

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Trading (Allowable Hours) Act 1990 - s. 21 - trading hours orders on non-exempt shops

National Retail Association Limited, Union of Employers AND Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees (TH/2012/1)

TRADING HOURS - NON-EXEMPT SHOPS TRADING BY RETAIL - STATE

DEPUTY PRESIDENT SWAN
COMMISSIONER BROWN
COMMISSIONER THOMPSON

24 October 2012

DECISION

WOODFORD AREA

- [1] An application was filed by the National Retail Association Limited, Union of Employers (NRA) on 20 April 2012 seeking to amend the Order - *Trading Hours - Non-Exempt Shops Trading by Retail - State* (Trading Hours Order) in the following terms:

"By inserting a new clause 1 (j) in Schedule 1 as follows:

- (j) the town of Woodford being the area within the following boundaries:

Commencing at the intersection of the Beerburum - Woodford Road and Cemetery Road; from that point following a line in a westerly direction to the intersection of the D'Aguilar Highway with Old Cove Road; from that point in a southerly direction to the intersection of Kopp Road and Iron Bark Drive; from that point in a easterly direction to the intersection of Mason Road and Chambers Road; from that point in a northerly direction to the point of commencement.".

Parties (in support of the application)

- [2] Parties supporting the application were:

- NRA
- Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees (SDA).

Witness Evidence

- [3] Evidence for the NRA was provided by the following:

- Ms Elena Marshall – Retail Support Manager for Woolworths (Exhibit 1)
- Mr Julian Young – Group Operations Manager for The Pullos Group of Hotels (Exhibit 2)
- Mr Gavin Howard – Owner/Manager of Woodford Hardware & Nursery (Exhibit 3)
- Ms Sue Bidgood – Owner/Manager of Woodford Homewares (Woodford Shopping Centre) (Exhibit 4).

Other correspondence

- [4] Correspondence, dated 25 June 2012, was received from Mr Ben Scott of United Retail Federation which addressed Queensland Retail Traders and Shopkeepers Association (QRTSA) difficulties regarding compliance with certain requirements of the *Industrial Relations Act 1999*. That being the case for QRTSA, Mr Scott sought leave for the United Retail Federation to be heard as a party in the proceedings, but also advised that United Retail Federation "is not an entity registered with the QIRC".
- [5] Queensland Industrial Relations Commission (QIRC) Registry records show that United Retail Federation is the business name for the QRTSA.
- [6] A short history of this matter was that on 21 June 2012 Mr Scott had written to the Registry of the QIRC stating that:

"I was intending to seek leave to appear as the United Retail Federation (in and of itself an entity not registered with the QIRC) as I doubt our processes will be finalised before documents are needed to be filed for that matter and even the hearing."

- [7] The Registry of the QIRC had issued a Directions Order on 20 April 2012 which required the NRA to serve the Application and the Directions Order to a range of bodies including the QRTSA by 27 April 2012. NRA supplied at the first mention of the matter before the Full Bench on 9 May 2012 its Affidavit of Service (ID 3).
- [8] A mention of the matter was held before the Full Bench on 9 May 2012 and directions were set for the hearing of the matter on 24 August 2012.
- [9] NRA was required to file its statements of evidence by 20 June 2012 and SDA did not seek to call evidence.

Inspections

- [10] The parties undertook inspections of the area under consideration.

The Legislation

- [11] Section 26 of the Trading Act states:

"s. 26 Matters relevant to s 21 order

In relation to making an order under section 21 the industrial commission must have regard to -

- (a) the locality, or part thereof, in which the non-exempt shop or class of non-exempt shop is situated;
- (b) the needs of the tourist industry or other industry in such locality or part;
- (c) the needs of an expanding tourist industry;
- (d) the needs of an expanding population;
- (e) the public interest, consumers' interest, and business interest (whether small, medium or large);
- (f) the alleviation of traffic congestion;
- (g) the likely impact of the order on employment;
- (h) the view of any local government in whose area the order is likely to have an impact;
- (i) such other matters as the industrial commission considers relevant."

Evidence

(a) The locality, or part thereof, in which the non-exempt shop or class of non-exempt shop is situated

- [12] Woodford is located 25 kilometres north-west of Caboolture on the D'Aguilar Highway. The township is just outside of the Brisbane statistical division boundary.
- [13] Previously Woodford was part of the Caboolture Shire Council and now falls within the Moreton Bay Regional Council area.
- [14] NRA submits that the vast majority of residents within south-east Queensland enjoy the benefits of seven day trade. NRA views Woodford's exclusion from seven day trade as an anomaly.
- [15] NRA states that Sunday and holiday trading is available in Caboolture to the south, Beerwah to the east, and Maleny to the north.
- [16] A successful application would provide the residents of Woodford the opportunity of shopping locally. They would not have to travel some distance to avail themselves of the type of trade offered by non-exempt stores on Sundays.

(b) the needs of the tourist industry or other industry in such locality or part

- [17] All of the information contained within this criterion has been supplied by NRA and its witnesses.
- [18] The Moreton Bay Region offers visitors a wide range of attractions, activities and events.
- [19] Of significance is the Woodford Folk Festival and The Dreaming Festival (Exhibit 2 - point 3).

