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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	Certified on and certificate issued	Cancelling
CA283/04	Endeavour – Disability Services (Adult Training and Support Service Workers) – Certified Agreement 2004	2/7/04	
CA294/04	NRG Gladstone Operating Services Pty Ltd (NRG GOS) – Certified Agreement 2004	13/7/04	CA205/02
CA295/04	The Blue Care – QPSU – QSU – Queensland Enterprise Bargaining – Certified Agreement	13/7/04	CA575/01
CA305/04	Andrew R Stewart – Certified Agreement	23/7/04	
CA306/04	Berkana Holdings Pty Ltd ATF t/a Aluminium Access Systems – Certified Agreement	23/7/04	
CA307/04	Stevenson Contracting Pty Ltd atf The Stevenson Family Discretionary Trust t/a Danlaid Contracting – Certified Agreement	23/7/04	
CA308/04	JC Barlow & BD Graham & RJ Hall t/a Artisan Panelling – Certified Agreement	23/7/04	
CA312/04	Mirvac Constructions (Qld) Pty Limited – Certified Agreement	23/7/04	

G.D. SAVILL,  
Acting Industrial Registrar.

INDUSTRIAL COURT OF QUEENSLAND

*Industrial Relations Act 1999 – s. 335 – application for costs*

**Debra Cheryl Gartside AND AlSCO Pty Ltd t/a AlSCO Linen Service (No. 2) (No. C12 of 2004)**

PRESIDENT HALL

22 July 2004

DECISION

On 11 February 2004, the Queensland Industrial Relations Commission dismissed an application by Debra Cheryl Gartside for relief under Chapter 3, Part 2 of the *Industrial Relations Act 1999*. The Commission dismissed the application because the Commission was not satisfied that Ms Gartside had been dismissed. Ms Gartside subsequently appealed to this Court. By a decision of 27 April 2004, now reported at 176 QGIG 2, the appeal was dismissed. All questions as to costs were reserved. The respondent to the appeal has sought costs.

It was not surprising that Ms Gartside appealed. Her case at first instance had been a strong one, the Commission’s language was less than felicitous and, if read literally, indicated a misapprehension of fact. An appeal brought in such circumstances may not legitimately be described as an appeal brought in circumstances in which it had no objective prospect of success. Whilst there was always room for difference of opinion about Ms Gartside’s prospects of success, it is impossible to conclude that a prudent practitioner considering the case without the benefit of the fulsome argument on the appeal would have recognised the appeal as one entirely without merit. In those circumstances, whether the respondent relies upon para (a) or para (b) of s. 335(1) of the *Industrial Relations Act 1999* the application for costs is doomed to failure.

I dismiss the application for costs.

Dated 22 July 2004.

D.R. HALL, President.

*Appearances:*

Ms T. Fantin of Morrow Petersen, Solicitors, for the Appellant.  
Mr A. A. Hornemman-Wren directly instructed by Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers, for the Respondent.

Released: 22 July 2004

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INDUSTRIAL COURT OF QUEENSLAND

*Workers’ Compensation and Rehabilitation Act 2003 – s. 563 – Costs of Appeal to Industrial Court*

**Kelvin Noel Appo AND Q-COMP (No. 3) (No. C49 of 2003)**

PRESIDENT HALL

22 July 2004

DECISION

By Orders made on 2 April 2004 this Court set aside the decision of the Industrial Magistrate made at Bundaberg on 15 May 2003 to uphold the decision of Q-COMP, made on 22 November 2002 to confirm the decision of WorkCover Queensland made on 3 October 2002 to refuse the appellant’s application for compensation. I also ordered that the application for compensation lodged by the appellant with WorkCover Queensland on or about 31 July 2002 to be accepted. All questions of costs were reserved.

The successful appellant subsequently sought costs both of the appeal to this Court and of the proceedings in the Industrial Magistrate’s Court. As to the costs of the appeal to this Court, I have no power to grant the appellant the relief which he seeks. Section 563 of the *Worker’s Compensation and Rehabilitation Act 2003* is not a limitation on a power to award costs otherwise vested in the Court but the grant of power to award costs. The terms of the section do not permit the award of costs to a successful applicant. Indeed, costs may be awarded against an unsuccessful appellant only if the appeal was made “vexatiously or without reasonable cause”.

Even if the appellant’s submission that s. 563 is but a limitation on power was correct, the application for costs of the appeal would still fail. The Industrial Court of Queensland is a statutory tribunal. It has no inherent power. It has only such power as is vested in it by the *Industrial Relations Act 1999* or by other legislation vesting the Court with jurisdiction. The only general power of the Court to award costs is that found in s. 335 of the *Industrial Relations Act 1999*. That section once again precludes a possibility of costs being awarded to a successful appellant and permits an order for costs against an unsuccessful appellant only where the appeal was made “vexatiously or without reasonable cause”.

