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No. 8

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/2008/19	UNiTAB Agents Association (Joanne Lepik) Enterprise Bargaining - Certified Agreement 2008	20/5/08	CA/2005/201
CA/2008/20	UNiTAB Agents Association (Yvonne & Ron Melling) Enterprise Bargaining - Certified Agreement 2008	20/5/08	CA/2005/201
CA/2008/21	UNiTAB Agents Association (Margaret Roberts) Enterprise Bargaining - Certified Agreement 2008	20/5/08	CA/2005/201
CA/2008/22	UNiTAB Agents Association (AW & HC Coutts) Enterprise Bargaining - Certified Agreement 2008	20/5/08	CA/2005/201
CA/2008/23	UNiTAB Agents Association (Joan Collins) Enterprise Bargaining - Certified Agreement 2008	20/5/08	CA/2005/201
CA/2008/24	UNiTAB Agents Association (Kevin & Marianne Lever) Enterprise Bargaining - Certified Agreement 2008	20/5/08	CA/2005/201
CA/2005/25	UNiTAB Agents Association (Hazel Brown) Enterprise Bargaining - Certified Agreement 2008	20/5/08	CA/2005/201
CA/2008/26	UNiTAB Agents Association (Frank & Doris McRobbie) Enterprise	23/5/08	CA/2005/201

No/s	Title	Certified on and certificate issued	Cancelling No.
	Bargaining - Certified Agreement 2008		
CA/2008/27	UNiTAB Agents Association (Philip & Lynn Spencer) Enterprise Bargaining - Certified Agreement 2008	23/5/08	CA/2005/201
CA/2008/28	UNiTAB Agents Association (Jacqueline Bestzynski) Enterprise Bargaining - Certified Agreement 2008	23/5/08	CA/2005/201
CA/2008/29	UNiTAB Agents Association (A.W.G. & G. M. Baulch) Enterprise Bargaining - Certified Agreement 2008	23/5/08	CA/2005/501
CA/2008/30	UNiTAB Agents Association (Thelma Hurley) Enterprise Bargaining - Certified Agreement 2008	23/5/08	CA/2005/201
CA/2008/31	UNiTAB Agents Association (Darryl & Lorraine Norwood) Enterprise Bargaining - Certified Agreement 2008	23/5/08	CA/2005/201
CA/2008/32	UNiTAB Agents Association (Pamelia Ward) Enterprise Bargaining - Certified Agreement 2008	23/5/08	CA/2005/201

G.D. SAVILL,
Industrial Registrar.

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INDUSTRIAL COURT OF QUEENSLAND

Workers' Compensation and Rehabilitation Act 2003 - s. 561(1) - appeal against decision of industrial magistrate

Lisa-Marie Di Cello and Q-COMP (C/2008/15)

PRESIDENT HALL

6 June 2008

DECISION

The Appellant injured her right shoulder, neck and elbow on 31 January 2007. The injuries were work-related and the Appellant claimed benefits under the *Workers' Compensation and Rehabilitation Act 2003* (the Act). The Appeal does not concern that claim. The Appeal concerns a subsequent attempt by the Appellant to enlarge her claim to embrace a claim for symptoms in her left arm and left shoulder. The attempt failed. (See WorkCover's letter of 12 April 2007). The Appellant sought a Statutory Review of WorkCover's decision. By a letter dated 28 June 2007, Q-COMP confirmed WorkCover's decision. There was an appeal to the Industrial Magistrate's Court at Southport. It was heard on 17 December 2007 and dismissed on 11 January 2008. The Appellant now seeks redress in this Court.

