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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999  
Industrial Relations (Tribunals) Rules 2000*

NOTICE

The following Agreements have been certified by the Commission:

No/s	Title	Certified on and certificate issued	Cancelling
CA479/04	Kmart Australia Ltd North Queensland Agreement 2004 – Certified Agreement 2004	06/10/04	CA339/01
CA454/04	Greek Orthodox Community of St George – Certified Agreement	11/10/04	
CA455/04	Queensland Glass Pty Ltd – Certified Agreement	11/10/04	CA265/01
CA460/04	ALARA Association Inc – Support Workers – Certified Agreement	11/10/04	CA449/01
CA466/04	Grelen Cleaning Pty Ltd – Certified Agreement	11/10/04	
CA467/04	A Devine and Associates Pty Ltd – Certified Agreement	11/10/04	
CA468/04	J & L Bricklaying Pty Ltd – Certified Agreement	11/10/04	
CA492/04	Madad Pty Ltd – Certified Agreement 2004	13/10/04	CA525/01
CA472/04	Polytechnic International Australia Pty Ltd – Certified Agreement	14/10/04	

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**Peter Anthony Croft AND Chubb Security Australia Pty Ltd (No. B1364 of 2003)**

DEPUTY PRESIDENT BLOOMFIELD

19 October 2004

Application for reinstatement – Applicant employed on the island of Nauru – Charged with using an illegal substance – Applicant summarily dismissed – Alleged admission said to have been given under duress or not at all – Witness evidence – Reason for termination unrelated to alleged admission – Alleged admission excuse given for termination – Termination found to be harsh, unjust or unreasonable – Compensation of \$16,221.58 awarded.

## DECISION

**Introduction**

Mr Peter Anthony Croft (the Applicant) seeks relief in respect of his alleged unfair dismissal by Chubb Security Australia Pty Ltd (the Respondent) from his position as Safety Officer (Security Officer) in Nauru on 5 August 2003.

The Applicant commenced employment with the Respondent in 2001 and was posted to Nauru on 23 March 2002. His primary duties at the time of his termination were looking after the welfare of a large number of asylum seekers housed on Nauru and supplying water to their camps from the Menen Hotel by truck.

The Respondent is contracted to provide safety, and other, services on the island of Nauru by a company known as Eurest Support Services (ESS) which in turn has a contract with International Organisation for Migration (IOM) to manage the detention centre for illegal immigrants housed on Nauru.

**Background to the application for relief**

The Applicant developed the symptoms of a chest infection on or around 27 May 2003 and was bed ridden until 30 May 2003 at which time he returned to Australia. He was diagnosed with a severe chest infection and subsequently diagnosed as having Type A Pneumonia causing asthma. His condition was said to have been contributed to by smoking and by breathing phosphate dust from the mines on Nauru. During his illness he was required to use a Ventolin mixture and nebuliser and was ultimately declared fit to resume work in or around mid-July 2003.

The Applicant returned to Nauru on 21 July 2003 to resume his normal duties. His health was still not 100% and the humidity on the island exacerbated his condition. He struggled with his tasks and still required Ventolin and regular use of the nebuliser. On 28 July 2003 he was given a herbal remedy by 2 local women he had befriended. Shortly after these women left his room a police officer entered his room and asked him certain questions regarding drug use. He was then asked to accompany the officer to the police station, at approximately 4.00 p.m., to assist the Police with their enquiries.

Without going into the whole of his evidence, the Applicant said he was badgered and threatened during a number of hours of intense investigation and ultimately – because he was feeling stressed, ill and in need of sleep – he agreed with the police officer that he had smoked Indian hemp. He said he was placed in an 8 by 4 cell with a concrete slab as a bed and was soaked by a rain storm during the night. In the morning of 29 July 2003 he spoke to Mr Brian Downs, the Respondent's acting Operations Manager at the time, where he stated words to the effect "*I am sorry I let you down*". Later, the Applicant was taken to the hospital and admitted. At around 10.30 p.m.–11.00 p.m. the police officer visited him and informed him that he was no longer in custody but must report to the police station to be formally charged at 10.00 a.m. the following morning (Wednesday, 30 July 2003).

The Applicant said he was escorted to the police station on Wednesday by 2 police officers and was questioned for another 2 and a half hours. Ultimately, after the Police went through the charge book to identify an offence, he was charged with "*procuring a dangerous drug contrary to section 10(1)(d) of the Dangerous Drugs Ordinance 1952-1961*". He was advised that this carried a possible sentence of 2 years in jail. He was asked if he had anything to say and replied that he was not signing the charge sheet. The officers allegedly then said words to the effect that he would be put back in the cell. The Applicant said he signed the charge sheet as he could not bare to return to the cell for another night.

The Applicant said that on 5 August 2003 he was contacted in his room at the Menen Hotel by Mr Jackwitz, the Respondent's Operations Manager, who asked him to meet him at the outside bar of the hotel. When they met, Mr Jackwitz handed him a letter advising of his dismissal from the employment of the Respondent.

The Applicant said he attended court on 6 August 2003 and entered a plea of not guilty. Court was adjourned. He said during the adjournment he was involved in a conversation with other people during which he referred to another employee of the Respondent having been charged with "*smoking a joint*" and said words to the effect "*if this was in Australia this would be thrown out of Court*". When Court resumed the Applicant was advised by the Magistrate that a *nulli prosequi* had been entered and he was free to go as there was no case to answer.

The Applicant said his admission to the Police he had smoked Indian hemp was made under duress at a time when he was ill and in need of medication and sleep. He denied ever smoking marijuana, on Nauru or anywhere else, and further stated that he had not made any of the admissions about having smoked marijuana to any of the Respondent's managers or employees, as alleged below. Further, the Applicant said he was never informed that his employment was in any way at risk prior to being handed his notice of termination by Mr Jackwitz on 5 August 2003.

The Applicant said that his termination, in all of the circumstances, was harsh, unjust or unreasonable and he sought compensation in the amount of 6 month's lost wages (\$32,928.67), plus \$10,000 for pain and suffering.

