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No. 8

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
CA384/01	Raco Pty Ltd t/a Building Waterproofing Services - Certified Agreement	19/9/01	
CA388/01	Vanwake Investments Pty Ltd t/a Arkell Shopfitting Installations - Certified Agreement	19/9/01	CA528/99
CA389/01	Sunshine Glass & Aluminium Pty Ltd - Certified Agreement	19/9/01	
CA390/01	Leslie O'Brien & Gavin Taylor t/a GL Plastering - Certified Agreement	19/9/01	CA379/95
CA391/01	Streamline Interiors Pty Ltd - Certified Agreement	19/9/01	
CA392/01	Aluminium Balustrades Burleigh Heads Pty Ltd - Certified Agreement	19/9/01	
CA393/01	De Marco Developments Pty Ltd t/a Compass Tiling - Certified Agreement	19/9/01	
CA394/01	Gibbus Pty Ltd - Certified Agreement	19/9/01	
CA398/01	Surfers Paradise Scaffolding Pty Ltd - Certified Agreement	19/9/01	CA207/97
CA399/01	Cadcor Australia Pty Ltd - Certified Agreement	19/9/01	
CA400/01	Action Skyline Qld Pty Ltd - Certified Agreement	19/9/01	
CA413/01	JVH Industries Pty Ltd t/a Geo Technic Tiling - Certified Agreement	19/9/01	
CA414/01	C.R.I.B. Interior Linings Pty Ltd - Certified Agreement	19/9/01	
CA415/01	SK Interior Linings Pty Ltd - Certified Agreement	19/9/01	
CA416/01	River City Flooring Pty Ltd - Certified Agreement	19/9/01	
CA417/01	M&B Davidson t/a M&B Davidson Shopfitting & Joinery - Certified Agreement	19/9/01	CA553/00
CA418/01	Arc Creations Group Pty Ltd - Certified Agreement	19/9/01	

No/s	Title	Date certified	Cancelling
CA419/01	Ladbern Pty Ltd t/a Coaststyle Cabinets - Certified Agreement	19/9/01	
CA420/01	Mango Industries Pty Ltd t/a RM Stone & Co - Certified Agreement	19/9/01	
CA422/01	Alpanel Aust. Pty Ltd - Certified Agreement	1/10/01	
CA423/01	Higgins Coatings Pty Ltd - Certified Agreement	1/10/01	
CA447/01	Cadbury Schweppes Australia, Maintenance Employees, MacGregor - Certified Agreement	8/10/01	CA245/00
CA454/01	Simmonds and Bristow Pty Ltd - Certified Agreement 2001	11/10/01	CA211/98
CA455/01	Trelleborg Queensland Rubber Pty Ltd Enterprise Bargaining - Certified Agreement 2001	11/10/01	CA433/00
CA460/01	Superior Pak Pty Ltd - Certified Agreement 2001	11/10/01	CA618/99
CA461/01	CMG Rockhampton Engineering - Certified Agreement 2001	11/10/01	CA66/00
CA464/01	PGH Clay Bricks & Pavers (Qld) - Certified Agreement	11/10/01	CA508/99
CA471/01	Limestone Quarry and Processing David Mitchell (NSW) Pty Ltd - Certified Agreement 2001	11/10/01	CA560/99
CA448/01	Residential Tenancies Authority - Certified Agreement 2001	16/10/01	CA39/98
CA449/01	ALARA Association Inc Support Workers - Certified Agreement	16/10/01	CA334/98
CA459/01	Relationships Australia (Qld) - Certified Agreement 2001	16/10/01	CA143/98
CA465/01	Parklands Christian College Limited - Certified Agreement	16/10/01	

E. EWALD  
Industrial Registrar

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

INDUSTRIAL REGISTRAR EWALD

15 October 2001

NOTICE

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

**Schedule**

<u>Case No.</u>	<u>Certified Agreements</u>
CA390/00	Kingfisher Bay Resort & Village - Certified Agreement 2000
CA473/00	Hepburn & Thorpe (Qld) Pty Ltd - Certified Agreement

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**Michael Ernest Hennessy AND Brent Building Pty Ltd (No. W89 of 2001)**

COMMISSIONER BECHLY

12 October 2001

Unpaid wages – *Building Products, Manufacture and Minor Maintenance Award* – State – Arbitrated matter – Application granted – Order made.

DECISION

Michael Ernest Hennessy of the Department of Industrial Relations, Townsville applies to the Commission for an order under s. 278 of the *Industrial Relations Act 1999* for recovery of unpaid wages to David Lawrence Laurent, being an amount of \$2,679.61, from Brent Building Pty Ltd which operated from premises at 85 Ingham Road, West End, Townsville.

The period during which the employee was employed and for which the wages are claimed is from 9 December 1997 to 16 June 2000.

The respondent, represented by the proprietor Mr Brent Hagerty, acknowledges the correctness of the calculations made by the Department but argues as a defence that an hourly rate agreement was made between Mr Laurent and himself to provide employment and training to enable him to gain certain

qualifications within the industry. It was effectively conceded that the hourly rate agreed to is less than that payable, including allowances and overtime, under the terms of the *Building Products, Manufacture and Minor Maintenance Award – State*.

The respondent argues that two other matters should be taken into consideration in any assessment of the overtime. These matters are the provision of free board and accommodation to Mr Laurent, his wife and child, for a period of a month and the damage done to the respondents business by the admitted unauthorised removal of a commercial refrigerator by Mr Laurent from a customers business. Mr Laurent referred to this as the “ mixup about the fridge”.

No value was placed on these matters and redress for damage is not available from this Commission.

In the face of the acknowledgment by the respondent of the claim by the Department the only course open is that an order be made as sought.

I order that Brent Building Pty Ltd pay David Lawrence Laurent the sum of \$2,679.61 within twenty-one days of the date of release of this decision.

R.E. BECHLY, Commissioner.

Released: 12 October 2001

*Appearances:-*

Mr. M.E. Hennessy for the Department of Industrial Relations.

Mr B. Hegarty for Brent Building Pty Ltd.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees (No. B218 of 2001)**

**SECURITY INDUSTRY (CONTRACTORS) AWARD – STATE**

COMMISSIONER ASBURY

12 October 2001

Union encouragement clause – Naming of particular union in union encouragement clause – Application granted.

DECISION

By decision dated 12 March 2001, the *Security Industry (Contractors) Award – State* was amended to include union encouragement provisions, following an application by the Australian Liquor, Hospitality and Miscellaneous Workers’ Union (ALHMWU). The application also sought the naming of the ALHMWU in the union encouragement clause. That aspect of the application was rejected. Following a successful appeal to the President, the application was relisted for further hearing to give the ALHMWU an opportunity to call evidence to demonstrate why that union should be named in the clause.

At that hearing, the ALHMWU called evidence, by way of an affidavit, from Mr J. Martin, Research Officer, to demonstrate that there is no controversy in relation to union membership in the contract security industry, and that the naming of the ALHMWU in the union encouragement clause in the *Security Industry (Contractors) Award – State* would enhance the current stability. Mr Martin’s affidavit also said that the only other union which may have coverage of the contract security industry was the Australian Workers’ Union of Employees, Queensland, and that union had not shown an interest in covering the industry.

