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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
CA283/02	Mareeba Shire Council Enterprise Bargaining - Certified Agreement	28/6/02	CA45/00
CA272/02	Goodman Fielder Consumer Foods Transport Employees Certified Agreement 2002-2003	28/6/02	CA408/98
CA271/02	Nanango Shire Council - Certified Agreement 2002	2/7/02	CA219/00
CA282/02	Etheridge Shire Council Enterprise Bargaining - Certified Agreement 2002	2/7/02	CA43/00

The following Agreement has been amended:-

No/s	Title
CA212/01	Lutheran Church of Australia Queensland District, Schools Department Certified Agreement 2001

The following Agreement has been withdrawn:-

No/s	Title
CA250/02	Erola Pty Ltd Certified Agreement

E. EWALD
Industrial Registrar

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 s. 229 – notice of industrial dispute

**Greg Stark AND James Hardie Industries Limited
(No. D230 of 2002)**

COMMISSIONER BLOOMFIELD

3 July 2002

Dispute – applicant seeking higher classification – previous dispute in 1999 – earlier recommendations not acted upon – classification structure has since changed – applicant unable to be reclassified.

DECISION

Background

On 16 September 1999 the Commission as presently constituted chaired a dispute conference (Matter No D235 of 1999) between the Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland (AMEPKU) and James Hardie Industries Limited regarding the correct classification of one of the Union's members, Mr Greg Stark.

During the course of the 1999 conference Mr Stark argued that he had accepted a move to an operator/maintainer position with the company on the understanding that he would not be disadvantaged by such move. He said he would have been able to progress to a C7 level classification under the Engineering Award – State had he remained in the maintenance department. He said other operator/maintainers who had the same skills as him were now classified at the C7 level but he was classified at a lower level. He requested the Commission to assist him to move to a C7 level.

Representatives of the company indicated that the progression arrangements within the company were different for operational stream employees and trade stream employees. However, the company had guaranteed that any employee who moved between the streams would not be disadvantaged and would be allowed to remain at their current classification. This had occurred in the case of the other employee mentioned by Mr Stark. He had progressed to a C7 level within the trade stream and had been maintained at a comparable classification level (JH9) when he moved into the operational stream.

Further, the company indicated that if Mr Stark acquired a number of identified operational skills he would be able to seek to be reclassified at an operational stream wage level which was equivalent to level C7 in the trade stream, viz JH Level 9.

At the conclusion of the 1999 conference, the Commission made a number of recommendations to the parties. For present purposes it is only necessary to refer to one of those, which was to the effect that the parties should identify the operational skills which Mr Stark needed to acquire before he could move to the JH Level 9 salary (the operational stream equivalent of C7 in the trades stream). Once the requisite operational skills were identified Mr Stark would be RPL'd against the skills requirements and trained in any missing areas. Once trained he would be able to seek reclassification at the JH Level 9.

On 11 June 2002 the Commission received a new dispute notification under the hand of Mr Stark (Matter No D230 of 2002) which was the subject of a further conference before the Commission as presently constituted on Monday, 17 June 2002.

On that date Mr Stark complained that the Commission's recommendation of 16 September 1999 had not been complied with by the company and, as a result, he was still under-classified. He (again) sought the Commission's assistance to progress to the C7 level.

During the course of this conference Mr Stark said his efforts to improve his classification level had been blocked by the employer. Firstly, they had not developed the training modules in the operational stream which would have allowed him to be trained, and consequently progress, to higher wage classifications. Further, the company had subsequently changed the rules and he had been required to undertake different training arrangements in order to progress to a higher classification level. He said he had met these new training requirements but, upon their completion, had been told the company had once again changed the rules which would not allow him to progress beyond his current wage level.

To better understand the dispute, the Commission conducted site inspections, followed by a further conference, on 26 June 2002. During the inspection Mr Stark took me on a detailed tour of his work area and highlighted the work which he performed both as an operator and as a maintainer. Mr Stark also tabled various e-mails and letters which highlighted his attempts to be reclassified and the company's alleged tardiness in developing training modules and conducting his competency assessments.

The company representatives indicated that the company had never intentionally blocked or otherwise hindered Mr Stark's attempts to be reclassified. It said it had always made its requirements known to Mr Stark but he had not taken any steps to expedite his reclassification. He had let the whole thing drift along and had made no effort to raise any of his concerns, about alleged lack of progress, with the company. Further, the processes by which Mr Stark might have moved to a JH Level 9 classification in the operational stream were no longer appropriate. The classification structure had changed, by agreement between the company and its workforce, in April 2001 and the highest classification level that an operator/maintainer could aspire to was JH Level 7. Because Mr Stark was already classified at JH Level 8 there was no capacity for him to advance.

Mr Stark argued that several other operators/maintainers were classified at the C7 level and there was no reason why he, also, could not be classified at that level. He said he had met the requirements which the Commission had recommended in 1999 and he should be allowed to progress to the C7 level.

Unfortunately, the Commission could not resolve the dispute during the second conference on 26 June 2002. As a result, it was agreed that the Commission would issue a decision in relation to the matter. This is that decision.

Mr Stark's efforts to be reclassified

At the time the Commission made its 1999 recommendation, it was possible for Mr Stark to move to the JH Level 9 within the operator/maintainer stream under the company's (then) classification structure. It was not possible at that time for Mr Stark to have been reclassified to the C7 level because that structure was (and is) restricted to the trade stream. Whilst the salaries payable to persons classified at C7 within the trades stream and those at JH Level 9 within the operator/maintainer stream are the same, the classifications are clearly different. It would never have been possible for Mr Stark to have been classified at C7 as he had requested in the 1999 dispute conference. My recommendations were designed to facilitate his progression to an equivalent level, viz JH Level 9.

That having been said, the available evidence demonstrates a surprising lack of effort on Mr Stark's part, since 1999, to pursue his possible reclassification. There is evidence of some meetings in October 1999, shortly after the Commission's recommendations, to discuss Mr Stark's possible progression through the operations stream. There is some further evidence of discussion about the conduct of a competency assessment in around May 2000 but nothing more until late April 2001. At that time Mr Stark complained that he had not been allowed to rotate through the various jobs performed in his work team and that he had not been able to achieve reclassification by obtaining his operational competencies.

