The following Agreements have been certified by the Commission:–

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<th>No/s</th>
<th>Title</th>
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<tr>
<td>CA47/01</td>
<td>Brisbane Greyhound Racing Club - AWU - Certified Agreement</td>
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<td>CA56/01</td>
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<td>CA91/01</td>
<td>Gold Coast Excavations Pty Ltd - Certified Agreement</td>
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<td>CA92/01</td>
<td>Varadex Pty Ltd - Certified Agreement</td>
<td>9/3/01</td>
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The following Agreement is terminated:

CA592/98 Minggadjumba Banbarribarra Dam Construction State Water Projects - Certified Agreement 1998  

The Queensland Public Sector Union of Employees AND  

PUBLIC SERVICE AWARD – STATE  

DISTRICT HEALTH SERVICE EMPLOYEES’ AWARD – STATE  

COMMISSIONERS BLOOMFIELD AND EDWARDS  

FURTHER SUPPLEMENTARY DECISION  

On 9 February 2001 we issued a supplementary decision (166 QGIG 225) which clarified an earlier decision issued on 21 December 2000 (166 QGIG 27) in relation to access for increments for part-time and casual employees employed under the above three (3) Awards.

In the supplementary decision we directed the parties to further confer and to draft appropriate amendments to the respective Awards. Leave was reserved to the parties to approach the Commission should they not be able to agree on the precise terms of the amendments to the Awards. We reserved the right to draft our own amendment(s) to the Award(s) should any outstanding matters not be able to be resolved following a conference chaired by the Commission.

We were subsequently approached by the parties on the basis that they could not agree the terms of the amendments necessary to give effect to our decision. A conference hearing before Commissioner Bloomfield took place on 23 February 2001. At that time the representatives of The Queensland Public Sector Union of Employees (QPSU) informed the Commission that there were a number of issues which were unresolved. Those issues and the respective parties’ attitude to them were spelt out on the record.

We have had the opportunity to review the parties’ submissions in respect of each of the issues and indicate our view with respect to each of them as follows:

**The requirement to apply to receive an increment**

QPSU opposed the draft prepared by the Crown which required part-time and casual employees to apply to receive an increment. In doing so Mr Pascoe, who represented QPSU, indicated that there was no similar requirement for full-time employees.

We have decided that whilst it would have been our preference for all employees – including full-time employees – to apply for an increment if they believed that they had met the requisite conduct, diligence, efficiency or performance measurement requirements we nonetheless note that there is no current requirement for full-time employees to make such application. It seems that the processing of increments is commenced by personnel and human resources staff after employees have been classified at a particular level for twelve months. In many cases supervisors merely certify that the increment is payable without proper consideration of whether the employee has met the conduct, diligence or performance objectives which are requirements attached to the payment of the increment. In the circumstances it would be unfair to impose an obligation on part-time and casual employees where there is none (currently) imposed on full-time employees.

It may be that the Crown wishes to pursue this aspect, in respect of all employees, by way of separate application. In that regard, we record that it is our view that the whole process of the approval of increments – based upon the evidence of this case – is not in keeping with the undertakings provided to the Full Bench of this Commission when the current classification structure was inserted into the respective Awards. It would be advisable for the parties to review the whole process associated with the payment of increments so that it more properly reflects the undertakings previously provided to the Commission.

**Engagement by more than one Government Department or Agency at a time**

Our decision considered the position of employees working in a particular classification in a particular position and their ability to access increments after working for twelve (12) calendar months. For reasons spelt out in the decision we decided that, overall, employees working on a part-time or casual basis acquired the same skills, and were called upon to exercise the same degree of responsibility as were full-time employees, after twelve hundred (1,200) ordinary hours.
In arriving at that decision we did not contemplate the position of employees who might work for more than one government agency at a time. There was simply no evidence about such employees and the rate at which they might acquire skills, experience and knowledge, nor how they might be called upon to exercise responsibility because of the fact that they were engaged by more than one agency at a time.

Consequently, we are not prepared to grant QPSU’s request that the amendment to the respective Awards take into account the position of such employees.

In any event, we can see no basis for the granting of the request on merit. Whilst the classification structure is generic – in that it covers a range of people performing a wide variety of tasks at a particular level – the whole basis for our decision was that part-time and casual employees acquire skills to the same level of equivalent full-time employees in a particular job setting after a certain period. There is no basis to automatically assume that a person who, say, works for six hundred hours in one A02 part-time or casual job and for six hundred hours in another A02 part-time or casual job acquires the same degree of skill, and is called upon to exercise the same level of responsibility, as a full-time employee in either position.

**Transitionary provisions**

In our supplementary decision we identified three primary categories of employees who needed to be catered for in the award amendments. They were part-time employees who received an increment in the twelve months prior to 1 March 2001, part-time employees who did not receive an increment in the twelve months prior to 1 March 2001 and casual employees.

QPSU has highlighted – although we were always aware of it – that the middle category includes two separate groups of employees. The first is the group that has not received an increment in the twelve months but who has worked for more than twelve months. The second group involves those who have, obviously, worked less than twelve months. QPSU has sought for the inclusion of provisions covering the first group because of certain anomalies that can arise in their treatment if our supplementary decision stands unaltered.

In our supplementary decision we spelt out our view that an employee’s entitlement to access an increment should coincide with a particular “trigger”, such as the anniversary of their previous increment or, in the case of those who have not received an increment, the anniversary date of the commencement of their employment.

After considering the submissions of Mr Pascoe and Ms McGinity we are prepared to make a further (limited) accommodation for the special group identified by Mr Pascoe.

Part-time employees who have worked more than twelve months as at 1 March 2001 and who did not receive an increment in the twelve months prior to that date will be entitled to access an increment – if they have worked twelve hundred (1,200) hours since commencement or since their last increment (if any) – upon the anniversary date of their commencement or the anniversary of their previous increment or 1 September 2001 whichever occurs earlier.

That small amendment to our supplementary decision will accommodate the position of employees who might have been inadvertently caught by the 1 March 2001 cut off. 1 September 2001 will act as a further trigger. However, having regard to the fact that it may take a little time for the clause to be implemented, and that there are already several trigger dates, we are not prepared to introduce a further variable (such as the completion of twelve hundred hours after 1 September and before the next trigger date).

In the future, we intend that the entitlement to an increment should be considered upon the anniversary date of an employee’s previous increment. If twelve hundred hours have been worked in the previous twelve months the increment would be payable – subject to meeting the necessary performance requirements. If not, the remaining hours would need to be worked before the entitlement would arise.

**Accrual of additional hours worked to count towards the next increment**

QPSU has argued that any additional hours worked by a part-time or casual employee beyond twelve hundred hours in one increment period should count towards the number of hours required to be worked before the next increment can be accessed.

Such a position is not in keeping with the logic of our decision of 21 December 2000 and is rejected. The decision granted access to an increment after a part-time or casual employee worked twelve hundred (1,200) ordinary hours or after they had received a wage at a particular paypoint level for a period of twelve (12) months whichever is the later.

We are not prepared to countenance the situation where an employee might work fifteen hundred hours in one twelve months and nine hundred hours in the next twelve months and still access the second increment.

