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- Introduction of award conditions for "outworkers" — Union sought to bring State award into line with Federal award as *re* limits on number of outworkers allowed, provision of 38 hours of work/week, free delivery of their work, keeping of time and wages records and allowing union inspection of such — C.I.C.'s noted previous occasions when similar claims rejected as unnecessary/unsubstantiated, etc — Fielding C., questioned the effectiveness of such conditions given that much of the "outwork" in question was done for retailers by "sub-contractors", who would not be "caught" by the Award — However, Majority accepted Union's submission *re* increased numbers of outworkers/their competitive advantage over factory workers, and agreed that the problems which had led to the inclusion of outworkers provisions in the Federal award now also existed in W.A. — Claims granted, with exception of claim for "Mixed Functions" clause, given its specific exclusion in the Federal award — Clothing Trades..... 155
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- <sup>1</sup>Jurisdiction of Commission to introduce award conditions for "outworkers" — Respondents claimed matters came within prerogative of management and were therefore excluded by section 7 (1) I.A. Act — Majority disagreed given that such provisions already in other State/Federal awards, provisions not in conflict with Factories & Shops Act and because such matters couldn't be excluded by a "loose claim" that employers have "some sole right of control" over outworkers — Fielding C., noted an earlier decision (1984, 58 ALJR 475) which made managerial prerogative a less restrictive factor, but also noted that other tribunals do not have the express limitations set out in the I.A. Act — See under "Award" for remainder of findings — Clothing Trades..... 155
- <sup>2</sup>Appeal against Commission's decision (64 WAIG 2179) refusing allowance for employees holding a sterilising technology certificate — Appellant claimed Commission failed to deal with merits of case and had erred in ruling it outside its jurisdiction — Full Bench stated that as similar allowances are found in many awards, it fell within definition of an industrial matter and therefore was under Commission's jurisdiction — However Full Bench found merits of claim had been covered by Commission and upheld decision that it fell outside "principles" — Dismissed..... 243

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- <sup>1</sup>Appeals against Commission's decision (at 65 WAIG 721) that neither AMWSU or BEU had constitutional coverage of operators in proposed can production plant — AMWSU claimed that Commission erred in concluding that it did not have constitutional coverage of operators and should have concluded that such operators were sheetmetal workers — BEU based its appeal upon words of its rule "in and/or about a brewery" which it interpreted to be reference to legal and related product proximity rather than geographical proximity so as to include operators — Full Bench shared Commission's opinion that BEU sought to give those words meaning they cannot sustain — Full Bench found operators to be sheetmetal workers and as such eligible for AMWSU membership and stated that Commission took insufficient account of technological change upon tasks to be performed by employees — Granted in part — Can Production 769
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- <sup>1</sup>Appeal against Full Bench decision (at 64 WAIG 876) dismissing application by Association of Professional Engineers, Australia (APEA) to be registered as union — Appellant claimed Full Bench erred in law on two grounds — Firstly, in deciding that by reason of APEA's eligibility for membership rule so as to include academic staff, it was incapable of registration and thus Full Bench without jurisdiction — Secondly, in finding registration neither necessary or desirable for purposes and objects of I.A. Act — Court found it necessary to deal only with first ground — Court rejected appellant's argument that all that was necessary was for there to be a minimum number of employees amongst membership to justify registration under section 53 I.A. Act — Clear statutory intention that unions consisting of employees as defined by I.A. Act should consist of only employees and not non-employees as well — Court found Full Bench correct in deciding it had no jurisdiction to register APEA as union — Dismissed — Engineering..... 4
- <sup>2</sup>Appeal against Commission's decision (64 WAIG 2179) refusing allowance for employees holding a sterilising technology certificate — Appellant claimed Commission failed to deal with merits of case and had erred in ruling it outside its jurisdiction — Full Bench stated that as similar allowances are found in many awards, it fell within definition of an industrial matter and therefore was under Commission's jurisdiction — However Full Bench found merits of claim had been covered by Commission and upheld decision that it fell outside "principles" — Dismissed..... 243
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## SHIFT WORK

- New roster providing one extra day's leisure without changing total hours sought for employees in publishing area — Applicant claimed variation in roster would not entail additional cost for respondent but would actually result in saving in labour costs — Respondent contended that significant cost factor was involved resulting in probable overtime or increased manning and argued that it should have the right to roster its employees in accordance with production requirements and provisions of award — Commission saw purpose of roster to be "allocation of ordinary hours of work over days of working week so as to provide optimum manning for purpose of and having regard to respondent's operations provided that roster does not impose unjust or unreasonable demands on employees subject thereto" — Commission found new roster did not fit overriding criteria of spreading hours or work required by respondent for optimum efficiency in production — Dismissed — Printing..... 542
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UNIONS