There is also evidence that Mr Leggott, the Production Superintendent, told Mr Stark on 14 May 2001, that he would not be able to progress under the new operator/maintainer structure which came into effect the previous month. A file note, under the hand of Mr Leggott dated 14 May 2001, indicates that "Greg stated that he was aware of this but (said) it should not affect him as he should be able to do whatever was necessary to comply with the Commissioner's ruling. If this was not the case then a timeframe had been placed on him which he was not aware of". The diary note records that Mr Leggott informed Mr Stark that my 1999 ruling envisaged a timeframe of several months but it was now 20 months after that ruling.

On 4 June 2001 the AMEPKU wrote to the company on Mr Stark's behalf. The Union said that Mr Stark had completed the necessary training to complete the skills gaps identified in 1999 and sought his reclassification in accordance with the Commission's 1999 recommendations.

On 13 June 2001 the company responded to the AMEPKU. It informed the Union that the parties had agreed in October 1999 that Mr Stark would need to achieve three C level (advanced operator) operational competencies before he could be reclassified to JH Level 9. The letter went on to indicate that at the time of writing (13 June 2001) Mr Stark had not been assessed competent to advanced operator level in any area. As a consequence, he could not be reclassified to JH Level 9. [During the course of the 26 June 2002 conference Mr Stark complained that the 13 June 2001 letter further demonstrated the company's lack of *bona fides* because it did not mention to the Union that the classification structure had changed in April 2001. He said the letter was a further example of the company's unwillingness to clearly spell out all of the requirements for reclassification.]

On 27 August 2001 Mr Stark wrote to Mr Leggott informing him (again) that he felt disadvantaged by his transfer from maintenance fitter to operator/maintainer and was still seeking to be classified at C7/JH Level 9. He said he had recently completed AQF Level 1 qualifications [which the company was now relying upon to underpin its classification structure] and would be applying for reclassification once he successfully completed AQF Level 2.

Mr Leggott replied in September 2001 and informed Mr Stark that acquisition of an AQF Level 2 qualification would not assist in his claim for reclassification. Mr Leggott said the classification structure agreed between the company and the workforce in April 2001 only allowed progression to JH Level 7 and no more. Mr Leggott told Mr Stark that because he was already classified above that level he could not be disadvantaged and would retain his classification of JH Level 8. Mr Leggott indicated to Mr Stark that the only way for him to be reclassified at C7/Level 9 would be to move to the trade stream within the asset management team. Mr Stark was invited to apply for any position which might arise in that team if he wished to pursue that avenue for reclassification.

Conclusion

It is far too late in the day for Mr Stark to attempt to rely upon the recommendation made by the Commission almost three years ago to achieve reclassification to a higher level within the company. The 1999 recommendation envisaged that Mr Stark would work cooperatively with the company to identify the necessary skills which he needed to acquire to achieve reclassification to JH Level 9 (as it then stood).

Importantly, the 1999 recommendation envisaged that Mr Stark would carry the onus of attempting to move the matter forward. It was never contemplated that the responsibility for ensuring the skills audit took place and that the competencies were acquired would rest with the company representatives. Mr Stark always had the responsibility to attempt to progress the matter.

Unfortunately, the record indicates that Mr Stark seems to have taken the view that the 1999 recommendation would lead to a guaranteed outcome, irrespective of the timelines. Such a view is reflected in his verbal response to Mr Leggott on 14 May 2001 (recorded above), and in his letter to Mr Leggott of 27 August 2001 that the 2001 changes would not affect him.

Indeed, Mr Stark's whole approach during the current dispute conferences indicates that he is not concerned about the rules by which people might be classified. Rather, he continues to believe he was disadvantaged by his move from the trades stream to his operator/maintainer classification in November 1996 and claims he should be reclassified so that he will no longer be disadvantaged. He also seems to have regarded the Commission's 1999 recommendation as an acceptance of his position and that the Commission's recommendation constitutes a guaranteed path to reclassification.

If that be the case then Mr Stark has, unfortunately, misread the situation.

The 1999 recommendation was never a direction to James Hardie Industries Limited that it had to reclassify Mr Stark because the Commission accepted the validity of Mr Stark's arguments. The Commission's principal recommendation merely recorded three possible ways by which Mr Stark might be able to achieve reclassification under the company's classification structure as it then stood. The Commission's recommendation envisaged that the process would be completed within several months. Allowing for some slippage, reclassification should have occurred within a minimum of 9-12 months. The recommendation was not open ended nor did it cater for any changes to the structure which were not, at that time, within the contemplation of the parties.

In my view, the onus was on Mr Stark to try to progress the matter and the onus was on him to request a re-listing of his original dispute notification if the matter was not resolved within a reasonable timeframe.

The current classification structure for the operational stream – agreed between the company and its workforce in early 2001 – no longer allows employees engaged as operator/maintainers to progress beyond JH Level 7. However, it does allow persons who are already classified at a level above JH Level 7 to retain their classification. Mr Stark is such a person.

The company has no obligation to reclassify Mr Stark beyond his current classification while he remains in the position of operator/maintainer. The only way that Mr Stark can be reclassified is if he takes up Mr Leggott's offer of 19 September 2001 and successfully applies for any vacancy which might occur within the asset maintenance team. If Mr Stark has the necessary skills, and is called upon to use them, he can seek reclassification at the C7 level within the trades stream.

Simply put, too much water has flowed under the bridge for the Commission's 1999 recommendations to have any relevance. Changes in the way that the company operates its business, as well as changes in the classification structure since that time, have overtaken events. Mr Stark already enjoys a classification which is in excess of the highest classification that other operator/maintainers may move to. His lack of urgency in late 1999/early 2000 has caused him to lose the chance to be reclassified at a higher level within the operational stream.

I so determine.

A.L. BLOOMFIELD, Commissioner.

Released: 3 July 2002

Appearances:

Mr G. Stark appearing on his own behalf.

Mr D. Richards, with Mr S. Leggott on behalf of James Hardie Industries Limited.

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999 – s. 276 – power to amend or void contracts***Graham Mather AND Toll Transport Pty Ltd (No. B480 of 2000)**

COMMISSIONER SWAN

DECISION

2 July 2002

This application is made by Mr Graham Mather against Toll Transport Pty Ltd (the respondent) pursuant to section 276 of the *Industrial Relations Act 1999* (the Act). The applicant seeks orders amending or voiding his contract for service with the respondent. The claim to be responded to is, the “second further amended application” lodged with the Commission in February 2002.