The short issue before the Acting Industrial Magistrate was whether the symptoms in her left shoulder and elbow were caused by overuse of her left arm because of the work-related injuries to her right limb. (I should add that the Appellant was right handed.) The medical witnesses called by the Appellant were Dr Tomlinson (a neurosurgeon), Dr Pentis (an orthopaedic surgeon) and Dr Liu (the treating orthopaedic surgeon). Q-COMP called Dr Stabler (an orthopaedic surgeon). After a careful review of the evidence, the Acting Industrial Magistrate concluded:

"On the whole of the evidence before me I accept and prefer the evidence of Dr Stabler for the following reasons:

1. He saw M/s Di Cello on 29 March 2007 and the injury to the left side was reported to him at that time as 'the claimant has been experiencing pain in the left shoulder for the last two weeks.';
2. He canvassed the left shoulder injury at that time;
3. His opinion is based on his consultation at that time and the history given by M/s Di Cello;
4. His opinion is based on significant experience in this area;
5. I find that the opinion of Dr Tomlinson has not assisted this court in determining this matter;
6. Dr Pentis was not able to rule out normal degeneration and formed the view that he would have expected something more than day to day activities to cause injury to the left side. This is not the case on the evidence before me;

7. Dr Liu does not become aware of the left side injury until 26 September 2007, despite M/s Di Cello having a consultation with him on 30 April 2007. She does not raise the issue with him at that time. He examined the shoulder on 10 December 2007;
8. To my mind the evidence supports a finding in support of the opinion of Dr Stabler.

I accept and find on the balance of probabilities that M/s Di Cello was using her left side instead of her right side subsequent to the initial injury, however she was only involved in normal day to day activities during this time.

I accept and find on the balance of probabilities that the injuries to the left side of M/s Di Cello are due to constitutional factors.

I do not accept that these matters fall within the definition of 'injury' pursuant to the provisions of Section 32 of the Act. I do not accept that there was an initial injury to the left side during the initial incident on 31 January 2007 and there has been any aggravation pursuant to the provisions of Section 32(3)(b)."

I accept the submission that the circumstance that Dr Liu did not become aware of the left shoulder and elbow injury until 25 September 2007, despite having a consultation with the Appellant on 30 April 2007 (after the commencement of the symptoms), neither undermines Dr Liu's opinion nor throws light on the cause of the symptoms. In other circumstances the late disclosure to Dr Liu might reflect on the Appellant's credibility. However the Acting Industrial Magistrate expressly found her to be credible.

Dr Tomlinson's evidence was too readily put aside. With respect to the Acting Industrial Magistrate, Dr Tomlinson did not defer to the orthopaedic surgeons. Dr Tomlinson was prepared to defer to the treating orthopaedic surgeon, *viz.*, Dr Liu but as to the others said:

"Is this really a case where you would defer to the opinions of Dr Liu, who is an orthopaedic surgeon, and other orthopaedic surgeons who have examined the appellant in this instant in respect to diagnosing the problem in respect to the left shoulder? -- Well, you know, obviously at the end of the day the court, you know, is going to have to, I guess, use the orthopaedic argument to weight their evidence more heavily than mine. If they want to do that, that is fine, but from my point of view as a clinician who sees, you know, lots of people with lots of neck and shoulder and, you know, elbow conditions, arm pain of various sorts, I would say that what she is telling me is consistent with, you know, what you see in normal day to day clinical practice. So if you wanted to talk about operative technique, that would be fine, defer to the orthopaedic surgeons, an [sic] as I say the most important person to refer to is her treating doctor, Dr Liu."

That said, whilst the evidence of Dr Tomlinson was very helpful on the nature of the left limb injuries (as was the evidence of Dr Liu) on the question of "cause", his evidence was entirely intuitive (as was the evidence of Dr Liu). Both surgeons really relied on the proposition that the proximity in time between over-use of the left limb and the symptoms suggested a nexus. The surgeons whose evidence about cause was more expansive were Dr Pentis and Dr Stabler.

The evidence of Dr Pentis was:

"Right? --- Even though I know that Dr Stabler said in one of his reports in normal activities it won't, but sometimes normal activities will aggravate something that's there that may go with time or with stress.

