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No. 2

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
CA273/04	Blacks Beach Seafood – Certified Agreement 2004	5/7/04	
CA356/04	Blackboy Ridge Pty Ltd – Certified Agreement 2004	10/8/04	
CA346/04	Anderson Industries (Aust) Pty Ltd – Certified Agreement No.4	17/8/04	CA359/02
CA390/04	Cheep Pick Ups Pty Ltd – Catchers – Certified Enterprise Bargaining Agreement	19/8/04	
CA378/04	Mater Misericordiae Hospital Townsville Ltd – Clerical Staff – Certified Agreement 2004-2006	20/8/04	CA270/03
CA384/04	Hunter's Spar Supermarket – Certified Agreement 2003-2006	20/8/04	CA32/03
CA391/04	Mining Area Mount Isa Mines Limited – Certified Agreement	23/8/04	CA435/96
CA124/03	Action Shopfitters Pty Ltd – Certified Agreement	24/8/04	CA316/95
CA362/04	Butter Producers Co-Operative Federation Limited – Certified Agreement 2004	24/8/04	CA358/02
CA379/04	Department of Natural Resources, Mines & Energy – State Valuation Service – Certified Agreement	24/8/04	
CA403/04	Great Adventures Marine – Certified Agreement 2004-2007	24/8/04	CA264/01
CA363/04	Uniting Healthcare Security Supervisors – Certified Agreement 2004	25/8/04	
CA395/04	Cellnet Group Limited (Eagle Farm, Queensland) Warehouse Employees – Certified Agreement	27/8/04	
CA396/04	Imperial Management Queensland Pty Ltd – Certified Agreement 2004	27/8/04	
CA410/04	Farmfresh Fine Foods – Certified Agreement 2004	27/8/04	
CA415/04	Lockyer Produce Pty Ltd – Certified Agreement 2004	27/8/04	

No/s	Title	Certified on and certificate issued	Cancelling
CA397/04	Simon Hone t/as Honex Brunel & Electrical Trades Union of Employees of Australia, Queensland Branch – Certified Agreement 2003/2005	30/8/04	
CA398/04	R & J Cousins Electrical Constructions Pty Ltd – Certified Agreement 2003-2005	30/8/04	
CA399/04	Blue Star Pacific Pty Ltd & Electrical Trades Union of Australia, Queensland Branch – Certified Agreement 2003/2005	30/8/04	
CA400/04	Simon Hone t/as Honex Brunel Queensland Vegetation – Certified Agreement 2003/2005	30/8/04	
CA401/04	Simon Hone t/as Honex Brunel – Certified Agreement 2003/2005	30/8/04	
CA407/04	Rocky Point Mill Enterprise Bargaining – Certified Agreement Number 6	30/8/04	CA465/02

G.D. SAVILL
Industrial Registrar

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INDUSTRIAL COURT OF QUEENSLAND

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

Kenneth John Sheehan AND Department of Employment and Training (No. C40 of 2004)

PRESIDENT HALL

25 August 2004

DECISION

The Queensland Industrial Relations Commission is not a superior court of record. It is a statutory tribunal. It has no inherent jurisdiction. Plainly, the Commission has by implication the power to do everything which is necessary for the exercise of powers expressly vested, but such implied powers must be derived by implication from the expressed powers and limited to necessary powers. In particular, there is no justification for the implication of powers to issue mandatory and restrictive injunctions supplementary to the expressed powers at s. 276 of the *Industrial Relations Act 1999*, compare *Gersten v Cape York Land Council Aboriginal Corporation (2004)* 175 QGIG 1085. However, s. 265(1)(e) of the Act contemplates that the Commission may be vested with jurisdiction to hear and determine a matter by an Act other than the *Industrial Relations Act 1999*. One such Act is the *Whistleblower's Protection Act 1994*.

By s. 46 of that Act an employee may apply for an injunction about a reprisal (defined by s. 41) to the Industrial Commission if the reprisal has caused or may cause detriment to the employee and involves or may involve a breach of the *Industrial Relations Act 1999*, an award, an industrial agreement, a certified agreement or an enterprise flexibility agreement under the *Industrial Relations Act 1999*. By s. 49 the Industrial Commission may grant such an injunction if satisfied that a person has engaged, is engaging or is proposing to engage, in conduct amounting to the taking of a reprisal. The form of the order is left to the discretion of the Commission. The Commission's power to grant mandatory injunctive relief is further developed by s. 50 which provides that the Commission "may grant an injunction requiring the person to take specified action to remedy any detriment caused by the conduct."

By an application dated 8 June 2004 and filed with the Industrial Registrar on 11 June 2004, Kenneth John Sheehan, a public servant, applied to the Commission for relief in the following terms:

- "1. An urgent interim injunction to prevent immediate reprisals against a Whistleblower, pending the outcome of a full hearing of the matter before the Commission. Those immediate reprisals being a reduction in salary from AO4(4) to AO4(2), entailing a detriment of approximately \$5,000 to me, plus a reprimand, as detailed in a letter sent to me by Mr Chris Robinson and dated 1 March 2004, a copy of which is attached listed as **Schedule 1**.
2. A permanent injunction to prevent the above reprisals against a Whistleblower, and in addition to prevent as yet unspecified reprisals contained in a Show Cause notice sent to me by Mr Chris Robinson and dated 16 March 2004, a copy of which is attached listed as **Schedule 2**."

By decision of 16 June 2004 now reported at 176 QGIG 408, the Commission rejected Mr Sheehan's claim for interim relief. For immediate purposes it is sufficient to reproduce the final three paragraphs of the decision, viz:

"In my view therefore, Mr Sheehan is unable to succeed in this application for injunction, interim or permanent, to prevent a termination and it is premature to second guess what other 'unspecified reprisals' might be forthcoming, if any. Any injunctive order has to be specific in its terms.

The applications for the urgent interim injunction are refused.

The application for the permanent injunction is adjourned to a date to be fixed to await the outcome of the Public Service Appeal process. The application will be re-listed when the advice is received of the applicant's intentions."

The use of the plural noun "applications" with reference to interim injunctive relief is because an exchange on transcript lead the Commission to believe that as well as the interim relief at (1) above, Mr Sheehan also sought interim relief in terms of (2) above additionally to a permanent injunction in those terms. In those circumstances, no doubt mindful of the obligation under s. 320(2) and (3) of the *Industrial Relations Act 1999* to ignore technicality and have regard to the substantial merits of the case, the Commission dealt with that application for interim relief without proper pleadings.

Having heard Mr Sheehan on the appeal, I accept that Mr Sheehan was not seeking interim relief other than that described at (1) above. However, since the Commission always recognised that there was an application at (2) above for a permanent injunction or preserved that application by adjourning it, no harm has been done.

Mr Sheehan now appeals against the refusal of the Commission to grant interim injunction relief. For the purposes of the appeal, the respondent is prepared to accept that the noun "injunction" at ss. 47, 49 and 50 of the *Whistleblower's Protection Act 1994* encompasses an interim injunction and raises no issue about whether the interim relief which was sought at (1) above goes beyond maintaining the *status quo*, until the application for permanent relief at (2) above is heard. What the respondent does emphasise, and rightly emphasises, is that to grant interim injunctive relief involves the exercise of discretion, and that the discretion is the discretion of the Commission and not of this Court.

Any discretionary decision attracts the principles enunciated in *House v The King (1936)* 55 CLR 499 at 504-505 per Dixon, Evatt and McTiernan J J:

"...The manner in which an appeal against an exercise of discretion should be determined is governed by established principles. It is not enough that the judges composing the appellate court consider that, if they had been in the position of the primary judge, they would have taken a different course. It must appear that some error has been made in exercising the discretion. If the judge acts upon a wrong principle, if he allows extraneous or irrelevant matters to guide or affect him, if he mistakes the facts, if he does not take into account some material consideration, then his determination should be reviewed and the appellate court may exercise its own discretion in substitution for his if it has the materials for doing so. It may not appear how the primary judge has reached the result embodied in his order, but, if upon the facts it is unreasonable or plainly unjust, the appellate court may infer in some way there has been a failure properly to exercise the discretion which the law reposes in the court of first instance. In such a case, although the nature of the error may not be discoverable, the exercise of discretion is reviewed on the grounds that a substantial wrong has in fact occurred."

But the matter does not stop there. Because the Commission was not finally determining substantive rights but was dealing with a matter of practice and procedure, there is an additional restraint upon an appellate court. In *Adam P Brown Male Fashions Pty Ltd v Phillip Morris Incorporated and Ors (1981)* 148 CLR at 177 Gibbs C J, Aickin, Wilson and Brennan J J observed (footnote references omitted):

"Nor is there any serious dispute between the parties that appellate courts exercise particular caution in reviewing decision pertaining to practice and procedure. Counsel for Brown urged that specific cumulative bars operate to guide appellate courts in the discharge of that task. Not only must there be error of principle, but the decision appealed from must work a substantial injustice to one of the parties. The opposing view is that such criteria are to be expressed disjunctively. Cases can be cited in support of both views: for example, on the one hand, *Niemann v. Electronic Industries Ltd*; on the other hand, *De Mesire v. A. D. Hunter Pty Ltd*. For ourselves, we believe it to be unnecessary and indeed unwise to lay down rigid and exhaustive criteria. The circumstances of different cases are infinitely various. We would merely repeat, with approval, the oft-cited statement of Sir Frederick Jordan in *In re the Will of F. B. Gilvert (dec.)*:

'... I am of opinion that, ... there is a material difference between an exercise of discretion on a point of practice of procedure and an exercise of discretion which determines substantive rights. In the former class of case, if a tight rein were not kept upon interference with the orders of a Judges of first instance, the result would be disastrous to the proper administration of justice. The disposal of cases could be delayed interminably, and costs heaped up indefinitely, if a litigant with a long purse or a litigious disposition could, at will, in effect transfer all exercises of discretion in interlocutory applications from a judge in Chambers to a Court of Appeal.'

See also, *Brambles Holdings Ltd. v. Trade Practices Commission; Dougherty v. Chandler*. It is safe to say that the question of injustice flowing from the order appealed from will generally be relevant and necessary consideration."

The Commission dealt with the application for the interim relief at (1) above as follows:

"It was determined, pursuant to s. 87(1)(b), (d) and (f) of the *Public Service Act 1996*, on 1 March 2004 that there would be a reduction in salary from AO4(4) to AO4(2) and a reprimand. That determination is not to be implemented until any appeal process is completed. Mr Sheehan, as he was entitled to do, has appealed to the Public Service Commissioner against that penalty. That appeal process is still on foot – the decision of the Public Service Commissioner has not been delivered. It might well be that the appeal is upheld. In any event, it would seem to me to be an interference with the right of the Public Service Commissioner to complete the process undertaken by him should an interim injunction be issued at this stage. There is no harm being suffered by Mr Sheehan which cannot be subsequently undone and it seems to me that the public interest and the balance of convenience are against the issue of an interim injunction in respect of the reduction in salary."

History has shown the Commission to have been wrong. Mr Sheehan's appeal to the Public Service Commissioner failed. That avails Mr Sheehan not at all. The appeal to this Court is an appeal by way of rehearing, s. 348(1) of the *Industrial Relations Act 1999*. By s. 348(2) there is a limited discretionary power to admit new evidence. But that power is not available to admit evidence of events subsequent to the hearing at first instance. In cases such as this the appeal must be determined on the law and the facts as they were at the time that the decision at first instance was given. *Coal and Allied Operations Pty Ltd v Australian Industrial Relations Commission and Ors (2000)* 203 CLR 194 at paragraphs 12-13 per Gleeson C J, Gaudron and Hayne J J. Plainly, Mr Sheehan is entitled to approach the Commission again but that is of no present moment. The Commission was right to consider the balance of convenience, compare *AWU v Yallourn Energy Pty Ltd (1999)* 95 IR 206 at paragraphs 78-79 per Merkel J.

Mr Sheehan (perfectly understandably) contends that the argument that all may be reversed on the application for permanent relief is of little comfort to a separated father with a low income and with children to support. But that is a matter of weight and a matter for the tribunal at first instance. The Commission was plainly right to consider the public interest, compare *Castlemaine Tooheys Ltd v South Australia (1986)* 161 CLR 148 at 155 per Mason A. C. J. The legislature has made a decision that in the ordinary case, appeals against disciplinary decisions taken under the *Public Service Act 1996* should be determined by the Public Service Commission. Notwithstanding that the *Whistleblowers Protection Act 1994* grants power to interfere, it is not in the least surprising that the Commission will be reluctant to do so. Tribunals exercising supervisory jurisdiction, whether by way of the issue of injunctions or the grant or prerogative relief, are normally loath to exercise the discretionary power to intervene before any alternate appellate scheme is exhausted.

As to the application for an interim injunction in terms of (2) above, if indeed there was such an application, the Commission was right to dismiss the application on the ground that "...it is premature to second guess what other 'unspecified reprisals' might be forthcoming ...".

However, in my view, the Commission was compelled to come to that conclusion for an additional reason. It is clear from s. 49 of the *Whistleblowers Protection Act 1994* that an injunction must be about "conduct". The purpose of the order is to tell the person against whom it is directed what that person must or must not do. It is not a legitimate use of the power to grant injunctive relief to reinforce statutory barriers to reprisal or to supplement sanctions otherwise available for a reprisal. The Commission is required to go behind nouns such as "reprisal" and "detriment" and deal with conduct and as the Commission found, there was no conduct imminent at the time of the hearing at first instance to which an injunctive order might be directed.

That is sufficient to dispose of the appeal. However, in the course of dealing with the application for injunctive relief at (2) above, the Commission dealt with the issue whether interim injunctive relief was available to protect a whistleblower against reprisal by way of termination of employment. The issue rises in this way. To dismiss an employee because of a belief that the employee has made or may make a public interest disclosure under the *Whistleblowers Protection Act 1994* is to dismiss for an invalid reason and to breach s. 73 of the *Industrial Relations Act 1999*. By s. 277(11) of the *Industrial Relations Act 1999* the Commission may not grant an injunctive order for a proposed contravention of, *inter alia*, s. 73 of that Act. The Commissioner took the view that s. 277(11) was inconsistent with the provisions of ss. 47(1) and s. 49 of the *Whistleblowers Protection Act 1994*, or that as the latter Act the *Industrial Relations Act 1999* must prevail to the extent of the inconsistency.

The inconsequence was, of course, there was no power under s. 47(1) and s. 49 of the *Whistleblowers Protection Act 1994* to grant injunctive relief against an impending dismissal. The conclusion goes beyond an inconvenient *obiter dictum*. It was an alternate reason for the Commission's decision about the second application for interim relief. If certain proceedings under the *Public Service Act 1996* are determined adversely to Mr Sheehan, the conclusion may well prove critical on the application for permanent injunctive relief. The point has been argued on the appeal and I think that I should deal with it.

I accept that the relationship between s. 47 of the *Whistleblowers Protection Act 1994* and the *Industrial Relations Act 1999* is a matter of some difficulty. Frankly, as a matter of first impression, s. 47 of the *Whistleblowers Protection Act 1994* is incomprehensible. However, the difficulties may not be overcome by invoking the rule in *Goodwin v. Phillips (1908)* 7 CLR 1 and holding that in the event of inconsistency the latter Act prevails. There is not a latter Act. The difficulties in the relationship between s. 47 of the *Whistleblowers Protection Act 1994* and the *Industrial Relations Act 1999* arise out of amendments made to s. 47 by s. 747 and Schedule 3 of the *Industrial Relations Act 1999*. Further, one does not look first to the principles of the statutory construction, whether developed by the common law or sourced in legislation about statutory interpretation. One looks first to the text of the applicable legislation, compare *Attorney General for the state of Queensland v Australian Industrial Relations Commission and Ors (2002)* 213 CLR 485 at paragraphs 112-114 per Kirby J.

Whatever the provision of the *Industrial Relations Act 1999* at which s. 47(3) of the *Whistleblowers Protection Act 1994* is directed, that section makes clear that in the event of inconsistency it is s. 47 which is to prevail. Beyond that, I say nothing about the matter of conflict other than that on an application for permanent injunction there will be greater time to research and enlightenment may yet be dawn.

I dismiss the appeal.

I reserve all questions as to costs.

Dated 25 August 2004

D. R. HALL, President.

Appearances:
The Appellant in person.
Mr C. J. Murdoch instructed by Crown Law for the Respondent.
The Public Service Commissioner entered an appearance only for the purpose of abiding the order of the court.

Released: 25 August 2004

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INDUSTRIAL COURT OF QUEENSLAND

Workplace Health and Safety Act 1995 – s. 144(3) – appeal against decision of industrial magistrate

Honeycombs Townsville Pty Ltd AND David Williams (No. C25 of 2004)

PRESIDENT HALL

26 August 2004

DECISION

On 19 February 2003 the appellant was charged that on 8 November 2002 it breached s. 24 of the *Workplace Health and Safety Act 1995* in failing to discharge a workplace health and safety obligation imposed upon it and prescribed by s. 30(1)(a) of that Act. The complaint particularised that the risk was the risk of injury, including the risk of injury to Mr Ante Banicevic resulting from a fall from a height. The source of the risk was particularised as emanating from working at height. The workplace was particularised as the High Point Development, Walker Street, Townsville. The appellant admitted in corporation, that the High Point Development was a workplace and that on the date nominated in the complaint Mr Banicevic fell and suffered bodily harm. The issue that was tried was whether the risk of injury by falling was minimised as required by s. 30(1)(a).

By a decision published on 24 February 2004 the Industrial Magistrate at Townsville found the charge to be proven and that no defence was available under s. 37(1)(b)(i) and (ii). The critical passages in His Worship’s decision were:

“I find with the change in circumstances on the site, when the internal scaffolding was removed, or/and further, when the hand-rails were removed, and if not then, when it was known that employees of a sub-contractor would be attending at the site, a proper assessment of the risk involved of a fall from height, ought to have been carried out, in order for it to fulfil its statutory obligations of risk management. I find no such assessment was conducted. I find the placement of the scaffolding mesh against the open doorway, without additional precautions, such as handrails on the floor edge, was an inadequate and insufficient safety barrier, in this particular set of circumstances.

On the whole of the evidence, I am not satisfied, on the balance of probabilities, that the defendant company has shown a defence open to it under s. 37(1)(b)(i) or (ii) of the Act. I find, beyond any reasonable doubt, that the defendant company, in acting as they did, failed to ensure risk of injury to Mr. Banicevic was minimized when he came onto the balcony to work that day.”.

By way of background I shall say that Mr Banicevic had gained access to and had fallen from an internal mezzanine level. At an earlier time workmen had been protected against the risk of fall by hand-rails and birdcage scaffolding which had been placed around the edge of the mezzanine floor. The date of removal of the hand-rails and birdcage scaffolding was unknown. Importantly, there was no record of the removal.

Mr Banicevic had entered upon the mezzanine floor for a perfectly proper reason. He had been directed to go to unit 89 and to remove cement from the return of the doorway. The need to remove the cement, so that a door might be installed, had been minuted. It was accepted that the task would not be performed until waterproofing of the unit had been completed.

On the evidence, a wire mesh gate had been leaned across the doorway. The Industrial Magistrate held that the wire mesh gate was a visual warning against passage through the doorway but also held that the wire mesh gate had not been fastened. Mr Banicevic removed the wire mesh gate and walked through the doorway in order to get better leverage in trying to remove remnants of cement referred to as “dags”.

It was in gaining leverage that he stepped or fell backwards and over the edge of the mezzanine floor.

The real issue on the appeal has been the Industrial Magistrate’s finding that upon the removal of the rails and birdcage scaffolding that no proper assessment of the risk of injury by falling from the unguarded mezzanine floor was undertaken. (The hazard itself seems to be common ground.)

Whilst there is no formal record of any such assessment and no direct evidence (except by the Industrial Magistrate) that such an assessment occurred, the visual barrier of the wire mesh gate is said to support an inference that assessment of the risk had been carried out. The submission is that what everyone might think of the adequacy of the measure adopted, viz the unsecured wire mesh gate, the act of positioning the wire mesh gate can only have flowed from a recognition and assessment of the risk.

The Industrial Magistrate was well aware that there was an issue about the wire mesh barrier. There was a conflict of evidence about whether there was a barrier at all. The Industrial Magistrate pulled that evidence together and, favourably to the appellant, found that there was a barrier in place. There was also a conflict of evidence about whether the barrier was a wire mesh barrier or a ply wood barrier. Once again, the Industrial Magistrate summarised the evidence and concluded that a wire mesh barrier had been used. That conclusion also was favourable to the appellant.

If the Industrial Magistrate had found that a wind resistant movable barrier had been used, other issues, potentially including amendment of the complaint, would have arisen. There was an issue about whether the barrier had been put in place before or after the removal of the railing and the birdcage scaffolding. The Industrial Magistrate rehearsed that evidence (albeit inconclusively). The written decision makes it plain that His Worship was well aware that he was being asked to draw an inference from the placement of the wire mesh gate that somebody had assessed the risk. However, His Worship was also well aware that the real issue was whether the risk had been assessed and that he should not be mesmerised by arguments about the gate. At one point His Worship said:

“The question of whether or not the scaffolding mesh barrier was in place, fixed or otherwise, across the open doorway, is a significant aspect of this matter, even though, a finding in that respect, will not be sufficient to determine the complaint.”.

Bearing in mind the absence of any record of an assessment being made, the absence of any witness claiming to be a participant of the process and the absence of witnesses claiming to have observed the process, it was plainly open to the Industrial Magistrate to conclude (as His Worship did) that there had been no assessment of the risk and that the wire mesh barrier had been put there for reasons unrelated to the risk of falling from the mezzanine floor. There was, I might add, evidence upon which an inference might have been drawn that the purpose of the visual barrier constituted by the wire mesh gate was to deter persons from using the doorway to gain access to the roof. That inference was debated at first instance.

Some attempt was made to argue that even if the wire mesh gate had been fastened, it would be possible for workmen to remove it or to climb over it. I accept that. But the obligation at s. 30(1)(a) is to minimise the risk. The risk would have been reduced by the act of fastening the gate. (I stress that I give no support to the use of fastened wire mesh gates to bar access to mezzanine floors whilst a building is under construction.) With respect to the diligence with which counsel for the appellant has argued his case, it is difficult to understand why the “dags” were not removed before the hand-rails and birdcage scaffolding was removed.

In my view the Industrial Magistrate was right to convict.

There is also an appeal against the quantum of the fine imposed by the Industrial Magistrate. The fine imposed was \$28, 500. The maximum available penalty was \$187,500.

The offence was objectively serious. The appellant had failed at the first hurdle. The risk was simply not assessed. On building/construction sites, which are almost invariably dangerous and which present variable rather than static degrees of danger, that is not good enough. It is legitimately contended that Mr Banicevic did not take the care for his own safety which he should have taken. The reforms encapsulated in the *Workplace Health and Safety Act 1995* are (in part) directed at that very problem.

Whilst it is true that the respondent concedes that the appellant’s workplace health and safety performance was, over all, of a satisfactory nature, the difficulty remains that it was the third offence. I am unaware, and counsel for the respondent who is very experienced in these matters is unaware, of any other Queensland company or natural person which has three convictions for a breach of the *Workplace Health and Safety Act 1995*. It is that circumstance that takes this case beyond the range of \$15,000 to \$22,500 nominated in *Batley v. S. Lowe and Sons (Tulley) Pty Ltd* (2003) 174 QGIG 179. (A case involving a first offender and determined in the absence of a circumstance of aggravation and against the background maximum penalty of \$150,000.)

I can see nothing in the Industrial Magistrate’s reasons to indicate that His Worship acted upon a wrong principle. The fine is very far from being so manifestly excessive as to indicate an undisclosed error.

I dismiss the appeal against the quantum of the fine.

The respondent seeks costs. I reserve all questions as to costs. Submissions will be taken in writing in accordance with a schedule to be prepared by my associate.

Dated 26 August 2004

D. R. HALL, President.

Appearances:

Mr J. Moon instructed by Connolly Suthers Solicitors for the Appellant.

Mr S. Habermann directly instructed by Workplace Health and Safety for the Respondent.

Released: 26 August 2004

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

Andrew William McElhone AND Class A Floor Preparations Pty Ltd (No. B527 of 2004)

DEPUTY PRESIDENT BLOOMFIELD

27 August 2004

Application for reinstatement – Witness evidence – Credibility – Applicant previously agreed to terminate on a particular day and become a contractor – Applicant reneged on agreement – Respondent wrote letter formally terminating applicant in light of previous agreement – Termination found to have occurred by prior agreement – Applicant was not dismissed – Application dismissed for want of jurisdiction.

DECISION

Background

This decision relates to an application lodged by Mr Andrew William McElhone (the applicant) in which he seeks relief in relation to his alleged unfair dismissal by Class A Floor Preparations Pty Ltd (the respondent) on or around 31 March 2004. The applicant seeks reinstatement to his former position.

Class A Floor Preparations came into the ownership of Mr Douglas Engel on 1 October 2003. Mr Engel operated another business, a bakery, but decided to purchase Class A Floor Preparations on the recommendation of a business broker and financier, a Mr Douglas McGregor. Mr McGregor provided funding for the purchase and also recommended to Mr Engel that he engage the applicant as the manager of the business from the time Mr Engel acquired it.

The business itself had 2 parts. One part involved "floor topping", usually one-off domestic jobs, with the second part involving concrete polishing, usually on major commercial projects.

The applicant's contentions

The applicant claimed he was enticed to work for the respondent by Mr McGregor who allegedly also offered him a 50% shareholding in the respondent, to be repaid through the profits of the business.

The applicant said that during March 2004 some preliminary discussions were held about Mr McGregor's proposal that all employees become contractors or consultants some time in the future. The applicant said "*I had no choice but to acknowledge this as part of the long term plan for the business.*" (Exhibit 2, paragraph 3). However, according to the applicant, no firm decisions were made.

The applicant said he received an email from Mr McGregor on 25 March 2004 which requested him to get all of the financials for the business up-to-date by Friday, 26 March 2004. The applicant said he performed this task in conjunction with the bookkeeper and met Mr McGregor at approximately 4.30 p.m. on the Friday. The applicant said Mr McGregor informed him during this meeting that his work colleagues thought he was a joke. The applicant claimed he experienced severe headaches over the following weekend, was unable to sleep and felt very stressed and tense. He said he saw a doctor early on the morning of Monday, 29 March 2004 and was given a medical certificate declaring him unfit for work duties until Friday, 1 April 2004. The applicant said he came home from the doctors and wrote a letter explaining his predicament which he sent by email to Mr McGregor and by fax to Mr Engel.