The costs of the proceedings in the Industrial Magistrate’s Court of Bundaberg is another matter. It is common ground that the Industrial Magistrate had full power to make such an Order and to make the Order on the basis that costs follow the event. On a successful appeal, this Court has full power to set aside a decision of an Industrial Magistrate and substitute another decision, compare s. 562(1)(c).

In my view the appellant should have his costs of the proceedings in the Industrial Magistrate’s Court in which the appellant should have succeeded. Q-COMP was the other party to those proceedings. Q-COMP is the party against which the order should be made.

I order that the order of the Industrial Magistrate that the appellant pay the costs of Q-COMP be set aside and that the appellant be awarded the costs of the hearing on 15 May 2003 on scale E of the Magistrate’s Court scale.

Lest there be any difficulty in the recovery of costs, I reserve liberty to apply.

Dated 22 July 2004.

D.R. HALL, President.

*Appearances:*

Mr A. McLean-Williams, instructed by Payne Butler Lang Solicitors, for the Appellant.  
Ms Ann-Maree Coulin for Q-COMP  
Mr J. McPherson of McCullough Robertson Lawyers for the Employer.

Released: 22 July 2004

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999 – s. 335 – costs*

**John Love AND Australasian Correctional Management Pty Ltd (No. B1855 of 2003)**

DEPUTY PRESIDENT SWAN

22 July 2004

DECISION

The applicant, who was successful in his application before the Commission, has sought costs in this matter. The respondent was unprepared at that point to respond to the costs submission and the Commission afforded the respondent some 14 days in which to respond. The Commission had actually said at the time to the respondent "well, 14 days or if you need a bit more time because you have been away it's not a problem to add a bit extra" (see transcript page 246). That comment was made on 18 June 2004. After the expiration of approximately one month, there had been no response from the respondent. Correspondence was received from the applicant's solicitors on 15 July 2004 requesting that the matter be determined by the Commission in the absence of any response by the respondent.

The Commission arranged for the Registrar to contact the respondent's solicitors and on 20 July 2004 the Registrar forwarded a copy of the letter from the applicant's solicitors to them asking for a response by close of business on that day. The respondent's solicitors did telephone advising that they intended to respond and would do so by 1.00 p.m. the following day (21 July 2004). This has not occurred. Sufficient time has elapsed and in the absence of any response to the application, I determine as follows.

The reinstatement application was successful to this extent. Mr Love was re-employed in a position with the former employer without loss of continuity of service or entitlements. Both representatives at the trial agreed that during the conciliation conference this outcome was put unsuccessfully by the applicant. It was clear during the case that the respondent was aware of some shortcomings in its case as it went to the question of natural justice. However, it must be said that the respondent at all times vigorously defended its position in that it viewed Mr Love's actions as warranting dismissal.

In the absence of any submissions to the contrary, I propose to award to Mr Love his costs in this matter pursuant to s. 355 of the *Industrial Relations Act 1999* (the Act). It was unreasonable for the respondent not to consider prior to trial the offers put by the applicant. The offer made was more than reasonable in the circumstances. The applicant's solicitors are to forward to the Commission the costs it has incurred in pursuit of the outcome achieved. This material is to be forwarded to the Commission and the respondent's solicitors within seven days of the release of this decision. The respondent may comment only upon the actual quantum claimed, if they see fit within a further seven days after the receipt of that material.

Order accordingly.

D. A. SWAN, Deputy President.

*Appearances:*

Mr A. C. Harding, instructed by Mr H. Small of Gilshenan & Luton  
Solicitors for the Applicant.  
Mr R. King and Mr D. Copeland of Blake Dawson Waldron for  
Australasian Correctional Management Pty Ltd.

*Hearing Details:*

2004 15, 16 and 18 March  
18 June

Released: 22 July 2004

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999 – s. 274 – general powers*

**Specialist Solutions Pty Ltd AND Nicole Pender (No. B1081 of 2004)**

DEPUTY PRESIDENT SWAN

26 July 2004

REASONS FOR DECISION

The essence of this decision was read from the Bench on 16 July 2004. As edited, the decision is as follows:

The Commission is being asked by the applicant in this matter (the applicant being the 'respondent' in an application for an allegedly unfair dismissal) to temporarily stay or adjourn the reinstatement hearing into that matter.

The reason put by the applicant is that a complaint has been made by them to the Police about the former employee (the 'respondent' in this matter) for alleged misconduct.

