



The Queensland Government Industrial Gazette

PUBLISHED BY AUTHORITY

PP 451207100086

Annual Subscription \$358.00 (GST inclusive)

ISSN 0155-9362

Vol. 188

FRIDAY, 11 JULY, 2008

No. 11

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 No.
CA/2008/33	NRW Forest Products Certified Agreement 2007	5/6/08	
CA/2008/34	Queensland Catholic Education Commission, Clerical and Administrative Employees - Certified Agreement 2008	5/6/08	CA/2004/645
CA/2008/35	Time Line Drafting Certified Agreement 2008	13/6/08	
CA/2008/36	Idano Horse Transport Certified Agreement 2007	11/6/08	CA/2006/242
CA/2008/37	Speaking Up For You Certified Agreement	11/6/08	
CA/2008/38	The Youth Emergency Services Certified Agreement July 2008	27/6/08	

G.D. SAVILL,
Industrial Registrar.

INDUSTRIAL COURT OF QUEENSLAND

*Industrial Relations Act 1999 - s. 341(1) - appeal against decision of commission***Timothy Edward Jerome AND Queensland Education Moreton Region (C/2008/16)**

PRESIDENT HALL

1 July 2008

DECISION

On 12 September 2007, Timothy Edward Jerome filed an Application for Reinstatement under s. 74 of the *Industrial Relations Act 1999* (the Act). To succeed, Mr Jerome was required to establish that he had been dismissed by his employer. As a matter of formality, Mr Jerome had resigned. The case developed for Mr Jerome, by the industrial organisation of employees which represented him in the Queensland Industrial Relations Commission, was that there had been a constructive dismissal, or, in the alternative, that Mr Jerome had resigned in consequence of misleading advice to him by an agent of the employer acting within the scope of his authority. By a decision of 31 March 2008, now reported at 187 QGIG 190, the Commission rejected Mr Jerome's case that he had been dismissed and, in consequence, dismissed his application under s. 74 of the Act. Mr Jerome now appeals to this Court.

It must be stressed that decisions of the Queensland Industrial Relations Commission are final and conclusive and cannot be impeached for informality or want of form, nor reviewed, nor quashed by any court, save to the extent that the Act authorises an appeal; see s. 349. Here, the Act does authorise an appeal against a decision of the Commission, but on the limited grounds of excess or want of jurisdiction and error of law, see s. 341(1).

Mr Jerome, who is self-represented, has neither sought to identify any excess or want of jurisdiction, nor any error of law. He has sought to re-argue his case on the papers. This Court has no authority to consider such an appeal.

For completeness, I should add, that had an appeal on the ground of error of fact been available on the basis of re-hearing on the record, Mr Jerome would have failed. As is often the case, there were conflicting bodies of evidence before the Deputy President who dealt with the matter at first instance. In particular, Mr Jerome and the Principal of the school at which he was based, gave different versions of a particular conversation. The Deputy President accepted the Principal's version and otherwise rejected the case based upon the evidence of Mr Jerome. The Deputy President formed an adverse view of Mr Jerome's credibility. There is absolutely nothing in the material to which I have been taken to suggest that the Deputy President failed to use, or palpably misused his advantage in hearing and seeing the witnesses, or acted on evidence which was inconsistent with facts incontrovertibly established by the evidence, or which was glaringly improbable, or otherwise fell within a recognised category of case in which it is legitimate for an appellate court to go behind credibility findings made by the Tribunal at first instance. Certainly, there was an allegation that the Deputy President's decision had been delivered three and a-half months after the matter had been heard. I accept that extensive delay in delivering a judgement reliant upon findings of credibility, may justify interference by an appellate court, compare *Expectation Pty Ltd v PRD Realty Pty Ltd (2004)* 140 FCR 17. However, such cases concern lengthy delays, e.g. in *Expectation Pty Ltd v PRD Realty Pty Ltd, ibid*, a period of 17 months, and an absence of adequate reasoning. Here, the delay, which was in truth not three and a-half months but from 12 February 2008 to 31 March 2008, falls well short of extensive delay and the reasons extend into particularity and give examples supportive of the finding about credibility. Even if (as is not the law) an appeal on the ground of error of fact had been permissible, it would have failed.

Although there was no elaboration, Mr Jerome's Application to Appeal referred to inadequacy in the representation provided by the industrial officer who acted for him below. His submissions on the hearing of the Appeal, raise an allegation of bias against the Deputy President. I have not been taken to any material to support either complaint.

I should add that it has not been necessary for the Court to consider whether the case described at 187 QGIG 190, if made out, would justify a finding of "constructive dismissal". Neither has the Court been required to consider the effect of the misrepresentation. The misrepresentation was found not to have been made. This decision should not be treated as an authority which accepts or rejects the adequacy of the cases which were not made out.

I dismiss the Appeal. I reserve all questions as to costs. If costs are pursued by the Respondent, my Associate will make the arrangements necessary to take submissions in writing.

Dated 1 July 2008.

D. R. HALL, President.

Released: 1 July 2008

Appearances:

The Appellant in Person.

Dr M. Stry, instructed by the Crown Solicitor, for the Respondent.

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Workers' Compensation and Rehabilitation Act 2003 - s. 550 - procedure for appeal

Roger Michael Poed AND Q-COMP and Anor (WC/2007/78)

DEPUTY PRESIDENT SWAN

7 July 2008

DECISION

This is an application lodged by Mr Roger Michael Poed (the appellant) against a decision of Q-COMP dated 7 August 2007 issued pursuant to s. 550 of the *Workers' Compensation and Rehabilitation Act 2003* (the Act).

Q-COMP's decision is as follows:

"My decision is to affirm the decision by the insurer, namely that your claim for psychiatric injury is one for rejection. It is my view that your injury fell within the reasonable management exclusion under s32(5) of the Act."

The decision of the insurer, Tabcorp Holdings Limited (Tabcorp), dated 9 February 2007 is as follows:

"I am satisfied that you were a 'worker' under the Act at the relevant time, and that you developed a psychological condition which amounts to 'personal injury'.

However, I am also satisfied that based on the medical evidence at hand, your employment with Conrad Treasury Casino whilst amounting to a contributing factor, was not a significant contributing factor to the onset of your condition.

Further, with respect to the issues raised by you, I am satisfied that such issues constitute reasonable management action taken in a reasonable way by your employer, and therefore are excluded from the definition of injury.

In accordance with Section 34 (*sic*) (1) & (5) of the Workers Compensation and Rehabilitation Act 2003 it is concluded that you have not suffered an 'injury'.

For the above reasons your application for compensation is rejected."

On 21 September 2007, Tabcorp filed an application in the Commission seeking leave to appear in the hearing of the appeal (WC/2007/78). In giving her decision from the Bench, Fisher C stated:

"Given that the parties to the appeal are not objecting, I can't see any reason not to grant the application in the form sought". [(2007) 186 QGIG 607-608.]

Particulars of the appellant's claim

The appellant commenced employment as a casual steward for Food and Beverage, Back of House at the Conrad Treasury Casino (Conrad) in August 2003. Eventually, this work became permanent part-time employment.

The appellant claims to have sustained an injury (adjustment disorder with anxiety) and that his employment was a significant contributing factor to that condition. It is claimed that the adjustment disorder arose out of unreasonable management action taken by Tabcorp and the following stressors were nominated by the appellant:

1. The incidents listed in the Original incidents;
2. Assault by fellow staff member Carlito Espino;
3. Harassment by Chef Todd Ulraine;
4. Issue with applications of Permanent-Part Time;
5. Removal from silver room after incident with Don Preira;
6. Reneging on a verbal agreement to undertake the Supervisor development course;
7. Failure to be properly remunerated for using a Grade 3 chemical, D47;
8. Breach of Privacy by Supervisor Steven Emmanuel;
9. Harassment by Manager, Tom Cooper." [Appellant's submissions, Introduction.]

The "original incidents" were alleged harassment by Head Steward, Tom Cooper and Stewarding Supervisor, Derek Crane in mid-2004.

Submissions

Tabcorp accepted that the appellant had suffered an injury, which had been diagnosed by Professor Harvey Whiteford (specialist psychiatrist) as an adjustment disorder with anxiety (DSM IV). Consistent with Professor Whiteford's report, Tabcorp accepted that the injury arose out of or in the course of the appellant's employment and that his employment was a significant contributing factor to this injury. Tabcorp, however, states that the injury is withdrawn from the definition of injury in s. 32 of the Act by reason of s. 32(5) of the Act - i.e. whether this injury arose out of or in the course of reasonable management action taken in a reasonable way.

Notwithstanding the stressors nominated by the appellant, both Tabcorp and Q-COMP say that some of the stressors should be disregarded by the Commission because, on the appellant's own evidence, the incidents appeared to have primarily resolved themselves soon after they had occurred or had caused the appellant little concern. Further, in this hearing, the appellant added 2 additional stressors. These related to the appellant's failure to be promoted to a permanent part-time position during 2005 and the appellant's subjection to ongoing harassment by Mr Cooper (Manager, Back of House Stewarding) between 2004 and his decompensation in November/December 2006.

There is merit in the claims of both Tabcorp and Q-COMP that some of the stressors nominated by the appellant should be disregarded for the purposes of this application. Professor Whiteford's evidence was the only medical evidence adduced. Professor Whiteford, in preparing his report dated 2 February 2007, had taken into account the appellant's own comments to him, the general practitioner's records, witness statements, medical certificates and various Tabcorp file notes.

The appellant had accepted that Professor Whiteford's report accurately described what had occurred from the appellant's perspective.

Professor Whiteford believed that the appellant possessed personality traits which "make him more vulnerable to develop anxiety and depression during times of psychosocial stress." [Exhibit 4, Summary and Opinion, dot point 6.] Explained, that meant that those within this category had a tendency when things were going well for their adjustment disorder to go away and to feel better only to have it re-emerge when stressors returned.

Against that background, when one considers what the appellant describes as the "original incidents", the appellant's evidence will show that in about mid-2004, having visited his general practitioner and after taking medication, the appellant believed that "everything seemed to level out", he felt better within himself, he was starting to enjoy work and things had improved between him and Mr Cooper. [Transcript, Day 3, p. 124.]

Upon being questioned about the "assault" which occurred in December 2004, Professor Whiteford said that it was not significant enough to maintain an adjustment disorder over a period in excess of 6 months. [Transcript, Day 5, p. 300.] Professor Whiteford had said that by the end of 2005, things were going well for the appellant in that he had been made permanent part-time, he had been awarded Steward of the Year and he was not undertaking any medical treatment. Professor Whiteford said that whilst some issues referred to by the appellant were not stressors for the appellant's decompensation, they could have contributed to a particular state of mind which made the appellant more vulnerable to stressors.

A further issue relating to Mr Ulraine, around which the grievance procedure had been activated, had resolved itself by November 2005, according to the appellant's evidence. [Transcript, Day 4, p. 177.]

A nominated stressor (failure to be promoted to permanent part-time work) was resolved in November 2005 when the appellant was appointed to that position. When questioned about how he felt about this issue at the time, the appellant said that it may have affected his health "to a little extent", but once the position had been achieved, he had ceased to be concerned about the issue. [Transcript, Day 4, p. 209.]

Tabcorp and Q-COMP say that the "silver room incident" is the starting point when considering any stressors faced by the appellant. This view is confirmed by Professor Whiteford, who says that prior to this incident the adjustment disorder had gone only to be re-enlivened by the silver room incident. [Transcript, Day 5, p. 298.]

Professor Whiteford's evidence was that when the appellant had consulted with him in January 2007, the incidents which were of concern were:

- he felt he had been inappropriately removed from the silver room and replaced by other employees, which put him in a state where he developed the view that he was being unfairly treated;

- throughout 2006 he continually tried to get back into the silver room but continued to feel he was being unfairly treated;
- this feeling mounted until the end of the year he had "had enough" and "needed a break";
- the breach of privacy incident then occurred, which made him "more angry, frustrated and distressed such that he didn't believe that he could return to work at the casino". [Transcript Day 5, p. 300.]

Tabcorp's position was that, prior to December 2006 when the appellant says he decompensated, there may have been occasions when the appellant experienced an adjustment disorder with anxiety, but those episodes and the stressors which had activated them were not related in a causal sense to the injury for which the appellant now claims compensation. Professor Whiteford said that the silver room incident precipitated the injury which caused the appellant to cease work in December 2006. [Transcript, Day 5, p. 295.] Further, Professor Whiteford said that while the appellant had an underlying vulnerability to the development of anxiety and depression, any symptoms had receded prior to the silver room incident.

With that in mind, Tabcorp and Q-COMP both state that the only stressors for which the appellant had decompensated in December 2006, and consequently the only ones relevant for the purpose of this hearing, were:

- "(a) the silver room issue, including any incidents relating to his attempts to work in the silver room and his being denied that work throughout 2006;
- (b) the supervisor training incident, being an incident that occurred contemporaneously causing his feeling of being unfairly treated to mount, and
- (c) the breach of privacy issue." [Tabcorp submissions, point. 16.]

With 2 specific exceptions, I am persuaded by these submissions to adopt this approach. The appellant's evidence speaks for itself. As well, the evidence of Professor Whiteford, the only medical evidence available, bolsters that view. The first exception is that the appellant says that the alleged assault by Mr Espino was never satisfactorily resolved and for that reason I propose to consider that stressor as well.

In considering the appellant's claim, however, I am also conscious of the fact that Professor Whiteford raised the prospect that previous stressors may have contributed to a state of mind which made the appellant more vulnerable to stressors. This factor has been borne in mind when making a decision with regard to this claim.

The appellant has raised the history of alleged harassment towards him by Mr Cooper which he says was ongoing from 2004 until the period of his decompensation. Some of the earlier stressors identified by the appellant involved some level of interaction and involvement with Mr Cooper. Notwithstanding the fact that the appellant says his working life and relationship with Mr Cooper had improved in 2005, the second exception I propose to consider is Mr Cooper's involvement in the alleged assault and all issues in which Mr Cooper had an involvement with the appellant under the heading of the stressors nominated by Tabcorp and Q-COMP.

For particular reasons, discrete from the aforementioned reasons, I have determined to consider Stressor 7.

Stressor 2: Assault by fellow staff member Carlito Espino

Mr Espino was to be called to give evidence by the appellant. Tabcorp arranged for this employee to be available. As the hearing progressed Mr Espino was not called. The appellant was advised of this and told Tabcorp that he had no difficulty with that course as it did not alter the manner in which he chose to run his case. [Transcript, Day 8, pp. 509-510.]