The affidavit also indicated that only the ALHMWU had ever been involved in amendments to the *Security Industry (Contractors) Award – State*, and that there is an agreement currently in effect between the ALHMWU and the Australian Workers’ Union of Employees, Queensland, not to disturb each other’s coverage.

Mr K. Crank for the ALHMWU relied on the fact that no other union had sought to intervene in this application notwithstanding that the hearings had been advertised through the law list published in the *Courier Mail*, and the weekly list of Commission proceedings generally available from the Industrial Registrar. Further, Mr Crank argued that the ALHMWU is named as a party to the *Security Industry (Contractors) Award – State*, and is the only union to be so named. Mr Crank also submitted that the Commission had already granted another application in virtually identical circumstances where the ALHMWU had been named in the union encouragement clause (See *Ambulance Service Employees Award – State (2001) 166 QGIG 293*).

It is also clear that the employers in the contract security industry, particularly those who employ a significant majority of employees, do not object to the naming of the ALHMWU in the union encouragement provisions contained in the *Security Industry (Contractors) Award – State*.

Having considered the evidence of Mr Martin, I am satisfied that union coverage in the contract security industry is clearly established, well known and stable. I am further satisfied that the ALHMWU as the only union named as a party to the *Security Industry (Contractors) Award – State* should also be named in the union encouragement clause of that Award. The Award will be further amended in line with the original application. An amendment is issued with this decision.

I order accordingly.

I.C. ASBURY, Commissioner.

Released: 12 October 2001

*Appearances:-*

Mr K. Crank of Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees.

## QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**The Australian Workers' Union of Employees, Queensland (B958 of 2001), The Electrical Trades Union of Employees of Australia, Queensland Branch (B971 of 2001) and the Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland (B978 of 2001) AND the Australian Sugar Milling Association, Queensland, Union of Employers and Others.**

**SUGAR INDUSTRY AWARD – STATE**

COMMISSIONER EDWARDS

15 October 2001

Applications for Amendment – Afternoon and Night Shift Allowances – Statement of Policy – Temporary Exclusion – Applications Heard Concurrently – Evidence – Employer Opposition – Economic State of Sugar Industry – Modest Recovery – Employers Not Shown that Exclusion can be Sustained – Employees Prospect of Retaining Parity More Remote as Time goes by – Principal Objects of Act – Amendments Approved

## DECISION

Application B958 of 2001 filed by The Australian Workers' Union of Employees, Queensland and subsequently amended, application B971 of 2001 filed by The Electrical Trades Union of Employees of Australia, Queensland Branch and application B978 of 2001 filed by the Automotive, Metals, Engineering, Printing and Kindred Industries Union of Employees, Queensland seek amendment of the *Sugar Industry Award – State* under s. 125 of the *Industrial Relations Act 1999*.

By these applications the three unions seek to insert the Statement of Policy (Full Bench – Case No. B1206 of 1999 issued on 5 May 2000) 164 QGIG 54-62 relating to percentage afternoon and night shift allowances into the said Award. In issuing the Statement of Policy, the Full Bench stated:–

“The Commission has therefore determined that it will not make a General Ruling, but we are satisfied that we should declare a policy establishing standards which may be transposed into awards on application. In any such application the parties have the right to be heard as to whether there is good reason to modify the provisions to meet the particular exigencies of the award in question.”.

As a result of the submissions which had been made regarding the sugar industry, the Full Bench stated:–

“We are of the view that the material before us going to the parlous state of the Queensland sugar industry warrants special consideration. Assuming that the economic state of the sugar industry does not improve in the 2000 season we are of the view that the industry (including members of the ASMA and the QMCHA) should be excluded from the effect of this decision at least until 1 June 2001. At that time it will be a matter for the Commission, when dealing with any application from the relevant industrial unions for the insertion of this policy into the respective sugar industry awards, to determine the appropriate quantum of any increase and the timing of such increase. Should the economic state of the sugar industry not prove to be as dire as predicted by Mr Desmarchelier in his evidence, the unions are at liberty to seek to have the policy inserted into awards at an earlier time.”.

The Australian Sugar Milling Association, Queensland, Union of Employers (ASMA), The Queensland Mechanical Cane Harvesters Association, Union of Employers (QMCHA), and the Queensland Cane Growers' Association, Union of Employers (QCGA) opposed the current applications. The current applications relate to the field and milling sectors of the Award. On consideration of the nature of the applications as amended the Commission proceeded to hear the matters concurrently.

The Full Bench excluded at least until 1 June 2001 the sugar industry from the effect of its decision based primarily on the evidence of Mr Desmarchelier in relation to the economic state of the industry at that time.

From the evidence the economic state of the industry has altered since the matter was before the Full Bench.

The onus was upon the employer organisations to establish why the industry should be further excluded from the Full Bench decision.

Mr P. Warren on behalf of the ASMA stated the insertion of the Statement of Policy into the *Sugar Industry Award – State* “has the potential to adversely impact upon harvesting costs for cane growers.” He also submitted:–

- Australia's sugar production conditions remained below the peaks reached in the late 1990's.
- Poor weather, pests, disease and low sugar prices place growers under continued financial strain.
- 24 hour harvesting may be required in the future.
- During the 2000 season, there were approximately 1128 harvesting contracts operating. However, if 24-hour harvesting commenced, those numbers could reduce by approximately 40%.
- The projected increases (were the exclusion to be lifted) could increase the wages bills for growers substantially.

Mr G. Trost on behalf of the QCGA relied upon earlier decisions of the Commission and the Industrial Court in 37 QGIG 763, 41 QGIG 157 and 80 QGIG 125 which had found against the granting of a percentage based shift payment for employees within the sugar industry. He submitted:–

- That shift work allowances paid under the *Sugar Industry Award – State* should be maintained as a flat rate allowance.
- Problems encountered by poor weather, pests and disease still affect the industry adversely.
- The predicted sugar yield for 2001 is 31.5 million tonnes of cane compared with 28.3 million tonnes of cane in 2000.
- During 2000, the sugar price was \$253 per tonne (excluding GST).
- The prediction for 2001 is that the sugar price will be \$343 per tonne (excluding GST).

Mr Trost further stated that "Whilst the 2001 season offered better prospects with relatively good weather conditions and signs of an improved international market place, the prevailing weather conditions are generally drier than predicted and the crop size is falling across the industry".

He indicated that if 24 hour harvesting was introduced, then in the Field Sector, Canegrowers' estimates that the additional harvesting costs could be \$5,625,000 annually depending upon crop size and season length.

Mr Trost also indicated that monetary assistance has been given to individual growers, through Federal Government grants, whose crops were affected by poor weather and disease. Additional costs should not be imposed upon the industry.

Mr Laube on behalf of CSR Limited (CSR) submitted that there has been "no change in the economic circumstances which now warrants the introduction of percentage increases".

In providing a monetary analysis of the situation, Mr Laube stated that "The increases would move from a flat \$53.50 if working 5 afternoons or nights to increases ranging from \$16.95 to \$61.11 per week."

In the event that the Commission acceded to the unions' claims, then "CSR would seek the increases be phased in at the expiry of the current round of company Certified Agreements i.e. 2004 or when the economics of the industry allow."