And what do you - I don't want you to comment on what Dr Stabler might think normal activities are, but what would you put normal activities down to? -- Well, most normal things around the house, if they're below shoulder level may tend not to give you any problems. But if you decide to sort of hang a lot of washing, do some painting, do some scrubbing or cleaning that's high up, even do polishing activities below shoulder level, you can find that it stirs up the shoulder musculature.

So in effect, more rigorous activities using your left arm --?-- Usually is, something that's more repetitive and rigorous, specifically repetitive as well."

It was not the Appellant's evidence that she had used her left limb to perform tasks described by Dr Pentis. The Appellant's evidence was that (with difficulty) she was using her left limb for dressing, toileting, cleaning her teeth, drinking etc. That left the Acting Industrial Magistrate, with the evidence of Dr Stabler that the symptoms were constitutional and spontaneous. In cross-examination Dr Stabler explained:

"No, there is no such study. The reason I give my opinion is that I've been doing this for twenty-five years and I have an extraordinarily large number of people who have been totally disabled in one upper limb and use the other limb completely normally without having any problems at all, even though that is their only limb."

The Acting Industrial Magistrate chose to act on Dr Stabler's evidence and, in my view, was entitled to do so.

I dismiss the Appeal.

I reserve all questions as to costs.

Dated 6 June 2008.

D.R. HALL, President.

Released: 6 June 2008

Appearances:

Mr M. Pope instructed by Derek & Dwyer Lawyers, for the Appellant.

Mr S.A. McLeod, directly instructed, for the Respondent.

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INDUSTRIAL COURT OF QUEENSLAND

Workers' Compensation and Rehabilitation Act 2003 - s. 561(1) - appeal against decision of industrial magistrate

Stephen Horace MacDonald AND Q-COMP (No. 2) (C/2007/50)

PRESIDENT HALL

12 June 2008

DECISION

By an application dated 31 January 2005 and received by WorkCover on 15 February 2005, Mr MacDonald claimed benefits under the *Workers' Compensation and Rehabilitation Act 2003* (the Act). The claim related to a degenerative back which had become symptomatic. By a letter dated 7 April 2005, WorkCover rejected the claim on the ground that it was lodged out of time and on the ground that Mr MacDonald had not sustained an injury within s. 34 of the *WorkCover Queensland Act 1996* (which applied because of the date of the alleged injury). By an Application for Review dated 30 May 2005, Mr MacDonald sought a review of each of those decisions. Each decision was confirmed by Q-COMP. Mr MacDonald appealed to the Industrial Magistrate's Court at Brisbane. By a decision of 6 June 2006, the Industrial Magistrate set aside Q-COMP's decision on the issue of time, and in lieu thereof substituted a decision extending time until 15 February 2005. As to the issue whether Mr MacDonald had sustained an "injury", the Bench Sheet records:

"...I return the matter to Q-COMP in order that the matter be referred back to WorkCover to determine the issue of injury under the Act."

The Industrial Magistrate's Order in relation to the matter of "injury", which was binding on Q-COMP but not binding on WorkCover, was a cause of some consternation. On the hypothesis that Q-COMP was being directed to require WorkCover to review its earlier decision, the Order raised the issues discussed in *BP Refinery (Bulwer Island) Ltd v Bloor* (2003) 172 QGIG 1844, about WorkCover's capacity to revisit its decisions. On the hypothesis that the Order treated WorkCover's earlier decision that there was not an "injury" as a nullity, because it had been made on an out-of-time application (compare *Thompson v WorkCover Queensland* [2002] 1 Qd.R. 461 at 462 per Helman J), a question arose about whether the extension of time cured the defect. I mention those matters because Mr MacDonald treats the correspondence between WorkCover and Q-COMP dealing with the Industrial Magistrate's Order as a source of suspicion. In my view, the correspondence, which was made available to Mr MacDonald, is entirely innocent and arises out of an unfortunate order by the Industrial Magistrate. The regrettable delay in further progressing Mr MacDonald's claim had the same origin. However that may be, the remedy for excessive delay by WorkCover in processing a claim is the grant of a right to Statutory Review of the claim: not as Mr MacDonald would have it, the grant of the claim for benefits.

