



The Queensland Government Industrial Gazette

PUBLISHED BY AUTHORITY

PP 451207100086

Annual Subscription \$358.62 (GST inclusive)

ISSN 0155-9362

Vol. 170

FRIDAY, 2 AUGUST, 2002

No. 15

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
CA266/02	TeeCee Transport - Certified Agreement (Queensland) 2002	24/6/02	CA48/00
CA235/02	The Palm Beach Currumbin Clinic - Allied Health Employees Certified Agreement 2002	15/7/02	
CA273/02	Simon Engineering (Aust) Pty Ltd trading as Simon-Carves Electrical Services - Certified Agreement 2001/2002	16/7/02	CA109/99
CA279/02	Subway Lutwyche, Maroochydore and Mooloolaba – Certified Agreement 2001	16/7/02	
CA286/02	Carramar Noosa Homes for the Aged Incorporated – Certified Agreement 2002	16/7/02	CA51/00
CA288/02	Berri Ltd/N.U.W./A.M.E.P.K.I.U. Brisbane - Certified Agreement 2001	16/7/02	CA32/01
CA297/02	Eos Civil Solutions (a business unit of Redcliffe City Council) Enterprise Bargaining - Certified Agreement (State) 2002	16/7/02	
CA307/02	Calvary Hospital Cairns - Nurses - Certified Agreement 2002	16/7/02	CA753/00
CA306/02	Australian Pharmaceutical Industries - Certified Agreement 2002	18/7/02	CA646/00
CA308/02	Alex Supporters Association Incorporated - Certified Agreement	18/7/02	CA648/99
CA313/02	Mostia Constructions Pty Ltd - Certified Agreement	24/7/02	
CA314/02	Dietzel Interiors Pty Ltd - Certified Agreement	24/7/02	

E. EWALD
Industrial Registrar

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**Queensland Council of Unions AND Queensland Chamber of Commerce and
Industry Limited, Industrial Organisation of Employers and Others (No. B753 of 2002) and
The Australian Workers' Union of Employees, Queensland AND Queensland Chamber of Commerce and
Industry Limited, Industrial Organisation of Employers and Others (No. B755 of 2002)**

PRESIDENT HALL
VICE PRESIDENT LINNANE
COMMISSIONER EDWARDS

22 July 2002

DECLARATION OF INTENT

On 9 May 2002 the Australian Industrial Relations Commission published its decision in what is colloquially known as Safety Net Review – Wages – 2002. On 13 May 2002 the Queensland Council of Unions filed with the Industrial Registrar an application which, amongst other things, sought to flow the decision of the Australian Industrial Relations Commission into Queensland Awards. Later on the same day The Australian Workers' Union of Employees, Queensland filed a similar application.

We have perused the decision of the Australian Industrial Relations Commission and have heard each of the applicants and a variety of other interested persons. We are conscious that in 1997, 1998, 1999, 2000 and 2001 comparable Safety Net Review (Wages) decisions of the Australian Commission were flowed into State Awards by way of a declaration of a general ruling. We have decided that we should direct our mind to the question whether, as the Queensland Council of Unions and The Australian Workers' Union of Employees, Queensland submit, we should flow the Safety Net increases and increases in allowances approved by the Australian Commission into the Queensland system by way of a declaration of general ruling. We make it plain that we have not decided to do so at this stage. The purpose of this declaration is to discharge the duty cast upon us by s. 287(2).

A copy of this declaration is to be published in the *Queensland Government Industrial Gazette*. A copy of the declaration will be given to all persons, natural and artificial, upon whom the initiating applications were served. If any person who has not previously participated in these proceedings wishes to make submissions about the (possible) general ruling, that person has liberty to do so. An outline of any such submission should be filed with the Industrial Registrar no later than 4.00 p.m. on 2 August 2002. We shall at a date to be fixed hear such oral submissions as are necessary.

Dated 22 July 2002.

D.R. HALL, President.

D.M. LINNANE, Vice President.

K. L. EDWARDS, Commissioner.

Released: 22 July 2002

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**The Australian Workers' Union of Employees, Queensland AND
Mount Isa Mines Holdings Limited (No. D265 of 2002)**

MINING AREA – MOUNT ISA MINES LIMITED – CERTIFIED AGREEMENT 1996

COMMISSIONER FISHER

22 July 2002

Dispute notification – Certified Agreement – Agreement defeated at ballot – Dispute re Rostering arrangements – Stop work meeting – Respondent seeks Interim Injunction and Orders – Conciliation – Interpretation of clause 5.6 – Recommendation – Parties to advise by 23 July 2002.

DECISION

In 1996 Mount Isa Mines Holdings Limited (MIM) and The Australian Workers' Union of Employees, Queensland (AWU) and another Union entered into the Mining Area – Mount Isa Mines Limited – Certified Agreement 1996. The Agreement had a nominal expiry date of 31 August 2000. It remains in force as it has not been terminated or replaced by another agreement.

On 5 May 2000, the AWU notified MIM of its proposal to make a certified agreement for employees in the mining area of MIM. The AWU invited MIM to participate in those negotiations. An agreement went to ballot in 2001 but did not receive a vote of a valid majority in support of it. The Commission is advised that negotiations between the parties did not recommence after the defeat of the agreement in the ballot.

In 2001 proceedings occurred in the Commission about the proposed introduction of a new shift roster in the lead mine of MIM. A decision in relation to this matter was released on 16 November 2001. It addressed some matters that have also been raised in the present dispute but not to the satisfaction of the AWU, in particular, the critical matter of with whom agreement about the introduction of new rosters is to be obtained.

On 8 July 2002, the Commission as constituted convened a conference between the AWU and MIM in response to a dispute notification lodged by the AWU regarding the introduction of a 52 hour roster in the Upper Mining Block of the George Fisher Mine. The AWU alleged that MIM had attempted to introduce the roster without consultation and more particularly without their agreement. At the conference MIM asserted that it was introducing a roster in accordance with the provisions of the Certified Agreement and they were committed to abiding by the provisions of the Certified Agreement. The response by MIM did not satisfy the AWU's concerns. The AWU advised it intended to take a "measured response" in light of the position of MIM.

On 19 July 2002, MIM applied to the Commission seeking an interim injunction to have the AWU "cease and desist from undertaking existing or threatened industrial action and revoke all notices advising of a stop work meeting planned for 25 July 2002.". The interim injunction is intended to apply until the application for orders, also filed by MIM on 19 July 2002, is heard and determined. In his affidavit, Neal Macrossan O'Connor, General Manager, Legal, MIM, attests to the following:

- that 837 workers are presently employed by MIM in the underground mining operation;
- that clause 4.2 Best Practice approach to resolving differences of the Certified Agreement has not been followed by the AWU in deciding to hold the stop work meeting. This clause requires complaints to be resolved through the Fair Treatment System;
- that the Upper Mining Block operates on the basis of a 52 hour roster and has done so since 1 September 2001;
- that at the end of June 2002 MIM decided due to production requirements to transfer mining equipment to its Upper Mining Block and to employ additional labour in that area to operate the extra equipment;
- that MIM decided to employ a number of extra people to work the 52 hour roster that operates in the Upper Mining Block and that recruitment and selection processes are in train to have the employees commence on or about 1 August 2002;
- that no existing employee will be forced to transfer to the Upper Mining Block;
- that significant losses of production will occur if the stop work action occurs;
- that other disruptions will occur as a result of the stop work action; and
- that the safety of the workforce may be affected.

The AWU advised at the conference that its members had petitioned the Union calling for a stop work meeting to discuss issues around the 52 hour roster. As a result of receiving the petition the AWU decided to call a stop work meeting of all workers working in the underground mining department of MIM. The AWU notified MIM management of the stop work meeting to be held on 25 July 2002.

In response to the submissions of MIM and Mr O'Connor's affidavit, the AWU contended amongst other things, that:

- on 19 July 2002 it had filed a notice of intention to engage in protected industrial action. As the Certified Agreement had passed its nominal expiry date, the AWU was entitled to lodge such a notice. Moreover, this notice had the effect of making the stop work meeting on 25 July 2002 protected action;
- the Fair Treatment process does not apply to collective complaints and advice to that effect had been given by MIM to the AWU.

