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No. 16

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
CA289/02	MontroseAccess - Certified Agreement 2002	25/7/02	CA609/98 CA610/02
CA291/02	HCA Private Hospitals - Administration Staff - Certified Agreement 2002	25/7/02	
CA301/02	Action Supermarkets and SDA Richlands Distribution Centre - Certified Agreement 2002	25/7/02	CA176/01
CA304/02	The Holy Cross Laundry - Certified Agreement 2002	25/7/02	
CA305/02	Pauls Limited (Brisbane Operations) - Certified Agreement	25/7/02	CA488/00
CA296/02	QCL Cairns - Certified Agreement 2002	29/7/02	CA533/98
CA310/02	Perma-Log - Certified Agreement 2001	31/7/02	CA70/00
CA316/02	Belyando Shire Council - Certified Agreement 2002	31/7/02	CA109/00
CA318/02	Roma Town Council - Certified Agreement 2002	31/7/02	CA34/01
CA321/02	Carter Holt Harvey Cartons, Crestmead - Certified Agreement 2002	31/7/02	

The following Agreements have been amended:

No/s	Title	Date approved
CA234/00	State Government Departments - Certified Agreement 2000	15/7/02
CA44/01	Goondiwindi Town Council - Certified Agreement 2000	24/7/02
CA17/02	Livingstone Shire Council Enterprise Bargaining Certified Agreement 2001	30/7/02

E. EWALD
Industrial Registrar

INDUSTRIAL COURT OF QUEENSLAND

*Industrial Relations Act 1999 – s. 341(1) – appeal against decision of industrial commission***Queensland Public Sector Union of Employees AND Department of Corrective Services (No. C45 of 2002)****Department of Corrective Services AND Queensland Public Sector Union of Employees (No. C46 of 2002)****QUEENSLAND CORRECTIVE SERVICES COMMISSION EMPLOYEES' AWARD – STATE**

PRESIDENT HALL

31 July 2002

DECISION

By a decision of 12 April 1994, see 145 QGIG 872, the Queensland Industrial Relations Commission decided to make a new award entitled Queensland Corrective Services Commission Employees' Award – State. A principal purpose of the new Award was to bring within one award both custodial correctional officer employees and non-custodial correctional or administrative employees of the Department of Corrective Services. Hitherto, the employment of custodial correctional officer employees had been governed by the Queensland Corrective Services Commission Employees' Award – State whilst the employment of non-custodial correctional or administrative employees had been governed by the Queensland Corrective Services Commission Professional Administrative Employees' Award – State. The operative date of the new award was 28 February 1994. It was published on 15 July 1994, see 146 QGIG 623. It was (materially) amended as and from 23 December 1996 by a decision of the Commission of 17 January 1997, see 154 QGIG 684. It is necessary to consider only those provisions of the new Award which identify the classification and paypoint at which new recruits are to be engaged and which deal with the matter of career progression (promotion apart) through paypoints and classification structures. Sections 3.7, 3.8 and 3.9 of the Award currently provide (administrative and nursing streams omitted):

“3.7 Qualifications

...

- (2) *Correction Stream* – Except for Trades Instructors and Farm Officers whose qualification requirements are set out in provision (a) hereof, an employee appointed to the Corrections Stream who has satisfied the requirements of an Associate Diploma, shall be paid not less than Classification Level 1, paypoint 3. An employee appointed to the Corrections Stream who satisfies the requirement for a Degree, shall be paid not less than Classification Level 1, paypoint 5. An employee appointed to the Corrections Stream who satisfies the requirement for a Degree that requires in excess of three years to complete, shall be paid not less than Classification Level 1, paypoint 6.

3.8 Movement Between Classification Levels

- (1) *All Streams* – Subject to the provisions of this clause movement between Classification Levels, in all Streams, will be based on appointment on merit to advertised vacancies.

...

- (3) *Corrections Stream* – Movement between classification levels in the Corrections Stream is prescribed as follows:
- (a) Except for Trades Instructors and Farm Officers whose progression arrangements are set out in subclause (5) hereof, movement from Classification Level 1 to Classification Level 2 of the Corrections Stream will be restricted to persons who possess a relevant Degree or equivalent qualification or experience as deemed appropriate by the QCSC.

...

3.9 Movement Within Classification Levels

- (1) Except in the case of an employee in the Administrative Stream who is paid the prescribed basic salary on attaining the age of twenty-one (21) years or in the case of a promotion, or transfer and promotion from one Classification Level to another, an increase shall not be made to the salary of any employee until:
- (a) in the case of a full-time employee such employee has received such salary for a period of twelve (12) months;
- (b) in addition to (a) above, an employee in the Corrections Stream, other than an employee appointed as a Trade Instructor or Farm Officer, will be restricted in movement beyond paypoint 2 of Classification Level 1 until the Certificate III in Corrections is obtained. Movement beyond paypoint 4 of Classification Level 1 will be restricted to employees who possess an Advanced Certificate in Corrections. Movement beyond paypoint 7 of Classification Level 1 will be restricted to employees who possess an Associate Diploma in Corrections:

Provided that in accordance with clause 3.7, graduates who are appointed to the Corrections Stream other than Trade Instructors and Farm Officers, will automatically progress through the following paypoints:

- Classification Level 1, paypoint 5
- Classification Level 1, paypoint 6
- Classification Level 1, paypoint 8
- Classification Level 2, paypoint 1
- Classification Level 2, paypoint 2
- Classification Level 2, paypoint 3
- Classification Level 2, paypoint 4.”

Differences have arisen between the Queensland Public Sector Union of Employees and the Department of Corrective Services about the operation of ss. 3.7, 3.8 and 3.9 to employees who have satisfied the requirements of a degree. On 23 August 2001 the Union sought the Commission's interpretation of these sections. The Commission was required to answer the following questions:

"1. Do employees in the Corrections Stream who, on appointment, satisfy the requirements for a degree, have the right to automatically progress through the following paypoints:

Classification Level 1, paypoint 5
 Classification Level 1, paypoint 6
 Classification Level 1, paypoint 8
 Classification Level 2, paypoint 1
 Classification Level 2, paypoint 2
 Classification Level 2, paypoint 3
 Classification Level 2, paypoint 4

2. Do employees in the Corrections Stream who, after they are appointed, satisfy the requirements for a degree have the right to automatically progress through the paypoints as outlined in Question 1 above?
3. If not, what are the progressional arrangements for such employees?"

The Commission gave the answer "Yes" to each of question 1 and question 2. In the premises, it was unnecessary for the Commission to answer question 3. Against that interpretation the Department of Corrective Services now appeals.