The appellant said he had an unresolved issue concerning Mr Espino. On 9 December 2004 the appellant said he was assaulted by Mr Espino whilst at work. The appellant and Mr Espino were both working on the loading dock. Mr Espino was carrying a heavy glass bin and the appellant was mopping the area. Mr Espino had to pass the appellant and, according to the appellant, they initially exchanged a few jokes. Part of the mop became caught in the bin wheel and the bin jerked. The appellant says that Mr Espino kicked him on the thigh and on the ankle.

A complaint was made by the appellant to a supervisor who said he would inform Mr Cooper. The appellant says he telephoned Mr Cooper saying he did not feel comfortable in coming to work that night but Mr Cooper suggested he come to work and he would try to sort the matter out. Mr Cooper's evidence was that the appellant told him he would not be coming to work because he was upset and was going to call in sick. Mr Cooper advised him that he could not call in sick if he was not sick as that would be a breach of procedure.

The matter was investigated by the Human Resources Branch and the appellant says he was told that Mr Espino was sorry about the event and that it should not have happened. In her evidence, Ms Carrie (Duty Manager) who conducted the initial investigation came to the conclusion that the appellant was in the wrong as much as Mr Espino. In her view, both had broken the health and safety policy. Ms Carrie said she was treating the matter as a dispute between 2 workmates.

Some days later, the appellant said that he was unable to sleep and had taken some tranquillisers and arrived late to work on his shift. For that he was given a written warning.

The appellant was dissatisfied with this result and made contact with the Chief Executive Officer of Conrad, Mr Xavier Walsh. Mr Walsh subsequently convened a meeting but the appellant did not believe the matter had been resolved and all that he got out of the meeting was that he was able to talk to someone about it.

The appellant believed that Mr Espino had previously been involved in an altercation with another employee, Mr Vaughan. The appellant's view was that, with this history, Mr Espino should have been more severely dealt with by Tabcorp. Mr Cooper said he was aware of an incident between Mr Espino and Mr Vaughan but he also stated that he did not believe that Mr Espino was an aggressor as claimed by the appellant. Mr Vaughan in his evidence had said that an incident had occurred between him and Mr Espino where he alleges Mr Espino grabbed hold of him.

Mr Cooper, in a file note he recorded at the time of the alleged assault by Mr Espino towards the appellant, says that while Mr Espino had admitted to the actions complained of, Mr Espino believed that the appellant had instigated the action. Ms Carrie said her understanding of the event was that the appellant had blocked Mr Espino's passage with the bin. She said Mr Espino decided to push his way past the appellant and in the course of doing so his foot touched the appellant.

Ms Carrie was unable to view the incident via security cameras as the area in which the appellant and Mr Espino were working was out of camera view. Ms Carrie said she had asked the appellant whether he had wanted to go home after the incident but he had declined. Ms Carrie also said that the appellant had asked for Mr Espino to be taken off his shift or fired because of the incident. She said that her response was that both parties could have been suspended because each was in the wrong. In her view, because of a lack of any independent evidence, it became one person's word against another.

Save for diary notes taken at the time, Mr Cooper's evidence was somewhat vague around this incident. In my view, that with the effluxion of time, most of the detail had been forgotten by Mr Cooper.

Stressor 5: Removal from silver room after incident with Don Pereira

The appellant had a desire to work in the silver room. Work in this area provided a higher rate of remuneration.

Tabcorp claimed that the appellant was initially rostered in the silver room when another employee, Mr Pereira was on leave. This point was confirmed by one of the appellant's witnesses, Mr Vaughan. Mr Vaughan's evidence was as follows:

- it was the intention that the appellant work in the silver room only during the period of Mr Pereira's long service leave;
- Mr Vaughan had worked in the silver room for about 18 months with Mr Pereira;
- sometime in 2005, Mr Vaughan was offered higher duties to be performed on a Monday and Tuesday and during that time he was unable to work in the silver room;
- consequently, Mr Vaughan's position in the silver room had to be filled, and it was filled by the appellant, on a Monday and Tuesday;
- sometime in 2006, Mr Vaughan sought to return to the silver room on a full-time basis;
- when this occurred there was no position available for any other steward to work in the silver room;
- the appellant was one of some 12 employees who had been trained to work in the silver room;
- the appellant was also the least experienced of the employees able to work in the silver room;
- in determining who performed duties in the silver room, a number of factors had to be considered:
 - for shiftwork stewards, work was performed within Conrad where it was deemed necessary;
 - supervisors made this decision;
 - the silver room was the only place where an employee could perform light duties; and
 - the relative experience of employees was considered before placing an employee in the silver room.

Tabcorp says that the appellant, while he may not have liked it, knew that the posting was not permanent.

Mr Cooper's evidence was that, upon enquiry from Mr Pereira, he was advised that the appellant's work performance in the silver room was not at an appropriate standard, notwithstanding the fact that the appellant had "spent more time training in the silver room than all other team members placed there. As reported by supervisors he lacked motivation and needed constant supervision.". [Transcript, Day 10, p. 533.]

Initially, in his opening address and his submissions, the appellant had said that when he went to work in the silver room, after the return of Mr Pereira, he was told to "fuck off" by Mr Pereira. In his evidence to the Commission, the appellant said:

"... I said, 'Okay. Well, you know that I'm in the Silver Room now' et cetera and basically he told me to fuck off. He said, 'You're not working for me in the Silver Room. You can go back to a kitchen' and I thought, 'Okay, fair enough'.". [Transcript, Day 3, p. 82.]

The appellant's view was that he was to retain his work in the silver room upon Mr Pereira's return. He believed that he was removed from the silver room because Mr Pereira had told him to "fuck off". During his evidence Mr Poed said that Mr Pereira's behaviour in all "wasn't that big a deal". [Transcript, Day 4, p. 183.]

The appellant's evidence was contrary to the evidence of Mr Cooper and Mr Vaughan. Mr Cooper's evidence conforms with that of Mr Vaughan to the extent that work in the silver room was on an "as needs" basis. I have accepted their evidence that the appellant's placement in the silver room was only temporary and that it should not have been surprising when he was told by Mr Pereira that he was no longer working there. In terms of the language used by Mr Pereira, Mr Cooper told Mr Pereira that language such as that used would not be tolerated.

It was not challenged that the duties of one working in the silver room attracted Grade 3 pay whereas usual stewarding (as performed by the appellant) attracted Grade 1 pay.

As a consequence of the complaints being made by the appellant at not returning to the silver room, an agreement was reached between the appellant, Mr Cooper and Ms Johnson who is the senior Human Resources Consultant for Tabcorp. [See Exhibit 3.]. That agreement, *inter alia*, contained the following:

"Training to occur each Wednesday and shall coincide with Rogers regular dayshift cycle. As Roger has already had experience in the Burnishing Room, it would be expected that his training be no longer than 3 training shifts.

He shall be paid Grade 3 while completing the remainder of his training shifts.

It will be a requirement of Roger being allocated further Burnishing Room Shifts that he demonstrate competency in performing burnishing duties while under training.

Roger will be available to complete additional shifts as a Burnishing Assistant on an as 'business demands' basis. However, if a more experienced team member is on shift, that steward shall be allocated assistant burnishing duties. This decision will be made by the shift supervisor on duty.". [Exhibit 3.]

Some 2 months after this agreement was entered into, the appellant received the training. The delay was due to the fact that Mr Cooper forgot about the agreement. Tabcorp's evidence was that a special training program was required to be written for the appellant. The agreement does note that the appellant would only be required to work in the silver room on an "as needs" basis and not on a permanent basis.

Stressor 6: Reneging on a verbal agreement to undertake the supervisor development course

The appellant states that not only was he denied work in the silver room, but also that he was denied the opportunity to undertake the supervisor development course.

The appellant believes, at the time of the discussions around the silver room agreement, that Ms Johnson advised him that he could undertake any course he liked. The appellant says that he asked Mr Cooper for his approval to do a course and an understanding was reached whereby the appellant could do any course in his own time for which he would not be paid. However, upon lodging an application to do a course, Mr Cooper had rejected the application stating that the appellant was not ready to undertake such a course.

Mr Lucas (Union Delegate) was in attendance at the meeting and confirmed that this issue had been discussed. Ms Spurway (General Manager Human Resources) advised the appellant that it was her decision that he not do the course. The reason behind this decision was budgetary constraints because the course was considered to be paid training.

Stressor 7: Failure to be properly remunerated for using a Grade 3 chemical, D47

One particular stressor nominated by the appellant is "failure to be properly remunerated for using a Grade 3 chemical, D47".

From the material before me, it seems that this stressor also remained unresolved for the appellant. Certainly, it is outside of the stressors identified by Professor Whiteford and there was no submission from Tabcorp or Q-COMP identifying the fact that the appellant had considered the matter resolved. The appellant complained that the usage of this chemical justified the payment at Grade 3 level and not at Grade 1 level for all who used it. This was irrespective of whether or not one was using the concentrated solution of the chemical. The appellant also believed that there was some arrangement between supervisors as to which employee got paid Grade 1 or Grade 3.

There is evidence from Mr Vaughan and Mr Crane (each supervisors at various times) that D47 was not hazardous and was considered to be a Grade 1 chemical when diluted. Chemicals were prepared by the supervisor on the morning shift and it was the evidence of Mr Piesley (who was a supervisor on those shifts when the appellant worked) that the appellant was not entitled to Grade 3 remuneration because he was not using concentrated D47 or any other chemical.

Mr Piesley determined not to permit the appellant to use the chemical because it was in concentrated form. Mr Piesley's evidence was that he chose employees to do the chemical run based on their skill and knowledge to mix chemicals together with the degree of training they had received. No steward could do the chemical run without being specifically requested to do so.

Mr Vaughan's evidence was that the chemical run could be performed by a number of employees - the supervisor on shift; a steward performing higher duties; a steward acting in the supervisor's role; or by a senior experienced steward who had been there for some years.

The appellant stated there was a period of 3 weeks during which he claimed payment at Grade 3. This claim had been rejected by Mr Piesley and the appellant claimed as well that Mr Cooper was complicit in not permitting the appellant to use the chemical. Tabcorp submitted that there was no evidence from the appellant to show when he was using the chemical; by whom he had been asked to use the chemical; whether he was diluting or simply using the chemical; and also whether he had formally claimed payment for it. For the 3 weeks in question, Mr Piesley believed he had been the supervisor and that the appellant was not using concentrated chemicals during that period because he had been on Mr Piesley's shifts.

The difficulty for the appellant was that he believed the payment at Grade 3 level should have been made whether the chemical was used in its concentrated form or not.

Stressor 8: Breach of privacy by Supervisor Steven Emmanuel

The appellant had provided a file note of an incident involving another employee to Mr Cooper in August 2006.

While the appellant was home on stress leave, a Mr Pacitto (a fellow employee and with whom the appellant shared accommodation) advised him that Mr Emmanuel (a supervisor) had gained access to the statement given to Mr Cooper. It is alleged that Mr Emmanuel spread information about the employee to others and it was surmised that the appellant had written the file note. The appellant had originally intended to call Mr Emmanuel to give evidence but later decided not to do so.

The appellant says that Mr Emmanuel admitted to the breach of privacy and the employer issued him with a verbal warning. Tabcorp stated that Mr Emmanuel did not disclose the details of the note, but rather enquired as to who might be the author of such a note. The appellant believes that this was an insufficient disciplinary outcome and represented unreasonable management action. The appellant also states that the body to which the file note was referred (ultimately Occupational Health and Safety for Tabcorp) did not attempt to make contact with the employee in question.

Tabcorp says that the appellant has made no complaint about the incident, but complained about the manner in which it was handled by Tabcorp.

The appellant was concerned that the subject of the file note had been violated, however, that person was not called to give evidence. Further, no evidence was adduced by the appellant concerning any failing on the part of Occupational Health and Safety at Tabcorp.

All that appeared to have occurred is that the appellant called someone from Occupational Health and Safety for Tabcorp. The appellant was told by Ms Johnson from Human Resources that Mr Emmanuel had admitted to the breach and that he was new to his role and that the breach should not have occurred. Ms Johnson said she apologised to the appellant if any of this caused him concern and her evidence is that he said "thank you" and hung up the telephone.

Q-COMP submits that the event did not arise "in the course of employment" because it arose at the appellant's home, while he was on leave, and not while he was doing something that was part of his employment. [See *WorkCover Queensland v BHP (Queensland) Workers' Compensation Unit* (2002) 170 QGIG 142.].

Q-COMP also submits that the event did not "arise out of employment". That phrase requires some causal or consequential relationship between the employment and the injury. [See *Lackey v WorkCover* (2000) 165 QGIG 2.]. In this instance, the appellant, whilst on leave from work, had been told about something that had happened at work.

In the appellant's application for compensation, he claimed that he ceased work on 5 December 2006 due to his injury. This is prior to the event concerning Mr Emmanuel. This issue arose when the appellant was on sick leave.

Relevant legislation

Section 32 of the Act states:

"32 Meaning of *injury*

(1) An *injury* is personal injury arising out of, or in the course of, employment if the employment is a significant contributing factor to the injury.

...

(3) *Injury* includes the following -

(a) a disease contracted in the course of employment, whether at or away from the place of employment, if the employment is a significant contributing factor to the disease;

(b) an aggravation of the following, if the aggravation arises out of, or in the course of, employment and the employment is a significant contributing factor to the aggravation -

(i) a personal injury;

(ii) a disease;

(iii) a medical condition if the condition becomes a personal injury or disease because of the aggravation;

(c) loss of hearing resulting in industrial deafness if the employment is a significant contributing factor to the causing the loss of hearing;

(d) death from injury arising out of, or in the course of, employment if the employment is a significant contributing factor to causing the injury;

(e) death from a disease mentioned in paragraph (a), if the employment is a significant contributing factor to the disease;

(f) death from an aggravation mentioned in paragraph (b), if the employment is a significant contributing factor to the aggravation.

...

(5) Despite subsection (1) and (3), *injury* does not include a psychiatric or psychological disorder arising out of, or in the course of, any of the following circumstances -

(a) reasonable management action taken in a reasonable way by the employer in connection with the worker's employment;

(b) the worker's expectation or perception of reasonable management action being taken against the worker;

(c) action by the Authority or an insurer in connection with the worker's application for compensation.

Examples of actions that may be reasonable management actions taken in a reasonable way -

- action taken to transfer, demote, discipline, redeploy, retrench or dismiss the worker
- a decision not to award or provide promotion, reclassification or transfer of, or leave of absence or benefit in connection with, the worker's employment."

Conclusion

It is not challenged by Tabcorp or Q-COMP that the appellant qualifies as a "worker" who has sustained an "injury" (adjustment disorder with anxiety (DSM IV)) and that the injury arose out of or in the course of the appellant's employment and that his employment was a significant contributing factor to this injury. I have accepted that those elements have been proved by the appellant during the course of this hearing.