The particulars of the relief sought are as follows:

“An order declaring that the contract void save and except for the provisions of the contract which have allowed for the applicant to receive remuneration during the period of the contract;

An order declaring that the respondent pay the applicant the following amounts:–

- I Compensation of \$7,000 to the applicant for loss of goodwill on termination of the contract;
- II A refund of the \$5,000 security deposit paid by the applicant in 1987;
- III Reasonable notice of six months (at \$1,500 per week) which comes to \$36,000;
- IV Some other amount that this Commission deems fit and appropriate.”

Within the application, it is claimed:

- “(i) That the applicant was engaged under a contract for services as a courier driver with the respondent. The terms of this contract were negotiated with Mr Tony Woods, the Depot Manager for the respondent. The applicant had been negotiating the purchase of a ‘vehicle with work’ from a former contractor, Mr Warner. This vehicle was purchased for \$11,000 including ‘goodwill’ of \$7,000. The applicant states that Mr Woods was aware of this arrangement.
- (ii) It is further claimed that in late 1987 the applicant’s contract was varied in that he acquired a radio from the respondent for which he paid \$5,000 and that he would be allocated a portion of the work undertaken by a subsidiary business, ‘Complete Transport’.
- (iii) The applicant states that he paid the amount of \$5,000 to Mr Woods believing it to be a deposit which would be refundable upon the return of the radio.
- (iv) During 1997, the contract with the respondent, being of indefinite duration, became capable of termination upon the giving of four hours notice by either party.
- (v) The applicant claims that he performed his contractual obligations without breach, or alternatively, without such breach which would justify termination of the contract by the respondent.
- (vi) During 1992, the contract was varied to include a term that the applicant was prohibited from assigning for value the benefit of his contract.”

Below is a brief summary of the issues in contention between the parties.

Termination and Notice Provisions Generally

At this point in time, it is relevant to note an Agreement entered into between subcontractors and the respondent. That Agreement (hereafter the “1997 Agreement”) states, *inter alia*:

**“Toll Express Queensland
Local Contractor Payment Agreement
Effective July 1 1997**

...

Agreed conditions:

Rates will be reviewed every 12 months

- All contractors are casuals
- Contractor pecking order to apply in the call out of work
- No weekly minimum hours
- A four (4) hour daily minimum hire applies

...

PREAMBLE

A Toll Express has for some time used the services of subcontractors

B With the aim of clarity it is appropriate to set out formally the terms of the Agreement between Toll Express and its Subcontractors, and that is the purpose of this Agreement.

...

1. INDUSTRIAL DISPUTES

Subcontractors will comply with the settlement of disputes procedure, in clause 9 of the Transport Workers Toll Express Brisbane Agreement 1997.

2. TERMINATION

- (i) This Agreement may be terminated upon the giving of four hours notice by Toll Express and on the giving of four hours notice by any Subcontractor, or by the Union on that Subcontractor’s behalf.

- (ii) This Agreement may be terminated instantly if:
- (a) The Subcontractor breaches policies or procedures of Toll Express;
 - (b) The Subcontractor supplies fraudulent or misleading information to Toll Express as to hours worked in any particular period;
 - (c) If the Subcontractor steals the property of Toll Express.”.

This Agreement was signed by the Transport Workers’ Union of Australia, Union of Employees (Queensland Branch) (TWU) of which the applicant was a member, and the respondent. It is this Agreement which is applicable in terms of dismissal and notice provisions relevant to the applicant at the time of termination of his contract.

In terms of the abovementioned Agreement, it is submitted by the respondent that the Agreement was reached as a consequence of a strike by contractors. It is claimed that the applicant was a spokesperson for the striking contractors and was involved in negotiations leading to the making of the Agreement. The essence of this evidence is not challenged.

The respondent claims that as the applicant was a casual contractor for the respondent, and not an employee, the terms of the 1997 Agreement apply irrespective of whether different terms might apply to an employee in a traditional employment contract. The applicant, while not specifically stating as much, does suggest that the terms and conditions applicable *vis a vis* termination of contract for misconduct be viewed against terms which might accord with traditional employee conditions of employment. This inference is drawn because the Commission is asked to consider what occurred around the question of misconduct and what might be seen to be standard procedural fairness requirements which are encapsulated within Legislation relevant to an employee under a traditional employment contract.

Brief Summary of Issues Surrounding the Termination of the Contract

At some short period prior to termination, the applicant had been requested by the respondent to supply confirmation of insurance details relating to his insurance policy for the carriage of goods on behalf of the respondent. The applicant had previously enquired as to the need to do this, however ultimately he did agree to supply the documents.

On 25 October 1999, the applicant went to the respondent’s offices to deliver the documents. He discussed the issue with the quality assurance officer for the respondent, Ms McLeod. A disagreement ensued between the parties around the question of the purpose for the supply of the documents. The applicant claims that he left the material on Ms McLeod’s desk and commenced leaving the office. As he was leaving, it is claimed that Ms McLeod “flung the documentation at the applicant, which hit him and then fell to the floor”. The applicant states that he became angry and sought to retrieve the documents. The applicant commenced saying something to Ms McLeod which he discontinued and he states that he “did not threaten to or physically assault Ms McLeod or any other staff member”.

The Manager allegedly witnessed some of these events and immediately ordered the applicant to return to the loading area. Shortly thereafter, the applicant went to the Manager’s office and was advised that his contract was immediately terminated.

Applicants’ Assertions Regarding the Specific Question of the Alleged Unfair Contract

Against that brief background to events from the applicant’s perspective as they relate to events surrounding the termination of the contract on the grounds of misconduct, it is contended that the contract between the parties is/was harsh unconscionable and unfair, or became so because of the conduct of the parties. The specifics of the unfairness are as follows:

- the contract between the parties did not contain a term requiring the respondent to conduct an appropriate investigation of the applicant’s alleged misconduct and to accord the applicant procedural fairness;
- the contract did not contain a term providing for a period of reasonable notice on termination of the contract. It is submitted that the contract should have provided for a period of six months’ notice;
- the contract did not provide for the refund to the applicant of the \$5,000 which was paid to the respondent as a security deposit for the installation of a radio in the applicant’s vehicle;
- the contract did not permit the applicant to assign the benefit of his contract;
- the contract did not provide a period of notice or other opportunity for the applicant to recover the goodwill which he had paid to Mr Warner upon assignment of the benefit in 1987;
- alternatively, the contract did not provide for any compensation to the applicant for the “lost opportunities” regarding assigning the benefit of his contract to another and the recovery of goodwill; and
- the applicant was required to have his vehicle painted with the company colours and logos. To have the vehicle restored to its original condition would require a payment of between \$4,000 and \$8,000 for which the respondent has made no payment or offer of payment.