In the course of its reasoning the Commission "found", to attempt to use a neutral word, that the interpretation contended for by the department had been accepted by the Union since 1994. The Commission concluded:

"Having considered all of the evidence, materials, authorities and submissions, provided in these proceedings in reaching my decision, I feel it necessary to place on record that the continued acceptance of the Board interpretation, since 1994, by the Union up until the filing of the application in this matter, that any implementation of this decision, prior to the date of lodgement of the application, would, in ethical terms, be morally unjust and it will be the strong recommendation that the operative date of this interpretation be formalised in a written agreement between the parties applying from 23 August 2000."

The Union now appeals against the "finding", the conclusion and the recommendation.

Although the Union's appeal was first in time it is common ground (and the appeal was argued on the basis) that the department's appeal should be determined first.

It is the department's contention that each of question 1 and question 2 should be answered "No" and that question 3 should be answered:

Employees in the Corrections Stream who, after appointment, satisfy the requirements for a degree, have the right to automatically progress through Classification Level 1, paypoint 5 to Classification Level 1, paypoint 9.

Movement between Classification Levels is governed by clause 3.8(3)(a) of the Award. To progress from Classification Level 1, paypoint 9 to Classification Level 2, paypoint 1, an employee must possess:

- (i) a 'relevant degree' as deemed appropriate by the Queensland Corrective Services Commission or its successors; or
- (ii) an equivalent qualification as deemed appropriate by the Queensland Corrective Services Commission or its successors (which may include a degree that is not a 'relevant degree' and another qualification such as a diploma); or
- (iii) experience as deemed appropriate by the Queensland Corrective Services Commission or its successors.

Once a graduate employee has progressed, pursuant to clause 3.8(3)(a), from Classification Level 1, paypoint 9 to Classification Level 2, paypoint 1, pursuant to clause 3.9(b), automatic progression occurs through to Classification Level 2, paypoint 4."

The gist of the department's complaint is that the Commission acted on the basis of ss. 3.7 and 3.9 and gave no (or insufficient) weight to s. 3.8.

It is, I think, settled that an award is to be read as a whole, compare *City of Wanneroo v. Holmes* (1989) 30 IR 362 at 378 to 379 per French J. Here, if ss. 3.7, 3.8 and 3.9 are read as a whole they present as sections dealing with separate matters. Section 3.7 presents as a section dealing with the classification level to which the paypoint at which a new recruit is to be appointed. Section 3.8 presents as a clause dealing with movement from one classification level to another. Section 3.9 presents as a clause dealing with progression from one paypoint to another within a classification level. Certainly, the heading to s. 3.8 suggests that it is about movement between classification levels whilst the heading to s. 3.9 suggests it is about movement within classification levels. An award of the Queensland Industrial Relations Commission is a statutory instrument within the meaning of the *Statutory Instruments Act 1992*, *Queensland Nurses' Union of Employees v. Longreach and District Aged People's Inc trading as Pioneers' Hostel/Nursing Home (No. 2)* (2002) 170 QGIG 212 at 213. By s. 14(1) of the *Statutory Instruments Act 1992* certain provisions of the *Acts Interpretation Act 1954* are applied to statutory instruments. Amongst those provisions is s. 35C. It follows that the headings to sections of an award are to be treated as part of the Award. Without rehearsing in detail the use which may legitimately be made of a heading, it is clear that a heading may be taken into consideration in determining the meaning of the provision where that provision is ambiguous and in determining the scope of a provision, see in *Re Commercial Bank of Australia Limited* (1893) 19 VLR 333 at 375 per Holroyd J (with whom Hodges and Hood JJ agreed) and *Silk Bros Pty Ltd v. State Electricity Commission of Victoria* (1943) 67 CLR 1 at 16 per Latham CJ.

In their natural and grammatical meaning the substance of words of s. 3.8 also suggests that the section is intended to exhaustively state the circumstances in which an employee, including an employee who has satisfied the requirements for a degree, may move from one classification level to another. Again, in their natural and grammatical meaning, the words at paragraphs (a) and (b) of s. 3.9(1) suggest that the provision is directed to the matter of movement from one salary point to another within the classification level. The difficulty, of course, is that the case largely turns on the construction of what presents as a proviso to s. 3.9(1)(b).

The problems associated with the construction of a proviso are demonstrated by the decision of the Privy Council in *Commissioner of Stamp Duties v. Atwill* [1973] AC 558, a decision which reversed a majority judgment of the High Court of Australia, see at (1971) 45 ALJR 703. The essential nature of the difficulty was summed up by Viscount Dilhorne at 561:

“The decision of the majority of the High Court was thus based on the view that the proviso was a true proviso limiting or qualifying what preceded it.

Their Lordships are not able to agree with this conclusion. While in many cases that is the function of a proviso, it is the substance and content of the enactment, not its form, which has to be considered, and that which is expressed to be a proviso may itself add to and not merely limit or qualify that which precedes it.”.

The current state of the authorities is, I think, that a provision framed as a proviso should be construed as such, i.e. as a qualification of what has gone before rather than an independent provision, but that consideration must always be given to whether the proviso contains matter which is really “in substance a fresh enactment, adding to and not merely qualifying that which goes before, *Rhondda Durban Council v. Taff Vale Railway Co* [1909] AC 253 at 258 per Loreburn LC: see *Datt v. Law Society of New South Wales* (1981) 35 ALR 523 at 534 per Brennan J and *State of Western Australia v Wilmshire* (1981-1982) 40 ALR 213 at 226 to 227 per Wilson J. To the union’s view of ss. 3.7, 3.8 and 3.9 I shall shortly turn. But it may be noted here that the construction contended for by the department gives no weight to the adverb “automatically” at the (apparent) proviso. As the Commission pointed out, in reliance on the Shorter Oxford English Dictionary, that “automatic” bears the primary meaning “of the nature of, or pertaining to, an automaton. 1. Self-acting, having the power and motion or action within itself . . . 2. going by itself . . .”. “Automatically” has a comparable meaning.

At one time I was taken by the argument that the omission of classification level 1, paypoint 9 in the table at the (apparent) proviso favoured a construction contended for by the department. The argument was that on its literal meaning the (apparent) proviso would carry an employee in classification level 1, paypoint 8 to classification level 1, paypoint 9 but would not carry the employee through that latter paypoint to classification level 2 paypoint 1. On reflection, the difficulty is the table makes no reference to classification level 1, paypoint 7. On the argument described an employee whose initial appointment was below classification level 1, paypoint 8 might not progress to that paypoint. The more likely intention, and Mr Murdoch, of Counsel for the department does not contend to the contrary, is that it was intended that an employee would “jump” paypoint 7. If that be so, the omission of reference to classification level 1, paypoint 9 may be explained on the same basis. The explanation, I hasten to add, does not give support to the construction contended for by the Union. It merely operates to deny the department an argument which would otherwise be available to it.