The applicant said that on the following day Mr Engel rang him at home to say he would like to collect the company's 2 mobile phones that afternoon if the applicant could make it. Mr Engel also allegedly acknowledged receipt of the letter mentioned above and expressed empathy and understanding for the applicant's situation. According to the applicant they also discussed the applicant's potential return to work on the following Friday.

The applicant said Mr Engel did not make the programmed phone call to arrange to collect the phones. However, at approximately 3.00 p.m. on Wednesday, 31 March 2004 Mr Engel did ring to say he would like to meet to collect the phones. Arrangements were made to meet outside Mr Engel's old house at Benowa.

At this meeting, at approximately 4.00 p.m., the applicant said he was asked to handover the respondent's 2 mobile phones and the keys to its leased warehouse and its letterbox. The applicant said he handed these items over and was then handed an envelope by Mr Engel which contained a letter, dated 29 March 2004, in the following terms:

"Dear Andrew

Re: Your employment as Manager: 'Class A' Floor Preparations Pty Ltd

I confirm my agent's previous notification to you that your employment as manager is terminated from 31 March 2004.

Please hand over all company property (including mobile phones) and company documents and records that you have in your possession.

I note that you have purported to draw a cheque (no. 364) for all your outstanding entitlements. However, a brief perusal of the accounts indicated that you have drawn considerably more than the agreed total salary and superannuation package of \$50,000 per annum.

Yours faithfully

*Doug Engel
Director"*

The applicant said Mr Engel told him that he had simply signed the letter and that it had been written by Mr McGregor. The applicant claimed this was the first time he had any knowledge of his termination. He said he had never received any warnings during his employment, either verbal or written, and no reason was given, or has since been given, for his termination. Further, no mention was made of any ongoing role with the respondent.

The applicant claims that his termination, in all of the circumstances, was harsh, unjust or unreasonable. He also claims it was for an invalid reason because he was on sick leave at the time of his termination.

The respondent's contentions

Mr McGregor said he had been a friend of Mr Engel for approximately 25 years and had provided financial assistance to Mr Engel to set up previous businesses. Mr McGregor said he had met the applicant in July 2003 whilst performing a part-time consultancy role at Hallmark Business Sales (Hallmark) and had also become aware of Class A Floor Preparations through his time at Hallmark.

Mr McGregor suggested to Mr Engel that Class A Floor Preparations might be a good business venture to consider moving into and also recommended that the applicant might be a suitable manager. After due diligence, Mr Engel decided to purchase the business and to engage the applicant to manage it.

Mr McGregor said that neither he nor Mr Engel had any direct involvement with the business until late February 2004. Up until that time the applicant had possession of all of the company records and provided brief verbal reports on the business and how it was running. These reports were always positive.

However, Mr McGregor said he had become increasingly concerned about the business, and the applicant's ability to manage it, in the period between mid-December 2003 and late February 2004. He first became concerned when the applicant telephoned him on 15 December 2003 to request an urgent injection of funds because 3 cheques had been dishonoured by the bank. Mr McGregor said he met with the applicant and the respondent's part-time bookkeeper in early February 2004 to discuss the financial reports. Mr McGregor said conflicting reports were given to him and it became clear to him that neither the applicant nor the bookkeeper had much knowledge about the production of business records. As a result, Mr McGregor lost all confidence in the reports he was receiving from the Applicant.

Mr McGregor said that by late February 2004 he was starting to have serious concerns about the applicant's management ability and style. These concerns arose from a variety of issues including:

- the continuing failure to resolve the accounting issues;
- the fact that the company was locked into an unprofitable contract which had been seriously underquoted by the applicant;
- that this same contract was seriously behind schedule and could render the respondent liable to a damages claim;
- that the applicant had been unable to secure any major future work since the takeover of the business by the new owners in October 2003;
- the number of recalls to jobs to rectify deficient work;
- a large damages claim for a job on the Gold Coast; and
- the fact that it had now become clear that the respondent would only make a profit one month out of the first 5 months of its operation and was well behind budgeted forecasts.

Mr McGregor said he spoke to Mr Engel about the above issues because Mr Engel was now more aware of the day to day problems because Mr Engel's son had commenced to work for the business. Mr McGregor also said that by this time Mr Engel had sold the bakery and was preparing to start work in the business. He urged Mr Engel to start as soon as possible. Mr McGregor said he discussed with Mr Engel an arrangement whereby Mr Engel would take over all site and project management responsibilities, the applicant would focus on sales and marketing and he, in turn, would look after all administrative and accounting functions. In addition, the business would be relocated.

Mr McGregor said that because he was now proposing to do the books he wanted as few employees as possible and wished to rely upon sub-contractors and contractors as much as possible. Consequently, it was agreed between he and Mr Engel that a suitable time to commence the new arrangements would be on 1 April 2004, after Mr Engel had been in the business for a few weeks, because that was the start of a new BAS period.

Mr McGregor went on to indicate that in late February 2004 he also spoke to the applicant about the proposed changes (as above). In particular, there was a meeting at the factory on 27 February 2004. Mr McGregor said that the applicant expressed some concerns about the changes but there was nothing of significance. Mr McGregor also said it was made abundantly clear to the applicant at this time that his management role would cease on 31 March 2004 and that after that date he would be limited to a sales and marketing role. It was also made clear to the applicant that he would need to be an independent contractor and go onto the GST system.

Mr McGregor said he also discussed with the applicant the Taxation Office's "80/20 Rules" for independent contractors and advised him that he would be free to do other consulting work. The applicant was asked to indicate the consultancy fees he thought he should receive. In this regard, the applicant sent an email on 3 March 2004 which, amongst other things, indicated that he was looking to receive \$1,450 per week, plus GST, under the proposed arrangements. Mr McGregor said he responded by return email stating that this amount was acceptable. These emails were produced into evidence.

Mr McGregor said that from the beginning of March 2004 he started to take a far more active interest in the business and, to this end, had a number of meetings with the applicant. He recalled having meetings on 10, 15, 19, 23 and 26 March 2004. On the afternoon of 19 March 2004 the applicant produced a number of written reports on matters Mr McGregor had requested. At the next meeting, on 23 March 2004, Mr Engel was also present.

At the 23 March 2004 meeting the plans for relocation and restructure were discussed and it was also, according to Mr McGregor, agreed that Mr Engel would take over the site management role immediately because of the magnitude of the problems being experienced. Mr McGregor said that the applicant expressed no dissent to these plans during the meeting. However, after Mr Engel left the meeting the applicant started to provide reasons why his role should be enlarged from sales and marketing. On the following day, the applicant sent an email pursuing some of the issues canvassed by him on the previous day. Mr McGregor said he responded by email to inform the applicant that he could not leave many of the comments unchallenged, indicating he would take the matters up when they next met on Friday, 26 March 2004 at the factory. These emails were also produced into evidence.

Mr McGregor said that at the 26 March 2004 meeting he started to talk to the applicant about the financial reports and other matters. Mr McGregor said he told the applicant that Mr Engel wanted the business to proceed forward positively in a no-blame environment with a team approach. However, the applicant wanted, instead, to talk further about his managerial performance. Mr McGregor said he told the applicant there was a wide body of opinion that indicated his managerial performance was poor. The applicant kept pressing Mr McGregor for his sources of knowledge saying it was all hearsay. Mr McGregor said the applicant then insisted he be granted a half shareholding in the business, offering to release that shareholding if the business did not achieve \$200,000 turnover in the next 6 months. Mr McGregor said he totally rejected this proposal, without consulting Mr Engel, because that would have involved rewarding the applicant for oversighting a significant reduction in the annual turnover of the business from the time it was acquired. As such, he told the applicant the shareholding proposal was not possible and pressed him to take up the sales and marketing role "*as previously agreed*". According to Mr McGregor, the applicant then said "*he had seen this coming*" and pulled a yellow post-it note from his pocket. The applicant then said that he intended to report Mr McGregor to the Law Society, the Taxation Office, Hallmark and 3 other bodies which he would not name.

Mr McGregor said he did not wish to continue the conversation after these serious threats were made against him. He said he told the applicant he should "*think about it all*" over the weekend, after which he should talk to Mr Engel.

Mr McGregor also said he made it abundantly clear to the applicant throughout the meeting on 26 March 2004 that the applicant's position would change as of 31 March 2004 and he would no longer be its manager. However, during all of the earlier discussions he had made it clear to the applicant that a sales and marketing consultancy was available from 1 April 2004 if the applicant wanted it.

Mr McGregor said before leaving the 26 March 2004 meeting he asked the applicant for the respondent's cheque books. He subsequently examined them and noted that the applicant had, earlier during the day on 26 March 2004, drawn a cheque for all of his entitlements, including 9 days holiday pay. The applicant had also paid his superannuation entitlements up to that date.

Finally, Mr McGregor said he caused a letter to the applicant to be prepared early the following week, under Mr Engel's signature, which confirmed to the applicant that he would not be the manager of the business beyond 31 March 2004. This was the letter referred to by the applicant above.

Mr Engel confirmed Mr McGregor's evidence about how the business started up and how the applicant became involved. Mr Engel also said that his son commenced in the business in January 2004 and became a source of information about how the business was going. His son told him about a number of problems with the business relating to work systems and quality control. Mr Engel said that at first he was not overly concerned about these problems as they seemed to be normal for the construction industry. However, he continued to hear about work problems, including from some of the respondent's sub-contractors.

Mr Engel said that by early March 2004 he had held a number of meetings with Mr McGregor to discuss the problems occurring in the business. He was aware of the job which had been underquoted and which was behind schedule. He also heard about other problems from Mr McGregor that he was not previously aware of. Mr Engel said Mr McGregor indicated that he had lost confidence in the applicant's financial management and in the figures that had been produced. Mr Engel also said that Mr McGregor informed him that the applicant's skills were in the sales and marketing area and it was suggested he should be used there.

Mr Engel said as a result of the problems and what was happening within the business, it was agreed between Mr McGregor and himself that the business would have a complete restructure. Firstly, he would become responsible for all site supervision from 1 April 2004 while Mr McGregor would handle all administrative and accounts matters. Secondly, the business would be relocated from its premises at Andrews on the Gold Coast to a more central location. Thirdly, the applicant would cease employment as manager on 31 March 2004 and become a consultant to the business concentrating on sales and marketing.

Mr Engel said he started work with the respondent on 12 March 2004 and soon after that discussed the restructure arrangements with the applicant. The applicant indicated he was pleased he would no longer have site supervision responsibilities after the end of March 2004. Mr Engel said he assumed the applicant was happy with the restructure arrangements because he only made positive comments about them.

Mr Engel said that because of a number of problems on certain sites it was decided at a lunch time meeting on 23 March 2004 between the applicant, himself and Mr McGregor that he would take over site supervision and co-ordination on all jobs immediately, instead of on 1 April 2004. Mr Engel said the applicant's sales and marketing role was also discussed at the same meeting because he (Mr Engel) was concerned there was no new major work in the pipeline.

Mr Engel said he met with Mr McGregor on Sunday, 28 March 2004 as the office and equipment was being relocated from Andrews at the Gold Coast to a shed on Mr Engel's rented property at Ormeau. Mr McGregor told him that the meeting with the applicant on the previous Friday had ended in dispute, with the applicant now appearing to reject the agreed restructure arrangements and wanting to continue with his full-time management role. Mr Engel said he and Mr McGregor agreed this proposal was impossible and further agreed that "*it would be the sales and marketing role as previously discussed or nothing*".

Mr Engel said he did not hear from the applicant at all on Monday, 29 March 2004. However, Mr McGregor telephoned him that evening to say he had received an email from the applicant which indicated the applicant was sick and had been to the doctor.

Mr Engel also indicated he could not recall speaking to the applicant on Tuesday, 30 March 2004, but acknowledged he may have done so. In any event, he did contact the applicant late on Wednesday, 31 March 2004 to arrange to meet him to pick up the respondent's 2 mobile phones, which were its business phones. At this meeting the applicant handed over the phones and Mr Engel asked for the file concerning the respondent's major contract. The applicant said he did not have it with him. Mr Engel also said he gave the applicant a letter (above) terminating his services as manager.

Mr Engel said he suggested to the applicant that he should take a break until after Easter, after which they should have a talk about the sales and marketing position. However, the applicant allegedly informed Mr Engel that "*he would not be ringing*" him.

Mr Engel said that whilst he would, initially, have been happy to have had the applicant return in the sales and marketing role, that was no longer the case. He believed the applicant was responsible, post-termination, for the loss of work referrals from a previous major client and also for union problems on its major construction site.

Findings

During the course of proceedings it became apparent that the applicant had lodged a claim in the District Court against Mr McGregor for damages as a result of Mr McGregor's failure to deliver on his alleged promise to the applicant that he would be provided with a 50% shareholding in the respondent.

It also became clear that the applicant was more interested in having a "trial run" of that case than he was in seriously pursuing the current application. Further, much of the material he sought to canvass was irrelevant to the current proceedings. He was more interested in having arguments with Mr McGregor about past history, particularly their alleged agreement, than he was in developing the case in support of his argument that he had been unfairly dismissed.

As a consequence, although I have considered all of the evidence produced and all of the submissions made, it has not been necessary for me to deal with all of that material in the course of this decision. Nonetheless, everything relevant to the current application has been considered in the course of reaching my ultimate conclusions.

On the whole, I found the applicant to be somewhat of an evasive, argumentative and untruthful witness who refused to answer a lot of questions directly and attempted to skirt others. By contrast, I found each of Mr McGregor and Mr Engel to be truthful and credible witnesses and I accept their evidence ahead of that of the applicant where there is a conflict.

It became abundantly clear during the course of the applicant's evidence that he did not possess the necessary skills to fit him to be the manager of the respondent's business. Firstly, he had little or no building or construction experience. Secondly, he had no experience in project management on the type of work in which the respondent was engaged. Thirdly, he had absolutely no idea about budgeting and accounting procedures, as is evidenced by his profit and loss forecast (Exhibit 8), his weekly expenses schedule (Exhibit 9), his 3 year projections (Exhibit 17) and by the budget attached to his marketing proposal (Exhibit 13). These are, at best, amateurish and, at worst, embarrassing. I can fully understand Mr McGregor's frustration at the state of the accounts. The applicant was operating a cash accounting system only. Consequently, all the figures were wrong. Whereas the applicant was reporting to Mr Engel and Mr McGregor that the business was making profits, that was far from the truth.

It is clear to me, from the evidence, that the business was not just floundering as at the beginning of March 2004, it was rapidly heading towards failure unless some urgent remedial steps were taken. In that sense, I accept not just the veracity of the evidence given by Mr McGregor and Mr Engel concerning their meetings in late February/early March 2004 about future strategy, I also accept the truthfulness of their evidence.

In particular, I accept their evidence that they spoke to the applicant on a number of occasions during early to mid March 2004 about their restructuring plans, which included a proposal that the applicant would cease to be the respondent's manager and would become a consultant to it, performing a sales and marketing role. Their evidence on that point was confirmed by the applicant's email, dated 3 March 2004, to Mr McGregor (Exhibit 5), proposing \$1,450 plus GST as his fee, and by his evidence at page 79, lines 7-13 and page 81, lines 42-46 and Exhibit 2, paragraph 3.

There was also some further evidence to suggest that the applicant knew he was finishing at the end of March 2004 because he drew a cheque (number 000364) on 26 March 2004 paying himself not only his wages for that week but also 9 days holiday pay "*to end March 2004*". By separate cheque he also paid his superannuation contribution until that date. The applicant attempted to defend these payments stating they were only made to bring the financials up-to-date as at the end of March 2004. I do not accept the truthfulness of that evidence. I think the applicant made the payments because he knew (as at 26 March 2004) that he was scheduled to finish work, as an employee, the following week. If I be wrong on that point, the applicant's decision to make the payments serves only to reinforce my earlier finding that his knowledge of accounting procedures and requirements was non-existent. One does not have to actually make such payments in order to take them into account when preparing financial reports.

I also accept Mr McGregor’s evidence about the nature of the conversation he had with the applicant on the afternoon of 26 March 2004. In particular, I accept his evidence that the applicant – for the first time – began to dispute the previous agreement that his employment as manager would end on 31 March 2004 and that he would become a contractor providing sales and marketing advice from that time. I also accept Mr McGregor’s evidence to the effect that the applicant threatened to take him to the Law Society and other bodies after Mr McGregor rejected the applicant’s overtures to be granted a shareholding in the business.

I particularly record that I accept Mr McGregor’s evidence (given at pages 109 and 110) about the reasons why he decided to write a letter to the applicant confirming the termination of his services as manager of the business from 31 March 2004. Mr McGregor said the letter was a procedural thing written in the context of the meeting of 26 March 2004 where the applicant told him he was the manager of the business and “*would not be moving from here until someone tells me*”. When viewed in that context the letter makes absolute sense.

After considering all of the evidence presented, and all of the submissions, I conclude that the applicant’s employment ceased on 31 March 2004 by prior agreement reached between the applicant, Mr Engel and Mr McGregor. Notwithstanding the terms of the letter of 29 March 2004, there was no termination of the applicant’s employment at the initiative of the employer. The letter of 29 March 2004 simply sought to confirm to the applicant the earlier agreement, after he attempted to renege on the arrangement, that his employment, as such, would end on 31 March 2004. The letter did not alter the arrangement previously agreed – it only served to make it absolute. Consequently, I dismiss the application for want of jurisdiction.

The Commission determines and orders accordingly.

A.L. BLOOMFIELD, Deputy President.

Appearances:

Mr A.W. McElhone, the Applicant.

Mr D.J. McGregor, for the Respondent.

Hearing Details:
2004 12 July

Released: 27 August 2004

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

Queensland Independent Education Union of Employees (for Paul Collins) AND Educang Limited (B266 of 2004)

COMMISSIONER ASBURY

25 August 2004

Unfair dismissal – Whether contract of employment terminated by agreement and effluxion of time – Whether employed under a contract for a specified period or with a valid outer limit – Whether a probationary employee – Whether excluded from making unfair dismissal application by s. 72(1)(b) – Case law on contract for specified period and termination of contract by agreement and effluxion of time – Finding that contract of employment established a valid outer limit beyond which it would not operate – Finding that there was no termination at the initiative of the employer – Finding that employment terminated by agreement and effluxion of time – Finding that contract was not a device to avoid unfair dismissal laws – For exclusion in s. 72(1)(b) to operate probationary period must be in writing and unambiguous – Finding that contract of employment did not establish a probationary period – Application under Chapter 3 Part 2 dismissed.

DECISION

1. Background

By application made on 20 February 2004, the Queensland Independent Education Union of Employees (QIEU) made application under Part 2 of Chapter 3 of the *Industrial Relations Act 1999* seeking the reinstatement of Mr Paul Collins to his former position as Head of Middle Schooling for Forest Lake College and Springfield College. The respondent Educang Limited, initially contended that the applicant was an excluded employee on a number of grounds put as alternatives.

Firstly, it was contended that the written contract of employment between Mr Collins and the respondent had provided that it was for an initial period to 31 December 2003. The applicant’s employment had terminated by the effluxion of time and not at the initiative of the respondent. Accordingly, it was contended that there was no dismissal at the initiative of the employer to activate Chapter 3 of the Act.

Secondly, it was contended in the alternative that the applicant was engaged for a specific period and his employment had been terminated at the conclusion of that period, so that the applicant was an excluded employee pursuant to s. 72(1)(d) of the Act. Thirdly, it was contended in the alternative that the period of operation specified in the contract of employment was intended to be a probationary period to assess Mr Collins’ suitability for the position. In this regard the probationary period had been established in advance and was reasonable in the circumstances: *Education Queensland v Nigel Lyle Vidler* (2000) 164 QGIG 42. Fourthly, it was contended in the alternative, that the applicant was not employed under an industrial instrument; that the applicant’s annual wages immediately before his dismissal exceeded the amount prescribed by regulation; and that he was an excluded employee by virtue of s. 72(1)(e). In oral submissions for the respondent it was indicated that only the first and third points were pressed.

2. The Issues for Determination

The respondent does not contend that the applicant is excluded from bringing an unfair dismissal application under Chapter 3 of the Act by virtue of being engaged for a specific period, as provided in s. 72(1)(d). The issues for determination in this case are whether Mr Collins’ employment was terminated at the initiative of the respondent employer or whether it ended by agreement and effluxion of time. In order to determine this issue it is necessary to determine whether Mr Collins’ contract of employment was a contract with a valid outer limit, beyond which the parties had agreed the contract would not run. If employment was terminated by agreement and effluxion of time, there was no termination of employment at the initiative of the employer, and the Commission has no jurisdiction to entertain an application under Chapter 3 Part 2 of the Act.

A further issue which arises in this case is whether Mr Collins was serving a reasonable period of probation, agreed in writing before his employment with the respondent started, and is accordingly excluded from bringing an unfair dismissal application by virtue of s. 72(1)(b) of the Act.

3. Relevant Legislation and Case Law

In *Victoria v Commonwealth* (1996) 187 CLR 416 the High Court unanimously held that when a fixed or specified term contract is in place, an employer does not terminate an employee’s employment when the term of that employment expires. Instead, employment comes to an end by agreement and by the effluxion of time or by the operation of a statute or an award. Consequently there is no termination at the initiative of the employer.

A contract of employment will be for a specific period where the time of commencement and the time of completion are unambiguously identified by a term of the contract, either by the contract stating definite dates or by stating the time or criterion by which one or other end of the period of time is fixed: *Andersen v Umbakumba Community Council* (1994) 56 IR 102 at 106 per Von Doussa J. There is a raft of authority for the proposition that where both parties have rights to terminate a contract of employment which are not conditional upon a breach of any term of the contract, then the period of the contract is indeterminate, and it is not a contract for a specified period of time. Rather, the cessation date merely records the outer limit beyond which the contract of employment will not run: *Cooper v Darwin Rugby League Inc.* (1994) 57 IR 238 per Northrop J; *Andersen v Umbakumba Community Council* (1994) 56 IR 102 per Von Doussa J; *Grycan v Table Tennis Australia Inc.* (Print R7452) per Giudice J, Boulton J and Cribb C.

However, as Whelan C of the Australian Industrial Relations Commission noted in *Hughes v Monash University* (Print R4303) both *Andersen v Umbakumba Community Council* and *Cooper v Darwin Rugby League Inc.* involved termination of a contract of employment before its specified expiry date. In *Andersen v Umbakumba Community Council* Von Doussa J held (at 56 IR 106) that:

“...the Employment Agreement clearly state[s] a commencement date for the employment and a cessation date, but in the light of the right of either party to the contract...to bring the employment to an end on two weeks notice, and the right of the employer...to bring employment to an end with the payment of two weeks salary, the cessation date merely records the outer limit of a period beyond which the contract of employment will not run (unless a new period is entered into...). Within the period stated...the period of the contract of employment is indeterminate. At any point during the two year period identified by the commencement and the cessation dates neither side could know with any certainty when the period of the contract of employment may come to an end. It is significant that the rights to terminate the contract of employment... are not conditioned on a breach of any term of the contract. The rights are unqualified.” (my emphasis).

Similarly in *Cooper v Darwin Rugby League Inc* (at 57 IR 241) Northrop J said:

“One thing is clear. The employment of the applicant was terminated by the unilateral act of the respondent. The employment was not terminated by agreement of the employer and employee. It was not terminated by effluxion of the period of time specified in the period of employment. In these circumstances, it is only fair that the issue of whether the termination was lawful or not depends upon all of the facts leading up to the unilateral termination of employment by the respondent.”

In short, neither case is authority for the proposition that if a contract does not meet the description of being for a “specified period” then its term can not be fixed in such a way as to provide for expiry once the end date has been reached. While the fact that a contract may be terminated prior to its expiry date might disqualify it from being considered to be a contract for a specified period in accordance with s. 72(1)(d), it does not mean that the contract can be regarded as one having no valid outer limit.

In summary, the case law establishes the following principles. Where a contract of employment specifies clear and unambiguous starting and ceasing dates, and employment ceases on the specified ceasing date, there will generally be no termination at the initiative of the employer and therefore, no jurisdiction for the Commission to deal with an application for unfair dismissal by the employee whose employment has terminated. Such a contract is one with a definite outer limit, beyond which the contract will not run. Employment comes to an end by agreement and the effluxion of time: *Fisher v Edith Cowan University* (1996) 70 IR 206; *Qantas Airways Limited v Fetz & Ors* [Print Q1482].

Where a contract of employment specifies clear and unambiguous starting and ceasing dates, and an employee is terminated before the specified ceasing date, termination of employment does not occur by agreement and by effluxion of time. Further where a contract of employment specifies clear and unambiguous starting and ceasing dates, and in addition, provides unqualified rights for the employer or both the employer and the employee to terminate the contract, it will not be a contract for a “specific period” under s. 72(1)(d) of the Act. An employee party to such a contract will not be excluded from bringing an unfair dismissal application, in the event that employment is terminated during the period of operation of the contract: *Cooper v Darwin Rugby League Inc.* (1994) 57 IR 238; *Andersen v Umbakumba Community Council* (1994) 56 IR 102; *Hughes v Monash University* (Print R4303).

There may be cases where termination of employment at the initiative of the employer will be found to have occurred, where a contract of employment which specifies starting and ceasing dates, has *prima facie* ended by agreement and effluxion of time. In such cases, there is usually an element of sham or an attempt to disguise what is in truth employment for an indeterminate period, as a series of sequential periods of employment each subject to a contract of employment for a fixed period. There may be cases where such contracts are a device to avoid unfair dismissal laws. There may also be cases where a contract of employment is simply ambiguous and must be construed as either a contract for an indeterminate period or a contract having a valid outer limit. In considering whether a contract of employment is in these categories, all provisions of the contract must be considered, together with the context or factual matrix in which the contract was made: see for example *D’Lima v Board of Management Princess Margaret Hospital for Children* (1995) 64 IR 19; *Swan v Ballarat & District Division of General Practice Inc.* [Print Q5915]; and *Parkes v John Bertram and Associates* [Print P6363].

A contract which is one for a specific period within the meaning in s. 72(1)(d) may also be found to be a device to avoid unfair dismissal laws, where the main purpose of engaging the employee in that way is, or was, to avoid the employer’s obligations with respect to unfair dismissal laws: s. 72(1)(d)(i). A provision for the renewal or extension of a contract which otherwise specifies clear and unambiguous starting and ceasing dates, will not necessarily change the nature of a contract from a contract having a specified period or a valid outer limit, to a contract for an indeterminate period: *Qantas Airways Limited v Fetz & Ors* [Print Q1482].