As I understand it the respondent's submissions are as follows:

- a complaint has been made to the Police;
- there is a proposed meeting between the applicant's client and the Police to be held during this month;
- there are no criminal proceedings on foot;
- no criminal charges have been made; and
- the claim against the applicant occurred after the application had been lodged with the Commission for alleged unfair dismissal. It has remained on that basis (i.e. a complaint) for some four months without progression to any other stage

The applicant asks the Commission to consider, *inter alia*, the following matters:

- that the respondent does not seek reinstatement and that the only prejudice to be suffered might be a possible loss of compensation;
- that the Commission might monitor the progression of the matter before the Police with scheduled report-back hearings;
- that an absurd result might occur if the Commission determined the dismissal to be harsh or unfair and subsequently a Court found that the respondent had been guilty of misconduct;
- that the Commission consider the time and cost for its client having to progress through a reinstatement application before other possible litigation;
- that the Commission considers that the applicant has limited resources to investigate appropriately what they believe to have occurred; and
- that the Commission should consider the question of delay. The applicant states that the six months time period may not run out before it is known what the Police might do.

Reliance is placed, by the respondent, on *Sogelease Australia Limited & Anor v Griffin & Ors* [2002] NSWSC 1099 (21 November 2002) wherein Barrett J cites the principles enunciated in *McMahon v Gould* (1982) 7 ACLR 202 which I adopt, where relevant, and which bear repeating in this matter:

I approach the decision of this matter with the following guidelines:

- (a) Prima facie a plaintiff is entitled to have his action tried in the ordinary course of the procedure and business of the court (*Rochford v John Fairfax & Sons Ltd* [1972] 1 NSWLR 16;
- (b) It is a grave matter to interfere with this entitlement by a stay of proceedings, which requires justification on proper grounds (*ibid*);
- (c) The burden is on the defendant in a civil action to show that it is just and convenient that the plaintiff's ordinary rights should be interfered with (*Jefferson v Bhetcha* [1979] 1 WLR 898;
- (d) Neither an accused (*ibid*) nor the Crown (*Rochford v John Fairfax & Sons Ltd* [1972] 1 NSWLR 16) are entitled as of right to have a civil proceeding stayed because of a pending or possible criminal proceeding;
- (e) The Court's task is one of "the balancing of justice between the parties" (*Jefferson Ltd v Bhetcha* [1979] WLR at 904) taking account of all relevant factors (*ibid* at 905).
- (f) Each case must be judged on its own merits, and it would be wrong and undesirable to attempt to define in the abstract what are the relevant factors (*ibid* at 905);
- (g) One factor to take into account where there are pending or possible criminal proceedings is what is sometimes referred to as the accused's "right of silence", and the reasons why that right, under the law as it stands, is a right of a defendant in a criminal proceeding (*ibid*). I return to this subject below;
- (h) However, the so-called "right of silence" does not extend to give such a defendant as a matter of right the same protection in contemporaneous civil proceedings. The plaintiff in a civil action is not debarred from pursuing action in accordance with the normal rules merely because to do so would, or might, result in the defendant, if he wished to defend the action, having to disclose, in resisting an application for summary judgment, in the pleading of his defence, or by way of discovery or otherwise, what his defence is likely to be in the criminal proceeding (*ibid* at 904-5).
- (i) The court should consider whether there is a real and not merely notional danger of injustice in the criminal proceedings (*ibid*);
- (j) In this regard factors which may be relevant include:
  - (i) The possibility of publicity that might reach and influence jurors in the civil proceedings (*ibid* at 905);
  - (ii) The proximity of the criminal hearing (*ibid* at 905);
  - (iii) The possibility of miscarriage of justice eg by disclosure of a defence enabling the fabrication of evidence by prosecution witnesses, or interference with defence witnesses (*ibid* at 905);
  - (iv) The burden on the defendant of preparing for both sets of proceedings concurrently (*Beece Group v Barton* (1980) 5 ACLR 33
  - (v) Whether the defendant has already disclosed his defence to the allegations (*Caesar v Sommer* [1980] 2 NSWLR at 932); *Re Saltergate Insurance Co Ltd* (1980) 4 ACLR 735-6);
- (k) The effect on the plaintiff must also be considered and weighed against the effect on the defendant. In this connection I suggest below that it may be relevant to consider the nature of the defendant's obligation to the plaintiff;
- (l) In an appropriate case the proceedings may be allowed to proceed to a certain stage, eg, setting down for trial, and then stayed (*Breece Group v Barton* (1980) 5 ACLR 33).

Issues such as those which have occurred in this matter arise in the Commission from time to time. In most cases, an action against the party has already commenced in another jurisdiction or at least it is known when the action might commence. That is not the case in this matter. All that has occurred here is that a complaint has been made to the Police by the applicant after the receipt of the application for reinstatement. A period of four months has elapsed with no progression at all of the matter before the Police.

Addressing the question of the "right to silence", there is no conflict in this matter because the party usually seeking to enforce this right is the applicant in the reinstatement hearing. The applicant to the reinstatement hearing does not seek to enforce this right.

From my perspective, there is no basis for the Commission to interfere in the respondent's decision to have a reinstatement hearing heard and determined by the Commission.