It should, additionally, be noted that a criticism of the construction contended for by the department is that it does not explain why s. 3.7 refers to a “degree”, s. 3.8 refers to a “relevant degree” and s. 3.9 refers to a “graduate”. That criticism leads to what, in my view, is the most significant deficiency in the department’s case. I adhere to the view which I expressed in *Queensland Nurses’ Union of Employees v. Longreach and District Aged People’s Inc trading as Pioneers’ Hostel/Nursing Home (No.2)* (2002) 170 QGIG 211 at 212 to 213 that the starting point in the construction of an award is identification of the purpose of the Award, including its policy objective, because an interpretation which will best achieve that purpose is to be preferred to any other interpretation. Without seeking to republish that which has only recently appeared in the Queensland Government Industrial Gazette, it must be emphasised that the purpose of an award is now the starting point rather than a consideration to which regard may be had where analysis of the natural and grammatical meaning of the words used does not lead to the formation of a conviction that a particular construction is correct. In this case, reading ss. 3.7, 3.8 and 3.9 as a whole, it is apparent that the person or persons responsible for the drafting, who apparently entertained a rather limited and narrow view of the nature and purpose of tertiary education, had a concern about the appointment and advancement of graduates holding degrees which were not “relevant”. On a moment’s reflection, there is no problem about the appointment of graduates with “irrelevant” degrees. Subject to any other legislation, the department may simply decline to appoint such graduates. A system under which graduate recruits move “automatically” through both paypoints and classification is containable if those making the selection on behalf of the department are able to withhold appointment from applicants of whom it might be thought desirable that they do not so progress. At a policy level, the problem is with the employee who acquires a degree after appointment. That problem may be, and I think is, dealt with by denying such a person advancement beyond the classification level to which the person was appointed without a degree, save where the person acquires a “relevant degree” or otherwise satisfies s. 3.8.

On the purposive approach to construction, full effect may be given to each of ss. 3.7, 3.8 and 3.9. Section 3.7 goes to the classification level and paypoint at which a graduate recruit is to be appointed. The (apparent) proviso to s. 3.9(1)(b) is not a true proviso. It deals with a matter of progression through the paypoints and through the classifications of graduate recruits. Full effect is given to the adverb “automatically”. Treating the (apparent) proviso as an independent provision rather than as a qualification of s. 3.9(1)(b) explains why it is that the (apparent) proviso commences not, “provided that”, but “provided that in accordance with clause 3.7”. Neither s. 3.7 nor the (apparent) proviso to s. 3.9(1)(b) touch upon the situation of employees who satisfy the requirements of a degree some time after commencement of employment with the department. Progression of such employees through the various paypoints, both before and after acquisition of a degree, is regulated by s. 3.9(1)(a). Movement of such persons from classification level 1 to classification level 2 is regulated by s. 3.8(3)(a). I take the liberty of adding that I reject the proposition, which seems to be almost common ground between the parties, that the relevance of a degree is to be determined by the opinion of the department. In my view the test of relevance is objective. Whether a disagreement between an employee and the department about the relevance of a degree is to be resolved on a grievance procedure, by way of an application for an order in the nature of a mandatory injunction or by treating the employee as reclassified in an action for the recovery of wages may be left to another day until various possibilities are properly argued. I set aside the answers given by the Commission. I order that the questions asked of the Commission be answered:

1. Do employees in the Corrections Stream who, on appointment, satisfy the requirements for a degree, have the right to automatically progress through the following pay points:

Classification Level 1, Pay Point 5
 Classification Level 1, Pay Point 6
 Classification Level 1, Pay Point 8
 Classification Level 2, Pay Point 1
 Classification Level 2, Pay Point 2
 Classification Level 2, Pay Point 3
 Classification Level 2, Pay Point 4.

The answer is “Yes”.

2. Do employees in the Corrections Stream who, after they are appointed, satisfy the requirements for a degree have the right to automatically progress through the pay points as outlined in question 1 above?

The answer is “No”.

3. Employees in the Corrections Stream who satisfy the requirements for a degree may move (by progression) from Classification Level 1 to Classification 2 only by satisfying s. 3.8. Such employees progress through paypoints pursuant to s. 3.9(1)(a).

I turn now to the Union’s appeal. In the proceedings before the Commission much evidence was led about how the parties to the proceedings had treated ss. 3.7, 3.8 and 3.9 after the Award had been made. In my view such evidence was inadmissible. *Seamen’s Union of Australia v. Adelaide Steamship Co Ltd* (1976) 46 FLR 444 at 445, *Re: Hydro Electric Commission (Tas) Carpenters’ and Painters’ Award 1979*, [1981] IAS Current Review 549 at 554 per

Morling J and *Professional Radio and Electronics Institute of Australasia v. Qantas Airways Ltd* (1984) 10 IR 1 at 324 per Gray J. The decision in *Merchants Service Guild of Australia v. Sydney Steam Colliery Owners and Coal Stevedores Association* (1958) 1 FLR 248 at 251, 254 and 257 should be taken to establish no more than that if an award is remade after a history of consistent conduct by the parties, it is permissible to have regard to that conduct as supporting the view that the parties and the arbitrator intended to continue a settled interpretation of the provision; compare *Professional Radio and Electronics Institute of Australasia v. Qantas Airways Ltd*, *ibid*, and *Short v. F W Hercus Pty Ltd* (1993) 40 FCR 511 at 517 per Burchett J. However, in so far as *Merchant Service Guild of Australia v. Sydney Steam Colliery Owners and Coal Stevedores Association, op.cit.*, is concerned with conduct after the making of an award, it was based on the decision of the Privy Council in *Watcham v. Attorney-General of the East Africa Protectorate* [1919] AC 533 which is no longer regarded as good law, compare *F L Schuler A G v. Wickham Machine Tools Sales Ltd* [1974] AC 235. In any event, the decision is directed to an industrial agreement rather than an award. On the admissibility of evidence of such conduct, the decision should not be followed. Section 320(2) of the *Industrial Relations Act 1999* may not be prayed in aid. The evidence is inadmissible because it is not relevant. Irrelevant material is inherently incapable of informing the mind of a Tribunal. Here, regrettably, the matter was let in without objection and was, indeed, made the subject of cross-examination. Understandably the Commission acted upon the evidence. In doing so the Commission made "finding" previously described. The "finding" led to the Commission making the recommendation previously set out. The Union now seeks to challenge both the "finding" and the recommendation. In my view neither the "finding" nor the recommendation are appellable.

