CUMULATIVE DIGEST

MATTERS REFERRED TO IN DECISIONS OF INDUSTRIAL APPEAL COURT, INDUSTRIAL COMMISSION AND INDUSTRIAL MAGISTRATES CONTAINED IN VOL. 69 PART 2, SUB PART 6.

Note: [1]Denotes Industrial Appeal Court Decision. [3]Denotes Commission in Court Session Decision.
[2]Denotes Full Bench Decision. [4]Denotes Decision of President.

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ACT — INTERPRETATION OF —

Appeal against employees dismissal for alleged misconduct, that being sexually interfering with a client — Appellant denied allegations and claimed dismissal unfair — Appellant argued further that there had not been a complaint from the client in question — Respondent argued that on balance of probabilities misconduct had occurred — Public Service Appeal Board considered section 80I of Industrial Relations Act provided it with a greater license to substitute its own view than in claims of unfair dismissal before the Commission *per se* — The decision to dismiss was to be reviewed *de novo* on the evidence before the PSAB not merely on whether the decision maker made the right decision on the evidence before it at the time — PSAB found evidence left too many questions unanswered about the allegations relied upon by the Respondent and that the dismissal should not be allowed to stand — Granted — Community Services (Government) 2266

[2]Application for enforcement of order pursuant to section 84A(1)(b) of Act — Conference held as required by that section and as no amicable solution reached matter proceeding to hearing — Respondent submitted Commission acted without jurisdiction — Full Bench reviewed Commission's power to make orders pursuant to section 44 and found that as there was no indication that orders were "interim" or that they were orders made to determine the question in dispute they were outside power — Dismissed — Construction (Metal Trades) 1904

[2]Appeal against decision of Commission at (69 WAIG 735) *re* unfair dismissal — Appellant Union claimed Commission had erred in having found a constructive summary dismissal to be unjustified, then finding dismissal in accordance with contract of service not unfair — Appellant argued that Commission failed to apply correct tests and relevant authorities — Full Bench reviewed authorities and found in context of Industrial Relations Act Commission must consider the act of dismissal complained about — Furthermore the question was not whether the dismissal was lawful but whether the dismissal which occurred was fair, not whether another form of the exercise of the right to dismiss was fair — Full Bench found Commission's exercise of discretion miscarried and erred fundamentally in that it made an order contrary to its findings and had therefore no power other than to reinstate and/or declare the dismissal unfair — Upheld — Transport (Passenger) 1895

[2]Appeal against interim order arising out of conference and granting four per cent second tier wage increase pending final arbitration of new award — Appellant argued a number of grounds including that the Commission was not empowered to vary section 32 orders pursuant to section 44 (6)(ba) until the arbitration of the separate proceedings had concluded and that the order was issued contrary to Wage Fixing Principles — Full Bench found appeal to be incompetent as it had not been established that matter was of such importance that in the public interest an appeal should lie [section 49(2)] — Full Bench further found that even if appeal had been competent it would have failed as Commission made no errors of law or fact or any miscarriage of discretion — Dismissed — Iron Ore 1873

Application for determination of eligibility requirements for a new position — Applicant claimed essential qualification was contrary to, custom and Practice and sought an appropriate tertiary qualification be set — Respondent opposed claim and argued Government School Teachers Tribunal did not have jurisdiction to entertain the application — Teachers Tribunal examined section 78 of Industrial Relations Act and other relevant statute — Majority of Teachers Tribunal found that it had no jurisdiction for reasons expressed in a previous decision — Dismissal — Education 2269

[2]Appeal against decision of Commission at (69 WAIG 709) to award payment of denied contractual benefits arising out of wrongful dismissal of a fixed term contract — Appellant claimed Commission erred in finding that the respondent's claim was for a benefit under her contract of employment and that it could be distinguished from an action brought at common how for damages arising out of a breach of contract — Appellant argued *inter alia* that the Commission's jurisdiction ended on the date of the dismissal — Respondent argued Pepler decision was confined to the question of compansation in claim of unfair dismissal — Full Bench reviewed authorities and found section 29(b)(ii) of the Industrial Relations Act extended the definition of Industrial Matter — Furthermore that a benefit must be given its widest meaning under the Statute — Full Bench found that the claim was for a benefit rather than compensation — Dismissed — Education 2307

[2]Appeal against finding of Commission (69 WAIG 1794) that organisation was party to an award pursuant to section 38 of the Industrial Relations Act — Appellant argued that Commission did not have power to make such finding and has misapplied Act's definition of "industry" — Full Bench defined "industry" and "calling", interpreted "in respect of" as per section 38 and reviewed authorities (esp. Parker's Case and Glover's Case) — Full Bench found section 38 enabled Commission to add any organisation as named party to award where there is sufficient connection insofar that the organisation is registered in respect of any calling to which the award applies or to any industry to which the award applies — As the calling of cabinetmaker was not one of the classifications of the Building Trades Construction Award, 14 of 1978, and as the fact that some cabinetmakers for whom UFTU have registration work in the Building construction industry does not mean that the UFTU necessarily is registered in respect of the building construction industry the Commission did no have power to make finding it did — Upheld — Building Construction 2646

[1]Appeal against decision of Full Bench (69 WAIG 1282) that it did not have jurisdiction to entertain an appeal against a decision of the Government School Teachers' Tribunal — After reviewing sections of Act, Regulations and authorities Industrial Appeal Court found section 80B(2)(b) of Industrial Relations Act denies the right of appeal to the Full Bench against a decision of the Tribunal — Dismissed — Education 2930

[2]Application for enforcement of Commission direction to Respondent *re* industrial action — Respondent admitted breach of Order and breach of prevention of disputes procedure in award — Full Bench examined nature of proceedings under section 84A and found that this dispute was a one-off protest ostensibly caused by the actions of another employer — Having regard to seriousness of contravention and mitigating circumstances Full Bench issued caution — Proven — Iron Ore 2317

Assistant Foreman, Fitting — Recommending Authority argued PAB did not have jurisdiction to determine an appeal against a temporary position — PAB reviewed section 80X, 80Y and 80ZA of the Industrial Relations Act and found that the wording in the definition of "office" excluded any Office or position that was temporary — Dismissed — Westrail 3170

[3]Preliminary point raised in proceedings instituted on Commission's own motion to consider National Wage Case, August 1989 pursuant to section 51 of IR Act — CWAI whilst not arguing that Commission in Court Session should refrain from endorsing National Wage Decision submitted that procedurally this was not a decision that could be given effect by General Order as per section 51 because it did not of itself vary wages in federal awards but instead required individual award variation applications with different dates of operation — Majority of Commission in Court Session found that the fact that the decision did not result in any immediate or collective amendment to awards does not mean that it is not applicable to those awards — Further, the instant decision is applicable generally to awards because all awards of the Australian Commission are covered by the Principles which flow from that decision and it is therefore appropriately dealt with under section 51 — State Wage Case 2913

CUMULATIVE DIGEST—*continued*

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ACT — INTERPRETATION OF —*continued*

Determination *re* jurisdiction — Applicant Union claimed that two employees had been unfairly dismissed — Respondent argued section 23(3) of Industrial Relations Act excluded the Commission in exercising its powers due to the jurisdiction of appeal board under another Act — Commission found that there was no jurisdiction conferred on the Railways Appeal Board over the dismissal of Government Railway Employees for grounds other than misconduct — Jurisdiction confirmed — Railways 3123

Conference referred for hearing and determination *re* claim for redundancy package in excess of that offered by employer — Respondent employer argued Commission did not have jurisdiction to issue order sought — Commission reviewed authorities and found that redundancy occurs when an employer no longer requires the work that an employee/s performed to be done at all — Further, section 7 of the Industrial Relations Act defines an industrial matter to include conditions which are to take effect after the termination of employment — Commission further found Respondent's objection to the Constitution of the Commission at the hearing was made out of time — Commission found Respondent's offered redundancy package conflicted with redundancy principle in so far as payments for years of service were concerned, but otherwise aligned with contemporary standards — Granted In Part — Baking 3132

[1]Appeal against decision of Commission in Court Session (69 WAIG 1924 and 1938) to ratify consent award variations in respect to shift and overtime rates — Appellant claimed Commission had failed to adhere to its Wage Fixation Principles (69 WAIG 2412) in that it had misapplied the Conditions of Employment Principle and failed to apply the tests required by the Anomalies and Inequities Principle — Industrial Appeal Court found that whilst the Anomalies Conference Procedure had been deleted from the "Principles" the Anomalies and Inequities Principle was still extant — The Commission in Court Session had erred in law by proceeding as if the Anomalies and Inequities Principle were no longer in force and failing to take that principle into account when making its decision — Upheld and referred to Commission in Court Session for further consideration — Health 3219

Two appeals against decisions of Commission (69 WAIG 1143) *re* payment of three per cent superannuation — Union's appeal was against Commission's failure to include the leading hand allowance in the earnings from which superannuation payments would be calculated — Full Bench found that decision was discretionary and that the Commission's decision had not miscarried — Employer's appeal was on numerous grounds including that it was beyond power of Commission to make the order/s it made under the sections of the Act it purportedly made them; that it was beyond the power of Commission to order Employer to change the terms of Trust Deed and Provident Fund; that Commission erred in granting superannuation without offsets as in case of other companies after finding the existence of a "standard" amongst iron ore producers in Pilbara; and, that Wage Fixing Principles did not require payment of superannuation as the existing "fund" was in excess of that required — Full Bench extensively reviewed authorities, sections 32, 23, 26, 27 and 7 of I.R. Act 1979 and the Interpretation Act 1984 — Full bench found orders made were within powers of Commission and its interpretation of the Wage Fixing Principles was open to it — Both appeals dismissed — Iron Ore 2629

Appeal against decision of the Commission (69 WAIG 1722) arising from Conference *re* entitlement to annual leave loading — Appellant claimed Commission did not have power to interpret or enforce awards out of a section 44 Conference — Respondent submitted decision was to settle a dispute and that any interpretation or enforcement of the award was incidental to that — Full Bench reviewed the authorities and found that interpretation of awards is incidental to many powers exercised by the Commission which should not be read down in favour of section 46 unless the matter is unequivocally one of interpretation — Full Bench found Commission had no jurisdiction to enforce awards and the decision in question was a "bald interpretation matter" as well as a matter of enforcement — Upheld — Metal Trades 2623

Appeals against a "finding" of the Commission (69 WAIG 1110) *re* which Unions had constitutional coverage of award classification — Full Bench found what was being appealed against was not a "finding" as defined in section 7 of IR Act 1989 but part of the reasons for decision — As what was being appealed was not a finding, order, award or declaration, section 49 conferred no jurisdiction for the Full Bench to hear them — Dismissed — Mining (Gold) 2300

ALLOWANCES —

Claim *re* site allowance — Commission found on inspection factors relating to soil nature, rehandling of materials and temperatures due to working in a natural hollow warranted a site allowance under criteria of Full Bench and Sapri Decision — Commission set quantum after comparison with a similar site and referred to parties for agreement on operative date — Granted — Construction 2264

[3]Application for variation to public section awards re locality allowance — Parties consented to adjustment in line with consumer price index — CICS noted application was within the Allowances Principle and that the proposed change was merely to reflect the increased cost of living — General Order issued with updated list of awards — Granted — State Government 2297

Claim *re* experience payment to be maintained when acting in higher classifications — Applicant Union argued that there was a disparity between day and shift employees — Respondent argued "experience allowance" as title suggests, is for the gaining of experience in the higher classification — Commission having noted the history of the allowance found that experience payment be maintained — Ordered Accordingly — Power/Electrical 2212

Claim *re* site allowance — Parties were in consent for the payment of a site allowance for the prescribed amount sought — Commission approved prescribed amount as it was within the range envisaged in the Wage Fixing Principles and satisfied guidelines set down by the Full Bench in the Alcoa case — Ordered Accordingly — Construction 2214

[3]Claim for a Special Allowance for employees training fellow employees at the request of employer — Parties reached agreement and sought approval of the Commission as a Special Case — Parties detailed Functional Review, re-organisation of enterprise and the teaching function of "expert workers" — Commission in Court Session considered claim under New Allowances and Work Value Changes Principles — Commission found claim to be consistent with the Principles and particularly the Structural Efficiency Principle — Granted — Printing 2334

[3]Application to vary Award *re:* Overtime Meal Allowance and Annual Leave — Claim for quantum increase in Meal Allowance not disputed — Applicant Union further sought for provision of Meal Allowance to be as for the Award of the majority of employees in a work place — Respondent argued that there was nothing special in the circumstances of the claim and that the Award applied to a much broader scope than the people or Respondents noted — Commission in Court Session found Award had its own particular basis of wages and condition quantum and that to correct a problem in one area only of its application could lend to major problems in the majority of other industries to which it applied — Commission in Court Session reviewed authorities relating to the claim to include long service leave as leave counting for the purposes of annual leave and found such a provision to be a standard of the Commission — Granted in Part — Various 2673

Applications to vary Award by consent *re* Travelling Allowances and reimbursement of expenses of providing prisoners' meals — Commission found changes reflected changes to an Award representing the State Standard and CPI increase respectively — Principles satisfied — Granted — Police 2540

Application to vary Award *re* new provision for additional payments for performing "internal relief" and variation of rates for casual employees performing "external relief" — Applicant employer argued proposed variation was part of an indivisible cost neutral package the first of significant restructuring arising out of an agreement — Respondent Union argued the proposed variation to casual rates reduced salaries contrary to the *de facto* wage Principle — Government School Teachers Tribunal found agreement did not stand up to the ultimate tests of Structural Efficiency Principle but proposed additional payments were in accordance with the Allowances Principle — Tribunal found itself unable to find in favour of the Applicant on the basis of the Respondents original consent to the variation of rates to casual workers *per se*— Tribunal stated that *de facto* Principle had been "buried" by CICS — Tribunal found on merit, it was inequitable and illogical to compress a scale of salaries to which a person progresses by virtue of qualifications and experience to a middle of the range salary — Granted In Part — Eduction 2866

CUMULATIVE DIGEST—*continued*

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ALLOWANCES—*continued*

Application to vary Award *re*allowance for disabilities involved in mortuary work — Public Service Arbitrator found total adjustments sought complied with Allowance Principle, however retrospectivity, given the principles was not an option readily open to the Commission — Granted in Part — Public Administration 3314

Applications to vary Awards *re* travelling allowances — Commission found proposed variation sought to align instant awards' travelling allowance provisions with that of their parent award which had been recently varied in accordance with the Wage Fixing Principles — Granted — Health Administration 3345

Claim *re* site allowance — Parties agreed to site allowance of $1.70 per hour in lieu of special rates and provisions of awards — Commission found claim could be dealt with in accordance with State Wage Principles and Alcoa case and that disabilities associated with an isolated and exposed site warranted allowance sought — Commission further ratified agreements on other matters including a travelling allowance and grievance procedures — Granted — Construction 3120

Appeal against decision of Commission at (69 WAIG 2212) *re* granting of experience allowance to employees acting in higher positions — Appellant argued Commission failed to attach sufficient weight on a number of issues — Full Bench found order issued purporting to vary award no longer in existence and in fact varied and interpreted new award — Full Bench found Commission erred in the exercise of its discretion — Upheld — Power/Electricity 3239

Appeal against decision of Commission at (69 WAIG 2206) *re* granting of site allowance — Appellant argued decision of Commission is contrary to the substantial merits of the case and submitted grounds of appeal on a number of issues — Full Bench found from evidence Commission had not erred in fixing the quantum which it did and furthermore, no attempt was made to persuade Full Bench that allowances were not payable in this case as a matter of pure principle — Dismissed — Construction 3233

[3]Application made in course of enforcement proceedings — Respondent argued that Full Bench had no power to hear enforcement application — Furthermore, enforcement proceedings commenced after cessation of industrial dispute and respondent submitted enforcement only possible while dispute afoot — Full Bench found enforcement in section 84A relates to the imposition of penalties etc and that there was no provision that section 84A relates only to current industrial dispute — Full Bench found jurisdiction exists for it to deal with matter — Dismissed 2937

[3]Application to alter registered rules — Applicant sought eligibility for union employees to become members of union — Objections lodged by members — Full Bench found opinion of membership not ascertained. Association's Council had no express power to alter rules and had not complied with the Association's rules — Furthermore, Full Bench found failure to comply with Industrial Relations Act — Dismissed — Unions 3247

Conference referred *re* dispute over commuted allowances — Parties reached agreement and sought ratification of an allowance to be paid in lieu of overtime and shift penalties — Commission found that there had been a valuable activity at the prompting of the Commission, in complete accord with the Structural Efficiency Principle — Allowance was in essence a device for paying existing allowances more conveniently — Commission further found a transfer and rotation policy addressed an anomaly where employees might have received an allowance to which they could not establish a claim — Granted — Welfare Institutions 3281

ANNUAL LEAVE —

Application to vary Award *re* annual leave to accrue during long service leave — Applicant argued provision had historical basis and that Commission had already recognised long service leave did not break continuity of service required for accrual of annual leave — Respondent argued no case to answer as matter was serious enough to require evidence — Respondent further argued many Awards did not have provision and Conditions of Employment Principle prohibited variation unless it was a flow-on of a recognised standard provision — Commission found case to be answered — Commission considered Conditions of Employment Principle clarified question as was the provision a standard of the Commission — Commission referred to authorities and found in favour of Applicant — Granted — Building 2053

Application for contractual benefits — Applicant sought payment in lieu of notice and annual leave entitlements — Respondent argued only against payment in lieu of notice as certain matters have arisen that would have served as grounds for instant dismissal of Applicant — Commission found Applicant had breached his contract of employment, however Respondent consents to payment of *pro rata* annual leave entitlement — Granted in Part — Service 2164

Application for contractual entitlements — Applicant sought payment for annual leave on *pro rata* basis — Commission found that order could only be made in respect of terms of contract made between the parties and was unconvinced that there was a term of contract as alleged by the Applicant — Dismissed — Poultry 2173

Claim *re* contractual entitlement — Applicant sought payment of salary owed and *pro rata* annual leave — Respondent admitted liability for salary, however was unable to make immediate payment due to financial difficulties — Commission granted claim for salary however found from *dicta re* implied terms of contract that claim for *pro rata* annual leave could not be sustained — Granted in part 2510

[3]Application to vary Award *re:* Overtime Meal Allowance and Annual Leave — Claim for *quartum* increase in Meal Allowance not disputed — Applicant Union further sought for provision of Meal Allowance to be as for the Award of the majority of employees in a work place — Respondent argued that there was nothing special in the circumstances of the claim and that the Award applied to a much broader scope than the people or Respondents noted — Commission in Court Session found Award had its own particular basis of wages and condition *quantum* and that to correct a problem in one area only of its application could lend to major problems in the majority of other industries to which it applied — Commission in Court Session reviewed authorities relating to the claim to include long service leave as leave counting for the purposes of annual leave and found such a provision to be a standard of the Commission — Granted in Part — Various 2673

Application for payment of *pro rata* annual leave denied on resignation — Parties had employment agreement governed by the terms and conditions of an award — Respondent argued misconduct disentitled Applicant to payment sought — Commission found there had been no dismissal for misconduct therefore a benefit arose for a completed 12 months' service but no more — Granted in Part — Clerical 2788

Application to vary award by consent — Applicant denied it had a special case and sought significant changes to conditions of employment — Applicant argued that the existing conditions were chronically out of date and not in the Public Interest — Public Service Arbitrator examined a wealth of evidence — PSA found it had no hesitation whatsoever despite costs, in sanctioning on agreement as it applied to reducing hours of work to 40 per week, rosters and the like — PSA found after noting professional status of employees concerned, work value charges of a justify to magnitude claimed five per cent salary increase — Granted — Health 2361

Application to vary Award by consent *re* Second Tier Wage Increase — Parties agreed to trade off with respect to Tea Breaks, Meal Money, *Pro-Rata* Annual Leave Loading, Long Service Leave and Higher Duties — Commission found lack of detailed cost offsets to be unsatisfactory — However, Commission was not prepared to stand in the way of the agreements consumation, given all the circumstances, including the time expired since the matter was first raised — Granted — Health 2747

Application to vary Award *re* widened "definition" of continuous service in Annual Leave clause — Applicant argued it merely sought to extend an industry standard to the subject Award — Respondent and CWAI intervening argued claim was outside Wage Fixing Principles and that subject Award was not a Building Industry Award — Commission found existing Award provisions did not mirror those of the Building Industry — Dismissed — Construction 2771

CUMULATIVE DIGEST—*continued*

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ANNUAL LEAVE —*continued*

Applications to vary Awards *re* Wages Schedules and Annual Leave — Parties presented agreed facts on work value increases and sought new wages schedules to reflect movement and rearrangement in an award with which the parties sought to re-establish a nexus — Parties in disagreement over Annual Leave provision — Respondent sought removal of the word "department" from the Annual Leave clause and argued that its use hampered the efficient management of numerous employers operating small establishments — Commission considered it was in no way bound by a CICS Decision on which the Applicant relied — Commission found little equity where employees who did not suffer the inconveniences for which more than four weeks annual leave were designed to compensate, continue to enjoy that benefit — Furthermore it was a semantic accident which prevented compliance with the spirit of the prescription — Granted in Part — Health 2428

[3]Application for General Order prescribing minimum entitlement to four weeks annual leave, an additional week of annual leave for seven day shift workers, 17.5 per cent annual leave loading and two weeks sick leave for employees not covered by awards — Minister for Labour supported application in terms sought by Applicant — COWAI and AMMA opposed application — Majority of Commission in Court Session rejected claim for sick leave as it was not satisfied that the "existing boundaries between the common law and statutory provision of sick leave ought to be varied by General Order" — Claims for 17.5 per cent loading and the additional weeks' leave for seven day shift workers were rejected as lacking in merit — It was, however, considered to be in interests of award-free employees and community as a whole for Commission to prescribe minimum conditions of annual leave — Granted In Part — General Order 3487

Claim *re* contractual entitlements — Applicant claimed non-payment of wages and annual leave in accordance with contract of employment — Respondent did not appear and the matter proceeded *ex parte* — Commission found claims for contractual entitlements and annual leave proven — However, the matter of annual leave loading was not a term of the contract of employment so that must fail — Granted In Part — Horticultural 3383

APPEAL —

Appeal against employees dismissal for alleged misconduct, that being sexually interfering with a client — Appellant denied allegations and claimed dismissal unfair — Appellant argued further that there had not been a complaint from the client in question — Respondent argued that on balance of probabilities misconduct had occurred — Public Service Appeal Board considered section 80I of Industrial Relations Act provided it with a greater license to substitute its own view that in claims of unfair dismissal before the Commission *per se* — The decision to dismiss was to be reviewed *de novo* on the evidence before the PSAB not merely on whether the decision maker made the right decision on the evidence before it at the time — PSAB found evidence left too many questions unanswered about the allegations relied upon by the Respondent and that the dismissal should not be allowed to stand — Granted — Community Services (Government) 2266

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[2]Appeal against decision of Commission at (69 WAIG 735) *re* unfair dismissal — Appellant Union claimed Commission had erred in having found a constructive summary dismissal to be unjustified, then finding dismissal in accordance with contract of service not unfair — Appellant argued that Commission failed to apply correct tests and relevant authorities — Full Bench reviewed authorities and found in context of Industrial Relations Act Commission must consider the act of dismissal complained about — Furthermore the question was not whether the dismissal was lawful but whether the dismissal which occurred was fair, not whether another form of the exercise of the right to dismiss was fair — Full Bench found Commission's exercise of discretion miscarried and erred fundamentally in that it made an order contrary to its findings and had therefore no power other than to reinstate and/or declare the dismissal unfair — Upheld — Transport (Passenger) 1895

[2]Appeal against decision of Magistrate to dismiss complaints *re* underpayment of award — In that matter the employee worked the hours shown on a roster which were subsequently copied into the time and wages records from which wages were calculated — If employee worked other than hours on roster he informed office manager who made appropriate adjustment to time and wages records — Employee gave evidence that on occasion he did not work rostered hours but could not say exactly when and Magistrate held this created an element of uncertainty and thus on the balance of probabilities it could not be proved when employee worked — Full Bench reviewed authorities and found that it was more probable than not that the record was an accurate record of the time and hours worked, there was no other ingredient not proven and that Appellant had discharged its onus — Upheld — Security 1899

[2]Appeal against interim order arising out of conference and granting four per cent second tier wage increase pending final arbitration of new award — Appellant argued a number of grounds including that the Commission was not empowered to vary section 32 orders pursuant to section 44(6)(ba) until the arbitration of the separate proceedings had concluded and that the order was issued contrary to Wage Fixing Principles — Full Bench found appeal to be incompetent as it had not been established that matter was of such importance that in the public interest an appeal should lie [section 49(2)] — Full Bench further found that even if appeal had been competent it would have failed as Commission made no errors of law or fact or any miscarriage of discretion — Dismissed — Iron Ore 1873

[2]Appeal against decision of Commission at (68 WAIG 2069) to vary an Award to establish a new tally rate — Appellant claimed Commission had erred in that it *inter alia* failed to consider detrimental effects to the employees immediately concerned —Further the decision was not in accordance with the existing provisions of Award and contrary to the First Awards and Extension to Existing Awards Principle — Also appellant argued Commission had incorrectly applied previous decision of Full Bench and applied incorrect methodology in establishing the tally rate — Respondent argued decision was within the Award structure and not contrary to evidence — Full Bench applied principles relating to reviews of discretionary judgment as prescribed by Appeal Court — Full Bench found that Commission had correctly reviewed matter *de novo* on the evidence before it, however had erred in its methodology in establishing the specific rate — Furthermore, Commission had failed to give sufficient weight to certain evidence — Full Bench gave guidelines to be considered in further hearing and determintion — Upheld — Meat Industry (State) 1884

[2]Appeal against decision of Commission (69 WAIG 1529) to grant variation to award by allowing reduction in standard hours to 38 per week — Appellant claimed denial of natural justice had occurred insofar that it had not sufficient opportunity to be heard — Full Bench reviewed pertinent authorities *re* "natural justice" and found that the Appellant had been given every opportunity to put its case thus there was no denial of natural justice — Further, Full Bench found no evidence of the Commission's discretion having miscarried so grounds of appeal had not been made out — Dismissed — Hospitality 2303

Appeal against decision of Public Service Commission *re* unfair dismissal due to inefficiency Appellant argued allegations of inefficiency were vague and nebulous and furthermore there was a lack of notification and counselling with regard to the matters of inefficiency and work performance — Appellant further argued that penalty of dismissal was unreasonably harsh and sought reinstatement without loss of benefits — Board found from evidence that dismissal was fair and just and concluded unanimously that appellant had failed to successfully perform the duties required of a Level 5 Engineer — Dismissed 2586

[2]Appeal against decision of Commission at (69 WAIG 709) to award payment of denied contractual benefits arising out of wrongful dismissal of a fixed term contract — Appellant claimed Commission erred in finding that the respondent's claim was for a benefit under her contract of employment and that it could be distinguished from an action brought at common how for damages arising out of a breach of contract — Appellant argued *inter alia* that the Commission's jurisdiction ended on the date of the dismissal — Respondent argued Pepler decision was confined to the question of compansation in claim of unfair dismissal — Full Bench reviewed authorities and found section 29(b)(ii) of the Industrial Relations Act extended the definition of Industrial Matter — Furthermore that a benefit must be given its widest meaning under the Statute — Full Bench found that the claim was for a benefit rather than compensation — Dismissed — Education 2307

CUMULATIVE DIGEST—*continued*

APPEAL —*continued* Page

[2]Appeal against finding of Commission (69 WAIG 1794) that organisation was party to an award pursuant to section 38 of the Industrial Relations Act — Appellant argued that Commission did not have power to make such finding and has misapplied Act's definition of "industry" — Full Bench defined "industry" and "calling", interpreted "in respect of" as per section 38 and reviewed authorities (esp. Parker's Case and Glover's Case) — Full Bench found section 38 enabled Commission to add any organisation as named party to award where there is sufficient connection insofar that the organisation is registered in respect of any calling to which the award applies or to any industry to which the award applies — As the calling of cabinetmaker was not one of the classifications of the Building Trades Construction Award, 14 of 1978, and as the fact that some cabinetmakers for whom UFTU have registration work in the Building construction industry does not mean that the UFTU necessarily is registered in respect of the building construction industry the Commission did no have power to make finding it did — Upheld — Building Construction 2646

[2]Appeals against decision of Magistrate *re* breaches of award — Appellant claimed Complainant Union had failed to produce evidence to discharge its onus of proving its case for some charges and the time and wages records which were relied on as evidence in other charges had not been proved to be correct — Full Bench found that time and wages records produced from an employers own custody and maintained by it as a duty under an award and complied within its own knowledge is *prima facie* evidence against and employer in the absence of evidence to the contrary as to the entries therein — the only evidence impugning the time and wages record had not been accepted by the Magistrate which he was entitled to do — Full Bench further concluded that once time and wages had been accepted as correct then the burden of proof on the Complainant was capable of being discharged and the Magistrate then found that it was — Dismissed — Security 2662

[1]Appeal against decision of Full Bench (69 WAIG 1282) that it did not have jurisdiction to entertain an appeal against a decision of the Government School Teachers' Tribunal — After reviewing sections of Act, Regulations and authorities Industrial Appeal Court found section 80B(2)(b) of Industrial Relations Act denies the right of appeal to the Full Bench against a decision of the Tribunal — Dismissed — Education 2930

[4]Application to cancel stay order — Applicant wished to discontinue appeal and sought to be allowed to make payments in accordance with original decision — President examined ability to entertain application — President found Notice of Discontinuance not applicable to appeal — Appeal had to be dismissed by consent which would settle matter of the stay — Dismissed — Metal Trades 2943

[2]Appeal against decision of Industrial Magistrate *re* penalties for breach of award — Matter had previously been appealed and upheld and remitted back to Industrial Magistrate by Full Bench (69 WAIG 1050) — Full Bench found there was no evidence His Worship adverted to number of breaches, period of occurrence, disadvantage to employee or previous breach, and further "parity of penalty" applies — Upheld — Transport 2668

[1]Appeal against decision of Commission in Court Session (69 WAIG 1924 and 1938) to ratify consent award variations in respect to shift and overtime rates — Appellant claimed Commission had failed to adhere to its Wage Fixation Principles (69 WAIG 2412) in that it had misapplied the Conditions of Employment Principle and failed to apply the tests required by the Anomalies and Inequities Principle — Industrial Appeal Court found that whilst the Anomalies Conference Procedure had been deleted from the "Principles" the Anomalies and Inequities Principle was still extant — The Commission in Court Session had erred in law by proceeding as if the Anomalies and Inequities Principle were no longer in force and failing to take that principle into account when making its decision — Upheld and referred to Commission in Court Session for further consideration — Health 3219

Two appeals against decisions of Commission (69 WAIG 1143) *re* payment of three per cent superannuation — Union's appeal was against Commission's failure to include the leading hand allowance in the earnings from which superannuation payments would be calculated — Full Bench found that decision was discretionary and that the Commission's decision had not miscarried — Employer's appeal was on numerous grounds including that it was beyond power of Commission to make the order/s it made under the sections of the Act it purportedly made them; that it was beyond the power of Commission to order Employer to change the terms of Trust Deed and Provident Fund; that Commission erred in granting superannuation without offsets as in case of other companies after finding the existence of a "standard" amongst iron ore producers in Pilbara; and, that Wage Fixing Principles did not require payment of superannuation as the existing "fund" was in excess of that required — Full Bench extensively reviewed authorities, sections 32, 23, 26, 27 and 7 of I.R. Act 1979 and the Interpretation Act 1984 — Full bench found orders made were within powers of Commission and its interpretation of the Wage Fixing Principles was open to it — Both appeals dismissed — Iron Ore 2629

Appeal against decision of the Commission (69 WAIG 1722) arising from Conference *re* entitlement to annual leave loading — Appellant claimed Commission did not have power to interpret or enforce awards out of a section 44 Conference — Respondent submitted decision was to settle a dispute and that any interpretation or enforcement of the award was incidental to that — Full Bench reviewed the authorities and found that interpretation of awards is incidental to many powers exercised by the Commission which should not be read down in favour of section 46 unless the matter is unequivocally one of interpretation — Full Bench found Commission had no jurisdiction to enforce awards and the decision in question was a "bald interpretation matter" as well as a matter of enforcement — Upheld — Metal Trades 2623

Appeals against a "finding" of the Commission (69 WAIG 1110) *re* which Unions had constitutional coverage of award classification — Full Bench found what was being appealed against was not a "finding" as defined in section 7 of IR Act 1989 but part of the reasons for decision — As what was being appealed was not a finding, order, award or declaration, section 49 conferred no jurisdiction for the Full Bench to hear them — Dismissed — Mining (Gold) 2300

[2]Appeal against decision of Industrial Magistrate that Employer was not respondent to particular award — Appellant had misapplied the principles for determining the industry carried out by an employer for the purpose of determining award respondency — Full Bench examined scope clause of award and then applied the principles from Glovers' Case (50 WAIG 704) and the "common object" test from Parkers' Case (29 WALR 90) — Full Bench found Respondent was in the sign manufacture and supply industry not the electrical contracting industry and Industrial Magistrate had not erred — Dismissed — Sign Manufacturing 2658

Appeal against decision of Industrial Magistrate (69 WAIG 1675) *re* underpayment of award wages and annual leave — Appellant claimed Magistrate had erred in allowing complaints to be amended by substituting name of defendant — Full Bench examined Justices Act and Strata Titles Act — Full Bench found the mistaken name on the complaints to have been a "misnomer" as per the authorities i.e. a mere technical variance between the complaint and the evidence with regard to the name or the description of the person charged within the meaning given to that by the Justices Act — Justices Act clearly gave Magistrate power to amend complaints, there was ample evidence that Appellant was employer of complainant and employer had every opportunity to present its case — Dismissed — Caretaking 2653

[3]Appeal against decision of Long Service Leave Board of Reference that Appellants were not entitled to Long Service Leave — CICS reviewed authorities and found appeal to be heard and determined on the facts as found by the BOR — CICS found BOR directed itself to the correct question i.e. whether the Applicants were ever employed by a company other than the Respondent — However found BOR had paid insufficient attention to who in fact controlled the employees in the performance of their duties — Upheld — Court Reporting 3254