The respondent has a right to have the reinstatement hearing heard as quickly as possible (see s. 74(8) of the *Industrial Relations Act 1999* (the Act)).

I dismiss the application.

#### **Costs Application**

I have been asked by the respondent in this matter to consider the question of costs.

The respondent in this matter seeks costs of and incidental to the application for a stay or adjournment. The respondent states that the application is misconceived and amounts to an unreasonable act or omission in the conduct of the application for the purposes of s. 335(1)(6) of the *Industrial Relations Act 1999*.

While I have found that this application has failed for the reasons so outlined, I do not find that the applicant has acted in such a manner as to enliven a costs order against it pursuant to s. 335 of the Act. The applicant believes that the respondent in this matter has acted in such a way during the period of her employment that dismissal for misconduct was the only course open to it. As well, the applicant had relied upon one decision of this Commission where it is alleged that reference was made to some "general adoption of a principal" with regard to these matters. With respect, I do not see that there is any general principle that civil proceedings be stayed pending the outcome of criminal proceedings. Each case turns on its own facts.

Whether or not what the applicant alleges to have occurred has happened is really a matter for another day. This hearing was not about determining whether or not the respondent had been unfairly dismissed, it was about whether the applicant had a right to have her matter heard at this point in time. While it may be argued that the application was misconceived, I have not accepted that it was pursued in a manner which enlivens s. 335 of the Act.

I dismiss the application for costs.

Order accordingly.

D.A. SWAN, Deputy President.

*Appearances:*

Mr A. Tobin of Deacons Lawyers for the Applicant.

Mr C. Murdoch instructed by Michael Sing Solicitors for the Respondent.

*Hearing Details:*

2004 16 July

Released: 26 July 2004

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999 – s. 87 – orders about severance allowance and other separation benefits*

**Australasian Meat Industry Union of Employees (Queensland Branch)  
AND Overseas Game Meat Export Pty Ltd (No. B205 of 2004)**

COMMISSIONER BECHLY

23 July 2004

DECISION

The Australasian Meat Industry Union of Employees (Queensland Branch) has sought orders for the payment of redundancy and notice of termination of employment for two employees of Overseas Game Meat Export Pty Ltd. The employees, Mr A.E. Beck and Mr P. Paraha provided evidence as to conversations between them and the Production Manager Mr Robert Lattimer. Mr Lattimer was not called by the respondent to provide evidence. The respondent was represented by Mr C. Harwood, a director of the respondent. Mr Harwood provided sworn evidence.

The respondent operated a meat processing plant at Nerang on the Gold Coast. A decision was made to close that plant down and move the operation to Walkuraka near Ipswich, some 120 kilometers away.

Mr Beck lived at Labrador and Mr Paraha lived at Helensvale, both areas relatively close to the Nerang operation requiring a short travel time in the order of 20 minutes each way.

There was minimal cross-examination of the witnesses.

Both the employees were offered employment at Walkuraka and both declined on the basis of the substantial additional daily travel involved.

The total new travel time proposed for Mr Beck was in the order of three hours daily. Mr Beck's evidence is that he traveled from Labrador to Walkuraka on the weekend noting the distance to be 120km with a travel time of approximately 1.5 hours. Whilst no specific times were quoted by Mr Paraha a similar additional time applied to him. Of concern to both was the fact that the travel to Walkuraka involved payment of toll on several occasions each way, each day.

The lack of evidence from the Supervisor, Mr Lattimer together with the minimal cross-examination of the applicants produces some difficulty. I can only rely on the evidence before me including of course the evidence of Mr Harwood.

Mr Harwood states that in mid January 2001 plans were finalised for the refurbishment of the Ipswich site and the reduction of the usage of the Nerang premises. Staff were offered continuing employment at the new site. Some staff elected to retain their positions and some decided that they would take the opportunity to resign and move to other jobs. All staff had been given advance advice and the respondent did not find it necessary to make any staff redundant.

The respondent established a car-pool arrangement. All tolls, fuel etc., are paid by the respondent. The proposal was apparently offered to the applicants but, on their evidence, the proposal was shaky with little detail as to the provision of vehicles etc, payment of fuel and tolls or length of time that the arrangement would remain in place.

The vehicles provided by the company alternate between a utility and a Hi-Ace van. A privately owned vehicle of an employee is also used.

The operations at Ipswich are much smaller than those at Nerang, both as to plant operations and office staff, although it is expected to grow. Currently there is work for less than ten people. On the evidence of Mr Harwood those currently employed are not producing a profit but their employment is being maintained. No evidence was provided as to the total workforce at Nerang prior to its closure, other than an estimation of one of the applicants.

The discussions about continuing employment, termination and car-pooling by Mr Beck were with Mr Lattimer. He did not provide any evidence. I can only rely on the evidence of Mr Beck.

