

CUMULATIVE DIGEST headings

*Denotes New Heading

- Absence Without Leave
- Act—Interpretation of
- Allowances—See also specific heading, e.g. Isolation Allowance, Industry Allowance, Meal Money—(Includes Special Rates and Provisions)
- Annual Leave—(Includes Annual Leave Loading)
- Appeal
- Apprentices and Juniors
- Awards—(Includes specified sub-headings, First Awards, New Awards, Area, Scope, Coverage, Cancellations, Award-Free, Respondency)
- Board of Reference
- Board and Lodging—(Includes Accommodation)
- Bonus—(Includes Incentive Payments)
- Breach of Award
- Capacity to Pay—Includes Inability to Pay
- Casual Work—(Includes loadings applicable to such work and nature of casual employment)
- Classification—(Includes Reclassification)
- Clothing—(Used when clothing is/is not provided and for clothing allowances)
- Common Rule—(Used in relation to Awards being or becoming Common Rule awards)
- Comparative Wage Justice—See also Nexus—(Includes Relativities)
- Compassionate Leave—(Includes Bereavement Leave)
- Compensation—See also specific heading, e.g. Redundancy, Long Service Leave—(Includes compensation for unfair dismissals)
- Conference—(Includes such matters as jurisdiction arising out of)
- Confined Space
- Consumer Price Index
- Contract of Service—(Used in relation to Section 29 (2) applications)
- Contract out of Award
- Custom and Practice
- Dangerous Work
- Date of Operation—(Includes Retrospectivity, Prospectivity)
- Demarcation
- Dirt Money
- Disabilities
- Discrimination
- Employee—(Used in such cases as whether person is an employee or independent contractor or agent)
- Enforcement of Awards/Orders
- Entry: Right of
- Hours of Work
- Industrial Action—(Includes Work-to-Rule, Picketing, Stop Work Meeting, Strike, Bans, Lockouts)
- Industrial Matter
- Industry—(Used re questions of extent and meaning of specified industry)
- Industry Allowance
- Interpretation—Words and Phrases
- Intervention
- Isolation Allowance
- Jurisdiction
- Jury Service
- Leave Without Pay
- Living Away From Home Allowance
- Long Service Leave
- Managerial Prerogative
- Manning
- Maternity Leave
- Meal Breaks
- Meal Money
- Misconduct
- Mixed Functions—(Includes Higher Duties)
- Natural Justice
- Nexus
- Night and Weekend Work
- On Call—(Includes Stand by)
- Order—(Includes Cancellation of Order)
- Over Award Payment
- Overtime—(Includes Call Back, Recall)
- Part-Time
- Penalty Rates
- Piecework
- Preference—(Includes Compulsory Unionism)
- Principles (Wage Fixing)
- Procedural Matters (e.g. Standards of evidence)
- Promotion Appeals
- Public Holidays
- Public Interest
- Redundancy/Retrenchment—(Includes Severance Pay)
- Reinstatement
- Registration—See Unions
- Rest Periods—(Includes Smokos)
- Safety
- Shift Work
- Sick Leave
- Standdown
- Stay of Proceedings
- Superannuation
- Supplementary and Service Payments
- Tallies
- Technological Change
- Termination—(Includes Dismissal, Wrongful/Unfair Dismissal)
- Training
- Transfer
- Travelling—(Includes Travelling Allowance and Travelling Time)
- Unfair Discrepancy
- Unions—(Includes Direction for Observance of Rules, Registration, Rules, Enforcement of Rules, Coverage/Constitutional Coverage, Dues, Membership, Cancellations, Exemptions)
- Utilisation of Contractors
- Victimisation
- Wages—(Includes Catch-up Margins, Payment by Results, Piece Work, Minimum Wage)
- Work Value
- Worker Participation
- Workers Compensation

CUMULATIVE DIGEST

MATTERS REFERRED TO IN DECISIONS OF INDUSTRIAL APPEAL COURT, INDUSTRIAL COMMISSION AND INDUSTRIAL MAGISTRATES CONTAINED IN VOL. 78 PART 1, SUB PART 10.

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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ABSENCE WITHOUT LEAVE	
Application re unfair dismissal-Applicant argued that he had maintained contact with a senior manager whilst not attending mine site-Respondent argued that application was lodged out of time and that Applicant had abandoned his job-Commission found that the action taken by an employer to dismiss an employee is not effective until it is communicated to the employee-Application restored to the lists for further hearing and determination. - Mr DJ Duke-v- Byrne-cut Mining Pty Ltd - APPL 1360 of 1998 - BEECH C -21/10/98 - Metal Ore Mining.....	4414
Application for compensation on the grounds of unfair dismissal-Applicant argued that the termination was without warning and without valid reason-Respondent argued that the Applicant was dismissed because of an unsatisfactory attitude to his work and failure to comply with instructions-Commission found that it needs to adopt a pragmatic and practical approach to matters like this in looking at the relationship between a farmer and his farmhands-Commission further found that the manner of dismissal is only one of the factors to be considered in a case of alleged unfair dismissal-Dismissed - Mr GB Johnson -v- DC & CM Richards - APPL 44 of 1998 - FIELDING C - 25/09/98 -Agriculture	4430
Application for reinstatement on the grounds of unfair dismissal-Applicant argued that the allegation of assault made against former employee is part of a conspiracy by Respondent's senior officers to get rid of former employee due to his active membership of the Applicant union-Respondent argued that employment was terminated with five weeks' pay in lieu of notice due to the assault on the maintenance superintendent-Commission found that the Respondent gave fair opportunity to discuss the incident but that industrial law does not require employers to keep an inquiry alive indefinitely-Dismissed. - AUTO, FOOD,METAL, ENGIN UNION -v- Dampier Salt Operations Ltd - CR 214of 1998 - FIELDING C - 20/10/98 - Other Mining.....	4476
Application for compensation on the grounds of unfair dismissal-Applicant argued that management had mindfully worked against her interests-Respondent argued they had no intention of dismissing the Applicant when they telephoned her at home one evening but to invite her to a meeting to discuss her attitude and behaviour at work-Commission found that although the Applicant may have found the management's behaviour to be personally distressing this did not excuse her attitude and behaviour towards members of management-Dismissed. - LIQUOR, HOSPITALITY & MISC -v- Cat Welfare Society Inc T/A Cat Haven - CR 359 of 1996 - PARKS C -18/09/98 - Other Services	4480
ACT —INTERPRETATION OF	
³ State Wage Case 1998 —CICS reviewed whether to give effect to the decision of the Full Bench of the AIRC re the Safety Net Review —Wage and increase in the Adult Minimum Wage —Subject to qualifications arising out of the Western Australian legal framework and industrial ramifications of dealing with breakdowns in enterprise bargaining, the Minister for Labour Relations, CCI, TLC,& AMMA supported giving effect to the National Wage Decision —CCI and the Minister also gave detailed submissions on the State Economy —The Minister, CCI and AMMA argued that to meet economic objectives identified by the AIRC the wages increases should only be available by application and from the date the award is varied —Minister further asked the Commission not to adopt the Minimum Wage increases as that could be achieved under the Minimum Conditions of Employment Act —TLC argued that the safety net adjustments should be effected by general order as previous general orders had not had an adverse economic impact —TLC further argued that the differences between State and Federal laws conspired to disadvantage Trade Unions in the State and sought the deletion of the Enterprise Bargaining Principle —CICS found no good reason not to give effect to the National Wage Decision with Safety Net adjustments to be absorbed and available on application no earlier than the date of variation —CICS found that the Adult Minimum Wage was an integral part of the National Wage Decision and the abolition of the Enterprise Bargaining Principle would militate against a workplace focus —Statement of Principles and General Order issued —(Commission's own motion) -v- Trades and Labor Council of Western Australia & Others —APPL 757 of 1998 —Commission in Court Session —COLEMAN CC/FIELDING C/GREGOR C —12/06/98 —Various	2579
² Appeal against decision of Commission (78 WAIG 756) re denied contractual entitlements —Appellant argued Commission erred in not finding that the Respondent had abandoned his employment, that the Minimum Conditions of Employment Act applied as there was no award and the Commission did not have jurisdiction to deal with deductions from wages —Full Bench found that there was no jurisdiction in the Industrial Magistrate's Court and that the Commission correctly found that there was no term in the contract that the applicant forfeit a week's pay for leaving without notice —Dismissed —J & R Sacca Poultry -v —Mr C Pearson —APPL 206 of 1998 —Full Bench —SHARKEY P/COLEMAN CC/KENNER C —30/06/98 —Agriculture	2588
² Appeal against part of decision of Commission (78 WAIG 1065) re order that Appellant not refuse entry to its premises to an ex employee - Appellant argued that the application for the order appealed against should have been made under s23A of the IR Act, the order was incompetent and that the matter of the worker being prohibited from entering the Appellants premises was not an industrial matter - Full Bench found that the claim for the order raised a separate matter which could have been the subject of a separate application under s44 - Full Bench found that the matter did not effect or relate to the work rights or duties of the worker as an employee of the Appellant and the Commission was without jurisdiction to make the order - Upheld - WMC Resources Ltd -v- The Australian Workers' Union, West Australian Branch, Industrial Union of Workers - APPL 499 of 1998 - Full Bench - SHARKEY P/GREGOR C/SCOTT C. - 29/07/98 - Metal Ore Mining 3012 4Application for orders restraining Respondent Registrar from proceeding with action under s84E to have party struck out of award or industrial agreement - Applicant argued that jurisdiction was founded on interalia ss26 and 94 of the IR ACT - Respondent argued that the application was incompetent as it did not pertain to any matters referred to in s66 of the IR ACT - President found that the orders sought did not relate to the rules of the Applicant organisation, their observance or non observance, but to the discharge of the Registrar's statutory duty under s84E - Demised - COMM, ELECTRIC, ELECT, ENERGY -v- Registrar, Western Australian Industrial Relations Commission - APPL 1181 of 1998 - President - SHARKEY P - 27/07/98 - Other Services	3026
¹ Appeal against decision of Commission in Court Session (78 WAIG 2346) varying awards re salary packaging - Appellants argued it was not open to CICS to judge a government policy and attempt to circumvent it, and CICS impermissably had regard for the content of workplace agreements - Appellant argued CICS failed to: receive written evidence; give full consideration to the tax implications of the clause, and to have regard to matters of public interest, flow on and structural efficiency - Appellant further argued that any salary packaging would be contracting out of the award and contravene s114 of the IR Act - IAC found that CICS was not precluded from holding that industrial conduct was unfair because it may stem from a government policy from which the Commission has no jurisdiction - IAC further found that there was nothing in the award variation which would require the parties to enter into a salary packaging arrangement which was unfair to either one - IAC found that salary packaging was not mandatory - Arrangements entered into would not have the effect of annulling or varying the award, nor would they affect the rights of anyone other than the parties to the particular arrangement - Dismissed - Commissioner, Public Service Commission & Others -v- The Civil Service Association of Western Australia Incorporated - IAC 3 of 1998 - Industrial Appeal Court - Kennedy J./Anderson J./Scott J. - 09/09/98 - Government Administration	3630

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ACT—INTERPRETATION OF— <i>continued</i>	
² Appeal against decision of Commission (78 WAIG 2691) re dismissed application for an award - Full Bench found the appeal was determinable primarily on the interpretation of the Appellant Union's Rules - Full Bench found, having regard to the Fish Resources Management Act 1994 and the evidence, it was open to the Commission to find that the Respondent and its officers were not engaged in a service that bore any relationship to the Mercantile Marine - Full Bench further found the Commission correctly found that the fisheries officers were not eligible to be members of the Appellant and that the application for an award should be dismissed - Dismissed - Merchant Service Guild of Australia, Western Australian Branch, Union of Workers -v- Fisheries Department of Western Australia - APPL 1354 of 1998 - Full Bench - SHARKEY P/COLEMAN CC/KENNER C -18/09/98 - Government Administration	3648
Application for order re penalty imposed for misconduct for involvement in a prison incident - Applicant Union argued that the Respondent had imposed penalties on an employee for which it had no legal mandate - Applicant argued that the employee was not treated fairly or consistently; the suspension was arbitrary and capricious and Public Sector Management Act was not complied with - Respondent argued PSA was without jurisdiction because there was no disciplinary finding at the relevant time, there was no power to extend the time to file an appeal to the Public Service Appeal Board and because of s23(3)(d) of the IRAct1979 - PSA found there was no breach of the Public Sector Management Act and the Public Service Appeal Board had sole jurisdiction to determine such a matter - PSA further found justice required the matter to be brought to a conclusion - Matter divided and Dismissed in part for want of jurisdiction - The Civil Service Association of Western Australia Incorporated -v- Ministry of Justice - P 37 of1997 - Public Service Arbitrator - GREGOR C - 06/10/98 -Government Administration	4397
Application re Unfair Dismissal - Applicant argued that her resignation resulted from conduct by the Respondent designed to force her to resign so that "Resignation" actually amounted to an act of dismissal by the Respondent - Respondent argued that Applicant had resigned and that terms of the termination had been negotiated and agreed by the parties - Further costs against the Applicant's Industrial Agent was claimed because of negligent representation and serious dereliction of duty - Commission found Applicant resigned and for costs be made against the Applicant as the Agent was not a registered Industrial Agent - Dismissed and the Applicant to pay Respondent \$4000.00 costs. - Miss P Pisconeri -v- Laurens and Munns - APPL 555 of 1998 - CAWLEY C. - 12/11/98 - Business Services.....	4931
Application re Unfair Dismissal - Applicant argued that her resignation resulted from conduct by the Respondent designed to force her to resign so that "Resignation" actually amounted to an act of dismissal by the Respondent - Respondent argued that Applicant had resigned and that terms of the termination had been negotiated and agreed by the parties - Further costs against the Applicant's Industrial Agent was claimed because of negligent representation and serious dereliction of duty - Commission found Applicant resigned and for costs be made against the Applicant as the Agent was not a registered Industrial Agent - Dismissed and the Applicant to pay Respondent \$4000.00 costs. - Miss P Pisconeri -v- Laurens and Munns - APPL 555 of 1998 - CAWLEY C. - 12/11/98 - Business Services.....	4931
ALLOWANCES	
³ Chamber of Commerce and Industry application to recind General Order No. 1400 of 1997 on location allowances and issue new General Order to commence on or after first day of July 1998 - Section 50 parties afforded opportunity to be heard - no objections received as to proposed new order - New General Order issued. - Chamber of Commerce & Industry of Western Australia -v- Minister for Labour Relations & Others - APPL 975 of 1998 - Commission in Court Session - CAWLEY C./SCOTT C./KENNER C - General 2999 Application to amend award - Applicant sought to insert new provision for rental assistance into Award on grounds of shortage of accommodation; difficulty in retaining employees; current allowance is inadequate, inequality with current Workplace Agreement Minister for Labour Relations opposed amendment on grounds that the Union was only seeking entitled because it was offered under a Workplace Agreement, accommodation was optional; Rent not an industrial matter, rent is not an employee related expense and interalia, retention of staff at Westrail is not problematic in light of organisational restructuring - Commission in Court Session found that the appropriate way to deal with the inequity of this allowance was by way of application to amend the District allowance - Application dismissed - Australian Railways Union of Workers, West Australian Branch -v- Western Australian Government Railways Commission & Others - APPL 534 of 1997 - Commission in Court Session - COLEMAN CC/PARKS C/SCOTT C. - Rail Transport.....	3020
Applicant sought a declaration that 25 staff of Westrail whose jobs had been substantially changed, had been dealt with unfairly and as such sought an Order that their existing rates of pay (including an aggregate of allowances) and a productivity payment of 10% - Union Applicant claims that staff had carried out duties under new work arrangement which were beyond the scope of the award, on the understanding that they would soon enter into an Industrial agreement with Westrail. It is further claimed that now Westrail has reneged on that arrangement and is in the process of contracting out the work of these employees. The Minister for Labour Relations stated that the claim would undermine the intent and effect of the Public Sector Management Act, as previous employees in the same area had either accepted severance payments, had been redeployed or were awaiting redeployment. Further the Minister argued that the tasks undertaken by the employees were within the terms of the award, conditions attracting allowances were paid as entitlements and as such there was no enterprise for which a bargain could be determined. The Commission in Court Session found that within the context of the Enterprise Bargaining Principle there was no claim, and that the matters before the Commission should be considered under the Workvalue Changes Principles and because that was not the current claim before the Commission, the claim as it stood must fail - Application dismissed. - Australian Railways Union of Workers, West Australian Branch -v- Western Australian Government Railways Commission - CR 165 of 1997 - Commission in Court Session - COLEMAN CC/PARKS C/SCOTT C. - Rail Transport	3022
Application Re. Allegedly Denied Contractual Entitlements of Annual Leave, Daily Allowances, Long Service Leave and Wages. Applicant argued that Entitlements are constituted under contract of Employment. Respondent argued that it denied liability for the moneys claimed except for Long Service Leave and a component of a Daily Allowance, in fact Applicant was over paid. Commission found that Applicant had not established that there had been any denied contractual benefits which can be recovered in this jurisdiction other than the conceded Long Service leave. Granted in Part - Mr MD McPolin -v- The West Australian Locomotive Engine Drivers', Firemen's and Cleaners' Union of Workers - APPL 696 of 1997 - FIELDING C - Rail Transport.....	3358
Chamber of Commerce and Industry application to recind General Order No. 1400 of 1997 on location allowances and issue new General Order to commence on or after first day of July 1998 - Section 50 parties afforded opportunity to be heard - no objections received as to proposed new order - New General Order issued. - Chamber of Commerce & Industry of Western Australia -v- Minister for Labour Relations & Others - APPL 975 of 1998 - Commission in Court Session - CAWLEY C./SCOTT C./KENNER C - General	2999
Application for reinstatement on the grounds of unfair dismissal and allegedly denied contractual entitlements-Applicant argued that the dismissal was procured through stealth without either substantive or procedural fairness-Respondent argued that Applicant withdrew his services and refused to undertake the duties required of him under his contract of service-Respondent also argued that access to a credit card was not a term of Applicant's employment contract-Commission found that rather than taking steps to formally terminate the Applicant's employment, the Respondent restructured its organisation and in effect demoted him without proper notice or discussion-Compensation and denied contractual entitlements granted.- Mr V Tranchita -v- Wavemaster International Pty Ltd -APPL 1117 of 1997 - FIELDING C - 21/10/98 - Water Transport.....	4463

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ANNUAL LEAVE	
² Appeal against decision of Commission (78 WAIG 756) re denied contractual entitlements —Appellant argued Commission erred in not finding that the Respondent had abandoned his employment, that the Minimum Conditions of Employment Act applied as there was no award and the Commission did not have jurisdiction to deal with deductions from wages —Full Bench found that there was no jurisdiction in the Industrial Magistrate's Court and that the Commission correctly found that there was no term in the contract that the applicant forfeit a week's pay for leaving without notice —Dismissed —J & R Sacca Poultry -v —Mr C Pearson —APPL 206 of 1998 —Full Bench —SHARKEY P/COLEMAN CC/KENNER C —30/06/98 —Agriculture.....	2588
Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements -Applicant argued that despite his verbal resignation there was an understanding between herself and the Respondent that the resignation was rescinded and her job was still available-Respondent argued the Applicant's erratic behaviour reinforced the belief the Applicant had resigned and Commission could deal with matters under Minimum Conditions of Employment Act-Commission found the section 29(1)(b) application was not valid due to time restrictions -Commission further found that a commission in respect to the sale of a single property was outstanding-Granted in part —Ms MM Barnes -v- Elliose Pty Ltd t/a Faul & Associates —APPL 792 of 1997 —SCOTT C. —12/06/98 —Property Services.....	3343
Application for allegedly denied contractual entitlements -Only issue was date of operation-Applicant prepared to give Respondent company an additional 3 months to resurrect itself financially-Respondent argued for the 3 months unconditionally-Commission found that it was important for an order to issue confirming Applicant's entitlement to the money in the normal course-Ordered accordingly —Mr LR Vickers -v- Imtech Industries Pty Ltd —APPL 2308 of 1997 —BEECH C —09/06/98 .	2953
Application for allegedly denied contractual entitlements-Applicant argued that annual leave, long service leave and redundancy payment accrued from employment prior to recent employment with Respondent amounting to transmission of business-Respondent argued against a transmission of business and against jurisdiction of the Commission-Commission found that it is not the case that a transfer of assets is indistinguishable from a transfer of business-Dismissed - Mr G J Barrow -v- George Moss Limited T/A Gemco - APPL 2192 of 1997 - Cawley C - 29/9/98 - Services To Mining.....	4400
Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements-Applicant argued that she had insufficient time in which to complete her designated tasks and was verbally attacked by the Respondent-Respondent argued that although she had spoken to the Applicant about her work it had been the Applicant's intimidatory actions that had led to the dismissal-Commission found that there had been several instances of conflict between the Applicant and the Respondent during the working relationship and witnesses had seen the Respondent's aggressive attitude on prior occasions-Dismissed - Mrs JC Dingwall -v- Mac's Deli &News - APPL 217 of 1998 - PARKS C - 30/10/98 - Food Retailing.....	4411
Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements-Applicant argued that she had not agreed to the change in her employment status from full-time to casual and as such this change constituted an unfair dismissal-Respondent argued there had been agreement at a meeting between himself and the Applicant regarding the change in employment status and had willing paid all entitlements due-Commission found that the Respondent's behaviour represented a justifiable and prudent business decision-Dismissed. - Ms EM Greig -v- Occasions Pty Ltd T/A Classic Holidays - APPL 2045 of 1997 - PARKS C - 02/11/98 -Services to Transport	4422
Application for reinstatement on the grounds of unfair dismissal and allegedly denied contractual entitlements-Applicant argued that the dismissal was procured through stealth without either substantive or procedural fairness-Respondent argued that Applicant withdrew his services and refused to undertake the duties required of him under his contract of service-Respondent also argued that access to a credit card was not a term of Applicant's employment contract-Commission found that rather than taking steps to formally terminate the Applicant's employment, the Respondent restructured its organisation and in effect demoted him without proper notice or discussion-Compensation and denied contractual entitlements granted.- Mr V Tranchita -v- Wavemaster International Pty Ltd -APPL 1117 of 1997 - FIELDING C - 21/10/98 - Water Transport	4463
Application for reinstatement on the grounds of unfair dismissal and allegedly denied contractual entitlements -Applicant argued that the original letter of appointment did not refer to a probationary term-Applicant further argued that at no time was he warned of unsatisfactory work standards-Respondent argued that it was standard practice to employ sales staff on a probationary basis-Respondent further argued that a conversation about lack of performance had taken place and had included the applicant -Commission found that the applicant was employed on a probationary basis and the respondent had no obligation to continue the employment relationship after this period -Dismissed. - Mr D Beanham -v- Tutt Bryant Equipment Pty Ltd T/A Tutts-Ta Hong - APPL 208 of 1998 - GREGOR C - Machining and Motor Veh Whlslg.....	4895
Application for compensation on the grounds of unfair dismissal-Applicant argued that he was denied natural justice in not being given the opportunity to respond to allegations of poor performance and conduct-Applicant further argued that the respondent had breached the Workplace Relations Act, s.170 CM in terms of notice of termination of employment-Respondent argued that the applicant voluntarily left the employ of the respondent and there was no dismissal to confer jurisdiction on the Commission under the Act-Commission found that fairness and justice require than an employee accused of misconduct be given a reasonable opportunity to offer an explanation -Commission further found that the employer should conduct a reasonable investigation of the relevant circumstances to satisfy itself as to form an honest and genuine belief, based upon reasonable grounds, that the employee is guilty of misconduct- Dismissed. - Mr GA Chapman -v- JL & MN Rossiter T/A Arumine Painting Services - APPL 356 of 1998 - KENNER C - Other Services.....	4900
Application for allegedly denied contractual entitlements -Applicant argued that he never offered his resignation to the respondent company-Applicant further argued that all efforts made by him to discuss his contract were ignored -Respondent argued that he had had frequent discussions with the applicant in relation to running the business -Respondent further argued that the applicant had not been honest regarding his managerial abilities-Commission found that it was material to the case that the applicant at no time wrote down his version of events in protest at the respondent's alleged conduct-Commission further found that in the case of employment contracts, for a claim to be made for an ongoing salary, an employee must reject the purported termination by the employer and insist upon performance under the contract-Dismissed. - Mr GF O'Dea -v- South West Maintenance Services Pty Ltd - APPL 736 of 1998 - KENNER C - Services to Mining.....	4924
APPEAL	
² Appeal against decision of Commission (78 WAIG 756) re denied contractual entitlements —Appellant argued Commission erred in not finding that the Respondent had abandoned his employment, that the Minimum Conditions of Employment Act applied as there was no award and the Commission did not have jurisdiction to deal with deductions from wages —Full Bench found that there was no jurisdiction in the Industrial Magistrate's Court and that the Commission correctly found that there was no term in the contract that the applicant forfeit a week's pay for leaving without notice —Dismissed —J & R Sacca Poultry -v —Mr C Pearson —APPL 206 of 1998 —Full Bench —SHARKEY P/COLEMAN CC/KENNER C —30/06/98 —Agriculture.....	2588

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³ Appeal against decision of Board of Reference re objection to registration of employer under the CIPPLSL Act —Appellant argued that the BOR misconstrued or failed to give sufficient weight to the evidence on the nature of the Respondent's undertaking and the work done by its employees —Appellant further argued that it was more concerned with establishing that it had a right of appeal —Respondent argued that the provision of the IRACT 1979 indicated that the appeal was to be determined on the basis of the facts found by the BOR rather than the evidence raised before it and the findings were not defective — Respondent further argued that CIPPLSLPB -v- B.G. & E.D. Hoskins (71 WAIG 2051) was wrongly decided and invited CICS to reconsider it —CICS found on the basis of the grounds of appeal, that the appeal was incompetent —Majority of CICS found no right of appeal to the Appellant —Dismissed CICS further found that —Construction Industry Long Service Leave Payments Board -v- Claude Neon (Aust) Pty Ltd —APPL 350 of 1998 —Commission in Court Session —FIELDING C/CAWLEY C./SCOTT C. —02/07/98 —Construction Trade Services	2590
¹ Appeal from decision of President whereby the President declined to make orders in favour of the Appellant on an application under s.66 Industrial Relations Act alleging non-observance of the rules of the State School Teachers Union (Inc) - The Appellant submitted 177 grounds of appeal - The Respondents sought costs on the grounds that the proceedings are frivolously and vexatiously instituted. The Court held that the Appellant failed to establish that there were any errors of Law on the part of the President and further that the proceedings were not instituted frivolously or vexatiously - Appeal dismissed and no award of costs against Appellant. - Ms R Bannon -v- The State School Teachers Union of W.A. (Incorporated) & Other - IAC 1 of 1998 - Kennedy J./Franklyn J./Anderson J. - Education	3003
² Appeal against part of decision of Commission (78 WAIG 1065) re order that Appellant not refuse entry to its premises to an ex employee - Appellant argued that the application for the order appealed against should have been made under s23A of the IR Act, the order was incompetent and that the matter of the worker being prohibited from entering the Appellants premises was not an industrial matter - Full Bench found that the claim for the order raised a separate matter which could have been the subject of a separate application under s44 - Full Bench found that the matter did not effect or relate to the work rights or duties of the worker as an employee of the Appellant and the Commission was without jurisdiction to make the order - Upheld - WMC Resources Ltd -v- The Australian Workers' Union, West Australian Branch, Industrial Union of Workers - APPL 499 of 1998 - Full Bench - SHARKEY P/GREGOR C/SCOTT C. - 29/07/98 - Metal Ore Mining	3012
Appeal for reinstatement on the grounds of Termination was harsh, oppressive and unfair - Appellant argued that he had expectation of continued employment beyond term of short contract - Respondent argued employment was subject to a contract which came to an end by the effluxion of time, and thus the Board had no jurisdiction to deal with this matter - Board considered the series of unbroken express contracts and the agreed and express term contained therein and found that the decision not to offer a further contract after the last one elapsed was not a termination and thus the Board had no jurisdiction to deal with this matter - Appeal dismissed. - Mr JW Ridd -v- Family and Children's Services - PSAB 6 of 1998 - Public Service Appeal Board - CAWLEY C. - Government Administration	3389
¹ Appeal against decision of Commission in Court Session (78 WAIG 2346) varying awards re salary packaging - Appellants argued it was not open to CICS to judge a government policy and attempt to circumvent it, and CICS impermissably had regard for the content of workplace agreements - Appellant argued CICS failed to: receive written evidence; give full consideration to the tax implications of the clause, and to have regard to matters of public interest, flow on and structural efficiency - Appellant further argued that any salary packaging would be contracting out of the award and contravene s114 of the IR Act - IAC found that CICS was not precluded from holding that industrial conduct was unfair because it may stem from a government policy from which the Commission has no jurisdiction - IAC further found that there was nothing in the award variation which would require the parties to enter into a salary packaging arrangement which was unfair to either one - IAC found that salary packaging was not mandatory - Arrangements entered into would not have the effect of annulling or varying the award, nor would they affect the rights of anyone other than the parties to the particular arrangement - Dismissed - Commissioner, Public Service Commission & Others -v- The Civil Service Association of Western Australia Incorporated - IAC 3 of 1998 - Industrial Appeal Court - Kennedy J./Anderson J./Scott J. - 09/09/98 - Government Administration	3630
² Appeal against decision of Commission (78 WAIG 2444) re unfair dismissal. Applicant argued erred in Law and miscarried its discretion, and failed to take into account a number of points, including witnesses, evidence and the manner in which the dismissal was carried out - Full Bench found on evidence the financial difficulties of the Respondent were not necessarily attributable to any neglect or incompetence on behalf of the Appellant and the conclusion was open that the circumstances in which the Respondent found itself were largely beyond the Appellant's control- Full Bench found not enough warning or notice was given and, having regard to all of the evidence the decision reached was not reasonable in all of the circumstances of the case - Upheld and adjourned for further submissions. - Mr R Bogunovich -v- Bayside Western Australia Pty Ltd - APPL 939 of 1998 - Full Bench - SHARKEY P/COLEMAN CC/KENNER C - Building Structure Services	3635
² Appeal against decision of Commission (78 WAIG 2691) re dismissed application for an award - Full Bench found the appeal was determinable primarily on the interpretation of the Appellant Union's Rules - Full Bench found, having regard to the Fish Resources Management Act 1994 and the evidence, it was open to the Commission to find that the Respondent and its officers were not engaged in a service that bore any relationship to the Mercantile Marine - Full Bench further found the Commission correctly found that the fisheries officers were not eligible to be members of the Appellant and that the application for an award should be dismissed - Dismissed - Merchant Service Guild of Australia, Western Australian Branch, Union of Workers -v- Fisheries Department of Western Australia - APPL 1354 of 1998 - Full Bench - SHARKEY P/COLEMAN CC/KENNER C - 18/09/98 - Government Administration.....	3648
Appeal for reinstatement on the grounds of termination being harsh, oppressive and unfair. Applicant argued that termination was unfair because during the probation period she was subject to harassment, isolation and receiving less favourable treatment than others. Respondent argued that employee did not meet the standard performance required and extensive efforts were made to train, support and assist the Applicant. Commission found that everything that could be done to assist the Applicant to maintain her position was done by Respondent - Dismissed - Ms PA Vyas -v- Commissioner of Police - PSAB 11 of 1997 - GREGOR C - Government Administration	3893
¹ Appeal against decision of Full Bench (77WAIG 1530) re allegedly denied contractual entitlements-Decision concerned the construction of the clause in a fixed term contract of employment-Appellant argued, inter alia, that Full Bench had erred in finding that the written employment contract only provided for a redundancy payment where employment was terminated in circumstances where the respondent company was undergoing a merger, acquisition, re-arrangement, re-construction, liquidation or receivership-Appellant argued that the Full Bench, having found the appellant was constructively dismissed and that the contract did not apply, failed in holding that appellant was entitled to receive payment for the balance of the contract-IAC found that the task of construction of the contract is to determine the intention of the parties objectively from the agreement they have reached-IAC further found that there were changes made in the manner in which the respondent business was organised but that there was no change to structure-Appellant further argued that Full Bench failed to consider and award to appellant the amount to which he was entitled by way of damages for loss of remuneration under the contract for the remaining term-IAC found this matter not dealt with expressly in the reasons of the Full Bench but because of lack of documented evidence before this court as to monies already paid to the appellant it was inappropriate for this court to attempt any final resolution of the position between the parties-Upheld and remitted. - Mr MW Hart -v- Robowash Pty Ltd -IAC 7 of 1998 - Industrial Appeal Court - KennedyJ./Anderson J./Parker J. - 07/10/98 - Construction Trade Services	4307