Employee demoted and transferred on grounds of inefficiency — Appellant sought restoration to status held prior to position from which demoted — Respondent argued Appellant had been out of that area for some years and duties and responsibilities of it had increased since then in the area of Appellant's weakness — Government School Teachers Tribunal found that transfer provided Appellant with the opportunity to re-establish confidence, however restored Appellant to status sought — Granted In Part — Education 3436

[3]Appeal against decision of Board of Reference *re* weekly wage rate applicable to determined period of long service leave — Appellant argued that BOR had erred in applying Clause 4(2) of Long Service Leave — Standard Provisions and sought variation of order or referral back to BOR for further hearing and determination — CICS found task was to determine the number of hours usually worked — "usually" meaning more often than not, most often or most commonly occurring — CICS found BOR made no finding as to what was the number of hours per day worked by the Appellant most often — Upheld and Remitted — Transport 3252

CUMULATIVE DIGEST—*continued*

APPEAL —*continued* Page

²Appeal against decision of Industrial Magistrate *re* breach of award — Appellant Union claimed failure of Respondent to make available time and wages records was contrary to Clause 28 of award — Interpretation of award and "reasonable suspicion" of breach required under award before inspection — Full Bench found duty of employer to maintain and make available for inspection time and wages records and furthermore, union was not required to particularise suspected breach — Complaint remitted — Upheld — Building Industry 3241

Appeal against decision of Commission at (69 WAIG 2203) *re* summary dismissal of employee due to misconduct — Appellant union argued that evidence against employee was circumstantial — Full Bench noted strict well known company policy *re* misconduct and suspension of employee whilst investigation was conducted — Full Bench considered a number of principles and question of whether legal rights of employer had been exercised harshly or oppressively against employee so as to amount to an abuse of that right — Full Bench found evidentiary onus had been discharged by employer — Dismissed — Brewing 3228

Appeal against decision of Commission at (69 WAIG 2206) *re* granting of site allowance — Appellant argued decision of Commission is contrary to the substantial merits of the case and submitted grounds of appeal on a number of issues — Full Bench found from evidence Commission had not erred in fixing the quantum which it did and furthermore, no attempt was made to persuade Full Bench that allowances were not payable in this case as a matter of pure principle — Dismissed — Construction 3233

²Appeal against decision of Industrial Magistrate *re* breach of award for failure to pay wages in lieu of notice — Appellant submitted that employee was not terminated but left on his own accord — Full Bench found that conflicting evidence from witnesses called by the Appellant, the credibility, including demeanour of witnesses led Industrial Magistrate to accept evidence of union — Dismissed — Timber Industry 3245

Application to vary awards *re* special provisions for cycle working — Applicant Employers sought to insert new clause into awards to introduce cycle working in remote areas as in the Goldmining Consolidated Award — Respondent unions questioned the validity of a survey as evidence and argued that the best way to deal with the issues involved was on an *ad hoc* basis with specific mines as and when those mines were brought on stream — Respondents further claimed union notification provision of proposed clause was insufficient and provision of compensation for travel expenses was needed — Commission found cycle working to be a fact of life in the mining industry and that many small gold mining properties which would otherwise be non-viable had been brought on stream using the work cycle process — Furthermore, Commission found adequate protection in clause to cover objections of Respondents — Granted — Mining (Gold) 3022

Application pursuant to Regulation 93 of Act to set aside proceeding and order which varied Award — Applicants claimed provisions of Regulations 10 and 11 were not followed thus they were unaware of proceedings and this amounted to a denial of natural justice — Respondent denied claim and agreed that employees concerned would be without award coverage should application succeed — Commission found in favour of Applicant but with the instruction that position of employees covered by the Award remain unaltered until matter is finally determined — Granted — Hospitality 2743

Application to vary Awards (3) *re* superannuation referred to CICS pursuant to section 27(1)(t) of Industrial Relations Act — Applicant Unions sought common rule effect to occupational superannuation on the basis that it was a "mopping up" exercise and the most orderly and rational basis for implementing what was argued to be an entitlement — Respondents argued common rule approach to superannuation could not adequately address the diversity of needs that exist in the range of industries covered by the Awards — Furthermore, CWAI argued that there were no special circumstances as identified in the Security Industry Superannuation Case — CICS reviewed Principles, Authorities and the number of enterprise and industry superannuation agreements in the areas of employment covered by the awards — CICS found no overriding impediment to common rule superannuation and that a protracted company by company approach would render, in many instances, the availability of the benefit so remote as to be illusory — CICS further dealt with operative dates, no reduction provision and an exemption — Granted — Various 3509

Application to vary Award *re* 38 hour week — Parties agreed significant changes would result in work practices and a degree of flexibility had been achieved — Furthermore the ordinary hours would be broadened and worked in shifts — Commission found the claim not only satisfied the Standard Hours Principle it was also consistent with the Structural Efficiency Principle — The proposed changes have the potential for increased efficiency and minimal costs — Granted — Dentists 3308

Applications to vary awards — Parties were in agreement for the inclusion of an occupational superannuation clause for the employees of each of the awards — Commission found the proposals standard and complied with the Commissions' Superannuation Principle and contained the standard exemptions — Granted — Dentists 3333

Application to vary Awards by consent *re* wages — Parties aimed at implementing the objects of the Structural Efficiency Principle into the Private Health Care Industry — Furthermore the parties are preserving a generalised nexus in wages and conditions with a broad-banding exercise thus reducing a multiplicity of classifications — Commission found the parties have complied with the requirements of the Structural Efficiency Principles — Ordered Accordingly — Health Care 3316

Application to vary Award by consent increasing wage rates for part-time employees — Applicant Union claimed wage rates for full-time academics had been adjusted and should reflect upon the part-time academic salaries prescribed in the Award — Commission found the variation of an Award could be varied if not previously varied — Furthermore no extra claims commitment has been included — Granted — Education 3330

APPRENTICES/JUNIORS —

Application for variation to private industry clerical awards by inserting new "Traineeships" clause — Parties were in dispute on issues of "additionality", continuity of service, access to trainees by Union and on overtime and shift work — Commission found that ample safeguards existed to protect the trainees and amended awards, however "additionality" not granted — Granted In Part — Clerical 2060

AWARDS —

Application to vary Award *re* annual leave to accrue during long service leave — Applicant argued provision had a historical basis and that Commission had already recognised long service leave did not break continuity of service required for accrual of annual leave — Respondent argued no case to answer as matter was serious enough to require evidence — Respondent further argued many Awards did not have provision and Conditions of Employment Principle prohibited variation unless it was a flow-on of a recognised standard provision — Commission found case to be answered — Commission considered Conditions of Employment Principle clarified question as was the provision a standard of the Commission — Commission referred to authorities and found in favour of Applicant — Granted — Building 2053

Application for variation to private industry clerical awards by inserting new "Traineeshps" clause — Parties were in dispute on issues of "additionality", continuity of service, access to trainees by Union and on overtime and shift work — Commission found that ample safeguards existed to protect the trainees and amended awards, however "additionality" not granted — Granted In Part — Clerical 2060

Claims for variation of award, redefinition of classification, insertion of new classification or alternatively group reclassification — Union claimed that when "broadbanding" of classifications occurred in formulation of current award on omission resulted in the operators of some machines being effectively "declassified" — Commission found broadbanding agreement had also involved a restructuring of classifications according to skills whereas this claim sought to change basis of classification to size of machinery operated — Commission also found the fact that Award was still in term to be an insurmountable barrier — Dismissed — Iron Ore 2142

CUMULATIVE DIGEST—*continued*

AWARDS —*continued* Page

[2]Appeal against decision of Commission at (68 WAIG 2069) to vary an Award to establish a new tally rate — Appellant claimed Commission had erred in that it *inter alia* failed to consider detrimental effects to the employees immediately concerned —Further the decision was not in accordance with the existing provisions of Award and contrary to the First Awards and Extension to Existing Awards Principle — Also Appellant argued Commission had incorrectly applied previous decision of Full Bench and applied incorrect methodology in establishing the tally rate — Respondent argued decision was with the Award structure and not contrary to evidence — Full Bench applied principles relating to reviewes of discretionary judgment as prescribed by Appeal Court — Full Bench found that Commission had correct reviewed matter *de novo* on the evidence before it, however had erred in its methodology in establishing the specific rate — Furthermore, Commission had failed to give sufficient weight to certain evidence — Full Bench gave guidelines to be considered in further hearing and determination — Upheld — Meat Industry (State) 1884

Dispute *re* performance of certain work — Applicant Employer claimed Respondent had placed work bans on work in question and sought declaration that it was entitled to expect the work be performed — Applicant argued work was within competence of employees who had been trained and within the terms of an Award — Respondent opposed claim and argued Applicant had transgressed the Award in that it attempted to eliminate a trade and de-skill work — Respondent argued Applicant was being unreasonable — Commission found Award, incorporating Restructuring and Efficiency Principle, disposed of traditional demarcation lines and Employer had right to direct a competent employee within the contract of service — However, on consideration of facts, Commission found Applicant should not persist in its directions to the degree that it had — Granted in Part — Iron Ore 2229

[3]Application for amalgamation of two existing awards into one new award and for the removal of wage differential between different categories of hairdressers — Commission in Court Session examined recent changes in duties of hairdressers in the light of both the Work Value Principles and Structural Efficiency Principle and found differential should remain — Granted in Part — Hairdressing 2324

Application to vary Award by consent *re* overtime — Parties sought to clarify the interpretation of a clause in an Award to clearly prescribe that for overtime purposes each day shall stand alone — Commission found that the claim accorded with standard government overtime provisions and that the additional costs were minimal — Granted — Education/Research 2755

[3]Application to vary Award *re:* Overtime Meal Allowance and Annual Leave — Claim for quantum increase in Meal Allowance not disputed — Applicant Union further sought for provision of Meal Allowance to be as for the Award of the majority of employees in a work place — Respondent argued that there was nothing special in the circumstances of the claim and that the Award applied to a much broader scope than the people or Respondents noted — Commission in Court Session found Award had its own particular basis of wages and condition quantum and that to correct a problem in one area only of its application could lend to major problems in the majority of other industries to which it applied — Commission in Court Session reviewed authorities relating to the claim to include long service leave as leave counting for the purposes of annual leave and found such a provision to be a standard of the Commission — Granted in Part — Various 2673

[3]Application for a New Award by consent — Applicant Union sought new professional classification and salary rates as the second stage in arrangement in negotiating the existing Award — Applicant argued for a special case to be recognised and that its previous acceptance of depressed salary rates warranted recognition — Respondent presented evidence as to how new award arrangements were part of the restructuring of the industry — Commission in Court Session limited its consideration of the Application to the question of a Special Case — Commission in Court session accepted the parties submissions and evidence as to the true nature of the arrangements — However, Commission in Court Session agreed with CWAI, intervening, that an argument which seeks to build the recognition of an anomaly or inequity upon the absence of an equitable base and thereby achieve special case status is an exercise in semantics — Granted in Part — Surveying 2675

[2]Appeal against finding of Commission (69 WAIG 1794) that organisation was party to an award pursuant to section 38 of the Industrial Relations Act — Appellant argued that Commission did not have power to make such finding and has misapplied Act's definition of "industry" — Full Bench defined "industry" and "calling", interpreted "in respect of" as per section 38 and reviewed authorities (esp. Parker's Case and Glover's Case) — Full Bench found section 38 enabled Commission to add any organisation as named party to award where there is sufficient connection insofar that the organisation is registered in respect of any calling to which the award applies or to any industry to which the award applies — As the calling of cabinetmaker was not one of the classifications of the Building Trades Construction Award, 14 of 1978, and as the fact that some cabinetmakers for whom UFTU have registration work in the Building construction industry does not mean that the UFTU necessarily is registered in respect of the building construction industry the Commission did no have power to make finding it did — Upheld — Building Construction 2646

Applications to vary Award by consent *re* Travelling Allowances and reimbursement of expenses of providing prisoners' meals — Commission found changes reflected changes to an Award representing the State Standard and CPI increase respectively — Principles satisfied — Granted — Police 2540

[3]Application to vary Wages clause of an Award — applicant Union sought increase rates for specific classifications and to insert a new classification on the grounds of work value changes — Respondent argued claim could not be considered in isolation of consideration resultant from Structural Efficiency Principles — Minister intervened to raise questions related to possible flow-ons — CICS reviewed Work Value Principle and found that although any restructuring may alter the situation the case for work value adjustments had not been established — Dismissed — Railways 2941

Application to vary award by consent — Applicant denied it had a special case and sought significant changes to conditions of employment — Applicant argued that the existing conditions were chronically out of date and not in the Public Interest — Public Service Arbitrator examined a wealth of evidence — PSA found it had no hesitation whatsoever despite costs, in sanctioning on agreement as it applied to reducing hours of work to 40 per week, rosters and the like — PSA found after noting professional status of employees concerned, work value charges of a justify to magnitude claimed five per cent salary increase — Granted — Health 2361

Application to vary Awards *re* Wages — Special Case Status previously granted within bounds of Structural Efficiency — Parties sought order enabling interim increase in rates pending find resolution of matter — CICS found parties had heeded Commission's "counselling" and examined award variation proposals to date — granted — Health 2671

[3]Claim for award variation — Applicant claimed increase in base wage rate for all classifications on the basis of increased work value and for factors specific to industry subject to award which constitute "Special Case" status — Commission in Court Session accepted that this was a special case but emphasised that Structural Efficiency must take precedence — Commission in Court Session found the increase sought to be a step in award restructuring but was not prepared to vary base rate — Commission in Court Session ordered additional payment on understanding that there were no undeclared over award payments and that this would not prejudice final determination of award rates under Structural Efficiency Principle — Granted in Part — Mineral Sands 2321

Application to vary Award by consent *re* Second Tier Wage Increase — Parties agreed to trade off with respect to Tea Breaks, Meal Money, *Pro-Rata* Annual Leave Loading, Long Service Leave and Higher Duties — Commission found lack of detailed cost offsets to be unsatisfactory — However, Commission was not prepared to stand in the way of the agreements consumation, given all the circumstances, including the time expired since the matter was first raised — Granted — Health 2747

Application to vary Award *re* widened "definition" of continuous service in Annual Leave clause — Applicant argued it merely sought to extend an industry standard to the subject Award — Respondent and CWAI intervening argued claim was outside Wage Fixing Principles and that subject Award was not a Building Industry Award — Commission found existing Award provisions did not mirror those of the Building Industry — Dismissed — Construction 2771

CUMULATIVE DIGEST—*continued*

AWARDS —*continued* Page

Applications to vary Awards *re* Wages Schedules and Annual Leave — Parties presented agreed facts on work value increases and sought new wages schedules to reflect movement and rearrangement in an award with which the parties sought to re-establish a nexus — Parties in disagreement over Annual Leave provision — Respondent sought removal of the word "department" from the Annual Leave clause and argued that its use hampered the efficient management of numerous employers operating small establishments — Commission considered it was in no way bound by a CICS Decision on which the Applicant relied — Commission found little equity where employees who did not suffer the inconveniences for which more than four weeks annual leave were designed to compensate, continue to enjoy that benefit — Furthermore it was a semantic accident which prevented compliance with the spirit of the prescription — Granted in Part — Health 2428

Conference referred for hearing and determination *re* claim for a nine day fortnight rather than a 19 day month — Applicant union argued that a decision of the Australian Conciliation and Arbitration Commission indicated the principles which should guide the Commission in the instant case — Applicants argued further that the nine day fortnight best suited the business by: increased efficiency through interaction with other employees, decrease in absenteeism, improved morale; cost savings and safety improvements — Furthermore that the employers had given undertakings that there would be no unnecessary complaints about problems arising from transferring employees from work sites or potential pay and administrative problems — Respondents and Intervenors argued on the basis of potential flow ons, industry standards, costs, client demands, *inter alia*, and that the Respondent had already acceded to a 19 day fortnight in preceding negotiations of the claim, hence eliminating the "middle ground" — Commission found the prime consideration relevant to the assessment of the available options to be contained in the Electrical Contracting Industry Award — Taking all factors into account, the Commission found the Applicant union had not met the test of the obligation to show that the favoured method of a 38 hour week implementation best suited the business of the Employer — Dismissed — Electrical Contracting 3125

Application for an Award — Applicant unions claimed that Respondent went to inordinate lengths when dealing with industrial relations issues either to frustrate the achievement of fair pay and working conditions or uphold its managerial prerogative and sought an Award to provide industrial relations negotiation — Respondent argued that the application was not for a new Award on the basis that previous industrial agreements from which it had retired were in effect Awards — Respondent further argued that to be regulated by a State Award would be a forced step backwards into the Pilbara industrial relations climate and that it needed to make a clean break from the industrial standards and practises of the industry as they were an impediment to the most efficient conduct of its operations and market competitiveness — Furthermore, that an Award was unnecessary as the Industrial Relations Act provided access to the Commission over acts of unfairness as they arise — Commission reviewed history of industrial relations, the application and disputation between the parties and found they had "painted themselves into their respective ideological corners" — Commission extensively reviewed authorities and the Industrial Relations Act and stated the need for mutual respect between the parties under the contemporary industrial relations climate — Commission found that the real interests of the Respondents' employees required the Industrial Relations fundamentals *re* cost — Commission examined the merits of and determined the issues of grievance procedures, on site union representation, suspension of paid union meetings, disputation between unionists and non-unionists, accommodation rents and utility charges — Commission set award period of six months with liberty to apply in relation to specific clauses — Award Issued — Iron Ore 3000

Application to vary Award by consent *re* a new classification — Parties claimed significant changes to duties and responsibilities and that proposed classification and rate of pay were within the Wage Fixing Principles — Objecting union argued that it had consitutional coverage and on the basis of the work performed and the preferences of the employees concerned — Commission examined union Rules and Awards and found the objection was not sustained — Commission further found proposed new classification was warranted, however, inserted a proviso to account of an Order of CICS — Granted In Part — Entertainment 2758

Application to vary Award *re* new provision for additional payments for performing "internal relief" and variation of rates for casual employees performing "external relief" — Applicant employer argued proposed variation was part of an indivisible cost neutral package the first of significant restructuring arising out of an agreement — Respondent Union argued the proposed variation to casual rates reduced salaries contrary to the *de facto* wage Principle — Government School Teachers Tribunal found agreement did not stand up to the ultimate tests of Structural Efficiency Principle but proposed additional payments were in accordance with the Allowances Principle — Tribunal found itself unable to find in favour of the Applicant on the basis of the Respondents original consent to the variation of rates to casual workers *per se*— Tribunal stated that *de facto* Principle had been "buried" by CICS — Tribunal found on merit, it was inequitable and illogical to compress a scale of salaries to which a person progresses by virtue of qualifications and experience to a middle of the range salary — Granted In Part — Eduction 2866

Application to vary Award *re*allowance for disabilities involved in mortuary work — Public Service Arbitrator found total adjustments sought complied with Allowance Principle, however retrospectivity, given the principles was not an option readily open to the Commission — Granted in Part — Public Administration 3314

[2]Appeal against decision of Industrial Magistrate that Employer was not respondent to particular award — Appellant had misapplied the principles for determining the industry carried out by an employer for the purpose of determining award respondency — Full Bench examined scope clause of award and then applied the principles from Glovers' Case (50 WAIG 704) and the "common object" test from Parkers' Case (29 WALR 90) — Full Bench found Respondent was in the sign manufacture and supply industry not the electrical contracting industry and Industrial Magistrate had not erred — Dismissed — Sign Manufacturing 2658

Applications to vary Awards by consent *re* wages — Parties sought first Structural Efficiency Wage Increase on the basis of the parties' work since 1985 — PSA/Commission found it would be a strange application of equity and good conscience to erect an artificial hurdle for the parties to scale merely because they had anticipated the requirements now in place and complied substantially with them ahead of time — PSA/Commission expressed misgivings in applying a $15.00 increase to the lowest classification Level, however considered that the situation could be rectified — Granted — Public Administration 3282

[3]Application to vary Award by consent — Wages — Parties sought once and for all "catch up" increase in wages — CICS found that by all relevant comparisons the employees concerned had been seriously prejudiced for apparently bureaucratic reasons and that simple fairness required a proper nexus for wages be established — Granted — Catering 3256

Application to vary scope of Award — Parties sought new classification to cover "Award Free" employees — objecting union and CWAI argued on the basis of another Awards' provisions and the specific constitutional coverage of the Objector — Commission examined authorities, applied Common Object Test and found employees concerned to be employed in the Health Industry — Granted — Health 3351

Applications to vary Awards *re* wage increase pursuant to Structural Efficiency Principle — Public Service Arbitrator examined agreement of parties, which included, *inter alia*, the introduction of broadbanding, scope for multiskilling, more flexible working hours and changes to other provisions in line with the Public Service — PSA found substantial benefits to both employers and employees at very little cost, which was within the spirit and letter of the Structural Efficiency Principle — Granted —Health 3290

Applications to vary Awards — Parties sought rates of pay increases in accordance with Structural Efficiency Principle — Commission reviewed dicta of principle and having regard that parties were expected to present a single award to replace existing three and non-award measures already implemented, found that they had done enough to comply with the Principles — Commission expressed concern in applying the $15.00 quantum to certain levels of employee and required amendments to incorporate flexibility in adjustment of hours of work — Granted — Police 3355

Application for variation of award — Commission in Court Session had endorsed work value package in accordance with Wage Fixing Principles Package which was to be delivered in carefully spaced instalments — Commission found instant award had not received endorsed increase and ratified final instalments — Granted — Health 3054

Applications to vary Awards *re* travelling allowances — Commission found proposed variation sought to align instant awards' travelling allowance provisions with that of their parent award which had been recently varied in accordance with the Wage Fixing Principles — Granted — Health Administration 3345

CUMULATIVE DIGEST—*continued*

AWARDS —*continued* Page

Application for variation to award — Application to amend award list of government officers not covered by scope of award — Parties were in agreement — Commission found in favour of exclusion in Award being deleted and addressed the Wage Fixing Principles — Granted — State Government 3015

Application for variation to award — Applicant seeks inclusion of new classification in award — Work Value — Commission found application to be similar to that approved by CICS and Respondent's objections to be of no substance — Granted — Power/Energy 2068

Conference matter referred for hearing and determination *re* wage increase — Applicant Employer claimed that it had erroneously paid its employees twice a second tier wage increase and sought to absorb part of that amount by not passing on another increase — Respondent argued increase in question was nothing more than an over award payment — Commission reviewed authorities and found that the money in question was not an award entitlement but a contractual benefit for which each of the employees, individually, would have a right to make a claim pursuant to section 29(b)(ii) of the Industrial Relations Act — Dismissed —Retail 2833

Application to vary Award by consent — Parties sought increase in salaries on the basis of a Structural Efficiency Agreement — Commission took the view as expressed in the Building Trades Case and found that the parties had done enough to justify the first instalment under Structural Efficiency Principle — Commission found it not inappropriate to adjust the lower rates in the Award by a quantum of $15.00 because of the new career structure dependent in part on such adjustments — Public Transport — Granted 3369

BOARD AND LODGING —

Application for an Award — Applicant unions claimed that Respondent went to inordinate lengths when dealing with industrial relations issues either to frustrate the achievement of fair pay and working conditions or uphold its managerial prerogative and sought an Award to provide industrial relations negotiation — Respondent argued that the application was not for a new Award on the basis that previous industrial agreements from which it had retired were in effect Awards — Respondent further argued that to be regulated by a State Award would be a forced step backwards into the Pilbara industrial relations climate and that it needed to make a clean break from the industrial standards and practises of the industry as they were an impediment to the most efficient conduct of its operations and market competitiveness — Furthermore, that an Award was unnecessary as the Industrial Relations Act provided access to the Commission over acts of unfairness as they arise — Commission reviewed history of industrial relations, the application and disputation between the parties and found they had "painted themselves into their respective ideological corners" — Commission extensively reviewed authorities and the Industrial Relations Act and stated the need for mutual respect between the parties under the contemporary industrial relations climate — Commission found that the real interests of the Respondents' employees required the Industrial Relations fundamentals *re* cost — Commission examined the merits of and determined the issues of grievance procedures, on site union representation, suspension of paid union meetings, disputation between unionists and non-unionists, accommodation rents and utility charges — Commission set award period of six months with liberty to apply in relation to specific clauses — Award Issued — Iron Ore 3000

BOARD OF REFERENCE —

Application to be excluded as an employee under the terms of the Construction Industry Portable Paid Long Service Leave Act 1985 or that ordinary pay be calculated using "the ordinary rates of wage payable" for the amount of time actually worked — Applicant an employee registered by the Construction Industry — Long Service Leave Payments Board — Board of Reference found both claims outside its jurisdiction — Dismissed — Building/Construction 2777

[3]Appeal against decision of Board of Reference *re* weekly wage rate applicable to determined period of long service leave — Appellant argued that BOR had erred in applying Clause 4(2) of Long Service Leave — Standard Provisions and sought variation of order or referral back to BOR for further hearing and determination — CICS found task was to determine the number of hours usually worked — "usually" meaning more often than not, most often or most commonly occurring — CICS found BOR made no finding as to what was the number of hours per day worked by the Appellant most often — Upheld and Remitted — Transport 3252

Payment for long service leave sought — Respondent Employer argued Applicant was not entitled to long service leave due to absences which exhausted leave entitlements and broke the continuity of service — Board of Reference found no evidence that Respondent had provided written notification of break in continuity as required by section 6(2)(i) of Long Service Leave Act either during or within 14 days of the termination of any of the absences — However period of absence, other than specified in Act, were not included for purposes of calculating entitlement — Granted — Clothing 2778

BONUS —

Claim *re* contractual entitlements — Applicant claimed payment of a *pro rata* bonus — Respondent argued bonuses were a performance based *ex gratia* payment and when an employee is terminated it was company policy not to pay a *pro rata* bonus — Commission found Applicant failed to establish that bonuses were a term of the contract of service — Dismissed — Sales 3096

BREACH OF AWARD —

[2]Appeal against decision of Magistrate to dismiss complaints *re* underpayment of award — In that matter the employee worked the hours shown on a roster which were subsequently copied into the time and wages records from which wages were calculated — If employee worked other than hours on roster he informed officer manager who made appropriate adjustment to time and wages records — Employee gave evidence that on occasion he did not work rostered hours but could not say exactly when and Magistrate held this created an element of uncertainty and thus on the balance of probabilities it could not be proved when the employee worked — Full Bench reviewed authorities and found that it was more probable than not that the record was an accurate record of the time and hours worked, there was no other ingredient not proven and that Appellant had discharged its onus — Upheld — Security 1899

[2]Appeals against decision of Magistrate *re* breaches of award — Appellant claimed Complainant Union had failed to produce evidence to discharge its onus of proving its case for some charges and the time and wages records which were relied on as evidence in other charges had not been proved to be correct — Full Bench found that time and wages records produced from an employers own custody and maintained by it as a duty under an award and complied within its own knowledge is *prima facie* evidence against and employer in the absence of evidence to the contrary as to the entries therein — the only evidence impugning the time and wages record had not been accepted by the Magistrate which he was entitled to do — Full Bench further concluded that once time and wages had been accepted as correct then the burden of proof on the Complainant was capable of being discharged and the Magistrate then found that it was — Dismissed — Security 2662

[2]Appeal against decision of Industrial Magistrate *re* penalties for breach of award — Matter had previously been appealed and upheld and remitted back to Industrial Magistrate by Full Bench (69 WAIG 1050) — Full Bench found there was no evidence His Worship adverted to number of breaches, period of occurrence, disadvantage to employee or previous breach, and further "parity of penalty" applies — Upheld — Transport 2668

CUMULATIVE DIGEST—*continued*

BREACH OF AWARD —*continued* Page

Complaint *re* Breach of an Award in that Defendant committed a breach of an order, *re* bans or industrial action — Defendant submitted no case to answer — Magistrate found complaint proven on the balance of probabilities as the type of action committed did constitute industrial action — Furthermore the evidence as a whole proved the order had not been complied with — Proven — Building 2777

Appeal against decision of Industrial Magistrate (69 WAIG 1675) *re* underpayment of award wages and annual leave — Appellant claimed Magistrate had erred in allowing complaints to be amended by substituting name of defendant — Full Bench examined Justices Act and Strata Titles Act — Full Bench found the mistaken name on the complaints to have been a "misnomer" as per the authorities i.e. a mere technical variance between the complaint and the evidence with regard to the name or the description of the person charged within the meaning given to that by the Justices Act — Justices Act clearly gave Magistrate power to amend complaints, there was ample evidence that Appellant was employer of complainant and employer had every opportunity to present its case — Dismissed — Caretaking 2653

[3]Appeal against decision of Industrial Magistrate *re* breach of award — Appellant Union claimed failure of Respondent to make available time and wages records was contrary to Clause 28 of award — Interpretation of award and "reasonable suspicion" of breach required under award before inspection — Full Bench found duty of employer to maintain and make available for inspection time and wages records and furthermore, union was not required to particularise suspected breach — Complaint remitted — Upheld — Building Industry 3241

[3]Appeal against decision of Industrial Magistrate *re* breach of award for failure to pay wages in lieu of notice — Appellant submitted that employee was not terminated but left on his own accord — Full Bench found that conflicting evidence from witnesses called by the Appellant, the credibility, including demeanour of witnesses led Industrial Magistrate to accept evidence of union — Dismissed — Timber Industry 3245

CAPACITY TO PAY —

Claim *re* experience payment to be maintained when acting in higher classifications — Applicant Union argued that there was a disparity between day and shift employees — Respondent argued "experience allowance" as title suggests, is for the gaining of experience in the higher classification — Commission having noted the history of the allowance found that experience payment be maintained — Ordered accordingly — Power/Electrical 2212

[3]Application for a New Award by consent — Applicant Union sought new professional classification and salary rates as the second stage in arrangement in negotiating the existing Award — Applicant argued for a special case to be recognised and that its previous acceptance of depressed salary rates warranted recognition — Respondent presented evidence as to how new award arrangements were part of the restructuring of the industry — Commission in Court Session limited its consideration of the Application to the question of a Special Case — Commission in Court session accepted the parties submissions and evidence as to the true nature of the arrangements — However, Commission in Court Session agreed with CWAI, intervening, that an argument which seeks to build the recognition of an anomaly or inequity upon the absence of an equitable base and thereby achieve special case status is an exercise in semantics — Granted in Part — Surveying 2675

Conference referred for hearing and determination *re* claim for a nine day fortnight rather than a 19 day month — Applicant union argued that a decision of the Australian Conciliation and Arbitration Commission indicated the principles which should guide the Commission in the instant case — Applicants argued further that the nine day fortnight best suited the business by: increased efficiency through interaction with other employees, decrease in absenteeism, improved morale; cost savings and safety improvements — Furthermore that the employers had given undertakings that there would be no unnecessary complaints about problems arising from transferring employees from work sites or potential pay and administrative problems — Respondents and Intervenors argued on the basis of potential flow ons, industry standards, costs, client demands, *inter alia*, and that the Respondent had already acceded to a 19 day fortnight in preceding negotiations of the claim, hence eliminating the "middle ground" — Commission found the prime consideration relevant to the assessment of the available options to be contained in the Electrical Contracting Industry Award — Taking all factors into account, the Commission found the Applicant union had not met the test of the obligation to show that the favoured method of a 38 hour week implementation best suited the business of the Employer — Dismissed — Electrical Contracting 3125

Appeal against decision of Commission at (69 WAIG 2206) *re* granting of site allowance — Appellant argued decision of Commission is contrary to the substantial merits of the case and submitted grounds of appeal on a number of issues — Full Bench found from evidence Commission had not erred in fixing the quantum which it did and furthermore, no attempt was made to persuade Full Bench that allowances were not payable in this case as a matter of pure principle — Dismissed — Construction 3233

CASUAL WORK —

Claim *re* unfair dismissal seeking re-employment and payment of 'lost' entitlements — Applicant claimed permanent employment was offered and accepted and subsequent dismissal was summary and unfair — Respondent opposed claim and argued employment had been casual, no new contract of service had existed, therefore Commission had no jurisdiction — Commission found on evidence Manager or Respondent had established a new contract of service — Commission further found no misconduct identified, hence in favour of the Applicant — Granted — Hotels 2154

Application to vary Award *re* new provision for additional payments for performing "internal relief" and variation of rates for casual employees performing "external relief" — Applicant employer argued proposed variation was part of an indivisible cost neutral package the first of significant restructuring arising out of an agreement — Respondent Union argued the proposed variation to casual rates reduced salaries contrary to the *de facto* wage Principle — Government School Teachers Tribunal found agreement did not stand up to the ultimate tests of Structural Efficiency Principle but proposed additional payments were in accordance with the Allowances Principle — Tribunal found itself unable to find in favour of the Applicant on the basis of the Respondents original consent to the variation of rates to casual workers *per se*— Tribunal stated that *de facto* Principle had been "buried" by CICS — Tribunal found on merit, it was inequitable and illogical to compress a scale of salaries to which a person progresses by virtue of qualifications and experience to a middle of the range salary — Granted In Part — Eduction 2866

[3]Appeal against decision of Board of Reference *re* weekly wage rate applicable to determined period of long service leave — Appellant argued that BOR had erred in applying Clause 4(2) of Long Service Leave — Standard Provisions and sought variation of order or referral back to BOR for further hearing and determination — CICS found task was to determine the number of hours usually worked — "usually" meaning more often than not, most often or most commonly occurring — CICS found BOR made no finding as to what was the number of hours per day worked by the Appellant most often — Upheld and Remitted — Transport 3252

Dispute *re* nature of contract of service — Applicant Union claimed agreement was for payment of a "full swing" regardless of actual time involved to install safety value on Rankin A platform and to return to Perth — Respondent agreed on matter of payment however argued agreement was reached with the impression that there would be flexibility of platform operations — Commission found *bona fides* of parties are not doubted however the scales tip in favour of employees' understanding of their contract — Granted — Power/Energy 2813

CUMULATIVE DIGEST—*continued*

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CLASSIFICATION —

Application for an order to defer re-classification of schools and declaration that new criteria for reclassification was beyond the Respondent's powers — Applicant argued Respondent had breached custom and practice and leniently applied Education Act Regulations in the timing of reclassification notifications, such that hardship was experienced by employees — Respondent wholly opposed claim and argued *inter alia* that not all employees were affected — Majority of Government School Teachers Tribunal found on evidence notifications not contrary to custom or practice, a new reclassification criteria had not been adapted and that overall the circumstances were not inequitable in their effect on employees — Dismissed — Education 2273