There were some discussions between Mr Paraha and both Mr Harwood and Mr Lattimer. Mr Paraha was on workers' compensation immediately prior to his cessation of employment. That expired on 5 April 2004.

Mr Paraha says that at a time when the plant was "sort of shut down" in early February 2004, he gave Mr Lattimer some WorkCover documentation and, in response to a question from Mr Lattimer as to whether he would accept a job at Ipswich, he replied in the negative the reason being the extra travel time. He asked for a reference and was given one.

Subsequently to this conversation he received correspondence from the company dated 7 April indicating that it had been advised that Mr Paraha was fit to resume work on 5 April and requiring him to attend a meeting on 13 April to discuss the matter and "your ongoing employment" with the respondent.

The evidence of Mr Paraha and Mr Harwood differs as to what transpired between them. Mr Paraha states that he thought his employment ceased in early February when he advised Mr Lattimer that he declined the offer to work at Ipswich. Mr Harwood states that he accepted Mr Paraha resigned on 13 April.

He states that some work was available to Mr Paraha at that time. However, the plant had been shut down for some time and the work proposed was that of dismantling machinery, not work as a skinner, the work for which Mr Paraha had been employed for over the past two to three years. There was no evidence put to demonstrate that Mr Paraha was capable of performing the short term work offered.

On about 22 April Mr Paraha received a payment advice from the company. He had an entitlement to 164,945 hours accumulated annual leave. From this the company deducted three weeks' wages claiming an entitlement to do so because Mr Paraha had not given and worked out three weeks' notice.

#### Outcome

The respondents' operations are award free but it generally applies the terms of the Federal Meat Industry (Processing) Award.

Mr Harwood expressed the belief that the respondent had done everything in its power to ensure that ongoing employment of a suitable nature was offered to all staff and has fulfilled all requirements and gone past that which is required.

On the contrary, on the material before me, that is not the case. The respondent treats the cessation of employment of those employees who chose not to work at Ipswich as resignations rather than termination at the behest of the employer.

It is patently clear that the new plant could not sustain the employment of all those employed at Nerang.

In the case of Mr Beck and Mr Paraha their principal reason for declining the offer to work at Ipswich was the distance and hours of travel required. This was estimated at approximately 240 kilometers each day and a total of three hours extra each day. It was proposed by Mr Stroppiano acting for Mr Beck and Mr Paraha that the estimate should be regarded as the minimum because of the notorious traffic delays on the Ipswich Motorway. It is true that the Ipswich Motorway has been the subject of extensive media reporting about accidents and long delays in recent times.

The respondent has not made out a case that it has offered acceptable alternative employment and thus be entitled to exemption from the requirement to pay a redundancy entitlement, nor has it made any application to the Commission pursuant to Clause 15 of the Termination, Change and Redundancy Statement of Policy of this Commission (the Statement of Policy). It relies on the belief that employees resigned, that many people travel from the Gold Coast to Brisbane to work each day and that transport has been provided to the new plant.

Mr Beck declined the offer to work at Ipswich, was offered two extra weeks work of a labouring nature and ceased employment on 19 February 2004.

Mr Paraha declined the offer of employment at Ipswich in early February 2004, in a meeting with the Production Manager whilst on workers' compensation. He enquired as to the payment of his accrued annual leave and was told that it would be attended to.

Mr Harwood treats the cessation of employment as resignations. The reality is that he was unable to provide continuing employment at the Nerang plant in the capacity for which Mr Beck and Mr Paraha were engaged.

While the respondent may be award free it is bound by the terms of the *Industrial Relations Act 1999* and Statements of Policy of this Commission.

On the evidence the respondent has not complied fully with the requirements of the Termination, Change and Redundancy Statement of Policy of this Commission with respect to consultation prior to termination (in part), time off during notice period, notice to Centrelink and payment of severance pay written advices to employees etc.

Most importantly the respondent has not sought exemption from the requirements of the Statement of Policy. This matter could have been determined simply on the fact acknowledged by the respondent that no payments had been made as required by the Statement of Policy. However, the matter has been dealt with on a broader basis should any application be made for exemption through clause 15 of the Statement of Policy. Such an application if made would be rejected by me.

It is apparent from the evidence that both Mr Beck and Mr Paraha were employed as permanent employees for a period of more than three years but less than four years.

Each is entitled to a payment of seven weeks as a severance entitlement.

While there is a degree of uncertainty about notice of termination it seems clear on the evidence that no notice of termination was given by the respondent.

The respondent employed a sufficient number of employees to be bound by the Statement of Policy. It has given little compliance to that Statement of Policy and appears to have acted in a way to subvert the Policy.

In the circumstance which have been outlined in all the material before me the appearance is that it was never the intention to implement the terms of the Policy as to notice and payment of severance payment and other facets of the Policy.

