

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *National Retail Association Limited, Union of Employers* [2022] QIRC 227

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

CASE NO: TH/2022/5

PROCEEDING: Application

DELIVERED ON: 17 June 2022

HEARING DATE: 17 June 2022

MEMBER: Hartigan IC

HEARD AT: Brisbane

DECLARATION:

1. Pursuant to s 5(1)(c)(ii) of the *Trading (Allowable Hours) Act 1990 (Qld)*, I declare the Burdekin Show a special event.
2. The declaration shall apply for a period commencing on 22 June 2022 and concluding on 22 June 2022.
3. The declaration applies to the following stated area:
 - Starting on the corner of Jones St and Bruce Hwy at the Ayr Showgrounds
 - Travelling south-east and turning onto Burke St then onto Chippendale St
 - Turning at MacMillan St and turning onto Kennedy and then onto Bower St northbound

- **Through to Railway St and then onto Jones St to starting point**

CATCHWORDS: INDUSTRIAL LAW – TRADING HOURS – APPLICATION FOR DECLARATION OF SPECIAL EVENT – application to classify all non-exempt shops as exempt shops in part of the Burdekin Shire Council area for a specified period during a special event, namely the Burdekin Show – whether the Burdekin Show is a special event within the meaning of s 5 of the *Trading (Allowable Hours) Act 1990* – declaration made

LEGISLATION: *Trading (Allowable Hours) Act 1990* (Qld), s 5

CASES: *National Retail Association Limited, Union of Employers* [2020] QIRC 031
National Retail Association Limited, Union of Employers [2020] QIRC 168
National Retail Association Limited, Union of Employer (the 2021 Burdekin Show case) [2021] QIRC 220

APPEARANCES: Mr D. Stout 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 9 June 2022, the National Retail Association Limited, Union of Employers ('NRA'), applied for a declaration pursuant to s 5(2) of the *Trading (Allowable Hours) Act 1990* (Qld) ('the Act'), that the Burdekin Show, to be held on Wednesday, 22 June 2022 is a special event within the meaning of s 5(1)(c)(ii) of the Act ('the Application').

- [2] The NRA submits that, if the declaration is made, it would provide for non-exempt shops, operating in a stated area during the period of the event (the Burdekin Show), to be exempt shops for the period of that event within the meaning of the Act.
- [3] 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.¹ The geographical area is described as follows:
- Starting on the corner of Jones St and Bruce Hwy at the Ayr Showgrounds
Travelling south-east and turning onto Burke St then onto Chippendale St
Turning at MacMillan St and turning onto Kennedy and then onto Bower St northbound
Through to Railway St and then onto Jones St to starting point
- [4] The period for which the declaration is sought is Wednesday, 22 June 2022.
- [5] On 10 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 14 June 2022 and an outline of submissions by 12 noon on 15 June 2022. The Application, affidavit of Mr Stout and the directions order was published on the Queensland Industrial Relations Commission ('the Commission') website on 13 June 2022.
- [6] On 10 June 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 Mr Darryn Gaffy in support. On 13 June 2022, The Australian Workers' Union of Employees, Queensland ('the AWU') filed both an application seeking leave to be heard and written submissions in relation to the Application. On 15 June 2022, the Commission granted leave for the SDA and the AWU to be heard at the hearing of the matter² and the SDA subsequently filed written submissions.
- [7] The question for my determination is whether I should make the declaration sought by the NRA in its Application.

The relevant provisions of the Act

- [8] 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

¹ Filed on 9 June 2022, see exhibit B.

² *Industrial Relations Act 2016* (Qld) s 539.

- (a) an independent retail shop; or
- (b) 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.

...

[9] 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

[10] 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 Burdekin Shire Council did not file any submissions with respect to this.

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).

