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No. 18

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
CA298/01	Cross Country Tours Coach Captains - Certified Agreement 2001	31/7/01	CA85/99
CA321/01	Sanreef Pty Ltd - AWU - Certified Agreement	31/7/01	CA64/95
CA306/01	Master Carpet Company (Qld) Pty Ltd t/a Master Kelwin Floors- Certified Agreement	6/8/01	
CA307/01	Style Carpets (Qld) Pty Ltd - Certified Agreement	6/8/01	
CA308/01	Floorvision Pty Ltd - Certified Agreement	6/8/01	
CA309/01	PKF Queensland Pty Ltd - Certified Agreement	6/8/01	
CA310/01	Future Floor Services (Qld) Pty Ltd - Certified Agreement	6/8/01	
CA311/01	Contract Floor Coverings Pty Ltd - Certified Agreement	6/8/01	CA253/95
CA312/01	Interface Services Pty Ltd - Certified Agreement	6/8/01	
CA313/01	Maxbrick Pty Ltd t/a Maxi-Tex - Certified Agreement	6/8/01	CA50/96
CA314/01	Vladimir Vinsalek t/a VV Professional Tiling - Certified Agreement	6/8/01	
CA315/01	Erin Glaze Pty Ltd - Certified Agreement	6/8/01	
CA316/01	Gonzo Formwork Pty Ltd - Certified Agreement	6/8/01	
CA317/01	P&D Cabinets Pty Ltd - Certified Agreement	6/8/01	
CA318/01	Huntsman Chemical Company Australia Pty Ltd t/a Futuretec Australia - Certified Agreement	6/8/01	
CA319/01	Shamrock Civil Engineering Pty Ltd - Certified Agreement	6/8/01	CA711/97
CA320/01	Trevor Roller Shutters (Qld) Pty Ltd - Certified Agreement	6/8/01	

E. EWALD
Industrial Registrar

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999
Industrial Relations (Tribunals) Rules 2000
Part 17 – Lapse of Proceedings

INDUSTRIAL REGISTRAR EWALD

2 August 2001

NOTICE

PURSUANT to Part 17 of the Industrial Relations (Tribunals) Rules 2000, I hereby give notice that the Commission has Ordered that the matters listed in the Schedule hereto be disposed of by being struck out.

Schedule

<u>Case No.</u>	<u>Certified Agreements</u>
CA398/98	NERANG GLOSS PTY LTD - CERTIFIED AGREEMENT 1998
CA240/99	P&O PREPARED FOODS (WACOL) ENTERPRISE BARGAINING – CERTIFIED AGREEMENT NO. 2
<u>Case No.</u>	<u>Enterprise Flexibility Agreement</u>
EF1/96	HOSEKI GEMS PTY LTD - ENTERPRISE FLEXIBILITY AGREEMENT

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INDUSTRIAL COURT OF QUEENSLAND

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

Neville Palk and Flora Production Services Pty Ltd (No. C29 of 2001)

Flora Production Services Pty Ltd and Neville Palk (C30 of 2001)

PRESDIDENT HALL

7 August 2001

DECISION

Brian Richards is a wholesaler of flowers to the international market. He conducts his business from two sheds on a property near Crows Nest. One shed is used for the reception, simple processing, packing and dispatch of flowers. Fresh flowers are stored in water in buckets. The flowers are then taken to a table in the middle of the room. "Rough cut" branches are cut into smaller pieces, and are selected and arranged according to shape, length and general quality standards. The processed flowers are then (briefly) stored in a cold room until dispatched. For completeness I add that simple though the processing is, it does add value to the product. The second shed is used primarily for the storage of xanthorea.

Some of the flowers are picked under licence in state forests. Some are grown on a farm operated by Mr Richards. Some flowers are purchased from other growers.

The Commissioner who dealt with the matter at first instance variously concluded that "over 50% of the product comes from other growers" and "at least half of the product that he exports . . . [was] provided by other growers". The findings have been challenged on the appeal. It is put that the findings are based on vague estimates of witnesses who had little knowledge of the business and that the evidence of Mr Richards, who had detailed knowledge of the business, should have been preferred. On any fair reading of the transcript the evidence upon which the Commissioner relied may be characterised as vague. The suspicion is that some estimates were guesstimates. However, the Commissioner had the inestimable advantage of hearing and observing the witnesses. The limited circumstances in which an appellate court may go behind the primary tribunal's opinion about the credibility of witnesses, who have been heard and observed by the primary tribunal are well known; see e.g. *S.S. Hontestroom v SS Sagaproack* [1927] AC 37 at 47 adopted by Gibbs ACJ, Jacobs and Murphy JJ in *Warren v Coombes* 142 CLR 531 at 537; *Devries v Australian Railways Commission* 177 CLR 472 at 479 per Brennan, Gaudron and McHugh JJ and *Rosenberg v Percival* [2001] HCA 18 at [41] per McHugh J. Having observed the demeanour of the witnesses the Commissioner may very well have concluded from the definiteness and certainty with which the evidence was given that the witnesses at least knew where the bulk of the flowers was coming from. I am not disposed to interfere with the Commissioner's finding.

Mr Richards' farm is a farm of one hundred and twenty acres. Twenty acres are currently used to grow flowers. Work is underway to clear a further fifty acres. When cleared, the land will be used to grow flowers. The flowers will reduce Mr Richards' dependency on product from other growers.

The first difficulty in this matter arises from the circumstance that the two sheds are situated on the farm.

The Commissioner pieced out the activities in the sheds and the activity on the farm. The decision is now reported at 167 QGIG 34. At 41, the Commissioner said:-

"On the evidence before the Commission, I believe that it is reasonable to conclude that Mr Richards, through his company Flora Production Services Pty Ltd both operates a farming and wholesale flower business with at least half of the product that he exports, at the time of Ms Weis' employment being provided by other growers."

That conclusion is attacked on the appeal by Flora Production Services Pty Ltd. It is vigorously contended that Mr Richards is conducting a farm.

I have some sympathy with the submission. The history of the "venture" is that Mr Richards attempted to establish a farm to grow flowers for export. It was the combined effect of hail storms and the drought on the Darling Downs in the 1990's which caused him to commence purchasing, processing and exporting flowers grown by others. One labour force is used across the farm and the sheds. It is not a case of a casual waitress employed in a restaurant on a vineyard on Friday and Saturday night fortuitously securing a limited amount of work pruning at the end of the season. Flora Production Services Pty Ltd, a labour provider of which Mr Richards is the alter ego, supplies staff who come to work at the beginning of a week not knowing at what times

in the week they will work in the sheds, and not knowing at what times in the week they will work in the fields. Indeed, I doubt if the supervisor knows. The evidence suggests a day-to-day prioritisation of tasks and the allocation of tasks to meet those priorities and ensure that no time is lost. Whilst one may quibble with the notion that Mr Richards is conducting a farm, one can see the weight of the argument that he is conducting an integrated growing and processing business in the horticultural industry. On the other hand there is the finding by the Commissioner about the proportion of products sourced from other growers and a passage in the article by Mr Richards in the journal "*Buds and Bracts*" of June 1998 (which is Attachment A to his statement) –

"At the same time, being fully aware of my weaknesses, I decided to look at my strengths which were: 1. Good export market experience and good international customers. 2. Good packing shed facilities for export. 3. Good experienced workforce. So I decided to go out into our district to see if I could get product to export from other growers."

The passage is open to the interpretation that Mr Richards himself recognised that he was taking a long stride from farming. [It might also mean that he was seeking to use his shed and workforce for more than one purpose.]

The arguments are about inference and weight. They are appropriate to an appeal by way of a re-hearing on a *Warren v Coombes* 142 CLR 531 basis. This appeal is limited to error of law. Section 348(1) does no more than permit the appellant to trawl over the transcript and the reasons to find the error of law; compare *Julia Ross Personnel v Rebecca Wain* (2001) 166 QGIG 350 at 351. There was evidence before the Commissioner on which his conclusion was open to him. It does not demonstrate an error of law to say that other honest and fair-minded persons might have drawn a different inference.

The Commissioner's conclusion was of some importance. The contention of the industrial inspector who initiated the proceedings for the benefit of a former casual employee of Flora Production Services Pty Ltd, viz Ms Wise, was that her engagement was regulated by the *General Stores, Warehousing and Distribution Award – State*. That Award applies *inter alia* to all persons employed in or in connection with –

"1. Any store where goods are stored and/or handled and all wholesale warehouses and sample rooms and wharf stores in the whole of the Eastern district of the southern division of Queensland and in wine and spirit stores and that portion of such district north of 25 degrees of south latitude."

The contention of Flora Production Services Pty Ltd is that the sheds are not "stores" and, in the alternative, are not stores "where goods are stored and/or handled".

The shorter Oxford English Dictionary, Third Edition, relevantly defines store as "a place where stores are kept, a warehouse; a storehouse". In similar vein, in *Fisher, Reeves and Co v Armour and Co* [1920] 3 KB 615 at 624 Eve J said:

"I think the contract was clearly a contract to sell 'ex store' at Rotterdam, which in my view, in the absence of special circumstances effecting the conclusion of the contract, is synonymous with 'ex warehouse'. The primary meaning of each expression seems to me to be a place for a storage of goods or wares."

The question at issue is whether the Commissioner erred in finding that the sheds fell within that definition of "store" notwithstanding the volume of processing and/or value adding activity which took place within the sheds. Even if an attack on a *Warren v Coombes* 142 CLR 531 basis were available, it seems to me that this is not a case in which this Court "is in as good a position as the trial judge to decide on the proper inference to be drawn from facts which are undisputed or which having been disputed are established by the findings of a trial judge", at 551 per Gibbs ACJ, Jacobs and Murphy JJ. The Commissioner was taken to the farm and had a view. He had a background against which he might understand the evidence about the processing and/or value adding activities. In any event, Flora Production Services Pty Ltd must establish an error of law. The Commissioner was perfectly well aware of the dictionary definition of "store". He quoted it. In every case in which goods are received and packed there will be some element of processing and/or value adding. The Commissioner was confronted with a question which was very much one of fact and degree. I am not prepared to conclude that the decision which the Commissioner reached was not open to him. It is not suggested that every employment in a shed on a farm is governed by the *General Stores, Warehousing and Distribution Award – State*. A shed on a farm may no more be severed from the farm than may a storeroom at a retail store. It is settled that such storerooms are not relevantly "stores", compare *Re: Federated Storemen and Packers' Union of Australia (NSW Branch) and Others* (1982) 1 IR 193. If the appeal against the Commissioner's decision to tease out the activities in the store and the activities on the farm had been upheld, I should have held the sheds not to have been "stores".

On the hypothesis accepted by the Commissioner that there were two enterprises, if Ms Weis had performed no work other than the work which she performed within the shed, I should have thought that the Commissioner was correct to hold that the work that she performed was governed by the *General Stores, Warehousing and Distribution Award – State*. Additionally, on the hypothesis that there were two enterprises, if Ms Weis had performed no work other than the work which she performed on the farm, I should have thought that the Commissioner was correct to reject the submission that the *Nurserymen's Award – State* applied to the work. The question whether that Award has any application whatever to such a farm may be left for another day. It is sufficient to say that even if the Award applied to the farm, it applied only to "employees for whom classifications and rates of pay are herein prescribed". The work which Ms Weis performed on the farm, viz cutting bypasses off trees, pruning limbs and cutting flowers from trees for processing, does not fall within any classification in the Award.

The difficulty is that Ms Weis did not perform work only within the shed or only on the farm. She performed work both in the shed and on the farm. The Commissioner dealt with that difficulty by holding (a) that at least 50% of Ms Weis' work was performed in the shed, by holding (b) that the work performed in the shed was covered by the *General Stores, Warehousing and Distribution Award – State* and by holding (c) that the remaining work which was performed by Ms Weis (on the farm) was award-free work. Both parties have appealed against that decision. Counsel are *ad idem* that the decision of the Commissioner must be set aside. I am compelled to agree.

The starting point is that there was but one engagement. The situation was not analogous to a casual secretary at a solicitor's practice taking occasional, casual work as a babysitter for one of the partners. The relationship pursuant to which Ms Weis worked on the farm was the relationship pursuant to which she worked in the shed. It may have been possible to tease out the enterprise conducted in the shed and the enterprise conducted on the farm and treat them as separate enterprises. There was not any evidence at all to justify teasing out the engagement under which (as required) Ms Weis worked sometimes on the farm and sometimes in the shed, and treating the work in the shed and on the farm as notionally performed pursuant to different engagements. In those circumstances, the Commissioner should have embarked on an enquiry "directed to ascertaining the principal purpose for which the worker is employed", *Merchant Service Guild of Australia v Portland Harbour Trust Commissioners* (1972) 146 CAR 194 at 196 per Ludeke J. See also *Merchant Service Guild v J. Fenwick & Co. Pty Ltd* (1973) IAS (current review) [U2], *Joyce v Christofferson* (1990) 33 IR 390 at 397-399 per Gray J, *Comdox (No. 272) Pty Ltd v Dawson* (1993) 49 IR 458 at 462 per Maidment J, and *Hennessey v Coral Princess Cruises* (1998) 159 QGIG 4 at 526 per Williams, President. Here, there seem to have been three possibilities. One, the principal purpose of Ms Weis' engagement might have been to perform work in the shed. Two, the principal purpose of Ms Weis' engagement might have been to perform work on the farm. Three, the principal purpose of Ms Weis' engagement was to perform work both in the shed and on the farm (as required). (The Commissioner's decision that the shed and the farm might

be teased out as enterprises is not incompatible with the conclusion that Mr Richards, who utilised a corporation under the *Corporation's Law* to provide labour for the enterprises, had fused his workforce though he had not fused the enterprises.)

In reliance on s. 341(3)(b) and s. 348, it is contended (in both appeals) that the Court should set aside the decision of the Commissioner and, on the basis of the record, substitute another decision for the decision of the Commissioner. That is the most expeditious and least expensive course. I adopt it.