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² Appeal against decision of Industrial Magistrate (unreported) regarding breach of award-Question of jurisdiction of Full Bench raised-Full Bench questioned whether decision of Industrial Magistrate was such within meaning of section 83 of the Act-Appeal not competent and therefore dismissed-Dismissed - Giovanni Basilio Nicoletti and Guiliana Nicoletti -v- Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch - APPL 2157 of 1997 - Full Bench - SHARKEY P/BEECHC/PARKS C - 30/10/98 - Unions.....	4316
Appeal against decision of Commission re application for compensation on the grounds of unfair dismissal-Appellant argued the Commissioner had erred in law and fact by failing to consider an employer's vicarious liability for causal negligence of servants towards another-Appellant further argued that the employer failed to conduct a proper enquiry and that employment benefits such as accommodation were withdrawn before a thorough investigation of the complaint was made-Respondent argued that although the Appellant had been told to vacate his on site accommodation he had not been dismissed-Commission found that the Appellant had failed to dismiss the onus on him to show, on the balance of probabilities, that he had been dismissed -Dismissed - Mr AG Wood -v- National Mine Management Pty Ltd - APPL 2218 of 1997 - Full Bench - SHARKEY P/COLEMAN CC/FIELDING C - Services to Mining	4853
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Application for compensation on the grounds of unfair dismissal-Applicant sought one week's pay in lieu of notice to terminate employment-Respondent argued for application to be dismissed for want of prosecution and questioned Applicant's sincerity in pursuing his claim-Commission found that Applicant's continual failure to keep hearing dates led it to query the public interest of expending further time on this issue-Discontinued. - Mr RG Johnson -v- David's Garden Centre - APPL 187 of 1998 - BEECH C -21/10/98 - Personal and Other Services	4431
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³ State Wage Case 1998 —CICS reviewed whether to give effect to the decision of the Full Bench of the AIRC re the Safety Net Review —Wage and increase in the Adult Minimum Wage —Subject to qualifications arising out of the Western Australian legal framework and industrial ramifications of dealing with breakdowns in enterprise bargaining, the Minister for Labour Relations, CCI, TLC, & AMMA supported giving effect to the National Wage Decision —CCI and the Minister also gave detailed submissions on the State Economy —The Minister, CCI and AMMA argued that to meet economic objectives identified by the AIRC the wages increases should only be available by application and from the date the award is varied — Minister further asked the Commission not to adopt the Minimum Wage increases as that could be achieved under the Minimum Conditions of Employment Act —TLC argued that the safety net adjustments should be effected by general order as previous general orders had not had an adverse economic impact —TLC further argued that the differences between State and Federal laws conspired to disadvantage Trade Unions in the State and sought the deletion of the Enterprise Bargaining Principle —CICS found no good reason not to give effect to the National Wage Decision with Safety Net adjustments to be absorbed and available on application no earlier than the date of variation —CICS found that the Adult Minimum Wage was an integral part of the National Wage Decision and the abolition of the Enterprise Bargaining Principle would militate against a workplace focus —Statement of Principles and General Order issued —(Commission's own motion) -v- Trades and Labor Council of Western Australia & Others —APPL 757 of 1998 —Commission in Court Session —COLEMAN CC/FIELDING C/GREGOR C —12/06/98 —Various	2579
Application for compensation on the grounds of unfair dismissal-Applicant argued that an applicable Federal Award did not confer exclusive jurisdiction on the Federal Commission to the exclusion of the State Commission -Respondent argued that State provisions in relation to unfair dismissal are inconsistent with provisions of the Federal Award and so render State laws invalid-Respondent further argued that State provisions dealing with unfair dismissal did not extend to employees covered by federal awards-Commission found that the Federal award granted a positive authority which must be construed to take effect to the exclusion of State law-Dismissed for want of jurisdiction —Mr AT Mitchell -v- United Credit Union Limited —APPL 76 of 1998 —KENNER C —05/06/98 —Finance	2939
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² Appeal against decision of Commission (78 WAIG 2691) re dismissed application for an award - Full Bench found the appeal was determinable primarily on the interpretation of the Appellant Union's Rules - Full Bench found, having regard to the Fish Resources Management Act 1994 and the evidence, it was open to the Commission to find that the Respondent and its officers were not engaged in a service that bore any relationship to the Mercantile Marine - Full Bench further found the Commission correctly found that the fisheries officers were not eligible to be members of the Appellant and that the application for an award should be dismissed - Dismissed - Merchant Service Guild of Australia, Western Australian Branch, Union of Workers -v- Fisheries Department of Western Australia - APPL 1354 of 1998 - Full Bench - SHARKEY P/COLEMAN CC/KENNER C - 18/09/98 - Government Administration	3648
Application to amend Clause 36 - Redundancy. Applicant put forward no evidence. Respondent put forward no evidence. Commission found that exigencies of daily hire where employees are engaged either for the day or the project apply to these employees. Thus, the redundancy conditions established to deal with the circumstances experienced by employees in the Building and Construction Industry have not been demonstrated to be appropriate to the employees covered by this Award - Dismissed. - The Western Australian Builders' Labourers, Painters & Plasterers Union of Workers & Other -v- Coca-Cola Bottlers Pty Ltd & Others - APPL 1725 of 1996; APPL 466,1886 of 1997; APPL 647 of 1998 - SCOTT C. - Building	3763
Application to amend Clause 8 - Part-Time Workers of the Award. Union seeks to amend the Award to provide that part-time workers are paid one-thirty-eighth, as an hourly rate, of the wages fixed in Clause 11 rather than one-fortieth as the Award, now prescribes. No appearance by the Respondents. Commission found amendment to the award rational, and made the amendment sought - Ordered Accordingly. - LIQUOR, HOSPITALITY & MISC -v- Carine Glades Health Studio & Others - APPL 1467 of 1998 - FIELDING C - Health	3818
Application for a conference seeking a determination by the Commission exercising the powers of a Board of Reference to determine work performed by members of the Applicant Union - Applicant argued that the work performed at the site in connection with the construction of a kiln facility is construction work defined as per the Award - Respondent argued a jurisdictional issue that employees employed at the site were registered under a Workplace Agreement thus the Commission did not have the jurisdiction to deal with this matter - Commission found that employees were registered under a Workplace Agreement and the Award ceased to apply once Workplace Agreement was registered and covered the employees - Thus there was no powers that can be exercised by the Commission pursuant to the Act - Dismissed for want of prosecution. - AUTO, FOOD, METAL, ENGIN UNION -v- Midland Brick Company Pty Ltd - C 113,114 of 1998 - KENNER C - Construction	3876
Application for Commission to determine issues between parties to Award-Applicant and Respondent sought Commission's determination on ordinary hours of work, overtime and cumulative sick leave-Applicant argued for recognition of seasonality of industry-Respondent argued about the economic consequences of overtime pay and sick leave accumulation-Commission found that discussions should continue toward an award that reflected annualised salaries and the equality of accumulating sick leave-No order issued by request. - Merchant Service Guild of Australia, Western Australian Branch, Union of Workers & Other -v- Boat Torque Cruises Pty Ltd & Others - A 9 of 1996 - BEECH C - 15/09/98 - Water Transport	4356

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Applications for variations of Five Public Service Awards to insert salary packaging - Applicant argued that awards be varied to insert salary packaging clause as approved by a Commission in Court Session on 13 March 1998 - Respondent did not oppose or consent to Applications - Respondent outlined this was a change to Government Policy -Commission found that Government policy is not binding on the Commission and not applicable to Applications, thus variations to the Awards granted - Granted. - The Civil Service Association of Western Australia Incorporated -v-Fisheries Department of Western Australia - P 8,10,12,14,15of 1998 - BEECH C - 25/09/98 - Government Administration	4388
Application for variation of the Award to insert salary packaging - Applicant Union argued that a clause allowing for salary packaging arrangements be inserted as determined by the Commission in Court Session - No answers filed by Respondent, further Respondent could not consent to the claim because of Government Policy - Commission found Government Policy is not Law and this particular Government Policy was unfair and discriminatory - The claim made by the Applicant Union had merit and the Award was varied to insert salary packaging provisions - Granted. - The Civil Service Association of Western Australia Incorporated -v-Insurance Commission of Western Australia - P 11 of 1998 -CAWLEY C. - 18/09/98 - Government Administration	4392
Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements-Applicant argued that she had insufficient time in which to complete her designated tasks and was verbally attacked by the Respondent-Respondent argued that although she had spoken to the Applicant about her work it had been the Applicant's intimidatory actions that had led to the dismissal-Commission found that there had been several instances of conflict between the Applicant and the Respondent during the working relationship and witnesses had seen the Respondent's aggressive attitude on prior occasions-Dismissed - Mrs JC Dingwall -v- Mac's Deli &News - APPL 217 of 1998 - PARKS C - 30/10/98 - Food Retailing	4411
Application re unfair dismissal-Applicant argued that he had maintained contact with a senior manager whilst not attending mine site-Respondent argued that application was lodged out of time and that Applicant had abandoned his job-Commission found that the action taken by an employer to dismiss an employee is not effective until it is communicated to the employee-Application restored to the lists for further hearing and determination. - Mr DJ Duke-v- Byrnecut Mining Pty Ltd - APPL 1360 of 1998 - BEECH C -21/10/98 - Metal Ore Mining	4414
Application re unfair dismissal and allegedly denied contractual entitlements-Applicant argued that during her interview with the Respondent there was no indication that she was to be other than in his employ and she understood she was to receive a regular wage-Respondent argued that the Applicant was never an employee and thus the Commission lacked jurisdiction in this matter-Commission found that the Applicant had applied for the advertised position in order to receive payment for her work-Granted in full. - Ms K Moodley -v- Datastream Productivity Pty Ltd - APPL 645 of 1998 - KENNER C - 12/10/98 - Communication Services.....	4441
Application re unfair dismissal and allegedly outstanding contractual entitlements-Commission firstly established that as the Applicant was covered by an award it had no jurisdiction in the question of denied contractual entitlements-Applicant argued that after an argument between himself and the Respondent he understood the Respondent had demanded he leave the premises which he had done so immediately-Respondent argued that the Applicant left the job entirely of his own volition after the argument when he refused to continue the job for which he had been employed-Commission found that the Applicant terminated his own employment on the balance of probabilities-Dismissed. - Mr T Mott -v- Sign Supermarket - APPL 792,843,887 of 1998 - GREGOR C - 21/10/98 - Business Services	4443
Application for reinstatement on the grounds of unfair dismissal-Applicant argued that the allegation of assault made against former employee is part of a conspiracy by Respondent's senior officers to get rid of former employee due to his active membership of the Applicant union-Respondent argued that employment was terminated with five weeks' pay in lieu of notice due to the assault on the maintenance superintendent-Commission found that the Respondent gave fair opportunity to discuss the incident but that industrial law does not require employers to keep an inquiry alive indefinitely-Dismissed. - AUTO, FOOD,METAL, ENGIN UNION -v- Dampier Salt Operations Ltd - CR 214of 1998 - FIELDING C - 20/10/98 - Other Mining.....	4476
Application to order Respondent not to require any employee to participate in the Personal Performance Review processor alternatively to first negotiate terms for an increase in pay rates to reflect the resultant productivity increases-Applicant argued that there was no consultation with the Applicant unions prior to the implementation of the review process-Applicant further argued that review was another example of the Respondent constantly changing policies-Respondent argued that it has an obligation under the Public Sector Management Act 1994 to comply with relevant standards and prior to the implementation of the review the Respondent had been advised it was not complying with these standards-Commission found that an employee has an obligation to provide information on his or her work to the employer upon request of such-Dismissed. - Australian Railways Union of Workers, West Australian Branch -v-Western Australian Government Railways Commission & Others- APPL 684,685 of 1998; CR 146 of 1998 - BEECH C - 15/10/98- Rail Transport	4484
Application re entitlement to study leave from place of work-Applicant argued that he had been granted 5 hours study leave per semester in the past but now had been given only half that time-Respondent argued that study leave is provided for under the award and is at the discretion of the Chief Executive Officer-Commission found that the applicant's circumstances failed to meet the provisions of the relevant clause in the award-Dismissed - The Civil Service Association of Western Australia Incorporated -v- Chief Executive Officer, Department of Environmental Protection - P 42 of 1998 - BEECH C - Government Administration	4887
Application for compensation on the grounds of unfair dismissal-Applicant argued that he was denied natural justice in not being given the opportunity to respond to allegations of poor performance and conduct-Applicant further argued that the respondent had breached the Workplace Relations Act, s.170 CM in terms of notice of termination of employment-Respondent argued that the applicant voluntarily left the employ of the respondent and there was no dismissal to confer jurisdiction on the Commission under the Act-Commission found that fairness and justice require than an employee accused of misconduct be given a reasonable opportunity to offer an explanation -Commission further found that the employer should conduct a reasonable investigation of the relevant circumstances to satisfy itself as to form an honest and genuine belief, based upon reasonable grounds, that the employee is guilty of misconduct- Dismissed. - Mr GA Chapman -v- JL & MN Rossiter T/A Arunine Painting Services - APPL 356 of 1998 - KENNER C - Other Services.....	4900
Application for compensation on the grounds of unfair dismissal-Issues of jurisdiction arose due to the applicant being covered by a federal award as opposed to a state award and that the terms of the Award are inconsistent with the terms of the Act in relation to harsh, oppressive or unfair dismissal-Applicant and Respondent both agreed to these issues being heard as threshold issues-Commission found that it was possible to discern a legislative intention by the Commonwealth to provide an exhaustive code in relation to termination of employment to the exclusion of State law-Commission further found that the above conclusion cannot affect the scope and application of the unfair dismissal provisions of the Act itself-Dismissed for want of jurisdiction. - Mr W Hull -v- City of Mandurah - APPL 706 of 1998 - KENNER C - Government Administration	4912
BOARD AND LODGING	
Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements -Applicant argued he was dismissed without an opportunity to discuss the Respondent's accusations-Respondent argued that the Applicant was argumentative and never took direction-Commission found that during the time the Applicant worked for the Respondent, the Applicant raised opposition on a regular basis to many instructions given to him-Dismissed —Mr JM Winton -v- Fairlawn Stud —APPL 2049 of 1997 —GREGOR C —12/06/98 —Agriculture	2953

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BOARD AND LODGING—continued

- Application to amend award - Applicant sought to insert new provision for rental assistance into Award on grounds of shortage of accommodation; difficulty in retaining employees; current allowance is inadequate, inequality with current Workplace Agreement Minister for Labour Relations opposed amendment on grounds that the Union was only seeking entitled because it was offered under a Workplace Agreement, accommodation was optional; Rent not an industrial matter, rent is not an employee related expense and interalia, retention of staff at Westrail is not problematic in light of organisational restructuring - Commission in Court Session found that the appropriate way to deal with the inequity of this allowance was by way of application to amend the District allowance - Application dismissed - Australian Railways Union of Workers, West Australian Branch -v- Western Australian Government Railways Commission & Others - APPL 534 of 1997 - Commission in Court Session - COLEMAN CC/PARKS C/SCOTT C. - Rail Transport..... 3020

BOARD OF REFERENCE

- ³Appeal against decision of Board of Reference re objection to registration of employer under the CIPPLSL Act —Appellant argued that the BOR misconstrued or failed to give sufficient weight to the evidence on the nature of the Respondent's undertaking and the work done by its employees —Appellant further argued that it was more concerned with establishing that it had a right of appeal —Respondent argued that the provision of the IRACT 1979 indicated that the appeal was to be determined on the basis of the facts found by the BOR rather than the evidence raised before it and the findings were not defective — Respondent further argued that CIPPLSLPB -v- B.G. & E.D. Hoskins (71 WAIG 2051) was wrongly decided and invited CICS to reconsider it —CICS found on the basis of the grounds of appeal, that the appeal was incompetent —Majority of CICS found no right of appeal to the Appellant —Dismissed CICS further found that —Construction Industry Long Service Leave Payments Board -v- Claude Neon (Aust) Pty Ltd —APPL 350 of 1998 —Commission in Court Session —FIELDING C/CAWLEY C./SCOTT C. —02/07/98 —Construction Trade Services 2590

BONUS

- Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements -Applicant argued that the sales target set for him by the Respondent was unrealistic given his other duties and the restrictions placed upon his area of operation-Applicant also argued that the dismissal was unfair because he was not given proper warning that his job was in jeopardy -Respondent argued that the Applicant continually refused to take directions from the Respondent regarding his work duties-Commission found the Respondent attempted to bring about change in the Applicant's work performance which have had a significant effect upon the success of the business which the Applicant ignored at his peril-Commission further found that a reasonable notice period for a position such as that held by the Applicant was 3 months-Granted in part —Mr JS Blake -v- Robowash Pty Ltd —APPL 1843 of 1997 —SCOTT C. —05/05/98 —Machinery & Equipment Mfg 2925
- Application for allegedly denied contractual entitlements -Applicant argued that he had not been paid for work completed in excess to the standard 40 hours per week as provided for in his contract-Respondent argued that the additional chargeable hours were to be agreed between the Respondent and the mine owner before these hours were worked-Commission found that the issue between the parties turned primarily on the correct interpretation of a clause within the Applicant's contract of employment-Dismissed —Mr L Thomas -v- Hosch International Pty Ltd —APPL 1057 of 1997 —BEECH C —30/06/98 — Services to Mining 2952
- Application re unfair dismissal and allegedly denied contractual entitlements-Applicant argued that during her interview with the Respondent there was no indication that she was to be other than in his employ and she understood she was to receive a regular wage-Respondent argued that the Applicant was never an employee and thus the Commission lacked jurisdiction in this matter-Commission found that the Applicant had applied for the advertised position in order to receive payment for her work-Granted in full. - MsK Moodley -v- Datastream Productivity Pty Ltd - APPL 645 of 1998 - KENNER C - 12/10/98 - Communication Services..... 4441
- Application re unfair dismissal and allegedly outstanding contractual entitlements-Commission firstly established that as the Applicant was covered by an award it had no jurisdiction in the question of denied contractual entitlements-Applicant argued that after an argument between himself and the Respondent he understood the Respondent had demanded he leave the premises which he had done so immediately-Respondent argued that the Applicant left the job entirely of his own volition after the argument when he refused to continue the job for which he had been employed-Commission found that the Applicant terminated his own employment on the balance of probabilities-Dismissed. - Mr T Mott -v- Sign Supermarket - APPL 792,843,887 of 1998 - GREGOR C - 21/10/98 - Business Services 4443
- Application for reinstatement or compensation on the grounds of unfair dismissal-Applicant argued the termination was executed in a summary manner and with no warnings from the Respondent that the Applicant's position was in jeopardy-Applicant further argued that he was denied procedural fairness and the Respondent had acted in a deceptive manner-Respondent argued that although the termination was summary this was justified by the Applicant's incompetence and inefficiency and his false claim to hold a management degree-Commission found that Respondent had not discharged the onus of establishing that there was a level of serious misconduct or performance justifying summary dismissal-Commission further found that a finding of unlawful dismissal does not of itself determine whether a dismissal is unfair-Compensation granted and claim for denied contractual benefits dismissed - Mr JJ Timms -v- Phillips Engineering Pty Ltd -APPL 2242 of 1997 - CAWLEY C. - 23/10/98 - Services to Mining..... 4460
- Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements-Applicant argued the Respondent must discharge the onus of establishing the applicant's misconduct for the purposes of a lawful right to summarily dismiss to arise-Respondent argued that several verbal warnings had been given to the Applicant in front of witnesses-Commission found there was no denial of natural justice-Dismissed - Mr LV White -v-Dale Alcock Home Improvement Pty Ltd - APPL 286 of 1998 -CAWLEY C. - 17/09/98 - General Construction 4469
- Application for reinstatement on the grounds of unfair dismissal and allegedly denied contractual entitlements -Applicant argued that the original letter of appointment did not refer to a probationary term-Applicant further argued that at no time was he warned of unsatisfactory work standards-Respondent argued that it was standard practice to employ sales staff on a probationary basis-Respondent further argued that a conversation about lack of performance had taken place and had included the applicant -Commission found that the applicant was employed on a probationary basis and the respondent had no obligation to continue the employment relationship after this period -Dismissed. - Mr D Beanham -v- Tutt Bryant Equipment Pty Ltd T/A Tutts-Ta Hong - APPL 208 of 1998 - GREGOR C - Machining and Motor Veh Whlslg..... 4895
- Application for allegedly denied contractual entitlements - Applicant claimed for pro-rata entitlements, including commission - Applicant pursued the commission entitlement only - No appearance from Respondent - Commission found that the Applicant was entitled to be paid the commission - Granted. - Ms R Mancuso -v- Mada Holdings Pty Ltd & Other - APPL 1475 of 1998 - FIELDING C - 03/12/98 - Finance 4923
- Application for allegedly denied contractual entitlements - Applicant claimed for pro-rata entitlements, including commission - Applicant pursued the commission entitlement only - No appearance from Respondent - Commission found that the Applicant was entitled to be paid the commission - Granted. - Ms R Mancuso -v- Mada Holdings Pty Ltd & Other - APPL 1475 of 1998 - FIELDING C - 03/12/98 - Finance 4923

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BREACH OF AWARD

- Application for unfair dismissal and contractual entitlements. Applicant claimed he was unfairly dismissed after arriving 12 minutes late for work and that he was owed 3 days pay for time worked and a week in lieu of notice. Respondent argued that Applicant was on a trial period and when challenged over being late told the Respondent to "stick his job" and left. Commission found it impossible to distinguish between witnesses' credibility but as the Applicant bears the onus of proving his case and as this was not proven the unfair dismissal claim was dismissed. Commission unable to deal with Award entitlements claim - Dismissed. - Mr DG White -v- Australind Caravan Park - APPL 704 of 1998 - SCOTT C. - Accommodation 3865
- ²Appeal against decision of Industrial Magistrate (unreported) regarding breach of award-Question of jurisdiction of Full Bench raised-Full Bench questioned whether decision of Industrial Magistrate was such within meaning of section 83 of the Act-Appeal not competent and therefore dismissed-Dismissed - Giovanni Basilio Nicoletti and Guiliana Nicoletti -v- Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch - APPL 2157 of 1997 - Full Bench - SHARKEY P/BEECH/PARKS C - 30/10/98 - Unions..... 4316
- Application to order Respondent not to require any employee to participate in the Personal Performance Review processor alternatively to first negotiate terms for an increase in pay rates to reflect the resultant productivity increases-Applicant argued that there was no consultation with the Applicant unions prior to the implementation of the review process-Applicant further argued that review was another example of the Respondent constantly changing policies-Respondent argued that it has an obligation under the Public Sector Management Act 1994 to comply with relevant standards and prior to the implementation of the review the Respondent had been advised it was not complying with these standards-Commission found that an employee has an obligation to provide information on his or her work to the employer upon request of such-Dismissed. - Australian Railways Union of Workers, West Australian Branch -v-Western Australian Government Railways Commission & Others- APPL 684,685 of 1998; CR 146 of 1998 - BEECH C - 15/10/98- Rail Transport..... 4484

CAPACITY TO PAY

- Application re unfair dismissal and allegedly denied contractual entitlements-Applicant argued that the terms of the dismissal were unfair-Respondent argued that economic circumstances forced company restructuring which meant the Applicant's position was no longer required in the form it had existed-Commission found that it is required to discover all the circumstances of a dismissal and balance them out-Commission further found that the dismissal must be considered from both the employee's and employer's points of view-Dismissed - Mrs CD Miskiewicz -v- Ledge Point Charters Pty Ltd T/A Trimview Building Industries -APPL 250 of 1998 - GREGOR C - 23/09/98 - General Construction 4439
- Application re unfair dismissal and allegedly denied contractual entitlements-Applicant argued that during her interview with the Respondent there was no indication that she was to be other than in his employ and she understood she was to receive a regular wage-Respondent argued that the Applicant was never an employee and thus the Commission lacked jurisdiction in this matter-Commission found that the Applicant had applied for the advertised position in order to receive payment for her work-Granted in full. - Ms K Moodley -v- Datastream Productivity Pty Ltd - APPL 645 of 1998 - KENNER C - 12/10/98 - Communication Services..... 4441

CASUAL WORK

- Application for allegedly denied contractual entitlements-Applicant argued Respondent had failed to pay for work completed after Respondent's business stopped trading-Respondent failed to appear-Commission found that it was a straight forward mathematical exercise to work out what monies were due-Granted. - Ms J Farka -v- Artwise Graphic Design - APPL 493,494 of 1998 - BEECH C - 31/08/98 - Printg, Publishg & Rcd Media..... 4419
- Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements-Applicant argued that she had not agreed to the change in her employment status from full-time to casual and as such this change constituted an unfair dismissal-Respondent argued there had been agreement at a meeting between himself and the Applicant regarding the change in employment status and had willing paid all entitlements due-Commission found that the Respondent's behaviour represented a justifiable and prudent business decision-Dismissed. - Ms EM Greig -v- Occasions Pty Ltd T/A ClassicHolidays - APPL 2045 of 1997 - PARKS C - 02/11/98 -Services to Transport..... 4422
- Application for reinstatement or compensation on the grounds of unfair dismissal-Applicant argued that he had never withheld monies or documents belonging to the Respondent companies-Respondent argued that the Applicant's resignation as a Director of the Respondent company according to a Deed resulting from a Supreme Court Order also constituted the Applicant's resignation as an employee-Commission found that the Applicant's dismissal was unrelated to the Applicant's performance or conduct as an employee-Commission further found the Applicant was not afforded any procedural fairness-Compensation granted - Mr FA Khoury -v- Rosemist Holdings Pty Ltd - APPL 405 of 1998- KENNER C - 07/10/98 - Food, Beverage and Tobacco Mfg..... 4432
- Application re unfair dismissal-Applicant argued that she was a casual employee who had in all but one instance been available to work when requested and this single instance had led to her dismissal-Respondent argued that the substance of the applicant's casual employment was her availability to work flexibly but a number of messages regarding roster changes had never been returned and the applicant had never been very flexible in her ability to work different shifts - Commission found it more likely than not that the employment relationship came to an end by an effluxion of time-Commission further found that as a casual employee, the applicant's contract would have come to an end at the next set of rostered shifts-Dismissed. - Ms V Franks -v- Lakers Tavern - APPL 763 of 1998 - GREGOR C - Accommodatn, Cafes&Restaurants..... 4906
- Application re alleged unfair dismissal-Applicant argued that the failure to pay her wages at the time of her cessation of work amounted to unfair dismissal-Respondent argued the applicant had been a casual employee and had readily accepted the reason she would be offered no further work-Commission found that the fact the applicant was a casual employee does not mean she cannot be unfairly dismissed-Commission further found that the applicant did not challenge the reasons she was not given continuing work and therefore there was no basis for an unfair dismissal claim-Dismissed. - Ms EA Heslington -v- Penman Holdings Pty Ltd T/A Video Ezy Gosnells - APPL 1188 of 1998 - BEECH C - Motion Picture Radio & TV Serv 4910

CLASSIFICATION

- ²Application for an order authorising the registration of an alteration of rules of employee organisation-No objection to application-Full Bench satisfied that sufficient reason for alteration was provided to members and that association had acted in equity and good conscience-Ordered accordingly. - Real Estate Salespersons Association of Western Australia (Inc) -v- (Not applicable) - APPL 1273 of 1998 - Full Bench - SHARKEY P/COLEMAN CC/GREGOR C -26/10/98 - Property Services..... 4317
- Application re alleged unfair dismissal-Applicant argued that the failure to pay her wages at the time of her cessation of work amounted to unfair dismissal-Respondent argued the applicant had been a casual employee and had readily accepted the reason she would be offered no further work-Commission found that the fact the applicant was a casual employee does not mean she cannot be unfairly dismissed-Commission further found that the applicant did not challenge the reasons she was not given continuing work and therefore there was no basis for an unfair dismissal claim-Dismissed. - Ms EA Heslington -v- Penman Holdings Pty Ltd T/A Video Ezy Gosnells - APPL 1188 of 1998 - BEECH C - Motion Picture Radio & TV Serv 4910

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Chamber of Commerce and Industry application to recind General Order No. 1400 of 1997 on location allowances and issue new General Order to commence on or after first day of July 1998 - Section 50 parties afforded opportunity to be heard - no objections received as to proposed new order - New General Order issued. - Chamber of Commerce & Industry of Western Australia -v- Minister for Labour Relations & Others - APPL 975 of 1998 - Commission in Court Session - CAWLEY C./SCOTT C./KENNER C - General	2999
Application for compensation on the grounds of unfair dismissal-Applicant argued that the dismissal was due to injury received during work hours or fact he was in receipt of worker's compensation-Respondent argued that the reason was solely economic and it had regard for its usual policy under the relevant award to terminate employment on a "last on, first off" basis-Respondent also argued for an award of costs against the applicant-Commission found that the Applicant did not make out his case on the balance of probabilities that the reason for dismissal was the worker's compensation claim-Commission further found that an award of costs was not warranted-Dismissed - Mr HS Gunes-v- EJ Electrical Engineering Contractors - APPL 2271 of 1997 - CAWLEY C. - 17/09/98 - Construction Trade Services	4424
Application re unfair dismissal and allegedly outstanding contractual entitlements-Commission firstly established that as the Applicant was covered by an award it had no jurisdiction in the question of denied contractual entitlements-Applicant argued that after an argument between himself and the Respondent he understood the Respondent had demanded he leave the premises which he had done so immediately-Respondent argued that the Applicant left the job entirely of his own volition after the argument when he refused to continue the job for which he had been employed-Commission found that the Applicant terminated his own employment on the balance of probabilities-Dismissed. - Mr T Mott -v- Sign Supermarket - APPL 792,843,887 of 1998 - GREGOR C - 21/10/98 - Business Services	4443
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Application for reinstatement or compensation on the grounds of unfair dismissal-Applicant argued that after several incidents of criticism of his work by the Respondent's manager the Applicant came to the conclusion that he was no longer wanted as an employee and so resigned-Respondent argued that although the manager and the Applicant had several discussions regarding the quality of the Applicant's work the Respondent had at all times wanted the Applicant to remain an employee-Commission found that the criticism of the Applicant was legitimate and that the resignation had been freely tendered-Dismissed for want of jurisdiction - Mr H Schwab -v- Barrett's Bread - APPL807 of 1998 - KENNER C - 08/09/98 - Food Retailing.....	4455
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Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements -Applicant argued that the sales target set for him by the Respondent was unrealistic given his other duties and the restrictions placed upon his area of operation-Applicant also argued that the dismissal was unfair because he was not given proper warning that his job was in jeopardy -Respondent argued that the Applicant continually refused to take directions from the Respondent regarding his work duties-Commission found the Respondent attempted to bring about change in the Applicant's work performance which have had a significant effect upon the success of the business which the Applicant ignored at his peril-Commission further found that a reasonable notice period for a position such as that held by the Applicant was 3 months-Granted in part —Mr JS Blake -v- Robowash Pty Ltd —APPL 1843 of 1997 —SCOTT C. —05/05/98 —Machinery & Equipment Mfg	2925
Application for compensation on the grounds of unfair dismissal-Applicant argued that an applicable Federal Award did not confer exclusive jurisdiction on the Federal Commission to the exclusion of the State Commission -Respondent argued that State provisions in relation to unfair dismissal are inconsistent with provisions of the Federal Award and so render State laws invalid-Respondent further argued that State provisions dealing with unfair dismissal did not extend to employees covered by federal awards-Commission found that the Federal award granted a positive authority which must be construed to take effect to the exclusion of State law-Dismissed for want of jurisdiction —Mr AT Mitchell -v- United Credit Union Limited —APPL 76 of 1998 —KENNER C —05/06/98 —Finance	2939
Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements -Applicants argued that they were employed by the Respondents and the Commission had jurisdiction to hear the claims-Respondent argued the Applicants had at no time been employed by the Respondent company and any claim of unfair dismissal had to be predicated by the existence of an employment contract which has been terminated by the employer party-Commission found that the Applicants had not been employed by the named Respondent-Ruled out as invalid —Mr JG Reid -v- Shark Bay Salt Joint Venture —APPL 931,1075 of 1997 —CAWLEY C. —24/7/97, 11/05/98 —Other Mining.....	2944
Application re allegedly denied contractual entitlements -Applicant argued that he was at all times willing and able to work and presented as required by the Respondent despite no existing business premises-Respondent failed to appear and no answers to the claim had been filed-Commission found the Applicant was entitled to be paid in accordance with the contract for the period it was on foot and a sum in lieu of notice to be implied into the contract-Granted —Mr JT Tan -v- Execucum Technologies —APPL 271 of 1998 —CAWLEY C. —29/06/98 —Personal & Household Good Rtlg	2951
Application for allegedly denied contractual entitlements -Applicant argued that he had not been paid for work completed in excess to the standard 40 hours per week as provided for in his contract-Respondent argued that the additional chargeable hours were to be agreed between the Respondent and the mine owner before these hours were worked-Commission found that the issue between the parties turned primarily on the correct interpretation of a clause within the Applicant's contract of employment-Dismissed —Mr L Thomas -v- Hosch International Pty Ltd —APPL 1057 of 1997 —BEECH C —30/06/98 — Services to Mining	2952
Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements -Applicant argued he was dismissed without an opportunity to discuss the Respondent's accusations-Respondent argued that the Applicant was argumentative and never took direction-Commission found that during the time the Applicant worked for the Respondent, the Applicant raised opposition on a regular basis to many instructions given to him-Dismissed —Mr JM Winton -v- Fairlawn Stud —APPL 2049 of 1997 —GREGOR C —12/06/98 —Agriculture	2953
Application for compensation on the grounds of unfair dismissal. Applicant argued that the hearing proceed even though the employer has had administrators appointed. Respondent argued that as employer is in the hands of a Liquidator pursuant to the Corporations Law 440D(1) and 471B and the Commission does not have the authority to proceed with the Application. Commission found that the Corporations Law applies and cannot proceed. Application adjourned and no further proceedings until authority pursuant to the Corporations Act is obtained. - Mr P Helm -v- Hansley Holdings Pty Ltd T/A GIS Engineering - APPL 1724 of 1997 - CAWLEY C. - Engineering	3576
Application for compensation on the grounds of unfair dismissal. Applicant argued that dismissal was unfair because required to resign by employer after an incident causing damage. Respondent argued that the Applicant chose to resign because of the carelessness and breach of safety caused from the damage and the events of the incident. Commission found the Applicant was dismissed and did not resign voluntarily. However, the dismissal was not unfair as the Applicant breached safety rules - Dismissed. - Mr B Pheasby -v- Eltin Surface Mining Pty Ltd - APPL 2065 of 1997 - BEECH C - Mining	3582

