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INDUSTRIAL COURT OF QUEENSLAND

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

Stephen William Sutherland AND Q-COMP (C/2008/35)

PRESIDENT HALL 5 November 2008

DECISION

By a written decision of 10 July 2008, an Acting Industrial Magistrate at Caboolture purported to dismiss an appeal pursuant to s. 549 of the *Workers' Compensation and Rehabilitation Act 2003*. On 30 July 2008, Mr Sutherland's Solicitors filed an Appeal against the "decision" of the Acting Industrial Magistrate to this Court. The problem which immediately arises is that although each of Mr Sutherland and Q-COMP was given a copy of the written decision, the decision is yet to be given "in a hearing in open court". The general proposition is, of course, the proposition articulated by Griffith CJ (with whom Chubb and Real JJ agreed) in *Melville v Phillips* (1899) QLJ 114 at 115 to 116:

> "Now judgment has been given in this case only by its being read or mentioned by the Registrar in the absence of the judge. Rule 156 purports to empower judgment to be given in that way, and to provide that it shall have the same effect as if it were delivered at the trial. But pronouncing judgment upon a trial is a judicial proceeding - perhaps the most important part of the judicial proceeding - and I confess I do not see how a judge can pronounce judgment except in open court, unless under the authority of some statute. A statute was passed a year or two ago empowering absent members of the Full Court, in any case in which judgment is reserved, to send their judgment in writing, to be read by a brother judge in open court. In the absence of any statutory authority of that kind, I can see no authority for a judge to give judgment otherwise than in open court; and so it appears to have been decided in Victoria. If that is the correct view, judgment has not been pronounced in this case, and as the Full Court does not sit as an advisory court, to give opinions in cases in which judgments have not been pronounced, this appeal is premature, and we have no jurisdiction to entertain it. At the same time, I think it right to say that Rule 156 is a rule of great convenience; and although, strictly speaking, it is *ultra vires*, still, when judgment is so given and accepted by the parties, probably no objection could be taken afterwards. But it would be far better that statutory authority should be given to the Rule.".

More recently the same view was taken in *Mandin Springs v Wagner* [1991] 2 LR 496 at pp 498 to 499 per McDonald J. Here, so far from there being statutory authority for dispensing with a decision in open court, there is an express obligation to deliver the decision in open court, see s. 559.
In fairness to the Acting Industrial Magistrate, I should record that the Bench Sheet shows that, although the parties were not present and had not been notified of the "hearing", a "decision" had been given in a courtroom. I am told that that course has been adopted on other occasions both in the Industrial Magistrates Court and in the Queensland Industrial Relations Commission. However, any such practice is entirely irregular. A "decision" given in a court room on an occasion to which the parties have not been invited is not given in open court.

The Appeal must be dismissed. Q-COMP does not oppose grant of an order under s. 248(1)(e) of the *Industrial Relations Act 1999* to correct the defect. I order that the Acting Industrial Magistrate re-list the matter at Caboolture on a date to be fixed by His Honour, notify the parties and, at the hearing, publish His Honour's decision in open court.

Lest Mr Sutherland appeal again, I reserve liberty to apply for waiver of any otherwise applicable fees.

There is no application for costs.

Dated 5 November 2008.

D.R. HALL, President.

Released: 5 November 2008

Appearances:
Mr S. McGhie of Richardson McGhie Solicitors, for the Appellant.
Mr P. O'Neill, directly instructed for the Respondent.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999

CIVIL CONSTRUCTION, OPERATIONS AND MAINTENANCE GENERAL AWARD - STATE 2003

(Gazette 4 April 2003)

(AR46 of 2002)

DEPUTY PRESIDENT SWAN
COMMISSIONERS EDWARDS AND BECHLY 27 October 2008

AWARD REVIEW
(Correction of Error)

WHEREAS an error occurred in the Award as published in the *Queensland Government Industrial Gazette* of 4 April 2003, Vol. 172, No. 14, pages 1493-1540, the following correction is made to be effective as from 28 April 2003:

By deleting the reference "clause 1.8.14" from where it appears in clause 1.3.2 and inserting the reference "clause 1.8.9" in lieu thereof:

Dated 27 October 2008.

W. J. LOBLEY,
Acting Industrial Registrar.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - s. 125 - making, amending and repealing awards

Queensland Services, Industrial Union of Employees AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (A/2008/5)

QUEENSLAND COMMUNITY SERVICES AND CRISIS ASSISTANCE AWARD - STATE 2008

COMMISSIONER FISHER 3 November 2008

AMENDMENT (Correction of Error)

Whereas an error occurred in the abovementioned award as published in the *Queensland Government Industrial Gazette* of 24 October 2008 189, QGIG 683-744 at 685, the following correction is made to be effective as from 3 November 2008:

By deleting clause 1.4.2(b) and inserting the following in lieu thereof:

1.4.2.(b) A service, the predominant function of which is the provision of family day care and childcare services including kindergartens, outside school hours care including those conducted by Parents and Citizens Associations, Parents and Friends Associations and the Independent Parents and Friends Associations;

Dated 3 November 2008.

By the Commission,
W. J. LOBLEY,
Acting Industrial Registrar.

Operative Date: 3 November 2008
Amendment - Correction of Error
Released: 5 November 2008

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