In any event, by a letter of 21 September 2006, WorkCover notified Mr MacDonald that the claim had been rejected on the ground that he had not suffered an "injury" within s. 34 of the *WorkCover Queensland Act 1996*. Mr MacDonald sought a Statutory Review. By a decision of 12 February 2007, Q-COMP confirmed WorkCover's decision. Mr MacDonald appealed to the Industrial Magistrate's Court at Brisbane. By a decision of 10 August 2008, the Industrial Magistrate dismissed the Appeal. Mr MacDonald now appeals to this Court.

It must be appreciated that the appeal to the Industrial Magistrate's Court from a decision of Q-COMP given in the Statutory Review process is not an appeal by way of "judicial review". It is an appeal by way of hearing *de novo*. The informal and hopefully inexpensive system of resolution by way of administrative review having failed, the claim for benefits is simply put to a trial. The Industrial Magistrate is not required to apply forensic forceps to the minutia of the procedural dealings between an appellant and each of WorkCover and Q-COMP. Neither is this Court authorised to embark on such a process. Procedural deficiencies in the Industrial Magistrate's Court are another matter. Such

deficiencies may well cause proceedings in the Industrial Magistrate's Court to miscarry. However, the deficiencies identified by Mr MacDonald are not of that character. Mr MacDonald's first concern is that the Industrial Magistrate who dealt with the matter when it was mentioned and who made the arrangements for the trial was not the Industrial Magistrate who ultimately presided at the trial. In a busy court, and the Magistrates Court of Brisbane is a busy court, that is a matter of everyday experience. It is a concern also to Mr MacDonald that the Industrial Magistrate who heard the appeal by way of hearing *de novo*, at one point revealed that His Honour had been a solicitor for thirty years. In Mr MacDonald's view, that claim is belied by His Honour's youthful appearance. Doubtless the Industrial Magistrate, and in deference to His Honour's colleagues I should indicate that it was Mr Parker, would be buoyed by Mr MacDonald's opinion of his youth, but that is not a legitimate basis for interfering with the trial. There is no substance to the assertion that Mr MacDonald was cross-examined by the Industrial Magistrate. The Transcript shows no more than that Mr MacDonald, who was self-represented, was led through a variety of formal matters which he might otherwise have omitted to mention. The exchanges between Mr MacDonald and the Industrial Magistrate do not go beyond what one would expect in the case of a querulous and challenging litigant. Mr MacDonald failed because of the state of the evidence.

Q-COMP was content to have the matter dealt with on the basis that Mr MacDonald suffered from a degenerative and symptomatic back but denied that his employment (at an Indian restaurant at South Bank) was a significant contributing factor. There were two medical witnesses, *viz.*, Dr K. Outerbridge, an orthopaedic surgeon who had been asked to prepare an independent report by Q-COMP, and Dr R. Jackson, a general practitioner who had treated Mr MacDonald. Dr Outerbridge was called by Q-COMP. Dr Jackson was called by Mr MacDonald. The Industrial Magistrate preferred the evidence of Dr Outerbridge, who concluded that Mr MacDonald's condition was not (relevantly) work-related, to that of Dr Jackson who took the contrary view. In part, the Industrial Magistrate was influenced by Dr Outerbridge's greater qualifications. Of more importance, however, was a finding adverse to the credibility of Dr Jackson and Mr MacDonald. The problem was that Dr Jackson's notes showed that Mr MacDonald had complained to him about the painful condition of his back before his employment at the Indian restaurant had commenced. The difficulty compounded by the circumstance that Dr Jackson had yielded to a request from Mr MacDonald to generate a memo explaining away the note as a breakdown in communication between doctor and patient, and by the circumstance that in cross-examination Dr Jackson chose to defend that explanation long after the attempt had been exposed as untenable. Subject to the limitations developed in *Fox v Percy* (2003) 214 CLR 118, matters of credibility are for the presiding judicial officer. No gloss on the general proposition applies here. On the contrary, a finding by the Industrial Magistrate that on the basis of demeanour he was prepared to treat Dr Jackson's evidence as credible, would have failed on the basis that it was contrary to the compelling inferences arising from the language used.