Various witnesses gave evidence for the employer groups. The primary points of the evidence are as follows:-

Mr Desbois is the Chief Accountant with Mackay Sugar Co-operative Association Limited. Mr Desbois' affidavit, as it went to monetary predictions based upon the unions' claims, was deficient in that he did not possess at the time of making the affidavit the amended union application. However, that point alone did not detract from the general thrust of his affidavit. The "general thrust" went to projected increases in labour costs were the Policy to be inserted into the Award. Based upon the figures, which were incorrect, the increase in the shift allowance would be approximately 56% of the shift allowance component of the company's labour costs. I am unable to draw a firm conclusion on the points being pursued by Mr Desbois because he simply did not have the facts correctly in front of him at the time of writing his affidavit. I am prepared to accept that generally there would be price increases (which is simply common sense) as a result of the claim, but the real degree to which those increases would be felt is unknown.

Mr M. Hochen is the General Manager of Isis Central Sugar Mill Company Limited (Isis Mill). As well, Mr Hochen is the Chairman of the Industrial Relations Committee of the Australian Sugar Milling Council Pty Limited (ASMC). Isis Mill employs approximately 200 employees during the crushing season. A primary point in Mr Hochen's evidence was that the Mill had negotiated a Certified Agreement with the unions and this assisted the Mill in managing their industrial relations and labour costs over a period of time with some degree of certainty. Reference was made to the fact that sugar mills in Queensland all paid a flat rate for shift allowances, and that an extra amount of \$1 overaward payment was made as the result of an unregistered agreement between the parties. All employees received an identical shift allowance, which, at present, was \$10.70.

Mr Hochen estimated that out of approximately 4800 wages employees within the sugar industry in Queensland, about half would be affected by an alteration to the shift allowance as sought by the unions.

Mr Hochen stated "I am aware of and endorse the material that Mr Desmarchelier is presenting to this case about the economic state of the industry and its modest emergence from the recent severe downturn". The estimated cost for this Mill were the claim to be successful would be, it was estimated, approximately \$70,000 per annum.

Mr Desmarchelier is the General Manager of the ASMC and the ASMA. He stated that the industry had not performed well during the 1999 and 2000 seasons. However, he claimed that a "modest recovery from a very low base is expected this season".

Mr Desmarchelier reiterated earlier comments by other witnesses concerning the influence upon the economic state of the sugar industry of the weather, pests and disease.

It appears, from Mr Desmarchelier's evidence, that the industry experienced its worst outcome during the 2000 season. From an ASMC Estimate "Table 1 - Cane Crushed and Raw Sugar Manufactured - Queensland" the 2001 estimates in the areas of "cane crushed" and "raw sugar", the outcomes are improving. The statistics quoted by Mr Desmarchelier are, realistically, representative of the last five or so years within the industry. The industry has not reverted back to its more robust period around 1997, but an improved outcome is evident. In fact, Mr Desmarchelier stated that a "recovery of world prices commenced in mid-2000 in anticipation of a slight easing in global surplus stocks as production declined in a number of regions".

Mr Desmarchelier also stated that "after the extremely heavy costs and low income experienced in 1999 and 2000 seasons, the modest recovery expected for 2001 season is welcome". He did go on to state, however, that "while it is much too early to provide a crop/sugar estimate for 2002 season, the global price outlook is subdued".

Notwithstanding those comments, Mr Desmarchelier believed that a wage increase of the type sought would have a significant impact upon the sugar industry.

Mr McKay is the Financial Manager - Sugar Mills with CSR. Mr McKay gave similar evidence to earlier witnesses called by ASMA on factors such as the state of the industry over the last few years. As well, similar evidence was given regarding future economic projections for the industry.

While Mr McKay stated that the projected costs for the industry, should the claim to be granted, were significant. He did not believe that CSR would be affected, in a monetary sense, in any way if the claim was granted over the life of the Certified Agreements operating in CSR Mills (i.e. three years). Mr McKay stated that he had not viewed the union's applications.

It was clear that Mr McKay did not have an appropriate understanding of the interaction between the Award and the Certified Agreement in place. However, his evidence regarding projected costings was incorrect to some degree also as his calculations were based upon an incorrect appreciation of the claim. In all, his evidence was helpful to the degree that projected costs, when adjusted, still indicated the cost upon CSR Mills in general.

Mr Milford is the Senior Manager, Policy of the Queensland Cane Growers Association Ltd. He stated that "at present there is little harvesting done under shift work conditions".

Much of this evidence was based upon the possibility that, in the future, 24-hour harvesting would commence. From his and the evidence of other witnesses it would appear that the increasing capital costs of harvesting equipment will result in the need for it to be operational as much as possible during the harvesting season.

This evidence had to be seen in this light – a projection of a possible situation with estimates of possible outcomes. This evidence was of little help in making this decision.

The abovementioned evidence represents the sum of the evidence presented in this case. The temporary exclusion granted to the industry by the Full Bench on 5 May 2000 was to stay in existence until 1 June 2001, at which stage the Commission could review the situation. This is what has occurred.

The Full Bench stated in its 5 May 2000 decision that “should the economic state of the sugar industry not prove to be as dire as predicted by Mr Desmarchelier in his evidence, the unions are at liberty to seek to have the policy inserted into awards at an earlier date.”.

While the “earlier date” to progress a claim has not been chosen (as the full year has elapsed), the unions now state that the exclusion should be lifted as a case has not been made out by the industry which would warrant the exclusion continuing.

In my view, it has not been shown by the employer bodies that the exclusion can be sustained. Some of the evidence given was based on a questionable factual situation, although the general thrust of the evidence was clear. The remainder of the evidence showed that the situation within the industry has changed since the Full Bench heard the matter more than 12 months ago. As such the Commission indicates very clearly that this decision is considering the exclusion granted by the Full Bench rather than the principles which were argued before the Full Bench.

When the Full Bench made its decision to exclude the industry from the effects of the shift allowance increases, it did so relying on the evidence of the employer bodies that the industry was in a parlous state. The evidence now shows that the industry is recovering to some degree and that the extreme reasons, which existed during 2000, which convinced the Full Bench to act as it did, are now much less evident. To deny employees (even for a small period of time) monetary increases, which are available to other employees within the State, is a very serious step for the Commission to take. When the seriousness of the situation lessens, so too must the restrictions, which have been placed upon the employees. To continue a course such as this (i.e. exclusion) has the capacity to see a group of employees fall behind the remainder of employees in the State while the prospect of them ever retaining parity with other employees becomes more remote as time goes by.

Section 3 of the *Industrial Relations Act 1999* states that:–

“The principal object of this Act is to provide a framework for industrial relations that supports economic prosperity and social justice by –  
...  
(f) ensuring wages and employment conditions provide fair standards in relation to living standards prevailing in the community;  
...”

To do otherwise with this decision, would be contrary to the principal objects of the Act in the circumstances of this case.

In terms of the current status of various Certified Agreements within the industry and the method by which the increases can be utilised by employees, the Full Bench has already dealt with this issue in its decision and those processes will be adopted in this decision.