In addition, QPSU’s new claim would be contrary to the way that full-time employees are treated. Excluding holidays and leave entitlements full-time employees are required to work between approximately 1,630 and 1,690 hours to access an increment. Further, a full-time employee who is absent from work for any reason outside those allowed for has their increment anniversary date varied to allow for the absence. They are not entitled to rely upon any additional hours which may have been worked, such as through overtime, to make up for their absence. Their increment date is simply extended to cater for their absence. A part-time or casual employee who is “absent” for, say, two days each week should be treated no differently.

**Crown employees whose position is reflected at 151 QGIG 324-5**

The Crown has asked that the position of part-time employees at classification level A01 or A02 of the Administrative Stream and classification level O01, O02 and O03 of the Operational Stream be amended to reflect our decision of 21 December 2000.

The special provisions covering that group were inserted in the Crown Employees Award by consent in 1995 (151 QGIG 324-5).

Nothing was advanced during the course of the case proper which suggested that the Commission was being called upon to review that consent position. In the circumstances, it would be inappropriate for us to accede to the Crown’s request.

However, casual employees were not covered by the consent arrangement. Their position was dealt with in our decision of 21 December 2000 and should be reflected in the amendment to the Employees of Queensland Government Departments (Other than Public Servants) Award.

The parties were also unable to agree on the way that the amendment should be set out. In keeping with our supplementary decision we have decided to draft the amendment to the Public Service Award – State. It is attached for final proof reading by the parties. Any comments which the parties may have in relation to it should be directed, in writing, to the Associate of Commissioner Bloomfield. Those comments will be considered prior to the amendment...
being finalised and Gazetted. The parties are also directed to confer and draft amendments to the other Awards which reflect the Commission’s comments in this decision and the attached draft.

The Commission determines and orders accordingly.

A.L. BLOOMFIELD, Commissioner.
K.L. EDWARDS, Commissioner.

Appearances:
Mr J. Pascoe and Mr J. Lunn for The Queensland Public Sector Union of Employees and the Australian Municipal, Administrative, Clerical and Services Union, Central and Southern Queensland Clerical and Administrative Branch, Union of Employees.
Ms M. McGinity and Mr V. Kerin for the Crown and Queensland Health.

Released: 16 March 2001

Queensland Industrial Relations Commission

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

Marie Isobel Morrison AND The Catering Company Pty Ltd (No. B1465 of 2000)

Commissioner Brown

Decision

Marie Isobel Morrison (the applicant) sought reinstatement to her former position with The Catering Company Pty Ltd (the respondent) in an application lodged on 2 October 2000.

The applicant commenced employment at the Southport R.S.L. Memorial Club Inc. (the Club) as a servery hand and relief supervisor on 10 November 1996 and remained so employed until the catering operation of the Club was leased to the respondent on 24 May 2000 whereupon she became an employee of the respondent. She remained an employee of the respondent until she submitted her resignation on 19 September 2000.

The applicant claims that her departure from the respondent was in fact a constructive dismissal allegedly caused by the manner in which the second-in-charge Ms L. D’Arcy (LD) treated her.

The applicant submitted in evidence that approximately 5 weeks after the respondent took over, LD had demoted her from the position of relieving supervisor to attendant with a corresponding wage reduction of 91c per hour.

The applicant claimed that LD had constantly “nit picked her work”; spoke in a harsh degrading manner to her and watched her constantly while she worked.

This, the applicant said, was stressful and affected her sleep.

On 3 July 2000 Dr Downs diagnosed the applicant’s condition as “work related stress”. A decision by Workcover rejecting her claim for compensation has been appealed. In that, the appeal has not been determined, I have not taken Workcover’s decision into account.

The applicant stated that she tendered her resignation on 19 September 2000 as a result of her inability to tolerate the constant harassment and also because of a feeling she had no other option.

The applicant felt unable to approach Mr Hanley, principal of the respondent, regarding LD as she believed them, Hanley and LD, to be in a personal relationship.

The applicant felt that her demotion was a “put down” but was not concerned regarding her loss of pay.

In relation to her decision to resign, the applicant stated in evidence –

“Well, it was an instant decision in one way that I just – that day when I went in I thought ‘No, I can’t stand any more of this’. We were short staffed. They expected you to do the whole floor on your own on a busy time so I thought, ‘No, I’ve had enough. I can’t take this any more’. I had enough stress without – having physical stress as well as mental.”

The applicant was unsure whether or not LD was at work that day.

There were no incidents between the applicant and LD during the month prior to the applicant’s resignation.

During the last 12 weeks of employment the applicant worked 58 hours in total with most shifts worked on a Monday or Tuesday.

LD was usually off on Mondays.

The applicant provided medical certificates to the respondent which cited “medical condition” or “medical reason” as the illness causing her absence from work.

The applicant stated in evidence that she did not give LD her medical certificates but forwarded them to Ms Horkings.

The applicant cited instances of how LD harassed and intimidated her. One instance involved LD insisting that work shirts be returned on the same day the request was made. The applicant complied with the request yet noticed that the shirts had not been put to use two weeks later.

In another instance, the applicant felt offended and subject to harsh speech when LD asked her to clear away a food trolley and to assist other staff. The applicant made no effort to talk to LD about the exchange or any of the incidents where the applicant claimed to be upset or harassed as she felt it was pointless.
She had drawn this conclusion from an assessment of the outcomes experienced by other staff when issues had been raised and a belief that Hanley and LD were in a personal relationship.

The applicant conceded that she was unsure of what the response may have been forthcoming from LD had she raised her concerns with LD.

Ms Bow for the applicant called Ms D. Comber, a former employee, who in evidence claimed to have unsatisfactory experiences as a result of the management approach of LD and the respondent.

Ms Comber had not met with LD to spell out her concerns, she also was reluctant to raise matters with Mr Hanley because of his relationship with LD. After a discussion with Mr Hanley she was made Night Duty Manager and her former position of Functions Co-ordinator was advertised.

Ms Comber witnessed an incident involving the applicant whereby LD placed Comber in charge of an area for the last hour of a shift in place of the applicant who had supervised up until then. Ms Comber ultimately resigned following a further position change and roster problems.

Ms Comber did not witness any harsh or rude comments made by LD to the applicant.

Ms L. Pennell witness for the applicant and former employee gave evidence which included an account of a disturbing incident between herself and her supervisor Mr Bubb involving Bubb’s use of inappropriate language in a written message to Pennell.

Ms Pennell had no recollection of and did not witness any incident involving abuse or harassment of the applicant by LD.

Ms A. Horkings, a former employee, was subpoenaed by the applicant to give evidence. She believed that after 4 to 6 weeks the respondent had formed the view that some employees would not fit in, the applicant being one of them.

This opinion had been formed as a result of having overheard conversations between LD and Hanley in the office.

Ms Horkings did participate in some talks regarding staff fitting in, however, never directly in relation to the applicant.

Ms Horkings did not witness the applicant being treated in an abrupt manner or being spoken to in a derogatory way.

Ms Horkings was in the adjoining office during the meeting in June between LD and the applicant where the applicant was demoted.

She testified that the meeting lasted for 10 to 15 minutes and that neither LD nor the applicant raised their voices.