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- 'Allegation that state-registered union had failed to observe its rules — President recalled recent similar case which had arisen because state union and WA Branch of Federal union being run as one, even though their rules were different (63 WAIG 1929) — Respondent (Union) did not deny failure to observe rules, but claimed matters raised were either trifling, reflections of administrative inefficiencies or the *bona fide* result of observing Branch rules ". . . because those in charge treated the union as a branch of the federal organisation" — President noted that many of the allegations concerned past events which could not be altered or domestic affairs inappropriate to be dealt with under section 66 I.A. Act — However, in several other instances (dismantling of benefit funds, election of delegates to state conference, failure to purge register of unfinancial members, inaccurate information provided to Registrar, etc.), President considered rules should be enforced — Initial order directed compliance with rules concerned — Subsequent order directed Registrar to institute proceedings for an offence against the Act *re* failing to file a financial return within the prescribed time — Building..... 135
- 'Appeal against Commission's decision (64 WAIG 2141) awarding FMWU coverage of certain workers to exclusion of FLAIEU in granting of new award — Full Bench considered heart of problem to be question whether aged hostels or mental care establishments fall within accommodation industry notwithstanding that they are hostels for purpose of FMWU's constitutional rule — In 1976 CICS (57 WAIG 89) answered this question in affirmative and principal thrust of appellant's argument was that Commission departed from that finding upon flimsiest evidence of changed circumstance — Full Bench refused to interfere with decision of Commission on industrial coverage and dismissed appeal on those grounds — However, Full Bench found Commission paid insufficient attention to all important question as to whether rates claimed could be awarded having regard for work value and Wage Fixing Principles — On that basis Full Bench remitted case to Commission for further hearing and determination — Upheld in part — Aged and Disabled Persons Hostels..... 237
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- 'Industrial coverage of particular employees in Good Samaritan and F.C.B. Industries sought by H.S.O.A. — F.C.U. objected *re* persons eligible to be covered by it — Full Bench satisfied that activities of both industries were similar to other employers referred to in H.S.O.A. constitution and that H.S.O.A. had demonstrated it was an appropriate union despite the overlapping of eligibility with F.C.U. — Full Bench noted that previously similar extensions to coverage had been granted to H.S.O.A. despite objection of F.C.U. — Application granted on proviso that "the qualification to coverage" consistent with previous alterations remained — Hospital Ancillary Services..... 728
- 'Withdrawal of Registrar's decision to grant an election for certain positions on CATU's Committee of Management sought — Applicant claimed that persons who had been elected to fill casual vacancies were elected pursuant to rule 15 for a period of four years and therefore an election was not necessary — Commission upheld Registrar's decision that the rule governing the filling of casual vacancies stated that persons are elected for the unexpired portion of the term of office of the person vacating the office — Dismissed — Clothing..... 664
- Dispute as to which union should have right to enrol operators at planned automated can production plant — BEU claimed conditions of Brewing Industry and Maltng Industry Award should apply to operators — Question concerned with matter of interpretation of constitution rules of AMSWU and BEU leaving survivors to enter into negotiations with respondent after that matter decided — Essence of BEU's case was that respondent is closely aligned with brewery and as cans produced by respondent provide key element in brewing industry and work of operators not covered by another union, it must fall within BEU's rule — Commission found respondent to be organisation with corporate identity of its own and its work did not fall within that contemplated by BEU's rule — Consequently AMSWU able to continue negotiations and BEU's application dismissed — Can Production..... 721
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- 'Appeals against Commission's decision (at 65 WAIG 721) that neither AMWSU or BEU had constitutional coverage of operators in proposed can production plant — AMWSU claimed that Commission erred in concluding that it did not have constitutional coverage of operators and should have concluded that such operators were sheetmetal workers — BEU based its appeal upon words of its rule "in and/or about a brewery" which it interpreted to be reference to legal and related product proximity rather than geographical proximity so as to include operators — Full Bench shared Commission's opinion that BEU sought to give those words meaning they cannot sustain — Full Bench found operators to be sheetmetal workers and as such eligible for AMWSU membership and stated that Commission took insufficient account of technological change upon tasks to be performed by employees — Granted in part — Can Production..... 769
- 'Ex member of ASE sought order requiring union to recover and return to its general account amount of money paid out to officials — Each paid official required to contribute to federal union fund providing for retirement allowances — In 1983 federal union repaid contributions together with amount representing reasonable return as officials not eligible for membership — President found ample justification to treat money not as part of general funds but as return of contributions which ASE had paid over for benefit of officials and received back together with interest on express conditions that it be paid out to those officials — Dismissed — Union..... 783
- 'Allegation by members of CJU that union did not properly observe certain rules *re* Annual Conference procedures, election of delegates from sub-branches, enrolment of ineligible members, collection of fees, expenditure of funds contrary to union "objects" and appointment to Executive Committee — President ordered that rules particularly in respect to Annual Conference procedures be observed and that resolution *re* alteration of rules at 1984 Annual Conference be treated as recommendation until general meeting called — President ordered State Management Committee to investigate eligibility of certain persons and take appropriate action to exclude those not eligible — President directed Registrar to carry out investigation into financial affairs of union — Further, moneys paid for fines and costs incurred after prosecution of employees of union to be recovered — Election to be held to fill vacancy in position of Assistant Secretary — Unions..... 784
- 'Allegation that certain meetings held by CATU's Committee of Management were null and void due to the alleged expiration of term of office of particular officials — Applicant sought orders *re* proper application of union rules for the administration of the union — President considered each order sought on merit and found that the right of certain committee members to act as official representatives had ceased (65 WAIG 664) — President found Committee has the right to use its discretion *re* frequency of general meetings but ordered two general meetings for specified dates to discuss all matters and explain the reasons for particular resolutions — Further that it was beyond the provision of the rules to order that all "general business" be conducted at general meetings as the Committee is substantially charged with the "day to day" running of the union — President ordered that only members holding office in the union may attend and participate in meetings of the Committee — Clothing..... 791