It is not necessary to determine the principal purpose of Ms Weis' engagement. The conundrum may be left to posterity. The onus of proof in the proceedings below was carried by the applicant. For the applicant to recover any money at all on behalf of Ms Weis it was necessary for the applicant to establish a factual basis for a conclusion that on the balance of probability the work performed by Ms Weis came within the *General Stores, Warehousing and Distribution Award – State*. To do that, it was necessary for the applicant to show that the principal purpose of Ms Weis' engagement was to perform the work of processing/value adding and packing the flowers in the shed. The applicant has not discharged that onus.

Each of Ms Weis and Mr Richards swore to the fact, i.e. each of them swore to the nature of the engagement. There was not before the Commissioner sufficient evidence of what had in fact been said between Ms Weis and Mr Richards to enable a reasonable onlooker to form an objective view about the nature of the engagement. In those circumstances, though a mathematical approach to the issue of "principal purpose of an engagement" carries risks, the only approach available is to look at the work in which Ms Weis was principally engaged. The difficulty is that there was a conflict of evidence. Ms Weis' evidence was that in the order of 70-75% of her time was spent on work within the shed. Mr Richards gave evidence that over 50% of Ms Weis' time was spent working on the farm. Whilst the Commissioner made adverse comments about the way in which Mr Richards conducted himself in and about the conduct of proceedings, he made no adverse finding about Mr Richards' credit. It seems to me that the proper course is to proceed on the view that having seen and observed the witnesses, the Commissioner had not formed an adverse view of Mr Richards' credit. Ms Warwick, Ms Weis' supervisor, said that she had seen Mr Richards' statement and agreed with his estimate. In cross-examination Ms Warwick recanted and agreed that over 50% of Ms Weis' time was spent in the sheds. (It may be added that the Commissioner has resolved a conflict in evidence about the quantum of product brought in from other growers in favour of Ms Weis in reliance on the evidence of Ms Warwick. On that point, the Commissioner thought Ms Warwick to be the "most reliable" witness.)

The issue is largely one of credibility. The Commissioner addressed it and concluded –

"On the evidence before the Commission, it is impossible to determine an exact amount of time spent by Ms Weis on the various duties that she performed, I believe that it is not unreasonable for the Commission to reach a decision that at least 50% of her work was performed within the warehouse situation that existed on the property."

It seems that in the light of the language of s. 348 and the decision in *Warren v Coombes* 142 CLR 531 I should treat myself as bound by the Commissioner's inability to resolve the matter of credibility rather than try to resolve the issue on the transcript. On such a view, one must inevitably come to the view that the applicant in the proceedings before the Commission failed to make out her case. The conclusion that "at least 50% of her work was performed in the warehouse situation" may be treated as conclusive, but that conclusion in itself does not justify the inference that the principal purpose of Ms Weis' engagement was to perform work in the shed. It might be legitimate to draw an inference about "principal purpose" if the proportion of work performed in the shed was overwhelming but a figure of "at least 50%" falls squarely within the stricture that "... it is not enough merely to make a quantitative assessment of time spent in carrying out various duties", *Merchant Service Guild v J. Fenwick & Co Pty Ltd* (1973) IAS (current review) [U2] at 6 per Ludeke J.

I dismiss the appeal by Neville Palk which is Case No. C29 of 2001. I allow the appeal of Flora Production Services Pty Ltd which is Case No. C30 of 2001. I dismiss application No. W213 of 2000.

The appeal in Case No. C29 of 2001 was not instituted "vexatiously or without reasonable cause". In those circumstances, there is no power to award costs.

Dated this seventh day of August, 2001.

D.R. HALL, President.

Appearances:-

Mr C.J. Murdoch instructed by Crown Law for the appellant in Case No. C29 of 2001 and for the respondent in Case No. C30 of 2001.

Mr A. Herbert instructed by Employer Services Pty Ltd for the respondent in Case No. C29 of 2001 and for the appellant in Case No. C30 of 2001.

Released: 7 August 2001

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INDUSTRIAL COURT OF QUEENSLAND

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

CSR Limited (Ex parte Barry Poole) AND WorkCover Queensland (No. C31 of 2001)

PRESIDENT HALL

6 August 2001

REPORT ON DECISION (as edited)

In giving his decision from the Bench on 26 July 2001, President Hall stated:-

" By the consent of the parties, the appeal is allowed. The decision of the Industrial Magistrate given at Brisbane on 16 March 2001 is set aside. In lieu thereof, I declare that the appellant is a self-insurer. The appellant is entitled to rely on, have reference to and have available to it, for the purposes of calculating normal weekly earnings, the provisions of Regulation 47 of the *WorkCover Queensland Regulation 1996* as amended.

I remit the matter to the Industrial Magistrates Court at Brisbane, in order that the substantive appeal may be heard in accordance with law.

I order that the order made by the Industrial Magistrate directing the appellant to pay the respondent's costs in the sum of \$844.00, be set aside. In lieu of that order, I order that the respondent pay the appellant's costs of the proceedings of 16 March 2001 in the Industrial Magistrates Court, as agreed by the parties, or failing an agreement, as assessed by the Industrial Magistrate who hears the substantive appeal.

Regrettably, I have no power to do anything at all about the costs of the appeal to this Court.

I adjourn the Court.”.

Dated this sixth day of August, 2000.

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

Appearances:-
Mr K. Varley instructed by Ebsworth and Ebsworth for the appellant.
Mr A. Horneman-Wren instructed by WorkCover Queensland for the respondent.

Released: 6 August 2001

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INDUSTRIAL COURT OF QUEENSLAND

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

Queensland Teachers’ Union of Employees AND Department of Education (No. 2) (No. C42 of 1999)

PRESIDENT HALL

6 August 2001

REPORT ON DECISION (as edited)

In giving his decision from the Bench on 25 July 2001, President Hall stated:-

“On 17 September 1999 I ordered that Ronald Ferguson be reinstated to the position which he occupied immediately before his suspension and that the period 18 October 1997 to 17 September 1999 be deemed a period of employment continuous with his previous service.

On the materials before me I was unable to decide whether an order under s. 222(2)(b) of the *Workplace Relations Act 1997* should be made. I was not in a position to settle the terms of such an order. In those circumstances, lest the parties were unable to reach agreement, I reserved the matter of reimbursement.

In fact, the parties have been unable to reach agreement. Having heard Mr Horneman-Wren of counsel for the appellant and Mr Murdoch of counsel for the respondent, and by the consent of the parties, I now vacate that part of the order which reserved to myself the matter of reimbursement.

It is now common ground between the parties that the most appropriate course is for that matter to be remitted to Commissioner Fisher, who heard the matter at first instance, in order that she might hear the argument upon the matter of remuneration lost by Mr Ferguson because of his dismissal. I order accordingly.

I adjourn the Court.”.

Dated this sixth of August, 2001.

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

Appearances:-
Mr A. Horneman-Wren instructed by Queensland Teachers’ Union of Employees for the appellant.
Mr C. Murdoch instructed by Education Queensland for the respondent.

Released: 6 August 2001

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 274 – general powers

Anita Ho AND Viva Nightclub Pty Ltd (No. B129 of 2001)

VICE PRESIDENT LINNANE

25 July 2001

Application for adjournment of hearing of unfair dismissal application – Primary witness for respondent facing criminal charges – Applicant a complainant in criminal proceedings – Whether prejudice suffered if unfair dismissal application heard prior to committal hearing – Whether prejudice to respondent greater than prejudice to applicant if hearing delayed – Conceded that reinstatement or re-employment not practical remedies – Application granted.

REPORT ON DECISION (as edited)

In giving her decision from the Bench on 25 July 2001, Vice President Linnane stated:-

“This is an application by Viva Nightclub Pty Ltd, the respondent in an unfair dismissal application by Anita Ho, for an adjournment of the hearing of that application. The matter is listed for hearing by Commissioner Bechly commencing 30 July, 2001. Subsequent to the dismissal of Ms Ho, Robert Johnson, the sole director of Viva Nightclub Pty Ltd, has been charged with a number of sexual offences. One charge is based on a complaint by Ms Ho that Mr Johnson unlawfully and indecently assaulted her. The complainants in all charges laid against Mr Johnson are former employees of Viva Nightclub Pty Ltd.

Whilst Viva Nightclub Pty Ltd does not press the issue, the current bail conditions prevent Mr Johnson from being at the Commission during the course of the unfair dismissal hearing. I have been informed that Ms Ho has sought to have the bail conditions varied to enable the hearing, in the presence of Mr Johnson, to occur. At the time of hearing this application however, no application for variation of the bail conditions has been heard

and determined. Given that I am assured that there would be little difficulty in obtaining a variation to the bail conditions I have not considered this matter in determining the issue before me.

The principal argument advanced for an adjournment is that Mr Johnson would suffer a prejudice if he were required to elect whether or not to give evidence at the unfair dismissal hearing. Mr Nolan, counsel for Viva Nightclub Pty Ltd, submits that should the hearing proceed as scheduled then Mr Johnson would be required to either give evidence before this Commission and perhaps prejudice the determination of the criminal proceedings or refuse to give evidence because of the impending criminal proceedings.

I have been informed that Ms Ho is currently in employment. Both Mr Nolan and Ms Hindman, solicitor for Ms Ho, concede that reinstatement or re-employment would not be a practicable remedy should the dismissal ultimately be found to be harsh, unjust or unreasonable. Mr Nolan informs me that Mr Johnson's committal hearing is scheduled for 24, 25 and 26 October, 2001. I am further advised by Mr Nolan that if Mr Johnson were committed to stand trial that the trial would probably commence in November.

Ms Hindman provided detailed written submissions opposing the application for an adjournment. Essentially Ms Ho's opposition is based on the prejudice to be suffered by her as a result of the delay in the proceedings. In that regard it was submitted that the delay would be lengthy as Mr Johnson had not faced a committal hearing at the time when the unfair dismissal hearing was scheduled to commence. Ms Hindman further submitted that whilst, at this time, Ms Ho was simply relying upon her own evidence in the unfair dismissal hearing she may wish to call rebuttal evidence from others once the statements of evidence have been filed by Viva Nightclub Pty Ltd. That being the case it is submitted that the recollections of such witnesses may fade over time and this could result in prejudice to Ms Ho.

I do note that the conduct of Viva Nightclub Pty Ltd to date gives me cause for concern. The concern emanates from:-

- (i) the failure of Viva Nightclub Pty Ltd to attend conferences in the Commission scheduled for 26 February, 2001 and 14 March, 2001; and
- (ii) the attendance by Mr Johnson at a conference on 16 March, 2001 unrepresented and his request at that conference for time to seek legal advice.

It is understandable that the conduct to date of Viva Nightclub Pty Ltd would give Ms Ho a reasonable apprehension that her former employer in seeking an adjournment of the hearing was attempting to further delay proceedings. Viva Nightclub Pty Ltd has sought this adjournment. The delay between 30 July, 2001 and 3 December, 2001 is approximately four months. The prejudice to Ms Ho is a four month delay in receipt of any compensation. The conduct of Viva Nightclub Pty Ltd throughout the course of these proceedings is a matter that may be considered in assessment of any compensation.

Taking into consideration the following matters:-

- (i) Ms Ho is currently in employment;
- (ii) the parties concur that reinstatement or re-employment is not a practicable option should the dismissal be found to be harsh, unjust or unreasonable;
- (iii) the committal hearing is scheduled for 24, 25 and 26 October, 2001;
- (iv) the trial, if Mr Johnson is committed, is likely to be scheduled in November, 2001; and
- (v) Commissioner Bechly is available to hear the matter on 3 and 4 December, 2001;

I have formed the view that the prejudice likely to be suffered by Mr Johnson should the matter proceed to hearing prior to the committal is greater than the prejudice likely to be suffered by Ms Ho from a four month delay in the commencement of the unfair dismissal hearing.

In those circumstances I am prepared to grant the adjournment but only until the first week in December, 2001. Commissioner Bechly is available to hear the matter on 3 and 4 December, 2001 in Brisbane. The parties have indicated that the matter should now only take one day of hearing however I have allocated two days to ensure that the matter is finalised at that time.

If Mr Johnson is not committed to stand trial then I would expect that Ms Hindman would contact my Associate to see if an earlier trial date could be arranged. If Mr Johnson is committed to stand trial then I would expect that his legal representatives would do all in their power to seek urgent trial dates to ensure the unfair dismissal hearing can proceed on 3 December, 2001. At least by 3 December, 2001 the committal proceedings will be concluded.

In the course of the hearing Mr Nolan submitted that there was a general principle in the Commission that civil proceedings will be stayed pending the outcome of criminal proceedings. I do not necessarily agree that such a general principle exists. Whether or not an adjournment of an unfair dismissal hearing will be granted will depend on the merits of any such application and the potential prejudice to the parties. Should the delay in the hearing of this unfair dismissal application have extended beyond 2001 then the prejudice likely to be suffered by Ms Ho may well have been greater than the prejudice to Viva Nightclub Pty Ltd.

Directions for the further conduct of this matter will issue in due course.

I grant the application."

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

Appearances:-

Ms M. Hindman of Quinn and Scattini for the applicant.
Mr P. Nolan, instructed by Mr P. Kerwin of Burns Jamieson for the respondent.

Released: 3 August 2001

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 319 – application for representation**Grant Leslie Patrick Fitzgerald AND Lifeline, Mackay-Whitsunday (No 3) (No. B1022 of 2000)**

COMMISSIONER BLADES

2 August 2001

Unfair dismissal – Representation of parties – Industrial Advocates – Application seeking to deny Advocate a right to represent – Whether authority to make such an order – Inferences to be drawn from the provisions of s. 709 of *Industrial Relations Act 1999* – Provisions of s. 329 of the Act to be read narrowly – Right to be represented by Advocate of own choice a basic right, not to be removed without clear words – Application dismissed.