By a decision now reported at 187 QGIG 118, this Court rejected an application by Mr MacDonald to call additional evidence from a Dr Clarke, a Dr Lee and a physiotherapist. Mr MacDonald was granted leave to seek evidence from a Dr Sheehan. In the event, the evidence of Dr Sheehan was unhelpful to Mr MacDonald. On the evidence of Dr Sheehan one might find, as it is not in dispute, that Mr MacDonald suffers from a symptomatic back and might find also that the work which Mr MacDonald claims to have performed at the Indian restaurant was capable of producing those symptoms in a degenerative back. However, on the critical question of whether in fact the employment at the Indian restaurant was a significant contributing factor to the symptoms in Mr MacDonald's back, Dr Sheehan's evidence advanced the case not at all. Dr Sheehan had had access to memos generated by each of Dr Clarke and Dr Lee. Those memos showed that at consultations on particular dates, Mr MacDonald had raised no complaint about pain in his back. Dr Sheehan makes the assumption that the memos are accurate and the assumption that Mr MacDonald had not raised the matter of pain in his back because he was not suffering pain in his back. Dr Sheehan has had access to a further memo by Dr Clarke, identifying that at a subsequent consultation, Mr MacDonald did complain about pain in his back. Dr Sheehan makes the assumption that the complaint was genuine. On those very broad assumptions, Dr Sheehan concludes that the development of the symptoms was attributable to something which happened between the first set of consultations and the later consultation with Dr Clarke, and on the basis of the history recounted to him by Mr MacDonald, concludes that the employment at the Indian restaurant was the "something". The difficulty is that when pressed in cross-examination, Dr Sheehan had to agree that his thesis would fail if there were evidence that Mr MacDonald had been complaining about the pain in his back before commencement of his employment at the Indian restaurant. That takes one back to the very point determined as a matter of fact by the Industrial Magistrate. There is no justification for reaching a different conclusion.

I dismiss the Appeal.

I reserve all questions as to costs.

Although Mr MacDonald's Application to Appeal to this Court does not challenge an order for costs made against him by the Industrial Magistrate, Mr MacDonald has raised that matter in his written submissions. It must be understood that the grant of costs involves a quintessential exercise of discretion. Here, the case for asserting that the discretion has entirely miscarried is all based upon unsubstantiated allegations of impecuniosity. It seems to me, that such matters should be

developed in correspondence between Mr MacDonald and Q-COMP. It is not the business of this Court, nor the business of an Industrial Magistrate to utilise Q-COMP's resources to grant indulgence.

Dated 12 June 2008.

D.R. HALL, President.

Appearances:

The Appellant in person.

Released: 12 June 2008

Mr P. Rashleigh, directly instructed for the Respondent.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - s. 276 - power to amend or void contracts

Richard Foster AND Rinker Australia Pty Ltd (B/2005/1099)

COMMISSIONER FISHER

11 June 2008

Application by respondent for costs - *Industrial Relations Act 1999 - s. 335 - Unsuccessful unfair contract application - History of the litigation - Basis of claim for costs - Respondent contends unfair contract application made without reasonable cause - Applicant rejects contention - Failure to succeed does not equate to application being commenced without cause - Determined remuneration disparity unfair - Finding case not objectively recognisable as one which could not succeed at time application made - Application for costs refused.*

DECISION

The respondent, Rinker Australia Pty Ltd (Rinker), seeks costs against the applicant, Richard Foster, in light of his unsuccessful unfair contract application made pursuant to s. 276 of the *Industrial Relations Act 1999* (the Act). The parties agreed that the Commission would make determinations about whether costs should be ordered, and, if so, the basis upon which they should be ordered. Should the respondent be successful then the parties could confer on quantum with the Commission to make a final determination only if agreement could not be reached.