LD was also subpoenaed by the applicant to give evidence. LD stated that she was employed as Catering Manager by the respondent and had previously performed other functions including some administrative and supervisory functions having first been employed by the respondent in January 2000. LD had a total of 8 years experience in the Hospitality Industry and possessed an Arts Degree in Leisure Management.

When asked by Ms Bow whether any confrontation with the applicant had occurred, LD recalled the circumstances surrounding the instruction to the applicant to clear a table but denied any harsh treatment.

LD acknowledged having appointed a supervisor to take charge for the remainder of a shift in the area that the applicant had been supervising but said that this was simply an organisational decision to cover a particular busy period and not designed to upset the applicant.

LD stated she did not raise her voice to the applicant during any conversation nor refuse roster requests from the applicant. She stated that she was not responsible for the hiring or firing of staff of the respondent.

LD did not think it was her place to confront the applicant over her absences and did not counsel or criticise the applicant for her absences.

She did not see her management style as abrupt but rather forthright, firm and fair.

LD felt that the applicant was unhappy but because the applicant failed to approach LD about her unhappiness, felt unable to rectify the situation.

She did not forewarn the applicant about the subject matter of their June meeting but stated that had the applicant requested that a witness be present she would have acceded to such request.

Of the relieving supervisors in existence at the time of the respondent’s take over, an assessment was made as to who would be best for the respondent and a decision made which led to the applicant being advised of the decision to demote her at the June meeting.

LD claimed that the decision had been taken after consideration of the needs of the business and the wish to have the best team in place. This decision also accommodated another employee, Beverley Veasey, then a casual in the position of Supervisor.

LD felt that the applicant would not communicate with her.

LD was supportive of staff requirements with respect to personal matters but maintained a belief that the interests of the business must also be considered in decision making.

LD denied harassing staff.

LD did not reduce the applicant’s hours.

When the applicant produced a Doctor’s certificate limiting her to working only one shift per week, the balance of hours up to 12 were made up of sick pay.

LD’s rostered days off were Sunday and Monday most weeks. Communication with staff took the form of meetings with all staff, meetings of groups of staff, individual meetings and written and oral communication.

Most of LD’s dealings with staff in the Brasserie area was through Joyceylynn Bennett, the Senior Supervisor.
The applicant did not respond in any way to the news of her demotion. She simply left the room.

Joycelynn Bennett, Christopher Bubb and Jeffrey Postle also gave evidence on behalf of the respondent.

Jeffrey Postle was employed by the Club in managerial positions from February 1995 to February 2000. He stated in evidence the applicant was–

- rarely happy with her lot;
- unco-operative towards Supervisors;
- critical of Supervisors;
- at times belligerent and aggressive; and
- often appeared upset or stressed with her work.

Joycelynn Bennett, the current Brasserie Supervisor stated–

- the applicant became stressed when dealing with staff problems when acting as a Supervisor;
- she did not like working with the applicant; and
- she was treated with respect by the respondent.

Christopher Bubb said the applicant was always complaining. He acknowledged Hanley directly disciplined him for the inappropriate message to Pennell. He stated that he did not work in close proximity to the applicant.

Roderick O’Toole Hanley’s evidence was that he was the principal of the respondent and LD was his Operations Manager.

In the early stages of the respondent’s involvement at the Club, Hanley personally spent a lot of time in the Brasserie and whilst there were three staff who operated as Supervisors from time to time, he regarded 2 of them, Jo Bennett and Bev Veasey as permanent and the applicant as a relief.

Hanley stated that he was on site most days and that staff had the opportunity to speak to him if they wished.

Hanley denied that he and LD were a couple but believed that there was a workplace rumour to this effect.

On occasion staff discussed issues with the Club management and they in turn spoke to Hanley.

Hanley had no knowledge of the applicant having any work related problems until 11 September 2000 when Workcover documentation relating to the applicant was received.

Conclusions

Ms Bow for the applicant submitted that a working environment existed where–

- rumours were left unaddressed;
- there was a lack of consultation;
- there was a lack of procedural fairness; and
- previous grievances were left improperly dealt with.

She submitted that the way in which Hanley handled the incident between Mr Bubb and Ms Pennell was unsatisfactory.

Ms Bow also stated that despite LD’s experience in the Hospitality Industry and her formal qualifications, LD failed to afford the applicant procedural fairness in the June meeting which saw the applicant demoted.

Ms Bow also stated that Hanley had not afforded Ms Pennell a fair go over the incident with Bubb nor Comber over her concerns and submitted that the reason for the applicant’s failure to raise her grievance with Hanley was “maybe she didn’t want to deal with Mr Hanley’s fair go”.

Ms Bow referred to Post Office v Roberts (1980) IRLR 347/52 and to the decision of Moore J. in Rheinberger v Huxley Marketing Pty Ltd 67 IR 154. Ms Bow also cited the decision of the Full Bench of the South Australian Industrial Commission in Linkstaff International Pty Ltd v Roberts 67 SAIR 381 at 389 to support the applicant’s contention that the dismissal was constructive.

The respondent relied on Allison Anthony v Bega Valley Council (1995) 63 IR 68 and Western Excavation (S.C.C.) Ltd v Sharp (1978) I.C.R. at 225 and the tests applied therein to determine that the termination was not constructive.

There had been no incidents between Management and the applicant in the month prior to her resignation.

The applicant was unsure as to whether or not LD was at work on the day of the resignation. The applicant’s evidence was that the estimated workload on the day of her resignation was a factor considered in her decision to resign.

The applicant at no stage raised with LD or Hanley her dissatisfaction with the way she was treated. The applicant maintained she was reluctant to raise these matters as she felt it would be pointless because of firstly, the perceived relationship between LD and Hanley and secondly, because she believed that treatment of other staff by Management was unfair.

To examine the incidents cited as harsh treatment by the applicant I firstly turn to the direction from LD to the applicant to clear a table in early June.

In my view the exchange between LD and the applicant was an exchange which, in the sometimes very busy atmosphere of the Hospitality Industry, is quite normal. In saying this, pressure and workload are not excuses for mistreating staff, however, on the evidence, there was no raised voices, no threat of dismissal and no harsh or inappropriate language, but simply a direction.

The request to return the clothes and the appointment of another Supervisor for the remainder of a shift (given the circumstances) were incidents which do not seem to me to constitute harassment or poor treatment.

Regardless of who may have been in attendance at the meeting between the applicant and LD, the undisputed facts are that LD advised the applicant of her decision not to use her as a relieving Supervisor in future. LD did not advise the applicant of the reasons for the meeting prior to the meeting. LD did
not advise the applicant of her right to bring a witness to the meeting. The applicant did not request a witness to be present. The applicant accepted without objection her changed role and left the room. LD did not threaten the applicant’s position, raise her voice, or use inappropriate language. LD would not have objected to a witness being present had the applicant requested one.

In evidence it was stated that LD failed to make contact with the applicant regarding her absences through illness. Also, in evidence it was stated that LD accommodated the applicant on the roster in accordance with the wishes of the applicant and her Doctor without question and remained informed as to the applicant’s circumstances through general conversation with other staff in the workplace.

I am of the view that this action or inaction on the part of LD is not crucial to deciding this matter. Indeed, in my experience, repeated enquiries by an employer of an absent employee regarding their state of health and likely recovery date would be more likely to cause stress to the employee than the absence of such enquiries.