DECISION

Mr Grant Fitzgerald lodged an application for reinstatement on 17 July 2000. He is a fourth year law student and has represented himself. A preliminary issue was heard in Mackay on 20 November, 2000 before another Commissioner, resulting in Mr Fitzgerald's application being dismissed. An extension of time to lodge an appeal was eventually sought and granted, resulting in his Honour the President holding that without fault, the appellant (applicant) had been denied natural justice. His Honour ordered that the appeal be allowed and remitted the matter to the Commission to be allocated to a different member of the Commission because of attacks made by the applicant, without foundation, upon the Commissioner who originally heard the matter. The decision in the appeal *Fitzgerald v Lifeline Mackay-Whitsunday* 167 QGIG 114 was released on 31 May 2001.

Throughout the hearing before the Commissioner and on the extension of time application, the respondent was represented by Mr C. Joy of Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers (QCCI), of which organisation the respondent is a member. At the hearing of the appeal, the respondent was represented by Mr M.V. Smith of the QCCI.

With the due passage of time, the hearing of the reinstatement application was allocated to the Commission as presently constituted. Mr Fitzgerald wrote to the Registrar by letter dated 4 June, 2001 among other things, as follows:–

“I seek further directions in relation to this matter pursuant to section 41 Industrial Rules of Court 1997 (Qld) (sic) that the respondent's advocate Mr Craig Joy of the Queensland Chamber of Commerce and Industry be disqualified from appearing on behalf of the respondent.”

In response, there was a hearing at Mackay on 26 June 2001 where the parties addressed the merits of the application. However, upon consideration being given to the matter, I determined that there was a preliminary question of fundamental importance which had not been addressed, namely, under what circumstances, if any, does the Commission have the right to refuse to hear a particular Advocate? Mr Fitzgerald has made it plain that his objection does not lie to the respondent being represented by QCCI or another Advocate on behalf of QCCI. His objection is to the appearance of Mr Joy personally. An opportunity was given to the parties to address me on that issue by way of written and oral submissions on 1 August, 2001.

QCCI has submitted that there is no power that would allow the Commission to disqualify an advocate from appearing before the Commission. It pointed to s. 709 of the *Industrial Relations Act 1999* (the Act) which contains a regulation making power (not yet invoked) for regulating the conduct of persons, other than lawyers, who act for parties in an industrial cause, or who appear in proceedings before the Commission. QCCI further submitted that the inference is that the Legislature has acknowledged that the Queensland Industrial Relations Commission does not currently have the power to disqualify an Advocate from appearing in the Commission.

In his submissions, Mr Fitzgerald conceded that there was no power in the Act but relied upon the principles of natural justice and the common law. He also cited s. 2 of the *Constitution Act 1867 (Qld)*; the *Legislative Standards Act 1992 (Qld)* and the *Acts Interpretation Act 1954 (Qld)*. He cited *Salemi v Mackellar* (No. 2) (1977) 137 CLR 396 on the principles of natural justice.

It is my view that the submissions of the QCCI have merit.

Lawyers have an absolute right to be heard in the various Courts of Queensland. The *Supreme Court Act 1995* provides:–

“Appearance to be in person or by barrister or solicitor or person allowed by the judge.

209 (1) In all matters and proceedings in the Supreme Court, a party may appear in person or by a barrister or solicitor or by any person allowed by special leave of the judge in any case.”

Thus the lawyer has the right to appear and other persons will only be permitted to appear by leave. It was held as far back as *Collier v Hicks* (1831) 2 B & Ad 663 that persons not in the legal profession are not allowed to practice as advocates in any of the Courts.

There are similar provisions in s. 52(1) of the *District Court Act 1967* and s. 18(1) of the *Magistrates Court Act 1921*. Under s. 319 of the Act, the right to appear is completely reversed. The section provides:–

“(1) In proceedings, a party to the proceedings, or a person ordered or permitted to appear or to be represented in the proceedings, may be represented by –

(a) an agent appointed in writing; or

(b) if the party or person is an organisation – an officer or member of the organisation.

(2) The party or person may be represented by a lawyer if, and only if ... ”.

Thus a party to proceedings has an absolute right to appear and the only restraint placed upon an agent is that there must be an appointment in writing. There are numerous restraints placed upon lawyers.

The appointment of an agent is provided for in Rule 102 of the *Industrial Relations (Tribunals) Rules of 2000*. This rule provides:–

“(1) An agent may be appointed under section 319(1)(a) of the Act only by –

(a) filing a notice of appointment of agent in the approved form, signed by the party or person appointing the agent; and

(b) serving a copy of the notice on all parties to the proceeding.

(2) Subrule (1)(a) applies only if the notice has not already accompanied a document that has been filed.”.

Mr Joy holds an appointment of agent, even if belated.

In the case of *Drummond v Howell* (1923) S.A.S.R. 124 the presiding Magistrate refused to hear the practitioner unless he apologised for allegedly insulting conduct. It was held that the Magistrate was not justified in refusing to hear the practitioner, who had the right under s. 137 of the *Local Courts Act 1886* to appear in the Local Court in any case in which a client had instructed him to appear. Contrast those circumstances to those existing under the provisions of s. 319 of the Act. Mr Joy has a statutory right to appear in the same way as lawyers do in other Courts.

Drummond also went on to deal with those cases where a Court may interfere with the right to appear. Murray C.J. said:–

“(The Magistrate’s) only power to deal with a practitioner who is guilty of misconduct is conferred by s. 267 of the ... Act ... which provides that any person who wilfully insults the Court or the Special Magistrate, or is guilty of certain other conduct, may be detained as an offender, and the Court may commit him to prison for any term not exceeding fourteen days, or may impose upon him a fine not exceeding ten pounds ...”.

The Court went on to hold that the Magistrate had no right to suspend the practitioner from the practice of his profession and that the only tribunal that could do that was the Supreme Court.

I think those remarks are also apt in this jurisdiction bearing in mind that it is the Advocate who has the right to appear as a duly appointed Agent. Solicitors are of course, required to hold a practising certificate and are admitted to practice by the Supreme Court. Industrial Advocates neither hold practising certificates nor are they admitted to practice. A power to punish for contempt is vested in the Industrial Court by s. 251. There is no similar power vested in the Commission although there could be no doubt that the Commission has implied powers to regulate its own proceedings (*Collier v Hicks* (supra); *WorkCover Queensland v Markwell* 166 QGIG 426 and *Consolidated Press Holdings Ltd v Wheeler* (1992) 109 FLR 241). I do not consider those implied powers extend to punishment for contempt.

As the QCCI has submitted, the Legislature has taken an initial step by way of s. 709 in regulating the conduct of Advocates but it has not proceeded beyond that initial step.

In *President and Members of the Court of Arbitration (W.A.) v Nicholson* (1906) 4 C.L.R. 362 there was a question about the right of a particular person to appear as an advocate. Griffith CJ asked the question whether a mandamus could ever be used to compel an inferior Court to hear a particular person as advocate. The question was not answered except that Higgins J said at 373:–

“I wish to say also that I do not want to deal at all with the grave difficulty which has been discussed as to a mandamus lying to hear a particular agent or counsel. It seems at first sight to have no precedent for it.”.

It seems to me that there should be similar reservations in the Commission holding that a party should not be represented by a particular Advocate.

There is a provision in s. 329 of the Act which, on a wide reading, might suggest that the Commission has power to direct that parties be represented by particular Advocates. Section 329(b) provides that the Commission may direct, for proceedings:–

“(b)(ii) by whom the parties may be represented; ...”.

However it would seem to me that because a wide reading of the clause would be an interference with the basic right of a party to be represented by an advocate of his own choosing (*Drummond* and also “*Ethics in Law*” 2nd Ed. Butterworths para 8.24), that there should be a reluctance to read that clause in that way. The clause would still have work to do when dealing with demarcation issues for example and it should be given that limited meaning. The right of a party to be represented by an Advocate of its own choosing should not be abrogated without clear words.

For these reasons it seems to me that I do not have the authority to make the order sought by Mr Fitzgerald.

Moreover, I think that without clear authority it would be most improper for one Commissioner to attempt to deal with an Advocate who is alleged to have been guilty of misconduct or impropriety before another Commissioner and rather impudent for a Commissioner to enquire into something which occurred before the Industrial Court. No authority has been brought before me, I have found none with my research and I would not expect to find any.

But what are Mr Fitzgerald’s objections to the appearance of Mr Joy? These would appear to primarily relate to Mr Joy’s conduct during the various hearings. As to the hearing on 20 November 2000 (before the Commission), they include:–

- Mr Joy made a submission to the Commissioner that he intended to prove there was no dismissal.
- A Ms Ferraro has made an affidavit in which she says she noticed Mr Joy in conversation with a witness Ms Lewis while Ms Lewis was still in the witness box during an adjournment. This conversation ceased when they noticed they were being watched. She further stated that the brief adjournment was permitted to allow Ms Lewis time to compose herself.
- Mr Joy was mistakenly under the impression that conciliation conference proceedings held on 5 September 2000 had been officially recorded.
- Because of a question asked by Mr Joy of a witness Ms Lewis, deliberate and false evidence was given.
- Mr Joy introduced a new question and pressured a witness Hansen into agreeing with a certain proposition which was misleading and to which the Commissioner gave excessive weight.
- Mr Joy asked a question of witness Evans about a grievance procedure. This was false and given excessive weight by the Commissioner.

Further complaints were then made about the hearing on 13 March 2001 conducted by the President in regard to the extension of time. These included:–

- There were many inconsistencies in Mr Joy’s submission to the President. Mr Joy was not required by the Directions Order to give a submission on the merits of the appeal, he did so “off his own back”.

- Mr Joy said in his submission that he had contacted the Anti-Discrimination Commission which confirmed that no action would be taken by them until the matter was concluded in the industrial jurisdiction. It was claimed that this submission was false.
- There was a false submission made in regard to the number of hours worked per week.
- Mr Joy has submitted that Mr Fitzgerald had claimed that a witness had repeatedly changed her story (witness Lewis) when this was not so. The allegations came from two witnesses and Mr Fitzgerald had now made this a police matter.
- Mr Joy made a submission about the nature of the employment changing during the course of employment, a submission which was false.
- Mr Joy made a submission about what witnesses McNichol and Wright said and did which submission was false.

In his conclusion, Mr Fitzgerald made reference to an estoppel having been raised, that Mr Joy himself may well be interviewed by Police and that "by the evidence before the Court, mainly the transcript of the 20 November 2000 there has been a miscarriage of justice to the detriment of the Appellant including contraventions of the *Criminal Code 1899 (Qld)*. This was not challenged by President Hall, in fact he affirms the same in the second last paragraph of his decision dated 31 May 2001."

Mr Joy gave no evidence during either the hearing on 20 November or on the application for an extension of time. He acted only as an Advocate. I do not intend to say any more regarding the matter before the President. At the hearing on 20 November 2000, each objection involves a criticism of Mr Joy's style of examination and cross-examination. If he was misleading a witness, or if he inappropriately spoke to a witness (which he has denied), it was up to the presiding Commissioner to deal with the matter. It is not up to this Commission to discipline Mr Joy for what occurred during that hearing, if in fact there is anything to discipline. This Commission, as I have said, has no power to punish for contempt and has no power to discipline an Advocate except perhaps for contempt through the Court itself.

The fundamental question remains unanswered. I am not prepared to read into s. 329 of the Act a power to direct that parties can or can not be represented by named Advocates and the inferences to be drawn from the enactment of s. 709 of the Act lead me to the conclusion that no such power exists. I have received no assistance from the common law.

Mr Fitzgerald's application to prevent Mr Joy's appearance is dismissed.

I order accordingly.

B.J. BLADES, Commissioner.

Appearances:-

Mr G.L.P Fitzgerald, applicant, on his own behalf.

Mr C. Joy, Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers, for the respondent.

Released: 2 August 2001

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**Australian Building Construction Employees and Builders' Labourers' Federation Queensland Branch
Union of Employees AND Gary G. Bernerson t/a Active Construction Services (No. W103 of 2001)**

COMMISSIONER THOMPSON

2 August 2001

Jurisdictional Issue – Award coverage – *National Building and Construction Industry Award 1990 – Workplace Relations Act 1996* (Commonwealth) – Witness evidence – Queensland Industrial Relations Commission not appropriate Tribunal.

DECISION

This matter, W103 of 2001, was an application under s. 278 of the *Industrial Relations Act 1999* (Act) in which the Australian Building Construction Employees and Builders' Labourers' Federation Queensland Branch) Union of Employees (BLF) sought an order from the Commission for the payment of wages owing by way of an alleged redundancy entitlement for Mr Daniel McGarry following the cessation of his employment with Active Construction Services (ACS) on 27 October 1998.

A preliminary hearing was held in Brisbane on 15 June 2001 where each of the parties placed on record brief submissions in respect of the matter.

The Commission, at that hearing, put forward a proposition that a conference be convened between the parties and chaired by another member of the Commission to ascertain if the matter could be settled by the conciliation process and thus avoiding the need to go to hearing.

While both parties agreed to participate in the proposed conference, tentative dates, those being Monday 6 and Tuesday 7 August, 2001, were set aside for the hearing, with a Further Directions Order being released on 15 June, 2001, which required the following:-

1. That the Applicant supply to the Respondent, and lodge in the Commission, statement(s) of evidence, from all witnesses to be called and which are to be relied upon in the hearing, by 4.00 p.m. on Monday 2 July, 2001.
2. That the Respondent supply to the Applicant, and lodge in the Commission, statement(s) of evidence, from all witnesses to be called and which are to be relied upon in the hearing, by 4.00 p.m. on Monday 16 July, 2001.
3. That the Applicant supply to the Respondent, and lodge in the Commission, any witness statements in reply by 4.00 p.m. on Wednesday 25 July, 2001."

On 22 June 2001, a conference was held before Commissioner Brown at which the parties agreed on the length of service of Mr McGarry and of the rate of pay that would be applicable if the application was to be successful.

However, a resolution of the matter was not found, with Commissioner Brown making the following comments prior to adjourning the proceedings:–

“In the time since recording ceased the parties have had a discussion both together and separately with the Commission. The discussions have failed to bear fruit. The parties have agreed on the length of service of Mr McGarry and further agreed that his weekly rate of pay was \$1,120 and they further agreed that the applicant left his employment of his own volition rather than being made redundant.”