Brief Summary of Respondent’s Assertions Concerning the Applicant’s Pleadings

For the respondent, issue was initially taken with the pleadings made in the application. The application has been amended. There is nothing untoward in that. The complaint of the respondent goes more to the point that the “circumstances of this case do not in any sense warrant the provision of the relief sought in the pleading.”.

Specifically, the respondent claims that the applicant submits (but does not plead) that the contract between the parties was “harsh, unconscionable or unfair.” That is not so much in question. The claim is that the pleadings assert unfairness, but do not provide any basis upon which the Commission may grant relief under s. 276 of the Act. It is asserted that “nothing in the pleading, nor in the contractor’s submissions, establishes or indicates reliance upon section 276 (2) (a) to (c)”. These sections relate to the questions of relative bargaining power between the parties when the contract was entered into, issues of undue influence, pressure or unfair tactics, or whether the contract is contrary to or inconsistent with any industrial instrument or the Act.

The respondent cites various cases where differing jurisdictions have considered the question of fairness in contracts generally. It is submitted that the essence of the test is examined by Commissioner Bechly in *Reilly v TDG Logistics Pty Ltd* where it was stated:

“Section 276 is similar to unfair contract legislation contained in the *New South Wales Industrial Relations Act 1996* at s.106.

Unfair contract matters have been the subject of considerable litigation in that jurisdiction, with much attention being paid to what is meant by the term ‘unfair’.

In summary, arising from the above matters it could be said that the test of unfairness of a contract or arrangement or understanding has been found to be determinable by the application of common sense and sense of justice and the common sense approach of a jurymen and that it is a moral and not a legal issue.

Also, in applying that test, it is not simply a case of applying standards which appear to provide a proper balance or division of advantage or disadvantage between parties who had made a contract or arrangement. What has also to be borne in mind is the conduct of the parties, their capability to appreciate the bargain that was made and the comparative bargaining positions when entering into the contract or arrangement. Further, the legislation’s massive power makes it imperative that it should be exercised with proper restraint and should not become a refuge for those who are merely disgruntled with a bargain entered into on even terms. The discretion should be exercised to protect victims of wrongdoing, not to prescribe an anodyne.”.

Against these abovementioned criteria, with the onus being upon the applicant to establish unfairness, the respondent reinforced its submissions upon the inadequacy of the applicant’s pleadings.

The respondent made reference to the opening submissions of the applicant and stated that those submissions did not reflect the pleadings in their amended application. For the applicant, in response to these claims, it was stated that the pleadings referred to issues within common knowledge in industrial relations (i.e. the concept of “reasonable notice”).

Upon the question of pleadings, I respectfully adopt the views expressed by President Hall in *TDG Logistics Pty Ltd v Peter William Reilly* (2001) 167 QGIG 247 where the President cited the decision of *Gould and Birbeck and Bacon v Mt Oxide Mines Limited* (in liquidation) (1916) 22 CLR 490 per Isaacs and Rich JJ where it was stated:

“...pleadings are only a means to an end, and if the parties in fighting their legal battles choose to restrict them, or to enlarge them, or to disregard them and meet each other on issues fairly fought out, it is impossible for either of them to hark back to the pleadings and treat them as governing the area of contest.”.

In fairness to the respondent in this matter, the issue of pleadings was raised in the preliminary stages of the case being heard.

Pleadings represent, in general, a summarised form of the relevant facts to be relied upon by the applicant in a proceeding. The essence of pleadings, amongst other things, is to ensure that the respondent is not ambushed during the course of a hearing by claims which have the capacity to impact upon the outcome of the case to which no prior reference has been made. The facts pleaded are assertions which would require to be proved by evidence (*Laws v Australian Broadcasting Tribunal* (1990) 170 CLR 70 at 85-87 per Mason CJ and Brennan J, at 98 per Gaudron and McHugh JJ). In my view, were there to be rigid adherence to the pleadings made by either party, it may be that a decision is made which fails to take into account the merits of the case. It seemed to be that the most appropriate course to adopt in this matter was to ensure that, in the main, the case put relied upon the facts pleaded, with amendments being made if sought (**Part 2 – Industrial Tribunals and Registry Subdivision 2 – Amendments – Industrial Relations (Tribunals) Rules 2000**), but that leniency be afforded where no departure of moment has arisen from the case as pleaded or formally amended.

Relevantly, as will later be seen, the pleadings do not state or suggest that the applicant was an employee of the respondent. Beyond the pleadings, this did not occur either. The applicant was always presented as being one “under a contract for services”.

In my view, at that point in the hearing upon considering the submissions of the parties, it was appropriate to continue to hear the matter on the understanding that Mr Reid, rather than amend the application further, elaborate upon issues of concern to the respondent. This approach was acceptable to the parties.

The specific grounds of unfairness pleaded by the applicant are as follows:

- that the contract did not contain a term requiring the respondent to conduct an investigation into the applicant’s alleged misconduct and did not afford appropriate procedural fairness to the applicant. The respondent did not attribute due weight to all of the evidence surrounding the incident;
- that the contract did not contain a term providing for a period of reasonable notice on termination of the contract. The applicant claims that irrespective of “misconduct”, such a contract would be capable of termination on reasonable notice. In this instance, the reasonable notice would be a period of six months;
- that the respondent did not provide for the refund to the applicant of the amount of \$5000 which was allegedly paid as a security deposit for the installation of a two way radio in the applicant’s vehicle;
- that the contract prohibited the applicant from assigning the benefit of his contract;
- that the contract failed to provide for a period of notice or other opportunity for the applicant to recover the goodwill which he says he had paid to Jack Warner upon assignment of the benefit of Warner’s contract to the applicant in 1987. Alternatively, that the contract failed to provide for any compensation to the applicant for the “lost opportunities” referred to in the previous two points; and
- that the respondent failed to reimburse the applicant for moneys expended upon the re-spraying of his vehicle. This cost is between \$4,000 and \$8,000.

The Issues Around the Question of the Notice Provisions Contained in the 1997 Agreement

In accordance with the terms of the 1997 Agreement, all employees were casual employees. The applicant was a participant in the negotiations around the making of this Agreement. There is no sustainable argument that the applicant, at the time, was not aware of or did not accept the notice provisions of the Agreement. The notice provisions of the Agreement are what were agreed to between the parties, with the assistance of the TWU, and the respondent. In any event the provisions conform to contemporary industrial relations standards as they relate to casual employees.