The Commission approves amendments to Division 2 – Field Sector and Division 3 – Sugar Milling Sector of the *Sugar Industry Award – State* with dates of operation as follows:–

Afternoon Shift Allowance

The percentage allowance to be 12% or \$9.70 per shift (whichever is the greater) effective as and from 23 September 2001  
The percentage allowance to be 12.5% or \$9.70 per shift (whichever is the greater) effective as and from 23 March 2002

Night Shift Allowance

The percentage allowance to be 14% or \$9.70 per shift (whichever is the greater) effective as and from 23 September 2001  
The percentage allowance to be 15% or \$9.70 per shift (whichever is the greater) effective as and from 23 March 2002

I order accordingly.

K.L. EDWARDS, Commissioner.

*Appearances:–*

Mr J. Sharpe on behalf of The Australian Workers’ Union of Employees, Queensland.  
Ms K. Inglis and Mr P. Ong on behalf of The Electrical Trades Union of Employees of Australia, Queensland Branch.  
Mr B. Burton on behalf of the Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland.

Mr P. Warren, Mr R. Cullen and Mr M. Procter on behalf of the Australian Sugar Milling Association, Queensland, Union of Employers.  
Mr B. Laube on behalf of CSR Limited.  
Mr G. Trost on behalf of the Queensland Cane Growers’ Association Union of Employers.  
Mr J Powell on behalf of the Queensland Mechanical Cane Harvesters Association, Union of Employers.

Released: 15 October 2001

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**Robert Walker AND Gold Coast District Health Service (No. B44 of 2001)**

COMMISSIONER BECHLY

15 October 2001

Unfair dismissal – First termination – Reinstated on suspension on full pay – Investigation by employer – Second termination – Recollection of events due to time passing – Allegation of physical assault – Allegation of verbal assault – Onus of proof on employer – Case law – Onus not discharged – Dismissal found to be harsh – Reinstatement ordered – Applicant to be given training – Reimbursement of nett loss of income ordered.

## DECISION

Robert Walker seeks reinstatement to the position of wardsperson at the Gold Coast Hospital. He was first dismissed from that position on 28 June 2000 by letter of the same date. That letter refers to him as being on probation.

Following a conference as required by s. 75 to take place preceding a reinstatement hearing the termination was converted to a suspension on pay while an investigation was conducted by the employer.

Mr Walker was again terminated on 18 December 2000 following the above investigation.

The respondent argues that the first termination is not the matter before the Commission and that the respondent should not be burdened with events surrounding that matter forming part of the Commission's consideration of the second termination.

I hold a different view. The course adopted by the respondent when first dealing with the matters involved in the termination of the applicant had a significant impact on the capacity of those involved in the matter to recall the events and a significant impact also on those later called upon to investigate and report upon the events of 16 and 28 June and on the other matters raised in the Terms of Reference given to the investigators.

The recollection of those involved in the incidents and the capacities of those called upon to investigate have been tainted by the tyranny of time. The investigation began some three months after the events initially relied upon and the hearing where witnesses were examined commenced some nine months after the second termination and some fifteen months after the initial termination.

The delay in the investigation can be fairly laid at the feet of the respondent. It is clear from a consideration of all the material that the issues in both dismissals are the same. Although the reasons given for the second dismissal do not go beyond the incidents of 16 and 28 June the investigation goes to other issues which formed part of the first dismissal.

In forming these views I do take into account the fact that, at the time of the first termination, the applicant was held to be a probationary employee. Probationary employees are not entitled to access the reinstatement provisions of the Act and that it was not until after the initial conference in the Commission that that position was abandoned, no doubt because the probation conditions imposed were flawed.

The first termination action was taken following reports by two separate enrolled nurses about incidents said to have occurred on 16 and 28 June 2000 during procedures which Mr Walker and another wardsperson provided assistance to roll patients on their sides. Other issues intruded and were referred to as "lack of due diligence in your employment".

The grounds on which that termination was made were particularised in correspondence of 28 June 2000 as follows:-

- You have performed your duties carelessly, incompetently or inefficiently and/or;
- You are guilty of misconduct and/or;
- You have breached the Queensland Health Code of Conduct.

Specifically you have been observed:-

- On 16 June 2000 and 28 June 2000 engaging in verbal and physical abuse of patients.
- Asleep while you were on rostered duty.
- Not exercising proper diligence, care and attention to your duties including not collecting soiled linen when directed, not responding to calls when required."

That correspondence terminated the employment in the following terms:-

"The evidence in the case raises serious concerns regarding your behaviour. In my opinion you are unfit to be a District Health Services employee. It is my determination, given the serious nature of these actions, that your probationary employment should be rescinded immediately thus resulting in the termination of your employment."

None of the allegations were raised with Mr Walker prior to the letter of termination being delivered to him.

A number of allegations made emanate from a meeting of wardspersons held on 29 May 2000 called by the Portage Manager who was responding to matters raised by one of the wardspersons. The Manager cannot now recall who that person was. Mr Walker was not invited to attend the meeting because the matter raised by the instigating wardsperson concerned him.

Following this meeting some issues were raised with nursing staff and some comments were made by them about Mr Walker.

Mr Walker was not informed prior to his termination of any of these matters and thus was not given any chance to respond to the matters which formed the reasons for his termination. The issues went beyond those said to have occurred on 16 and 28 June 2000 and related to significant issues alleged about his behaviour at work.

It is against this background that a decision was made to change the termination to a suspension on pay while an investigation was conducted.

This investigation commenced in September 2000, some three to four months after the allegations of 29 May and the incidents of 16 and 28 June 2000.

The terms of reference for the investigation were as follows:-

1. On the 16<sup>th</sup> June 2000 Mr Walker was observed by two fellow members of staff verbally and physically assaulting a patient in the Urology Ward. The assault is alleged to have included repeatedly telling the patient to 'shut up' and improperly and aggressively moving a patient by pulling them by their wrists, putting the patient's welfare at risk.
2. On 28<sup>th</sup> June 2000 Mr Walker was observed by two fellow staff members assaulting a patient in Ward 7B. The detail of the assault is that Mr Walker struck a patient with his open hand to the wrist/forearm.

3. He engaged in improper behaviour towards nursing staff and patients. This includes harassing nurses and improperly going behind patient curtains without any legitimate clinical requirement.
4. He has performed his duties carelessly and inefficiently as reported by his fellow Porterage Officers. This includes him being asleep whilst on duty, not collecting soiled linen when required, not responding to calls when required and not working as a contributing team member.”.

Mr Walker was eventually terminated a second time by letter of 18 December 2000. The dismissal was instant and contained the following relevant passage:—

“Based on the information provided to me in the form of the Investigation Report and associated statements and your written responses to me, I believe the weight of evidence falls against you. That is on the balance of probabilities you did verbally and physically assault a patient on 16 June 2000 and physically assault a patient on 28 June 2000. It is completely unacceptable for employees of the district to engage in such conduct and will not be tolerated in any circumstances.

For these reasons, I am dismissing you from employment with the Gold Coast Health Service District. Your dismissal is effective immediately.”.

The hearing of this matter commenced on 10 September 2001, some 12 months after the investigation began and some nine months after the second termination.