In relation to the exclusion for probationary employees, s. 72(1)(a) and (b) of the Act relevantly provide as follows:

“...Section 73(1) does not apply to –

- (a) an employee during the first 3 months of employment with the employer (the **probationary period**), if the dismissal is for other than an invalid reason, unless the employee and the employer agree in writing that the employee serve –
 - (i) a period of probation that is shorter than the probationary period; or
 - (ii) no period of probation; or
- (b) an employee serving a period of probation that is longer than the probationary period, if –
 - (i) the period decided by written agreement between the employee and employer before the employment started, is a reasonable period having regard to the nature and circumstances of the employment; and
 - (ii) the dismissal is for a reason other than an invalid reason...”.

4. Relevant Facts

The parties agreed on the following facts:

1. Mr Collins commenced employment on 13 January 2003;
2. an offer of employment dated 25 December 2002 setting out terms and conditions of employment was provided to Mr Collins;
3. the offer of employment was accepted by Mr Collins on 31 December 2002;
4. Mr Collins was formally advised in a letter dated 10 December 2003, that his employment with the respondent would cease on 31 December 2003.

The contract of employment contained in the letter of offer countersigned by Mr Collins to indicate his agreement, (Exhibit A2) relevantly provides as follows:

“...I am writing to confirm my verbal offer to you of full time employment as Head of Middle Schooling, EDUCANG Limited (the Company)...Your employment commences on a date to be negotiated, before 21 January 2003...”

This employment contract will be for an initial period to 31 December 2003. A performance review will be conducted towards the end of that time...A recommendation will be made to me. Subject to a satisfactory outcome of that review, a five year contract will be offered. If the five year contract is agreed, an annual performance review will be conducted while you work for the Company. Subject to continuing satisfactory outcomes of these annual performance appraisals, a further five year contract can be negotiated.

...

2. Termination of Employment

2.1 If:

- [a] The Head of Middle Schooling is convicted of a criminal offence;
- [b] The Head of Middle Schooling commits an act of dishonesty or gross misconduct or refuses to fulfil any of her duties under this agreement which refusal is in the opinion of the Executive Principal unreasonable; or
- [c] The Head of Middle Schooling whilst employed by EDUCANG Limited, is not in possession of a valid Blue Card issued by the Commission for Children and Young People for Child Related Employment or current registration with the Queensland Board of Teacher Registration;

then the Executive Principal, may immediately, by notice in writing to the Head of Middle Schooling terminate her employment with the Company and this agreement and in such case the Head of Middle Schooling shall only be entitled to be paid her salary, accrued annual leave and any applicable service leave entitlement up to the date of service of the notice of termination. All other entitlements will cease at that time also.

2.2 This agreement and the employee’s employment with the employer may at any time during the term hereof be terminated by:

- [a] the employee by giving the employer a minimum of twelve weeks’ notice in writing of the date of termination of employment;
- [b] the employer, except as provided in Clause 2.1, giving the employee twelve weeks’ notice of termination of employment.

2.3 Payment in lieu of notice shall be made if the appropriate notice is not given, provided that employment my (sic) be terminated by part of the period of notice specified and part payment in lieu thereof.

2.4 On termination of your employment you will be required to return to us:

- [a] any papers, records and documents which relate in any way to EDUCANG Limited;
- [b] all books, syllabus or research materials; and
- [c] any other items of property belonging to EDUCANG Limited

before your final payment is processed.”.

The contract of employment also contained provisions which are *prima facie* inconsistent with an intention that the contract be for a fixed term, such as references to leave entitlements relating to periods of service past the stated term of the contract. These include long service leave and study leave as set out in clauses 3.6 and 3.13 respectively, of the Schedule to the contract.

On 10 December 2003 Mr Watt, the Chief Executive Officer of the respondent wrote to Mr Collins advising that the outcome of a performance review conducted on 26 November 2003 had been unsatisfactory, and the review panel had recommended that Mr Collins’ employment with the respondent should end on 31 December 2003 as provided by the contract of employment.

5. Conclusions

The contract of employment provided for termination in circumstances which would probably amount to fundamental breach by the applicant. However, by virtue of clause 2.2 of the contract, it could be terminated unilaterally by either the employer or the employee, by the giving of notice, in circumstances where there was no breach. Accordingly the contract of employment was not one for a specific period and the applicant would not have been an excluded employee by virtue of s. 72(1)(d) of the Act. In my view the respondent correctly did not press this ground, although it had been raised in its outline of submissions.

I am however of the view that the applicant’s employment was terminated through the effluxion of time and not at the initiative of the employer. There was a written contract of employment. Although the starting date of the contract was not specified, there was a clear process for that date to be established and a deadline for the commencement of employment. Further, there was no evidence that this provision of the contract was not complied with or that an agreed starting date was not established as provided in the contract. The contract specified a cessation date and made it clear that employment would not automatically continue past that date, but would be subject to a review. As a matter of fact, employment did not actually continue past that date.

Although there were terms of the contract which were inconsistent with the contract operating for twelve months only, these terms are also consistent with an intention for the contract to operate for twelve months and then to be subject to renewal, provided that Mr Collins’ performance was considered satisfactory, through a review. On balance, when all provisions of the contract are considered, it is clearly a contract with a valid end date, being 31 December 2003.

There is no evidence upon which I could be satisfied that the contract was a sham or a device to avoid the operation of Chapter 3 of the Act. In this regard it is relevant that the initial contract was for a period of approximately twelve months, but that later contracts, subject to a satisfactory review after the first contract, were to be for five year periods. This is not a case where it is clear from the terms of the contract or the evidence, that the employer was proposing a series of consecutive 12 month contracts on a more or less indefinite basis, with questionable motives for doing so, or where it could be said that there an element of avoidance of unfair dismissal laws: c.f. *D’Lima v Board of Management Princess Margaret Hospital for Children* (1995) 64 IR 19; and *Parkes v John Bertram and Associates* [Print P6363].

Accordingly, the jurisdiction of the Commission to entertain an application under Chapter 3 Part 2 of the Act is not enlivened in this case, and the application is dismissed.

Although it is not necessary to decide the issue of probationary employment, I would add that I would not have accepted that the contract of employment established a probationary period so as to bring Mr Collins within the exclusion in s. 72(1)(b) of the Act. To establish a probationary period in excess of the default position in s. 72(1)(a), there must be a written agreement to do so. That agreement must also be made before employment started. It is apparent from those provisions that the agreement must be clear with respect to intention to create a probationary period. Such an intention will usually be indicated by use of the expression "probationary period" or a synonym for that expression. In the present case, the contract of employment stated that it was for an "initial period". In the context of the contract, that term is capable of bearing an ordinary meaning to the effect that subsequent contracts for different periods, may be offered. There is nothing in the contract of employment to indicate any intention to create a probationary period and as a result there was no agreement in this regard.

I Order accordingly.

I.C. ASBURY, Commissioner.

Appearances:

Mr J. W. Spriggs with him Ms J. Urquhart of the Queensland Independent Education Union of Employees for the applicant.
Mr J. Jones of Jones Ross for the respondent.

Hearing Details:
2004 2 June

Released: 26 August 2004

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 120 – application for orders

**The Electrical Trades Union of Employees of Australia, Queensland Branch AND
O'Donnell Griffin, a Division of Tyco Asia Pacific (No. B346 of 2004)**

COMMISSIONER THOMPSON

27 August 2004

Application for orders – Alleged prohibited conduct – Witness evidence – No prohibited conduct engaged in by respondent – Application dismissed.

DECISION

Background

An application was filed on behalf of The Electrical Trades Union of Employees of Australia, Queensland Branch (ETU) on 4 March 2004 seeking the imposition of a penalty against O'Donnell Griffin, a Division of Tyco Asia Pacific (the Company) in accordance with the provisions of s. 120 of the *Industrial Relations Act 1999* (the Act).

There was an amendment to the original application, proposed by the filer, and subsequently accepted by the Commission at the commencement of the proceedings proper.

The application alleged that the Company had engaged in prohibited conduct contrary to Chapter 4, Part 2 of the Act in that, for a prohibited reason sought to disadvantage or injure Mr Scott Rasmussen, an employee of the Company, member of the ETU and Workplace Health and Safety Representative (WHSR) of the Pivotal Point Project on the Gold Coast.

In addition to the imposition of a financial penalty against the Company, the application sought payment of compensation for the loss of wages incurred by Mr Rasmussen between 28 January 2004 and the hearing of this matter.

Applicant

In this matter, the applicant relied upon evidence given by Mr Allen Hicks, Mr Scott Rasmussen, Mr Max Mathers, and Mr Gary Crawford.

Hicks

Mr Hicks, an organiser with the Union for the past four years, had the responsibility for recruiting and organising members in the Electrical Contracting Industry in Brisbane, Gold Coast and Mt Isa.

Mr Hicks provided to the Commission two affidavits (exhibits 1 and 2) which went to his involvement in the matters leading up to the application before the Commission.

In evidence, he provided a recount of Mr Rasmussen's initial employment with the Company, including his appointment as WHRS at the Pivotal Site in July 2003 and of Mr Darryl Robinson's (ODG Project Manager) confirmation of the said appointment.

On 25 August 2003, Mr Hicks met with electricians on site, those being Mr Rasmussen and Mr Crawford, and a discussion occurred around the WHSR role, with Mr Rasmussen being elected to the position.

A meeting of all site employees followed, with a number of WHSR's from other sections of the workforce, including Mr Rasmussen, being introduced to the meeting.

Paper work was filled in by all the WHSR nominees, enabling their enrolment in a training course to be provided by Construction Skills Training Centre (CSTC).

Between September 2003 and 21 January 2004, several attempts were made to have the Company's WHRS's trained in accordance with the *Workplace Health and Safety Act 1995*, however no such training was forthcoming.

The Company according to Mr Hicks had formed a position that such training was not obligatory.

A meeting of electricians and plumbers was held on site on 21 January 2004, at which those in attendance voted to maintain the "sacred Saturday".

Note: "sacred Saturday" is a term for the Saturday immediately prior to a Rostered Day Off, which when not worked, effectively provides a three (3) day weekend.

At the conclusion of the meeting, Mr Rasmussen raised concerns that he still had not received WHSR training, additionally he also had further concerns about some problems on the deck.

Mr Hicks, in the Company of Mr Rasmussen, conducted an inspection of the deck where, at the completion of the inspection, he advised Mr Tim Gunter (Project Manager – Multiplex) that unless rectification to a number of problems was immediate, electricians would vacate the deck and power supply to the deck would be cut.

On 30 January 2004, it came to Mr Hicks' attention that Mr Rasmussen had been made redundant, even though the site had some ten (10) months to run until completion.

He made phone contact later that day with Mr Rasmussen and was advised that the Company had sought (two days earlier) to transfer him to another site at Broadbeach, even though he was the longest serving electrician on site.

Mr Hicks had concerns about Mr Rasmussen's circumstances, in particular, a "run in" with Mr Robinson over the "sacred Saturday" vote, and decided to contact Mr Les McMahon (Gold Coast Manager of ODG) to find out the reasoning behind the proposed transfer of Mr Rasmussen.

Mr Hicks, in his conversation with Mr McMahon, raised the point that Mr Rasmussen as the WHSR on site should not have been considered for transfer without firstly contacting the Union.

Mr McMahon told Mr Hicks that "it didn't matter anymore as Scott had quit" and that he would not reconsider the matter.

A number of meetings were subsequently held involving the Company, Union and Multiplex, the first being on 2 February 2004 which, according to Mr Hicks, was to endeavour to have Mr Rasmussen re-employed back at the Pivotal Site.

In respect of persons involved in the meetings, they included Mr Dick Williams (from the Union), Mr Andy Osolin, Mr Vic Gasparrina, and Mr Phil Darby from the Company.

The Company was steadfast in their refusal to return Mr Rasmussen to site, stating "they would not be dictated to by the Union about the transfer of labour".

In the course of the meeting, Mr McMahon gave reasons which he said justified the transfer.

At paragraph 24 of Mr Hicks' affidavit, those reasons were identified:

- "Scott put the Pivotal job at risk by taking an extra week's holiday at Christmas time
- Scott had refused to do deck work; and
- Scott had his own business that he operates after hours and had been coming to work tired."

A report back site meeting had been scheduled for 4 February 2004 which was attended by Mr Hicks where he told the meeting that he was quite confident that Mr Rasmussen would be returning to site.

A further meeting between the Union and the Company broke down when the Union, through Mr Hicks, refused to revoke the "sacred Saturday" vote in return for Mr Rasmussen's return to site.

Mr Hicks raised with Mr Gunter the position of the Company and his interpretation that it amounted to coercion. It was at this time Mr Gunter informed him that he thought the matter was fixed and that Mr Rasmussen would be returning to the Pivotal Site.

A further meeting took place with the Company, the outcome of the meeting was set out in paragraph 32 of Mr Hicks' affidavit:

"We then met with the ODG Managers again. They told us they had had further discussions, and withdrew their offer of reinstating Scott back to the Pivotal site on the condition I revoke the 'Sacred Saturday' vote. They had now decided to offer Scott re-employment at the Broadbeach site with a return to Pivotal when Broadbeach had finished."

Mr Hicks advised that the offer was not acceptable as this had been a previous position offered by the Union which had at the time been rejected.

A report back meeting was held on 5 February 2004 where site members were advised of the situation and subsequently carried a motion supporting the reinstatement of Mr Rasmussen.

In Mr Hicks' second affidavit, he provided evidence in reply to the affidavits provided by Messers McMahon, Robinson, Gasparrini, Scanlan and Gunter.

In response to paragraph 15 of Mr McMahon's affidavit, at paragraph 4 of his second affidavit, Mr Hicks stated:

"At para 15, Les McMahon says that Scott Rasmussen was not elected to the position of site safety representative, but rather appointed as he and Darryl Robinson were the only two ODG construction electricians on site. This is correct insofar as Scott was appointed on 16 July 2003 but on 25 August 2003, he was elected as WHSR in the presence of Gary Crawford and myself."

Cross-examination of Mr Hicks covered a range of issues including:

- trade qualifications and employment background
- roles and responsibilities as an officer of the ETU

- preference for WHRS training providers (page 48, line 42 of transcript):

“Horneman-Wren: In relation to the issue of workplace health and safety representatives on site, the Union had a preference for a particular course, is that correct?

Hicks: When you say the Union, whom do you mean? Do you mean the ETU?

Horneman-Wren: Yes, if I say the Union, you can safely assume that I’m referring to the ETU, your Union?

Hicks: Okay. The ETU had no preference.”.

- application of certified agreement
- Scott Rasmussen’s election as a WHSR
- “better conditions” being sought by the Union prior to 28 January 2004
- “sacred Saturday” – vote by electricians on Pivotal site
- permanency of employment (page 66, line 36 of transcript):

“Horneman-Wren: There’s no guarantee of permanency of tenure in the electrical trade on construction sites, is there?

Hicks: No. The only guarantee they’ve got is they’re a permanent employee.

Horneman-Wren: Subject to the laws of the State and of the Commonwealth so far as it complies to them that deals with their rights and obligations?

Hicks: That’s right.

Horneman-Wren: There’s no guarantee that if you’re working on one particular job you’ll stay on that job until it is completed, is there?

Hicks: There’s no guarantees in life at all, no.”.

- Scott Rasmussen’s departure from the Company
- meetings/negotiations involving the Union and the Company after Scott Rasmussen’s departure (page 82, line 25 of transcript):

“Horneman-Wren: These later negotiations however were all being conducted in the context of it now being recognised by you that Scott had resigned?

Hicks: Well, he – yeah, he resigned.”.

Rasmussen

Mr Rasmussen, as was the case with Mr Hicks, provided two affidavits (exhibits 5 and 6).

His employment as a construction electrician commenced with the Company on 23 July 2003 on the Pivotal Point project at Southport.

Shortly after commencing employment, Mr Robinson requested that he attend Safety Committee meetings and take on role of WHSR, requests that were agreed to by the witness.

His evidence in respect of his later election as the WHRS for the Company at a Union run meeting corroborated that given by Mr Hicks in the proceedings.

After his election, he made arrangements to be enrolled in a safety training course and on acceptance to the course showed Mr Robinson the correspondence, however approval to attend was not given with Mr Robinson explaining that the Company was not prepared to or required to send him to the course.

In terms of his involvement with the Safety Committee, the evidence was that he attended nearly every meeting with the exception of meeting numbers 20, 21 and 23.

Mr Rasmussen’s evidence went to several situations where he had raised concerns in respect of safety conditions on site with Multiplex management.

On 21 January 2004, he attended a meeting of plumbers and electricians at which the issue of “sacred Saturdays” were to be discussed.

His evidence was that, prior to attending the meeting, Darryl Robinson had told him not to vote for the “sacred Saturday”, however the members voted in favour of retaining such arrangement.

At the conclusion of the Union meeting, a toolbox meeting of electricians was held where, at paragraph 22 of his first affidavit, the witness described Darryl Robinson’s response to the vote:

“We were told by Darryl Robinson that he had taken us voting for the Sacred Saturday very personally, and that it potentially stopped ODG from getting a lot of work on the Gold Coast. He then proceeded to ask each man one at a time if they would come into work on the Sacred Saturday if the need arose, which put the men in a difficult situation.”.

On 28 January 2004, he was approached by Darryl Robinson and told he was to go to a job at Broadbeach for a couple of weeks as there was a “push” on.

He queried the decision as he was the longest serving electrician on site and was told to contact Les McMahon if he wished to raise the matter further.

He contacted Les McMahon, and was given different information which indicated he would be at the Broadbeach site until April 2004 without a guarantee of future employment beyond that time.

He became suspicious and formed a view that as he had been vocal on safety and industrial issues that he was being squeezed out.

At paragraph 30 of his first affidavit, he stated:

“I said that I believed I was being transferred so that ODG could make me redundant, and if that was the case he should do so now. Les McMahon agreed.”.

He recalled being on site at Pivotal on 3 February 2004 where a meeting was held between Multiplex, the Company, and the Union where he was offered his job back on site subject to the removal of the “sacred Saturday”. Both he and Allen Hicks rejected the offer.

In his second affidavit (exhibit 6), he disputed some points in the affidavits of Messers McMahon, Robinson, Darby and Gunter.

He disputed Les McMahon’s claim that he was tired and did not enjoy working at the Pivotal site.

On his departure from the Company, at paragraph 7 he stated:

“In relation to para 34, the words I used were ‘You might as well finish me up then’ to which Les McMahon replied ‘If that’s what you want’.”.

He also disputed that he had said that he did not like working on the deck.

In paragraph 18 of his affidavit, his evidence in response to comments made to Darryl Robinson at the time of the proposed transfer was:

“I did not mention to Darryl Robinson anything about being victimised. I queried why I had been chosen to transfer ahead of someone who had only been there 1 week. I said words to the effect of ‘I think I am being shafted’.”.

In respect of Phil Darby’s affidavit, he indicated that he did not receive the letter (marked PD1) which was confirmation of an offer before Commissioner Richards of the Australian Industrial Relations Commission (AIRC) relating to re-employment

Cross-examination of Mr Rasmussen went to matters including:

- Union membership
- WHRS role
 - attendance at meetings
 - minutes of safety committee meetings
- toolbox meetings
- WHRS training
- Saturday work
- “sacred Saturdays”
- transfer to Broadbeach site (page 116, line 39 of transcript):

Horneman-Wren: Now on the 28th of January you were approached by Robinson and told there was a push on at Broadbeach?

Rasmussen: Yep.

Horneman-Wren: And that you were to go there for a couple of weeks?

Rasmussen: That’s correct.

Horneman-Wren: That’s the extent of what you were initially told?

Rasmussen: That’s all Darryl told me, yeah.

Horneman-Wren: Right. When he told you that there was a push on at the Broadbeach on the Park site you knew what a push was, didn’t you?

Rasmussen: Yeah.

Horneman-Wren: Because it’s not uncommon, an uncommon expression in the industry that there’s a push on at a particular site?

Rasmussen: No, it’s not.

Horneman-Wren: You knew it to mean that there was a quickening of the pace of the work that was being performed?

Rasmussen: Yep.

Horneman-Wren: And you’d agree with me that a consequence of a push being on any particular site is that it is either intended to get the job a little bit ahead or tries to catch up?

Rasmussen: Yeah.”.

- conversation with Les McMahon re transfer (Page 120, line 29 of transcript):

“Horneman-Wren: And you asked Les McMahon whether he was sending you down to Broadbeach for a couple of weeks to sack you?”

Rasmussen: Yes.

Horneman-Wren: And he said, ‘No, that’s not true, we need additional labour at Broadbeach’?

Rasmussen: That’s what he said, yeah.

Horneman-Wren: And that’s when he said to you, ‘We can only guarantee you work until the end of April like anyone else whether you work at Pivotal or Broadbeach’?

Rasmussen: He didn’t – I don’t believe he said ‘like anybody else’. He said, ‘I can only guarantee you work there till April’.

Horneman-Wren: Whether you work at Pivotal or Broadbeach?

Rasmussen: No. He said – I believe he said, I can’t – he said, ‘You’ll be there till April, I can’t guarantee you anything after that’.

Horneman-Wren: You resigned at that point, didn’t you?

Rasmussen: I said to him, ‘You’d better finish me up then’. That was my exact words, to which he replied, ‘If that’s what you want’.

Horneman-Wren: I suggest you said effectively, ‘I resign’ and he said, ‘That’s fine’?

Rasmussen: No. I said what I just told you I said.

Horneman-Wren: You asked if you could be made redundant though?

Rasmussen: No, I used the words I just said.”.

- withdrawal of unfair dismissal application.

Mathers

Mr Mathers, a steel fixer on the Pivotal site, gave evidence of his role as an elected WHSR, having held that position since June 2003.

He recalled that on several occasions, Scott Rasmussen had informed the safety committee meetings of ODG’s refusal to provide WHRS training that he had requested.

On the role of Scott Rasmussen as a WHSR, his evidence was that he, at times, raised numerous issues relating to site safety and followed each issue through until it was resolved.

In cross-examination, Mr Mathers was directed to the workings of the safety committee.

Crawford

Mr Crawford, the final witness for the applicant, provided an affidavit to the proceeding, but was not required to attend for the purposes of cross-examination.

In evidence, he indicated that he has been employed as an Electrical Foreman on the Pivotal site since 25 August 2003 and, on his arrival to site that day, attended a meeting of all on-site workers, members of various Unions which dealt with the election of safety committee members.

At paragraphs 6 and 7 of his affidavit, he stated:

“6. After the meeting I met with Allen Hicks and Scott Rasmussen. Allen said words to the effect of ‘Scott has been the site safety representative[s] for Pivotal. Is it okay if he continues as the representative?’.”

7. I responded with words to the effect of ‘That’s fine by me, I am employed as foreman so that only leaves Scott. Even if I was a labourer, I wouldn’t be interested in doing it’.”.

Respondent

Evidence was provided to the Commission on behalf of the respondent by Mr Les McMahon, Mr Darryl Robinson, Mr Tim Gunter, Mr Phil Darby, Mr Mike Scanlon and Mr Vic Gasparrini.

McMahon

Mr McMahon the Gold Coast manager of the Company gave evidence which initially went to his history with the Company, his role within the Company, and the general operations of the business.

His evidence was that in respect of electricians, they were engaged for a number of electrical tasks carried out on a range of sites.

The Company did not guarantee anyone long-term positions or long-term work, due to the nature of the industry which was recognised by the operation of portable long service leave and redundancy schemes.

Most, if not all, construction electricians employed by the Company are members of the Union and the Certified Agreement that covers the employment conditions contains an encouragement clause to join the Union.

In respect of Scott Rasmussen’s employment with the Company, he confirmed the period of employment and his commencement on the Pivotal site.

In January 2004, due to a project at Broadbeach falling behind schedule, the Company was required to increase the number of electricians on site and he subsequently made the decision to relocate Scott Rasmussen to that site.

Scott Rasmussen refused to take the transfer and he then sent two other electricians to the site.

On the reason for choosing Scott Rasmussen instead of other electricians, he stated that he took into account his reluctance to work six day weeks on offer at the Pivotal site and that he believed the five day site at Broadbeach would suit his needs. Further he had formed the impression that he was not enjoying working at Pivotal.

At paragraph 24 of his affidavit, he stated:

“My decision to relocate Scott Rasmussen had nothing whatsoever to do with the fact that he had been the nominee on the site safety committee, that he was a member of the ETU or that he had the benefit of any industrial agreement.”

If Scott Rasmussen had accepted the transfer, his employment would have been covered by the same industrial instrument.

Mr McMahon acknowledged that the work available at Broadbeach was less than that at Pivotal, he however stated in clause 28 of his affidavit:

“In addition, it was possible that if work had finished at the Broadbeach Site, I would have asked Scott to relocate back to Pivotal, but I could not guarantee this. It would have depended on the labour demands at the time.”

In April 2004, the Company estimated that they would have to retrench some 20 electricians, however the witness stated that having secured other projects, to date no retrenchments had taken place.

The two employees from Pivotal that were transferred to the Broadbeach site had since returned to the Pivotal site.

In terms of Scott Rasmussen’s resignation, the witness went to the detail of the phone conversation between themselves on the morning of 28 January 2004.

He stated that Scott Rasmussen had alleged that he was being sent to Broadbeach so as he could then be sacked. This claim was, according to the witness, denied.

At paragraph 34 of his affidavit, he said:

“Scott said words to the effect of ‘I resign’ and I said ‘That’s fine’. After a pause, Scott said words to the effect of ‘can you make me redundant’. I agreed to this as a favour to Scott, as I thought it would help him access his redundancy entitlements.”

The evidence went to the meetings between the parties as a consequence of Scott Rasmussen leaving his employment.

In recounting the meeting of 4 February 2004 at paragraph 46 of his affidavit he stated:

“At the meeting, I said words to the effect of ‘Did you resign or were you terminated’ to which Scott replied ‘I resigned’.”

At that point, he offered Scott Rasmussen his job back with a commitment to return him to the Pivotal site when Broadbeach finished in return for the ETU agreeing not to go on strike.

It was agreed between the parties that Scott Rasmussen and the Union would consider the offer overnight, however the next morning the employees went on strike with the Company taking the matter to the AIRC.

On the training of WHSR’s, he stated that he had only ever received two written requests from elected WHSR’s to be trained and both requests were approved.

Cross-examination of the witness went to a range of issues including:

- role as manager
- encouragement from the Company for electricians to be Union members
- transfer of labour from site to site
- Scott Rasmussen’s employment with the Company and appointment as WHSR
- WPSR training courses
- relocation of Scott Rasmussen
- meetings held between the parties following Scott Rasmussen’s departure from the Company (page 191, line 53 of transcript):

“Inglis: But we’ve got a meeting regarding Scott Rasmussen’s employment, pre-prepared questions. In the middle of the pre-prepared questions there’s an issue to do with Multiplex and sacred Saturdays. Then we go back onto negotiating an outcome for Scott Rasmussen and then we’re back to the Saturday thing again. I put to you that that deal that you’re talking about was an offer that Scott Rasmussen could return to the Pivotal site if the Union lifted its ban on sacred Saturdays?”