In my view, the award provision is clear. It is further my opinion that the – that it is not in the public interest to occupy resources of this Commission in the formal hearing of such a matter therefore I recommend that the respondent settle the application prior to the hearing. It is disturbing to note the comments of the respondent in as much as he has stated that he would rather go to gaol than pay the money. I have nothing further.”.

On 2 July 2001, in accordance with the Further Directions Orders, the applicant filed three affidavits being from Mr McGarry, Mr Peter Dunnett and Mr Carmello Masi.

Each of the affidavits filed met the criteria required by the Commission.

On 16 July 2001, the date upon which the respondent was to supply the applicant and lodge in the Commission statement(s) of evidence from all witnesses to be relied upon in the hearing, correspondence was received by the Commission under the signature of Mr Dan Pratt of Australian Industry Group, Industrial Organisation of Employers (Queensland) (AIG) acting on behalf of ACS seeking, as a matter of urgency, a hearing to determine a threshold issue of jurisdiction.

The issue to be considered was one of jurisdiction, in that it was to be argued that the respondent, at the time of the cessation of employment, was a member of the Metal Trades Industry Association (MTIA) now known as AIG, and therefore bound by an industrial instrument of the Australian Industrial Relations Commission. That being, the *National Building and Construction Industry Award 1990* applies.

At the hearing on 23 July 2001, evidence was called from Ms Susan Beaverson, a partner in ACS and the Administration “Head” for the business.

In evidence, Ms Beaverson stated that on 14 October 1996, she applied, on behalf of ACS, to be admitted as a member of MTIA, and provided to the Commission, by way of attachment to her affidavit of evidence, a copy of the application and a copy of the MTIA Council Report dated October 1996 showing ACS as a new member of that organisation.

Note: Mr Pratt provided to the Commission the original records of the MTIA from which the copy tendered by Ms Beaverson had been obtained.

At paragraph 3 of her affidavit of evidence, Ms Beaverson stated:–

“When Mr McGarry left ACS in October 1998, ACS was a member of the MTIA.”.

Under cross-examination from Mr Rhett Moxham of the BLF, at page 8, line 60 of transcript:–

Moxham: In point 4 you state that you understood that membership bound you to the Federal Award, the National Building Construction Industry Award?

Beaverson: Yes

Moxham: So you’re aware that once you became a member of the MTIA that you were bound by the Award and you were aware of the contents of that Award?

Beaverson: As much as I can be, yeah, it’s a big Award.”.

In submissions, Mr Pratt indicated that the relevant time, in respect of this matter, was when Mr McGarry left the employment of ACS, and that was October 1998, at which time the respondent was a member of the MTIA. He then referred to the *National Building and Construction Industry Award 1990*, Part 7 “PARTIES AND PERSONS BOUND” where it states that the Award shall apply to and be binding upon:–

“. . . 7.2(a) The employers and organisations of employers, listed in a schedule to the award in respect of their employees or employees of their members within the classifications contained in 9.1(a) or 9.1(b) of the award whether members of the organisations mentioned in 7.1(a) or not.”.

At Schedule A “EMPLOYER RESPONDENTS”, the sixth entry listed to the Award at that time was:–

“Metal Trades Industry Association of Australia
PO Box 289
NORTH SYDNEY NSW 2060”.

It was further submitted that as the respondent was clearly bound by its membership of the MTIA to the Award, then the employees of the respondent would fall within the classification structure provided by the terms of the Award which, in itself, was similar in terms of the classification structure the applicant would rely upon under the State Award.

At s. 149 of the *Workplace Relations Act 1996* which is entitled “Persons bound by awards” at subsection (1):–

“Subject to any order of the Commission, an award determining an industrial dispute is binding on: . . .
(f) all members of organisations bound by the award.”.

This, according to Mr Pratt, demonstrated that ACS, as a member of MTIA at the relevant time, was bound by the *National Building and Construction Industry Award 1990*.

Mr Pratt then referred to clause 38A of the Federal Award that provides for Redundancy, and provided to the Commission the original text of the Award definition for Redundancy at clause 38A:–

“(a) Redundancy means a situation where an employee ceases to be employed for any reason and the employee elects to no longer seek work in the industry (as defined in (b)(iii) hereof).”.

According to Mr Pratt, the provision had since changed to mirror what effectively was the definition in the State Award, and now reads:-

“(a) ‘Redundancy’ means a situation where an employee ceases to be employed by an employer, respondent to this award, other than for reasons of misconduct or refusal of duty. ‘Redundant’ has a corresponding meaning.”.

Mr Pratt stated that he had brought the definition of Redundancy to the attention of the Commission simply to provide details that the Federal Award provided ample means for Redundancy as was the case with the State Award.

He then referred to s. 152 of the *Workplace Relations Act 1996*:-

“152 Awards to prevail over State laws and State awards

(1) Subject to this section, if a State law or a State award is inconsistent with, or deals with a matter dealt with in, an award, the latter prevails and the former, to the extent of the inconsistency or in relation to the matter dealt with, is invalid.”.

At page 12, line 40 of transcript, Mr Pratt, in finalising his argument:-

“Section 152 of the Workplace Relations Act 1996 Commonwealth, states clearly that it matters not whether the terms of the State and Federal Awards differ from each other, that the Federal Award deals with redundancy, means that pursuant to section 152 of the Workplace Relations Act 1996 Commonwealth, the State Award, the Building Construction Industry Award – State is invalid in terms of matters dealt with by the 1990 Federal Award, and specifically for the purpose of this application, the matter of redundancy. It’s our submission that the Commission cannot hear an application under an Award that is invalid, by virtue of the power of section 152 of the Workplace Relations Act.”.

Supportive of the respondent’s position, authorities were tendered relating to the following matters: *Metal Trades Industry Association v Australian Metal Workers’ and Shipwrights’ Union* (1983) 152 CLR 632 before the High Court of Australia, and *Sutton v Sharp* (No 3) [2000] IRCA 1 (10 March 2000).

Mr Moxham, on behalf of the applicant, expressed his disappointment with the manner in which the AIG had handled this matter, and in particular, their failure at a preliminary hearing and conference that followed that hearing to raise the issue of jurisdiction.

In fact he alleged that AIG had sought to gain an advantage by waiting until the applicant had filed the witness statements to be relied upon before raising the issue of jurisdiction, only one hour before they were due to lodge witness statements in compliance with the Further Directions Order.

Mr Moxham further submitted that the redundancy clause in the Federal Award is the same as contained in the State Award, and that the outcome of this matter, in his view, would be the same whether heard in the Queensland Industrial Relation Commission or the Magistrate’s Court.

He indicated that once this matter went to the Magistrate’s Court, the Union would be seeking the imposition of the penalty against the employer for a breach of the Award.

Finally, Mr Moxham submitted that whilst it had been shown that ACS was a member of the MTIA in 1996, it was not evident before the Commission in this hearing that the company had satisfied all requirements of membership of the MTIA at October 1998 when Mr McGarry had ceased employment. Therefore, a case had not been made that the Queensland Industrial Relations Commission was not the correct jurisdiction for this matter.

Conclusion

In the determination of this matter, it was not necessary to give consideration to the substance of the claim, but to merely examine issue of jurisdiction.

Evidence produced to the Commission in respect of ACS’s membership was sufficient for the Commission to establish that the respondent company made an application in October 1996 for membership of the then MTIA and the subsequent acceptance of the application.

In terms of the respondent’s membership (of MTIA) circumstances at the relevant time, that being the date Mr McGarry ceased employment, the evidence of Ms Beaverson was not challenged in relation to her affidavit of evidence, and confirmation was provided from the Bar Table by Mr Pratt of an ongoing and continuing membership of ACS since the initial acceptance in 1996.

There was no evidence or submissions placed before the Commission that questioned the binding of ACS to the *National Building and Construction Industry Award 1990* as a consequence of their membership of the then MTIA.

In respect of the second significant ground relied upon by ACS in this matter, that being s. 152 of the *Workplace Relations Act 1996*, the material placed before the Commission by way of authority in the matter of *Sutton v Sharp* (No 3) [2000] IRCA 1 (10 March 2000) at paragraph 50 of that decision, was not disputed:-

“50 The position here is to be contrasted with that in relation to federal awards. The IR Act expressly provided in s 152 that such awards should operate to the exclusion of State laws and awards dealing with the same matters. Federal awards made pursuant to the IR Act were, by the terms of the Act, brought into force as part of the law of the Commonwealth: see *Collins v Charles Marshall Pty Ltd* (1955) 92 CLR 529, where Dixon CJ, McTiernan, Williams, Webb, Fulager and Kitto JJ said at 547:

“The basis of the application of s 109 to a State law affecting industrial relations regulated by an award is not that the award is a law of the Commonwealth within the meaning of s 109 but that the Conciliation and Arbitration Act constitutes the inconsistent Federal law inasmuch as it means that an award purporting to make an exhaustive regulation shall be treated as the exclusive determination of the industrial relations which it affects. “The award itself is, of course, not law, it is a factum merely. But once it is completely made, its provisions are by the terms of the Act itself brought into force as part of the law of the Commonwealth. . .” per Isaacs CJ and Starke J, Ex parte McLean [(1909) 8 CLR 465].”

Therefore, in respect of the issue of jurisdiction, on the evidence and submissions that have been placed before the Commission, I find that the Queensland Industrial Relations Commission is not the appropriate Tribunal in which this matter should be heard and, as such, is, in effect, excluded from further dealing with matter W103 of 2001.

I doth order.

J.M. THOMPSON, Commissioner.

Appearances:-

Mr R. Moxham, of the Australian Building Construction Employees and Builders' Labourers' Federation (Queensland Branch) Union of Employees, for the Applicant.
Mr D. Pratt, of the Australian Industry Group, Industrial Organisation of Employers (Queensland), on behalf of the Respondent.

Released: 2 August 2001

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

Jay Berends AND Gillilodge Pty Ltd Trading as The Campmart (Case No. B362 of 2001)

COMMISSIONER ASBURY

3 August 2001

Termination of employment – Dismissal or resignation – Constructive dismissal – Case law – Refusal to pay wages to the applicant constituted fundamental breach of employment contract – Applicant entitled to accept breach and consider himself discharged from further performance of contract – Applicant was constructively dismissed – Dismissal was unfair – Consideration of Award provisions re limitations on hours to be worked in any one week by casual employees – Compensation to be awarded – Further details of earnings to be provided by applicant to enable compensation to be determined.

DECISION

Background to the Application

This is an application by Jay Berends (the applicant) alleging his unfair dismissal by Gillilodge Pty Ltd trading as The Campmart (the respondent). The respondent is engaged in the retail of camping and other similar equipment. The applicant commenced employment with the respondent on 27 September 1999, as a shop assistant. The applicant's employment was governed by the *Retail Industry Interim Award – State* (the Award). The applicant worked in the respondent's Strathpine store. The applicant's employment ceased on Thursday 8 February 2001. The applicant contends that he was constructively dismissed. The respondent contends that the applicant resigned his employment.

The facts in relation to this application can be briefly summarised as follows. In late September 2000, the applicant contacted Wageline, seeking information about the rate of pay to which he was entitled under the Award. The applicant's initial inquiries established that the Award rates had increased from early September 2000, and that the rate being paid to him and to other employees, was less than the Award rate. The applicant then held a number of discussions with the Manager of the Strathpine store, Mr Nigel Crossley, in an attempt to resolve the matter. When those discussions failed to address his concerns, the applicant, prepared a letter to the owner Mr Liekari, dated 5 January 2001, which was signed by a number of other employees (one of whom subsequently withdrew his name), requesting payment in accordance with the Award, and back payment of penalty rates and overtime. The letter also stated that if there was no reasonable response to the request within fourteen days, the matter would be taken to the Industrial Relations Commission.

The applicant also raised with the respondent, the issue of the definition of casual employee contained in the Award (at clause 3.1(4), which provides that a casual employee is one who is employed for not more than 30 hours in any one week. Prior to raising these issues, the applicant was regularly rostered to work 40 hours per week. Upon becoming aware of the Award provisions with respect to casual employees through the applicant and its own inquiries, the respondent reduced the rostered hours of the applicant to 28 hours per week, with effect from 9 January 2001. The applicant says that only the hours of casual employees who had complained about their wages and working conditions were reduced. The respondent says that the hours of all casual employees were reduced, to ensure compliance with Award provisions. The applicant says that the respondent then further reduced his hours to twenty per week. The respondent says that the further reduction was because the applicant had advised that he was unable to work on Mondays.

Events leading to the cessation of the applicant's employment

On 2 February 2001, the applicant attended a meeting with Mr Liekari to discuss his claim for underpayment of wages. The applicant says that at that meeting, Mr Liekari made an offer to settle his claim for underpayment of wages, and that after a further discussion with the inspector, who had been investigating the claim, (who was on the respondent's premises at the time), he advised Mr Liekari that the offer was accepted. The applicant says that after he had accepted the settlement offer, Mr Liekari advised him that he wanted the Department of Industrial Relations to check whether the amount offered was correct. The applicant says that he had no option but to agree to this proposal. The applicant further says that Mr Liekari offered him an amount of \$1,000 as part payment of the settlement amount, and that he accepted this on the basis that he was in financial difficulty due to the reduction in his rostered hours which the respondent had imposed.

Mr Liekari's version of the meeting differs significantly from that of the applicant. Mr Liekari says that he was in the middle of discussions with the applicant about his wages claim, when he was advised that the inspector had just told Mr Crossley, that casual employees were not entitled to overtime payments under the Award until they worked in excess of 38 hours. Prior to this advice, Mr Liekari says that he had been calculating payments owed to the applicant on the basis that overtime was payable to casual employees after 30 hours were worked in any week. Mr Liekari says that the applicant agreed to let the inspector recalculate the final figure to attend a further meeting to conclude the claim. Mr Liekari says that in the interim, he advanced the applicant \$1,000 against his future earnings, on the basis that he had been advised by Mr Crossley that the applicant was short of money due to the reduction in his rostered hours. Mr Liekari says that this amount was a loan.