I am of the view that the exchanges and incidents referred to above were not of such a nature that they constituted inappropriate treatment or treatment calculated to cause the applicant to resign.

The fact that the applicant saw the act of making her feelings known to the respondent as pointless requires examination.

On the evidence, the applicant’s assumptions as to the value of raising her concerns were drawn from her belief that LD was in a personal relationship with Hanley and presumably their closeness would prevent an objective examination of her complaints and also that she had a perception of how other staff had been dealt with.

The evidence disclosed a close working relationship between Hanley and LD. The status of the relationship is not important. What is important is that the applicant “believed” that a close personal relationship existed and saw this as a barrier to a resolution of the problems arising from her treatment at the hands of LD.

Put aside my findings that LD’s actions were not calculated to or of a nature severe enough to cause the applicant’s resignation.

In that the applicant believed they were, I am of the view, that there was an obligation upon the applicant to raise her concerns with the respondent to at least satisfy herself that her fears were either founded or not by gauging the response and reaction of the respondent.

The act of an employee complaining to management regarding management’s performance or perceived shortcomings will probably always be accompanied by some anguish and doubt on the part of the employee. None the less if the matter is serious enough to cause the employee to contemplate resignation, it should be raised.

Her failure to do this denied the respondent the opportunity to address any rumours or adjust any aspect of their behaviour to the satisfaction of the applicant.

The applicant in evidence admitted that she was unsure what response would have been forthcoming had the complaint been raised.

The decision on the evidence that LD’s actions were not calculated to or of a nature severe enough to cause the applicant’s resignation.

The Industrial Relations Act 1999 at s.77(c)(i) and (ii) sets out matters for consideration by the Commission in the event of an allegation of unfair dismissal of an employee. It states:—

“(c) if the dismissal relates to the employee’s conduct, capacity or performance –

(i) whether the employee had been warned about the conduct, capacity or performance; or

(ii) whether the employee was given an opportunity to respond to the allegation about the conduct, capacity or performance;”.

I am firmly of the view, despite the applicant’s assessment of the usefulness or otherwise of the exercise, that the applicant should have been afforded the same opportunities to respond to her allegations regarding their conduct, capacity or performance as she, by law, must be afforded in the event of conduct, capacity or performance allegations against her.

The applicant did not give the respondent that opportunity and they remained unaware of how seriously the applicant viewed the situation. Hence the respondent was unable to react to the situation if, indeed, a reaction was necessary.

Having considered in detail the evidence and submissions, I am of the view that the resignation of the applicant was not a termination at the initiative of the respondent.

I dismiss the application.

Order accordingly.

D.K. BROWN, Commissioner.

Appearences:—
Ms K. Bow of Workplace Equity Consultants for the Applicant.
Mr D. Simmons of Denis Simmons Total Management for The Catering Company Pty Ltd.

Released: 20 March 2001
Unpaid wages – Non attendance of respondent — Proceeded ex parte – Cleaning industry – Witness evidence – Application granted – Order by Commission

DECISION

These matters came before the Commission following applications, filed separately, in respect of Lee Christison (filed 27 September 2000) and Milissa Barron (filed 11 October 2000) seeking that Choice Commercial Cleaning Pty Ltd pay monies to the amount of $3,105.75 and $979.19 respectively being for unpaid wages.

At a hearing on 26 October 2000, Mr R. Robinson from the Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union for unpaid wages.

A further hearing was held on 13 December 2000, where the Commission was advised by Ms V. Semple (ALHMWU), that following preliminary hearings, there had been discussion held between the parties, on a without prejudice basis, and that a settlement of both claims had been reached.

The Commission acceded to the request.

A requirement of the settlement was that payments of the amount of monies agreed would be made by 17 November 2000. However, the respondent had failed to make the payments as agreed.

The Commission was not informed of the arrangements regarding settlement.

The matter was set down for hearing on 18 and 19 January 2001, and that day, the respondent, who had been legally represented at previous hearings, failed to attend.

The hearing was adjourned whilst efforts were made to contact the respondent without success.

The Commission, having had the opportunity to scrutinise the issuing process of the Directions Orders, was not entirely convinced that they been served in the correct manner upon the respondent, and rescheduled the hearing until 12 and 13 March 2001.

Further Directions Orders were served upon the parties by registered mail with those addressed to the respondent being returned unclaimed on 15 February 2001.

On 19 February 2001, the Commission again served the Orders on the respondent, and at the time of hearing on 12 March 2001, whilst there had not been compliance of the directions by the respondent, they had not been returned to sender.

At the commencement of proceedings on 12 March 2001, there was again no appearance by the respondent which brought about a submission by Mr J. Martin, of the ALHMWU, that the respondent’s previous legal representation at hearings, was in fact a confirmation that there was an awareness of the proceedings, and requested that the matter go ahead ex parte.

The Industrial Relations (Tribunals) Rules 2000 allows for an application, under s. 278 of the Industrial Relations Act 1999, to be heard in the respondent’s absence—

“Hearing in the respondent’s absence

62. A commissioner may hear and decide an application under section 27812 of the Act in the respondent’s absence, if the commission is satisfied—
   (a) the application contained a warning that the application may be dealt with in the respondent’s absence; and
   (b) the applicant has proved service of the application on the respondent; and
   (c) the application contains sufficient particulars relied on in support of the application.”.

It was the view of the commission that the circumstances in this matter satisfied the criteria in respect of subclauses (a), (b) and (c) and accordingly the hearing proceeded in the absence of the respondent.

The evidence in support of the case for the applicant, was given by Ms Barron, Ms Christison and Mr Colin Struthers an organiser of the ALHMWU.

Ms Barron, in evidence, detailed her employment with Choice Cleaning Pty Ltd, which commenced on 18 May 2000 and finished on 30 June 2000, and included reference to—

- wages – $13 per hour (weekday) $16 per hour (weekends);
- work locations;
- allocation and direction of work;
- signing (forced) of a contract; and
- non-supply by applicant of cleaning equipment, materials or chemicals.

The evidence of Ms Christison, who commenced her employment with Choice Cleaning Pty Ltd on 20 May 2000 and finished on 21 August 2000, was of a similar nature to that of Ms Barron in that she received the same level of wages and experienced similar working conditions.

In the evidence of both Ms Barron and Ms Christison, if they were to be absent from work, they were given directions not to arrange for other persons to replace them as that would be the responsibility of Mr Hazel.

Mr Struthers gave evidence that both Ms Barron and Ms Christison had approached him in his capacity as a union organiser with the responsibilities for the Contract Cleaning Industry, and sought assistance based on their belief that they were employees covered under the terms and conditions of the Contract Cleaning Industry Award – State and not subcontractors as was the view of Choice Commercial Cleaning Pty Ltd.

Mr Struthers, whose evidence indicated that he was a union official with extensive experience in the Contract Cleaning Industry, formed the view that for all intents and purposes, both of Ms Barron and Ms Christison were employees and, on that understanding, had cause to prepare a document scheduled 1, which was attached to his affidavit of evidence.
The attachment (schedule 1) set out in detail all of the relevant employment data, including a comparison between the level of wages paid to Ms Barron and Ms Christison and the remuneration for which they would have been entitled to receive if paid in accordance with the Award.