This claim, however, for “reasonable notice of six months” for a casual engaged “under a contract for services” is misplaced, in my view. The contract stands as it is between the parties on this point. Even if it was relevant, it is not unfair in terms of any yard-stick which might be used.

The Issues Around the Question of Termination of the Contract Between the Parties

There is no avenue for the applicant in this matter to pursue the reinstatement provisions of the Act. I have determined that the respondent rightfully terminated the contract with the applicant. The reasons for concluding as such are as follows:

It is not pleaded or asserted at any stage during the course of the hearing that the applicant was an employee. As a consequence, there has been no alternative position posed by the applicant to consider him to be an employee and therefore able to pursue an application under the dismissal provisions of the legislation.

The criteria which I am asked to consider these events against relate to general questions of contemporary industrial relations and natural justice considerations. Specifically, it is pleaded that "The contract between the parties did not contain a term requiring the respondent to conduct an appropriate investigation of the applicant's alleged misconduct and to accord the applicant procedural fairness".

I reiterate my earlier views that the contract stands as it is, on this point. But, in any event the terms of the contract in this regard are not dissimilar to standard employment contracts where reference is made to instant dismissal in the case of misconduct.

Were I to compare what occurred in this case against contemporary industrial standards, then the actions of the respondent conform to fair and reasonable industrial relations standards. The matter was properly investigated and the applicant was afforded natural justice in terms of responding to the claims made by the respondent at the time of termination of his contract.

From the evidence put before me on this point, I draw the conclusion that the termination of the applicant's contract with the respondent was warranted in the circumstances.

Within this context, a specific incident occurred at the workplace involving the applicant and Ms McLeod.

The incident involved Mr Mather being requested to provide to Ms McLeod documents relating to insurance of the applicant's truck. It is conceded by the applicant that a verbal argument occurred between the two parties but that there was no threat of violence by Mr Mather against Ms McLeod. Mr Mather says that Ms McLeod threw the documentation at the applicant, hitting him before it fell to the floor. The applicant's amended application states that:

"The applicant bent over to pick up the documentation and, having naturally become angry, glared at Ms McLeod and said the word 'You...'. The applicant did not finish the sentence, did not verbally abuse Ms McLeod and did not threaten to or physically assault Ms McLeod or any other staff member...".

Mr Mather then states that he was told by Mr Hain, the State Manager for the respondent, to go into the yard for a while. After a short period of time, Mr Mather claims that Mr Hain summonsed him into his office and stated that his contract was terminated, effective immediately.

Ms McLeod's evidence is that Mr Mather, in a very agitated state, visited her office with the insurance documents stating in a loud voice "here's your papers, here's your papers". She states that she explained to him that Mr Little required the information for quality purposes. It is claimed that the applicant clenched his fists and Ms McLeod thought she was about to be struck. Ms McLeod claims that the applicant said to her "I will fucking get you". It is then claimed that Mr Hain intervened in the matter.

Mr Hain states that, prior to Ms McLeod requesting the documentation from the applicant, he was aware that:

"Over a period of three or four weeks leading up to the incident I spoke to him and he seemed more and more annoyed and agitated about the whole issue. I remember on one occasion that Mather said the words 'that bloody bitch upstairs' in relation to the request for insurance documents. I assumed he was talking about Sonja and upon hearing this I again explained to Graham Mather that it wasn't Sonja McLeod who was requesting the documents, it was the company and that he merely had to turn them over to her."

On the day of the incident between Mr Mather and Ms McLeod, Mr Hain states that he was in his office speaking on the telephone, when he heard loud yelling from Ms McLeod's office which was near to his office. He states that he does not recall specifically the content of what was said, but that:

"Mather had both fists clenched in an aggressive fashion and his face was white. Sonja then said to Graham Mather 'Don't threaten me, don't threaten me'."

Mr Hain claimed to have interposed himself between the two of them because he felt that Mr Mather was about to strike Ms McLeod. After sending Mr Mather into the yard, Mr Hain then spoke to the applicant in the presence of a union representative and another manager, Les Little. Mr Hain states that:

"At the meeting I put to Mather the facts as related to me by Sonja... and asked him to give me his story or justification. The applicant's answers to my questions were unsatisfactory and he did not deny the facts put to him as I had understood them from my observations and from Sonja, or try to justify his action."

Mr Little, previously Operations Manager for the respondent, says that he was present on the day of the altercation. Mr Little was also present at the interview held with the applicant. His evidence was that:

"I was at work on the day of the altercation between Graham Mather and Sonja McLeod, and I was present at the meeting at which Graham Mather was formally dismissed. Apart from Brian and Graham Mather, the other person that I can remember being present was Gordon Whalley as the union representative. Tim Burke may have also been present from the Union. At the meeting, Brian Hain asked Graham Mather to explain his actions regarding the incident. Mather said words to the effect of 'I didn't do anything' to which Brian replied 'That's not what I heard and saw'. He then stated to Mather that his behaviour had been unacceptable, that it breached the company disciplinary procedure and that he was dismissing him for physically threatening and verbally abusing Sonja McLeod."

I accept the evidence of the respondent's witnesses as it goes to the question of an altercation occurring between the applicant and Ms McLeod and that the applicant had acted in a threatening manner towards Ms McLeod. I also accept Mr Hain's evidence that Mr Mather was reluctant to comply with the respondent's wishes regarding the insurance documents for some time prior to the incident occurring between the two parties.

I gained the impression through listening and observing Ms McLeod giving her evidence that she may have the tendency to be officious in the manner in which she performed her duties and that there may have been an element of over-exaggeration on her part with regard to the impact upon her of this

altercation. Notwithstanding those observations, I have accepted the evidence of Ms McLeod and Mr Hain that the incident in question occurred as they so described it. The behaviour of the applicant was unacceptable, so much so that it did constitute misconduct in my view.

I have also accepted the respondent's evidence that Mr Mather was well aware of the reasons for his dismissal and that he did have sufficient opportunity to respond to the allegations prior to his dismissal.

This was a particular incident which clearly denoted misconduct and from my perspective no further investigation was required.

In these set of circumstances, the actions of the respondent were appropriate and the terms of the Agreement fair and reasonable.

