

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *National Retail Association Limited, Union of Employers (the Mount Isa Mines Rodeo)*
[2021] QIRC 254

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

CASE NO: TH/2021/9

PROCEEDING: Application

DELIVERED ON: 27 July 2021

HEARING DATE: 26 July 2021

MEMBER: Industrial Commissioner Pidgeon

HEARD AT: Brisbane

DECLARATION: Pursuant to s 5(1)(c) of the *Trading (Allowable Hours) Act 1990* (Qld) I declare that:

1. The Mount Isa Mines Rodeo is for the purposes of s 5(1)(c)(ii) a special event;
2. The declaration shall apply for a period commencing on 12 August 2021 and shall continue up to and including 15 August 2021; and
3. The declaration applies to the geographic locations described as: starting at Abel Smith Parade turning south onto Sunset Drive through to Camooweal Street then on to Patricia Street and West Street travelling south through to Isa Street then onto Pamela Street then East Street

**turning east onto Barkly Highway
then onto Abel Smith Parade to the
starting point at Sunset Drive.**

CATCHWORDS:

INDUSTRIAL LAW – TRADING HOURS –
APPLICATION FOR DECLARATION OF
SPECIAL EVENT – application to classify all
non-exempt shops as exempt shops in Mount
Isa for a specified period during a special
event, namely, the Mount Isa Mines Rodeo

LEGISLATION:

Trading (Allowable Hours) Act 1990, s 5, 36B

APPEARANCES:

Mr D Stout and Ms L Charlton, for the
applicant

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

Reasons for Decision

Introduction

- [1] The National Retail Association Limited, Union of Employers ('the NRA') is seeking an order under the *Trading (Allowable Hours) Act 1990* (Qld) ('the Act') to classify all non-exempt shops as exempt shops in a geographic area for a specified period during a special event, namely, the Mount Isa Mines Rodeo.
- [2] According to the Act, an "exempt shop" includes shops in an area surrounding a special event as declared by the Commission.
- [3] This application is made under s 5(2)(a) of the Act and may be made by an organisation, chief executive, local government or any other person.
- [4] The applicant seeks a declaration that the Mount Isa Mines Rodeo is a special event pursuant to s 5(1)(c) of the Act. It is proposed for a period beginning Thursday 12 August 2021 and continuing up to and including Sunday 15 August 2021.¹

¹ Events on Thursday run from 6.30am to 7.00pm, Friday and Saturday from 8.30am to 12.45am and Sunday from 8.30am to 4.00pm.

- [5] Exhibit B to the Affidavit of Mr David Stout filed 25 June 2021, describes the area proposed to be covered as:

Starting at Abel Smith Parade turning south onto Sunset Dr through Camooweal St then on to Patricia St and West St

Travelling south through to Isa St then onto Pamela St then to East St

Turning east onto Barkly Hwy then onto Abel Smith Parade to the starting point at Sunset Dr

- [6] The application was made on 25 June 2021. A directions order was subsequently issued on that same day and served on the parties affected by the application. Those parties were directed to make a formal application seeking leave to be heard by 13 July 2021. The directions order also stated that the application would be listed for hearing on 26 July 2021 commencing at 10.00am.
- [7] As required under the Act, the application and directions order were published on the Commission's website.
- [8] On 2 July 2021, Ms Laura Armstrong, Industrial Officer of the Shop Distributive and Allied Employees Association (Queensland Branch) Union of Employees ('the SDA') wrote to the Commission to seek leave to be heard in this matter, filing an application and affidavit on behalf of the SDA.
- [9] On 2 July 2021, I approved the SDA's application for leave to appear, issuing an order to that effect. On 20 July 2021 the SDA filed an outline of submissions.
- [10] On 8 July 2021, the Australian Workers' Union of Employees (AWU) sent an email to the Registry to state that it has members in the affected area but does not seek leave to be formally heard in the matter. However, in the same email the AWU put forward the following:
- The Commission should account for and take into consideration all matters referred to in Section 5 of the relevant legislation and further if there is in fact a necessity for a non-exempt shop to be redefined as an exempt store for the purpose of such an application.
 - That whilst Section 5 of the Act focuses on the Commission's ability to decide that the Mt Isa Mines Rodeo should be a "special event" it can provide ancillary orders such as an order to ensure that all employees in the affected shops receive a protection from working extended trading hours by reason of Section 36B of the Act.
- [11] On Monday 26 July 2021, the Mount Isa City Council sent an email to the Industrial Registry stating that it would remain neutral during the process.
- [12] A hearing was held on 26 July 2021 to consider the application. Oral submissions were made by the NRA and the SDA in support of their filed submissions.

Should the Commission grant the declaration sought?

The Act

- [13] The applicant submits that the Mount Isa Mines Rodeo fits the description of a special event under the Act.
- [14] Relevantly, s 5 of the Act 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;
 - (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
 - (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) the 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.
- [15] The Act provides for non-exempt shops operating in a stated area for an event to be considered exempt for the period of that event if the Commission declares the event to be a "special event".

- [16] In deciding whether an event is a "special event", 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. 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.

NRA submissions

- [17] Mr David Stout, on behalf of the applicant, submitted in his affidavit filed 25 June 2021 that the Mount Isa Mines Rodeo started in 1959 and is now recognised as the largest rodeo in the southern hemisphere. It is submitted that the event has sporting, tourism and economic significance to the local community and the state.
- [18] The Mount Isa Mines Rodeo is internationally recognised, is a highly significant event for the Australian rodeo circuit and is an essential event in the professional bull riding circuit.
- [19] The 2021 Mount Isa Mines Rodeo schedule features nightly concerts, as well as eight rodeo events, a street festival, horse races and a bush poetry breakfast.
- [20] It is expected that the population of Mount Isa will more than double for the event and the rodeo will contribute around \$10 million to Mount Isa's tourist economy and encourage visitors to spend longer in Outback Queensland.
- [21] At the 2019 Mount Isa Mines Rodeo, tourists spent \$12.24 million in the local economy. Overall attendance surpassed 2018 with 39,993 over the four days, generating more than 64,000 visitor nights in Queensland.
- [22] The NRA submits that the tourism significance of the event has been nationally recognised for many years, representing Queensland at the Qantas Australian Tourism Awards for the best Festivals and Events category. The event won gold in 2016, silver in 2017, gold in 2018 and 2019.
- [23] The NRA submits that as with any local event, retail operators around the venue areas will have an increase in activity both directly related and ancillary to events that make up the Rodeo.
- [24] The NRA has assurances that non-exempt retailers will only trade in line with customer expectations and this application will not come at the expense of regulation or employees. This application allows retailers to better cater to the needs of visitors to the region for the event, as well as residents, at their own discretion, based on their customer needs.

- [25] The NRA 'recognises the tremendous efforts of our essential retail team members who have continued to serve our community in the midst of the global COVID-19 pandemic. We also recognise the necessary staff contribution for stores to trade additional hours.'
- [26] The NRA states work performed during the extended hours will be on a voluntary basis and notes Commissioner Dwyer's statement in *National Retail Association Limited, Union of Employers* [2020] QIRC 154 that there are a number of protections available under other statutes or instruments to employees who may find themselves subject to duress or coercion with respect to being directed to work extended hours, as is their right, to ensure that work is of a voluntary nature.²

SDA submissions

- [27] The SDA filed their submissions on 20 July 2021. The SDA believes that there is a deficiency in the Act for not providing guidance or any reference to considerations on such matters as: the necessity of non-exempt shops to actually trade as exempt shops during the special event; the impact such a declaration has on employees of shops affected by the granting of such a declaration and the necessity to limit any retail hours during the special event period.
- [28] The SDA submits that the recommendations of the Office of Industrial Relations Review in December 2016 were not intended to make every event significant nor to make all non-exempt facilities in locations near an event free from trading regulation.
- [29] The SDA says that the application raises concerns around both the immediate and long-term consequences for its members. The SDA says that application under s 5 of the Act which suggest the significance of any event without demonstrating real necessity for extended trading by major retailers undermines the existing trading regime. This may benefit some major retailers but is likely to put significant pressure on the availability required of retail workers in the future and removes the competitive advantage of late night trading relied upon by many small business owners and operators.
- [30] Further, the SDA says that the 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. Whilst it is ideal to hypothesize 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.
- [31] The SDA is not confident that the event will hold the same level of significance it has in previous years as a result of the impact of COVID-19, and they submit the economic and tourism interests of the area would be better served by minimising any unnecessary

² *National Retail Association Limited, Union of Employers* [2020] QIRC 154 [32].

gathering opportunities such as shopping at Woolworths in extended hours, to avoid increasing fears of community transmission.

