

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *National Retail Association Limited, Union of Employers* [2022] QIRC 299

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

CASE NO: TH/2022/6

PROCEEDING: Application

DELIVERED ON: 5 August 2022

HEARING DATE: 5 August 2022

MEMBER: Dwyer IC

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 11 August 2022 and shall continue up to and including 14 August 2022; 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 onto 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.**

CATCHWORDS: INDUSTRIAL LAW – TRADING HOURS – APPLICATION FOR DECLARATION OF SPECIAL EVENT – application to classify all

non-exempt shops as exempt shops in the Mt Isa CBD for a specified period during a special event, namely the Mt Isa Rodeo – declaration made

LEGISLATION: *Trading (Allowable Hours) Act 1990* (Qld), ss 5, 36B

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

National Retail Association Limited, Union of Employers [2019] QIRC 112

National Retail Association Limited, Union of Employers [2018] QIRC 96

National Retail Association Limited, Union of Employers [2020] QIRC 154

National Retail Association Limited, Union of Employers [2021] QIRC 155

APPEARANCES: Mr M. Cole of the National Retail Association Limited, Union of Employers

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

Mr D. Marr of The Australian Workers' Union of Employees, Queensland

Reasons for Decision

Introduction

- [1] On 14 June 2022, the National Retail Association Limited, Union of Employers ('NRA'), applied for a declaration pursuant to s 5(2)(c) of the *Trading (Allowable Hours) Act 1990* (Qld) ('the Act'), to classify all non-exempt shops as exempt shops in a geographic area from 11 August to 14 August 2022 for a special event, namely, the Mount Isa Mines Rodeo ('the Application').¹

¹ Events on Thursday run from 8.0am to 7.00pm, Friday and Saturday from 8.30am to late and Sunday from 8.30am to 4.00pm.

- [2] The area that is sought to be covered by the Application is the geographical area as set out in exhibit B to the affidavit of Mr David Stout.² The geographical area is described as follows:

Starting at Abel Smith Parade turning south onto Sunset Dr through to Camooweal St then onto 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

- [3] On 16 June 2022 directions were issued, which provided, *inter alia*, that those parties who may be affected by the Application may file in the Industrial Registry and serve on the other parties, an application seeking leave to be heard by 8 July 2022. The directions order also stated that the application would be listed for hearing on 5 August 2022 at 2.00pm.
- [4] As required under the Act, the application and directions order were published on the Commission's website.
- [5] On 5 July 2022 Mt Isa City Council filed an application seeking leave to be heard. On 6 July 2022, the Shop Distributive and Allied Employees Association (Queensland Branch), Union of Employees ('the SDA'), filed an application seeking leave to be heard and an affidavit of Ms Laura Helen Armstrong in support. On 8 July 2022, The Australian Workers' Union of Employees, Queensland ('the AWU') filed an application seeking leave to be heard. On 11 July 2022, the Commission granted leave for Mt Isa City Council, the SDA and the AWU to be heard at the hearing of the matter.

The relevant provisions of the Act

- [6] Section 5 of the Act provides the definition of an exempt shop as follows:

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

² Filed on 14 June 2022, see exhibit B.

- 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.

...

[7] Accordingly, the Commission must consider, in determining whether an event is a special event pursuant to s 5(1)(c)(ii) of the Act, the following:

- (a) the cultural, religious or sporting significance of the event;³ and
- (b) the significance of the event to the economy and the tourism industry.⁴

[8] 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.⁵ The Mt Isa City Council did not file any submissions with respect to this.

[9] The Affidavit of Mr David Stout filed with the Application by the NRA includes an outline of submissions. The NRA submits that the Mt Isa Mines Rodeo meets the criteria under the Act as being a 'unique or infrequent event of local, state or national significance'. The NRA further submits that there is evidence available that supports a conclusion that the event carries sporting significance, as well as significance to the economy and tourism industry.

³ *Trading (Allowable Hours) Act 1990* (Qld) s 5(3)(a)(i).