The specific claim for an order declaring that the contract be voided in terms of the notice and procedural provisions which is specifically claimed as "Reasonable notice of six months (at \$1,500 per week) which comes to \$36,000" is dismissed.

The Issues Concerning Compensation of \$7,000 for the Loss of Goodwill Upon Termination of the Contract and the Payment of \$5,000 for a Deposit on a Radio Refundable Upon the Return of the Radio

Mr Mather stated that in 1987 he was engaged under a contract for services as a courier driver with the respondent. Mr Mather claims that he purchased his vehicle "with work" from a former contractor, Jack Warner. It is stated that Mr Tony Woods, Depot Manager for the respondent at the time, met with the applicant and was aware that goodwill had been paid by him to Mr Warner. As well, Mr Mather states that he paid to Mr Woods the sum of \$5,000 being a deposit refundable upon the return of the radio.

In response to the claim concerning "goodwill" and the purchase of a truck with work from Mr Warner, the respondent states:

"...the respondent has no knowledge of the alleged purchase of a truck by the applicant from Jack Warner."

Mr Hain's evidence around this point is as follows:

"I have been with Toll Express in various positions since 1989...I have no personal knowledge of any payment for goodwill by the applicant. The issue was not raised with me by the applicant until after his contract was terminated. The respondent has never recognised goodwill and I know of no case where a contractor to the respondent has paid goodwill to an outgoing vendor. There has been very little turnover in the respondent's contract drivers since 1989 and there has been no case where an outgoing contractor has sold a vehicle and sought a payment for goodwill. If that had occurred, I would have told the purchaser that the Respondent did not recognise goodwill. Goodwill has simply never been an issue until this case. One of the principal reasons for this is that prior to a written contract coming into existence between the Respondent and its contract drivers, the Agreement between the Respondent and its contractors was there was no guaranteed work at any time and that contracts could be terminated without notice." (Commission emphasis)

The applicant's submissions around this point were confusing. He states that he paid Jack Warner \$8,000 for a truck which was barely roadworthy but that Mr Woods had claimed that it was necessary for him to pay "goodwill". He states in his affidavit that a truck was purchased by him in 1987 for \$8,000 with no amount identified as goodwill. In the second Further Amended Application, the applicant states that he purchased a vehicle with work for \$11,000 of which \$7,000 was for goodwill. In the applicant's final submissions, it is then contended that the goodwill element of the purchase price was at least \$6,000.

In 1992, the applicant claims that he was told by a manager, Mr John Kelly, that there would be "no more selling trucks". This evidence is supported by Mr Tupper, a work colleague of Mr Mather's. The applicant saw these events as indicative of a variation to his contract in 1992 to prohibit him from subsequently selling the benefit of his contract with the respondent for value. Apparently, the applicant accepted the alleged variation to the contract at that time.

There appears to have been no agitation by the applicant around this point from 1992 onwards. In fact all the evidence goes to show that the applicant was heavily involved in Union matters about work related conditions during the 1990's and this issue only first arose for consideration in 2002 after the cessation of his contract by the respondent. As well, it is relevant to consider the fact that contractors were never guaranteed minimum hours of work and could be terminated instantly without cause. The relevance of this is that any amount allegedly paid for goodwill would arguably have been minimal because there were so few safeguards built into the contract in respect of anticipated remuneration.

From my perspective, even if there had been debate between the applicant and the respondent around the question of goodwill and the non-payment thereof during 1992, (and I am unconvinced that there was) there was implied consent on the part of the applicant to this process occurring at the time. The fact that the applicant was an active participant in workplace negotiations with the employer and through the TWU during all of this time only bolsters my view that this element of the claim is now being pursued inappropriately.

I reject this element of the applicant's claim.

On the question of the payment of \$5,000 for the supply of a radio, the evidence around this point is also difficult to follow. The applicant's evidence on this issue varied during the case but his evidence generally was supported by Mr Tupper.

The assertion has been made by the respondent that radios were issued to drivers, but that they were returned when the driver ceased the contract with the respondent. From its perspective, the respondent denied being involved in the type of practice so asserted by the applicant.

The applicant did not return the radio to the respondent and there is no documented evidence of the applicant paying any amount to a representative at any time. On the lack of consistency in the evidence given on this point cited hereunder, and for further reasons also detailed hereunder, I refuse this element of the claim.

The respondent asserts that the Commission should consider the credibility of the applicant as it goes to these issues and states as follows:

- (a) the Contractor has admitted the radio deposit was paid in cash obtained from the sale of a motorbike. This is contrary to the particulars given by the solicitors for the Contractor, presumably acting on his instruction, who said, in further particulars, that this payment was made in part by a withdrawal from the Bank of Queensland;
- (b) he admitted that cash payments made to him for Complete Transport work were not included in his tax return;
- (c) he has admitted to making a false claim on the Tax Department in respect of amounts deducted for depreciation;

- (d) while asserting that, in 1992, his contract was varied to preclude the recovery of goodwill, he made no complaint about that alleged variation at the time, nor subsequently;
- (e) he sold a vehicle in 1989 to another contractor and did not recover, nor claim goodwill on that sale; and
- (f) the TWU has shown no support for his claim, despite obvious attempts by the Contractor to gain their support.

Points (a) to (d) are factual and relevant, from my perspective, and do little to assist the applicant in terms of accepting his word against the assertions of others.

Given the findings I have made, it is obvious that all other components of the claim fail.

Conclusion

In terms of the Agreement entered into in 1997, it was entered into with the full knowledge and consent of the parties which of course included the applicant. Within this context, I adopt the views of the Full Bench of the New South Wales Commission in *Behan v Bush Boake Allen Australia Ltd* [1999] NSWIR Comm 582 (17 December 1999) which state that:

“The discretion whether relief should be granted in any particular case, in itself, is exclusionary in nature. As Barwick CJ commented in *Stevenson v Barham* (1977) 136 CLR 190 at 192, as to the width and generality of the intractable language of s. 88F, ‘The legislature has apparently left it to the good sense of the Industrial Commission not to use its extensive discretion to interfere with bargains freely made by a person who was under no constraint or inequality, or whose labour was not being oppressively exploited’.”

The other components of the claim are rejected for the reasons so outlined. I reiterate my earlier comments with regard to the question of pleadings in cases relating to unfair contacts. Leniency was granted by the Commission partly because the matter had been on foot for some period of time and in the public interest it had to be heard and determined sooner rather than later. Leniency was also afforded to the applicant because at least at the time of hearing, Counsel had been engaged who assisted all by proposing a practical and reasonable approach to having the matter progress in a fair and reasonable manner.