- [11] The NRA submits that the Burdekin Show 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, in the form of statements and endorsements, that supports a conclusion that the event is also of cultural significance, in particular of agricultural significance, and of significance to the economy and tourism industry.
- [12] The Burdekin Show is scheduled to be held at the Ayr Show Grounds. The NRA submits that the event features 21 sections with over 50 exhibitors and there are 300 prizes available to be won, presumably by patrons attending the event. Additionally, the event provides for other entertainment including: trackskill V8 Ute show, above ground zero fireworks display, Burdekin machinery preservationist, animal farm and petting zoo, honeycomb tractor pull, super tank fish habitat display, equestrian competitions, camel rides, circus performers, sideshow alley and roving entertainers. The NRA further submits that the event is a major tourist drawcard in regional Queensland, providing interstate and intrastate tourism and employment opportunities.

Submissions of the parties

Submissions filed by the SDA

- [13] The SDA filed written submissions⁶ 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 submissions regarding the consequences of the Application as relevantly summarised:
- (a) applications made 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 regime. This has the consequence of potentially benefitting some major retailers, however it also places significant pressure on the availability of retail workers, removes the competitive advantage relied on by small business owners and operators and detracts from the services available at the event; and
 - (b) existing protections around voluntary work available under statutes or other instruments are not always adequate in preventing the reality of pressures in store, and employers usually direct employees to work a particular roster for the relevant period, rather than make additional hours available to employees who request to work.
- [14] The SDA also made general submissions in relation to the term 'significance'. These submissions are summarised as follows:

⁶ Filed on 15 June 2022.

- (a) 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, and the understanding of 'significance' has not been reached in the Application made by the NRA;
- (b) the NRA has failed to demonstrate an adequate connection between the event and the surrounding retailers as the affidavit of Mr David Stout refers to general assertion rather than direct comment from retailers regarding their support for the event, the affidavit also refers to catering to customer expectations, however the NRA fails to explain what the customer expectations are or how the operation of non-exempt retailers in the extended hours will achieve such expectations; and
- (c) 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.

[15] 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.

[16] Finally, the SDA requests that the importance of work within the extended hours as remaining voluntary to be expressed in any order made by the Commission.

[17] At the hearing of the matter, the SDA clarified its position and confirmed that it objected to the Application. The SDA relied on the matters as referred to above in support of its objection.⁷

[18] Essentially, the SDA submitted that it considered the material filed by the NRA did not adequately address the significance of the event. The SDA confirmed that it did not challenge the evidence contained in Mr Stout's affidavit.

Submissions filed by the AWU

[19] The AWU's written submissions⁸ confirms that it represents members in the affected area and states that it does not oppose the Application filed by the NRA. The AWU makes further general submissions with respect to the Application as follows:

4. The Commission should account for and take into consideration all matters referred to in section 5 of the *Trading (Allowable Hours) Act 1990* ('the Act') and further if there is in fact a necessity for a non-exempt shop to be redefined as an exempt store for the purposes of such an application.

⁷ See [14].

⁸ Filed on 13 June 2022.

5. That whilst section 5 of the Act focuses on the Commission's ability to decide that the Burdekin Show should be regarded as a 'special event' it can provide ancillary orders 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.

[20] At the hearing of the matter, the AWU confirmed that it did not object to the Application.

Is the Burdekin Show a 'special event' within the meaning of s 5(1)(c)(ii) of the Act?

[21] Section 5(3)(a) of the Act prescribes the matters the Commission must consider in deciding to declare an event to be a special event for the purpose of s 5(1)(c) of the Act. I will address those matters further below.

[22] The parties each raise matters in their submissions which go beyond the matters required to be considered by s 5(3)(a) of the Act. Section 5(3) does not provide that in deciding whether or not to make the declaration, the Commission must have regard only to the matters specified in that section.⁹ However, any other matter that the Commission is bound to consider must be determined by implication from the subject matter, scope and purpose of the Act.¹⁰

[23] It may well be that some of the matters raised by the SDA in its submissions including, for instance, the impact on small business owners and operators and employees if a declaration is made fall within the consideration of whether a declaration should be made if it can be established those matters are relevant to the subject matter, scope and purpose of the Act. The SDA's submissions are of a general nature and do not establish by reference to evidence or any other information the relevance of such matters in the context of this Application.

[24] The SDA submits that, on a reasonable understanding of the legislation, the term 'significance' does not apply where an event poses a very basic level significance, but rather, it applies where an event is of such significance that it creates the real possibility of retail opportunities in the extended hours.