The attempt to treat the cessation of employment of employees as resignations and thus avoid the requirements of the Statement of Policy is inappropriate if not reprehensible. The cessation of employment was a direct result of the respondent's failure to provide work at the Nerang site or to provide suitable alternative employment. The additional distance and time of travel outlined in the evidence of the applicants would constitute a sufficient reason to make a finding that the work was not a suitable alternative.

The Statement of Policy requires the employer to act in an appropriate fashion to provide some certainty for employees about their future employment with the employer.

While there was some consultation with employees about the proposed closure of the plant it seems that little of the other terms of the Statement of Policy were implemented. The Statement of Policy does not envisage a circumstance where the separation date drifts from one week to the next.

Mr Beck states that about five weeks before his employment came to an end on 19 February 2004 he and others were informed that the Nerang plant was closing and work, under the same conditions, would be offered at Walkuraka.

Subsequent to that meeting he worked for another three weeks undertaking boning and slicing work and was then offered a further two weeks as a labourer. His employment appears to have then simply come to an end. There was no evidence provided by the employer that notice of termination was given.

The Statement of Policy at clause 7 requires certain notices to be provided to employees in writing. In all the circumstance of the matter I consider that the respondent has not provided the notice required to Mr Beck and that a payment of three weeks' pay in lieu of notice should also be made to Mr Beck.

In February Mr Paraha attended the plant to give WorkCover documents to the Production Manager. He was suffering from Brucellosis or QFever contracted while working. Significantly the plant was shutdown at that time. The Production Manger offered him a production position at the new plant. Mr Paraha declined the offer, the reason being the additional travel and cost and the uncertainty about a car-pool arrangement proposed by the respondent.

Reasonably Mr Paraha assumed that no further work would be available to him at the end of his absence on WorkCover. Indeed the company was not able to offer him continuing employment as a skinner at the Nerang plant. He heard nothing from the respondent about employment until 7 April 2004 when Mr Harwood delivered a letter to him requesting he attend a meeting on 13 April 2004. Mr Paraha had been declared fit to resume work from 5 April 2004. Mr Harwood regarded his employment as still being in place and offered him a position at the new plant. He declined that position and Mr Harwood treated his employment as being at an end and deducted three weeks' payment of wages from accrued annual leave because in his mind Mr Paraha had not given three weeks' notice of resignation.

Mr Paraha states that he first became aware that there may be a change to the employers operations by way of a newspaper article and rumors circulating at that time. Later, in mid 2003 Mr Harwood addressed employees and advised that the company was considering moving to Wulkuraka. He heard nothing further about the matter prior to his contracting Brucellosis or QFever on 19 December 2003. Again the respondent has not provided the appropriate period of notice of termination of employment to Mr Paraha. Mr Paraha is entitled to the payment of three weeks' wages in lieu of notice. The deduction of three weeks' wages from accrued annual leave was unlawful. An order will be issued for recovery.

There is some uncertainty about the basis of hourly payments contracted between the parties. A bonus amount has been referred to, together with a guaranteed weekly payment.

The applicant is directed to provide the Commission and to the respondent precise details as to the nature of the agreement as to wage rates made between the parties together with the weekly wage upon which these claims are based within fourteen days of release of this decision.

Should the respondent contest that information within fourteen days of the information being provided, a further hearing will be set to enable the Commission to determine the amounts to be awarded to each employee.

R.E. BECHLY, Commissioner.

*Appearances:*

Mr M. Stroppiano, of Australasian Meat Industry Union of Employees (Queensland Branch), on behalf of the Applicant.  
Mr C. Harwood, on behalf of Overseas Game Meat Export Pty Ltd.

*Hearing Details:*  
2004 7 June

Released: 23 July 2004

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**National Retail Association Limited, Union of Employers AND The Australian Workers' Union of Employees, Queensland and Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees (Nos. B578 and B579 of 2004)**

**FAST FOOD INDUSTRY AWARD – STATE (EXCLUDING SOUTH-EAST QUEENSLAND) 2003**

**FAST FOOD INDUSTRY AWARD – SOUTH-EASTERN DIVISION 2003**

COMMISSIONER THOMPSON

27 July 2004

REPORT ON DECISION (as edited)

In giving his decision from the Bench on 22 July 2004, Commissioner Thompson stated:

"It is my intention today to give a decision in respect of this matter from the Bench and, I do it on the basis that in each of the applications, both B578 and B579 of 2004, there is, in effect, consent to each of the said applications and no opposition offered to them.

In relation to both matters, they were joined very early in the proceedings by the Commission with the agreement of the parties, so as to conduct the hearing in an orderly and sensible manner.

The matter came before the Commission, firstly in a preliminary way on 28 April 2004, with subsequent hearings being before the Commission on 27 May 2004, and today on 22 July 2004.