- [32] The SDA notes that the current COVID-19 situation is likely to have an impact on the attendance numbers at the event and that locals to the area will not have an expectation of additional shopping opportunities.
- [33] If the event does proceed, the SDA submit the existing trading regime is sufficient for the period of the Mount Isa Mines Rodeo. The area requested has a number of existing exempt shops and the show website encourages patrons to purchase food and drink at the event. This application does not serve any genuine need of patrons attending the event.
- [34] The SDA requests the Commission give particular thought to whether the Mt Isa Rodeo will be sufficiently significant to justify the order requested in consideration of all of the circumstances.
- [35] I note that the SDA submits that if the Commission is minded to grant an order, it does not object to the requested period or the requested area.

Consideration

- [36] The Rodeo is an iconic event and has been running for six decades. It attracts competitors from well beyond Queensland and has demonstrably captured the interest and imagination of the many thousands of visitors who attend each year when it is held. It seems to me that the cancellation of the 2020 event will mean that the 2021 events will be much anticipated by the local community and those competitors and tourists planning to attend. It is clear to me that the Mount Isa Mines Rodeo is a unique event of local, state or national significance.³
- [37] The event occurs annually and includes not only rodeo and bull riding events, but a range of accompanying cultural and social events. To this end, I find that it is of cultural and sporting significance⁴ and is both unique and infrequent.⁵
- [38] While the SDA have predicted that the impact of COVID-19 may cause lower attendance at the event, the affidavit of Mr Stout provides quite specific information about the predicted impact of the event on the local community, the economy and the tourism industry. At the hearing, Mr Stout reported that as of today, only four percent of the accommodation made available for the event remains unoccupied. I consider that the information provided is sufficient to make out the significance of the event to the economy and the tourism industry as per s 5(3)(a)(ii) of the Act.

³ The Act, s 5(1)(c)(i).

⁴ The Act, s 5(3)(a)(i).

⁵ The Act, s 5(1)(c)(i).

- [39] In their submissions objecting to the application, the SDA submits that the existing protections are not always adequate in preventing the reality of other relational pressures in store where a worker may wish to decline work during the period of the event. This may well have been the experience for particular workers who have requested help from their union in this regard. However, protections do exist⁶ and there are mechanisms for complaints to be made or disputes notified where the protections are not adhered to. With regard to the concerns raised by the SDA, Mr Stout noted the voluntary nature of work should the declaration be made. I consider that this issue and the relevant section of the legislation is well understood by the parties. I asked the SDA if there were specific examples they could provide regarding problems encountered by their members during previous Mount Isa Mines Rodeo events, however the union did not have such examples. In circumstances where the I find that the requirements of s 5 of the Act have been met, I do not consider that the possible behaviour of some and the potential negative impacts of such behaviour are reasons to refuse this application.
- [40] I note the submissions of the SDA questioning the need for patrons to access non-exempt shops trading as exempt shops and the NRA submissions that retailers will trade to meet the expectations of customers. These are not specific issues to be considered in deciding whether to declare the event to be a special event.
- [41] The objections of the SDA included commentary on the provisions of the Act and whether they represent the recommendations of the 2016 Review. While the views of the SDA are noted, there is nothing put forward in its written or oral submissions that causes me to determine that the declaration should not be made.
- [42] I have considered the SDA comments regarding COVID-19 and that the economic and tourism interests of the area would be better served by 'minimising any unnecessary gathering opportunities, such as shopping at Woolworths in extended hours to avoid increasing fears of community transmission'. I am confident that in the event that the relevant authorities are concerned about the risk of community transmission of COVID-19 during the event, appropriate advice will be issued or action taken to address the risk. I do not consider that the risk posed by some stores being open for extended hours outweighs the potential significance of the event to the economy and tourism industry.
- [43] For completeness, I note that similar applications regarding the Mount Isa Mines Rodeo were approved in 2018 and 2019.⁷

Declaration

- [44] For the reasons set out above, I am satisfied that I should grant the application. Accordingly, I make the following declaration:

⁶ The Act, s 36B.

⁷ *National Retail Association Limited, Union of Employers* [2018] QIRC 96; *National Retail Association Limited, Union of Employers* [2019] QIRC 112.

Pursuant to s 5(1)(c) of the *Trading (Allowable Hours) Act 1990* (Qld), I declare that:

- 1. The Mount Isa Mines Rodeo is for the purposes of s 5(1)(c)(ii) a special event;**
- 2. The declaration shall apply for a period commencing on 12 August 2021 up to and including 15 August 2021; and**
- 3. The declaration applies to the geographic locations described as:**

**Starting at Abel Smith Parade turning south onto Sunset Drive through to Camooweal Street then on to Patricia Street and West Street,
Travelling south through to Isa Street then onto Pamela Street then to East Street Turning east onto Barkly Highway then onto Abel Smith Parade to the starting point at Sunset Drive.**