His calculations had Ms Christison being underpaid an amount of $3,105.75 and underpayment to Ms Barron of $979.19.

**Final Submissions**

Mr Martin, in final submissions, stated that the evidence before the Commission clearly demonstrated that both applicants were employees, and relied upon Stevens and Gray v Brodribb Sawmilling Co Pty Ltd 160 CLR 16, a High Court Decision in 1986, that established a set of indicia that determined whether a person was an employee or an independent contractor.

It was further submitted that the application of the control test in this matter demonstrated that both Ms Christison and Ms Barron were employees.

The sworn evidence of Mr Struthers, including schedule 1 which identified the entitlements under the relevant Award, was in the view of Mr Martin, sufficient to warrant the Commission granting the application in the terms sought.

**Conclusion**

In the determination of this matter, the Commission had only the evidence provided by the applicant, due to the failure of the respondent to attend the hearing. But nevertheless, the Industrial Relations (Tribunals) Rules 2000 at s. 62, allows for the hearing to occur despite the absence of the respondent.

The Commission was required to form a view, in the first instance, as to whether Ms Christison and Ms Barron were in fact employees as opposed to independent contractors.

In determining the employee verses independent contractor position, a number of factors were subject to my considerations including, but not limited to, the provision of equipment and materials, the obligation to work, hours of work and the delegation of the work by the employer.

Additionally, the control test, put forward in Mr Martin’s submissions, was also considered by the Commission, and in the matter of Humberstone v Northern Timber Mills (1946) 79 CLR 389, Dixon J. said:–

“The question is not whether in practice the work was in fact done subject to a direction and control exercised by an actual supervision or whether an actual supervision was possible but whether ultimate authority over the man in the performance of his work resided in the employer so that he was subject to the latter’s order and directions.”

Therefore, having considered all of the evidence put before the Commission, I have formed the view that both the applicant’s were, for all intents and purposes, employees and as such, covered under the terms and conditions of the Contract Cleaning Industry Award – State.

Further, on the evidence as provided at schedule 1 of the sworn evidence of Mr Struthers, I find that both Ms Christison and Ms Barron are entitled to the payments as identified in their applications.

Accordingly, I order that Choice Commercial Cleaning Pty Ltd pay Ms Lee Christison an amount of $3,105.75 gross, and Ms Milissa Barron an amount of $979.19 gross within 22 days of the release of the decision.

J.M. THOMPSON, Commissioner.

Appears:–

Mr J. Martin, of the Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees, for the Applicant.

Released: 19 March 2001

QUEENSLAND INDUSTRIAL REGISTRAR

Industrial Relations Act 1999 – s. 482 – arrangement for conduct of elections

Australian Salaried Medical Officers Federation Industrial Union of Employees, Queensland (No. Q5 of 2001)

REGISTRAR EWALD


DECISION

On 26 February 2001 the Australian Salaried Medical Officers Federation Industrial Union of Employees, Queensland lodged in the Registry under section 481 of the Industrial Relations Act 1999, the information as prescribed in section 36 of the Industrial Relations Regulation 2000 in relation to the conduct of an election by the Electoral Commission of Queensland for the following positions of office:–

<table>
<thead>
<tr>
<th>Office</th>
<th>Number of Positions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Branch Delegate to State Council:</td>
<td></td>
</tr>
<tr>
<td>Doctor’s In Training State Branch</td>
<td>7</td>
</tr>
<tr>
<td>Specialists Branch</td>
<td>4</td>
</tr>
<tr>
<td>Career Medical Officers Branch</td>
<td>1</td>
</tr>
<tr>
<td>Medical Superintendents Branch</td>
<td>1</td>
</tr>
<tr>
<td>Medical Superintendents with the Right of Private Practice and Medical Officers with the Right of Private Practice Branch</td>
<td>1</td>
</tr>
<tr>
<td>General Branch</td>
<td>1</td>
</tr>
</tbody>
</table>

**Reason for Election**

The Industrial Organisation advises that an inaugural election for State Council is now due.
**Timing of Election**

Rule 46 (1) of the Organisation’s Rules states that nominations for positions on State Council shall open on 1 March.

For the purpose of lodgment of the prescribed information (i.e. 2 months before the first day on which a person may become a candidate in the election) I find that the prescribed information was not filed within the time frame prescribed by the Act.

Notwithstanding I am prepared to exercise my discretion and extend the prescribed time for filing of such information to 26 February 2001.

**Method of Elections**

I am satisfied that the election is a direct voting system by way of a secret postal ballot of financial members.

I have considered the application, the Act and Rules and I find that the election being sought is for positions of office within the meaning of the Act.

I am satisfied that an election for the above named positions is required to be held under the Rules of the Industrial Organisation.

Therefore, under section 482 of the *Industrial Relations Act 1999*, I am making arrangements for the conduct of the election of the above named positions by the Electoral Commission of Queensland.

Dated this sixteenth day of March, 2001.

E. EWALD, Registrar

**Decision – Conduct of Election**

Released: 16 March 2001

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**QUEENSLAND INDUSTRIAL RELATIONS COMMISSION**

*Industrial Relations Act 1999 – s. 278 – application for unpaid wages and pro rata annual leave*


COMMISSIONER THOMPSON 19 March 2001

ORDER

THIS matter coming on for hearing before the Commission at Brisbane on 12 March 2001, this Commission, after having decided that Lee Christison was underpaid wages by Choice Commercial Cleaning Pty Ltd, in accordance with the provisions of the *Contract Cleaning Industry Award – State*, doth order as follows:–


2. That the amount set out in paragraph 1 of this Order is to be paid within twenty-two (22) days of the date of this Order.

Dated this nineteenth day of March, 2001.


Released: 19 March 2001

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**QUEENSLAND INDUSTRIAL RELATIONS COMMISSION**

*Industrial Relations Act 1999 – s. 278 – application for unpaid wages and pro rata annual leave*


COMMISSIONER THOMPSON 19 March 2001

ORDER

THIS matter coming on for hearing before the Commission at Brisbane on 12 March 2001, this Commission, after having decided that Milissa Barron was underpaid wages by Choice Commercial Cleaning Pty Ltd, in accordance with the provisions of the *Contract Cleaning Industry Award – State*, doth order as follows:–


2. That the amount set out in paragraph 1 of this Order is to be paid within twenty-two (22) days of the date of this Order.

Dated this nineteenth day of March, 2001.


Released: 19 March 2001
QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s.125 – application for amendment

Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch,
Union of Employees AND The Baking Industry Association of Queensland –
Union of Employers and Others (No. B176 of 2001)

BAKING INDUSTRY AWARD – SOUTHERN AND MACKAY DIVISIONS

COMMISSIONER BROWN 27 February 2001

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 27 February 2001, this Commission orders that the said Award be amended as follows as from the second day of April, 2001:–

By inserting a new clause 6.6 (Union Encouragement) as follows:–

“6.6 Union Encouragement

(1) Union Encouragement – This clause gives effect to section 110 of the Industrial Relations Act 1999 in its entirety. Consistent with section 110 a Full Bench of the Queensland Industrial Relations Commission has issued a Statement of Policy on Union Encouragement (reported 165 QGIG 221) that encourages an employee to join and maintain financial membership of an organisation of employees that has the right to represent the industrial interests of the employees concerned.