In its reply MIM said that:

- the Fair Treatment system is intended to resolve group complaints. In any event the workers affected by the 52 hour roster system would be volunteers and hence would not be complaining about the roster;
- the action intended for 25 July 2002 was not protected because the notice of 5 May 2000 had long since lapsed and the parties had abandoned negotiations after the failure of the vote in 2001. Moreover, the action was not protected as the action was not for the purposes of supporting or advancing claims in relation to a proposed agreement as required by s. 174 (1) of the *Industrial Relations Act 1999*.

In considering the application by MIM, the Commission was of the preliminary view that that the proposed industrial action on 25 July 2002, according to the notice that contained advice of it, may not be protected action in terms of s. 174(1) of the Act. However, after hearing from the parties in relation to the application for the interim injunction, the Commission attempted to conciliate the matter rather than proceed down the path proposed by MIM. Although the parties came close to a resolution, an agreement was unable to be reached. It is clear that until the parties' differences can be resolved over the interpretation of clause 5.6, Introduction of New Rosters of the Certified Agreement, tension over the 52 hour roster (and perhaps other rostering arrangements) introduced without the agreement of the AWU will remain.

Accordingly, the Commission considers that it would be the most appropriate course of action at this time to focus on the central issue in this dispute, that is, the disagreement over the interpretation of clause 5.6 of the Certified Agreement. This should be allowed to occur in an environment that, as far as practicable, is free from the threat of industrial action on the part of the AWU and counter legal responses from MIM. To achieve this the Commission makes the following recommendations:

1. That the AWU not proceed with the stop work meeting scheduled for Thursday 25 July, 2002 or other industrial action related directly or indirectly to the issues in dispute pending a resolution of an application for interpretation of clause 5.6 of the Certified Agreement.
2. That MIM discontinue its application for an interim injunction and Orders pending a resolution of an application for interpretation of clause 5.6 of the Certified Agreement.
3. That the AWU and MIM proceed with an application for interpretation of clause 5.6 of the Certified Agreement and that the parties cooperate in framing that application.
4. That MIM proceed to operate the Jumbo in the Upper Mining Block on a 42 hour roster pending the resolution of the interpretation.
5. That MIM proceed to hire an additional 15 employees to operate the Jumbo. Such employees to commence employment on a 42 hour roster but on the understanding that they would move to a 52 hour roster should the application for interpretation be determined in the Company's favour.

An application for interpretation is able to be heard by Commissioner Blades on 8 August 2002. It is anticipated that Commissioner Blades would be able to release a decision in relation to that application within four weeks of that hearing date.

The parties are invited to consider the recommendation and to advise the Commission in writing by 11 a.m. on Tuesday, 23 July 2002 as to whether that recommendation is accepted. In the event that one or both of the parties find that they are unable to accept the recommendation the Commission will proceed to determine its response to MIM's application for an interim injunction.

G.K. FISHER, Commissioner.

Appearances:

Mr B. Swan and Mr R. Harris for The Australian Workers' Union of Employees, Queensland.

Mr J. Murdoch (Barrister) instructed by Allens, Arthur Robinson Solicitors and with them Mr N. O'Connor and Mr D. O'Brien on behalf of the respondent.

Released: 22 July 2002

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999 – s. 74 – application for reinstatement***Amelia McGrory AND Woolworths (Q'land) Pty Ltd (No. B1299 of 2001)**

COMMISSIONER BECHLY

19 July 2002

DECISION

On 3 July 2001 Ms Amelia McGrory was dismissed from employment as a shop assistant with Woolworths QLD Limited at its Roma store.

The cause of the dismissal was the manner in which she dealt with an amount of \$10 tendered to her by a loss prevention officer posing as a customer.

An application for reinstatement was filed and a conference held but further action was deferred as a complaint had been made by Woolworths QLD Limited to police and the applicant was charged with stealing as a servant. She pleaded not guilty and when the matter was dealt with by the District Court the prosecutor entered a *nolle prosequi* plea and the applicant was discharged. The hearing of the reinstatement application took place at Roma on 13 May 2002.

In summary what occurred on 3 July 2001 was that the respondent conducted an exercise in an attempt to discover the cause of till shortages. These shortages appeared to have occurred over many months. A large discrepancy had occurred a few days earlier in the applicant's till. The till operator and a service manager had access to the till on the day in question.

The manager states that the applicant had been spoken to several times about till shortages but this does not appear to have been entered into her personnel file.

Two loss prevention officers travelled to Roma on 3 July 2001 and, in conjunction with the store manager, set in place a process to discover the applicant's reaction to a situation where she was handed the correct cash payment of \$10 for a marked down item in a situation where she could not immediately enter the transaction in the register because she was part way through serving another customer.

What followed from the handing of the money to the applicant differs according to what the applicant recalls and what was said to have been observed by the witness involved.

The transaction and following events were observed and orchestrated by one of the loss prevention officers.

The applicant was serving a customer who had two trolleys of goods. She had processed one totally and was partway through the second.

One of the loss prevention officers pushed past the customer and presented the applicant with a label marked "Reduced for quick sale - \$10.00" and a \$10 note and stated that she was in a hurry because her child had vomited.

The applicant took the money and price tag and the loss prevention officer left the store.

From here the stories as to what was done with the price tag and money differ.

The applicant was interviewed a little over an hour after the exercise and the interview was recorded. The union delegate attended the interview. Part way through the interview, when the subject of "Reduced to Clear Items" was raised the applicant announced that she had a docket and \$10 that had been given to her earlier in the day.

She explained that she still had the money and docket because she was waiting for the shopper to return because the shopper had said she was going to do more shopping.

She acknowledged that the company policy was that she should have called a supervisor to deal with the matter, however she stated that she did not have the opportunity to do so because she had been working flat out all day.

However, when it was put to her she did acknowledge that on two separate occasions a Service Supervisor had come to her register after she had been given the docket and money and that she had not raised the existence of the docket and money with the supervisor. She herself had called the supervisor on one of the above occasions.

She acknowledged that she did not ring up the amount in the till when the customer gave her the money and when asked why she gave as an explanation that she was about to but that it was the wrong colour (this refers to the colour of the mark down advice written on the docket).

When asked why she did not call the Service Manager at that time she again stated that she was busy.

She then stated that she stuck the money and docket under a green bin on a shelf below the register where people could not see it and then forgot about it.

Later, she says, it dropped and she put it in her pocket, thinking that she would go up and call service. She never did so.

In her statement of 27 March 2002 Ms McGrory recounted the events of the day, but with some alterations, i.e.

1 – there was no reference to the belief that the customer was intending to return to do more shopping, and

2 – she gave as the reason for putting the bar code and money in her pocket the fact that the wrong colour code had been used but that this was not noticed until after it had been placed under the basket and it had fallen to the floor.

During cross-examination other differences became apparent. Ms McGrory acknowledged that her statement that the customer had said she was returning to the store was not correct.

She stated that she did not notice the colour code when the barcode was first handed over contrary to the interview version.

At another time she said that she could not put the \$10 in the till because the till could not be opened halfway through serving a customer.

At first glance the applicant's story has some attractions. The unusualness of being given a marked down for quick sale item; a customer who did not wait for a receipt; concern that the \$10 note and swing tag might blow away or be taken by a customer if left out of the till but in sight of other customers; putting the money and tag in the applicant's pocket to protect it; forgetting about it in the rush of customers; being too busy to call the service manager to deal with it.

On closer examination the inconsistencies and admitted fabrication remove those attractions.

Reduced to clear items seem to be quite commonplace. The electronic journal reveals that during the period of surveillance the applicant dealt with at least thirteen reduced to clear items, seven of them being just prior to the customer called as a witness.