History of the litigation

Mr Foster filed an application (later amended) seeking to amend or void a contract made between himself and Rinker. The orders sought were that the contract was an unfair contract and other orders varying the contract to remedy the claimed unfairness. The amended application asserted unfairness with respect to Rinker's decision to remove Mr Foster's company vehicle (the vehicle removal issue) and his remuneration relative to other employees with the same job title but graded at a higher level (the remuneration disparity issue).

The application was considered in a conciliation conference. Following a preliminary objection to the application taken by the respondent (then Readymix Holdings Pty Ltd) the parties agreed to a case stated before the Industrial Court: (2006) 183 QGIG 519.

After the primary issue of the case stated was determined the application was then allocated to the Commission as constituted for hearing and determination. After hearing evidence and submissions and considering a volume of exhibits the Commission considered that Mr Foster's contract was not unfair in respect to the two aspects of unfairness asserted by him and declined to make the orders sought: (2007) 185 QGIG 99.

Mr Foster appealed the Commission's decision. The President held that the Commission had erred in law with respect to the remuneration disparity issue and that no ultimate finding on the fairness or otherwise of the contract had been made: (2007) 186 QGIG 649. After hearing submissions from the parties on the two matters remitted for further consideration the Commission outlined its reasons as to why the remuneration disparity did not make the contract an unfair contract and determined that the contract was not an unfair contract within the meaning of the Act: (2008) 187 QGIG 129.

Basis of the claim for costs

Both of the parties submitted comprehensive submissions in relation to the cost application. Although they are not detailed here they have been considered by the Commission in reaching its decision.

The basis of the respondent's claim for costs is that Mr Foster must have known that:

- (a) having been provided with a motor vehicle, the employer was not obliged to provide that motor vehicle without limit of time, and without regard to the basis on which it was supplied; and
- (b) a disparity in remuneration could not ground a successful s. 276 claim, as was clear on the authorities.

In response, Mr Foster argued that on the authorities there is no basis for an order for costs because there was nothing known to him at the time he made his application that should have led him to believe that the application would fail.

Consideration

Section 335 of the Act prescribes the basis upon which the Commission may award costs. For other than an application for reinstatement the Commission has the power to award costs only if satisfied the application was made vexatiously or without reasonable cause: s. 335(1)(a). Here, Rinker does not contend Mr Foster made the application vexatiously but contends he made it without reasonable cause. This contention is vigorously rejected by Mr Foster.

In *P & J Trucking Pty Ltd v Toll Transport Pty Ltd t/a Toll Logistics* (2001) 167 QGIG 56, Blades C referred to a decision of Wilcox J in *Kanan v Australian Postal and Telecommunications Union* (1992) 43 IR 257 at 264-265 where the following was said:

"It seems to me that the way of testing whether a proceeding is instituted 'without reasonable cause' is to ask whether, upon the facts apparent to the applicant at the time of instituting the proceeding, there was no substantial prospect of success. If success depends upon the resolution in the applicant's favour of one or more arguable points of law, it is inappropriate to stigmatise the proceeding as being 'without reasonable cause'. But where, on the applicant's own version of the facts, it is clear that the proceeding must fail, it may properly be said that the proceeding lacks a reasonable cause."

Failure to succeed in an application does not equate to an application being commenced without cause: *Re Commonwealth of Australia & Anor; Ex parte Marks* per McHugh J [2007] HCA 67. The test is that the case is one that was "objectively recognisable as one which could not succeed at the time the application was made": *MIM Holdings Limited v AMEPKU* (2000) 164 QGIG 370.