At the point of engagement, an employer to whom this Award applies shall provide employees with a document indicating that a Statement of Policy on Union Encouragement has been issued by the Queensland Industrial Relations Commission, a copy of which is to be kept on the premises of the employer in a place readily accessible by the employee.

The document provided by the employer shall also identify the existence of a union encouragement clause in this Award.

(2) Union Delegates – Union delegates and job representatives have a role to play within a workplace. The existence of accredited union delegates and/or representatives is encouraged.

The employer shall not unnecessarily hinder accredited union delegates and/or job representatives in the reasonable and responsible performance of their duties.

(3) Deduction of Union Fees – Where arrangements can be entered into, employers are encouraged to provide facilities for the deduction and remittance of union fees for employees who signify in writing to their employer, their desire to have such membership fees deducted from their wages.”.

Dated this twenty-seventh day of February, 2001.

By the Commission,

[LS] E. EWALD,
Industrial Registrar.

Operative Date: 2 April 2001

Released: 16 March 2001

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s.125 – application for amendment

Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch,
Union of Employees AND The Baking Industry Association of Queensland –
Union of Employers and Others (No. B177 of 2001)

BAKING, PROCESSING, DISTRIBUTION AND MANUFACTURING
INDUSTRY AWARD – NORTHERN DIVISION

COMMISSIONER BROWN 27 February 2001

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 27 February 2001, this Commission orders that the said Award be amended as follows as from the second day of April, 2001:–

By inserting a new clause 7 (Union Encouragement) as follows:–

“7. Union Encouragement

(1) Union Encouragement – This clause gives effect to section 110 of the Industrial Relations Act 1999 in its entirety. Consistent with section 110 a Full Bench of the Queensland Industrial Relations Commission has issued a Statement of Policy on Union Encouragement (reported 165 QGIG 221) that encourages an employee to join and maintain financial membership of an organisation of employees that has the right to represent the industrial interests of the employees concerned.

At the point of engagement, an employer to whom this Award applies shall provide employees with a document indicating that a Statement of Policy on Union Encouragement has been issued by the Queensland Industrial Relations Commission, a copy of which is to be kept on the premises of the employer in a place readily accessible by the employee.
The document provided by the employer shall also identify the existence of a union encouragement clause in this Award.

(2) Union Delegates – Union delegates and job representatives have a role to play within a workplace. The existence of accredited union delegates and/or representatives is encouraged.

The employer shall not unnecessarily hinder accredited union delegates and/or job representatives in the reasonable and responsible performance of their duties.

(3) Deduction of Union Fees – Where arrangements can be entered into, employers are encouraged to provide facilities for the deduction and remittance of union fees for employees who signify in writing to their employer, their desire to have such membership fees deducted from their wages.”.

Dated this twenty-seventh day of February, 2001.


Queensland Industrial Relations Commission

Operative Date: 2 April 2001
Amendment – Union Encouragement
Released: 16 March 2001

Queensland Industrial Relations Act 1999 – s.125 – application for amendment

Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch,
Union of Employees AND Queensland Chamber of Commerce and Industry Limited,
Industrial Organisation of Employers and Others (No. B178 of 2001)

Biscuit Manufacturing Award – State

Amendment – Union Encouragement

Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch,
Union of Employees AND Queensland Chamber of Commerce and Industry Limited,
Industrial Organisation of Employers and Others (No. B178 of 2001)

Child Care Industry Award – State

AMENDMENT

By inserting a new clause 11.4 (Union Encouragement) as follows:

“11.4 Union Encouragement

11.4.1 Union Encouragement

This clause gives effect to section 110 of the Industrial Relations Act 1999 in its entirety. Consistent with section 110 a Full Bench of the Queensland Industrial Relations Commission has issued a Statement of Policy on Union Encouragement (reported 165 QGIG 221) that encourages an employee to join and maintain financial membership of an organisation of employees that has the right to represent the industrial interests of the employees concerned.

At the point of engagement, an employer to whom this Award applies shall provide employees with a document indicating that a Statement of Policy on Union Encouragement has been issued by the Queensland Industrial Relations Commission, a copy of which is to be kept on the premises of the employer in a place readily accessible by the employee.

The document provided by the employer shall also identify the existence of a union encouragement clause in this Award.

11.4.2 Union Delegates

Union delegates and job representatives have a role to play within a workplace. The existence of accredited union delegates and/or representatives is encouraged.

The employer shall not unnecessarily hinder accredited union delegates and/or job representatives in the reasonable and responsible performance of their duties.

11.4.3 Deduction of Union Fees

Where arrangements can be entered into, employers are encouraged to provide facilities for the deduction and remittance of union fees for employees who signify in writing to their employer, their desire to have such membership fees deducted from their wages.”.

Dated this twenty-seventh day of February, 2001.


Queensland Industrial Relations Commission

Operative Date: 19 March 2001
Amendment – Union Encouragement
Released: 16 March 2001

Queensland Industrial Relations Act 1999 – s.125 – application for amendment

Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch,
Union of Employees AND Queensland Chamber of Commerce and Industry Limited,
Industrial Organisation of Employers and Others (No. B178 of 2001)
AMENDMENT

This matter coming on for hearing before the Commission at Brisbane on 27 February 2001, this Commission orders that the said Award be amended as follows as from the second day of April, 2001:–

By inserting a new clause 10.4 (Union Encouragement) as follows:–

“10.4 Union Encouragement

10.4.1 Union Encouragement

This clause gives effect to section 110 of the Industrial Relations Act 1999 in its entirety. Consistent with section 110 a Full Bench of the Queensland Industrial Relations Commission has issued a Statement of Policy on Union Encouragement (reported 165 QGIG 221) that encourages an employee to join and maintain financial membership of an organisation of employees that has the right to represent the industrial interests of the employees concerned.

At the point of engagement, an employer to whom this Award applies shall provide employees with a document indicating that a Statement of Policy on Union Encouragement has been issued by the Queensland Industrial Relations Commission, a copy of which is to be kept on the premises of the employer in a place readily accessible by the employee.

The document provided by the employer shall also identify the existence of a union encouragement clause in this Award.

10.4.2 Union Delegates

Union delegates and job representatives have a role to play within a workplace. The existence of accredited union delegates and/or representatives is encouraged.

The employer shall not unnecessarily hinder accredited union delegates and/or job representatives in the reasonable and responsible performance of their duties.

10.4.3 Deduction of Union Fees

Where arrangements can be entered into, employers are encouraged to provide facilities for the deduction and remittance of union fees for employees who signify in writing to their employer, their desire to have such membership fees deducted from their wages.”.

Dated this twenty-seventh day of February, 2001.


Operative Date: 2 April 2001

Released: 16 March 2001
(b) Any day appointed under the Holidays Act 1983 from time to time by the Minister by notification published in the Gazette as the day to be kept as a holiday in a particular district in relation to the annual agricultural, horticultural or industrial show held at the principal city or town, as specified in such notification for such district:

Provided that in a district in which a holiday is not appointed for an annual agricultural, horticultural or industrial show, the employee and employer must agree on an ordinary working day that is to be treated as a show holiday for all purposes.

(2) An employee, other than a casual, who would ordinarily be required to work on a day on which a public holiday falls is entitled to full pay for the time the employee would ordinarily have been required to perform work on that day irrespective of the fact that the employee may not be required to work on such day.