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Application for compensation on the grounds of unfair dismissal. Applicant argued dismissal was unfair as there was no complaint or performance appraisal, no alternative options provided and a similar position advertised as being performed by the Applicant. Respondent argued the Applicant was not dismissed unfairly but for unsatisfactory performance conduct and demeanour and warnings were given. Commission found that claim was not made out and the position disappeared to restructuring. Dismissed - Mr M Wichmann -v- Peter Stannard Homes Pty Ltd - APPL 1297 of 1997 - CAWLEY C. - Property Services.....	3586
Application for compensation on the grounds of unfair dismissal. No appearance from Applicant. Respondent argued that the matter be struck out for want of prosecution as the Applicant has failed to pursue the claim. Commission found that the Applicant has failed in pursuing the Application and the lack of contact has persuaded the Commission to strike out the Application. - Struck Out for Want of Prosecution. - Mr M Wilson -v- Shire of Mount Marshall - APPL 546 of 1998 - BEECH C - Government Administration.....	3589
Application for compensation on the grounds of unfair dismissal. Applicant argued that dismissal was unfair because as a permanent employee and not a casual, the Applicant was exercising rights under the Award. Respondent argued that Applicant was employed as a casual not as a permanent employee and abandoned work contract of employment. Commission found that Applicant was employed as a casual and the Applicant had abandoned the contract of employment. - Dismissed - Mrs SL Wilson -v- Teedan Pty Ltd- APPL 189 of 1998 - CAWLEY C. - Cafes.....	3590
² Appeal against decision of Commission (78 WAIG 2444) re unfair dismissal. Applicant argued erred in Law and miscarried its discretion, and failed to take into account a number of points, including witnesses, evidence and the manner in which the dismissal was carried out - Full Bench found on evidence the financial difficulties of the Respondent were not necessarily attributable to any neglect or incompetence on behalf of the Appellant and the conclusion was open that the circumstances in which the Respondent found itself were largely beyond the Appellant's control- Full Bench found not enough warning or notice was given and, having regard to all of the evidence the decision reached was not reasonable in all of the circumstances of the case - Upheld and adjourned for further submissions. - Mr R Bogunovich -v- Bayside Western Australia Pty Ltd - APPL 939 of 1998 - Full Bench - SHARKEY P/COLEMAN CC/KENNER C - Building Structure Services.....	3635
Application for compensation of unfair dismissal and outstanding contractual entitlements. Applicant argued that dismissal was unfair regarding unauthorised use of company vehicle and the denied entitlements formed part of the compensation. Respondent argued that dismissal was necessary as trust had been abused by unauthorised use of vehicle. Commission found that there was an abuse of privilege and there was the unauthorised use of a company vehicle - Dismissed. - Ms S Bonn -v- Collie Freightlines - APPL 631 of 1998 - SCOTT C. - Transport Industry.....	3838
Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements. Applicant argued that there was suffering from work-related stress and did not resign. Wages, Bonus and Motor Vehicle are the entitlements being claimed. Respondent argued that the Applicant was not dismissed but resigned. Also the Commission lacks jurisdiction to deal with this matter, and denies any entitlements due under the contract of service. Commission found that Applicant had resigned and that no compensation is due and no contractual entitlement have been denied - Dismissed. - Mr B Burrows -v- Central Warehouse Pty Ltd - APPL 247 of 1997 - PARKS C - Wholesaling.....	3842
Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements. Applicant argued no formal warning given regarding poor performance. Respondent argued Applicant was advised of the dissatisfaction with certain aspects of his performance. Commission found there had been procedural failure by Respondent but applicant warned of the dissatisfaction of poor performance and no evidence regarding denied contractual entitlements given - Dismissed. - Mr SP Hernadi -v- Salmon Point Holdings Pty Ltd T/A O2 Bar & Club - APPL 236 of 1998 - SCOTT C. - Hospitality.....	3848
Application for compensation on the grounds of unfair dismissal and outstanding contractual entitlements. Applicant argued that dismissal was unfair because less than a fair go was given regarding breach of policy and ethical standard. Respondent argued that Applicant was fully aware and informed of the policies of code of conduct and ethical standards. Commission found that the Applicant had breached the ethical rules of the Respondent and this was a direct and wilful breach of them - Dismissed. - Mr PD Morgan -v- Orix Australia Corporation Ltd - APPL 190 of 1998 - GREGOR C - Motor Vehicle Rtlg & Services.....	3850
Application re alleged unfair dismissal. Applicant claimed that after challenging procedures of respondent as inappropriate, Respondent found faults with his work performance resulting in succession of baseless allegations which led to his dismissal. Respondent acknowledged that applicant's employment was terminated but denied it was unfair. Respondent argued that Applicant's claim be dismissed due to Applicant attempting by threat and duress to get witnesses to change their evidence, and that Applicant has misled the Commission. Commission found on evidence that Applicant is demonstrably a discreditable person. Commission found that Application should be dismissed pursuant to S.27(1)(a). Commission found that Applicant pay costs to Respondent - Dismissed and costs awarded to Respondent. - Mr BF Smith -v- Nulsen Haven Association (Inc) - APPL 558 of 1998 - CAWLEY C. - Health Services.....	3863
Application for compensation or reinstatement on the grounds of unfair dismissal. Applicant argued that less than a fair go was given and Respondent was harsh by not assessing all the situation. Respondent argued that the Application was dismissed for gross misconduct, after assessing the situation the Respondent discovered that the Applicant initiated the situation, further, the situation escalated due to Applicant engaging in an abusive and aggressive argument. Commission found that Respondents investigation, the Respondent did not fail to give Applicant fair go - Dismissed. - AUTO, FOOD, METAL, ENGIN UNION -v- John Holland Construction & Engineering Pty Ltd - CR 315 of 1997 - SCOTT C. - Mining.....	3875
Application for compensation on the grounds of unfair dismissal-Applicant argued that an oral contract of employment existed and he is owed unpaid entitlements-Respondent argued that the Applicant failed to accept the written offer of employment within a reasonable time and so the offer was withdrawn-Commission found that any purported acceptance of the employment contract two years after originally presented could, at best, be considered a counter-offer by the Applicant-Dismissed - Mr TM Baker -v-Westpoint Consulting Group Pty Ltd (Westpoint Corporation Pty Ltd) - APPL 384 of 1998 - BEECH C - 19/10/98 - Business Services.....	4399
Application re unfair dismissal and allegedly denied contractual entitlements-Applicant argued that a change in her employment conditions after becoming pregnant was not agreed to by self-Applicant further argued for a claim of unfair dismissal which had been filed at a later date-Respondent argued that the Applicant's proceedings with the Equal Opportunity Commission precluded the involvement of the WAIRC in this claim-Commission found that the claim re unfair dismissal was outside the 28 day time limit and was separate to the original claim for allegedly denied contractual entitlements-Commission further found that the Commissions was not precluded from hearing the claim despite a separate claim lodged with the EOC-Claim relisted for hearing and determination. - Mrs TC Bates -v- Mountway Nominees Pty Ltd - APPL 34 of 1998 - KENNER C - 25/09/98 -Machining and Motor Veh Whlslg.....	4402
Application for compensation on the grounds of unfair dismissal-Applicant argued that his employment with the Christmas Island News agency had been unfairly terminated-Respondent argued that the WAIRC did not have jurisdiction to hear this case as it had occurred outside the State-Commission found that the Federal Workplace Relations Act extends the operation of that Act and thus the jurisdiction of the Federal Commission to the Territory of Christmas Island-Dismissed for want of jurisdiction. - Ms J Billcliff-v- Christmas Island News agency - APPL 1161 of 1998 -FIELDING C - 12/10/98 - Personal and Other Services.....	4410

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Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements-Applicant argued that she had insufficient time in which to complete her designated tasks and was verbally attacked by the Respondent-Respondent argued that although she had spoken to the Applicant about her work it had been the Applicant's intimidatory actions that had led to the dismissal-Commission found that there had been several instances of conflict between the Applicant and the Respondent during the working relationship and witnesses had seen the Respondent's aggressive attitude on prior occasions-Dismissed - Mrs JC Dingwall -v- Mac's Deli &News - APPL 217 of 1998 - PARKS C - 30/10/98 - Food Retailing	4411
Application for compensation on the grounds of unfair dismissal-Applicant argued that his failure to comply with a direction and lying about this failure should be considered in terms of his length of service, sales record, management change and effects of company restructure-Respondent argued that as the Applicant's manager was based out of State, the sales team had to be reliable, honest and adhere to instructions-Commission found that in arriving at its decision the Respondent had proper regard for the Applicant's length of service and record-Commission further argued that the Applicant was not denied natural justice-Dismissed - Mr JH Duggan -v- Canon Australia Pty Ltd - APPL 434 of 1998 - CAWLEY C. - 21/09/98 - Business Services	4412
Application for reinstatement or compensation on the grounds of unfair dismissal-Applicant argued that the dismissal was unjustified-Respondent argued that its employee's behaviour had been tolerated over many years often to the detriment of fellow workers-Commission found that the employee had been counselled or warned about her conduct but had refused to acknowledge the conduct of the problem caused-Dismissed. - The Forest Products, Furnishing and Allied Industries Industrial Union of Workers, W.A. Branch -v- Curtain World - CR 187 of 1998 - SCOTT C. -06/11/98 - Textile, Clothing, Footwear.....	4420
Application for compensation on the grounds of unfair dismissal-Applicant argued that the dismissal was due either to injury received during work hours or fact he was in receipt of worker's compensation-Respondent argued that the reason was solely economic and it had regard for its usual policy under the relevant award to terminate employment on a "last on, first off" basis-Respondent also argued for an award of costs against the applicant-Commission found that the Applicant did not make out his case on the balance of probabilities that the reason for dismissal was the worker's compensation claim-Commission further found that an award of costs was not warranted-Dismissed - Mr HS Gunes-v- EJ Electrical Engineering Contractors - APPL 2271 of 1997 - CAWLEY C. - 17/09/98 - Construction Trade Services	4424
Application for compensation on the grounds of unfair dismissal-Applicant argued that the termination was without warning and without valid reason-Respondent argued that the Applicant was dismissed because of an unsatisfactory attitude to his work and failure to comply with instructions-Commission found that it needs to adopt a pragmatic and practical approach to matters like this in looking at the relationship between a farmer and his farmhands-Commission further found that the manner of dismissal is only one of the factors to be considered in a case of alleged unfair dismissal-Dismissed - Mr GB Johnson -v- DC &CM Richards - APPL 44 of 1998 - FIELDING C - 25/09/98 -Agriculture.....	4430
Application for compensation on the grounds of unfair dismissal-Applicant sought one week's pay in lieu of notice to terminate employment-Respondent argued for application to be dismissed for want of prosecution and questioned Applicant's sincerity in pursuing his claim-Commission found that Applicant's continual failure to keep hearing dates led it to query the public interest of expending further time on this issue-Discontinued. - Mr RG Johnson -v- David's Garden Centre - APPL 187 of 1998 - BEECH C -21/10/98 - Personal and Other Services	4431
Application for reinstatement or compensation on the grounds of unfair dismissal-Applicant argued that he had never withheld monies or documents belonging to the Respondent companies-Respondent argued that the Applicant's resignation as a Director of the Respondent company according to a Deed resulting from a Supreme Court Order also constituted the Applicant's resignation as an employee-Commission found that the Applicant's dismissal was unrelated to the Applicant's performance or conduct as an employee-Commission further found the Applicant was not afforded any procedural fairness-Compensation granted - Mr FA Khoury -v- Rosemist Holdings Pty Ltd - APPL 405 of 1998 - KENNER C - 07/10/98 - Food, Beverage and Tobacco Mfg.....	4432
Application re unfair dismissal and allegedly outstanding contractual entitlements-Commission firstly established that as the Applicant was covered by an award it had no jurisdiction in the question of denied contractual entitlements-Applicant argued that after an argument between himself and the Respondent he understood the Respondent had demanded he leave the premises which he had done so immediately-Respondent argued that the Applicant left the job entirely of his own volition after the argument when he refused to continue the job for which he had been employed-Commission found that the Applicant terminated his own employment on the balance of probabilities-Dismissed. - Mr T Mott -v- Sign Supermarket - APPL 792,843,887 of 1998 - GREGOR C - 21/10/98 - Business Services	4443
Application for compensation on the grounds of unfair dismissal-Applicant's counsel sought and received 7 day adjournment-Applicant failed to return to the Commission for further hearings-Commission found that Applicant had received every chance to prosecute its application-Dismissed for want of prosecution. - Mr CA O'Neill -v-Dale Alcock Homes Pty Ltd - APPL 542 of 1998 - GREGOR C -24/09/98 - Property Services	4445
Application for compensation on the grounds of unfair dismissal-Applicant argued that he was forced to resign because of stress and religious discrimination-Respondent argued that the Commission did not have jurisdiction to deal with a matter based on religious discrimination-Commission found that proceedings should be adjourned to allow the Commissioner for Equal Opportunity to rule on jurisdiction-Adjourned for no earlier than 28 days from date of Decision. - Mr LA Peredo -v- Metland Products -APPL 1311 of 1998 - FIELDING C - 23/10/98 - Other Manufacturing.....	4446
Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements-Applicant argued that the Respondent unilaterally reduced her wages-Respondent argued that the Applicant's workload had been substantially decreasing over time with the employment of additional staff-Commission found that an employer cannot unilaterally vary the contract of employment between it and an employee and still less can do so retrospectively-Unpaid entitlements to be paid and compensation for unfair dismissal granted. - Mrs SL Scanlan-v- Greenport Nominees Pty Ltd T/A Indiana Tea House - APPL 587 of 1998 - BEECH C - 23/09/98 - Accommodatn, Cafes & Restaurants	4452
Application for reinstatement or compensation on the grounds of unfair dismissal-Applicant argued that after several incidents of criticism of his work by the Respondent's manager the Applicant came to the conclusion that he was no longer wanted as an employee and so resigned-Respondent argued that although the manager and the Applicant had several discussions regarding the quality of the Applicant's work the Respondent had at all times wanted the Applicant to remain an employee-Commission found that the criticism of the Applicant was legitimate and that the resignation had been freely tendered-Dismissed for want of jurisdiction - Mr H Schwab -v- Barrett's Bread - APPL807 of 1998 - KENNER C - 08/09/98 - Food Retailing.....	4455
Application for reinstatement or compensation on the grounds of unfair dismissal-Applicant argued the termination was executed in a summary manner and with no warnings from the Respondent that the Applicant's position was in jeopardy-Applicant further argued that he was denied procedural fairness and the Respondent had acted in a deceptive manner-Respondent argued that although the termination was summary this was justified by the Applicant's incompetence and inefficiency and his false claim to hold a management degree-Commission found that Respondent had not discharged the onus of establishing that there was a level of serious misconduct or performance justifying summary dismissal-Commission further found that a finding of unlawful dismissal does not of itself determine whether a dismissal is unfair-Compensation granted and claim for denied contractual benefits dismissed - Mr JJ Timms -v- Phillips Engineering Pty Ltd -APPL 2242 of 1997 - CAWLEY C. - 23/10/98 - Services to Mining.....	4460

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Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements-Applicant argued the Respondent must discharge the onus of establishing the applicant's misconduct for the purposes of a lawful right to summarily dismiss to arise-Respondent argued that several verbal warnings had been given to the Applicant in front of witnesses-Commission found there was no denial of natural justice-Dismissed - Mr LV White -v-Dale Alcock Home Improvement Pty Ltd - APPL 286 of 1998 -CAWLEY C. - 17/09/98 - General Construction	4469
Application for compensation on the grounds of unfair dismissal-Applicant argued that management had mindfully worked against her interests-Respondent argued they had no intention of dismissing the Applicant when they telephoned her at home one evening but to invite her to a meeting to discuss her attitude and behaviour at work-Commission found that although the Applicant may have found the management's behaviour to be personally distressing this did not excuse her attitude and behaviour towards members of management-Dismissed. - LIQUOR, HOSPITALITY & MISC -v- Cat Welfare Society Inc T/A Cat Haven - CR 359 of 1996 - PARKS C -18/09/98 - Other Services	4480
Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements - Applicant argued that an oral contract had been accepted - Respondent argued that the Applicant was not an employee but a contractor - Commission found that Applicant did not establish that there was an employee and employer relationship - Dismissed for want of jurisdiction. - Mr M Aleixo -v- AcQua Holdings - APPL 343,627 of 1998 - GREGOR C - 01/12/98 - Hospitality	4890
Application for compensation on the grounds of unfair dismissal - Applicant argued that no warning or notice of probation given prior to termination - Respondent argued that there were problems with the management and work practices of the Applicant - Commission found no warning or notice of probation given to Applicant prior to termination - Further the Commission found reinstatement not a viable option - Payment by instalments was also granted - Granted. - Mr S Backman -v- Growers Market Butchers - APPL 792 of 1998 - GREGOR C - 21/10/98 - Meat Product Manufacturing	4892
Application for compensation on the grounds of unfair dismissal and alleged denied contractual entitlements - Applicant argued that dismissal was unfair because proper procedures were not followed - Further the Applicant argued for unpaid salary, overtime and expenses as compensation - Respondent argued that the Commission did not have jurisdiction to deal with Application because Applicant's employment was governed by a Federal Award and further there was no basis for contractual entitlements claimed - Commission found that there was no jurisdiction to deal with Application because the provisions of the Federal Award conflict with the provisions of the State Act - Further there is no basis for the contractual entitlements claimed - Dismissed. - Mr JT Burnham -v- Western Desert Puntukurnuparna Aboriginal Corporation - APPL 556 of 1998 - FIELDING C - 25/11/98 - Health and Community Services.....	4899
Application for compensation on the grounds of Unfair Dismissal.- Applicant argued that he was not a casual employee but employed on a single and ongoing contract of indefinite duration.- Respondent argued that Applicant was a casual employee and further had a bad attitude.- Commission found Applicant was employed on a single and ongoing contract of indefinite duration during the Lobster Fishing season, further no warning or counselling given regarding Applicant's performance. As reinstatement was not practical, compensation was awarded.- Granted. - Mr ET Watson -v- JK Colero Enterprises - APPL 343,627 of 1998 - GREGOR C - 01/12/98 - Commercial Fishing	4943
Appeal against decision of Commission re application for compensation on the grounds of unfair dismissal-Appellant argued the Commissioner had erred in law and fact by failing to consider an employer's vicarious liability for causal negligence of servants towards another-Appellant further argued that the employer failed to conduct a proper enquiry and that employment benefits such as accommodation were withdrawn before a thorough investigation of the complaint was made-Respondent argued that although the Appellant had been told to vacate his on site accommodation he had not been dismissed-Commission found that the Appellant had failed to dismiss the onus on him to show, on the balance of probabilities, that he had been dismissed -Dismissed - Mr AG Wood -v- National Mine Management Pty Ltd - APPL 2218 of 1997 - Full Bench - SHARKEY P/COLEMAN CC/FIELDING C - Services to Mining	4853
Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements - Applicant argued that an oral contract had been accepted - Respondent argued that the Applicant was not an employee but a contractor - Commission found that Applicant did not establish that there was an employee and employer relationship - Dismissed for want of jurisdiction. - Mr M Aleixo -v- AcQua Holdings - APPL 343,627 of 1998 - GREGOR C - 01/12/98 - Hospitality	4890
Application for compensation on the grounds of unfair dismissal - Applicant argued that no warning or notice of probation given prior to termination - Respondent argued that there were problems with the management and work practices of the Applicant - Commission found no warning or notice of probation given to Applicant prior to termination - Further the Commission found reinstatement not a viable option - Payment by instalments was also granted - Granted. - Mr S Backman -v- Growers Market Butchers - APPL 792 of 1998 - GREGOR C - 21/10/98 - Meat Product Manufacturing	4892
Application for compensation on the grounds of unfair dismissal and alleged denied contractual entitlements - Applicant argued that dismissal was unfair because proper procedures were not followed - Further the Applicant argued for unpaid salary, overtime and expenses as compensation - Respondent argued that the Commission did not have jurisdiction to deal with Application because Applicant's employment was governed by a Federal Award and further there was no basis for contractual entitlements claimed - Commission found that there was no jurisdiction to deal with Application because the provisions of the Federal Award conflict with the provisions of the State Act - Further there is no basis for the contractual entitlements claimed - Dismissed. - Mr JT Burnham -v- Western Desert Puntukurnuparna Aboriginal Corporation - APPL 556 of 1998 - FIELDING C - 25/11/98 - Health and Community Services.....	4899
Application for compensation on the grounds of unfair dismissal-Applicant argued that he was denied natural justice in not being given the opportunity to respond to allegations of poor performance and conduct-Applicant further argued that the respondent had breached the Workplace Relations Act, s.170 CM in terms of notice of termination of employment-Respondent argued that the applicant voluntarily left the employ of the respondent and there was no dismissal to confer jurisdiction on the Commission under the Act-Commission found that fairness and justice require than an employee accused of misconduct be given a reasonable opportunity to offer an explanation -Commission further found that the employer should conduct a reasonable investigation of the relevant circumstances to satisfy itself as to form an honest and genuine belief, based upon reasonable grounds, that the employee is guilty of misconduct- Dismissed. - Mr GA Chapman -v- JL & MN Rossiter T/A Arunine Painting Services - APPL 356 of 1998 - KENNER C - Other Services.....	4900
Application for allegedly denied contractual entitlements -Applicant argued that he never offered his resignation to the respondent company-Applicant further argued that all efforts made by him to discuss his contract were ignored -Respondent argued that he had had frequent discussions with the applicant in relation to running the business -Respondent further argued that the applicant had not been honest regarding his managerial abilities-Commission found that it was material to the case that the applicant at no time wrote down his version of events in protest at the respondent's alleged conduct-Commission further found that in the case of employment contracts, for a claim to be made for an ongoing salary, an employee must reject the purported termination by the employer and insist upon performance under the contract-Dismissed. - Mr GF ODea -v- South West Maintenance Services Pty Ltd - APPL 736 of 1998 - KENNER C - Services to Mining.....	4924
Application for compensation on the grounds of Unfair Dismissal.- Applicant argued that he was not a casual employee but employed on a single and ongoing contract of indefinite duration.- Respondent argued that Applicant was a casual employee and further had a bad attitude.- Commission found Applicant was employed on a single and ongoing contract of indefinite duration during the Lobster Fishing season, further no warning or counselling given regarding Applicant's performance. As reinstatement was not practical, compensation was awarded.- Granted. - Mr ET Watson -v- JK Colero Enterprises - APPL 343,627 of 1998 - GREGOR C - 01/12/98 - Commercial Fishing	4943

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Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements -Applicants argued that they were employed by the Respondents and the Commission had jurisdiction to hear the claims-Respondent argued the Applicants had at no time been employed by the Respondent company and any claim of unfair dismissal had to be predicated by the existence of an employment contract which has been terminated by the employer party-Commission found that the Applicants had not been employed by the named Respondent-Ruled out as invalid —Mr JG Reid -v- Shark Bay Salt Joint Venture —APPL 931,1075 of 1997 —CAWLEY C. —24/7/97, 11/05/98 —Other Mining	2944
Application for reinstatement or reemployment on the grounds of unfair dismissal. Applicant argued that less than a fair go was given and Respondent was harsh by not assessing all the situation. Respondent argued that the Application was dismissed for gross misconduct, after assessing the situation the Respondent discovered that the Applicant initiated the situation, further, the situation escalated due to Applicant engaging in an abusive and aggressive argument. Commission found that Respondents investigation, the Respondent did not fail to give Applicant fair go - Dismissed. - AUTO, FOOD, METAL, ENGIN UNION -v- John Holland Construction & Engineering Pty Ltd - CR 315 of 1997 - SCOTT C. - Mining	3875
Application for a conference seeking a determination by the Commission exercising the powers of a Board of Reference to determine work performed by members of the Applicant Union - Applicant argued that the work performed at the site in connection with the construction of a kiln facility is construction work defined as per the Award - Respondent argued a jurisdictional issue that employees employed at the site were registered under a Workplace Agreement thus the Commission did not have the jurisdiction to deal with this matter - Commission found that employees were registered under a Workplace Agreement and the Award ceased to apply once Workplace Agreement was registered and covered the employees - Thus there was no powers that can be exercised by the Commission pursuant to the Act - Dismissed for want of prosecution. - AUTO, FOOD, METAL, ENGIN UNION -v- Monadelphous Group of Companies - C 113,114 of 1998 - KENNER C - Construction	3876
Application for reinstatement on the grounds of unfair dismissal. Applicant Union argued that the dispute resolution clause of the Arrangement is inconsistent and therefore the Applicant had the option of bringing the matter before the Commission as there is no express inconsistency. Respondent argued that the dispute resulted disciplinary action for serious and/or wilful misconduct, regarding Dispute Resolution Clause and thus matter must be dealt with in the Federal Jurisdiction. Commission found that the intention of the agreement when any dispute arose and could not be resolved by this jurisdiction and must be referred to the AIRC for resolution - Dismissed For Want of Jurisdiction. - LIQUOR, HOSPITALITY & MISC -v- Coca-Cola Amatil Western Australia - CR 117 of 1998 - GREGOR C - Beverage	3888
Application re unfair dismissal-Applicants argued that the existence of the Respondent's registered office in this State gave grounds for jurisdiction-Respondent argued that Applicants were employed and worked in another State and thus this State had no jurisdiction to hear this case-Commission found the Respondent's participation in the proceedings to this point display submission to the jurisdiction of the Commission of this State-Jurisdiction application dismissed. - Mrs MA Luff -v- DG Fletcher Holdings Pty Ltd T/A WA/SA Border Village - APPL 684,685 of 1998; CR 146 of 1998 - BEECH C - 15/10/98 - Accommodatn, Cafes & Restaurants.....	4438
Application re unfair dismissal-Applicant understood at all times that her employer was the Respondent-Respondent argued that administrative staff in the dental practice were employed by a separate entity and questioned the Commission's jurisdiction to hear this case-Commission found that due to the strict 28 day time limit for proceedings to be instituted it was imperative that such proceedings are done so correctly from the start-Commission further found that the obligation rests with the employee to establish the identity of the former employer-Dismissed for want of jurisdiction. - Mrs CM Roe -v- Bradley Gordon Shepherd - APPL 792,843,887 of 1998 - GREGOR C - 21/10/98 -Health Services.....	4451
Application for reinstatement or compensation on the grounds of unfair dismissal-Applicant argued the termination was executed in a summary manner and with no warnings from the Respondent that the Applicant's position was in jeopardy-Applicant further argued that he was denied procedural fairness and the Respondent had acted in a deceptive manner-Respondent argued that although the termination was summary this was justified by the Applicant's incompetence and inefficiency and his false claim to hold a management degree-Commission found that Respondent had not discharged the onus of establishing that there was a level of serious misconduct or performance justifying summary dismissal-Commission further found that a finding of unlawful dismissal does not of itself determine whether a dismissal is unfair-Compensation granted and claim for denied contractual benefits dismissed - Mr JJ Timms -v- Phillips Engineering Pty Ltd -APPL 2242 of 1997 - CAWLEY C. - 23/10/98 - Services to Mining	4460
Application for reinstatement on the grounds of unfair dismissal-Applicant argued that the allegation of assault made against former employee is part of a conspiracy by Respondent's senior officers to get rid of former employee due to his active membership of the Applicant union-Respondent argued that employment was terminated with five weeks' pay in lieu of notice due to the assault on the maintenance superintendent-Commission found that the Respondent gave fair opportunity to discuss the incident but that industrial law does not require employers to keep an inquiry alive indefinitely-Dismissed. - AUTO, FOOD,METAL, ENGIN UNION -v- Dampier Salt Operations Ltd - CR 214of 1998 - FIELDING C - 20/10/98 - Other Mining.....	4476
Application for compensation on the grounds of unfair dismissal-Applicant argued that management had mindfully worked against her interests-Respondent argued they had no intention of dismissing the Applicant when they telephoned her at home one evening but to invite her to a meeting to discuss her attitude and behaviour at work-Commission found that although the Applicant may have found the management's behaviour to be personally distressing this did not excuse her attitude and behaviour towards members of management-Dismissed. - LIQUOR, HOSPITALITY & MISC -v- Cat Welfare Society Inc T/A Cat Haven - CR 359 of 1996 - PARKS C -18/09/98 - Other Services	4480
Application for allegedly denied contractual entitlements-Applicant argued that at time of resignation both parties agreed to the payment of two week's pay in lieu of notice of termination-Respondent argued that a Workplace Agreement between the Respondent and the Applicant was in existence and this did not include an express term giving rise to aright for payment in lieu of notice-Commission found it has a specific duty in such cases to determine the meaning or effect of the Agreement-Dismissed for want of jurisdiction.- Mr WR Forrest -v- Shane Scholes on behalf of Metro Brick Malaga - WAG 6 of 1998 - GREGOR C - 29/10/98 - Construction Trade Services	4496
CONTRACT OUT OF AWARD	
Applicant sought a declaration that 25 staff of Westrail whose jobs had been substantially changed, had been dealt with unfairly and as such sought an Order that their existing rates of pay (including an aggregate of allowances) and a productivity payment of 10% - Union Applicant claims that staff had carried out duties under new work arrangement which were beyond the scope of the award, on the understanding that they would soon enter into an Industrial agreement with Westrail. It is further claimed that now Westrail has reneged on that arrangement and is in the process of contracting out the work of these employees. The Minister for Labour Relations stated that the claim would undermine the intent and effect of the Public Sector Management Act, as previous employees in the same area had either accepted severance payments, had been redeployed or were awaiting redeployment. Further the Minister argued that the tasks undertaken by the employees were within the terms of the award, conditions attracting allowances were paid as entitlements and as such there was no enterprise for which a bargain could be determined. The Commission in Court Session found that within the context of the Enterprise Bargaining Principle there was no claim, and that the matters before the Commission should be considered under the Workvalue Changes Principles and because that was not the current claim before the Commission, the claim as it stood must fail - Application dismissed. - Australian Railways Union of Workers, West Australian Branch -v- Western Australian Government Railways Commission - CR 165 of 1997 - Commission in Court Session - COLEMAN CC/PARKS C/SCOTT C. - Rail Transport	3022

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CONTRACT OUT OF AWARD—continued

- ¹Appeal against decision of Commission in Court Session (78 WAIG 2346) varying awards re salary packaging - Appellants argued it was not open to CICS to judge a government policy and attempt to circumvent it, and CICS impermissibly had regard for the content of workplace agreements - Appellant argued CICS failed to: receive written evidence; give full consideration to the tax implications of the clause, and to have regard to matters of public interest, flow on and structural efficiency - Appellant further argued that any salary packaging would be contracting out of the award and contravene s114 of the IR Act - IAC found that CICS was not precluded from holding that industrial conduct was unfair because it may stem from a government policy from which the Commission has no jurisdiction - IAC further found that there was nothing in the award variation which would require the parties to enter into a salary packaging arrangement which was unfair to either one - IAC found that salary packaging was not mandatory - Arrangements entered into would not have the effect of annulling or varying the award, nor would they affect the rights of anyone other than the parties to the particular arrangement - Dismissed - Commissioner, Public Service Commission & Others -v- The Civil Service Association of Western Australia Incorporated - IAC 3 of 1998 - Industrial Appeal Court - Kennedy J./Anderson J./Scott J. - 09/09/98 - Government Administration 3630

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- ²Appeal against decision of Commission (78 WAIG 756) re denied contractual entitlements —Appellant argued Commission erred in not finding that the Respondent had abandoned his employment, that the Minimum Conditions of Employment Act applied as there was no award and the Commission did not have jurisdiction to deal with deductions from wages —Full Bench found that there was no jurisdiction in the Industrial Magistrate's Court and that the Commission correctly found that there was no term in the contract that the applicant forfeit a week's pay for leaving without notice —Dismissed —J & R Sacca Poultry -v- Mr C Pearson —APPL 206 of 1998 —Full Bench —SHARKEY P/COLEMAN CC/KENNER C —30/06/98 —Agriculture 2588
- Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements -Applicant argued that despite his verbal resignation there was an understanding between herself and the Respondent that the resignation was rescinded and her job was still available-Respondent argued the Applicant's erratic behaviour reinforced the belief the Applicant had resigned and Commission could deal with matters under Minimum Conditions of Employment Act-Commission found the section 29(1)(b) application was not valid due to time restrictions -Commission further found that a commission in respect to the sale of a single property was outstanding-Granted in part —Ms MM Barnes -v- Elliose Pty Ltd t/a Faul & Associates —APPL 792 of 1997 —SCOTT C. —12/06/98 —Property Services 3343
- Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements -Applicant argued that the sales target set for him by the Respondent was unrealistic given his other duties and the restrictions placed upon his area of operation-Applicant also argued that the dismissal was unfair because he was not given proper warning that his job was in jeopardy -Respondent argued that the Applicant continually refused to take directions from the Respondent regarding his work duties-Commission found the Respondent attempted to bring about change in the Applicant's work performance which have had a significant effect upon the success of the business which the Applicant ignored at his peril-Commission further found that a reasonable notice period for a position such as that held by the Applicant was 3 months-Granted in part —Mr JS Blake -v- Robowash Pty Ltd —APPL 1843 of 1997 —SCOTT C. —05/05/98 —Machinery & Equipment Mfg 2925
- Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements —Applicant argued he had been offered permanent employment and had refused other employment due to this understanding —Respondent argued that health issues and business profitability made changes to the business structure necessary —Commission found that an employer was entitled to determine how their business operated and redundancy was a legitimate basis upon which employment terminated —Granted in part —Mr LCV Drage -v- PT & BD Slade —APPL 270 of 1998 —SCOTT C. —27/05/98 —Agriculture 2933
- Application re unfair dismissal and allegedly and allegedly denied contractual benefits-Applicant argued that he was forced to resign and that notwithstanding an arrangement between himself and the Respondent for offsetting debts against salary the Applicant was owed outstanding payments -Respondent argued that there was no case to answer -Commission found the application appeared to be more one based upon a personal feud and ran the risk of being found vexatious-Dismissed —Mr KF Foo -v- Kim Soia Personalized Tuition —APPL 215 of 1998 —GREGOR C —24/06/98 —Education..... 2934
- Application for allegedly denied contractual entitlements -Applicant argued that a contract of employment existed despite not having commenced work with the Respondent -Respondent argued that the Applicant had never been in Respondent's employ-Commission found that the fact the Applicant was unable to execute all the duties of the position for which she was engaged did not render the employment contract null-Granted —Ms G Gozenton -v- Execucum Technologies —APPL 143 of 1998 —CAWLEY C. —12/06/98 —Communication Services 2937
- Application for allegedly denied contractual entitlements on written submission-Applicant argued that an ex-gratia payment of one month's salary was promised in addition to his normal salary until the end of January 1998-Respondent argued that the termination was to occur by the end of December 1997 and the payment for January was the ex-gratia payment only-Commission found the Applicant was favourably treated by the Respondent company in offering an ex-gratia payment with the opportunity to leave without deduction -Dismissed —Mr SA Milner -v- Money Mining NL —APPL 504 of 1998 —BEECH C —10/06/98 —Metal Ore Mining 2938
- Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements -Applicants argued that they were employed by the Respondents and the Commission had jurisdiction to hear the claims-Respondent argued the Applicants had at no time been employed by the Respondent company and any claim of unfair dismissal had to be predicated by the existence of an employment contract which has been terminated by the employer party-Commission found that the Applicants had not been employed by the named Respondent-Ruled out as invalid —Mr JG Reid -v- Shark Bay Salt Joint Venture —APPL 931,1075 of 1997 —CAWLEY C. —27/4/97, 11/05/98 —Other Mining 2944
- Application re allegedly denied contractual entitlements -Applicant argued that he was at all times willing and able to work and presented as required by the Respondent despite no existing business premises-Respondent failed to appear and no answers to the claim had been filed-Commission found the Applicant was entitled to be paid in accordance with the contract for the period it was on foot and a sum in lieu of notice to be implied into the contract-Granted —Mr JT Tan -v- Execucum Technologies —APPL 271 of 1998 —CAWLEY C. —29/06/98 —Personal & Household Good Rtlg 2951
- Application for allegedly denied contractual entitlements -Applicant argued that he had not been paid for work completed in excess to the standard 40 hours per week as provided for in his contract-Respondent argued that the additional chargeable hours were to be agreed between the Respondent and the mine owner before these hours were worked-Commission found that the issue between the parties turned primarily on the correct interpretation of a clause within the Applicant's contract of employment-Dismissed —Mr L Thomas -v- Hosch International Pty Ltd —APPL 1057 of 1997 —BEECH C —30/06/98 —Services to Mining 2952
- Application for allegedly denied contractual entitlements -Only issue was date of operation-Applicant prepared to give Respondent company an additional 3 months to resurrect itself financially-Respondent argued for the 3 months unconditionally-Commission found that it was important for an order to issue confirming Applicant's entitlement to the money in the normal course-Ordered accordingly —Mr LR Vickers -v- Imtech Industries Pty Ltd —APPL 2308 of 1997 —BEECH C —09/06/98.. 2953