Concern that the money and tag might blow away seem far-fetched considering the environment of the register area. There is evidence from the then manager that there were steps that could be taken to secure the money in the till even while serving a customer. These were not detailed but presumably one possibility was to slip the note into the till through the gap between the drawer and the body of the till.

The inability to follow the correct procedure and call a service manager because she was too busy was admitted as a falsehood by the applicant. In any event, that simply required ringing a bell. She did admit that a service manager had attended at the till while the customer she was serving at the time was still present. That customer acknowledged that such a person (a service manager) did attend the till just as she was completing her transaction.

Additionally the applicant called a service manager to the till herself a little later because of a difficulty with an EFT function. The service manager attended the till and fixed the problem. Strangely, in her statement of evidence, the applicant when she was being interviewed said that she had called a service manager about the money and swing docket given to her but no service manager responded. This does not appear in the transcript of the interview. The transcript was accepted by the applicant and her witness as being a full and correct record of the interview.

There are discrepancies in the three versions of what the applicant did with the money just after it had been handed to her.

The shopper called as a witness by the applicant to the incident states that the applicant put the money in her pocket almost straight away and that some conversation occurred to the effect that it might blow away if left on the till. She is positive that the applicant did not put the money under a waste basket under the till and that it did not drop to the floor before the applicant put it in her pocket.

The applicant states that she put the money under a waste basket on a shelf under the register and some little time later she knocked it and, when it fell to the floor she put it in her pocket and that the customer was present.

The loss prevention officer observing the applicant states that he observed the applicant in conversation with the customer just after the money was given to the applicant and that she put it under the waste drawer and that, just as she was about to take a break she retrieved the money and docket from under the bin and put it in her pocket.

According to the electronic journal the applicant finished serving the customer at 12:33 p.m., served five other customers and went on break at two minutes past one.

In view of the discrepancies in the evidence of the applicant I am inclined to accept that the applicant put the money in her pocket just as she was about to go on a break.

When interviewed on the day by the loss prevention officers the applicant stated that when she had been given the money and docket she was about to ring it up but did not do so because the written reduced price advice was the wrong colour and that she stuck it under the bin until she could call a service manager.

In her written statement the applicant stated that she had not put the money and bar code in her pocket after they had fallen on the floor because she saw then that the colour on the bar code was not the right colour.

In her evidence at the trial the applicant stated that she had not put the money in the till because she was serving another customer and could not open the till.

The following extract from the record of the interview where the applicant states that she put the money in her pocket "thinking that I would go up and call service" suggests to me that the action occurred as she was about to leave the area and go on a break:

BB: Okay. So once you had a - I believe you then were told to go on a break, or something? You closed your register?

Amelia: Yes.

BB: Why not scan it then?

Amelia: Because I forgot all about it.

BB: Amelia, how could you forget about it, if it was underneath there, and you have obviously picked it up at some stage?

Amelia: Because it dropped.

BB: How could you forget about?

Amelia: It did drop and I put it in my pocket thinking I would go up and call service.

Also, at page six when asked what she intended doing with the money the applicant replied "I probably would have come back and given it to my supervisor".

The use of the terms "thinking that I would *go up* and call service" and "would have *come back* and given it to my supervisor" suggest that the putting of the money in the pocket occurred just prior to the break.

Additionally, there was a service manager at the applicant's till when she returned from her break. The opportunity was presented to her to give the money to her service manager at that time. She did not do so.

I have great difficulty in accepting that the applicant simply forgot about the money in her pocket until the interview.

If it was the subject of conversation with the customer it could not have been forgotten in the few moments between the conversation and the arrival of the service manager while the customer was still present.

While the dealing with reduced to clear items is commonplace, a customer pushing in during a transaction tendering correct money and leaving without a receipt would not appear to be so commonplace as to allow the matter to be forgotten in moments.

Even if one was to accept the applicant's version of when she put the money in her pocket she stated that she "put it in her pocket thinking that she would go up and call service".

The certain events of the day were that the service manager came to her within moments of her putting it in her pocket when she could have then put her stated intention of handing the matter over to "service" into effect.

There is a further inconsistency in the applicant's evidence about her stated belief that the customer involved in the ten dollar transaction had indicated that she was intending to return to the store.

At the interview on the day in question the applicant indicated that she was holding the money waiting for the customer to come through again because she said she was going to do more shopping. During the hearing her evidence was that she was intending to ask the customer to come up to the service desk so a supervisor could deal with it from there.

During the hearing the applicant acknowledged that what she said on the day of the interview about the shopper stating that she was intending to return was not entirely true.

The applicant was dismissed for breach of company policy in failing to follow prescribed procedures for dealing with money tendered in this fashion by a customer.

Was dismissal for this reason a reasonable action of the respondent?

The applicant failed to either process the tendered amount through the till or immediately, or even within a reasonable time, report the matter to a service manager.

I do not accept that the applicant forgot about the money in her pocket or that she was too busy to call a supervisor.

The surveillance of the applicant by the loss prevention officers was not a random matter. There had been a regular shortage in the applicant's till balance in the previous weeks and, in the previous few days a discrepancy of seven hundred dollars had occurred.

The applicant had been trained in the correct procedures to be followed in transactions at the till and other aspects of her employment. Her training file and her responses to the questions at her interview reveal that she was aware of the correct procedure to follow in the circumstance she was faced with. The staff handbook clearly states the consequences that follow a breach of policy of this nature.

Was the breach of policy serious enough to warrant dismissal?

This is not a case of eating a piece of cake or other foodstuff sold by the employer. It is a fundamental and serious breach of the duties of a cashier. The failure to place the money in the till, putting it in her pocket, and the failure to immediately call a service manager or to utilise the several opportunities available to her to hand the money to a supervisor constitutes misconduct serious enough to warrant dismissal. She retained the money in her pocket from approximately 12:30 p.m. until she closed off the till to allow the interview at 1:52 p.m. and only disclosed it when the issue of reduced to clear items effectively put her in a corner. Other conclusions might have been readily acceptable except for the inconsistencies and admissions earlier referred to.

The interview conducted by the respondent's loss prevention officers was appropriate in the circumstances.

Opportunity was given to the applicant to consider her position and discuss it with her delegate.

She was informed of the recommendations the loss prevention officers were intending to make to the store manager with respect to termination of her employment and given an opportunity to consider those recommendations and respond.

She responded to the manager in terms that she was innocent. Whether she intended to say more than that is not certain from the transcript of the proceedings. It appears that she was cut off by the manager at that point although he states that he believed she had concluded her response.

She was later given a copy of the record of interview.

I am satisfied that the respondent took appropriate action as warranted by breach of store policy. Ms McGrory's evidence was contradictory and ambiguous.

I believe that the respondent did not act in a harsh, unjust or unreasonable manner.

The application is rejected.

R.E. BECHLY, Commissioner.

Appearances:

Mr L. Gillespie, of the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees, for the Applicant.

Ms S. McAuliffe, of the Retailers' Association of Queensland Limited, Union of Employers, for the Respondent.

Released: 19 July 2002

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999 – s. 74 – application for reinstatement***Bruce Rich AND Scott Brickworks (No. B2207 of 2001)**

COMMISSIONER BECHLY

19 July 2002

DECISION

Bruce Rich ceased employment with Scott Brickworks in Townsville on 20 November 2001. He had been employed by the respondent for eight years as a labourer.

Mr Rich says that his employment was terminated by Mr William Benjamin Scott, a partner in the business. Mr Scott says that Mr Rich left the premises of the business in a rage on that day demanding a Separation Certificate and consequently ceased employment of his own accord.

The circumstances leading up to the termination are reasonably straightforward. Mr Rich, an apparently fit forty-one year old labourer conducted an, on the evidence, unprovoked attack on a seventeen year old slightly built employee who also worked as a labourer over a set of work gloves.

The unprovoked attack consisted of a thrust to the chest with his right elbow immediately followed by a punch to the jaw with a clenched left fist. The attack came without warning.

There was an attempt on behalf of the applicant to limit any evidence to only the conversation between the applicant and the respondent which led to the cessation of employment.