Statements from the respondent’s witnesses to the incidents of 16 and 28 June 2000 were prepared in August 2001.

The evidence of the witnesses to the incidents which gave rise to the second termination (and partly the reason for the first termination) relates to the handling of two patients by Mr Walker in conjunction with another wardsperson, Mr K. Dawes, when assisting enrolled nurse Ms M. Smith on 16 June 2000 and enrolled nurse Ms G. Hill on 28 June 2000.

The respondent argues that the one constant factor in the evidence about the incidents of 16 and 28 June is the contemporaneous report made by the nursing staff about Mr Walker’s behaviour when assisting to turn or roll a patient to facilitate treatment by nursing staff.

On 16 June a report was made by Ms Smith about the way Mr Walker spoke to and moved a patient by pulling his arms and moving him across a bed. She did not inform Mr Walker that she was intending to file the report.

No action was taken by the respondent on that matter until 28 June.

A further incident in the early hours of 28 June was reported by the nurse involved, MS G. Hill. She reported that Mr Walker had struck a patient during a procedure providing pressure area treatment.

The allegations contained in the report are denied by Mr Walker and explanations of his version of the event have been given in evidence.

Significantly in each incident it was not thought necessary by the nursing staff to look to see if any injury or hurt had been sustained by either patient at the time nor to cause any medical examination to determine if either patient suffered any ill effects from the alleged actions of Mr Walker.

The evidence given about these incidents has many conflicting points, both between the respondent’s witnesses themselves and with Mr Walker’s evidence. I regard the conflict between the respondent’s witnesses as being such as to make their recollections of the events questionable.

The difficulty now facing the Commission is to determine what actually did occur. That is, in this instance, almost impossible.

Had an investigation been carried out immediately after the incidents of 16 and 28 June many of the difficulties presently facing the Commission would not have arisen.

Mr Walker presents, in his evidence, a not implausible recollection of the events. His recollections of course do not coincide with those of other persons present.

He denies the allegations and admits, on 16 June, in the course of his duties assisting Ms Smith with the handling of a bedridden, elderly, frail, demented patient in the company of another wardsperson, that he took the patients flailing arms and moved them down towards his stomach to enable him to turn the patient towards himself to allow Ms Smith to attend to the patients needs.

On 28 June he admits to tapping another elderly, frail, demented patient on the wrist to try to get him to release his hold on a sheet so that the patient could be turned and attended to. Mr Walker denies the allegation that he told the patient to “shut up”. Under cross-examination he acknowledged that it was not impossible that he might have used those words.

The investigation found that it was on the balance of probabilities that Mr Walker went beyond what would be regarded as the correct standards applicable to the circumstances he was faced with when dealing with the patients concerned, in company with a nurse and another wardsperson.

As stated above that investigation took place months after the incidents. Both incidents involved the rolling of patients on a bed to allow necessary care to be given. This process takes place several times a day for a large number of patients and is probably carried out by nursing staff and wardspersons hundreds if not thousands of times a year.

The difficulty is exact recall of all the circumstances of an individual turning a patient some months prior, in these circumstances, would be enormous.

It is the evidence of the Porterage Manager, Ms S. Arnott, that wardspersons should be taking directions from nursing staff on moving a patient and that nursing staff need to direct porters on how they want patients lifted or moved. It is not up to the porter to determine how patients should be moved.

There was no evidence as to specific directions, or any at all, given to Mr Walker by Ms Smith or Ms Hill as to how he was required to carry out the duties on the two occasions in question. It would appear that he was left to his own devices as to how the required procedures were to be performed by him in rolling or turning a patient to enable care to be given.

Could the technique that he used be determined to be an act of wilful violence towards the patients?

The nature of the evidence given does not enable me to make such a finding.

There is the conflict in evidence as to what did occur and, on the second occasion, whether Mr Walker's attempts to get the patient to release his grip on the sheet would be regarded as assault.

Mr Walker likens his actions to those of a nurse tapping the back of a patients hand to raise a vein for the insertion of a needle.

As earlier stated, a timely investigation would have enabled the events to be determined far more accurately.

The only conclusion I can come to is that Mr Walker used techniques which were out of keeping with desired standards but which were not intended to cause any harm or injury to the patients.

These techniques in fact did not harm or injure the patients in any visible way.

On both occasions the terminations were instant and were based on a finding, in the second termination after the investigation, that, on the balance of probabilities, a verbal and physical assault occurred.

The onus of proof falls upon the respondent to establish, to the reasonable satisfaction of the Commission that the employee was guilty of the misconduct alleged. The standard of proof, the civil standard, must be such as to enable a positive finding that the misconduct occurred. The requisite degree of satisfaction must have regard to the seriousness of the alleged conduct and the gravity of the consequences of the finding. (*Wang v Crestele Industries Pty Ltd* (1977) 73 IR 454; *Gilmores* Case No IRL 38907 of 1998 (2 October 1998 unreported) and *Briginshaw and Briginshaw*).

The allegations are serious and the consequences determined by the employer are serious. The conflict in the evidence about the incidents in question is significant. The lapse of time in carrying out an investigation has sufficiently tainted the outcome of the investigation as to make it unreliable. I am not satisfied on the evidence that the onus has been discharged.

In the circumstances I find the dismissal to be harsh.

#### REMEDY

Mr Walker seeks reinstatement as the primary remedy. The respondent proposes that reinstatement or re-employment is impracticable.

The essence of that belief of the respondent is that if it is accepted that the form of conduct as alleged did occur in some form then it is impracticable to reinstate or reemploy the applicant because it would cause the recipients of health care services and those close to those persons to lose confidence in the ability of the respondent to provide safe and dignified care to aged persons.

It is clear that some circumstances arose which motivated nursing staff to raise concerns by reporting the matters on two occasions. For the reasons outlined earlier I am not able to determine what actually did occur to prompt the reports.

The difficulties raised by the respondent can be removed by the adoption of a course of action which I consider to be reasonable.

The applicant should be reinstated as soon as possible following the release of this decision. He should be paid any loss of nett earnings during the period between the second termination and the date of reinstatement.

He should, as soon as practicable, be required to attend appropriate training to ensure that there is a full understanding of that which is required of him in the role of wardsperson and that which is required under the Code of Conduct. Some evidence was given with respect to the Code of Conduct. It is clear that some wardspersons are unaware of its contents and the obligation that it imposes upon them. No evidence was given as to whether or when a detailed explanation was given to Mr Walker as to the requirements imposed by the Code. It may never have been done.

Taking into account the evidence of the Portage Manager with respect to wardspersons acting under the direction of a nurse when performing certain of their duties it would seem to be incumbent upon the respondent to ensure that nursing staff appropriately instruct wardspersons as to what is required of them and the manner in which those duties are performed.

There were other issues raised during the investigation some of which were dealt with in evidence. These relate to the manner in which Mr Walker goes about the performance of his duties and the manner in which he relates to other staff.

These matters cannot be left in limbo notwithstanding that they were dropped from the reasons given for the second termination. Appropriate action should be taken by the respondent to address these issues with Mr Walker and others involved to assess the validity of comments made during the whole process from May 2000 to the completion of the final investigation to ensure that, should a modification in the manner of the performance of duties be required of Mr Walker, that he is aware of such requirement and the reasons why such a modification is necessary. If there are no grounds for the allegations made, this fact should be clearly stated on Mr Walker's employment record.