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Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements - Applicant argued he was dismissed without an opportunity to discuss the Respondent's accusations-Respondent argued that the Applicant was argumentative and never took direction-Commission found that during the time the Applicant worked for the Respondent, the Applicant raised opposition on a regular basis to many instructions given to him-Dismissed —Mr JM Winton -v- Fairlawm Stud —APPL 2049 of 1997 —GREGOR C —12/06/98 —Agriculture	2953
Application for reinstatement on the grounds of unfair dismissal - Applicant argued dismissal unfair because she was assured permanent employment upon completion of her probationary period - Respondent argued that the three month probationary period constituted a fixed term of employment, the contract of employment ended with the effluxion of time, and therefore no dismissal occurred - Commission found that the situation which existed was not the continuation of a casual relationship but a new contract relationship and the severance of that relationship did not constitute a dismissal - Application dismissed. - Mrs MLD Brown -v- BTR Nylex Limited - APPL 2410 of 1997 - PARKS C - Wholesaling	3352
Application for denied contractual benefits - Applicant claimed unpaid wages - Informal settlement of matters between Applicant and Respondent - Applicant disputed amount forwarded to him from Respondent and wanted hearing to proceed - Applicant did not attend hearing - Respondent sought costs of attending Commission and losing work as he was a truck driver and could not drive truck that day - Commission found conduct of Applicant warranted Respondent being awarded reasonable costs - Application for unpaid benefits dismissed and order for costs payable to Respondent from Applicant. - Mr KM May -v- Lazza's Hiab Service - APPL 2299 of 1997 - PARKS C - Road Transport.....	3357
Application Re. Allegedly Denied Contractual Entitlements of Annual Leave, Daily Allowances, Long Service Leave and Wages. Applicant argued that Entitlements are constituted under contract of Employment. Respondent argued that it denied liability for the moneys claimed except for Long Service Leave and a component of a Daily Allowance, in fact Applicant was over paid. Commission found that Applicant had not established that there had been any denied contractual benefits which can be recovered in this jurisdiction other than the conceded Long Service leave. Granted in Part - Mr MD McPolin -v- The West Australian Locomotive Engine Drivers', Firemen's and Cleaners' Union of Workers - APPL 696 of 1997 - FIELDING C - Rail Transport.....	3358
Application for denied contractual benefits and compensation on grounds of unfair dismissal - Applicant argued that he was constructively dismissed as he was forced to resign by reason of unauthorised deductions from remuneration and impossible targets and request to enter workplace agreement - Respondent claimed applicant resigned and the contract of employment came to an end - Commission found that applicant resigned and the circumstances of that resignation did not constitute duress so as to amount to a repudiation by the Respondent of the Applicant's contract of employment thereby entitling the Applicant to leave employment without notice.- Application Dismissed - Mr AG marae -v- Brocket Estate Agency - APPL 152 of 1998 - KENNER C - Property Services	3361
Application for contractual benefits due under a contract in relation to a claim of unfair dismissal - Respondent argued matter could not proceed as company was now in administration and s.44 OD(1) of the Corporation Law was involved - Applicant argued that for the purposes of the Corporation Law, the Commission was not a Court of Law - Commission concluded that s.44D(1) applied because it exercised a judicial function and performance of that function supports the view that Commission is a Court with respect to this matter - Application adjourned sine die, and application could be relisted by either party, should circumstances change. - Mr PJ Walden -v- Hansley Holdings Pty Ltd T/A GIS Engineering - APPL 2142 of 1997 - BEECH C - Other Manufacturing.....	3370
Application for compensation and payment of denied contractual benefits on grounds of unfair dismissal - Respondent argued that Commission had no jurisdiction as applicant was covered by a Federal Award and further that the Industrial Relations Act provisions for unfair dismissal are inconsistent with Federal Award and therefore is subordinate to it - Commission held that s.29(1)(b) of the Industrial Relations Act were not intended to cover employees covered by Federal Awards as well as those employees seeking to recover benefits "not being a benefit under an award or order" - Dismissed for lack of jurisdiction. - Mrs JV Woods -v- Linfoot Cleaning Services - APPL 928 of 1998 - FIELDING C - Education.....	3373
Application for allegedly denied Contractual Entitlements. Applicant argued contractual benefits due under contract of employment including not applying the award rate, not increasing the wage according to the variations of the award rate, and not applying other conditions such as overtime rates and penalty rates. Respondent argued no award existed and the award referred to was used as a guide only and further no dispute or issue was raised whilst Applicant was employed. Commission found award did not apply to contract of employment - Dismissed - Ms AP Ahern-v- Aust Fed of TPI Ex-Serv Men - APPL 1436 of 1997 - CAWLEY C. - Personal Services.....	3572
Application for allegedly denied contractual entitlements. Applicant argued that entitlement resulting from a salary packaging arrangement and salary were due. Respondent argued that no entitlement was due and the Applicant had breached the contract of service. Commission found that resignation was a breach of contract and no evidence for pro-rata salary packaging entitlement - Dismissed. - Mr C Fraser -v- Sport Specific Australia P/L - APPL 700 of 1998- CAWLEY C. - Food Manufacture	3574
Application for allegedly denied contractual entitlements. Applicant claimed unpaid bonuses earned and due for over target commissions. Respondent argued that no entitlement was due under the contract of employment and bonuses were the discretion of the employer with the intention to pay after 12 months' employment. Commission found that the bonus system was implied into the contract and bonuses were payable as targets has been achieved - Granted. - Ms K Sullivan -v- Harvey World Travel Fremantle - APPL 610 of 1998 - CAWLEY C. - Services to Transport.....	3583
Application for allegedly denied contractual entitlements. Applicant claimed unpaid wages and wages in lieu of Notice of Termination. No appearance by Respondent. Commission concluded that the claim had been made out and a contract of employment existed - Granted. - Ms E Van Dongen -v-Execucom Technologies - APPL 825 of 1998 - CAWLEY C. - Electronic Equipment Manufacture.....	3585
Application for compensation of unfair dismissal and outstanding contractual entitlements. Applicant argued that dismissal was unfair regarding unauthorised use of company vehicle and the denied entitlements formed part of the compensation. Respondent argued that dismissal was necessary as trust had been abused by unauthorised use of vehicle. Commission found that there was an abuse of privilege and there was the unauthorised use of a company vehicle - Dismissed. - Ms S Bonn -v- Collie Freightlines - APPL 631 of 1998 - SCOTT C. - Transport Industry.....	3838
Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements. Applicant argued that there was suffering from work-related stress and did not resign, Wages, Bonus and Motor Vehicle are the entitlements being claimed. Respondent argued that the Applicant was not dismissed but resigned. Also the Commission lacks jurisdiction to deal with this matter, and denies any entitlements due under the contract of service. Commission found that Applicant had resigned and that no compensation is due and no contractual entitlement have been denied - Dismissed. - Mr B Burrows -v- Central Warehouse Pty Ltd - APPL 247 of 1997 - PARKS C - Wholesaling.....	3842
Application for allegedly denied contractual entitlements. Applicant argued that there was an employee-employer relationship and claimed for various expenditure and expense incurred as an employee, as an arrangement was made with Respondent for payment of expenditures. Respondent argued that there was no employee-employer relationship but a contract for service relationship. Respondent argued that there was no logic in expenditures if no such arrangement existed. Commission found Applicant a contractor under a contract for services - Dismissed. - Mr S Bourne -v- Ivor Jones T/A Deluxe Limousines and Supreme Limousines - APPL 1965 of 1997 - GREGOR C - Road Transport.....	3845

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Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements. Applicant argued no formal warning given regarding poor performance. Respondent argued Applicant was advised of the dissatisfaction with certain aspects of his performance. Commission found there had been procedural failure by Respondent but applicant warned of the dissatisfaction of poor performance and no evidence regarding denied contractual entitlements given - Dismissed. - Mr SP Hernadi -v- Salmon Point Holdings Pty Ltd T/A O2 Bar & Club - APPL 236 of 1998 - SCOTT C. - Hospitality.....	3848
Application re alleged unfair dismissal. Applicant claimed that she was competent to do the job of Director and that she had not received any warnings about her performance prior to her suspension and subsequent dismissal. Respondent argued that Applicant was incompetent unable to carry out her duties and had a poor performance record. Commission found on evidence that Applicant's performance demonstrated a high level of incompetence and inability to carry out basic duties and functions, and that Applicant had wilfully disobeyed lawful instructions. Commission found that Applicant had not been unfairly dismissed - Dismissed. - Ms J Nicholls -v- Eastern Goldfields Aboriginal Advancement Council Inc - APPL 1329 of 1997 - GREGOR C - Other Services.....	3854
Application re alleged unfair dismissal. Applicant claimed that after challenging procedures of respondent as inappropriate, Respondent found faults with his work performance resulting in succession of baseless allegations which led to his dismissal. Respondent acknowledged that applicant's employment was terminated but denied it was unfair. Respondent argued that Applicant's claim be dismissed due to Applicant attempting by threat and duress to get witnesses to change their evidence, and that Applicant has misled the Commission. Commission found on evidence that Applicant is demonstrably a discreditable person. Commission found that Application should be dismissed pursuant to S.27(1)(a). Commission found that Applicant pay costs to Respondent - Dismissed and costs awarded to Respondent. - Mr BF Smith -v- Nulsen Haven Association (Inc) - APPL 558 of 1998 - CAWLEY C. - Health Services.....	3863
Application for unfair dismissal- Applicant claimed he was unfairly dismissed by Respondent - Respondent argued that Applicant was a contractor and not an employee and had signed a contract for services agreement - Commission found Applicant to be a contractor and not an employee - Dismissed for Want of Jurisdiction. - Mr I Zovko -v- KLM Fabricators - APPL 382 of 1998 - GREGOR C - General Construction.....	3866
¹ Appeal against decision of Full Bench (77WAIG 1530) re allegedly denied contractual entitlements-Decision concerned the construction of the clause in a fixed term contract of employment-Appellant argued, inter alia, that Full Bench had erred in finding that the written employment contract only provided for a redundancy payment where employment was terminated in circumstances where the respondent company was undergoing a merger, acquisition, re-arrangement, re-construction, liquidation or receivership-Appellant argued that the Full Bench, having found the appellant was constructively dismissed and that the contract did not apply, failed in holding that appellant was entitled to receive payment for the balance of the contract-IAC found that the task of construction of the contract is to determine the intention of the parties objectively from the agreement they have reached-IAC further found that there were changes made in the manner in which the respondent business was organised but that there was no change to structure-Appellant further argued that Full Bench failed to consider and award to appellant the amount to which he was entitled by way of damages for loss of remuneration under the contract for the remaining term-IAC found this matter not dealt with expressly in the reasons of the Full Bench but because of lack of documented evidence before this court as to monies already paid to the appellant it was inappropriate for this court to attempt any final resolution of the position between the parties-Upheld and remitted. - Mr MW Hart -v- Robowash Pty Ltd -IAC 7 of 1998 - Industrial Appeal Court - Kennedy J./Anderson J./Parker J. - 07/10/98 - Construction Trade Services.....	4307
Application for order re penalty imposed for misconduct for involvement in a prison incident - Applicant Union argued that the Respondent had imposed penalties on an employee for which it had no legal mandate - Applicant argued that the employee was not treated fairly or consistently; the suspension was arbitrary and capricious and Public Sector Management Act was not complied with - Respondent argued PSA was without jurisdiction because there was no disciplinary finding at the relevant time, there was no power to extend the time to file an appeal to the Public Service Appeal Board and because of s23(3)(d) of the IRAct1979 - PSA found there was no breach of the Public Sector Management Act and the Public Service Appeal Board had sole jurisdiction to determine such a matter - PSA further found justice required the matter to be brought to a conclusion - Matter divided and Dismissed in part for want of jurisdiction - The Civil Service Association of Western Australia Incorporated -v- Ministry of Justice - P 37 of 1997 - Public Service Arbitrator - GREGOR C - 06/10/98 - Government Administration.....	4397
Application re unfair dismissal-Applicant argued that the relevant contract of employment did not allow the Respondent to direct the Applicant to work an increased number of hours per week-Respondent argued that there were no specified working hours within the contract of employment-Commission found that the hours the Applicant had previously worked were a custom or practice but did not have the effect of making it a term of the contract-Dismissed. - Mr TJ Etherington -v- Star and Garter Hotels Pty Ltd - APPL 1536 of 1998 - BEECH C - 14/10/98 -Accommodatn, Cafes & Restaurants.....	4418
Application for compensation on the grounds of unfair dismissal-Applicant argued that the termination was without warning and without valid reason-Respondent argued that the Applicant was dismissed because of an unsatisfactory attitude to his work and failure to comply with instructions-Commission found that it needs to adopt a pragmatic and practical approach to matters like this in looking at the relationship between a farmer and his farmhands-Commission further found that the manner of dismissal is only one of the factors to be considered in a case of alleged unfair dismissal-Dismissed - Mr GB Johnson -v- DC & CM Richards - APPL 44 of 1998 - FIELDING C - 25/09/98 -Agriculture.....	4430
Application re allegedly denied contractual entitlements-Applicant argued that Respondent's policy of not paying for unpaid sick leave for entire period of employment on retirement was discriminatory-Commission found that it may only order the Applicant be paid a benefit to which he is entitled under his contract of employment. The Commission cannot rewrite his entitlements to make them more favourable to the Applicant-Dismissed - Mr BM King -v-Email Limited - APPL 424 of 1998 - BEECH C - 15/09/98 -Machinery & Equipment Mfg.....	4437
Application re unfair dismissal-Applicants argued that the existence of the Respondent's registered office in this State gave grounds for jurisdiction-Respondent argued that Applicants were employed and worked in another State and thus this State had no jurisdiction to hear this case-Commission found the Respondent's participation in the proceedings to this point display submission to the jurisdiction of the Commission of this State-Jurisdiction application dismissed. - Mrs MA Luff -v- DG Fletcher Holdings Pty Ltd T/A WA/SA Border Village - APPL 684,685 of 1998; CR 146 of 1998 - BEECH C - 15/10/98 - Accommodatn, Cafes & Restaurants.....	4438
Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements-Applicant argued that the Respondent unilaterally reduced her wages-Respondent argued that the Applicant's work load had been substantially decreasing over time with the employment of additional staff-Commission found that an employer cannot unilaterally vary the contract of employment between it and an employee and still less can do so retrospectively-Unpaid entitlements to be paid and compensation for unfair dismissal granted. - Mrs SL Scanlan-v- Greenport Nominees Pty Ltd T/A Indiana Tea House - APPL587 of 1998 - BEECH C - 23/09/98 - Accommodatn, Cafes & Restaurants.....	4452
Application for reinstatement or compensation on the grounds of unfair dismissal-Applicant argued the termination was executed in a summary manner and with no warnings from the Respondent that the Applicant's position was in jeopardy-Applicant further argued that he was denied procedural fairness and the Respondent had acted in a deceptive manner-Respondent argued that although the termination was summary this was justified by the Applicant's incompetence and inefficiency and his false claim to hold a management degree-Commission found that Respondent had not discharged the onus of establishing that there was a level of serious misconduct or performance justifying summary dismissal-Commission further found that a finding of unlawful dismissal does not of itself determine whether a dismissal is unfair-Compensation granted and claim for denied contractual benefits dismissed - Mr JJ Timms -v- Phillips Engineering Pty Ltd -APPL 2242 of 1997 - CAWLEY C. - 23/10/98 - Services to Mining.....	4460

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Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements—Applicant argued the Respondent must discharge the onus of establishing the applicant's misconduct for the purposes of a lawful right to summarily dismiss to arise—Respondent argued that several verbal warnings had been given to the Applicant in front of witnesses—Commission found there was no denial of natural justice—Dismissed - Mr LV White -v-Dale Alcock Home Improvement Pty Ltd - APPL 286 of 1998 -CAWLEY C. - 17/09/98 - General Construction	4469
Application for allegedly denied contractual entitlements—Applicant argued that at time of resignation both parties agreed to the payment of two week's pay in lieu of notice of termination—Respondent argued that a Workplace Agreement between the Respondent and the Applicant was in existence and this did not include an express term giving rise to aright for payment in lieu of notice—Commission found it has a specific duty in such cases to determine the meaning or effect of the Agreement—Dismissed for want of jurisdiction.- Mr WR Forrest -v- Shane Scholes on behalf of Metro Brick Malaga - WAG 6 of 1998 - GREGOR C - 29/10/98 - Construction Trade Services.....	4496
Application for compensation on the grounds of unfair dismissal and alleged denied contractual entitlements - Applicant argued that dismissal was unfair because proper procedures were not followed - Further the Applicant argued for unpaid salary, overtime and expenses as compensation - Respondent argued that the Commission did not have jurisdiction to deal with Application because Applicant's employment was governed by a Federal Award and further there was no basis for contractual entitlements claimed - Commission found that there was no jurisdiction to deal with Application because the provisions of the Federal Award conflict with the provisions of the State Act - Further there is no basis for the contractual entitlements claimed - Dismissed. - Mr JT Burnham -v- Western Desert Puntukurnuparna Aboriginal Corporation - APPL 556 of 1998 - FIELDING C - 25/11/98 - Health and Community Services.....	4899
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³ State Wage Case 1998 —CICS reviewed whether to give effect to the decision of the Full Bench of the AIRC re the Safety Net Review —Wage and increase in the Adult Minimum Wage —Subject to qualifications arising out of the Western Australian legal framework and industrial ramifications of dealing with breakdowns in enterprise bargaining, the Minister for Labour Relations, CCI, TLC,& AMMA supported giving effect to the National Wage Decision —CCI and the Minister also gave detailed submissions on the State Economy —The Minister, CCI and AMMA argued that to meet economic objectives identified by the AIRC the wages increases should only be available by application and from the date the award is varied — Minister further asked the Commission not to adopt the Minimum Wage increases as that could be achieved under the Minimum Conditions of Employment Act —TLC argued that the safety net adjustments should be effected by general order as previous general orders had not had an adverse economic impact —TLC further argued that the differences between State and Federal laws conspired to disadvantage Trade Unions in the State and sought the deletion of the Enterprise Bargaining Principle —CICS found no good reason not to give effect to the National Wage Decision with Safety Net adjustments to be absorbed and available on application no earlier than the date of variation —CICS found that the Adult Minimum Wage was an integral part of the National Wage Decision and the abolition of the Enterprise Bargaining Principle would militate against a workplace focus —Statement of Principles and General Order issued —(Commission's own motion) -v- Trades and Labor Council of Western Australia & Others —APPL 757 of 1998 —Commission in Court Session —COLEMAN CC/FIELDING C/GREGOR C —12/06/98 —Various	2579
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² Appeal against decision of Commission (78 WAIG 1393) re dismissal of unfair dismissal application—Appellant argued Commission had erred in law in not finding that the dismissal was harsh, oppressive or unfair because the employer causally linked the appellant's conduct with the theft of money in the letter of dismissal—Full Bench found that no ground of appeal had been made out—Dismissed - Ms CD'Agostino -v- P & O Food Services Pty Ltd - APPL 497 of 1998 - Full Bench - SHARKEY P/PARKS C/SCOTT C. - 30/10/98 -Food Retailing	4311

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Application to order Respondent not to require any employee to participate in the Personal Performance Review processor alternatively to first negotiate terms for an increase in pay rates to reflect the resultant productivity increases-Applicant argued that there was no consultation with the Applicant unions prior to the implementation of the review process-Applicant further argued that review was another example of the Respondent constantly changing policies-Respondent argued that it has an obligation under the Public Sector Management Act 1994 to comply with relevant standards and prior to the implementation of the review the Respondent had been advised it was not complying with these standards-Commission found that an employee has an obligation to provide information on his or her work to the employer upon request of such-Dismissed. - Australian Railways Union of Workers, West Australian Branch -v- Western Australian Government Railways Commission & Others- APPL 684,685 of 1998; CR 146 of 1998 - BEECH C - 15/10/98- Rail Transport	4484
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Application for compensation on the grounds of unfair dismissal-Issues of jurisdiction arose due to the applicant being covered by a federal award as opposed to a state award and that the terms of the Award are inconsistent with the terms of the Act in relation to harsh, oppressive or unfair dismissal-Applicant and Respondent both agreed to these issues being heard as threshold issues-Commission found that it was possible to discern a legislative intention by the Commonwealth to provide an exhaustive code in relation to termination of employment to the exclusion of State law-Commission further found that the above conclusion cannot affect the scope and application of the unfair dismissal provisions of the Act itself-Dismissed for want of jurisdiction. - Mr W Hull -v- City of Mandurah - APPL 706 of 1998 - KENNER C - Government Administration	4912
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² Appeal against decision of Industrial Magistrate (unreported) regarding breach of award-Question of jurisdiction of Full Bench raised-Full Bench questioned whether decision of Industrial Magistrate was such within meaning of section 83 of the Act- Appeal not competent and therefore dismissed-Dismissed - Giovanni Basilio Nicoletti and Guiliana Nicoletti -v- Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch - APPL 2157 of 1997 - Full Bench - SHARKEY P/BEECHC/PARKS C - 30/10/98 - Unions.....	4316
Application re unfair dismissal-Applicant made reference in the Notice that his employment was governed by a Federal award-Respondent filed a Notice of Answer challenging the WAIRC's jurisdiction in this matter-Commission found that it has no jurisdiction in a Federal award matter-Dismissed for want of jurisdiction. - Mr RJ Cumming -v- Pacific Manning & Other - APPL 1359 of 1998 - FIELDING C - 05/10/98- Water Transport	4410
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Application for allegedly denied contractual entitlements -Applicant argued that he had not been paid for work completed in excess to the standard 40 hours per week as provided for in his contract-Respondent argued that the additional chargeable hours were to be agreed between the Respondent and the mine owner before these hours were worked-Commission found that the issue between the parties turned primarily on the correct interpretation of a clause within the Applicant's contract of employment-Dismissed —Mr L Thomas -v- Hosch International Pty Ltd —APPL 1057 of 1997 —BEECH C —30/06/98 — Services to Mining	2952
Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements -Applicant argued he was dismissed without an opportunity to discuss the Respondent's accusations-Respondent argued that the Applicant was argumentative and never took direction-Commission found that during the time the Applicant worked for the Respondent, the Applicant raised opposition on a regular basis to many instructions given to him-Dismissed —Mr JM Winton -v- Fairlawn Stud —APPL 2049 of 1997 —GREGOR C —12/06/98 —Agriculture	2953
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Application re unfair dismissal-Applicant argued that the dismissal was summary-Respondent argued that although they accept the dismissal was summary the Applicant had breached client security and confidentiality in a business based on security-Commission found that the credibility of the Respondent company's operations was based on the ability to maintain the efficacy of a security system and must be able to rely on the honesty and integrity of its employees to achieve this-Dismissed. - Ms RL Ellison -v- Lythven Pty Ltd T/A Shelf Security - APPL 1195 of 1998 - COLEMAN CC -29/10/98 - Property and Business Services	4416
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Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements-Applicant argued that she had not agreed to the change in her employment status from full-time to casual and as such this change constituted an unfair dismissal-Respondent argued there had been agreement at a meeting between himself and the Applicant regarding the change in employment status and had willing paid all entitlements due-Commission found that the Respondent's behaviour represented a justifiable and prudent business decision-Dismissed. - Ms EM Greig -v- Occasions Pty Ltd T/A Classic Holidays - APPL 2045 of 1997 - PARKS C - 02/11/98 -Services to Transport	4422
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Application re unfair dismissal-Applicant argued she was told that the reason for her dismissal was because the project was winding down but she was nevertheless working the same number of hours and that her work continued to be performed after the dismissal-Respondent argued Applicant was employed on terms that were "project specific"-Commission found it remarkable that given the Respondent's emphasis on a project specific term it had not been included in the written contract-Commission further found that the termination occurred in accordance with the employment agreement between the two parties-Dismissed. -Ms NJ Smith -v- Concrete Constructions Group Ltd - APPL1229 of 1998 - BEECH C - 20/10/98 - General Construction	4457
Application for compensation on the grounds of unfair dismissal-Applicant argued that management had mindfully worked against her interests-Respondent argued they had no intention of dismissing the Applicant when they telephoned her at home one evening but to invite her to a meeting to discuss her attitude and behaviour at work-Commission found that although the Applicant may have found the management's behaviour to be personally distressing this did not excuse her attitude and behaviour towards members of management-Dismissed. - LIQUOR, HOSPITALITY & MISC -v- Cat Welfare Society Inc T/A Cat Haven - CR 359 of 1996 - PARKS C -18/09/98 - Other Services	4480
Application for allegedly denied contractual entitlements-Applicant argued that at time of resignation both parties agreed to the payment of two week's pay in lieu of notice of termination-Respondent argued that a Workplace Agreement between the Respondent and the Applicant was in existence and this did not include an express term giving rise to aright for payment in lieu of notice-Commission found it has a specific duty in such cases to determine the meaning or effect of the Agreement-Dismissed for want of jurisdiction.- Mr WR Forrest -v- Shane Scholes on behalf of Metro Brick Malaga - WAG 6 of 1998 - GREGOR C - 29/10/98 - Construction Trade Services	4496
Application re entitlement to study leave from place of work-Applicant argued that he had been granted 5 hours study leave per semester in the past but now had been given only half that time-Respondent argued that study leave is provided for under the award and is at the discretion of the Chief Executive Officer-Commission found that the applicant's circumstances failed to meet the provisions of the relevant clause in the award-Dismissed - The Civil Service Association of Western Australia Incorporated -v- Chief Executive Officer, Department of Environmental Protection - P 42 of 1998 - BEECH C - Government Administration	4887
Application for allegedly denied contractual entitlements -Applicant argued that while it had been acknowledged at the commencement of his employment that work on Sundays may prove necessary at times it had never been envisaged that working Sundays was to become a regular practice-Respondent argued that the employment contract discussions had centred around the work requirements to accommodate the loading operation-Commission found that the incidence of a 7-day load out schedule was not in itself the basis upon which the adequacy of the wage was to be reviewed but the reasonableness of the demands made of the applicant -Granted. - Mr MJ Hartnett -v- Skilled Engineering Limited - APPL 16 of 1998 - COLEMAN CC - Rail Transport.....	4908
Application re alleged unfair dismissal-Applicant argued that the failure to pay her wages at the time of her cessation of work amounted to unfair dismissal-Respondent argued the applicant had been a casual employee and had readily accepted the reason she would be offered no further work-Commission found that the fact the applicant was a casual employee does not mean she cannot be unfairly dismissed-Commission further found that the applicant did not challenge the reasons she was not given continuing work and therefore there was no basis for an unfair dismissal claim-Dismissed. - Ms EA Heslington -v- Penman Holdings Pty Ltd T/A Video Ezy Gosnells - APPL 1188 of 1998 - BEECH C - Motion Picture Radio & TV Serv	4910

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² Appeal against part of decision of Commission (78 WAIG 1065) re order that Appellant not refuse entry to its premises to an employee - Appellant argued that the application for the order appealed against should have been made under s23A of the IR Act, the order was incompetent and that the matter of the worker being prohibited from entering the Appellants premises was not an industrial matter - Full Bench found that the claim for the order raised a separate matter which could have been the subject of a separate application under s44 - Full Bench found that the matter did not effect or relate to the work rights or duties of the worker as an employee of the Appellant and the Commission was without jurisdiction to make the order - Upheld - WMC Resources Ltd -v- The Australian Workers' Union, West Australian Branch, Industrial Union of Workers - APPL 499 of 1998 - Full Bench - SHARKEY P/GREGOR C/SCOTT C. - 29/07/98 - Metal Ore Mining.....	3012
Application to amend award - Applicant sought to insert new provision for rental assistance into Award on grounds of shortage of accommodation; difficulty in retaining employees; current allowance is inadequate, inequality with current Workplace Agreement Minister for Labour Relations opposed amendment on grounds that the Union was only seeking entitled because it was offered under a Workplace Agreement, accommodation was optional; Rent not an industrial matter, rent is not an employee related expense and interalia, retention of staff at Westrail is not problematic in light of organisational restructuring - Commission in Court Session found that the appropriate way to deal with the inequity of this allowance was by way of application to amend the District allowance - Application dismissed - Australian Railways Union of Workers, West Australian Branch -v- Western Australian Government Railways Commission & Others - APPL 534 of 1997 - Commission in Court Session - COLEMAN CC/PARKS C/SCOTT C. - Rail Transport.....	3020
¹ Appeal against decision of Commission in Court Session (78 WAIG 2346) varying awards re salary packaging - Appellants argued it was not open to CICS to judge a government policy and attempt to circumvent it, and CICS impermissibly had regard for the content of workplace agreements - Appellant argued CICS failed to: receive written evidence; give full consideration to the tax implications of the clause, and to have regard to matters of public interest, flow on and structural efficiency - Appellant further argued that any salary packaging would be contracting out of the award and contravene s114 of the IR Act - IAC found that CICS was not precluded from holding that industrial conduct was unfair because it may stem from a government policy from which the Commission has no jurisdiction - IAC further found that there was nothing in the award variation which would require the parties to enter into a salary packaging arrangement which was unfair to either one - IAC found that salary packaging was not mandatory - Arrangements entered into would not have the effect of annulling or varying the award, nor would they affect the rights of anyone other than the parties to the particular arrangement - Dismissed - Commissioner, Public Service Commission & Others -v- The Civil Service Association of Western Australia Incorporated - IAC 3 of 1998 - Industrial Appeal Court - Kennedy J./Anderson J./Scott J. - 09/09/98 - Government Administration	3630
Application for compensation on the grounds of unfair dismissal-Issues of jurisdiction arose due to the applicant being covered by a federal award as opposed to a state award and that the terms of the Award are inconsistent with the terms of the Act in relation to harsh, oppressive or unfair dismissal-Applicant and Respondent both agreed to these issues being heard as threshold issues-Commission found that it was possible to discern a legislative intention by the Commonwealth to provide an exhaustive code in relation to termination of employment to the exclusion of State law-Commission further found that the above conclusion cannot affect the scope and application of the unfair dismissal provisions of the Act itself-Dismissed for want of jurisdiction. - Mr W Hull -v- City of Mandurah - APPL 706 of 1998 - KENNER C - Government Administration	4912
INDUSTRY	
Application for unfair dismissal and contractual entitlements. Applicant claimed he was unfairly dismissed after arriving 12 minutes late for work and that he was owed 3 days pay for time worked and a week in lieu of notice. Respondent argued that Applicant was on a trial period and when challenged over being late told the Respondent to "stick his job" and left. Commission found it impossible to distinguish between witnesses' credibility but as the Applicant bears the onus of proving his case and as this was not proven the unfair dismissal claim was dismissed. Commission unable to deal with Award entitlements claim - Dismissed. - Mr DG White -v- Australind Caravan Park - APPL 704 of 1998 - SCOTT C. - Accommodation	3865
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Application for allegedly denied contractual entitlements -Applicant argued that he had not been paid for work completed in excess to the standard 40 hours per week as provided for in his contract-Respondent argued that the additional chargeable hours were to be agreed between the Respondent and the mine owner before these hours were worked-Commission found that the issue between the parties turned primarily on the correct interpretation of a clause within the Applicant's contract of employment-Dismissed —Mr L Thomas -v- Hosch International Pty Ltd —APPL 1057 of 1997 —BEECH C —30/06/98 — Services to Mining	2952
² Appeal against decision of Commission (78 WAIG 2691) re dismissed application for an award - Full Bench found the appeal was determinable primarily on the interpretation of the Appellant Union's Rules - Full Bench found, having regard to the Fish Resources Management Act 1994 and the evidence, it was open to the Commission to find that the Respondent and its officers were not engaged in a service that bore any relationship to the Mercantile Marine - Full Bench further found the Commission correctly found that the fisheries officers were not eligible to be members of the Appellant and that the application for an award should be dismissed - Dismissed - Merchant Service Guild of Australia, Western Australian Branch, Union of Workers -v- Fisheries Department of Western Australia - APPL 1354 of 1998 - Full Bench - SHARKEY P/COLEMAN CC/KENNER C - 18/09/98 - Government Administration.....	3648
¹ Appeal against decision of Full Bench (77WAIG 1530) re allegedly denied contractual entitlements-Decision concerned the construction of the clause in a fixed term contract of employment-Appellant argued, inter alia, that Full Bench had erred in finding that the written employment contract only provided for a redundancy payment where employment was terminated in circumstances where the respondent company was undergoing a merger, acquisition, re-arrangement, re-construction, liquidation or receivership-Appellant argued that the Full Bench, having found the appellant was constructively dismissed and that the contract did not apply, failed in holding that appellant was entitled to receive payment for the balance of the contract-IAC found that the task of construction of the contract is to determine the intention of the parties objectively from the agreement they have reached-IAC further found that there were changes made in the manner in which the respondent business was organised but that there was no change to structure-Appellant further argued that Full Bench failed to consider and award to appellant the amount to which he was entitled by way of damages for loss of remuneration under the contract for the remaining term-IAC found this matter not dealt with expressly in the reasons of the Full Bench but because of lack of documented evidence before this court as to monies already paid to the appellant it was in appropriate for this court to attempt any final resolution of the position between the parties-Upheld and remitted. - Mr MW Hart -v- Robowash Pty Ltd - IAC 7 of 1998 - Industrial Appeal Court - Kennedy J./Anderson J./Parker J. - 07/10/98 - Construction Trade Services.....	4307
Application for interpretation of Enterprise Bargaining Agreement as regards salary and productivity improvement plan clauses-Applicant argued that the correct measure to apply for the purpose of ascertaining any salary increase due was actuarial model used previously by the Respondent-Respondent argued that it applied the methodology for calculation provided for in the Agreement for justification of any salary increase-Commission found that the 1997actuarial model not~ model to be applied for the purpose of the Agreement-Order issued accordingly - The Civil Service Association of Western Australia Incorporated -v- Insurance Commission of Western Australia - P 7 of 1998 - Public Service Arbitrator - CAWLEY C. - 10/09/98 - Insurance.....	4393