Claim *re* reclassification of employee to tradesperson in accordance with an agreed reference Award — Applicant Union argued employee performed some range of tasks as was interchangeable with a co-employee paid as a tradesperson — Further that previously agreed wage arrangements were no longer appropriate — Respondent argued wage arrangements were an agreed acceptance of a previous Commission recommendation and that subsequent changes did not represent an increase in work value — Commission found on evidence that events had overtaken the Commission's previous recommendations applicability and that the Respondent treated both employees as equal in skill — However Commission considered employee did not possess all skills of a tradesperson and in the wider sense, hence was not prepared to accede to the claim in full and recommended that further discussion of the issue occur between the parties — Granted in Part — Building Maintenance (Retail) 2210

Claims for variation of award, redefinition of classification, insertion of new classification or alternatively group reclassification — Union claimed that when "broadbanding" of classifications occurred in formulation of current award on omission resulted in the operators of some machines being effectively "declassified" — Commission found broadbanding agreement had also involved a restructuring of classifications according to skills whereas this claim sought to change basis of classification to size of machinery operated — Commission also found the fact that Award was still in term to be an insurmountable barrier — Dismissed — Iron Ore 2142

Dispute *re* performance of certain work — Applicant Employer claimed Respondent had placed work bans on work in question and sought declaration that it was entitled to expect the work be performed — Applicant argued work was within competence of employees who had been trained and within the terms of an Award — Respondent opposed claim and argued Applicant had transgressed the Award in that it attempted to eliminate a trade and de-skill work — Respondent argued Applicant was being unreasonable — Commission found Award, incorporating Restructuring and Efficiency Principle, disposed of traditional demarcation lines and Employer had right to direct a competent employee within the contract of service — However, on consideration of facts, Commission found Applicant should not persist in its directions to the degree that it had — Granted in Part — Iron Ore 2229

[3]Application for a New Award by consent — Applicant Union sought new professional classification and salary rates as the second stage in arrangement in negotiating the existing Award — Applicant argued for a special case to be recognised and that its previous acceptance of depressed salary rates warranted recognition — Respondent presented evidence as to how new award arrangements were part of the restructuring of the industry — Commission in Court Session limited its consideration of the Application to the question of a Special Case — Commission in Court session accepted the parties submissions and evidence as to the true nature of the arrangements — However, Commission in Court Session agreed with CWAI, intervening, that an argument which seeks to build the recognition of an anomaly or inequity upon the absence of an equitable base and thereby achieve special case status is an exercise in semantics — Granted in Part — Surveying 2675

[3]Application to vary Wages clause of an Award — applicant Union sought increase rates for specific classifications and to insert a new classification on the grounds of work value changes — Respondent argued claim could not be considered in isolation of consideration resultant from Structural Efficiency Principles — Minister intervened to raise questions related to possible flow-ons — CICS reviewed Work Value Principle and found that although any restructuring may alter the situation the case for work value adjustments had not been established — Dismissed — Railways 2941

Application to vary Award by consent *re* a new classification — Parties claimed significant changes to duties and responsibilities and that proposed classification and rate of pay were within the Wage Fixing Principles — Objecting union argued that it had consitutional coverage and on the basis of the work performed and the preferences of the employees concerned — Commission examined union Rules and Awards and found the objection was not sustained — Commission further found proposed new classification was warranted, however, inserted a proviso to account of an Order of CICS — Granted In Part — Entertainment 2758

Application to vary scope of Award — Parties sought new classification to cover "Award Free" employees — objecting union and CWAI argued on the basis of another Awards' provisions and the specific constitutional coverage of the Objector — Commission examined authorities, applied Common Object Test and found employees concerned to be employed in the Health Industry — Granted — Health 3351

Application for variation to award — Applicant seeks inclusion of new classification in award — Work Value — Commission found application to be similar to that approved by CICS and Respondent's objections to be of no substance — Granted — Power/Energy 2068

Dispute *re* wages for new classification in award — Parties are in agreement on the definition, duties and responsibilities of classification — Commission found claim to fall within the Work Value Principle of State Wage Principles — Commission having regard to submissions and material and inspections undertaken determined the appropriate quantum — Ordered Accordingly — Power/Energy 2753

Application to vary Awards by consent *re* wages — Parties aimed at implementing the objects of the Structural Efficiency Principle into the Private Health Care Industry — Furthermore the parties are preserving a generalised nexus in wages and conditions with a broad-banding exercise thus reducing a multiplicity of classifications — Commission found the parties have complied with the requirements of the Structural Efficiency Principles — Ordered Accordingly — Health Care 3316

CLOTHING —

Conference referred for hearing and determination *re* warm clothing issue — Union sought issue of warm clothing for a group of employees on basis of weather conditions and that other employees who worked in that area received such an issue — Applicant argued that it was not administratively convenient to issue clothing on the basis of a review being undertaken into the broader issue across its workforce — Commission balanced competing objectives and found that in the case of two fork lift drivers the merit of the claim had been established — However, given the time of year and imminent release of the review, Commission found it should not intervene at that point with respect to the remainder of employees concerned — Granted In Part — Railways ... 3400

COMMON RULE —

Application to vary Awards (3) *re* superannuation referred to CICS pursuant to section 27(1)(t) of Industrial Relations Act — Applicant Unions sought common rule effect to occupational superannuation on the basis that it was a "mopping up" exercise and the most orderly and rational basis for implementing what was argued to be an entitlement — Respondents argued common rule approach to superannuation could not adequately address the diversity of needs that exist in the range of industries covered by the Awards — Furthermore, CWAI argued that there were no special circumstances as identified in the Security Industry Superannuation Case — CICS reviewed Principles, Authorities and the number of enterprise and industry superannuation agreements in the areas of employment covered by the awards — CICS found no overriding impediment to common rule superannuation and that a protracted company by company approach would render, in many instances, the availability of the benefit so remote as to be illusory — CICS further dealt with operative dates, no reduction provision and an exemption — Granted — Various 3509

CUMULATIVE DIGEST—*continued*

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COMPARATIVE WAGE JUSTICE —
Dispute *re* wages for new classification in award — Parties are in agreement on the definition, duties and responsibilities of classification — Commission found claim to fall within the Work Value Principle of State Wage Principles — Commission having regard to submissions and material and inspections undertaken determined the appropriate quantum — Ordered Accordingly — Power/Energy 2753

COMPENSATION —
[2]Appeal against decision of Commission at (69 WAIG 709) to award payment of denied contractual benefits arising out of wrongful dismissal of a fixed term contract — Appellant claimed Commission erred in finding that the respondent's claim was for a benefit under her contract of employment and that it could be distinguished from an action brought at common how for damages arising out of a breach of contract — Appellant argued *inter alia* that the Commission's jurisdiction ended on the date of the dismissal — Respondent argued Pepler decision was confined to the question of compansation in claim of unfair dismissal — Full Bench reviewed authorities and found section 29(b)(ii) of the Industrial Relations Act extended the definition of Industrial Matter — Furthermore that a benefit must be given its widest meaning under the Statute — Full Bench found that the claim was for a benefit rather than compensation — Dismissed — Education 2307

CONFERENCE —
Conference referred for hearing and determination *re* staffing level and meal breaks for prison officers — Commission extensively reviewed submissions of parties including jurisdictional argument that this matter was one of managerial prerogative — Commission referred to dicta of Commission in Court Session in AMWSU and others and Robe River Iron Associates (67 WAIG 2 at 24) and found that changes should be made to manning levels pending results of taskforce which should be set up to enquire into Structural Efficiency Principle matters including the staffing formula and total establishment numbers — Granted in Part — Corrective Services 2217
[2]Application for enforcement of order pursuant to section 84A(1)(b) of Act — Conference held as required by that section and as no amicable solution reached matter proceeding to hearing — Respondent submitted Commission acted without jurisdiction — Full Bench reviewed Commission's power to make orders pursuant to section 44 and found that as there was no indication that orders were "interim" or that they were orders made to determine the question in dispute they were outside power — Dismissed — Construction (Metal Trades) 1904
[3]Consent claim for variations to awards including wage increases arising from conference application — Parties sought ratification of agreement on award restructuring in accordance with Structural Efficiency Principle — COWAI intervened pursuant to section 50 of Act — CICS reviewed tests set out in Structural Efficiency Principle, analysed agreement and found agreement satisfied tests — Granted — Health Care 1938
[2]Appeal against interim order arising out of conference and granting four per cent second tier wage increase pending final arbitration of new award — Appellant argued a number of grounds including that the Commission was not empowered to vary section 32 orders pursuant to section 44(6)(ba) until the arbitration of the separate proceedings had concluded and that the order was issued contrary to Wage Fixing Principles — Full Bench found appeal to be incompetent as it had not been established that matter was of such importance that in the public interest an appeal should lie [section 49(2)] — Full Bench further found that even if appeal had been competent it would have failed as Commission made no errors of law or fact or any miscarriage of discretion — Dismissed — Iron Ore 1873
Conference referred for hearing and determination *re* claim for redundancy package in excess of that offered by employer — Respondent employer argued Commission did not have jurisdiction to issue order sought — Commission reviewed authorities and found that redundancy occurs when an employer no longer requires the work that an employee/s performed to be done at all — Further, section 7 of the Industrial Relations Act defines an industrial matter to include conditions which are to take effect after the termination of employment — Commission further found Respondent's objection to the Constitution of the Commission at the hearing was made out of time — Commission found Respondent's offered redundancy package conflicted with redundancy principle in so far as payments for years of service were concerned, but otherwise aligned with contemporary standards — Granted In Part — Baking 3132
Dissenting opinion *re* order directing union to cease industrial action — Government School Teachers Tribunal member reviewed authority and expressed opinion that order did not achieve nor was necessary to achieve the purposes of section 44(6)(ba) of the Industrial Relations Act — Order by Majority — Education 3437

CONFINED SPACE —
Claim *re* site allowance — Parties agreed to site allowance of $1.70 per hour in lieu of special rates and provisions of awards — Commission found claim could be dealt with in accordance with State Wage Principles and Alcoa case and that disabilities associated with an isolated and exposed site warranted allowance sought — Commission further ratified agreements on other matters including a travelling allowance and grievance procedures — Granted — Construction 3120

CONSUMER PRICE INDEX —
[3]Application for variation to public section awards *re* locality allowance — Parties consented to adjustment in line with consumer price index — CICS noted application was within the Allowances Principle and that the proposed change was merely to reflect the increased cost of living — General Order issued with updated list of awards — Granted — State Government 2297
Applications to vary Award by consent *re* Travelling Allowances and reimbursement of expenses of providing prisoners' meals — Commission found changes reflected changes to an Award representing the State Standard and CPI increase respectively — Principles satisfied — Granted — Police 2540

CUMULATIVE DIGEST—*continued*

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CONTRACT OF SERVICE —

Application for wages, overtime and other benefits alleged to be due from contract of employment — Applicant employed on Job Start Scheme through CES — In Job Start Scheme agreement CES and Respondent agreed Applicant's conditions of employment to be as per Horse Training Industry Award — Commission found that although this Award did not cover Applicant by virtue of the Job Start Scheme agreement its terms specified the contract of service — Commission calculated amount due less one week's pay as Applicant terminated without notice — Granted in Part — Horse Training 2172

Claim *re* payment in lieu of notice sought — Applicant claimed employment was permanent and it had been understood that notice of regisnation period was to correspond to completion of specific duties — Respondent argued employment was casual with a contractual agreement terminable without notice and that had in fact occurred — Commission found, on evidence employment to be on a permanent basis and that matter then turned on implied terms of contract of service — Commission found contract implied termination required reasonable notice — Granted — Fundraising Consultancy 2174

Claim for termination payment — Respondent notified Commission in writing that it was in liquidation and contended proceedings against it stayed without leave of Supreme Court — Commission provided opportunity for Applicant to present submissions on the matter and received no response or advice of leave be granted by Supreme Court — Commission found that operations of Companies (Western Australia) Code denied Commission jurisdiction to entertain or defer the hearing of the claim without leave of the Supreme Court — Struck Out — Recreation 2166

Employee summarily dismissed due to alleged negligence — Applicant sought recovery of moneys deducted or withheld by Respondent due to burglary — Commission found negligence sufficient to warrant dismissal, however Respondent was not authorised to suspend Applicant and due to provisions of Truck Act 1899 not able to deduct money — Granted — Food and Beverage 2156

Claim *re* contractual entitlements — Appliant sought order for alleged outstanding wages — Commission from evidence established that employer/employee had existed with one of the Respondents and found that Applicant had been denied benefit under contract of service — Granted — Food and Beverage 2159

Application for contractual benefits — Applicant sought payment in lieu of notice and annual leave entitlements — Respondent argued only against payment in lieu of notice as certain matters have arisen that would have served as grounds for instant dismissal of Applicant — Commission found Applicant had breached his contract of employment, however Respondent consents to payment of *pro rata* annual leave entitlement — Granted in Part — Service 2164

Application for contractual entitlements — Applicant sought payment for annual leave on *pro rata* basis — Commission found that order could only be made in respect of terms of contract made between the parties and was unconvinced that there was a term of contract as alleged by the Applicant — Dismissed — Poultry 2173

Claim for contractual benefits — Applicant claimed he was terminated after only one month of the three months' notice period had been worked and sought payment in lieu of the balance of that period — Commission heard matter *ex parte* and found that contract of employment did provide for three months' notice and that Applicant had been terminated after one month — However, as Applicant commenced new employment before the expiry of the period of notice and Commisison was not, therefore, convinced that Applicant would have worked the full period of notice it was only prepared to order one month's pay — Granted in Part — Plastic Manufacturing 2162

Application for denied contractual entitlements — in absence of evidence to the contrary, Commission found in favour Applicant — Granted — Promotions Advertising 2512

Claim *re* unfair dismissal seeking reinstatement or payment for remainder of term of contract — Applicant argued termination was without justification as it was to his disadvantage to renegotiate his term of appointment — Commission found that the respondent had lawfully exercised options available when reviewing the contract of employment — Furthermore Commission found that the termination did not constitute as an unfair dismissal as applicant declined to co-operate in correcting the deficiencies which the respondent perceived existed — Dismissed — Sport/Recreation 2169

Claim *re* outstanding benefits — Applicant claimed he was denied part of his superannuation benefit — Respondent argued that applicant was not directly employed by them — Commission found from evidence that claim be dismissed for want of jurisdiction as there was no contract of service between the parties — Dismissed 2165

Claim *re* contractual entitlements — Applicants claimed various sums of money due for work carried out and for termination of contract without due notice — Respondent argued that business was sold and all outstanding liabilities were the responsibility of current owner — Commission established that relationship was that of employee-employer and found it was not open to an employer to enter into such a contract and then "transfer" its legal obligations pursuant to that contract elsewhere — Granted — Health and Fitness 2152

Claim *re* contractual entitlement — Applicant sought payment of salary owed and *pro rata* annual leave — Respondent admitted liability for salary, however was unable to make immediate payment due to financial difficulties — Commission granted claim for salary however found from dicta *re* implied terms of contract that claimed for *pro rata* annual leave could not be sustained — Granted in Part 2510

Application for allegedly denied contractual entitlements — Applicant sought payment of one week's wages, holiday pay and one month's pay in lieu of notice on the basis that he had been employed as General Manager of a company by its receivers and managers — Respondent argued that the relevant contract had not been with the Applicant but a company not an employee — Commission found that it was not satisfied that the Applicant was appointed as claimed rather than an old arrangement continued — Furthermore that the receivers and managers were not as claimed by the Applicant — Dismissed —Restaurant 2786

[2]Appeal against decision of Commission at (69 WAIG 709) to award payment of denied contractual benefits arising out of wrongful dismissal of a fixed term contract — Appellant claimed Commission erred in finding that the respondent's claim was for a benefit under her contract of employment and that it could be distinguished from an action brought at common how for damages arising out of a breach of contract — Appellant argued *inter alia* that the Commission's jurisdiction ended on the date of the dismissal — Respondent argued Pepler decision was confined to the question of compansation in claim of unfair dismissal — Full Bench reviewed authorities and found section 29(b)(ii) of the Industrial Relations Act extended the definition of Industrial Matter — Furthermore that a benefit must be given its widest meaning under the Statute — Full Bench found that the claim was for a benefit rather than compensation — Dismissed — Education 2307

Claim *re* contractuaral entitlements — Applicant claimed underpayment of termination payments — Commission dealt with matter *ex parte* and was satisfied that a contract of service had existed between the Applicant and Respondent — furthermore that there had been an underpayment of pay in lieu of notice and annual leave — Granted — Hire Services Equipment and Sales 2789

Application for payment of *pro rata* annual leave denied on resignation — Parties had employment agreement governed by the terms and conditions of an award — Respondent argued misconduct disentitled Applicant to payment sought — Commission found there had been no dismissal for misconduct therefore a benefit arose for a completed 12 months' service but no more — Granted in Part — Clerical 2788

Employee retrenched due to alleged lack of work — Applicant Union claimed unfair dismissal and sought reinstatement without loss of earnings and continuity of employment — Respondent argued the employees services had been no longer required thus the contract of employment had ended — Commission found on the balance of probabilities that the applicants contract of employment had been terminated due to a shortage of work and that there was no substance to the allegation that such action was unfair — Dismissed — Brickworks 2822

Claim *re* contractual entitlements — Applicant sought one month's wages, *pro rata* holiday pay and pay in lieu of notice — Respondent argued the Applicant should be paid up to his termination date and should not receive anything thereafter — Commission found on the balance of probabilities that Applicant was denied contractual benefits — Granted 2793

Application for denied contractual entitlements, namely payment for one week's salary, pay in lieu of notice, annual leave and leave loading — Commission found an award did not apply but formed part of the Applicant's contract of service — Commission found Applicant had no claim for the payment of a Leave Loading — Granted in Part — Education 3105

CUMULATIVE DIGEST—*continued*

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CONTRACT OF SERVICE —*continued*

Application for reinstatement without loss of entitlements — Applicant Union claimed employee's actions warranted a penalty but dismissal was too severe — Respondent claimed that in all circumstances the termination of the employee's contract of service was justified — Commission found on evidence that the employee had been warned of misconduct previously and that such actions would breach his contract of employment — Commission concluded that to intervene, a good and sufficient reason needed to be established — The application fails — Dismissed 2812

[4]Application *re* eligibility for membership of a Union — Applicant argued that subject member was not an employee but an employer and therefore ineligible for membership — President cited authority of Rice's Case (64 WAIG 881) and found that the fact that a person was a director of a company did not preclude that person from also being an employee of that company — President decided subject member was an employee and therefore eligible for union membership — Dismissed — Nursing 2430

Application for alleged denied contractual entitlements — Applicant claimed non payment of wages and sought order — Commission found Applicant was governed by an Award and hence the application was beyond the Commission's jurisdiction — Dismissed — Food and Beverage 3115

Application for denied contractual entitlements — Applicant claimed he had been underpaid payment in lieu of notice and outstanding commission — Respondent refutes terms and conditions of Applicant's contract — Commission found an absence of documentary evidence to support Respondent's claim and on balance preferred the Applicant's version of events — Granted — Employment Agency 2512

Application for allegedly denied contractual entitlements — Applicant claimed outstanding payment of commission — Respondent argued a different arrangement was made *re* payment of commission — Commission found detail for the payment of commission with a base salary was never consumated in a way that it would become part of a contract, nor could it be implied that there was a specific amount payable for commission — Commission found it was not within its jurisdictional power to grant relief — Dismissed 3099

Claim *re* contractual entitlements — Applicant claimed payment of a *pro rata* bonus — Respondent argued bonuses were a performance based *ex gratia* payment and when an employee is terminated it was company policy not to pay a *pro rata* bonus — Commission found Applicant failed to establish that bonuses were a term of the contract of service — Dismissed — Sales 3096

Claim *re* unfair dismissal — Applicant sought contractual entitlements or reinstatement — Respondent refuted claim arguing that no contract of service existed as Applicant's services were as a consultant — Commission found in favour of Applicant on issue of employment relationship — Commission noted that dismissal had not been exercised unfairly, however found that as an employee under a contract of service, Applicant was entitled to payment for each week of employment and an implied period of notice — Granted in Part — Financial Services 2789

Employee summarily dismissed for alleged assault — Applicant Union argued penalty of summary dismissal was unfair in light of employee's history and sought declaration to that effect together with an order of reinstatement — Respondent argued matters which led to the incident did not justify the violence of the action — Furthermore, Respondent was concerned for the welfare of its other employees — Commission found from evidence that industrial fairness must be based upon the nature and quality of the conduct involved and this action was a fundamental breach of employee's contract of service and the Commission had no warrant to interfere with the termination — Dismissed — Mining 3139

Applicant claimed unfair dismissal seeking reinstatement or payment for remainder of term of contract — Respondent argued claim was not an industrial matter as defined in the Act and also whether the claim constituted a contractual benefit or a claim for damages for breach of contract — Commission determined from the authorities that the contract of employment between the two parties constituted an industrial matter for the purposes of the Act — Dismissed 3110

Claim *re* contractual entitlements — Applicant claimed non-payment of contractual benefits according to the Employment Agreement and Amendments reached between the two parties — Respondent refuted claim and produced an Addendum Service Agreement — Commission found the contract to be a thorough document and entitlements to exist during the continuance of the contract only and that evidence from the Applicant did not convince the Commission that changes had been made to the contract — Granted In Part 2785

Appeal against decision of Industrial Magistrate (69 WAIG 1675) *re* underpayment of award wages and annual leave — Appellant claimed Magistrate had erred in allowing complaints to be amended by substituting name of defendant — Full Bench examined Justices Act and Strata Titles Act — Full Bench found the mistaken name on the complaints to have been a "misnomer" as per the authorities i.e. a mere technical variance between the complaint and the evidence with regard to the name or the description of the person charged within the meaning given to that by the Justices Act — Justices Act clearly gave Magistrate power to amend complaints, there was ample evidence that Appellant was employer of complainant and employer had every opportunity to present its case — Dismissed — Caretaking 2653

Employee summarily dismissed for alleged poor time keeping — Applicant claimed dismissal was unfair and sought reinstatement — Respondent argued right to set policies concerning lateness and to enforce them — Commission found from evidence that conduct of Applicant had not been such that would have created a fundamental breach of contract and that dismissal was summary in nature and unfair — Granted — Mining 2506

Application for contractual benefits denied on termination — Applicant claimed a motor vehicle be assigned to him free of encumbrances, compensation for travelling and vehicle repair costs, payment of *pro rata* annual leave with loading and sought order — Respondent conceded claim for annual leave exclusive of loading — Commission found Applicant was to be assigned vehicle if employment relationship ceased albeit on the basis of accepting outstanding financial liability of the original purchase — Commission further found no upper limit expressed in contract of service on payment of maintenance costs — Annual leave loading not express term of contract — Granted In Part — Engineering 2507, 2784

Application for allegedly denied contractual entitlements — Applicant claimed contract of service had been for fixed term and sought payment for balance of wages, vehicle and tool allowances and exemplary damages — Commission found written contract of service, by incorporating the terms and conditions of an award, expressly provided for termination on one week's notice or payment in lieu, as was done — Further, a claim for exemplary damages was not within the Commission's jurisdiction — Dismissed — Film and Television Production 3385

Claim *re* contractual entitlement — Applicant sought an extra two months' pay in lieu of notice as a contractual benefit denied him under contract of employment — Commission found from evidence, Applicant had not established that a term providing in excess of one month's notice to terminate the contract of employment should be implied into his contract of employment — Dismissed — Accounting 3101

Claim *re* contractual entitlements — Applicant claimed non-payment of wages and annual leave in accordance with contract of employment — Respondent did not appear and the matter proceeded *ex parte* — Commission found claims for contractual entitlements and annual leave proven — However, the matter of annual leave loading was not a term of the contract of employment so that must fail — Granted In Part — Horticultural 3383

Application for wages and moneys outstanding in lieu of notice under contract of service — Respondent argued Applicant was covered by award and was not dismissed, but voluntarily terminated his employment without notice — Commissioner outlined the questions to be answered and found applicant was covered by the award — Granted In Part — Hospitality 2780

Conference matter referred for hearing and determination *re* wage increase — Applicant Employer claimed that it had erroneously paid its employees twice a second tier wage increase and sought to absorb part of that amount by not passing on another increase — Respondent argued increase in question was nothing more than an over award payment — Commission reviewed authorities and found that the money in question was not an award entitlement but a contractual benefit for which each of the employees, individually, would have a right to make a claim pursuant to section 29(b)(ii) of the Industrial Relations Act — Dismissed — Retail 2833

[2]Appeal against decision of Industrial Magistrate *re* breach of award for failure to pay wages in lieu of notice — Appellant submitted that employee was not terminated but left on his own accord — Full Bench found that conflicting evidence from witnesses called by the Appellant, the credibility, including demeanour of witnesses led Industrial Magistrate to accept evidence of union — Dismissed — Timber Industry 3245

CUMULATIVE DIGEST—*continued*

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CONTRACT OF SERVICE —*continued*

Application for allegedly denied contractual entitlements — Applicant claimed he had been underpaid wages and sought order — Respondent argued that if the Applicant had been an employee then employment was on the basis that the Applicant was to receive a share of the profits — Commission found no reason why merely because the Applicant was a purchaser or potential purchaser of the Respondent's business he should not be an employee — However, Commission was not satisfied that the Applicant was to be remunerated as claimed — Dismissed — Construction 3390

Application *re* summary dismissal for alleged misconduct — Applicant claimed moneys in lieu of notice and in lieu of annual leave and sought a declaration for unfair dismissal — Respondent argued Applicant had failed to complete a task assigned to her, involving a substantial amount of money — Commission found Applicant had been lax and inattentative and had needed reprimanding, however this error did not justify summary dismissal — Furthermore, Commission found Applicant's previous service was without blemish and her competence and satisfactory service had been rewarded with a promotion — Granted in Part — Sales 3384

Conference matter referred *re* unfair dismissal — Applicant Union claimed the employee was dismissed from his employment because of instigating actions against the Respondent in the Commission — Respondent claimed he effectively gave notice to the employee and had offered him casual employment even though the employee was allegedly at loggerheads with his superior and that there was no future with the Respondent — Commission found a problem existed between the employee and his superior and that the employee architected his own fate by resuming employment at a casual rate — Dismissed — Hospitality 2521

Claim *re* contractual entitlements — Applicant claimed non-payment of outstanding wages for three weeks' work — Respondent argued Applicant was incapable of doing the work he was engaged for and had not completed work assigned to him — Commission found that the Applicant had not been warned about work performances and if wages accrue under the contract of employment they are recoverable by the Applicant — Granted — Electronics 3388

Claim *re* unfair dismissal/contractual entitlements — Applicant sought reinstatement or one week's pay in lieu of notice — Applicant argued events prior to the termination had affected work performance, therefore dismissal was unfair and the termination procedure followed had not conformed with the employees' handbook — Respondent claimed Applicant had been warned to improve poor work performance — Commission found appropriate warnings had been issued and Respondent did not unfairly exercise the right to terminate the employee's services — Dismissed — Hospitality 3379

Claim *re* contractual entitlements — Applicant claimed non-payment of wages and annual leave in accordance with contract of employment — Respondent did not appear and the matter proceeded *ex parte* — Commission found claims for contractual entitlements and annual leave proven — However, the matter of annual leave loading was not a term of the contract of employment so that must fail — Granted In Part — Horticultural 3383

Claim *re* alleged failure to pay contractual entitlements — Applicant claimed non-payment of overtime calculated at penalty rates — Respondent claimed that the calculations were in error and not in accordance with company's overtime policy — Furthermore, Respondent argued, Commission's jurisdiction would be contrary to the terms of the contract — Commission found that it did have jurisdiction to hear and determine the matter — However Applicant had not established that there was a benefit in the contract for what was claimed — Dismissed — Mining 3116

CONTRACT OUT OF AWARD —

Dispute *re* nature of contract of service — Applicant Union claimed agreement was for payment of a "full swing" regardless of actual time involved to install safety value on Rankin A platform and to return to Perth — Respondent agreed on matter of payment however argued agreement was reached with the impression that there would be flexibility of platform operations — Commission found *bona fides* of parties are not doubted however the scales tip in favour of employees' understanding of their contract — Granted — Power/Energy 2813

CUSTOM AND PRACTICE —

Application for an order to defer re-classification of schools and declaration that new criteria for reclassification was beyond the Respondent's powers — Applicant argued Respondent had breached custom and practice and leniently applied Education Act Regulations in the timing of reclassification notifications, such that hardship was experienced by employees — Respondent wholly opposed claim and argued *inter alia* that not all employees were affected — Majority of Government School Teachers Tribunal found on evidence notifications not contrary to custom or practice, a new classification criteria had not been adapted and that overall the circumstances were not inequitable in their effect on employees — Dismissed — Education 2273

Application for determination of eligibility requirements for a new position — Applicant claimed essential qualification was contrary to, custom and practice and sought an appropriate tertiary qualification be set — Respondent opposed claim and argued Government School Teachers Tribunal did not have jurisdiction to entertain the application — Teachers Tribunal examined section 78 of Industrial Relations Act and other relevant statute — Majority of Teachers Tribunal found that it had no jurisdiction for reasons expressed in a previous decision — Dismissal — Education 2269

Conference referred for hearing and determination *re* demarcation dispute — Respondent Union claimed that it had exclusive constitutional and industrial coverage of specific tasks — Respondent further opposed intervention of ROU on the basis of the Railway Classification Board's jurisdiction — Commission found the ROU had sufficient interest in the matter to be granted leave to intervene — Commission examined authorities and found test to be whether the work in question was a major part of a contract of service — Commission found, on examination of Union Rules, relevant awards and evidence, that the Respondent Union did not have exclusive constitutional and industrial coverage of the specified tasks — Order and Declaration issued accordingly — Railways 2816

DANGEROUS WORK —

Dispute *re* availability of certified first aid personnel — Applicant Union sought order to ensure that a person holding an appropriate first aid certificate be on duty or available during all working hours — Applicant argued its necessity due to the nature of work and uncertainty of materials, including chemicals, that the workers involved dealt with — Respondent argued the claims ulterior motive nature was to have a minority section of its workers to gave full time first aid training in working time — Furthermore adequate Occupational Health Safety and measures existed — Commission found on evidence adequate access to an Occupational Nurse during normal working hours but not outside those hours — Granted in Part — Railways 2517

DATE OF OPERATION —

Application for award variation *re* four per cent second tier wage increase, 38 hour week and maternity leave — Applicant Union sought phasing in of four per cent increase with retrospective dates, and date of hearing as operative date for 38 hour week — Commission found Wage Principles did not envisage for second tier wage increases prior to implementation of offsets and as for 38 hour week, set an operative date which allowed time for necessary adjustments to meet requirements of the Order — Ordered accordingly — Dry Cleaning/Laundry 2112

Applications to vary award and orders by consent — *re* money amounts of contribution to superannuation fund — Operative Date disputed — Applicant Union argued that when agreement with the industry was reached was the appropriate operative date — Respondent argued Commission could not grant retrospectivity unless there were special circumstances as envisaged by section 39 of the Industrial Relations Act — Commission reviewed Superannuation Principle, Act, Authority and the background including procedures of the instant matter — Commission found a date of operation earlier than the date of decision was warranted and did not damage the Principles — Granted in Part — Manufacturing /Furniture 2725

Application to vary Award *re*allowance for disabilities involved in mortuary work — Public Service Arbitrator found total adjustments sought complied with Allowance Principle, however retrospectivity, given the principles was not an option readily open to the Commission — Granted in Part — Public Administration 3314

CUMULATIVE DIGEST—*continued*

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DEMARCATION —

Dispute *re* performance of certain work — Applicant Employer claimed Respondent had placed work bans on work in question and sought declaration that it was entitled to expect the work be performed — Applicant argued work was within competence of employees who had been trained and within the terms of an Award — Respondent opposed claim and argued Applicant had transgressed the Award in that it attempted to eliminate a trade and de-skill work — Respondent argued Applicant was being unreasonable — Commission found Award, incorporating Restructuring and Efficiency Principle, disposed of traditional demarcation lines and Employer had right to direct a competent employee within the contract of service — However, on consideration of facts, Commission found Applicant should not persist in its directions to the degree that it had — Granted in Part — Iron Ore 2229

Conference referred for arbitration *re* Dispute over Manning Levels — Applicant sought declaration to effect that it had the right to determine manning levels on a particular train — Respondent argued that an additional passenger car to the usual train consist required an additional employee skilled in safe working — Furthermore Respondent claimed Applicant had attempted to force an untrained employee rostered in the additional car to perform the work of the suitably trained employee — Commission examined evidence and found Respondent Union had not discharged the onus of establishing its claim or that the Applicant acted harshly or opprehensively — Granted — Railways 2515

Conference referred for hearing and determination *re* demarcation dispute — Respondent Union claimed that it had exclusive constitutional and industrial coverage of specific tasks — Respondent further opposed intervention of ROU on the basis of the Railway Classification Board's jurisdiction — Commission found the ROU had sufficient interest in the matter to be granted leave to intervene — Commission examined authorities and found test to be whether the work in question was a major part of a contract of service — Commission found, on examination of Union Rules, relevant awards and evidence, that the Respondent Union did not have exclusive constitutional and industrial coverage of the specified tasks — Order and Declaration issued accordingly — Railways 2816

Application to vary Award by consent *re* a new classification — Parties claimed significant changes to duties and responsibilities and that proposed classification and rate of pay were within the Wage Fixing Principles — Objecting union argued that it had consitutional coverage and on the basis of the work performed and the preferences of the employees concerned — Commission examined union Rules and Awards and found the objection was not sustained — Commission further found proposed new classification was warranted, however, inserted a proviso to account of an Order of CICS — Granted In Part — Entertainment 2758

²Two applications from Construction Mining and Energy Workers Union and Operative Plasterers and Plaster Workers Federation respectively to amend their eligibility for membership rules to include wall and ceiling fixers — Work had been performed by plasterers, carpenters and wall and ceiling fixers which had caused a long history of demarcation disputation — Full Bench found that although there is now a specific apprenticeship curriculum for wall and ceiling fixers the trade developed from fibrous plastering (covered by Operative Plasterers and Plaster Workers Federation) due to changes in material and technology — Full Bench found that only a particular class of carpenters do the work in question, the fixing of boards involved only a small role for carpenters and that training in the trade of carpentry did not necessarily equip one to be a wall and ceiling fixer — Full Bench amended constitution rule of Operative Plasterers and Plaster Workers Federation to include wall and ceiling fixers — Building Construction 1908