I should state that I have had regard to the past employment history of Mr Walker with the respondent and other material put in his support.

He worked as a wardsperson at Mt Isa Base Hospital for a period of two years seven months and was provided with a complimentary reference as to his pleasant manner and ability by the head wardsperson. He has since worked for the respondent at the Gold Coast Hospital from November 1997 until his dismissal on 28 June 2000. There has apparently been no cause for performance counselling during this time.

Other material provided refers to his involvement in community organisations, Mt Isa Mines Ltd emergency rescue team, State Emergency Service and long term personal references. On face value these attribute to Mr Walker a diligent, caring, gentle, courteous and community minded personality.

The respondent, Gold Coast District Health Service is ordered to reinstate the applicant Mr Robert Paul Walker to the position of portage officer within one week of the issue of this decision and reimburse him for any nett loss of income that he would have incurred from the date of termination to the date of reinstatement.

R.E. BECHLY, Commissioner.

*Appearances:-*

Mr C. Simpson, with him Mr R. McComb for The Australian Workers' Union of Employees, Queensland on behalf of the applicant.

Mr C. Murdoch (instructed by Crown Law) with him Ms P. O'Keefe for Queensland Health on behalf of Gold Coast Hospital.

Released: 16 October 2001

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999 – s. 230 – action on industrial dispute*

**Australian Rail, Tram and Bus Union, Queensland Branch AND Queensland Rail (No. D224 of 2001)**

COMMISSIONER BECHLY

16 October 2001

DECISION

The Australian Rail, Tram and Bus Industry Union, Queensland Branch notified a dispute under section 229 of the *Industrial Relations Act 1999* on 20 July 2001 concerning action taken by Queensland Rail in changing the employment conditions of a driver, Mr Raymond Edge-Williams following an incident on 1 June 2001 when Mr Edge-Williams failed to stop the train he was driving (6CN5) at a Block Limit Board in accordance with the requirements of a Direct Train Control authority which resulted in the train exceeding its authority to travel by 11.53 kilometres.

The train was operated by two drivers. Each are equally responsible for the control of the train in accordance with the Queensland Rail Traincrew Subsidiary Agreement extension, Certified Agreement 1998. Mr Edge-Williams was the driver in control at the time of the incident. The other driver was in a passive capacity. Each driver has been reduced in employment conditions. Only Mr Edge-Williams has initiated this action.

Train 6CN5 was authorised to travel only as far as Reid River on 1 June 2001. Mr Edge-Williams acknowledges that he forgot to obtain authorisation from the Near West Control Officer to travel beyond Reid River.

As a consequence train 6CN5 overran Reid River by some eleven and a half kilometres before it was brought to a halt and some action taken by Mr Edge-Williams to contact the train controller to attempt to secure authorisation to proceed.

Each driver was aware that they were authorised to drive the train only as far as Reid River through instructions given by the Near West Control Officer which were exhibited on the in-cabin screen of the Direct Traffic Control system.

That screen provides clear and precise information as to the limits of authority to travel; the limit beyond which the train may not travel; advice when the locomotive comes within one kilometre of the limit of authority and advice when the limit of authority is exceeded.

When the limit of authority is exceeded the screen also flashes as an additional visual warning. An audible warning is also given in such circumstances by some systems. Mr Edge-Williams states that that warning was not audible at the time.

In the circumstances that Mr Edge-Williams has acknowledged that he forgot to take the necessary steps to obtain the necessary authorisation to enter the prohibited area it is only necessary to determine whether the action taken by Queensland Rail to reduce his classification was fair. That is the process which has been agreed by the parties that the Commission should follow on this occasion.

In defence of his actions Mr Edge-Williams indicates that he was distracted on approaching Reid River by the automatic application of brakes of the train through the automatic train protection system (ATP).

He states that he was discussing the different application of the ATP with the second driver and became distracted and failed to contact the Near West Control Officer to gain authority to proceed. He also states that he had an expectation that he would gain such authority to proceed to Antil Plains because a preceding train had arrived intact at Antil Plains.

Unlike illuminated signals which indicate danger or safe to proceed, block limit boards are painted, fixed signs situated at the side of the permanent way at about loco cabin height and clearly identify the location where they are placed, in this case the entrance to the Reid River Woodstock section.

On becoming aware that he had exceeded his authority Mr Edge-Williams brought the train to a halt and in breach of the procedures for dealing with a signal passed at danger (SPAD) as contained in the Direct Traffic Control Manual, he sought to gain approval to enter the Reid River Woodstock section after he had proceeded 11.53 kilometres into the section.

Queensland Rail standards for dealing with a SPAD situation provide only two categories of SPAD; those where the limit has been exceeded by less than 50 metres and those where the limit has been exceeded by 50 metres or more. Exceeding the limit by 11.53 kilometres is, rightly, regarded as a very serious breach.

The tape recording of communication between Mr Edge-Williams and the Near West Control Officer indicates that at 1653.46 hours Mr Edge-Williams advised control that the train was "Just at Reid River" and was given a new command code to enable the train to proceed beyond its original authority.

He commenced to enter the code into the computer which then shut down because the train was beyond its authority.

It was after that point that the Near West Control Officer was advised that the train was beyond its authority. Initially Mr Edge-Williams advised that it was five kilometres beyond its authority and later the correct kilometre mark was quoted which was 11.56 kilometres beyond Reid River.

The two drivers were subsequently removed from further operation of the train which was taken on the remainder of its journey by another crew. The drivers were suspended on pay, an investigation conducted and following an opportunity to show cause why disciplinary action should not be taken, were effectively demoted to a lower grade for six months.

On the evidence before me the investigation conducted by Queensland Rail was proper in all respects.

Mr Edge-Williams raised a number of matters in his defence which were dealt with in evidence as follows:-

- “The failure of control to respond to his call at Woldston, an earlier checkpoint.”  
Control responded to the first call made but did not respond to a second call. This has little if any effect upon the failure to secure later required authority to proceed beyond Reid River.
- “The operation of the ATP which he believed was a malfunction.”  
Evidence was presented to demonstrate that the operation of the ATP was not a malfunction. Although the train was travelling within the speed limit for the track it was travelling beyond the speed which would have enabled it to stop safely at the block limit board at Reid River.
- “The position of the DTC screen and the inaudible alarm.”  
The screen is at what is described as the eyebrow position in the cab. The driver looks up to it, just above the windscreen. The screen is not visible to the second driver. The positioning of the screen was established through a cab committee upon which the drivers are represented. On the locos in question the eyebrow position is the only feasible position to place the screen. On inspection I formed the conclusion that it was not difficult for a driver to lift his eyes to the screen from time to time to observe messages contained therein and to observe the screen flashing warning signs.  
It was said that the sound alarm was inaudible. I have taken this into account. It is only one of the alert systems used to inform drivers that authority has been exceeded.
- “The possible inaccuracy on the Global Positioning System(GPS).”  
It was established that the GPS was not inaccurate. The GPS determines the position by way of straight line distance between two positions whereas the track measured distance takes into account the meandering of the track through the terrain.
- “The cab layout and screen location does not assist the second driver who is well out of line of vision.”  
This is factual. However, it is obviously the responsibility of the command driver to maintain an awareness of the information and warnings provided on the screen. More importantly both drivers were made aware through control instruction that the limit of their authority was Reid River some 34 kilometres from the start of a journey of some 48 minutes.
- “The operation of the ATP was a definite distraction.”  
The ATP is a safety feature. It never replaces Direct Traffic Control and does not supervise the limit of authority. There appears to be some confusion as to when the ATP operates. Mr Edge-Williams expressed the view that he was not exceeding the speed allowed on the line and some surprise that the ATP applied a “braking penalty” when he crossed the transponder which activates the ATP. Queensland Rail’s evidence is that although he may not have been exceeding the speed for the line he was exceeding the speed which would have enabled him to stop safely at the Block Limit Board. These are two quite different concepts. Further training should provide a better understanding of the ATP system. I do not see the operation of the ATP as being a significantly greater distraction than other aspects of driving a locomotive. I do recognise that there is a belief that it operates on occasion when it is unexpected or thought not to be appropriate.