McMahon: All these matters were discussed in this meeting, but the only resolution put to the Union was that Scott go to Broadbeach till it finished and come back to Pivotal at the end of – at the end of the Broadbeach meeting if the Union didn’t go on strike the following day. That was the only resolution to come out of the meeting.

Inglis: That might be the only resolution to come out of it, but was that discussed? Did you put a proposal that that would be the case?

McMahon: There's no – in our document there there's no word in here say 'If Scott comes back to this site we'll lift the ban'.

Inglis: I know there's no word there, I know it doesn't specifically say that, but did it happen?

McMahon: No, it didn't happen. The only resolution put to the Union was that Scott Rasmussen – if they didn't go on strike the following day Scott Rasmussen would go to Broadbeach, Finish the job and come back to Pivotal.”.

- Page 192, line 22 of transcript:

“Commissioner: That was an offer more than a resolution. It was an offer to settle the dispute - - ?

McMahon: That's correct.

Commissioner: - - by Scott Rasmussen going to Broadbeach and when that job finished coming back to Pivotal?

McMahon: That's correct.

Commissioner: And who put that?

McMahon: I put that offer to them.”.

- Attendance (non-attendance) by Scott Rasmussen at site safety meetings.

Robinson

Mr Robinson, the Project Supervisor at Pivotal, gave evidence pertaining to his employment with the Company and on Scott Rasmussen's employment.

His evidence went to matters including:

- Scott Rasmussen as Site Safety Representative
- “sacred Saturdays
- work on the top deck
- decision to relocate Scott Rasmussen
- Scott Rasmussen's Conduct and Performance.

He gave evidence of Scott Rasmussen's initial membership of the site safety committee (in July 2003) although he later qualified the appointment by saying that reference to Scott Rasmussen as Site Safety Representative was not meant “in the legal sense”.

He disputed that Scott Rasmussen was ever elected to the position of WHSR and stated that in August 2003 Scott Rasmussen had said words to the effect “I am not interested in doing the training”. He confirmed his position on the training issue again in or around September 2003.

Mr Robinson, in evidence, indicated that the current WHSR on the Pivotal site had requested training and such training had been provided at the Company's expense.

On the issue of the “sacred Saturdays”, he gave evidence of speaking to all electricians on site prior to a Union meeting that was held on 21 January 2004.

He said that he had told the electricians that he thought it was a “bad idea” to vote in favour of the “sacred Saturday”.

At a toolbox meeting held at the conclusion of the Union meeting he expressed his disappointment at the vote taken by the employees saying that the decision “could jeopardise O'Donnell Griffin getting work on other construction projects”.

He confirmed, in evidence, that Scott Rasmussen had, on a number of occasions, raised safety issues in respect of working on deck and that he eventually relocated him to other duties in September 2003.

On 27 January 2004, Les McMahon had phoned him and directed that Scott Rasmussen be sent the following day to the Broadbeach site as there was a need for extra workers.

When Scott Rasmussen arrived at work on 28 January 2004, he issued the instruction to him to go to the Broadbeach site “for a couple of weeks”.

The response was that Scott Rasmussen was not happy with moving and stated that he was being victimised.

He advised Scott Rasmussen to contact Less McMahon and at paragraph 31 of his affidavit recalled overhearing the following comments from Scott Rasmussen during that phone conversation:

“I heard Scott say ‘I am resigning’ and then, after a pause, ‘can you make me redundant’.”.

The next he heard about Scott Rasmussen's departure was on 5 February 2004 when the site went on strike in support of Mr Rasmussen.

In relation to Scott Rasmussen's conduct, his evidence went to the reluctance to work on Saturdays and taking an extra week's leave in January 2004 without prior approval.

Matters subject to cross-examination included:

- witnesses on site responsibilities
- Scott Rasmussen's initial appointment on the safety committee

- Tyco Services Occupational Health and Safety Policy
- Scott Rasmussen's request for training as a WHSR (page 211, line 24 of transcript):

"Inglis: Are you aware that, or at least were you aware at the time or have you become aware since that elected health and safety representatives are entitled to training if they so request?"

Robinson: Yes, if they so request, yes.

Inglis: And Scott requested that training, didn't he?"

Robinson: No. He indicated to me he wasn't interested in doing the training, the day that he handed me this document and later on in further discussions.

Inglis: If he wasn't interested in the training, why do you suppose he would have handed you the document?"

Robinson: I've got no idea.

Inglis: So what did you do when you handed him the document, why did you bother to pass it on then?"

Robinson: Because I wasn't aware of the ramifications of the document.".
- election of Martin Wartman to replace Scott Rasmussen as WHSR
- "sacred Saturdays"
- decision to relocate Scott Rasmussen (page 229, line 20 of transcript):

"Inglis: And you told him that he was needed at Broadbeach, there was a push on and needed to be there for a couple of weeks?"

Robinson: Yep.

Inglis: Okay. So it was only when he came back down with his gear did he query why he had been chosen, 'Why me?' sort of thing, to change?"

Robinson: Yeah, that's my recollection I've got, that he's – he sort of started collecting his tools and he said, 'I've got to go upstairs and get some more gear,' and he went up, up to the top deck, came back down and then he just said he wasn't happy about it and I just said, 'Look, I just got a phone call. Ring Les'.

Inglis: Sure. Were you – I mean, yourself, when Les had said to send Scott, were you surprised at the choice?"

Robinson: No.".
- extension of leave by Scott Rasmussen at Christmas.

Gunter

The evidence of Mr Gunter, the Project Manager for Multiplex Constructions, was reasonably brief and went to his involvement in a meeting on 4 February 2004 which was attended by the Company, the Union, Scott Rasmussen and himself.

At paragraph 6 of his affidavit, he recalled the following exchanges and comments:

- "I recall that Scott Rasmussen said words to the effect of 'I resigned because O'Donnell Griffin was transferring me to Broadbeach to sack me'. It was not disputed at the meeting that Scott has resigned of his own volition.
- I also recall Les McMahon asking Scott 'Do you want to work for O'Donnell Griffin?' to which Scott responded with words to the effect of 'I don't really care'."

An offer of re-employment was made at the meeting by Les McMahon, which would have required Scott Rasmussen to work at the Broadbeach site. This offer was rejected.

Darby

Mr Darby is the Industrial Relations Manager of Tyco Services of which O'Donnell Griffin is a division.

His involvement in the matter commenced in late January 2004 when Les McMahon telephoned him to advise that Scott Rasmussen, a worker at Pivotal had resigned and that the ETU wanted him reinstated.

On or around 2 February 2004, he was attending a meeting at the Brisbane offices of the ETU over a matter in Weipa and as he was about to leave he went into a room where Allen Hicks and Vic Gasparini were in a telephone conference with Les McMahon.

At paragraph 6 of his affidavit, his evidence went to his limited involvement in that particular meeting:

"I was in the room for about one minute and overheard Les saying words to the effect of, 'Scott does not work on the decks'. I interrupted with words to the effect of, 'That's not what you told me. You told me you moved him because you needed him over at a different site and he refused to go'."

Sometime between 5 and 9 February 2004, he had a phone conversation with Dick Williams where he made an offer to reinstate Scott Rasmussen at a site to be determined by the Company and allow the Union to make an application to the AIRC to resolve any outstanding issues.

According to the witness, Dick Williams agreed to the offer, however he rang back within the hour and left a message which, in effect, stated "Our organiser at the Gold Coast couldn't sell it to the troops", which he interpreted that the offer was unacceptable.

On 9 February 2004, the matter went before Commissioner Richards in the AIRC where, during the course of the conference, Mr Darby put forward an offer which, at the request of the Commission, he subsequently put in writing and forwarded to Scott Rasmussen, the AIRC and the Union.

The text of the letter "PD1" stated:

"Without Prejudice [Prejudice]

Matter no C2004/1758

Dear Scott

I refer to the above matter and the offer made by the Company before Commissioner Richards, which is as follows.

- 1) The Company offers you re-employment into your former position as Construction Electrician on a site deemed by the Company to require your services.
- 2) The Company agrees to provide a letter to yourself that such a move from your original site Pivotal was due to operational needs as stated in the commission by the Company.
- 3) In respect to future training the Company will provide appropriate training to employees who are duly elected into OH&S positions.

At the conciliation it was agreed both you and the Union would consider such a proposal.

To day Friday 13th at 1500 hrs Allan Hicks contacted myself and stated that the offer was rejected.

As an offer of good will the Company is prepared to leave the offer outlined above open till 4pm Tuesday 17th February 2004.

If After such time no contact is made the offer will extinguish."

At no time did he receive a response from Scott Rasmussen.

In cross-examination, matters raised with Mr Darby included:

- attendance at meeting over reinstatement of Scott Rasmussen
- training for WHSR's
- offer to re-employ sent to Scott Rasmussen (page 253, line 4 of transcript):

"Inglis: No, this is just for the record.

Darby: On the 13th. Mr Hicks had stated that they rejected the offer, and I did the documentation in line with that and I believe it was sent. Normally when we send these documentations, it's – it's sent through the office concerned and normally they register it. I don't know what – I can't say that – if this was registered."

Scanlan

Mr Scanlan is the Area Manager for South-East Queensland for O'Donnell Griffin which takes in the Gold Coast area.

He gave evidence of being informed by Les McMahon of the resignation of Scott Rasmussen on 28 January 2004 where it was further advised that the mode of termination had been changed to that of redundancy to assist the employee access to his redundancy entitlements.

On 30 January Les McMahon rang him again where he was informed that "Allen Hicks has rung me and he is demanding that we re-employ Scott or there will be industrial action at Pivotal".

He attended the meeting on 4 February 2004 that has previously been referred to in evidence and took notes which were appended to his affidavit as "MS1" with the originals becoming exhibit 17 in the proceedings.

The meeting, which eventually "transgressed into an unruly squabble" discussed a number of site-specific issues including "sacred Saturdays".

At the meeting, Les McMahon offered to reinstate Scott Rasmussen subject to reporting to the Broadbeach site.

With the matter not resolved, and the Company under pressure from Multiplex, the AIRC was notified and a conference held on 9 February 2004.

Mr Scanlon corroborated the evidence of Phil Darby in respect of the Commission conference, adding that Mr Darby said words to the effect "We cannot guarantee any of our employees' continuous employment and to do so for Scott would be to leave our business open to each and every one of our employees to seek such guarantees".

He also confirmed the evidence of Mr Darby in respect of the letter of offer sent to Scott Rasmussen following the conference.

Issues covered in cross-examination included:

- notes kept by witness of meeting held on 4 February 2004
- reinstatement claim for Scott Rasmussen to return to the Pivotal site only
- "sacred Saturdays"
- Tyco's health and safety policy

Gasparrini

The final witness for the respondent was Mr Gasparrini who is the Manager of Major Installations for the Company.

He stated in evidence that he had no involvement in the resignation of Scott Rasmussen and first became aware of the situation on or about 30 January 2004 when Les McMahon advised him of potential industrial action at the Pivotal site if Scott Rasmussen was not re-employed at the Pivotal site.

In evidence, he gave his recollection of two meetings on 2 and 4 February 2004 over the position of Scott Rasmussen. At the 4 February 2004 meeting there was a period of time when Allen Hicks and himself left the meeting to discuss the matter privately.

At paragraph 13 of his affidavit, he stated:

“Allen and I then went out of the room and spoke in private. Allen said words to the effect of, ‘We want Scott reinstated back to the Pivotal site and we want a guarantee he won’t be laid off’. I said, ‘I think Les’s offer to reinstate Scott back at Broadbeach is a fair offer. We can’t guarantee anyone’s employment because our work is project driven’. Allen said words to the effect of ‘It’s fair for you but not for us’.”.

He also attended the conference before Commissioner Richards on 9 February 2004 with his evidence confirming the evidence on this point, that had been previously given to this proceeding.

Finally, in his evidence he went to the appointment of WHSR’s and stated that in or around August 2003 there was some confusion between management and workers on the process for appointment of such representatives.

A memorandum was prepared by Warwick Wilson, the Workplace Health and Safety Manager for O’Donnell Griffin (VG1) and distributed to the workers.

The Company, according to the witness had always “compiled with its obligations in relation to training of WHSR elected under the *Workplace Health and Safety 1995*.”.

Questions put to Mr Gasparri in cross-examination went to matters including:

- transfer of Scott Rasmussen from the Pivotal
- meetings attended by the witness over the Scott Rasmussen issue
- “sacred Saturdays”
- appointment of WHSR’s and training to be provided by the Company.

Submissions

Written submissions were provided to the Commission with each party taking the opportunity to orally address their submissions.

Applicant

The applicant firstly identified the amendments to the application and then proceeded to go to the issues emanating from the evidence given on behalf of the applicant during the course of proceedings.

Matters referred to included:

- facts
- election of Rasmussen as a WHSR
- WHSR training
- meetings – 28 January, 3, 4 and 5 February 2004
- transfer between sites and reasons given for the transfer
- freedom of association
- discrimination on the basis of Trade Union activity
- *Workplace Health and Safety Act 1995*
- “sacred Saturdays”
- right of Rasmussen to make an inquiry or complaint under an industrial law
- dissatisfaction by Rasmussen with his industrial conditions
- disadvantage or injury suffered by Rasmussen.

In her oral submissions, Ms Kerry Inglis went firstly to the detail of her written submission and then along the way referring to other matters which included the standard of proof that must be exercised by the Commission in consideration of the application.

It was submitted that Mr Rasmussen had suffered a disadvantage as a result of the direction to take a transfer to another site and an injury by the fact that he was left with little alternative other than to bring about an end to the employment arrangement between himself and the Company.

Finally, the Commission was requested to grant the amended application and issue the subsequent orders.

Respondent

Mr Sandy Horneman-Wren, on behalf of the respondent, in the first instance, challenged the ability of the amended application to meet the tests of prohibited conduct.

He questioned the case presented by the applicant and, in particular, the failure of the applicant to present proper argument to support claims alluded to in the application.

The submission went on to take issue with the application in that the respondent was forced "to defend itself, under pain of penalty, against an allegation which lacked substance", effectively rendering the application as mischievous.

At paragraph 5 of the submission, it was stated:

"Therefore, properly analysed in respect of both the legislation and the case pleaded and opened by the applicant, there is only one allegation against the respondent in respect of prohibited conduct. That being that it disadvantaged or injured Mr Rasmussen by transferring him."

The submission covered, at length, the reasons behind the transfer of Mr Rasmussen, stating that the reason for transferring labour from the Pivotal site was for no reason other than to meet an increased demand on the Broadbeach site.

In terms of the evidence before the Commission, paragraphs 28, 29 and 30 of the submission went to reasons as to why the Commission could, in the circumstances, dismiss the application:

28. The Commission needs look no further than the applicant's evidence to make that finding. No other finding is open on the evidence. It is not merely that the weight of evidence supports or favours the finding. It is that all the evidence supports the finding and that there is no evidence to support any other finding.
29. Having reached that point, the judgement can readily be reached, applying the very test postulated by the applicant in opening its case that the transfer of Mr Rasmussen to the Broadbeach site was for legitimate business reasons.
30. The Commission could dismiss the application at that point."

On the issue of an alleged lower level of job security had Mr Rasmussen accepted the transfer to the Broadbeach site, this, according to the submission, was disproved on the evidence of both Mr Hicks and Mr Rasmussen.

The evidence in relation to Mr Rasmussen's alleged disadvantage clearly sets out that the Company's offer to re-employ Mr Rasmussen which was rejected by the Union would have rectified that position.

Other matters covered in the submission included:

- Union membership
- certified agreements
- seeking of better industrial conditions
- "sacred Saturdays"
- Rasmussen's dissatisfaction with his industrial conditions.

In presentation of oral submissions, Mr Horneman-Wren spoke at length in support of the written submissions provided to the Commission.

Additionally, he relied upon a number of authorities to support arguments advanced on behalf of the respondent.

It was contended that the application be dismissed.

Decision

During the course of the proceedings, leave was granted to the ETU to amend their application.

The original application and the amended application were as follows:

2. The original application for orders sought the following relief:
 - (a) pursuant to s. 120(1)(a)(i) and s. 121(1) of the *Industrial Relations Act 1999* ('the Act') O'Donnell Griffin, a division of Tyco Asia Pacific Pty Ltd ('the employer') pay a penalty to Mr Rasmussen; and
 - (b) pursuant to s. 120(1)(b)(i) of the Act, the employer reinstate Mr Scott Rasmussen to the position from which Mr Rasmussen was dismissed on 28 January 2004, being that of electrician employed at the Pivotal site; and
 - (c) pursuant to s. 120(1)(d) of the Act, the employer pay Mr Rasmussen compensation for the loss of wages he incurred between 28 January 2004 and the date of his reinstatement.
3. However, the application was subsequently amended to read:
 - (a) pursuant to s. 120(1)(a)(i) and s. 121(1) of the *Industrial Relations Act 1999* ('the Act') O'Donnell Griffin, a division of Tyco Asia Pacific Pty Ltd ('the employer') pay a penalty to Mr Rasmussen; and
 - (b) pursuant to s. 120(1)(d) of the Act, the employer pay Mr Rasmussen compensation for the loss of wages he incurred between 28 January 2004 and the date of hearing of this matter. . .".

The Commission in giving consideration to the application was required to take into account the provisions of Part 4 – Civil Remedies of the Act which includes sections 117 through to 122.

The basis upon which the ETU built their case was that member Scott Rasmussen, a duly appointed WHSR on the Pivotal Point project, had been subjected to a form of prohibited conduct by ODG solely for reasons relating to his conduct in that position and his activities as a Union member.

The respondent argued most strongly that no such conduct occurred and that the application, in effect, lacked merit.

Mr Rasmussen obtained employment with ODG in July 2003 as a construction electrician, taking up his appointment at the Pivotal Point project.

Almost immediately on commencement, there was a requirement for the Company to put forward a person to attend site safety meetings and Mr Rasmussen accepted nomination to that position by Mr Daryl Robinson, the site Project supervisor for ODG.

The evidence before the Commission, whilst contested by the respondent, points to Mr Rasmussen being elected as WHSR at a meeting convened by Mr Hicks from the ETU on 25 August 2003.

The Commission is of the view that Mr Rasmussen, in effect, was from the commencement of the employment, the duly accredited safety representative for the Company and that on or around 25 August 2003 was elected as a WHSR (unopposed) at a meeting convened by the Union.

He held the said position in one form or another until his departure from the Company.

As to whether Mr Rasmussen sought to attend an appropriate training course, which was to be undertaken by a number of WHRS's from other subcontractors on site, the evidence before the proceedings is such to conclude that such an approach had been made.

The Company, at the time, had refused to accede to the request and relied upon advice from a person (Warwick Wilson) within the Company (with the designated authority to implement safety outcomes) to support their position.

This action by the Company could lead a reasonable person to question whether they were genuine in their commitment to the process involving WHRS's and not just providing the most minimal support to satisfy their obligations.

The Company approach to the position of WHSR after the departure of Mr Rasmussen was of a completely different nature with the immediate election of a replacement followed by that persons attendance at the same course originally the subject of the request by Mr Rasmussen.

The evidence before, and accepted by, the Commission was that Mr Rasmussen carried out his duties as a WHSR in a diligent and professional manner, raising many concerns relating to genuine safety matters on the project.

There was nothing to suggest that there was anything untoward in his behaviour and it would appear that he earned the respect of his peers for the straight forward approach he had adopted when dealing with the issue of site safety.

In raising his concerns, he generally did so directly with Multiplex and not ODG so that it would be difficult to accept that ODG had reason to be "offside" with Mr Rasmussen in respect of his WHSR role.

The Company, particularly through Mr Robinson, had expressed disappointment in a decision taken at a meeting on 21 January 2004 where plumbers and electricians on site had voted against working on the "sacred Saturday".

It does not appear that the Company singled Mr Rasmussen out for this decision with Mr Rasmussen's own evidence indicating that Mr Robinson had expressed his disappointment at the decision to all electricians on site.

The Commission was not provided with evidence that the Company had formed the view that Mr Rasmussen had played a significant role in that decision.

Shortly thereafter on 28 January 2004 Mr Rasmussen was told by Mr Robinson that he would be required to transfer to the Broadbeach site which immediately raised his ire.

The transfer itself would have not deprived Mr Rasmussen of any industrial benefit in that he would remain covered by the same certified agreement.

He believed that as the longest serving electrician on site he should not have to transfer and that a fellow employee with lesser service should be required to relocate if a transfer was necessary.

Mr Rasmussen gave evidence that he held a genuine suspicion that because he had been vocal on safety as well as industrial issues, he was being "squeezed out" and would subsequently be made redundant on his departure from the Pivotal site.

He took up the option of discussing (by phone) the proposed transfer with Mr McMahon where he was given the Company's reasons for the transfer.

Despite putting his position to Mr McMahon, there was no preparedness by the Company to change their mind with Mr Rasmussen then deciding to sever ties with the Company.

Whilst there was competing evidence as to the words used by Mr Rasmussen in severing the employment relationship the Commission is of the view that he voluntarily chose to no longer work for the Company.

There is no evidence that the actions of Mr Rasmussen were taken under duress and, in fact, he presented to the Commission as a person not likely to "buckle" under that type of pressure.

Further, supportive of the argument that Mr Rasmussen was not forced out of his employment, was his failure to contact Mr Hicks to inform him of his departure.

Mr Hicks had been a regular visitor to the site and on the evidence in the proceedings, the Commission concludes that he is an organiser who would be most supportive to a member being "forced out" of his employment under such circumstances.

It was through another source that Mr Hicks became aware of Mr Rasmussen's departure, some two days after the event.

The Union took a most proactive stance in seeking to have Mr Rasmussen re-employed on the Pivotal site and argued most strongly that position at a series of meetings.

Much was made by the applicant of certain proposals put forward by the Company at those meetings and, in particular, a proposed "trade off" in respect of the "sacred Saturday" ban.

Like Unions that operate in the construction industry, employers too, can at time, see windows of opportunity and in seeking a change to an industrial situation when negotiating another one is in the view of the Commission a most common occurrence.

Following a series of meetings, the matter was referred to the AIRC on 9 February 2004 from which the Company put forward an offer (in writing) of re-employment to Mr Rasmussen which was subsequently rejected.

Evidence before the Commission confirmed that a payment of wages was continued by the Company for Mr Rasmussen during this process.

Finding

For the application in this matter to succeed the Commission must be satisfied on the balance of probabilities that an entity has engaged in or proposes to engage in prohibited conduct.

Once such a conclusion had been reached the Commission has a range of options under s. 120 Remedies of the Act for which orders can be issued.

Whilst the Commission is of the view that the ETU held an honest belief that the decision to transfer Mr Rasmussen from the Pivotal site was for reasons relating to his role as WHSR and in respect of other industrial behaviour in which he was involved, that position is neither supported by the evidence or the facts in this matter.

The transfer on offer in no way would have financially disadvantaged Mr Rasmussen and whilst the Commission can not, with any accuracy, determine whether he would have, at a time been returned to the Pivotal site or not, there was evidence before the Commission that the (two) employees who were transferred to the Broadbeach site did in fact return to Pivotal and at the time of the hearing remained in the employ of ODG at the Pivotal site.

Further evidence before the Commission confirmed that at the time of hearing there had been no redundancies on any of the Gold Coast projects for the 2004 year to date.

The employment of Mr Rasmussen ceased through a decision made entirely by him alone, no doubt due to suspicions he held relating to the proposed transfer but nevertheless based on suspicions.

The Union was able to negotiate an offer of re-employment which, if accepted by Mr Rasmussen, would have seen him returned to employment without loss of any income and most likely continuity of employment.

He chose to reject the offer.

On the issue of the transfer, the Union raised the failure of the Company to consult with the Union prior to transferring Mr Rasmussen from the Pivotal site.

Undoubtedly, it would have been better for all concerned had some discussion occurred however, the Commission does draw a distinction between the role of WHSR and that of a duly elected Union site delegate and would think that the onus to have those discussions in respect of the Union delegate would not necessarily apply in the same way to the WHSR position.

Having considered the evidence, material and submissions before the Commission, I find that ODG did not engage in a form of prohibited conduct or proposed to engage in such conduct in relation to Scott Rasmussen and, as such, the application fails.

The application is therefore dismissed.

I order accordingly.

J.M. THOMPSON, Commissioner.

Hearing Details:

2004 4 May
21 to 24 June
17 August

Appearances:

Ms K. Inglis, of The Electrical Trades Union of Employees of Australia, Queensland Branch, Applicant.
Mr A. Horneman-Wren, Counsel, instructed by Mr A. Rice, of Blake Dawson Waldron, for the Respondent.

Released: 27 August 2004

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QUEENSLAND INDUSTRIAL REGISTRAR

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

Queensland Police "Union of Employees" (No. Q23 of 2004)

REGISTRAR SAVILL

1 September 2004

Conduct of Election – Prescribed Information – Reason for Election – Electoral Commission to Conduct Election.

DECISION

On 26 August 2004 the Queensland Police "Union of Employees" lodged in the Registry under section 481 of the *Industrial Relations Act 1999*, the information as prescribed in section 36 of the *Industrial Relations Regulation 2000* in relation to the conduct of an election by the Electoral Commission of Queensland for the following positions of office:

Office	Number of Positions
Conference Delegate	
Far Northern Region	1 from each group
Northern Region	1 from each group
Central Region	1 from each group
North Coast Region	1 from each group
Southern Region	1 from each group
South East Region	1 from each group
Metropolitan North Region	1 from each group
Metropolitan South Region	1 from each group
Headquarters and Support Region.....	1 from each group

Rule 22 provides for Conference Delegates to be elected annually. Each Region is divided into Groups and one financial member is to be elected for each group. The Industrial Organisation’s Rules define the stations for each group.

Under Rule 23 nominations are to be called not later than 5 months prior to the dates set for Annual Conference and shall be received no later than the end of the month in which they are called. The Annual Conference has been set for March, 2005. In the month that nominations are to be called, the QPUE shall cause to be published in that month’s Journal a full page advice of the calling of such nominations, how members may nominate and the conditions surrounding nominations.

I have considered the application, the Act and Rules and I find that the election being sought is for positions of office within the meaning of the Act.

I am satisfied that an election for the above named positions is required to be held under the Rules of the Industrial Organisation.

Under section 482 of the *Industrial Relations Act 1999*, I am making arrangements for the conduct of the election of the above named positions by the Electoral Commission of Queensland.

Dated 1 September 2004.

