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INDUSTRIAL COURT OF QUEENSLAND

Industrial Relations Act 1999 - s. 335 - application for costs

Timothy Edward Jerome AND Queensland Education Moreton Region (C/2008/16)

PRESIDENT HALL 14 August 2008

DECISION

By a decision delivered on 31 March 2008, now reported at 187 QGIG 190, the Queensland Industrial Relations Commission rejected a case developed by Mr Jerome that he had been dismissed and, in consequence, dismissed Mr Jerome's Application for relief under s. 74 of the *Industrial Relations Act 1999* (the Act). Mr Jerome appealed against that decision to this Court. By a decision of 1 July 2008, now reported at 188 QGIG 246, the Court dismissed Mr Jerome's Appeal. All questions as to costs were reserved. An order was made that if costs were pursued by the Respondent, arrangements would be made to take submissions in writing. In fact, the Respondent did seek costs and written submissions about costs were exchanged between the parties.

The power of the Industrial Court of Queensland to award costs in matters under the Act arises from s. 335 which provides as follows:

"**335 General power to award costs**

(1) The court or commission may order a party to an application to pay costs, including witness expenses and other expenses, incurred by another party only if satisfied -

(a) the party made the application vexatiously or without reasonable cause; or

(b) for an application for reinstatement - the party caused costs, including witness expenses and other expenses, to be incurred by the other party because of an unreasonable act or omissions connected with the conduct of the application.

(2) In making an order, the court or commission may order a party to pay another party an amount reasonably payable to a person, who is not a lawyer, for representing the other party.".

Section 335 is a novel provision. Whilst provisions of the same general genre as s. 335 are commonly included in legislation dealing with industrial/employment relations, the normal pattern is for the provision to restrain the exercise of an admitted power to award costs, save where the proceedings have been instituted vexatiously or without reasonable cause, compare s. 824 of the *Workplace Relations Act 1996* (Cwth). Section 335 does not follow that pattern. Section 335 is the grant of power to award costs. It follows, that where a case is advanced that an application was instituted vexatiously or without reasonable cause and the Respondent is successful on that point, the Court has a full and ample discretion over the matter of costs; i.e. the award of costs does not follow as a matter of course where it is shown that an application was instituted vexatiously or without reasonable cause.

One may appreciate the need for such a provision as s. 335. The Act authorises proceedings by self-represented litigants. Forms and procedures are simplified to facilitate access to the Commission and to the Court by those without the benefit of legal representation. There is an inherent risk that a self-represented litigant of limited means will enthusiastically pursue a case doomed to failure. There may be an element of unfairness in finding that the proceedings were instituted "without reasonable cause" in the sense that they were proceedings objectively recognisable as having no prospect of success and imposing an unforeseen costs burden on the applicant. Doubtless, there will be other cases in which the award of costs would be unfair. The statutory discretion is not to be constrained. However, the case of the impoverished, self-represented applicant is an obvious case. But it is not this case.

The Appeal had been mentioned. Mr Jerome was told of the type of case which he needed to make to succeed in proceedings under s. 341(1) of the Act. Mr Jerome seems to have heard what he was told because he substantially reproduces the advice in his written submissions as to costs. In fact, Mr Jerome made no attempt to develop the type of appeal permitted by the Act and chose to press the type of case for which he considered provision should have been made. The Appeal had no objective prospect of success and Mr Jerome must have known that. As to the matter of impecuniosity, notwithstanding Mr Jerome's assertion that he is "not in a financial position to be paying costs", the Respondent has put in evidence to show that since his return from Pakistan (as to which, see 187 QGIG 190), Mr Jerome has been and continues to be employed by the Respondent on a regular (albeit casual) basis, and has been well remunerated. I entirely accept that payment of the costs incurred by the Respondent will be an unwanted burden to Mr Jerome, but that is not a sufficient basis to grant him indulgence at the Respondent's expense.

I order that the Appellant pay the Respondent's costs of and incidental to the Appeal and order that in the event that the parties are unable to agree, the Industrial Registrar is to assess those costs as they would have been assessed if the matter had been a matter in the Supreme Court of Queensland.

Dated 14 August 2008.

D.R. HALL, President.

Released: 14 August 2008

Appearances:
The Appellant in person.
Dr M. Spry, instructed by the Crown Solicitor for the Respondent.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - s. 474 - approval for eligibility rule amendment

Australian Building Construction Employees and Builders' Labourers' Federation (Queensland Branch) Union of Employees (RIO/2008/56)

VICE PRESIDENT LINNANE 11 August 2008

Application for approval to amend the organisation's eligibility rule - No objection - Application granted - *Industrial Relations Act 1999* - s. 474.

REPORT ON DECISION (as edited)

Delivering her decision from the Bench on 5 August 2008, Vice President Linnane stated:

> "This is an application by the Australian Building Construction Employees and Builders' Labourers' Federation (Queensland Branch) Union of Employees (BLF) to amend its eligibility rule. The application has been made in accordance with the provisions of the *Industrial Relations Act 1999* (Act) and the *Industrial Relations Regulation 2000*.
>
> The proposed amendment to the rules has been made in accordance with the rules of the BLF. There is no objection to the proposed amendment.

None of the matters outlined in s. 474(3) of the Act have been identified in the course of this hearing.

In those circumstances I am required by the provisions of the Act to grant consent to the amendment of the rules and I so do.

The operative date for amendments will be 5 August 2008.".

Order accordingly.

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

Hearing Details:
2008 5 August

Appearances:
Mr. K. Crank of the Australian Building Construction Employees and Builders' Labourers' Federation (Queensland Branch) Union of Employees for the Applicant.

Released: 11 August 2008

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - s. 473 - approval for other name amendment

Australian Building Construction Employees and Builders' Labourers' Federation (Queensland Branch) Union of Employees (RIO/2008/57)

VICE PRESIDENT LINNANE 11 August 2008

Application for approval to change name - No objection - No similar name - *Industrial Relations Act 1999* - s. 473.

REPORT ON DECISION (as edited)

Delivering her decision from the Bench on 5 August 2008, Vice President Linnane stated:

"This is an application by The Australian Building Construction Employees and Builders' Labourers' Federation (Queensland Branch) Union of Employees to amend its name to the Australian Building Construction Employees and Builders' Labourers' Federation (Queensland) Union of Employees.

I am satisfied that the change in name has been effected in accordance with the rules of the organisation and is made in accordance with the relevant provisions of the *Industrial Relations Act 1999* and the *Industrial Relations Regulation 2000*.

There is no objection to the change in name.

I find that the proposed name is not the same as the name of any existing industrial organisation of employees, nor is the proposed name so similar to the name of an existing organisation of employees as to be likely to cause confusion.

In the circumstances I approve the name amendment. The amendment is to be operative as and from 5 August 2008.

Order accordingly.".

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

Hearing Details:
2008 5 August

Appearances:
Mr. K. Crank of the Australian Building Construction Employees and Builders' Labourers' Federation (Queensland Branch) Union of Employees for the Applicant.

Released: 11 August 2008

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