- [20] There are other significant tourist destinations - eg the Australian Narrow Gauge Railway Museum and the Storeybrook Cottage Herb Garden (Exhibit – point 3).
- [21] Data from the 2006 Census shows that sectors associated with tourism accounted for the following rates of employment:
- Retail trade - 12.5%
 - Accommodation, cafes and restaurants - 5.5%
 - Personal and other services - 4.9%
 - Cultural and recreational services - 1.1% (Exhibit 1 - attachment 2)
- [22] Generally, employment in these sectors are comparable to the norm in south-east Queensland.
- [23] Overseeing the program for tourism growth is the Moreton Bay Region Tourism Destination Management Plan 2009 (the Plan). This organisation manages factors such as development, marketing and growth of a cohesive, robust industry sector.
- [24] The Plan identifies concerns regarding the hospitality and retail services offered in the region. Of particular concern is the perceived lack of range and choice of retail and hospitality services within this area.
- [25] NRA submits that there is a need for more visitor friendly opening hours for non-exempt stores.

(c) the needs of an expanding tourist industry

- [26] Information presented by NRA showed that the majority of regions in Queensland recorded increases in day trip expenditure. The ABS statistical division of Brisbane, which includes Woodford, recorded growth of 17%.
- [27] Evidence given by Mr J Young (Exhibit 2 - point 3) discussed the growth in tourism in Woodford and particularly the Woodford Folk Festival.
- [28] Since 1995 the Festival has attracted a wide range of visitors. The attendance at the Festival has grown from 66,500 in 1995 to 98,500 for 2011/12. The gross expenditure in the region during the Festival doubled from \$6,000,000 in 1995 to \$14,201,080 in 2011/12 (Exhibit 2 - point 5).
- [29] The mix of tourists show that 55% come from south-east Queensland, intrastate visitors account for 12%, interstate visitors account for 30%, and 2.9% of visitors come from overseas (Exhibit 2 - point 6).
- [30] It was submitted by NRA that there would be repeat visitation to the area from those who had been introduced to the area through the Festival (Exhibit 2 - point 6).

(d) the needs of an expanding population

- [31] From 2001-2011, there had been an increase of 891 persons in the population of the Caboolture Hinterland statistical area (which includes Woodford) and this represented a population growth of 15.7% over that time (NRA Submissions Attachment 3, ABS - Regional Population Growth in Australia, July 2012).
- [32] Ms Elena Marshall's statement shows that between 2012-2011, the Moreton Bay Regional Council area experienced the 3rd largest population increase and became the 10th fastest growing regional council in Queensland (Exhibit 1 - point 8).
- [33] The resident population of Moreton Bay Regional Council area is projected to increase by 60.2% between the years 2006-2031, from 332,862 persons to 533,170 persons.
- [34] NRA claims that people move to the Woodford area for a quieter life style, work at the Woodford Correctional Centre or at the abattoir in Kilcoy, and the availability of cheaper accommodation.

(e) the public interest, consumers' interest, and business interest (whether small, medium or large)

- [35] NRA referred to the 1996 Knox Inquiry into trading hours where the following conclusion was drawn:

"It is also evident that extended hours are in line with mainstream consumer preferences. The consumer survey undertaken for the Inquiry found that the majority of people surveyed had a positive attitude toward extended trading hours and were utilising the extended trading hours" (NRA Submissions - point 11).

- [36] This application was supported by two local small businesses and also by the medium business, Woodford Village Hotel/Motel and a large business, Woolworths.

[37] Evidence given by Ms Marshall included the following:

- Sunday trade would see a reduction in congestion at registers with some redistribution of demand from current trading days to Sundays.
- Better efficiencies of energy usage.
- Assisting with greater efficiencies in scheduled deliveries and store replenishment (Exhibit 1 - point 11).

[38] In consideration of the ‘consumer interest’ element of this criteria, in our view it would be beneficial for consumers to have access to seven day trade primarily for the purpose of ensuring that there would be no need to travel out of Woodford to access a non-exempt store. Further, local consumers would have the benefit of competitive pricing of goods in a non-exempt store.

[39] A flow-on effect from seven day trade in Woodford would also benefit smaller businesses within the township.

[40] Ms Marshall also referred to the cost of petrol and thus the cost impost on consumers having to travel out of Woodford to access seven day trade (Exhibit 1 - point 21).

(f) the alleviation of traffic congestion

[41] This criterion was not relevant to this case.

(g) the likely impact of the order on employment

[42] Woolworths anticipated that Sunday and holiday trade would increase employment hours by approximately 10% (Exhibit 1 - point 25).

(h) the view of any local government in whose area the order is likely to have an impact

[43] NRA claims that the relevant Council, whilst being served with the application, did not express a view.

(i) such other matters as the industrial commission considers relevant

[44] SDA had sought assurances from the non-exempt trader that work on a Sunday would be of a voluntary nature if the application was granted. That assurance was given.

Conclusion

[45] There has been no opposition to this claim.

[46] However, the Commission is required to consider, where relevant, the mandatory provisions of the Act contained with s. 26.

[47] That consideration has been made and the Commission proposes to grant the application.

[48] Favourable considerations relate to the locality of Woodford and the prevalence of the tourism industry within that locality. The statistics show that there is an expanding tourism industry and population growth. Both factors bolster the argument to expand trading hours for non-exempt stores within that township. As well there would be increased hours of work for existing employees and/or new employees.

[49] This application has drawn support from small, medium and large business.

[50] Other criteria contained within s. 26 have not been activated by this application.

[51] In our view, the application should be granted and we propose an operative date of 7 December 2012.

[52] Order accordingly.

D.A. SWAN, Deputy President.

D.K. BROWN, Commissioner.

J.M. THOMPSON, Commissioner.

Hearing Details:

2012 24 August

Released: 24 October 2012

Appearances:

Ms A. Lamb, of National Retail Association Limited, Union of Employers.

Mr T. Martin, of Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees.