

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *National Retail Association Limited, Union of Employers (the 2021 Burdekin Show case) [2021] QIRC 220*

PARTIES: **National Retail Association Limited, Union of Employers**
(Applicant)

CASE NO.: TH/2021/7

PROCEEDING: Application

DELIVERED ON: 21 June 2021

HEARING DATE: 18 June 2021

MEMBER: Merrell DP

HEARD AT: Brisbane

DECLARATION:

1. **It is declared that the Burdekin Show is a special event for the purposes of s 5(1)(c)(ii) of the *Trading (Allowable Hours) Act 1990*.**
2. **The declaration shall apply for a period commencing on 23 June 2021 and concluding on 23 June 2021.**
3. **The declaration applies to an area in Ayr starting from a point on the corner of Jones Street and the Bruce Highway at the Ayr Showgrounds:**
 - **travelling south-east and turning onto Burke Street and then onto Chippendale Street;**
 - **turning at MacMillan Street and turning onto Kennedy Street and then onto Bower Street northbound; and**
 - **through to Railway Street and then onto Jones Street to the starting point.**

CATCHWORDS: INDUSTRIAL LAW - QUEENSLAND - TRADING HOURS - APPLICATION FOR DECLARATION OF A SPECIAL EVENT -

application, pursuant to s 5 of the *Trading (Allowable Hours) Act 1990* to classify all non-exempt shops as exempt shops in part of Ayr for a specified period during a special event, namely, the Burdekin Show 2021 - Burdekin Show declared to be a special event within the meaning of s 5 of the *Trading (Allowable Hours) Act 1990*

LEGISLATION: *Trading (Allowable Hours) Act 1990*, s 5 and s 36B

CASES: *National Retail Association Limited, Union of Employers* [2019] QIRC 095

National Retail Association Limited, Union of Employers [2021] QIRC 029

APPEARANCES: Mr D. Stout and Ms L. Charlton of the Applicant.

Ms L. Armstrong of the Shop, Distributive and Allied Employees (Queensland Branch) Union of Employees.

Reasons for Decision

- [1] By application filed on 3 June 2021, the National Retail Association Limited, Union of Employers, applied for a declaration, pursuant to s 5(2) of the *Trading (Allowable Hours) Act 1990* ('the Act'), that the Burdekin Show, to be held on Wednesday, 23 June 2021, is a special event within the meaning of s 5(1)(c)(ii) of the Act.
- [2] The effect of such a declaration, if made, would be that a shop, as defined in the Act, operating in an area in Ayr, as specified in the Applicant's application, would be an exempt shop within the meaning of the Act.
- [3] The area in Ayr, as specified in the Applicant's application, is an area from a starting point on the corner of Jones Street and the Bruce Highway at the Ayr Showgrounds:
- travelling south-east and turning onto Burke Street and then onto Chippendale Street;
 - turning at MacMillan Street and turning onto Kennedy Street and then onto Bower Street northbound; and
 - through to Railway Street and then onto Jones Street to the starting point.
- [4] The period for which the declaration is sought is Wednesday, 23 June 2021.
- [5] On 4 June 2021, a Directions Order was issued which required that the Applicant's application, and the Directions Order, be served on the Burdekin Shire Council, the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of

Employees ('the SDA'), The Australian Workers' Union of Employees, Queensland, the Local Government Association of Queensland Limited, the Executive Director, Industrial Relations, Office of Industrial Relations, and the Chief Industrial Inspector, Office of Industrial Relations.

- [6] The Directions Order provided that those who may be affected by the application may make a formal application seeking leave to be heard and, if leave was granted, such a party was to file an outline of submissions and serve those submissions on the Applicant by 14 June 2021.
- [7] The Application and Directions Order were published on the Commission's website.
- [8] By application filed on 9 June 2021, the SDA made application seeking leave to be heard. By order dated 10 June 2021, I gave leave to the SDA to be heard. On 14 June 2021, the SDA filed written submissions.

Should the Commission grant the declaration sought?

- [9] The Applicant contends that the Burdekin Show meets the description of a special event within the meaning of s 5(1)(c)(ii) of the Act.
- [10] Section 5 of the Act relevantly provides:

5 Exempt shops

- (1) An *exempt shop* is-
- (a) a shop of a description mentioned in schedule 1AA used predominantly for selling goods by retail, or for supplying services, a reasonable person would expect to be sold or supplied in that shop; or
 - (b) an independent retail shop; or
 - (c) a shop operating in a stated area for an event-
 - (i) that is a unique or infrequent event of local, State or national significance; and
Examples—
 - the 2018 Commonwealth Games
 - the Weipa Fishing Classic event
 - (ii) declared by the industrial commission to be a special event for this paragraph.
- (2) A declaration for subsection (1)(c)-
- (a) may be made by the industrial commission on an application by an organisation, chief executive, local government or any other person; and
 - (b) must state the following-
 - (i) details of the event the subject of the declaration;
 - (ii) the period for which the declaration applies;
 - (iii) the area to which the declaration applies; and
 - (c) must be published on the QIRC website.
- (3) In deciding whether to declare an event to be a special event for subsection (1)(c), the industrial commission-
- (a) must consider-
 - (i) the cultural, religious or sporting significance of the event; and
 - (ii) the significance of the event to the economy and the tourism industry; and
 - (b) may consider a submission made by a local government for an area in which the declaration is likely to have an impact.