**The Respondent's position**

The Respondent said the Applicant's letter of appointment to his position on Nauru (Exhibit 7) clearly outlined how seriously the Respondent considered the possession and/or use of illicit drugs. Clause 10 (Termination of Employment) contained the following provision:

*"Your employment with the company may be terminated ... in any instance of serious misconduct ... without notice ...*

*Serious misconduct may include but not necessarily be limited to ... possession and or use of illicit drugs, or consumption of alcohol whilst performing your duties."*

Mr Peter Turner, the Respondent's General Manager Queensland, said he first heard about the arrest of the Applicant, and 2 other employees, on the morning of 29 July 2003. He immediately arranged for Mr Jackwitz to travel to Nauru to establish what was going on and to try to have the 3 employees released from jail and returned to Australia.

Mr Turner said he had a number of conversations with Mr Jackwitz whilst he was in Nauru. In these discussions Mr Jackwitz told him about the efforts senior managers of the Respondent were making to negotiate with Nauruan officials for the release of the 3 employees and their return to Australia. Mr Turner said during one such discussion he informed Mr Jackwitz "*if we are to remove the 3 employees from Nauru with a promise to never return we will have to terminate their contracts of employment. To terminate them we must be sure that serious misconduct is evident. I need you to talk to them again, individually, and ask them if in fact that they used the drugs. If they did and we accept their admissions then we have the right to terminate them ... It is vitally important that we are convinced that they have used the drug by their own admissions to you. This needs to be done before they go to Court. If they go to Court and we cannot show that these employees will not be returning, the charges may proceed and they may end up in jail for a long time."*

Mr Turner said that on 5 August 2003 he again spoke with Mr Jackwitz who informed him that he had spoken to all 3 officers again *"and each one of them have admitted to me that they used the drug. Peter Croft told me that he smoked some dope at a party earlier in the year."* Mr Turner said that based upon this admission he determined that the Applicant and the other 2 employees were guilty of serious misconduct and instructed Mr Jackwitz to terminate their employment. He also instructed Mr Jackwitz to write a termination letter to each of the employees informing them that they were not just terminated from the Respondent's employment on Nauru, they were terminated from the Respondent's employment *"in total"*.

The Respondent argued its decision to terminate the Applicant's employment was because he admitted, to the Police and to Mr Jackwitz, using illegal drugs on the island of Nauru which was in contravention of his contract of employment. His admission obviated the need for the Respondent to conduct its own enquiries. Nonetheless, the Respondent conducted its own enquiries with the Applicant when he again admitted to having smoked marijuana. It had thus met the tests set out in *Bi-Lo Pty Ltd v Hooper* (1992) 53 IR 224. Further, because of the nature of the Respondent's contract on Nauru, the Respondent was entitled to terminate the Applicant's employment. There was nothing unfair about it and the application should be dismissed.

#### **Other evidence on behalf of the Applicant**

Mr Darryl Ballin, a safety officer employed, for a time, by the Respondent on Nauru, said he first heard about the arrests early in the morning of 29 July 2003. He first saw the Applicant on the night of 30 July 2003 when he observed that the Applicant was crying, shaking and using a nebulising inhaler.

Mr Ballin said that on or about 31 July 2003 the Applicant suffered some form of panic attack and it took 5 safety officers to hold him down whilst he was sedated by a doctor. Mr Ballin also said he spent considerable time after this with the Applicant calming him whenever he woke from a panic attack and attempting to get him to settle down. During the evening Mr Jackwitz came into the Applicant's room and the Applicant woke up bellowing out words to the effect *"don't let them get me"* a number of times. Mr Ballin said he ordered Mr Jackwitz out of the room and it took him 20 minutes to calm the Applicant down before his next panic attack.

Mr Ballin also said he spoke to Mr Jackwitz a little bit later. Mr Jackwitz questioned him about whether the Applicant's behaviour had been genuine. Mr Ballin responded in reasonably harsh words to the effect *"that was no act, that's the genuine article"*.

Ms Shirley Morris said she had been involved in a relationship with the Applicant since May 2003. She heard about the Applicant's arrest shortly after it happened from the partner of another employee who had also been arrested. She spoke to Mr Jackwitz on the day he arrived in Nauru (31 July 2003) and informed him that the Applicant had previously had an emotional breakdown. She also asked Mr Jackwitz to keep an eye on the Applicant.

Ms Morris also said that once the Applicant returned to Australia his emotional health deteriorated. He became highly argumentative and agitated and lost his temper very easily. He also suffered nightmares almost every night to the point where she had to sleep in a different room. This deterioration put a great deal of strain on her relationship with the Applicant – including financially because he was not working – and led to its breakdown.

Dr Heather Jenkins said she had been the Applicant's doctor since 1993 and had treated his medical conditions since that time – including upon his return from Nauru in June 2003 with the chest infection (above). Dr Jenkins said the Applicant consulted her on 25 November 2003 when he spoke about the circumstances of his being interviewed by the Police in Nauru. She said the Applicant:

*"described symptoms of severe anxiety leading to a prolonged panic attack. He was extremely anxious with tachycardia, shortness of breath (further contributed to by his chest infection), feelings of impending doom ... He has very little recollection of the week that followed his police interview on 28 July 2003.*

*I have treated Peter in the past for depression and panic disorder and find his description of his medical symptoms and signs in keeping with his past presentations and panic disorder. It is highly likely that he would have poor recollection of the events of that week and it is also likely that his judgement was impaired due to the combination of severe anxiety and also the prescribed medication given him by the visiting medical officer.*

*In the 10 years that Peter has been my patient I have never seen any evidence of the use of alcohol to excess nor the use of non-prescribed substances."*

Under cross-examination Dr Jenkins indicated she had questioned the Applicant on a number of occasions about his full medical history. This included questions about whether he smoked marijuana or used any street drugs. In response to a question under cross-examination as to whether she would accept a response from the Applicant that he had not smoked marijuana on face value, she indicated that on most occasions she would *"but I've never had any cause to believe that Mr Croft was telling me anything but the truth"*. She further indicated that in the 50 or so occasions she had seen him since 1993 she had never seen him under what she would call the influence of marijuana.

Dr Scott Jenkins (unrelated) is a psychiatrist who has specialised in that practice since 1987. He said he had read a transcript of the evidence given by the Applicant as well as the witness statement, and accompanying report, filed by Dr Heather Jenkins. Dr Scott Jenkins had not actually met with the Applicant but based his opinions on the material referred to.