The question for determination is whether the injury arose out of or in the course of "reasonable management action taken in a reasonable way by the employer in connection with the worker's employment". [s. 32(5)(a) of the Act.]

In consideration of that factor, I have relied upon the following decisions of the Industrial Court of Queensland:

Whether management action is reasonable must be considered and assessed "in all the circumstances of the case" (see *WorkCover Queensland v Kehl* (2002) 170 QGIG 930).

Reasonable in all of the circumstances of the case includes consideration as to the manner of delivery of the management action (see *WorkCover Queensland v Heit* (2000) 164 QGIG 121).

Management action need not be perfect. It can be "blemished" and yet not categorised as unreasonable (see *Bowers v WorkCover Queensland* (2002) 170 QGIG 1).

Earlier reference has been made to the fact that many of the appellant's cited stressors in this hearing were resolved to his satisfaction by way of management interaction and action with him.

I have found that much of the appellant's concerns centred upon a belief, misplaced though it was, that he had an entitlement to certain outcomes.

With regard to the assault issue, the reality is that Tabcorp was presented with 2 versions of events from 2 employees with no other witness evidence. The view formed by Tabcorp after investigating the matter was that each party was equally to blame. The appellant was afforded a meeting with Tabcorp's Chief Executive Officer but the matter remained unresolved for him.

In my view, the matter was fully responded to and acted upon by Tabcorp in a reasonable manner. An investigation was conducted by Tabcorp and a view was formed which did not suit the appellant. The appellant sought and was granted a meeting with the Chief Executive Officer of Tabcorp. The appellant remained dissatisfied with the outcome of that meeting.

The reality was that Tabcorp went to some length to consider the appellant's complaint. That it reached a decision which was contrary to that of the appellant does not render Tabcorp's actions as unreasonably taken. Tabcorp was in fact more than reasonable in its accommodation of the requests of the appellant to take the matter as high as he could within Tabcorp. Based on the evidence before it, Tabcorp had found that both employees could be in breach of policy and spoke to both of them accordingly.

Tabcorp issued the appellant with a written warning some days after the event when he failed to turn up at work on time. Tabcorp had already found that both parties were arguably equally to blame for the "assault" which had occurred. The appellant's excuse for not coming to work on time after the event was not accepted by Tabcorp as warranted and it acted accordingly. This also does not render this action of Tabcorp as unreasonable. In any event, were it to be considered so, at worst, the decision would be no more than a "blemish". [See *Bowers v WorkCover Queensland* (*supra*).]

Concerning the silver room, I have accepted that the appellant's work in the silver room was on an "as needs" basis. The appellant has ultimately accepted this as well by being a party to the agreement.

I have found that, the management action taken with regard to the silver room has been reasonable. Firstly, the appellant was never offered a permanent position in the silver room although Mr Cooper had agreed to him working in the silver room during the period when Mr Vaughan was performing higher duties. Secondly, after complaining about not being trained to work in that area, management compiled a particular training program for him. As part of an arrangement, to which he was a signatory, the appellant has agreed that work in the silver room was on an "as needs" basis. Thirdly, with regard to the derogatory comments made to him by Mr Pereira, management spoke to Mr Pereira advising that language such as that used would not be tolerated. Finally, the fact that there was some delay in implementing the training program until the appellant complained, does not, in itself, indicate to me unreasonable management action. It was not unreasonable because there was never a need for management to have to train the appellant for the position in the first place. All management eventually did was to accommodate an employee who had no particular claim to a particular position in which he wished to work.

With regard to the supervisor development course, I have accepted that the management action taken in this case was not unreasonable. A decision was made by Ms Spurway based upon information received from Mr Cooper that the appellant was not likely to advance to a more senior position.

Mr Cooper agreed that the appellant could do the course, but ultimately he changed his mind. Tabcorp says that notwithstanding Mr Cooper's agreement, the application had to proceed elsewhere within the organisation for approval.

Ms Spurway said that she would not have recommended that the appellant do the training course in his own time, as the courses were conducted during the day because of availability of trainers and this had potentially adverse repercussions for shift workers as well.

In my view, there is nothing unusual about this course of events. A decision was made by Ms Spurway and notwithstanding the fact that Mr Cooper had agreed for the appellant to undertake this course, the decision was ultimately not of his making. That he changed his mind later is not exceptional.

The appellant was offered other courses directed to supervisory duties. The appellant undertook these courses and Tabcorp says that he was never unreasonably denied training opportunities. I have accepted this evidence.

Concerning the issues around the chemical D47, the appellant has been unable to show that he was entitled to Grade 3 payment and also that there was some victimisation in Tabcorp's treatment of him around this issue. In the *Conrad Treasury Brisbane Team Members' Certified Agreement 2006* [Exhibit 38] Q-COMP rightly points out that for a steward performing Level 2 duties, this involves "specialist cleaning duties which may involve operation of specialised equipment and high risk hazardous chemicals and/or the requirement to work without supervision". [Q-COMP's submissions, point 117.] The work being performed by the appellant within this context did not constitute a substantial part of his work and the chemical in the safety documents attached to it does not render it as high risk nor, when diluted, does it render it hazardous. Chemicals on the "graveyard shift" were used at full strength for the cleaning of certain kitchen items but the appellant never worked on those shifts. It is my view that the payments made to the appellant were correct and Tabcorp's decision to exclude the appellant from using the chemical was completely reasonable in all of the circumstances.

In considering the breach of privacy issue, in my view, this is not an example of unreasonable management action taken in an unreasonable way. It should also be noted that the appellant only became aware of this matter after his application for compensation had been lodged (the appellant had ceased work on 5 December 2006 due to his injury).

Tabcorp chose to deal with this incident in a manner which apparently upset the appellant. Tabcorp accepted that Mr Emmanuel did not disclose the details of the note. When investigated by Tabcorp, it is claimed that Mr Emmanuel admitted to the breach and admits that this should not have occurred, citing his newness to the position. The appellant had determined to call Mr Emmanuel to give evidence but then chose not to do so. The appellant was contacted by Ms Johnson who apologised on behalf of Tabcorp for any concern he may have felt.

Having considered the facts around this issue, I am unable to accept that what occurred was at such a level to have rendered it unreasonable management action. Tabcorp dealt with the issue in a manner which befitted its status.

Mr Cooper's involvement with the appellant was, from the very nature of his duties, frequent.

In the cited stressors, there are 2 primary occasions upon which Mr Cooper's management performance as it related to the appellant could be considered.

The first related to the appellant's work in the silver room. I have accepted that the appellant had no right *per se* to work in the silver room. Having accepted that, Mr Cooper's involvement, together with that of Ms Johnson, was to facilitate a special training program for the appellant.

Mr Cooper admits that he failed to proceed implementing the program for some time, but in my view this does not equate with unreasonable management action taken in an unreasonable way. At worst, the delay was a blemish only as the appellant had no right to be in the silver room any more than the other employees who had been similarly trained. [See *Bowers v WorkCover Queensland (supra)*.]

The actual agreement entered into between the appellant, Mr Cooper and Ms Johnson only permitted the appellant to work in the silver room subject to operational requirements and his work performance.

The second occasion related to the supervisor development course. In this case, the appellant was ultimately refused participation in the course by Ms Spurway who made her decision as she says, based on budgetary constraints. Mr Cooper may have expressed views about courses but, in the end, the decision was not his to make.

Mr Cooper's role in all of these incidents appears to have been more limited than the appellant believed. The appellant's perception in this regard did not match the reality of the situations.

After having considered the relevant material before the Commission and acknowledging that many instances at work upset the appellant, I have been unable to link those instances to unreasonable management action taken in an unreasonable way.

I dismiss the appeal. I confirm the decision of Q-COMP dated 7 August 2007 that the appellant's claim for compensation is one for rejection.

Order accordingly.

D.A. SWAN, Deputy President.

Appearances:

The appellant conducted his own case.

Mr C. Murdoch, Counsel, instructed by Ms L. Booth and Mr D. Saunders of Q-COMP, for the first respondent.

Mr A. Rich, Counsel, instructed by Mr J. McPherson of CLS Lawyers, for the second respondent.

Hearing Details:

2007 18 December

2008 18, 23, 24, 25 January

26 March

7, 8, 9, 18 April

20, 28 May (Written submissions)

6 June (Oral submissions)

18 June (Transcript)

Released: 7 July 2008

#####

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

Cindy Challen AND Queensland Health (TD/2007/44)

COMMISSIONER ASBURY

3 July 2008

Application for reinstatement - Whether applicant offered permanent position - Respondent maintains applicant was not dismissed - Applicant made complaints and lodged grievance against managers - Finding that applicant was unfairly treated - No reasonable explanation provided by employer for failure to provide employee with work - Applicant may have other remedies against the respondent for failure to provide work and unfair treatment - Finding that the applicant was a short term casual employee - Application for reinstatement dismissed.

DECISION

1. Overview

This is an application by Ms Cindy Challen under s. 74 of the *Industrial Relations Act 1999* (the Act) for reinstatement to a permanent position in Food and Retail Services at the Royal Brisbane Hospital. The respondent in the matter is Queensland Health. Ms Challen's application for reinstatement filed on 2 April 2007 states that she was dismissed from the position of café Supervisor. In the hearing of the application Ms Challen sought reinstatement "as per my permanent working agreement". The factual situation and the events surrounding Ms Challen's employment with Queensland Health is complex.

At the heart of the matter is the status of Ms Challen's employment. Essentially, Ms Challen contends that after commencing employment on 13 February 2006 as a casual employee, she was offered a permanent part-time position at the level of OO2/3 on or around 22 May 2006 and accepted that position. According to Ms Challen the offer was made by Duty Manager Mr Brent Deller and accepted by way of a form known as an "Employee Movements form" which was signed by Ms Challen and the Manager of Food and Retail Services, Mr Don Bambry. Ms Challen alleges that the Employee Movements form appointing her to a permanent part-time position has been removed from her personnel file.

Queensland Health contends that there was no such appointment or form, and the process described by Ms Challen would have breached standards, policies and procedures for such appointments within the public sector.

Ms Challen contends that before she started to work in the permanent part-time OO2/3 position, she was offered a supervisory position under what was termed a "temporary contract" at level OO3. The temporary contract was renewed on a monthly basis for the period from 12 June 2006 until 22 October 2006. This contract and the renewal of its terms were recorded on Employee Movements forms. During that period, Ms Challen was paid as a permanent employee and received accrued leave entitlements, consistent with the practices of Queensland Health with respect to temporary contracts.

After taking up the supervisory position, Ms Challen made a number of complaints to managers about staffing levels. On 28 September 2006 Ms Challen met with Mr Bambry about her concerns. On 4 October 2006 Ms Challen wrote a letter of complaint to Mr Bambry detailing her complaints. Ms Challen alleges that she was warned by another Manager that Mr Bambry did not like complaints being put in writing and that there would be repercussions. After receiving Ms Challen's letter of complaint, Mr Bambry decided not to renew her temporary contract. Mr Bambry contended that this decision had nothing to do with the fact that Ms Challen had made a complaint but was based on his view that despite support and assistance being provided to Ms Challen her supervisory skills were not going to improve. Ms Challen was advised of this decision on or around 10 October 2006.

Ms Challen lodged a formal grievance against Mr Bambry and Ms Maria Wallace, Acting Manager Food Services, on 20 October 2006. While that grievance was being investigated Ms Challen was moved to another part of the workplace, so that she would not come into contact with managers involved in the grievance. Ms Challen was scheduled to take leave from November 2006 and Mr Bambry decided that Ms Challen would continue to be paid at the OO3 level until that time.

Queensland Health also contends that Ms Challen was not dismissed, but remains listed on its database as a "call in" casual employee. Further, Queensland Health contends that Ms Challen has refused work which has been offered to her and has failed to advise of her availability for work. Ms Challen contends that she has sought work and has been told that there is none available.

2. Evidence

Evidence in support of the application for reinstatement was given by the applicant Ms Challen and:

- Mickelle CORBIN, former employee of Queensland Health employed in Café Nescafe while Ms Challen was Supervisor;
- Jessica PACKHAM, former employee of Queensland Health employed in Café Nescafe while Ms Challen was Supervisor;
- Natasha BENNETT, of Queensland Health employed in Café Nescafe while Ms Challen was Supervisor;
- Ms Danica BROWN, Allocations Co-ordinator.

Evidence was given for Queensland Health by:

- Mr Donald Craig BAMBRY, Manager of Food and Retail Services at the Royal Brisbane and Women's Hospital;
- Mr Owen Russell FRASER, Project Officer, Queensland Health;
- Irma Birgitta (Nim) HONE, Manager Employee Relations, Royal Brisbane Hospital; and
- Ryan James DELLER, Project Officer.

The documentary evidence provided by Ms Challen was extensive, and it was tendered as attachments to Ms Challen's affidavit (Exhibit A1) without objection from the respondent. In particular there is a lengthy document entitled: "Investigation Report Grievance Allegations Made By Ms Cindy Challen Against Mr Don Bambry, Acting Manager Food and Retail Services and Ms Maria Wallace, Acting Manager Food Services" which contains thirteen bundles of enclosures. Those enclosures include transcripts of interviews with the key players in the present case, some of whom gave evidence in these proceedings. I have considered this material where it is relevant to the issues in dispute.

Generally I found Ms Challen, Ms Corbin, Ms Packham, Ms Bennett and Ms Brown to be credible witnesses. I also found Ms Hone and Mr Fraser to be credible witnesses. In contrast, Mr Bambry and Mr Deller were evasive; made claims in their evidence-in-chief which they departed from in cross-examination; and failed to provide satisfactory explanations for contradictions between the evidence they gave and the evidence of witnesses for Ms Challen. In general where there has been a conflict between the evidence of Mr Bambry and Mr Deller and that of other witnesses, I have preferred the evidence of those other witnesses.

3. The issues in dispute

The issues in dispute are:

- Ms Challen's employment status within Queensland Health;
- Whether Ms Challen is excluded from bringing an application for reinstatement;
- Whether Ms Challen was dismissed; and
- If Ms Challen is not an excluded employee and was dismissed, was the dismissal unfair?

These issues were identified by Counsel for Queensland Health, and the case was conducted in relation to all of them.