The application in all respects is dismissed.

Order accordingly,

D. A. SWAN, Commissioner.

Appearances:
 Mr R. Reid of Counsel (instructed by Mr M. Watt of Reidy and Tonkin Solicitors) for the applicant.
 Mr R. Perry of Counsel (instructed by Ms M. Savic of Clayton Utz) for Toll Transport Pty Ltd.

Released: 2 July 2002

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 167 – successor employers bound

Woolworths (Q’land) Pty Limited AND The Australian Workers’ Union of Employees, Queensland (No. B929 of 2002)

WOOLWORTHS QUEENSLAND SUPERMARKET CERTIFIED AGREEMENT 2001

COMMISSIONER BLADES

27 June 2002

ORDER

THIS matter coming on for hearing before the Commission at Brisbane on 24 and 27 June 2002, this Commission orders as follows as from 27 June 2002:

Woolworths (Q’land) Pty Limited is exempted from any requirement which may otherwise exist under the Woolworths Queensland Supermarket Certified Agreement 2001 to make redundancy or severance payments to any employee whose employment may come to an end in circumstances where the employee has been offered employment with Woolworths Limited. This order will have no application to any subsequent decision by Woolworths Limited to terminate the employment of any employee by reason of redundancy.

This order shall come into operation from 27 June 2002 and shall remain in force for a period of 6 months.

Dated 27 June 2002.

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

Operative date: 27 June 2002
Order – Exemption
Released: 28 June 2002

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1997 – s. 32 – successor employers bound
Industrial Relations Act 1999 – s. 167 – successor employers bound

Woolworths (Q'land) Pty Limited AND Automotive, Metals,
Engineering, Printing and Kindred Industries Industrial Union of Employees,
Queensland and Another (No. B930 of 2002)

WOOLWORTHS SUPERMARKETS, QUEENSLAND DISTRIBUTION CENTRES MAINTENANCE
CERTIFIED AGREEMENT 1998

COMMISSIONER BLADES

27 June 2002

ORDER

THIS matter coming on for hearing before the Commission at Brisbane on 24 and 27 June 2002, this Commission orders as follows as from 27 June 2002:

Woolworths (Q'land) Pty Limited is exempted from any requirement which may otherwise exist under the Woolworths Supermarkets, Queensland Distribution Centres Maintenance Certified Agreement 1998 to make redundancy or severance payments to any employee whose employment may come to an end in circumstances where the employee has been offered employment with Woolworths Limited. This order will have no application to any subsequent decision by Woolworths Limited to terminate the employment of any employee by reason of redundancy.

This order shall come into operation from 27 June 2002 and shall remain in force for a period of 6 months.

Dated 27 June 2002.

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

Operative Date: 27 June 2002
Order – Exemption
Released: 28 June 2002

#####

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 167 – successor employers bound

Woolworths (Q'land) Pty Limited AND
Shop, Distributive and Allied Employees Association (Queensland Branch)
Union of Employees (No. B931 of 2002)

WOOLWORTHS (Q'LAND) SUPERMARKETS DISTRIBUTION CENTRES
(SOUTH-EAST QUEENSLAND) – CERTIFIED AGREEMENT, 2001

COMMISSIONER BLADES

27 June 2002

ORDER

THIS matter coming on for hearing before the Commission at Brisbane on 24 and 27 June 2002, this Commission orders as follows as from 27 June 2002:

Woolworths (Q'land) Pty Limited is exempted from any requirement which may otherwise exist under the Woolworths (Q'land) Supermarkets Distribution Centres (South-East Queensland) – Certified Agreement, 2001 to make redundancy or severance payments to any employee whose employment may come to an end in circumstances where the employee has been offered employment with Woolworths Limited. This order will have no application to any subsequent decision by Woolworths Limited to terminate the employment of any employee by reason of redundancy.

This order shall come into operation from 27 June 2002 and shall remain in force for a period of 6 months.

Dated 27 June 2002.

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

Operative Date: 27 June 2002
Order – Exemption
Released: 28 June 2002

#####

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1997 – s. 32 – successor employers bound
Industrial Relations Act 1999 – s. 167 – successor employers bound

Woolworths (Q'land) Pty Limited and AND The Australian Workers'
Union of Employees, Queensland (No. B932 of 2002)

WOOLWORTHS SUPERMARKETS DISTRIBUTION CENTRES (TOWNSVILLE)
CERTIFIED AGREEMENT

COMMISSIONER BLADES

27 June 2002

ORDER

THIS matter coming on for hearing before the Commission at Brisbane on 24 and 27 June 2002, this Commission orders as follows as from 27 June 2002:

Woolworths (Q'land) Pty Limited is exempted from any requirement which may otherwise exist under the Woolworths Supermarkets Distribution Centres (Townsville) Certified Agreement to make redundancy or severance payments to any employee whose employment may come to an end in circumstances where the employee has been offered employment with Woolworths Limited. This order will have no application to any subsequent decision by Woolworths Limited to terminate the employment of any employee by reason of redundancy.

This order shall come into operation from 27 June 2002 and shall remain in force for a period of 6 months.

Dated 27 June 2002.

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

Operative Date: 27 June 2002
Order – Exemption
Released: 28 June 2002

#####

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1997 – s. 32 – successor employers bound
Industrial Relations Act 1999 – s. 167 – successor employers bound

Woolworths (Q'land) Pty Limited AND Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees (No. B933 of 2002)

BIG W NORTHERN REGION DISTRIBUTION CENTRE – CERTIFIED AGREEMENT

COMMISSIONER BLADES

27 June 2002

ORDER

THIS matter coming on for hearing before the Commission at Brisbane on 24 and 27 June 2002, this Commission orders as follows as from 27 June 2002:

Woolworths (Q'land) Pty Limited is exempted from any requirement which may otherwise exist under the Big W Northern Region Distribution Centre – Certified Agreement to make redundancy or severance payments to any employee whose employment may come to an end in circumstances where the employee has been offered employment with Woolworths Limited. This order will have no application to any subsequent decision by Woolworths Limited to terminate the employment of any employee by reason of redundancy.

This order shall come into operation from 27 June 2002 and shall remain in force for a period of 6 months.

Dated 27 June 2002.