Without going into his evidence, Dr Scott Jenkins essentially indicated that the Applicant may have made the admissions alleged to have been made to the Police in order to reduce the perceived threat which faced him at the time. It may have also been that he suffered from something similar to Stockholm Syndrome. *"This syndrome is basically where, under settings of extreme duress and interrogation, the person being interrogated becomes submissive and excessively co-operative in an attempt to reduce the perceived threat to their life ... In the immediate setting (of 28 July) he may have felt that he had no hope of corroborating support or confidence in the transparency or justice of the process. Therefore, he may have simply complied with whatever they requested."*

#### **Other evidence from the Respondent**

Mr Turner said his main concern after he heard about the arrests of the 3 employees on Nauru was their welfare. His secondary concern was his company's contract with ESS/IOM. He said that because he was primarily concerned about the welfare of the 3 employees his staff had attempted to negotiate an arrangement with senior officials of the Republic of Nauru such that the employees would not be placed in jail but, instead, would be allowed to return to Australia.

The general tenor of his evidence was to the effect that the company had assisted the Applicant, and the other employees, by its intervention and the termination of their employment, as well as their removal from Nauru, ensured they did not face any time in jail.

Mr Jackwitz also gave evidence about the extensive efforts he and others had made to negotiate an outcome with senior officials from the Republic of Nauru to ensure the Applicant's release and return to Australia. He said that these efforts were made with the knowledge and endorsement of the Applicant, and the 2 other employees.

Mr Jackwitz said he spoke to the Applicant around noon on Thursday, 31 July 2003 when the Applicant admitted *"that he had a 'smoke' with the locals back in May"*. Mr Jackwitz also recalled the Applicant was in a very distressed state and that he was crying and hysterical at the time of the meeting. Mr Jackwitz said the incident described by Mr Ballin (above) occurred on Sunday, 3 August 2003 rather than on the date suggested by Mr Ballin.

Mr Jackwitz also said the Respondent's attempts to negotiate a favourable outcome with the officials of the Republic of Nauru were unsuccessful. On the advice of an APS manager on 5 August 2003 Mr Jackwitz put the Applicant, and the other employees, in contact with a lawyer who could represent them at their trial on 6 August 2003. Mr Jackwitz also said that after the Applicant visited the lawyer he seemed to be a completely different person. The Applicant told him *"the charges were not worth the paper they were written on"* and said words along the lines *"back in Australia for what we have done you don't have to go to Court."*

Mr Jackwitz also said he informed Mr Turner on 5 August 2003 that each of the 3 staff members had admitted they had smoked marijuana and one of the employees also admitted possession. Mr Turner told him the matter was very serious and he would speak to head office before getting back to him. Mr Jackwitz said that after returning from taking the Applicant to the lawyer (above) he again spoke to Mr Turner. During this conversation Mr Turner told him to immediately terminate the 3 employees for serious misconduct and also informed him that it would be inappropriate for him (Mr Jackwitz) to provide character witness statements to support them during their court appearance the next day.

Mr Brian Downs, the Respondent's Acting Operations Manager on Nauru on 28 July 2003, said that during the days after the officers' release he attempted to make arrangements to get the investigating officers and their superiors to accept a "win-win" solution. He said as a manager his chief role was staff issues and within this was the welfare and support of the officers. Mr Downs said the Respondent's decisions to assist the Applicant, and the other employees, *"were based on the contract that could be lost if this drug case is on-going. Fifty officers could lose their jobs over these incidents."*

Mr Downs also said that on either 30 or 31 July 2003 the Applicant *"readily admitted on several occasions that he had smoke (sic) marijuana in the privacy of his Hotel room by himself. He stated words to the effect of, 'I haven't had a smoke on (sic) any kind since March this year. All I was doing was smoking dope up in my room by myself, I didn't hurt anyone, I didn't sell it, that's what I told Venus' (the arresting officer)."*

Mr Downs also said that on the day of the court hearing, 6 August 2003, the Applicant openly stated words to the effect of *"all I did was smoking (sic) dope, I didn't bother or harm anybody, in Australia that's nothing."* After the charges were withdrawn the Applicant repeated similar words.

Mr Peter Roumen, the usual Operations Manager of the Respondent on Nauru, said he returned to Nauru from a period of rest and relaxation on 31 July 2003 when he travelled from Brisbane to Nauru in company with Mr Jackwitz. During the course of the flight, Mr Jackwitz informed him about what had happened on the island. Mr Roumen gave detailed evidence about the attempts he made to negotiate what he also described as a "win-win situation" for all of the parties. He also said he had spoken with the 3 safety officers involved who told him *"all we want to do is get out of this hole and we don't care how. The sooner the better."*

Mr Roumen said the Respondent unsuccessfully attempted to negotiate for the charges to be dropped. However, in a somewhat contradictory statement, he also said that in a meeting on 1 August 2003 he and Mr Jackwitz were informed, by the Director of Public Prosecutions, *"the 3 charged officers will appear in court the following Wednesday, 6 August 2003. Mr Mandukas and Mr Croft, who are charged with the minor/Level 1 charges, will most likely have their charges withdrawn. Mr Gray, who has the more serious/Level 2 charges will be charged with a penalty of some small monetary value, but your company will have to pay for the expenses for them to be sent back to Australia."*

Mr Roumen said the 3 officers were informed of the above arrangement and they agreed. Mr Roumen also said Mr Jackwitz informed him on 5 August 2003 that he had been instructed by the Respondent's head office to terminate the 3 officers.

Mr Emerik Petrac said that just before the court hearing on 31 July 2003 the Applicant said to him *"Emerik, I was smoking dope quietly in my room on my balcony, alone, I did not sell any drugs and I did not smoke publicly. I am clear since May this year ... They (the Nauru Police) do not have any evidence, except that I rise (sic) my hand and admitted."* [Mr Petrac may have had his dates or events confused. The Applicant was formally charged on 30 July 2003. The court hearing occurred on 6 August 2003.]