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## UNIONS—continued

- <sup>2</sup>Appeal against Commission's decision refusing application of TWU and FEDFU to be joined to proceedings so that they would become parties to award when it issued — Respondents sought award to apply to workers in mining and processing of diamantiferous ore to which AWU would be party — Appellants sought to show that work for which they seek coverage is not embraced within membership rule of AWU in that AWU rule covers only metalliferous mining — Full Bench saw only question to be whether at time decision was made to exclude appellants from award there was material before Commission to support that decision — Full Bench stated that to ascertain worker's eligibility for membership, it is first necessary to locate in rule industry in which he/she is employed and then to examine exceptions and exclusions to see whether he/she is excluded from eligibility for membership — Following this procedure, Full Bench found no reason to suggest that meaning of word "mining" should be restricted to metalliferous mining — Full Bench saw overriding consideration in Commission's decision to secure peaceful carrying on of industry and to permit it to function in most efficient manner — Halliwell, C. dissenting — Dismissed — Mining (Diamonds)..... 775

## UTILISATION OF CONTRACTORS

- Union objected to claimant's retention of contractor to perform work of servicing and maintaining airconditioning units in light vehicles — Decision rested on Commission's interpretation of 'Utilisation of Contractors' Clause in relevant award — Commission's interpretation differed from that of both parties in its broadness and stated that Clause constituted "implied recognition of right of claimant to retain the services of contractors to perform all kinds of work" — In addition Clause implied that claimant must retain contractors' services without raising threats against employees' security leading to industrial dislocation — Commission decided on balance of evidence that no threat to claimant's employees arose, therefore claimant should not be prevented from retaining contractor — Declaration issued accordingly — Granted — Iron Ore (Contracting)..... 91