In this matter I do not consider this test can be satisfied. In my initial decision I said in respect of the vehicle removal issue:

"From Mr Foster's perspective the unfairness can be readily understood. He had been provided with a fully maintained company vehicle which he used substantially for travel to and from work and for personal reasons. Comparatively little usage over the period was for business purposes. The vehicle moved with him to Brisbane where he continued to have little business usage. Suddenly, after a substantial period where he has used the vehicle for mainly private purposes, the vehicle is proposed to be removed. From Mr Foster's perspective little has altered over the ten year period in which he has been supplied with a vehicle. In such circumstances it is not surprising that Mr Foster was upset, concerned and resisted the removal of the vehicle. Others in his position would also be likely to feel distressed by the decision."

Although I did not express any similar view on the remuneration disparity issue it is readily understood that an employee would believe that unfairness existed where two employees in the same workplace performing essentially the same duties were paid different amounts. At the time of making his application Mr Foster was not fully privy to all of the reasons the disparity existed or of the attempts made by his supervisor, Mr Tallon, to minimize the disparity. I am not suggesting that either Mr Tallon was obliged to disclose his efforts to Mr Foster or that the only way Mr Foster could have his concerns addressed was to make an application under s. 276 of the Act. The point is that on its face and given the limited information available to Mr Foster about the reasons for the existence of the differential the remuneration disparity was unfair.

However, an employment contract is not necessarily rendered an unfair contract within the meaning of the Act just because a person considers their employment conditions to be unfair. To make such a determination the Commission generally applies principles developed from case law to the facts and circumstances raised in the case. In such circumstances minds may differ about possible outcomes and based on the facts and circumstances known to Mr Foster and his legal advisers at the time of commencing proceedings his case was not devoid of merit. That his position did not ultimately prevail when considered in light of all of the evidence does not mean that Mr Foster's claim was filed without reasonable cause. It was only when all of the facts and circumstances were disclosed during the proceedings that it became apparent his case could not succeed. In this regard reference is made to the production of previous company policies concerning the provision of company vehicles which were not readily available given changes in company

structure and the evidence of Mr Tallon about the remuneration disparity detailed in my decision on the remitted matters. In this context I do not consider that this was a case which was objectively recognisable as one which could not succeed at the time Mr Foster made the application.

The application for costs is refused.

G.K. FISHER, Commissioner.

Hearing Details:

Submissions - Respondent - 9 May 2008

Applicant - 26 May 2008

Respondent in Reply - 30 May 2008

Appearances:

Ms A. Milner of Milner Lawyers on behalf of the Applicant.

Mr J. Naughton of Allens Arthur Robinson on behalf of the Respondent.

Released: 11 June 2008



INDUSTRIAL GAZETTE NOTICE

AMENDMENT TO INDUSTRIAL GAZETTE NOTICE
VOL. 188 DATED 6 JUNE 2008 NO. 6

WORKERS' COMPENSATION AND REHABILITATION ACT 2003

1. Notification 5 amended as follows:

This Notification applies to employers who have an obligation under section 226 of the Act.

For section 99C(1)(a) of the *Workers' Compensation and Rehabilitation Regulation 2003*, from 1 July 2008 the amount of wages for the preceding financial year is more than

- *omit* **\$1.698 million; and**
- *insert* **\$1.63 million**

For section 99C(1)(b) of the *Workers' Compensation and Rehabilitation Regulation 2003*, from 1 July 2008 the amount of wages for the preceding financial year is more than \$5.577 million.

2. Notification 6 amended as follows:

This Notification applies to employers who have an obligation under section 227 of the Act.

For section 99D(1)(a) of the *Workers' Compensation and Rehabilitation Regulation 2003*, from 1 July 2008 the amount of wages for the preceding financial year is more than.....

- *omit* **\$1.698 million; and**
- *insert* **\$1.63 million**

For section 99D(1)(b) of the *Workers' Compensation and Rehabilitation Regulation 2003*, from 1 July 2008 the amount of wages for the preceding financial year is more than \$5.577 million.

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