Mr Victor Goodall said he spoke to the Applicant outside his room at the Menen Hotel shortly after the Applicant had been charged. The Applicant literally broke down and cried on his shoulder. When he composed himself the Applicant said *"Mate, what harm was I doing to anyone. A quiet smoke out on my balcony by myself, not bothering anybody."*

Later, after the court case, Mr Goodall spoke to the Applicant again. In this conversation the Applicant said *"Nothing to fucking will (sic) answer for. What a load of shit. The only thing I am guilty of, is putting my hand up and saying YES I smoked dope. I would have been better off playing dumb. At least I would still have a job."*

Mr Eric Gleeson said he entered into a conversation with the Applicant shortly prior to the court hearing on 6 August 2003. During this conversation the Applicant stated he had smoked some *"weed"* and felt he had not disturbed or interfered with anyone as it did not involve any other person or persons during his smoking sessions on his balcony.

## Findings

Although I might not have specifically mentioned particular aspects of the evidence, either above or below, I have nonetheless considered the whole of the evidence in reaching my ultimate conclusions in this matter. In particular, I record whilst I have not mentioned much about the evidence of the Applicant, Mr Turner and Mr Jackwitz, that material has been decisive in my consideration of the matter.

After considering all of the evidence, I have concluded that the primary or motivating factor for the termination of the Applicant's employment was the Respondent's concern that if it did not take strong and decisive action against the Applicant, and the other 2 employees concerned, prior to their court hearing, then the Respondent's contract with ESS/IOM may have been at risk. Further, my consideration of the evidence leads me to conclude that the reason relied upon *i.e.* the Applicant's alleged use of marijuana, was not the true reason for the termination, but merely the excuse to justify it.

Mr Turner's witness statement (Exhibit 6 – paragraph 8) makes it clear that he knew within 2 days of the Applicant's detention that ESS and IOM wanted the 3 employees who had been detained removed from the project *"and they were not to be allowed back at any stage to work in Nauru on this project"*.

Everything that the Respondent did, after that time, was designed to minimise the potential fall-out from the unfortunate events and to protect the Respondent's reputation such that its on-going contract with ESS/IOM could be secured.

Indeed, I gained the impression that the Respondent's attempts to negotiate what was described as a "win-win" situation with the Republic of Nauru officials was nothing more than an attempt to have the matter hushed up so that the employees could be removed from the project by agreement with the Nauruan officials thereby keeping the Respondent's name out of the news, the clients happy and the contract intact.

When those efforts failed the Respondent distanced itself from the Applicant, and the other employees. It withdrew offers of legal support (which I am satisfied were provided). Mr Jackwitz was instructed not to give any evidence on the Applicant's behalf during the trial and he was also instructed not to pursue the matter when he urged management to allow the Applicant and the other employees the opportunity to defend the charges against them (Transcript, pages 203-204).

Mr Turner also claimed under cross-examination he attempted to make "*triple sure*" the Applicant had admitted smoking marijuana before he decided to terminate him. In that respect, Mr Turner gave evidence (Exhibit 6 – paragraph 15) that he instructed Mr Jackwitz to speak to the Applicant (and the other employees) to ask them whether they had used the drugs as alleged. Mr Turner also said Mr Jackwitz telephoned him to confirm he had spoken to the Applicant who had admitted, again, that he had smoked drugs. However, that evidence was essentially rejected by Mr Jackwitz who said he could not recall such a conversation – agreeing that it would have been an important discussion and he would have remembered it had it occurred.

Importantly, Mr Jackwitz did not say that the Applicant's alleged admission had also been confirmed by Mr Downs, stating he only heard about other admissions "*when the statements started to arrive in*" (Transcript, page 206). Consequently, I conclude that the Applicant's alleged admission to Mr Downs he had smoked marijuana was not within Mr Jackwitz's or Mr Turner's knowledge at the time the Respondent decided to terminate the Applicant's employment.

Mr Jackwitz's evidence about the Applicant's so called admission relates to a single conversation he held with the Applicant on 31 July 2003 when the Applicant said he had had a "*smoke*" with the locals back in May 2003. Importantly, Mr Jackwitz also said the Applicant was in a very distressed state when this discussion occurred. Not only does there not appear to have been any admission, but it would also have been unwise for the Respondent to have relied upon anything the Applicant said at this time because of the distressed state he was in.

In reaching my conclusion that Mr Turner acted for the reasons stated above, I also note the total lack of procedural fairness associated with the communication of his termination to the Applicant. The company's intentions were never discussed with him and he was not invited to show cause why his employment should be terminated. In that respect, the Respondent is a large employer and has appeared many times in unfair dismissal proceedings in this Commission. Although the termination took place on Nauru, the Respondent has also been involved in other matters involving terminations at that location (see, for example, *Tafuaupolu Efu v Chubb Protective Services Pty Ltd* (2003) 173 QGIG 146). It knew that someone terminated on Nauru could still access this Commission. It knew what the requirements for dismissal were, yet it chose to ignore them.

The fact that the Respondent chose to ignore the well known processes entitles the Commission to draw adverse inferences about its behaviour and the true motivation for the Applicant's termination. Equally, the haste with which the terminations were carried out – Mr Turner wanted the dismissal to be effected before the Court proceedings on 6 August 2003 – causes one to question the *bona fides* of the Respondent's stated reasons for termination.

All of these issues have contributed to me reaching my ultimate decision that the termination was motivated because of the Respondent's concern about its on-going contract and the need to obey the instruction of ESS/IOM that the employees were to be removed from Nauru, never to return.

Notwithstanding that finding, the Applicant's alleged admissions to other members of the Respondent's management and workforce (above) have also been relied upon by the Respondent to support its decision to terminate the Applicant's employment. Consequently, it is necessary for me to deal with that material as well.

Each of the Respondent's employees who gave evidence about the alleged admissions came under intense cross-examination by Mr Coates, who represented the Applicant. During that cross-examination, Mr Coates questioned the various witnesses about their use of the terms "*dope*" and "*weed*", suggesting to them that their recollections were mistaken. Two of the witnesses agreed that references by the Applicant to "*weed*" and "*having a smoke*" may have been words used by the Applicant when referring to cigarettes.