4. Ms Challen's Employment Status

Ms Challen commenced employment with Queensland Health as a casual Food and Retail Services Operator on 13 February 2006 (Letter of Offer Exhibit R1 DCB2). According to Ms Challen, on approximately 22 May 2006 she was offered a permanent part-time position by Mr Brent Deller, the then Duty Manager, to ensure that she would work in Café Nescafe five days per week. Ms Challen said that she negotiated her rate of pay and working hours with Mr Brent Deller, and it was agreed that she would be employed at the level OO2/4. Ms Challen said that she did this because taking up a position where she would be required to work five days would mean that she could no longer work in her second job on Fridays and she required some stability in order to give up that second job.

Mr Ryan Deller (who then worked in the Food and Retail Services and Patient Support Services Allocations area) drew up "paperwork" relating to the offer of the part-time position, and this was signed by Ms Challen and Mr Don Bambry, Manager of Food and Retail Services. Mr Ryan Deller later told Ms Challen that an increase to that level in one jump had not been approved by "HR" and Ms Challen agreed to be paid at the level OO2/3. Further "paperwork" was filled out to record this and signed by Mr Bambry and Ms Challen. Ms Challen said that this paperwork was an Employee Movements form.

Shortly after signing the Employee Movements form in relation to the permanent part-time position, Ms Challen became aware that the Supervisor of Café Nescafe had resigned, and approached Mr Brent Deller expressing an interest in filling that position. Mr Brent Deller told Ms Challen that it was a month-to-month contract, and the pay level was OO3. Ms Challen said that approximately one week after signing the Employee Movements form changing the basis of her employment to permanent part-time, she signed a further Employee Movements form giving effect to a temporary month to month appointment as a Supervisor at pay level OO3.

There is a handwritten note in the Employee Schedule Report (Exhibit A1 Appendix 2 Enclosure 10) indicating that Ms Challen started supervising on 29 May 2006. On Monday 19 June 2006, Ms Challen's classification level is shown in that report as being OO3. Also contained in Enclosure 10 are four Employee Movements forms for the following periods:

- 12 June - 16 July 2006;
- 17 July - 13 August 2006;
- 14 August - 24 September 2006;
- 25 September - 22 October 2006.

Each of those forms indicates that Ms Challen's then current position was that of a Retail Attendant at level OO2. On each form a box is ticked or marked to indicate that the type of employment was casual. Each form also indicates that the proposed position subject of the movements form is Retail Supervisor at level OO3. Boxes are ticked or marked to indicate that the type of employment relating to this position is full-time and temporary.

In response to a question from the Commission, Ms Challen said that she did not notice that each of these Employee Movement forms indicated that she was a casual employee acting in a series of temporary engagements, because the forms were simply put in front of her and she was asked to sign them. Further, the forms were not provided to Ms Challen so that she could peruse them or take them home. Ms Challen maintained that at the time she accepted the temporary OO3 Supervisor position she believed that she held a permanent part-time position at pay level OO2.

Under cross-examination, Ms Challen agreed that she had not made an application for such a position or gone through a formal interview. Ms Challen also agreed that the sum total of her evidence on this point was that Mr Brent Deller offered her a permanent part-time position at pay level OO2; necessary paperwork reflecting the offered position was signed by Mr Bambry; Ms Danica Brown in the Human Resources Department had seen that paperwork and would give evidence to that effect; and Ms Challen had given the paperwork to Mr Ryan Deller.

Ms Brown said in her oral evidence that an Employee Movements form could be used to record an employee's status changing from casual to permanent. Ms Brown also said that she had handled an Employee Movements form recording Ms Challen's employment changing from casual to permanent part-time. Allocations had been instructed by Mr Bambry to do a "prior recognition service" for Ms Challen. The relevant paperwork had been filled out by Mr Ryan Deller and had been forwarded to the Human Resources Department. That process sought a classification of OO2/4 for Ms Challen, and this had not been approved. The Human Resources Department had agreed that Ms Challen should be classified at the level OO2/3 and another Employee Movements form had been completed to reflect this. This form also indicated that Ms Challen was being appointed to a permanent part-time position. The form was signed by Mr Bambry and Ms Challen. Ms Brown took a copy of the form and placed it on Ms Challen's personnel file. The original of the form was handed by Ms Brown to Mr Deller to be sent to the Human Resources Department.

In response to a question from the Commission, Ms Brown said that the Employee Movements form had indicated that the basis of Ms Challen's employment was changing from casual to permanent part-time, with hours of work being 60 per fortnight. Ms Brown said that, at some point the filing cabinet containing Ms Challen's file had been moved from the Allocations office to Mr Bambry's office.

Under cross examination, Ms Brown maintained that she had seen paperwork changing the status of Ms Challen's employment from casual to permanent part-time and that she was absolutely certain that Ms Challen had been offered a permanent part-time role. Ms Brown said that she knew that Ms Challen was working four eight hour shifts per week as a casual employee and had been offered five six hour shifts per week as a permanent part-time employee. Ms Brown also maintained that the paperwork she had seen in this regard was not that dealing with Ms Challen's temporary position as a Supervisor at pay level OO3.

Ms Brown was shown two emails dated 20 November 2006 and 27 November 2006. The first email dated 20 November 2006, from Ms Brown to Ms Ralda McGregor states:

"I have spoken to Ian McMahon (HR) in regards Cindy's substantive position and it seems she is substantively a OO2 Casual. I have also checked my copies of Employee Movement's forms and I have the same as HR."

The email dated 27 November 2006 from Ms Brown to Mr Ian McMahon, states as follows:

"Cindy Challen has gone on leave as from today 27.11.06, she is casual OO3 and is to be paid all her leave entitlements at OO3 (cas) please. She will (may) return 2.02.07."

It was put to Ms Brown that the statements in these emails about the status of Ms Challen's employment were at odds with her evidence to the Commission. Ms Brown said that at the time she sent these emails she could not locate the paperwork on Ms Challen's file which indicated that she was a permanent part-time employee. Further, Mr Bambry had told Ms Brown that Ms Challen was a casual employee and that when Ms Challen came back from holidays there would be no work for her. Mr Bambry also told Ms Brown not to ask any questions about Ms Challen.

Mr Bambry said in his evidence-in-chief that Ms Challen commenced employment as an "on call" casual on 14 February 2006. Attached to Mr Bambry's (Exhibit R1) as DCB-2 is a letter offering Ms Challen the position of Food Services Officer Retail on a casual basis. The letter makes no reference to the position being an "on call" casual. The letter does state that if Ms Challen is placed on a temporary roster at any time in the future, she will be required to complete an Employee Movements Form. According to Mr Bambry, on 25 May 2006 Ms Challen accepted a temporary contract recorded on an Employee Movements form for the position of Supervisor of Café Nescafé for the period from 12 June to 16 July 2006. Ms Challen subsequently signed further Employee Movements forms taking her up to 22 October 2006. The temporary vacancy for this position arose because Mr Brent Deller was acting up in the Duty Manager's position in a temporary capacity while Mr Darren Schubert was acting in the Retail Co-ordinator's position. The Supervisor's position in Café Nescafé was temporary because the commercial viability of that Café as a stand-alone operation was being tested.

Mr Bambry maintained that Ms Challen was not offered a permanent part-time position prior to her taking the temporary Supervisor position. Mr Bambry also denied that he told Ms Challen that the paperwork relating to such a position was on his desk. According to Mr Bambry at a meeting on 17 October 2006 where Ms Challen alleged that she had been offered such a position, Mr Bambry might have said that Ms Challen's personnel file or "some" paperwork was on his desk.

According to Mr Bambry the normal process for offering permanent employment for a base level OO2 position, would be to advertise the position internally and go through a recruitment process. The minimum level of advertising would be for Expressions of Interest to be called for in the OO2 position. In order for Ms Challen to be offered such a position, whether by Mr Schubert or Mr Deller, a merit selection recruitment process would have been required, and Mr Bambry would have had to approve such an appointment. Mr Bambry said that he had never seen any paperwork relating to a merit selection process completed by Ms Challen for a permanent position. Even if the paperwork had been lost, there would have been a

record of such an appointment on the Employee Records system. At the time Ms Challen alleges that she was offered a permanent position at OO2 level, such a position did not exist and there is no record of this on the system.

Mr Bambrly said that his understanding of Ms Challen's employment status was that she was employed as a casual at level OO2 and was then put into a temporary position at level OO3. Employee Movements forms were designed so that casual employees could be given fixed term work on a month-to-month basis to fill in for other employees who may be on leave. These forms could not be used to change the basis of employment from casual to permanent. Mr Bambrly also said that he had not hired people without going through appropriate channels. Ms Challen had made application for recognition of prior learning, and Mr Bambrly may have signed that application. This process related to pay levels and not to employment status.

Under cross-examination Mr Bambrly said that he might have signed an Employee Movements form to change Ms Challen's pay level from OO2/1 to a OO2/3 and that this could have been based on Ms Challen's past work experience. However, Mr Bambrly rejected the proposition that this form changed the status of Ms Challen's employment from casual to permanent, maintaining that even if this form had been lost, the change would have been recorded in the computer system dealing with employee records, and it had not been. It was not put to Mr Bambrly that he had removed any paperwork from Ms Challen's personnel file.

Mr Fraser said that generally, Employee Movements forms are only used for vacant positions, for example when someone goes on leave or is off work on worker's compensation. When Mr Fraser first took control of the Allocations team he noticed that the vast majority of staff in Retail Services were employed as casuals. This caused Mr Fraser concern for a number of reasons including that:

- the relevant award states that this should not occur and unions did not like Queensland Health staff being employed on a casual basis; and
- it creates extra work for the Allocations team and Payroll as casual staff cannot be put on a roster, but have to ring through to payroll instead of being put on a roster like temporary and permanent staff.

Mr Fraser said that he discussed this matter with Mr Bambrly in or around July 2006, and insisted that casual staff be put on temporary movement forms. In December 2006 Mr Bambrly and Mr Fraser had a further conversation where Mr Bambrly agreed that in the New Year he would advertise permanent positions.

According to Mr Fraser, Ms Challen's employee schedule report shows that before she was acting in the Supervisor position at level OO3, she did not have a regular schedule of shifts. This report also indicates that Ms Challen was on worker's compensation for a period. Mr Fraser said that he came on to the scene in Food and Retail Services on 1 July 2006, and prior to that had nothing to do with the rostering and administration of Food and Retail Staff. In order for an employee to go from casual to permanent employment, there would have to be a merit based selection process other than in exceptional circumstances. Such a process would generate numerous pieces of paper or electronic records related to approvals to recruit staff; advertising and calling for expressions of interest in positions; position descriptions and selection criteria. Positions at level OO3 and above must be advertised externally while positions at OO2 can be advertised internally. A recruitment package would be prepared and candidates would be interviewed and shortlisted, before a selection was made.

It was put to Mr Fraser that Ms Challen's evidence was that she signed an Employee Movements form that transferred her from being a OO2 casual to a OO2/3 permanent part-time employee and Mr Fraser was asked to comment on whether this would be possible. Mr Fraser said in response to this question:

"Only after a recruitment process like I've described because that - that is the other thing. You get peoples - people's status change from casual to temporary to permanent they must sign off to get them into the - into the system so to speak, into the payroll system, the appropriate paperwork must be signed off." (Transcript 131 lines 25 - 30)

In response to a question about what that paperwork would consist of, Mr Fraser said it was a single form and he could not recall whether it was called an Employee Movements form. Whatever the form is called, it is a single document which confirms the job with the authority of the executive person who signed off the job. In the area in which Ms Challen worked, the person with executive authority to sign off on an appointment is Mr Jeff Hitchings. In response to a question about whether Mr Bambrly had authority to sign off on Ms Challen's form, Mr Fraser said: "Technically no...". According to Mr Fraser, once the document had been signed by a person in authority, it went to the payroll section and details were put into the payroll system. There was no indication on the payroll system that Ms Challen's substantive position was other than that of a casual employee.

In cross-examination, Mr Fraser was asked about comments he made in an interview with Mr Stephen Peacock in relation to the investigation of Ms Challen's grievance with Ms Wallace and Mr Bambrly, to the effect that Mr Bambrly did not follow procedures with employment. Mr Fraser said that these comments related to recruitment in Food Services generally, and not to one specific instance. Mr Fraser agreed that Mr Bambrly did not always follow procedures relating to employment.

Mr Fraser also said that when Ms Challen left to go overseas she would not have been required to apply for leave as she was a casual employee. What would have occurred is that Ms Challen would have been paid a lump sum for leave she accrued while temporarily working at the OO3 level and her status would have reverted back to that of a casual employee. Mr Fraser said he could not comment on whether Ms Challen was required to complete an Application for Leave form, because he had not asked Ms Challen to do so. Appended to Ms Challen's witness statement (Exhibit A1) was an Application for Leave form, completed by Ms Challen on 24 November 2006, seeking leave from 27 November 2006 until 5 February 2007. The application was apparently processed on 4 December 2006, and the word "casual" has been written on the bottom of the form, probably by the person who processed it. Mr Fraser was not asked to comment on that form.

Ms Hone's dealings with Ms Challen began in October 2006, when she was approached by Mr Hitchings, Director of Corporate Affairs, and asked to facilitate a meeting between Ms Challen and Mr Bambrly regarding some concerns Ms Challen had. This meeting was held on 17 October 2006. Ms Hone said that at this meeting, among other issues, Ms Challen alleged that she was offered the choice of a permanent part-time position at OO2 level or a temporary OO3 contract by Mr Darren Schubert and Ms Maria Wallace. According to Ms Hone, Ms Challen said that she had chosen the temporary position and the paperwork for the permanent position was on Mr Bambrly's desk. Ms Hone said that Mr Bambrly stated that if there was paperwork on his desk then he would have a look at it. Ms Hone said that the major topic of the meeting was that Ms Challen's contract at OO3 was not renewed.

After the meeting on 17 October 2006 Ms Hone asked Mr Bambrly to look on his desk for paperwork in relation to Ms Challen's allegation that she had been offered a temporary position. No such documentation had been located for Ms Challen either electronically or physically.

Ms Hone also gave evidence about legislation and industrial instruments relevant to the employment of Operational Officers such as Ms Challen. There are also policies contained in the Integrated HR/IR Resources Manual, with such policies being referred to as IRMs. Some of these IRMs put into effect legislative obligations or Directives issued under the *Health Services Act 1991*, while others provided guidance for relevant staff to follow in regards to various employment issues. Attached to Ms Hone's statement (Exhibit R3) were a number of IRMs and Directives relating to recruitment for permanent positions (Appendices NH5 - NH12).