This approach was rejected. To adopt the approach sought would have, amongst other things, excluded all the evidence from the assaulted employee and historic evidence as to the angry behaviour of the applicant.

The applicant acknowledged that there had been previous incidents where he had become angry.

The respondent alleges that there had been several occasions where the applicant had exhibited sudden anger or rage and walked off the job.

There appears to have been some, but limited, warnings issued about the behaviour.

One could ask what matters whether the employment ceased because Mr Rich walked off the premises seeking a Separation Certificate or whether his employment was terminated because of his conduct.

The answer lies in a claimed entitlement to *pro rata* long service leave which becomes payable after eight years if the employee terminates because of illness, incapacity or pressing domestic necessity, relevantly, if the employer terminates unfairly or for a reason other than the employees conduct, capacity or performance.

In defending the matter the respondent relied only upon the basis that the applicant had walked off the job and, in effect, resigned notwithstanding an opportunity given to resolve the matter by way of apology.

The applicant's case relied upon an allegation that the respondent had sacked him on the spot and that the process of dismissal was unfair.

There was no direct argument about the appropriateness of a dismissal brought about by the conduct of the employee. There is however a need to touch on this matter to avoid unnecessary further proceedings.

The assault occurred at the commencement of work on 20 November at approximately 6.20 a.m.

Mr Rich says that he used two pairs of gloves because he had at that time a skin irritation. It is no longer evident. He accused the other employee, Tim McGregor, of picking up his second pair of gloves to use that day.

Mr McGregor states that the gloves that he picked up were his and that he picked them up from the place that he had put them on the previous evening. He also states that he was unaware of the practice alleged by Mr Rich of using two sets of gloves. He states that Mr Rich did not adopt such a practice.

Not a great deal turns on this point but I have some difficulty believing that Mr Rich adopted this practice. He clearly marked his gloves for personal identification, but only one pair! The second pair which he claimed were his were not so marked. Why mark only one pair?

There are some inconsistencies in the evidence as to the sequence of what actually occurred which were not explored in examination of the witnesses. Again, nothing greatly turns on this in the light of the admission by Mr Rich that he assaulted Mr McGregor and the manner of the assault. However an exploration of these differences may have assisted in the determination of which of the various recollections of the incident was more reliable.

On being accused of wearing Mr Rich's gloves Mr McGregor denied the fact which annoyed Mr Rich.

According to Mr Rich, Mr McGregor was immediately behind him and he was annoyed by the denial so, without warning, he struck back at Mr McGregor with his elbow, hitting him in the chest and then turned around and punched him in the face.

Mr Rich says that he merely threw a shadow punch in a sparring type manner without the intent of doing any injury or harm. He says the contact was nothing more than a tap.

He then walked away to his work area and soon after saw Mr McGregor, who was crying, talking to Mr Scott, the Production Manager. He says that Mr Scott did not seem to take much notice of the matter and Mr McGregor then went into the office.

Mr McGregor says that at no time did he do anything to provoke Mr Rich and that Mr Rich shoved him with his elbow and then punched him in the jaw. He says the blow hurt him and when he was hit he heard a crack. He was shocked that Mr Rich punched him and that Mr Rich's eyes looked wild and Mr Rich was spitting when he was speaking.

Mr Scott says that when Mr McGregor told him of the incident he checked Mr McGregor's mouth and jaw but saw no signs of damage and told Mr McGregor "not to worry about it and go back to work".

When Mr McGregor then went to the office to phone his mother he realised that Mr McGregor had been hit harder than he initially thought.

He then took Mr McGregor over to see Mr Rich and asked him if he had hit Mr McGregor. Mr Rich acknowledged that he had hit him but indicated that he thought it was of little force and said that he hit his grandchildren harder than he had hit Mr McGregor.

Then there is a crucial difference between the parties as to what was then said by Mr Scott.

Mr Scott says that he then said to Mr Rich that hitting another employee was a serious offence and could cost him his job. He says he then asked Mr Rich to apologise but that he refused and demanded a Separation Certificate.

Mr McGregor says that Mr Scott asked Mr Rich to apologise but that he refused. A Mr Dru McGregor, Tim McGregor's brother, was partially involved at this stage and confirms that Mr Scott sought an apology from Mr Rich.

Mr Rich says that, upon his confirming to Mr Scott that he had punched Mr McGregor, Mr Scott said "That has just cost you your job" and that, considering his length of service he was stunned by the dismissal. He also says that Mr Scott poked him in the chest with his finger. Mr Scott denies this. Mr Rich denies that an apology was sought.

Some conversation occurred about whether there were men or boys working at the premises and Mr Rich then went to the office and waited for a short period, about fifteen to thirty minutes, to collect what he referred to as a Separation Ticket and what Mr Scott referred to as a Separation Certificate.

Mr Rich says that he was terminated by Mr Scott. Mr Scott says that Mr Rich was in a rage and he thought that any further conversation when the incident was under investigation at about 6:30 a.m. would be unwise as it would only inflame the matter.

That Mr Rich was in a rage can be gleaned from his threat to Mr McGregor as he walked past him. While there are some differences as to what was actually said, Mr Rich agrees that he said "if I see you out on the street I am going to kill you".

There was evidence given as to what subsequently occurred when Mr Rich returned on three occasions later in the morning and afternoon to collect his final payment and Separation Certificate. He had in the meantime successfully sought work elsewhere and he so informed the office secretary.

When he first returned at 9:00 a.m. Mr Scott approached him and asked him what was going on hoping that he had calmed down from the incident. Mr Rich said that he had come for his Separation Certificate. Mr Scott says that he did not know what a Separation Certificate, or Ticket as referred to by Mr Rich, was. While this is somewhat difficult to accept he had a production role and his knowledge of documentation produced as to wage administration was very limited.

Taking into account all that I have heard I conclude that it is more likely that Mr Rich walked off the job and away from his employment when confronted with the assault.

Even if he was dismissed, which the respondent continues to deny, it would be necessary for the applicant to establish that the process of dismissal was unfair before the way was open to make a claim for *pro rata* long service leave.

The assault and the manner in which it was carried out satisfy me that there was good reason for dismissal.

Mr Rich acknowledges the assault and rejected an opportunity to resolve the matter by way of apology.

I was referred to *DG Carrol AND Australian Broadcasting Commission* to support the argument that Mr Rich had not resigned. The facts are markedly different.

As to opportunity given to Mr Rich to respond, in the face of his acknowledgement that he had punched Mr McGregor because he annoyed him there was little further that Mr Scott could have done. If he had sought greater detail as to why the assault had occurred the outcome, in my view, would have been the same.

A reasonable action of the employer in the circumstances of the matter would have resulted in termination of employment because of the conduct of the employee.

Mr Scott did not press the matter at the time of the interview with Mr Rich because Mr Rich was obviously in a rage. Later in the morning there was an opportunity given to Mr Rich to respond either by way of explanation or by way of apology when Mr Scott approached him in the office to find out what Mr Rich was intending to do. Mr Rich did not take the opportunity to respond seeking only a Separation Certificate and final payment to end his employment.

The application is rejected.

R.E. BECHLY, Commissioner.

Released: 19 July 2002

Appearances:

Mr A. Baxter of Ruddy, Tomlins & Baxter, for the Applicant.

Mr T. Lindsay of Eamon Lindsay and Richard Lindsay, for the Respondent.

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 278 – recovery of unpaid wages

Michael Ernest Hennessy of the Department of Industrial Relations, Townsville AND Tennis Townsville Inc. (No. W47 of 2002)

COMMISSIONER BECHLY

19 July 2002

DECISION

This application is made on behalf of Mr Kevin Francis O’Sullivan, a previous employee of Tennis Townsville Inc. (TTI) and seeks recovery of \$5486.20 in unpaid wages for work performed during Mr O’Sullivan’s employment from 18 September 2000 to 8 May 2001.

While TTI proposed that Mr O’Sullivan was employed as a caretaker under the terms of the Miscellaneous Workers’ Award – State, that in fact was not the appropriate award to apply to the duties carried out by Mr O’Sullivan. The appropriate Award to cover the duties allocated to Mr O’Sullivan is the Greenkeeping Industry Award – State.