DISABILITIES —

Claim *re* site allowance — Commission found on inspection factors relating to soil nature, rehandling of materials and temperatures due to working in a natural hollow warranted a site allowance under criteria of Full Bench and Sapri Decision — Commission set quantum after comparison with a similar site and referred to parties for agreement on operative date — Granted — Construction 2264

Claim *re* site allowance — Parties were in consent for the payment of a site allowance for the prescribed amount sought —Commission approved prescribed amount as it was within the range envisaged in the Wage Fixingn Principles and satisfied guidelines set down by the Full Bench in the Alcoa case — Ordered accordingly — Construction 2214

Application to vary Award *re*allowance for disabilities involved in mortuary work — Public Service Arbitrator found total adjustments sought complied with Allowance Principle, however retrospectivity, given the principles was not an option readily open to the Commission — Granted in Part — Public Administration 3314

Conference referred for hearing and determination *re* warm clothing issue — Union sought issue of warm clothing for a group of employees on basis of weather conditions and that other employees who worked in that area received such an issue — Applicant argued that it was not administratively convenient to issue clothing on the basis of a review being undertaken into the broader issue across its workforce — Commission balanced competing objectives and found that in the case of two fork lift drivers the merit of the claim had been established — However, given the time of year and imminent release of the review, Commission found it should not intervene at that point with respect to the remainder of employees concerned — Granted In Part — Railways ... 3400

Claim *re* site allowance — Parties agreed to site allowance of $1.70 per hour in lieu of special rates and provisions of awards — Commission found claim could be dealt with in accordance with State Wage Principles and Alcoa case and that disabilities associated with an isolated and exposed site warranted allowance sought — Commission further ratified agreements on other matters including a travelling allowance and grievance procedures — Granted — Construction 3120

DISCRIMINATION —

Appeal against decision of Public Service Commission *re* unfair dismissal due to inefficiency Appellant argued allegations of inefficiency were vague and nebulous and furthermore there was a lack of notification and counselling with regard to the matters of inefficiency and work performance — Appellant further argued that penalty of dismissal was unreasonably harsh and sought reinstatement without loss of benefits — Board found from evidence that dismissal was fair and just and concluded unanimously that appellant had failed to successfully perform the duties required of a Level 5 Engineer — Dismissed 2586

EMPLOYEE —

Claim *re* contractual entitlements — Applicant sought order for alleged outstanding wages — Commission from evidence established that employer/employee had existed with one of the Respondents and found that Applicant had been denied benefit under contract of service — Granted — Food and Beverage 2159

Claim *re* contractual entitlements — Applicants claimed various sums of money due for work carried out and for termination of contract without due notice — Respondent argued that business was sold and all outstanding liabilities were the responsibility of current owner — Commission established that relationship was that of employee-employer and found it was not open to an employer to enter into such a contract and then "transfer" its legal obligations pursuant to that contract elsewhere — Granted — Health and Fitness 2152

Application for allegedly denied contractual entitlements — Applicant sought payment of one week's wages, holiday pay and one month's pay in lieu of notice on the basis that he had been employed as General Manager of a company by its receivers and managers — Respondent argued that the relevant contract had not been with the Applicant but a company not an employee — Commission found that it was not satisfied that the Applicant was appointed as claimed rather than an old arrangement continued — Furthermore that the receivers and managers were not as claimed by the Applicant — Dismissed —Restaurant 2786

CUMULATIVE DIGEST—*continued*

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EMPLOYEE —*continued*

[4]Application *re* eligibility for membership of a Union — Applicant argued that subject member was not an employee but an employer and therefore ineligible for membership — President cited authority of Rice's Case (64 WAIG 881) and found that the fact that a person was a director of a company did not preclude that person from also being an employee of that company — President decided subject member was an employee and therefore eligible for union membership — Dismissed — Nursing 2430

Claim *re* unfair dismissal — Applicant sought contractual entitlements or reinstatement — Respondent refuted claim arguing that no contract of service existed as Applicant's services were as a consultant — Commission found in favour of Applicant on issue of employment relationship — Commission noted that dismissal had not been exercised unfairly, however found that as an employee under a contract of service, Applicant was entitled to payment for each week of employment and an implied period of notice — Granted in Part — Financial Services 2789

Appeal against decision of Industrial Magistrate (69 WAIG 1675) *re* underpayment of award wages and annual leave — Appellant claimed Magistrate had erred in allowing complaints to be amended by substituting name of defendant — Full Bench examined Justices Act and Strata Titles Act — Full Bench found the mistaken name on the complaints to have been a "misnomer" as per the authorities i.e. a mere technical variance between the complaint and the evidence with regard to the name or the description of the person charged within the meaning given to that by the Justices Act — Justices Act clearly gave Magistrate power to amend complaints, there was ample evidence that Appellant was employer of complainant and employer had every opportunity to present its case — Dismissed — Caretaking 2653

Application for allegedly denied contractual entitlements — Applicant claimed he had been underpaid wages and sought order — Respondent argued that if the Applicant had been an employee then employment was on the basis that the Applicant was to receive a share of the profits — Commission found no reason why merely because the Applicant was a purchaser or potential purchaser of the Respondent's business he should not be an employee — However, Commission was not satisfied that the Applicant was to be remunerated as claimed — Dismissed — Construction 3390

ENFORCEMENT OF AWARDS/ORDERS —

[2]Application for enforcement of order pursuant to section 84A(1)(b) of Act — Conference held as required by that section and as no amicable solution reached matter proceeded to hearing — Respondent submitted Commisison acted without jurisdiction — Full Bench reviewed Commisison's power to make orders pursuant to section 44 and found that as there was no indication that orders were "interim" or that they were orders made to determine the question in dispute they were outside power — Dismissed — Construction (Metal Trades) 1904

[2]Application for enforcement of Commission direction to Respondent *re* industrial action — Respondent admitted breach of Order and breach of prevention of disputes procedure in award — Full Bench examined nature of proceedings under section 84A and found that this dispute was a one-off protest ostensibly caused by the actions of another employer — Having regard to seriousness of contravention and mitigating circumstances Full Bench issued caution — Proven — Iron Ore 2317

Appeal against decision of the Commission (69 WAIG 1722) arising from Conference *re* entitlement to annual leave loading — Appellant claimed Commission did not have power to interpret or enforce awards out of a section 44 Conference — Respondent submitted decision was to settle a dispute and that any interpretation or enforcement of the award was incidental to that — Full Bench reviewed the authorities and found that interpretation of awards is incidental to many powers exercised by the Commission which should not be read down in favour of section 46 unless the matter is unequivocally one of interpretation — Full Bench found Commission had no jurisdiction to enforce awards and the decision in question was a "bald interpretation matter" as well as a matter of enforcement — Upheld — Metal Trades 2623

[2]Application made in course of enforcement proceedings — Respondent argued that Full Bench had no power to hear enforcement application — Furthermore, enforcement proceedings commenced after cessation of industrial dispute and respondent submitted enforcement only possible while dispute afoot — Full Bench found enforcement in section 84A relates to the imposition of penalties etc and that there was no provision that section 84A relates only to current industrial dispute — Full Bench found jurisdiction exists for it to deal with matter — Dismissed 2937

HOURS OF WORK —

[4]Application for stay of order *re* implementation of 38 hour week, pending appeal — Applicants claimed *inter alia* that their business operations would be prejudiced in the event that the appeal was successful and the matter remitted for further hearing — Respondent argued implementation of 38 hour week could be altered to comply with any possible new order and that there was sufficient flexibility within the order in any case — Furthermore Respondents argued Applicants had shown total disregard for the Commission by being in breach of the order — President stated it would be neither an act of equity or good conscience to exercise discretion in favour of Applicants, in this case, when they had decided not to comply with an order of the Commission — Furthermore President considered the dispute was not whether the 38 hour week would apply but when and what offsets might be achieved — President found no real harm or inconvenience to the Applicants — Dismissed — Hotel (Clerks) 1954

[2]Appeal against decision of Commission (69 WAIG 1529) to grant variation to award by allowing reduction in standard hours to 38 per week — Appellant claimed denial of natural justice had occurred insofar that it had not sufficient opportunity to be heard — Full Bench reviewed pertinent authorities *re* "natural justice" and found that the Appellant had been given every opportunity to put its case thus there was no denial of natural justice — Further, Full Bench found no evidence of the Commission's discretion having miscarried so grounds of appeal had not been made out — Dismissed — Hospitality 2303

Application for award variation *re* four per cent second tier wage increase, 38 hour week and maternity leave — Applicant Union sought phasing in of four per cent increase with retrospective dates, and date of hearing as operative date for 38 hour week — Commission found Wage Principles did not envisage for second tier wage increases prior to implementation of offsets and as for 38 hour week, set an operative date which allowed time for necessary adjustments to meet requirements of the Order — Ordered accordingly — Dry Cleaning/Laundry 2112

Application to vary award by consent — Applicant denied it had a special case and sought significant changes to conditions of employment — Applicant argued that the existing conditions were chronically out of date and not in the Public Interest — Public Service Arbitrator examined a wealth of evidence — PSA found it had no hesitation whatsoever despite costs, in sanctioning on agreement as it applied to reducing hours of work to 40 per week, rosters and the like — PSA found after noting professional status of employees concerned, work value charges of a justify to magnitude claimed five per cent salary increase — Granted — Health 2361

Conference referred for hearing and determination *re* claim for a nine day fortnight rather than a 19 day month — Applicant union argued that a decision of the Australian Conciliation and Arbitration Commission indicated the principles which should guide the Commission in the instant case — Applicants argued further that the nine day fortnight best suited the business by: increased efficiency through interaction with other employees, decrease in absenteeism, improved morale; cost savings and safety improvements — Furthermore that the employers had given undertakings that there would be no unnecessary complaints about problems arising from transferring employees from work sites or potential pay and administrative problems — Respondents and Intervenors argued on the basis of potential flow ons, industry standards, costs, client demands, *inter alia*, and that the Respondent had already acceded to a 19 day fortnight in preceding negotiations of the claim, hence eliminating the "middle ground" — Commission found the prime consideration relevant to the assessment of the available options to be contained in the Electrical Contracting Industry Award — Taking all factors into account, the Commission found the Applicant union had not met the test of the obligation to show that the favoured method of a 38 hour week implementation best suited the business of the Employer — Dismissed — Electrical Contracting 3125

CUMULATIVE DIGEST—*continued*

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HOURS OF WORK —*continued*

Applications to vary Awards — Parties sought rates of pay increases in accordance with Structural Efficiency Principle — Commission reviewed dicta of principle and having regard that parties were expected to present a single award to replace existing three and non-award measures already implemented, found that they had done enough to comply with the Principles — Commission expressed concern in applying the $15.00 quantum to certain levels of employee and required amendments to incorporate flexibility in adjustment of hours of work — Granted — Police 3355

[3]Appeal against decision of Board of Reference *re* weekly wage rate applicable to determined period of long service leave — Appellant argued that BOR had erred in applying Clause 4(2) of Long Service Leave — Standard Provisions and sought variation of order or referral back to BOR for further hearing and determination — CICS found task was to determine the number of hours usually worked — "usually" meaning more often than not, most often or most commonly occurring — CICS found BOR made no finding as to what was the number of hours per day worked by the Appellant most often — Upheld and Remitted — Transport 3252

Application to vary awards *re* special provisions for cycle working — Applicant Employers sought to insert new clause into awards to introduce cycle working in remote areas as in the Goldmining Consolidated Award — Respondent unions questioned the validity of a survey as evidence and argued that the best way to deal with the issues involved was on an *ad hoc* basis with specific mines as and when those mines were brought on stream — Respondents further claimed union notification provision of proposed clause was insufficient and provision of compensation for travel expenses was needed — Commission found cycle working to be a fact of life in the mining industry and that many small gold mining properties which would otherwise be non-viable had been brought on stream using the work cycle process — Furthermore, Commission found adequate protection in clause to cover objections of Respondents — Granted — Mining (Gold) 3022

Application to vary Award *re* 38 hour week — Parties agreed significant changes would result in work practices and a degree of flexibility had been achieved — Furthermore the ordinary hours would be broadened and worked in shifts — Commission found the claim not only satisfied the Standard Hours Principle it was also consistent with the Structural Efficiency Principle — The proposed changes have the potential for increased efficiency and minimal costs — Granted — Dentists 3308

INDUSTRIAL ACTION —

Dispute *re* performance of certain work — Applicant Employer claimed Respondent had placed work bans on work in question and sought declaration that it was entitled to expect the work be performed — Applicant argued work was within competence of employees who had been trained and within the terms of an Award — Respondent opposed claim and argued Applicant had transgressed the Award in that it attempted to eliminate a trade and de-skill work — Respondent argued Applicant was being unreasonable — Commission found Award, incorporating Restructuring and Efficiency Principle, disposed of traditional demarcation lines and Employer had right to direct a competent employee within the contract of service — However, on consideration of facts, Commission found Applicant should not persist in its directions to the degree that it had — Granted in Part — Iron Ore 2229

Claim *re* payment for time away from work while attending stop work meetings — Applicant Unions claimed payment would promote structural efficiency — Commission was not persuaded by the applicants proposition that there would be a negative cost impact for the respondent — Commission found that applicant had not discharged the onus to make out a case — Dismissed — Electrical/Power 2145

Claim *re* unfair dismissal seeking reinstatement or payment for reminader of term of contract — Applicant argued termination was without justification as it was to his disadvantage to renegotiate his term of appointment — Commission found that the respondent had lawfully exercised options available when reviewing the contract of employment — Furthermore Commisison found that the termination did not constitute as an unfair dismissal as applicant declined to co-operate in correcting the deficiencies which the respondent perceived existed — Dismissed — Sport/Recreation 2169

[4]Application to vary award by consent — Parties sought to replace percentage Shift Allowance with a flat money allowance and argued for a Special Case — CWAI intervened and argued that the resultant increase in conditions of employment was not based on merit and could flow on to other Industry sectors — CICS examined history of case and found a Special Case existed — Conferences were held before Commission to scrutinise proposed variation under the Principles and then CICS heard further submissions — CICS stated Industrial Action was reprehensive and had no bearing on final judgment — CICS found proposed variation to generally be consistent with the Principles and a first step in Structural Efficiency — However CICS was not convinced the matter was of such urgency or special nature as to allow an operative date such as to override the main objective of the Principles — Granted in Part — Health Care 1924

[2]Application for enforcement of Commission direction to Respondent *re* industrial action — Respondent admitted breach of Order and breach of prevention of disputes procedure in award — Full Bench examined nature of proceedings under section 84A and found that this dispute was a one-off protest ostensibly caused by the actions of another employer — Having regard to seriousness of contravention and mitigating circumstances Full Bench issued caution — Proven — Iron Ore 2317

Application for an Award — Applicant unions claimed that Respondent went to inordinate lengths when dealing with industrial relations issues either to frustrate the achievement of fair pay and working conditions or uphold its managerial prerogative and sought an Award to provide industrial relations negotiation — Respondent argued that the application was not for a new Award on the basis that previous industrial agreements from which it had retired were in effect Awards — Respondent further argued that to be regulated by a State Award would be a forced step backwards into the Pilbara industrial relations climate and that it needed to make a clean break from the industrial standards and practises of the industry as they were an impediment to the most efficient conduct of its operations and market competitiveness — Furthermore, that an Award was unnecessary as the Industrial Relations Act provided access to the Commission over acts of unfairness as they arise — Commission reviewed history of industrial relations, the application and disputation between the parties and found they had "painted themselves into their respective ideological corners" — Commission extensively reviewed authorities and the Industrial Relations Act and stated the need for mutual respect between the parties under the contemporary industrial relations climate — Commission found that the real interests of the Respondents' employees required the Industrial Relations fundamentals *re* cost — Commission examined the merits of and determined the issues of grievance procedures, on site union representation, suspension of paid union meetings, disputation between unionists and non-unionists, accommodation rents and utility charges — Commission set award period of six months with liberty to apply in relation to specific clauses — Award Issued — Iron Ore 3000

Conference referred for hearing and determination *re* whether the employer had been right or wrong in considering employees who had refused to clock on to be on strike — Applicant employer argued that the employees had not been prepared to work normally and that there had been a clear refusal to carry out a lawful direction — Respondent Union claimed the Applicant had been unjustified in actions and sought a declaration and payment of outstanding moneys — Commission reviewed definition of a "strike" and examined agreed facts — Commission found clocking-on did not in itself trigger payment, there was no refusal to work and it was not necessary to rely on the no work no pay principle to determine the workers' entitlement to pay — Union claim granted — Construction (Oil and Gas) 2827

Settlement of dispute *re* pay claim — Parties sought ratification of three per cent or $15.00 as first instalment pay increase on the basis of a settlement wherein parties had reached agreement on certain aspects of a Conditions of Work Agreement — Commission considered agreement and also put restructuring in the light of the Structural Efficiency Principle — Commission found that although agreement was a tenuous one, on the face of it, it justified the salary adjustment sought, with future restructuring to be examined on application for the second instalment of the claim — Granted — Education 3644

Dissenting opinion *re* order directing union to cease industrial action — Government School Teachers Tribunal member reviewed authority and expressed opinion that order did not achieve nor was necessary to achieve the purposes of section 44(6)(ba) of the Industrial Relations Act — Order by Majority — Education 3437

CUMULATIVE DIGEST—*continued*

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INDUSTRIAL MATTER —

Claim *re* restrictive work practice — Applicant sought order that union remove its "hardhat" notice and reaffirm the general principle of Award that employees may be required to work as directed, subject to competency and regulatory requirements — Commission found nothing in Award which fetters the right of the Applicant to direct its employees to do the work in question in the manner it proposes and reiterated that there was nothing which established that the practice *per se* is unsafe — Granted — Iron Ore 2824

Dispute *re* nature of contract of service — Applicant Union claimed agreement was for payment of a "full swing" regardless of actual time involved to install safety value on Rankin A platform and to return to Perth — Respondent agreed on matter of payment however argued agreement was reached with the impression that there would be flexibility of platform operations — Commission found *bona fides* of parties are not doubted however the scales tip in favour of employees' understanding of their contract — Granted — Power/Energy 2813

INDUSTRY —

[2]Appeal against finding of Commission (69 WAIG 1794) that organisation was party to an award pursuant to section 38 of the Industrial Relations Act — Appellant argued that Commission did not have power to make such finding and has misapplied Act's definition of "industry" — Full Bench defined "industry" and "calling", interpreted "in respect of" as per section 38 and reviewed authorities (esp. Parker's Case and Glover's Case) — Full Bench found section 38 enabled Commission to add any organisation as named party to award where there is sufficient connection insofar that the organisation is registered in respect of any calling to which the award applies or to any industry to which the award applies — As the calling of cabinetmaker was not one of the classifications of the Building Trades Construction Award, 14 of 1978, and as the fact that some cabinetmakers for whom UFTU have registration work in the Building construction industry does not mean that the UFTU necessarily is registered in respect of the building construction industry the Commission did no have power to make finding it did — Upheld — Building Construction 2646

[2]Appeal against decision of Industrial Magistrate that Employer was not respondent to particular award — Appellant had misapplied the principles for determining the industry carried out by an employer for the purpose of determining award respondency — Full Bench examined scope clause of award and then applied the principles from Glovers' Case (50 WAIG 704) and the "common object" test from Parkers' Case (29 WALR 90) — Full Bench found Respondent was in the sign manufacture and supply industry not the electrical contracting industry and Industrial Magistrate had not erred — Dismissed — Sign Manufacturing 2658

INTERPRETATION — WORDS AND PHRASES —

[2]Question of law *re* whether a clause in a proposed consent order would create an offence under the Industrial Relaitons Act — Appliant Union argued matter should be remitted back to Commission at first instance as necessary findings of fact had not been made — Respondent notified that it no longer consented to the clause in question — Full Bench found that the whole basis of the question of law referred had been removed unilaterally and the question was possibly no longer germane to the decision of the Commission at first instance — Remitted — Hydraulic Engineering 1907

Application to vary Award by consent *re* overtime — Parties sought to clarify the interpretation of a clause in an Award to clearly prescribe that for overtime purposes each day shall stand alone — Commission found that the claim accorded with standard government overtime provisions and that the additional costs were minimal — Granted — Education/Research 2755

[2]Appeal against decision of Commission at (69 WAIG 709) to award payment of denied contractual benefits arising out of wrongful dismissal of a fixed term contract — Appellant claimed Commission erred in finding that the respondent's claim was for a benefit under her contract of employment and that it could be distinguished from an action brought at common how for damages arising out of a breach of contract — Appellant argued *inter alia* that the Commission's jurisdiction ended on the date of the dismissal — Respondent argued Pepler decision was confined to the question of compansation in claim of unfair dismissal — Full Bench reviewed authorities and found section 29(b)(ii) of the Industrial Relations Act extended the definition of Industrial Matter — Furthermore that a benefit must be given its widest meaning under the Statute — Full Bench found that the claim was for a benefit rather than compensation — Dismissed — Education 2307

[2]Appeal against finding of Commission (69 WAIG 1794) that organisation was party to an award pursuant to section 38 of the Industrial Relations Act — Appellant argued that Commission did not have power to make such finding and has misapplied Act's definition of "industry" — Full Bench defined "industry" and "calling", interpreted "in respect of" as per section 38 and reviewed authorities (esp. Parker's Case and Glover's Case) — Full Bench found section 38 enabled Commission to add any organisation as named party to award where there is sufficient connection insofar that the organisation is registered in respect of any calling to which the award applies or to any industry to which the award applies — As the calling of cabinetmaker was not one of the classifications of the Building Trades Construction Award, 14 of 1978, and as the fact that some cabinetmakers for whom UFTU have registration work in the Building construction industry does not mean that the UFTU necessarily is registered in respect of the building construction industry the Commission did no have power to make finding it did — Upheld — Building Construction 2646

Assistant Foreman, Fitting — Recommending Authority argued PAB did not have jurisdiction to determine an appeal against a temporary position — PAB reviewed section 80X, 80Y and 80ZA of the Industrial Relations Act and found that the wording in the definition of "office" excluded any Office or position that was temporary — Dismissed — Westrail 3170

[3]Preliminary point raised in proceedings instituted on Commission's own motion to consider National Wage Case, August 1989 pursuant to section 51 of IR Act — CWAI whilst not arguing that Commission in Court Session should refrain from endorsing National Wage Decision submitted that procedurally this was not a decision that could be given effect by General Order as per section 51 because it did not of itself vary wages in federal awards but instead required individual award variation applications with different dates of operation — Majority of Commission in Court Session found that the fact that the decision did not result in any immediate or collective amendment to awards does not mean that it is not applicable to those awards — Further, the instant decision is applicable generally to awards because all awards of the Australian Commission are covered by the Principles which flow from that decision and it is therefore appropriately dealt with under section 51 — State Wage Case 2913

Application for an Award — Applicant unions claimed that Respondent went to inordinate lengths when dealing with industrial relations issues either to frustrate the achievement of fair pay and working conditions or uphold its managerial prerogative and sought an Award to provide industrial relations negotiation — Respondent argued that the application was not for a new Award on the basis that previous industrial agreements from which it had retired were in effect Awards — Respondent further argued that to be regulated by a State Award would be a forced step backwards into the Pilbara industrial relations climate and that it needed to make a clean break from the industrial standards and practises of the industry as they were an impediment to the most efficient conduct of its operations and market competitiveness — Furthermore, that an Award was unnecessary as the Industrial Relations Act provided access to the Commission over acts of unfairness as they arise — Commission reviewed history of industrial relations, the application and disputation between the parties and found they had "painted themselves into their respective ideological corners" — Commission extensively reviewed authorities and the Industrial Relations Act and stated the need for mutual respect between the parties under the contemporary industrial relations climate — Commission found that the real interests of the Respondents' employees required the Industrial Relations fundamentals *re* cost — Commission examined the merits of and determined the issues of grievance procedures, on site union representation, suspension of paid union meetings, disputation between unionists and non-unionists, accommodation rents and utility charges — Commission set award period of six months with liberty to apply in relation to specific clauses — Award Issued — Iron Ore 3000

CUMULATIVE DIGEST—*continued*

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INTERPRETATION — WORDS AND PHRASES —*continued*

Conference referred for hearing and determination *re* whether the employer had been right or wrong in considering employees who had refused to clock on to be on strike — Applicant employer argued that the employees had not been prepared to work normally and that there had been a clear refusal to carry out a lawful direction — Respondent Union claimed the Applicant had been unjustified in actions and sought a declaration and payment of outstanding moneys — Commission reviewed definition of a "strike" and examined agreed facts — Commission found clocking-on did not in itself trigger payment, there was no refusal to work and it was not necessary to rely on the no work no pay principle to determine the workers' entitlement to pay — Union claim granted — Construction (Oil and Gas) 2827

Conference referred for hearing and determination *re* claim for redundancy package in excess of that offered by employer — Respondent employer argued Commission did not have jurisdiction to issue order sought — Commission reviewed authorities and found that redundancy occurs when an employer no longer requires the work that an employee/s performed to be done at all — Further, section 7 of the Industrial Relations Act defines an industrial matter to include conditions which are to take effect after the termination of employment — Commission further found Respondent's objection to the Constitution of the Commission at the hearing was made out of time — Commission found Respondent's offered redundancy package conflicted with redundancy principle in so far as payments for years of service were concerned, but otherwise aligned with contemporary standards — Granted In Part — Baking 3132

Application for declaration of true interpretation of award *re* whether shift loadings are included for the purposes of computing overtime — Respondent argued the existence of a general principle against the payment of double penalties, however, whilst this principle is long established and widely recognised it cannot override the express terms of a particular award which in this case says that overtime on shift work "shall be based on the rate payable for shift work — Declaration made in terms of Application — Aerated Water and Cordial Manufacturing 3277

Appeals against a "finding" of the Commission (69 WAIG 1110) *re* which Unions had constitutional coverage of award classification — Full Bench found what was being appealed against was not a "finding" as defined in section 7 of IR Act 1989 but part of the reasons for decision — As what was being appealed was not a finding, order, award or declaration, section 49 conferred no jurisdiction for the Full Bench to hear them — Dismissed — Mining (Gold) 2300

[3]Appeal against decision of Board of Reference *re* weekly wage rate applicable to determined period of long service leave — Appellant argued that BOR had erred in applying Clause 4(2) of Long Service Leave — Standard Provisions and sought variation of order or referral back to BOR for further hearing and determination — CICS found task was to determine the number of hours usually worked — "usually" meaning more often than not, most often or most commonly occurring — CICS found BOR made no finding as to what was the number of hours per day worked by the Appellant most often — Upheld and Remitted — Transport 3252

Appeal against decision of Commission at (69 WAIG 2212) *re* granting of experience allowance to employees acting in higher positions — Appellant argued Commission failed to attach sufficient weight on a number of issues — Full Bench found order issued purporting to vary award no longer in existence and in fact varied and interpreted new award — Full Bench found Commission erred in the exercise of its discretion — Upheld — Power/Electricity 3239

[2]Appeal against decision of Industrial Magistrate *re* breach of award — Appellant Union claimed failure of Respondent to make available time and wages records was contrary to Clause 28 of award — Interpretation of award and "reasonable suspicion" of breach required under award before inspection — Full Bench found duty of employer to maintain and make available for inspection time and wages records and furthermore, union was not required to particularise suspected breach — Complaint remitted — Upheld — Building Industry 3241

INTERVENTION —

[3]Application to vary Wages clause of an Award — applicant Union sought increase rates for specific classifications and to insert a new classification on the grounds of work value changes — Respondent argued claim could not be considered in isolation of consideration resultant from Structural Efficiency Principles — Minister intervened to raise questions related to possible flow-ons — CICS reviewed Work Value Principle and found that although any restructuring may alter the situation the case for work value adjustments had not been established — Dismissed — Railways 2941

[4]Application for interpretation of Union's eligibility for membership rule — Counterpart Federal Union and Other Federal and State Unions sought leave — President extensively reviewed authorities and principles *re* "intervention" and found that only the State registered Union whose rule was being interpreted had sufficient interest to intervene — Dismissed — Nursing 2343

Conference referred for hearing and determination *re* demarcation dispute — Respondent Union claimed that it had exclusive constitutional and industrial coverage of specific tasks — Respondent further opposed intervention of ROU on the basis of the Railway Classification Board's jurisdiction — Commission found the ROU had sufficient interest in the matter to be granted leave to intervene — Commission examined authorities and found test to be whether the work in question was a major part of a contract of service — Commission found, on examination of Union Rules, relevant awards and evidence, that the Respondent Union did not have exclusive constitutional and industrial coverage of the specified tasks — Order and Declaration issued accordingly — Railways 2816

JURISDICTION —

Appeal against employees dismissal for alleged misconduct, that being sexually interfering with a client — Appellant denied allegations and claimed dismissal unfair — Appellant argued further that there had not been a complaint from the client in question — Respondent argued that on balance of probabilities misconduct had occurred — Public Service Appeal Board considered section 80I of Industrial Relations Act provided it with a greater license to substitute its own view than in claims of unfair dismissal before the Commission *per se* — The decision to dismiss was to be reviewed *de novo* on the evidence before the PSAB not merely on whether the decision maker made the right decision on the evidence before it at the time — PSAB found evidence left too many questions unanswered about the allegations relied upon by the Respondent and that the dismissal should not be allowed to stand — Granted — Community Services (Government) 2266

[2]Question of law *re* whether a clause in a proposed consent order would create an offence under the Industrial Relations Act — Applicant Union argued matter should be remitted back to Commission at first instance as necessary findings of fact had not been made — Respondent notified that it no longer consented to the clause in question — Full Bench found that the whole basis of the question of law referred had been removed unilaterally and the question was possibly no longer germane to the decision of the Commission at first instance — Remitted — Hydraulic Engineering 1907

Claim for termination payment — Respondent notified Commission in writing that it was in liquidation and contended proceedings againt it stayed without leave of Supreme Court — Commission provided opportunity for Applicant to present submissions on the matter and received no response or advice of leave be granted by Supreme Court — Commission found that operations of Companies (Western Australia) Code denied Commission jurisdiction to entertain or defer the hearing of the claim without leave of the Supreme Court — Struck Out — Recreation 2166

[2]Application for enforcement of order pursuant to section 84A(1)(b) of Act — Conference held as required by that section and as no amicable solution reached matter proceeded to hearing — Respondent submitted Commission acted without jurisdiction — Full Bench reviewed Commissioner's power to make orders pursuant to section 44 and found that as there was no indication that orders were "interim" or that they were orders made to determine the question in dispute they were outside power — Dismissed — Construction (Metal Trades) 1904

CUMULATIVE DIGEST—*continued*

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JURISDICTION —*continued*

[2]Appeal against decision of Commission at (69 WAIG 735) *re* unfair dismissal — Appellant Union claimed Commission had erred in having found a constructive summary dismissal to be unjustified, then finding dismissal in accordance with contract of service not unfair — Appellant argued that Commission failed to apply correct tests and relevant authorities — Full Bench reviewed authorities and found in context of Industrial Relations Act Commission must consider the act of dismissal complained about — Furthermore the question was not whether the dismissal was lawful but whether the dismissal which occurred was fair, not whether another form of exercise of the right to dismiss was fair — Full Bench found Commission's exercise of discretion miscarried and erred fundamentally in that it made an order contrary to its findings and had therefore no power other than to reinstate and/or declare the dismissal unfair — Upheld — Transport (Passenger) 1895

[2]Appeal against interim order arising out of conference and granting four per cent second tier wage increase pending final arbitration of new award — Appellant argued a number of grounds including that the Commission was not empowered to vary section 32 orders pursuant to section 44(6)(ba) until the arbitration of the separate proceedings had concluded and that the order was issued contrary to Wage Fixing Principles — Full Bench found appeal to be incompetent as it had not been established that matter was of such importance that in the public interest an appeal should lie [section 49(2)] — Full Bench further found that even if appeal had been competent it would have failed as Commission made no errors of law or fact or any miscarriage of discretion — Dismissed — Iron Ore 1873

Claim *re* unfair dismissal seeking re-employment and payment of 'lost' entitlements — Applicant claimed permanent employment was offered and accepted and subsequent dismissal was summary and unfair — Respondent opposed claim and argued employment had been casual, no new contract of service had existed, therefore Commission had no jurisdiction — Commission found on evidence Manager of Respondent had established a new contract of service — Commission further found no misconduct identified, hence in favour of the Applicant — Granted — Hotels 2154

Application for determination of eligibility requirements for a new position — Applicant claimed essential qualification was contrary to, custom and practice and sought an appropriate tertiary qualification be set — Respondent opposed claim and argued Government School Teachers Tribunal did not have jurisdiction to entertain the application — Teachers Tribunal examined section 78 of Industrial Relations Act and other relevant statute — Majority of Teachers Tribunal found that it had no jurisdiction for reasons expressed in a previous decision — Dismissal — Education 2269

[2]Appeal against decision of Commission at (69 WAIG 709) to award payment of denied contractual benefits arising out of wrongful dismissal of a fixed term contract — Appellant claimed Commission erred in finding that the respondent's claim was for a benefit under her contract of employment and that it could be distinguished from an action brought at common how for damages arising out of a breach of contract — Appellant argued *inter alia* that the Commission's jurisdiction ended on the date of the dismissal — Respondent argued Pepler decision was confined to the question of compansation in claim of unfair dismissal — Full Bench reviewed authorities and found section 29(b)(ii) of the Industrial Relations Act extended the definition of Industrial Matter — Furthermore that a benefit must be given its widest meaning under the Statute — Full Bench found that the claim was for a benefit rather than compensation — Dismissed — Education 2307

[1]Appeal against decision of Full Bench (69 WAIG 1282) that it did not have jurisdiction to entertain an appeal against a decision of the Government School Teachers' Tribunal — After reviewing sections of Act, Regulations and authorities Industrial Appeal Court found section 80B(2)(b) of Industrial Relations Act denies the right of appeal to the Full Bench against a decision of the Tribunal — Dismissed — Education 2930

Application to be excluded as an employee under the terms of the Construction Industry Portable Paid Long Service Leave Act 1985 or that ordinary pay be calculated using "the ordinary rates of wage payable" for the amount of time actually worked — Applicant an employee registered by the Construction Industry — Long Service Leave Payments Board — Board of Reference found both claims outside its jurisdiction — Dismissed — Building/Construction 2777