G SAVILL,
Industrial Registrar

Released: 1 September 2004

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QUEENSLAND INDUSTRIAL REGISTRAR

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

UNiTAB Agents Association, Union of Employers Queensland (No. Q24 of 2004)

REGISTRAR SAVILL

1 September 2004

Conduct of Election – Prescribed Information –Rule Changes – Methods of Elections –Electoral Commission to Conduct Elections.

DECISION

On 25 August 2004, the UNiTAB Agents Association, Union of Employers Queensland, lodged in the Registry under section 481 of the *Industrial Relations Act 1999* the information as prescribed in section 36(1) of the *Industrial Relations Regulation 2000* in relation to its request for the conduct of an election by the Electoral Commission of Queensland for the following positions of Office:

Office	Number of Positions	Method of Election
President	1	Direct vote by financial members
Council Members		
– Brisbane North	2	Direct vote by members of respective TAB Regional Zone
– Brisbane South	2	
– Gold Coast & Darling Downs	2	
– Sunshine Coast and Bundaberg	1	
– Central Queensland	1	
– North Queensland	2	
– Southern	3	
– Northern	1	
Management Committee		
– Vice-President	1	Collegiate vote by members of Council
– Junior Vice-President	1	
– Treasurer	1	
– Secretary	1	

Timing of Elections

Rule 33(a) provides for the calling of nominations for Council members 6 weeks prior to the date of the Annual General Meeting, in the year in which elections are due which this year, has been scheduled for 8 November 2004. Nominations for the President are to be called between the 1st and 7th of September every second year. Section 36(4) of the *Industrial Relations Regulation 2000* requires the prescribed information to be filed by the prescribed day i.e 2 months before the first day on which a person may become a candidate in the election, under the organisation’s or branch’s rules. Therefore I find that, in this instance, the prescribed information was filed later than the prescribed day however I am prepared to extend the time for filing to 25 August 2004.

Methods of Elections

The methods of election are set out above. Direct votes are by way of secret postal ballot and the collegiate vote shall be conducted as a secret ballot.

Conduct of Elections

I have considered the request, the Act and Rules and I am satisfied that an election is required to be held under the Rules for the Offices as set out above. Under section 482 of the Industrial Relations Act 1999, I am making arrangements for the conduct of the election by the Electoral Commission of Queensland.

Dated 1 September 2004.

G Savill,
Industrial Registrar.

Released: 1 September 2004

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QUEENSLAND INDUSTRIAL REGISTRAR

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

Queensland Nurses’ Union of Employees (No. Q22 of 2004)

REGISTRAR SAVILL

1 September 2004

Conduct of Election – Timing of Election – Number of Councillors – Term of Office – Reason for Election – Electoral Commission to Conduct Election

DECISION

On 24 August 2004, the Queensland Nurses’ Union of Employees lodged in the Registry under section 481 of the *Industrial Relations Act 1999* the information as prescribed in section 36(1) of the *Industrial Relations Regulation 2000* in relation to its request for the conduct of an election by the Electoral Commission for the following Offices:-

<i>Office</i>	<i>Number of Positions</i>
Secretary	1
President	1
Vice President	1
Executive Members	4
Councillors	18

Timing of Election

No date is prescribed by the Rules for the opening of nominations to assist in determining the prescribed date for the filing of prescribed information and, after reading all rules, a date is not definable by me.

Rule 19(f) provides as follows:

“(f) Elections for officers and members of the Council (other than Secretary and Assistant Secretary) shall be conducted between the first day of September and the thirtieth day of October in each alternate year . . . , provided that the Returning Officer may call for nominations prior to the first day of September in the year of such elections.”.

Therefore taking into account the indefinable time frame for the opening of nominations for the purpose of lodgment of the prescribed information (i.e. “2 months prior to the calling of nominations”) I find that the prescribed information was not filed within the time frame prescribed by the Act.

Notwithstanding that, I am prepared to exercise my discretion and extend the prescribed time for filing of such information.

Number of Councillors

Rule 19, Council, provides for the number of Councillors as follows:

“the Council shall consist of:

- (i) the President, Vice President and Secretary and Assistant Secretary where Council determines that an Assistant Secretary is to be elected;
- (ii) four executive members (hereinafter referred to as ‘the executive members’); and
- (iii) such number of other members (hereinafter referred to as ‘Councillors’), no fewer than five or more than twenty as determined by Council – all of whom shall be elected in accordance with these Rules.”

The Industrial Organisation has declared that there are presently 18 Councillor positions for election.

Term of Office

Rule 19(c) prescribes that the Council (except the Secretary and Assistant Secretary) shall hold office for a term of two years and shall be eligible for re-election for a further term of two years each.

Rule 19(e) prescribes that the Secretary and Assistant Secretary shall hold office for a term of four years and shall be eligible for re-election for a further term of four years.

Method of Election

Rules 19 and 36 prescribe the conduct of elections by the Returning Officer as a direct vote by way of a secret postal ballot to every financial member of the Union entitled to vote.

Conduct of Election

I have considered the application, the Act and Rules, and I am satisfied that an election is required to be held under the rules of each of the above positions of Office.

Therefore, under section 482 of the *Industrial Relations Act 1999*, I am making arrangements for the conduct of the election of the above named positions by the Electoral Commission of Queensland.

Dated 1 September 2004.

G Savill
Industrial Registrar

Released: 1 September 2004

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

Queensland Teachers Union of Employees AND Department of Education and the Arts (No. B1036 of 2004)

**COMMUNITY TEACHERS, ASSISTANT TEACHERS – ABORIGINAL & TORRES STRAIT ISLANDER
COMMUNITY SCHOOLS AWARD – STATE 2003**

VICE PRESIDENT LINANNE
COMMISSIONER EDWARDS
COMMISSIONER THOMPSON

17 August 2004

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 29 July and 12 August 2004, this Commission orders that the said Award be amended as follows as from 26 August 2004:

1. By deleting clause 5.2.2 and inserting the following in lieu thereof:

“5.2.2 The salaries of employees covered by this Award will not be less than the following:

	Per Fortnight \$	Per Annum \$
(a) Community Teachers A and B		
1st Step	1,168.80	30,493
2nd Step	1,232.10	32,144
3rd Step	1,296.00	33,811
4th Step	1,361.90	35,531
5th Step	1,428.50	37,268
6th Step	1,479.00	38,586
7th Step	1,529.80	39,911
(b) Assistant Teachers		
1st Step	1,121.50	29,259
2nd Step	1,151.00	30,028
3rd Step	1,180.10	30,788
4th Step	1,209.20	31,547

The rates of pay in this Award are intended to include the arbitrated wage adjustment payable under the 1 September 2003 Declaration of General Ruling and earlier Safety Net Adjustments and arbitrated wage adjustments (disputed cases are to be referred to the Vice President). This arbitrated wage adjustment may be offset against any equivalent amount in wages of pay received by employees whose wages and conditions of employment are regulated by this Award, which are above the wage rates prescribed in the Award. Such payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Queensland workplace agreements, award amendments to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous State wages cases or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated wage adjustments.

Note: these rates of pay also incorporate adjustments based upon the Department of Education Teachers’ Determination 2000 (B458 of 2000).”.

2. By deleting clause 5.5.1 and inserting the following in lieu thereof:

“5.5.1 *Aboriginal and Islander community schools allowance* – In addition to the salaries and other allowances prescribed by this Award, an allowance at the rate of \$24.80 per fortnight (\$647.00 per annum) will be paid to community teachers A and B in Torres Strait Islander schools and preschools and Aboriginal community schools and preschools.”.

3. By deleting clause 5.5.2 and inserting the following in lieu thereof:

“5.5.2 *Head teacher allowance* – A community teacher or an assistant teacher who is the head teacher of a Torres Strait island primary school, will receive an allowance at the rate of \$148.30 per fortnight (\$3,869.00 per annum) in addition to the salary and other allowance as prescribed by this Award.”.

4. By deleting clause 5.5.3 and inserting the following in lieu thereof:

“5.5.3 *Teacher-in-Charge: Torres Strait Island preschool* – A community teacher or an assistant teacher who is the teacher-in-charge of a Torres Strait Island preschool, will receive an allowance at the rate of \$71.80 per fortnight (\$1,873.00 per annum) in addition to salary and allowances, as prescribed by this Award.”.

5. By deleting clause 5.5.4 and inserting the following in lieu thereof:

“5.5.4 *Education achievement allowances* – Assistant teachers who have successfully completed the training programs, other than courses qualifying them as community teachers A and B or registered teachers, will receive the following education achievement allowances:

Completion of 1st Course (2 semesters' duration)	\$15.80 per fortnight
Completion of 2nd Course (2 semesters' duration)	\$31.40 per fortnight
Completion of 3rd Course (1 semester duration).”.	\$46.40 per fortnight

Dated 17 August 2004.

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

Operative Date: 26 August 2004
Amendment – Wages and Allowances
Released: 27 August 2004

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

Queensland Teachers Union of Employees AND Department of Education and the Arts (No. B1037 of 2004)

TEACHERS' AWARD – STATE 2003

VICE PRESIDENT LINANNE
COMMISSIONER EDWARDS
COMMISSIONER THOMPSON

17 August 2004

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 29 July and 12 August 2004, this Commission orders that the said Award be amended as follows as from 26 August 2004:

1. By deleting clause 5.5.1(b) and inserting the following in lieu thereof:

“(b) What is the salary of a senior teacher?

The minimum salary of a 4 year trained senior teacher will be \$2,197.50 per fortnight (\$57,331 per annum).

A 3 year trained senior teacher will receive an allowance of \$87.90 per fortnight (\$2,293.20 per annum) in addition to other entitlements under clause 5.2. The allowance is determined by subtracting the rate for band 3 step 4 from the 4 year senior teacher rate.”.

2. By deleting clause 5.5.2(b) and inserting the following in lieu thereof:

“(b) What will a Senior Instrumental Music Instructor be paid?

The minimum salary for a 4 year trained Senior Instrumental Music Instructor will be \$2,197.50 per fortnight (\$57,331 per annum).

A 3 year trained Senior Instrumental Music Instructor will receive an allowance of \$87.90 per fortnight (\$2,293.20 per annum) in addition to other entitlements under clause 5.2. The allowance is determined by subtracting the rate for band 3 step 4 from the 4 year Senior Instrumental Instructor rate.”.

3. By deleting clause 5.5.4(c) and inserting the following in lieu thereof:

“(c) Teachers employed on a casual basis to teach courses will be paid at the following rate per hour of programmed student contact:

	Per Hour
	\$
Internally Assessed Courses.....	83.7541
Externally Assessed Courses.....	71.8179.”.

4. By deleting clause 5.5.4(d) and inserting the following in lieu thereof:

“(d) Guidance personnel employed on a casual basis will be paid at the rate of \$53.4135 per hour.”.

5. By deleting clause 5.5.4(e) and inserting the following in lieu thereof:

“(e) Teacher librarians employed on a casual basis will be paid at the rate of \$53.4135 per hour.”.

6. By deleting clause 5.7.2 and inserting the following in lieu thereof:

“5.7.2 *Moderation duties*

In addition to the salaries and other allowances prescribed in this Award, classified teachers who perform moderation duties and are responsible to a District Moderation meeting for the assessment of a subject area in Grades 10, 11 and 12, will be paid allowances at the following rates:

- (a) \$16.90 per fortnight (\$441 per annum) where the teacher concerned is responsible for themselves and 2 or more teachers in the subject area; or
- (b) \$11.40 per fortnight (\$297 per annum) where the teacher concerned is responsible for themselves and 1 other teacher in the subject area.”.

7. By deleting clause 5.7.3 and inserting the following in lieu thereof:

“5.7.3 *Teachers in charge*

In addition to the salaries and other allowances prescribed by this Award, any teacher paid according to clause 5.2 of this Award and designated as a teacher in charge, will be paid an allowance at the rate of \$65.20 per fortnight (\$1,701 per annum).”.

8. By deleting clause 5.7.4 and inserting the following in lieu thereof:

“5.7.4 *Teachers seconded for special duties*

In addition to the salaries and other allowances prescribed by this Award, teachers seconded as Advisory Teachers will be paid an allowance equivalent to the 3 year trained senior teacher allowance in clause 5.5.1(b) – \$87.90 per fortnight (\$2,293.20 per annum).”.

9. By deleting clause 5.7.5 and inserting the following in lieu thereof:

“5.7.5 *Teachers in special schools*

In addition to the salaries and other allowances prescribed by this Award, an allowance at the rate of \$22.50 per fortnight (\$587 per annum) will be paid to Principals and teachers in special schools (i.e. schools for the physically and mentally handicapped) and in departmental schools at Yarrabah, Bamaga, Palm Island, Cherbourg, Woorabinda, Weipa South, Bloomsfield River and such other schools as may from time to time be approved by the employer.”.

10. By deleting clause 5.7.7(a)(i) and inserting the following in lieu thereof:

“(a) Classroom Teachers

- (i) Teachers paid according to clause 5.2 of this Award who are seconded as Education Officers (Special Duties) will be entitled to a salary of \$214.00 per fortnight (\$5,583 per annum) in addition to their entitlements under clause 5.2.”.

11. By deleting clauses 5.8.1 and 5.8.2 inserting the following in lieu thereof:

“5.8.1 The rates of pay in this Award are intended to include the arbitrated wage adjustments payable under the 1 September 2003 Declaration of General Ruling and earlier Safety New Adjustments and arbitrated wage adjustments. (Disputed cases are to be referred to the Vice President). This arbitrated wage adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this Award, which are above the wage rates prescribed in the Award. Such payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Queensland workplace agreements, award amendments to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous State wage cases or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated wage adjustments.

Note: These rates of pay also incorporate adjustments based upon the Department of Education Teachers’ Determination 2000 (B458 of 2000).”.

12. By deleting Schedule 2 and inserting the following in lieu thereof:

“**SCHEDULE 2 – SALARIES – TEACHERS**

The following scale of minimum salaries will apply to teachers (see clause 5.2)

		Per Fortnight	Per Annum
		\$	\$
Band 1	Step 1.....	1,323.90	34,539
	Step 2.....	1,361.50	35,520
	Step 3.....	1,407.20	36,712
	Step 4.....	1,455.70	37,978

Band 2	Step 1.....	1,496.20	39,034
	Step 2.....	1,579.80	41,202
	Step 3.....	1,661.90	43,357
	Step 4.....	1,744.90	45,523
	Step 5.....	1,828.10	47,693
Band 3	Step 1.....	1,897.40	49,501
	Step 2.....	1,967.00	51,317
	Step 3.....	2,109.60	55,037

The above rates incorporate adjustments based upon the Department of Education Teachers' Determination 2000 (B458 of 2000) and include the arbitrated wage adjustment payable under the 1 September 2003 Declaration of General Ruling and earlier Safety Net Adjustments."

13. By deleting Schedule 3 and inserting the following in lieu thereof:

"SCHEDULE 3 – SALARIES – PROMOTIONAL POSITIONS

The following scale of minimum salaries will apply to Promotional Positions (see clause 5.3).

Band		Salary Step 1 \$	Salary Step 2 \$	Salary Step 3 \$	Salary Step 4 \$	Salary Step 5 \$
11	p.f.	3,246.60	3,328.10	3,409.40	3,497.20	3,581.10
	p.a.	84,701	86,827	88,948	91,238	93,427
10	p.f.	3,066.00	3,136.30	3,220.70	3,299.70	3,380.40
	p.a.	79,989	81,823	84,025	86,086	88,191
9	p.f.	2,896.40	2,965.80	3,042.10	3,118.40	3,193.60
	p.a.	75,564	77,375	79,365	81,356	83,318
8	p.f.	2,739.80	2,807.10	2,877.40	2,949.80	3,022.80
	p.a.	71,479	73,234	75,068	76,957	78,862
7	p.f.	2,606.10	2,667.20	2,734.30	2,800.80	2,871.10
	p.a.	67,991	69,585	71,335	73,070	74,904
6	p.f.	2,486.00	2,541.60	2,599.30	2,666.10	2,736.50
	p.a.	64,857	66,308	67,813	69,556	71,393
5	p.f.	2,366.40	2,427.80	2,480.10	2,544.30	2,605.20
	p.a.	61,737	63,339	64,703	66,378	67,967
4	p.f.	2,258.80	2,314.70	2,357.90	2,424.50	2,491.60
	p.a.	58,930	60,388	61,515	63,253	65,003

The above rates incorporate adjustments based upon the Department of Education Teachers' Determination 2000 (358 of 2000) and include the arbitrated wage adjustment payable under the 1 September 2003 Declaration of General Ruling and earlier Safety Net Adjustments."

Dated 17 August 2004.

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

Operative Date: 26 August 2004
Amendment – Wages and Allowances
Released: 27 August 2004

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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 Queensland Services, Industrial Union of Employees (No. B1590 of 2003)

COOTHARINGA SOCIETY OF NORTH QUEENSLAND (ENTERPRISE) AWARD 2003

COMMISSIONER BECHLY

28 May 2004

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 28 May 2004, this Commission orders that the said Award be amended as follows as from 1 December 2003:

By deleting clauses 4.5 (Termination of Employment), 4.6 (Introduction of Changes) and 4.7 (Redundancy) and inserting the following in lieu thereof:

"4.5 Termination of employment

4.5.1 *Statement of employment*

An employer shall, in the event of termination of employment, provide upon request to the employee who has been terminated a written statement specifying the period of employment and the classification or type of work performed by the employee.

4.5.2 *Termination by employer*

(a) An employer may dismiss an employee only if the employee has been given the following notice:

Period of Continuous Service	Period of Notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years.....	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

- (b) In addition to the notice in (a) above, employees 45 years old or over and who have completed at least 2 years' continuous service with the employer shall be entitled to an additional week's notice.
- (c) Payment in lieu of notice shall be made if the appropriate notice is not given:
- Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.
- (d) In calculating any payment in lieu of notice the minimum compensation payable to an employee will be at least the total of the amounts the employer would have been liable to pay the employee if the employee's employment had continued until the end of the required notice period. The total must be worked out on the basis of:
- (i) the ordinary working hours to be worked by the employee; and
 - (ii) the amounts payable to the employee for the hours including for example allowances, loadings and penalties; and
 - (iii) any other amounts payable under the employee's employment contract.
- (e) The period of notice in this clause shall not apply in the case of dismissal for misconduct or other grounds that justify instant dismissal, or in the case of a casual employee, or an employee engaged by the hour or day, or an employee engaged for a specific period or tasks.

4.5.3 *Notice of termination by employee*

The notice of termination required to be given by an employee shall be one week, or payment forfeited in lieu thereof.

4.5.4 *Time off during notice period*

During the period of notice of termination given by the employer, an employee shall be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. This time off shall be taken at times that are convenient to the employee after consultation with the employer.

4.6 **Introduction of changes**

4.6.1 *Employer's duty to notify*

- (a) Where an employer decides to introduce changes in production, program, organisation, structure or technology, that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes and, where relevant, their Union or Unions.
- (b) 'Significant effects' includes termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs:

Provided that where the Award makes provision for alteration of any of the matters referred to herein an alteration shall be deemed not to have significant effect.

4.6.2 *Employer's duty to consult over change*

- (a) The employer shall consult the employees affected and, where relevant, their Union or Unions about the introduction of the changes, the effects the changes are likely to have on employees (including the number and categories of employees likely to be dismissed, and the time when, or the period over which, the employer intends to carry out the dismissals), and the ways to avoid or minimise the effects of the changes (e.g. by finding alternative employment).
- (b) The consultation must occur as soon as practicable after making the decision referred to in clause 4.6.1.
- (c) For the purpose of such consultation the employer shall provide in writing to the employees concerned and, where relevant, their union or unions, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees, and any other matters likely to affect employees, provided that any employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests.

4.7 **Redundancy**

4.7.1 *Consultation before terminations*

- (a) Where an employer decides that the employer no longer wishes the job the employee has been doing to be done by anyone, and this is not due to the ordinary and customary turnover of labour, and that decision may lead to termination of employment, the employer shall consult the employee directly affected and where relevant, their Union or Unions.
- (b) The consultation shall take place as soon as it is practicable after the employer has made a decision, which will invoke the provisions of clause 4.7.1(a) and shall cover the reasons for the proposed terminations, measures to avoid or minimise the terminations and/or their adverse effects on the employees concerned.
- (c) For the purpose of the consultation the employer shall, as soon as practicable, provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, the number of workers normally employed and the period over which the terminations are likely to be carried out:

Provided that any employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests.

4.7.2 *Transfer to lower paid duties*

- (a) Where an employee is transferred to lower paid duties for reasons set out in clause 4.7.1 the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated under clause 4.5.

- (b) The employer may, at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former amounts the employer would have been liable to pay and the new lower amount the employer is liable to pay the employee for the number of weeks of notice still owing.
- (c) The amounts must be worked out on the basis of:
- (i) the ordinary working hours to be worked by the employee; and
 - (ii) the amounts payable to the employee for the hours including for example, allowances, loadings and penalties; and
 - (iii) any other amounts payable under the employee's employment contract.

4.7.3 *Transmission of business*

- (a) Where a business is, whether before or after the date of insertion of this clause in the Award transmitted from an employer (transmittor) to another employer (transmittee), and an employee who at the time of such transmission was an employee of the transmittor of the business, becomes an employee of the transmittee:
- (i) the continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission; and
 - (ii) the period of employment which the employee has had with the transmittor or any prior transmittor shall be deemed to be service of the employee with the transmittee.
- (b) In clause 4.7.3, 'business' includes trade, process, business or occupation and includes a part or subsidiary (which means a corporation that would be taken to be a subsidiary under the Corporations Law, whether or not the Corporations Law applies in the particular case) of any such business and 'transmission' includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and 'transmitted' has a corresponding meaning.

4.7.4 *Time off during notice period*

- (a) Where a decision has been made to terminate an employee in the circumstances outlined in clause 4.7.1, the employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or the employee shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

4.7.5 *Notice to Centrelink*

Where a decision has been made to terminate employees in the circumstances outlined in clause 4.7.1, the employer shall notify Centrelink as soon as possible giving all relevant information about the proposed terminations, including a written statement of the reasons for the terminations, the number and categories of the employees likely to be affected, the number of workers normally employed and the period over which the terminations are intended to be carried out.

4.7.6 *Severance pay*

- (a) In addition to the period of notice prescribed for ordinary termination in clause 4.5.2(a), and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in clause 4.7.1(a), shall be entitled to the following amounts of severance pay:

Period of Continuous Service	Severance Pay (weeks' pay)
Less than 1 year	nil
1 year but not more than 2 years.....	4
More than 2 years but not more than 3 years	6
More than 3 years but not more than 4 years	7
More than 4 years but not more than 5 years	8
More than 5 years but not more than 6 years	9
More than 6 years but not more than 7 years	10
More than 7 years but not more than 8 years	11
More than 8 years but not more than 9 years	12
More than 9 years but not more than 10 years	13
More than 10 years but not more than 11 years	14
More than 11 years but not more than 12 years	15
More than 12 years.....	16

- (b) 'Weeks' Pay' means the ordinary time rate of pay for the employee concerned:

Provided that the following amounts are excluded from the calculation of the ordinary time rate of pay: overtime, penalty rates, disability allowances, shift allowances, special rates, fares and travelling time allowances, bonuses and any other ancillary payments.

4.7.7 *Superannuation benefits*

An employer may make an application to the Commission for relief from the obligation to make severance payments in circumstances where:

- (a) the employer has contributed to a superannuation scheme which provides a particular benefit to an employee in a redundancy situation; and
- (b) the particular benefit to the employee is over and above any benefit the employee might obtain from any legislative scheme providing for superannuation benefits (currently the federal Superannuation Guarantee levy) or an award based superannuation scheme.

4.7.8 *Employee leaving during notice*

An employee whose employment is terminated for reasons set out in clause 4.7.1(a), may terminate such employment during the period of notice, and, if so, shall be entitled to the same benefits and payments under this clause had such employee remained with the employer until the expiry of such notice:

Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.

4.7.9 *Alternative employment*

An employer, in a particular case, may make application to the Commission to have the general severance pay prescription amended if the employer obtains acceptable alternative employment for an employee.

4.7.10 *Employees with less than one year's service*

Clause 4.7 shall not apply to employees with less than one year's continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.

4.7.11 *Employees exempted*

Clause 4.7 shall not apply:

- (a) where employment is terminated as a consequence of misconduct on the part of the employee; or
- (b) to employees engaged for a specific period or task(s); or
- (c) to casual employees.

4.7.12 *Employers exempted*

- (a) Subject to an order of the Commission, in a particular redundancy case, clause 4.7 shall not apply to an employer including a company or companies that employ employees working a total of fewer than 550 hours on average per week, excluding overtime, Monday to Sunday. The 550 hours shall be averaged over the previous 12 months.
- (b) A 'company' shall be defined as:
 - (i) a company and the entities it controls; or
 - (ii) a company and its related company or related companies; or
 - (iii) a company where the company or companies has a common Director or common Directors or a common shareholder or common shareholders with another company or companies.

4.7.13 *Exemption where transmission of business*

- (a) The provisions of clause 4.7.6 are not applicable where a business is before or after the date of the insertion of this clause into the Award, transmitted from an employer (transmittor) to another employer (transmittee), in any of the following circumstances:
 - (i) where the employee accepts employment with the transmittee which recognises the period of continuous service which the employee had with the transmittor, and any prior transmittor, to be continuous service of the employee with the transmittee; or
 - (ii) where the employee rejects an offer of employment with the transmittee:
 - (A) in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with the transmittor; and
 - (B) which recognises the period of continuous service which the employee had with the transmittor and any prior transmittor to be continuous service of the employee with the transmittee.
- (b) The Commission may amend clause 4.7.13(a)(ii) if it is satisfied that it would operate unfairly in a particular case, or in the instance of contrived arrangements.

4.7.14 *Incapacity to pay*

An employer in a particular redundancy case may make application to the Commission to have the general severance pay prescription amended on the basis of the employer's incapacity to pay."

Dated 28 May 2004.

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

Operative Date: 1 December 2003
Amendment – TCR Provisions
Released: 20 August 2004

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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 Australian Mines and Metals Association
(Inc.) Queensland Branch (No. B1590 of 2003)**

COPPER REFINERIES PTY LTD AWARD – STATE 2002

AMENDMENT

This matter coming on for hearing before the Commission at Brisbane on 28 May 2004, this Commission orders that the said Award be amended as follows as from 1 December 2003:

1. By deleting clauses 4.10 (Termination of Employment) and 4.11 (Introduction of Changes) and inserting the following in lieu thereof:

“4.10 Termination of employment**4.10.1 Statement of employment**

An employer shall, in the event of termination of employment, provide upon request to the employee who has been terminated a written statement specifying the period of employment and the classification or type of work performed by the employee.