The respondent says that it was advised by Wageline that the appropriate Award was the Miscellaneous Workers’ Award – State. That advice may have been so provided but it would have been based on information given by the respondent as to the duties to be performed. It would seem that the information provided to Wageline was not accurate.

Mr O’Sullivan was required to work for 25 hours each week and he was required to live on the premises. Some accommodation was available on-site but it was agreed by Ms Klemm, the Financial Officer/Secretary of the respondent, that the mobile accommodation in which Mr O’Sullivan lived could be used by him at the respondent’s premises.

The amount of underpaid wages claimed is \$5486.20. The details of the claim are set out in Schedule 1 of the claim.

The claim properly reflects the entitlement due for work performed on twenty-five hours during each of the weeks that Mr O’Sullivan was employed.

The respondent seeks to offset an amount for the benefits of on-site accommodation. There is no provision in the Greenkeeping Award – State for accommodation. No agreement exists with Mr O’Sullivan for the deduction of any amount from his wages for accommodation.

On the evidence Mr O’Sullivan worked in excess of twenty-five hours each week. No claim is made for the excess hours.

The respondent also seeks to offset the claim for unpaid *pro-rata* annual leave by deduction of days not worked by Mr O’Sullivan during some periods of his employment.

On the evidence before me these periods were “time off in lieu” of extended hours worked by him.

Evidence in this matter was provided by Mr O’Sullivan who was cross-examined by the respondent’s representative. Affidavit material only was provided by Ms Klemm and a Mr Victor Bayer, neither of whom attended the hearing.

In the circumstances I rely on the evidence of Mr O’Sullivan where there is conflict with the affidavit material and particularly in those matters where Mr O’Sullivan maintained his position in the face of cross-examination.

Much of the cross-examination was irrelevant. The respondent, quite improperly, sought to raise matters which might have been relevant in a reinstatement hearing but had no relevance to the matter before me. There had been a previous settlement of a reinstatement application by Mr O’Sullivan. That settlement did not place any ban to the wage recovery action proceeding.

I allow the claim in full and order that Townsville Tennis Inc. pay to Kevin Francis O’Sullivan the sum of \$5486.20 within thirty days of the publishing of this decision from the Registry.

R.E. BECHLY, Commissioner.

Appearances:

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

Released: 19 July 2002

Mr D. Lynch of the Queensland Chamber of Commerce and Industry for the Respondent.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 153 application to certify agreement

Pozzolan Bulk Carriers Pty Ltd AND an Employee (No. CA255 of 2002)

POZZOLANIC NORTH QUEENSLAND MAINTENANCE – CERTIFIED AGREEMENT 2002

COMMISSIONER ASBURY

23 July 2002

Application for certification of agreement – Affidavit accompanying agreement states that agreement is made with one employee – Consideration of whether reference to “group of employees” in s. 141(1) includes a single employee – Consideration of requirement in s. 156(1)(g) for valid majority of relevant employees to approve the agreement – Principles of statutory interpretation regarding use of singular and plural – Consideration of provisions regarding certified agreements in overall context of legislation – Presumption that singular includes plural and vice versa – S. 32(2) of Acts Interpretation Act 1954 (Qld) displaced by contrary intention in Industrial Relations Act 1999 (Qld) – Point at which an agreement is made – Agreement must meet requirements for certification at point certification is sought – Agreement which does not meet requirements for certification at the point certification is sought, but may meet those requirements at some point during its period of operation cannot be certified – Agreement between single employee and employer not able to be certified – Irrelevant that more than one employee may be covered during period of operation of Agreement – Application related to enable parties who made Agreement to take action as may be necessary to enable the Agreement to be certified.

DECISION

By way of an application filed on 29 May 2002, Pozzolanic Bulk Carriers Pty Ltd seeks certification of the Pozzolanic North Queensland Maintenance – Certified Agreement 2002 (the Agreement). The application for certification of the Agreement states that it is made with employees, under Chapter 6, Part 1 of the *Industrial Relations Act 1999*. In the affidavit accompanying the application, pursuant to Regulation 9 of the *Industrial Relations Regulation 2000*, the deponent, Mr Iain Tait, Manager Industrial Relations, states *inter-alia*, that the number of male employees to be covered by the Agreement is one. Further, there are no other employees in any of the other categories stipulated in Regulation 9, namely female employees, apprentices or trainees. In response to a question at the hearing into the application for certification of the Agreement, Mr Tait advised that there was currently and at the time of a ballot for approval of the Agreement, only one employee, proposed to be covered by the Agreement, although in future, there may be more than one employee covered.

The question arises as to whether an agreement may be certified under Chapter 6, Part 1 of the Act where one employee was involved in the negotiation and approval of the agreement, and where only one employee is proposed to be covered by the agreement, at the point at which certification is sought. The starting point in relation to the making of certified agreements, is s. 141 of the Act which provides as follows:

“141 Certified agreements

- (1) A certified agreement may be made about the relationship between an employer and a group of employees (whether all employees, or a category of employees) of the employer.
- (2) The certified agreement covers all employees in the group, even if they were employed after the agreement was made.
- (3) In this section –

‘group of employees’ includes –

- (a) employees of a single employer; and
- (b) employees of a multi-employer; and
- (c) employees of an employer who are engaged in a project, including a proposed project; and
- (d) employees proposed to be employed in a new business by an employer, other than a multi-employer; and
- (e) employees of –
 - (i) the State; or
 - (ii) an entity established for a public purpose under a law of the State or Commonwealth; or
 - (iii) another entity in which the State has a controlling interest.”.

The question of who may make certified agreements is dealt with in s. 142 of the Act, in the following terms:

“142 Who may make certified agreements

A certified agreement may be made between –

- (a) on the one hand, the employer; and
- (b) on the other hand –
 - (i) 1 or more employee organisations who represent, or are entitled to represent, any employees who are, or are eligible to be, members of the organisation; or
 - (ii) the employees at the time the agreement is made.”.

Neither of these sections provides for a certified agreement to be made with a single employee. Section 143 deals with the provision of advice to proposed parties to a certified agreement. Section 144 introduces the concept of relevant employees, and requires the employer by virtue of subsection (2) to take certain steps with respect to the provision of a proposed agreement in writing and an explanation of its terms, to such employees. Section 144(2) also requires that each relevant employee is informed that he or she may ask a relevant employee organisation for representation in negotiating with the employer about the agreement before it is made. The definition of “relevant employee” is set out in Schedule 5 in the following terms:

“ ‘relevant employee’ for a certified agreement, means an employee whose employment is or will be subject to the agreement.”.

Section 156(1) provides that the Commission must certify an agreement if and must not certify an agreement unless, it is satisfied that the requirements set out in that section are met. In considering whether to certify an agreement the Commission can require no more and accept no less than what is laid down in that section. Section 156(1)(g) requires that a valid majority of the relevant employees employed at the time approved the agreement.

It is also established that an agreement may not be certified on the basis of a jurisdictional point. A Full Bench of this Commission in *AWU v Skills Training Mackay* and *ETU v Northpower* (2002) 169 QGIG 172 found that an agreement containing a clause dealing with matters falling outside s. 141(1) could not be certified. In that case, the subject matter of a particular clause was found to be outside of the relationship between an employer and a group of employees.

It is true that there is a presumption of statutory interpretation, that words in the singular include the plural and vice versa. In relation to that presumption, the Privy Council in *Blue Metal Industries Ltd v Dillely* (1969) 117 CLR 651 at 656, held that:

“ . . . the mere fact that the reading of words in a section suggests an emphasis on singularity as opposed to plurality, is not enough to exclude plurality. Words in the singular will include the plural unless the contrary intention appears. But in considering whether a contrary intention appears

there need be no confinement of intention to any one particular section of an Act. It may be necessary to consider the section in its setting in the legislation and furthermore to consider the substance and tenor of the legislation as a whole.”.

