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No. 9

INDUSTRIAL COURT OF QUEENSLAND

Industrial Relations Act 1999 - s. 342(2) - application for leave to appeal to a full bench

United Firefighters' Union of Australia, Union of Employees, Queensland AND Department of Emergency Services (on behalf of the Queensland Fire and Rescue Service) (C/2008/28)

PRESIDENT HALL
VICE PRESIDENT LINNANE
DEPUTY PRESIDENT BLOOMFIELD

22 September 2008

DECISION

The Queensland Fire and Rescue Service - Certified Agreement 2006 makes provision for a job evaluation exercise to be conducted by Mercer Human Resource Consulting. The outcome of the evaluation may well lead to an adjustment to wages. By clause 6.1.10 the factors to be taken into consideration in determining any adjustment to wages as a result of the job evaluation process are to be "determined by the QIRC [Queensland Industrial Relations Commission] based on submissions from the parties.". By a decision of 16 June 2008, now reported at 188 QGIG 188, a Deputy President of the Queensland Industrial Relations Commission issued a determination about factors to be taken into account. On 4 July 2008, the United Firefighters' Union of Australia, Union of Employees, Queensland (the Applicant) made application for leave to appeal against the decision of the Deputy President to a Full Bench of the Commission. In compliance with a Directions Order issued by the Full Bench, the Department of Emergency Services (on behalf of the Queensland Fire and Rescue Service) (the Respondent) filed a written outline of submissions taking the point that by its express terms, s. 342 of the *Industrial Relations Act 1999* (the Act) permits an appeal to the Full Bench (by leave) only by "a person dissatisfied with a decision of the Commission (other than a determination under s. 149 or a decision under s. 273A)" and that the determination of the Deputy President previously described was a decision under s. 273A of the Act. By its written outline of argument in reply, the Applicant advanced the contention that the decision of the Deputy President was not a decision under s. 273A of the Act. When the matter was called, Counsel for the Respondent submitted that having put its case below on the basis of s. 273A of the Act, the Applicant should not be permitted to make a case for leave to appeal on the ground that the Deputy President had acted on the Applicant's submissions.

On a perusal of the file we are satisfied that as a matter of pleading, each of the Respondent and the Applicant sought to base jurisdiction at first instance upon s. 230(c) of the Act and in the alternative upon s. 273A of the Act. It seems to us to be equally plain that the Deputy President based the determination on s. 273A of the Act. To begin with, s. 273A of

the Act is the section referred to in the heading to the decision. Secondly, the decision is explicitly based upon the provision of the Certified Agreement authorising the Commission to determine the "factors to be taken into consideration". Section 273A of the Act expressly authorises the Commission to give effect to such an agreement. There are unresolved arguments of long standing about whether by agreement (including by a certified agreement) parties may authorise the Commission to conduct a private arbitration and about the probity of the Commission undertaking such an exercise. We find it impossible to believe that an experienced presidential member would embark upon such a course without explicit reasoning when another perfectly straight forward jurisdictional basis was available. To treat the Deputy President's decision in that way does not involve treating the decision as a decision which decides nothing. The decision determines the factors to be taken into consideration for the purposes of clause 6.1.10 of the Certified Agreement which provides:

"Factors to be taken into consideration in determining any adjustment in wages as a result of the job evaluation process will be determined by the Queensland Industrial Relations Commission based on submissions from the parties."

Whether the determination is binding is a point to be taken in other proceedings.

In our view, a matter in which an applicant for leave to appeal seeks to complain that the Commission at first instance acted on the applicant's submissions is inherently outside the category of a matter which is "important enough", in the public interest, to give leave. The purpose of s. 342 of the Act is the correction of error by the Commission: not correction of error by a party. It was for those reasons that at the hearing of 16 September 2008, we dismissed the application for leave to appeal.

We reserve all questions as to costs.

As a matter of prudence we add that we have not sought to examine the scope of the mediation power (s. 231), nor the capacity of the Commission to engage in private arbitration, neither have we considered whether parties to a private arbitration agreement may preserve a right of appeal nor whether the exercise of jurisdiction under s. 273(A) of the Act may be controlled by the grant of prerogative relief pursuant to s. 248(1)(e) of the Act.

Dated 22 September 2008.

D.R. HALL, President.

D.M. LINNANE, Vice President.

A.L. BLOOMFIELD, Deputy President.

Appearances:

Mr J. Merrell, instructed by Hall Payne Lawyers for the Applicant.

Mr A. Herbert, directly instructed for the Respondent.

Released: 22 September 2008

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