Subsequently, Mr Liekari says that he found an "IOU" in the cash register from the applicant for the amount of \$40. Mr Liekari says that he became concerned about how the applicant was going to repay the \$1,000 "loan" and the amount of \$40, and gave an instruction to Mr Crossley to arrange a meeting with the applicant on Friday 9 February to discuss these amounts, and not to release the applicant's weekly pay (which was due to be paid on Thursday 8 February) until that day.

The applicant says that he attended work on Thursday 8 February and was asked by Mr Crossley to attend a meeting with Mr Liekari the next day. The applicant declined to do so, on the basis that Friday 9 February was the first day of a number of days off, and he was not due to start work again until Tuesday 13 February. The applicant also said he told Mr Crossley that he could not afford the fuel to undertake a 25 minute car trip, as a result of the reduction in his rostered hours. Upon requesting payment of his wages for the week he had just worked, the applicant says that he was told that his pay was being withheld until he met with Mr Liekari to discuss repayment of the \$1,000 "loan" and the \$40 "IOU".

The applicant told Mr Crossley that it was illegal to withhold his wages, and that he had no other choice but to leave the workplace. The applicant says that the reduction to his hours of work; the refusal to pay his wages and other acts of intimidation on the part of Mr Crossley and Mr Liekari, resulted in a situation where he believed that he had no other option but to leave his employment with the respondent.

The respondent maintains that there was no refusal to pay the applicant's wages to him. Had the applicant attended the meeting on 9 February as requested, and resolved issues with the "loan" and the "IOU", his wages would have been paid to him. The respondent contends that the applicant resigned his employment, and that the cessation of the applicant's employment does not constitute a constructive dismissal.

Constructive Dismissal

Numerous authorities have established under previous legislation, that relief is not available through unfair dismissal provisions, unless a "dismissal" has occurred. (See for example, decisions of Bougoure C in *Griggs v Health Equipment Hire and Supplies Pty Ltd* (1995) 149 QGIG 131; *Thomas v Power Electric Switchboards Pty Ltd* (1995) 149 QGIG 493 and *Mabo v Linkup* (1995) 149 QGIG 775). The provisions of the legislation when those decisions were handed down, were not materially different for the purposes of this issue, from those of the *Industrial Relations Act 1999*, and the proposition stated in those decisions still has application.

In *Dowdell v Sunlite Glass Bricks* (1997) 155 QGIG 785 Bougoure C, citing *Cowan v Trinolea* (1995) 148 QGIG 639; *Cooper v Darwin Rugby League Inc.* (1994) 1 IRCR 130 and *Allison v Bega Valley Council* IRC 116 of 1995, 1 September 1995, said "[i]t seems to me that a 'dismissal' may be conveniently described as a termination of employment at the initiative of the employer and without the genuine consent of the employee". Notwithstanding the changes in the legislation, and the fact that previous legislation called in aid the ILO Termination of Employment Convention 1982, it is still the case that the provisions of the *Industrial Relations Act 1999* dealing with unfair dismissal, have application when an act of the employer results directly or consequentially in the termination of employment, and the employment relationship does not end voluntarily [*Mohazeb v Dick Smith Electronics* (No. 2) (1995) 62 IR 2000].

In *Iskander v Brisbane Display and Shopfitting Pty Ltd* (1997) 154 QGIG 806, Chief Industrial Commissioner Hall noted that the expression "constructive dismissal" has leaked into the reported decisions of Australian Industrial Tribunals over the past twenty years. In that decision the Chief Commissioner doubted that the adjective "constructive" adds anything, if all that is involved in the notion of a constructive dismissal, is a proposition to an employee to "resign or else". The Chief Commissioner went on to say that "[i]t has always been the case that one must go past matters of form and look at the whole facts and characterise the transaction".

In *Allison v Bega Valley Council* IRC 116 of 1995, 1 September 1995, a Full Bench of the Industrial Relations Commission of New South Wales said:-

"Although the term 'constructive dismissal' is quite commonly used it can deflect attention from the real inquiry. That inquiry should involve an analysis of what occurred. Did the employer behave in such a way so as to render the employer's conduct the real and effective initiator of the termination of the contract of employment and was this so despite on the face of it the employee appears to have given his or her resignation... In order to undertake the necessary analysis it is necessary to determine whether the actual determination was effectively initiated by the employer or by the employee particularly where the dynamics within a factual situation may change."

This approach was also followed by Fisher C, in *Venter v Australian Country Choice Abattoir* (1997) 154 QGIG 605 at 606.

In *Iskander*, the Chief Commissioner also traced a line of authority for the proposition that a fundamental breach of the contract of employment by the employer, entitles the employee to consider himself discharged from further performance. In such cases, the contract is terminated by the employee by reason of the employer's conduct, and the employee has been constructively dismissed (Lord Denning MR in *Western Excavating (ECC) Ltd v Sharp* (1978) ICR 221 at 226). Further Chief Commissioner referred to authorities for the proposition that there is an implied term in a contract of employment that employers will not, without reasonable cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. It is not necessary to show that the employer intended any repudiation of the contract. The Tribunal's function is to look at the employer's conduct as a whole, and determine whether, on a reasonable and sensible view, it is such that the employee cannot be expected to put up with it (*Woods v WN Car Services (Peterborough) Ltd* [1981] 1 ICR 666 at 670 per Browne-Wilkinson J. This view is also apparent in the decision of the Full Court of the Industrial Relations Court of South Australia in *Little v Sparrow* (No 2) [1998] SAIRC 58 29 October 1998 and the decision of the Supreme Court of South Australia in *Grivell v Adelaide Advertiser Newspapers Ltd* (1999) 90 IR 211 at 217.

Was the applicant constructively dismissed?

On consideration of the respondent employer's conduct as a whole in this case, I am reasonably satisfied that the employer was the real and effective initiator of the termination of the applicant's employment.

The evidence clearly shows that after the applicant raised the issue of the apparent 30 hour limit on ordinary hours which a casual employee could work in any week, under the Award, that his hours of work were reduced to 28 and then 20 per week. While the respondent was entitled to reduce hours of work of casual employees to comply with the Award limitation, the applicant, and Mr Gensh who gave evidence on the applicant's behalf, contended that this was done selectively, and targeted at employees who had signed the letter of demand of 5 January, in relation to their wages and working conditions.

The respondent only called evidence from one employee, Mr Jarrott, to counter this contention. Mr Jarrot's evidence establishes that while his hours of work were reduced from 38 to 30 per week, he had made a deal with Mr Crossley some time in January, that his hours would be increased when the Award related issues were resolved. The evidence of Mr Crossley and Mr Liekari for the respondent, was that they believed, on the basis of their own inquiries, that the Award required casual employees to be paid overtime, for hours in excess of 30 per week, and they had acted upon this view. Mr Crossley and Mr Liekari held this view until 2 February 2001, when an industrial inspector investigating the applicant's underpayment of wages claim, retracted the advice which had previously been given in relation to the limitation on hours for casual employees under the Award, and advised Mr Crossley that overtime was not payable to casual employees until 38 hours in any week had been worked.

It is clear from the evidence that Mr Crossley gave a commitment to increase Mr Jarrott's hours of work to 38 per week, at a time when he believed that such an increase would breach the Award. No such commitment was given to the applicant, or any of the other witnesses called by the applicant who had signed the letter of complaint to Mr Liekari on 5 January 2001. I am reasonably satisfied, given the evidence of Mr Jarrott about the "deal" with Mr Crossley, that the reduction in hours was not primarily motivated by a desire on the part of Mr Liekari or Mr Crossley to conform with the provisions of the Award. Rather, the reduction was motivated, at least in part, by a desire to silence employees who had made claims against the employer in respect of wages and working conditions. In my view, it was reasonable for the applicant to form a view that he was being targeted by the respondent for having made such a claim. While this may not have lead directly to the dismissal of the applicant, it could certainly have contributed to the views he later formed about other conduct on the part of Mr Liekari and Mr Crossley.

In my view, the delay of the respondent in dealing with the applicant's claim for underpayment of wages was unreasonable. The applicant had raised serious issues about his wages and working conditions in September 2000, and had later provided details from Wageline about these matters. Further, the respondent's evidence establishes membership of an employer organisation, which could have provided advice in relation to the applicant's claim. In light of this delay, it is hardly surprising that the applicant became distressed, and concerned about his position. Again, while this may not have led directly to the dismissal of the applicant, it could certainly have contributed to the views he later formed about other conduct on the part of Mr Liekari and Mr Crossley.

I accept the evidence of the applicant that the \$1,000 was paid to him by Mr Liekari, in part settlement of his claim with respect to underpayment of wages. The evidence clearly establishes that payment of an amount of \$1,000 to the applicant as an advance on wages, would have been unprecedented, given that previous advances were in the order of \$50 to \$100. Mr Liekari also stated in his evidence that he had made an offer of \$5,100 to settle the applicant's wages claim, prior to offering to "loan" him \$1,000 as an advance against his wages. In my view it is highly improbable that having become aware of the change in the industrial inspector's view about the payment of overtime to casual employees, that the respondent would have offered to lend or advance the applicant an amount of \$1,000 against his future wages.

The more probable version of events is that on 2 February, Mr Liekari offered the applicant \$1,000 as part payment of \$5,100 amount which the applicant had agreed to accept in settlement of his wages claim. Upon subsequently becoming aware that the industrial inspector had altered his view about the restriction on hours of work for casual employees under the Award, Mr Liekari sought to transform the \$1,000 payment into a "loan".

While all of these matters contributed to the applicant's frame of mind about his treatment by the respondent, they did not constitute fundamental breaches of his contract of employment. However, the refusal by Mr Liekari, the Managing Director of the respondent, to pay the applicant's wages, is another matter. I am reasonably satisfied on the evidence before me, that Mr Liekari sought to withhold payment of the applicant's wages, in order to induce him to agree to repay the \$1,000 amount and the \$40 "IOU". Mr Crossley said in his evidence that he told the applicant on 8 February, that Mr Liekari would happily release the applicant's pay, when the applicant sat down with Mr Liekari and worked out the repayment of those amounts. Mr Matley's submission for the respondent, that there was no evidence that the applicant's wages were never going to be paid, and that all he had to do to receive payment, was attend a meeting on the following day with Mr Liekari, misses the point.

The reality is, that on the evidence of the respondent's own witnesses, the applicant was not going to be paid his wages until Mr Liekari was satisfied that arrangements for the repayment of the amounts he believed the applicant owed him, regardless of whether the applicant attended a meeting on 9 February or not. There was no evidence that the respondent's position in relation to this matter would have changed, and indeed, the evidence shows that the applicant has still not been paid for the week worked prior to the cessation of his employment on 8 February.

The simple facts of the matter are that the respondent had no right to withhold payment of the applicant's wages in the circumstances of this case. Even if the respondent had established that the \$1,000 was a loan or an advance against future wages, no deduction could lawfully have been made from the applicant's wages in settlement of that loan (much less the total withholding of the applicant's wages), in the absence of his written agreement. Indeed, s. 391(1) of the Act would appear to prohibit the respondent's conduct.

In my view, the action of the respondent in withholding the applicant's wages constituted a fundamental breach of the applicant's contract of employment, and entitled the applicant to consider himself discharged from the further performance of that contract. The obligation of the employer to pay wages for work performed by an employee goes to the root of the contract of employment, and refusal to do so, in the absence of some common law or statutory right to withhold payment, is a repudiation of the contract, which the applicant was entitled to accept. The applicant did so, with the result that he was constructively dismissed by the respondent.

I reject the submission of Mr Matley that the applicant freely resigned and subsequently filed an unfair dismissal application due to failure to gain satisfaction with respect to alleged unpaid entitlements as was found to be the case in *Butler v Docklea Combined Services* (2000) 165 QGIG 50.

Further, in my view, this is not a case where the applicant acted unreasonably in withdrawing from a meeting, where the employer was seeking to give him an opportunity to respond to allegations about his conduct, capacity or work performance as required by the Act, as was the case in *Wotherspoon v Ibx International Business Exchange Limited* (1997) 154 QGIG 467. I also note that in that case, the applicant held a management position and was considered by Bougoure C as being capable of responding to the allegations in question. In this case, the applicant was a casual shop assistant, entirely dependent for income upon his wage from the respondent. The respondent had reduced the applicant's hours of work, failed to respond to his wages claim in a reasonable time frame, and was unreasonably (and arguably unlawfully) refusing to pay the applicant's wages, until he had repaid an amount of money which he quite rightly, did not accept had been loaned or advanced against those wages.

Was the dismissal of the applicant unfair?

The case for the respondent has focused on the contention that the applicant resigned his employment. Some evidence has been lead for the respondent to establish that the applicant had been warned about his conduct, capacity and work performance, during the period of his employment with the respondent. However, I am unable to be reasonably satisfied that the matters about which the applicant had been warned, had any bearing on his dismissal. Further, I am unable to be reasonably satisfied that the applicant engaged in conduct at the time of his dismissal that would justify his dismissal. The applicant had pursued a wages claim which he was perfectly entitled to do, and the manner in which that claim was pursued was not unreasonable, given the delay on the part of the respondent in dealing with the matters raised. The conduct of the applicant in refusing to attend a meeting with Mr Liekari on his day off, was also perfectly reasonable in my view, given the refusal on the part of Mr Liekari to authorise the payment of the applicant's wages, in the circumstances in which that refusal occurred.

The applicant did not pursue the argument that his dismissal was for an invalid reason pursuant to s. 73(2)(e) of the Act. After carefully considering all of the evidence in this case, I am not prepared to make a finding in this regard. I find that the dismissal of the applicant, in all of the circumstances, was unfair, in that it was harsh, unjust and unreasonable. Further, I have considered the matters required by s. 77 of the Act and in my view, the provisions of subsections (a), (b) and (c) of that section are not relevant to a finding that the dismissal of the applicant was unfair in this case, given the circumstances in which the dismissal occurred. In relation to s. 77(d), the other matters which I consider are relevant to the determination of whether the dismissal of the applicant was unfair, are set out in this decision.