The decision in *Blue Metal Industries v Dilley* was made in the context of s. 21 of the *Interpretation Act 1889* (NSW) which provided that in all Acts, unless the contrary intention appeared, words in the singular shall include the plural and words in the plural shall include the singular. Section 32(2) of the *Acts Interpretation Act 1954* (Qld) provides that in an Act, words in the singular include the plural and words in the plural include the singular. By virtue of s. 4 of the *Acts Interpretation Act 1954* (Qld), the application of s. 32(2) may be displaced wholly or partly, by a contrary intention appearing in any Act.

In my view, Chapter 6, Part 1 of the *Industrial Relations Act 1999* (Qld), does not provide for the making of certified agreements between an employer and a single employee. At the commencement of Part 6 which deals with certified agreements, the phrase “group of employees” appears. Thus, the noun “employees” which appears in its plural form, is qualified by an adjective which also indicates that “employees” is to be read in a plural sense. It would be one thing to find that the term employees could be read to include the singular form. It would be quite another thing to find that the phrase “group of employees” could similarly be read so as to include one employee. As stated in the Privy Council decision in *Blue Metal Industries v Dilley* (1969) 117 CLR 651 at 660:

“The circumstances that early words in a section are clearly not pluralised does not of itself prevent later words in the singular from including the plural. But if early words in the singular are clearly not intended to include the plural it might be surprising if words in the singular which immediately follow were by abrupt contrast and with no warning or indication of a change of approach intended to include the plural.”.

To take the converse approach, it would be surprising if the early words in s. 141(1) which clearly are used in a plural sense, were followed by provisions where the term “employees” was read to include the singular. Further, the definition of “group of employees” in s. 141(3) lists scenarios where such a group will come within the provisions of s. 141(1) enabling an agreement to be made. These scenarios are all of similar width, in that the provision does not refer to general matters in conjunction with specific matters of a particular kind. Applying the syntactical presumption *noscitur a sociis*, there is no warrant for departing from the general reference to “employees” in the plural form, and finding that a single employee of a single employer would come within the definition of “group of employees.”.

Throughout Chapter 6, Part 1, where reference is made to a single employee, it is in the context of rights which that employee has as part of a group of employees, with whom an agreement is proposed or made. Thus in s. 144(2) the employer must take the specified steps with respect to each relevant employee in the group of relevant employees with whom an agreement is proposed to be made. The reference to each relevant employee in s. 144(2) can in no way be read so as to allow the making of an agreement with a single employee. In addition, I fail to see how I could be satisfied under s. 156(1) that a valid majority of relevant employees employed at the time approved the agreement, when only one relevant employee was employed at the time.

Further, when consideration is given to the provisions of Chapter 6, Part 1 of the Act in their setting, it is clear that the making of agreements between a single employer and a single employee, is dealt with in Part 2 of that Chapter, through the medium of Queensland Workplace Agreements. In s. 192(1) it is made clear that a single employer and a single employee may make a QWA subject to the provisions of s. 192(3). If the intention of the legislature was to allow single employees to made certified agreements with single employers, then the clear precedent of the language in s. 192(1) could have been used to say so. Accordingly, the operation of s. 32(2) of the *Acts Interpretation Act 1954* (Qld) is displaced by the contrary intention, which in my view, is clear from the provisions of the *Industrial Relations Act 1999* (Qld).

I am also of the view that an agreement is made at the point it is approved by a valid majority of relevant employees, rather than at the point of certification. A number of decisions of the Australian Industrial Relations Commission illustrate this point, and are relevant given the similarities between the provisions of the *Industrial Relations Act 1999* (Qld) and the *Workplace Relations Act 1996* (Cth). In *Wideline Limited Enterprise Agreement 2002* PR918909, 27 June 2002, Munro J observed that pursuant to the *Workplace Relations Act 1996* (Cth), a written offer of a proposed agreement may be accepted by a valid majority of employees in a number of ways, including a secret ballot, and thereupon, the agreement is made. In *Group 4 Securitas Pty Ltd v ALHMMWU* PR909786 28 September 2001, Lacy SDP certified an agreement which the employer party sought to withdraw from, noting that an agreement made under the *Workplace Relations Act 1996* (Cth), reflects a bargain between the parties, and may affect rights established and accrued during negotiations. Accordingly, prior to the certification of a duly executed agreement, one party could not withdraw, without the consent of the other.

An agreement must meet the requirements of the Act for certification at the point it is before the Commission for certification. It is at that point that the Commission must assess whether the requirements of the Act necessary for certification are met. An agreement which does not meet the requirements for certification at the point at which certification is being considered by the Commission, cannot be certified on the basis that it may meet those requirements at some future point, during its period of operation. The fact that the Agreement in this case may cover more than one employee during its period of operation, by virtue of s. 141(2) and s. 166 does not overcome the difficulty, that the Agreement, made as it is with a single employee, does not meet the requirements for certification at the point certification is sought. It is also my view that such an agreement cannot be made in the first place.

The Agreement by virtue of the fact that it is made with a single employee, falls outside the provisions of s. 141(1) and is not able to be certified. By s. 158(1)(b) the Commission is required to give the persons who made the Agreement the opportunity to take such action as may be necessary to enable the Commission to certify the Agreement. Accordingly, the application is listed for further hearing on Friday, 2 August 2002, at 9.00 a.m.

I.C. ASBURY, Commissioner.

Appearances:

Released: 24 July 2002

Mr I. Tait of Queensland Cement Limited on behalf of Pozzolanic Bulk Carriers Pty Ltd.

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INDUSTRIAL COURT OF QUEENSLAND

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

Murrays Australia Limited AND Training Recognition Council AND Others (No 2) (C51 of 2002)

PRESIDENT HALL

22 July 2002

ORDER

By consent of the parties given 19 July 2002, the Court orders that the whole of the decision made by the Commission in AT13 to AT32 of 2002 on 8 July 2002, be stayed, pending the outcome of the substantive appeal in Case No. C52 of 2002.

Dated 22 July 2002.

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

Released: 22 July 2002

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**Training Recognition Council AND Queensland Chamber of Commerce and Industry
Limited, Industrial Organisation of Employers and Others (Nos. B992, B993 and B994 of 2002)**

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

COMMISSIONER BLOOMFIELD
COMMISSIONER BROWN
COMMISSIONER THOMPSON

12 July 2002

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 12 July 2002, this Commission orders that the said Order be amended as follows as from 12 July 2002:

1. By deleting clause 2.1.3(a) from Schedule 5 “Business and Property Services Industry” and inserting the following in lieu thereof:
 - “(a) Cleaning Traineeships
 - (i) Wages and Conditions for cleaning trainees who are subject to an industrial instrument which has specific provisions for cleaning trainees shall be as provided in that industrial instrument.
 - (ii) Cleaning trainees employed by Local Government employers shall be entitled to wages calculated at 80% of the Relevant Adult Rate and conditions in accordance with this order.”.
2. By deleting the heading to clause 2.1.1 from Schedule 21 “Transport and Distribution Industry” and inserting the following in lieu thereof:

“2.1.1 *Maritime Training Package; and Transport and Distribution Training Package*”
3. By inserting a new clause 2.1.3 in Schedule 23 “Wholesale and Retail Sales, Pharmaceutical and Other Personal Services Industries” as follows:

“2.1.3 *Wholesale Training Package*

Wholesale Operations trainees shall receive wages in accordance with the *Training Wage Award – State* (Certificate II – Skill Level B and Certificate III – Skill Level A) and conditions in accordance with this Order.”.

Dated 12 July 2002.