By s. 341(1) a person dissatisfied with a decision of the Commission may appeal against the decision to this Court on grounds where specified. "Decision" is unhelpfully defined at schedule 5 to mean:

- “(a) a decision of the court, the commission, a magistrate or the registrar; or
- (b) an award, declaration, determination, direction, judgment, order or ruling; or
- (c) an agreement approved, certified, or amended by the commission and an extension of the agreement.”.

I say "unhelpfully" because the noun "decision" is defined by reference to, *inter alia*, the noun "decision". *Prima facie*, the difficulty should be overcome by giving "decision" where it appears at paragraph (a) meaning other than the defined meaning of "decision", compare *The King v. Commonwealth Court of Conciliation and Arbitration and Others ex parte the State of Victoria and Another* (1942) 66 CLR 488 at 501 per Latham CJ and *The Queen v. Coldham; ex parte Australian Social Welfare Union* (1983) 153 CLR 297 at 315. Just what that "other meaning" might be I refrain from saying until such time as I have had a full argument upon the point. For present purposes, it is sufficient to recognise that notwithstanding that the right to appeal is no longer confined to a "person aggrieved" but extends to a person "dissatisfied", there can be no justification for classifying a non-binding recommendation of the type issued by the Commission in this matter as a "decision" within paragraph (a) of the definition of "decision" or a "direction" within the meaning of paragraph (b) of that definition. As to the distinction between a binding and a non-binding recommendation see generally *Minister for Immigration and Ethnic Affairs v. Pochi* (1981) 149 CLR 132 at 143 per Gibbs CJ, Mason, Aickin and Wilson JJ). Still less, may a "finding" which is but a reason for the making of the unappellable recommendation be characterised as a "decision" within the meaning of paragraph (a) of the definition of "decision" or a "ruling" within the meaning of paragraph (c) of the definition: compare *Lake v. Lake* [1955] P 336 at 343 to 344 per Lord Evershed MR, *The Queen v. Ireland* (1970) 126 CLR 321 at 330 per Barwick CJ, *Ah Toy v. Registrar of Companies* (1985) 10 FCR 280 at 286 and *Australian Telecommunications Commission v. Colpitts* (1986) 12 FCR 395 at 410 per Jackson J.

I order that the union's appeal, *viz* No. C45 of 2002, be dismissed.

Dated 31 July 2002.

D.R. HALL, President.

Appearances:

Mr C. Murdoch, instructed by Crown Law for the Department of Corrective Services.

Mr J. Merrell, instructed by Quinlan, Miller & Treston, Solicitors, for The Queensland Public Sector Union of Employees.

Released: 31 July 2002

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

The Australian Workers' Union of Employees, Queensland AND The Crown and Others (No. B1402 of 1994)

CIVIL CONSTRUCTION, OPERATIONS AND MAINTENANCE GENERAL AWARD – STATE

COMMISSIONERS FISHER, BECHLY

31 July 2002

Full Bench decision – Traffic Controller – Application granted – Variation not submitted – Omission identified by AWU – Registrar notified – Matter relisted – Conference – No agreement between the parties – Traffic control providers – Amendment and operative date determined.

DECISION

On 16 April 1996, a Full Bench consisting of Commissioners Bougoure, Fisher and Bechly, issued a decision in relation to two competing applications dealing with the issue of award coverage for the classification of Traffic Controller (1996) 151 QGIG 56. The Full Bench decided that "traffic control work performed on contract by employees of Security Industry employers should not be covered by the Civil Construction, Operations and Maintenance General Award – State.". The award coverage in that case was determined to be the Security Industry (Contractors) Award – State.

In relation to the application filed by the Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees (ALHMWU), the Full Bench decided that "the provisions (of the Security Contractors Award) are currently of sufficient breadth to cover the type of duties undertaken by persons performing what is called the duty of a traffic controller, however, we see no reason why a new classification should not be more precise to remove any doubt.". (our parenthesis) In relation to The Australian Workers' Union of Employees, Queensland (AWU) application to vary the Civil Construction Award to insert a new classification of "Traffic Controller – Construction Sites", the Full Bench said:

“In the event that it be necessary, we propose to grant the AWU application subject to an exemption, as indicated in relation to employees of employers who carry on a distinct or separate business or a Security Industry provider.”.

The AWU was directed to confer with the other parties and submit to the Commission an appropriate variation, including an adequate exemption provision, within 14 days of the date of the decision.

For reasons that are now lost in the mists of time, a variation, including an exemption provision, was not submitted by the AWU. Nor was one issued by the Full Bench. This omission was only realised by the AWU after being recently involved in a number of issues about whether traffic controllers are paid under the Civil Construction Award. On having the matter brought to their attention, the AWU wrote to the Industrial Registrar advising of their omission and proposing an amendment to the Award as originally directed.

On receipt of the correspondence, the application by the AWU was relisted and a copy of the draft amendment forwarded to the parties for their consideration. At the hearing, the Commission noted that one member of the Bench which had issued the decision in 1996 had resigned his Commission and inquired whether any of the parties objected to the remaining two members of the Bench dealing with the matter. No party objected.

At the request of the parties, the matter was adjourned into conference to explore whether concerns raised by some of the parties could be addressed. Regrettably, they could not and the Commission must now decide the matter.

The primary concern raised by the ALHMWU and the Australian Industry Group, Industrial Organisation or Employers (Queensland) (AIG) was that since the release of the Full Bench decision in 1996, the nature of the "industry" has changed markedly. Since that time a number of companies have been established that provide traffic control services. In the view of the ALHMWU, this change renders the proposed amendment obsolete or at best, the proposed exemption should be further amended to exempt traffic control providers. The AWU, in particular, took issue with this proposition.

We consider that any amendment to the Civil Construction Award resulting from the 1996 Full Bench decision must reflect that decision. There was no evidence put before the Full Bench at that time about distinct traffic control providers. None has been formally put to the Commission subsequently, we only have assertions from the bar table. It may well be that the industry has changed since 1996. Indeed it would be reasonable to expect that it had, given the rapidly changing world in which we live. However, this is not a matter that we can address here.

The AWU have proposed the amendment to the Civil Construction Award be in the following terms:

"Traffic Controller – Construction Sites (excluding employees of employers who carry on a distinct or separate business as a security industry provider.)".