4.10.2 Termination by employer

- (a) An employer may dismiss an employee only if the employee has been given the following notice:

Period of Continuous Service	Period of Notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

- (b) In addition to the notice in (a) above, employees 45 years old or over and who have completed at least 2 years' continuous service with the employer shall be entitled to an additional week's notice.

- (c) Payment in lieu of notice shall be made if the appropriate notice is not given:

Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

- (d) In calculating any payment in lieu of notice the minimum compensation payable to an employee will be at least the total of the amounts the employer would have been liable to pay the employee if the employee's employment had continued until the end of the required notice period. The total must be worked out on the basis of:

- (i) the ordinary working hours to be worked by the employee; and
- (ii) the amounts payable to the employee for the hours including for example allowances, loadings and penalties; and
- (iii) any other amounts payable under the employee's employment contract.

- (e) The period of notice in this clause shall not apply in the case of dismissal for misconduct or other grounds that justify instant dismissal, or in the case of a casual employee, or an employee engaged by the hour or day, or an employee engaged for a specific period or tasks.

4.10.3 Notice of termination by employee

The notice of termination required to be given by an employee shall be the same as that required of CRL, save and except that there shall be no additional notice based on the age of the employee concerned:

Provided that the notice of termination specified in this clause may be varied by agreement between the employee and the company.

If an employee fails to give notice CRL shall have the right to withhold monies due to the employee with a maximum amount equal to the ordinary time rate for the period of notice.

4.10.4 Payment of termination

In the case of dismissal of an employee or of an employee leaving the service of CRL, after the prescribed notice has been given, the employee shall be paid all wages due within 15 minutes of ceasing work. If such wages are not paid within the time prescribed, all waiting time in excess of 15 minutes shall be paid for at ordinary rates.

In the event of an employee being discharged or leaving without notice, the employee shall be paid all wages due within 24 hours of the termination of employment.

4.10.5 Time off during notice period

During the period of notice of termination given by the employer, an employee shall be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. This time off shall be taken at times that are convenient to the employee after consultation with the employer.

4.11 Introduction of changes**4.11.1 Employer's duty to notify**

- (a) Where an employer decides to introduce changes in production, program, organisation, structure or technology, that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes and, where relevant, their Union or Unions.
- (b) 'Significant effects' includes termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs:

Provided that where the Award makes provision for alteration of any of the matters referred to herein an alteration shall be deemed not to have significant effect.

4.11.2 *Employer's duty to consult over change*

- (a) The employer shall consult the employees affected and, where relevant, their Union or Unions about the introduction of the changes, the effects the changes are likely to have on employees (including the number and categories of employees likely to be dismissed, and the time when, or the period over which, the employer intends to carry out the dismissals), and the ways to avoid or minimise the effects of the changes (e.g. by finding alternative employment).
- (b) The consultation must occur as soon as practicable after making the decision referred to in clause 4.11.1.
- (c) For the purpose of such consultation the employer shall provide in writing to the employees concerned and, where relevant, their union or unions, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees, and any other matters likely to affect employees, provided that any employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests."

2. By deleting clause 4.13 (Redundancy) and inserting the following in lieu thereof:

"4.13 Redundancy

4.13.1 *Consultation before terminations*

- (a) Where an employer decides that the employer no longer wishes the job the employee has been doing to be done by anyone, and this is not due to the ordinary and customary turnover of labour, and that decision may lead to termination of employment, the employer shall consult the employee directly affected and where relevant, their Union or Unions.
- (b) The consultation shall take place as soon as it is practicable after the employer has made a decision, which will invoke the provisions of clause 4.13.1(a) and shall cover the reasons for the proposed terminations, measures to avoid or minimise the terminations and/or their adverse effects on the employees concerned.
- (c) For the purpose of the consultation the employer shall, as soon as practicable, provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, the number of workers normally employed and the period over which the terminations are likely to be carried out:

Provided that any employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests.

4.13.2 *Transfer to lower paid duties*

- (a) Where an employee is transferred to lower paid duties for reasons set out in clause 4.13.1 the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated under clause 4.10.
- (b) The employer may, at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former amounts the employer would have been liable to pay and the new lower amount the employer is liable to pay the employee for the number of weeks of notice still owing.
- (c) The amounts must be worked out on the basis of:
 - (i) the ordinary working hours to be worked by the employee; and
 - (ii) the amounts payable to the employee for the hours including for example, allowances, loadings and penalties; and
 - (iii) any other amounts payable under the employee's employment contract.

4.13.3 *Transmission of business*

- (a) Where a business is, whether before or after the date of insertion of this clause in the Award transmitted from an employer (transmittor) to another employer (transmittee), and an employee who at the time of such transmission was an employee of the transmittor of the business, becomes an employee of the transmittee:
 - (i) the continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission; and
 - (ii) the period of employment which the employee has had with the transmittor or any prior transmittor shall be deemed to be service of the employee with the transmittee.
- (b) In clause 4.13.3, 'business' includes trade, process, business or occupation and includes a part or subsidiary (which means a corporation that would be taken to be a subsidiary under the Corporations Law, whether or not the Corporations Law applies in the particular case) of any such business and 'transmission' includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and 'transmitted' has a corresponding meaning.

4.13.4 *Time off during notice period*

- (a) Where a decision has been made to terminate an employee in the circumstances outlined in clause 4.13.1, the employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or the employee shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

4.13.5 *Notice to Centrelink*

Where a decision has been made to terminate employees in the circumstances outlined in clause 4.13.1 'Consultation before terminations', the employer shall notify Centrelink as soon as possible giving all relevant information about the proposed terminations, including a written statement of the reasons for the terminations, the number and categories of the employees likely to be affected, the number of workers normally employed and the period over which the terminations are intended to be carried out.

4.13.6 *Severance pay*

- (a) In addition to the period of notice prescribed for ordinary termination in clause 4.10.2(a), and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in clause 4.13.1(a), shall be entitled to the following amounts of severance pay:

Period of Continuous Service	Severance Pay (weeks' pay)
Less than 1 year	nil
1 year but not more than 2 years.....	4
More than 2 years but not more than 3 years	6
More than 3 years but not more than 4 years	7
More than 4 years but not more than 5 years	8
More than 5 years but not more than 6 years	9
More than 6 years but not more than 7 years	10
More than 7 years but not more than 8 years	11
More than 8 years but not more than 9 years	12
More than 9 years but not more than 10 years	13
More than 10 years but not more than 11 years	14
More than 11 years but not more than 12 years	15
More than 12 years.....	16

- (b) 'Weeks' Pay' means the ordinary time rate of pay for the employee concerned:

Provided that the following amounts are excluded from the calculation of the ordinary time rate of pay: overtime, penalty rates, disability allowances, shift allowances, special rates, fares and travelling time allowances, bonuses and any other ancillary payments.

4.13.7 *Superannuation benefits*

An employer may make an application to the Commission for relief from the obligation to make severance payments in circumstances where:

- (a) the employer has contributed to a superannuation scheme which provides a particular benefit to an employee in a redundancy situation; and
- (b) the particular benefit to the employee is over and above any benefit the employee might obtain from any legislative scheme providing for superannuation benefits (currently the federal Superannuation Guarantee levy) or an award based superannuation scheme.

4.13.8 *Employee leaving during notice*

An employee whose employment is terminated for reasons set out in clause 4.13.1(a), may terminate such employment during the period of notice, and, if so, shall be entitled to the same benefits and payments under this clause had such employee remained with the employer until the expiry of such notice:

Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.

4.13.9 *Alternative employment*

An employer, in a particular case, may make application to the Commission to have the general severance pay prescription amended if the employer obtains acceptable alternative employment for an employee.

4.13.10 *Employees with less than one year's service*

Clause 4.13 shall not apply to employees with less than one year's continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.

4.13.11 *Employees exempted*

Clause 4.13 (Redundancy) shall not apply:

- (a) where employment is terminated as a consequence of misconduct on the part of the employee; or
- (b) to employees engaged for a specific period or task(s); or
- (c) to casual employees.

4.13.12 *Employers exempted*

- (a) Subject to an order of the Commission, in a particular redundancy case, clause 4.13 shall not apply to an employer including a company or companies that employ employees working a total of fewer than 550 hours on average per week, excluding overtime, Monday to Sunday. The 550 hours shall be averaged over the previous 12 months.

- (b) A 'company' shall be defined as:

- (i) a company and the entities it controls; or
- (ii) a company and its related company or related companies; or
- (iii) a company where the company or companies has a common Director or common Directors or a common shareholder or common shareholders with another company or companies.

4.13.13 *Exemption where transmission of business*

- (a) The provisions of clause 4.13.6 are not applicable where a business is before or after the date of the insertion of this clause into the Award, transmitted from an employer (transmittor) to another employer (transmittee), in any of the following circumstances:
 - (i) where the employee accepts employment with the transmittee which recognises the period of continuous service which the employee had with the transmittor, and any prior transmittor, to be continuous service of the employee with the transmittee; or
 - (ii) where the employee rejects an offer of employment with the transmittee:
 - (A) in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with the transmittor; and
 - (B) which recognises the period of continuous service which the employee had with the transmittor and any prior transmittor to be continuous service of the employee with the transmittee.
- (b) The Commission may amend clause 4.13.13(a)(ii) if it is satisfied that it would operate unfairly in a particular case, or in the instance of contrived arrangements.

4.13.14 *Incapacity to pay*

An employer in a particular redundancy case may make application to the Commission to have the general severance pay prescription amended on the basis of the employer’s incapacity to pay.”.

Dated 28 May 2004.

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

Operative Date: 1 December 2003
Amendment – TCR Provisions
Released: 5 August 2004

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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 Queensland Chamber of Commerce and Industry Limited,
Industrial Organisation of Employers (No. B1590 of 2003)**

DISABILITY SUPPORT WORKERS AWARD – STATE 2003

COMMISSIONER BECHLY

28 May 2004

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 28 May 2004, this Commission orders that the said Award be amended as follows as from 1 December 2003:

By deleting clauses 4.6 (Termination of Employment), 4.7 (Introduction of Changes) and 4.8 (Redundancy) and inserting the following in lieu thereof:

“4.6 Termination of employment

4.6.1 *Statement of employment*

An employer shall, in the event of termination of employment, provide upon request to the employee who has been terminated a written statement specifying the period of employment and the classification or type of work performed by the employee.

4.6.2 *Termination by employer*

- (a) An employer may dismiss an employee only if the employee has been given the following notice:

Period of Continuous Service	Period of Notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years.....	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks
- (b) In addition to the notice in (a) above, employees 45 years old or over and who have completed at least 2 years’ continuous service with the employer shall be entitled to an additional week’s notice.
- (c) Payment in lieu of notice shall be made if the appropriate notice is not given:

Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.
- (d) In calculating any payment in lieu of notice the minimum compensation payable to an employee will be at least the total of the amounts the employer would have been liable to pay the employee if the employee’s employment had continued until the end of the required notice period. The total must be worked out on the basis of:
 - (i) the ordinary working hours to be worked by the employee; and
 - (ii) the amounts payable to the employee for the hours including for example allowances, loadings and penalties; and
 - (iii) any other amounts payable under the employee’s employment contract.

- (e) The period of notice in this clause shall not apply in the case of dismissal for misconduct or other grounds that justify instant dismissal, or in the case of a casual employee, or an employee engaged by the hour or day, or an employee engaged for a specific period or tasks.

4.6.3 *Notice of termination by employee*

The notice of termination required to be given by an employee shall be the same as that required of an employer, save and except that there shall be no additional notice based on the age of the employee concerned. If an employee fails to give notice, the employer shall have the right to withhold monies due to the employee with a maximum amount equal to the amount the employee would have received under clause 4.6.2.

4.6.4 *Time off during notice period*

During the period of notice of termination given by the employer, an employee shall be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. This time off shall be taken at times that are convenient to the employee after consultation with the employer.

4.7 **Introduction of changes**

4.7.1 *Employer's duty to notify*

- (a) Where an employer decides to introduce changes in production, program, organisation, structure or technology, that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes and, where relevant, their Union or Unions.
- (b) 'Significant effects' includes termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs:

Provided that where the Award makes provision for alteration of any of the matters referred to herein an alteration shall be deemed not to have significant effect.

4.7.2 *Employer's duty to consult over change*

- (a) The employer shall consult the employees affected and, where relevant, their Union or Unions about the introduction of the changes, the effects the changes are likely to have on employees (including the number and categories of employees likely to be dismissed, and the time when, or the period over which, the employer intends to carry out the dismissals), and the ways to avoid or minimise the effects of the changes (e.g. by finding alternative employment).
- (b) The consultation must occur as soon as practicable after making the decision referred to in clause 4.7.1.
- (c) For the purpose of such consultation the employer shall provide in writing to the employees concerned and, where relevant, their union or unions, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees, and any other matters likely to affect employees, provided that any employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests.

4.8 **Redundancy**

4.8.1 *Consultation before terminations*

- (a) Where an employer decides that the employer no longer wishes the job the employee has been doing to be done by anyone, and this is not due to the ordinary and customary turnover of labour, and that decision may lead to termination of employment, the employer shall consult the employee directly affected and where relevant, their Union or Unions.
- (b) The consultation shall take place as soon as it is practicable after the employer has made a decision, which will invoke the provisions of clause 4.8.1(a) and shall cover the reasons for the proposed terminations, measures to avoid or minimise the terminations and/or their adverse effects on the employees concerned.
- (c) For the purpose of the consultation the employer shall, as soon as practicable, provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, the number of workers normally employed and the period over which the terminations are likely to be carried out:

Provided that any employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests.

4.8.2 *Transfer to lower paid duties*

- (a) Where an employee is transferred to lower paid duties for reasons set out in clause 4.8.1 the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated under clause 4.6.
- (b) The employer may, at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former amounts the employer would have been liable to pay and the new lower amount the employer is liable to pay the employee for the number of weeks of notice still owing.
- (c) The amounts must be worked out on the basis of:
- (i) the ordinary working hours to be worked by the employee; and
 - (ii) the amounts payable to the employee for the hours including for example, allowances, loadings and penalties; and
 - (iii) any other amounts payable under the employee's employment contract.

4.8.3 *Transmission of business*

- (a) Where a business is, whether before or after the date of insertion of this clause in the Award transmitted from an employer (transmittor) to another employer (transmittee), and an employee who at the time of such transmission was an employee of the transmittor of the business, becomes an employee of the transmittee:
 - (i) the continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission; and
 - (ii) the period of employment which the employee has had with the transmittor or any prior transmittor shall be deemed to be service of the employee with the transmittee.
- (b) In clause 4.8.3, 'business' includes trade, process, business or occupation and includes a part or subsidiary (which means a corporation that would be taken to be a subsidiary under the Corporations Law, whether or not the Corporations Law applies in the particular case) of any such business and 'transmission' includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and 'transmitted' has a corresponding meaning.

4.8.4 *Time off during notice period*

- (a) Where a decision has been made to terminate an employee in the circumstances outlined in clause 4.8.1, the employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or the employee shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

4.8.5 *Notice to Centrelink*

Where a decision has been made to terminate employees in the circumstances outlined in clause 4.8.1, the employer shall notify Centrelink as soon as possible giving all relevant information about the proposed terminations, including a written statement of the reasons for the terminations, the number and categories of the employees likely to be affected, the number of workers normally employed and the period over which the terminations are intended to be carried out.

4.8.6 *Severance pay*

- (a) In addition to the period of notice prescribed for ordinary termination in clause 4.6.2(a), and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in clause 4.8.1(a), shall be entitled to the following amounts of severance pay:

Period of Continuous Service	Severance Pay (weeks' pay)
Less than 1 year	nil
1 year but not more than 2 years.....	4
More than 2 years but not more than 3 years	6
More than 3 years but not more than 4 years	7
More than 4 years but not more than 5 years	8
More than 5 years but not more than 6 years	9
More than 6 years but not more than 7 years	10
More than 7 years but not more than 8 years	11
More than 8 years but not more than 9 years	12
More than 9 years but not more than 10 years	13
More than 10 years but not more than 11 years	14
More than 11 years but not more than 12 years	15
More than 12 years.....	16

- (b) 'Weeks' Pay' means the ordinary time rate of pay for the employee concerned:
 - Provided that the following amounts are excluded from the calculation of the ordinary time rate of pay: overtime, penalty rates, disability allowances, shift allowances, special rates, fares and travelling time allowances, bonuses and any other ancillary payments.

4.8.7 *Superannuation benefits*

An employer may make an application to the Commission for relief from the obligation to make severance payments in circumstances where:

- (a) the employer has contributed to a superannuation scheme which provides a particular benefit to an employee in a redundancy situation; and
- (b) the particular benefit to the employee is over and above any benefit the employee might obtain from any legislative scheme providing for superannuation benefits (currently the federal Superannuation Guarantee levy) or an award based superannuation scheme.

4.8.8 *Employee leaving during notice*

An employee whose employment is terminated for reasons set out in clause 4.8.1(a), may terminate such employment during the period of notice, and, if so, shall be entitled to the same benefits and payments under this clause had such employee remained with the employer until the expiry of such notice:

Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.

4.8.9 *Alternative employment*

An employer, in a particular case, may make application to the Commission to have the general severance pay prescription amended if the employer obtains acceptable alternative employment for an employee.

4.8.10 *Employees with less than one year's service*

Clause 4.8 shall not apply to employees with less than one year's continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.

4.8.11 *Employees exempted*

Clause 4.8 shall not apply:

- (a) where employment is terminated as a consequence of misconduct on the part of the employee; or
- (b) to employees engaged for a specific period or task(s); or
- (c) to casual employees.

4.8.12 *Employers exempted*

- (a) Subject to an order of the Commission, in a particular redundancy case, clause 4.8 shall not apply to an employer including a company or companies that employ employees working a total of fewer than 550 hours on average per week, excluding overtime, Monday to Sunday. The 550 hours shall be averaged over the previous 12 months.
- (b) A 'company' shall be defined as:
 - (i) a company and the entities it controls; or
 - (ii) a company and its related company or related companies; or
 - (iii) a company where the company or companies has a common Director or common Directors or a common shareholder or common shareholders with another company or companies.

4.8.13 *Exemption where transmission of business*

- (a) The provisions of clause 4.8.6 are not applicable where a business is before or after the date of the insertion of this clause into the Award, transmitted from an employer (transmittor) to another employer (transmittee), in any of the following circumstances:
 - (i) where the employee accepts employment with the transmittee which recognises the period of continuous service which the employee had with the transmittor, and any prior transmittor, to be continuous service of the employee with the transmittee; or
 - (ii) where the employee rejects an offer of employment with the transmittee:
 - (A) in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with the transmittor; and
 - (B) which recognises the period of continuous service which the employee had with the transmittor and any prior transmittor to be continuous service of the employee with the transmittee.
- (b) The Commission may amend clause 4.8.13(a)(ii) if it is satisfied that it would operate unfairly in a particular case, or in the instance of contrived arrangements.

4.8.14 *Incapacity to pay*

An employer in a particular redundancy case may make application to the Commission to have the general severance pay prescription amended on the basis of the employer's incapacity to pay."

Dated 28 May 2004.

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

Operative Date: 1 December 2003
Amendment – TCR Provisions
Released: 20 August 2004

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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 Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers (No. B1590 of 2003)

DIVERSIONAL THERAPISTS AWARD – STATE 2003

COMMISSIONER BECHLY

28 May 2004

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 28 May 2004, this Commission orders that the said Award be amended as follows as from 1 December 2003:

By deleting clauses 4.5 (Termination of Employment), 4.6 (Introduction of Changes) and 4.7 (Redundancy) and inserting the following in lieu thereof:

“4.5 Termination of employment

4.5.1 *Statement of employment*

An employer shall, in the event of termination of employment, provide upon request to the employee who has been terminated a written statement specifying the period of employment and the classification or type of work performed by the employee.

4.5.2 Termination by employer

- (a) An employer may dismiss an employee only if the employee has been given the following notice:

Period of Continuous Service	Period of Notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

- (b) In addition to the notice in (a) above, employees 45 years old or over and who have completed at least 2 years' continuous service with the employer shall be entitled to an additional week's notice.
- (c) Payment in lieu of notice shall be made if the appropriate notice is not given:
- Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.
- (d) In calculating any payment in lieu of notice the minimum compensation payable to an employee will be at least the total of the amounts the employer would have been liable to pay the employee if the employee's employment had continued until the end of the required notice period. The total must be worked out on the basis of:
- the ordinary working hours to be worked by the employee; and
 - the amounts payable to the employee for the hours including for example allowances, loadings and penalties; and
 - any other amounts payable under the employee's employment contract.
- (e) The period of notice in this clause shall not apply in the case of dismissal for misconduct or other grounds that justify instant dismissal, or in the case of a casual employee, or an employee engaged by the hour or day, or an employee engaged for a specific period or tasks.

4.5.3 Notice of termination by employee

The notice of termination required to be given by an employee shall be one week, or payment forfeited in lieu thereof.

4.5.4 Time off during notice period

During the period of notice of termination given by the employer, an employee shall be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. This time off shall be taken at times that are convenient to the employee after consultation with the employer.

4.6 Introduction of changes

4.6.1 Employer's duty to notify

- (a) Where an employer decides to introduce changes in production, program, organisation, structure or technology, that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes and, where relevant, their Union or Unions.
- (b) 'Significant effects' includes termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs:

Provided that where the Award makes provision for alteration of any of the matters referred to herein an alteration shall be deemed not to have significant effect.

4.6.2 Employer's duty to consult over change

- (a) The employer shall consult the employees affected and, where relevant, their Union or Unions about the introduction of the changes, the effects the changes are likely to have on employees (including the number and categories of employees likely to be dismissed, and the time when, or the period over which, the employer intends to carry out the dismissals), and the ways to avoid or minimise the effects of the changes (e.g. by finding alternative employment).
- (b) The consultation must occur as soon as practicable after making the decision referred to in clause 4.6.1.
- (c) For the purpose of such consultation the employer shall provide in writing to the employees concerned and, where relevant, their union or unions, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees, and any other matters likely to affect employees, provided that any employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests.

4.7 Redundancy

4.7.1 Consultation before terminations

- (a) Where an employer decides that the employer no longer wishes the job the employee has been doing to be done by anyone, and this is not due to the ordinary and customary turnover of labour, and that decision may lead to termination of employment, the employer shall consult the employee directly affected and where relevant, their Union or Unions.
- (b) The consultation shall take place as soon as it is practicable after the employer has made a decision, which will invoke the provisions of clause 4.7.1(a) and shall cover the reasons for the proposed terminations, measures to avoid or minimise the terminations and/or their adverse effects on the employees concerned.

- (c) For the purpose of the consultation the employer shall, as soon as practicable, provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, the number of workers normally employed and the period over which the terminations are likely to be carried out:

Provided that any employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests.

4.7.2 *Transfer to lower paid duties*

- (a) Where an employee is transferred to lower paid duties for reasons set out in clause 4.7.1 the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated under clause 4.5.
- (b) The employer may, at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former amounts the employer would have been liable to pay and the new lower amount the employer is liable to pay the employee for the number of weeks of notice still owing.
- (c) The amounts must be worked out on the basis of:
- (i) the ordinary working hours to be worked by the employee; and
 - (ii) the amounts payable to the employee for the hours including for example, allowances, loadings and penalties; and
 - (iii) any other amounts payable under the employee's employment contract.

4.7.3 *Transmission of business*

- (a) Where a business is, whether before or after the date of insertion of this clause in the Award transmitted from an employer (transmittor) to another employer (transmittee), and an employee who at the time of such transmission was an employee of the transmittor of the business, becomes an employee of the transmittee:
- (i) the continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission; and
 - (ii) the period of employment which the employee has had with the transmittor or any prior transmittor shall be deemed to be service of the employee with the transmittee.
- (b) In clause 4.7.3, 'business' includes trade, process, business or occupation and includes a part or subsidiary (which means a corporation that would be taken to be a subsidiary under the Corporations Law, whether or not the Corporations Law applies in the particular case) of any such business and 'transmission' includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and 'transmitted' has a corresponding meaning.

4.7.4 *Time off during notice period*

- (a) Where a decision has been made to terminate an employee in the circumstances outlined in clause 4.7.1, the employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or the employee shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

4.7.5 *Notice to Centrelink*

Where a decision has been made to terminate employees in the circumstances outlined in clause 4.7.1, the employer shall notify Centrelink as soon as possible giving all relevant information about the proposed terminations, including a written statement of the reasons for the terminations, the number and categories of the employees likely to be affected, the number of workers normally employed and the period over which the terminations are intended to be carried out.

4.7.6 *Severance pay*

- (a) In addition to the period of notice prescribed for ordinary termination in clause 4.5.2(a), and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in clause 4.7.1(a), shall be entitled to the following amounts of severance pay:

Period of Continuous Service	Severance Pay (weeks' pay)
Less than 1 year	nil
1 year but not more than 2 years.....	4
More than 2 years but not more than 3 years	6
More than 3 years but not more than 4 years	7
More than 4 years but not more than 5 years	8
More than 5 years but not more than 6 years	9
More than 6 years but not more than 7 years	10
More than 7 years but not more than 8 years	11
More than 8 years but not more than 9 years	12
More than 9 years but not more than 10 years	13
More than 10 years but not more than 11 years	14
More than 11 years but not more than 12 years	15
More than 12 years.....	16

- (b) 'Weeks' Pay' means the ordinary time rate of pay for the employee concerned:

Provided that the following amounts are excluded from the calculation of the ordinary time rate of pay: overtime, penalty rates, disability allowances, shift allowances, special rates, fares and travelling time allowances, bonuses and any other ancillary payments.

4.7.7 *Superannuation benefits*

An employer may make an application to the Commission for relief from the obligation to make severance payments in circumstances where:

- (a) the employer has contributed to a superannuation scheme which provides a particular benefit to an employee in a redundancy situation; and
- (b) the particular benefit to the employee is over and above any benefit the employee might obtain from any legislative scheme providing for superannuation benefits (currently the federal Superannuation Guarantee levy) or an award based superannuation scheme.

4.7.8 *Employee leaving during notice*

An employee whose employment is terminated for reasons set out in clause 4.7.1(a), may terminate such employment during the period of notice, and, if so, shall be entitled to the same benefits and payments under this clause had such employee remained with the employer until the expiry of such notice:

Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.

4.7.9 *Alternative employment*

An employer, in a particular case, may make application to the Commission to have the general severance pay prescription amended if the employer obtains acceptable alternative employment for an employee.