[25] The word significance should be read within its ordinary context. That is, it is of importance and/or consequence.¹¹

[26] The SDA submits that whether the event meets an adequate understanding of 'significance', that the Commission use its discretion to consider factors such as attendance numbers, size of the event, media coverage and contribution to Queensland's national and international reputation.

⁹ *National Retail Association Limited, Union of Employers* [2020] QIRC 031, [24] – [26].

¹⁰ *Ibid*, [27].

¹¹ *National Retail Association Limited, Union of Employer (the 2021 Burdekin Show case)* [2021] QIRC 220, Merrell DP, [18].

- [27] Whilst I accept these submissions generally, the SDA has placed no direct evidence before the Commission with respect to these matters. Further, there is no challenge to the affidavit evidence relied on by the NRA with respect to history and description of the cultural significance of the Burdekin Show. In this regard, the unchallenged evidence is that the Burdekin Show is an annual event that celebrates the significance of agriculture to the region's economy and has become a major cultural event drawing thousands of visitors. Further, the unchallenged evidence with respect to the significance of the event, to the economy and tourism industry that the Burdekin Show is sponsored by 71 local businesses, banks and government bodies and draws visitors from across the region.
- [28] For these reasons, I am satisfied that the Burdekin Show is a unique cultural event of local significance to the region, its economy, and its tourism industry.
- [29] I accept that the Burdekin Show is, for the purpose of s 5(1)(c)(ii) of the Act, a special event.

Ancillary orders sought by the SDA and AWU

The claim for an auxiliary order for the protection of employees

- [30] 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.
- [31] I have addressed a similar claim by the SDA in *National Retail Association Limited, Union of Employers*.¹² For the same reasons, I decline to make an order in the terms sought by the SDA.

What should be the area to which the declaration applies?

- [32] Exhibit B to Mr Stout's affidavit attaches a map with a description of the boundary as follows:

Starting on the corner of Jones St and Bruce Hwy at the Ayr Showgrounds
 Travelling south-east and turning onto Burke St then onto Chippendale St
 Turning at MacMillan St and turning onto Kennedy and then onto Bower St northbound
 Through to Railway St and then onto Jones St to starting point

- [33] As noted above, the SDA does not object to the geographical area sought in the declaration. At the hearing, the AWU confirmed that it did not object to the geographical area sought by the NRA.

What should be the period to which the declaration applies?

¹² [2020] QIRC 168, [41] – [45].

[34] The Burdekin Show is scheduled to operate from 10:00am to 11:00pm on Wednesday, 22 June 2022. The NRA has applied for the declaration to be made for Wednesday, 22 June 2022. The SDA in their written submissions stated that they did not object to this time period. At the hearing of the matter, the AWU confirmed that it did not object to the time period applied for by the NRA.

[35] Accordingly, the period for which the declaration applies will be Wednesday, 22 June 2022.

Conclusion

[36] The Burdekin Show is a special event within the meaning of s 5(1)(c)(ii) of the Act because the Burdekin Show is an event of cultural significance to the region and is significant to the economy and tourism industry of the region.

[37] For the reasons set out above, I am satisfied that I should make a declaration to that effect. The period for which the declaration applies is limited to the length of the event, namely Wednesday, 22 June 2022.

[38] Further, the area to which the declaration applies is the area as set out in paragraph [3].

[39] I make the following declaration:

- 1. Pursuant to s 5(1)(c)(ii) of the *Trading (Allowable Hours) Act 1990 (Qld)*, I declare the Burdekin Show a special event.**
- 2. The declaration shall apply for a period commencing on 22 June 2022 and concluding on 22 June 2022.**
- 3. The declaration applies to the following stated area:**
 - Starting on the corner of Jones St and Bruce Hwy at the Ayr Showgrounds**
 - Travelling south-east and turning onto Burke St then onto Chippendale St**
 - Turning at MacMillan St and turning onto Kennedy and then onto Bower St northbound**
 - Through to Railway St and then onto Jones St to starting point**