The words in brackets adopt the summary of the decision of the Full Bench as given above. We now consider the exemption adequately reflects the issue that the Full Bench addressed. Accordingly, we believe the amendment should reflect an earlier part of the decision where the issue was identified. The amendment is issued in the following terms:

"Traffic Controller – Construction Sites (excluding employees of employers whose substantial function and character is that of providing security services, but who, to varying degrees and on an as required basis, provide their employees to work as traffic controllers on construction sites pursuant to a contract between the employer and the authority undertaking road construction work.)".

The second contentious issue was the date of operation. Only the AWU sought an operative date of 16 April 1996; the other parties proposed the operative date be that of the date of hearing regarding the form of the amendment.

The reason the amendment was not issued in 1996 seems to be that of omission. None of the parties submitted any particularly disadvantageous consequences in the event the amendment was backdated to 1996. In our view, the date of operation of the amendment, which includes the exemption, should be 16 April 1996. In determining such date to be appropriate the Commission has exercised its power under s. 125(3)(c) of the *Industrial Relations Act 1999* and relies on the decision of Moynihan, P in *Re: North Queensland Boating Operators Employees Award – State* (1991) 138 QGIG 187. That decision interpreted an almost identical section of the *Industrial Relations Act 1990 – 1991* to the present Act provision.

Order Accordingly.

G.K. FISHER, Commissioner.

Appearances:

Ms T. Lane and Mr. B Swan for the applicant.

Ms M. Austin and Mr C. Price for the Federated Engine Drivers' and Firemen's Association of Australasia Queensland Branch, Union of Employees and The Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland.

R.E. BECHLY, Commissioner.

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

Mr R. Anderson for the Department of Industrial Relations.

Mr S. Nance and Mr P. Knight for Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employees.

Released: 31 July 2002

Mr G. Power for the Australian Industry Group, Industrial Organisation of Employers (Queensland).

Mr A. Ivory and Mr A. Glowacz on behalf of Traffic Control Operations Pty Ltd.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

Julie Stanton AND QM Technologies Pty Ltd (No. B442 of 2002)

COMMISSIONER BLADES

25 July 2002

Unfair dismissal – Conduct, capacity and performance – Questions of fact – Failure of employee to cooperate in performance improvement process – Dismissal not harsh, unjust or unreasonable – Application dismissed.

DECISION

Ms Julie Stanton commenced employment with QM Technologies Pty Ltd (QM) as a software engineer on 2 July 2001. She was dismissed on 4 March 2002, allegedly for unsatisfactory performance.

The applicant claims that in January 2002 she raised work related concerns and was subsequently victimised. On 25 January 2002 she was asked to sign documents "Position Statement" and "Product Development performance objectives". She refused to sign because the documents were less favourable than the original employment contract she signed. On 26 January, she filed an unfair treatment complaint regarding the meeting on 25 January and since

then, she alleges that the performance problems were raised. She was dismissed on 4 March without having been given an opportunity to respond to the performance allegations. She seeks reinstatement, the payment of legal fees, reimbursement of filing fee together with compensation for humiliation and other matters considered appropriate.

Fairly predictably in these cases, QM has a different version. Mr Goodwin, the Director of the Product Development team of which the applicant was a member, alleged that unsatisfactory work performance by members of the group (including Ms Stanton but not limited to Ms Stanton) were first raised with him in October and November 2001. On 19 December, he advised the group he was dissatisfied with overall performance and productivity. He says that he advised the group that beginning early in 2002, measures would be taken to address non-performance at both group and individual levels. He instituted what he described as a "fair, transparent and positive performance improvement process" for all group members. This comprised:

- updating position descriptions for all development positions;
- creating performance objectives for each development position based on the minimal level of performance expected;
- meeting with each staff member to clarify their position requirements and clearly establish QM's expectations of them and the objectives set; and
- monitoring the performance of each staff member in accordance with set objectives.

He alleges that this process commenced on 21 January and on 25 January he and Mr Andrew Reye, the Software Development Manager, met with Ms Stanton. He says that all members of the team with the exception of Ms Stanton responded positively. Ms Stanton stated at the meeting that she would never accept or sign the Position Description, nor would she subscribe to the performance objectives set. She stated that she would take no part in the performance improvement process.

If that evidence be accepted, it is clear that the relationship was doomed from that point.

It is impracticable to refer in this decision to all of the evidence that has been given. There were numerous statements and attachments and there were numerous disputes of fact. In view of the conflict in the evidence, issues of credibility are important. In this regard, I was unimpressed with Ms Stanton's apparent inflexibility when answering questions in cross-examination and some of the propositions she advanced left me perplexed. I noted also that on many occasions, it was difficult for the cross-examiner to obtain an answer to the question asked, Ms Stanton either advancing other propositions or skirting the issue. Her cross-examination was peppered with prevarication. I have appreciated the fact that she was unrepresented. I record that I have placed no weight whatever on her failure to cross-examine witnesses on important areas of disagreement because she indicated clearly that she relied upon the contents of her statement as opposed to the contrary versions given by the respondent's witnesses. My conclusions have been reached on the balance on probabilities upon the whole of the evidence.

I doubted her evidence that she was unaware that Mr Reye was the Software Development Manager. The team in which she worked consisted of seven, including Mr Goodwin and Mr Reye. She explained that she was not aware that Reye was directly under Goodwin because she had not seen the organisation's hierarchal structure, yet she worked in close contact with the team for some months.

The allegation that she was unaware there were performance issues with the group, including herself, suited her case that the performance problems were first raised with her after she had lodged the fair treatment complaint. Consequently, it was not surprising that she refused to concede that she had any knowledge that there were performance issues raised as early as December 2001 which might involve her. Her written evidence was that there was a meeting on 19 December 2001 between the team and the managers where concern was expressed with the "product development as a whole". Ms Stanton was involved in product development. She claimed orally that the complaints were directed only to those involved in "user interface" which was not part of her duties. When she was told that management were asking questions about the money they invested in "us", she again claimed "us" referred only to those involved in "interface". Her persistent denials that she was unaware any of the complaints involved her are unacceptable.

An email was sent to all of the team by Mr Reye on 20 December confirming the discussions on 19 December. Ms Stanton again persistently denied that the email's contents had any reference to her. Again her denials were hard to understand.

It was alleged by her that her work relating to Administrative Module QM-eView was assigned to someone else on 1 February 2002 without explanation. When it was put to her that her work was both behind schedule and not progressing, she responded that it was progressing very well but she was unable to provide any explanation as to why it might have been re-assigned. It was also put to her that not one line of code written by her had found its way into any commercial products. She denied that proposition but when asked to name one product, was unable to do so.

On 25 January 2002 she was called to a meeting with Messrs Reye and Goodwin and asked to sign the documents "Position Statement" and "Product Development performance objectives". She refused. She claimed that even then, she was unaware there were issues about her performance. She claimed she refused to sign because the documents altered her employment contract. Clearly they did not because the contract said nothing about performance management or position objectives.