4.7.10 *Employees with less than one year's service*

Clause 4.7 shall not apply to employees with less than one year's continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.

4.7.11 *Employees exempted*

Clause 4.7 shall not apply:

- (a) where employment is terminated as a consequence of misconduct on the part of the employee; or
- (b) to employees engaged for a specific period or task(s); or
- (c) to casual employees.

4.7.12 *Employers exempted*

- (a) Subject to an order of the Commission, in a particular redundancy case, clause 4.7 shall not apply to an employer including a company or companies that employ employees working a total of fewer than 550 hours on average per week, excluding overtime, Monday to Sunday. The 550 hours shall be averaged over the previous 12 months.
- (b) A 'company' shall be defined as:
 - (i) a company and the entities it controls; or
 - (ii) a company and its related company or related companies; or
 - (iii) a company where the company or companies has a common Director or common Directors or a common shareholder or common shareholders with another company or companies.

4.7.13 *Exemption where transmission of business*

- (a) The provisions of clause 4.7.6 are not applicable where a business is before or after the date of the insertion of this clause into the Award, transmitted from an employer (transmitter) to another employer (transmittee), in any of the following circumstances:
 - (i) where the employee accepts employment with the transmittee which recognises the period of continuous service which the employee had with the transmitter, and any prior transmitter, to be continuous service of the employee with the transmittee; or
 - (ii) where the employee rejects an offer of employment with the transmittee:
 - (A) in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with the transmitter; and
 - (B) which recognises the period of continuous service which the employee had with the transmitter and any prior transmitter to be continuous service of the employee with the transmittee.
- (b) The Commission may amend clause 4.7.13(a)(ii) if it is satisfied that it would operate unfairly in a particular case, or in the instance of contrived arrangements.

4.7.14 *Incapacity to pay*

An employer in a particular redundancy case may make application to the Commission to have the general severance pay prescription amended on the basis of the employer's incapacity to pay."

Dated 28 May 2004.

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

Operative Date: 1 December 2003
Amendment – TCR Provisions
Released: 20 August 2004

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999 – s. 125 – application for amendment***The Australian Workers' Union of Employees, Queensland AND Carter Holt Harvey
Wood Products Australia Pty Ltd (No. B1590 of 2003)****FOREST RESOURCES INDUSTRY (CARTER HOLT HARVEY WOOD PRODUCTS AUSTRALIA PTY LTD – GYMPIE) AWARD 2003**

COMMISSIONER BECHLY

28 May 2004

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 28 May 2004, this Commission orders that the said Award be amended as follows as from 1 December 2003:

By deleting clauses 4.6 (Termination of Employment), 4.7 (Introduction of Changes) and 4.8 (Redundancy) and inserting the following in lieu thereof:

“4.6 Termination of employment*4.6.1 Statement of employment*

An employer shall, in the event of termination of employment, provide upon request to the employee who has been terminated a written statement specifying the period of employment and the classification or type of work performed by the employee.

4.6.2 Termination by employer

- (a) An employer may dismiss an employee only if the employee has been given the following notice:

Period of Continuous Service	Period of Notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years.....	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

- (b) In addition to the notice in (a) above, employees 45 years old or over and who have completed at least 2 years' continuous service with the employer shall be entitled to an additional week's notice.
- (c) Payment in lieu of notice shall be made if the appropriate notice is not given:
- Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.
- (d) In calculating any payment in lieu of notice the minimum compensation payable to an employee will be at least the total of the amounts the employer would have been liable to pay the employee if the employee's employment had continued until the end of the required notice period. The total must be worked out on the basis of:
- (i) the ordinary working hours to be worked by the employee; and
 - (ii) the amounts payable to the employee for the hours including for example allowances, loadings and penalties; and
 - (iii) any other amounts payable under the employee's employment contract.
- (e) The period of notice in this clause shall not apply in the case of dismissal for misconduct or other grounds that justify instant dismissal, or in the case of a casual employee, or an employee engaged by the hour or day, or an employee engaged for a specific period or tasks.

4.6.3 Notice of termination by employee

The notice of termination required to be given by an employee shall be one week, or payment forfeited in lieu thereof.

4.6.4 Time off during notice period

During the period of notice of termination given by the employer, an employee shall be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. This time off shall be taken at times that are convenient to the employee after consultation with the employer.

4.7 Introduction of changes*4.7.1 Employer's duty to notify*

- (a) Where an employer decides to introduce changes in production, program, organisation, structure or technology, that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes and, where relevant, their Union or Unions.
- (b) 'Significant effects' includes termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs:

Provided that where the Award makes provision for alteration of any of the matters referred to herein an alteration shall be deemed not to have significant effect.

4.7.2 Employer's duty to consult over change

- (a) The employer shall consult the employees affected and, where relevant, their Union or Unions about the introduction of the changes, the effects the changes are likely to have on employees (including the number and categories of employees likely to be dismissed, and the time when, or the period over which, the employer intends to carry out the dismissals), and the ways to avoid or minimise the effects of the changes (e.g. by finding alternative employment).

- (b) The consultation must occur as soon as practicable after making the decision referred to in clause 4.7.1.
- (c) For the purpose of such consultation the employer shall provide in writing to the employees concerned and, where relevant, their union or unions, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees, and any other matters likely to affect employees, provided that any employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests.

4.8 Redundancy

4.8.1 Consultation before terminations

- (a) Where an employer decides that the employer no longer wishes the job the employee has been doing to be done by anyone, and this is not due to the ordinary and customary turnover of labour, and that decision may lead to termination of employment, the employer shall consult the employee directly affected and where relevant, their Union or Unions.
- (b) The consultation shall take place as soon as it is practicable after the employer has made a decision, which will invoke the provisions of clause 4.8.1(a) and shall cover the reasons for the proposed terminations, measures to avoid or minimise the terminations and/or their adverse effects on the employees concerned.
- (c) For the purpose of the consultation the employer shall, as soon as practicable, provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, the number of workers normally employed and the period over which the terminations are likely to be carried out:

Provided that any employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests.

4.8.2 Transfer to lower paid duties

- (a) Where an employee is transferred to lower paid duties for reasons set out in clause 4.8.1 the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated under clause 4.6.
- (b) The employer may, at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former amounts the employer would have been liable to pay and the new lower amount the employer is liable to pay the employee for the number of weeks of notice still owing.
- (c) The amounts must be worked out on the basis of:
 - (i) the ordinary working hours to be worked by the employee; and
 - (ii) the amounts payable to the employee for the hours including for example, allowances, loadings and penalties; and
 - (iii) any other amounts payable under the employee's employment contract.

4.8.3 Transmission of business

- (a) Where a business is, whether before or after the date of insertion of this clause in the Award transmitted from an employer (transmittor) to another employer (transmittee), and an employee who at the time of such transmission was an employee of the transmittor of the business, becomes an employee of the transmittee:
 - (i) the continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission; and
 - (ii) the period of employment which the employee has had with the transmittor or any prior transmittor shall be deemed to be service of the employee with the transmittee.
- (b) In clause 4.8.3, 'business' includes trade, process, business or occupation and includes a part or subsidiary (which means a corporation that would be taken to be a subsidiary under the Corporations Law, whether or not the Corporations Law applies in the particular case) of any such business and 'transmission' includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and 'transmitted' has a corresponding meaning.

4.8.4 Time off during notice period

- (a) Where a decision has been made to terminate an employee in the circumstances outlined in clause 4.8.1, the employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or the employee shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

4.8.5 Notice to Centrelink

Where a decision has been made to terminate employees in the circumstances outlined in clause 4.8.1, the employer shall notify Centrelink as soon as possible giving all relevant information about the proposed terminations, including a written statement of the reasons for the terminations, the number and categories of the employees likely to be affected, the number of workers normally employed and the period over which the terminations are intended to be carried out.

4.8.6 Severance pay

- (a) In addition to the period of notice prescribed for ordinary termination in clause 4.6.2(a), and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in clause 4.8.1(a), shall be entitled to the following amounts of severance pay:

Period of Continuous Service	Severance Pay (weeks' pay)
Less than 1 year	nil
1 year but not more than 2 years.....	4
More than 2 years but not more than 3 years	6
More than 3 years but not more than 4 years	7
More than 4 years but not more than 5 years	8
More than 5 years but not more than 6 years	9
More than 6 years but not more than 7 years	10
More than 7 years but not more than 8 years	11
More than 8 years but not more than 9 years	12
More than 9 years but not more than 10 years	13
More than 10 years but not more than 11 years	14
More than 11 years but not more than 12 years	15
More than 12 years.....	16

(b) 'Weeks' Pay' means the ordinary time rate of pay for the employee concerned:

Provided that the following amounts are excluded from the calculation of the ordinary time rate of pay: overtime, penalty rates, disability allowances, shift allowances, special rates, fares and travelling time allowances, bonuses and any other ancillary payments.

4.8.7 *Superannuation benefits*

An employer may make an application to the Commission for relief from the obligation to make severance payments in circumstances where:

- (a) the employer has contributed to a superannuation scheme which provides a particular benefit to an employee in a redundancy situation; and
- (b) the particular benefit to the employee is over and above any benefit the employee might obtain from any legislative scheme providing for superannuation benefits (currently the federal Superannuation Guarantee levy) or an award based superannuation scheme.

4.8.8 *Employee leaving during notice*

An employee whose employment is terminated for reasons set out in clause 4.8.1(a), may terminate such employment during the period of notice, and, if so, shall be entitled to the same benefits and payments under this clause had such employee remained with the employer until the expiry of such notice:

Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.

4.8.9 *Alternative employment*

An employer, in a particular case, may make application to the Commission to have the general severance pay prescription amended if the employer obtains acceptable alternative employment for an employee.

4.8.10 *Employees with less than one year's service*

Clause 4.8 shall not apply to employees with less than one year's continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.

4.8.11 *Employees exempted*

Clause 4.8 shall not apply:

- (a) where employment is terminated as a consequence of misconduct on the part of the employee; or
- (b) to employees engaged for a specific period or task(s); or
- (c) to casual employees.

4.8.12 *Employers exempted*

- (a) Subject to an order of the Commission, in a particular redundancy case, clause 4.8 shall not apply to an employer including a company or companies that employ employees working a total of fewer than 550 hours on average per week, excluding overtime, Monday to Sunday. The 550 hours shall be averaged over the previous 12 months.
- (b) A 'company' shall be defined as:
 - (i) a company and the entities it controls; or
 - (ii) a company and its related company or related companies; or
 - (iii) a company where the company or companies has a common Director or common Directors or a common shareholder or common shareholders with another company or companies.

4.8.13 *Exemption where transmission of business*

- (a) The provisions of clause 4.8.6 are not applicable where a business is before or after the date of the insertion of this clause into the Award, transmitted from an employer (transmitter) to another employer (transmittee), in any of the following circumstances:
 - (i) where the employee accepts employment with the transmittee which recognises the period of continuous service which the employee had with the transmitter, and any prior transmitter, to be continuous service of the employee with the transmittee; or

- (ii) where the employee rejects an offer of employment with the transmittee:
 - (A) in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with the transmitter; and
 - (B) which recognises the period of continuous service which the employee had with the transmitter and any prior transmitter to be continuous service of the employee with the transmittee.
- (b) The Commission may amend clause 4.8.13(a)(ii) if it is satisfied that it would operate unfairly in a particular case, or in the instance of contrived arrangements.

4.8.14 *Incapacity to pay*

An employer in a particular redundancy case may make application to the Commission to have the general severance pay prescription amended on the basis of the employer’s incapacity to pay.”.

Dated 28 May 2004.

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

Operative Date: 1 December 2003
Amendment – TCR Provisions
Released: 20 August 2004

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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 CSR Limited (No. B1590 of 2003)

FOREST RESOURCES INDUSTRY (CSR SOFTWOODS) AWARD – STATE 2003

COMMISSIONER BECHLY

28 May 2004

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 28 May 2004, this Commission orders that the said Award be amended as follows as from 1 December 2003:

By deleting clauses 4.5 (Termination of Employment), 4.6 (Introduction of Changes) and 4.7 (Redundancy) and inserting the following in lieu thereof:

“4.5 Termination of employment

4.5.1 *Statement of employment*

An employer shall, in the event of termination of employment, provide upon request to the employee who has been terminated a written statement specifying the period of employment and the classification or type of work performed by the employee.

4.5.2 *Termination by employer*

- (a) An employer may dismiss an employee only if the employee has been given the following notice:

Period of Continuous Service	Period of Notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years.....	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

- (b) In addition to the notice in (a) above, employees 45 years old or over and who have completed at least 2 years’ continuous service with the employer shall be entitled to an additional week’s notice.
- (c) Payment in lieu of notice shall be made if the appropriate notice is not given:

Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.
- (d) In calculating any payment in lieu of notice the minimum compensation payable to an employee will be at least the total of the amounts the employer would have been liable to pay the employee if the employee’s employment had continued until the end of the required notice period. The total must be worked out on the basis of:
 - (i) the ordinary working hours to be worked by the employee; and
 - (ii) the amounts payable to the employee for the hours including for example allowances, loadings and penalties; and
 - (iii) any other amounts payable under the employee’s employment contract.

- (e) The period of notice in this clause shall not apply in the case of dismissal for misconduct or other grounds that justify instant dismissal, or in the case of a casual employee, or an employee engaged by the hour or day, or an employee engaged for a specific period or tasks.

4.5.3 *Notice of termination by employee*

The notice of termination required to be given by an employee shall be one week, or payment forfeited in lieu thereof.

4.5.4 *Time off during notice period*

During the period of notice of termination given by the employer, an employee shall be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. This time off shall be taken at times that are convenient to the employee after consultation with the employer.

4.6 **Introduction of changes**

4.6.1 *Employer's duty to notify*

- (a) Where an employer decides to introduce changes in production, program, organisation, structure or technology, that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes and, where relevant, their Union or Unions.
- (b) 'Significant effects' includes termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs:

Provided that where the Award makes provision for alteration of any of the matters referred to herein an alteration shall be deemed not to have significant effect.

4.6.2 *Employer's duty to consult over change*

- (a) The employer shall consult the employees affected and, where relevant, their Union or Unions about the introduction of the changes, the effects the changes are likely to have on employees (including the number and categories of employees likely to be dismissed, and the time when, or the period over which, the employer intends to carry out the dismissals), and the ways to avoid or minimise the effects of the changes (e.g. by finding alternative employment).
- (b) The consultation must occur as soon as practicable after making the decision referred to in clause 4.6.1.
- (c) For the purpose of such consultation the employer shall provide in writing to the employees concerned and, where relevant, their union or unions, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees, and any other matters likely to affect employees, provided that any employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests.

4.7 **Redundancy**

4.7.1 *Consultation before terminations*

- (a) Where an employer decides that the employer no longer wishes the job the employee has been doing to be done by anyone, and this is not due to the ordinary and customary turnover of labour, and that decision may lead to termination of employment, the employer shall consult the employee directly affected and where relevant, their Union or Unions.
- (b) The consultation shall take place as soon as it is practicable after the employer has made a decision, which will invoke the provisions of clause 4.7.1(a) and shall cover the reasons for the proposed terminations, measures to avoid or minimise the terminations and/or their adverse effects on the employees concerned.
- (c) For the purpose of the consultation the employer shall, as soon as practicable, provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, the number of workers normally employed and the period over which the terminations are likely to be carried out:

Provided that any employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests.

4.7.2 *Transfer to lower paid duties*

- (a) Where an employee is transferred to lower paid duties for reasons set out in clause 4.7.1 the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated under clause 4.5.
- (b) The employer may, at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former amounts the employer would have been liable to pay and the new lower amount the employer is liable to pay the employee for the number of weeks of notice still owing.
- (c) The amounts must be worked out on the basis of:
 - (i) the ordinary working hours to be worked by the employee; and
 - (ii) the amounts payable to the employee for the hours including for example, allowances, loadings and penalties; and
 - (iii) any other amounts payable under the employee's employment contract.

4.7.3 *Transmission of business*

- (a) Where a business is, whether before or after the date of insertion of this clause in the Award transmitted from an employer (transmittor) to another employer (transmittee), and an employee who at the time of such transmission was an employee of the transmittor of the business, becomes an employee of the transmittee:

- (i) the continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission; and
- (ii) the period of employment which the employee has had with the transmittor or any prior transmittor shall be deemed to be service of the employee with the transmittee.

(b) In clause 4.7.3, 'business' includes trade, process, business or occupation and includes a part or subsidiary (which means a corporation that would be taken to be a subsidiary under the Corporations Law, whether or not the Corporations Law applies in the particular case) of any such business and 'transmission' includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and 'transmitted' has a corresponding meaning.

4.7.4 *Time off during notice period*

- (a) Where a decision has been made to terminate an employee in the circumstances outlined in clause 4.7.1, the employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or the employee shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

4.7.5 *Notice to Centrelink*

Where a decision has been made to terminate employees in the circumstances outlined in clause 4.7.1, the employer shall notify Centrelink as soon as possible giving all relevant information about the proposed terminations, including a written statement of the reasons for the terminations, the number and categories of the employees likely to be affected, the number of workers normally employed and the period over which the terminations are intended to be carried out.

4.7.6 *Severance pay*

- (a) In addition to the period of notice prescribed for ordinary termination in clause 4.5.2(a), and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in clause 4.7.1(a), shall be entitled to the following amounts of severance pay:

Period of Continuous Service	Severance Pay (weeks' pay)
Less than 1 year	nil
1 year but not more than 2 years.....	4
More than 2 years but not more than 3 years	6
More than 3 years but not more than 4 years	7
More than 4 years but not more than 5 years	8
More than 5 years but not more than 6 years	9
More than 6 years but not more than 7 years	10
More than 7 years but not more than 8 years	11
More than 8 years but not more than 9 years	12
More than 9 years but not more than 10 years	13
More than 10 years but not more than 11 years	14
More than 11 years but not more than 12 years	15
More than 12 years.....	16

- (b) 'Weeks' Pay' means the ordinary time rate of pay for the employee concerned:

Provided that the following amounts are excluded from the calculation of the ordinary time rate of pay: overtime, penalty rates, disability allowances, shift allowances, special rates, fares and travelling time allowances, bonuses and any other ancillary payments.

4.7.7 *Superannuation benefits*

An employer may make an application to the Commission for relief from the obligation to make severance payments in circumstances where:

- (a) the employer has contributed to a superannuation scheme which provides a particular benefit to an employee in a redundancy situation; and
- (b) the particular benefit to the employee is over and above any benefit the employee might obtain from any legislative scheme providing for superannuation benefits (currently the federal Superannuation Guarantee levy) or an award based superannuation scheme.

4.7.8 *Employee leaving during notice*

An employee whose employment is terminated for reasons set out in clause 4.7.1(a), may terminate such employment during the period of notice, and, if so, shall be entitled to the same benefits and payments under this clause had such employee remained with the employer until the expiry of such notice:

Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.

4.7.9 *Alternative employment*

An employer, in a particular case, may make application to the Commission to have the general severance pay prescription amended if the employer obtains acceptable alternative employment for an employee.

4.7.10 *Employees with less than one year's service*

Clause 4.7 shall not apply to employees with less than one year's continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.

4.7.11 *Employees exempted*

Clause 4.7 shall not apply:

- (a) where employment is terminated as a consequence of misconduct on the part of the employee; or
- (b) to employees engaged for a specific period or task(s); or
- (c) to casual employees.

4.7.12 *Employers exempted*

- (a) Subject to an order of the Commission, in a particular redundancy case, clause 4.7 shall not apply to an employer including a company or companies that employ employees working a total of fewer than 550 hours on average per week, excluding overtime, Monday to Sunday. The 550 hours shall be averaged over the previous 12 months.
- (b) A 'company' shall be defined as:
 - (i) a company and the entities it controls; or
 - (ii) a company and its related company or related companies; or
 - (iii) a company where the company or companies has a common Director or common Directors or a common shareholder or common shareholders with another company or companies.

4.7.13 *Exemption where transmission of business*

- (a) The provisions of clause 4.7.6 are not applicable where a business is before or after the date of the insertion of this clause into the Award, transmitted from an employer (transmittor) to another employer (transmittee), in any of the following circumstances:
 - (i) where the employee accepts employment with the transmittee which recognises the period of continuous service which the employee had with the transmittor, and any prior transmittor, to be continuous service of the employee with the transmittee; or
 - (ii) where the employee rejects an offer of employment with the transmittee:
 - (A) in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with the transmittor; and
 - (B) which recognises the period of continuous service which the employee had with the transmittor and any prior transmittor to be continuous service of the employee with the transmittee.
- (b) The Commission may amend clause 4.7.13(a)(ii) if it is satisfied that it would operate unfairly in a particular case, or in the instance of contrived arrangements.

4.7.14 *Incapacity to pay*

An employer in a particular redundancy case may make application to the Commission to have the general severance pay prescription amended on the basis of the employer's incapacity to pay."

Dated 28 May 2004.

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

Operative Date: 1 December 2003
Amendment – TCR Provisions
Released: 20 August 2004

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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 Department of Industrial Relations
(No. B1590 of 2003)**

FORESTRY EMPLOYEES' AWARD – DEPARTMENT OF PRIMARY INDUSTRIES 2003

COMMISSIONER BECHLY

28 May 2004

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 28 May 2004, this Commission orders that the said Award be amended as follows as from 1 December 2003:

1. By renumbering existing clause 4.9 (Continuity of Service – transfer of calling) as clause 4.10.
2. By deleting clauses 4.7 (Termination of Employment) and 4.8 (Redundancy) and inserting the following in lieu thereof:

“4.7 Termination of employment

4.7.1 *Statement of employment*

An employer shall, in the event of termination of employment, provide upon request to the employee who has been terminated a written statement specifying the period of employment and the classification or type of work performed by the employee.

4.7.2 Termination by employer

- (a) An employer may dismiss an employee only if the employee has been given the following notice:

Period of Continuous Service	Period of Notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

- (b) In addition to the notice in (a) above, employees 45 years old or over and who have completed at least 2 years' continuous service with the employer shall be entitled to an additional week's notice.
- (c) Payment in lieu of notice shall be made if the appropriate notice is not given:
- Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.
- (d) In calculating any payment in lieu of notice the minimum compensation payable to an employee will be at least the total of the amounts the employer would have been liable to pay the employee if the employee's employment had continued until the end of the required notice period. The total must be worked out on the basis of:
- the ordinary working hours to be worked by the employee; and
 - the amounts payable to the employee for the hours including for example allowances, loadings and penalties; and
 - any other amounts payable under the employee's employment contract.
- (e) The period of notice in this clause shall not apply in the case of dismissal for misconduct or other grounds that justify instant dismissal, or in the case of a casual employee, or an employee engaged by the hour or day, or an employee engaged for a specific period or tasks.
- (f) The employer is not to offset notice of termination against any period of annual leave or part thereof.

4.7.3 Notice of termination by employee

The notice of termination required to be given by an employee shall be one week. If an employee fails to give notice, the employer shall have the right to withhold monies due to the employee with a maximum amount equal to one weeks pay.

4.7.4 Time off during notice period

During the period of notice of termination given by the employer, an employee shall be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. This time off shall be taken at times that are convenient to the employee after consultation with the employer.

4.8 Introduction of changes

4.8.1 Employer's duty to notify

- (a) Where an employer decides to introduce changes in production, program, organisation, structure or technology, that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes and, where relevant, their Union or Unions.
- (b) 'Significant effects' includes termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs:

Provided that where the Award makes provision for alteration of any of the matters referred to herein an alteration shall be deemed not to have significant effect.

4.8.2 Employer's duty to consult over change

- (a) The employer shall consult the employees affected and, where relevant, their Union or Unions about the introduction of the changes, the effects the changes are likely to have on employees (including the number and categories of employees likely to be dismissed, and the time when, or the period over which, the employer intends to carry out the dismissals), and the ways to avoid or minimise the effects of the changes (e.g. by finding alternative employment).
- (b) The consultation must occur as soon as practicable after making the decision referred to in clause 4.8.1.
- (c) For the purpose of such consultation the employer shall provide in writing to the employees concerned and, where relevant, their union or unions, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees, and any other matters likely to affect employees, provided that any employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests.

4.9 Redundancy

4.9.1 Consultation before terminations

- (a) Where an employer decides that the employer no longer wishes the job the employee has been doing to be done by anyone, and this is not due to the ordinary and customary turnover of labour, and that decision may lead to termination of employment, the employer shall consult the employee directly affected and where relevant, their Union or Unions.
- (b) The consultation shall take place as soon as it is practicable after the employer has made a decision, which will invoke the provisions of clause 4.9.1(a) and shall cover the reasons for the proposed terminations, measures to avoid or minimise the terminations and/or their adverse effects on the employees concerned.

- (c) For the purpose of the consultation the employer shall, as soon as practicable, provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, the number of workers normally employed and the period over which the terminations are likely to be carried out:

Provided that any employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests.

4.9.2 *Transfer to lower paid duties*

- (a) Where an employee is transferred to lower paid duties for reasons set out in clause 4.9.1 the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated under clause 4.7.
- (b) The employer may, at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former amounts the employer would have been liable to pay and the new lower amount the employer is liable to pay the employee for the number of weeks of notice still owing.
- (c) The amounts must be worked out on the basis of:
- (i) the ordinary working hours to be worked by the employee; and
 - (ii) the amounts payable to the employee for the hours including for example, allowances, loadings and penalties; and
 - (iii) any other amounts payable under the employee's employment contract.

4.9.3 *Transmission of business*

- (a) Where a business is, whether before or after the date of insertion of this clause in the Award transmitted from an employer (transmittor) to another employer (transmittee), and an employee who at the time of such transmission was an employee of the transmittor of the business, becomes an employee of the transmittee:
- (i) the continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission; and
 - (ii) the period of employment which the employee has had with the transmittor or any prior transmittor shall be deemed to be service of the employee with the transmittee.
- (b) In clause 4.9.3, 'business' includes trade, process, business or occupation and includes a part or subsidiary (which means a corporation that would be taken to be a subsidiary under the Corporations Law, whether or not the Corporations Law applies in the particular case) of any such business and 'transmission' includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and 'transmitted' has a corresponding meaning.

4.9.4 *Time off during notice period*

- (a) Where a decision has been made to terminate an employee in the circumstances outlined in clause 4.9.1, the employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or the employee shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

4.9.5 *Notice to Centrelink*

Where a decision has been made to terminate employees in the circumstances outlined in clause 4.9.1, the employer shall notify Centrelink as soon as possible giving all relevant information about the proposed terminations, including a written statement of the reasons for the terminations, the number and categories of the employees likely to be affected, the number of workers normally employed and the period over which the terminations are intended to be carried out.