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INTERPRETATION-WORDS & PHRASES—continued	
Application re unfair dismissal-Applicant argued that he had maintained contact with a senior manager whilst not attending mine site-Respondent argued that application was lodged out of time and that Applicant had abandoned his job-Commission found that the action taken by an employer to dismiss an employee is not effective until it is communicated to the employee-Application restored to the lists for further hearing and determination. - Mr DJ Duke-v- Byrnegut Mining Pty Ltd - APPL 1360 of 1998 - BEECH C -21/10/98 - Metal Ore Mining.....	4414
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⁴ Application for orders re observance or non-observance of Union rules - Applicant sought to rely on an affidavit and sought to discontinue the application when President did not admit it into evidence - President found the contents of the affidavit were substantially irrelevant - President further found that having regard to the lack of evidence and the nature of proceedings the application should be dismissed - Dismissed - Mr JW Turner & Others -v-Australian Railways Union of Workers, West Australian Branch - APPL 1603 of 1998 - President - SHARKEY P - 07/09/98 - Other Services	3421
Application for compensation on the grounds of unfair dismissal-Applicant argued that his failure to comply with a direction and lying about this failure should be considered in terms of his length of service, sales record, management change and effects of company restructure-Respondent argued that as the Applicant's manager was based out of State, the sales team had to be reliable, honest and adhere to instructions-Commission found that in arriving at its decision the Respondent had proper regard for the Applicant's length of service and record-Commission further argued that the Applicant was not denied natural justice-Dismissed - Mr JH Duggan -v- Canon Australia PtyLtd - APPL 434 of 1998 - CAWLEY C. - 21/09/98 - Business Services.....	4412
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² Appeal against decision of Commission (78 WAIG 756) re denied contractual entitlements —Appellant argued Commission erred in not finding that the Respondent had abandoned his employment, that the Minimum Conditions of Employment Act applied as there was no award and the Commission did not have jurisdiction to deal with deductions from wages —Full Bench found that there was no jurisdiction in the Industrial Magistrate's Court and that the Commission correctly found that there was no term in the contract that the applicant forfeit a week's pay for leaving without notice —Dismissed —J & R Sacca Poultry -v —Mr C Pearson —APPL 206 of 1998 —Full Bench —SHARKEY P/COLEMAN CC/KENNER C —30/06/98 —Agriculture.....	2588
Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements -Applicant argued that despite his verbal resignation there was an understanding between herself and the Respondent that the resignation was rescinded and her job was still available-Respondent argued the Applicant's erratic behaviour reinforced the belief the Applicant had resigned and Commission could deal with matters under Minimum Conditions of Employment Act-Commission found the section 29(1)(b) application was not valid due to time restrictions -Commission further found that a commission in respect to the sale of a single property was outstanding-Granted in part —Ms MM Barnes -v- Elliose Pty Ltd t/a Faul & Associates —APPL 792 of 1997 —SCOTT C. —12/06/98 —Property Services.....	3343
Application for compensation on the grounds of unfair dismissal-Applicant argued that an applicable Federal Award did not confer exclusive jurisdiction on the Federal Commission to the exclusion of the State Commission -Respondent argued that State provisions in relation to unfair dismissal are inconsistent with provisions of the Federal Award and so render State laws invalid-Respondent further argued that State provisions dealing with unfair dismissal did not extend to employees covered by federal awards-Commission found that the Federal award granted a positive authority which must be construed to take effect to the exclusion of State law-Dismissed for want of jurisdiction —Mr AT Mitchell -v- United Credit Union Limited —APPL 76 of 1998 —KENNER C —05/06/98 —Finance	2939
² Appeal against part of decision of Commission (78 WAIG 1065) re order that Appellant not refuse entry to its premises to an ex employee - Appellant argued that the application for the order appealed against should have been made under s23A of the IR Act, the order was incompetent and that the matter of the worker being prohibited from entering the Appellants premises was not an industrial matter - Full Bench found that the claim for the order raised a separate matter which could have been the subject of a separate application under s44 - Full Bench found that the matter did not effect or relate to the work rights or duties of the worker as an employee of the Appellant and the Commission was without jurisdiction to make the order - Upheld - WMC Resources Ltd -v- The Australian Workers' Union, West Australian Branch, Industrial Union of Workers - APPL 499 of 1998 - Full Bench - SHARKEY P/GREGOR C/SCOTT C. - 29/07/98 - Metal Ore Mining.....	3012
Application to amend award - Applicant sought to insert new provision for rental assistance into Award on grounds of shortage of accommodation; difficulty in retaining employees; current allowance is inadequate, inequality with current Workplace Agreement Minister for Labour Relations opposed amendment on grounds that the Union was only seeking entitled because it was offered under a Workplace Agreement, accommodation was optional; Rent not an industrial matter, rent is not an employee related expense and interalia, retention of staff at Westrail is not problematic in light of organisational restructuring - Commission in Court Session found that the appropriate way to deal with the inequity of this allowance was by way of application to amend the District allowance - Application dismissed - Australian Railways Union of Workers, West Australian Branch -v- Western Australian Government Railways Commission & Others - APPL 534 of 1997 - Commission in Court Session - COLEMAN CC/PARKS C/SCOTT C. - Rail Transport.....	3020
⁴ Application for orders restraining Respondent Registrar from proceeding with action under s84E to have party struck out of award or industrial agreement - Applicant argued that jurisdiction was founded on interalia ss26 and 94 of the IR ACT - Respondent argued that the application was incompetent as it did not pertain to any matters referred to in s66 of the IR ACT - President found that the orders sought did not relate to the rules of the Applicant organisation, their observance or non observance, but to the discharge of the Registrar's statutory duty under s84E - Dismissed - COMM, ELECTRIC, ELECT, ENERGY -v- Registrar, Western Australian Industrial Relations Commission - APPL 1181 of 1998 - President - SHARKEY P - 27/07/98 - Other Services	3026
Application Re. Allegedly Denied Contractual Entitlements of Annual Leave, Daily Allowances, Long Service Leave and Wages. Applicant argued that Entitlements are constituted under contract of Employment. Respondent argued that it denied liability for the moneys claimed except for Long Service Leave and a component of a Daily Allowance, in fact Applicant was over paid. Commission found that Applicant had not established that there had been any denied contractual benefits which can be recovered in this jurisdiction other than the conceded Long Service leave. Granted in Part - Mr MD McPolin -v- The West Australian Locomotive Engine Drivers', Firemen's and Cleaners' Union of Workers - APPL 696 of 1997 - FIELDING C - Rail Transport.....	3358
Application for compensation and payment of denied contractual benefits on grounds of unfair dismissal - Respondent argued that Commission had no jurisdiction as applicant was covered by a Federal Award and further that the Industrial Relations Act provisions for unfair dismissal are inconsistent with Federal Award and therefore is subordinate to it - Commission held that s.29(1)(b) of the Industrial Relations Act were not intended to cover employees covered by Federal Awards as well as those employees seeking to recover benefits "not being a benefit under an award or order" - Dismissed for lack of jurisdiction. - Mrs JV Woods -v- Linfoot Cleaning Services - APPL 928 of 1998 - FIELDING C - Education.....	3373
Appeal for reinstatement on the grounds of Termination was harsh, oppressive and unfair - Appellant argued that he had expectation of continued employment beyond term of short contract - Respondent argued employment was subject to a contract which came to an end by the effluxion of time, and thus the Board had no jurisdiction to deal with this matter - Board considered the series of unbroken express contracts and the agreed and express term contained therein and found that the decision not to offer a further contract after the last one elapsed was not a termination and thus the Board had no jurisdiction to deal with this matter - Appeal dismissed. - Mr JW Ridd -v- Family and Children's Services - PSAB 6 of 1998 - Public Service Appeal Board - CAWLEY C. - Government Administration	3389

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- Application for compensation on the grounds of unfair dismissal. Applicant argued that the hearing proceed even though the employer has had administrators appointed. Respondent argued that as employer is in the hands of a Liquidator pursuant to the Corporations Law 440D(1) and 471B and the Commission does not have the authority to proceed with the Application. Commission found that the Corporations Law applies and cannot proceed. Application adjourned and no further proceedings until authority pursuant to the Corporations Act is obtained. - Mr P Helm -v- Hansley Holdings Pty Ltd T/A GIS Engineering - APPL 1724 of 1997 - CAWLEY C. - Engineering 3576
- ¹Appeal against decision of Commission in Court Session (78 WAIG 2346) varying awards re salary packaging - Appellants argued it was not open to CICS to judge a government policy and attempt to circumvent it, and CICS impermissably had regard for the content of workplace agreements - Appellant argued CICS failed to: receive written evidence; give full consideration to the tax implications of the clause, and to have regard to matters of public interest, flow on and structural efficiency - Appellant further argued that any salary packaging would be contracting out of the award and contravene s114 of the IR Act - IAC found that CICS was not precluded from holding that industrial conduct was unfair because it may stem from a government policy from which the Commission has no jurisdiction - IAC further found that there was nothing in the award variation which would require the parties to enter into a salary packaging arrangement which was unfair to either one - IAC found that salary packaging was not mandatory - Arrangements entered into would not have the effect of annulling or varying the award, nor would they affect the rights of anyone other than the parties to the particular arrangement - Dismissed - Commissioner, Public Service Commission & Others -v- The Civil Service Association of Western Australia Incorporated - IAC 3 of 1998 - Industrial Appeal Court - Kennedy J./Anderson J./Scott J. - 09/09/98 - Government Administration 3630
- Application for allegedly denied contractual entitlements. Applicant argued that there was an employee-employer relationship and claimed for various expenditure and expense incurred as an employee, as an arrangement was made with Respondent for payment of expenditures. Respondent argued that there was no employee-employer relationship but a contract for service relationship. Respondent argued that there was no logic in expenditures if no such arrangement existed. Commission found Applicant a contractor under a contract for services - Dismissed. - Mr S Bourne -v- Ivor Jones T/A Deluxe Limousines and Supreme Limousines - APPL 1965 of 1997 - GREGOR C - Road Transport 3845
- Application for unfair dismissal- Applicant claimed he was unfairly dismissed by Respondent - Respondent argued that Applicant was a contractor and not an employee and had signed a contract for services agreement - Commission found Applicant to be a contractor and not an employee - Dismissed for Want of Jurisdiction. - Mr I Zovko -v- KLM Fabricators - APPL 382 of 1998 - GREGOR C - General Construction 3866
- Application for a conference seeking a determination by the Commission exercising the powers of a Board of Reference to determine work performed by members of the Applicant Union - Applicant argued that the work performed at the site in connection with the construction of a kiln facility is construction work defined as per the Award - Respondent argued a jurisdictional issue that employees employed at the site were registered under a Workplace Agreement thus the Commission did not have the jurisdiction to deal with this matter - Commission found that employees were registered under a Workplace Agreement and the Award ceased to apply once Workplace Agreement was registered and covered the employees - Thus there was no powers that can be exercised by the Commission pursuant to the Act - Dismissed for want of prosecution. - AUTO, FOOD, METAL, ENGIN UNION -v- Monadelphous Group of Companies - C 113,114 of 1998 - KENNER C - Construction 3876
- Application for a conference regarding unfair dismissal - Preliminary matter raised as to the jurisdiction of the Commission - Preliminary matter raised was that the Conference was registered under section 29(1)(b)(i) of the Act and thus the Commission did have the power to pursue matter under Section 44 - Further - The Applicant was not authorised to lodge an Application under section 29(1)(b)(i) - Commission found that the content of the Application was misleading and confusing and reached the conclusion that it had the powers to proceed pursuant to section 44(1) of the Act. - LIQUOR, HOSPITALITY & MISC -v- Bega Garnbirringu Health Services Aboriginal Corp. - CR 163 of 1997 - PARKS C - Medical 3882
- Application for reinstatement on the grounds of unfair dismissal. Applicant Union argued that the dispute resolution clause of the Arrangement is inconsistent and therefore the Applicant had the option of bringing the matter before the Commission as there is no express inconsistency. Respondent argued that the dispute resulted disciplinary action for serious and/or wilful misconduct, regarding Dispute Resolution Clause and thus matter must be dealt with in the Federal Jurisdiction. Commission found that the intention of the agreement when any dispute arose and could not be resolved by this jurisdiction and must be referred to the AIRC for resolution - Dismissed For Want of Jurisdiction. - LIQUOR, HOSPITALITY & MISC -v- Coca-Cola Amatil Western Australia - CR 117 of 1998 - GREGOR C - Beverage 3888
- Application for further and better particulars. Commission requested the Respondent to be more specific and ordered the Respondent to do so - Order Accordingly. Summons to witness Application and production of documents by Respondent. Applicant put forward no argument. Respondent lodged a summons to witness to require the witness to produce documents in the witness's possession, custody and control. Commission found that common fairness could not permit the Respondent to inspect the documents for fishing purposes. Matter determined accordingly. - Mr JPTD Anderson -v- Crystal Brook Dental Centre - APPL 591 of 1998 - BEECH C - Dental 3888
- ²Appeal against decision of Industrial Magistrate (unreported) regarding breach of award-Question of jurisdiction of Full Bench raised-Full Bench questioned whether decision of Industrial Magistrate was such within meaning of section 83 of the Act-Appeal not competent and therefore dismissed-Dismissed - Giovanni Basilio Nicoletti and Guiliana Nicoletti -v- Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch - APPL 2157 of 1997 - Full Bench - SHARKEY P/BEECH/PARKS C - 30/10/98 - Unions 4316
- Application for order re penalty imposed for misconduct for involvement in a prison incident - Applicant Union argued that the Respondent had imposed penalties on an employee for which it had no legal mandate - Applicant argued that the employee was not treated fairly or consistently; the suspension was arbitrary and capricious and Public Sector Management Act was not complied with - Respondent argued PSA was without jurisdiction because there was no disciplinary finding at the relevant time, there was no power to extend the time to file an appeal to the Public Service Appeal Board and because of s23(3)(d) of the IRAct1979 - PSA found there was no breach of the Public Sector Management Act and the Public Service Appeal Board had sole jurisdiction to determine such a matter - PSA further found justice required the matter to brought to a conclusion - Matter divided and Dismissed in part for want of jurisdiction - The Civil Service Association of Western Australia Incorporated -v- Ministry of Justice - P 37 of 1997 - Public Service Arbitrator - GREGOR C - 06/10/98 -Government Administration 4397
- Application re unfair dismissal and allegedly denied contractual entitlements-Applicant argued that a change in her employment conditions after becoming pregnant was not agreed to by self-Applicant further argued for a claim of unfair dismissal which had been filed at a later date-Respondent argued that the Applicant's proceedings with the Equal Opportunity Commission precluded the involvement of the WAIRC in this claim-Commission found that the claim re unfair dismissal was outside the 28 day time limit and was separate to the original claim for allegedly denied contractual entitlements-Commission further found that the Commissions was not precluded from hearing the claim despite a separate claim lodged with the EOC-Claim relisted for hearing and determination. - Mrs TC Bates -v- Mountway Nominees Pty Ltd - APPL 34 of 1998 - KENNER C - 25/09/98 -Machining and Motor Veh Whlslg 4402
- Application re unfair dismissal-Applicant made reference in the Notice that his employment was governed by a Federal award-Respondent filed a Notice of Answer challenging the WAIRC's jurisdiction in this matter-Commission found that it has no jurisdiction in a Federal award matter-Dismissed for want of jurisdiction. - Mr RJ Cumming -v- Pacific Manning & Other - APPL 1359 of 1998 - FIELDING C - 05/10/98- Water Transport 4410

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Application for compensation on the grounds of unfair dismissal-Applicant argued that his employment with the Christmas Island Newsagency had been unfairly terminated-Respondent argued that the WAIRC did not have jurisdiction to hear this case as it had occurred outside the State-Commission found that the Federal Workplace Relations Act extends the operation of that Act and thus the jurisdiction of the Federal Commission to the Territory of Christmas Island-Dismissed for want of jurisdiction. - Ms J Billcliff-v- Christmas Island Newsagency - APPL 1161 of 1998 -FIELDING C - 12/10/98 - Personal and Other Services	4410
Application for reinstatement on the grounds of unfair dismissal-Applicant argued that although he had signed a workplace agreement the Commission had jurisdiction to hear the claim under s.7G of the Act-Respondent argued that the applicant was not dismissed in the sense contemplated ins.29 but that his contract came to an end by the effluxion of a three month probationary period-Commission found that it was not appropriate for it to enter into a hearing and determination which would provide no meaningful remedy where nothing the Commission did or said would affect directly the rights of the parties-Dismissed - Mr GR Hutchinson -v- Cable Sands (WA) Pty Ltd - APPL 549 of 1998- SCOTT C. - 12/10/98 - Services to Mining.....	4427
Application re unfair dismissal-Applicants argued that the existence of the Respondent's registered office in this State gave grounds for jurisdiction-Respondent argued that Applicants were employed and worked in another State and thus this State had no jurisdiction to hear this case-Commission found the Respondent's participation in the proceedings to this point display submission to the jurisdiction of the Commission of this State-Jurisdiction application dismissed. - Mrs MA Luff -v- DG Fletcher Holdings Pty Ltd T/A WA/SA Border Village - APPL 684,685 of 1998; CR 146 of 1998 - BEECH C - 15/10/98 - Accommodatn, Cafes & Restaurants.....	4438
Application re unfair dismissal and allegedly outstanding contractual entitlements-Commission firstly established that as the Applicant was covered by an award it had no jurisdiction in the question of denied contractual entitlements-Applicant argued that after an argument between himself and the Respondent he understood the Respondent had demanded he leave the premises which he had done so immediately-Respondent argued that the Applicant left the job entirely of his own volition after the argument when he refused to continue the job for which he had been employed-Commission found that the Applicant terminated his own employment on the balance of probabilities-Dismissed. - Mr T Mott -v- Sign Supermarket - APPL 792,843,887 of 1998 - GREGOR C - 21/10/98 - Business Services	4443
Application for compensation on the grounds of unfair dismissal-Applicant argued that he was forced to resign because of stress and religious discrimination-Respondent argued that the Commission did not have jurisdiction to deal with a matter based on religious discrimination-Commission found that proceedings should be adjourned to allow the Commissioner for Equal Opportunity to rule on jurisdiction-Adjourned for no earlier than 28 days from date of Decision. - Mr LA Peredo -v- Metland Products -APPL 1311 of 1998 - FIELDING C - 23/10/98 - Other Manufacturing.....	4446
Application re unfair dismissal and allegedly denied contractual entitlements-Respondent argued that the Commission lacked jurisdiction as there was no employer/employee relationship between the Applicant and the Respondent-Commission found that the Applicant appeared to have been misled in official employment documents drawn up by the Respondent and relied upon by herself-Dismissed.- Ms CM Pitts -v- Silhouette Publications - APPL 813 of 1998 - SCOTT C. - 02/11/98 - Printg, Publishg & Rccd Media.....	4450
Application re unfair dismissal-Applicant understood at all times that her employer was the Respondent-Respondent argued that administrative staff in the dental practice were employed by a separate entity and questioned the Commission's jurisdiction to hear this case-Commission found that due to the strict 28 day time limit for proceedings to be instituted it was imperative that such proceedings are done so correctly from the start-Commission further found that the obligation rests with the employee to establish the identity of the former employer-Dismissed for want of jurisdiction. - Mrs CM Roe -v- Bradley Gordon Shepherd - APPL 792,843,887 of 1998 - GREGOR C - 21/10/98 -Health Services.....	4451
Application for reinstatement or compensation on the grounds of unfair dismissal-Applicant argued the termination was executed in a summary manner and with no warnings from the Respondent that the Applicant's position was in jeopardy-Applicant further argued that he was denied procedural fairness and the Respondent had acted in a deceptive manner-Respondent argued that although the termination was summary this was justified by the Applicant's incompetence and inefficiency and his false claim to hold a management degree-Commission found that Respondent had not discharged the onus of establishing that there was a level of serious misconduct or performance justifying summary dismissal-Commission further found that a finding of unlawful dismissal does not of itself determine whether a dismissal is unfair-Compensation granted and claim for denied contractual benefits dismissed - Mr JJ Timms -v- Phillips Engineering Pty Ltd -APPL 2242 of 1997 - CAWLEY C. - 23/10/98 - Services to Mining.....	4460
Application for reinstatement on the grounds of unfair dismissal and allegedly denied contractual entitlements -Applicant argued that the dismissal was procured through stealth without either substantive or procedural fairness -Respondent argued that Applicant withdrew his services and refused to undertake the duties required of him under his contract of service-Respondent also argued that access to a credit card was not a term of Applicant's employment contract-Commission found that rather than taking steps to formally terminate the Applicant's employment, the Respondent restructured its organisation and in effect demoted him without proper notice or discussion-Compensation and denied contractual entitlements granted. - Mr V Tranchita -v- Wavemaster International Pty Ltd - APPL 1117 of 1997 - FIELDING C - 21/10/98 - Water Transport.....	4463
Application for compensation on the grounds of unfair dismissal-Applicant argued that management had mindfully worked against her interests-Respondent argued they had no intention of dismissing the Applicant when they telephoned her at home one evening but to invite her to a meeting to discuss her attitude and behaviour at work-Commission found that although the Applicant may have found the management's behaviour to be personally distressing this did not excuse her attitude and behaviour towards members of management-Dismissed. - LIQUOR, HOSPITALITY & MISC -v- Cat Welfare Society Inc T/A Cat Haven - CR 359 of 1996 - PARKS C -18/09/98 - Other Services	4480
Application for allegedly denied contractual entitlements-Applicant argued that at time of resignation both parties agreed to the payment of two week's pay in lieu of notice of termination-Respondent argued that a Workplace Agreement between the Respondent and the Applicant was in existence and this did not include an express term giving rise to a right for payment in lieu of notice-Commission found it has a specific duty in such cases to determine the meaning or effect of the Agreement-Dismissed for want of jurisdiction.- Mr WR Forrest -v- Shane Scholes on behalf of Metro Brick Malaga - WAG 6 of 1998 - GREGOR C - 29/10/98 - Construction Trade Services.....	4496
Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements - Applicant argued that an oral contract had been accepted - Respondent argued that the Applicant was not an employee but a contractor - Commission found that Applicant did not establish that there was an employee and employer relationship - Dismissed for want of jurisdiction. - Mr M Aleixo -v- AcQua Holdings - APPL 343,627 of 1998 - GREGOR C - 01/12/98 - Hospitality.....	4890
Application for compensation on the grounds of unfair dismissal and alleged denied contractual entitlements - Applicant argued that dismissal was unfair because proper procedures were not followed - Further the Applicant argued for unpaid salary, overtime and expenses as compensation - Respondent argued that the Commission did not have jurisdiction to deal with Application because Applicant's employment was governed by a Federal Award and further there was no basis for contractual entitlements claimed - Commission found that there was no jurisdiction to deal with Application because the provisions of the Federal Award conflict with the provisions of the State Act - Further there is no basis for the contractual entitlements claimed - Dismissed. - Mr JT Burnham -v- Western Desert Puntukuruparna Aboriginal Corporation - APPL 556 of 1998 - FIELDING C - 25/11/98 - Health and Community Services.....	4899

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Appeal against decision of Commission re application for compensation on the grounds of unfair dismissal-Appellant argued the Commissioner had erred in law and fact by failing to consider an employer's vicarious liability for causal negligence of servants towards another-Appellant further argued that the employer failed to conduct a proper enquiry and that employment benefits such as accommodation were withdrawn before a thorough investigation of the complaint was made-Respondent argued that although the Appellant had been told to vacate his on site accommodation he had not been dismissed-Commission found that the Appellant had failed to dismiss the onus on him to show, on the balance of probabilities, that he had been dismissed -Dismissed - Mr AG Wood -v- National Mine Management Pty Ltd - APPL 2218 of 1997 - Full Bench - SHARKEY P/COLEMAN CC/FIELDING C - Services to Mining	4853
Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements - Applicant argued that an oral contract had been accepted - Respondent argued that the Applicant was not an employee but a contractor - Commission found that Applicant did not establish that there was an employee and employer relationship - Dismissed for want of jurisdiction. - Mr M Aleixo -v- AcQua Holdings - APPL 343,627 of 1998 - GREGOR C - 01/12/98 - Hospitality	4890
Application for compensation on the grounds of unfair dismissal and alleged denied contractual entitlements - Applicant argued that dismissal was unfair because proper procedures were not followed - Further the Applicant argued for unpaid salary, overtime and expenses as compensation - Respondent argued that the Commission did not have jurisdiction to deal with Application because Applicant's employment was governed by a Federal Award and further there was no basis for contractual entitlements claimed - Commission found that there was no jurisdiction to deal with Application because the provisions of the Federal Award conflict with the provisions of the State Act - Further there is no basis for the contractual entitlements claimed - Dismissed. - Mr JT Burnham -v- Western Desert Puntukuruparna Aboriginal Corporation - APPL 556 of 1998 - FIELDING C - 25/11/98 - Health and Community Services.....	4899
Application for compensation on the grounds of unfair dismissal-Applicant argued that he was denied natural justice in not being given the opportunity to respond to allegations of poor performance and conduct-Applicant further argued that the respondent had breached the Workplace Relations Act, s.170 CM in terms of notice of termination of employment-Respondent argued that the applicant voluntarily left the employ of the respondent and there was no dismissal to confer jurisdiction on the Commission under the Act-Commission found that fairness and justice require that an employee accused of misconduct be given a reasonable opportunity to offer an explanation -Commission further found that the employer should conduct a reasonable investigation of the relevant circumstances to satisfy itself as to form an honest and genuine belief, based upon reasonable grounds, that the employee is guilty of misconduct- Dismissed. - Mr GA Chapman -v- JL & MN Rossiter T/A Arunine Painting Services - APPL 356 of 1998 - KENNER C - Other Services.....	4900
Application for compensation on the grounds of unfair dismissal-Issues of jurisdiction arose due to the applicant being covered by a federal award as opposed to a state award and that the terms of the Award are inconsistent with the terms of the Act in relation to harsh, oppressive or unfair dismissal-Applicant and Respondent both agreed to these issues being heard as threshold issues-Commission found that it was possible to discern a legislative intention by the Commonwealth to provide an exhaustive code in relation to termination of employment to the exclusion of State law-Commission further found that the above conclusion cannot affect the scope and application of the unfair dismissal provisions of the Act itself-Dismissed for want of jurisdiction. - Mr W Hull -v- City of Mandurah - APPL 706 of 1998 - KENNER C - Government Administration	4912
LONG SERVICE LEAVE	
³ Appeal against decision of Board of Reference re objection to registration of employer under the CIPPLSL Act —Appellant argued that the BOR misconstrued or failed to give sufficient weight to the evidence on the nature of the Respondent's undertaking and the work done by its employees —Appellant further argued that it was more concerned with establishing that it had a right of appeal —Respondent argued that the provision of the IRACT 1979 indicated that the appeal was to be determined on the basis of the facts found by the BOR rather than the evidence raised before it and the findings were not defective — Respondent further argued that CIPPLSLPB -v- B.G. & E.D. Hoskins (71 WAIG 2051) was wrongly decided and invited CICS to reconsider it —CICS found on the basis of the grounds of appeal, that the appeal was incompetent —Majority of CICS found no right of appeal to the Appellant —Dismissed CICS further found that —Construction Industry Long Service Leave Payments Board -v- Claude Neon (Aust) Pty Ltd —APPL 350 of 1998 —Commission in Court Session —FIELDING C/CAWLEY C./SCOTT C. —02/07/98 —Construction Trade Services	2590
Application Re. Allegedly Denied Contractual Entitlements of Annual Leave, Daily Allowances, Long Service Leave and Wages. Applicant argued that Entitlements are constituted under contract of Employment. Respondent argued that it denied liability for the moneys claimed except for Long Service Leave and a component of a Daily Allowance, in fact Applicant was over paid. Commission found that Applicant had not established that there had been any denied contractual benefits which can be recovered in this jurisdiction other than the conceded Long Service leave. Granted in Part - Mr MD McPolin -v- The West Australian Locomotive Engine Drivers', Firemen's and Cleaners' Union of Workers - APPL 696 of 1997 - FIELDING C - Rail Transport	3358
Application for allegedly denied contractual entitlements-Applicant argued that annual leave, long service leave and redundancy payment accrued from employment prior to recent employment with Respondent amounting to transmission of business-Respondent argued against a transmission of business and against jurisdiction of the Commission-Commission found that it is not the case that a transfer of assets is indistinguishable from a transfer of business-Dismissed - Mr G J Barrow -v- George Moss Limited T/A Gemco - APPL 2192 of 1997 - Cawley C - 29/9/98 - Services To Mining.....	4400
MANAGERIAL PREROGATIVE	
Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements -Applicant argued that the sales target set for him by the Respondent was unrealistic given his other duties and the restrictions placed upon his area of operation-Applicant also argued that the dismissal was unfair because he was not given proper warning that his job was in jeopardy -Respondent argued that the Applicant continually refused to take directions from the Respondent regarding his work duties-Commission found the Respondent attempted to bring about change in the Applicant's work performance which have had a significant effect upon the success of the business which the Applicant ignored at his peril-Commission further found that a reasonable notice period for a position such as that held by the Applicant was 3 months-Granted in part —Mr JS Blake -v- Robowash Pty Ltd —APPL 1843 of 1997 —SCOTT C. —05/05/98 —Machinery & Equipment Mfg	2925
Application for compensation on the grounds of unfair dismissal-Applicant argued that his failure to comply with a direction and lying about this failure should be considered in terms of his length of service, sales record, management change and effects of company restructure-Respondent argued that as the Applicant's manager was based out of State, the sales team had to be reliable, honest and adhere to instructions-Commission found that in arriving at its decision the Respondent had proper regard for the Applicant's length of service and record-Commission further argued that the Applicant was not denied natural justice-Dismissed - Mr JH Duggan -v- Canon Australia Pty Ltd - APPL 434 of 1998 - CAWLEY C. - 21/09/98 - Business Services	4412
Application re unfair dismissal and allegedly denied contractual entitlements-Applicant argued that the terms of the dismissal were unfair-Respondent argued that economic circumstances forced company restructuring which meant the Applicant's position was no longer required in the form it had existed-Commission found that it is required to discover all the circumstances of a dismissal and balance them out-Commission further found that the dismissal must be considered from both the employee's and employer's points of view-Dismissed - Mrs CD Miskiewicz -v- Ledge Point Charters Pty Ltd T/A Trimview Building Industries -APPL 250 of 1998 - GREGOR C - 23/09/98 - General Construction	4439

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MANAGERIAL PREROGATIVE—continued	
Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements-Applicant argued that the Respondent unilaterally reduced her wages-Respondent argued that the Applicant's workload had been substantially decreasing over time with the employment of additional staff-Commission found that an employer cannot unilaterally vary the contract of employment between it and an employee and still less can do so retrospectively-Unpaid entitlements to be paid and compensation for unfair dismissal granted. - Mrs SL Scanlan-v- Greenport Nominees Pty Ltd T/A Indiana Tea House - APPL587 of 1998 - BEECH C - 23/09/98 - Accommodatn, Cafes & Restaurants	4452
Application for reinstatement on the grounds of unfair dismissal and allegedly denied contractual entitlements-Applicant argued that the dismissal was procured through stealth without either substantive or procedural fairness-Respondent argued that Applicant withdrew his services and refused to undertake the duties required of him under his contract of service-Respondent also argued that access to a credit card was not a term of Applicant's employment contract-Commission found that rather than taking steps to formally terminate the Applicant's employment, the Respondent restructured its organisation and in effect demoted him without proper notice or discussion-Compensation and denied contractual entitlements granted.- Mr V Tranchita -v- Wavemaster International Pty Ltd -APPL 1117 of 1997 - FIELDING C - 21/10/98 - Water Transport	4463
Application re unfair dismissal-Applicant argued he had done his best to notify the site manager of his leaving the mine and admitted he failed to comply with the tagging procedure-Respondent argued that the former employee displayed a blatant disregard for the Respondent's safety rules and his subsequent comments on the matter confirm this-Respondent further argued that safety on a mine site was of paramount importance to ensure working conditions for all on site-Commission found that although it may have reacted differently to the Respondent to this transgression of safety rules it is only for the Commission to determine whether a reasonable employer would have reacted as the Respondent did in this case-Dismissed - The Australian Workers' Union, West Australian Branch, Industrial Union of Workers -v- Barmingo Pty Ltd - CR 186 of 1998 - FIELDING C - 22/10/98 - Metal Ore Mining.....	4478
Application re entitlement to study leave from place of work-Applicant argued that he had been granted 5 hours study leave per semester in the past but now had been given only half that time-Respondent argued that study leave is provided for under the award and is at the discretion of the Chief Executive Officer-Commission found that the applicant's circumstances failed to meet the provisions of the relevant clause in the award-Dismissed - The Civil Service Association of Western Australia Incorporated -v- Chief Executive Officer, Department of Environmental Protection - P 42 of 1998 - BEECH C - Government Administration	4887
MANNING	
² Appeal against decision of Commission (78 WAIG 1393) re dismissal of unfair dismissal application-Appellant argued Commission had erred in law in not finding that the dismissal was harsh, oppressive or unfair because the employer causally linked the appellant's conduct with the theft of money in the letter of dismissal-Full Bench found that no ground of appeal had been made out-Dismissed - Ms CD'Agostino -v- P & O Food Services Pty Ltd - APPL 497 of 1998 - Full Bench - SHARKEY P/PARKS C/SCOTT C. - 30/10/98 -Food Retailing	4311
Application for compensation on the grounds of unfair dismissal-Applicant argued that the dismissal was due either to injury received during work hours or fact he was in receipt of worker's compensation-Respondent argued that the reason was solely economic and it had regard for its usual policy under the relevant award to terminate employment on a "last on, first off" basis-Respondent also argued for an award of costs against the applicant-Commission found that the Applicant did not make out his case on the balance of probabilities that the reason for dismissal was the worker's compensation claim-Commission further found that an award of costs was not warranted-Dismissed - Mr HS Gunes-v- EJ Electrical Engineering Contractors - APPL 2271 of 1997 - CAWLEY C. - 17/09/98 - Construction Trade Services	4424
MATERNITY LEAVE	
Application re unfair dismissal and allegedly denied contractual entitlements-Applicant argued that a change in her employment conditions after becoming pregnant was not agreed to by self-Applicant further argued for a claim of unfair dismissal which had been filed at a later date-Respondent argued that the Applicant's proceedings with the Equal Opportunity Commission precluded the involvement of the WAIRC in this claim-Commission found that the claim re unfair dismissal was outside the 28 day time limit and was separate to the original claim for allegedly denied contractual entitlements-Commission further found that the Commissions was not precluded from hearing the claim despite a separate claim lodged with the EOC-Claim relisted for hearing and determination. - Mrs TC Bates -v- Mountway Nominees Pty Ltd - APPL 34 of 1998 - KENNER C - 25/09/98 -Machining and Motor Veh Whlslg	4402
MISCONDUCT	
³ Conference referred re introduction of drug and alcohol program and random drug testing —Claimant employer argued program was necessary to comply with safety obligations under the Mines Safety and Inspection Act 1997 and Regulations, impractical to introduce the program unless it applied to all employees and sought a declaration that it was fair and reasonable —Respondent Union argued that the proposed drug testing regime travelled beyond the boundaries of acceptable work related disclosure of personal information, there was no evidence to suggest a need for such drastic measures, urine testing was not reliable indicator of impairment, education was a better option and the Commission should not impose consent arrangements on non-consenting parties —CICS found the program to be reasonable and fair —Decision issued unreasonable harsh or unfair — BHP Iron Ore Pty Ltd -v- CONSTRUCTION, MINING, ENERGY & Other —CR 274 of 1997 —Commission in Court Session —FIELDING C/CAWLEY C./BEECH C —19/06/98 —Metal Ore Mining.....	2593
Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements -Applicant argued he was dismissed without an opportunity to discuss the Respondent's accusations-Respondent argued that the Applicant was argumentative and never took direction-Commission found that during the time the Applicant worked for the Respondent, the Applicant raised opposition on a regular basis to many instructions given to him-Dismissed —Mr JM Winton -v- Fairlawn Stud —APPL 2049 of 1997 —GREGOR C —12/06/98 —Agriculture	2953
Application for relief on grounds of unfair dismissal - Applicant alleged dismissal unfair because he was not given an opportunity to put his case before the Respondent given the allegation made against him - Respondent argued Applicant was dismissed because his conduct amounted to gross insubordination.- Commission found that Applicant was aggressive and intimidating to Respondent and such conduct justified his dismissal and that manner destroyed the relationship between employer and employee - Application Dismissed - Mr PB Walsh -v- Shire of Meekatharra - APPL 2262 of 1997 - BEECH C - Services to Transport.....	3371
Application for orders re written reprimand to an employee following a complaint by an apprentice that the employee had made inappropriate and sexually explicit comments in front of her - Applicant Union argued that the employee had not made the comments and challenged the appropriateness of the written reprimand - Public Service Arbitrator found on evidence that the Applicant had not discharged the onus of proving the claim and that the reprimand was justified -Dismissed - The Civil Service Association of Western Australia Incorporated -v- South Metropolitan College of TAFE - P 21 of 1998 - Public Service Arbitrator - BEECH C -05/08/98 - Education	3571
Application re alleged unfair dismissal. Applicant claimed that she was competent to do the job of Director and that she had not received any warnings about her performance prior to her suspension and subsequent dismissal. Respondent argued that Applicant was incompetent unable to carry out her duties and had a poor performance record. Commission found on evidence that Applicant's performance demonstrated a high level of incompetence and inability to carry out basic duties and functions, and that Applicant had wilfully disobeyed lawful instructions. Commission found that Applicant had not been unfairly dismissed - Dismissed. - Ms J Nicholls -v- Eastern Goldfields Aboriginal Advancement Council Inc - APPL 1329 of 1997 - GREGOR C - Other Services.....	3854

