

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Re: National Retail Association Limited, Union of Employers* [2014] QIRC 056

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

CASE NO: TH/2012/8

PROCEEDING: Application to amend Order - Trading Hours
Non-Exempt Shops Trading by Retail - State
(Townsville Tourist Area)

DELIVERED ON: 21 March 2014

HEARING DATE: 7 March 2014
19 March 2014 - Written submissions

MEMBERS: Industrial Commissioner Fisher
Industrial Commissioner Knight
Industrial Commissioner Neate

ORDER: **Attendance Notice to Produce be set aside.**

CATCHWORDS: INDUSTRIAL LAW - TRADING HOURS ORDER
- Application to set aside attendance notice to produce - Whether attendance notice could be issued at request of organisation granted leave to appear and be heard in proceedings - Written submissions - QRTSA agreed to application to set aside attendance notice to produce - Determined attendance notice to produce be set aside.

CASES: *Trading (Allowable Hours) Act 1990, s 21, s 23*
Industrial Relations (Tribunals) Rules 2011, s 58(1), Part 3, Schedule 2

APPEARANCES: Ms A. Lamb for the National Retail Association Limited, Union of Employers, the Applicant.
Mr C. Dorber for the Queensland Retail Traders and Shopkeepers Association (Industrial Organisation of Employers) and certain IGA Stores.

Decision

- [1] The National Retail Association Limited, Union of Employers (NRA) made an application to vary the Trading Hours - Non-Exempt Shops Trading by Retail - State Order in respect of the Townsville Tourist Area. The Queensland Retail Traders and Shopkeepers Association (Industrial Organisation of Employers) (QRTSA) was granted leave to appear and be heard by the Deputy Industrial Registrar on 11 September 2012.
- [2] On 21 February 2014 an Attendance Notice to Produce was issued at the request of the QRTSA and served on the NRA.
- [3] On 28 February 2014 the NRA filed an application to set aside the Attendance Notice to Produce.
- [4] The application by the NRA was listed before a Full Bench on 7 March 2014. At the commencement of the proceedings the Full Bench alerted the NRA and the QRTSA to a threshold issue of whether the Attendance Notice to Produce could be issued at the request of the QRTSA in light of s 58(1) of the *Industrial Relations (Tribunals) Rules 2011* (the Rules) which provides that:

"On the request of a *party*, a member of the commission or the registrar may issue an attendance notice to a person." (emphasis added)
- [5] The Full Bench advised the QRTSA that it was not a party to the proceedings but had been granted leave to appear only. The Full Bench invited the NRA and the QRTSA to make submissions as to whether an attendance notice could be issued at the request of the QRTSA. At their request, the Full Bench allowed written submissions to be made. Those submissions have been received and considered by the Full Bench.
- [6] Section 23 of the *Trading (Allowable Hours) Act 1990* (the Act) provides a process that may be adopted by the Queensland Industrial Relations Commission (the Commission) when, as in the present matter, an application is made pursuant to s 21 of the Act. The Commission may issue directions about the notification of the application by requiring publication on the QIRC website, advertising in newspapers and service on industrial organisations, other persons and other organisations as the Commission may direct: s 23(3). Those directions are set out in a Directions Order issued by the Industrial Registrar identifying the applicant party as well as other organisations and individuals that may be interested in the application. The Directions Order contains an Order, in accordance with s 23(4) of the Act, that any person or organisation which claim to be concerned in the making of the order may apply to the Industrial Registrar to appear and be heard in an application. In the present matter, the QRTSA availed itself of this provision and was granted such leave.
- [7] Schedule 2 Dictionary of the Rules defines "party" as "for part 3, may include a person ordered or permitted to appear in a proceeding". Part 3 concerns proceedings before Magistrates. Thus, for the purposes of Commission proceedings, only parties to a proceeding are able to request an attendance notice be issued. A "party" is a

person or organisation that defends legal proceedings. Here, the QRTSA is not defending legal proceedings on behalf of its members. The QRTSA has an interest in the proceedings as any Order could affect the interests of its membership, but any Order made by the Commission is not binding on those members. An order issued by the Commission under s 21 of the Act binds only non-exempt shops as defined by the Act. It is so the interests of other shopkeepers are considered by the Commission in its decision-making that the QRTSA and other such organisations or interested persons are granted leave to appear and be heard in the proceedings.

- [8] The Full Bench is aware that it has been past practice to describe those granted leave to appear and be heard as "parties" but this has been more a matter of convenience than a recognition of their status. The Act makes clear that those with an interest in an application made under s 21 of the Act are not parties.
- [9] On receipt of the submissions made by the NRA, which addressed a number of the above issues, the QRTSA advised that, based on advice and its research, it did "not intend to make any further submission and acknowledged that an order setting aside the notice to produce, on the basis of the NRA submission is the only proper course of action for the Full Bench to follow."
- [10] In light of the submissions received and given the requirements of the Rules, the Full Bench orders that the Attendance Notice to Produce issued at the request of the QRTSA and served on the NRA on 21 February 2014 be set aside.
- [11] For completeness, we also record that another Attendance Notice to Produce issued at the request of the QRTSA was served on the Townsville City Council (the Council). The Council had been granted leave to appear and be heard but had subsequently notified it was withdrawing from the proceedings. By the time of the hearing the application by the NRA to set aside the Attendance Notice to Produce, the Council had complied with its Attendance Notice to Produce and the QRTSA had accessed the produced documents. Following the hearing, the Full Bench notified the Council of the issue and invited it to make a submission. No submission has been received from the Council, however, the QRTSA has advised:

"The documents tabled by the Townsville City Council and provided to me from the Registrar's Office will be returned. I record that I have read them and that the documents will not be admissible, directly or indirectly in the Full Bench hearing of the substantive application."

- [12] Order accordingly.