representation and, at that hearing, directions orders in respect of this matter were further amended.

The amendment required the applicant to provide statements to the respondent by 21 May 2001, for the respondent to provide statements to the applicant by 4 June 2001, and for the applicant to provide responses to those statements by 11 June 2001.

In the first instance, the applicant, who was continuing to pursue a negotiated outcome, failed to meet the designated date of 21 May 2001 and, as a consequence, it had an unfortunate but understandable domino effect on the rest of the dates.

Nevertheless, on the examination of the affidavits lodged with the Commission, I can understand the concern of the applicant in respect of the lateness, in particular, of the affidavit of Mr Klan, considering the importance his evidence is likely to assume during the course of the hearing.

However, at the same time, Mr Klan, who was to go overseas on 13 June and subsequently did not return until 2 July 2001, in my view, had his preparation of his affidavit hampered to some degree by the lateness of the receipt of the completed witness statements from the applicant.

I must say that, despite all of the circumstances in this matter that have been brought before the Commission today, in either evidence or by submissions, there is a situation where both parties have been somewhat tardy in respect of their compliance with the directions of the Commission.

An outcome of that, in my view, has led to a situation that if this matter was to commence on Thursday, 19 July 2001 as scheduled, then the applicant may have reasonable justification in pursuing an argument for a number of reasons that a form of disadvantage has occurred.

In saying that, however, this matter has now been around for some time and it is not unreasonable for the Commission to have expectations that each of the parties would have finalised or at least made the bulk of their preparations in this case.

The Commission has also the need to consider the work programming and management of its own business and, to allow the adjournment of the seven days allocated between 19 and 27 July 2001, at this time and on the notice that has been given, there would need to be a significant reason or reasons that were clear and defined.

I have decided that this matter will not proceed as scheduled on 19 July, and that the hearing will commence at 9.30 a.m. on Tuesday, 24 July 2001 in Toowoomba and proceed for a period of four days.

This will give each of the parties three full days, being 19, 20 and 23 July that had originally been set aside for the proceedings to allow for finalisation of their preparation and whatever else may be required as a result of the failure of both the parties to meet the dates contained within the directions order.

Mr Anthony Barlow, Counsel for the respondent, in submissions, indicated that he would accept any responses to the respondent's affidavits up to 24 hours prior to the commencement of the hearing. On that basis, I am not prepared to give that 24 hours as such, but I determine that any responses that would or should be filed by the applicant should be with the Registry and with the respondent by no later than 2.00 p.m. on Monday, 23 July 2001.

Any material not filed by that time will not be accepted by the Commission unless some outstanding circumstances were to be provided to the Commission. At the moment, I can't think of any reason as to why I would accept any further material.

When this matter was first set down, seven days of hearing were allocated. However, during the course of Mr Barlow's submissions in the proceedings today, in this application, he indicated that he was of the opinion that four days may be sufficient to conclude the proceedings with the possibility of written submissions being provided by the parties if time was to run out.

Mr John Spriggs, of the Queensland Independent Education Union of Employees for the applicant, on the other hand, was non-committal in terms of the time required and the Commission itself is not sure as to whether or not the matter can be completed within the four days.

The Commission indicates to both parties that if the matter cannot be concluded within the four days, then at the end of the proceedings on 27 July in Toowoomba, the issue of written submissions or further hearing times will be made after a consideration of all of the circumstances and following consultation with each of the parties.

In respect of the application not to accept the evidence of Mr Klan, having read the affidavit and examined the attached schedule myself, I am of the view that the additional three days now available to the applicant should be sufficient time so as not to disadvantage the applicant in the terms as put by Mr Spriggs during the course of his submission.

Formally, therefore, the application to adjourn this matter to a date to be fixed, as such, has been rejected and further, that Mr Klan's evidence not be accepted by the Commission is also rejected.

Dated this sixteenth day of July, 2001.

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

Released: 19 July 2001

Appearances:-

Mr J. Spriggs, on behalf of the Queensland Independent Education Union of Employees, for the Applicant.

Mr A. Barlow, of Counsel, instructed by Clewett Corser & Drummond, for the Respondent.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees
AND Choice Commercial Cleaning Pty Ltd (No. W106 of 2001)**

COMMISSIONER FISHER

12 July 2001

ORDER

THIS matter coming on for hearing before the Commission at Brisbane on 6 and 12 July 2001, this Commission after having decided that Donna Campbell was underpaid wages by Choice Commercial Cleaning Pty Ltd, orders as follows:-

- 1. That Choice Commercial Cleaning Pty Ltd pay Donna Campbell an amount of \$299.00.

2. That the said amount shall be paid within 14 days of 12 July 2001.

Dated this twelfth day of July, 2001.

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

Operative Date: 12 July 2001
Order – Unpaid Wages
Released: 18 July 2001