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

Operative Date: 27 June 2002
Order – Exemption
Released: 28 June 2002

#####

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 167 – successor employers bound

Woolworths (Q'land) Pty Limited AND Federated Clerks' Union of Australia, North Queensland Branch, Union of Employees AND Another (No. B934 of 2002)

WOOLWORTHS QUEENSLAND REGIONAL OFFICES (REG 9 & REG 10), DISTRIBUTION CENTRES, AUSTRALIAN INDEPENDENT WHOLESALERS, MIS, BRISMEAT CLERICAL AND ADMINISTRATIVE CERTIFIED AGREEMENT, 2001

COMMISSIONER BLADES

27 June 2002

ORDER

THIS matter coming on for hearing before the Commission at Brisbane on 24 and 27 June 2002, this Commission orders as follows as from 27 June 2002:

Woolworths (Q'land) Pty Limited is exempted from any requirement which may otherwise exist under the Woolworths Queensland Regional Offices (Reg 9 & Reg 10), Distribution Centres, Australian Independent Wholesalers, MIS, Brismeat Clerical and Administrative Certified Agreement, 2001 to make redundancy or severance payments to any employee whose employment may come to an end in circumstances where the employee has been offered employment with Woolworths Limited. This order will have no application to any subsequent decision by Woolworths Limited to terminate the employment of any employee by reason of redundancy.

This order shall come into operation from 27 June 2002 and shall remain in force for a period of 6 months.

Dated 27 June 2002.

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

Operative Date: 27 June 2002
Order – Exemption
Released: 28 June 2002

#####

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 167 – successor employers bound

**Woolworths (Q'land) Pty Limited AND Australian Liquor, Hospitality and Miscellaneous
Workers Union, Queensland Branch, Union of Employees (No. B935 of 2002)**

WOOLWORTHS STATE OFFICE CANTEEN STAFF – CERTIFIED AGREEMENT

COMMISSIONER BLADES

27 June 2002

ORDER

THIS matter coming on for hearing before the Commission at Brisbane on 24 and 27 June 2002, this Commission orders as follows as from 27 June 2002:

Woolworths (Q'land) Pty Limited is exempted from any requirement which may otherwise exist under the Woolworths State Office Canteen Staff – Certified Agreement to make redundancy or severance payments to any employee whose employment may come to an end in circumstances where the employee has been offered employment with Woolworths Limited. This order will have no application to any subsequent decision by Woolworths Limited to terminate the employment of any employee by reason of redundancy.

This order shall come into operation from 27 June 2002 and shall remain in force for a period of 6 months.

Dated 27 June 2002.

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

Operative Date: 27 June 2002
Order – Exemption
Released: 28 June 2002

#####

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 140 – application for amendment of an order

**Gordon Richard Nuttall, Minister for Industrial Relations AND Training
Recognition Council and Others (No. B1014 of 2002)**

ORDER – COMMUNITY JOBS PLAN TRAINEES' CONDITIONS

COMMISSIONER BLOOMFIELD

1 July 2002

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 1 July 2002, this Commission orders that the said Order be amended as follows as from 1 July 2002:

By replacing "30 June 2002" with "31 December 2002" in clause 15 (Date of Operation).

Dated 1 July 2002.

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

Operative Date: 1 July 2002
Amendment – Community Jobs Plan Trainees' Conditions
Released: 3 July 2002

#####

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**The Australian Workers' Union of Employees, Queensland AND Director General,
Department of Health and Others (No. B1079 of 2001)**

DISTRICT HEALTH SERVICES EMPLOYEES' AWARD – STATE

COMMISSIONER BLADES

27 June 2002

AMENDMENT (Correction of Error)

WHEREAS an error occurred in the Amendment to the abovementioned Award as published in the *Queensland Government Industrial Gazette* of 14 June 2002, Vol. 170, No. 8, pages 204-209, this Commission orders that the following correction be made and to be effective as from 1 June 2002:

In item 3, by deleting the last sentence to Schedule B(i) and inserting the following in lieu thereof:

“The rates of pay in this clause include the arbitrated wage adjustment payable under 1 September 2001 Declaration of General Ruling and earlier Safety Net Adjustments.”.

Dated this twenty-seventh day of June, 2002.

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

Operative Date: 1 June 2002
Amendments – Correction of Error
Released: 27 June 2002

#####

QUEENSLAND INDUSTRIAL REGISTRAR

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

Queensland Teachers Union of Employees (No. Q24 of 2002)

REGISTRAR EWALD

1 July 2002

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

DECISION

On 28 June 2002, the Queensland Teachers Union of Employees lodged in the Registry under s. 481 of the *Industrial Relations Act 1999* the information prescribed in section 36 of the *Industrial Relations Regulation 2000* in relation to the conduct of elections for the following positions of office –

Office	Number of Positions	Method of Election
<i>TAFE Council Representative of a Branch–</i>		
Bremmer Institute	1	Direct vote by members of TAFE Branch
<i>Area Council Officer</i>		
Metropolitan East Area Council Treasurer	1	Collegiate vote by members of Area Council

Area Council Representative of a Branch –

Office	Number of Positions	Office	Number of Positions
Central Queensland Area Council		Peninsula Area Council	
Callide & Dawson Valleys	1	Cape and Gulf.....	1
Rockhampton South.....	1	South Coast Area Council	
Metropolitan East Area Council		Gold Coast North	1
Brisbane Central	2	Merrimac	1
Capalaba.....	1	Woodridge	1
East Brisbane	1	South Queensland Area Council	
East Moreton.....	2	Darling Downs North	2
Ferny Grove	1	Sunshine Coast Area Council	
Geebung	1	Caloundra	1
The Gap.....	1	Redcliffe	1
Windsor.....	1	Wide Bay Area Council	
Metropolitan West Area Council		Hervey Bay.....	1
Brisbane Valley	1		
Ipswich East.....	1		
Macgregor/Rochedale.....	1		
Sunnybank	1		
North Queensland Area Council			
Hinchinbrook	1		
Ross.....	1		

Reasons for Elections

The Industrial Organisation advises the request for conduct of elections for the above positions arises from the casual vacancies occurring through resignations and unfilled positions.

Methods of Election

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

Conduct of Elections

I have considered the request, the Act and Rules and I find the elections being sought are for positions of office within the meaning of the Act and are required to be held under the Rules of the Industrial Organisation.

Therefore, under s. 482 of the *Industrial Relations Act 1999*, I am making arrangements for the Electoral Commission of Queensland to conduct the elections.

Dated 1 July 2002.

E. Ewald,
Registrar.

Released: 1 July 2002

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