According to Ms Hone's evidence, the effect of these IRMs and Directives is that permanent positions at OO2 level can be advertised internally, which means that advertisements for such positions do not need to be placed in the Queensland Government Gazette or the *The Courier Mail*, but can be made known within the Hospital through emails to Managers or notices on boards. However, unless there are exceptional circumstances, appointments to all permanent positions including those at level OO2 must be made on merit. This involves a selection committee being formed to consider all applicants both internal and external, and making a recommendation to the relevant decision maker. Once an applicant has been selected for a permanent position, there are a number of other steps that occur before the person is formally appointed, which must be taken for all successful applicants whether sourced internally or externally. These steps are reference and criminal record checks and sending out an appointment letter. If Ms Challen had been offered a permanent appointment there would have to be paperwork such as:

- a position description including a vacancy reference number;
- a job application;
- selection materials used by a selection committee;
- appointment letter; and
- evidence of reference and criminal record checks.

Exceptional circumstances would apply where there was a pool of casuals or people who had been in temporary positions for quite a while within an area, and a position became available. In these circumstances there would be a closed merit process where only those persons would apply for the position. In response to a question from the Commission, Ms Hone said that it was agreed that Ms Challen would continue to be paid at level OO3 while her grievance was dealt with, and until she went overseas. Ms Hone also said that, for the final pay period before Ms Challen went overseas she was paid as a casual employee, and was paid out all of the recreation leave accrued during her temporary engagements. Shortly before Ms Challen went on her overseas holiday, Ms Challen telephoned Ms Hone to query what the status of her employment would be upon her return. Ms Hone told Ms Challen that the OO3 Supervisor's position could not be held open while Ms Challen was on leave, and that she would be returning to the casual pool of employees and would have to ring and

advise her availability for work. According to Ms Hone, Ms Challen was not upset or agitated and she thought that Ms Challen understood this and was not concerned that her employment status would return to casual after her trip.

On 1 February 2007, Ms Hone had a further conversation with Ms Challen about her employment status. When Ms Hone told Ms Challen that her employment was casual, Ms Challen became angry and said that this was not what she had been told previously. On 6 February 2007 Ms Challen sent an email to Ms Hone which among other issues, alleged that Ms Challen had been guaranteed that she would continue her duties on her return from leave, and that the *status quo* had been broken (NH22 Exhibit R3). According to Ms Hone, Ms Challen's details are still listed on the employee reference data base (LATTICE) as a casual employee, and Ms Challen's employment has not been terminated. Ms Hone also said that she was not aware of any direction to Allocations not to provide Ms Challen with work.

Under cross-examination, Ms Hone said that an Employee Movements form could not be used to change the status of a person's employment from casual to permanent part-time. The Employee Movements form would be the "top" form and under it would be other paperwork relating to the process that had been used to select the employee for the position, including the application, interview, referee check and criminal history check. In response to the proposition that Mr Bambry could simply sign an Employee Movements form to change the basis of Ms Challen's employment from casual to permanent, Ms Hone said that Mr Bambry could not do this because it was contrary to the IRMs and procedures that were in place. If this was occurring it had to be rectified. Ms Hone confirmed that there had been an investigation into failure to follow correct employment procedures, and any disciplinary action against Mr Bambry which may have come out of such an investigation is confidential.

Mr Ryan Deller said in his evidence that there is a process within Queensland Health where employees with previous experience can seek to have the experience recognised in accordance with IRM 4.2-5 *Recognition of Previous Service and/or Experience for Salary and Increment Purposes*. This process is undertaken by an employee completing an RPL form and providing copies of relevant documentation to establish previous service or experience. Mr Deller said that he could recall providing a blank copy of an RPL form to Ms Challen, which Ms Challen completed attaching relevant documentation, and returned to Mr Deller. Ms Challen had qualifications as a pastry chef and had worked at McDonalds. Ms Challen hoped to increase her paypoint from OO2/1 to OO2/3 or OO2/4. The form had been completed by Ms Challen approximately two or three months after she commenced employment with Queensland Health. Mr Deller forwarded the form and supporting documentation to the Human Resources Department.

Mr Deller also recalled that there may have been problems with the form either because Ms Challen did not complete it within one month of commencing employment, or that the movement between bands exceeded the maximum allowed under the RPL process. Mr Deller told Ms Challen that her application for recognition of prior service was not going to be progressed by Payroll and that if she wanted to pursue this further she should speak to Mr Bambry or her Duty Manager.

According to Mr Deller, the same form is used for temporary employee movements and for permanent movements, with different boxes being ticked in each circumstance. In the case of a permanent movement, there is additional documentation. Ms Challen might have been confused in relation to various documents and believed that a form dealing with her temporary movement to the OO3 Supervisory position or a form dealing with recognition of prior learning, were an offer of permanent employment.

Mr Deller said that to his knowledge Ms Challen was never offered a permanent position, and outlined the necessary documentation which must be created in the process of offering such a position. According to Mr Deller, in addition to that documentation, vacant positions are often temporarily filled (on a temporary contract basis) while the position was being advertised and the process for filling the position permanently is undertaken. If Ms Challen was offered a permanent contract, Mr Deller would have been involved in preparing some of the paperwork in relation to the temporary contract while the application process was undertaken. Mr Deller was never asked to, and did not prepare any such paperwork.

Under cross-examination, Mr Deller agreed that if Ms Challen had completed documentation in relation to recognition of prior learning, he would have sent the originals to the Human Resources section and placed a copy on Ms Challen's personnel file. Mr Deller said that he had no recollection of having placed it there and had no knowledge of whether such paperwork existed. Counsel for Queensland Health confirmed that there was no paperwork dealing with recognition of prior learning on Ms Challen's file. Mr Deller said that Allocations staff and Mr Bambry would have had access to Ms Challen's personnel file. It was put to Mr Deller by the Commission that he said in his witness statement that he was never asked to and did not prepare paperwork changing Ms Challen's employment status from casual to permanent, and in his oral evidence that he did not remember whether or not he had prepared such paperwork. Mr Deller said that his evidence was that he did not remember having prepared such paperwork. Mr Deller said that he did recall having prepared paperwork dealing with recognition of Ms Challen's prior experience as a pastry chef and as an employee of McDonalds.

Mr Brent Deller was not called to give evidence. Mr Ryan Deller confirmed that he is in contact with Mr Brent Deller who is his brother. Counsel for Queensland Health said that it was believed that there was no need to call Mr Brent Deller, because it was Queensland Health's view that Ms Challen was alleging that she had been offered the permanent part-time position by Mr Darren Schubert. This is at odds with Ms Challen's previous statements including the allegations made in her interview with Mr Peacock as part of the investigation of her grievance with Mr Bambry and Ms Wallace. I cannot see any evidence of Ms Challen alleging that the offer of permanent employment was made by Mr Schubert. In any event, Mr Schubert was not called by Queensland Health. It is also the case that Ms Challen did not call Mr Brent Deller as a witness and could have done so. In the circumstances, I am not prepared to draw any inference about the failure of either party to call Mr Brent Deller.

There are significant conflicts in the evidence about Ms Challen's employment status particularly in the evidence of Ms Challen and Ms Brown on the one hand, and Mr Bambry and Mr Deller on the other. Mr Bambry and Mr Deller were evasive when answering questions under cross-examination. Furthermore it was not put to Ms Challen or Ms Brown that they were being untruthful and both were very clear and did not depart from their versions of events under cross-examination. Overall, I preferred the evidence of Ms Challen and Ms Brown.

However, even if all of the evidence on behalf of Ms Challen in relation to the proposition that she was offered and accepted a permanent position is accepted, it is not sufficient to establish that there was a binding contract between Ms Challen and Queensland Health under which Ms Challen would be employed on a permanent basis. I accept that there probably was a discussion between Ms Challen and Mr Brent Deller about terms under which Ms Challen would be employed on a permanent basis, and that an Employee Movements form reflecting this discussion was completed. I am unable to make any finding about why this form is not on Ms Challen's personnel file or that it was deliberately removed. The proposition that the form was deliberately removed was not put to any of the witnesses for Queensland Health. Further, the fact that a form dealing with recognition of prior learning is also missing suggests that any missing paperwork is accidental, as the existence of the form dealing with recognition of prior learning would have assisted any argument on the part of Queensland Health about Ms Challen confusing the two forms.

That Mr Brent Deller and Ms Challen had discussions about a permanent position, did not constitute an offer of such a position by Queensland Health that was capable of acceptance by Ms Challen. I am also of the view that an Employee Movements form could not, by itself, constitute an offer of permanent employment capable of acceptance by Ms Challen. In my view an Employee Movements form is a multi-purpose form which records changes to an employee's employment for administrative purposes. The Employee Movements form does not in itself put those changes into effect. This is clear from the form itself, and from the other policy documents which were in evidence before the Commission. In respect of a temporary/fixed term appointment, IRM 1.2 requires that the terms of such an appointment are to be provided in writing in the form of an appointment letter. In the case of permanent appointments, the relevant IRMs also require an appointment letter to convey an offer of employment.

There is no evidence of an appointment letter in relation to the temporary supervisory position filed by Ms Challen although it is clear that the contract came into effect and was performed by both parties. This is not the case with respect to the alleged permanent position at level OO2/3. There was no appointment letter conveying an offer of such a position. Further, such an appointment was not put into effect through the computer system operated by Queensland Health. Ms Challen's pay slips continued to record the fact that she was a casual employee, as did the series of Employee Movements forms signed by Ms Challen in relation to the temporary supervisory position. Notwithstanding Ms Brown's evidence that she had seen an Employee Movements form altering the status of Ms Challen's employment from casual to permanent, Ms Brown confirmed that Ms Challen was a casual employee in two emails on 20 and 27 November 2006. Although there is evidence of Mr Bambry failing to follow proper procedures when employing staff, it does not follow that this is sufficient to establish the existence of a contract between Ms Challen and Queensland Health for a permanent part-time position.

At all relevant times, Ms Challen was a casual employee. However, in the circumstances of this case, it is perfectly understandable that Ms Challen could reasonably have believed that she was a permanent employee.

5. Was Ms Challen dismissed and if so, was the dismissal unfair?

It is strongly arguable that Ms Challen has been dismissed from her casual employment with Queensland Health. I am also of the view that regardless of whether or not Ms Challen was dismissed, or whether or not the casual nature of Ms Challen's employment means that she is excluded from bringing an application for reinstatement, the manner in which Ms Challen was treated was unfair.

I accept that Ms Challen's temporary contract as OO3 Supervisor could have been brought to an end at any time, and that to bring this contract to an end would not constitute a dismissal. However, it was reasonable in the circumstances for Ms Challen to have an expectation that this would not occur without some valid operational reason, such as the return of the person whose position she was filling; the need to give some other employee an opportunity to work at a higher level; a decision that the position was no longer required; or genuine issues with her work performance in that role. In the present case, there is no evidence of any such reason for the cessation of the temporary contract. Mr Bambrly gave evidence about his reasons for deciding not to renew Ms Challen's temporary contract as a Supervisor which sought to bring into question Ms Challen's work performance. That evidence was unconvincing.

Mr Bambrly said that Café Nescafe was experiencing a decrease in revenue during the period that Ms Challen was Supervisor but conceded under cross-examination that he may have been mistaken in the figures provided by him in his sworn affidavit to support this allegation and that there were days when the takings in Café Nescafe were higher than he had indicated in his evidence. Mr Bambrly was also unable to provide any documentation to support his contention that the figures for the Café are currently over \$3,000 per day. Mr Bambrly's evidence that staffing issues in Café Nescafe had been resolved was contradicted by witnesses for Ms Challen including Ms Mickelle Corbin, Ms Jessica Packham and Ms Natasha Bennett, all of whom gave evidence of staff shortages which were not addressed, particularly gaps in rosters caused by absent staff which were not filled. On balance, I prefer the evidence of these witnesses to that of Mr Bambrly. An investigation conducted by the LKA Group into grievance allegations made by Ms Challen also found that her complaints regarding staff shortages were substantiated.

Mr Bambrly also gave evidence about steps taken to assist Ms Challen with her supervisory duties such as introducing disposable cutlery; reducing the menu; removing food preparation; ceasing table service and providing additional staff. This evidence was contradicted by the evidence of Ms Corbin, Ms Packham and Ms Bennett, all of whom said that the disposable cutlery and the menu reductions were not implemented until after Ms Challen left, and that there were always staff shortages particularly due to absenteeism. Ms Challen conceded that there was some change with regard to food preparation while she was supervising Café Nescafe but maintained that the other changes had not been put into effect prior to her leaving. If there were issues, they were not raised with Ms Challen in a fair or reasonable manner.

I do not accept that there were issues with Ms Challen as a Supervisor which were substantial enough to warrant her contract not being extended. Mr Bambrly gave evidence of discussions he had held with other Managers about Ms Challen's performance and of a review conducted by another Supervisor, Ms Crabbe. None of those Managers or Ms Crabbe gave evidence. Further, Mr Bambrly conceded under cross-examination that none of the performance issues he identified in his evidence were raised with Ms Challen. Mr Bambrly also wrote an article in a newsletter entitled "Retail Rap" stating that Ms Challen had personally driven changes in the Café, and that it was a better place because of her initiative.

It is also the case that at or around the time the decision was taken not to extend Ms Challen's contract as OO3 Supervisor, she made a number of complaints to Mr Bambrly, both verbal and written, about staffing levels in Café Nescafe and lack of support from Managers. Mr Bambrly met with Ms Challen to discuss her complaints on 28 September 2006. On 4 October 2006 Ms Challen put her complaints into writing. Ms Challen said that Ms Maria Wallace, Acting Manager Food Services, told her that Mr Bambrly was angry about receiving the letter and that there would be consequences. Ms Wallace was issued with an attendance notice by Ms Challen but did not attend on the basis that she was not paid conduct money.

Ms Brown, who gave evidence in support of Ms Challen, said that she was present during a discussion between Ms Challen and Ms Wallace where Ms Wallace said that Ms Challen should not have gone over her head to Mr Bambrly. According to Ms Brown, Ms Wallace went on to say that Mr Bambrly did not like letters of complaint and that Ms Challen would suffer the consequences. Also in evidence was the transcript of an interview with Mr Fraser (who gave evidence for Queensland Health in these proceedings) conducted during the investigation of Ms Challen's grievances against Ms Wallace and Mr Bambrly. In that interview, Mr Fraser is recorded as having stated that Mr Bambrly was annoyed with Ms Challen for speaking about her issues to Ms Brown and at what he believed was Ms Brown's involvement in assisting Ms Challen to write the letter of complaint. Mr Fraser also said in that interview that Mr Bambrly had said that he had issues with the way that Ms Challen was running Café Nescafe, but did not elaborate other than to indicate his annoyance with the fact that he had been holding discussions with Ms Challen and she had put something in writing.