Wages claim

In dealing with this case, I have considered the manner in which the applicant's wages claim was dealt with by the respondent. While the substance of that claim is not a matter I am required to determine, and I have not taken the correctness or otherwise of the claim into account in reaching my decision in this case, evidence about the claim has been presented by both the applicant and the respondent, which I intend to make some comment about. The respondent was represented by an employer organisation, and the implications of some of the evidence lead on this issue, should have been apparent.

Clause 3.1(4) of the Award contains the following definition of a casual employee:-

“ ‘Casual employee’ shall mean an employee who is engaged as such and who is employed for not more than thirty (30) hours in any one (1) week.”.

The principles of statutory interpretation should generally be applied in interpreting awards. As a general principle, an award should be interpreted consistent with those principles so that as far as possible, words or sentences are not superfluous, void or insignificant. (See *Project Blue Sky v ABA* (1998) 194 CLR 355 at 382 per McHugh, Gummow, Kirby and Hayne JJ referring to the decision of Griffith CJ in *The Commonwealth v Baume* (1905) 405 CLR 414) who had cited the statement in *R v Berchet* ((1688) 1 Show KB 106 [89 ER 480]) that it was “a known rule in the interpretation of statutes that such a sense is to be made upon the whole that no clause, sentence or word shall prove superfluous, void or insignificant, if by any other construction they may all be made useful and pertinent” and Isacs and Rich JJ quoting from *Broom’s Legal Maxims*, 9th ed., pp. 367-368, in *The Metropolitan Gas Company v The Federated Gas Employees’ Industrial Union and Another* (1925) 35 CLR 449 at 455: “In construing an instrument every part of it should be brought into action, or in other words construction must be made upon the entire instrument, and not merely upon disjointed parts of it ... the whole context must be considered ... although the immediate object of inquiry be the meaning of an isolated clause ...”).

The obvious question is what effect does clause 3.1(4) of the Award have? It may very well be arguable that this provision does not entitle a casual employee to be paid overtime rates for work in excess of thirty hours in any one week, but in the absence of detailed argument on this point I will not express a view. However, if this argument is correct, that is not the end of the matter. It is equally arguable that a casual employee who is regularly rostered or otherwise required to work in excess of thirty hours per week, ceases to be a casual employee for the purposes of entitlements under the Award. As a result, such an employee may become entitled to benefits of the Award applicable to weekly employees.

Remedy

In concluding his case, the applicant advised that he was not seeking reinstatement, and had obtained alternative employment in May 2001. In all of the circumstances of this case, I find, pursuant to s. 79(1) of the Act, that reinstatement is not practicable. Accordingly, I intend to compensate the applicant for his unfair dismissal.

Unfortunately, the applicant presented his own case, and was not in a position to put evidence to the Commission about the date he commenced his new employment; the remuneration he has received from that employment; or any non-refundable earnings from other sources (such as unemployment benefits) he may have received since his dismissal.

Accordingly, I direct the applicant to file an affidavit with the Industrial Registry within seven days of the release of this decision, detailing these matters. In particular the applicant is to provide a break-down of this information showing dates when wages or other non-refundable payments were received. The applicant is to also serve the affidavit on the respondent’s representative, the Queensland Retail Traders and Shopkeepers Association Industrial Organisation of Employers (QRTSA). The required form of an affidavit is available from the Industrial Registry.

Upon receipt of the applicant’s affidavit, the QRTSA is to advise the Industrial Registry in writing, of whether or not the respondent seeks to cross-examine the applicant with respect to the contents of the affidavit. This advice is to be provided by the QRTSA within fourteen days of the release of this decision. In the event that the respondent seeks to cross-examine the applicant the matter will be relisted for this purpose. In the event that the respondent does not seek to cross-examine the applicant in relation to his affidavit and/or does not advise the Industrial Registry in accordance with the above direction, the contents of the affidavit will be relied upon to determine an appropriate amount of compensation, to be paid by the respondent to the applicant.

I.C. ASBURY, Commissioner.

Appearances:-

Mr J. Berends, the Applicant, on his own behalf.

Mr D. Matley of Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) for the Respondent.

Released: 3 August 2001

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

The Australian Workers’ Union of Employees, Queensland AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Another (No. B855 of 2001)

FISHERY EMPLOYEES’ AWARD – STATE

VICE PRESIDENT LINNANE

25 May 2001

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 25 May 2001, this Commission orders that the said Award be amended as follows as from the twenty-fifth day of May, 2001:-

By deleting the paragraph entitled “Shift Work Penalty Rates” and inserting the following in lieu thereof:-

“(i) *Afternoon and Night Shift Allowances* – In addition to the rates of pay prescribed by clause 14 (Wages) of this Award, employees whilst engaged on Afternoon Shift and Night Shift, shall be paid an additional penalty rate for each such shift as follows, where two or more shifts are worked in any period of 24 hours:-

- | | |
|--------------------------------------|--|
| (a) Afternoon Shift (from 25/5/2001) | 12% (or \$9.70 whichever is the greater) |
| Night Shift (from 25/5/2001) | 14% (or \$9.70 whichever is the greater) |
| (b) Afternoon Shift (from 1/11/2001) | 12.5% (or \$9.70 whichever is the greater) |
| Night Shift (from 1/11/2001) | 15% (or \$9.70 whichever is the greater) |

(ii) For the purposes of this clause:-

- (a) 'Afternoon Shift' shall mean any shift finishing after 6.00 p.m. and at or before midnight;
- (b) 'Night Shift' shall mean any shift finishing after midnight and at or before 8.00 a.m. or where the majority of hours worked in the shift fall between midnight and 8.00 a.m.;
- (c) The percentage which is quoted shall be the amount which is payable for each shift in addition to the employee's ordinary time wage rate; and
- (d) An allowance shall only apply where the operational requirements are such that two or more shifts operate within a period of 24 hours.

(iii) No employee shall as a result of this clause suffer any reduction to their current entitlement to shift allowance."

Dated this twenty fifth day of May, 2001.

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

Operative Date: 25 May 2001
Amendment – Shift Work Penalty Rates
Released: 2 August 2001

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999

ELECTRICITY GENERATION, TRANSMISSION AND SUPPLY AWARD – STATE

(Gazette, 12th January, 1996)

(Correction of Error)

WHEREAS an error occurred in the Amendment (General Ruling) to this award as published in the *Queensland Government Industrial Gazette* of 6 August 1999, Vol. 161, No. 16, pages 413-419, the following correction is made:

By deleting Item 3 and inserting the following in lieu thereof:-

"3. By deleting from the subclauses listed in the first column of the Schedule, the amount in the second column, and inserting the amount in the third and fourth columns respectively in lieu thereof.

DIVISION 1 (GOVERNMENT OWNED GENERATION)

<u>Column 1</u>	<u>Column 2</u>	<u>Column 3</u> (as from commencement of the first pay period after 1.9.97)	<u>Column 4</u> (as from 1.9.98)
	\$	\$	\$
3.10 (1)	43c	43.95c	45.3c
3.10 (2)	2.82	2.88	2.97
3.10 (3)	44c	44.95c	46.35c
	28c	28.6c	29.5c
3.10 (4)	1.03	1.0525	1.085
3.10 (5)	44c	44.95c	46.35c
3.10 (7)	16.50	16.90	17.40
3.10 (8)	36c	36.8c	37.95c
3.10 (9)	44c	44.95c	46.35c
3.10 (10)	34c	34.75c	35.85c
3.10 (11)	4.03	4.10	4.20
3.10 (12)	8.56	8.70	9.00
	13.12	13.40	13.80
3.10 (13)	44c	44.95c	46.35c
3.10 (14)	43c	43.95c	45.3c
3.10 (16)	9.55	9.80	10.10
3.10 (17)	2.10	2.15	2.22
3.10 (18)	44c	44.95c	46.35c
3.10 (19)	2.31	2.36	2.43
	36c	36.8c	37.95c
3.10 (20) (a)	9.08	9.30	9.60
(b)	19.52	19.90	20.50
3.10 (21)	2.10	2.146	2.2125
	1.41	1.441	1.4855
3.10 (22)	43c	43.95c	45.3c
3.10 (23)	34c	34.75c	35.85c
3.10 (24)	43c	43.95c	45.3c
	36c	36.8c	37.95c
3.10 (25)	94c	96.05c	99.05c
3.10 (26)	95c	97.1c	1.001
3.10 (27)	44c	44.95c	46.35c
3.12 (1)	36c	36.8c	37.95c
3.12 (2)	36c	36.8c	37.95c
3.12 (3)	421.00	430.00	443.00
3.12 (4)	924.00	944.00	973.00

<u>Column 1</u>	<u>Column 2</u> \$	<u>Column 3</u> (as from commencement of the first pay period after 1.9.97) \$	<u>Column 4</u> (as from 1.9.98) \$
3.12 (5)	11.50c 90c	11.75c 92c	12.1c 95c
3.12 (6)	1.39	1.42	1.46
3.12 (7)	1.78	1.82	1.88
3.12 (8)	1.45 84c 1.88 1.06 14.6c	1.48 86c 1.92 1.08 14.9c	1.53 89c 1.98 1.11 15.35c
3.13	1,040	1,063	1,096
	520	531	547
3.14	8.89	9.10	9.40

DIVISION 2 (GOVERNMENT OWNED TRANSMISSION AND SUPPLY)

<u>Column 1</u>	<u>Column 2</u> \$	<u>Column 3</u> (as from commencement of the first pay period after 1.9.97) \$	<u>Column 4</u> (as from 1.9.98) \$
3.10 (1)	43c	43.95c	45.3c
(2)	2.82	2.88	2.97
(3)	44c 28c	44.95c 28.6c	46.35c 29.5c
(4)	16.50	16.90	17.40
(5)	33c	33.75c	34.8c
(6)	36c	36.8c	37.95c
(7)	44c	44.95c	46.35c
(8)	34c	34.75c	35.85c
(9)	4.03	4.10	4.20
(10)	8.56 13.12	8.70 13.40	9.00 13.80
(11)	44c	44.95c	46.35c
(12)	43c	43.95c	45.3c
(13)	9.55	9.80	10.10
(14)	2.10	2.15	2.22
(15)	44c	44.95c	46.35c
(16)	2.31 2.31 36c	2.36 2.36 36.8c	2.43 2.43 37.95c
(17)	4.35	4.45	4.59
(18)(i)	6.46	6.60	6.80
(ii)	13.68	14.00	14.40
(19)	43c	43.95c	45.3c
(20)	34c	34.75c	35.85c
(21)	43c 36c	43.95c 36.8c	45.3c 37.95c
(22)	4.25	4.34	4.47
(23)	95c	97.1c	1.001
(24)	44c	44.95c	46.35c
3.12 (1)	36c	36.8c	37.95c
(2)	36c	36.8c	37.95c
(3)	421.00	430.00	443.00
(4)	924.00	944.00	973.00
(5)	5.45 9.83	5.60 10.00	5.80 10.30
(6)	11.50c 90c	11.75c 92c	12.1c 95c
(7)	1.39	1.42	1.46
(8)	1.78	1.82	1.88
(9)	1.45 84c 1.88 1.06 14.6c	1.48 86c 1.92 1.08 14.9c	1.53 89c 1.98 1.11 15.35c
(10)	3.20 78c	3.30 80c	3.40 82c
(11)	1.61	1.65	1.70
3.13	1,040	1,063	1,096
	520	531	547
3.14	8.89	9.10	9.40."

Dated this fifth day of May, 2000.

E. EWALD
Registrar.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999

ELECTRICITY SUPPLY INDUSTRY EMPLOYEES' AWARD – STATE

(Gazette, 12th January, 1996)

(Correction of Error)

WHEREAS an error occurred in the Amendment (General Ruling) to this award as published in the *Queensland Government Industrial Gazette* of 6 August 1999, Vol. 161, No. 16, pages 420-422, the following correction is made:

By deleting Item 2 and inserting the following in lieu thereof:–

“2. By deleting from the subclauses listed in the first column of the Schedule, the amount in the second column, and inserting the amount in the third and fourth columns respectively in lieu thereof.