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

Operative Date: 12 July 2002
Amendment – Order – Apprentices’ and Trainees’ Wages and Conditions (Excluding
Certain Queensland Government Entities)

Released: 18 July 2002

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees,
Queensland and Others AND Queensland Chamber of Commerce and Industry Limited,
Union of Employers and Others (No. B920 of 2001)**

ENGINEERING AWARD – STATE

COMMISSIONER FISHER
COMMISSIONER THOMPSON
COMMISSIONER BROWN

15 May 2002

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 19 June and 14 August 2001 and 4, 5, 6, 7 and 8 February 2002, this Commission orders that the *Engineering Award – State* be amended as follows from 5 August 2002:

1. By deleting from clause 2.1(2) the word and figures in brackets, “clause 3.4(3)” and replacing them with “Part 8”.
2. By deleting clause 3.4(3) and renumbering clause 3.4(4) as clause 3.4(3);

3. By deleting from clause 4.2 the word and figures "clause 4.10" and replacing them with "clause 4.9".
4. By deleting the existing clause 4.9 of the Award and renumbering clause 4.10 as clause 4.9 and clause 4.11 as clause 4.10.
5. By inserting a new Part 7:

"PART 7 – PART-TIME EMPLOYMENT

- 7.1.1 An employee may be engaged to work on a part-time basis involving a regular pattern of hours which shall average less than 38 hours per week.
- 7.1.2(a) Before commencing part-time employment, the employee and employer must agree:
- (i) upon the hours to be worked by the employee, the days upon which they will be worked and the commencing and finishing times for the work; and
 - (ii) upon the classification applying to the work to be performed in accordance with Part 3 of this Award.
- (b) Except as otherwise provided in this Award, a part-time employee is entitled to be paid for the hours agreed upon in accordance with 7.1.2(a).
- (c) The terms of this agreement may be varied by *consent*.
- (d) The terms of this Award or any amendment to it shall be in writing and retained by the employer. A copy of the Award and any amendment to it shall be provided to the employee by the employer.
- 7.1.3 The terms of this Award shall apply *pro-rata* to part-time employees on the basis that ordinary weekly hours for full-time employees are 38.
- 7.1.4 *Overtime:* A part-time employee who is required by the employer to work in excess of the hours agreed upon in accordance with clause 7.1.2(a) and (c) shall be paid overtime in accordance with clause 4.4 of this Award.
- 7.1.5 *Public Holidays:* Where the part-time employee's normal paid hours fall on a public holiday prescribed in clause 5.3 and work is not performed by the employee, such employee shall not lose pay for the day. Where the employee works on the holiday, such employee shall be paid in accordance with clause 5.3 of this Award."
6. By inserting a new Part 8:

"PART 8 CASUAL EMPLOYMENT

- 8.1.1(a) A casual employee is to be one engaged and paid as such. A casual employee, for working ordinary time, shall be paid an hourly rate calculated on the basis of one thirty-eighth of the relevant weekly wage for the level of work being performed plus a loading of 23%. This loading is not an all-purpose payment.
- 8.1.2(a) A casual employee, other than an irregular casual employee as defined in clause 8.1.5(a), who has been engaged by a particular employer on a regular and systematic basis and for several periods of employment under this Award during a period of six months shall thereafter have the right to elect to have his or her contract of employment converted to full-time employment or part-time employment if the employment is to continue beyond the conversion process.
- (b) Every employer of such an employee shall give the employee notice in writing of the provisions of this clause within four weeks of the employee having attained such period of six months.
- The employee retains his or her right of election under this clause if the employer fails to comply with this paragraph.
- (c) Any such casual employee who does not within four weeks of receiving written notice elect to convert his or her contract of employment to a full-time employment or a part-time employment will be deemed to have elected against any such conversion.
- (d) Any casual employee who has a right to elect under clause 8.1.2(a), upon receiving notice under clause 8.1.2(b) or after the expiry of the time for giving such notice, may give four weeks' notice in writing to the employer that he or she seeks to elect to convert his or her contract of employment to full-time or part-time employment, and within four weeks of receiving such notice the employer shall consent to or refuse the election but shall not unreasonably so refuse. Any dispute about a refusal of an election to convert a contract of employment shall be dealt with as far as practicable with expedition through the grievance procedure.
- (e) Once a casual employee has elected to become and been converted to a full-time employee or a part-time employee, the employee may only revert to casual employment by written agreement with the employer.
- (f) If a casual employee has elected to have his or her contract of employment converted to full-time or part-time employment in accordance with clause 8.1.2(d), the employer and employee in accordance with this clause shall discuss and agree upon:
- (i) which form of employment the employee will convert to, that is, full-time or part-time; and
 - (ii) if it is agreed that the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked, as set out in clause 7.1.2:

Provided that an employee who has worked on a full-time basis throughout the period of casual employment has the right to elect to convert his or her contract of employment to full-time employment and an employee who has worked on a part-time basis during the period of casual employment has the right to elect to convert his or her contract of employment to part-time employment, on the basis of the same number of hours and times of work as previously worked, unless other arrangements are agreed upon between the employer and employee.

Following such agreement being reached, the employee shall convert to full-time or part-time employment.

Where, in accordance with clause 8.1.2(d) an employer refuses an election to convert, the reasons for doing so shall be fully stated to and discussed with the employee concerned and a genuine attempt made to reach agreement.

Any dispute about the arrangements to apply to an employee converting from casual employment to full-time or part-time employment shall be dealt with as far as practicable with expedition through the grievance procedure.

- (g) By agreement between the employer and the majority of the employees in the relevant workplace, or section of it, or with the casual employee concerned, the employer may apply 8.1.2(a) as if the reference to six months is a reference to 12 months, but only in respect of a currently engaged individual employee or group of employees. Any such agreement shall be recorded in the time and wages records. Any such agreement reached with an individual employee may only be reached within the two months prior to the end of the period of six months referred to in 8.1.2(a).

8.1.3(a) An employer when engaging a person for casual employment must inform the employee then and there that the employee is to be employed as a casual, stating by whom the employee is employed, the job to be performed and the classification level, the actual or likely number of hours required, and the relevant rate of pay.

(b) The employer shall give to a casual employee who has been engaged for one or more periods of employment extending over three or more weeks in any calendar month, and whose employment is or is likely to be ongoing, a notice in writing signed by or on behalf of the employer stating:

- (i) the name and address of the employer;
- (ii) if the employee has been engaged by the employer to perform work on hire to another person or company or is regularly engaged to perform work on hire to other persons or companies, a statement to that effect;
- (iii) the job to be performed and the classification level on which the employee has been or is likely to be engaged;
- (iv) as far as practicable, the terms of the current engagement, including the likely number and likely pattern of hours required to be worked, the base hourly rate upon which the casual loading is calculated, the casual loading and the total casual rate; and
- (v) the contingency on which the engagement expires, or the notice, if any, that will be given to terminate any ongoing employment.

Appendix 2 to this Award provides a pro-forma letter for compliance with the requirements of this clause.

(c) It shall be sufficient compliance with clause 8.1.3(b) if the employer gives such a note in writing upon or following the first occasion on which the casual employee has been so engaged for a period or periods extending over three or more weeks in any calendar month.

(d) On each occasion a casual employee is required to attend work, the employee is entitled to payment for a minimum of three hours' work.

8.1.4 An employee must not be engaged and re-engaged to avoid any obligation under this Award.

8.1.5(a) An "irregular casual employee" is one who has been engaged to perform work on an occasional or non-systematic or irregular basis.

(b) The provisions of clause 8.1.2 do not apply to irregular casual employees."

7. By inserting a new Appendix 2 as follows:

"APPENDIX 2

Appendix 2 to the *Engineering Award – State* provides a pro-forma letter which complies with the requirements of clause 8.1.3(b) of the Award. A letter in this form must be provided to all casual employees on the first occasion that they have been employed for three weeks or more in any calendar month and whose employment is likely to be ongoing. The employer must complete the details required and sign the letter. The letter should be provided on the employer's letterhead.

Employee Name: _____

EMPLOYER DETAILS

Employer's Name	
Employer's Address	

NATURE OF EMPLOYMENT

Will the employee be engaged to perform work on hire to other persons or companies or is the employee regularly engaged to perform work on hire to other persons or companies?	YES or NO
What job is the employee to perform? (e.g. boilermaker, fitter, etc.)	
At what classification level is the employee engaged or is likely to be engaged? (e.g. C-10, C-12, C-8 etc.)	