After carefully considering the evidence of Mr Downs, Mr Petrac, Mr Goodall and Mr Gleeson, and notwithstanding the fact that the same or similar evidence was given by a number of witnesses, I have ultimately concluded that each of the Respondent's witnesses was mistaken in their recollection that the Applicant used the term "*dope*" when discussing his charges, and matters related to them, with those witnesses.

The Applicant appeared as a well presented, well spoken, but (with due respect to him) somewhat of a pompous type of individual. When he spoke about the illicit substance he had been accused of smoking he referred to it as "*marijuana*" or "*cannabis sativa*". He specifically rejected he would ever have used the term "*dope*" to refer to the substance concerned, saying it was not a word he would normally use. I believed his evidence on this point.

The Applicant also denied admitting that he had smoked marijuana or in any other way agreeing with anyone (except the Police) that he had smoked marijuana. His denials carried a lot of conviction – especially his evidence about his discussions with his son about the use of such substances. His evidence on his past behaviour and practice is supported, to a degree, by Dr Heather Jenkins. She said he had always responded negatively when she asked him whether he had ever used marijuana or other street drugs. Whilst the Applicant *may* have lied to her I think it was inherently unlikely. I reach this conclusion because of what was said in evidence about the other matters the Applicant discussed with his doctor and the nature of the things he confided to her. It would, in my opinion, be highly unusual for someone like the Applicant to have so "unclothed" himself before his medical practitioner that he would not also have discussed having smoked marijuana had he, in fact, done so at some point.

In the end result, I have concluded that whilst the Applicant, himself, has very little, or no, recollections of what he actually said between 29 July 2003 and 6 August 2003, he is unlikely to have used the word "*dope*" as alleged. Rather, the various employees of the Respondent to whom he was speaking have simply assumed that the Applicant was agreeing that he had smoked an illegal substance when he acknowledged that he had "*smoked*". What I think happened was that all of the other employees knew that the Applicant had been charged with "*smoking dope*". When he admitted "*smoking*" they assumed *he was also* referring to "*dope*", not cigarettes.

Further, whilst the witnesses all recounted the Applicant using similar phrases such as "*I had a smoke with the locals back in May*", "*I haven't smoked since 28 May*", "*all I was doing was smoking on my balcony*" etc., and suggested this amounted to an admission, such is clearly not the case. At worst, the comments are neutral.

The Respondent's general evidence was also to the effect that the Applicant's termination was part of a "deal" with officials of the Republic of Nauru, agreed to by the Applicant and the other employees, such that the Applicant could stay out of jail and return to Australia. However, that evidence is not supported by Mr Jackwitz, Mr Roumen (who gave some contradictory evidence on the point – above) and Mr Downs. They all stated that no concluded arrangement had been reached. If it had been, there would have been no need for Mr Jackwitz to refer the Applicant, and the other employees, to a lawyer on 5 August 2003.

On 5 August 2003 there were many possible scenarios available to the Respondent. Firstly, it could have awaited the outcome of the trial. If the Applicant was found guilty it would have had justification to terminate his employment. If he was found innocent it could, nonetheless, have performed a drug test *in situ* on Nauru (indeed, there was nothing preventing this course of action at any stage after 29 July 2003) or flown him back to Australia and asked him to take a drug test here. Secondly, it could have asked the Applicant to show cause why his employment should not be terminated because of his alleged admissions and go through a show cause process – either on Nauru or in Australia. None of these things happened.

That the Respondent did not take any such step simply reinforces my belief that the Respondent’s decision to terminate was based upon reasons other than the Applicant’s alleged admissions. In my view the termination was motivated by pecuniary factors and/or self-interest (as above). It lacked any justification other than a single alleged admission to Mr Jackwitz (and to the Police under duress) and was carried out without any procedural fairness whatsoever. In all of the circumstances, I have concluded that the Applicant’s termination on 5 August 2003 was harsh, unjust and unreasonable.

**Remedy**

The evidence shows that after his return to Australia on 8 August 2003, the Applicant became depressed and substantially remained house-bound until he decided some time in September 2003 that the only way to get out of his depression was to start working again. He said that when he applied at one company for a position he was informed the circumstances surrounding his dismissal from Nauru had been reported in the news and were available on the internet. The Applicant said after he obtained this information he lapsed, again, into being despondent and depressed and did not do anything to help himself until he decided in or around November 2003 that the only cure for his depression was to obtain employment. Importantly, the Applicant also visited Dr Heather Jenkins around this time, for the first time since his chest infection, and did so on 25 November 2003.

During November 2003 the Applicant gained employment in a security guard position with an annual salary of \$37,000 per annum. He continued in that role until he moved to a position with better prospects, but at the same salary, in March 2004.

The parties agree that reinstatement of the Applicant to his previous employment with the Respondent on Nauru, or with the Respondent at all, is not possible or practicable. I agree with that assessment. Accordingly, I am left to consider the only other alternative remedy available, *viz.* compensation.

I have decided to award the Applicant the amount of \$16,221.58. That represents an equivalent amount of payment to the Applicant (excluding the daily meal allowance) as if he had completed his then rotation (14 more days) on Nauru plus a further 2 rotations, making a total of 94 days’ pay.

In deciding upon the above figure as an appropriate amount of compensation, I have taken into account the following factors:

- the maximum amount of compensation that can be awarded is 6 month’s wages. In the Applicant’s case this would equal \$31,088.49, excluding meal allowance and superannuation (see written submissions);
- the reason for the Applicant’s inaction between August 2003 and November 2003 has only been partially explained;
- the Applicant significantly mitigated his loss in or around November 2003 by entering into secure employment at a rate of \$37,000 per annum. This has resulted in a continuing loss of \$25,176.98 per annum (excluding meal allowance and superannuation) compared to the amount he would have earned had he remained in employment with the Respondent;
- there is no guarantee that the Applicant would have remained on Nauru for any significant period of time. He developed a severe chest infection in May 2003 which was contributed to by breathing dust from the phosphate mines on Nauru. Even when he returned to Nauru, after being cleared to do so, he developed further complications and was experiencing those at the time of his detention on 28 July 2003. It is thus questionable whether the Applicant would have been able to continue his work, indefinitely, on Nauru; and
- had the applicant returned to Australia, because of the above health complications – or simply because IOM might not have allowed him to return to Nauru by cancelling his visa – he might or might not have been continued in his employment with the Respondent. If he had continued, then his original contract of employment did not guarantee full-time employment. Further, whether he had worked full-time or part-time, his rate of pay would also have been at a lower rate than he enjoyed on Nauru.