<u>Column 1</u>	<u>Column 2</u>	<u>Column 3</u> (as from the commencement of the first pay period after 1/9/97)	<u>Column 4</u> (as from 1/9/98)
	\$	\$	\$
3.17(12) (a)	389.00	398.00	410.00
(b)	855.00	874.00	901.00
3.21	14.30	14.60	15.10
3.26	5.04	5.20	5.40
	9.09	9.30	9.60
3.32 (1)	43c	43.95c	45.3c
(2)	63c	64.4c	66.4c
(3)	2.82	2.88	2.97
(4)	44c	44.95c	46.35c
	28c	28.6c	29.5c
(5)	1.03	1.0525	1.085
(6)	44c	44.95c	46.35c
(8)	16.50	16.90	17.40
(9)	34c	34.75c	35.85c
(10)	36c	36.8c	37.95c
(11)	36c	36.8c	37.95c
(12)	1.12	1.1445	1.18
(13)	36c	36.8c	37.95c
(14)	44c	44.95c	46.35c
(15)	34c	34.75c	35.85c
(16)	5.45	5.60	5.80
	9.83	10.00	10.30
(17)	88c	90c	90c
	1.75	1.80	1.90
	3.14	3.20	3.30
	4.55	4.70	4.80
	6.13	6.30	6.50
	7.00	7.20	7.40
	8.02	8.20	8.50
	9.24	9.40	9.70
(18)	11.5c	11.75c	12.1c
	90c	92c	94.85c
(19)	8.89	9.10	9.40
(20)	1.39	1.42	1.46
(21)	1.78	1.82	1.88
(22)	4.03	4.10	4.20
(23)	8.56	8.70	9.00
	13.12	13.40	13.80
(24)	44c	44.95c	46.35c
(25)	43c	43.95c	45.3c
(27) Leading Hand Allowance			
(a) Group B	19.52	19.90	20.50
	29.55	30.20	31.10
	38.57	39.40	40.60
(b) Group C	3.90	3.99	4.11
	5.91	6.04	6.23
	7.71	7.88	8.12
(c) Group D(i)	3.90	3.99	4.11
	5.91	6.04	6.23
	7.71	7.88	8.12

<u>Column 1</u>	<u>Column 2</u>	<u>Column 3</u> (as from the commencement of the first pay period after 1/9/97)	<u>Column 4</u> (as from 1/9/98)
	\$	\$	\$
(ii)	19.52	19.90	20.50
(d) Group F	7.81	8.00	8.20
	9.79	10.00	10.30
	11.74	12.00	12.40
(e) Group G	1.87	1.91	1.97
	4.13	4.22	4.35
	5.20	5.31	5.47
	6.98	7.13	7.35
	3.03	3.10	3.20
	4.37	4.47	4.61
	6.16	6.30	6.50
(f) Group H	10.63	10.90	11.20
	15.94	16.30	16.80
(g) Group L	3.90	3.99	4.11
	5.91	6.04	6.23
	7.71	7.88	8.12
(h) Group M	18.77	19.20	19.80
	28.42	29.00	29.90
(30)	37.08	37.90	39.10
(31)	9.55	9.80	10.10
(33)	2.10	2.15	2.22
	1.45	1.48	1.53
	84c	86c	89c
	1.88	1.92	1.98
	1.06	1.08	1.11
(33)(f)	14.56c	14.9c	15.35c
(34)	44c	44.95c	46.35c
(35)	3.12	3.2c	3.3c
(36)	2.31	2.36	2.43
	2.31	2.36	2.43
	36c	36.8c	37.95c
(37)	4.35	4.45	4.59
(38)	9.08	9.30	9.60
	19.52	19.90	20.50
	6.46	6.60	6.80
	13.68	14.00	14.40
(39)	2.09	2.136	2.202
	1.41	1.441	1.4855
(40)	43c	43.95c	45.3c
(41)	34c	34.75c	35.85c
(42)	3.20	3.30	3.40
	78c	80c	82c
(43)	4.94	5.00	5.20
(45)	43c	43.95c	45.3c
	36c	36.8c	37.95c
(46)	11.60	11.90	12.30
(47)	1.61	1.65	1.70
(48)	4.25	4.34	4.47
(51)	94c	96.05c	99.05c
(52)	95c	97.1c	1.001
(53)	44c	44.95c	46.35c
(54)	27c	28c	29c

Dated this third day of May, 2001.

E. EWALD,
Registrar.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999

ELECTRICITY SUPPLY INDUSTRY EMPLOYEES' AWARD - STATE

(Gazette, 12th January, 1996)

(Correction of Error)

WHEREAS an error occurred in the Amendment (General Ruling) to this award as published in the *Queensland Government Industrial Gazette* of 30 November 2000, Vol. 165, No. 15, pages 430-433, the following correction is made:-

By deleting Item 2 and inserting the following in lieu thereof:-

"2. By deleting from the subclauses listed in the first column of the Schedule, the amount in the second column, and inserting the amount in the third column in lieu thereof.

<u>Column 1</u>	<u>Column 2</u>	<u>Column 3</u>
	\$	\$
3.17(12)(a)	410.00	421.00
(b)	901.00	924.00
3.21	15.10	15.50
3.26	5.40	5.50
	9.60	9.80
3.32(1)	45.3c	46.5c
(2)	66.4c	68.15c
(3)	2.97	3.05
(4)	46.35c	47.55c
	29.5c	30.25c
(5)	1.085	1.113
(6)	46.35c	47.55c
(8)	17.40	17.90
(9)	35.85c	36.8c
(10)	37.95c	38.95c
(11)	37.95c	38.95c
(12)	1.18	1.2105
(13)	37.95c	38.95c
(14)	46.35c	47.55c
(15)	35.85c	36.8c
(16)	5.80	6.00
	10.30	10.60
(17)	90c	90c
	1.90	1.90
	3.30	3.40
	4.80	4.90
	6.50	6.70
	7.40	7.60
	8.50	8.70
	9.70	10.00
(18)	12.1c	12.4c
	94.85c	97.3c
(19)	9.40	9.60
(20)	1.46	1.50
(21)	1.88	1.93
(22)	4.20	4.30
(23)	9.00	9.20
	13.80	14.20
(24)	46.35c	47.55c
(25)	45.3c	46.5c
(27)Leading Hand Allowance		
(a) Group B		
	20.50	21.00
	31.10	31.90
(b) Group C	40.60	41.70
	4.11	4.22
	6.23	6.39
(c) Group D (i)	8.12	8.33
	4.11	4.22
	6.23	6.39
(ii)	8.12	8.33
(d) Group F	20.50	21.00
	8.20	8.40
	10.30	10.60
(e) Group G	12.40	12.70
	1.97	2.02
	4.35	4.46
	5.47	5.61
	7.35	7.54
	3.20	3.28
	4.61	4.73
(f) Group H	6.50	6.67
	11.20	11.50
(g) Group L	16.80	17.20
	4.11	4.22
	6.23	6.39
(h) Group M	8.12	8.33
	19.80	20.30
	29.90	30.70
(30)	39.10	40.10
(31)	10.10	10.40
(33)	2.22	2.28
	1.53	1.57

<u>Column 1</u>	<u>Column 2</u>	<u>Column 3</u>
	\$	\$
	89c	91c
	1.98	2.03
(33)(f)	1.11	1.14
(34)	15.35c	15.75c
(35)	46.35c	47.55c
(36)	3.3c	3.4c
	2.43	2.49
	2.43	2.49
(37)	37.95c	38.95c
(38)	4.59	4.71
	9.60	9.80
	20.50	21.00
	6.80	7.00
(39)	14.40	14.80
	2.202	2.2595
(40)	1.4855	1.524
(41)	45.3c	46.5c
(42)	35.85c	36.8c
	3.40	3.50
(43)	82c	84c
(45)	5.20	5.30
	45.3c	46.5c
(46)	37.95c	38.95c
(47)	12.30	12.60
(48)	1.70	1.74
(51)	4.47	4.59
(52)	99.05c	1.0165
(53)	1.001	1.027
(54)	46.35c	47.55c
	29c	30c

Dated this third day of May, 2001.

E. EWALD,
Registrar.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999

SANCTUARY COVE EMPLOYEES AWARD

(Gazette, 15 November 1996)

AMENDMENT
(Replacement)

WHEREAS an error occurred in the Amendment to this Award as published in the *Queensland Government Industrial Gazette* of 7 December 2000, Vol. 165, No. 18, pages 666-668, the following amendment shall replace the aforementioned amendment in its entirety as from the first day of September, 1999:-

1. By deleting schedule 1 and inserting the following in lieu thereof:-

**“SCHEDULE 1
WAGES**

The minimum wages payable to employees at the various levels shall be as follows:-

Level	Percentage Relativity %	Ordinary Full-time Weekly Rate \$
Introductory.....	78.....	385.40
Level 1.....	82.....	402.10
Level 2.....	88.....	427.10
Level 3.....	92.4.....	445.50
Level 4.....	100.....	477.20
Level 5.....	110.....	518.90
Level 6.....	115.....	537.80

Note 1: Those employees who were, (and no other employees) as of the commencement date of this Award, Employed at Level 4 of the preceding *Sanctuary Cove Employees Award* as Electricians, Fitters, Refrigeration Mechanics, Vehicle Mechanics, Carpenters, Qualified greenkeepers, landscape Gardeners or Butchers and were entitled to payment of an additional amount of \$58.14 to their ordinary rate of pay, shall continue to be paid an additional payment of \$58.14 per week. This payment shall not be subject to any adjustment. New employees joining after the date of the Award shall not be entitled to this amount.

Note 2: The relativities contained above relate to a trade equivalent (100%) rate of \$417.20 which does not include the application of any arbitrated Safety Net Adjustments.”.

2....By deleting Schedule 3 and inserting the following in lieu thereof:-

“SCHEDULE 3

	Ordinary full-time rate per week \$	Ordinary full-time rate per hour \$	Loadings per hour \$	Ordinary full-time loaded rate per hour \$	Casual rate of pay per hour \$
Food & Beverage					
Introductory.....	385.40	10.14	1.52	11.66	13.59
Level 1.....	402.10	10.58	1.59	12.17	14.18
Level 2.....	427.10	11.24	1.69	12.93	15.07
Level 3.....	445.50	11.72	1.76	13.48	15.71
Level 4.....	477.20	12.56	1.88	14.44	16.83
Level 5.....	518.90	13.66	2.05	15.71	18.31
Kitchen					
Introductory.....	385.40	10.14	1.52	11.66	13.59
Level 1.....	402.10	10.58	1.59	12.17	14.18
Level 2.....	427.10	11.24	1.69	12.93	15.07
Level 3.....	445.50	11.72	1.76	13.48	15.71
Level 4.....	477.20	12.56	1.88	14.44	16.83
Level 5.....	518.90	13.66	2.05	15.71	18.31
Level 6.....	537.80	14.15	2.12	16.27	18.96
Guest Service					
Introductory.....	385.40	10.14	1.52	11.66	13.59
Level 1.....	402.10	10.58	1.59	12.17	14.18
Level 2.....	427.10	11.24	1.69	12.93	15.07
Level 3.....	445.50	11.72	1.76	13.48	15.71
Level 4.....	477.20	12.56	1.88	14.44	16.83
Level 5.....	518.90	13.66	2.05	15.71	18.31
Stores					
Introductory.....	385.40	10.14	0.20	10.34	12.27
Level 1.....	402.10	10.58	0.21	10.79	12.80
Level 2.....	427.10	11.24	0.22	11.46	13.60
Level 3.....	445.50	11.72	0.23	11.95	14.18
Level 4.....	477.20	12.56	0.25	12.81	15.20
Security					
Introductory.....	385.40	10.14	2.43	12.57	14.50
Level 1.....	402.10	10.58	2.54	13.12	15.13
Level 2.....	427.10	11.24	2.70	13.94	16.08
Level 3.....	445.50	11.72	2.81	14.53	16.76
Level 4.....	477.20	12.56	3.01	15.57	17.96
General Engineering & Maintenance					
Introductory.....	385.40	10.14	0.71	10.85	12.78
Level 1.....	402.10	10.58	0.74	11.32	13.33
Level 2.....	427.10	11.24	0.79	12.03	14.17
Level 3.....	445.50	11.72	0.82	12.54	14.77
Level 4.....	477.20	12.56	0.88	13.44	15.83
Level 5.....	518.90	13.66	0.96	14.62	17.22
Greenkeeping					
Introductory.....	385.40	10.14	1.01	11.15	13.08
Level 1.....	402.10	10.58	1.06	11.64	13.65
Level 2.....	427.10	11.24	1.12	12.36	14.50
Level 3.....	445.50	11.72	1.17	12.89	15.12
Level 4.....	477.20	12.56	1.26	13.82	16.21
Level 5.....	518.90	13.66	1.37	15.03	17.63
Leisure Activities					
Introductory.....	385.40	10.14	1.52	11.66	13.59
Level 1.....	402.10	10.58	1.59	12.17	14.18
Level 2.....	427.10	11.24	1.69	12.93	15.07
Level 3.....	445.50	11.72	1.76	13.48	15.71
Level 4.....	477.20	12.56	1.88	14.44	16.83

	Ordinary full-time rate per week \$	Ordinary full-time rate per hour \$	Loadings per hour \$	Ordinary full-time loaded rate per hour \$	Casual rate of pay per hour \$
Administration Services					
Introductory.....	385.40	10.14	0.00	10.14	12.07
Level 1.....	402.10	10.58	0.00	10.58	12.59
Level 2.....	427.10	11.24	0.00	11.24	13.38
Level 3.....	445.50	11.72	0.00	11.72	13.95
General Employees					
Introductory.....	385.40	10.14	0.00	10.14	12.07
Level 1.....	402.10	10.58	0.00	10.58	12.59

Note 1: The loaded rate means the rate payable to employees pursuant to clause 5.3.

Note 2: The casual rate of pay has been calculated in accordance with clause 4.3.3 of the Award.

The rates of pay in this award are intended to include the arbitrated wage adjustment payable under the 1 September 1999 Declaration of General Ruling and earlier Safety Net Adjustments. [Disputed cases are to be referred to the President.] This arbitrated wage adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Queensland workplace agreements, award variations to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous State Wage Cases or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated wage adjustments.”.

By deleting from the subclauses listed in the first column of the Schedule, the amount in the second column, and inserting the amount in the third column in lieu thereof.

Column 1	Column 2	Column 3
\$	\$	\$
5.6.1	11.20	11.50

Dated this third day of May, 2001.

E. EWALD,
Registrar.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999

TEACHERS’ AWARD – STATE

(Gazette, 17th March, 2000)

(Correction of Error)

WHEREAS an error occurred in the Amendment (General Ruling) as published in the *Queensland Government Industrial Gazette* of 7 December 2000, Vol.165, No.18, pages 696 – 698, the following correction is made:–

1. In clause 6 –

(a) by deleting subclauses (2)(a) and (2)(b) and inserting the following in lieu thereof:–

“(2) *Three Year Trained Teachers* –

(a) *Salaries* – The following scale of minimum salaries shall apply to three year trained teachers:–

	Per Fortnight \$	Per Annum \$
Band 1 –		
Step 1	1,035.20	27,008
Step 2	1,058.60	27,618
Step 3	1,092.00	28,489
Step 4	1,127.40	29,413
Band 2 –		
Step 1	1,152.90	30,078
Step 2	1,211.90	31,618
Step 3	1,270.70	33,152
Step 4	1,329.60	34,688
Step 5	1,388.60	36,228

	Per Fortnight \$	Per Annum \$
Band 3 –		
Step 1	1,437.70	37,509
Step 2	1,482.90	38,688
Step 3	1,532.00	39,969
Step 4	1,581.10	41,250

(b) A three year trained teacher paid in accordance with clause 6(3)(d) of the Teachers' Award – State prior to 1 December 1990, shall be paid the following salary:–

	Per Fortnight \$	Per Annum \$
.....	1,336.90	34,877”;

(b) by deleting subclauses (3)(a) and (3)(b) and inserting the following in lieu thereof:–

“(3) Four year trained teachers –

(a) *Salaries* –

The following scale of minimum salaries shall apply to four year trained teachers:–

	Per Fortnight \$	Per Annum \$
Band 2 –		
Step 1	1,152.90	30,078
Step 2	1,211.90	31,618
Step 3	1,270.70	33,152
Step 4	1,329.60	34,688
Step 5	1,388.60	36,228
Band 3 –		
Step 1	1,437.70	37,509
Step 2	1,482.90	38,688
Step 3	1,532.00	39,969
Step 4	1,581.10	41,250

(b) Four year trained teachers who have obtained:–

(i) an approved masters or doctoral degree; or

(ii) two approved degrees, of a recognised University or Universities shall in the ninth and subsequent years of service be paid the following minimum salaries:–

	Per Fortnight \$	Per Annum \$
.....	1,553.10	40,519”.