The earlier hearings apart from today were generally in terms of programming where this matter would go, but it would be for the record worth also noting that at those earlier proceedings there were other parties to the matters that came and went as the matter proceeded. In respect of that, I make reference to Mr Gil Muir, of Employer Services, who represented the Fast Food Chain Association and also Mr Kerry Krebs, of the Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees (LHMU) who each had an interest in the matters at some stage but during the course of the proceeding withdrew.

The application before the Commission in relation to both matters dealt with an amendment to clause 1.4 which is to the coverage clause of both awards, and was to include Subway Systems Australia Pty Ltd and their franchises in that particular clause.

***Fast Food Industry Award – State (Excluding South-East Queensland) 2003 (B578 of 2004)***

In respect of B578 of 2004, the party other than the NRA was The Australian Workers' Union of Employees, Queensland (AWU) and as we have heard today from Mr Matthew Guymer, of the National Retail Association Limited, Union of Employers (NRA), during the course of this matter there has been an agreement reached between the parties and the Commission received correspondence dated 20 July 2004 under the signature of Mr W. Ludwig, the Secretary of the Union, which indicated and confirmed the comments made by Mr Guymer.

In respect of that correspondence I might just place on record the following:

‘The Retailers Association of Queensland Limited Union of Employees have filed an amendment to the abovementioned award. The amendment is at clause 1.4 – Coverage to include Subway Systems Australia Pty Ltd and franchises thereto and their employees as a respondent to the abovementioned award. The Australian Workers’ Union of Employees, Queensland (AWU) has had discussions with Mr Matthew Guymer from the RAQ and has agreed to a further amendment as follows:

“1.4.3 *This Award shall apply to all employees as defined herein, engaged in or in connection with, fast food operations (as defined) throughout the State of Queensland excluding the South-Eastern Division, employed by Subway Systems Australia Pty Ltd and their franchise thereto, and to their employees provided that the employees engaged prior to (insert date of award variation) shall retain the wage rates and conditions of employment prescribed in the Café, Restaurant and Catering Award – State (Excluding South-East Queensland).*”.

I now wish to add that amendment to this decision that is now being given from the Bench:

Mr Guymer sought, and was granted, leave from the Bench to amend the application in matter B578 of 2004 to, in effect, include what is, in the view of the Commission, a ‘savings’ provision that, in time, will disappear, however, it seems, at this stage, to meet the requirements of the AWU to allow the application to go forward uncontested.

***Fast Food Industry Award – South-Eastern Division 2003*** (B579 of 2004)

In respect of B579 of 2004, there is, of course, consent to that application also. The parties, however, chose to run a course in line with what may have occurred had there been some objection and as a result, inspections were carried out by the Commission.

Those inspections were held at around about 10 a.m. today (22 July 2004) and involved the Commission, Mr Guymer, Mr Laurie Gillespie, of the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees (SDA), and Mr Peter Hampson, of Subway, attending two Subway stores, the first in Edward Street, Brisbane and the second at Post Office Square, Brisbane. The Commission had an opportunity to have a look at each of those particular stores and, in terms of the details of that inspection, it is not my intention to place on record anything in addition to what Mr Guymer covered in his submissions in terms of what the Commission has observed.

The matter then came back to the Commission and, in the hearing, we had the evidence from Mr Hampson accepted, without the need to have him take the stand or subject himself to the cross-examination of Mr Gillespie, as Mr Gillespie waived his rights.

The Commission has had an opportunity to look closely at the evidence that now is before the Commission by way of Mr Hampson’s statement and, in respect of that particular evidence, found that there was certainly beneficial information contained within the affidavit which was helpful to the Commission.

Mr Guymer then sought to amend, from the Bar table, the application in respect of B579 of 2004 and the amendment, as such, was tendered as part of Exhibit 1. For the record, the Commission would like to place, within the body of this decision, the particular amendment section that the Commission considers relevant to this matter:

‘This Award shall also apply to all employees as defined herein, engaged in, or in connection with, fast food operations (as defined) throughout the South-Eastern Division of the State of Queensland, employed by Subway Systems Australia Pty Ltd and franchises thereto, and to their employers [employees], provided that to accommodate the transition to this award, employees engaged prior to [insert date of award variation] will be exempt from clauses 6.5.1, 6.5.2 and 6.5.3 of this award and will instead be subject to clauses 6.5.1 and 6.5.2 of the Retail Take-Away Food Award – South-Eastern Division 2003. No other terms and conditions of the Retail Take-Away Food Award – South-Eastern Division 2003 shall apply.’.

Mr Gillespie was asked by the Commission whether he had objections to the application being amended, and he indicated from the Bar table that he had no objections and there was, in effect, consent, and no opposition would be offered in respect of this particular application.