Queensland Rail alleged, in the required “show cause” letter, that Mr Edge-Williams endeavoured to conceal the error in proceeding beyond the authority and, improperly, sought to gain an extension of the authority.

This allegation has been denied by Mr Edge-Williams. His evidence is that he had no intention of covering up the incident, in his mind. He did indicate in his evidence that there were ways to defeat the system, none of which were legitimate.

Queensland Rail relies upon the transcript of the communication between Mr Edge-Williams and the Near West Control Officer after the train exceeded its limit and travelled a further 11.56 kilometres.

That transcript reveals that on three occasions Mr Edge-Williams advised in the following terms – “We’re just at Reid River”; “I’m just outside the yard” and “I stopped it and it (the computer) shut down. It said I exceeded the authority and then shut down.”.

What occurred during this time was that Near West Control issued another authority to Mr Edge-Williams in the belief that he was still at Reid River within the authority. When Mr Edge-Williams attempted to encode the new authority the computer shut down because the train was outside the limit of authority.

In the circumstances I believe that Queensland Rail had reason to suspect that there had been an attempt to conceal the fact that authority had been exceeded. A clear statement by Mr Edge-Williams, when he first contacted the controller, that he had exceeded his authority would have removed any prospect that a suspension would arise as to concealment.

On the information provided to me I accept that appropriate training has been given to both drivers. Evidence was tendered as to their attendance at the relevant training course.

It was acknowledged that the drivers involved did not drive on the track each day but it was put, and I think within reason, that both drivers had adequate familiarity with the track to be competent to drive over it.

As earlier indicated in this decision the only matter to be determined by me is whether the downgrading was excessive in the circumstances.

I have been provided with information as to the action taken by Queensland Rail with respect to other SPADS. The action, downgrading, has been the same as that applied to Mr Edge-Williams or different depending on the circumstances and relevant culpability of the crew members involved.

I have come to the conclusion that the action taken by Queensland Rail was not excessive in the circumstances. I take into account the advice given on the train Working Advice (form SW52) at the commencement of the journey. However that information does not constitute an authority to proceed and only reflects movements on or about the track at the time it is issued.

While no accident occurred there is always the potential for one. The parties do not need to be reminded of the loss of life, injury and damage that has occurred on railways where signals have been passed at danger.

R.E. BECHLY, Commissioner.

*Appearances:-*

Mr W. Williams for the Australian Rail, Tram and Bus Union, Queensland Branch.

Mr P. Lucas for Queensland Rail.

Released: 16 October 2001

## QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999 – s. 74 – application for reinstatement***Sonya Lawton AND National Telecoms Group Ltd (No. B126 of 2001)****Sonya Lawton AND NTG Services Pty Ltd (No. B1204 of 2001)**

COMMISSIONER THOMPSON

18 October 2001

Preliminary issue – Telephone evidence – Practice Note – Evidence by witness residing in Perth to be taken in person – Evidence by witness residing in Sydney to be taken by telephone.

## DECISION

In this matter, which has been set down for hearing in Brisbane on 29, 30 and 31 October, 2001, Ms Bernadette Callaghan, of Counsel, sought to have evidence given by way of telephone from two witnesses for the respondent, who are presently located in Sydney and Perth respectively.

A preliminary hearing to consider the matter was convened on 10 October 2001, where Ms Callaghan, in the first instance, requested that the Managing Director of the respondent company, whose residence and place of work is in Sydney, be allowed to give his evidence by phone for the reasons of:

- Costs.
- Time away from his normal business.
- Evidence of an uncontroversial nature.

In relation to this evidence, Ms Callaghan submitted that the Managing Director was more indirectly than directly involved in the events leading to the termination of Ms Sonya Lawton, the applicant in this matter, and that his evidence could sufficiently be presented to the Commission without detracting from the situation of his not being present in the Commission.

The second request was made on behalf of Ms Brigitte Bozic, the Queensland Manager at the time of the termination, who now resides in Perth, to also give evidence by telephone.

The argument put forward by Ms Callaghan in this particular case revolved around the significant cost that would be incurred by the respondent in relation to air fares, accommodation costs, and productivity that would be lost by the amount of time that Ms Bozic would be required to spend in Brisbane.

Mr Harding, of Counsel, on behalf of the applicant, in essence, opposed the request as it applied to both witnesses, but in particular, as it related to Ms Bozic, stated that in the circumstances, this was not a case where there was consent, or likely to be consent, given by the applicant for the taking of telephone evidence.

There was an argument also put forward by Mr Harding that both the applicant and the Commission would lose the ability to effectively impugn the credibility of a challenged witness when that person is giving evidence on the telephone and not in person.

It was the submission of Mr Harding that if the Commission was to accede to the respondent's request that Ms Bozic not appear in person, there would need to be good reason for departing from the practice direction issued by the Commission.

The Commission was advised during the course of the hearing by the parties that the Directions Order in respect of the matter had not been complied with in terms of the exchange of documents and of the affidavits of evidence to be relied upon by the applicant during the course of the proceedings.

As a consequence of that position, with the consent of the parties, a new set of dates were agreed upon.

In respect of the request for telephone evidence, a practice note, handed down by President Hall on 1 December 2000 – *TAKING EVIDENCE BY TELEPHONE* (No. 1 of 2000), is regarded as an appropriate guide to be considered by the Commission when determining whether evidence will be given in person or by telephone.

Most particularly, paragraph 1 of that practice note is of extreme importance:–

- “1. Telephone evidence will be taken from expert witnesses and on formal and uncontroversial matters. Telephone evidence will not be taken where credibility is an issue.”.

Having viewed the affidavits of evidence that were subsequently filed by the applicant, there is no doubt, in my view, that the evidence of Ms Bozic should and must be given in these proceedings in person, and therefore the request from the respondent to allow Ms Bozic's evidence to be given by telephone is denied.

In the case of the Managing Director of the respondent company, from Sydney, I confirm the position placed on transcript at page 16 on 10 October 2001, in that I am prepared to accept this witness' evidence by telephone.