[11] As is evident from s 5(1), the Act provides for non-exempt shops, operating in a stated area for an event, to be exempt shops for the period of that event if the Commission declares that event to be a special event.

[12] In deciding whether an event, that is a unique or infrequent event of local, State or national significance, is a special event for the purposes of s 5(1)(c)(ii) of the Act, the Commission must consider:

- the cultural, religious or sporting significance of the event; and
- the significance of the event to the economy and the tourism industry.

[13] Further, the Commission may consider a submission made by a local government for an area in which the declaration is likely to have an impact.

[14] The Applicant submitted that the Burdekin Show, because of its cultural significance and significance to the economy and the tourism industry of the region around Ayr, was a special event for the purposes of s 5(1)(c)(ii) of the Act. In oral submissions, Mr David Stout, Director Policy of the Applicant, submitted that, in general, while retail employees have faced a number of difficult times in 2020 and 2021 due to the effect of the COVID-19 pandemic and that they should be able to enjoy public holidays, that needed to be balanced with the significance an event, such as the Burdekin show, has to towns such as Ayr and the support for such an event by local businesses.

[15] The SDA opposed the application. Ms Armstrong, on behalf of the SDA, submitted that:

- the term 'significance' in s 5(3) of the Act was not intended to be used as an unmeasured benchmark available to the Applicant to point to any cultural, religious or sporting aspect of an event to satisfy an application for extended trading;
- a reasonable understanding of the legislation would be that it applies where an event is of such significance it creates the real possibility of retail opportunities in the extended hours;
- citing the decision of Industrial Commissioner McLennan in *National Retail Association Limited, Union of Employers ('the 2021 BrisAsia Festival case')*,¹ it is not enough for an event to have cultural, religious or sporting significance without some other compelling argument to disturb the existing regime;²
- the Commission should consider that:
 - 23 June 2021 is a public holiday which should be enjoyed by the local retail workers who have engaged in essential front line work for their community over the last year and a half; and
 - the public holiday represents an opportunity for the community to come together after the impact of the pandemic in 2020 and retail workers should

¹ [2021] QIRC 029 (*2021 BrisAsia Festival case*).

² *Ibid* [46].

have the opportunity to enjoy the public holiday without the pressure of an expectation to work on that day;

- the Applicant has failed to present or discuss particular information in their application necessary to establish a sufficient reason for the order requested, namely:
 - the population size of Ayr and expected attendance at the Burdekin Show;
 - details of what opportunities non-exempt retailers may have to capture shoppers, including information about what specific needs of the patrons attending the event of which those non-exempt shops intend to take advantage; and
 - an understanding of why the shops present in the local area are insufficient to service this need (noting that there are at least seven service stations within the vicinity of the showgrounds and several takeaway shops and restaurants available); and
- consideration should be given to the facts that the event is held on a Wednesday, that visitors travelling to the area are likely to stay in the area for more than one day and that it is more likely visitors and people local to the area will utilise the available trading hours on other days than on a day they have set aside to attend the event.

[16] By way of conclusion, the SDA submitted:

- 5.5. The SDA believes that without the above information, the Commission cannot be confident this event will impact the economy and tourism industry in such a way that genuine trading opportunities will be created for Non-Exempt Shops.

The unique local significance of the Burdekin show, the cultural significance of the Burdekin Show and the significance of the Burdekin Show to the economy and to the tourism industry of Ayr

[17] I cannot accept the SDA's submissions.

[18] First, the submission that the word 'significance' in s 5(3)(a) of the Act was not intended to be used as an unmeasured benchmark available to an applicant to point to any cultural, religious or sporting aspect of an event to satisfy an application for extended trading does not take into account the ordinary meaning of that word. The ordinary contextual meaning of 'significance' in s 5(3)(a) of the Act is: 'important; consequence.'³

[19] I also cannot accept the submission that a real understanding of the legislation is that it applies when an event is of such significance it creates the real possibility of retail opportunities in the extended hours. Certainly, s 5(3)(a)(ii) of the Act provides that the Commission must consider the significance of the event to the economy and to the tourism industry. However, that provision does not go so far as submitted by the SDA. If

³ *Macquarie Dictionary* (7th ed, 2017) 'significance' (def 1).

the purpose of the legislation was that, in deciding whether to declare an event to be a special event, the Commission was required to consider whether the event creates the real possibility of retail opportunities in the extended hours, then the legislation would provide for that.