I have decided not to award the Applicant any compensation in respect of “pain and suffering”. Whilst the Applicant claimed his lethargy and depression between August 2003 and November 2003 was substantially attributable to his unfair dismissal, that claim is not supported by any medical evidence. What evidence there is suggests any depression may have been caused, or substantially caused, by his incarceration coupled with his run-down condition. Overall, I thought the Applicant’s evidence on this point was based on what he needed to establish in order to support the claim, rather than what actually happened.

The amount of compensation decided by this decision, *viz.* \$16,221.58, is to be treated according to Australian taxation laws and paid to the Applicant by the Respondent within 22 days of the date of release of this decision.

The Commission determines and orders accordingly.

A.L. BLOOMFIELD, Deputy President.

*Appearances:*  
Mr S.P. Coates, Counsel instructed by Mr S. Mackie of Gilshenan & Luton, for the Applicant.  
Mr G. Muir, of Employer Services Pty Ltd, for the Respondent.

*Hearing Details:*  
2004 23, 24 March  
17, 18 May  
21, 27 May (Written submissions)  
3 June (Written submissions)

Released: 19 October 2004

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999 – s. 53 – application for payment instead of long service leave*

**Murray Leonard Morseu AND Queensland Rail (No. B1499 of 2004)**

DEPUTY PRESIDENT BLOOMFIELD

14 October 2004

REPORT ON DECISION (as edited)

In giving his decision from the Bench on 13 October 2004, Deputy President Bloomfield stated:

"I think in the circumstances, notwithstanding the applicant's absence, that I am left with no alternative other than to dismiss the application because there is no entitlement to long service leave for the applicant to access. Accordingly, I will take the step of formally dismissing application number B1499 of 2004 because there is no capacity which resides in the applicant to make the application.

However, I shall take the precaution of announcing a preparedness to reopen the matter if some additional information comes to light which you, Mr Dawes, are not aware of and I am not aware of whereby we might need to revisit the decision that has just been made. I take the precaution of putting that on the record, although I would be extremely surprised if we ever need to avail ourselves of that 'leave reserved' option."

Dated 14 October 2004.

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

Appearances:  
No appearance by the applicant.  
Mr D. Dawes, of Queensland Rail.

Released: 14 October 2004

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**The Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (No. B1445 of 2004)**

**BLASTCOATERS OFFSITE AWARD – STATE 2002**

COMMISSIONER BROWN

11 October 2004

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 11 October 2004, this Commission orders that the said Award be amended as follows as from 11 October 2004:

- 1. By deleting from clause 5.5.5 the amount of "\$1,283.00" and inserting the amount of "\$1,315.00" in lieu thereof.
- 2. By deleting from clause 8.2.2(b) the amounts of "\$338.60" and "\$48.40" and inserting the amounts of "\$348.10" and "\$49.80" respectively in lieu thereof.

Dated 11 October 2004.

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

Operative Date: 11 October 2004  
Amendment – Allowances  
Released: 18 October 2004

#####

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**Australian Building Construction Employees and Builders' Labourers' Federation (Queensland Branch) Union of Employees and The Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (Nos. B1441 and B1444 of 2004)**

**BUILDING CONSTRUCTION INDUSTRY AWARD – STATE 2003**

COMMISSIONER BROWN

11 October 2004

AMENDMENT

THESE matters coming on for hearing before the Commission at Brisbane on 11 October 2004, this Commission orders that the said Award be amended as follows as from 20 August 2004:

- 1. By deleting clause 5.1.2(b) and inserting the following in lieu thereof:

“(b) Translated Classifications

The following hourly rates have been calculated in accordance with 5.1.5 of this Award. These rates include industry allowance, tool allowance, and the respective special allowance.

Old wage group	New wage group	Hourly Rate
		\$
Refractory Bricklayer (rate includes refractory bricklaying allowance)	CW5	19.05

Old wage group	New wage group	Hourly Rate \$
Carver	CW5	17.76
Special Class Tradesperson	CW5	17.76
Marker or Setter Out	CW4	17.20
Letter Cutter	CW4	17.20
Signwriter	CW4	16.73
Artificial Stoneworker, Carpenter and/or Joiner, Marble and Slate Worker, Stonemason, Plumber	CW3	16.63
Caster, Fixer, Floorlayer Specialist, Plasterer.	CW3	16.52
Bricklayer	CW3	16.45
Roof Tiler, Slate Ridger, Roof Fixer	CW3	16.34
Painter, Glazier, Licensed Drainer	CW3	16.16
Labourer (1) – Rigger, Dogger, Drainer, Concrete Pump Operator	CW3	16.02
Labourer (2) – Scaffolder, Powder Monkey, Hoist or Winch Driver, Foundation Shaftworker (as defined), Steel Fixer including Tack Welder, Concrete Finisher	CW2	15.51
Refractory Bricklayers Assistant (rate includes refractory bricklaying allowance)	CW1(d)	16.40
Labourer (3) – Bricklayer's Labourer, Plasterer's Labourer, Labourer assisting any other tradesperson, Assistant Rigger, Assistant Powder Monkey (as defined), Demolition Worker (after 3 months experience), Gear Hand, Steel Erector, Aluminium Alloy Structural Erectors (whether Prefabricated or otherwise), Steel or Bar Bender to Pattern or Plan, Underpinner, Jackhammer Operator, Mixer Driver (concrete), Gantry Hand or Crane Hand, Crane Chaser, Cement Gun Operator, Concrete Cutting or Drilling Machine Operator, Concrete Gang including Concrete Floater, Roof Layer (malthoid or similar material), Dump Cart Operator, Concrete Formwork Stripper, Mobile Concrete Pump Hoseman or Line Hand	CW1(d)	15.14
Labourer (4) – Builders Labourer (other than as specified herein)	CW1(c)	14.83".