4.9.6 *Severance pay*

- (a) In addition to the period of notice prescribed for ordinary termination in clause 4.7.2(a), and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in clause 4.9.1(a), shall be entitled to the following amounts of severance pay:

Period of Continuous Service	Severance Pay (weeks' pay)
Less than 1 year	nil
1 year but not more than 2 years.....	4
More than 2 years but not more than 3 years	6
More than 3 years but not more than 4 years	7
More than 4 years but not more than 5 years	8
More than 5 years but not more than 6 years	9
More than 6 years but not more than 7 years	10
More than 7 years but not more than 8 years	11
More than 8 years but not more than 9 years	12
More than 9 years but not more than 10 years	13
More than 10 years but not more than 11 years	14
More than 11 years but not more than 12 years	15
More than 12 years.....	16

- (b) 'Weeks' Pay' means the ordinary time rate of pay for the employee concerned:

Provided that the following amounts are excluded from the calculation of the ordinary time rate of pay: overtime, penalty rates, disability allowances, shift allowances, special rates, fares and travelling time allowances, bonuses and any other ancillary payments.

4.9.7 *Superannuation benefits*

An employer may make an application to the Commission for relief from the obligation to make severance payments in circumstances where:

- (a) the employer has contributed to a superannuation scheme which provides a particular benefit to an employee in a redundancy situation; and
- (b) the particular benefit to the employee is over and above any benefit the employee might obtain from any legislative scheme providing for superannuation benefits (currently the federal Superannuation Guarantee levy) or an award based superannuation scheme.

4.9.8 *Employee leaving during notice*

An employee whose employment is terminated for reasons set out in clause 4.9.1(a), may terminate such employment during the period of notice, and, if so, shall be entitled to the same benefits and payments under this clause had such employee remained with the employer until the expiry of such notice:

Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.

4.9.9 *Alternative employment*

An employer, in a particular case, may make application to the Commission to have the general severance pay prescription amended if the employer obtains acceptable alternative employment for an employee.

4.9.10 *Employees with less than one year's service*

Clause 4.9 shall not apply to employees with less than one year's continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.

4.9.11 *Employees exempted*

Clause 4.9 shall not apply:

- (a) where employment is terminated as a consequence of misconduct on the part of the employee; or
- (b) to employees engaged for a specific period or task(s); or
- (c) to casual employees.

4.9.12 *Employers exempted*

- (a) Subject to an order of the Commission, in a particular redundancy case, clause 4.9 shall not apply to an employer including a company or companies that employ employees working a total of fewer than 550 hours on average per week, excluding overtime, Monday to Sunday. The 550 hours shall be averaged over the previous 12 months.
- (b) A 'company' shall be defined as:
 - (i) a company and the entities it controls; or
 - (ii) a company and its related company or related companies; or
 - (iii) a company where the company or companies has a common Director or common Directors or a common shareholder or common shareholders with another company or companies.

4.9.13 *Exemption where transmission of business*

- (a) The provisions of clause 4.9.6 are not applicable where a business is before or after the date of the insertion of this clause into the Award, transmitted from an employer (transmitter) to another employer (transmittee), in any of the following circumstances:
 - (i) where the employee accepts employment with the transmittee which recognises the period of continuous service which the employee had with the transmitter, and any prior transmitter, to be continuous service of the employee with the transmittee; or
 - (ii) where the employee rejects an offer of employment with the transmittee:
 - (A) in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with the transmitter; and
 - (B) which recognises the period of continuous service which the employee had with the transmitter and any prior transmitter to be continuous service of the employee with the transmittee.
- (b) The Commission may amend clause 4.9.13(a)(ii) if it is satisfied that it would operate unfairly in a particular case, or in the instance of contrived arrangements.

4.9.14 *Incapacity to pay*

An employer in a particular redundancy case may make application to the Commission to have the general severance pay prescription amended on the basis of the employer's incapacity to pay."

4.9.15 *Queensland Government Departments and Agencies*

The provisions of clause 4.9 will not apply to employees of Queensland Government Departments and Agencies to the extent that the provisions of the redundancy arrangements are contained in a Directive issued by the Public Service Commissioner or the Minister for Industrial Relations pursuant to s. 34 of the *Public Service Act 1996*, where the Directive provides for entitlements that are superior to clause 4.9.

Dated 28 May 2004.

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

Operative Date: 1 December 2003
Amendment – TCR Provisions
Released: 20 August 2004

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 699 – obsolete industrial instrument

INDUSTRIAL REGISTRAR

NOTICE

Pursuant to s. 699 of the *Industrial Relations Act 1999* I hereby declare that the industrial instruments contained in the Schedule attached are obsolete and, upon gazettal of this Notice, cease to have any force or effect.

Dated 31 August 2004.

G.D. SAVILL,
Industrial Registrar.

SCHEDULE

Agreement No.	Title of Agreement	Gazette reference
A50/88	B.H.P. – UTAH COAL LTD./AUSTRALIAN WORKERS' UNION BARNEY POINT – INDUSTRIAL AGREEMENT	(1988) 30 QGIG 781
A103/90	BOARDING HOUSE EMPLOYEES' AWARD – STATE (EXCLUDING SOUTH-EAST QUEENSLAND) Hours of Work – Employees of Departments of Government – INDUSTRIAL AGREEMENT	(1991) 4 QGIG 166
IA75/95	BOARDING HOUSE EMPLOYEES AWARD – STATE (EXCLUDING SOUTH EAST QUEENSLAND) Hours of Work – Bodensee Holdings Pty Ltd – INDUSTRIAL AGREEMENT	(1995) 6 QGIG 464
A167/89	BRISBANE CITY COUNCIL – STRUCTURAL EFFICIENCY PRINCIPLE – INDUSTRIAL AGREEMENT	(1990) 5 QGIG 113
A66/90	BRISBANE CITY COUNCIL – STRUCTURAL EFFICIENCY PRINCIPLE SECOND PAYMENT – INDUSTRIAL AGREEMENT	(1990) 25 QGIG 935
A25/61	BUILDING TRADES AWARD – STATE The Queensland Turf Club – Sick Leave – INDUSTRIAL AGREEMENT	(1961) 5 QGIG 25
A47/92	BUNDABERG BAG COMPANY PTY. LTD. – INDUSTRIAL AGREEMENT	(1992) 14 QGIG 349
A27/91	CAFÉ, RESTAURANT AND CATERING AWARD – STATE (EXCLUDING SOUTH-EAST QUEENSLAND) The End of the World Night Club – INDUSTRIAL AGREEMENT	(1991) 18 QGIG 430
A12/90	CAFÉ, RESTAURANT AND CATERING AWARD – STATE (EXCLUDING SOUTH-EAST QUEENSLAND) The Nest Night Club – INDUSTRIAL AGREEMENT	(1990) 13 QGIG 309
A21/91	CAFÉ, RESTAURANT AND CATERING AWARD – STATE (EXCLUDING SOUTH-EAST QUEENSLAND) Silvers Night Club – INDUSTRIAL AGREEMENT	(1991) 18 QGIG 429
A8/90	CAFÉ, RESTAURANT AND CATERING AWARD – STATE (EXCLUDING SOUTH-EAST QUEENSLAND) Campana Pty. Ltd. Trading as Reno Club International – INDUSTRIAL AGREEMENT	(1990) 13 QGIG 308
A41/86	CAFÉ, RESTAURANT AND CATERING AWARD – STATE (EXCLUDING SOUTH-EAST QUEENSLAND) Trade Winds Outrigger, Cairns – INDUSTRIAL AGREEMENT	(1986) 17 QGIG 275
A23/86	CAFÉ, RESTAURANT AND CATERING AWARD – STATE (EXCLUDING SOUTH-EAST QUEENSLAND) Trade Winds Sunlodge, Cairns – INDUSTRIAL AGREEMENT	(1986) 17 QGIG 904
A104/90	CAFE, RESTAURANT AND CATERING AWARD – STATE (EXCLUDING SOUTH-EAST QUEENSLAND) Hours of Work Employees of Departments of Government – INDUSTRIAL AGREEMENT	(1991) 4 QGIG 169
A63/92	CAIRNS MARINE TERMINAL Pty. Ltd., TRADING AS "GBR (DIVING) CENTRE" – INDUSTRIAL AGREEMENT	(1992) 24 QGIG 663
IA66/93	CARBON CONSULTING INTERNATIONAL PTY. LTD., CARGO SUPERINTENDENTS CO. (A/ASIA) PTY. LTD., AND S.G.S. AUSTRALIA PTY. LTD. EMPLOYEES – STATE – INDUSTRIAL AGREEMENT	(1994) 12 QGIG 389

Agreement No.	Title of Agreement	Gazette reference
A31/70	CARTING TRADE AWARD – NORTHERN DIVISION – BULK MILK CARTERS – THE ATHERTON TABLELAND CO-OPERATIVE BUTTER ASSOCIATION LIMITED – MALANDA – INDUSTRIAL AGREEMENT	(1970) 37 QGIG 685
A105/90	CARTING TRADE AWARD – NORTHERN AND MACKAY DIVISIONS – Hours of Work – Employees of Departments of Government – INDUSTRIAL AGREEMENT	(1991) 4 QGIG 172
A103/88	CARTING TRADE AWARD – NORTHERN AND MACKAY DIVISIONS A.W.U. – Retec Ltd. (Chemtrans North Queensland Depots) – INDUSTRIAL AGREEMENT	(1988) 32 QGIG 1384
A123/86	CARTING TRADE AWARD – NORTHERN AND MACKAY DIVISIONS Hours of Work – Transport of Sugar, Sugar Cane and Molasses – J.R.T. 2 – INDUSTRIAL AGREEMENT	(1986) 35 QGIG 1310
A29/89	CATERING SERVICES – GLENDEN CAFETERIA – INDUSTRIAL AGREEMENT	(1989) 30 QGIG 504
A35/92	CEMENT INDUSTRY REDUNDANCY AGREEMENT, QUEENSLAND – 1992 – INDUSTRIAL AGREEMENT	(1992) 20 QGIG 619
A2/79	CENTRAL QUEENSLAND CEMENT PTY. LTD. – INDUSTRIAL AGREEMENT	(1979) 7 QGIG 60
A46/87	CLERKS AND SWITCHBOARD ATTENDANTS' AWARD – STATE Cement Industry – Clerical Staff – INDUSTRIAL AGREEMENT	(1987) 43 QGIG 1397
IA22/96	CLOTHING TRADE AWARD – STATE (EXCLUDING SOUTH-EAST QUEENSLAND) – Cueldee – Shift work – INDUSTRIAL AGREEMENT	(1996) 14 QGIG 914
A92/89	COLD STORAGE AND ICE-MAKING AWARD – STATE Employees – Davids Holdings Pty Limited INDUSTRIAL AGREEMENT	(1989) 33 QGIG 834
A68/84	COLD STORAGE AND ICE MAKING AWARD – STATE – Employees – Frigmobile Pty Ltd – INDUSTRIAL AGREEMENT	(1984) 26 QGIG 325
A36/90	CONFECTIONERS' AWARD – SOUTH-EASTERN DIVISION Confectionery Workers – Bartlett Confectionery INDUSTRIAL AGREEMENT	(1990) 25 QGIG 912
A79/80	EMPLOYEES – BANDAG MANUFACTURING PTY. LIMITED WACOL FACTORY – INDUSTRIAL AGREEMENT	(1980) 2 QGIG 22
A22/81	EMPLOYEES QUEENSLAND MOTOR SHOW – INDUSTRIAL AGREEMENT	(1981) 31 QGIG 1104
A14/92	EMPLOYMENT OPTIONS FOR PEOPLE WITH DISABILITIES INCORPORATED – AWU – INDUSTRIAL AGREEMENT	(1992) 30 QGIG 905
A50/91	FOOD AND DRUG STORE EMPLOYEES AWARD – SOUTHERN DIVISION (EASTERN DISTRICT) Shift Work – Berrivale Orchards Limited – INDUSTRIAL AGREEMENT	(1991) 21 QGIG 991
A43/75	FOOD AND DRUG STORE EMPLOYEES AWARD – SOUTHERN DIVISION (EASTERN DISTRICT) Old Country Products Pty. Ltd. – INDUSTRIAL AGREEMENT	(1975) 37 QGIG 394
A30/79	FOOD AND DRUG STORE EMPLOYEES AWARD – SOUTHERN DIVISION (EASTERN DISTRICT) Hardings Packs Pty. Ltd. – INDUSTRIAL AGREEMENT	(1979) 27 QGIG 741
A37/80	FOOD AND DRUG STORE EMPLOYEES AWARD – SOUTHERN DIVISION (EASTERN DISTRICT) Record Chemical (Australia) Pty. Limited – INDUSTRIAL AGREEMENT	(1980) 9 QGIG 108
A45/68	FOOD AND DRUG STORE EMPLOYEES' AWARD SOUTHERN DIVISION (EASTERN DISTRICT) Shift Work – Weis Industries Pty. Ltd. – INDUSTRIAL AGREEMENT	(1968) 3 QGIG 28
IA80/96	GLASS BOTTOM WATER BIKES – INDUSTRIAL AGREEMENT	(1997) QGIG 670
IA34/93	HIDE, SKIN, WOOL, AND WOOL DUMPING STORES AWARD – SOUTHERN DIVISION Master Butchers Limited Shift – INDUSTRIAL AGREEMENT	(1993) 23 QGIG 533
A73/76	HOTELS AND LIQUOR INDUSTRY AWARD – STATE (EXCLUDING SOUTH-EAST QUEENSLAND) Conditions of Employment – Part-Time Employees – Board and Lodging – Karumba Lodge Pty. Ltd. – INDUSTRIAL AGREEMENT	(1976) 20 QGIG 709

Agreement No.	Title of Agreement	Gazette reference
A10/90	HOTELS AND LIQUOR INDUSTRY AWARD – STATE (EXCLUDING SOUTH-EAST QUEENSLAND) Great Northern Hotel – Reef Bar and Bird Watchers Bar and Club – INDUSTRIAL AGREEMENT	(1990) 22 QGIG 751
A56/88	HOTELS AND LIQUOR INDUSTRY AWARD – STATE (EXCLUDING SOUTH EAST QUEENSLAND) – Pacific International Hotel – The Down Under Night Club – INDUSTRIAL AGREEMENT	(1988) 35 QGIG 926
A106/86	HOTELS AND LIQUOR INDUSTRY AWARD – STATE (EXCLUDING SOUTH-EAST QUEENSLAND) Great Northern Hotel, 69 Abbott Street, Cairns – INDUSTRIAL AGREEMENT	(1986) 27 QGIG 1186
IA113/95	INDEPENDENCE INCORPORATED BUNDABERG – INDUSTRIAL AGREEMENT	(1996) 4 QGIG 439
IA4/96	INDEPENDENT RECYCLERS BUNDABERG LTD – INDUSTRIAL AGREEMENT	(1996) 11 QGIG 1157
IA23/95	LADY RAMSAY CHILD CARE CENTRE – INDUSTRIAL AGREEMENT	(1995) 149 QGIG 121
A33/91	LOGAN JOB PLACEMENT INCORPORATED – AWU – INDUSTRIAL AGREEMENT	(1993) 143 QGIG 689
IA45/93	MACKAY SUGAR CO-OPERATIVE ASSOCIATION LIMITED SUGAR REFINERY – INDUSTRIAL AGREEMENT	(1993) 19 QGIG 576
A88/88	MASTERS AND ENGINEERS' AWARD – PORT OF BRISBANE (Golden Mile Marine Limited Ferry Operation) – INDUSTRIAL AGREEMENT	(1988) 16 QGIG 387
A18/77	MASTERS AND ENGINEERS' AWARD – PORT OF BRISBANE Moreton Tug & Barge Co. Pty. Ltd. – INDUSTRIAL AGREEMENT	(1977) 36 QGIG 862
A58/78	MASTERS AND ENGINEERS' AWARD – PORT OF BRISBANE Stradbroke Ferries Pty. Ltd. – INDUSTRIAL AGREEMENT	(1978) 35 QGIG 815
A4/85	MASTERS AND ENGINEERS' AWARD – PORT OF BRISBANE Wright Launch Service – INDUSTRIAL AGREEMENT	(1985) 28 QGIG 239
A15/90	MOTELS INDUSTRY Hours of Works – Ambassador Hote – INDUSTRIAL AGREEMENT	(1990) 24 QGIG 869
A85/73	MOTELS INDUSTRY – INDUSTRIAL AGREEMENT Night Porters – Lyons Motel – INDUSTRIAL AGREEMENT	(1973) 34 QGIG 362
A6/91	MOTELS INDUSTRY Montaren Pty Ltd trading as Club Magnums – INDUSTRIAL AGREEMENT	(1991) 11 QGIG 378
IA86/96	PORT CURTIS DAIRY LIMITED (MONTA OPERATIONS) – INDUSTRIAL AGREEMENT	(1997) 26 QGIG 1075
A42/90	POULTRY FARMS AND HATCHERIES, ETC. Inghams Enterprises Pty. Ltd. Catchers – Park Ridge – INDUSTRIAL AGREEMENT	(1990) 2 QGIG 49
IA63/95	Q.R.T.A. – A.W.U. – TRAINEE WAGES – INDUSTRIAL AGREEMENT	(1995) 4 QGIG 281
A27/58	RACECOURSE EMPLOYEES – TOWNSVILLE TURF CLUB – INDUSTRIAL AGREEMENT	(1958) 92 QGG 1855
A66/87	RESEARCH AND SUPPORT STAFF – BRISBANE WORKERS' HEALTH CO-OPERATIVE LTD. – INDUSTRIAL AGREEMENT	(1987) 20 QGIG 367
A61/78	RUBBER AND PLASTIC INDUSTRY AWARD – STATE – EMPLOYEES – BANDAG MANUFACTURING PTY. LTD. – INDUSTRIAL AGREEMENT	(1978) 4 QGIG 103
A66/85	SAWMILLING INDUSTRY AWARD – STATE Locality Overseer Tuan Sawmill – INDUSTRIAL AGREEMENT	(1985) 44 QGIG 479
A108/90	STOREMEN AND PACKERS' AWARD – NORTHERN AND MACKAY DIVISIONS Hours of Work – Employees of Departments of Government – INDUSTRIAL AGREEMENT	(1991) 4 QGIG 184
IA32/93	STRADBROKE FERRIES PTY. LTD. – AWU – INDUSTRIAL AGREEMENT	(1993) 144 QGIG 264
A140/76	TOBACCO FARM WORKERS INDUSTRIAL AGREEMENT	(1977) 94 QGIG 2

Agreement No.	Title of Agreement	Gazette reference
A7/82	TOWNSVILLE TRANSPORT & SERVICES PTY. LTD. LONG SERVICE LEAVE – INDUSTRIAL AGREEMENT	(1982) 11 QGIG 157
A85/84	TRADE UNION TRAINING AUTHORITY LEAVE – THE AMALGAMATED METALS FOUNDRY AND SHIPWRIGHTS’ UNION OF EMPLOYEES QUEENSLAND – LOCAL AUTHORITIES WITHIN QUEENSLAND –INDUSTRIAL AGREEMENT	(1984) 34 QGIG 488
A249/74	WAGES – PEANUT TREATING AND PROCESSING – KINGAROY PEANUTS – INDUSTRIAL AGREEMENT	(1974) 5 QGIG 86
A30/92	WAREHOUSE AND STORES – ICI BRISBANE – INDUSTRIAL AGREEMENT	(1992) 18 QGIG 539
A34/91	WORK VENTURE INCORPORATED – AWU – INDUSTRIAL AGREEMENT	(1991) 3 QGIG 77
A7/83	WHOLESALE WAREHOUSES AND STORES AWARD – SOUTHERN DIVISION (EASTERN DISTRICT) – Chemos Industries Pty. Ltd. – INDUSTRIAL AGREEMENT	(1983) 35 QGIG 297
A9/82	WHOLESALE WAREHOUSES AND STORES AWARD – SOUTHERN DIVISION (EASTERN DISTRICT) B.H.G.S. Pty. Ltd. – INDUSTRIAL AGREEMENT	(1982) 11 QGIG 59
A137/81	WHOLESALE WAREHOUSES AND STORES AWARD – SOUTHERN DIVISION (EASTERN DISTRICT) JHI Distribution Centre – INDUSTRIAL AGREEMENT	(1981) 24 QGIG 369
A151/82	WORKING HOURS – HYNE & SON PTY.LTD. – MARYBOROUGH – INDUSTRIAL AGREEMENT	(1982) 32 QGIG 1017

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999

TRAINING WAGE AWARD – STATE 2003

*(Rates of pay varied to accord with the General Ruling
Declaration, 3 August 2004)*

PURSUANT to the Declaration of the Commission as to a General Ruling made on 3 August, 2004, the Award is amended as follows as from 1 September, 2004:

By deleting clauses 4.1.2, 4.1.3 and 4.1.4 and inserting the following in lieu thereof:

“4.1.2 *Wage Level A* – Where the Approved Training course and work performed are for the purpose of generating skills which have been defined for work at Wage Level A.

Highest Year of Schooling Completed

School Leaver	Year 10	Year 11	Year 12
	\$	\$	\$
	168.00(50%)*	209.00(33%)*	
	196.00(33%)	235.00(25%)	284.00
plus 1 year out of school.....	235.00	284.00	330.00
plus 2 years out of school.....	284.00	330.00	384.00
plus 3 years out of school.....	330.00	384.00	439.00
plus 4 years out of school.....	384.00	439.00	
5 years or more out of school.....	439.00		

4.1.3 *Wage Level B* – Where the Approved Training course and work performed are for the purposes of generating skills which have been defined for work at Wage Level B.

Highest Year of Schooling Completed

School Leaver	Year 10	Year 11	Year 12
	\$	\$	\$
	168.00(50%)*	209.00(33%)*	
	196.00(33%)	235.00(25%)	274.00
plus 1 year out of school.....	235.00	274.00	315.00
plus 2 years out of school.....	274.00	315.00	370.00
plus 3 years out of school.....	315.00	370.00	421.00
plus 4 years out of school.....	370.00	421.00	
5 years or more out of school.....	421.00		

4.1.4 Wage Level C – Where the Approved Training course and work performed are for the purposes of generating skills which have been defined for work at Wage Level C.

Highest Year of Schooling Completed

School Leaver	Year 10	Year 11	Year 12
	\$	\$	\$
	168.00(50%)*	209.00(33%)*	
	196.00(33%)	235.00(25%)	268.00
plus 1 year out of school.....	235.00	268.00	301.00
plus 2 years out of school.....	268.00	301.00	337.00
plus 3 years out of school.....	301.00	337.00	376.00
plus 4 years out of school.....	337.00	376.00	
5 years or more out of school.....	376.00		

* Figures in brackets indicate the average proportion of time spent in approved training to which the associated wage rate is applicable. Where not specifically indicated the average proportion of time spent in structured training which has been taken into account in setting the rate is 20%.

NOTE: The rates of pay in this Award are intended to include the arbitrated wage adjustment payable under the 1 September 2004 Declaration of General Ruling and earlier Safety Net Adjustments and arbitrated wage adjustments. [Disputed cases are to be referred to the Vice President.] This arbitrated wage adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this Award which are above the wage rates prescribed in the Award. Such payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Queensland workplace agreements, award amendments to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous State Wage Cases or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated wage adjustments.”.

Dated 10 August 2004.

G.D. SAVILL,
Industrial Registrar.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1990 s. 142
Industrial Relations Act 1999 s. 713(2)

Ramsay Health Care Pty Ltd
Greenslopes Private Hospital

AND

Queensland Nurses’ Union of Employees Australian Municipal, Administrative, Clerical and Services Union,
Central and Southern Queensland Clerical and Administrative Branch, Union of Employees
– The Australian Worker’s Union of Employees, Queensland

GREENSLOPES PRIVATE HOSPITAL – INDUSTRIAL AGREEMENT

NOTICE OF INTENTION TO RETIRE FROM INDUSTRIAL AGREEMENT

TO: The Industrial Registrar, Industrial Registry, Level 14, Central Plaza 2, 66 Eagle Street, (corner Creek and Elizabeth Streets), Brisbane 4000, GPO Box 373, Brisbane Q 4001.

TAKE NOTICE that Ramsay Health Care Pty Ltd (Greenslopes Private Hospital) of Newdegate Street Greenslopes Qld 4120 one of the parties to the industrial agreement made between Ramsay Health Care (Greenslopes Private Hospital) and Queensland Nurses’ Union of Employees and Others and dated 1 June 1995 filed at the registry and given the registered No. IA52 of 1995 and that expired on 5 January 1998 will retire from the agreement and cease to be a party to the agreement at the expiration of 30 days from the date this notice is filed.

FURTHER TAKE NOTE that a copy of this notice has also been served on each of the original and any later parties to the agreement.

Signed for:
Ramsay Health Care Pty Ltd
Greenslopes Private Hospital

ALAN KINKADE
Chief Executive Officer

In the presence of – MEGAN PANTALONE

Filed in the Industrial Registry on: 26 August 2004

G.D. SAVILL,
Industrial Registrar.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1990 s. 142
Industrial Relations Act 1999 s. 713(2)

Golden Cockerel Pty Ltd

AND

The Australian Meat Industry Union of Employees, (Queensland Branch)

(No. A3 of 1988)

**POULTRY SLAUGHTERING AWARD – STATE
SENIORITY – GOLDEN COCKEREL PTY. LTD.
INDUSTRIAL AGREEMENT**

NOTICE OF INTENTION TO RETIRE FROM INDUSTRIAL AGREEMENT

TO: The Industrial Registrar, Industrial Registry, Level 14, Central Plaza 2, 66 Eagle Street, (corner Creek and Elizabeth Streets), Brisbane 4000, GPO Box 373, Brisbane Q 4001.

TAKE NOTICE that we GOLDEN COCKEREL PTY LTD an employer, one of the parties to the industrial agreement made between GOLDEN COCKEREL PTY LTD and THE AUSTRALIAN MEAT INDUSTRY UNION OF EMPLOYEES, (QUEENSLAND BRANCH) dated the eighteenth day of January 1988, filed at the registry and given the registered No. A3 of 1988 and that expired on the fourth day of January, 1991, will retire from the Agreement and cease to be a party to the agreement at the expiration of 30 days from the date this notice is filed.

FURTHER TAKE NOTE that a copy of this notice has also been served on each of the original and any later parties to the Agreement.

Signed for:
Golden Cockerel Pty Ltd

RONALD JAMES DELLAWAY

In the presence of – VICTORIA BRADFORD

Filed in the Industrial Registry on: 20 August, 2004.

G.D. SAVILL,
Industrial Registrar.