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MISCONDUCT—continued	
Applications re alleged unfair dismissal over allegations that Applicants had been stealing fuel from the Respondent - Commission found that Respondent had conducted a full and extensive investigation, as far as was reasonable over the allegations - Commission further found that the Applicants were given reasonable opportunity and sufficient time to answer the allegations and that the Respondent had discharged the onus which fell to it in the case of a dismissal for misconduct - Dismissed - Mr RAC Barber -v- Shire of Swan - APPL 2120,2121 of 1997 - SCOTT C. - 11/08/98 - Government Administration	3858
² Appeal against decision of Commission (78 WAIG 1393) re dismissal of unfair dismissal application-Appellant argued Commission had erred in law in not finding that the dismissal was harsh, oppressive or unfair because the employer causally linked the appellants conduct with the theft of money in the letter of dismissal-Full Bench found that no ground of appeal had been made out-Dismissed - Ms CD'Agostino -v- P & O Food Services Pty Ltd - APPL 497 of 1998 - Full Bench - SHARKEY P/PARKS C/SCOTT C. - 30/10/98 -Food Retailing	4311
Application for order re penalty imposed for misconduct for involvement in a prison incident - Applicant Union argued that the Respondent had imposed penalties on an employee for which it had no legal mandate - Applicant argued that the employee was not treated fairly or consistently; the suspension was arbitrary and capricious and Public Sector Management Act was not complied with - Respondent argued PSA was without jurisdiction because there was no disciplinary finding at the relevant time, there was no power to extend the time to file an appeal to the Public Service Appeal Board and because of s23(3)(d) of the IReact1979 - PSA found there was no breach of the Public Sector Management Act and the Public Service Appeal Board had sole jurisdiction to determine such a matter - PSA further found justice required the matter to brought to a conclusion - Matter divided and Dismissed in part for want of jurisdiction - The Civil Service Association of Western Australia Incorporated -v- Ministry of Justice - P 37 of1997 - Public Service Arbitrator - GREGOR C - 06/10/98 -Government Administration	4397
Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements-Applicant argued that she had insufficient time in which to complete her designated tasks and was verbally attacked by the Respondent-Respondent argued that although she had spoken to the Applicant about her work it had been the Applicant's intimidatory actions that had led to the dismissal-Commission found that there had been several instances of conflict between the Applicant and the Respondent during the working relationship and witnesses had seen the Respondent's aggressive attitude on prior occasions-Dismissed - Mrs JC Dingwall -v- Mac's Deli &News - APPL 217 of 1998 - PARKS C - 30/10/98 - Food Retailing	4411
Application for compensation on the grounds of unfair dismissal-Applicant argued that his failure to comply with a direction and lying about this failure should be considered in terms of his length of service, sales record, management change and effects of company restructure-Respondent argued that as the Applicant's manager was based out of State, the sales team had to be reliable, honest and adhere to instructions-Commission found that in arriving at its decision the Respondent had proper regard for the Applicant's length of service and record-Commission further argued that the Applicant was not denied natural justice-Dismissed - Mr JH Duggan -v- Canon Australia Pty Ltd - APPL 434 of 1998 - CAWLEY C. - 21/09/98 - Business Services	4412
Application re unfair dismissal-Applicant argued that the dismissal was summary-Respondent argued that although they accept the dismissal was summary the Applicant had breached client security and confidentiality in a business based on security-Commission found that the credibility of the Respondent company's operations was based on the ability to maintain the efficacy of a security system and must be able to rely on the honesty and integrity of its employees to achieve this-Dismissed. - Ms RL Ellison -v- Lythven Pty Ltd T/A Shelf Security - APPL 1195 of 1998 - COLEMAN CC -29/10/98 - Property and Business Services	4416
Application for reinstatement or compensation on the grounds of unfair dismissal-Applicant argued that the dismissal was unjustified-Respondent argued that its employee's behaviour had been tolerated over many years often to the detriment of fellow workers-Commission found that the employee had been counselled or warned about her conduct but had refused to acknowledge the conduct of the problem caused-Dismissed. - The Forest Products, Furnishing and Allied Industries Industrial Union of Workers, W.A. Branch -v- Curtain World - CR 187 of 1998 - SCOTT C. -06/11/98 - Textile, Clothing, Footwear.....	4420
Application for compensation on the grounds of unfair dismissal-Applicant argued that the termination was without warning and without valid reason-Respondent argued that the Applicant was dismissed because of an unsatisfactory attitude to his work and failure to comply with instructions-Commission found that it needs to adopt a pragmatic and practical approach to matters like this in looking at the relationship between a farmer and his farmhands-Commission further found that the manner of dismissal is only one of the factors to be considered in a case of alleged unfair dismissal-Dismissed - Mr GB Johnson -v- DC &CM Richards - APPL 44 of 1998 - FIELDING C - 25/09/98 -Agriculture.....	4430
Application for reinstatement or compensation on the grounds of unfair dismissal-Applicant argued that he had never withheld monies or documents belonging to the Respondent companies-Respondent argued that the Applicant's resignation as a Director of the Respondent company according to a Deed resulting from a Supreme Court Order also constituted the Applicant's resignation as an employee-Commission found that the Applicant's dismissal was unrelated to the Applicant's performance or conduct as an employee-Commission further found the Applicant was not afforded any procedural fairness-Compensation granted - Mr FA Khoury -v- Rosemist Holdings Pty Ltd - APPL 405 of 1998- KENNER C - 07/10/98 - Food, Beverage and Tobacco Mfg.....	4432
Application for reinstatement on the grounds of unfair dismissal-Applicant argued that the allegation of assault made against former employee is part of a conspiracy by Respondent's senior officers to get rid of former employee due to his active membership of the Applicant union-Respondent argued that employment was terminated with five weeks' pay in lieu of notice due to the assault on the maintenance superintendent-Commission found that the Respondent gave fair opportunity to discuss the incident but that industrial law does not require employers to keep an inquiry alive indefinitely-Dismissed. - AUTO, FOOD,METAL, ENGIN UNION -v- Dampier Salt Operations Ltd - CR 214of 1998 - FIELDING C - 20/10/98 - Other Mining.....	4476
Application re unfair dismissal-Applicant argued he had done his best to notify the site manager of his leaving the mine and admitted he failed to comply with the tagging procedure-Respondent argued that the former employee displayed a blatant disregard for the Respondent's safety rules and his subsequent comments on the matter confirm this-Respondent further argued that safety on a mine site was of paramount importance to ensure working conditions for all on site-Commission found that although it may have reacted differently to the Respondent to this transgression of safety rules it is only for the Commission to determine whether a reasonable employer would have reacted as the Respondent did in this case-Dismissed - The Australian Workers' Union, West Australian Branch, Industrial Union of Workers -v- Barmingo Pty Ltd - CR 186 of 1998 - FIELDING C- 22/10/98 - Metal Ore Mining	4478
Application for compensation on the grounds of unfair dismissal-Applicant argued that management had mindfully worked against her interests-Respondent argued they had no intention of dismissing the Applicant when they telephoned her at home one evening but to invite her to a meeting to discuss her attitude and behaviour at work-Commission found that although the Applicant may have found the management's behaviour to be personally distressing this did not excuse her attitude and behaviour towards members of management-Dismissed. - LIQUOR, HOSPITALITY & MISC -v- Cat Welfare Society Inc T/A Cat Haven - CR 359 of 1996 - PARKS C -18/09/98 - Other Services	4480

CUMULATIVE DIGEST—continued

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MISCONDUCT—continued

- Appeal against decision of Commission re application for compensation on the grounds of unfair dismissal-Appellant argued the Commissioner had erred in law and fact by failing to consider an employer's vicarious liability for causal negligence of servants towards another-Appellant further argued that the employer failed to conduct a proper enquiry and that employment benefits such as accommodation were withdrawn before a thorough investigation of the complaint was made-Respondent argued that although the Appellant had been told to vacate his on site accommodation he had not been dismissed-Commission found that the Appellant had failed to dismiss the onus on him to show, on the balance of probabilities, that he had been dismissed -Dismissed - Mr AG Wood -v- National Mine Management Pty Ltd - APPL 2218 of 1997 - Full Bench - SHARKEY P/COLEMAN CC/FIELDING C - Services to Mining 4853

MIXED FUNCTIONS

- Application re unfair dismissal and allegedly denied contractual entitlements-Applicant argued that a change in her employment conditions after becoming pregnant was not agreed to by self-Applicant further argued for a claim of unfair dismissal which had been filed at a later date-Respondent argued that the Applicant's proceedings with the Equal Opportunity Commission precluded the involvement of the WAIRC in this claim-Commission found that the claim re unfair dismissal was outside the 28 day time limit and was separate to the original claim for allegedly denied contractual entitlements-Commission further found that the Commissions was not precluded from hearing the claim despite a separate claim lodged with the EOC-Claim relisted for hearing and determination. - Mrs TC Bates -v- Mountway Nominees Pty Ltd - APPL 34 of 1998 - KENNER C - 25/09/98 -Machining and Motor Veh Whlslg 4402

NATURAL JUSTICE

- Application for order re penalty imposed for misconduct for involvement in a prison incident - Applicant Union argued that the Respondent had imposed penalties on an employee for which it had no legal mandate - Applicant argued that the employee was not treated fairly or consistently; the suspension was arbitrary and capricious and Public Sector Management Act was not complied with - Respondent argued PSA was without jurisdiction because there was no disciplinary finding at the relevant time, there was no power to extend the time to file an appeal to the Public Service Appeal Board and because of s23(3)(d) of the IRAct1979 - PSA found there was no breach of the Public Sector Management Act and the Public Service Appeal Board had sole jurisdiction to determine such a matter - PSA further found justice required the matter to be brought to a conclusion - Matter divided and Dismissed in part for want of jurisdiction - The Civil Service Association of Western Australia Incorporated -v- Ministry of Justice - P 37 of 1997 - Public Service Arbitrator - GREGOR C - 06/10/98 -Government Administration 4397
- Application re unfair dismissal-Preliminary point concerning proper name of employer-Applicant argued that she was unaware of the legal distinction between the trading name and company name of her employer but had acted in good faith-Respondent argued he is a different entity to his company which was the legal employer-Commission found that it is a tribunal designed to deal with people without legal training but who act in good faith-Dismissed. - Mrs J Suvaljko -v- Phoenix Fast Photos - APPL 838 of 1998 - BEECH C - 20/10/98 - Personal and Other Services..... 4459
- Application for compensation on the grounds of unfair dismissal-Applicant argued that his failure to comply with a direction and lying about this failure should be considered in terms of his length of service, sales record, management change and effects of company restructure-Respondent argued that as the Applicant's manager was based out of State, the sales team had to be reliable, honest and adhere to instructions-Commission found that in arriving at its decision the Respondent had proper regard for the Applicant's length of service and record-Commission further argued that the Applicant was not denied natural justice-Dismissed - Mr JH Duggan -v- Canon Australia Pty Ltd - APPL 434 of 1998 - CAWLEY C. - 21/09/98 - Business Services 4412
- Application for compensation on the grounds of unfair dismissal-Applicant argued that he was denied natural justice in not being given the opportunity to respond to allegations of poor performance and conduct-Applicant further argued that the respondent had breached the Workplace Relations Act, s.170 CM in terms of notice of termination of employment-Respondent argued that the applicant voluntarily left the employ of the respondent and there was no dismissal to confer jurisdiction on the Commission under the Act-Commission found that fairness and justice require than an employee accused of misconduct be given a reasonable opportunity to offer an explanation -Commission further found that the employer should conduct a reasonable investigation of the relevant circumstances to satisfy itself as to form an honest and genuine belief, based upon reasonable grounds, that the employee is guilty of misconduct- Dismissed. - Mr GA Chapman -v- JL & MN Rossiter T/A Arunine Painting Services - APPL 356 of 1998 - KENNER C - Other Services..... 4900

NIGHT AND WEEKEND WORK

- Application re unfair dismissal-Applicant argued that the dismissal was summary-Respondent argued that although they accept the dismissal was summary the Applicant had breached client security and confidentiality in a business based on security-Commission found that the credibility of the Respondent company's operations was based on the ability to maintain the efficacy of a security system and must be able to rely on the honesty and integrity of its employees to achieve this-Dismissed. - Ms RL Ellison -v- Lythven Pty Ltd T/A Shelf Security - APPL 1195 of 1998 - COLEMAN CC -29/10/98 - Property and Business Services 4416
- Application re unfair dismissal-Applicant argued over the validity of the reason given for his dismissal which was redundancy due to amalgamation of operations-Applicant further argued he had suffered harassment and victimisation during the course of his employment-Respondent argued that the amalgamation was a legitimate business decision which subsequently demanded certain positions be made redundant-Commission found that the Applicant may have been selected for redundancy because of poor work performance but that the reason for dismissal was the need to reduce the workforce-Granted - Mr AD Pether -v- Chubb Security Holdings Australia Limited & Others - APPL 23 of 1998 -BEECH C - 13/10/98 - Property Services 4446
- Application re alleged unfair dismissal-Applicant argued that the failure to pay her wages at the time of her cessation of work amounted to unfair dismissal-Respondent argued the applicant had been a casual employee and had readily accepted the reason she would be offered no further work-Commission found that the fact the applicant was a casual employee does not mean she cannot be unfairly dismissed-Commission further found that the applicant did not challenge the reasons she was not given continuing work and therefore there was no basis for an unfair dismissal claim-Dismissed. - Ms EA Heslington -v- Penman Holdings Pty Ltd T/A Video Ezy Gosnells - APPL 1188 of 1998 - BEECH C - Motion Picture Radio & TV Serv 4910

ON CALL

- Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements -Applicant argued he was dismissed without an opportunity to discuss the Respondent's accusations-Respondent argued that the Applicant was argumentative and never took direction-Commission found that during the time the Applicant worked for the Respondent, the Applicant raised opposition on a regular basis to many instructions given to him-Dismissed —Mr JM Winton -v- Fairlawn Stud —APPL 2049 of 1997 —GREGOR C —12/06/98 —Agriculture 2953

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ORDER	
² Appeal against part of decision of Commission (78 WAIG 1065) re order that Appellant not refuse entry to its premises to an employee - Appellant argued that the application for the order appealed against should have been made under s23A of the IR Act, the order was incompetent and that the matter of the worker being prohibited from entering the Appellants premises was not an industrial matter - Full Bench found that the claim for the order raised a separate matter which could have been the subject of a separate application under s44 - Full Bench found that the matter did not effect or relate to the work rights or duties of the worker as an employee of the Appellant and the Commission was without jurisdiction to make the order - Upheld - WMC Resources Ltd -v- The Australian Workers' Union, West Australian Branch, Industrial Union of Workers - APPL 499 of 1998 - Full Bench - SHARKEY P/GREGOR C/SCOTT C. - 29/07/98 - Metal Ore Mining.....	3012
⁴ Application for orders restraining Respondent Registrar from proceeding with action under s84E to have party struck out of award or industrial agreement - Applicant argued that jurisdiction was founded on interalia s26 and 94 of the IR ACT - Respondent argued that the application was incompetent as it did not pertain to any matters referred to in s66 of the IR ACT - President found that the orders sought did not relate to the rules of the Applicant organisation, their observance or non observance, but to the discharge of the Registrar's statutory duty under s84E - Dismissed - COMM, ELECTRIC, ELECT, ENERGY -v- Registrar, Western Australian Industrial Relations Commission - APPL 1181 of 1998 - President - SHARKEY P - 27/07/98 - Other Services	3026
OVERTIME	
Application for allegedly denied contractual entitlements -Applicant argued that he had not been paid for work completed in excess to the standard 40 hours per week as provided for in his contract-Respondent argued that the additional chargeable hours were to be agreed between the Respondent and the mine owner before these hours were worked-Commission found that the issue between the parties turned primarily on the correct interpretation of a clause within the Applicant's contract of employment-Dismissed —Mr L Thomas -v- Hosch International Pty Ltd —APPL 1057 of 1997 —BEECH C —30/06/98 — Services to Mining	2952
Application for Commission to determine issues between parties to Award-Applicant and Respondent sought Commission's determination on ordinary hours of work, overtime and cumulative sick leave-Applicant argued for recognition of seasonality of industry-Respondent argued about the economic consequences of overtime pay and sick leave accumulation-Commission found that discussions should continue toward an award that reflected annualised salaries and the equality of accumulating sick leave-No order issued by request. - Merchant Service Guild of Australia, Western Australian Branch, Union of Workers & Other -v- Boat Torque Cruises Pty Ltd & Others - A 9 of 1996 - BEECH C - 15/09/98 - Water Transport	4356
Application for allegedly denied contractual entitlements-Applicant argued that at time of resignation both parties agreed to the payment of two week's pay in lieu of notice of termination-Respondent argued that a Workplace Agreement between the Respondent and the Applicant was in existence and this did not include an express term giving rise to aright for payment in lieu of notice-Commission found it has a specific duty in such cases to determine the meaning or effect of the Agreement-Dismissed for want of jurisdiction.- Mr WR Forrest -v- Shane Scholes on behalf of Metro BrickMalaga - WAG 6 of 1998 - GREGOR C - 29/10/98 - Construction Trade Services.....	4496
Application for allegedly denied contractual entitlements -Applicant argued that while it had been acknowledged at the commencement of his employment that work on Sundays may prove necessary at times it had never been envisaged that working Sundays was to become a regular practice-Respondent argued that the employment contract discussions had centred around the work requirements to accommodate the loading operation-Commission found that the incidence of a 7-day load out schedule was not in itself the basis upon which the adequacy of the wage was to be reviewed but the reasonableness of the demands made of the applicant -Granted. - Mr MJ Hartnett -v- Skilled Engineering Limited - APPL 16 of 1998 - COLEMAN CC - Rail Transport.....	4908
PART-TIME	
Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements -Applicants argued that they were employed by the Respondents and the Commission had jurisdiction to hear the claims-Respondent argued the Applicants had at no time been employed by the Respondent company and any claim of unfair dismissal had to be predicated by the existence of an employment contract which has been terminated by the employer party-Commission found that the Applicants had not been employed by the named Respondent-Ruled out as invalid —Mr JG Reid -v- Shark Bay Salt Joint Venture —APPL 931,1075 of 1997 —CAWLEY C. —27/4/97, 11/05/98 —Other Mining.....	2944
Application to amend Clause 8 - Part-Time Workers of the Award. Union seeks to amend the Award to provide that part -time workers are paid one-thirty-eighth, as an hourly rate, of the wages fixed in Clause 11 rather than one -fortieth as the Award, now prescribes. No appearance by the Respondents. Commission found amendment to the award rational, and made the amendment sought - Ordered Accordingly. - LIQUOR, HOSPITALITY & MISC -v- Carine Glades Health Studio & Others - APPL 1467 of 1998 - FIELDING C - Health	3818
Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements-Applicant argued that she had not agreed to the change in her employment status from full-time to casual and as such this change constituted an unfair dismissal-Respondent argued there had been agreement at a meeting between himself and the Applicant regarding the change in employment status and had willing paid all entitlements due-Commission found that the Respondent's behaviour represented a justifiable and prudent business decision-Dismissed. - Ms EM Greig -v- Occasions Pty Ltd T/A Classic Holidays - APPL 2045 of 1997 - PARKS C - 02/11/98 -Services to Transport	4422
Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements-Applicant argued that the Respondent unilaterally reduced her wages-Respondent argued that the Applicant's workload had been substantially decreasing over time with the employment of additional staff-Commission found that an employer cannot unilaterally vary the contract of employment between it and an employee and still less can do so retrospectively-Unpaid entitlements to be paid and compensation for unfair dismissal granted. - Mrs SL Scanlan-v- Greenport Nominees Pty Ltd T/A Indiana Tea House - APPL587 of 1998 - BEECH C - 23/09/98 - Accommodatn, Cafes & Restaurants	4452
PRINCIPLES	
³ State Wage Case 1998 —CICS reviewed whether to give effect to the decision of the Full Bench of the AIRC re the Safety Net Review —Wage and increase in the Adult Minimum Wage —Subject to qualifications arising out of the Western Australian legal framework and industrial ramifications of dealing with breakdowns in enterprise bargaining, the Minister for Labour Relations, CCI, TLC,& AMMA supported giving effect to the National Wage Decision —CCI and the Minister also gave detailed submissions on the State Economy —The Minister, CCI and AMMA argued that to meet economic objectives identified by the AIRC the wages increases should only be available by application and from the date the award is varied — Minister further asked the Commission not to adopt the Minimum Wage increases as that could be achieved under the Minimum Conditions of Employment Act —TLC argued that the safety net adjustments should be effected by general order as previous general orders had not had an adverse economic impact —TLC further argued that the differences between State and Federal laws conspired to disadvantage Trade Unions in the State and sought the deletion of the Enterprise Bargaining Principle —CICS found no good reason not to give effect to the National Wage Decision with Safety Net adjustments to be absorbed and available on application no earlier than the date of variation —CICS found that the Adult Minimum Wage was an integral part of the National Wage Decision and the abolition of the Enterprise Bargaining Principle would militate against a workplace focus —Statement of Principles and General Order issued —(Commission's own motion) -v- Trades and Labor Council of Western Australia & Others —APPL 757 of 1998 —Commission in Court Session —COLEMAN CC/FIELDING C/GREGOR C —12/06/98 —Various	2579

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PRINCIPLES—continued

- ³Conference referred re enterprise bargaining claims —Claimant Union argued proposed work changes were little different from those which would have been expected under a workplace agreement, that the remuneration offered under the workplace agreement was a good guide to the value of the proposed changes and sought a 15 % wage increase in return —Respondent argued that the Applicants were offering little more than what they were required to do and had not put in place the 'whole of job' concept in response to previous wage increases and little increase in productivity —CICS found that it was not the purpose or the object of the Enterprise Bargaining Principle that the Commission manufacture an enterprise bargaining agreement for the parties but to arbitrate to assist the parties to strike a bargain where there are aspects of a potential agreement which could not be resolved by negotiation —CICS found that the measures designed by the Applicants had not actually been implemented as the Enterprise Bargaining and the Special Case Principles required —Dismissed —LIQUOR, HOSPITALITY & MISC -v- SCM Chemicals —CR 52 of 1997 —Commission in Court Session —FIELDING C —19/06/98 —Petroleum Coal Chemical Assoc 2963
- Applicant sought a declaration that 25 staff of Westrail whose jobs had been substantially changed, had been dealt with unfairly and as such sought an Order that their existing rates of pay (including an aggregate of allowances) and a productivity payment of 10% - Union Applicant claims that staff had carried out duties under new work arrangement which were beyond the scope of the award, on the understanding that they would soon enter into an Industrial agreement with Westrail. It is further claimed that now Westrail has reneged on that arrangement and is in the process of contracting out the work of these employees. The Minister for Labour Relations stated that the claim would undermine the intent and effect of the Public Sector Management Act, as previous employees in the same area had either accepted severance payments, had been redeployed or were awaiting redeployment. Further the Minister argued that the tasks undertaken by the employees were within the terms of the award, conditions attracting allowances were paid as entitlements and as such there was no enterprise for which a bargain could be determined. The Commission in Court Session found that within the context of the Enterprise Bargaining Principle there was no claim, and that the matters before the Commission should be considered under the Workvalue Changes Principles and because that was not the current claim before the Commission, the claim as it stood must fail - Application dismissed. - Australian Railways Union of Workers, West Australian Branch -v- Western Australian Government Railways Commission - CR 165 of 1997 - Commission in Court Session - COLEMAN CC/PARKS C/SCOTT C. - Rail Transport 3022
- ¹Appeal against decision of Commission in Court Session (78 WAIG 2346) varying awards re salary packaging - Appellants argued it was not open to CICS to judge a government policy and attempt to circumvent it, and CICS impermissibly had regard for the content of workplace agreements - Appellant argued CICS failed to: receive written evidence; give full consideration to the tax implications of the clause, and to have regard to matters of public interest, flow on and structural efficiency - Appellant further argued that any salary packaging would be contracting out of the award and contravene s114 of the IR Act - IAC found that CICS was not precluded from holding that industrial conduct was unfair because it may stem from a government policy from which the Commission has no jurisdiction - IAC further found that there was nothing in the award variation which would require the parties to enter into a salary packaging arrangement which was unfair to either one - IAC found that salary packaging was not mandatory - Arrangements entered into would not have the effect of annulling or varying the award, nor would they affect the rights of anyone other than the parties to the particular arrangement - Dismissed - Commissioner, Public Service Commission & Others -v- The Civil Service Association of Western Australia Incorporated - IAC 3 of 1998 - Industrial Appeal Court - Kennedy J./Anderson J./Scott J. - 09/09/98 - Government Administration 3630
- Application for compensation on the grounds of unfair dismissal-Applicant argued that his failure to comply with a direction and lying about this failure should be considered in terms of his length of service, sales record, management change and effects of company restructure-Respondent argued that as the Applicant's manager was based out of State, the sales team had to be reliable, honest and adhere to instructions-Commission found that in arriving at its decision the Respondent had proper regard for the Applicant's length of service and record-Commission further argued that the Applicant was not denied natural justice-Dismissed - Mr JH Duggan -v- Canon Australia Pty Ltd - APPL 434 of 1998 - CAWLEY C. - 21/09/98 - Business Services 4412
- PROCEDURAL MATTERS**
- Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements -Applicant argued that despite his verbal resignation there was an understanding between herself and the Respondent that the resignation was rescinded and her job was still available-Respondent argued the Applicant's erratic behaviour reinforced the belief the Applicant had resigned and Commission could deal with matters under Minimum Conditions of Employment Act-Commission found the section 29(1)(b) application was not valid due to time restrictions -Commission further found that a commission in respect to the sale of a single property was outstanding-Granted in part —Ms MM Barnes -v- Elliose Pty Ltd t/a Faul & Associates —APPL 792 of 1997 —SCOTT C. —12/06/98 —Property Services 3343
- ¹Appeal from decision of President whereby the President declined to make orders in favour of the Appellant on an application under s.66 Industrial Relations Act alleging non-observance of the rules of the State School Teachers Union (Inc) - The Appellant submitted 177 grounds of appeal - The Respondents sought costs on the grounds that the proceedings are frivolously and vexatiously instituted. The Court held that the Appellant failed to establish that there were any errors of Law on the part of the President and further that the proceedings were not instituted frivolously or vexatiously - Appeal dismissed and no award of costs against Appellant. - Ms R Bannon -v- The State School Teachers Union of W.A. (Incorporated) & Other - IAC 1 of 1998 - Kennedy J./Franklyn J./Anderson J. - Education 3003
- Application for denied contractual benefits - Applicant claimed unpaid wages - Informal settlement of matters between Applicant and Respondent - Applicant disputed amount forwarded to him from Respondent and wanted hearing to proceed - Applicant did not attend hearing - Respondent sought costs of attending Commission and losing work as he was a truck driver and could not drive truck that day - Commission found conduct of Applicant warranted Respondent being awarded reasonable costs - Application for unpaid benefits dismissed and order for costs payable to Respondent from Applicant. - Mr KM May -v- Lazza's Hiab Service - APPL 2299 of 1997 - PARKS C - Road Transport 3357
- ⁴Application for orders re observance or non-observance of Union rules - Applicant sought to rely on an affidavit and sought to discontinue the application when President did not admit it into evidence - President found the contents of the affidavit were substantially irrelevant - President further found that having regard to the lack of evidence and the nature of proceedings the application should be dismissed - Dismissed - Mr JW Turner & Others -v-Australian Railways Union of Workers, West Australian Branch - APPL 1603 of 1998 - President - SHARKEY P - 07/09/98 - Other Services 3421
- Application for orders re written reprimand to an employee following a complaint by an apprentice that the employee had made inappropriate and sexually explicit comments in front of her - Applicant Union argued that the employee had not made the comments and challenged the appropriateness of the written reprimand - Public Service Arbitrator found on evidence that the Applicant had not discharged the onus of proving the claim and that the reprimand was justified -Dismissed - The Civil Service Association of Western Australia Incorporated -v- South Metropolitan College of TAFE - P 21 of 1998 - Public Service Arbitrator - BEECH C -05/08/98 - Education 3571
- ²Appeal against decision of Industrial Magistrate(unreported) regarding breach of award-Question of jurisdiction of Full Bench raised-Full Bench questioned whether decision of Industrial Magistrate was such within meaning of section 83 of the Act-Appeal not competent and therefore dismissed-Dismissed - Giovanni Basilio Nicoletti and Guiliana Nicoletti -v- Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch - APPL 2157 of 1997 - Full Bench - SHARKEY P/BEECHC/PARKS C - 30/10/98 - Unions 4316