2. By deleting clause 5.1.5 and inserting the following in lieu thereof:

“5.1.5 *Calculation of hourly rate*

The calculation of the hourly rate for an employee will take into account a factor of 8 days in respect of the incidence of loss of wages for periods of unemployment between jobs.

For this purpose the hourly rate calculated to the nearest cent (less than half a cent to be disregarded) will be calculated by multiplying the sum of the appropriate weekly rates prescribed in clauses 5.1.2 and 5.1.3, together with the allowance clauses 5.6.24, 5.6.27 and 5.6.38 where appropriate multiplied by 52 divided by 50.4 and adding to that sub-total the amount prescribed in clause 5.1.4 and dividing the total by 38.

Despite clause 5.1.6, a Painter employed on repaint work will be paid 5 cents per hour less than the calculated construction rate for a Painter.

Example of calculation of rate for carpenter as at 1 September 2004:

The construction rate is made up of:

Wage	(5.1.2)	\$561.30
Industry allowance	(5.6.24)	\$21.10
Tool allowance	(5.6.38)	\$22.70
<u>Sub-total</u>		<u>\$605.10</u>
Follow the job loading equals	(5.1.5)	x 52/50.4 <u>\$624.31</u>
Plus special allowance equals	(5.1.4)	\$7.70 <u>\$632.01</u>
<u>Divided by 38</u>		<u>\$16.63</u>

3. By deleting from clause 5.6.38 the amounts of "\$22.10", "\$18.20", "\$15.60", "\$11.50", and "\$5.40" and inserting the amounts of "\$22.70", "\$18.70", "\$16.60", "\$11.80" and "\$5.50" respectively in lieu thereof.
4. By deleting from clause 6.6 the amount of "\$9.90" and inserting the amount of "\$10.20" in lieu thereof.
5. By deleting from clause 8.1.1(a) the amount of "\$13.30" and inserting the amount of "\$13.80" in lieu thereof.
6. By deleting from clause 8.1.1(d) the amount of "\$0.39" and inserting the amount of "\$0.40" in lieu thereof.
7. By deleting from clause 8.1.1(i) the amount of "\$0.73" and inserting the amount of "\$0.75" in lieu thereof.
8. By deleting from clause 8.2.1(a)(iii) the amount of "\$9.90" and inserting the amount of "\$10.20" in lieu thereof.
9. By deleting from clause 8.2.3(a) the amount of "\$27.10" and inserting the amount of "\$28.00" in lieu thereof.
10. By deleting from clause 8.3.3(b) the amounts of "\$338.60" and "\$48.40" and inserting the amounts "\$348.10" and "\$49.80" respectively in lieu thereof.
11. By deleting from clause 8.3.4(b) the amounts of "\$135.60" and "\$19.50" and inserting the amounts of "\$139.40" and "\$20.00" respectively in lieu thereof.
12. By deleting from clause 10.4.2(b) and 10.4.2(c) the amounts of "\$62.60", "\$53.60", "\$3.10" and "\$2.90" wherever appearing and inserting the amounts of "\$64.20", "\$64.20", "\$3.20" and "\$3.20" respectively in lieu thereof.
13. By deleting from clause 10.5.2 the amount of "\$1, 283.00" and inserting the amount of "\$1,315.00" in lieu thereof.

Dated 11 October 2004.

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

Operative Date: 20 August 2004  
Amendment – Allowances  
Released: 18 October 2004

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**The Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others  
(No. B1442 of 2004)**

**BUILDING PRODUCTS MANUFACTURE AND MINOR MAINTENANCE AWARD – STATE 2003**

COMMISSIONER BROWN

11 October 2004

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 11 October 2004, this Commission orders that the said Award be amended as follows as from 11 October 2004:

1. By deleting from clause 5.3.19 the amounts of "\$22.10", "\$22.10", "\$18.20", "\$15.60", "\$5.40" and "\$5.40" and inserting the amounts of "\$22.70", "\$22.70", "\$18.70", "\$16.00", "\$5.50" and "\$5.50" respectively in lieu thereof.
2. By deleting from clause 6.5.5(d) the amount of "\$9.90" and inserting the amount of "\$10.20" in lieu thereof.
3. By deleting from clause 8.1.1(d) the amounts of "\$338.60" and "\$48.40" and inserting the amounts of "\$348.10" and "\$49.80" respectively in lieu thereof.
4. By deleting from clause 8.1.1(e)(iv) the amount of "\$9.90" and inserting the amount of "\$10.20" in lieu thereof.

Dated 11 October 2004.

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

Operative Date: 11 October 2004  
Amendment – Allowances  
Released: 18 October 2004

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

The Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (No. B1446 of 2004)

BUILDING TRADES PUBLIC SECTOR AWARD – STATE 2002

COMMISSIONER BROWN

11 October 2004

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 11 October 2004, this Commission orders that the said Award be amended as follows as from 11 October 2004:

- 1. By deleting from clause 5.2.26 the amounts of "\$22.10", "\$22.10", "\$18.20", "\$15.60", "\$15.60", "\$5.40" and "\$5.40" and inserting the amounts of "\$22.70", "\$22.70", "\$18.70", "\$16.00", "\$16.00", "\$5.50" and "\$5.50" respectively in lieu thereof.
2. By deleting from clause 8.2.4 the amounts of "\$338.60" and "\$48.40" and inserting the amounts "\$348.10" and "\$49.80" respectively in lieu thereof.
3. By deleting from clause 10.1.2 the amount of "\$1, 283.00" and inserting the amount of "\$1,315.00" in lieu thereof.

Dated 11 October 2004.

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

Operative Date: 11 October 2004
Amendment – Allowances
Released: 18 October 2004

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

The Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland and Federated Engine Drivers' and Firemens' Association of Australasia, Queensland Branch, Union of Employees AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (Nos. B1443 and B1504 of 2004)

CIVIL CONSTRUCTION, OPERATIONS AND MAINTENANCE GENERAL AWARD – STATE 2003

COMMISSIONER BROWN

11 October 2004

AMENDMENT

THESE matters coming on for hearing before the Commission at Brisbane on 11 October 2004, this Commission orders that the said Award be amended as follows as from 11 October 2004:

- 1. By deleting from clause 5.3.7 and amounts of "\$22.10", "\$22.10", "\$15.60", "\$18.20" and "\$5.40" and inserting the amounts of "\$22.70", "\$22.70", "\$16.00", "\$18.70" and "\$5.50" respectively in lieu thereof.
2. By deleting from clause 8.1.2 the amount of "\$13.30" and inserting the amount of "\$13.80" in lieu thereof.
3. By deleting from clause 8.2.3(b) the amounts of "\$338.60" and "\$48.40" and inserting the amounts of "\$348.10" and "\$49.80" respectively in lieu thereof.