(3) All work done by any employee on any of the holidays or substituted holidays mentioned in clause (1)(a) or (1)(b) shall be paid for at the rate of double time and a-half with a minimum of three hours but so that the employee is not entitled to be paid at public holiday rates for both the holiday and the substituted day.

(4) For the purposes of this clause, ‘double time and a-half’ shall mean 2.5 times the hourly rate.

(5) Casual employees shall be paid for work done on the day observed as the public holiday at the rate of 269% of the relevant ordinary hourly rate with a minimum of three hours.

(6) Notwithstanding the provisions of this clause, the employer and the majority of employees concerned, may agree to substitute the public holidays in subclause (1) with another day and all work performed on the substituted day shall be deemed to be work performed on the public holiday and paid in accordance with subclause (3) but so that an employee is not entitled to receive public holiday benefits for both days.

(7) When a public holiday which would otherwise have fallen on a Saturday or a Sunday is substituted for a day appointed to be kept in its place, employees other than casuals required to work on the Saturday or the Sunday shall be paid at the ordinary Saturday or Sunday rate, except that when 25 December falls on a Saturday or a Sunday such employees shall receive in addition a loading of one-half of an ordinary day’s wages.

(8) Any and every employee who, having been dismissed or stood down by the employee’s employer during the month of December in any year, and re-employed by that employer at any time before the end of the month of January in the next succeeding year shall, if that employee shall have been employed by that employer for a continuous period of two weeks or longer immediately prior to being so dismissed or stood down, be entitled to be paid and shall be paid by the employee’s employer (at the ordinary rate payable to that employee when so dismissed or stood down) for any or more of the following holidays, namely Christmas Day, Boxing Day and the first day of January occurring during the period on and from the date of the employee’s dismissal or standing down to and including the date of the employee’s re-employment as aforesaid.

(9) Employees, other than casuals, who are not Monday to Friday workers – In the case of employees who do not ordinarily work Monday to Friday of each week, they shall be entitled to public holidays as follows:

(a) A full-time employee shall be entitled to either payment for each of the abovementioned public holidays or a substituted day’s leave.

(b) A part-time employee shall be entitled to either payment for each of the abovementioned public holidays or a substituted day’s leave provided that the part time employee would have been ordinarily rostered to work on that day had it not been a public holiday.

(c) Where a public holiday would have fallen on a Saturday or a Sunday but is substituted for another day all employees who would ordinarily have worked on such Saturday or Sunday but who are not rostered to work on such day shall be entitled to payment for the public holiday or a substituted day’s leave.

(d) A part-time employee who works an average five days per week, but whose roster is not a regular Monday to Friday roster, will not be disadvantaged by the fact that a prescribed holiday falls upon a day when the employee would not be working. The appropriate compensation is:

- an alternative ‘day off’; or
- an addition of one day to annual leave; or
- an additional day’s wages.

For the purposes of this subclause, ‘day off’ shall mean the average number of hours rostered per day in the four week cycle prior to the public holiday.”.

Dated this sixteenth day of March, 2001.

By the Commission,

[L.S.] E. EWALD,
Industrial Registrar.

Operative Date: 19 March 2001
Amendment – Statutory Holidays
Released: 20 March 2001

Queensland Industrial Relations Commission

Industrial Relations Act 1999 – s.125 – application for amendment

Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch,
Union of Employees AND Queensland Chamber of Commerce and Industry Limited,
Industrial Organisation of Employers and Others (No. B179 of 2001)

Food Production – P&O Prepared Foods (Wacol) – Award

Commissioner Brown

AMENDMENT

27 February 2001
THIS matter coming on for hearing before the Commission at Brisbane on 27 February 2001, this Commission orders that the said Award be amended as follows as from the nineteenth day of March, 2001:—

By inserting a new clause 6.11 (Union Encouragement) as follows:—

“6.11 Union Encouragement

(1) Union Encouragement — This clause gives effect to section 110 of the Industrial Relations Act 1999 in its entirety. Consistent with section 110 a Full Bench of the Queensland Industrial Relations Commission has issued a Statement of Policy on Union Encouragement (reported 165 QGIG 221) that encourages an employee to join and maintain financial membership of an organisation of employees that has the right to represent the industrial interests of the employees concerned.

At the point of engagement, an employer to whom this Award applies shall provide employees with a document indicating that a Statement of Policy on Union Encouragement has been issued by the Queensland Industrial Relations Commission, a copy of which is to be kept on the premises of the employer in a place readily accessible by the employee.

The document provided by the employer shall also identify the existence of a union encouragement clause in this Award.

(2) Union Delegates — Union delegates and job representatives have a role to play within a workplace. The existence of accredited union delegates and/or representatives is encouraged.

The employer shall not unnecessarily hinder accredited union delegates and/or job representatives in the reasonable and responsible performance of their duties.

(3) Deduction of Union Fees — Where arrangements can be entered into, employers are encouraged to provide facilities for the deduction and remittance of union fees for employees who signify in writing to their employer, their desire to have such membership fees deducted from their wages.”.

Dated this twenty-seventh day of February, 2001.

By the Commission,
[L.S.] E. EWALD,
Industrial Registrar.

Operative Date: 19 March 2001
Amendment – Union Encouragement
Released: 16 March 2001
AMENDMENT

This matter coming on for hearing before the Commission at Brisbane on 27 February 2001, this Commission orders that the said Award be amended as follows as from the nineteenth day of March, 2001:

By inserting a new clause 21H (Union Encouragement) as follows:–

“21H. Union Encouragement

(1) Union Encouragement – This clause gives effect to section 110 of the Industrial Relations Act 1999 in its entirety. Consistent with section 110 a Full Bench of the Queensland Industrial Relations Commission has issued a Statement of Policy on Union Encouragement (reported 165 QGIG 221) that encourages an employee to join and maintain financial membership of an organisation of employees that has the right to represent the industrial interests of the employees concerned.

At the point of engagement, an employer to whom this Award applies shall provide employees with a document indicating that a Statement of Policy on Union Encouragement has been issued by the Queensland Industrial Relations Commission, a copy of which is to be kept on the premises of the employer in a place readily accessible by the employee.

The document provided by the employer shall also identify the existence of a union encouragement clause in this Award.

(2) Union Delegates – Union delegates and job representatives have a role to play within a workplace. The existence of accredited union delegates and/or representatives is encouraged.

The employer shall not unnecessarily hinder accredited union delegates and/or job representatives in the reasonable and responsible performance of their duties.

(3) Deduction of Union Fees – Where arrangements can be entered into, employers are encouraged to provide facilities for the deduction and remittance of union fees for employees who signify in writing to their employer, their desire to have such membership fees deducted from their wages.”.

Dated this twenty-seventh day of February, 2001.

By the Commission,

[Signature]

Industrial Registrar.

Operative Date: 19 March 2001
Amendment – Union Encouragement
Released: 16 March 2001
(2) **Union Delegates** – Union delegates and job representatives have a role to play within a workplace. The existence of accredited union delegates and/or representatives is encouraged.

The employer shall not unnecessarily hinder accredited union delegates and/or job representatives in the reasonable and responsible performance of their duties.