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Application for compensation on the grounds of unfair dismissal-Applicant argued that his failure to comply with a direction and lying about this failure should be considered in terms of his length of service, sales record, management change and effects of company restructure-Respondent argued that as the Applicant's manager was based out of State, the sales team had to be reliable, honest and adhere to instructions-Commission found that in arriving at its decision the Respondent had proper regard for the Applicant's length of service and record-Commission further argued that the Applicant was not denied natural justice-Dismissed - Mr JH Duggan -v- Canon Australia Pty Ltd - APPL 434 of 1998 - CAWLEY C. - 21/09/98 - Business Services	4412
Application for reinstatement on the grounds of unfair dismissal and allegedly denied contractual entitlements -Applicant argued that the dismissal was procured through stealth without either substantive or procedural fairness -Respondent argued that Applicant withdrew his services and refused to undertake the duties required of him under his contract of service-Respondent also argued that access to a credit card was not a term of Applicant's employment contract-Commission found that rather than taking steps to formally terminate the Applicant's employment, the Respondent restructured its organisation and in effect demoted him without proper notice or discussion-Compensation and denied contractual entitlements granted. - Mr V Tranchita -v- Wavemaster International Pty Ltd - APPL 1117 of 1997 - FIELDING C - 21/10/98 - Water Transport.....	4463
Application re unfair dismissal-Applicant argued that she was a casual employee who had in all but one instance been available to work when requested and this single instance had led to her dismissal-Respondent argued that the substance of the applicant's casual employment was her availability to work flexibly but a number of messages regarding roster changes had never been returned and the applicant had never been very flexible in her ability to work different shifts - Commission found it more likely than not that the employment relationship came to an end by an effluxion of time-Commission further found that as a casual employee, the applicant's contract would have come to an end at the next set of rostered shifts-Dismissed. - Ms V Franks -v- Lakers Tavern - APPL 763 of 1998 - GREGOR C - Accommodatn, Cafes&Restaurants.....	4906
Application re allegedly denied contractual entitlements -Supreme Court of WA appointed a liquidator to the respondent company after the respondent's filing of an answer and counter proposal but prior to this hearing -Respondent liquidator argued that the matter before the Commission could not proceed without the consent of the Supreme Court-Commission found that the relevant legislation precludes any proceedings being commenced or continued in a court that may affect the property of a corporation under official management or in liquidation -Direction Order. - Mrs DB Rokita -v- Jay Brock Pty Ltd T/A Drake Brockman First National Real Estate - APPL 155 of 1998 - KENNER C - Property Services.....	4936
PUBLIC HOLIDAYS	
Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements-Applicant argued that she had insufficient time in which to complete her designated tasks and was verbally attacked by the Respondent-Respondent argued that although she had spoken to the Applicant about her work it had been the Applicant's intimidatory actions that had led to the dismissal-Commission found that there had been several instances of conflict between the Applicant and the Respondent during the working relationship and witnesses had seen the Respondent's aggressive attitude on prior occasions-Dismissed - Mrs JC Dingwall -v- Mac's Deli &News - APPL 217 of 1998 - PARKS C - 30/10/98 - Food Retailing	4411
PUBLIC INTEREST	
Application for reinstatement on the grounds of unfair dismissal-Applicant argued that although he had signed a workplace agreement the Commission had jurisdiction to hear the claim under s.7G of the Act-Respondent argued that the applicant was not dismissed in the sense contemplated in s.29 but that his contract came to an end by the effluxion of a three month probationary period-Commission found that it was not appropriate for it to enter into a hearing and determination which would provide no meaningful remedy where nothing the Commission did or said would affect directly the rights of the parties-Dismissed - Mr GR Hutchinson -v- Cable Sands (WA) Pty Ltd - APPL 549 of 1998- SCOTT C. - 12/10/98 - Services to Mining.....	4427
Application for compensation on the grounds of unfair dismissal-Applicant sought one week's pay in lieu of notice to terminate employment-Respondent argued for application to be dismissed for want of prosecution and questioned Applicant's sincerity in pursuing his claim-Commission found that Applicant's continual failure to keep hearing dates led it to query the public interest of expending further time on this issue-Discontinued. - Mr RG Johnson -v- David's Garden Centre - APPL 187 of 1998 - BEECH C -21/10/98 - Personal and Other Services	4431
REDUNDANCY/RETRENCHMENT	
Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements —Applicant argued he had been offered permanent employment and had refused other employment due to this understanding —Respondent argued that health issues and business profitability made changes to the business structure necessary —Commission found that an employer was entitled to determine how their business operated and redundancy was a legitimate basis upon which employment terminated —Granted in part —Mr LCV Drage -v- PT & BD Slade —APPL 270 of 1998 —SCOTT C. — 27/05/98 —Agriculture.....	2933
Application for allegedly denied contractual entitlements on written submission-Applicant argued that an ex-gratia payment of one month's salary was promised in addition to his normal salary until the end of January 1998-Respondent argued that the termination was to occur by the end of December 1997 and the payment for January was the ex-gratia payment only-Commission found the Applicant was favourably treated by the Respondent company in offering an ex-gratia payment with the opportunity to leave without deduction -Dismissed —Mr SA Milner -v- Money Mining NL —APPL 504 of 1998 — BEECH C —10/06/98 —Metal Ore Mining	2938
³ Applicant sought a declaration that 25 staff of Westrail whose jobs had been substantially changed, had been dealt with unfairly and as such sought an Order that their existing rates of pay (including an aggregate of allowances) and a productivity payment of 10% - Union Applicant claims that staff had carried out duties under new work arrangement which were beyond the scope of the award, on the understanding that they would soon enter into an Industrial agreement with Westrail. It is further claimed that now Westrail has reneged on that arrangement and is in the process of contracting out the work of these employees. The Minister for Labour Relations stated that the claim would undermine the intent and effect of the Public Sector Management Act, as previous employees in the same area had either accepted severance payments, had been redeployed or were awaiting redeployment. Further the Minister argued that the tasks undertaken by the employees were within the terms of the award, conditions attracting allowances were paid as entitlements and as such there was no enterprise for which a bargain could be determined. The Commission in Court Session found that within the context of the Enterprise Bargaining Principle there was no claim, and that the matters before the Commission should be considered under the Workvalue Changes Principles and because that was not the current claim before the Commission, the claim as it stood must fail - Application dismissed. - Australian Railways Union of Workers, West Australian Branch -v- Western Australian Government Railways Commission - CR 165 of 1997 - Commission in Court Session - COLEMAN CC/PARKS C/SCOTT C. - Rail Transport.....	3022
Application to amend Clause 36 - Redundancy. Applicant put forward no evidence. Respondent put forward no evidence. Commission found that exigencies of daily hire where employees are engaged either for the day or the project apply to these employees. Thus, the redundancy conditions established to deal with the circumstances experienced by employees in the Building and Construction Industry have not been demonstrated to be appropriate to the employees covered by this Award - Dismissed. - The Western Australian Builders' Labourers, Painters & Plasterers Union of Workers & Other -v- Coca-Cola Bottlers Pty Ltd & Others - APPL 1725 of 1996;APPL 466,1886 of 1997;APPL 647 of 1998 - SCOTT C. - Building.....	3763

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REDUNDANCY/RETRENCHMENT—continued

- ¹Appeal against decision of Full Bench (77WAIG 1530) re allegedly denied contractual entitlements-Decision concerned the construction of the clause in a fixed term contract of employment-Appellant argued, inter alia, that Full Bench had erred in finding that the written employment contract only provided for a redundancy payment where employment was terminated in circumstances where the respondent company was undergoing a merger, acquisition, re-arrangement, re-construction, liquidation or receivership-Appellant argued that the Full Bench, having found the appellant was constructively dismissed and that the contract did not apply, failed in holding that appellant was entitled to receive payment for the balance of the contract-IAC found that the task of construction of the contract is to determine the intention of the parties objectively from the agreement they have reached-IAC further found that there were changes made in the manner in which the respondent business was organised but that there was no change to structure-Appellant further argued that Full Bench failed to consider and award to appellant the amount to which he was entitled by way of damages for loss of remuneration under the contract for the remaining term-IAC found this matter not dealt with expressly in the reasons of the Full Bench but because of lack of documented evidence before this court as to monies already paid to the appellant it was inappropriate for this court to attempt any final resolution of the position between the parties-Upheld and remitted. - Mr MW Hart -v- Robowash Pty Ltd -IAC 7 of 1998 - Industrial Appeal Court - Kennedy J./Anderson J./Parker J. - 07/10/98 - Construction Trade Services 4307
- Application for allegedly denied contractual entitlements-Applicant argued that annual leave, long service leave and redundancy payment accrued from employment prior to recent employment with Respondent amounting to transmission of business-Respondent argued against a transmission of business and against jurisdiction of the Commission-Commission found that it is not the case that a transfer of assets is indistinguishable from a transfer of business-Dismissed - Mr G J Barrow -v- George Moss Limited T/A Gemco - APPL 2192 of 1997 - Cawley C - 29/9/98 - Services To Mining 4400
- Application for compensation on the grounds of unfair dismissal-Applicant argued that the dismissal was due either to injury received during work hours or fact he was in receipt of worker's compensation-Respondent argued that the reason was solely economic and it had regard for its usual policy under the relevant award to terminate employment on a "last on, first off" basis-Respondent also argued for an award of costs against the applicant-Commission found that the Applicant did not make out his case on the balance of probabilities that the reason for dismissal was the worker's compensation claim-Commission further found that an award of costs was not warranted-Dismissed - Mr HS Gunes-v- EJ Electrical Engineering Contractors - APPL 2271 of 1997 - CAWLEY C. - 17/09/98 - Construction Trade Services 4424
- Application re allegedly denied contractual entitlements-Applicant argued that Respondent's policy of not paying for unpaid sick leave for entire period of employment on retirement was discriminatory-Commission found that it may only order the Applicant be paid a benefit to which he is entitled under his contract of employment. The Commission cannot rewrite his entitlements to make them more favourable to the Applicant-Dismissed - Mr BM King -v-Email Limited - APPL 424 of 1998 - BEECH C - 15/09/98 -Machinery & Equipment Mfg 4437
- Application re unfair dismissal-Applicants argued that the existence of the Respondent's registered office in this State gave grounds for jurisdiction-Respondent argued that Applicants were employed and worked in another State and thus this State had no jurisdiction to hear this case-Commission found the Respondent's participation in the proceedings to this point display submission to the jurisdiction of the Commission of this State-Jurisdiction application dismissed. - Mrs MA Luff -v- DG Fletcher Holdings Pty Ltd T/A WA/SA Border Village - APPL 684,685 of 1998; CR 146 of 1998 - BEECH C - 15/10/98 - Accommodatn, Cafes & Restaurants 4438
- Application re unfair dismissal and allegedly denied contractual entitlements-Applicant argued that the terms of the dismissal were unfair-Respondent argued that economic circumstances forced company restructuring which meant the Applicant's position was no longer required in the form it had existed-Commission found that it is required to discover all the circumstances of a dismissal and balance them out-Commission further found that the dismissal must be considered from both the employee's and employer's points of view-Dismissed - Mrs CD Miskiewicz -v- Ledge Point Charters Pty Ltd T/A Trimview Building Industries -APPL 250 of 1998 - GREGOR C - 23/09/98 - General Construction 4439
- Application re unfair dismissal-Applicant argued over the validity of the reason given for his dismissal which was redundancy due to amalgamation of operations-Applicant further argued he had suffered harassment and victimisation during the course of his employment-Respondent argued that the amalgamation was a legitimate business decision which subsequently demanded certain positions be made redundant-Commission found that the Applicant may have been selected for redundancy because of poor work performance but that the reason for dismissal was the need to reduce the workforce-Granted - Mr AD Pether -v- Chubb Security Holdings Australia Limited & Others - APPL 23 of 1998 -BEECH C - 13/10/98 - Property Services 4446
- Appeal against decision of Commission re application for compensation on the grounds of unfair dismissal-Appellant argued the Commissioner had erred in law and fact by failing to consider an employer's vicarious liability for causal negligence of servants towards another-Appellant further argued that the employer failed to conduct a proper enquiry and that employment benefits such as accommodation were withdrawn before a thorough investigation of the complaint was made-Respondent argued that although the Appellant had been told to vacate his on site accommodation he had not been dismissed-Commission found that the Appellant had failed to dismiss the onus on him to show, on the balance of probabilities, that he had been dismissed -Dismissed - Mr AG Wood -v- National Mine Management Pty Ltd - APPL 2218 of 1997 - Full Bench - SHARKEY P/COLEMAN CC/FIELDING C - Services to Mining 4853

REGISTRATION

- ²Application for an order authorising the registration of an alteration of rules of employee organisation-No objection to application-Full Bench satisfied that sufficient reason for alteration was provided to members and that association had acted in equity and good conscience-Ordered accordingly. - Real Estate Salespersons Association of Western Australia (Inc) -v- (Not applicable) - APPL 1273 of 1998 - Full Bench - SHARKEY P/COLEMAN CC/GREGOR C - 26/10/98 - Property Services 4317
- Application re Unfair Dismissal - Applicant argued that her resignation resulted from conduct by the Respondent designed to force her to resign so that "Resignation" actually amounted to an act of dismissal by the Respondent - Respondent argued that Applicant had resigned and that terms of the termination had been negotiated and agreed by the parties - Further costs against the Applicant's Industrial Agent was claimed because of negligent representation and serious dereliction of duty - Commission found Applicant resigned and for costs be made against the Applicant as the Agent was not a registered Industrial Agent - Dismissed and the Applicant to pay Respondent \$4000.00 costs. - Miss P Pisconeri -v- Laurens and Munns - APPL 555 of 1998 - CAWLEY C. - 12/11/98 - Business Services 4931
- Application re Unfair Dismissal - Applicant argued that her resignation resulted from conduct by the Respondent designed to force her to resign so that "Resignation" actually amounted to an act of dismissal by the Respondent - Respondent argued that Applicant had resigned and that terms of the termination had been negotiated and agreed by the parties - Further costs against the Applicant's Industrial Agent was claimed because of negligent representation and serious dereliction of duty - Commission found Applicant resigned and for costs be made against the Applicant as the Agent was not a registered Industrial Agent - Dismissed and the Applicant to pay Respondent \$4000.00 costs. - Miss P Pisconeri -v- Laurens and Munns - APPL 555 of 1998 - CAWLEY C. - 12/11/98 - Business Services 4931

REINSTATEMENT

- Application for reinstatement on the grounds of unfair dismissal - Applicant argued dismissal unfair because she was assured permanent employment upon completion of her probationary period - Respondent argued that the three month probationary period constituted a fixed term of employment, the contract of employment ended with the effluxion of time, and therefore no dismissal occurred - Commission found that the situation which existed was not the continuation of a casual relationship but a new contract relationship and the severance of that relationship did not constitute a dismissal - Application dismissed. - Mrs MLD Brown -v- BTR Nylex Limited - APPL 2410 of 1997 - PARKS C - Wholesaling 3352

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Application for reinstatement on the grounds of unfair dismissal. Applicant argued that dismissal was unfair because the conduct was not of a serious nature, no proper warning given, and no alternatives to dismissal considered by Respondent. Respondent argued that workplace and sexual harassment is a serious matter and the Applicant's conduct was contrary to the policies and guidelines of the organisation concerning harassment. Commission found that the allegations provided constituted sexual harassment within the employer's guidelines and the Applicant's conduct destroyed any confidence by the employer in the Applicant - Dismissed. - Mr L McManus -v- Australian Guarantee Corporation Limited - APPL 2396 of 1997 - BEECH C-Finance.....	3577
Application for reinstatement on the grounds of unfair dismissal. Applicant argued that dismissal was unfair as arrangement had been made and that Respondent reneged on the arrangement. Respondent argued that the Applicant breached his contract of employment and employer had the right to dismiss the employee during a probationary period. Commission found employer had the right to end the contract of employment during the probationary period - Dismissed. - Mr S Crawford -v- Bayswater Door Centre - APPL 632 of 1997 - PARKS C - Metal Product Manufacturing	3848
Application for compensation or reinstatement on the grounds of unfair dismissal. Applicant argued that less than a fair go was given and Respondent was harsh by not assessing all the situation. Respondent argued that the Application was dismissed for gross misconduct, after assessing the situation the Respondent discovered that the Applicant initiated the situation, further, the situation escalated due to Applicant engaging in an abusive and aggressive argument. Commission found that Respondents investigation, the Respondent did not fail to give Applicant fair go - Dismissed. - AUTO, FOOD, METAL, ENGIN UNION -v- John Holland Construction & Engineering Pty Ltd - CR 315 of 1997 - SCOTT C. - Mining.....	3875
Application for reinstatement on the grounds of unfair dismissal-Applicant argued that although he had signed a workplace agreement the Commission had jurisdiction to hear the claim under s.7G of the Act-Respondent argued that the applicant was not dismissed in the sense contemplated in s.29 but that his contract came to an end by the effluxion of a three month probationary period-Commission found that it was not appropriate for it to enter into a hearing and determination which would provide no meaningful remedy where nothing the Commission did or said would affect directly the rights of the parties-Dismissed - Mr GR Hutchinson -v- Cable Sands (WA) Pty Ltd - APPL 549 of 1998 - SCOTT C. - 12/10/98 - Services to Mining.....	4427
Application for reinstatement or compensation on the grounds of unfair dismissal-Applicant argued that he had never withheld monies or documents belonging to the Respondent companies-Respondent argued that the Applicant's resignation as a Director of the Respondent company according to a Deed resulting from a Supreme Court Order also constituted the Applicant's resignation as an employee -Commission found that the Applicant's dismissal was unrelated to the Applicant's performance or conduct as an employee-Commission further found the Applicant was not afforded any procedural fairness-Compensation granted - Mr FA Khoury -v- Rosemist Holdings Pty Ltd - APPL 405 of 1998 - KENNER C - 07/10/98 - Food, Beverage and Tobacco Mfg.....	4432
Application for reinstatement or compensation on the grounds of unfair dismissal-Applicant argued that after several incidents of criticism of his work by the Respondent's manager the Applicant came to the conclusion that he was no longer wanted as an employee and so resigned -Respondent argued that although the manager and the Applicant had several discussions regarding the quality of the Applicant's work the Respondent had at all times wanted the Applicant to remain an employee-Commission found that the criticism of the Applicant was legitimate and that the resignation had been freely tendered-Dismissed for want of jurisdiction - Mr H Schwab -v- Barrett's Bread - APPL 807 of 1998 - KENNER C - 08/09/98 - Food Retailing.....	4455
Application for reinstatement or compensation on the grounds of unfair dismissal-Applicant argued the termination was executed in a summary manner and with no warnings from the Respondent that the Applicant's position was in jeopardy-Applicant further argued that he was denied procedural fairness and the Respondent had acted in a deceptive manner-Respondent argued that although the termination was summary this was justified by the Applicant's incompetence and inefficiency and his false claim to hold a management degree-Commission found that Respondent had not discharged the onus of establishing that there was a level of serious misconduct or performance justifying summary dismissal-Commission further found that a finding of unlawful dismissal does not of itself determine whether a dismissal is unfair-Compensation granted and claim for denied contractual benefits dismissed - Mr JJ Timms -v- Phillips Engineering Pty Ltd - APPL 2242 of 1997 - CAWLEY C. - 23/10/98 - Services to Mining.....	4460
Application for reinstatement on the grounds of unfair dismissal and allegedly denied contractual entitlements -Applicant argued that the dismissal was procured through stealth without either substantive or procedural fairness -Respondent argued that Applicant withdrew his services and refused to undertake the duties required of him under his contract of service-Respondent also argued that access to a credit card was not a term of Applicant's employment contract-Commission found that rather than taking steps to formally terminate the Applicant's employment, the Respondent restructured its organisation and in effect demoted him without proper notice or discussion-Compensation and denied contractual entitlements granted. - Mr V Tranchita -v- Wavemaster International Pty Ltd - APPL 1117 of 1997 - FIELDING C - 21/10/98 - Water Transport.....	4463
Application for reinstatement on the grounds of unfair dismissal-Applicant argued that the allegation of assault made against former employee is part of a conspiracy by Respondent's senior officers to get rid of former employee due to his active membership of the Applicant union -Respondent argued that employment was terminated with five weeks' pay in lieu of notice due to the assault on the maintenance superintendent-Commission found that the Respondent gave fair opportunity to discuss the incident but that industrial law does not require employers to keep an inquiry alive indefinitely-Dismissed. - AUTO, FOOD, METAL, ENGIN UNION -v- Dampier Salt Operations Ltd - CR 214 of 1998 - FIELDING C - 20/10/98 - Other Mining.....	4476
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Appeal against decision of Commission re application for compensation on the grounds of unfair dismissal-Appellant argued the Commissioner had erred in law and fact by failing to consider an employer's vicarious liability for causal negligence of servants towards another-Appellant further argued that the employer failed to conduct a proper enquiry and that employment benefits such as accommodation were withdrawn before a thorough investigation of the complaint was made-Respondent argued that although the Appellant had been told to vacate his on site accommodation he had not been dismissed-Commission found that the Appellant had failed to dismiss the onus on him to show, on the balance of probabilities, that he had been dismissed -Dismissed - Mr AG Wood -v- National Mine Management Pty Ltd - APPL 2218 of 1997 - Full Bench - SHARKEY P/COLEMAN CC/FIELDING C - Services to Mining	4853
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³ Conference referred re introduction of drug and alcohol program and random drug testing —Claimant employer argued program was necessary to comply with safety obligations under the Mines Safety and Inspection Act 1997 and Regulations, impractical to introduce the program unless it applied to all employees and sought a declaration that it was fair and reasonable —Respondent Union argued that the proposed drug testing regime travelled beyond the boundaries of acceptable work related disclosure of personal information, there was no evidence to suggest a need for such drastic measures, urine testing was not reliable indicator of impairment, education was a better option and the Commission should not impose consent arrangements on non-consenting parties —CICS found the program to be reasonable and fair —Decision issued unreasonable harsh or unfair — BHP Iron Ore Pty Ltd -v- CONSTRUCTION, MINING, ENERGY & Other —CR 274 of 1997 —Commission in Court Session —FIELDING C/CAWLEY C./BEECH C —19/06/98 —Metal Ore Mining	2593
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Application for allegedly denied contractual entitlements -Only issue was date of operation-Applicant prepared to give Respondent company an additional 3 months to resurrect itself financially-Respondent argued for the 3 months unconditionally-Commission found that it was important for an order to issue confirming Applicant's entitlement to the money in the normal course-Ordered accordingly —Mr LR Vickers -v- Imtech Industries Pty Ltd —APPL 2308 of 1997 —BEECH C —09/06/98..	2953
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Application for allegedly denied contractual entitlements -Applicant argued that he never offered his resignation to the respondent company-Applicant further argued that all efforts made by him to discuss his contract were ignored -Respondent argued that he had had frequent discussions with the applicant in relation to running the business -Respondent further argued that the applicant had not been honest regarding his managerial abilities-Commission found that it was material to the case that the applicant at no time wrote down his version of events in protest at the respondent's alleged conduct-Commission further found that in the case of employment contracts, for a claim to be made for an ongoing salary, an employee must reject the purported termination by the employer and insist upon performance under the contract-Dismissed. - Mr GF O'Dea -v- South West Maintenance Services Pty Ltd - APPL 736 of 1998 - KENNER C - Services to Mining.....	4924

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- Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements -Applicant argued that despite his verbal resignation there was an understanding between herself and the Respondent that the resignation was rescinded and her job was still available-Respondent argued the Applicant's erratic behaviour reinforced the belief the Applicant had resigned and Commission could deal with matters under Minimum Conditions of Employment Act-Commission found the section 29(1)(b) application was not valid due to time restrictions -Commission further found that a commission in respect to the sale of a single property was outstanding-Granted in part —Ms MM Barnes -v- Elliose Pty Ltd t/a Faul & Associates —APPL 792 of 1997 —SCOTT C. —12/06/98 —Property Services..... 3343
- Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements -Applicant argued that the sales target set for him by the Respondent was unrealistic given his other duties and the restrictions placed upon his area of operation-Applicant also argued that the dismissal was unfair because he was not given proper warning that his job was in jeopardy -Respondent argued that the Applicant continually refused to take directions from the Respondent regarding his work duties-Commission found the Respondent attempted to bring about change in the Applicant's work performance which have had a significant effect upon the success of the business which the Applicant ignored at his peril-Commission further found that a reasonable notice period for a position such as that held by the Applicant was 3 months-Granted in part —Mr JS Blake -v- Robowash Pty Ltd —APPL 1843 of 1997 —SCOTT C. —05/05/98 —Machinery & Equipment Mfg 2925
- Application for compensation on the grounds of unfair dismissal —Applicant argued the dismissal was unfair as it was because of her union membership, her concerns with matters of safety and security and the friction between herself and the Respondent's son —Respondent argued that his company's financial status required a reduction in staff numbers and working hours — Commission found that the employer had good cause to terminate the Applicant's employment and had not done so for any reason other than the need to reduce operating costs —Dismissed —Mrs F Camlin -v- Stakehill Enterprises Pty Ltd T/A Low Cost Cleaning Enterprises —APPL 2044 of 1997 —SCOTT C. —17/06/98 —Other Services 2928
- Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements —Applicant argued he had been offered permanent employment and had refused other employment due to this understanding —Respondent argued that health issues and business profitability made changes to the business structure necessary —Commission found that an employer was entitled to determine how their business operated and redundancy was a legitimate basis upon which employment terminated —Granted in part —Mr LCV Drage -v- PT & BD Slade —APPL 270 of 1998 —SCOTT C. —27/05/98 —Agriculture 2933
- Application re unfair dismissal and allegedly and allegedly denied contractual benefits-Applicant argued that he was forced to resign and that notwithstanding an arrangement between himself and the Respondent for offsetting debts against salary the Applicant was owed outstanding payments -Respondent argued that there was no case to answer -Commission found the application appeared to be more one based upon a personal feud and ran the risk of being found vexatious-Dismissed —Mr KF Foo -v- Kim Soia Personalized Tuition —APPL 215 of 1998 —GREGOR C —24/06/98 —Education..... 2934
- Application for allegedly denied contractual entitlements -Applicant argued that a contract of employment existed despite not having commenced work with the Respondent -Respondent argued that the Applicant had never been in Respondent's employ-Commission found that the fact the Applicant was unable to execute all the duties of the position for which she was engaged did not render the employment contract null-Granted —Ms G Gozenton -v- Execucum Technologies —APPL 143 of 1998 —CAWLEY C. —12/06/98 —Communication Services 2937
- Application for allegedly denied contractual entitlements on written submission-Applicant argued that an ex-gratia payment of one month's salary was promised in addition to his normal salary until the end of January 1998-Respondent argued that the termination was to occur by the end of December 1997 and the payment for January was the ex-gratia payment only-Commission found the Applicant was favourably treated by the Respondent company in offering an ex-gratia payment with the opportunity to leave without deduction -Dismissed —Mr SA Milner -v- Money Mining NL —APPL 504 of 1998 —BEECH C —10/06/98 —Metal Ore Mining 2938
- Application for compensation on the grounds of unfair dismissal-Applicant argued that an applicable Federal Award did not confer exclusive jurisdiction on the Federal Commission to the exclusion of the State Commission -Respondent argued that State provisions in relation to unfair dismissal are inconsistent with provisions of the Federal Award and so render State laws invalid-Respondent further argued that State provisions dealing with unfair dismissal did not extend to employees covered by federal awards-Commission found that the Federal award granted a positive authority which must be construed to take effect to the exclusion of State law-Dismissed for want of jurisdiction —Mr AT Mitchell -v- United Credit Union Limited —APPL 76 of 1998 —KENNER C —05/06/98 —Finance 2939
- Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements -Applicants argued that they were employed by the Respondents and the Commission had jurisdiction to hear the claims-Respondent argued the Applicants had at no time been employed by the Respondent company and any claim of unfair dismissal had to be predicated by the existence of an employment contract which has been terminated by the employer party-Commission found that the Applicants had not been employed by the named Respondent-Ruled out as invalid —Mr JG Reid -v- Shark Bay Salt Joint Venture —APPL 931,1075 of 1997 —CAWLEY C. —27/4/97, 11/05/98 —Other Mining..... 2944
- Application re allegedly denied contractual entitlements -Applicant argued that he was at all times willing and able to work and presented as required by the Respondent despite no existing business premises-Respondent failed to appear and no answers to the claim had been filed-Commission found the Applicant was entitled to be paid in accordance with the contract for the period it was on foot and a sum in lieu of notice to be implied into the contract-Granted —Mr JT Tan -v- Execucum Technologies —APPL 271 of 1998 —CAWLEY C. —29/06/98 —Personal & Household Good Rtlg 2951
- Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements -Applicant argued he was dismissed without an opportunity to discuss the Respondent's accusations-Respondent argued that the Applicant was argumentative and never took direction-Commission found that during the time the Applicant worked for the Respondent, the Applicant raised opposition on a regular basis to many instructions given to him-Dismissed —Mr JM Winton -v- Fairlawn Stud —APPL 2049 of 1997 —GREGOR C —12/06/98 —Agriculture 2953
- ²Appeal against part of decision of Commission (78 WAIG 1065) re order that Appellant not refuse entry to its premises to an ex employee - Appellant argued that the application for the order appealed against should have been made under s23A of the IR Act, the order was incompetent and that the matter of the worker being prohibited from entering the Appellants premises was not an industrial matter - Full Bench found that the claim for the order raised a separate matter which could have been the subject of a separate application under s44 - Full Bench found that the matter did not effect or relate to the work rights or duties of the worker as an employee of the Appellant and the Commission was without jurisdiction to make the order - Upheld - WMC Resources Ltd -v- The Australian Workers' Union, West Australian Branch, Industrial Union of Workers - APPL 499 of 1998 - Full Bench - SHARKEY P/GREGOR C/SCOTT C. - 29/07/98 - Metal Ore Mining..... 3012
- Application for reinstatement on the grounds of unfair dismissal - Applicant argued dismissal unfair because she was assured permanent employment upon completion of her probationary period - Respondent argued that the three month probationary period constituted a fixed tem of employment, the contract of employment ended with the effluxion of time, and therefore no dismissal occurred - Commission found that the situation which existed was not the continuation of a casual relationship but a new contract relationship and the severance of that relationship did not constitute a dismissal - Application dismissed. - Mrs MLD Brown -v- BTR Nylex Limited - APPL 2410 of 1997 - PARKS C - Wholesaling 3352

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Application re. unfair dismissal and allegedly denied contractual entitlements - Applicant argued that a Share Fishing Agreement was agreed to and a percentage of the catch and not employed on a trial basis. Respondent argued Applicant was not an employee and further was engaged for a trial period. Commission found that Applicant was engaged on a trial basis and was unsuccessful in being selected for employment - Dismissed. - Mr CA Larsen -v- Consolato Giovanni Barbera T/F Barbera Family Trust - APPL 48 of 1998 - SCOTT C. - Commercial Fishing	3354
Application Re. Allegedly Denied Contractual Entitlements of Annual Leave, Daily Allowances, Long Service Leave and Wages. Applicant argued that Entitlements are constituted under contract of Employment. Respondent argued that it denied liability for the moneys claimed except for Long Service Leave and a component of a Daily Allowance, in fact Applicant was over paid. Commission found that Applicant had not established that there had been any denied contractual benefits which can be recovered in this jurisdiction other than the conceded Long Service leave. Granted in Part - Mr MD McPolin -v- The West Australian Locomotive Engine Drivers', Firemen's and Cleaners' Union of Workers - APPL 696 of 1997 - FIELDING C - Rail Transport	3358
Application for denied contractual benefits and compensation on grounds of unfair dismissal - Applicant argued that he was constructively dismissed as he was forced to resign by reason of unauthorised deductions from remuneration and impossible targets and request to enter workplace agreement - Respondent claimed applicant resigned and the contract of employment came to an end - Commission found that applicant resigned and the circumstances of that resignation did not constitute duress so as to amount to a repudiation by the Respondent of the Applicant's contract of employment thereby entitling the Applicant to leave employment without notice.- Application Dismissed - Mr AG McRae -v- Brockway Estate Agency - APPL 152 of 1998 - KENNER C - Property Services	3361
Application for compensation on grounds of unfair dismissal - Respondent argued that applicant had resigned and the contract of service came to an end due to that circumstance - Applicant denied resigning and alleged that because she declined a request made outside working hours she was dismissed - Commission found applicant resigned in anger and was disrespectful, however, dismissal was still unfair - Commission ordered reinstatement impractical and compensation was appropriate remedy - Dismissal of applicant unfair and compensation ordered. - Ms S Nadin -v- WABC T/A Swan Blinds - APPL 1516 of 1997 - PARKS C - Other Manufacturing	3367
Application for relief on the grounds of unfair dismissal - Applicant alleged that he was "set up" for dismissal and that several people were complicit in these events - Respondent argued that dismissal was based on Applicant's conduct and behaviour which had continued despite prior warnings - Commission found Respondent had acted fairly and dismissal was a result of Applicant's conduct, attitude and approach - Application Dismissed. - Mr JT Pellemounter -v- Canine Association of Western Australia (Inc) - APPL 248 of 1998 - SCOTT C. - Other Services	3368
Application for contractual benefits due under a contract in relation to a claim of unfair dismissal - Respondent argued matter could not proceed as company was now in administration and s.44 OD(1) of the Corporation Law was involved - Applicant argued that for the purposes of the Corporation Law, the Commission was not a Court of Law - Commission concluded that s.44D(1) applied because it exercised a judicial function and performance of that function supports the view that Commission is a Court with respect to this matter - Application adjourned sine die, and application could be relisted by either party, should circumstances change. - Mr PJ Walden -v- Hansley Holdings Pty Ltd T/A GIS Engineering - APPL 2142 of 1997 - BEECH C - Other Manufacturing	3370
Application for relief on grounds of unfair dismissal - Applicant alleged dismissal unfair because he was not given an opportunity to put his case before the Respondent given the allegation made against him - Respondent argued Applicant was dismissed because his conduct amounted to gross insubordination.- Commission found that Applicant was aggressive and intimidating to Respondent and such conduct justified his dismissal and that manner destroyed the relationship between employer and employee - Application Dismissed - Mr PB Walsh -v- Shire of Meekatharra - APPL 2262 of 1997 - BEECH C - Services to Transport	3371
Application alleging unfair dismissal of union member on grounds of attempting to avoid a potential workers compensation claim - Applicant argued that member's injury and request for annual leave to recover from it prompted his termination as Respondent wanted to avoid Workers Compensation responsibilities - Respondent argued that downturn in market and decline in need for members labour prompted termination - Commission found downturn in market was valid reason for terminating employment as services no longer required and that it was not unfair - Application Dismissed. - AUST MEAT INDUSTRY EMPL UNION -v- Perth Pork Centre (Derby Industries Pty Ltd) - CR 293 of 1997 - FIELDING C - Services to Mining	3382
Appeal for reinstatement on the grounds of Termination was harsh, oppressive and unfair - Appellant argued that he had expectation of continued employment beyond term of short contract - Respondent argued employment was subject to a contract which came to an end by the effluxion of time, and thus the Board had no jurisdiction to deal with this matter - Board considered the series of unbroken express contracts and the agreed and express term contained therein and found that the decision not to offer a further contract after the last one elapsed was not a termination and thus the Board had no jurisdiction to deal with this matter - Appeal dismissed. - Mr JW Ridd -v- Family and Children's Services - PSAB 6 of 1998 - Public Service Appeal Board - CAWLEY C. - Government Administration	3389
Application for compensation on the grounds of unfair dismissal. Applicant argued that the hearing proceed even though the employer has had administrators appointed. Respondent argued that as employer is in the hands of a Liquidator pursuant to the Corporations Law 440D(1) and 471B and the Commission does not have the authority to proceed with the Application. Commission found that the Corporations Law applies and cannot proceed. Application adjourned and no further proceedings until authority pursuant to the Corporations Act is obtained. - Mr P Helm -v- Hansley Holdings Pty Ltd T/A GIS Engineering - APPL 1724 of 1997 - CAWLEY C. - Engineering	3576
Application for compensation on the grounds of unfair dismissal. Applicant argued that dismissal was unfair because required to resign by employer after an incident causing damage. Respondent argued that the Applicant chose to resign because of the carelessness and breach of safety caused from the damage and the events of the incident. Commission found the Applicant was dismissed and did not resign voluntarily. However, the dismissal was not unfair as the Applicant breached safety rules - Dismissed. - Mr B Pheasby -v- Eltin Surface Mining Pty Ltd - APPL 2065 of 1997 - BEECH C - Mining	3582
Application for compensation on the grounds of unfair dismissal. Applicant argued dismissal was unfair as there was no complaint or performance appraisal, no alternative options provided and a similar position advertised as being performed by the Applicant. Respondent argued the Applicant was not dismissed unfairly but for unsatisfactory performance conduct and demeanour and warnings were given. Commission found that claim was not made out and the position disappeared to restructuring. Dismissed - Mr M Wichmann -v- Peter Stannard Homes Pty Ltd - APPL 1297 of 1997 - CAWLEY C. - Property Services	3586
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Application for compensation on the grounds of unfair dismissal. Applicant argued that dismissal was unfair because was a permanent employee and not a casual, the Applicant was exercising rights under the Award. Respondent argued that Applicant was employed as a casual not as a permanent employee and abandoned work contract of employment. Commission found that Applicant was employed as a casual and the Applicant had abandoned the contract of employment. - Dismissed - Mrs SL Wilson -v- Teedan Pty Ltd- APPL 189 of 1998 - CAWLEY C. - Cafes.....	3590
Application for allegedly denied contractual entitlements. Applicant claimed unpaid wages and wages in lieu of Notice of Termination. No appearance by Respondent. Commission concluded that the claim had been made out and a contract of employment existed - Granted. - Ms E Van Dongen -v- Execucom Technologies - APPL 825 of 1998 - CAWLEY C. - Electronic Equipment Manufacture.....	3585
Application for reinstatement on the grounds of unfair dismissal. Applicant argued that dismissal was unfair because the conduct was not of a serious nature, no proper warning given, and no alternatives to dismissal considered by Respondent. Respondent argued that workplace and sexual harassment is a serious matter and the Applicant's conduct was contrary to the policies and guidelines of the organisation concerning harassment. Commission found that the allegations provided constituted sexual harassment within the employer's guidelines and the Applicant's conduct destroyed any confidence by the employer in the Applicant - Dismissed. - Mr L McManus -v- Australian Guarantee Corporation Limited - APPL 2396 of 1997 - BEECH C- Finance.....	3577
² Appeal against decision of Commission (78 WAIG 2444) re unfair dismissal. Applicant argued erred in Law and miscarried its discretion, and failed to take into account a number of points, including witnesses, evidence and the manner in which the dismissal was carried out - Full Bench found on evidence the financial difficulties of the Respondent were not necessarily attributable to any neglect or incompetence on behalf of the Appellant and the conclusion was open that the circumstances in which the Respondent found itself were largely beyond the Appellant's control- Full Bench found not enough warning or notice was given and, having regard to all of the evidence the decision reached was not reasonable in all of the circumstances of the case - Upheld and adjourned for further submissions. - Mr R Bogunovich -v- Bayside Western Australia Pty Ltd - APPL 939 of 1998 - Full Bench - SHARKEY P/COLEMAN CC/KENNER C - Building Structure Services.....	3635
Application for compensation of unfair dismissal and outstanding contractual entitlements. Applicant argued that dismissal was unfair regarding unauthorised use of company vehicle and the denied entitlements formed part of the compensation. Respondent argued that dismissal was necessary as trust had been abused by unauthorised use of vehicle. Commission found that there was an abuse of privilege and there was the unauthorised use of a company vehicle - Dismissed. - Ms S Bonn -v- Collie Freightlines - APPL 631 of 1998 - SCOTT C. - Transport Industry.....	3838
Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements. Applicant argued that there was suffering from work-related stress and did not resign, Wages, Bonus and Motor Vehicle are the entitlements being claimed. Respondent argued that the Applicant was not dismissed but resigned. Also the Commission lacks jurisdiction to deal with this matter, and denies any entitlements due under the contract of service. Commission found that Applicant had resigned and that no compensation is due and no contractual entitlement have been denied - Dismissed. - Mr B Burrows -v- Central Warehouse Pty Ltd - APPL 247 of 1997 - PARKS C - Wholesaling.....	3842
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Application for reinstatement on the grounds of unfair dismissal. Applicant argued that dismissal was unfair as arrangement had been made and that Respondent reneged on the arrangement. Respondent argued that the Applicant breached his contract of employment and employer had the right to dismiss the employee during a probationary period. Commission found employer had the right to end the contract of employment during the probationary period - Dismissed. - Mr S Crawford -v- Bayswater Door Centre - APPL 632 of 1997 - PARKS C - Metal Product Manufacturing.....	3848
Application for compensation on the grounds of unfair dismissal and outstanding contractual entitlements. Applicant argued that dismissal was unfair because less than a fair go was given regarding breach of policy and ethical standard. Respondent argued that Applicant was fully aware and informed of the policies of code of conduct and ethical standards. Commission found that the Applicant had breached the ethical rules of the Respondent and this was a direct and wilful breach of them - Dismissed. - Mr PD Morgan -v- Orix Australia Corporation Ltd - APPL 190 of 1998 - GREGOR C - Motor Vehicle Rtlg & Services.....	3850
Application re alleged unfair dismissal. Applicant claimed that she was competent to do the job of Director and that she had not received any warnings about her performance prior to her suspension and subsequent dismissal. Respondent argued that Applicant was incompetent unable to carry out her duties and had a poor performance record. Commission found on evidence that Applicant's performance demonstrated a high level of incompetence and inability to carry out basic duties and functions, and that Applicant had wilfully disobeyed lawful instructions. Commission found that Applicant had not been unfairly dismissed - Dismissed. - Ms J Nicholls -v- Eastern Goldfields Aboriginal Advancement Council Inc - APPL 1329 of 1997 - GREGOR C - Other Services.....	3854
Applications re alleged unfair dismissal over allegations that Applicants had been stealing fuel from the Respondent - Commission found that Respondent had conducted a full and extensive investigation, as far as was reasonable over the allegations - Commission further found that the Applicants were given reasonable opportunity and sufficient time to answer the allegations and that the Respondent had discharged the onus which fell to it in the case of a dismissal for misconduct - Dismissed - Mr RAC Barber -v- Shire of Swan - APPL 2120,2121 of 1997 - SCOTT C. - 11/08/98 - Government Administration.....	3858
Application re alleged unfair dismissal. Applicant claimed that after challenging procedures of respondent as inappropriate, Respondent found faults with his work performance resulting in succession of baseless allegations which led to his dismissal. Respondent acknowledged that applicant's employment was terminated but denied it was unfair. Respondent argued that Applicant's claim be dismissed due to Applicant attempting by threat and duress to get witnesses to change their evidence, and that Applicant has misled the Commission. Commission found on evidence that Applicant is demonstrably a discreditable person. Commission found that Application should be dismissed pursuant to S.27(1)(a). Commission found that Applicant pay costs to Respondent - Dismissed and costs awarded to Respondent. - Mr BF Smith -v- Nulsen Haven Association (Inc) - APPL 558 of 1998 - CAWLEY C. - Health Services.....	3863
Application for unfair dismissal and contractual entitlements. Applicant claimed he was unfairly dismissed after arriving 12 minutes late for work and that he was owed 3 days pay for time worked and a week in lieu of notice. Respondent argued that Applicant was on a trial period and when challenged over being late told the Respondent to "stick his job" and left. Commission found it impossible to distinguish between witnesses' credibility but as the Applicant bears the onus of proving his case and as this was not proven the unfair dismissal claim was dismissed. Commission unable to deal with Award entitlements claim - Dismissed. - Mr DG White -v- Australind Caravan Park - APPL 704 of 1998 - SCOTT C. - Accommodation.....	3865