Ms Stanton alleged that she found the meeting distressing. Reye had used fabricated information and there was bullying. She forwarded a letter of complaint on 26 January 2002 to Mr Goodwin alleging unfair treatment, including intimidation. In response to that, she received a letter dated 1 February from Mr Goodwin and which can only be described as conciliatory. She was told it would not be necessary to sign the documents and he attempted to fully explain the company position. But he also raised the question of her performance and her personal behaviour at a meeting on 29 January, he re-assigned her work on the QM-eView Administration Module and he placed her on a short-term performance process. This letter was the basis of her claim that over night, she developed performance problems and it was at this time that she says she became aware for the first time that her performance was the subject of review. I am unable to accept the allegation that her performance problems surfaced only after she lodged the fair treatment complaint. In addition to that already mentioned, there was also other evidence which confirmed that performance issues had been evident in regard to Ms Stanton prior to the meeting of 25 January and her fair treatment complaint. Mr Walker was a Software Architect and part of the Project Development team with Ms Stanton. He told the Commission in cross-examination that he had concerns about her ability with XML and he had communicated his frustration to Mr Reye who confirmed that had occurred in about October or November 2001. I am satisfied that the performance issues were not a late invention after the raising of the fair treatment complaint.

When Ms Stanton said that she would take no part in the performance improvement process, she was placed on short-term performance objectives and advised on 1 February by Mr Goodwin. In response to this, on 6 February she faxed the Chief Executive Officer alleging further unfair treatment, this time by Mr Goodwin and seeking intervention in terminating immediately the "unreasonable performance process".

During subsequent meetings, Ms Stanton either used a tape recorder or endeavoured to use one and remarkably in my view, would not concede that the use of the tape recorder might provoke in others a sense of mistrust or be viewed as a questioning of honesty. She would not even concede it was possible and endeavoured to compare what she was doing with the completely innocuous practice of students tape recording their lectures. She claimed that the only reason she began tape recording meetings three days after the letter of complaint was because she wanted to keep track of the project development.

She made unfounded allegations of plagiarism against Mr Reye in early February which she used as an excuse not to complete the tasks assigned.

The picture emerges of an employee unwilling to confront the reality of the situation and seeking to avoid a reasonably imposed process by imposing obstacles at every turn. Each other member of the team responded affirmatively to the request for the performance improvement process involving the "Position Statement" and the "Product Development performance objectives" and this I think exemplifies her illogical response.

Mr Walker accepted that the 19 December meeting related to the whole group and he was, like Ms Stanton, not responsible for the development of the user interface. He said it was agreed that they would take steps as a group to improve the situation.

In these circumstances, I am satisfied that the actions of the respondent in seeking to impose upon the applicant the position statement and product development performance objectives was reasonable management action applied to all of the those in the group. Ms Stanton's reaction was not reasonable.

When Ms Stanton was placed on the short-term performance improvement process by the letter of 1 February, she was directed to complete the following tasks:

- Preparation of a Software test Plan for QM-View 4.5 by 8th February 2002.
- Preparation of a number of test cases for QM-View 4.5 by 28th February 2002.

She was also given the opportunity to confirm with her manager that these dates were achievable.

It was explained that the first objective was to list a number of test cases by 8 February. On 5 February, Ms Stanton was away sick but on 6 and 8 February, she raised certain issues. The meeting on 8 February was described by Mr Walker, a co-worker, not part of management, who could be regarded as reasonably independent and whose evidence I accept, in the following terms:

"From the outset of the meeting Ms Stanton was objectionable. It was clear that Ms Stanton was unwilling to work on the test cases and that she was deliberately stalling the progress of the meeting by raising issues on points that were clearly irrelevant such as authorship of documents that she could use as reference if she so wished.

As the Software Architect for the group, I perceived the preparation of a list of test cases as a trivial task, able to be completed by anyone in the group in a couple of days. I was distressed after leaving the meeting as it had become apparent that Ms Stanton was no longer contributing to the development group in a positive way."

I am satisfied that there were requests on 12 February for Ms Stanton to produce a list of test cases but she refused to attend any meeting without an independent witness. On 13 February a meeting was called with Ms Stanton, Mr Reye, Mr Goodwin and Rod Corkill, the Chief Financial Officer of QM, also responsible for Human Resources and who attended as the observer. She was refused permission to tape record the meeting and subsequently went home ill. She did not return to work until 25 February.

On 25 February, I am satisfied that Ms Stanton attended a team meeting where again she raised the question of plagiarism by Mr Reye of the test plan and various emails ensued. On 26 February, Mr Reye handed her a document with new short-term performance objectives which included the completion of the test case list by Friday 1 March and the completion of the test case detail and design of tests by Friday 15 March. Later that day, after she expressed concern about time frames, she was sent an email directing her to proceed with the existing test plan template and advising her that the time frame could be revised if needed. Late in the afternoon of 26 February Mr Goodwin and Mr Reye met with Ms Stanton and delivered a letter outlining specific instances of unsatisfactory performance and examples of her poor attitude. She was orally warned at that meeting that unless substantive progress was made on the tasks assigned, her employment would be terminated.

Ms Stanton's evidence indicates that instead of attempting to comply with the direction issued to her, she spent the time preparing a response to the letter of 26 February and waiting for her solicitor's advice.

I accept the evidence that on Friday 1 March, Mr Reye reviewed the test plan Ms Stanton had prepared. He found that the document had no substantial new content and the list of test cases provided was identical to the list that had been provided to Ms Stanton as examples.

On Monday 4 March Ms Stanton attended at the boardroom for a meeting with Mr Reye and Mr Corkill. She was handed a letter of dismissal which read:

"On Tuesday, February 26, you were presented with clear objectives for you to complete. Objective 1 was to complete a draft test plan with a complete test case list by Friday 1 March. The schedule provided three full days with no other assignments to complete this work. Example test cases were provided to you to assist in this work.

On review of the Test Plan prepared by you, we find that the progress of this work totally unsatisfactory (sic). It is clear that you do not have the ability to satisfactorily complete the task assigned to you. QM has concluded that you do not have the ability to perform in the role for which you were employed and can no longer justify any further lack of productivity resulting from this.

Therefore, we have decided to terminate your employment forthwith. We will pay you four weeks in lieu of notice plus any accrued statutory entitlements as at the end of the 4 week notice period."