⁴ *Ibid* s 5(3)(a)(ii).

⁵ *Ibid* s 5(3)(b).

- [10] The Mt Isa Mines Rodeo started in 1959 and is now recognised as the largest rodeo in the southern hemisphere. In 2019, over 700 competitors attended the Rodeo across Australia and internationally. The 2022 Mt Isa Mines Rodeo will stage a new world championship event in partnership with the Mona Aboriginal Corporation.
- [11] The 2021 Mt Isa Mines Rodeo attracted over 25,000 attendees, with 52 percent from the Mt Isa region, 35 percent from other parts of Queensland and 13 percent from interstate. Only five percent of attendees made a day trip to the Rodeo, which subsequently generated 43,700 visitor nights in Queensland. With the vast majority of attendees staying in Mt Isa for the event, the NRA submits there is a demonstrated need for additional trading hours to service visitors to the region. The NRA further submits the tourism significance of the event has been recognised for many years, representing Queensland at the Qantas Australian Tourism Awards for the best Festivals and Events category, winning gold in 2016, silver in 2017, and gold again in 2018 and 2019.
- [12] The NRA also submits the Mt Isa Mines Rodeo has significantly contributed to the economy, with the 2021 Rodeo estimating that visitors to Mt Isa spent \$7.38 million in Queensland, \$6.94 million of which was event related.
- [13] The NRA further notes they have 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. The NRA also notes applications for the Mt Isa Rodeo were granted in 2021, 2019 and 2018.⁶
- [14] The NRA notes whilst the Commission may not be afforded the discretionary powers to preserve the employee rights protected within s36B of the Act, the work performed during the extended hours will be on a voluntary basis. The NRA makes reference to my statement in *National Retail Association Limited, Union of Employers*⁷ 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.

⁶ *National Retail Association Limited, Union of Employers (the Mount Isa Mines Rodeo)* [2021] QIRC 254; *National Retail Association Limited, Union of Employers* [2019] QIRC 112; *National Retail Association Limited, Union of Employers* [2018] QIRC 96.

⁷ [2020] QIRC 154 [32].

Submissions of the parties

Submissions filed by the SDA

[15] The SDA filed written submissions⁸ in response to the Application. Whilst not expressly objecting to the Application, the SDA submits that 'it is imperative that the Commission vigorously assess the Application and only make an order when the evidence strongly dictates it is appropriate in the circumstances.' The SDA made the following submissions regarding the consequences of the Application:

- 1.1 where Section 5 applications are used to suggest the significance of any event without demonstrating real necessity for extended trading by major retailers, we submit that application undermines the existing regime. This consequence may benefit some major retailers but it puts significant pressure on the availability required of retail workers, removes the competitive advantages relied upon by many small business owners and operators and can detract from the services available at the event itself ; and
- 1.2 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. We are informed regularly by our members they experience relationship breakdown and other consequences if those rosters are declined, regardless of the reason for declining.

[16] The SDA also made general submissions in relation to the term 'significance'. These submissions are summarised as follows:

- the term 'significance' was not intended to be used as an unmeasured benchmark available to the NRA to point to any cultural, religious or sporting aspect of an event to satisfy an application for extended trading. The term applies in circumstances where the event creates the real possibility of retail opportunities and extended hours;
- the NRA has failed to demonstrate an adequate connection between the event and the surrounding retailers as the affidavit of Mr Stout refers to general assertions of retailers in relation to their support for the event, without any direct comment from those retailers. Mr Stout also refers to catering to customer expectations, however does explain what the customer expectations are or how the operation of non-exempt retailers in the extended hours will achieve such expectations; and
- the Commission is requested to consider factors such as attendance numbers, size of the event, media coverage, and contribution to Queensland's national and international reputation.

⁸ Filed on 15 July 2022.

- [17] The SDA indicated that if the Commission is minded to grant the order sought, then it does not object to the requested period or to the requested area sought in the Application.
- [18] Finally, the SDA requested that the importance of voluntary work within the extended hours as to be expressed in any order made by the Commission.