Ms Corbin said that she was the Supervisor of Café Nescafe during that period and said that her name was not on the roster. Ms Corbin also said that when she asked why this was the case, she did not receive a response. Ms Brown said that Mr Bambrly told the Allocations team that the OO3 Supervisor position was not to be included on the Café Nescafe roster, because they did not want Ms Challen to know that there was a Supervisor in Café Nescafe at that time, and because of Ms Challen's "court case". According to Ms Brown, the name of the OO3 Supervisor for Café Nescafe appeared on the Food Court roster. Mr Bambrly was unable to satisfactorily explain why the name of the Supervisor, of the Café for the period from February 2008 onwards was not included in the roster, saying that he did not know why the rosters were attached to his witness statement. I prefer the evidence of Ms Corbin and Ms Brown on this point and I am of the view

that it is more probable than not that there was an attempt to create the appearance that there was no longer a Supervisor in Café Nescafé.

Ms Challen went on a period of pre-arranged leave from 27 November 2006 until 5 February 2007. Ms Challen gave evidence of having discussed and agreed this period of leave with various Supervisors and arranging it so it coincided with a close down at Café Nescafé. Ms Challen completed a leave form for this period, notwithstanding evidence from Queensland Health witnesses that there was no requirement for her to do so as she was a casual employee. Ms Challen was also paid for part of the period, as a result of accruing leave during the series of temporary contracts under which she worked as a Supervisor. While the disappearance of the Supervisor position from Café Nescafé roster might coincide with the re-opening of the Café after a closedown, it also coincides with the date that Ms Challen returned from leave and resumed her questioning about the status of her employment with Queensland Health.

According to the evidence of witnesses for Queensland Health, Ms Challen's substantive contract of employment was as a casual employee "on call" at level OO2, at all relevant times. Witnesses for Queensland Health also said that when Ms Challen's temporary contract as a Supervisor was not extended, she simply reverted to this position and was required to ring and advise of availability for work. This is at odds with the weight of the evidence which establishes that while Ms Challen may have been technically termed a "call in" or "on call" casual, she was rostered on a regular basis to perform work and was never treated as being "on call". The letter offering Ms Challen casual employment makes no mention of Ms Challen being "on call". Ms Challen's evidence that she was on a roster for the entire period of her employment was not contested. Under cross-examination, Mr Fraser agreed that the shifts worked by Ms Challen from 19 February 2006 to 28 May 2006 were regular shifts. Further, Mr Fraser agreed that while Ms Challen was working for Queensland Health in 2006, there was a practice of placing casual employees on rosters.

Ms Challen said that upon her return from overseas on or around 20 January 2007, she telephoned Ms Hone to ask what was happening with respect to her returning to work. Ms Hone informed Ms Challen that there was no position for her and that the Café had been restructured so that no supervisor was required. There are file notes outlining conversations between Ms Hone and Ms Challen on 1 February 2007 where Ms Hone confirmed that Ms Challen would be returning as a casual on-call. There is nothing in the notes of either conversation to indicate that Ms Challen was told that she was required to advise by telephone or otherwise of her availability (Exhibit R3 Appendices 19 and 20). Ms Hone said in her evidence, that she could not comment on why, when Ms Challen returned from leave, she was considered to be an on call casual, rather than being placed on a roster.

On 28 February 2007 Dr Graves, the Acting Clinical Chief Executive Officer wrote to Ms Challen and stated that: "You are still a casual employee and will be provided with shifts when required." (Exhibit A2). On 12 March 2007 Dr Graves again corresponded with Ms Challen to advise of the outcome of her grievance, and also advised that Ms Challen's current status was that of a casual employee of Food and Retail Services, and that she would need to advise the Allocations Coordinator, Mr Fraser, of her availability.

Ms Challen said that she telephoned Allocations on several occasions and spoke to Ms Brown and Mr Watson who informed her that there was no work available for her. Most recently, Ms Challen telephoned Allocations in January 2008 and was told by Ms Bates that there was no work available for her. Ms Challen said that she had not been called for work at the date of the current proceedings, and had made several requests for work.

Ms Brown said that she had been instructed by Mr Bambry that if Ms Challen rang to seek work, Ms Challen was to be told that she is still a casual on-call, but there is no work available. Ms Brown could not remember exactly when this instruction was given but said that it was while Ms Challen was on holidays. Ms Brown also said that Ms Challen had rung for shifts when she returned from her holiday and that she had noticed that Ms Challen's name and telephone number did not appear on the daily call-in list. Because of the instruction from Mr Bambry, Ms Brown did not ask why Ms Challen's name did not appear on the daily call-in list. Ms Brown also said that it is hard to believe that there is no work available for Ms Challen as she sees on a daily basis what shifts need to be filled, and which casuals are called into work.

Mr Bambry and Mr Fraser gave evidence about offers of casual shifts made to Ms Challen, but there is no evidence of any such offers prior to 23 May 2007. These offers were made after a dispute notified by Ms Challen was dealt with by the Queensland Industrial Relations Commission, and were for limited periods. In the circumstances, it is hardly surprising that Ms Challen declined this work. Mr Bambry said that he had never issued an instruction to the effect that Ms Challen was to be told that there was no work available for her. The only instruction issued by Mr Bambry had been that if Ms Challen telephoned Allocations she was to be put through to the Manager, as Mr Bambry was concerned that Ms Challen had been secretly tape recording telephone conversations with Queensland Health staff. On this issue, I prefer the evidence of Ms Challen and Ms Brown.

Mr Bambrly, Mr Fraser and Mr Deller also gave evidence to the effect that there is very limited casual work currently available and that most employees in the retail area are permanent or on temporary contracts. There was considerable evidence from witnesses for Ms Challen about casual employees being required to sign temporary contracts, and in some cases not being given any choice about the matter. It was clear from Mr Fraser's evidence that putting casual employees on temporary contracts was seen as a means of resolving an issue where casual employees were being regularly rostered, contrary to policies about circumstances in which casual employees are to be utilised.

I cannot see how placing casual employees on temporary contracts is consistent with the policies relating to the use of such contracts, in particular IRM 1.2 which sets out the circumstances in which such contracts can be utilised (Exhibit R2 Appendix ORF4). However, I am of the view that but for the quite unjustified termination of Ms Challen's casual employment, she would have been in the same position as other casual employees who were offered temporary contracts and were thus provided with ongoing employment. Further, there was a suggestion that the use of temporary contracts to facilitate the regular rostering of casual employees was to be replaced by the mechanism of offering permanent employment to casual employees in early 2007. There was no evidence about whether this has occurred, but if it has occurred, I can see no reason why Ms Challen would not have at least had the opportunity of applying for such a position.

When all of these circumstances are considered, it is more probable than not that the following occurred. Ms Challen was a casual employee who had been rostered to work regular hours. There had not been any issue raised with Ms Challen in respect to her conduct, capacity or work performance. There were some commitments made to Ms Challen about a permanent part-time position, which did not come to fruition. Ms Challen was offered and accepted a higher level supervisory position on the basis of a series of fixed term contracts, and her underlying contract of employment as a casual employee remained in place. Ms Challen was not aware that her underlying contract of employment was as a casual employee, and believed (on reasonable grounds) that she was a permanent employee.

While working in the supervisory position, Ms Challen raised legitimate issues about staffing levels with various Managers, and put her concerns in writing to the most senior Manager in her area of operation, Mr Bambrly. Mr Bambrly took umbrage at the fact that Ms Challen had made a complaint in writing, and effectively engineered a situation whereby either Ms Challen's underlying contract of employment as a regularly rostered casual employee was brought to an end, or where the contract remained in effect but Ms Challen was not offered any work. In doing this, Mr Bambrly took advantage of Ms Challen's status as a casual employee. It is likely that Mr Ryan Deller also participated given the improbability of some of his evidence. In particular, Mr Deller said that it was possible that he said the words: "Just sack her, get rid of her" but if he did so, this was not in reference to Ms Challen. Mr Deller's evidence on this point was entirely unconvincing. Ms Hone and Mr Fraser were clearly not part of Mr Bambrly's activities with respect to Ms Challen and played no role in the unfair treatment of Ms Challen. Any role played by Ms Hone and Mr Fraser was based on what they were told by Mr Bambrly.

There is nothing to suggest that Ms Challen was anything other than a good employee, at least while she was working at the level of OO2, and but for the actions of Mr Bambrly, Ms Challen would in all probability have had ongoing casual employment with regularly rostered hours. Ms Challen may also have had further temporary engagements and the opportunity to apply for permanent positions. I do not intend to make a finding as to whether or not Ms Challen was dismissed. It was contended by Counsel for Queensland Health that Ms Challen continues to be an employee of Queensland Health. If that is the case, then there is no reasonable explanation for why she has not been given work, other than she made a complaint and lodged a grievance about a number of issues, many of which were substantiated in these proceedings and in a previous investigation. Ms Challen may still have other remedies in relation to her treatment.

Ms Challen contends in her application that she was dismissed on 27 November 2006. If that is the case, then Ms Challen was a short term casual employee within the meaning of s. 71(8) of the Act, and as such is excluded from bringing an application for reinstatement by s. 72(1)(c). It was not pleaded in the application that Ms Challen's dismissal was for an invalid reason under s. 73(2) of the Act. Notwithstanding the unfairness with which Ms Challen has been treated, an application for reinstatement is not a remedy which Ms Challen can pursue.

The application for reinstatement in TD/2007/44 is dismissed. I order accordingly.

I.C ASBURY, Commissioner.

Hearing Details:

2008 27, 28 February

19, 20, 25 March

Appearances

Ms Cindy Challen Applicant, on her own behalf.

Ms V. Donaghy instructed by Ms C Lyndon of Minter Ellison for the respondent.

Released: 3 July 2008

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - s. 474
Industrial Relations Regulation 2000 - s. 20

(Matter No. RIO/2008/144)

**NOTICE OF APPLICATION FOR AMENDMENT OF ELIGIBILITY
RULE OF AN INDUSTRIAL ORGANISATION**

NOTICE is hereby given that an application has been made for an amendment to the Eligibility Rules of the Australian Federated Union of Locomotive Employees, Queensland Union of Employees. Interested persons may obtain a copy of the application from the Applicant.

All Notices of Objection to such amendment must be lodged in the Registry within thirty-five days from the date of publication of this Notice.

Dated 4 July 2008.

G D SAVILL,
Industrial Registrar.



INDUSTRIAL GAZETTE NOTICE

WORKERS' COMPENSATION AND REHABILITATION ACT 2003

Cost of hospitalisation

For section 218A of the *Workers' Compensation and Rehabilitation Act 2003*, from 1 July 2008 the costs for which an insurer is liable for hospitalisation of a worker as an inpatient at a public hospital are set out in the Schedule.

SCHEDULE



PUBLIC HOSPITALISATION TABLE OF COSTS

1 July 2008

PUBLIC HOSPITALISATION TABLE OF COSTS

TABLE OF CONTENTS

INTRODUCTION	4
APPLICATION	4
EXTENT OF INSURER'S LIABILITY	4
DEFINITIONS	5
INPATIENTS	6
1. INPATIENT SERVICES	6
2. INPATIENT FEE TYPES	6
2.1 SMALL HOSPITALS	7
2.1.1 Small Hospitals - Group X Hospital Fees	7
2.1.2 Small Hospitals - Group X Hospital Item Numbers	7
2.2 SUB AND NON-ACUTE CARE	7
2.2.1 Sub and Non-Acute Care Fees – Hospital Groups A,B,P,T	7
2.2.2 Sub and Non-Acute Care Item Numbers – Hospital Groups A,B,P,T	7
2.3 ACUTE CARE	8
2.3.1 Acute Care Fees - Hospital Groups A,B,P,T	8
2.3.2 Acute Care Item Numbers - Hospital Groups A,B,P,T	10
3. INTERFACILITY TRANSFER COSTS AND ESCORT FEE ITEM NUMBER.....	10
HOSPITAL GROUPS	11
Q-COMP DRG ITEM NUMBER CODES	12

PUBLIC HOSPITALISATION TABLE OF COSTS

INTRODUCTION

This Table of Costs commences 1 July 2008.

This Table of Costs sets out the procedures, conditions and costs applicable for the treatment of workers as public inpatients in Queensland public hospitals.

This Table of Costs is based on the Queensland Health Public Hospital Cost Benchmarks, with charges established on a cost recovery basis. Queensland Health reviews these costs on an annual basis. Q-COMP will review any adjustments to the Queensland Health Public Hospital Cost Benchmarks and gazette a Table of Costs when appropriate.

APPLICATION

This Table of Costs applies only to the costs of the services provided to a worker who is admitted to a public hospital (an inpatient) as a public patient on or after 1 July 2008.

This Table of Costs applies only to a worker receiving treatment for the worker's injury in a public hospital as a public patient under the care of a public hospital doctor.

This Table of Costs does not apply to the cost of treatment provided to a worker who elects to be treated as a private patient in the public hospital sector.

[NOTE: To be admitted to a public hospital as a private patient, the worker must elect to be treated as a private patient by a doctor of their choice. Unless prior approval is obtained from the insurer, Queensland Health will bill the worker for the cost].

EXTENT OF INSURER'S LIABILITY

For **non-elective** hospitalisation an insurer will be liable for the cost of public hospitalisation for not more than 4 days. After this time, an insurer will be liable if the insurer considers the non-elective hospitalisation is reasonable having regard to the worker's injury. In determining what is reasonable, an insurer must have regard to the medical determination made by the worker's treating medical practitioner.

It is recognised that for non-elective hospitalisation, Queensland Health will provide services, in many cases, before the claimant has made a claim. Accordingly, insurers will be making a retrospective assessment of the reasonableness of a stay of more than 4 days.

An insurer is liable for costs of **elective** hospitalisation to the extent it is agreed to by the insurer under arrangements entered into between the insurer and the worker (or someone for the worker) *before* the public hospitalisation.

An insurer's liability for public hospitalisation includes the provision of the facility as well as medical treatment provided at the hospital.

The insurer must pay the cost of public hospitalisation and medical treatment whether the public hospitalisation is provided at 1 time or at different times.

For an inpatient of a public hospital, a discharge summary report is included in the cost of hospitalisation.

In some situations, Queensland Health will make arrangements with private hospitals (contracted hospitals) to provide inpatient services for and on behalf of Queensland Health. These services will be billed by Queensland Health under this Table of Costs.

DEFINITIONS

The following definitions apply -

contracted hospital means a hospital that provides public health services to a patient under a contractual arrangement with the State, but does not include-

- (a) a public sector hospital under the Health Services Act 1991; or
- (b) a Mater Misericordiae Public Hospital.

elective hospitalisation means hospitalisation involving a treatment or procedure decided on by a worker or the worker's doctor that is of advantage to the worker, but is not fundamental in the treatment of the worker's injury.

hospital includes a day hospital.

hospitalisation, of a worker, means the admission of the worker in a private hospital or public hospital for medical treatment for the worker's injury.

private hospital means a hospital to which a worker is admitted as a private patient.

private patient means a worker who is a patient of a private doctor at a hospital that is not a contracted hospital.