Ms Stanton has complained she was not given an opportunity to respond. I am satisfied that Ms Stanton was given numerous opportunities to respond to the allegations of poor performance commencing 25 January. Her uncooperative conduct highlighted by the steady stream of excuses simply exacerbated the issues and leaves one with the suspicion that she was not capable of completing the test plan and did not possess the necessary skills to meet the criteria in the performance objective, a question which she would not answer in cross-examination. I reject her evidence that it was impossible to complete the task given to her.

In considering those matters set out in s. 77 of the *Industrial Relations Act 1999*, I am satisfied that Ms Stanton was provided with reasons for the dismissal which related to her conduct, capacity and performance and that she was warned about that conduct, capacity and performance and was given both counselling and an opportunity to respond. I am not satisfied that the dismissal in all of the circumstances was harsh, unjust or unreasonable.

The application is dismissed.

B.J. BLADES, Commissioner.

Hearing date: 22 July 2002

Released: 25 July 2002

Appearances:

Ms J. Stanton on her own behalf.

Mr D. Alexander, Counsel, with him Mr I.K. Goodwin, for the respondent.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 74 – application for re-instatement

Robert John Kaarsberg AND Cameron’s Furniture (No. B176 of 2002)

COMMISSIONER BROWN

26 July 2002

DECISION

This matter relates to an application by Robert John Kaarsberg (the applicant) for re-instatement to his former position with Cameron’s Furniture (ABN 21-719 704630) of 14 Grey St, St George (the respondent).

The applicant was employed as a carpet layer/labourer by the respondent and started employment in January 2000 as a trainee.

The applicant performed other functions in relation to the business at the respondent’s store from time to time.

The applicant was initially a casual employee. He was appointed as a permanent in January 2001. The exact date of this appointment is canvassed later in this decision as it is the subject of some disagreement between the parties.

It is of some importance in that the applicant was paid one week’s pay in lieu of notice upon termination in line with the requirements of the Act as they related to a person with less than one year’s service. The applicant believes that his entitlement was 2 week’s pay in lieu of notice as he believed his appointment as a permanent occurred on 1 January 2001 and not on 18 January 2001 as contended by the respondent.

The applicant was terminated by an employee of the respondent, Mrs Betty Anne Morris (Ms Morris) on Monday 14 January 2002 for failing to work on a Saturday morning as directed.

The dismissal was instant in that the applicant was not required, or indeed allowed, to work the notice period.

The evidence, both written and oral, from the applicant stated that he arranged to travel to Roma on Saturday 12 January 2002 to purchase personal items required by his wife and other items including school uniforms and requisites to enable his 5 year old son to commence primary school.

The applicant stated that on Monday, 7 January 2002, he advised Peter Bruce Cameron (Bruce C), the son of the owner of the respondent, that he needed to take Saturday, 12 January off.

The applicant claimed in evidence that Bruce C responded by saying that “Lloyd and I can handle it”. This, the applicant took, as tacit or implied agreement to his request for time off and due to the owner’s absence through illness he also believed that Bruce C had the authority to grant his request.

The following day the applicant claimed that Ms Morris approached him and asked whether or not he could alter his plans and work on the Saturday. He stated that Ms Morris’s reason was that she also wanted the day off.

The applicant undertook to speak to this wife about Ms Morris’s request and respond to her.

The applicant and his wife decided not to alter their plans, however, nothing was said to Ms Morris to convey that decision. The applicant claims to have forgotten to raise the matter.

On Friday, 11 January 2002, Ms Morris again approached the applicant and according to the applicant stated that should the applicant not report for work the following day – he would be dismissed.

The applicant claims to have responded by saying “I have to have that day off.”.

The applicant claimed that he was unaware that Morris was in fact the acting Manager at that time.

Also the applicant stated that he was unsure whether or not Ms Morris had the authority to dismiss him and in any event he believed that he could not be dismissed (or laid off) for missing 3 hours’ work as he had regularly worked overtime in the past.

On Monday, 14 January 2002, the applicant reported for work and was subsequently dismissed by Ms Morris. He ceased work immediately at the direction of Ms Morris. The applicant received one week’s pay in lieu of notice in addition to his statutory entitlements.

According to the applicant there were, over time, a number of disagreements between he and others related to work matters. Some of the exchanges were heated although he denied ever swearing and in particular denied using the F or C words in an exchange with Ms Morris.

He stated that no warnings were ever issued to him.

Evidence for the respondent was given by Peter Colin Cameron (Principle), Peter Bruce Cameron (employee of the respondent and son of the Principle), Betty Anne Morris (employee of the respondent) and Terry Salmon (a subsequent employer of the applicant).

Terry Salmon (Salmon) conducted a painting business and employed the applicant as a painter. Salmon’s evidence was that the applicant was a less than satisfactory employee who had abandoned his employment following a disagreement over payday frequency. Salmon stated that his workload was such that, despite his view of the applicant as an employee, he believed that the applicant would still be in his employ had the applicant not abandoned his employment.

The applicant, in evidence and submissions, claimed that to have resigned rather than to have abandoned his employment.

By arrangement with the respondent and with leave of the Commission, the applicant submitted 2 statements from former employers of the applicant indicating their satisfaction with the applicant as an employee.

The evidence of Peter Colin Cameron (Peter C) confirmed that there had been a history of unpleasant exchanges at the workplace involving the applicant.

Peter C became seriously ill on 17 December 2001, and during his hospitalisation, his son, Bruce C spent considerable time away from work to be with him.

Peter C was not involved in the dismissal although he admitted in evidence that he was not sad or upset about the departure of the applicant.

Peter C did not claim to have given any warning to the applicant regarding his conduct or work performance.

Bruce C worked on a day to day basis with the applicant. Bruce C's evidence did not contradict that of the applicant except where the applicant claimed to have been given approval for the Saturday off by Bruce C. Bruce C stated that he said he did not have a problem with the proposed absence of the applicant, however he should deal with Ms Morris as she was managing the store. He confirmed that he spent a great deal of time away from the store during his father's illness.

Ms Morris also confirmed most of the applicant's version of events in the lead up to his termination. Her evidence differed in some areas as already mentioned including the date the applicant was appointed as a permanent.

Importantly Ms Morris claimed that the applicant was or should have been aware of her managerial role in the absence of Peter C. This, she stated, was due to her historical tasks in administration during previous absences of Peter C.

In oral evidence Ms Morris conceded not having directly informed the applicant that she, in fact, was managing the business during Peter C's absence.

Ms Morris claimed that the applicant had used foul language to her previously.

Conclusions

The applicant had received no previous warning and none in particular related to refusing overtime.

The sometimes heated exchanges involving the applicant and other at the workplace did not impact on the decision to terminate him.