Assistant Foreman, Fitting — Recommending Authority argued PAB did not have jurisdiction to determine an appeal against a temporary position — PAB reviewed section 80X, 80Y and 80ZA of the Industrial Relations Act and found that the wording in the definition of "office" excluded any Office or position that was temporary — Dismissed — Westrail 3170

Application for alleged denied contractual entitlements — Applicant claimed non payment of wages and sought order — Commission found Applicant was governed by an Award and hence the application was beyond the Commission's jurisdiction — Dismissed — Food and Beverage 3115

Application for allegedly denied contractual entitlements — Applicant claimed outstanding payment of commission — Respondent argued a different arrangement was made *re* payment of commission — Commission found detail for the payment of commission with a base salary was never consumated in a way that it would become part of a contract, nor could it be implied that there was a specific amount payable for commission — Commission found it was not within its jurisdictional power to grant relief — Dismissed 3099

[3]Preliminary point raised in proceedings instituted on Commission's own motion to consider National Wage Case, August 1989 pursuant to section 51 of IR Act — CWAI whilst not arguing that Commission in Court Session should refrain from endorsing National Wage Decision submitted that procedurally this was not a decision that could be given effect by General Order as per section 51 because it did not of itself vary wages in federal awards but instead required individual award variation applications with different dates of operation — Majority of Commission in Court Session found that the fact that the decision did not result in any immediate or collective amendment to awards does not mean that it is not applicable to those awards — Further, the instant decision is applicable generally to awards because all awards of the Australian Commission are covered by the Principles which flow from that decision and it is therefore appropriately dealt with under section 51 — State Wage Case 2913

Application for an Award — Applicant unions claimed that Respondent went to inordinate lengths when dealing with industrial relations issues either to frustrate the achievement of fair pay and working conditions or uphold its managerial prerogative and sought an Award to provide industrial relations negotiation — Respondent argued that the application was not for a new Award on the basis that previous industrial agreements from which it had retired were in effect Awards — Respondent further argued that to be regulated by a State Award would be a forced step backwards into the Pilbara industrial relations climate and that it needed to make a clean break from the industrial standards and practises of the industry as they were an impediment to the most efficient conduct of its operations and market competitiveness — Furthermore, that an Award was unnecessary as the Industrial Relations Act provided access to the Commission over acts of unfairness as they arise — Commission reviewed history of industrial relations, the application and disputation between the parties and found they had "painted themselves into their respective ideological corners" — Commission extensively reviewed authorities and the Industrial Relations Act and stated the need for mutual respect between the parties under the contemporary industrial relations climate — Commission found that the real interests of the Respondents' employees required the Industrial Relations fundamentals *re* cost — Commission examined the merits of and determined the issues of grievance procedures, on site union representation, suspension of paid union meetings, disputation between unionists and non-unionists, accommodation rents and utility charges — Commission set award period of six months with liberty to apply in relation to specific clauses — Award Issued — Iron Ore 3000

Determination *re* jurisdiction — Applicant Union claimed that two employees had been unfairly dismissed — Respondent argued section 23(3) of Industrial Relations Act excluded the Commission in exercising its powers due to the jurisdiction of appeal board under another Act — Commission found that there was no jurisdiction conferred on the Railways Appeal Board over the dismissal of Government Railway Employees for grounds other than misconduct — Jurisdiction confirmed — Railways 3123

Conference referred for hearing and determination *re* claim for redundancy package in excess of that offered by employer — Respondent employer argued Commission did not have jurisdiction to issue order sought — Commission reviewed authorities and found that redundancy occurs when an employer no longer requires the work that an employee/s performed to be done at all — Further, section 7 of the Industrial Relations Act defines an industrial matter to include conditions which are to take effect after the termination of employment — Commission further found Respondent's objection to the Constitution of the Commission at the hearing was made out of time — Commission found Respondent's offered redundancy package conflicted with redundancy principle in so far as payments for years of service were concerned, but otherwise aligned with contemporary standards — Granted In Part — Baking 3132

CUMULATIVE DIGEST—*continued*

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JURISDICTION —*continued*

Applicant claimed unfair dismissal seeking reinstatement or payment for remainder of term of contract — Respondent argued claim was not an industrial matter as defined in the Act and also whether the claim constituted a contractual benefit or a claim for damages for breach of contract — Commission determined from the authorities that the contract of employment between the two parties constituted an industrial matter for the purposes of the Act — Dismissed 3110

Two appeals against decisions of Commission (69 WAIG 1143) *re* payment of three per cent superannuation — Union's appeal was against Commission's failure to include the leading hand allowance in the earnings from which superannuation payments would be calculated — Full Bench found that decision was discretionary and that the Commission's decision had not miscarried — Employer's appeal was on numerous grounds including that it was beyond power of Commission to make the order/s it made under the sections of the Act it purportedly made them: that it was beyond the power of Commission to order Employer to change the terms of Trust Deed and Provident Fund; that Commission erred in granting superannuation without offsets as in case of other companies after finding the existence of a "standard" amongst iron ore producers in Pilbara; and, that Wage Fixing Principles did not require payment of superannuation as the existing "fund" was in excess of that required — Full Bench extensively reviewed authorities, sections 32, 23, 26, 27 and 7 of I.R. Act 1979 and the Interpretation Act 1984 — Full bench found orders made were within powers of Commission and its interpretation of the Wage Fixing Principles was open to it — Both appeals dismissed — Iron Ore 2629

Appeal against decision of the Commission (69 WAIG 1722) arising from Conference *re* entitlement to annual leave loading — Appellant claimed Commission did not have power to interpret or enforce awards out of a section 44 Conference — Respondent submitted decision was to settle a dispute and that any interpretation or enforcement of the award was incidental to that — Full Bench reviewed the authorities and found that interpretation of awards is incidental to many powers exercised by the Commission which should not be read down in favour of section 46 unless the matter is unequivocally one of interpretation — Full Bench found Commission had no jurisdiction to enforce awards and the decision in question was a "bald interpretation matter" as well as a matter of enforcement — Upheld — Metal Trades 2623

Appeals against a "finding" of the Commission (69 WAIG 1110) *re* which Unions had constitutional coverage of award classification — Full Bench found what was being appealed against was not a "finding" as defined in section 7 of IR Act 1989 but part of the reasons for decision — As what was being appealed was not a finding, order, award or declaration, section 49 conferred no jurisdiction for the Full Bench to hear them — Dismissed — Mining (Gold) 2300

Application for allegedly denied contractual entitlements — Applicant claimed contract of service had been for fixed term and sought payment for balance of wages, vehicle and tool allowances and exemplary damages — Commission found written contract of service, by incorporating the terms and conditions of an award, expressly provided for termination on one week's notice or payment in lieu, as was done — Further, a claim for exemplary damages was not within the Commission's jurisdiction — Dismissed — Film and Television Production 3385

Claim *re* alleged failure to pay contractual entitlements — Applicant claimed non-payment of overtime calculated at penalty rates — Respondent claimed that the calculations were in error and not in accordance with company's overtime policy — Furthermore, Respondent argued, Commission's jurisdiction would be contrary to the terms of the contract — Commission found that it did have jurisdiction to hear and determine the matter — However Applicant had not established that there was a benefit in the contract for what was claimed — Dismissed — Mining 3116

LONG SERVICE LEAVE —

Payment of *pro rata* long service leave sought — Break had occurred in employees' part-time service — Board found employee had completed 10 years service since break and was entitled to part-time equivalent of long service order Long Service Leave Standard Provisions — Granted — Transport (Passenger) 2150

Application to be excluded as an employee under the terms of the Construction Industry Portable Paid Long Service Leave Act 1985 or that ordinary pay be calculated using "the ordinary rates of wage payable" for the amount of time actually worked — Applicant an employee registered by the Construction Industry — Long Service Leave Payments Board — Board of Reference found both claims outside its jurisdiction — Dismissed — Building/Construction 2777

Application to vary Award by consent *re* Second Tier Wage Increase — Parties agreed to trade off with respect to Tea Breaks, Meal Money, *Pro-Rata* Annual Leave Loading, Long Service Leave and Higher Duties — Commission found lack of detailed cost offsets to be unsatisfactory — However, Commission was not prepared to stand in the way of the agreements consumation, given all the circumstances, including the time expired since the matter was first raised — Granted — Health 2747

[3]Appeal against decision of Long Service Leave Board of Reference that Appellants were not entitled to Long Service Leave — CICS reviewed authorities and found appeal to be heard and determined on the facts as found by the BOR — CICS found BOR directed itself to the correct question i.e. whether the Applicants were ever employed by a company other than the Respondent — However found BOR had paid insufficient attention to who in fact controlled the employees in the performance of their duties — Upheld — Court Reporting 3254

[3]Appeal against decision of Board of Reference *re* weekly wage rate applicable to determined period of long service leave — Appellant argued that BOR had erred in applying Clause 4(2) of Long Service Leave — Standard Provisions and sought variation of order or referral back to BOR for further hearing and determination — CICS found task was to determine the number of hours usually worked — "usually" meaning more often than not, most often or most commonly occurring — CICS found BOR made no finding as to what was the number of hours per day worked by the Appellant most often — Upheld and Remitted — Transport 3252

Appeal against decision of Commission at (69 WAIG 2212) *re* granting of experience allowance to employees acting in higher positions — Appellant argued Commission failed to attach sufficient weight on a number of issues — Full Bench found order issued purporting to vary award no longer in existence and in fact varied and interpreted new award — Full Bench found Commission erred in the exercise of its discretion — Upheld — Power/Electricity 3239

Payment for long service leave sought — Respondent Employer argued Applicant was not entitled to long service leave due to absences which exhausted leave entitlements and broke the continuity of service — Board of Reference found no evidence that Respondent had provided written notification of break in continuity as required by section 6(2)(i) of Long Service Leave Act either during or within 14 days of the termination of any of the absences — However period of absence, other than specified in Act, were not included for purposes of calculating entitlement — Granted — Clothing 2778

MANNING —

Conference referred for hearing and determination *re* staffing level and meal breaks for prison officers — Commission extensively reviewed submissions of parties including jurisdictional argument that this matter was one of managerial prerogative — Commission referred to dicta of Commission in Court Session in AMWSU and others and Robe River Iron Associates (67 WAIG 2 at 24) and found that changes should be made to manning levels pending results of taskforce which should be set up to enquire into Structural Efficiency Principle matters including the staffing formula and total establishment numbers — Granted in Part — Corrective Services 2217

Conference referred for arbitration *re* Dispute over Manning Levels — Applicant sought declaration to effect that it had the right to determine manning levels on a particular train — Respondent argued that an additional passenger car to the usual train consist required an additional employee skilled in safe working — Furthermore Respondent claimed Applicant had attempted to force an untrained employee rostered in the additional car to perform the work of the suitably trained employee — Commission examined evidence and found Respondent Union had not discharged the onus of establishing its claim or that the Applicant acted harshly or oppresively — Granted — Railways 2515

CUMULATIVE DIGEST—*continued*

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MANNING —*continued*

Conference referred for hearing and determination *re* claim for a nine day fortnight rather than a 19 day month — Applicant union argued that a decision of the Australian Conciliation and Arbitration Commission indicated the principles which should guide the Commission in the instant case — Applicants argued further that the nine day fortnight best suited the business by: increased efficiency through interaction with other employees, decrease in absenteeism, improved morale; cost savings and safety improvements — Furthermore that the employers had given undertakings that there would be no unnecessary complaints about problems arising from transferring employees from work sites or potential pay and administrative problems — Respondents and Intervenors argued on the basis of potential flow ons, industry standards, costs, client demands, *inter alia*, and that the Respondent had already acceded to a 19 day fortnight in preceding negotiations of the claim, hence eliminating the "middle ground" — Commission found the prime consideration relevant to the assessment of the available options to be contained in the Electrical Contracting Industry Award — Taking all factors into account, the Commission found the Applicant union had not met the test of the obligation to show that the favoured method of a 38 hour week implementation best suited the business of the Employer — Dismissed — Electrical Contracting 3125

Dispute *re* transfer of employee — Applicant employer sought declaration that it had the right to deploy its workforce in accordance with its operational requirements — Respondent unions argued that the Applicant had acted unfairly — Commission reviewed operational requirements, including the need for specified employees to hold vehicle licences, as under an agreement, and having regard for the interests of the persons directly involved found it unwise to do other than dismiss the application — Dismissed — Power 2815

Application to vary awards *re* special provisions for cycle working — Applicant Employers sought to insert new clause into awards to introduce cycle working in remote areas as in the Goldmining Consolidated Award — Respondent unions questioned the validity of a survey as evidence and argued that the best way to deal with the issues involved was on an *ad hoc* basis with specific mines as and when those mines were brought on stream — Respondents further claimed union notification provision of proposed clause was insufficient and provision of compensation for travel expenses was needed — Commission found cycle working to be a fact of life in the mining industry and that many small gold mining properties which would otherwise be non-viable had been brought on stream using the work cycle process — Furthermore, Commission found adequate protection in clause to cover objections of Respondents — Granted — Mining (Gold) 3022

MANAGERIAL PREROGATIVE —

Conference referred for hearing and determination *re* staffing level and meal breaks for prison officers — Commission extensively reviewed submissions of parties including jurisdictional argument that this matter was one of managerial prerogative — Commission referred to dicta of Commission in Court Session in AMWSU and others and Robe River Iron Associates (67 WAIG 2 at 24) and found that changes should be made to manning levels pending results of taskforce which should be set up to enquire into Structural Efficiency Principle matters including the staffing formula and total establishment numbers — Granted in Part — Corrective Services 2217

Dispute *re* performance of certain work — Applicant Employer claimed Respondent had placed work bans on work in question and sought declaration that it was entitled to expect the work be performed — Applicant argued work was within competence of employees who had been trained and within the terms of an Award — Respondent opposed claim and argued Applicant had transgressed the Award in that it attempted to eliminate a trade and de-skill work — Respondent argued Appliant was being unreasonable — Commission found Award, incorporating Restructuring and Efficiency Principle, disposed of traditional demarcation lines and Employer had right to direct a competent employee within the contract of service — However, on consideration of facts, Commission found Applicant should not persist in its directions to the degree that it had — Granted in Part — Iron Ore 2229

Conference referred for arbitration *re* Dispute over Manning Levels — Applicant sought declaration to effect that it had the right to determine manning levels on a particular train — Respondent argued that an additional passenger car to the usual train consist required an additional employee skilled in safe working — Furthermore Respondent claimed Applicant had attempted to force an untrained employee rostered in the additional car to perform the work of the suitably trained employee — Commission examined evidence and found Respondent Union had not discharged the onus of establishing its claim or that the Applicant acted harshly or opprehensively — Granted — Railways 2515

Employee terminated due to insubordination — Applicant claimed unfair dismissal and sought reinstatement — Respondent argued applicant had misled, deceived and failed to accept authority of manager — Furthermore Applicant was reprimanded with a formal warning letter and given the opportunity to resign — Commission found dismissal was not unfair or unlawful as warning to cease such conduct of undermining supervisor's authority and reluctance to accept authority went unheeded — Dismissed — Pharmaceutical Sales 2167

Claim *re* intended termination of employee for alleged misconduct — Applicant Union argued the misconduct of drinking alcohol has not been proven beyond reasonable doubt — Commission found from evidence that, on the balance of probabilities the employee was in possession of and had commenced to consume alcohol and would not interfere with respondent's proposal to terminate the services of employee for serious misconduct — Dismissed — Brewing 2203

[3]Application to vary Award *re* Overtime Meal Allowance and Annual Leave — Claim for quartum increase in Meal Allowance not disputed — Applicant Union further sought for provision of Meal Allowance to be as for the Award of the majority of employees in a work place — Respondent argued that there was nothing special in the circumstances of the claim and that the Award applied to a much broader scope than the people or Respondents noted — Commission in Court Session found Award had its own particular basis of wages and condition quantum and that to correct a problem in one area only of its application could lend to major problems in the majority of other industries to which it applied — Commission in Court Session reviewed authorities relating to the claim to include long service leave as leave counting for the purposes of annual leave and found such a provision to be a standard of the Commission — Granted in Part — Various 2673

Claim *re* unfair dismissal — Applicant sought contractual entitlements or reinstatement — Respondent refuted claim arguing that no contract of service existed as Applicant's services were as a consultant — Commission found in favour of Applicant on issue of employment relationship — Commission noted that dismissal had not been exercised unfairly, however found that as an employee under a contract of service, Applicant was entitled to payment for each week of employment and an implied period of notice — Granted in Part — Financial Services 2789

Application for an Award — Applicant unions claimed that Respondent went to inordinate lengths when dealing with industrial relations issues either to frustrate the achievement of fair pay and working conditions or uphold its managerial prerogative and sought an Award to provide industrial relations negotiation — Respondent argued that the application was not for a new Award on the basis that previous industrial agreements from which it had retired were in effect Awards — Respondent further argued that to be regulated by a State Award would be a forced step backwards into the Pilbara industrial relations climate and that it needed to make a clean break from the industrial standards and practises of the industry as they were an impediment to the most efficient conduct of its operations and market competitiveness — Furthermore, that an Award was unnecessary as the Industrial Relations Act provided access to the Commission over acts of unfairness as they arise — Commission reviewed history of industrial relations, the application and disputation between the parties and found they had "painted themselves into their respective ideological corners" — Commission extensively reviewed authorities and the Industrial Relations Act and stated the need for mutual respect between the parties under the contemporary industrial relations climate — Commission found that the real interests of the Respondents' employees required the Industrial Relations fundamentals *re* cost — Commission examined the merits of and determined the issues of grievance procedures, on site union representation, suspension of paid union meetings, disputation between unionists and non-unionists, accommodation rents and utility charges — Commission set award period of six months with liberty to apply in relation to specific clauses — Award Issued — Iron Ore 3000

CUMULATIVE DIGEST—*continued*

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MANAGERIAL PREROGATIVE —*continued*

Dispute *re* transfer of employee — Applicant employer sought declaration that it had the right to deploy its workforce in accordance with its operational requirements — Respondent unions argued that the Applicant had acted unfairly — Commission reviewed operational requirements, including the need for specified employees to hold vehicle licences, as under an agreement, and having regard for the interests of the persons directly involved found it unwise to do other than dismiss the application — Dismissed — Power 2815

MEAL BREAK —

Application to vary award by consent *re* overtime records and Meal Allowance — Applicant Union sought to overcome an anomaly and clearly define the occasions when while an employee was entitled to partake of a meal break and be supplied with a meal when engaged on overtime duty — Applicant argued claim brought the provisions in line with a Commission standard — Respondent consented on condition that Applicant commit itself to variation being part of a package of Award restructuring — Commission found increase in allowance allowable under new allowances provision of the principles — Furthermore new provision was in public interest and reflected the exigencies of the workplace — Granted — Police 2705

MEAL MONEY —

Applications to vary Award by consent *re* Travelling Allowances and reimbursement of expenses of providing prisoners' meals — Commission found changes reflected changes to an Award representing the State Standard and CPI increase respectively — Principles satisfied — Granted — Police 2540

Application to vary award by consent *re* overtime records and Meal Allowance — Applicant Union sought to overcome an anomaly and clearly define the occasions when while an employee was entitled to partake of a meal break and be supplied with a meal when engaged on overtime duty — Applicant argued claim brought the provisions in line with a Commission standard — Respondent consented on condition that Applicant commit itself to variation being part of a package of Award restructuring — Commission found increase in allowance allowable under new allowances provision of the principles — Furthermore new provision was in public interest and reflected the exigencies of the workplace — Granted — Police 2705

Application to vary Award by consent *re* Second Tier Wage Increase — Parties agreed to trade off with respect to Tea Breaks, Meal Money, *Pro-Rata* Annual Leave Loading, Long Service Leave and Higher Duties — Commission found lack of detailed cost offsets to be unsatisfactory — However, Commission was not prepared to stand in the way of the agreements consumation, given all the circumstances, including the time expired since the matter was first raised — Granted — Health 2747

MISCONDUCT —

Employee dismissed for alleged altercation with another employee and insubordination — Applicant Union denied allegations, claimed dismissal unfair and sought reinstatement — Respondent argued employee was a disruptive influence and employee's performance poor — Commission found in favour of Applicant and that warning on poor performance had not been given as required by employer's staff code of conduct — Granted — Hospitality 2215

Appeal against employees dismissal for alleged misconduct, that being sexually interfering with a client — Appellant denied allegations and claimed dismissal unfair — Appellant argued further that there had not been a complaint from the client in question — Respondent argued that on balance of probabilities misconduct had occurred — Public Service Appeal Board considered section 80I of Industrial Relations Act provided it with a greater license to substitute its own view than in claims of unfair dismissal before the Commission *per se* — The decision to dismiss was to be reviewed *de novo* on the evidence before the PSAB not merely on whether the decision maker made the right decision on the evidence before it at the time — PSAB found evidence left too many questions unanswered about the allegations relied upon by the Respondent and that the dismissal should not be allowed to stand — Granted — Community Services (Government) 2266

Employee summarily dismissed due to alleged negligence — Applicant sought recovery of moneys deducted or withheld by Respondent due to burglary — Commission found negligence sufficient to warrant dismissal, however Respondent was not authorised to suspend Applicant and due to provisions of Truck Act 1899 not able to deduct money — Granted — Food and Beverage 2156

Applicant Union claimed written final warning to employee regarding unsafe driving in the course of employment was unfair and sought its withdrawal and lost overtime arising from the matter — Applicant argued empoyee had done nothing to warrant counselling and that the matter had been blown out of all proportion — Respondent opposed claim and argued that an incident of unsafe driving had occurred and that the employee had been previously reprimanded for a similar act — Commission found on evidence no doubt that empoyee was careless to some degree of the vehicle driven — However Commission further found it probable that other matters not addressed to the employee at the time lead to the warning and hence its unquivocal nature was unfair — Granted in Part — Mining (Iron Ore) 2201

Applicant claimed unfair dismissal and sought reinstatement — Respondent apposed claim and alleged Applicant to be untrustworthy on the basis of a garnishee order against the Applicant — Furthermore, Respondent cited conduct relating to absences from work and failure to disclose a criminal record as matters to justify termination — Commission found Applicant was summarily dismissed and that the dismissal was harsh and oppressive — Furthermore, Commission was not persuaded in the course of hearing the matter, that it should refuse the relief sought — Granted — Fabric Wholesalers 2054

Claim *re* intended termination of employee for alleged misconduct — Applicant Union argued the misconduct of drinking alcohol has not been proven beyond reasonable doubt — Commission found from evidence that, on the balance of probabilities the employee was in possession of and had commenced to consume alcohol and would not interfere with respondent's proposal to terminate the services of employee for serious misconduct — Dismissed — Brewing 2203

Employee summarily dismissed for striking a supervisor — Applicant union claimed dismissal was unfair and sought reinstatement without loss of entitlements — Commission reviewed authorities pertaining to "onus of Proof" and unfair dismissal — Commission found that a sustained assault upon a supervisor which was without provocation — justified summary dismissal — Dismissed — Hospitality 2830

Application for payment of *pro rata* annual leave denied on resignation — Parties had employment agreement governed by the terms and conditions of an award — Respondent argued misconduct disentitled Applicant to payment sought — Commission found there had been no dismissal for misconduct therefore a benefit arose for a completed 12 months' service but no more — Granted in Part — Clerical 2788

Claim *re* unfair dismissal — Applicant alleged constructive dismissal was unfair in all the circumstances and sought reinstatement — Respondent argued the Applicant had become an unsatisfactory employee and the final straw had been the maladministration of drugs, to a patient — Commission found from evidence that applicant was warned of her behaviour, but to no avail therefore dismissal of applicant as an unsatisfactory employee was not unfair — Dismissed — Nursing Homes 2784

Employee dismissed for breaching of rules and procedures and lying to Senior Management — Applicant Union claimed dismissal was unfair and sought re-employment without loss of entitlements — Commission found on evidence there had been a clear breach of rules which could have led to severe consequences for the Respondent — Furthermore the level of disciplinary action taken against employees involved led the Commission to the conclusion that the dismissal was not unfair — Dismissed — Racing and Gaming 2519

CUMULATIVE DIGEST—*continued*

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MISCONDUCT—*continued*

Application for reinstatement without loss of entitlements — Applicant Union claimed employee's actions warranted a penalty but dismissal was too severe — Respondent claimed that in all circumstances the termination of the employee's contract of service was justified — Commission found on evidence that the employee had been warned of misconduct previously and that such actions would breach his contract of employment — Commission concluded that to intervene, a good and sufficient reason needed to be established — The application fails — Dismissed 2812

Employee summarily dismissed for alleged assault — Applicant Union argued penalty of summary dismissal was unfair in light of employee's history and sought declaration to that effect together with an order of reinstatement — Respondent argued matters which led to the incident did not justify the violence of the action — Furthermore, Respondent was concerned for the welfare of its other employees — Commission found from evidence that industrial fairness must be based upon the nature and quality of the conduct involved and this action was a fundamental breach of employee's contract of service and the Commission had no warrant to interfere with the termination — Dismissed — Mining 3139

Application for reinstatement on the grounds of unfair dismissal — Applicant claimed he had been denied natural justice in an enquiry into allegations of neglect of duty which led to Applicant's dismissal — Respondent argued dismissal was fair, reasonable, lawful and in accordance with the Health Act — Commission found no fault in the process which lead to the termination as it related to the neglect of duties and that the Commission's conclusions coincided — Thus it was unnecessary to examine alleged matters which arose from allegations of falsification of figures and the Commission refrained from so doing as they may in due course have been of concern in another jurisdiction — Dismissed — Meat 3106

Appeal against decision of Commission at (69 WAIG 2203) *re* summary dismissal of employee due to misconduct — Appellant union argued that evidence against employee was circumstantial — Full Bench noted strict well known company policy *re* misconduct and suspension of employee whilst investigation was conducted — Full Bench considered a number of principles and question of whether legal rights of employer had been exercised harshly or oppressively against employee so as to amount to an abuse of that right — Full Bench found evidentiary onus had been discharged by employer — Dismissed — Brewing 3228

Application *re* summary dismissal for alleged misconduct — Applicant claimed moneys in lieu of notice and in lieu of annual leave and sought a declaration for unfair dismissal — Respondent argued Applicant had failed to complete a task assigned to her, involving a substantial amount of money — Commission found Applicant had been lax and inattentative and had needed reprimanding, however this error did not justify summary dismissal — Furthermore, Commission found Applicant's previous service was without blemish and her competence and satisfactory service had been rewarded with a promotion — Granted in Part — Sales 3384

MIXED FUNCTIONS —

Application to vary Award by consent *re* Second Tier Wage Increase — Parties agreed to trade off with respect to Tea Breaks, Meal Money, *Pro-Rata* Annual Leave Loading, Long Service Leave and Higher Duties — Commission found lack of detailed cost offsets to be unsatisfactory — However, Commission was not prepared to stand in the way of the agreements consumation, given all the circumstances, including the time expired since the matter was first raised — Granted — Health 2747

Appeal against decision of Commission at (69 WAIG 2212) *re* granting of experience allowance to employees acting in higher positions — Appellant argued Commission failed to attach sufficient weight on a number of issues — Full Bench found order issued purporting to vary award no longer in existence and in fact varied and interpreted new award — Full Bench found Commission erred in the exercise of its discretion — Upheld — Power/Electricity 3239

NATURAL JUSTICE —

[2]Appeal against decision of Commission (69 WAIG 1529) to grant variation to award by allowing reduction in standard hours to 38 per week — Appellant claimed denial of natural justice had occurred insofar that it had not sufficient opportunity to be heard — Full Bench reviewed pertinent authorities *re* "natural justice" and found that the Appellant had been given every opportunity to put its case thus there was no denial of natural justice — Further, Full Bench found no evidence of the Commission's discretion having miscarried so grounds of appeal had not been made out — Dismissed — Hospitality 2303

Appeal against decision of Public Service Commission *re* unfair dismissal due to inefficiency Appellant argued allegations of inefficiency were vague and nebulous and furthermore there was a lack of notification and counselling with regard to the matters of inefficiency and work performance — Appellant further argued that penalty of dismissal was unreasonably harsh and sought reinstatement without loss of benefits — Board found from evidence that dismissal was fair and just and concluded unanimously that appellant had failed to successfully perform the duties required of a Level 5 Engineer — Dismissed 2586

[4]Application for order requiring organisation to comply with its rules — Applicant's members of minority faction on Respondent Union's Executive — Applicants asked to leave Executive meeting and they claim to have done so "voluntarily" rather than having been expelled by vote — During Applicant's absence a report which may have involved conflict of interest for Applicants was presented and a motion passed — Applicants claim they should have been invited to return and vote on motion and that resolution passes should be rescinded — President found that the presence of Applicants would not have altered the outcome of the resolution and used his discretionary powers under section 27 and/or section 66 to dismiss matter — Dismissed —Union 2349

Application for reinstatement on the grounds of unfair dismissal — Applicant claimed he had been denied natural justice in an enquiry into allegations of neglect of duty which led to Applicant's dismissal — Respondent argued dismissal was fair, reasonable, lawful and in accordance with the Health Act — Commission found no fault in the process which lead to the termination as it related to the neglect of duties and that the Commission's conclusions coincided — Thus it was unnecessary to examine alleged matters which arose from allegations of falsification of figures and the Commission refrained from so doing as they may in due course have been of concern in another jurisdiction — Dismissed — Meat 3106

[4]Application *re* alleged breach of its rules by union executive and irregularity *re* elections arising from a report criticising previous applications Applicants had made to the Commission and recommending that they be reprimanded by "Conference" — President declined to exercise his discretion and dismiss matter after union offered to withdraw resolutions relating to report — President found conference report sought to discipline Applicants outside the union's rules — Further not affording applicants the opportunity to answer allegations against them in the report and cutting off avenue of appeal was a denial of natural justice — President also found that as Applicants were candidates in union elections and the Conference report could be used to discredit them in those elections, the report constitutes an election irregularity in that it is unlawful use of union resources in an election — President found conference report, union executive and union president all to be in breach of union rules — Granted — Unions 2944

Application pursuant to Regulation 93 of Act to set aside proceeding and order which varied Award — Applicants claimed provisions of Regulations 10 and 11 were not followed thus they were unaware of proceedings and this amounted to a denial of natural justice — Respondent denied claim and agreed that employees concerned would be without award coverage should application succeed — Commission found in favour of Applicant but with the instruction that position of employees covered by the Award remain unaltered until matter is finally determined — Granted — Hospitality 2743

CUMULATIVE DIGEST—*continued*

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NEXUS —

Application to vary Award *re* widened "definition" of continuous service in Annual Leave clause — Applicant argued it merely sought to extend an industry standard to the subject Award — Respondent and CWAI intervening argued claim was outside Wage Fixing Principles and that subject Award was not a Building Industry Award — Commission found existing Award provisions did not mirror those of the Building Industry — Dismissed — Construction 2771

Applications to vary Awards *re* Wages Schedules and Annual Leave — Parties presented agreed facts on work value increases and sought new wages schedules to reflect movement and rearrangement in an award with which the parties sought to re-establish a nexus — Parties in disagreement over Annual Leave provision — Respondent sought removal of the word "department" from the Annual Leave clause and argued that its use hampered the efficient management of numerous employers operating small establishments — Commission considered it was in no way bound by a CICS Decision on which the Applicant relied — Commission found little equity where employees who did not suffer the inconveniences for which more than four weeks annual leave were designed to compensate, continue to enjoy that benefit — Furthermore it was a semantic accident which prevented compliance with the spirit of the prescription — Granted in Part — Health 2428

[3]Claim *re* wage increases and improvements in conditions beyond Second Tier Wage Ceiling — Applicant Union sought nexus with Government counterparts — CICS rejected nexus, however found that wages and conditions should be adjusted in line with work value increases — Ordered Accordingly — Health/Welfare 2336

[3]Application to vary Award by consent — Wages — Parties sought once and for all "catch up" increase in wages — CICS found that by all relevant comparisons the employees concerned had been seriously prejudiced for apparently bureaucratic reasons and that simple fairness required a proper nexus for wages be established — Granted — Catering 3256

Applications to vary Awards *re* travelling allowances — Commission found proposed variation sought to align instant awards' travelling allowance provisions with that of their parent award which had been recently varied in accordance with the Wage Fixing Principles — Granted — Health Administration 3345

Application to vary Award by consent — Parties sought increase in salaries on the basis of a Structural Efficiency Agreement — Commission took the view as expressed in the Building Trades Case and found that the parties had done enough to justify the first instalment under Structural Efficiency Principle — Commission found it not inappropriate to adjust the lower rates in the Award by a quantum of $15.00 because of the new career structure dependent in part on such adjustments — Public Transport — Granted 3369

Dispute *re* wages for new classification in award — Parties are in agreement on the definition, duties and responsibilities of classification — Commission found claim to fall within the Work Value Principle of State Wage Principles — Commission having regard to submissions and material and inspections undertaken determined the appropriate quantum — Ordered Accordingly — Power/Energy 2753

ON CALL —

Application to vary award by consent — Applicant denied it had a special case and sought significant changes to conditions of employment — Applicant argued that the existing conditions were chronically out of date and not in the Public Interest — Public Service Arbitrator examined a wealth of evidence — PSA found it had no hesitation whatsoever despite costs, in sanctioning on agreement as it applied to reducing hours of work to 40 per week, rosters and the like — PSA found after noting professional status of employees concerned, work value charges of a justify to magnitude claimed five per cent salary increase — Granted — Health 2361

ORDER —

[4]Application for stay of order *re* implementation of 38 hour week, pending appeal — Applicants claimed *inter alia* that their business operations would be prejudiced in the event that the appeal was successful and the matter remitted for further hearing — Respondent argued implementation of 38 hour week could be altered to comply with any possible new order and that there was sufficient flexibility within the order in any case — Furthermore Respondents argued Applicants had shown total disregard for the Commission by being in breach of the order — President stated it would be neither an act of equity or good conscience to exercise discretion in favour of Applicants, in this case, when they had decided not to comply with an order of the Commission — Furthermore President considered the dispute was not whether the 38 hour week would apply but when and what offsets might be achieved — President found no real harm or convenience to the Applicants — Dismissed — Hotel (Clerks) 1954