[NOTE: To be admitted to a public hospital as a private patient, the worker must elect to be treated as a private patient by a doctor of their choice. Unless prior approval is obtained from the insurer, Queensland Health will bill the worker for the cost].

public hospital means a hospital to which a worker is admitted as a public patient.

public patient means a patient who is not a private patient.

An **inpatient in a public hospital** is a public patient admitted at a public hospital and includes admission as a public patient to a Mater Misericordiae Public Hospital or transferred to a contracted hospital.

Length of stay

The length of stay is calculated by subtracting the date the patient is admitted from the date of separation. All leave days*, including the day the patient went on leave are excluded. A day is measured from midnight to 2359 hours and includes full and partial days. A patient admitted and separated on the same day (a "same day" patient) is allocated a length of stay of one day.

*A leave day is where a patient is away from a hospital overnight, eg to have a meal with family at Christmas.

Queensland Health operates a large number of hospitals that are grouped according to the level of complexity and intensity of services offered. These are detailed on page 11.

PUBLIC HOSPITALISATION TABLE OF COSTS

INPATIENTS

1. INPATIENT SERVICES

Inpatient charges for public workers' compensation patients include the following services:

- Appropriate accommodation; shared ward, or single room if deemed clinically necessary
- Hospital hotel services, eg. meals
- Medical care provided by public hospital doctors
- Nursing care
- Pathology and imaging
- Pre-operative and post-operative care whilst an inpatient in hospital
- Theatre use, theatre consumables, in-theatre care and surgical implants
- All pharmaceutical and dressings including those issued on discharge- however the worker may be required to make a co-payment, which may be reimbursed by the insurer
- Allied Health services
- Discharge planning services
- Aids and appliances including those necessary for effective discharge- these may be loaned or given to the patient, depending on the facility
- Clerical and administrative support
- Discharge summary report

Under section 213(4) of the *Workers' Compensation and Rehabilitation Act 2003*, the workers' compensation medical certificate must be free of charge. As such, medical certification is provided at no additional charge.

Inpatient charges for public workers' compensation patients *do not* include emergency department or outpatient charges.

2. INPATIENT FEE TYPES

Queensland Health adopts a casemix-based pricing model for most acute public inpatients and a specified bed day fee for other types of public patients.

Admitted services are charged according to the hospital category and the patient diagnosis. There are three categories of inpatient fee types:

1. Small Hospitals (Hospital Group X) – handle acute, sub-acute and non-acute
2. Sub and Non-Acute (Hospital Groups A,B,P,T)
3. Acute (Hospital Groups A,B,P,T)

2.1 SMALL HOSPITALS

2.1.1 Small Hospitals - Group X Hospital Fees

These are smaller facilities in rural and remote areas. Treatment provided in these facilities is costed on a per day basis irrespective of the diagnosis category or the type of treatment. For all admissions the invoice will multiply the number of days by the per day cost for that day. This applies to acute, sub-acute and non-acute types of care.

Small Hospital Item No Code	Description	Max Fee Excl. GST
99800	Small Hospital – Group X	\$1,136 per day

NB. Because small hospitals handle acute, sub-acute and non-acute types of care, the item number is not based on a DRG code.

2.1.2 Small Hospitals - Group X Hospital Item Numbers

The Q-COMP item number for small hospitals is based on two components:

- the Small Hospital Item No Code (listed in the table above); and
- the corresponding hospital code (see page 11)

Small Hospital Item No Code + Q-COMP Hospital Code

2.2 SUB AND NON-ACUTE CARE

2.2.1 Sub and Non-Acute Care Fees – Hospital Groups A,B,P,T

Some types of treatment that a patient may receive are not considered “acute”. These types of care include rehabilitation, palliative care and maintenance care. The following fees and item numbers are for sub and non-acute care provided by hospitals in categories A, B, P and T. The fee is derived by multiplying the worker’s length of stay by the per day rate for the relevant type of care.

Sub and Non-Acute Item No Code	Description	Max Fee Excl. GST
99801	Maintenance	\$760 per day
99802	Rehabilitation – Same Day	\$253 per day
99803	Rehabilitation - Overnight	\$1,133 per day
99804	Palliative	\$887 per day

NB. Charges for like services in Hospital Groups A, B, P & T are the same.

2.2.2 Sub and Non-Acute Care Item Numbers – Hospital Groups A,B,P,T

The Q-COMP item numbers for sub and non-acute care are based on two components:

- the Sub and Non-Acute Care Item No Code (listed in the table above); and
- the corresponding hospital code (see page 11)

2.3 ACUTE CARE

2.3.1 Acute Care Fees - Hospital Groups A,B,P,T

Patients receiving acute care in Hospital Groups A,B,P,T have their fees calculated under a case-mix basis. This type of fee relates specifically to the condition for which the patient was treated and for how long they were treated. The case-mix fee for public hospitalisation will be determined by three key elements: -

- *Hospitalisation category* – with its relevant base rate;
- *Diagnosis category* (DRG code) – the type of condition as described by the Diagnosis Related Group with its applicable *cost weighting*; and
- *Length of stay* (LOS) – the worker's length of stay in hospital compared and adjusted to the average for that DRG via "trim points".

An average length of stay and "trim points" have been calculated for each diagnosis category (DRG code). The *average length of stay* and *cost weighting* may vary between hospital groups.

Base Rates

The base rate figure takes into account the variances in infrastructure between hospital groups.

Hospital Group	Base Rate
Group A	\$4,300
Group B & P	\$4,348
Group T	\$4,420

Long Stay Per Day Rates

The long stay per day rates take into account the variances in infrastructure between hospital groups.

Hospital Group	Type	Long Stay Per Day Rates
Group A	Medical	\$932
Group A	Surgical	\$1,213
Group A	Other	\$943
Group B	Medical	\$920
Group B	Surgical	\$1,210
Group B	Other	\$766
Group P	Medical	\$1,040
Group P	Surgical	\$1,356
Group P	Other	\$1,110
Group T	Medical	\$889
Group T	Surgical	\$1,169
Group T	Other	\$740

Extra Long Stay Per Day Rates

The extra long stay per day rates take into account the variances in infrastructure between hospital groups.

Hospital Group	Extra Long Stay Per Day Rates
Group A	\$422
Group B & P	\$427
Group T	\$348

Trim points

The trim points are calculated as follows:

- **Low trim point** – the point where it has been calculated ten percent of all stays fall below. For an individual DRG, at least ninety percent of the patients would have a length of stay greater than or equal to the low trim point.

NB. The distribution for most DRGs is so skewed that the low trim point is usually just one day. For these DRGs there will be no short stay outliers. There are 505 (of 665) DRGs where the low trim point is one day.

- **High trim point** – the point where it has been calculated ninety-five percent of all stays fall below. For an individual DRG, it means that ninety-five percent of the patients will have a length of stay less than or equal to the high trim point.
- **Extra high trim point** – the point where it has been calculated ninety-eight percent of all stays fall below. For an individual DRG, it means that ninety-eight percent of the patients will have a length of stay less than or equal to the extra high trim point.

Formulas

Depending on where the length of stay falls in relation to the trim points, there are four different formulas which may be used to calculate the casemix fee.

1. **Inlier** – length of stay falls between the low and high trim points (inclusive)

$$\text{Fee} = \text{DRG cost weight} \times \text{Base rate}$$

2. **Short Stay Outlier** – length of stay falls below the low trim point

$$\text{Fee} = \frac{\text{Actual length of stay} \times \text{Inlier Fee}}{\text{Low Trim Point}}$$

3. **Long Stay Outlier** – length of stay is above the high trim point and less than or equal to the extra high trim point. A long stay per day rate is applied to each DRG type (medical, surgical or other in each hospital category A, B, P and T).

$$\text{Fee} = \text{Inlier Fee} + (\text{Actual length of stay} - \text{High Trim Point}) \times \text{Long Stay Per Day Rate}$$

4. **Extra Long Stay Outlier** – length of stay is anywhere above the extra high trim point

Fee = Inlier Fee

+ (Extra High Trim Point – High Trim Point) x Long Stay Per Day Rate

+ (Actual Length of Stay – Extra High Trim Point) x Extra Long Stay Per Day Rate

2.3.2 Acute Care Item Numbers - Hospital Groups A,B,P,T

The Q-COMP item number for acute care is based on two components:

- The Diagnosis Related Group (DRG) classification code; and
- The corresponding hospital code (see page 11)

Each **DRG code** has been allocated a Q-COMP DRG Item Number Code. (For full list see pages 12-15)

For example:

DRG code	Q-COMP DRG Item Number Code
G10Z	99247
I02B	99312

The Q-COMP item number for acute fees combines these two components:

Q-COMP DRG Item Number Code + Q-COMP Hospital Code

3. INTERFACILITY TRANSFER COSTS AND ESCORT FEE ITEM NUMBER

This item is for transfer between hospitals and can include one or more of the following – escort, paramedic, ambulance fees. This item *does not* cover transportation from the hospital to a patient's home.

Q-COMP Item No	Description	Max Fee Excl. GST
99805000	Queensland Health Interfacility Transfer/Escort Cost	As billed

NB. The Q-COMP QAS grant covers pre-hospital care but *does not* cover interfacility transfers

HOSPITAL GROUPS

GROUP A	Hospital Code
Gold Coast	050
Mater General	001
Mater Mothers	003
Prince Charles	004
Princess Alexandra	011
Royal Brisbane & Womens'	201
Townsville	200

GROUP B

Bundaberg	062
Caboolture	030
Cairns	214
Caloundra	043
Gladstone	136
Gympie	068
Hervey Bay	069
Ipswich	015
Logan	029
Mackay	172
Maryborough	071
Mount Isa	246
Nambour	049
QE II	022
Redcliffe	016
Redland	028
Rockhampton	141
Toowoomba	104

GROUP P

Mater Children's	002
Royal Children's	007

GROUP T

Atherton	211
Ayr	191
Beaudesert	041
Dalby	092
Innisfail	222
Kingaroy	070
Mareeba	223
Roma	119
Thursday Island	226
Warwick	105

GROUP X	Hospital Code
Alpha	131
Aramac	151
Augathella	111
Aurukun	230
Babinda	212
Bamaga	213
Baralaba	132
Barcaldine	152
Biggenden	061
Biloela	133
Blackall	153
Blackwater	134
Boonah	042
Boulia	154
Bowen	192
Burketown	241
Camooweal	242
Charleville	112
Charters Towers	193
Cherbourg	063
Childers	064
Chillagoe	214
Chinchilla	091
Clermont	171
Cloncurry	243
Collinsville	194
Cooktown	216
Croydon	217
Cunnamulla	113
Dajarra	251
Dirranbandi	114
Doomadgee	252
Dunwich	025
Dysart	176
Eidsvold	065
Emerald	135
Esk	044
Forsayth	218
Gatton	045
Gayndah	066
Georgetown	219
Gin Gin	067
Goondiwindi	093
Gordonvale	220
Herberton	221
Home Hill	195
Hopevale	231
Hughenden	244
Ingham	196
Inglewood	094
Injune	115
Isisford	160

GROUP X	Hospital Code
Jandowae	095
Julia Creek	245
Jundah	155
Karumba	250
Kilcoy	046
Kowanyama	253
Laidley	047
Lockhart River	233
Longreach	156
Maleny	048
Miles	097
Millmerran	098
Mitchell	116
Monto	072
Moranbah	173
Mornington Island	249
Mossman	244
Mount Morgan	139
Mount Perry	073
Moura	140
Mundubbera	074
Mungindi	117
Murgon	075
Muttaburra	157
Nanango	076
Normanton	247
Oakey	099
Palm Island (Joyce Palmer Health Service)	197
Porpuraaw	254
Proserpine	174
Quilpie	118
Richmond	248
Sarina	175
Springsure	142
St George	120
Stanthorpe	100
Surat	121
Tambo	158
Tara	101
Taroom	102
Texas	103
Theodore	143
Tully	227
Weipa	228
Winton	159
Wondai	077
Woorabinda	145
Wujal Wujal	232
Wynnum	024
Yarrabah	229
Yeppoon	144

Q-COMP DRG ITEM NUMBER CODES

DRG	Q-COMP DRG Item Number Code	TYPE	DRG	Q-COMP DRG Item Number Code	TYPE	DRG	Q-COMP DRG Item Number Code	TYPE
901Z	99001	S	B73Z	99060	M	D67B	99119	M
902Z	99002	S	B74Z	99061	M	E01A	99120	S
903Z	99003	S	B75Z	99062	M	E01B	99121	S
960Z	99004	M	B76A	99063	M	E02A	99122	S
961Z	99005	M	B76B	99064	M	E02B	99123	S
963Z	99006	M	B77Z	99065	M	E02C	99124	S
A01Z	99007	S	B78A	99066	M	E40Z	99125	O
A03Z	99008	S	B78B	99067	M	E41Z	99126	O
A05Z	99009	S	B79Z	99068	M	E60A	99127	M
A06Z	99010	S	B80Z	99069	M	E60B	99128	M
A07Z	99011	S	B81A	99070	M	E61A	99129	M
A08A	99012	S	B81B	99071	M	E61B	99130	M
A08B	99013	S	C01Z	99072	S	E62A	99131	M
A09A	99014	S	C02Z	99073	S	E62B	99132	M
A09B	99015	S	C03Z	99074	S	E62C	99133	M
A40Z	99016	O	C04Z	99075	S	E63Z	99134	M
A41A	99017	O	C05Z	99076	S	E64Z	99135	M
A41B	99018	O	C10Z	99077	S	E65A	99136	M
B01Z	99019	S	C11Z	99078	S	E65B	99137	M
B02A	99020	S	C12Z	99079	S	E66A	99138	M
B02B	99021	S	C13Z	99080	S	E66B	99139	M
B02C	99022	S	C14Z	99081	S	E66C	99140	M
B03A	99023	S	C15A	99082	S	E67A	99141	M
B03B	99024	S	C15B	99083	S	E67B	99142	M
B04A	99025	S	C16A	99084	S	E68Z	99143	M
B04B	99026	S	C16B	99085	S	E69A	99144	M
B05Z	99027	S	C60A	99086	M	E69B	99145	M
B06A	99028	S	C60B	99087	M	E69C	99146	M
B06B	99029	S	C61Z	99088	M	E70A	99147	M
B07A	99030	S	C62Z	99089	M	E70B	99148	M
B07B	99031	S	C63A	99090	M	E71A	99149	M
B40Z	99032	O	C63B	99091	M	E71B	99150	M
B41Z	99033	O	D01Z	99092	S	E71C	99151	M
B60A	99034	M	D02A	99093	S	E72Z	99152	M
B60B	99035	M	D02B	99094	S	E73A	99153	M
B61A	99036	M	D02C	99095	S	E73B	99154	M
B61B	99037	M	D03Z	99096	S	E73C	99155	M
B62Z	99038	M	D04A	99097	S	E74A	99156	M
B63Z	99039	M	D04B	99098	S	E74B	99157	M
B64A	99040	M	D05Z	99099	S	E74C	99158	M
B64B	99041	M	D06Z	99100	S	E75A	99159	M
B65Z	99042	M	D09Z	99101	S	E75B	99160	M
B66A	99043	M	D10Z	99102	S	E75C	99161	M
B66B	99044	M	D11Z	99103	S	F01A	99162	S
B67A	99045	M	D12Z	99104	S	F01B	99163	S
B67B	99046	M	D13Z	99105	S	F02Z	99164	S
B67C	99047	M	D14Z	99106	S	F03Z	99165	S
B68A	99048	M	D40Z	99107	O	F04A	99166	S
B68B	99049	M	D60A	99108	M	F04B	99167	S
B69A	99050	M	D60B	99109	M	F05A	99168	S
B69B	99051	M	D61Z	99110	M	F05B	99169	S
B70A	99052	M	D62Z	99111	M	F06A	99170	S
B70B	99053	M	D63A	99112	M	F06B	99171	S
B70C	99054	M	D63B	99113	M	F07A	99172	S
B70D	99055	M	D64Z	99114	M	F07B	99173	S
B71A	99056	M	D65Z	99115	M	F08A	99174	S
B71B	99057	M	D66A	99116	M	F08B	99175	S
B72A	99058	M	D66B	99117	M	F09A	99176	S
B72B	99059	M	D67A	99118	M	F09B	99177	S