I believe that had the applicant reported for work on Saturday, 12 January 2002, he would not have been dismissed the following Monday.

The management structure, in the absence of Peter C, was never explained to the applicant.

Neither the applicant nor Ms Morris attempted to clarify the position.

The onus for ensuring that employees understood the management structure lay with the respondent.

The evidence of Bruce C that he told the applicant to raise the question of his time off with Ms Morris, as she was currently the manager, was directly challenged by the applicant who stated that no such comment was made.

In determining this application I am of the view that it is of significance to firstly determine whether or not the applicant knew that in disobeying the directive of Ms Morris, he was in fact disobeying a lawful direction given by a person with the appropriate authority.

Ms Morris acknowledged that at no time did she advise the applicant that she was acting in the position of manager. Ms Morris maintained that the applicant should have known because of the administrative functions performed by her during previous absences of Peter C.

Bruce C's challenged claim that he advised the applicant to "deal with Betty as she was managing the store at the time" may well be an accurate recollection, however, my observation of the witness left me with a clear impression that his communication skills were so poor as to render it possible that both versions are truthful. That is to say that Bruce C may truthfully believe that he made the comment and the applicant may truthfully believe that he did not.

I am of the view that no steps were taken to properly inform the applicant of the nature of the authority possessed by Ms Morris in the absence of Peter C and as a result I accept the applicant's evidence that he was unaware of her role as acting manager.

The situation confronting the applicant was confusing at the time. He believed that Bruce C (the principle's son) had authorised his absence, then another person has, with, in his mind, questionable authority, attempted to override the consent given.

Neither party, in my view, communicated effectively enough to avoid the problem.

However, the applicant was made aware of the expected workload for Saturday, 12 January 2002, in that a furniture delivery truck was to arrive. I accept that he should have known that his absence would have meant difficult circumstances for the others left to deal with the issue. That the truck broke down and did not arrive is of no consequence.

The applicant claimed to have pre-booked motel accommodation in Roma. He also stated that he did not like his wife driving long distances on her own with the children.

There were no previous incidents of the applicant refusing overtime. In fact, on the evidence, he worked all overtime as required.

In the circumstances and having considered all the evidence and submissions, I find that the decision to terminate the applicant was harsh in that a more appropriate response would have been, after having made clear the hierarchical structure, to issue a final warning in respect to obeying properly given directions.

Both parties agreed that in the event of a positive finding for the applicant, reinstatement was impracticable given the size of the respondent's business and the deterioration of the relationship since the dismissal. The applicant submitted that an appropriate remedy would be 6 weeks' pay.

The respondent argued that any award of compensation should be minimal.

The applicant ceased work on 14 January 2002, and was paid one week's pay in lieu of notice. He commenced work on Thursday, 17 January 2002, with Salmon as a painter until 2 February 2002.

His hourly rate as a casual employee with Salmon was \$16.52. There were 12 working days during this engagement during which he worked 88.5 hours or an average of 7.37 hours per day. He was paid, in total, \$1,462.02 gross. All hours were paid at ordinary rates.

His weekly rate with the respondent was \$552.50 per week or \$110.50 per day. Had the applicant remained with the respondent he would have earned \$1,326.00 for the 12 days mentioned above.

On the evidence the applicant left the employ of Salmon of his own choosing when also on the evidence he could have continued indefinitely.

It is not the fault of the respondent that the applicant left the employ of Salmon.

It is however true that the dismissal resulted in the applicant having casual employment rather than the certainty of permanence.

In considering all of the evidence and submissions, I have decided to award a global amount of compensation equivalent to 4 weeks' pay i.e. \$2,210.00.

Cameron's Furniture (ABN 21-719 704630) is to pay the amount of \$2,210.00 less appropriate taxation to Robert John Kaarsberg within 22 days of the date of release of this decision.

Order accordingly.

D.K. BROWN, Commissioner.

Released: 26 July 2002

Appearances:

Mr R.J. Kaarsberg on his own behalf.

Mr J. Ryan of Ken Hooper & Associates for Cameron's Furniture.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

Federated Engine Drivers' and Firemens' Association of Australasia Queensland Branch, Union of Employees AND Public Sector Industrial and Employee Relations Division, Department of Industrial Relations and Others (No. B1033 of 2002)

CIVIL CONSTRUCTION, OPERATIONS AND MAINTENANCE GENERAL AWARD - STATE

COMMISSIONER THOMPSON

29 July 2002

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 29 July 2002, this Commission orders that the said Award be amended as follows as from 1 July 2002:

By deleting clause 3.4(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) shall mean the actual ordinary rate of pay the employee receives for ordinary hours of work including tool allowance, industry allowance, trade allowances, 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, fares and travelling allowances (as contained in clause 3.5 (4)) and supervisory allowances 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.”

Dated 29 July 2002.

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

Operative Date: 1 July 2002
Amendment – Award – Civil Construction, Operations and Maintenance
General Award – State
Released 1 August 2002

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

The Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers (No. B1034 of 2002)

BLASTCOATERS OFFSITE AWARD – STATE

COMMISSIONER THOMPSON

29 July 2002

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 29 July 2002, this Commission orders that the said Award be amended as follows as from 1 July 2002:

By deleting clause 3.4(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 3.7(1)(a) 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 29 July 2002.

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

Operative Date: 1 July 2002
Amendment – Award – Blastcoaters Offsite Award – State
Released: 30 July 2002

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999 – section 474
Industrial Relations Regulation 2000 – section 20*

(No. U13 of 2002)

NOTICE OF APPLICATION FOR AMENDMENT OF ELIGIBILITY

RULE OF AN INDUSTRIAL ORGANISATION

NOTICE is hereby given that an application has been made to register an amendment to the Eligibility Rules of **T.A.B. Agents' Association of Queensland Union of Employers**. Interested persons may obtain a copy of the application from the Applicant.

All Notices of Objection to such registration must be lodged with me within thirty-five days from the date of publication of this Notice.

Dated this twenty-ninth day of July 2002.

E. Ewald
Industrial Registrar.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999 – section 474
Industrial Relations Regulation 2000 – section 20*

(No. U19 of 2002)

NOTICE OF APPLICATION FOR AMENDMENT OF ELIGIBILITY

RULE OF AN INDUSTRIAL ORGANISATION

NOTICE is hereby given that an application has been made to register an amendment to the Eligibility Rules of **Queensland Master Hairdressers' Industrial Union of Employers**. Interested persons may obtain a copy of the application from the Applicant.

All Notices of Objection to such registration must be lodged with me within thirty-five days from the date of publication of this Notice.

Dated this twenty-ninth day of July 2002.

E. Ewald
Industrial Registrar.

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