## WAGES

- Payment of wages sought by union members who had left their place of employment due to a water supply breakdown — Union claimed men entitled to leave workplace because there was no drinking water and unsafe toilet facilities — Respondent denied safety problem and claimed that water had been partially restored — Commission cited *Hall v. General Motors* (1979; 45 FLR 272 at 279); "it is the task of the applicant to demonstrate that there was in fact a hazard of sufficient moment to cause employees to fear for their safety" — Commission found insufficient evidence to satisfy criteria — Dismissed — Metal Trades (Railways)..... 90
- Application seeking order that respondent pay additional amount on top of ordinary wage to any person employed as "Temporary Clerk" — "Temporary Clerk" deemed to be any employee whose continuing employment not guaranteed by respondent whilst business continued at profit level that existed at time of person's employment — Respondent opposed — Application made to cover situation which had developed because respondent planned to relocate large proportion of business and had been recruiting people on understanding that they might not be retained after the move — Applicant did not criticize respondent for informing potential employees that their employment would not be of permanent nature, but submitted that such circumstance justified consideration over and above that in award — Commission concluded that any employer entitled to offer persons short term contracts for *bona fide* reasons and if person fully aware of terms, there was no reason for additional considerations — Dismissed — Clerks..... 67
- Alleged breach of award *re* failure to pay wages — Original copy of application not in evidence as only photocopies available — Magistrate found on basis of his own investigation and fact that defendant submitted himself to jurisdiction, he was able to deal with case on its merits — Magistrate satisfied on balance of probabilities that defendant was in building construction industry and that complainant employed on construction work as defined by award — Complaint proved — Building (Construction)..... 59
- Employer to bear cost of training new personnel — Union claimed trainees should be paid clerk's rates and clerks in "training role" should be paid at supervisory rate — Employer had previously born cost of training but change in policy required trainees to work without being paid — Union argued change to be inequitable in that trainee was actually performing clerk's work — Respondent objected and argued prospective employees were fully aware of training conditions and that, at that point, relationship was not one of employer/employee — Commission agreed with respondent in finding employer/employee relationship not in existence during training — Commission also found that clerks in "training role" bore no additional responsibility as respondent had waived provision of "Shortages" Clause — Dismissed — Clerks (Racing)..... 55
- Employer sought to amend award by adding new equivalent in following terms "four trunks boned on rail with leg and chump attached shall equal three carcasses" — Union objected and put forward counterproposal — Commission found that the evidence presented made decision a "matter of fact and method of boning" and that degree of difficulty and care exercised on boning trunks made up for the lesser quantity of product worked upon — Upon comparison with boning out whole carcasses Commission found that the tally for each such operation should be the same — Applicant's claim not allowed — Commission ordered that for "Trunk on bench or table, four trunks shall equal three carcasses. For carcasses on rail or chain, one carcass shall equal one carcass" — Commission found no reason to include "saving" and "reinforcing" counterproposals of the Respondent because directives to employees are employer's prerogative — Granted in part — Meat (State)..... 47
- Alleged breaches of award *re* failure to keep satisfactory time and wages record, underpayment of wages and annual leave — Magistrate accepted defendant's time and wages record as the most reliable evidence *re* days worked by employee, but not satisfied with employee's evidence *re* his belief that his position was full-time — On evidence, Magistrate accepted that terms of employment had changed at time of downturn in industry and found that employee was only entitled to payment for days actually worked — Award did not imply that an employee be paid full wages regardless of number of days or hours worked — However, service found to be continuous for purpose of Annual Leave clause — Complaints proved, although re-calculation of wages underpayment necessary in view of Magistrate's findings — Building Construction..... 190
- Application seeking exemption from operation of (base rate) wage increase orders, based on alleged financial incapacity — Wage increase order had specified that exceptions would only be allowed where companies in goldmining industry could show increases would have "dire consequences" *re* their viability (64 WAIG 1773) — Respondents claimed there was no evidence of such in any case — Commission agreed in majority of cases presented — However, Commission noted possible damage to viability of North Kalgurli Mines Ltd, if flow on of increases took place — After noting that paid wage rates included recent indexation increase of overaward payments, Commission decided that North Kalgurli should not be exempted from base rate increase, but that paid rates should be less the indexation increase of overaward payments — Commission considered such a course maintained uniformity of base rates whilst adjusting overaward payment according to the "individual employer's circumstances", in accordance with the Principles — Other claims refused — Gold Mining..... 194
- <sup>3</sup>Appeal against Commission's decision (at 65 WAIG 47) *re* new equivalent set for boners for "trunks" on rail, for purpose of remuneration — Appellant claimed equivalent set by Commission i.e. "carcase on rail or chain, one trunk shall equal one carcass" should be equivalent of boning a trunk on the bench as there was no material distinction between methods — Full Bench noted that Commission had rejected bench method as basis of comparison because it involved lesser "carcase" and different techniques — Full Bench agreed with Commission's comparison i.e. boning trunk on rail equal to boning whole of carcass on rail — Dismissed — Meat... 389
- <sup>1</sup>Wage increase sought for market inspectors — Parties agreed that anomaly existed and set operative date for new rate, but could not agree on method of setting rate — Parties requested CICS to clarify method used by Commission to adopt the rate struck in 1982, so that same rationale could be used — CICS adopted Commission's considerations in 1982 decision — CICS noted that rates fixed did not represent correct work value assessment of duties and responsibilities of employees under discussion and gave leave for parties to argue matter, without being prejudiced by current decision, in any post wage fixation principles — Granted — Metro Markets..... 454