M=Medical, S=Surgical, O=Other

DRG	Q-COMP DRG Item Number Code	TYPE	DRG	Q-COMP DRG Item Number Code	TYPE	DRG	Q-COMP DRG Item Number Code	TYPE
F10Z	99178	S	G04C	99238	S	H42C	99298	O
F11A	99179	S	G05A	99239	S	H60A	99299	M
F11B	99180	S	G05B	99240	S	H60B	99300	M
F12Z	99181	S	G06Z	99241	S	H60C	99301	M
F13Z	99182	S	G07A	99242	S	H61A	99302	M
F14A	99183	S	G07B	99243	S	H61B	99303	M
F14B	99184	S	G08A	99244	S	H62A	99304	M
F14C	99185	S	G08B	99245	S	H62B	99305	M
F15Z	99186	S	G09Z	99246	S	H63A	99306	M
F16Z	99187	S	G10Z	99247	S	H63B	99307	M
F17Z	99188	S	G11A	99248	S	H64A	99308	M
F18Z	99189	S	G11B	99249	S	H64B	99309	M
F19Z	99190	S	G12A	99250	S	I01Z	99310	S
F20Z	99191	S	G12B	99251	S	I02A	99311	S
F21A	99192	S	G42A	99252	O	I02B	99312	S
F21B	99193	S	G42B	99253	O	I03A	99313	S
F40Z	99194	O	G43Z	99254	O	I03B	99314	S
F41A	99195	O	G44A	99255	O	I03C	99315	S
F41B	99196	O	G44B	99256	O	I04Z	99316	S
F42A	99197	O	G44C	99257	O	I05Z	99317	S
F42B	99198	O	G45A	99258	O	I06Z	99318	S
F60A	99199	M	G45B	99259	O	I07Z	99319	S
F60B	99200	M	G46A	99260	O	I08A	99320	S
F60C	99201	M	G46B	99261	O	I08B	99321	S
F61Z	99202	M	G46C	99262	O	I09A	99322	S
F62A	99203	M	G60A	99263	M	I09B	99323	S
F62B	99204	M	G60B	99264	M	I10A	99324	S
F63A	99205	M	G61A	99265	M	I10B	99325	S
F63B	99206	M	G61B	99266	M	I11Z	99326	S
F64Z	99207	M	G62Z	99267	M	I12A	99327	S
F65A	99208	M	G63Z	99268	M	I12B	99328	S
F65B	99209	M	G64Z	99269	M	I12C	99329	S
F66A	99210	M	G65A	99270	M	I13A	99330	S
F66B	99211	M	G65B	99271	M	I13B	99331	S
F67A	99212	M	G66A	99272	M	I13C	99332	S
F67B	99213	M	G66B	99273	M	I14Z	99333	S
F68Z	99214	M	G67A	99274	M	I15Z	99334	S
F69A	99215	M	G67B	99275	M	I16Z	99335	S
F69B	99216	M	G68A	99276	M	I17Z	99336	S
F70A	99217	M	G68B	99277	M	I18Z	99337	S
F70B	99218	M	G69Z	99278	M	I19Z	99338	S
F71A	99219	M	G70A	99279	M	I20Z	99339	S
F71B	99220	M	G70B	99280	M	I21Z	99340	S
F72A	99221	M	H01A	99281	S	I23Z	99341	S
F72B	99222	M	H01B	99282	S	I24Z	99342	S
F73A	99223	M	H02A	99283	S	I25Z	99343	S
F73B	99224	M	H02B	99284	S	I27A	99344	S
F74Z	99225	M	H02C	99285	S	I27B	99345	S
F75A	99226	M	H05A	99286	S	I28A	99346	S
F75B	99227	M	H05B	99287	S	I28B	99347	S
F75C	99228	M	H06Z	99288	S	I29Z	99348	S
G01A	99229	S	H07A	99289	S	I30Z	99349	S
G01B	99230	S	H07B	99290	S	I60Z	99350	M
G02A	99231	S	H08A	99291	S	I61Z	99351	M
G02B	99232	S	H08B	99292	S	I63Z	99352	M
G03A	99233	S	H40Z	99293	O	I64A	99353	M
G03B	99234	S	H41A	99294	O	I64B	99354	M
G03C	99235	S	H41B	99295	O	I65A	99355	M
G04A	99236	S	H42A	99296	O	I65B	99356	M
G04B	99237	S	H42B	99297	O	I66A	99357	M

M=Medical, S=Surgical, O=Other

DRG	Q-COMP DRG Item Number Code	TYPE	DRG	Q-COMP DRG Item Number Code	TYPE	DRG	Q-COMP DRG Item Number Code	TYPE
I66B	99358	M	K01Z	99418	S	M03B	99478	S
I67A	99359	M	K02Z	99419	S	M04A	99479	S
I67B	99360	M	K03Z	99420	S	M04B	99480	S
I68A	99361	M	K04Z	99421	S	M05Z	99481	S
I68B	99362	M	K05Z	99422	S	M06A	99482	S
I68C	99363	M	K06Z	99423	S	M06B	99483	S
I69A	99364	M	K07Z	99424	S	M40Z	99484	O
I69B	99365	M	K08Z	99425	S	M60A	99485	M
I69C	99366	M	K09Z	99426	S	M60B	99486	M
I70Z	99367	M	K40Z	99427	O	M61A	99487	M
I71A	99368	M	K60A	99428	M	M61B	99488	M
I71B	99369	M	K60B	99429	M	M62A	99489	M
I71C	99370	M	K61Z	99430	M	M62B	99490	M
I72A	99371	M	K62A	99431	M	M63Z	99491	M
I72B	99372	M	K62B	99432	M	M64Z	99492	M
I73A	99373	M	K62C	99433	M	N01Z	99493	S
I73B	99374	M	K63Z	99434	M	N02A	99494	S
I73C	99375	M	K64A	99435	M	N02B	99495	S
I74A	99376	M	K64B	99436	M	N03A	99496	S
I74B	99377	M	L02A	99437	S	N03B	99497	S
I74C	99378	M	L02B	99438	S	N04Z	99498	S
I75A	99379	M	L03A	99439	S	N05A	99499	S
I75B	99380	M	L03B	99440	S	N05B	99500	S
I75C	99381	M	L04A	99441	S	N06Z	99501	S
I76A	99382	M	L04B	99442	S	N07Z	99502	S
I76B	99383	M	L04C	99443	S	N08Z	99503	S
I76C	99384	M	L05A	99444	S	N09Z	99504	S
I77A	99385	M	L05B	99445	S	N10Z	99505	S
I77B	99386	M	L06A	99446	S	N11A	99506	S
I78A	99387	M	L06B	99447	S	N11B	99507	S
I78B	99388	M	L07A	99448	S	N60A	99508	M
J01Z	99389	S	L07B	99449	S	N60B	99509	M
J06A	99390	S	L08A	99450	S	N61Z	99510	M
J06B	99391	S	L08B	99451	S	N62A	99511	M
J07A	99392	S	L09A	99452	S	N62B	99512	M
J07B	99393	S	L09B	99453	S	O01A	99513	S
J08A	99394	S	L09C	99454	S	O01B	99514	S
J08B	99395	S	L40Z	99455	O	O01C	99515	S
J09Z	99396	S	L41Z	99456	O	O02A	99516	S
J10Z	99397	S	L42Z	99457	O	O02B	99517	S
J11Z	99398	S	L60A	99458	M	O03Z	99518	S
J12A	99399	S	L60B	99459	M	O04Z	99519	S
J12B	99400	S	L60C	99460	M	O05Z	99520	S
J12C	99401	S	L61Z	99461	M	O60A	99521	M
J13A	99402	S	L62A	99462	M	O60B	99522	M
J13B	99403	S	L62B	99463	M	O60C	99523	M
J14Z	99404	S	L63A	99464	M	O61Z	99524	M
J60A	99405	M	L63B	99465	M	O63Z	99525	M
J60B	99406	M	L63C	99466	M	O64A	99526	M
J62A	99407	M	L64Z	99467	M	O64B	99527	M
J62B	99408	M	L65A	99468	M	O66A	99528	M
J63Z	99409	M	L65B	99469	M	O66B	99529	M
J64A	99410	M	L66Z	99470	M	P01Z	99530	S
J64B	99411	M	L67A	99471	M	P02Z	99531	S
J65A	99412	M	L67B	99472	M	P03Z	99532	S
J65B	99413	M	L67C	99473	M	P04Z	99533	S
J67A	99414	M	M01Z	99474	S	P05Z	99534	S
J67B	99415	M	M02A	99475	S	P06A	99535	S
J68A	99416	M	M02B	99476	S	P06B	99536	S
J68B	99417	M	M03A	99477	S	P60A	99537	M

M=Medical, S=Surgical, O=Other

DRG	Q-COMP DRG Item Number Code	TYPE	DRG	Q-COMP DRG Item Number Code	TYPE	DRG	Q-COMP DRG Item Number Code	TYPE
P60B	99538	M	T64A	99598	M	Z60C	99658	M
P61Z	99539	M	T64B	99599	M	Z61Z	99659	M
P62Z	99540	M	U40Z	99600	O	Z62Z	99660	M
P63Z	99541	M	U60Z	99601	M	Z63A	99661	M
P64Z	99542	M	U61A	99602	M	Z63B	99662	M
P65A	99543	M	U61B	99603	M	Z64A	99663	M
P65B	99544	M	U62A	99604	M	Z64B	99664	M
P65C	99545	M	U62B	99605	M	Z65Z	99665	M
P65D	99546	M	U63A	99606	M			
P66A	99547	M	U63B	99607	M			
P66B	99548	M	U64Z	99608	M			
P66C	99549	M	U65Z	99609	M			
P66D	99550	M	U66Z	99610	M			
P67A	99551	M	U67Z	99611	M			
P67B	99552	M	U68Z	99612	M			
P67C	99553	M	V60A	99613	M			
P67D	99554	M	V60B	99614	M			
Q01Z	99555	S	V61Z	99615	M			
Q02A	99556	S	V62A	99616	M			
Q02B	99557	S	V62B	99617	M			
Q60A	99558	M	V63A	99618	M			
Q60B	99559	M	V63B	99619	M			
Q60C	99560	M	V64Z	99620	M			
Q61A	99561	M	W01Z	99621	S			
Q61B	99562	M	W02Z	99622	S			
Q61C	99563	M	W03Z	99623	S			
Q62Z	99564	M	W04Z	99624	S			
R01A	99565	S	W60Z	99625	M			
R01B	99566	S	W61Z	99626	M			
R02A	99567	S	X02Z	99627	S			
R02B	99568	S	X04A	99628	S			
R03A	99569	S	X04B	99629	S			
R03B	99570	S	X05Z	99630	S			
R04A	99571	S	X06A	99631	S			
R04B	99572	S	X06B	99632	S			
R60A	99573	M	X07A	99633	S			
R60B	99574	M	X07B	99634	S			
R60C	99575	M	X60A	99635	M			
R61A	99576	M	X60B	99636	M			
R61B	99577	M	X60C	99637	M			
R61C	99578	M	X61Z	99638	M			
R62A	99579	M	X62A	99639	M			
R62B	99580	M	X62B	99640	M			
R63Z	99581	M	X63A	99641	M			
R64Z	99582	M	X63B	99642	M			
S60Z	99583	M	X64A	99643	M			
S65A	99584	M	X64B	99644	M			
S65B	99585	M	Y01Z	99645	S			
S65C	99586	M	Y02A	99646	S			
T01A	99587	S	Y02B	99647	S			
T01B	99588	S	Y03Z	99648	S			
T01C	99589	S	Y60Z	99649	M			
T60A	99590	M	Y61Z	99650	M			
T60B	99591	M	Y62A	99651	M			
T61A	99592	M	Y62B	99652	M			
T61B	99593	M	Z01A	99653	S			
T62A	99594	M	Z01B	99654	S			
T62B	99595	M	Z40Z	99655	O			
T63A	99596	M	Z60A	99656	M			
T63B	99597	M	Z60B	99657	M			

M=Medical, S=Surgical, O=Other

CONTENTS

(Gazette No. 11—pp. 245-283)

INDUSTRIAL COURT NOTICES

	Page
DECISIONS—	
Timothy Edward Jerome AND Queensland Education Moreton Region	246
Roger Michael Poed AND Q-COMP and Anor	247-256
Cindy Challen AND Queensland Health.....	256-266
NOTICES—	
Queensland Industrial Relations Commission.....	245
Q Comp	268-282
Australian Federated Union of Locomotive Employees, Queensland Union of Employees: Application for Amendment of Eligibility Rule of an Industrial Organisation	267