Application to vary Awards *re* Wages — Special Case Status previously granted within bounds of Structural Efficiency — Parties sought order enabling interim increase in rates pending find resolution of matter — CICS found parties had heeded Commission's "counselling" and examined award variation proposals to date — granted — Health 2671

[2]Application for enforcement of Commission direction to Respondent *re* industrial action — Respondent admitted breach of Order and breach of prevention of disputes procedure in award — Full Bench examined nature of proceedings under section 84A and found that this dispute was a one-off protest ostensibly caused by the actions of another employer — Having regard to seriousness of contravention and mitigating circumstances Full Bench issued caution — Proven — Iron Ore 2317

[4]Applicant Union sought declaration that the circulation to all union members of an addendum to the agenda of the union's annual conference would be sufficient compliance with an order of the President so as not to render an election for executive officers null and void — Granted — Unions 3266

Claim *re* restrictive work practice — Applicant sought order that union remove its "hardhat" notice and reaffirm the general principle of Award that employees may be required to work as directed, subject to competency and regulatory requirements — Commission found nothing in Award which fetters the right of the Applicant to direct its employees to do the work in question in the manner it proposes and reiterated that there was nothing which established that the practice *per se* is unsafe — Granted — Iron Ore 2824

Dissenting opinion *re* order directing union to cease industrial action — Government School Teachers Tribunal member reviewed authority and expressed opinion that order did not achieve nor was necessary to achieve the purposes of section 44(6)(ba) of the Industrial Relations Act — Order by Majority — Education 3437

Application pursuant to Regulation 93 of Act to set aside proceeding and order which varied Award — Applicants claimed provisions of Regulations 10 and 11 were not followed thus they were unaware of proceedings and this amounted to a denial of natural justice — Respondent denied claim and agreed that employees concerned would be without award coverage should application succeed — Commission found in favour of Applicant but with the instruction that position of employees covered by the Award remain unaltered until matter is finally determined — Granted — Hospitality 2743

OVERTIME —

Application to vary Award by consent *re* overtime — Parties sought to clarify the interpretation of a clause in an Award to clearly prescribe that for overtime purposes each day shall stand alone — Commission found that the claim accorded with standard government overtime provisions and that the additional costs were minimal — Granted — Education/Research 2788

[3]Application to vary Award *re:* Overtime Meal Allowance and Annual Leave — Claim for *quartum* increase in Meal Allowance not disputed — Applicant Union further sought for provision of Meal Allowance to be as for the Award of the majority of employees in a work place — Respondent argued that there was nothing special in the circumstances of the claim and that the Award applied to a much broader scope than the people or Respondents noted — Commission in Court Session found Award had its own particular basis of wages and condition *quantum* and that to correct a problem in one area only of its application could lend to major problems in the majority of other industries to which it applied — Commission in Court Session reviewed authorities relating to the claim to include long service leave as leave counting for the purposes of annual leave and found such a provision to be a standard of the Commission — Granted in Part — Various 2673

CUMULATIVE DIGEST—*continued*

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OVERTIME —*continued*

Application to vary award by consent *re* overtime records and Meal Allowance — Applicant Union sought to overcome an anomaly and clearly define the occasions when while an employee was entitled to partake of a meal break and be supplied with a meal when engaged on overtime duty — Applicant argued claim brought the provisions in line with a Commission standard — Respondent consented on condition that Applicant commit itself to variation being part of a package of Award restructuring — Commission found increase in allowance allowable under new allowances provision of the principles — Furthermore new provision was in public interest and reflected the exigencies of the workplace — Granted — Police 2705

Application to vary award by consent — Applicant denied it had a special case and sought significant changes to conditions of employment — Applicant argued that the existing conditions were chronically out of date and not in the Public Interest — Public Service Arbitrator examined a wealth of evidence — PSA found it had no hesitation whatsoever despite costs, in sanctioning on agreement as it applied to reducing hours of work to 40 per week, rosters and the like — PSA found after noting professional status of employees concerned, work value charges of a justify to magnitude claimed five per cent salary increase — Granted — Health 2361

Application for declaration of true interpretation of award *re* whether shift loadings are included for the purposes of computing overtime — Respondent argued the existence of a general principle against the payment of double penalties, however, whilst this principle is long established and widely recognised it cannot override the express terms of a particular award which in this case says that overtime on shift work "shall be based on the rate payable for shift work — Declaration made in terms of Application — Aerated Water and Cordial Manufacturing 3277

Conference referred *re* dispute over commuted allowances — Parties reached agreement and sought ratification of an allowance to be paid in lieu of overtime and shift penalties — Commission found that there had been a valuable activity at the prompting of the Commission, in complete accord with the Structural Efficiency Principle — Allowance was in essence a device for paying existing allowances more conveniently — Commission further found a transfer and rotation policy addressed an anomaly where employees might have received an allowance to which they could not establish a claim — Granted — Welfare Institutions 3281

Claim *re* alleged failure to pay contractual entitlements — Applicant claimed non-payment of overtime calculated at penalty rates — Respondent claimed that the calculations were in error and not in accordance with company's overtime policy — Furthermore, Respondent argued, Commission's jurisdiction would be contrary to the terms of the contract — Commission found that it did have jurisdiction to hear and determine the matter — However Applicant had not established that there was a benefit in the contract for what was claimed — Dismissed — Mining 3116

PART-TIME —

Payment of *pro rata* long service leave sought — Break had occurred in employee's part-time service — Board found employee had completed 10 years service since break and was entitled to part-time equivalent of long service order Long Service Leave Standard Provisions — Granted — Transport (Passenger) 2150

Employee dismissed for alleged altercation with another employee and insubordination — Applicant Union denied allegations, claimed dismissal unfair and sought reinstatement — Respondent argued employee was a disruptive influence and employee's performance poor — Commission found in favour of Applicant and that warning in poor performance had not been given as required by employer's staff code of conduct — Granted — Hospitality 2215

Application to vary Award by consent increasing wage rates for part-time employees — Applicant Union claimed wage rates for full-time academics had been adjusted and should reflect upon the part-time academic salaries prescribed in the Award — Commission found the variation of an Award could be varied if not previously varied — Furthermore no extra claims commitment has been included — Granted — Education 3330

PENALTY RATES —

[4]Application to vary award by consent — Parties sought to replace percentage Shift Allowance with a flat money allowance and argued for a Special Case — CWAI intervened and argued that the resultant increase in conditions of employment was not based on merit and could flow on to other Industry sectors — CICS examined history of case and found a Special Case existed — Conferences were held before Commission to scrutinise proposed variation under the Principles and then CICS heard further submissions — CICS stated industrial action was reprehensive and had no bearing on final judgment — CICS found proposed variation to generally be consistent with the Principles and a first step in Structural Efficiency — However CICS was not convinced the matter was of such urgency or special nature as to allow an operative date such as to override the main objective of the Principles — Granted in Part —Health Care 1924

Application to vary award by consent — Applicant denied it had a special case and sought significant changes to conditions of employment — Applicant argued that the existing conditions were chronically out of date and not in the Public Interest — Public Service Arbitrator examined a wealth of evidence — PSA found it had no hesitation whatsoever despite costs, in sanctioning on agreement as it applied to reducing hours of work to 40 per week, rosters and the like — PSA found after noting professional status of employees concerned, work value charges of a justify to magnitude claimed five per cent salary increase — Granted — Health 2361

Conference referred *re* dispute over commuted allowances — Parties reached agreement and sought ratification of an allowance to be paid in lieu of overtime and shift penalties — Commission found that there had been a valuable activity at the prompting of the Commission, in complete accord with the Structural Efficiency Principle — Allowance was in essence a device for paying existing allowances more conveniently — Commission further found a transfer and rotation policy addressed an anomaly where employees might have received an allowance to which they could not establish a claim — Granted — Welfare Institutions 3281

PRINCIPLES —

Application to vary Award *re* annual leave to accrue during long service leave — Applicant argued provision had a historical basis and that Commission had already recognised long service leave did not break continuity of service required for accrual of annual leave — Respondent argued no case to answer as matter was serious enough to require evidence — Respondent further argued many Awards did not have provision and Conditions of Employment Principle prohibited variation unless it was a flow-on of a recognised standard provision — Commission found case to be answered — Commission considered Conditions of Employment Principle clarified question as was the provision a standard of the Commission — Commission referred to authorities and found in favour of Applicant — Granted — Building 2053

[3]Consent claim for variations to awards including wage increases arising from conference application — Parties sought ratification of agreement on award restructuring in accordance with Structural Efficiency Principle — COWAI intervened pursuant to section 50 of Act — CICS reviewed tests set out in Structural Efficiency Principle, analysed agreement and found agreement satisfied tests — Granted — Health Care 1938

Application for Second Tier wage increase — Commission found that Union had not satisfied requirement of the Principles of identifying cost offsets and/or structural efficiency changes for Award to be amended to provide a four per cent increase — Dismissed — Accounting (Clerks) 2142

[2]Appeal against interim order arising out of conference and granting four per cent second tier wage increase pending final arbitration of new award — Appellant argued a number of grounds including that the Commission was not empowered to vary section 32 orders pursuant to section 44(6)(ba) until the arbitration of the separate proceedings had concluded and that the order was issued contrary to Wage Fixing Principles — Full Bench found appeal to be incompetent as it had not been established that matter was of such importance that in the public interest an appeal should lie [section 49(2)] — Full Bench further found that even if appeal had been competent it would have failed as Commisison made no errors of law or fact or any miscarriage of discretion — Dismissed — Iron Ore 1873

CUMULATIVE DIGEST—*continued*

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PRINCIPLES —*continued*

[2]Appeal against decision of Commission at (68 WAIG 2069) to vary an Award to establish a new tally rate — Appellant claimed Commission had erred in that it *inter alia* failed to consider detrimental effects to the employees immediately concerned —Further the decision was not in accordance with the existing provisions of Award and contrary to the First Awards and Extension to Existing Awards Principle — Also Appellant argued Commission had incorrectly applied previous decision of Full Bench and applied incorrect methodology in establishing the tally rate — Respondent argued decision was within the Award structure and not contrary to evidence — Full Bench applied principles relating to reviews of discretionary judgment as prescribed by Appeal Court — Full Bench found that Commission had correctly reviewed matter *de novo* on the evidence before it, however had erred in its methodology in establishing the specific rate — Furthermore, Commission had failed to give sufficient weight to certain evidence — Full Bench gave guidelines to be considered in further hearing and determination — Upheld — Meat Industry (State) 1884

[3]Application for variation to public section awards *re* locality allowance — Parties consented to adjustment in line with consumer price index — CICS noted application was within the Allowances Principle and that the proposed change was merely to reflect the increased cost of living — General Order issued with updated list of awards — Granted — State Government 2297

[2]Appeal against decision of Commission (69 WAIG 1529) to grant variation to award by allowing reduction in standard hours to 38 per week — Appellant claimed denial of natural justice had occurred insofar that it had not sufficient opportunity to be heard — Full Bench reviewed pertinent authorities *re* "natural justice" and found that the Appellant had been given every opportunity to put its case thus there was no denial of natural justice — Further, Full Bench found no evidence of the Commission's discretion having miscarried so grounds of appeal had not been made out — Dismissed — Hospitality 2303

[3]Application for amalgamation of two existing awards into one new award and for the removal of wage differential between different categroies of hairdressers — Commission in Court Session examined recent changes in duties of hairdressers in the light of both the Work Value Principles and Structural Efficiency Principle and found differential should remain — Granted in Part — Hairdressing 2324

Application for award variation *re* four per cent second tier wage increase, 38 hour week and maternity leave — Applicant Union sought phasing in of four per cent increase with retrospective dates, and date of hearing as operative date for 38 hour week — Commission found Wage Principles did not envisage for second tier wage increases prior to implementation of offsets and as for 38 hour week, set an operative date which allowed time for necessary adjustments to meet requirements of the Order — Ordered accordingly — Dry Cleaning/Laundry 2112

[4]Application to vary award by consent — Parties sought to replace percentage Shift Allowance with a flat money allowance and argued for a Special Case — CWAI intervened and argued that the resultant increase in conditions of employment was not based on merit and could flow on to other industry sectors — CICS examined history of case and found a Special Case existed — Conferences were held before Commission to scrutinise proposed variation under the Principles and then CICS heard further submissions — CICS stated industrial action was reprehensive and had no bearing on final judgment — CICS found proposed variation to generally be consistent with the Principles and a first step in Structural Efficiency — However CICS was not convinced the matter was of such urgency or special nature as to allow an operative date such as to override the main objective of the Principles — Granted in Part — Health Care 1924

[3]Claim for a Special Allowance for employees training fellow employees at the request of employer — Parties reached agreement and sought approval of the Commission as a Special Case — Parties detailed Functional Review, re-organisation of enterprise and the teaching function of "expert workers" — Commission in Court Session considered claim under New Allowances and Work Value Changes Principles — Commission found claim to be consistent with the Principles and particularly the Structural Efficiency Principle — Granted — Printing 2334

[3]Application for a New Award by consent — Applicant Union sought new professional classification and salary rates as the second stage in arrangement in negotiating the existing Award — Applicant argued for a special case to be recognised and that its previous acceptance of depressed salary rates warranted recognition — Respondent presented evidence as to how new award arrangements were part of the restructuring of the industry — Commission in Court Session limited its consideration of the Application to the question of a Special Case — Commission in Court session accepted the parties submissions and evidence as to the true nature of the arrangements — However, Commission in Court Session agreed with CWAI, intervening, that an argument which seeks to build the recognition of an anomaly or inequity upon the absence of an equitable base and thereby achieve special case status is an exercise in semantics — Granted in Part — Surveying 2675

[3]Application to vary Wages clause of an Award — applicant Union sought increase rates for specific classifications and to insert a new classification on the grounds of work value changes — Respondent argued claim could not be considered in isolation of consideration resultant from Structural Efficiency Principles — Minister intervened to raise questions related to possible flow-ons — CICS reviewed Work Value Principle and found that although any restructuring may alter the situation the case for work value adjustments had not been established — Dismissed — Railways 2941

Application to vary award by consent — Applicant denied it had a special case and sought significant changes to conditions of employment — Applicant argued that the existing conditions were chronically out of date and not in the Public Interest — Public Service Arbitrator examined a wealth of evidence — PSA found it had no hesitation whatsoever despite costs, in sanctioning on agreement as it applied to reducing hours of work to 40 per week, rosters and the like — PSA found after noting professional status of employees concerned, work value charges of a justify to magnitude claimed five per cent salary increase — Granted — Health 2361

Application to vary Awards *re* Wages — Special Case Status previously granted within bounds of Structural Efficiency — Parties sought order enabling interim increase in rates pending find resolution of matter — CICS found parties had heeded Commission's "counselling" and examined award variation proposals to date — granted — Health 2671

[3]Claim for award variation — Applicant claimed increase in base wage rate for all classifications on the basis of increased work value and for factors specific to industry subject to award which constitute "Special Case" status — Commission in Court Session accepted that this was a special case but emphasised that Structural Efficiency must take precedence — Commission in Court Session found the increase sought to be a step in award restructuring but was not prepared to vary base rate — Commission in Court Session ordered additional payment on understanding that there were no undeclared over award payments and that this would not prejudice final determination of award rates under Structural Efficiency Principle — Granted in Part — Mineral Sands 2321

Applications to vary award and orders by consent — *re* money amounts of contribution to superannuation fund — Operative Date disputed — Applicant Union argued that when agreement with the industry was reached was the appropriate operative date — Respondent argued Commission could not grant retrospectivity unless there were special circumstances as envisaged by section 39 of the Industrial Relations Act — Commission reviewed Superannuation Principle, Act, Authority and the background including procedures of the instant matter — Commission found a date of operation earlier than the date of decision was warranted and did not damage the Principles — Granted in Part — Manufacturing /Furniture 2725

Conference referred for hearing and determination *re* claim for a nine day fortnight rather than a 19 day month — Applicant union argued that a decision of the Australian Conciliation and Arbitration Commission indicated the principles which should guide the Commission in the instant case — Applicants argued further that the nine day fortnight best suited the business by: increased efficiency through interaction with other employees, decrease in absenteeism, improved morale; cost savings and safety improvements — Furthermore that the employers had given undertakings that there would be no unnecessary complaints about problems arising from transferring employees from work sites or potential pay and administrative problems — Respondents and Intervenors argued on the basis of potential flow ons, industry standards, costs, client demands, *inter alia*, and that the Respondent had already acceded to a 19 day fortnight in preceding negotiations of the claim, hence eliminating the "middle ground" — Commission found the prime consideration relevant to the assessment of the available options to be contained in the Electrical Contracting Industry Award — Taking all factors into account, the Commission found the Applicant union had not met the test of the obligation to show that the favoured method of a 38 hour week implementation best suited the business of the Employer — Dismissed — Electrical Contracting 3125

CUMULATIVE DIGEST—*continued*

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PRINCIPLES —*continued*

Application to vary Award *re* new provision for additional payments for performing "internal relief" and variation of rates for casual employees performing "external relief" — Applicant employer argued proposed variation was part of an indivisible cost neutral package the first of significant restructuring arising out of an agreement — Respondent Union argued the proposed variation to casual rates reduced salaries contrary to the *de facto* wage Principle — Government School Teachers Tribunal found agreement did not stand up to the ultimate tests of Structural Efficiency Principle but proposed additional payments were in accordance with the Allowances Principle — Tribunal found itself unable to find in favour of the Applicant on the basis of the Respondents original consent to the variation of rates to casual workers *per se*— Tribunal stated that *de facto* Principle had been "buried" by CICS — Tribunal found on merit, it was inequitable and illogical to compress a scale of salaries to which a person progresses by virtue of qualifications and experience to a middle of the range salary — Granted In Part — Eduction 2866

[3]Proceedings instituted on Commission's own motion to give consideration to issuing General Order giving effect to National Wage Case decision of August 1989 — Commission in Court Session adopted Wage Fixing Principles and increased Minimum Wage — State Wage Principles provide for "structural efficiency adjustments" comprising two separate wage increases of up to three per cent subject to no extra claims commitments being given by unions and inserted in Awards — Commission in Court Session also provided for "minimum rates adjustment" for refixing of wage relativities after awards have been restructured and for "special cases" to deal with claims for increases in wages or improvements in conditions which exceed the maximum increases allowable — Effected — State Wage Case 2197

[1]Appeal against decision of Commission in Court Session (69 WAIG 1924 and 1938) to ratify consent award variations in respect to shift and overtime rates — Appellant claimed Commission had failed to adhere to its Wage Fixation Principles (69 WAIG 2412) in that it had misapplied the Conditions of Employment Principle and failed to apply the tests required by the Anomalies and Inequities Principle — Industrial Appeal Court found that whilst the Anomalies Conference Procedure had been deleted from the "Principles" the Anomalies and Inequities Principle was still extant — The Commission in Court Session had erred in law by proceeding as if the Anomalies and Inequities Principle were no longer in force and failing to take that principle into account when making its decision — Upheld and referred to Commission in Court Session for further consideration — Health 3219

Two appeals against decisions of Commission (69 WAIG 1143) *re* payment of three per cent superannuation — Union's appeal was against Commission's failure to include the leading hand allowance in the earnings from which superannuation payments would be calculated — Full Bench found that decision was discretionary and that the Commission's decision had not miscarried — Employer's appeal was on numerous grounds including that it was beyond power of Commission to make the order/s it made under the sections of the Act it purportedly made them; that it was beyond the power of Commission to order Employer to change the terms of Trust Deed and Provident Fund; that Commission erred in granting superannuation without offsets as in case of other companies after finding the existence of a "standard" amongst iron ore producers in Pilbara; and, that Wage Fixing Principles did not require payment of superannuation as the existing "fund" was in excess of that required — Full Bench extensively reviewed authorities, sections 32, 23, 26, 27 and 7 of I.R. Act 1979 and the Interpretation Act 1984 — Full bench found orders made were within powers of Commission and its interpretation of the Wage Fixing Principles was open to it — Both appeals dismissed — Iron Ore 2629

Applications to vary Awards *re* wage increase pursuant to Structural Efficiency Principle — Public Service Arbitrator examined agreement of parties, which included, *inter alia*, the introduction of broadbanding, scope for multiskilling, more flexible working hours and changes to other provisions in line with the Public Service — PSA found substantial benefits to both employers and employees at very little cost, which was within the spirit and letter of the Structural Efficiency Principle — Granted — Health 3290

Applications to vary Awards — Parties sought rates of pay increases in accordance with Structural Efficiency Principle — Commission reviewed dicta of principle and having regard that parties were expected to present a single award to replace existing three and non-award measures already implemented, found that they had done enough to comply with the Principles — Commission expressed concern in applying the $15.00 quantum to certain levels of employee and required amendments to incorporate flexibility in adjustment of hours of work — Granted — Police 3355

Settlement of dispute *re* pay claim — Parties sought ratification of three per cent or $15.00 as first instalment pay increase on the basis of a settlement wherein parties had reached agreement on certain aspects of a Conditions of Work Agreement — Commission considered agreement and also put restructuring in the light of the Structural Efficiency Principle — Commission found that although agreement was a tenuous one, on the face of it, it justified the salary adjustment sought, with future restructuring to be examined on application for the second instalment of the claim — Granted — Education 3644

Appeal against decision of Commission at (69 WAIG 2206) *re* granting of site allowance — Appellant argued decision of Commission is contrary to the substantial merits of the case and submitted grounds of appeal on a number of issues — Full Bench found from evidence Commission had not erred in fixing the quantum which it did and furthermore, no attempt was made to persuade Full Bench that allowances were not payable in this case as a matter of pure principle — Dismissed — Construction 3233

Application for variation to award — Application to amend award list of government officers not covered by scope of award — Parties were in agreement — Commission found in favour of exclusion in Award being deleted and addressed the Wage Fixing Principles — Granted — State Government 3015

Claim *re* wage increase — Applicant sought four per cent increase pursuant to Second Tier — Parties were in Agreement — Commission noted with concern parties agreement to establish committees to inquire into ways and means of achieving efficiency rather than implementing them — Commission reiterated that spirit of the Principles is that changes should be real so that efficiencies can take place — Granted — University Administration 2766

Application to vary Award by consent — Parties sought increase in salaries on the basis of a Structural Efficiency Agreement — Commission took the view as expressed in the Building Trades Case and found that the parties had done enough to justify the first instalment under Structural Efficiency Principle — Commission found it not inappropriate to adjust the lower rates in the Award by a quantum of $15.00 because of the new career structure dependent in part on such adjustments — Public Transport — Granted 3369

Application to vary Awards (3) *re* superannuation referred to CICS pursuant to section 27(1)(t) of Industrial Relations Act — Applicant Unions sought common rule effect to occupational superannuation on the basis that it was a "mopping up" exercise and the most orderly and rational basis for implementing what was argued to be an entitlement — Respondents argued common rule approach to superannuation could not adequately address the diversity of needs that exist in the range of industries covered by the Awards — Furthermore, CWAI argued that there were no special circumstances as identified in the Security Industry Superannuation Case — CICS reviewed Principles, Authorities and the number of enterprise and industry superannuation agreements in the areas of employment covered by the awards — CICS found no overriding impediment to common rule superannuation and that a protracted company by company approach would render, in many instances, the availability of the benefit so remote as to be illusory — CICS further dealt with operative dates, no reduction provision and an exemption — Granted — Various 3509

Application to vary Award *re* 38 hour week — Parties agreed significant changes would result in work practices and a degree of flexibility had been achieved — Furthermore the ordinary hours would be broadened and worked in shifts — Commission found the claim not only satisfied the Standard Hours Principle it was also consistent with the Structural Efficiency Principle — The proposed changes have the potential for increased efficiency and minimal costs — Granted — Dentists 3308

Application to vary Awards by consent *re* wages — Parties aimed at implementing the objects of the Structural Efficiency Principle into the Private Health Care Industry — Furthermore the parties are preserving a generalised nexus in wages and conditions with a broad-banding exercise thus reducing a multiplicity of classifications — Commission found the parties have complied with the requirements of the Structural Efficiency Principles — Ordered Accordingly — Health Care 3316

Application to vary Award by consent increasing wage rates for part-time employees — Applicant Union claimed wage rates for full-time academics had been adjusted and should reflect upon the part-time academic salaries prescribed in the Award — Commission found the variation of an Award could be varied if not previously varied — Furthermore no extra claims commitment has been included — Granted — Education 3330

CUMULATIVE DIGEST—*continued*

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PROCEDURAL MATTERS —

[2]Question of law *re* whether a clause in a proposed consent order would create an offence under the Industrial Relations Act — Applicant Union argued matter should be remitted back to Commission at first instance as necessary findings of fact had not been made — Respondent notified that it no longer consented to the clause in question — Full Bench found that the whole basis of the question of law referred had been removed unilaterally and the question was possibly no longer germane to the decision of the Commission at first instance — Remitted — Hydraulic Engineering 1907

Claim for termination payment — Respondent notified Commission in writing that it was in liquidation and contended proceedings against it stayed without leave of Supreme Court — Commission provided opportunity for Applicant to present submissions on the matter and received no response or advice of leave be granted by Supreme Court — Commission found that operations of Companies (Western Australia) Code denied Commission jurisdiction to entertain or defer the hearing of the claim without leave of the Supreme Court — Struct Out — Recreation 2166

[2]Appeal against decision of Magistrate to dismiss complaints *re* underpayment of award — In that matter the employee worked the hours shown on a roster which were subsequently copied into the time and wages records from which wages were calculated — If employee worked other than hours on roster he informed officer manager who made appropriate adjustment to time and wages records — Employee gave evidence that on occasion he did not work rostered hours but could not say exactly when and Magistrate held this created an element of uncertainty and thus on the balance of probabilities it could not be proved when employee worked — Full Bench reviewed authorities and found that it was more probable than not that the record was an accurate record of the time and hours worked, there was no other ingredient not proven and that Appellant had discharged its onus — Upheld — Security 1899

[1]Application that order of Commission in Court Session being appealed to Industrial Appeal Court be not stayed as required by Regulation 6 pertaining to Industrial Appeal Court — The Confederation of Western Australian Industry (Inc) appealed order made by consent of parties on basis that it would flow on to their members in private sector and the institution of the Appeal operates as a stay — As the direct parties to matter were in agreement Judge in Chambers ordered that the proceedings be not stayed Granted — Health Care 2299

[2]Appeals against decision of Magistrate *re* breaches of award — Appellant claimed Complainant Union had failed to produce evidence to discharge its onus of proving its case for some charges and the time and wages records which were relied on as evidence in other charges had not been proved to be correct — Full Bench found that time and wages records produced from an employers own custody and maintained by it as a duty under an award and complied within its own knowledge is *prima facie* evidence against and employer in the absence of evidence to the contrary as to the entries therein — the only evidence impugning the time and wages record had not been accepted by the Magistrate which he was entitled to do — Full Bench further concluded that once time and wages had been accepted as correct then the burden of proof on the Complainant was capable of being discharged and the Magistrate then found that it was — Dismissed — Security 2662

[4]Application to cancel stay order — Applicant wished to discontinue appeal and sought to be allowed to make payments in accordance with original decision — President examined ability to entertain application — President found Notice of Discontuance not applicable to appeal — Appeal had to be dismissed by consent which would settle matter of the stay — Dismissed — Metal Trades 2943

Applications to vary award and orders by consent — *re* money amounts of contribution to superannuation fund — Operative Date disputed — Applicant Union argued that when agreement with the industry was reached was the appropriate operative date — Respondent argued Commission could not grant retrospectivity unless there were special circumstances as envisaged by section 39 of the Industrial Relations Act — Commission reviewed Superannuation Principle, Act, Authority and the background including procedures of the instant matter — Commission found a date of operation earlier than the date of decision was warranted and did not damage the Principles — Granted in Part — Manufacturing /Furniture 2725

Conference referred for hearing and determination *re* claim for redundancy package in excess of that offered by employer — Respondent employer argued Commission did not have jurisdiction to issue order sought — Commission reviewed authorities and found that redundancy occurs when an employer no longer requires the work that an employee/s performed to be done at all — Further, section 7 of the Industrial Relations Act defines an industrial matter to include conditions which are to take effect after the termination of employment — Commission further found Respondent's objection to the Constitution of the Commission at the hearing was made out of time — Commission found Respondent's offered redundancy package conflicted with redundancy principle in so far as payments for years of service were concerned, but otherwise aligned with contemporary standards — Granted In Part — Baking 3132

PROMOTION APPEAL —

Assistant Foreman, Fitting — Recommending Authority argued PAB did not have jurisdiction to determine an appeal against a temporary position — PAB reviewed section 80X, 80Y and 80ZA of the Industrial Relations Act and found that the wording in the definition of "office" excluded any Office or position that was temporary — Dismissed — Westrail 3170

PUBLIC HOLIDAYS —

Applications to vary Awards *re* Wages Schedules and Annual Leave — Parties presented agreed facts on work value increases and sought new wages schedules to reflect movement and rearrangement in an award with which the parties sought to re-establish a nexus — Parties in disagreement over Annual Leave provision — Respondent sought removal of the word "department" from the Annual Leave clause and argued that its use hampered the efficient management of numerous employers operating small establishments — Commission considered it was in no way bound by a CICS Decision on which the Applicant relied — Commission found little equity where employees who did not suffer the inconveniences for which more than four weeks annual leave were designed to compensate, continue to enjoy that benefit — Furthermore it was a semantic accident which prevented compliance with the spirit of the prescription — Granted in Part — Health 2428

PUBLIC INTEREST —

Claim *re* payment for time away from work while attending stop work meetings — Applicant Unions claimed payment would promote structural efficiency — Commission was not persuaded by the applicants proposition that there would be a negative cost impact for the respondent — Commission found that applicant had not discharged the onus to make out a case — Dismissed — Electrical/Power 2145

Application to vary award by consent *re* overtime records and Meal Allowance — Applicant Union sought to overcome an anomaly and clearly define the occasions when while an employee was entitled to partake of a meal break and be supplied with a meal when engaged on overtime duty — Applicant argued claim brought the provisions in line with a Commission standard — Respondent consented on condition that Applicant commit itself to variation being part of a package of Award restructuring — Commission found increase in allowance allowable under new allowances provision of the principles — Furthermore new provision was in public interest and reflected the exigencies of the workplace — Granted — Police 2705

[3]Application for General Order prescribing minimum entitlement to four weeks annual leave, an additional week of annual leave for seven day shift workers, 17.5 per cent annual leave loading and two weeks sick leave for employees not covered by awards — Minister for Labour supported application in terms sought by Applicant — COWAI and AMMA opposed application — Majority of Commission in Court Session rejected claim for sick leave as it was not satisfied that the "existing boundaries between the common law and statutory provision of sick leave ought to be varied by General Order" — Claims for 17.5 per cent loading and the additional weeks' leave for seven day shift workers were rejected as lacking in merit — It was, however, considered to be in interests of award-free employees and community as a whole for Commission to prescribe minimum conditions of annual leave — Granted In Part — General Order 3487

CUMULATIVE DIGEST—*continued*

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REDUNDANCY/RETRENCHMENT —

Claim for termination payment — Respondent notified Commisison in writing that it was in liquidation and contended proceedings against it stayed without leave of Supreme Court — Commission provided opportunity for Applicant to present submissions on the matter and received no response or advice of leave be granted by Supreme Court — Commission found that operations of Companies (Western Australia) Code denied Commission jurisdiction to entertain or defer the hearing of the claim without leave of the Supreme Court — Struck Out — Recreation 2166

Employee retrenched due to alleged lack of work — Applicant Union claimed unfair dismissal and sought reinstatement without loss of earnings and continuity of employment — Respondent argued the employees services had been no longer required thus the contract of employment had ended — Commission found on the balance of probabilities that the applicants contract of employment had been terminated due to a shortage of work and that there was no substance to the allegation that such action was unfair — Dismissed — Brickworks 2822

Claim *re* redundancy payments — Union sought two weeks pay for each year of service in excess of four years in addition to an agreed package — Union argued on the basis of comparisons and a General Order of the Commission — Commission found Termination Change and Redundancy Case recognised the greater length of service with an employer as requiring increased payment to an employee made redundant — Commission further noted costs to employer — Granted in Part — Health 2523

Conference referred for hearing and determination *re* claim for redundancy package in excess of that offered by employer — Respondent employer argued Commission did not have jurisdiction to issue order sought — Commission reviewed authorities and found that redundancy occurs when an employer no longer requires the work that an employee/s performed to be done at all — Further, section 7 of the Industrial Relations Act defines an industrial matter to include conditions which are to take effect after the termination of employment — Commission further found Respondent's objection to the Constitution of the Commission at the hearing was made out of time — Commission found Respondent's offered redundancy package conflicted with redundancy principle in so far as payments for years of service were concerned, but otherwise aligned with contemporary standards — Granted In Part — Baking 3132

[4]Application for stay of proceeding *re* redundancy payments pending appeal — Appellant argued serious jurisdictional question to be determined — President found that the balance of convenience favours appellant and serious question to be tried — Granted — Bakery 3260

REGISTRATION —

[2]Application for registration of employer organisation to cover the real estate industry — Full Bench found, application was not authorised in accordance with the rules of the applicant — Furthermore members had not been adequatley informed of intention to apply, proposed rules and right to object — Full Bench found members employers were from one real estate franchise group and that such a registration would not promote goodwill in the industry — Furthermore, Full Bench found danger of overlapping eligibility for membership — Dismissed — Real Estate/Unions 2939

Conference referred for hearing and determination *re* claim for redundancy package in excess of that offered by employer — Respondent employer argued Commission did not have jurisdiction to issue order sought — Commission reviewed authorities and found that redundancy occurs when an employer no longer requires the work that an employee/s performed to be done at all — Further, section 7 of the Industrial Relations Act defines an industrial matter to include conditions which are to take effect after the termination of employment — Commission further found Respondent's objection to the Constitution of the Commission at the hearing was made out of time — Commission found Respondent's offered redundancy package conflicted with redundancy principle in so far as payments for years of service were concerned, but otherwise aligned with contemporary standards — Granted In Part — Baking 3132

REINSTATEMENT —

[4]Application for stay of order to re-employ a dismissed employee, pending Appeal — Applicant argued no great prejudice to employee if stay granted and that a successful appeal would be rendered nugatory if there was a reinstatement — Furthermore, on convenience the *status quo* should remain — Respondent argued, *inter alia*, that the appeal was not a serious matter to be tried and that Regulations had not been complied with — President referred to Stott's case and found in favour of Respondent — Dismissed — Housing 1956