2. By deleting subclause (2) of clause 7 and inserting the following in lieu thereof:–

“(2) *Level 1*

(a) *Salary* –

(i) The minimum salary for a four year trained teacher selected as an Advanced Skills Teacher 1 shall be \$1628.20 per fortnight (\$42,479 per annum).

(ii) A three year trained teacher selected as an Advanced Skills Teacher 1 shall received an all-purpose allowance of \$50.90 per fortnight (\$1,328 per annum) in addition to other entitlements under clause 6 of this Award.”.

3. By deleting subclause (2)(a) of clause 7A and inserting the following in lieu thereof:–

“(2) *Level 1*

(a) *Salary* –

(i) The minimum salary for a four year trained instructor selected as an Advanced Skills Instructor 1 shall be \$1,628.20 per fortnight (\$42,479 per annum).

(ii) A three year trained instructor selected as an Advanced Skills Instructor 1 shall receive an all-purpose allowance of \$50.90 per fortnight (\$1,329 per annum) in addition to other entitlements under clause 6 of this Award.”.

4. By deleting subclause (2) of clause 8 and inserting the following in lieu thereof:-

“(2) *Salaries – Per Fortnight*

Band	Salary Step 1 \$	Salary Step 2 \$	Salary Step 3 \$	Salary Step 4 \$	Salary Step 5 \$
11 p.f.....	2,280.30	2,335.40	2,390.30	2,449.20	2,506.20
11 p.a.....	59,491.00	60,929.00	62,361.00	63,898.00	65,385.00
10 p.f.....	2,158.50	2,205.70	2,262.70	2,315.70	2,370.70
10 p.a.....	56,314.00	57,519.00	59,032.00	60,415.00	61,850.00
9 p.f.....	2,040.70	2,087.80	2,138.00	2,190.00	2,241.10
9 p.a.....	53,240.00	54,469.00	55,779.00	57,136.00	58,469.00
8 p.f.....	1,936.50	1,981.70	2,028.90	2,078.00	2,127.10
8 p.a.....	50,522.00	51,701.00	52,909.00	54,214.00	55,495.00
7 p.f.....	1,846.20	1,887.40	1,932.60	1,977.80	2,025.00
7 p.a.....	48,166.00	49,241.00	50,420.00	51,599.00	52,801.00
6 p.f.....	1,765.70	1,803.00	1,842.00	1,887.40	1,934.60
6 p.a.....	46,066.00	47,039.00	48,056.00	49,241.00	50,472.00
5 p.f.....	1,685.10	1,726.40	1,761.80	1,804.90	1,846.20
5 p.a.....	43,963.00	45,041.00	45,964.00	47,089.00	48,166.00
4 p.f.....	1,612.40	1,649.70	1,679.30	1,724.40	1,769.60
4 p.a.....	42,066.00	43,039.00	43,812.00	44,988.00	46,168.00”.

5. By deleting subclause (1)(a) of clause 9 and inserting the following in lieu thereof:-

"Education Officers (Special Duties)

9.(1)(a) Teachers paid according to clause 6 of this Award who are seconded as Education Officer (Special Duties) shall be entitled to salary of \$170.15 (\$4,439 per annum) in addition to their entitlements under clause 6.

The rates of pay in this Award are intended to include the arbitrated wage adjustment payable under the 1 September 2000 Declaration of General Ruling and earlier Safety Net Adjustments. [Disputed cases are to be referred to the President.] This arbitrated wage adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this Award which are above the wage rates prescribed in the Award. Such payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Queensland workplace agreements, award amendments to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous State Wage Cases or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated wage adjustments.”.

6. By deleting from the subclauses listed in the first column of the Schedule, the amount in the second column, and inserting the amounts in the third and fourth columns respectively in lieu thereof.

<u>Column 1</u>	<u>Column 2</u> \$	<u>Column 3</u> \$
13(i)	14.10	14.50
	369	378
13(ii)	9.40	9.65
	244	252
14	56.00	57.50
	1,462	1500.00
15	53.40	54.80
	1,394	1430.00
	66.20	67.95
	1,728	1773.00
	79.40	81.50
	2,071	2126
16	19.30	19.85
	502	518
17(i)	169	173.00
(ii)	1.00	1.03
	160	164
(iii)	8.00	8.20
18	12.10	12.45
	313	325

Dated this third day of May, 2001.

E. EWALD,
Registrar.

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999***TEACHERS' AWARD – NON GOVERNMENTAL SCHOOLS****(Gazette, 14th April 1983)**

(Correction of Error)

WHEREAS an error occurred in the Amendment (General Ruling) as published in the *Queensland Government Industrial Gazette* of 13 August 1999, Vol. 161, No. 18, pages 704-705, the following correction is made:–

1. By deleting subclauses (1) and (2) of clause 4 and inserting the following in lieu thereof:–

“Part I – Salaries**Three year trained teachers**

- 4.(1) *Salaries* – The following scale of minimum salaries shall apply to three year trained teachers:–

	Per Fortnight		Per Annum	
	(as from the commencement of the first pay period after 1/9/97)	(as from 1/9/98)	(as from the commencement of the first pay period after 1/9/97)	(as from 1/9/98)
	\$	\$	\$	\$
<i>Band 1 –</i>				
Step 1	1003.20	1031.20	26,173.00	26,903.00
Step 2	1030.60	1058.60	26,888.00	27,618.00
Step 3	1064.00	1092.00	27,759.00	28,489.00
Step 4	1099.40	1127.40	28,683.00	29,413.00
<i>Band 2 –</i>				
Step 1	1128.90	1152.90	29,452.00	30,078.00
Step 2	1187.90	1211.90	30,991.00	31,618.00
Step 3	1246.70	1270.70	32,526.00	33,152.00
Step 4	1305.60	1329.60	34,062.00	34,688.00
Step 5	1364.60	1388.60	35,601.00	36,228.00
<i>Band 3 –</i>				
Step 1	1413.70	1433.70	36,882.00	37,404.00
Step 2	1462.90	1482.90	38,166.00	38,688.00
Step 3	1512.00	1532.00	39,447.00	39,969.00
Step 4	1561.10	1581.10	40,728.00	41,250.00

- (2) A three year trained teacher paid in accordance with clause 6(3)(c) of the Teachers' Award – Non-Governmental Schools prior to 1 December 1990, shall be paid the following salary:–

	Per Fortnight		Per Annum	
	(as from the commencement of the first pay period after 1/9/97)	(as from 1/9/98)	(as from the commencement of the first pay period after 1/9/97)	(as from 1/9/98)
	\$	\$	\$	\$
.....	1264.90	1264.90	33,000.00	33,000.00”.

- (2) By deleting subclauses (1) and (2) of clause 5 and inserting the following in lieu thereof:

“Four year trained teachers

- 5.(1) *Salaries* – The following scale of minimum salaries shall apply to four year trained teachers:–

	Per Fortnight		Per Annum	
	(as from the commencement of the first pay period after 1/9/97)	(as from 1/9/98)	(as from the commencement of the first pay period after 1/9/97)	(as from 1/9/98)
	\$	\$	\$	\$
<i>Band 2 –</i>				
Step 1	1172.00	1152.00	29,429.00	30,055.00
Step 2	1187.90	1211.90	30,991.00	31,618.00
Step 3	1246.70	1270.70	32,526.00	33,152.00
Step 4	1305.60	1329.60	34,062.00	34,688.00
Step 5	1366.60	1390.60	35,654.00	36,280.00

	Per Fortnight		Per Annum	
	(as from the commencement of the first pay period after 1/9/97)	(as from 1/9/98)	(as from the commencement of the first pay period after 1/9/97)	(as from 1/9/98)
	\$	\$	\$	\$
Band 3 –				
Step 1	1413.70	1433.70	36,882.00	37,404.00
Step 2	1462.90	1482.90	38,166.00	38,688.00
Step 3	1512.00	1532.00	39,447.00	39,969.00
Step 4	1561.10	1581.10	40,728.00	41,250.00

(2) Four year trained teachers who have obtained:–

- (i) an approved masters or doctoral degree; or
- (ii) two approved degrees, of a recognised University or Universities shall in the ninth and subsequent years of service be paid the following minimum salaries:–

	Per Fortnight		Per Annum	
	(as from the commencement of the first pay period after 1/9/97)	(as from 1/9/98)	(as from the commencement of the first pay period after 1/9/97)	(as from 1/9/98)
	\$	\$	\$	\$
.....	1561.10	1581.10	40,728.00	41,250.00

The rates of pay in this Award are intended to include the arbitrated wage adjustment payable under the 1 September 2000 Declaration of General Ruling and earlier Safety Net Adjustments. [Disputed cases are to be referred to the President.] This arbitrated wage adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this Award which are above the wage rates prescribed in the Award. Such payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Queensland workplace agreements, award amendments to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous State Wage Cases or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated wage adjustments.”.

2. By deleting from the subclauses listed in the first column of the Schedule, the amount in the second column, and inserting the amounts in the third and fourth columns in lieu thereof.

<u>Column 1</u>	<u>Column 2</u>	<u>Column 3</u> (as from the commencement of the first pay period after 1/9/97)	<u>Column 4</u> (as from 1/9/98)
	\$	\$	\$
8A (2)(a)	100.50	102.75	105.95
	2,621	2,681	2,764
(b)	50.50	51.65	53.30
	1,317	1,348	1,391
8B(1)(a)	14.70	15.05	15.55
	383	393	406
(b)	9.90	10.15	10.50
	258	265	274
8C(4)(a)	1,299	1,328	1,369
17	11.00	11.242	11.5905

Dated this third day of May, 2001.

E. EWALD,
Registrar.

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999***TEACHERS' AWARD - NON GOVERNMENTAL SCHOOLS****(Gazette, 14th April 1983)**

(Correction of Error)

WHEREAS an error occurred in the Amendment (General Ruling) as published in the *Queensland Government Industrial Gazette* of 7 December 2000, Vol. 165, No. 18, pages 694 – 695 the following correction is made:–

1. By deleting subclauses (1) and (2) of clause 4 and inserting the following in lieu thereof:–

“Part I – Salaries**Three year trained teachers**

- 4.(1) *Salaries* – The following scale of minimum salaries shall apply to three year trained teachers:–

	Per Fortnight \$	Per Annum \$
<i>Band 1 –</i>		
Step 1 1051.20	27425.00	
Step 2	1078.60	28140.00
Step 3	1112.00	29011.00
Step 4	1147.40	29935.00
<i>Band 2 –</i>		
Step 1	1172.90	30600.00
Step 2	1231.90	32139.00
Step 3	1290.70	33673.00
Step 4	1349.60	35210.00
Step 5	1408.60	36749.00
<i>Band 3 –</i>		
Step 1	1453.70	37926.00
Step 2	1502.90	39210.00
Step 3	1552.00	40491.00
Step 4	1601.10	41772.00

- (2) A three year trained teacher paid in accordance with clause 6(3)(c) of the Teachers' Award – Non-Governmental Schools prior to 1 December 1990, shall be paid the following salary:–

.....	1264.90	33,000.00”.
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- (2) By deleting subclauses (1) and (2) of clause 5 and inserting the following in lieu thereof:

“Four year trained teachers

- 5.(1) *Salaries* – The following scale of minimum salaries shall apply to four year trained teachers:–

	Per Fortnight \$	Per Annum \$
<i>Band 2 –</i>		
Step 1	1172.00	30577.00
Step 2	1231.90	32139.00
Step 3	1290.70	33673.00
Step 4	1349.60	35210.00
Step 5	1410.60	36802.00
<i>Band 3 –</i>		
Step 1	1453.70	37926.00
Step 2	1502.90	39210.00
Step 3	1552.00	40491.00
Step 4	1601.10	41772.00

- (2) Four year trained teachers who have obtained:–

(i) an approved masters or doctoral degree; or

(ii) two approved degrees, of a recognised University or Universities shall in the ninth and subsequent years of service be paid the following minimum salaries:–

	Per Fortnight \$	Per Annum \$
.....	1601.00	41765.00

The rates of pay in this Award are intended to include the arbitrated wage adjustment payable under the 1 September 2000 Declaration of General Ruling and earlier Safety Net Adjustments. [Disputed cases are to be referred to the President.] This arbitrated wage adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this Award which are above the wage rates prescribed in the Award. Such payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Queensland workplace agreements, award amendments to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous State Wage Cases or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated wage adjustments.”.

2. By deleting from the subclauses listed in the first column of the Schedule, the amount in the second column, and inserting the amount in the third column in lieu thereof.

<u>Column 1</u>	<u>Column 2</u>	<u>Column 3</u>
	\$	\$
8A (2)	105.95	108.75
	2,764.00	2,837
	53.30	54.70
	1,391.00	1,427
8B (1)	15.55	16.00
	406.00	417
	10.50	10.80
	274.00	282.00
8C (4)	1,369.00	1,405
17	11.5905	11.892

Dated this third day of May, 2001.

E. EWALD,
Registrar.