- [20] Thirdly, the *2021 BrisAsia Festival case* cited by the SDA is not authority for the general proposition that it is not enough for an event to have cultural, religious or sporting significance without some other compelling argument to disturb the existing regime.
- [21] In that case, the present Applicant contended that the BrisAsia Festival, to be held from 1 to 28 February 2021 in Brisbane, was a special event within the meaning of s 5(1)(c)(ii) of the Act. In its submissions, the Applicant indicated that it was willing to accept a shortened period between 8 February 2021 and 14 February 2021 covering the area of the central ward of Brisbane.⁴ Industrial Commissioner McLennan's decision was that the BrisAsia Festival, while an event of cultural and religious significance,⁵ was not an event significant to the economy and the tourism industry because, on the particular facts of that case, there was only one festival event that fell between 8 February 2021 and 14 February 2021 (being the Lunar New Year event in the Chinatown Mall from 6.00pm to 9.00pm on Friday, 12 February 2021) to take place within the central ward of Brisbane.⁶ It was on the basis of those precise facts that Industrial Commissioner McLennan decided that there was not a sufficiently compelling argument to disturb the prescribed allowable trading hours.⁷
- [22] The other submissions, made by the SDA, namely, that the retail workers should be able to enjoy the public holiday of 23 June 2021 and that the Applicant has failed to present information that establishes there will be a significant uptake of persons wanting to attend non-exempt shops during extended trading hours on that day, seem to me to suggest that the Commission must take into account considerations that go beyond those expressly or impliedly prescribed by s 5(3) of the Act.
- [23] In 2019, I granted an application by the present Applicant for a declaration that the Burdekin Show was a special event within the meaning of s 5(1)(c)(ii) of the Act.⁸ The reasons why I made such a declaration are set out in paragraph [14] of that decision.
- [24] Having regard to the affidavit of Mr Stout accompanying the Applicant's application, the same reasons presently exist as to the unique local significance of the Burdekin Show, the cultural significance of the Burdekin Show and the significance of the Burdekin Show to the economy and tourism industry in and around Ayr. In summary, they are that the Burdekin annual show:
- is clearly an annual event of cultural significance to the region because it celebrates the significance of agriculture to the region's economy which draws visitors from across the region and from other places; and

⁴ *2021 BrisAsia Festival case* (n 1) [17].

⁵ *Ibid* [37].

⁶ *Ibid* [45].

⁷ *Ibid* [46].

⁸ *National Retail Association Limited, Union of Employers* [2019] QIRC 095.

- is sponsored by 71 local businesses, banks and government bodies which indicates the significance of the event to the local economy and tourism.

[25] Having regard to Mr Stout's unchallenged evidence, I am satisfied that the Burdekin Show is an infrequent event of local significance. Further, it is an event of cultural significance to the people in and around Ayr and is significant to the economy and tourism industry in and around Ayr, such that it should be declared to be a special event within the meaning of s 5(1)(c)(ii) of the Act.

Other issues

[26] The SDA submitted that existing protections around voluntary work available under statutes or other instruments are not always adequate in preventing the reality of other relational pressures in store and that while it is ideal to hypothesise additional hours will be available to those employees who request to work, employers usually direct employees to work a particular roster for the relevant period on the basis of operational needs or requirements. No doubt the SDA's submissions, in this regard, are based on its experience in representing its members.

[27] However, in the absence of any specific provision in the Act or in the absence of any necessary implication from the subject matter, scope and purpose of s 5 of the Act, requiring the Commission to take into account that some employees may be directed to work during extended hours when they do not want to, the possibility that it may occur cannot be a reason not to make the declaration sought.

[28] As has been noted by decisions of members of the Commission about similar applications, the legislature has made it an offence for an employer to require an employee to work during extended hours unless the employee has freely elected to work during the extended hours.⁹

Conclusion

[29] For the reasons set out above, I am satisfied that I should make the declaration sought.

Orders

[30] I make the following orders:

- 1. It is declared that the Burdekin Show is a special event for the purposes of s 5(1)(c)(ii) of the *Trading (Allowable Hours) Act 1990*.**
- 2. The declaration shall apply for a period commencing on 23 June 2021 and concluding on 23 June 2021.**

⁹ *Trading (Allowable Hours) Act 1990* s 36B(1).

- 3. The declaration applies to an area in Ayr starting from a point on the corner of Jones Street and the Bruce Highway at the Ayr Showgrounds:**
- **travelling south-east and turning onto Burke Street and then onto Chippendale Street;**
 - **turning at MacMillan Street and turning onto Kennedy Street and then onto Bower Street northbound; and**
 - **through to Railway Street and then onto Jones Street to the starting point.**