Appeal against employees dismissal for alleged misconduct, that being sexually interfering with a client — Appellant denied allegations and claimed dismissal unfair — Appellant argued further that there had not been a complaint from the client in question — Respondent argued that on balance of probabilities misconduct had occurred — Public Service Appeal Board considered section 80I of Industrial Relations Act provided it with a greater license to substitute its own view than in claims of unfair dismissal before the Commission *per se* — The decision to dismiss was to be reviewed *de novo* on the evidence before the PSAB not merely on whether the decision maker made the right decision on the evidence before it at the time — PSAB found evidence left too many questions unanswered about the allegations relied upon by the Respondent and that the dismissal should not be allowed to stand — Granted — Community Services (Government) 2266

Claim *re* unfair dismissal seeking re-employment and payment of 'lost' entitlements — Applicant claimed permanent employment was offered and accepted and subsequent dismissal was summary and unfair — Respondent opposed claim and argued employment had been casual, no new contract of service had existed, therefore Commission had no jurisdiction — Commisison found on evidence Manager of Respondent had established a new contract of service — Commission further found no misconduct identified, hence in favour of the Applicant — Granted — Hotels 2154

Applicant claimed unfair dismissal and nsought reinstatement — Respondent apposed claim and alleged Applicant to be untrustworthy on the basis of a garnishee order against the Applicant — Furthermore, Respondent cited conduct relating to absences from work and failure to disclose a criminal record as matters to justify termination — Commission found Applicant was summarily dismissed and that the dismissal was harsh and oppressive — Furthermore, Commission was not persuaded in the course of hearing the matter, that it should refuse the relief sought — Granted — Fabric Wholesalers 2054

Employee terminated due to insubordination — Applicant claimed unfair dismissal and sought reinstatement — Respondent argued applicant had misled, deceived and failed to accept authority of manager — Furthermore Appliant was reprimanded with a formal warning letter and given the opportunity to resign — Commission found dismissal was not unfair or unlawful as warning to cease such conduct of undermining supervisor's authority and reluctance to accept authority went unheeded — Dismissed — Pharmaceutical Sales 2167

Claim *re* unfair dismissal seeking reinstatement or payment for remainder of term of contract — Applicant argued termination was without justification as it was to his disadvantage to renegotiate his term of appointment — Commission found that the Respondent had lawfully exercised options available when reviewing the contract of employment — Furthermore Commission found that the termination did not constitute as an unfair dismissal as applicant declined to co-operate in correcting the deficiencies which the Respondent perceived existed — Dismissed — Sport/Recreation 2169

Appeal against decision of Public Service Commission *re* unfair dismissal due to inefficiency Appellant argued allegations of inefficiency were vague and nebulous and furthermore there was a lack of notification and counselling with regard to the matters of inefficiency and work performance — Appellant further argued that penalty of dismissal was unreasonably harsh and sought reinstatement without loss of benefits — Board found from evidence that dismissal was fair and just and concluded unanimously that appellant had failed to successfully perform the duties required of a Level 5 Engineer — Dismissed 2586

CUMULATIVE DIGEST—*continued*

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REINSTATEMENT —*continued*

Employee terminated for unsatisfactory work performance — Applicant Union alleged employee was unfairly dismissed — Respondent argued applicant had been warned on a number of occasions — Commission found from evidence that the employee had been given every opportunity to improve work performance and as such dismissal was not unfair — Dismissed — Retirement Homes 3136

Employee terminated for unsatisfactory work performance — Applicant Union claimed employee had been unfairly dismissed and sought reinstatement without loss of entitlements — Commission found from evidence that employee had an attitude of non-cooperation towards his superiors and fellow employees and would not accept lawful instructions and determined that termination was not unfair — Dismissal — Hospitality 2832

Claim *re* unfair dismissal — Applicant alleged constructive dismissal was unfair in all the circumstances and sought reinstatement — Respondent argued the Applicant had become an unsatisfactory employee and the final straw had been the maladministration of drugs, to a patient — Commission found from evidence that applicant was warned of her behaviour, but to no avail therefore dismissal of applicant as an unsatisfactory employee was not unfair — Dismissed — Nursing Homes 2784

Application for reinstatement on the grounds of unfair dismissal — Applicant alleged victimisation and a constructive dismissal — Respondent argued that a fair and proper approach had been taken to employment difficulties which occurred with the Applicant over the employment period — Commission found Applicant had terminated the contract of service — Furthermore that the Respondent had done everything to assist the Applicant in discharging duties — Commission also commented on representation of Parties and possibly vexatiousness of Application — Dismissed — Education 3103

Claim *re* unfair dismissal — Applicant Union claimed employee had been unfairly and summarily dismissed and sought reinstatement without loss of entitlements — Respondent argued employee had abandoned employment — Commission found employee had terminated the contract of employment — Dismissed — Child Care 3135

Employee summarily dismissed for alleged poor time keeping — Applicant claimed dismissal was unfair and sought reinstatement — Respondent argued right to set policies concerning lateness and to enforce them — Commission found from evidence that conduct of Applicant had not been such that would have created a fundamental breach of contract and that dismissal was summary in nature and unfair — Granted — Mining 2506

Conference matter referred *re* unfair dismissal — Applicant Union claimed the employee was dismissed from his employment because of instigating actions against the Respondent in the Commission — Respondent claimed he effectively gave notice to the employee and had offered him casual employment even though the employee was allegedly at loggerheads with his superior and that there was no future with the Respondent — Commission found a problem existed between the employee and his superior and that the employee architected his own fate by resuming employment at a casual rate — Dismissed — Hospitality 2521

Claim *re* unfair dismissal seeking reinstatement — Applicant claimed to be an efficient and effective employee but was badgered by superiors and was the subject of management by fear — Respondent argued Applicant needed to improve work performance or else they would have to part company — Commission found that the dismissal was not unfair and from evidence Applicant had not performed to expectations, he had not canvassed often enough or vigorously enough and was too often in the office — Dismissed — Sales 3389

Claim *re* unfair dismissal/contractual entitlements — Applicant sought reinstatement or one week's pay in lieu of notice — Applicant argued events prior to the termination had affected work performance, therefore dismissal was unfair and the termination procedure followed had not conformed with the employees' handbook — Respondent claimed Applicant had been warned to improve poor work performance — Commission found appropriate warnings had been issued and Respondent did not unfairly exercise the right to terminate the employee's services — Dismissed — Hospitality 3379

SAFETY —

Applicant Union claimed written final warning to employee regarding unsafe driving in the course of employment was unfair and sought its withdrawal and lost overtime arising from the matter — Applicant argued employee had done nothing to warrant counselling and that the matter had been blown out of all proportion — Respondent opposed claim and argued that an incident of unsafe driving had occurred and that the employee had been previously reprimanded for a similar act — Commission found on evidence no doubt that employee was careless to some degree of the vehicle driven — However Commission further found it probable that other matters not addressed to the employee at the time lead to the warning and hence its unequivocal nature was unfair — Granted in Part — Mining (Iron Ore) 2201

Conference referred for arbitration *re* Dispute over Manning Levels — Applicant sought declaration to effect that it had the right to determine manning levels on a particular train — Respondent argued that an additional passenger car to the usual train consist required an additional employee skilled in safe working — Furthermore Respondent claimed Applicant had attempted to force an untrained employee rostered in the additional car to perform the work of the suitably trained employee — Commission examined evidence and found Respondent Union had not discharged the onus of establishing its claim or that the Applicant acted harshly or oppresively — Granted — Railways 2515

Conference referred for hearing and determination *re* claim for a nine day fortnight rather than a 19 day month — Applicant union argued that a decision of the Australian Conciliation and Arbitration Commission indicated the principles which should guide the Commission in the instant case — Applicants argued further that the nine day fortnight best suited the business by: increased efficiency through interaction with other employees, decrease in absenteeism, improved morale; cost savings and safety improvements — Furthermore that the employers had given undertakings that there would be no unnecessary complaints about problems arising from transferring employees from work sites or potential pay and administrative problems — Respondents and Intervenors argued on the basis of potential flow ons, industry standards, costs, client demands, *inter alia*, and that the Respondent had already acceded to a 19 day fortnight in preceding negotiations of the claim, hence eliminating the "middle ground" — Commission found the prime consideration relevant to the assessment of the available options to be contained in the Electrical Contracting Industry Award — Taking all factors into account, the Commission found the Applicant union had not met the test of the obligation to show that the favoured method of a 38 hour week implementation best suited the business of the Employer — Dismissed — Electrical Contracting 3125

Claim *re* restrictive work practice — Applicant sought order that union remove its "hardhat" notice and reaffirm the general principle of Award that employees may be required to work as directed, subject to competency and regulatory requirements — Commission found nothing in Award which fetters the right of the Applicant to direct its employees to do the work in question in the manner it proposes and reiterated that there was nothing which established that the practice *per se* is unsafe — Granted — Iron Ore 2824

SHIFT WORK —

[4]Application to vary award by consent — Parties sought to replace percentage Shift Allowance with a flat money allowance and argued for a Special Case — CWAI intervened and argued that the resultant increase in conditions of employment was not based on merit and could flow on to other industry sectors — CICS examined history of case and found a Special Case existed — Conferences were held before Commission to scrutinise proposed variation under the Principles and then CICS heard further submissions — CICS stated industrial action was reprehensive and had no bearing on final judgment — CICS found proposed variation to generally be consistent with the Principles and a first step in Structural Efficiency — However CICS was not convinced the matter was of such urgency or special nature as to allow an operative date such as to override the main objective of the Principles —Granted in Part — Health Care 1924

CUMULATIVE DIGEST—*continued*

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SHIFT WORK—*continued*

Dispute *re* availability of certified first aid personnel — Applicant Union sought order to ensure that a person holding an appropriate first aid certificate be on duty or available during all working hours — Applicant argued its necessity due to the nature of work and uncertainty of materials, including chemicals, that the workers involved dealt with — Respondent argued the claims ulterior motive nature was to have a minority section of its workers to gave full time first aid training in working time — Furthermore adequate Occupational Health Safety and measures existed — Commission found on evidence adequate access to an Occupational Nurse during normal working hours but not outside those hours — Granted in Part — Railways 2517

Conference referred *re* dispute over commuted allowances — Parties reached agreement and sought ratification of an allowance to be paid in lieu of overtime and shift penalties — Commission found that there had been a valuable activity at the prompting of the Commission, in complete accord with the Structural Efficiency Principle — Allowance was in essence a device for paying existing allowances more conveniently — Commission further found a transfer and rotation policy addressed an anomaly where employees might have received an allowance to which they could not establish a claim — Granted — Welfare Institutions 3281

Application to vary awards *re* special provisions for cycle working — Applicant Employers sought to insert new clause into awards to introduce cycle working in remote areas as in the Goldmining Consolidated Award — Respondent unions questioned the validity of a survey as evidence and argued that the best way to deal with the issues involved was on an *ad hoc* basis with specific mines as and when those mines were brought on stream — Respondents further claimed union notification provision of proposed clause was insufficient and provision of compensation for travel expenses was needed — Commission found cycle working to be a fact of life in the mining industry and that many small gold mining properties which would otherwise be non-viable had been brought on stream using the work cycle process — Furthermore, Commission found adequate protection in clause to cover objections of Respondents — Granted — Mining (Gold) 3022

SICK LEAVE —

[3]Application for General Order prescribing minimum entitlement to four weeks annual leave, an additional week of annual leave for seven day shift workers, 17.5 per cent annual leave loading and two weeks sick leave for employees not covered by awards — Minister for Labour supported application in terms sought by Applicant — COWAI and AMMA opposed application — Majority of Commission in Court Session rejected claim for sick leave as it was not satisfied that the "existing boundaries between the common law and statutory provision of sick leave ought to be varied by General Order" — Claims for 17.5 per cent loading and the additional weeks' leave for seven day shift workers were rejected as lacking in merit — It was, however, considered to be in interests of award-free employees and community as a whole for Commission to prescribe minimum conditions of annual leave — Granted In Part — General Order 3487

STAY OF PROCEEDINGS —

[4]Application for stay of order to re-employ a dismissed employee, pending Appeal — Applicant argued no great prejudice to employee if stay granted and that a successful appeal would be rendered nugatory if there was a reinstatement — Furthermore, on convenience the *status quo* should remain — Respondent argued, *inter alia*, that the appeal was not a serious matter to be tried and that Regulations had not been complied with — President referred to Stott's case and found in favour of Respondent — Dismissed — Housing 1956

Claim for termination payment — Respondent notified Commission in writing that it was in liquidation and contended proceedings against it stayed without leave of Supreme Court — Commission provided opportunity for Applicant to present submissions on the matter and received no response or advice of leave be granted by Supreme Court — Commission found that operations of Companies (Western Australia) Code denied Commission jurisdiction to entertain or defer the hearing of the claim without leave of the Supreme Court — Struck Out — Recreation 2166

[4]Application for stay of order *re* implementation of 38 hour week, pending appeal — Applicants claimed *inter alia* that their business operations would be prejudiced in the event that the appeal was successful and the matter remitted for further hearing — Respondent argued implementation of 38 hour week could be altered to comply with any possible new order and that there was sufficient flexibility within the order in any case — Furthermore Respondents argued Applicants had shown total disregard for the Commission by being in breach of the order — President stated it would be neither an act of equity or good conscience to exercise discretion in favour of Applicants, in this case, when they had decided not to comply with an order of the Commission — Furthermore President considered the dispute was not whether the 38 hour week would apply but when and what offsets might be achieved — President found no real harm or inconvenience to the Applicants — Dismissed — Hotel (Clerks) 1954

[1]Application that order of Commission in Court Session being appealed to Industrial Appeal Court be not stayed as required by Regulation 6 pertaining to Industrial Appeal Court — The Confederation of Western Australian Industry (Inc) appealed order made by consent of parties on basis that it would flow on to their members in private sector and the institution of the Appeal operates as a stay — As the direct parties to matter were in agreement Judge in Chambers ordered that the proceedings be not stayed — Granted — Health Care 2299

[4]Application to cancel stay order — Applicant wished to discontinue appeal and sought to be allowed to make payments in accordance with original decision — President examined ability to entertain application — President found Notice of Discontuance not applicable to appeal — Appeal had to be dismissed by consent which would settle matter of the stay — Dismissed — Metal Trades 2943

[4]Application for stay of the operation of whole of award pending appeal — Consent matter — President found serious question of law to be tried and balance of convenience favoured that granting of a stay in each instance — Provisions of Act complied with — Granted — Iron Ore Mining 3258

[4]Application for stay of proceeding *re* redundancy payments pending appeal — Appellant argued serious jurisdictional question to be determined — President found that the balance of convenience favours appellant and serious question to be tried — Granted — Bakery 3260

[4]Application for stay pending appeals *re* question of jurisdiction in matters of dismissal — Appellant claimed serious question of law to be tried and a question of public interest — President found although serious matter to be tried, there would be no inconvenience to the Appellant as the former employees were no longer in their employment — Dismissed — Railways 3259

SUPERANNUATION —

Claim *re* outstanding benefits — Applicant claimed he was denied part of his superannuation benefit — Respondent argued that applicant was not directly employed by them — Commission found from evidence that claim be dismissed for want of jurisdiction as there was no contract of service between the parties — Dismissed 2165

Applications to vary award and orders by consent — *re* money amounts of contribution to superannuation fund — Operative Date disputed — Applicant Union argued that when agreement with the industry was reached was the appropriate operative date — Respondent argued Commission could not grant retrospectivity unless there were special circumstances as envisaged by section 39 of the Industrial Relations Act — Commission reviewed Superannuation Principle, Act, Authority and the background including procedures of the instant matter — Commission found a date of operation earlier than the date of decision was warranted and did not damage the Principles — Granted in Part — Manufacturing /Furniture 2725

Application to vary Awards (3) *re* superannuation referred to CICS pursuant to section 27(1)(t) of Industrial Relations Act — Applicant Unions sought common rule effect to occupational superannuation on the basis that it was a "mopping up" exercise and the most orderly and rational basis for implementing what was argued to be an entitlement — Respondents argued common rule approach to superannuation could not adequately address the diversity of needs that exist in the range of industries covered by the Awards — Furthermore, CWAI argued that there were no special circumstances as identified in the Security Industry Superannuation Case — CICS reviewed Principles, Authorities and the number of enterprise and industry superannuation agreements in the areas of employment covered by the awards — CICS found no overriding impediment to common rule superannuation and that a protracted company by company approach would render, in many instances, the availability of the benefit so remote as to be illusory — CICS further dealt with operative dates, no reduction provision and an exemption — Granted — Various 3509

Applications to vary awards — Parties were in agreement for the inclusion of an occupational superannuation clause for the employees of each of the awards — Commission found the proposals standard and complied with the Commissions' Superannuation Principle and contained the standard exemptions — Granted — Dentists 3333

CUMULATIVE DIGEST—*continued*

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TALLIES —

[2]Appeal against decision of Commission at (68 WAIG 2069) to vary an Award to establish a new tally rate — Appellant claimed Commission had erred in that it *inter alia* failed to consider detrimental effects to the employees immediately concerned —Further the decision was not in accordance with the existing provisions of Award and contrary to the First Awards and Extension to Existing Awards Principle — Also Appellant argued Commission had incorrectly applied previous decision of Full Bench and applied incorrect methodology in establishing the tally rate — Respondent argued decision was within the Award structure and not contrary to evidence — Full Bench applied principles relating to reviews of discretionary judgment as prescribed by Appeal Court — Full Bench found that Commission had correctly reviewed matter *de novo* on the evidence before it, however had erred in its methodology in establishing the specific rate — Furthermore, Commission had failed to give sufficient weight to certain evidence — Full Bench gave guidelines to be considered in further hearing and determination — Upheld — Meat Industry (State) 1884

TERMINATION —

Application for wages, overtime and other benefits alleged to be due from contract of employment — Applicant employed on Job Start Scheme through CES — In Job Start Scheme agreement CES and Respondent agreed Applicant's conditions of employment to be as per Horse Training Award — Commission found that although this Award did not cover Applicant by virtue of the Job Start Scheme agreement its terms specified the contract of service — Commission calculated amount due less one week's pay as Applicant terminated without notice — Granted in Part — Horse Training 2172

Employee dismissed for alleged altercation with another employee and insubordination — Applicant Union denied allegations, claimed dismissal unfair and sought reinstatement — Respondent argued employee was a disruptive influence and employee's performance poor — Commission found in favour of Applicant and that warning on poor performance had not been given as required by employer's staff code of conduct — Granted — Hospitality 2215

Claim *re* payment in lieu of notice sought — Applicant claimed employment was permanent and it had been understood that notice of resignation period was to correspond to completion of specific duties — Respondent argued employment was casual with a contractual agreement terminable without notice and that had in fact occurred — Commission found, on evidence employment to be on a permanent basis and that matter then turned on implied terms of contract of service — Commission found contract implied termination required reasonable notice — Granted — Fundraising Consultancy 2174

Appeal against employees dismissal for alleged misconduct, that being sexually interfering with a client — Appellant denied allegations and claimed dismissal unfair — Appellant argued further that there had not been a complaint from the client in question — Respondent argued that on balance of probabilities misconduct had occurred — Public Service Appeal Board considered section 80I of Industrial Relations Act provided it with a greater license to substitute its own view than in claims of unfair dismissal before the Commission *per se* — The decision to dismiss was to be reviewed *de novo* on the evidence before the PSAB not merely on whether the decision maker made the right decision on the evidence before it at the time — PSAB found evidence left too many questions unanswered about the allegations relied upon by the Respondent and that the dismissal should not be allowed to stand — Granted — Community Services (Government) 2266

Claim for termination payment — Respondent notified Commission in writing that it was in liquidation and contended proceedings against it stayed without leave of Supreme Court — Commission provided opportunity for Applicant to present submissions on the matter and received no response or advice of leave be granted by Supreme Court — Commission found that operations of Companies (Western Australia) Code denied Commission jurisdiction to entertain or defer the hearing of the claim without leave of the Supreme Court — Struck Out — Recreation 2166

Employee summarily dismissed due to alleged negligence — Applicant sought recovery of moneys deducted or withheld by Respondent due to burglary — Commission found negligence sufficient to warrant dismissal, however Respondent was not authorised to suspend Applicant and due to provisions of Truck Act 1899 not able to deduct money — Granted — Food and Beverage 2156

Claim *re* unfair dismissal — Applicant Union argued that there had been no warnings to the employee and implied as punishment for sick leave taken employee was dismissed — Commission found from evidence that dismissal was not unfair as employee was unable to perform the task required — Dismissed — Retail 2229

Application for contractual benefits — Applicant sought payment in lieu of notice and annual leave entitlements — Respondent argued only against payment in lieu of notice as certain matters have arisen that would have served as grounds for instant dismissal of Applicant — Commission found Applicant had breached his contract of employment, however Respondent consents to payment of *pro rata* annual leave entitlement — Granted in Part — Service 2164

Application for contractual entitlements — Applicant sought payment for annual leave on *pro rata* basis — Commission found that order could only be made in respect of terms of contract made between the parties and was unconvinced that there was a term of contract as alleged by the Applicant — Dismissed — Poultry 2173

[2]Appeal against decision of Commission at (69 WAIG 735) *re* unfair dismissal — Appellant Union claimed Commission had erred in having found a finding dismissal in accordance with contract of service not unfair — Appellant argued that Commission failed to apply correct tests and relevant authorities — Full Bench reviewed authorities and found in context of Industrial Relations Act Commission must consider the act of dismissal complained about — Furthermore the question was not whether the dismissal was lawful but whether the dismissal which occurred was fair, not whether another form of the exercise of the right to dismiss was fair — Full Bench found Commission's exercise of discretion miscarried and erred fundamentally in that it made an order contrary to its findings and had therefore no power other than to reinstate and/or declare the dismissal unfair — Upheld — Transport (Passenger) 1895

Claim for contractual benefits — Applicant claimed he was terminated after only one month of the three months' notice period had been worked and sought payment in lieu of balance of that period — Commission heard matter *ex parte* and found that contract of employment did provide for three months' notice and that Applicant had been terminated after one month — However, as Applicant commenced new employment before the expiry of the period of notice and Commission was not, therefore, convinced that Applicant would have worked the full period of notice it was only prepared to order one month's pay — Granted in Part — Plastic Manufacturing 2162

Claim *re* unfair dismissal seeking re-employment and payment of 'lost' entitlements — Applicant claimed permanent employment was offered and accepted and subsequent dismissal was summary and unfair — Respondent opposed claim and argued employment had been casual, no new contract of service had existed, therefore Commission had no jurisdiction — Commission found on evidence Manager of Respondent had established a new contract of service — Commission further found no misconduct identified, hence in favour of the Applicant — Granted — Hotel 2154

Applicant claimed unfair dismissal and sought reinstatement — Respondent apposed claim and alleged Applicant to be untrustworthy on the basis of a garnishee order against the Applicant — Furthermore, Respondent cited conduct relating to absences from work and failure to disclose a criminal record as matters to justify termination — Commisison found Applicant was summarily dismissed and that the dismissal was harsh and oppressive — Furthermore, Commission was not persuaded in the course of hearing the matter, that it should refuse the relief sought — Granted — Fabric Wholesalers 2054

Employee terminated due to insubordination — Applicant claimed unfair dismissal and sought reinstatement — Respondent argued applicant had misled, deceived and failed to accept authority of manager — Furthermore Applicant was reprimanded with a formal warning letter and given the opportunity to resign — Commission found dismissal was not unfair or unlawful as warning to cease such conduct of undermining supervisor's authority and reluctance to accept authority went unheeded — Dismissed — Pharmaceutical Sales 2167

CUMULATIVE DIGEST—*continued*

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TERMINATION—*continued*

Claim *re* unfair dismissal seeking reinstatement or payment for remainder of term of contract — Applicant argued termination was without justification as it was to his disadvantage to renegotiate his term of appointment — Commission found that the respondent had lawfully exercised options available when reviewing the contract of employment — Furthermore Commission found that the termination did not constitute as an unfair dismissal as applicant declined to co-operate in correcting the deficiencies which the respondent perceived existed — Dismissed — Sport/Recreation 2169

Appeal against decision of Public Service Commission *re* unfair dismissal due to inefficiency Appellant argued allegations of inefficiency were vague and nebulous and furthermore there was a lack of notification and counselling with regard to the matters of inefficiency and work performance — Appellant further argued that penalty of dismissal was unreasonably harsh and sought reinstatement without loss of benefits — Board found from evidence that dismissal was fair and just and concluded unanimously that appellant had failed to successfully perform the duties required of a Level 5 Engineer — Dismissed 2586

Claim *re* intended termination of employee for alleged misconduct — Applicant Union argued the misconduct of drinking alcohol has not been proven beyond reasonable doubt — Commission found from evidence that, on the balance of probabilities the employee was in possession of and had commenced to consume alcohol and would not interfere with respondent's proposal to terminate the services of employee for serious misconduct — Dismissed — Brewing 2203

Claim *re* contractual entitlements — Applicants claimed various sums of money due for work carried out and for termination of contract without due notice — Respondent argued that business was sold and all outstanding liabilities were the responsibility of current owner — Commission established that relationship was that of employee-employer and found it was not open to an employer to enter into such a contract and then "transfer" its legal obligations pursuant to that contract elsewhere — Granted — Health and Fitness 2152

Application for allegedly denied contractual entitlements — Applicant sought payment of one week's wages, holiday pay and one month's pay in lieu of notice on the basis that he had been employed as General Manager of a company by its receivers and managers — Respondent argued that the relevant contract had not been with the Applicant but a company not an employee — Commission found that it was not satisfied that the Applicant was appointed as claimed rather than an old arrangement continued — Furthermore that the receivers and managers were not as claimed by the Applicant — Dismissed —Restaurant 2786

[2]Appeal against decision of Commission at (69 WAIG 709) to award payment of denied contractual benefits arising out of wrongful dismissal of a fixed term contract — Appellant claimed Commission erred in finding that the respondent's claim was for a benefit under her contract of employment and that it could be distinguished from an action brought at common how for damages arising out of a breach of contract — Appellant argued *inter alia* that the Commission's jurisdiction ended on the date of the dismissal — Respondent argued Pepler decision was confined to the question of compansation in claim of unfair dismissal — Full Bench reviewed authorities and found section 29(b)(ii) of the Industrial Relations Act extended the definition of Industrial Matter — Furthermore that a benefit must be given its widest meaning under the Statute — Full Bench found that the claim was for a benefit rather than compensation — Dismissed — Education 2307

Employee summarily dismissed for striking a supervisor — Applicant union claimed dismissal was unfair and sought reinstatement without loss of entitlements — Commission reviewed authorities pertaining to "onus of Proof" and unfair dismissal — Commission found that a sustained assault upon a supervisor which was without provocation — justified summary dismissal — Dismissed — Hospitality 2830

Employee terminated for unsatisfactory work performance — Applicant Union alleged employee was unfairly dismissed — Respondent argued applicant had been warned on a number of occasions — Commission found from evidence that the employee had been given every opportunity to improve work performance and as such dismissal was not unfair — Dismissed — Retirement Homes 3136

Employee retrenched due to alleged lack of work — Applicant Union claimed unfair dismissal and sought reinstatement without loss of earnings and continuity of employment — Respondent argued the employees services had been no longer required thus the contract of employment had ended — Commission found on the balance of probabilities that the applicants contract of employment had been terminated due to a shortage of work and that there was no substance to the allegation that such action was unfair — Dismissed — Brickworks 2822

Employee terminated for unsatisfactory work performance — Applicant Union claimed employee had been unfairly dismissed and sought reinstatement without loss of entitlements — Commission found from evidence that employee had an attitude of non-cooperation towards his superiors and fellow employees and would not accept lawful instructions and determined that termination was not unfair — Dismissal — Hospitality 2832

Claim *re* unfair dismissal — Applicant alleged constructive dismissal was unfair in all the circumstances and sought reinstatement — Respondent argued the Applicant had become an unsatisfactory employee and the final straw had been the maladministration of drugs, to a patient — Commission found from evidence that applicant was warned of her behaviour, but to no avail therefore dismissal of applicant as an unsatisfactory employee was not unfair — Dismissed — Nursing Homes 2784

Claim *re* Alleged unfair dismissal and payment for outstanding wages. Commission advised both parties to present submissions and concluded that the balance of probabilities favoured the respondents contentions — Dismissed 3098

Claim *re* contractual entitlements — Applicant sought one month's wages, *pro rata* holiday pay and pay in lieu of notice —Respondent argued the Applicant should be paid up to his termination date and should not receive anything thereafter —Commission found on the balance of probabilities that Applicant was denied contractual benefits — Granted 2793

Application for reinstatement without loss of entitlements — Applicant Union claimed employee's actions warranted a penalty but dismissal was too severe — Respondent claimed that in all circumstances the termination of the employee's contract of service was justified — Commission found on evidence that the employee had been warned of misconduct previously and that such actions would breach his contract of employment — Commission concluded that to intervene, a good and sufficient reason needed to be established — The application fails — Dismissed 2812

Application for denied contractual entitlements — Applicant claimed he had been underpaid payment in lieu of notice and outstanding commission — Respondent refutes terms and conditions of Applicant's contract — Commission found an absence of documentary evidence to support Respondent's claim and on balance preferred the Applicant's version of events — Granted — Employment Agency 2512

Claim *re* contractual entitlements — Applicant claimed payment of a *pro rata* bonus — Respondent argued bonuses were a performance based *ex gratia* payment and when an employee is terminated it was company policy not to pay a *pro rata* bonus — Commission found Applicant failed to establish that bonuses were a term of the contract of service — Dismissed — Sales 3096

Claim *re* unfair dismissal — Applicant sought contractual entitlements or reinstatement — Respondent refuted claim arguing that no contract of service existed as Applicant's services were as a consultant — Commission found in favour of Applicant on issue of employment relationship — Commission noted that dismissal had not been exercised unfairly, however found that as an employee under a contract of service, Applicant was entitled to payment for each week of employment and an implied period of notice — Granted in Part — Financial Services 2789

Employee summarily dismissed for alleged assault — Applicant Union argued penalty of summary dismissal was unfair in light of employee's history and sought declaration to that effect together with an order of reinstatement — Respondent argued matters which led to the incident did not justify the violence of the action — Furthermore, Respondent was concerned for the welfare of its other employees — Commission found from evidence that industrial fairness must be based upon the nature and quality of the conduct involved and this action was a fundamental breach of employee's contract of service and the Commission had no warrant to interfere with the termination — Dismissed — Mining 3139

CUMULATIVE DIGEST—*continued*

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TERMINATION —*continued*

Application for reinstatement on the grounds of unfair dismissal — Applicant claimed he had been denied natural justice in an enquiry into allegations of neglect of duty which led to Applicant's dismissal — Respondent argued dismissal was fair, reasonable, lawful and in accordance with the Health Act — Commission found no fault in the process which lead to the termination as it related to the neglect of duties and that the Commission's conclusions coincided — Thus it was unnecessary to examine alleged matters which arose from allegations of falsification of figures and the Commission refrained from so doing as they may in due course have been of concern in another jurisdiction — Dismissed — Meat 3106

Determination *re* jurisdiction — Applicant Union claimed that two employees had been unfairly dismissed — Respondent argued section 23(3) of Industrial Relations Act excluded the Commission in exercising its powers due to the jurisdiction of appeal board under another Act — Commission found that there was no jurisdiction conferred on the Railways Appeal Board over the dismissal of Government Railway Employees for grounds other than misconduct — Jurisdiction confirmed — Railways 3123

Applicant claimed unfair dismissal seeking reinstatement or payment for remainder of term of contract — Respondent argued claim was not an industrial matter as defined in the Act and also whether the claim constituted a contractual benefit or a claim for damages for breach of contract — Commission determined from the authorities that the contract of employment between the two parties constituted an industrial matter for the purposes of the Act — Dismissed 3110

Claim *re* unfair dismissal — Applicant Union claimed employee had been unfairly and summarily dismissed and sought reinstatement without loss of entitlements — Respondent argued employee had abandoned employment — Commission found employee had terminated the contract of employment — Dismissed — Child Care 3135

Employee summarily dismissed for alleged poor time keeping — Applicant claimed dismissal was unfair and sought reinstatement — Respondent argued right to set policies concerning lateness and to enforce them — Commission found from evidence that conduct of Applicant had not been such that would have created a fundamental breach of contract and that dismissal was summary in nature and unfair — Granted — Mining 2506

Application for allegedly denied contractual entitlements — Applicant claimed contract of service had been for fixed term and sought payment for balance of wages, vehicle and tool allowances and exemplary damages — Commission found written contract of service, by incorporating the terms and conditions of an award, expressly provided for termination on one week's notice or payment in lieu, as was done — Further, a claim for exemplary damages was not within the Commission's jurisdiction — Dismissed — Film and Television Production 3385

Claim *re* contractual entitlement — Applicant sought an extra two months' pay in lieu of notice as a contractual benefit denied him under contract of employment — Commission found from evidence, Applicant had not established that a term providing in excess of one month's notice to terminate the contract of employment should be implied into his contract of employment — Dismissed — Accounting 3101

Appeal against decision of Commission at (69 WAIG 2203) *re* summary dismissal of employee due to misconduct — Appellant union argued that evidence against employee was circumstantial — Full Bench noted strict well known company policy *re* misconduct and suspension of employee whilst investigation was conducted — Full Bench considered a number of principles and question of whether legal rights of employer had been exercised harshly or oppressively against employee so as to amount to an abuse of that right — Full Bench found evidentiary onus had been discharged by employer — Dismissed — Brewing 3228

Application for wages and moneys outstanding in lieu of notice under contract of service — Respondent argued Applicant was covered by award and was not dismissed, but voluntarily terminated his employment without notice — Commissioner outlined the questions to be answered and found applicant was covered by the award — Granted In Part — Hospitality 2780

Application *re* summary dismissal for alleged misconduct — Applicant claimed moneys in lieu of notice and in lieu of annual leave and sought a declaration for unfair dismissal — Respondent argued Applicant had failed to complete a task assigned to her, involving a substantial amount of money — Commission found Applicant had been lax and inattentative and had needed reprimanding, however this error did not justify summary dismissal — Furthermore, Commission found Applicant's previous service was without blemish and her competence and satisfactory service had been rewarded with a promotion — Granted in Part — Sales 3384