The Commission draws to the attention of Ms Callaghan, paragraphs 5 and 6 of the practice note:–

- “5. In anticipation of the taking of evidence by telephone the representative of the party calling the witness must:–
- (a) arrange for the witness to have immediate access to the telephone;
  - (b) ascertain from the witness the form of oath to be taken and ensure that the witness is equipped to comply with the formalities of the oath, or confirm that it is appropriate to affirm;
  - (c) explain to the witness that the evidence is being given in formal court proceedings, and is being recorded, and that the witness may be cross-examined by the representative of the other party and questioned by the Commissioner and that the witness must be careful to respond to questions put and answer only the questions which are put;
  - (d) arrange for the witness to give evidence from a place where the witness will not be interrupted by work or other requirements/commitments.

6. Prior to the time the evidence is to be given the party calling the witness to give evidence by telephone is to inform the Associate to the Commissioner hearing the matter of the telephone number of the witness.”.

I order accordingly.

J.M. THOMPSON, Commissioner.

*Appearances:-*

Mr A. Harding, of Counsel, instructed by Ms E. Vogler of Gilshenan & Luton, for the Applicant.  
Ms B. Callaghan, of Counsel, instructed by Mr A. Boe of Boe Callaghan, for the Respondents.

Released: 18 October 2001

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999 – s. 137 – application to amend order*

**Training Recognition Council AND The Australian Workers' Union of Employees, Queensland and Others (Nos. B1606, B1691 and B1692 of 2001)**

**ORDER – APPRENTICES’ AND TRAINEES’ WAGES AND CONDITIONS  
(EXCLUDING CERTAIN QUEENSLAND GOVERNMENT ENTITIES)**

PRESIDENT HALL  
COMMISSIONERS FISHER AND BROWN

15 October 2001

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 15 October 2001, this Commission orders that the said Order be amended as follows as from the fifteenth day of October, 2001:-

1. By adding to clause 2.1.1 (Training Packages) in Schedule 4 “Building and Construction and Civil Construction Industries” the following:-

• *Apprentice Roof Tiler Allowance, (Compensation for Travel Patterns, Mobility Requirements of Employees and the Nature of Employment in Construction Work) –*

Apprentice Roof Tilers shall receive as a percentage of the allowances prescribed for tradespersons in the *Building and Construction Industry Award – State* the following:-

1 <sup>st</sup> stage	80%
2 <sup>nd</sup> stage	85%
3 <sup>rd</sup> Stage	90%
4 <sup>th</sup> stage	95%

The foregoing shall be calculated to the nearest 5 cents. 2 cents or less shall be disregarded.”.

2. In Schedule 8 “Food Industry” –

(a) by deleting clause 2.1 (Training Packages) and inserting the following in lieu thereof:-

“2.1 Training Packages

The wage progression arrangements for Bread Baking and Pastry Cook apprenticeships based on qualifications contained in the Food Industry Training Packages shall be as follows:-

Wage Level	Minimum Training Requirements on Entry	% of Trade Rate of Relevant Award
1	On entry into the apprenticeship	40
2	On completion of an aggregated period of twelve months after commencing Wage level 1	55
3	On completion of an aggregated period of twelve months after commencing Wage level 2	75
4	On completion of an aggregated period of twelve months after commencing Wage level 3	90
5	On completion of an aggregated period of twelve months after commencing Wage level 4	100

Note: Leave is reserved for the industrial parties to review competency based wage progression arrangements and other matters.”;

(b) by deleting the title of clause 3.1.1 and inserting the following in lieu thereof:-

“3.1.1 *Food Processing Training Package and Laboratory Operations Training Package.*”; and

(c) by inserting a new clause 4.1.2 as follows:-

“4.1.2 *Meat Retailing and Meat Salesperson/Packer*

Wage progression arrangements for Meat Retailing and Meat Salesperson/Packer apprenticeships and traineeships shall be entitled to the relevant wage progression arrangements as follows:-

Wage Level	Minimum Training Requirements on Entry	% of Relevant Adult Rate* Specified in the Industrial Instrument
1	On commencement; and (a) Prior to attainment of AQF 1; or (b) For the first six months of the training period, whichever is the earlier.	40
2	(a) On attainment of AQF 1; or (b) Six months after commencing Wage Level 1, whichever is the earlier.	55
3	(a) On attainment of AQF 2; or (b) Twelve months after commencing Wage Level 2, whichever is the earlier.	75
4	(a) On attainment of competencies MTMR307A, MTMSR301A, MTMSR302A AND MTMR301A or (b) Twelve months after commencing Wage Level 3, whichever is the earlier.	90
5	On attainment of AQF 3	100

\*Note: Provided that the relevant adult rate shall be no more than the 100% rate expressed in the relevant industrial instrument.”.

Dated this fifteenth day of October, 2001.

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

Operative Date: 15 October 2001  
Amendment – Order – Apprentices’ and Trainees’ Wages and Conditions (Excluding  
Certain Queensland Government Entities  
Released: 18 October 2001

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees,  
Queensland AND Queensland Chamber of Commerce and Industry Limited,  
Industrial Organisation of Employers and Others (No. B1604 of 2001)**

**PRINTING INDUSTRY AWARD – STATE**

COMMISSIONER BLOOMFIELD

8 October 2001

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 8 October 2001, this Commission orders that the said Award be amended as follows as from the first day of May, 2001:-

By deleting subclause (1) of clause 3.14 (Shift Allowance) and inserting the following in lieu thereof:-

“(1) In addition to the rates of pay prescribed by clause 3.8 of this Award, employees whilst engaged on morning, afternoon or nightshift, as defined in clause 4.3(1) of this Award, shall be paid an additional penalty rate for each such shift as follows:-

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

Dated this eighth day of October, 2001.

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

Operative Date: 1 May 2001  
Amendment – Morning shift allowance  
Released: 15 October 2001

## QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999* – s. 125 – application to amend award**Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees  
AND Chubb Protective Services (No. B218 of 2001)****SECURITY INDUSTRY (CONTRACTORS) AWARD – STATE**

COMMISSIONER ASBURY

12 October 2001

## AMENDMENT

THIS matter coming on for further hearing before the Commission at Brisbane on 24 August 2001, this Commission orders that the said Award be amended as follows as from the second day of April, 2001:–

By deleting subclause 10.3.1 of clause 10.3 (Union Encouragement) and inserting the following in lieu thereof:–

“10.3.1 This clause gives effect to s. 110 of the *Industrial Relations Act 1999* in its entirety. Consistent with s. 110 a Full Bench of the Queensland Industrial Relations Commission has issued a Statement of Policy on Union Encouragement (reported 165 QGIG 221) that encourages an employee to join and maintain financial membership of the Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees.

At the point of engagement, an employer to whom this Award applies shall provide employees with a document indicating that a Statement of Policy on Union Encouragement has been issued by the Queensland Industrial Relations Commission, a copy of which is to be kept on the premises of the employer in a place readily accessible by the employee.

The document provided by the employer shall also identify the existence of a union encouragement clause in this Award.”.

Dated this twelfth of October, 2001.

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

Operative Date: 2 April 2001  
Amendment – Union Encouragement  
Released: 12 October 2001