Submissions filed by the AWU

- [19] The AWU's written submissions filed on 22 July 2022 confirms that it represents members in the affected area and states that it does not oppose the Application filed by the NRA.
- [20] The AWU makes further general submissions with respect to the Application, contending the Commission should account for and take into consideration all matters referred to in section 5 of the Act and consider if there is a necessity for a non-exempt shop to be redefined as an exempt shop for the purposes of the Application. Additionally, the AWU notes the Commission does not have powers at the application stage to make orders to ensure employees in the affected shops receive a protection from working extended trading hours.⁹
- [21] The AWU submits it will seek undertakings by the applicant that any work undertaken by employees in the extended hours proposed are voluntarily agreed to by each employee, and those who agree to work additional hours are paid in accordance with the applicable industrial entitlements.

Consideration

- [22] I am satisfied that the Mt Isa Rodeo is a unique event of local, state or national significance.¹⁰ As I have previously held, these terms as they appear in s 5 of the Act are to be given a wide and diverse meaning, and ought to be considered in the context of the event for which the exemption is sought.¹¹ Taking that approach, an annual show in a small regional community comfortably falls within those terms.
- [23] The Mt Isa Rodeo is a stand-alone, singular event, of which there is no replica or rival in that community. The fact that it occurs annually does not make it less unique. The term 'significant' can be (and is) a reference not only to attendance numbers, but also to the impact and importance of the event on those in attendance.¹² It is clear the Mt Isa Rodeo is an event of sporting significance to the region and is significant to the economy and tourism industry of the region.

⁹ *Trading (Allowable Hours) Act 1990* (Qld) s36B.

¹⁰ *Ibid*, s5(1)(c)(i).

¹¹ *National Retail Association Limited, Union of Employers* [2021] QIRC 155, 6 [25].

¹² *Ibid*, 6 [27].

[24] For completeness, I note that similar applications regarding the Mount Isa Mines Rodeo were approved in 2018, 2019 and 2021.¹³

[25] The Commission did not receive any objections to the application.

[26] Both the SDA and AWU request that the importance of voluntary work within the extended hours be expressed in any order made by the Commission.

[27] I am comfortable that the Act provides adequate protection for retail employees potentially impacted by the application being granted. There are statutory protections for employees which are set out at s 36B of the Act:

- (1) An employer must not require an employee to work during extended hours unless the employee has freely elected to work during extended hours.

Maximum penalty—
 - (a) for a first offence—16 penalty units; or
 - (b) for a second or later offence—20 penalty units.
- (2) However, subsection (1) does not apply in relation to an employee if an industrial instrument provides arrangements under which the employee may refuse or agree to work during extended hours.
- (3) For subsection (1), an employee has not freely elected to work during extended hours—
 - (a) if the employee elects to work during extended hours because the employee has been coerced, harassed, threatened or intimidated by or for the employer; or
 - (b) only because the employee is rostered, or required under an industrial instrument, to work during those hours.

...

[28] I am not empowered to pre-emptively make orders incorporating the protections contained in s 36B. However, from the submissions made by all parties participating in the hearing there was clear consent by the parties that employees affected by a granting of the application, whose hours may extend outside the normal range as prescribed by their Certified Agreements and Awards, would only be required to work those additional hours on a voluntary basis.

[29] In all of the circumstances, I am prepared to grant the application.

¹³ *National Retail Association Limited, Union of Employers (the Mount Isa Mines Rodeo)* [2021] QIRC 254; *National Retail Association Limited, Union of Employers* [2019] QIRC 112; *National Retail Association Limited, Union of Employers* [2018] QIRC 96.

Declaration

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

- 1. Pursuant to s 5(1)(c)(ii) of the *Trading (Allowable Hours) Act 1990* (Qld), I declare the Mt Isa Mines Rodeo a special event.**
- 2. The declaration shall apply for a period commencing on 11 August 2022 and shall continue up to and including 14 August 2022.**
- 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 onto 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.**