CONDITIONS OF EMPLOYMENT

What are the likely number and likely pattern of hours required? (e.g. 24 hours per week with 8 hours on Monday, Tuesday and Wednesday)	
A. What is the base rate of pay (including any overaward payment if applicable) upon which the casual loading is based?	A = \$..... per hour
B. What is the amount of casual loading to be paid? (B = 23% of A)	B = 23% of A = \$..... per hour
C. What is the total casual rate? (A + B = C)	C = A + B = \$..... per hour
What could be the reason for the engagement to finish?	Project finishes? <input type="checkbox"/> Shortage of Work? <input type="checkbox"/> Unsatisfactory Performance/ Conduct <input type="checkbox"/> Any other reason – List Below
What notice will be given to terminate the employment?	As much as possible under the circumstances? <input type="checkbox"/> A day? <input type="checkbox"/> At least an hour? <input type="checkbox"/>

Signed: _____

Position: _____

Date:..

Dated 15 May 2002.

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

Operative Date: 5 August 2002
Amendment – Casual and Part-time Employees
Released: 19 July 2002

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**Australian Building Construction Employees and Builders’ Labourers’ Federation (Queensland Branch)
Union of Employees and The Construction, Forestry, Mining & Energy, Industrial
Union of Employees, Queensland AND Queensland Master Builders Association,
Industrial Organisation of Employers and Others (Nos. B926 and B944 of 2002)**

BUILDING CONSTRUCTION INDUSTRY AWARD – STATE

COMMISSIONER THOMPSON

12 July 2002

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 12 July 2002, this Commission orders that the said Award be amended as follows as from 1 July 2002:

By deleting clause 3.5(3)(d) and inserting the following in lieu thereof:

“(d) ‘Ordinary time earnings’ (which for the purposes of the *Superannuation Guarantee (Administration) Act 1992* will operate to provide a notional earnings base) means the actual ordinary rate of pay the employee receives for ordinary hours of work including tool allowance, industry allowance, trade allowance, shift loading, special rates, qualification allowances (e.g. first aid, laser safety officer), multi-storey allowance, district/location allowance, piecework rates, underground allowance, award site allowances, asbestos eradication allowance, leading hand allowances, in charge of plant allowance and supervisory allowances, together with those fares and travel allowances (as contained in clauses 3.7(1),3.7 (2), 3.7(3), 3.7(6)(b) and 3.7(7)) paid for days where ordinary time is worked, where applicable. The term includes any regular overaward pay as well as casual rates received for ordinary hours of work. All other allowances and payments are excluded. [Note: for the purposes of this subclause ‘ordinary hours of work’ includes ordinary hours of shiftwork where applicable].”

Dated 12 July 2002.

By the Commission,
[L.S.] E. EWALD,
Industrial Registrar.
Released: 24 July 2002

Operative Date: 1 July 2002
Amendment – Award – Building Construction Industry Award – State

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**Australian Building Construction Employees and Builders’ Labourers’ Federation (Queensland Branch)
Union of Employees and The Construction, Forestry, Mining & Energy, Industrial
Union of Employees, Queensland AND Queensland Master Builders Association,
Industrial Organisation of Employers and Others (Nos. B928 and B942 of 2002)**

BUILDING PRODUCTS, MANUFACTURE AND MINOR MAINTENANCE AWARD – STATE

COMMISSIONER THOMPSON

12 July 2002

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 12 July 2002, this Commission orders that the said Award be amended as follows as from 1 July 2002:

By deleting clause 3.5(3)(d) and inserting the following in lieu thereof:

“(d) ‘Ordinary time earnings’ shall mean the actual ordinary rate of pay the employee receives for ordinary hours of work including shift loading and leading hand, in-charge or supervisory allowances, fares and travelling allowances (as contained in clause 3.6(27)(b)) where applicable. The term includes any overaward payment as well as casual rates received for ordinary hours of work. Ordinary time earnings shall not include overtime, disability allowances, commission, bonuses, lump sum payments made as a consequence of the termination of employment, annual leave loading, penalty rates for public holiday work, or any other extraneous payments of a like nature. [Note: for the purposes of this clause ‘ordinary hours of work’ includes ordinary hours of shiftwork where applicable].”

Dated 12 July 2002.

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

Operative Date: 1 July 2002
Amendment – Award – Building Products, Manufacture and Minor
Maintenance Award – State

Released: 24 July 2002

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**Australian Building Construction Employees and Builders’ Labourers’ Federation (Queensland Branch)
Union of Employees and The Construction, Forestry, Mining & Energy, Industrial
Union of Employees, Queensland AND Queensland Master Builders Association,
Industrial Organisation of Employers and Others (Nos. B927 and B943 of 2002)**

BUILDING TRADES PUBLIC SECTOR AWARD – STATE

COMMISSIONER THOMPSON

12 July 2002

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 12 July 2002, this Commission orders that the said Award be amended as follows as from 1 July 2002:

By deleting clause 3.5(3)(d) and inserting the following in lieu thereof:

“(d) ‘Ordinary time earnings’ shall mean the actual ordinary rate of pay the employee receives for ordinary hours of work including shift loading and leading hand, in-charge or supervisory allowances, fares and travelling allowances (as contained in clause 3.6(14)(b)) where applicable. The term includes any overaward payment as well as casual rates received for ordinary hours of work. Ordinary time earnings shall not include overtime, disability allowances, commission, bonuses, lump sum payments made as a consequence of the termination of employment, annual leave loading, penalty rates for public holiday work, or any other extraneous payments of a like nature. [Note: for the purposes of this clause ‘ordinary hours of work’ includes ordinary hours of shiftwork where applicable].”

Dated 12 July 2002.

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

Operative Date: 1 July 2002
Amendment – Award – Building Trades Public Sector Award – State
Released: 24 July 2002

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**Director-General Department of Employment, Training and Industrial Relations AND
The Queensland Public Sector Union of Employees and Another (No. B1695 of 1999)**

SENIOR COLLEGE TEACHERS' AWARD – STATE

COMMISSIONER BALDWIN

21 January 2000

AMENDMENT

THIS matter coming on before the Commission at Brisbane on 21 January 2000, this Commission orders that the said Award be amended as follows as from 1 July 1999:

1. By deleting from the heading to clause 1.3, the word "Act" and inserting the word "Statutory".
2. By deleting clause 1.3 and inserting the following in lieu thereof:

"The provisions of the *Public Service Act 1996* and Regulations made thereunder and the *Vocational Education, Training and Employment Act 1991* and Regulations made thereunder and the Directives of the Minister for Employment, Training and Industrial Relations shall continue to apply to the employees or classes of employees to which this Award applies, where such Acts, Regulations and directives are applicable, save insofar as the conditions of employment and the remuneration to be received by such employees or classes of employees are affected by the provisions of this Award."

3. By inserting a new clause (2.4) as follows:

"2.4 Medical Certificate for Sick Leave

Unless otherwise provided, applications for sick leave must be supported by a medical certificate or other evidence of the illness that is acceptable to the chief executive.

Where the absence is not longer than three consecutive working days, the chief executive may dispense with the requirement to furnish a medical certificate or other evidence of the illness."

Dated 21 January 2000.

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

Operative date: 1 July 1999
Amendment – new clauses
Released: 22 July 2002

Filename: no.15 02.08.02
Directory: S:\QIRCDEV-BASE\qgig\2002\vol 170
Template: H:\NORMAL.DOT
Title: QGIG - Vol. 170 No. 15 02.08.02
Subject:
Author: Queensland Industrial Relations Commission
Keywords:
Comments:
Creation Date: 30/07/2002 2:12:00 PM
Change Number: 3
Last Saved On: 17/01/2008 2:11:00 PM
Last Saved By: TorrenVM
Total Editing Time: 0 Minutes
Last Printed On: 17/01/2008 2:11:00 PM
As of Last Complete Printing
Number of Pages: 17
Number of Words: 13,175 (approx.)
Number of Characters: 67,723 (approx.)