Dated 11 October 2004.

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

Operative Date: 11 October 2004
Amendment – Allowances
Released: 18 October 2004

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 137 – application for order

Training and Employment Recognition Council AND Queensland Services, Industrial Union of Employees and Others (Nos. B1486, B1487 and B1526 of 2004)

ORDER – APPRENTICES' AND TRAINEES' WAGES AND CONDITIONS (EXCLUDING CERTAIN QUEENSLAND GOVERNMENT ENTITIES) 2003

COMMISSIONER BROWN

18 October 2004

AMENDMENT

THESE matters coming on for hearing before the Commission at Brisbane on 18 October 2004, this Commission orders that the said Order be amended as follows as from 18 October 2004:

- 1. By deleting the title of clause 2.1.2 "Arts Administration Traineeships (from the Business Services Training package)" from Schedule 2 "Arts Industry" and inserting the title "Arts Administration Traineeships" in lieu thereof.

2. By deleting clauses 2.1.1 and 2.2.3 from Schedule 3 “Automotive Industry” and inserting the following in lieu thereof:

“2.1.1 *Automotive Retail Service and Repair Training Package; and Automotive Industry Manufacturing Training Package – (Bus, Truck and Trailer Stream)*

- (a) Apprentices who commenced or re-commenced on or after 18 October 2004.

The wage progression arrangements for apprentices who commenced an apprenticeship based on qualifications contained in the above training packages on or after 18 October shall be as follows:

Wage Level	Minimum Training Requirements On Entry	% of Tradesperson's Rate or equivalent
1	On entry into the apprenticeship	40
2	On attainment of 25 % of the total competency value for the competencies specified in the training plan <i>or</i> twelve months after commencing the apprenticeship whichever is the earlier	55
3	On attainment of 50 % of the total competency value for the competencies specified in the training plan <i>or</i> twelve months after commencing the apprenticeship whichever is the earlier	75
4	On attainment of 75 % of the total competency value for the competencies specified in the training plan <i>or</i> twelve months after commencing wage Level 3 whichever is the earlier	90
Exit (AQF III)	On completion of the apprenticeship	100

- (i) Definitions and Notes

- A. All apprentices must have an agreed training plan in accordance with the *Vocational Education Training and Employment Act 2000* including competencies already achieved or achieved through Recognition of Prior Learning.
- B. The ‘competency value’ for each competency unit means the approved nominal hours approved by the State Training Authority for that competency unit.
- C. The ‘total competency value’ is the sum of the approved nominal hours for all competency units specified in the apprentice’s individual training plan that are necessary for the attainment of the qualification, including any competencies achieved before the commencement of the apprenticeship.
- D. If the training plan is amended after the commencement of the apprenticeship, the apprentice will suffer no disadvantage in relation to their rate of pay.
- E. The competency value for a specific competency unit shall only be awarded to the apprentice when the apprentice has been assessed as competent by the supervising registered training organisation in conjunction with the employer.

- (b) Apprentices who commenced or re-commenced before 18 October 2004.

The wage progression arrangements for apprentices who commenced or re-commenced an apprenticeship based on qualifications contained in the above training packages before 18 October 2004 shall be in accordance with the provisions of clause 2 of Schedule 1 of this Order.”;

“2.2.3 *Automotive Parts Interpreter (Specialist) and Parts Interpreter*

- (a) This clause shall apply to the above named apprenticeships regardless if the qualification is from a training package or not.
- (b) Apprentices employed under the provisions of the Vehicle Industry – Repair, Services and Retail – Award 1983 (Federal) shall be entitled to wages and conditions in accordance with that Award.
- (c) Apprentices employed under the provisions of other Industrial instruments shall be entitled to wages in accordance with clause 2.1.1 of this Schedule. If an apprentice is employed under the provisions of an Industrial instrument which does not contain a tradesperson classification for automotive parts interpreting, the wage progression arrangements specified in clause 2.1.1 of this Schedule shall be based upon the C10 Classification specified in the Engineering Award – State 2002 as amended from time to time. All other conditions shall be in accordance with this Order and the Industrial instrument.”.

3. By deleting clause 2.1.1 from Schedule 6 “Community Services and Health Industries” and inserting the following in lieu thereof:

“2.1.1 *Community Services Training Package (Other than Child Care Apprentices and Trainees)*

Trainees registered in traineeships based on AQF 3 qualifications in the above training package in the following:

- Aged Care;
- Community Services Work;
- Disability Work;
- Social Housing; and
- Youth Work

shall receive wages in accordance with the Training Wage Award – State 2003, (Wage Level A), as amended from time to time and conditions specified in this Order and the Industrial instrument.”.

Dated 18 October 2004.

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

Operative Date: 18 October 2004  
Amendment – Schedules 2, 3 and 6.  
Released: 19 October 2004

## QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999* – s. 125 – application for amendment**The Australian Workers' Union of Employees, Queensland AND Australian Sugar Milling Association,  
Queensland, Union of Employers (No. B1673 of 2003)****SUGAR INDUSTRY AWARD – STATE**

COMMISSIONER BECHLY

13 October 2004

AMENDMENT  
(Correction of Error)

Whereas an error occurred in the amendment to the Award as published in the *Queensland Government Industrial Gazette* of 1 October 2004, Vol. 177, No. 5, pages 265-272, the following correction is made to be effective as from 1 December 2003:

By deleting the preamble of Item 2 of the amendment and inserting the following in lieu thereof:

“By deleting clause 37(2) of Division 3 and inserting the following in lieu thereof:”.

Dated 13 October 2004.

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

Operative Date: 1 December 2003  
Amendment – TCR Provisions (COE)  
Released: 18 October 2004