CUMULATIVE DIGEST—continued

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WAGES—continued

Order sought that employees stood down on two days because of industrial action by other of respondent's employees, be paid their ordinary wages for time they were so stood down — Respondent objected — Commission found material presented was not of a kind enabling it to make a factual finding and disallowed claim while stating applicant may pursue matter afresh — Dismissed — Printing... 542

Wage increase sought to establish an "equitable base" for electricians employed by Building Management Authority — Claim had been referred to a conference by approval of CICS (at 64 WAIG 1338) — Commission on evidence found equity existed with electricians employed by Public Works Departments federally and in other states and granted wage increase to being W.A. rates in line — Building Management Authority..... 539

Wage increase sought for four classifications of workers employed at Sunday Times — At Anomalies Conference hearing parties advised their only change of success was to establish a work value case — Evidence indicated that major technological changes had significantly altered operations in printing and publishing departments — Commission found flow-on to employees of W.A. Newspapers unlikely — Calculations of increases made with view to preserving long established relativities among the four classifications — Commission found striking of new wage rate applying specifically and to those workers alone, effectively created four new and unique classes — Granted — Printing (Newspapers)..... 690

Alleged breach of award *re* failure to pay wages — Question *re* whether employee covered by award — Magistrate not satisfied on evidence that work carried out was covered by award — Dismissed — Electronics..... 706

Alleged breaches of award *re* unauthorised increase in rate of wages — Defendant admitted that wages of machinists employed by it were increased against order of Commission — Magistrate found that although defendant acted to maintain production of newspaper after illegal industrial action by employees, a deliberate breach of award could not be leniently dealt with — Magistrate found that due to number of complaints penalty fairly imposed should be for overall breach and fined \$750 — Proved — Printing..... 893

Employees stood down due to breakdown of machinery — Union claimed workers entitled to wages as stand down could have been avoided if employer had conducted proper maintenance — Conflict of evidence — Employee claimed breakdown without warning and entitlement to invoke Breakdown Clause — Commission conducted inspections and found employer lost entitlement to Breakdown Clause as stoppage could have been prevented — Granted — Meat..... 935

Wage increase or discontinuation of wage differentiation *re* minor/major employers sought for aerated and cordial manufacturing employees — Union had failed via anomalies conference to prove an inequity existed with federal and other state awards and applied to have application in its entirety heard before CICS — CICS noted similar application had been before CICS in 1983 in which a partial wage increase flow on had been granted that reflected wage award but not overaward wage increase in the federal arena in 1982 — CICS had noted Australian Commission had not recognised overaward increase as it offended the Wage Fixation Principles — CICS stated that present application sought to have 1983 decision reviewed on the grounds of the Commission's increased desire to remedy inequities with the rest of the Commonwealth and a nexus with the federal award — CICS found "union failed to make a case for further adjustment to the 'equitable base' established in 1983" but noted a review of the equitable base may be considered upon further investigation — Dismissed — Manufacturing (Soft Drink)..... 796

WORK VALUE

Claim *re* allowance for hand fallers treating unpruned pine trees, for purposes of making chip board — Applicant claimed unpruned trees not included in current piece rate and work outside what was reasonable and normal — Respondent rejected claims stating that piece rate had been struck for all types of felling and unpruned trees should not attract additional compensation; further claimed allowance outside Wage Fixation Principles (64 WAIG 2210, 4 & 9.) — Board concluded from evidence and inspection that work was slower, more difficult, outside normal expectations and that current piece rate did not include work on extensive areas of unpruned trees; further that claim fell within Principles 4.e. and 9.b. (ii) — Board estimated worker's production reduced by 20 per cent — Allowance granted — Timber..... 62

Wage increase sought for four classifications of workers employed at Sunday Times — At Anomalies Conference hearing parties advised their only change of success was to establish a work value case — Evidence indicated that major technological changes had significantly altered operations in printing and publishing departments — Commission found flow-on to employees at W.A. Newspapers unlikely — Calculations of increases made with view to preserving long established relativities among the four classifications — Commission found striking of new wage rate applying specifically and to those workers alone, effectively created four new and unique classes — Granted — Printing (Newspapers)..... 690