Conference matter referred *re* unfair dismissal — Applicant Union claimed the employee was dismissed from his employment because of instigating actions against the Respondent in the Commission — Respondent claimed he effectively gave notice to the employee and had offered him casual employment even though the employee was allegedly at loggerheads with his superior and that there was no future with the Respondent — Commission found a problem existed between the employee and his superior and that the employee architected his own fate by resuming employment at a casual rate — Dismissed — Hospitality 2521

Claim *re* unfair dismissal seeking reinstatement — Applicant claimed to be an efficient and effective employee but was badgered by superiors and was the subject of management by fear — Respondent argued Applicant needed to improve work performance or else they would have to part company — Commission found that the dismissal was not unfair and from evidence Applicant had not performed to expectations, he had not canvassed often enough or vigorously enough and was too often in the office — Dismissed — Sales 3389

Claim *re* unfair dismissal/contractual entitlements — Applicant sought reinstatement or one week's pay in lieu of notice — Applicant argued events prior to the termination had affected work performance, therefore dismissal was unfair and the termination procedure followed had not conformed with the employees' handbook — Respondent claimed Applicant had been warned to improve poor work performance — Commission found appropriate warnings had been issued and Respondent did not unfairly exercise the right to terminate the employee's services — Dismissed — Hospitality 3379

TRAINEES —

Application for variation to private industry clerical awards by inserting new "Traineeships" clause — Parties were in dispute on issues of "additionality", continuity of service, access to trainees by Union and on overtime and shift work — Commission found that ample safeguards existed to protect the trainees and amended awards, however "additionality" not granted — Granted in Part — Clerical 2060

TRANSFER —

Employee demoted and transferred on grounds of inefficiency — Appellant sought restoration to status held prior to position from which demoted — Respondent argued Appellant had been out of that area for some years and duties and responsibilities of it had increased since then in the area of Appellant's weakness — Government School Teachers Tribunal found that transfer provided Appellant with the opportunity to re-establish confidence, however restored Appellant to status sought — Granted In Part — Education 3436

Dispute *re* transfer of employee — Applicant employer sought declaration that it had the right to deploy its workforce in accordance with its operational requirements — Respondent unions argued that the Applicant had acted unfairly — Commission reviewed operational requirements, including the need for specified employees to hold vehicle licences, as under an agreement, and having regard for the interests of the persons directly involved found it unwise to do other than dismiss the application — Dismissed — Power 2815

CUMULATIVE DIGEST—*continued*

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TRAVELLING —

Applications to vary Award by consent *re* Travelling Allowances and reimbursement of expenses of providing prisoners' meals — Commission found changes reflected changes to an Award representing the State Standard and CPI increase respectively — Principles satisfied — Granted — Police 2540

Application for contractual benefits denied on termination — Applicant claimed a motor vehicle be assigned to him free of encumbrances, compensation for travelling and vehicle repair costs, payment of *pro rata* annual leave with loading and sought order — Respondent conceded claim for annual leave exclusive of loading — Commission found Applicant was to be assigned vehicle if employment relationship ceased albeit on the basis of accepting outstanding financial liability of the original purchase — Commission further found no upper limit expressed in contract of service on payment of maintenance costs — Annual leave loading not express term of contract — Granted In Part — Engineering 2507, 2784

Applications to vary Awards *re* travelling allowances — Commission found proposed variation sought to align instant awards' travelling allowance provisions with that of their parent award which had been recently varied in accordance with the Wage Fixing Principles — Granted — Health Administration 3345

Claim *re* site allowance — Parties agreed to site allowance of $1.70 per hour in lieu of special rates and provisions of awards — Commission found claim could be dealt with in accordance with State Wage Principles and Alcoa case and that disabilities associated with an isolated and exposed site warranted allowance sought — Commission further ratified agreements on other matters including a travelling allowance and grievance procedures — Granted — Construction 3120

Application to vary awards *re* special provisions for cycle working — Applicant Employers sought to insert new clause into awards to introduce cycle working in remote areas as in the Goldmining Consolidated Award — Respondent unions questioned the validity of a survey as evidence and argued that the best way to deal with the issues involved was on an *ad hoc* basis with specific mines as and when those mines were brought on stream — Respondents further claimed union notification provision of proposed clause was insufficient and provision of compensation for travel expenses was needed — Commission found cycle working to be a fact of life in the mining industry and that many small gold mining properties which would otherwise be non-viable had been brought on stream using the work cycle process — Furthermore, Commission found adequate protection in clause to cover objections of Respondents — Granted — Mining (Gold) 3022

UNFAIR DISCREPANCY —

Dispute *re* nature of contract of service — Applicant Union claimed agreement was for payment of a "full swing" regardless of actual time involved to install safety value on Rankin A platform and to return to Perth — Respondent agreed on matter of payment however argued agreement was reached with the impression that there would be flexibility of platform operations — Commission found *bona fides* of parties are not doubted however the scales tip in favour of employees' understanding of their contract — Granted — Power/Energy 2813

UNIONS —

[4]Application for an order compelling union respondent to comply with its rules — Applicant claimed union had entered into an undertaking which was in breach of the spirit and letter of its constitution in that the undertaking had been purportedly entered into without consultation with the representatives of the employees affected — Applicant gave notice that he did not wish to proceed as union had withdrawn from undertaking — President exercised his discretion to dismiss matter pursuant to section 27 as a proper recognition of the essence of the settlement which the parties had prudently reached — Dismissed — Unions 2348

[2]Application for amalgamation and registration of an Organisation — No objections lodged by members or other organisations — Full Bench found Industrial Relations Act and Union Rules complied with — subscription rates amended to correct a recording error — Granted — Unions 2670

[3]Application to alter Union Rules — Application sought to change its name — No objections were lodged — Full Bench found Industrial Relations Act complied with and authorised Registrar to alter rules — Granted — Unions 2320

[4]Application for order requiring organisation to comply with its rules — Applicant's members of minority faction on Respondent Union's Executive — Applicants asked to leave Executive meeting and they claim to have done so "voluntarily" rather than having been expelled by vote — During Applicant's absence a report which may have involved conflict of interest for Applicants was presented and a motion passed — Applicants claim they should have been invited to return and vote on motion and that resolution passes should be rescinded — President found that the presence of Applicants would not have altered the outcome of the resolution and used his discretionary powers under section 27 and/or section 66 to dismiss matter — Dismissed —Union 2349

[2]Appeal against finding of Commission (69 WAIG 1794) that organisation was party to an award pursuant to section 38 of the Industrial Relations Act — Appellant argued that Commission did not have power to make such finding and has misapplied Act's definition of "industry" — Full Bench defined "industry" and "calling", interpreted "in respect of" as per section 38 and reviewed authorities (esp. Parker's Case and Glover's Case) — Full Bench found section 38 enabled Commission to add any organisation as named party to award where there is sufficient connection insofar that the organisation is registered in respect of any calling to which the award applies or to any industry to which the award applies — As the calling of cabinetmaker was not one of the classifications of the Building Trades Construction Award, 14 of 1978, and as the fact that some cabinetmakers for whom UFTU have registration work in the Building construction industry does not mean that the UFTU necessarily is registered in respect of the building construction industry the Commission did no have power to make finding it did — Upheld — Building Construction 2646

Claim *re* Deduction of Union Subscriptions — Applicant Union sought order to restore deduction of Union subscriptions from wages by Respondent — Respondent argued that onus was on Applicant to make out a case for the reintroduction of payroll deductions and that it had failed to do so — Commission reviewed Authorities and found that the Respondent had mistated the onus — Given the lack of communication between the Respondent and Applicant the Applicant would have been placed in a position of justifying the reintroduction of payroll deductions without knowing why they were discontinued — Commission found no reason why administrative requirements of new Taxation regulations increased the problems to the employer of making deductions — Furthermore that the action taken could not be divorced from the manner in which it chose to do it — Granted — Timber ... 2525

[4]Application for interpretation of Union's eligibility for membership rule — Counterpart Federal Union and Other Federal and State Unions sought leave — President extensively reviewed authorities and principles *re* "intervention" and found that only the State registered Union whose rule was being interpreted had sufficient interest to intervene — Dismissed — Nursing 2343

[4]Application *re* eligibility for membership of a Union — Applicant argued that subject member was not an employee but an employer and therefore ineligible for membership — President cited authority of Rice's Case (64 WAIG 881) and found that the fact that a person was a director of a company did not preclude that person from also being an employee of that company — President decided subject member was an employee and therefore eligible for union membership — Dismissed — Nursing 2430

[2]Application for registration of employer organisation to cover the real estate industry — Full Bench found, application was not authorised in accordance with the rules of the applicant — Furthermore members had not been adequatley informed of intention to apply, proposed rules and right to object — Full Bench found members employers were from one real estate franchise group and that such a registration would not promote goodwill in the industry — Furthermore, Full Bench found danger of overlapping eligibility for membership — Dismissed — Real Estate/Unions 2939

[2]Applicant to amend eligibility rule — Objections were lodged by various organisations and companies — Applicant Union amended application by only seeking to insert "locomotive observers" and "tour guides in power stations" and asserted that the latter only related to persons whose major and substantial employment is that of tour guide — Objections were withdrawn — Full Bench found application had complied with provisions of Industrial Relations Act 1979 — Granted — Unions 3142

CUMULATIVE DIGEST—*continued*

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UNIONS —*continued*

Application for an Award — Applicant unions claimed that Respondent went to inordinate lengths when dealing with industrial relations issues either to frustrate the achievement of fair pay and working conditions or uphold its managerial prerogative and sought an Award to provide industrial relations negotiation — Respondent argued that the application was not for a new Award on the basis that previous industrial agreements from which it had retired were in effect Awards — Respondent further argued that to be regulated by a State Award would be a forced step backwards into the Pilbara industrial relations climate and that it needed to make a clean break from the industrial standards and practises of the industry as they were an impediment to the most efficient conduct of its operations and market competitiveness — Furthermore, that an Award was unnecessary as the Industrial Relations Act provided access to the Commission over acts of unfairness as they arise — Commission reviewed history of industrial relations, the application and disputation between the parties and found they had "painted themselves into their respective ideological corners" — Commission extensively reviewed authorities and the Industrial Relations Act and stated the need for mutual respect between the parties under the contemporary industrial relations climate — Commission found that the real interests of the Respondents' employees required the Industrial Relations fundamentals *re* cost — Commission examined the merits of and determined the issues of grievance procedures, on site union representation, suspension of paid union meetings, disputation between unionists and non-unionists, accommodation rents and utility charges — Commission set award period of six months with liberty to apply in relation to specific clauses — Award Issued — Iron Ore 3000

Conference referred for hearing and determination *re* demarcation dispute — Respondent Union claimed that it had exclusive constitutional and industrial coverage of specific tasks — Respondent further opposed intervention of ROU on the basis of the Railway Classification Board's jurisdiction — Commission found the ROU had sufficient interest in the matter to be granted leave to intervene — Commission examined authorities and found test to be whether the work in question was a major part of a contract of service — Commission found, on examination of Union Rules, relevant awards and evidence, that the Respondent Union did not have exclusive constitutional and industrial coverage of the specified tasks — Order and Declaration issued accordingly — Railways 2816

Application to vary Award by consent *re* a new classification — Parties claimed significant changes to duties and responsibilities and that proposed classification and rate of pay were within the Wage Fixing Principles — Objecting union argued that it had consitutional coverage and on the basis of the work performed and the preferences of the employees concerned — Commission examined union Rules and Awards and found the objection was not sustained — Commission further found proposed new classification was warranted, however, inserted a proviso to account of an Order of CICS — Granted In Part — Entertainment 2758

[2]Two applications from Construction Mining and Energy Workers Union and Operative Plasterers and Plaster Workers Federation respectively to amend their eligibility for membership rules to include wall and ceiling fixers — Work had been performed by plasterers, carpenters and wall and ceiling fixers which had caused a long history of demarcation disputation — Full Bench found that although there is now a specific apprenticeship curriculum for wall and ceiling fixers the trade developed from fibrous plastering (covered by Operative Plasterers and Plaster Workers Federation) due to changes in material and technology — Full Bench found that only a particular class of carpenters do the work in question, the fixing of boards involved only a small role for carpenters and that training in the trade of carpentry did not necessarily equip one to be a wall and ceiling fixer — Full Bench amended constitution rule of Operative Plasterers and Plaster Workers Federation to include wall and ceiling fixers — Building Construction 1908

[4]Application *re* alleged breach of its rules by union executive and irregularity *re* elections arising from a report criticising previous applications Applicants had made to the Commission and recommending that they be reprimanded by "Conference" — President declined to exercise his discretion and dismiss matter after union offered to withdraw resolutions relating to report — President found conference report sought to discipline Applicants outside the union's rules — Further not affording applicants the opportunity to answer allegations against them in the report and cutting off avenue of appeal was a denial of natural justice — President also found that as Applicants were candidates in union elections and the Conference report could be used to discredit them in those elections, the report constitutes an election irregularity in that it is unlawful use of union resources in an election — President found conference report, union executive and union president all to be in breach of union rules — Granted — Unions 2944

[4]Application that SSTUWA had breached its rules through actions of its Executive *re* TAFE Committee — President found proposed amendments to rules *re* TAFE Committee were a breach of rules as TAFE Committee not consulted as required — There were further breaches of union policy and rules in that there was to be no special TAFE session at Conference to discuss matters pertaining to TAFE — Granted — Unions 3267

[4]Application that SSTUWA had breached its rules through decisions taken by its Executive *re* proposals concerning TAFE salary and restructuring items — President found that by bypassing the TAFE Committee and conducting a survey of TAFE members for which the rules provide no specific provision the Executive had acted *ultra vires* — In Supplementary Reasons, President reviewed authorities and directed parties as to purpose of speaking to minutes as well as clarifying interpretation of union rules given in decision proper — Granted — Unions 2960

[2]Application to alter membership rule — That part of Application which sought to delete an exclusion to members or persons eligible to be members of another union was objected to and adjourned *sine die* — Full Bench found in so far as the Application related to Honorary members sections 62 and 55 of the Industrial Relations Act had been complied with — Granted In Part and Adjourned — Unions 3507

[4]Applicant Union sought declaration that the circulation to all union members of an addendum to the agenda of the union's annual conference would be sufficient compliance with an order of the President so as not to render an election for executive officers null and void — Granted — Unions 3266

Application to vary scope of Award — Parties sought new classification to cover "Award Free" employees — objecting union and CWAI argued on the basis of another Awards' provisions and the specific constitutional coverage of the Objector — Commission examined authorities, applied Common Object Test and found employees concerned to be employed in the Health Industry — Granted — Health 3351

Application for an order directing Union to comply with its rules *re* union elections — Respondent admitted that it had failed to hold elections pursuant to rules and cited the pending amalgamation with another union as a delayig factor in so doing — Respondent argued President did not have power to issue orders sought — President reviewed authorities and Union rules and found the omission to hold an election as prescribed to be a serios matter and warranted the exercise of the President's discretion under section 66 of the Industrial Relations Act — Granted — Unions 3262

[4]Application pursuant to section 66 — Application for adjournment due to unavailability of Respondent Union's Secretary — Application for adjournment not opposed, however Applicant sought discovery and inspection of certain documents — Granted — Unions 3261

[2]Application to alter registered rules — Applicant sought eligibility for union employees to become members of union — Objections lodged by members — Full Bench found opinion of membership not ascertained, Association's Council had no express power to alter rules and had not complied with the Association's rules — Furthermore, Full Bench found failure to comply with Industrial Relations Act — Dismissed — Unions 3247

VICTIMISATION —

Appeal against decision of Public Service Commission *re* unfair dismissal due to inefficiency Appellant argued allegations of inefficiency were vague and nebulous and furthermore there was a lack of notification and counselling with regard to the matters of inefficiency and work performance — Appellant further argued that penalty of dismissal was unreasonably harsh and sought reinstatement without loss of benefits — Board found from evidence that dismissal was fair and just and concluded unanimously that appellant had failed to successfully perform the duties required of a Level 5 Engineer — Dismissed 2586

CUMULATIVE DIGEST—*continued*

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VICTIMISATION—*continued*

Application for reinstatement on the grounds of unfair dismissal — Applicant alleged victimisation and a constructive dismissal — Respondent argued that a fair and proper approach had been taken to employment difficulties which occurred with the Applicant over the employment period — Commission found Applicant had terminated the contract of service — Furthermore that the Respondent had done everything to assist the Applicant in discharging duties — Commission also commented on representation of Parties and possibly vexatiousness of Application — Dismissed — Education 3103

WAGES —

Claim *re* reclassification of employee to tradesperson in accordance with an agreed reference Award — Applicant Union argued employee performed some range of tasks as and was interchangeable with a co-employee paid as a tradesperson — Further that previously agreed wage arrangements were no longer appropriate — Respondent argued wage arrangements were an agreed acceptance of a previous Commission recommendation and that subsequent changes did not represent an increase in work value — Commission found on evidence that events had overtaken the Commisison's previous recommendations applicability and that the Respondent treated both employees as equal in skill — However Commission considered employee did not possess all skills of a tradesperson and in the wider sense, hence was not prepared to accede to the claim in full and recommended that further discussion of the issue occur between the parties — Granted in Part — Building Maintenance (Retail) 2210

Claims for variation of award, redefinition of classification, insertion of new classification or alternatively group reclassification — Union claimed that when "broadbanding" of classifications occurred in formulation of current award an omission resulted in the operators of some machines being effectively "declassified" — Commission found broadbanding agreement had also involved a restructuring of classifications according to skills whereas this claim sought to change basis of classification to size of machinery operated — Commission also found the fact that Award was still in term to be an insurmountable barrier — Dismissed — Iron Ore 2142

[3]Consent claim for variations to awards including wage increases arising from conference application — Parties sought ratification of agreement on award restructuring in accordance with Structural Efficiency Principle — COWAI intervened pursuant to section 50 of Act — CICS reviewed tests out in Structural Efficiency Principle, analysed agreement and found agreement satisfied tests — Granted — Health Care 1938

Application for Second Tier wage increase — Commission found that Union had not satisfied requirement of the Principles of identifying cost offsets and/or structural efficiency changes for Award to be amended to provide a four per cent increase — Dismissed — Accounting (Clerks) 2142

Claim *re* experience payment to be maintained when acting in higher classifications — Applicant Union argued that there was a disparity between day and shift employees — Respondent argued "experience allowance" as title suggests, is for the gaining of experience in the higher classification — Commission having noted the history of the allowance found that experience payment be maintained — Ordered accordingly — Power/Electrical 2212

[3]Application for amalgamation of two existing awards into one new award and for the removal of wage differential between different categories of hairdressers — Commission in Court Session examined recent changes in duties of hairdressers in the light of both the Work Value Principles and Structural Efficiency Principle and found differential should remain — Granted in Part — Hairdressing 2324

Application for award variation *re* four per cent second tier wage increase, 38 hour week and maternity leave — Applicant Union sought phasing in of four per cent increase with retrospective dates, and date of hearing as operative date for 38 hour week — Commission found Wage Principles did not envisage for second tier wage increases prior to implementation of offsets and as for 38 hour week, set an operative date which allowed time for necessary adjustments to meet requirements of the Order — Ordered accordingly — Dry Cleaning/Laundry 2112

[3]Application for a New Award by consent — Applicant Union sought new professional classification and salary rates as the second stage in arrangement in negotiating the existing Award — Applicant argued for a special case to be recognised and that its previous acceptance of depressed salary rates warranted recognition — Respondent presented evidence as to how new award arrangements were part of the restructuring of the industry — Commission in Court Session limited its consideration of the Application to the question of a Special Case — Commission in Court session accepted the parties submissions and evidence as to the true nature of the arrangements — However, Commission in Court Session agreed with CWAI, intervening, that an argument which seeks to build the recognition of an anomaly or inequity upon the absence of an equitable base and thereby achieve special case status is an exercise in semantics — Granted in Part — Surveying 2675

Claim *re* Deduction of Union Subscriptions — Applicant Union sought order to restore deduction of Union subscriptions from wages by Respondent — Respondent argued that onus was on Applicant to make out a case for the reintroduction of payroll deductions and that it had failed to do so — Commission reviewed Authorities and found that the Respondent had mistated the onus — Given the lack of communication between the Respondent and Applicant the Applicant would have been placed in a position of justifying the reintroduction of payroll deductions without knowing why they were discontinued — Commission found no reason why administrative requirements of new Taxation regulations increased the problems to the employer of making deductions — Furthermore that the action taken could not be divorced from the manner in which it chose to do it — Granted — Timber ... 2525

[3]Application to vary Wages clause of an Award — applicant Union sought increase rates for specific classifications and to insert a new classification on the grounds of work value changes — Respondent argued claim could not be considered in isolation of consideration resultant from Structural Efficiency Principles — Minister intervened to raise questions related to possible flow-ons — CICS reviewed Work Value Principle and found that although any restructuring may alter the situation the case for work value adjustments had not been established — Dismissed — Railways 2941

Application to vary award by consent — Applicant denied it had a special case and sought significant changes to conditions of employment — Applicant argued that the existing conditions were chronically out of date and not in the Public Interest — Public Service Arbitrator examined a wealth of evidence — PSA found it had no hesitation whatsoever despite costs, in sanctioning on agreement as it applied to reducing hours of work to 40 per week, rosters and the like — PSA found after noting professional status of employees concerned, work value charges of a justify to magnitude claimed five per cent salary increase — Granted — Health 2361

Application to vary Awards *re* Wages — Special Case Status previously granted within bounds of Structural Efficiency — Parties sought order enabling interim increase in rates pending find resolution of matter — CICS found parties had heeded Commission's "counselling" and examined award variation proposals to date — granted — Health 2671

[3]Claim for award variation — Applicant claimed increase in base wage rate for all classifications on the basis of increased work value and for factors specific to industry subject to award which constitute "Special Case" status — Commission in Court Session accepted that this was a special case but emphasised that Structural Efficiency must take precedence — Commission in Court Session found the increase sought to be a step in award restructuring but was not prepared to vary base rate — Commission in Court Session ordered additional payment on understanding that there were no undeclared over award payments and that this would not prejudice final determination of award rates under Structural Efficiency Principle — Granted in Part — Mineral Sands 2321

Application to vary Award by consent *re* Second Tier Wage Increase — Parties agreed to trade off with respect to Tea Breaks, Meal Money, *Pro-Rata* Annual Leave Loading, Long Service Leave and Higher Duties — Commission found lack of detailed cost offsets to be unsatisfactory — However, Commission was not prepared to stand in the way of the agreements consumation, given all the circumstances, including the time expired since the matter was first raised — Granted — Health 2747

CUMULATIVE DIGEST—*continued*

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WAGES —*continued*

Applications to vary Awards *re* Wages Schedules and Annual Leave — Parties presented agreed facts on work value increases and sought new wages schedules to reflect movement and rearrangement in an award with which the parties sought to re-establish a nexus — Parties in disagreement over Annual Leave provision — Respondent sought removal of the word "department" from the Annual Leave clause and argued that its use hampered the efficient management of numerous employers operating small establishments — Commission considered it was in no way bound by a CICS Decision on which the Applicant relied — Commission found little equity where employees who did not suffer the inconveniences for which more than four weeks annual leave were designed to compensate, continue to enjoy that benefit — Furthermore it was a semantic accident which prevented compliance with the spirit of the prescription — Granted in Part — Health 2428

[3]Claim *re* wage increases and improvements in conditions beyond Second Tier Wage Ceiling — Applicant Union sought nexus with Government counterparts — CICS rejected nexus, however found that wages and conditions should be adjusted in line with work value increases — Ordered Accordingly — Health/Welfare 2336

[3]Preliminary point raised in proceedings instituted on Commission's own motion to consider National Wage Case, August 1989 pursuant to section 51 of IR Act — CWAI whilst not arguing that Commission in Court Session should refrain from endorsing National Wage Decision submitted that procedurally this was not a decision that could be given effect by General Order as per section 51 because it did not of itself vary wages in federal awards but instead required individual award variation applications with different dates of operation — Majority of Commission in Court Session found that the fact that the decision did not result in any immediate or collective amendment to awards does not mean that it is not applicable to those awards — Further, the instant decision is applicable generally to awards because all awards of the Australian Commission are covered by the Principles which flow from that decision and it is therefore appropriately dealt with under section 51 — State Wage Case 2913

Application to vary Award *re* new provision for additional payments for performing "internal relief" and variation of rates for casual employees performing "external relief" — Applicant employer argued proposed variation was part of an indivisible cost neutral package the first of significant restructuring arising out of an agreement — Respondent Union argued the proposed variation to casual rates reduced salaries contrary to the *de facto* wage Principle — Government School Teachers Tribunal found agreement did not stand up to the ultimate tests of Structural Efficiency Principle but proposed additional payments were in accordance with the Allowances Principle — Tribunal found itself unable to find in favour of the Applicant on the basis of the Respondents original consent to the variation of rates to casual workers *per se*— Tribunal stated that *de facto* Principle had been "buried" by CICS — Tribunal found on merit, it was inequitable and illogical to compress a scale of salaries to which a person progresses by virtue of qualifications and experience to a middle of the range salary — Granted In Part — Eduction 2866

[3]Proceedings instituted on Commission's own motion to give consideration to issuing General Order giving effect to National Wage Case decision of August 1989 — Commission in Court Session adopted Wage Fixing Principles and increased Minimum Wage — State Wage Principles provide for "structural efficiency adjustments" comprising two separate wage increases of up to three per cent subject to no extra claims commitments being given by unions and inserted in Awards — Commission in Court Session also provided for "minimum rates adjustment" for refixing of wage relativities after awards have been restructured and for "special cases" to deal with claims for increases in wages or improvements in conditions which exceed the maximum increases allowable — Effected — State Wage Case 2197

Applications to vary Awards by consent *re* wages — Parties sought first Structural Efficiency Wage Increase on the basis of the parties' work since 1985 — PSA/Commission found it would be a strange application of equity and good conscience to erect an artificial hurdle for the parties to scale merely because they had anticipated the requirements now in place and complied substantially with them ahead of time — PSA/Commission expressed misgivings in applying a $15.00 increase to the lowest classification Level, however considered that the situation could be rectified — Granted — Public Administration 3282

[3]Application to vary Award by consent — Wages — Parties sought once and for all "catch up" increase in wages — CICS found that by all relevant comparisons the employees concerned had been seriously prejudiced for apparently bureaucratic reasons and that simple fairness required a proper nexus for wages be established — Granted — Catering 3256

Applications to vary Awards *re* wage increase pursuant to Structural Efficiency Principle — Public Service Arbitrator examined agreement of parties, which included, *inter alia*, the introduction of broadbanding, scope for multiskilling, more flexible working hours and changes to other provisions in line with the Public Service — PSA found substantial benefits to both employers and employees at very little cost, which was within the spirit and letter of the Structural Efficiency Principle — Granted — Health 3290

Applications to vary Awards — Parties sought rates of pay increases in accordance with Structural Efficiency Principle — Commission reviewed dicta of principle and having regard that parties were expected to present a single award to replace existing three and non-award measures already implemented, found that they had done enough to comply with the Principles — Commission expressed concern in applying the $15.00 quantum to certain levels of employee and required amendments to incorporate flexibility in adjustment of hours of work — Granted — Police 3355

Application for variation of award — Commission in Court Session had endorsed work value package in accordance with Wage Fixing Principles Package which was to be delivered in carefully spaced instalments — Commission found instant award had not received endorsed increase and ratified final instalments — Granted — Health 3054

Settlement of dispute *re* pay claim — Parties sought ratification of three per cent or $15.00 as first instalment pay increase on the basis of a settlement wherein parties had reached agreement on certain aspects of a Conditions of Work Agreement — Commission considered agreement and also put restructuring in the light of the Structural Efficiency Principle — Commission found that although agreement was a tenuous one, on the face of it, it justified the salary adjustment sought, with future restructuring to be examined on application for the second instalment of the claim — Granted — Education 3644

Claim *re* wage increase — Applicant sought four per cent increase pursuant to Second Tier — Parties were in Agreement — Commission noted with concern parties agreement to establish committees to inquire into ways and means of achieving efficiency rather than implementing them — Commission reiterated that spirit of the Principles is that changes should be real so that efficiencies can take place — Granted — University Administration 2766

Conference matter referred for hearing and determination *re* wage increase — Applicant Employer claimed that it had erroneously paid its employees twice a second tier wage increase and sought to absorb part of that amount by not passing on another increase — Respondent argued increase in question was nothing more than an over award payment — Commission reviewed authorities and found that the money in question was not an award entitlement but a contractual benefit for which each of the employees, individually, would have a right to make a claim pursuant to section 29(b)(ii) of the Industrial Relations Act — Dismissed —Retail 2833

Application to vary Award by consent — Parties sought increase in salaries on the basis of a Structural Efficiency Agreement — Commission took the view as expressed in the Building Trades Case and found that the parties had done enough to justify the first instalment under Structural Efficiency Principle — Commission found it not inappropriate to adjust the lower rates in the Award by a quantum of $15.00 because of the new career structure dependent in part on such adjustments — Public Transport — Granted 3369

Application pursuant to Regulation 93 of Act to set aside proceeding and order which varied Award — Applicants claimed provisions of Regulations 10 and 11 were not followed thus they were unaware of proceedings and this amounted to a denial of natural justice — Respondent denied claim and agreed that employees concerned would be without award coverage should application succeed — Commission found in favour of Applicant but with the instruction that position of employees covered by the Award remain unaltered until matter is finally determined — Granted — Hospitality 2743

Dispute *re* wages for new classification in award — Parties are in agreement on the definition, duties and responsibilities of classification — Commission found claim to fall within the Work Value Principle of State Wage Principles — Commission having regard to submissions and material and inspections undertaken determined the appropriate quantum — Ordered Accordingly — Power/Energy 2753

CUMULATIVE DIGEST—*continued*

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WAGES—*continued*

Application to vary Awards by consent *re* wages — Parties aimed at implementing the objects of the Structural Efficiency Principle into the Private Health Care Industry — Furthermore the parties are preserving a generalised nexus in wages and conditions with a broad-banding exercise thus reducing a multiplicity of classifications — Commission found the parties have complied with the requirements of the Structural Efficiency Principles — Ordered Accordingly — Health Care 3316

Application to vary Award by consent increasing wage rates for part-time employees — Applicant Union claimed wage rates for full-time academics had been adjusted and should reflect upon the part-time academic salaries prescribed in the Award — Commission found the variation of an Award could be varied if not previously varied — Furthermore no extra claims commitment has been included — Granted — Education 3330

WORK VALUE —

Claim *re* reclassification of employee to tradesperson in accordance with an agreed reference Award — Applicant Union argued employee performed some range of tasks as and was interchangeable with a co-employee paid as a tradesperson — Further that previously agreed wage arrangements were no longer appropriate — Respondent argued wage arrangements were an agreed acceptance of a previous Commission recommendation and that subsequent changes did not represent an increase in work value — Commission found on evidence that events had overtaken the Commission's previous recommendations applicability and that the Respondent treated both employees as equal in skill — However Commission considered employee did not possess all skills of a tradesperson and in the wider sense, hence was not prepared to accede to the claim in full and recommended that further discussion of the issue occur between the parties — Granted in Part — Building Maintenance (Retail) 2210

[3]Application to vary Wages clause of an Award — applicant Union sought increase rates for specific classifications and to insert a new classification on the grounds of work value changes — Respondent argued claim could not be considered in isolation of consideration resultant from Structural Efficiency Principles — Minister intervened to raise questions related to possible flow-ons — CICS reviewed Work Value Principle and found that although any restructuring may alter the situation the case for work value adjustments had not been established — Dismissed — Railways 2941

Application to vary award by consent — Applicant denied it had a special case and sought significant changes to conditions of employment — Applicant argued that the existing conditions were chronically out of date and not in the Public Interest — Public Service Arbitrator examined a wealth of evidence — PSA found it had no hesitation whatsoever despite costs, in sanctioning on agreement as it applied to reducing hours of work to 40 per week, rosters and the like — PSA found after noting professional status of employees concerned, work value charges of a justify to magnitude claimed five per cent salary increase — Granted — Health 2361

[3]Claim for award variation — Applicant claimed increase in base wage rate for all classifications on the basis of increased work value and for factors specific to industry subject to award which constitute "Special Case" status — Commission in Court Session accepted that this was a special case but emphasised that Structural Efficiency must take precedence — Commission in Court Session found the increase sought to be a step in award restructuring but was not prepared to vary base rate — Commission in Court Session ordered additional payment on understanding that there were no undeclared over award payments and that this would not prejudice final determination of award rates under Structural Efficiency Principle — Granted in Part — Mineral Sands 2321

Applications to vary Awards *re* Wages Schedules and Annual Leave — Parties presented agreed facts on work value increases and sought new wages schedules to reflect movement and rearrangement in an award with which the parties sought to re-establish a nexus — Parties in disagreement over Annual Leave provision — Respondent sought removal of the word "department" from the Annual Leave clause and argued that its use hampered the efficient management of numerous employers operating small establishments — Commission considered it was in no way bound by a CICS Decision on which the Applicant relied — Commission found little equity where employees who did not suffer the inconveniences for which more than four weeks annual leave were designed to compensate, continue to enjoy that benefit — Furthermore it was a semantic accident which prevented compliance with the spirit of the prescription — Granted in Part — Health 2428

[3]Claim *re* wage increases and improvements in conditions beyond Second Tier Wage Ceiling — Applicant Union sought nexus with Government counterparts — CICS rejected nexus, however found that wages and conditions should be adjusted in line with work value increases — Ordered Accordingly — Health/Welfare 2336

Application for variation of award — Commission in Court Session had endorsed work value package in accordance with Wage Fixing Principles Package which was to be delivered in carefully spaced instalments — Commission found instant award had not received endorsed increase and ratified final instalments — Granted — Health 3054

Application for variation to award — Applicant seeks inclusion of new classification in award — Work Value — Commission found application to be similar to that approved by CICS and Respondent's objections to be of no substance — Granted — Power/Energy 2068

Dispute *re* wages for new classification in award — Parties are in agreement on the definition, duties and responsibilities of classification — Commission found claim to fall within the Work Value Principle of State Wage Principles — Commission having regard to submissions and material and inspections undertaken determined the appropriate quantum — Ordered Accordingly — Power/Energy 2753