(3) **Deduction of Union Fees** – Where arrangements can be entered into, employers are encouraged to provide facilities for the deduction and remittance of union fees for employees who signify in writing to their employer, their desire to have such membership fees deducted from their wages.”.

Dated this twenty-seventh day of February, 2001.

By the Commission,

[L.S.] E. EWALD,
Industrial Registrar.

Operative Date: 19 March 2001
Amendment – Union Encouragement
Released: 16 March 2001
THIS matter coming on for hearing before the Commission at Brisbane on 27 February 2001, this Commission orders that the said Award be amended as follows as from the nineteenth day of March, 2001:–

By inserting a new clause 5G (Union Encouragement) as follows:–

“Union Encouragement

5G.(1) Union Encouragement – This clause gives effect to section 110 of the Industrial Relations Act 1999 in its entirety. Consistent with section 110 a Full Bench of the Queensland Industrial Relations Commission has issued a Statement of Policy on Union Encouragement (reported 165 QGIG 221) that encourages an employee to join and maintain financial membership of an organisation of employees that has the right to represent the industrial interests of the employees concerned.

At the point of engagement, an employer to whom this Award applies shall provide employees with a document indicating that a Statement of Policy on Union Encouragement has been issued by the Queensland Industrial Relations Commission, a copy of which is to be kept on the premises of the employer in a place readily accessible by the employee.

The document provided by the employer shall also identify the existence of a union encouragement clause in this Award.

(2) Union Delegates – Union delegates and job representatives have a role to play within a workplace. The existence of accredited union delegates and/or representatives is encouraged.

The employer shall not unnecessarily hinder accredited union delegates and/or job representatives in the reasonable and responsible performance of their duties.

(3) Deduction of Union Fees – Where arrangements can be entered into, employers are encouraged to provide facilities for the deduction and remittance of union fees for employees who signify in writing to their employer, their desire to have such membership fees deducted from their wages.”.

Dated this twenty-seventh day of February, 2001.

By the Commission,

[L.S.] E. EWALD,
Industrial Registrar.

Operative Date: 19 March 2001
Amendment – Union Encouragement
Released: 16 March 2001
AMENDMENT

This matter coming on for hearing before the Commission at Brisbane on 27 February 2001, this Commission orders that the said Award be amended as follows as from the nineteenth day of March, 2001:–

By inserting a new clause 10.3 (Union Encouragement) as follows:–

“10.3 Union Encouragement

10.3.1 Union Encouragement

This clause gives effect to section 110 of the Industrial Relations Act 1999 in its entirety. Consistent with section 110 a Full Bench of the Queensland Industrial Relations Commission has issued a Statement of Policy on Union Encouragement (reported 165 QGIG 221) that encourages an employee to join and maintain financial membership of an organisation of employees that has the right to represent the industrial interests of the employees concerned.

At the point of engagement, an employer to whom this Award applies shall provide employees with a document indicating that a Statement of Policy on Union Encouragement has been issued by the Queensland Industrial Relations Commission, a copy of which is to be kept on the premises of the employer in a place readily accessible by the employee.

The document provided by the employer shall also identify the existence of a union encouragement clause in this Award.

10.3.2 Union Delegates

Union delegates and job representatives have a role to play within a workplace. The existence of accredited union delegates and/or representatives is encouraged.

The employer shall not unnecessarily hinder accredited union delegates and/or job representatives in the reasonable and responsible performance of their duties.

10.3.3 Deduction of Union Fees

Where arrangements can be entered into, employers are encouraged to provide facilities for the deduction and remittance of union fees for employees who signify in writing to their employer, their desire to have such membership fees deducted from their wages.”.

Dated this twenty-seventh day of February, 2001.


Operative Date: 19 March 2001
Amendment – Union Encouragement
Released: 16 March 2001

 QUEENSLAND GOVERNMENT INDUSTRIAL GAZETTE 345

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s.125 – application for amendment

AMENDMENT

This matter coming on for hearing before the Commission at Brisbane on 27 February 2001, this Commission orders that the said Award be amended as follows as from the nineteenth day of March, 2001:–

By inserting a new clause 18F (Union Encouragement) as follows:–

“18F. (1) Union Encouragement – This clause gives effect to section 110 of the Industrial Relations Act 1999 in its entirety. Consistent with section 110 a Full Bench of the Queensland Industrial Relations Commission has issued a Statement of Policy on Union Encouragement (reported 165 QGIG 221) that encourages an employee to join and maintain financial membership of an organisation of employees that has the right to represent the industrial interests of the employees concerned.
At the point of engagement, an employer to whom this Award applies shall provide employees with a document indicating that a Statement of Policy on Union Encouragement has been issued by the Queensland Industrial Relations Commission, a copy of which is to be kept on the premises of the employer in a place readily accessible by the employee.

The document provided by the employer shall also identify the existence of a union encouragement clause in this Award.

(2) **Union Delegates** – Union delegates and job representatives have a role to play within a workplace. The existence of accredited union delegates and/or representatives is encouraged.

The employer shall not unnecessarily hinder accredited union delegates and/or job representatives in the reasonable and responsible performance of their duties.

(3) **Deduction of Union Fees** – Where arrangements can be entered into, employers are encouraged to provide facilities for the deduction and remittance of union fees for employees who signify in writing to their employer, their desire to have such membership fees deducted from their wages.”.

Dated this twenty-seventh day of February, 2001.


Operative Date: 19 March 2001
Amendment – Union Encouragement
Released: 16 March 2001
INDUSTRIAL COURT OF QUEENSLAND

Industrial Organisations Act 1997 – s. 245 and s. 246 – application under s. 245 and s. 246 that penalties be imposed on Performance Security for contraventions of s. 237 and s. 238 of Industrial Organisations Act 1997


PRESIDENT HALL 20 March 2001

REPORT ON DECISION (as edited)

In giving his decision from the Bench on 15 March 2001, President Hall stated:—

“This matter was before his Honour Williams J on 16 July 1999. On that occasion, upon the Court being informed of the settlement of the matter and informed that in the event of the terms not being implemented the respondent would not contest liability under the Act for imposition of orders, penalties and compensation the Court might determine, His Honour adjourned the matter to the Registry to enable the terms of the settlement to be carried out.

The matter was before me on 13 June 2000 when I was informed the sum of $1,668 was still outstanding. On that occasion I adjourned the matter until today’s date in order to give the respondent the opportunity to find the outstanding sum and pay it.

The moneys have not been paid. There has been no appearance by the respondent. It seems to me that the only proper course is to order that the respondent pay to the Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of employees the sum of $1,668 by way of final compensation for the breach of legislation which has occurred.

Having regard to the whole of the respondent’s conduct, though one may have some sympathy for the respondent’s straitened financial circumstances, it seems to me that the only proper course is to impose a pecuniary penalty of $1,500.

I shall draft a formal order in due course and cause the registrar to publish it.

You will appreciate that as in all cases where an order is made in the absence of one of the parties, if that party seeks to re-open the matter, the Court will list the matter and hear what that party has to say.

I adjourn the Court.”.

Dated this twentieth day of March 2001.

By the Court,
[L.S.] E. EWALD,
Industrial Registrar.

Appearances:—
Mr J. Martin and with him Mr K. Crank for the appellant.

Released: 21 March 2001