In terms of the application itself, the Commission is drawn to the statement of facts (in the application) and particularly clause (d) where it states, as follows:

‘Subway have the following characteristics which have been accepted by this Commission as fulfilling the necessary requirements to be made respondent to the above award:

- (i) Standardisation of products;
- (ii) Standardisation of menus;
- (iii) Standardised specifications of food, both pre-cooked and raw product and finished product;
- (iv) Standard specification of buildings, uniforms, marketing policies, packaging, equipment, uniforms and décor (if not colour);
- (v) Multi locations;
- (vi) Do not sell other goods such as confectionery, alcohol or cigarettes.”.

The Commission would indicate that they are matters that have been considered previously by Full Benches of this Commission in determining whether or not a party ought to be bound by the *Fast Food Industry Award – South-Eastern Division 2003*, and on the inspections that took place today, the Commission is of the view that quite clearly each of the six matters referred to in (d) have been met and the Commission is of the view that it adds considerable weightage to the application before the Commission.

The Commission also heard, from Mr Guymer, substantial submissions in relation to a number of cases that have gone before the Commission previously, be it from Full Benches and from individual Commissioners, and he placed reliance upon a range of authorities which had been tendered also to the Commission.

The Commission accepts the submission put forward by Mr Guymer, in particular, relating to the criteria that needs to be satisfied in terms of having this application granted. The Commission is of the view that the stores in question do, in effect, in both applications, meet the definitions and principles of the *Fast Food Industry Award – South-Eastern Division 2003*.

In terms of an operative date, it has been indicated by Mr Guymer that the operative date sought would be 28 July 2004, and the reason given for that particular date were that it is the commencement of a new pay week.

The fact that the Commission has chosen to deliver this decision from the Bench is, in some way, also to assist the parties, with the operative date is as requested. There is certainly no opposition from Mr Gillespie and there was nothing contained within the body of the correspondence from the AWU in respect of the operative date at all and certainly no mention of an alternate date.

So, in terms of the particular operative date, it is the intention of the Commission to therefore grant the applications in B578 and B579 of 2004, and that the Commission directs the NRA to prepare and forward draft amendments to the Registry as soon as possible.

In each case the operative date will be 28 July 2004.

I order accordingly.”.

Dated 27 July 2004.

By the Commission,  
[L.S.] G. SAVILL,  
Acting Industrial Registrar.

*Appearances:*  
Mr M. Guymmer, National Retail Association Limited, Union of Employers, Applicant.  
Ms T. Lane, The Australian Workers’ Union of Employees, Queensland, Respondent.  
Mr L. Gillespie, Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees, Respondent.

*Hearing Details:*  
2004 28 April  
27 May  
22 July

Released: 27 July 2004

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QUEENSLAND INDUSTRIAL REGISTRAR

*Industrial Relations Act 1999 – s. 476*  
(No. U9 of 2004)

**REPLACEMENT CERTIFICATE OF REGISTRATION  
AS AN EMPLOYEE ORGANISATION**

I, GARY DAVID SAVILL, Acting Industrial Registrar, pursuant to section 476 of the *Industrial Relations Act 1999*, hereby certify that on 6 July 2004, the Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees, registered on 24 March 1977 as an Industrial Organisation of employees in the State of Queensland amended its name to read Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees.

Dated at Brisbane 22 July 2004.

G.D. SAVILL,  
Acting Industrial Registrar.

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QUEENSLAND INDUSTRIAL REGISTRAR

*Industrial Relations Act 1999 – s. 476*  
(No. U25 of 2003)

**REPLACEMENT CERTIFICATE OF REGISTRATION  
AS AN EMPLOYER ORGANISATION**

I, GARY DAVID SAVILL, Acting Industrial Registrar, pursuant to section 476 of the *Industrial Relations Act 1999*, hereby certify that on 9 July 2004, the Retailers’ Association of Queensland Limited, Union of Employers, registered on 2 April 1931 as an Industrial Organisation of employers in the State of Queensland amended its name to read National Retail Association Limited, Union of Employers.

Dated at Brisbane 22 July 2004.

G.D. SAVILL,  
Acting Industrial Registrar.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**Textile, Clothing and Footwear Union of Australia, Queensland Branch, Union of Employees AND  
Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others**  
(No. B1803 of 2003)

**SURGICAL BOOTMAKING, BESPOKE BOOTMAKING AND  
BOOT REPAIRING AWARD – STATE 2003**

COMMISSIONER ASBURY

21 July 2004

AMENDMENT (Correction of Error)

WHEREAS an error occurred in the Amendment of the abovementioned Award as published in the *Queensland Government Industrial Gazette* of 19 March 2004, Vol. 175, No. 11, pages 1062 – 1065, this Commission orders that the following correction be made and to be effective as from 1 December 2003:

By deleting clause 4.7.4 and renumbering clause 4.7.5 as clause 4.7.4.

Dated 21 July 2004.

By the Commission,  
[L.S.] G.D. SAVILL,  
Acting Industrial Registrar.

Operative Date: 1 December 2003  
Amendment (COE) – TCR Provisions  
Released: 22 July 2004