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Application for unfair dismissal- Applicant claimed he was unfairly dismissed by Respondent - Respondent argued that Applicant was a contractor and not an employee and had signed a contract for services agreement - Commission found Applicant to be a contractor and not an employee - Dismissed for Want of Jurisdiction. - Mr I Zovko -v- KLM Fabricators - APPL 382 of 1998 - GREGOR C - General Construction	3866
Application for compensation or reinstatement on the grounds of unfair dismissal. Applicant argued that less than a fair go was given and Respondent was harsh by not assessing all the situation. Respondent argued that the Application was dismissed for gross misconduct, after assessing the situation the Respondent discovered that the Applicant initiated the situation, further, the situation escalated due to Applicant engaging in an abusive and aggressive argument. Commission found that Respondents investigation, the Respondent did not fail to give Applicant fair go - Dismissed. - AUTO, FOOD, METAL, ENGIN UNION -v- John Holland Construction & Engineering Pty Ltd - CR 315 of 1997 - SCOTT C. - Mining.....	3875
Application for a conference regarding unfair dismissal - Preliminary matter raised as to the jurisdiction of the Commission - Preliminary matter raised was that the Conference was registered under section 29(1)(b)(i) of the Act and thus the Commission did have the power to pursue matter under Section 44 - Further - The Applicant was not authorised to lodge an Application under section 29(1)(b)(i) - Commission found that the content of the Application was misleading and confusing and reached the conclusion that it had the powers to proceed pursuant to section 44(1) of the Act. - LIQUOR, HOSPITALITY & MISC -v- Bega Gambirringu Health Services Aboriginal Corp. - CR 163 of 1997 - PARKS C - Medical	3882
Application for reinstatement on the grounds of unfair dismissal. Applicant Union argued that the dispute resolution clause of the Arrangement is inconsistent and therefore the Applicant had the option of bringing the matter before the Commission as there is no express inconsistency. Respondent argued that the dispute resulted disciplinary action for serious and/or wilful misconduct, regarding Dispute Resolution Clause and thus matter must be dealt with in the Federal Jurisdiction. Commission found that the intention of the agreement when any dispute arose and could not be resolved by this jurisdiction and must be referred to the AIRC for resolution - Dismissed For Want of Jurisdiction. - LIQUOR, HOSPITALITY & MISC -v- Coca-Cola Amatil Western Australia - CR 117 of 1998 - GREGOR C - Beverage.....	3888
Appeal for reinstatement on the grounds of termination being harsh, oppressive and unfair. Applicant argued that termination was unfair because during the probation period she was subject to harassment, isolation and receiving less favourable treatment than others. Respondent argued that employee did not meet the standard performance required and extensive efforts were made to train, support and assist the Applicant. Commission found that everything that could be done to assist the Applicant to maintain her position was done by Respondent - Dismissed - Ms PA Vyas -v- Commissioner of Police - PSAB 11 of 1997 - GREGOR C - Government Administration	3893
Application for compensation on the grounds of unfair dismissal-Applicant argued that an oral contract of employment existed and he is owed unpaid entitlements-Respondent argued that the Applicant failed to accept the written offer of employment within a reasonable time and so the offer was withdrawn-Commission found that any purported acceptance of the employment contract two years after originally presented could, at best, be considered a counter-offer by the Applicant-Dismissed - Mr TM Baker -v-Westpoint Consulting Group Pty Ltd (Westpoint Corporation Pty Ltd) - APPL 384 of 1998 - BEECH C - 19/10/98 - Business Services	4399
Application for allegedly denied contractual entitlements-Applicant argued that annual leave, long service leave and redundancy payment accrued from employment prior to recent employment with Respondent amounting to transmission of business- Respondent argued against a transmission of business and against jurisdiction of the Commission-Commission found that it is not the case that a transfer of assets is indistinguishable from a transfer of business-Dismissed - Mr G J Barrow -v- George Moss Limited T/A Gemco - APPL 2192 of 1997 - Cawley C - 29/9/98 - Services To Mining.....	4400
Application re unfair dismissal and allegedly denied contractual entitlements-Applicant argued that a change in her employment conditions after becoming pregnant was not agreed to by self-Applicant further argued for a claim of unfair dismissal which had been filed at a later date-Respondent argued that the Applicant's proceedings with the Equal Opportunity Commission precluded the involvement of the WAIRC in this claim-Commission found that the claim re unfair dismissal was outside the 28 day time limit and was separate to the original claim for allegedly denied contractual entitlements-Commission further found that the Commissions was not precluded from hearing the claim despite a separate claim lodged with the EOC-Claim relisted for hearing and determination. - Mrs TC Bates -v- Mountway Nominees Pty Ltd - APPL 34 of 1998 - KENNER C - 25/09/98 -Machining and Motor Veh Whslg	4402
Application re unfair dismissal-Applicant made reference in the Notice that his employment was governed by a Federal award- Respondent filed a Notice of Answer challenging the WAIRC's jurisdiction in this matter-Commission found that it has no jurisdiction in a Federal award matter-Dismissed for want of jurisdiction. - Mr RJ Cumming -v- Pacific Manning & Other - APPL 1359 of 1998 - FIELDING C - 05/10/98- Water Transport	4410
Application for compensation on the grounds of unfair dismissal-Applicant argued that his employment with the Christmas Island Newsagency had been unfairly terminated-Respondent argued that the WAIRC did not have jurisdiction to hear this case as it had occurred outside the State-Commission found that the Federal Workplace Relations Act extends the operation of that Act and thus the jurisdiction of the Federal Commission to the Territory of Christmas Island-Dismissed for want of jurisdiction. - Ms J Billecliff-v- Christmas Island Newsagency - APPL 1161 of 1998 -FIELDING C - 12/10/98 - Personal and Other Services	4410
Application for compensation on the grounds of unfair dismissal-Applicant argued that his failure to comply with a direction and lying about this failure should be considered in terms of his length of service, sales record, management change and effects of company restructure-Respondent argued that as the Applicant's manager was based out of State, the sales team had to be reliable, honest and adhere to instructions-Commission found that in arriving at its decision the Respondent had proper regard for the Applicant's length of service and record-Commission further argued that the Applicant was not denied natural justice-Dismissed - Mr JH Duggan -v- Canon Australia Pty Ltd - APPL 434 of 1998 - CAWLEY C. - 21/09/98 - Business Services	4412
Application re unfair dismissal-Applicant argued that he had maintained contact with a senior manager whilst not attending mine site-Respondent argued that application was lodged out of time and that Applicant had abandoned his job-Commission found that the action taken by an employer to dismiss an employee is not effective until it is communicated to the employee- Application restored to the lists for further hearing and determination. - Mr DJ Duke-v- Byrne-cut Mining Pty Ltd - APPL 1360 of 1998 - BEECH C -21/10/98 - Metal Ore Mining.....	4414
Application re unfair dismissal-Applicant argued that the dismissal was summary-Respondent argued that although they accept the dismissal was summary the Applicant had breached client security and confidentiality in a business based on security- Commission found that the credibility of the Respondent company's operations was based on the ability to maintain the efficacy of a security system and must be able to rely on the honesty and integrity of its employees to achieve this-Dismissed. - Ms RL Ellison -v- Lythven Pty Ltd T/A Shelf Security - APPL 1195 of 1998 - COLEMAN CC -29/10/98 - Property and Business Services.....	4416
Application re unfair dismissal-Applicant argued that the relevant contract of employment did not allow the Respondent to direct the Applicant to work an increased number of hours per week-Respondent argued that there were no specified working hours within the contract of employment-Commission found that the hours the Applicant had previously worked were a custom or practice but did not have the effect of making it a term of the contract-Dismissed. - Mr TJ Etherington -v- Star and Garter Hotels Pty Ltd - APPL 1536 of 1998 - BEECH C - 14/10/98 -Accommodation, Cafes & Restaurants	4418

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Application for reinstatement or compensation on the grounds of unfair dismissal-Applicant argued that the dismissal was unjustified-Respondent argued that its employee's behaviour had been tolerated over many years often to the detriment of fellow workers-Commission found that the employee had been counselled or warned about her conduct but had refused to acknowledge the conduct of the problem caused-Dismissed. - The Forest Products, Furnishing and Allied Industries Industrial Union of Workers, W.A.Branch -v- Curtain World - CR 187 of 1998 - SCOTT C. -06/11/98 - Textile, Clothing, Footwear.....	4420
Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements-Applicant argued that she had not agreed to the change in her employment status from full-time to casual and as such this change constituted an unfair dismissal-Respondent argued there had been agreement at a meeting between himself and the Applicant regarding the change in employment status and had willing paid all entitlements due-Commission found that the Respondent's behaviour represented a justifiable and prudent business decision-Dismissed. - Ms EM Greig -v- Occasions Pty Ltd T/A Classic Holidays - APPL 2045 of 1997 - PARKS C - 02/11/98 -Services to Transport	4422
Application for compensation on the grounds of unfair dismissal-Applicant argued that the dismissal was due either to injury received during work hours or fact he was in receipt of worker's compensation-Respondent argued that the reason was solely economic and it had regard for its usual policy under the relevant award to terminate employment on a "last on, first off" basis-Respondent also argued for an award of costs against the applicant-Commission found that the Applicant did not make out his case on the balance of probabilities that the reason for dismissal was the worker's compensation claim-Commission further found that an award of costs was not warranted-Dismissed - Mr HS Gunes-v- EJ Electrical Engineering Contractors - APPL 2271 of 1997 - CAWLEY C. - 17/09/98 - Construction Trade Services	4424
Application re unfair dismissal-Preliminary point made regarding place of hearing-Applicant argued the employment, the dismissal and things pertaining to both have occurred in Esperance and could not afford the costs related to a change of hearing venue-Respondent argued that it has appointed counsel in Perth and has a witness in Perth-Commission found that the prejudice suffered by the applicant with a change of venue was greater than that suffered by the respondent in maintaining the hearing place-Dismissed - Ms AC Hewson -v- Gulshan Chopra, Registered Proprietor of Moss & Co Barristers & Solicitors - APPL 1498 of 1998 - BEECH C - 21/10/98 - Legal.....	4426
Application for reinstatement on the grounds of unfair dismissal-Applicant argued that although he had signed a workplace agreement the Commission had jurisdiction to hear the claim under s.7G of the Act-Respondent argued that the applicant was not dismissed in the sense contemplated ins.29 but that his contract came to an end by the effluxion of a three month probationary period-Commission found that it was not appropriate for it to enter into a hearing and determination which would provide no meaningful remedy where nothing the Commission did or said would affect directly the rights of the parties-Dismissed - Mr GR Hutchinson -v- Cable Sands (WA) Pty Ltd - APPL 549 of 1998- SCOTT C. - 12/10/98 - Services to Mining.....	4427
Application for compensation on the grounds of unfair dismissal-Applicant argued that the termination was without warning and without valid reason-Respondent argued that the Applicant was dismissed because of an unsatisfactory attitude to his work and failure to comply with instructions-Commission found that it needs to adopt a pragmatic and practical approach to matters like this in looking at the relationship between a farmer and his farmhands-Commission further found that the manner of dismissal is only one of the factors to be considered in a case of alleged unfair dismissal-Dismissed - Mr GB Johnson -v- DC &CM Richards - APPL 44 of 1998 - FIELDING C - 25/09/98 -Agriculture.....	4430
Application for compensation on the grounds of unfair dismissal-Applicant sought one week's pay in lieu of notice to terminate employment-Respondent argued for application to be dismissed for want of prosecution and questioned Applicant's sincerity in pursuing his claim-Commission found that Applicant's continual failure to keep hearing dates led it to query the public interest of expending further time on this issue-Discontinued. - Mr RG Johnson -v- David's Garden Centre - APPL 187 of 1998 - BEECH C -21/10/98 - Personal and Other Services	4431
Application for reinstatement or compensation on the grounds of unfair dismissal-Applicant argued that he had never withheld monies or documents belonging to the Respondent companies-Respondent argued that the Applicant's resignation as a Director of the Respondent company according to a Deed resulting from a Supreme Court Order also constituted the Applicant's resignation as an employee-Commission found that the Applicant's dismissal was unrelated to the Applicant's performance or conduct as an employee-Commission further found the Applicant was not afforded any procedural fairness-Compensation granted - MrFA Khoury -v- Rosemist Holdings Pty Ltd - APPL 405 of 1998- KENNER C - 07/10/98 - Food, Beverage and Tobacco Mfg.....	4432
Application re allegedly denied contractual entitlements-Applicant argued that Respondent's policy of not paying for unpaid sick leave for entire period of employment on retirement was discriminatory-Commission found that it may only order the Applicant be paid a benefit to which he is entitled under his contract of employment. The Commission cannot rewrite his entitlements to make them more favourable to the Applicant-Dismissed - Mr BM King -v-Email Limited - APPL 424 of 1998 - BEECH C - 15/09/98 -Machinery & Equipment Mfg.....	4437
Application re unfair dismissal-Applicants argued that the existence of the Respondent's registered office in this State gave grounds for jurisdiction-Respondent argued that Applicants were employed and worked in another State and thus this State had no jurisdiction to hear this case-Commission found the Respondent's participation in the proceedings to this point display submission to the jurisdiction of the Commission of this State-Jurisdiction application dismissed. - Mrs MA Luff -v- DG Fletcher Holdings Pty Ltd T/A WA/SA Border Village - APPL 684,685 of 1998; CR 146 of 1998 - BEECH C - 15/10/98 - Accommodatn, Cafes & Restaurants.....	4438
Application re unfair dismissal and allegedly denied contractual entitlements-Applicant argued that the terms of the dismissal were unfair-Respondent argued that economic circumstances forced company restructuring which meant the Applicant's position was no longer required in the form it had existed-Commission found that it is required to discover all the circumstances of a dismissal and balance them out-Commission further found that the dismissal must be considered from both the employee's and employer's points of view-Dismissed - Mrs CD Miskiewicz -v- Ledger Point Charters Pty Ltd T/A Trimview Building Industries -APPL 250 of 1998 - GREGOR C - 23/09/98 - General Construction	4439
Application re unfair dismissal and allegedly denied contractual entitlements-Applicant argued that during her interview with the Respondent there was no indication that she was to be other than in his employ and she understood she was to receive a regular wage-Respondent argued that the Applicant was never an employee and thus the Commission lacked jurisdiction in this matter-Commission found that the Applicant had applied for the advertised position in order to receive payment for her work-Granted in full. - Ms K Moodley -v- Datastream Productivity Pty Ltd - APPL 645 of 1998 - KENNER C - 12/10/98 - Communication Services.....	4441
Application re unfair dismissal and allegedly outstanding contractual entitlements-Commission firstly established that as the Applicant was covered by an award it had no jurisdiction in the question of denied contractual entitlements-Applicant argued that after an argument between himself and the Respondent he understood the Respondent had demanded he leave the premises which he had done so immediately-Respondent argued that the Applicant left the job entirely of his own volition after the argument when he refused to continue the job for which he had been employed-Commission found that the Applicant terminated his own employment on the balance of probabilities-Dismissed. - Mr T Mott -v- Sign Supermarket - APPL 792,843,887 of 1998 - GREGOR C - 21/10/98 - Business Services	4443

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Application for compensation on the grounds of unfair dismissal-Applicant's counsel sought and received 7 day adjournment-Applicant failed to return to the Commission for further hearings-Commission found that Applicant had received every chance to prosecute its application-Dismissed for want of prosecution. - Mr CA O'Neill -v-Dale Alcock Homes Pty Ltd - APPL 542 of 1998 - GREGOR C -24/09/98 - Property Services.....	4445
Application re unfair dismissal and allegedly denied contractual entitlements-Respondent argued that the Commission lacked jurisdiction as there was no employer/employee relationship between the Applicant and the Respondent-Commission found that the Applicant appeared to have been misled in official employment documents drawn up by the Respondent and relied upon by herself-Dismissed.- Ms CM Pitts -v- Silhouette Publications - APPL 813 of 1998 - SCOTT C. - 02/11/98 - Printg, Publishg & Rcd Media.....	4450
Application re unfair dismissal-Applicant understood at all times that her employer was the Respondent-Respondent argued that administrative staff in the dental practice were employed by a separate entity and questioned the Commission's jurisdiction to hear this case-Commission found that due to the strict 28 day time limit for proceedings to be instituted it was imperative that such proceedings are done so correctly from the start-Commission further found that the obligation rests with the employee to establish the identity of the former employer-Dismissed for want of jurisdiction. - Mrs CM Roe -v- Bradley Gordon Shepherd - APPL 792,843,887 of 1998 - GREGOR C - 21/10/98 -Health Services.....	4451
Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements-Applicant argued that the Respondent unilaterally reduced her wages-Respondent argued that the Applicant's workload had been substantially decreasing over time with the employment of additional staff-Commission found that an employer cannot unilaterally vary the contract of employment between it and an employee and still less can do so retrospectively-Unpaid entitlements to be paid and compensation for unfair dismissal granted. - Mrs SL Scanlan-v- Greenport Nominees Pty Ltd T/A Indiana Tea House - APPL587 of 1998 - BEECH C - 23/09/98 - Accommodatn,Cafes&Restaurants.....	4452
Application re unfair dismissal-Applicant argued she was told that the reason for her dismissal was because the project was winding down but she was nevertheless working the same number of hours and that her work continued to be performed after the dismissal-Respondent argued Applicant was employed on terms that were "project specific"-Commission found it remarkable that given the Respondent's emphasis on a project specific term it had not been included in the written contract-Commission further found that the termination occurred in accordance with the employment agreement between the two parties-Dismissed. -Ms NJ Smith -v- Concrete Constructions Group Ltd - APPL 1229 of 1998 - BEECH C - 20/10/98 - General Construction.....	4457
Application re unfair dismissal-Preliminary point concerning proper name of employer-Applicant argued that she was unaware of the legal distinction between the trading name and company name of her employer but had acted in good faith-Respondent argued he is a different entity to his company which was the legal employer-Commission found that it is a tribunal designed to deal with people without legal training but who act in good faith-Dismissed. - Mrs J Suvaljko -v- Phoenix Fast Photos - APPL 838 of 1998 - BEECH C - 20/10/98 - Personal and Other Services.....	4459
Application for reinstatement or compensation on the grounds of unfair dismissal-Applicant argued the termination was executed in a summary manner and with no warnings from the Respondent that the Applicant's position was in jeopardy-Applicant further argued that he was denied procedural fairness and the Respondent had acted in a deceptive manner-Respondent argued that although the termination was summary this was justified by the Applicant's incompetence and inefficiency and his false claim to hold a management degree-Commission found that Respondent had not discharged the onus of establishing that there was a level of serious misconduct or performance justifying summary dismissal-Commission further found that a finding of unlawful dismissal does not of itself determine whether a dismissal is unfair-Compensation granted and claim for denied contractual benefits dismissed - Mr JJ Timms -v- Phillips Engineering Pty Ltd -APPL 2242 of 1997 - CAWLEY C. - 23/10/98 - Services to Mining.....	4460
Application for reinstatement on the grounds of unfair dismissal and allegedly denied contractual entitlements-Applicant argued that the dismissal was procured through stealth without either substantive or procedural fairness-Respondent argued that Applicant withdrew his services and refused to undertake the duties required of him under his contract of service-Respondent also argued that access to a credit card was not a term of Applicant's employment contract-Commission found that rather than taking steps to formally terminate the Applicant's employment, the Respondent restructured its organisation and in effect demoted him without proper notice or discussion-Compensation and denied contractual entitlements granted.- Mr V Tranchita -v- Wavemaster International Pty Ltd -APPL 1117 of 1997 - FIELDING C - 21/10/98 - Water Transport.....	4463
Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements-Applicant argued the Respondent must discharge the onus of establishing the applicant's misconduct for the purposes of a lawful right to summarily dismiss to arise-Respondent argued that several verbal warnings had been given to the Applicant in front of witnesses-Commission found there was no denial of natural justice-Dismissed - Mr LV White -v-Dale Alcock Home Improvement Pty Ltd - APPL 286 of 1998 -CAWLEY C. - 17/09/98 - General Construction.....	4469
Application for reinstatement on the grounds of unfair dismissal-Applicant argued that the allegation of assault made against former employee is part of a conspiracy by Respondent's senior officers to get rid of former employee due to his active membership of the Applicant union-Respondent argued that employment was terminated with five weeks' pay in lieu of notice due to the assault on the maintenance superintendent-Commission found that the Respondent gave fair opportunity to discuss the incident but that industrial law does not require employers to keep an inquiry alive indefinitely-Dismissed. - AUTO, FOOD,METAL, ENGIN UNION -v- Dampier Salt Operations Ltd - CR 214 of 1998 - FIELDING C - 20/10/98 - Other Mining.....	4476
Application for compensation on the grounds of unfair dismissal-Applicant argued that management had mindfully worked against her interests-Respondent argued they had no intention of dismissing the Applicant when they telephoned her at home one evening but to invite her to a meeting to discuss her attitude and behaviour at work-Commission found that although the Applicant may have found the management's behaviour to be personally distressing this did not excuse her attitude and behaviour towards members of management-Dismissed. - LIQUOR, HOSPITALITY & MISC -v- Cat Welfare Society Inc T/A Cat Haven - CR 359 of 1996 - PARKS C -18/09/98 - Other Services.....	4480
Application for reinstatement on the grounds of unfair dismissal and allegedly denied contractual entitlements -Applicant argued that the dismissal was procured through stealth without either substantive or procedural fairness -Respondent argued that Applicant withdrew his services and refused to undertake the duties required of him under his contract of service-Respondent also argued that access to a credit card was not a term of Applicant's employment contract-Commission found that rather than taking steps to formally terminate the Applicant's employment, the Respondent restructured its organisation and in effect demoted him without proper notice or discussion-Compensation and denied contractual entitlements granted. - Mr V Tranchita -v- Wavemaster International Pty Ltd - APPL 1117 of 1997 - FIELDING C - 21/10/98 - Water Transport.....	4463
Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements - Applicant argued that an oral contract had been accepted - Respondent argued that the Applicant was not an employee but a contractor - Commission found that Applicant did not establish that there was an employee and employer relationship - Dismissed for want of jurisdiction. - Mr M Aleixo -v- AcQua Holdings - APPL 343,627 of 1998 - GREGOR C - 01/12/98 - Hospitality.....	4890

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- Application for compensation on the grounds of unfair dismissal - Applicant argued that no warning or notice of probation given prior to termination - Respondent argued that there were problems with the management and work practices of the Applicant - Commission found no warning or notice of probation given to Applicant prior to termination - Further the Commission found reinstatement not a viable option - Payment by instalments was also granted - Granted. - Mr S Backman -v- Growers Market Butchers - APPL 792 of 1998 - GREGOR C - 21/10/98 - Meat Product Manufacturing 4892
- Application for compensation on the grounds of unfair dismissal and alleged denied contractual entitlements - Applicant argued that dismissal was unfair because proper procedures were not followed - Further the Applicant argued for unpaid salary, overtime and expenses as compensation - Respondent argued that the Commission did not have jurisdiction to deal with Application because Applicant's employment was governed by a Federal Award and further there was no basis for contractual entitlements claimed - Commission found that there was no jurisdiction to deal with Application because the provisions of the Federal Award conflict with the provisions of the State Act - Further there is no basis for the contractual entitlements claimed - Dismissed. - Mr JT Burnham -v- Western Desert Puntukuruparna Aboriginal Corporation - APPL 556 of 1998 - FIELDING C - 25/11/98 - Health and Community Services..... 4899
- Application re Unfair Dismissal - Applicant argued that her resignation resulted from conduct by the Respondent designed to force her to resign so that "Resignation" actually amounted to an act of dismissal by the Respondent - Respondent argued that Applicant had resigned and that terms of the termination had been negotiated and agreed by the parties - Further costs against the Applicant's Industrial Agent was claimed because of negligent representation and serious dereliction of duty - Commission found Applicant resigned and for costs be made against the Applicant as the Agent was not a registered Industrial Agent - Dismissed and the Applicant to pay Respondent \$4000.00 costs. - Miss P Pisconeri -v- Laurens and Munns - APPL 555 of 1998 - CAWLEY C. - 12/11/98 - Business Services..... 4931
- Application for reinstatement on the grounds of unfair dismissal - Applicant argued that dismissal from employment was unfair because he was the victim of illegal or otherwise unauthorised threats regarding his well-being - Respondent argued that it had no alternative but to terminate the Applicant because it could not guarantee a safe working environment - Commission found that Respondent could not guarantee a safe working place for the Applicant - Dismissed. - Mr W Reid -v- John Holland Construction & Engineering Pty Ltd - APPL 171 of 1998 - FIELDING C - 24/11/98 - Construction Trade Services..... 4935
- Application for compensation on the grounds of Unfair Dismissal.- Applicant argued that he was not a casual employee but employed on a single and ongoing contract of indefinite duration.- Respondent argued that Applicant was a casual employee and further had a bad attitude.- Commission found Applicant was employed on a single and ongoing contract of indefinite duration during the Lobster Fishing season, further no warning or counselling given regarding Applicant's performance. As reinstatement was not practical, compensation was awarded.- Granted.- Mr ET Watson -v- JK Colero Enterprises - APPL 343,627 of 1998 - GREGOR C - 01/12/98 - Commercial Fishing 4943
- Application for compensation on the grounds of unfair dismissal and allegedly denied contractual entitlements - Applicant argued that an oral contract had been accepted - Respondent argued that the Applicant was not an employee but a contractor - Commission found that Applicant did not establish that there was an employee and employer relationship - Dismissed for want of jurisdiction. - Mr M Aleixo -v- AcQua Holdings - APPL 343,627 of 1998 - GREGOR C - 01/12/98 - Hospitality..... 4890
- Application for compensation on the grounds of unfair dismissal - Applicant argued that no warning or notice of probation given prior to termination - Respondent argued that there were problems with the management and work practices of the Applicant - Commission found no warning or notice of probation given to Applicant prior to termination - Further the Commission found reinstatement not a viable option - Payment by instalments was also granted - Granted. - Mr S Backman -v- Growers Market Butchers - APPL 792 of 1998 - GREGOR C - 21/10/98 - Meat Product Manufacturing 4892
- Application for reinstatement on the grounds of unfair dismissal and allegedly denied contractual entitlements -Applicant argued that the original letter of appointment did not refer to a probationary term-Applicant further argued that at no time was he warned of unsatisfactory work standards-Respondent argued that it was standard practice to employ sales staff on a probationary basis-Respondent further argued that a conversation about lack of performance had taken place and had included the applicant -Commission found that the applicant was employed on a probationary basis and the respondent had no obligation to continue the employment relationship after this period -Dismissed. - Mr D Beanham -v- Tutt Bryant Equipment Pty Ltd T/A Tutts-Ta Hong - APPL 208 of 1998 - GREGOR C - Machining and Motor Veh Whlslg 4895
- Application for compensation on the grounds of unfair dismissal and alleged denied contractual entitlements - Applicant argued that dismissal was unfair because proper procedures were not followed - Further the Applicant argued for unpaid salary, overtime and expenses as compensation - Respondent argued that the Commission did not have jurisdiction to deal with Application because Applicant's employment was governed by a Federal Award and further there was no basis for contractual entitlements claimed - Commission found that there was no jurisdiction to deal with Application because the provisions of the Federal Award conflict with the provisions of the State Act - Further there is no basis for the contractual entitlements claimed - Dismissed. - Mr JT Burnham -v- Western Desert Puntukuruparna Aboriginal Corporation - APPL 556 of 1998 - FIELDING C - 25/11/98 - Health and Community Services..... 4899
- Application for compensation on the grounds of unfair dismissal-Applicant argued that he was denied natural justice in not being given the opportunity to respond to allegations of poor performance and conduct-Applicant further argued that the respondent had breached the Workplace Relations Act, s.170 CM in terms of notice of termination of employment-Respondent argued that the applicant voluntarily left the employ of the respondent and there was no dismissal to confer jurisdiction on the Commission under the Act-Commission found that fairness and justice require than an employee accused of misconduct be given a reasonable opportunity to offer an explanation -Commission further found that the employer should conduct a reasonable investigation of the relevant circumstances to satisfy itself as to form an honest and genuine belief, based upon reasonable grounds, that the employee is guilty of misconduct- Dismissed. - Mr GA Chapman -v- JL & MN Rossiter T/A Arunine Painting Services - APPL 356 of 1998 - KENNER C - Other Services..... 4900
- Application re unfair dismissal-Applicant argued that she was a casual employee who had in all but one instance been available to work when requested and this single instance had led to her dismissal-Respondent argued that the substance of the applicant's casual employment was her availability to work flexibly but a number of messages regarding roster changes had never been returned and the applicant had never been very flexible in her ability to work different shifts - Commission found it more likely than not that the employment relationship came to an end by an effluxion of time-Commission further found that as a casual employee, the applicant's contract would have come to an end at the next set of rostered shifts-Dismissed. - Ms V Franks -v- Lakers Tavern - APPL 763 of 1998 - GREGOR C - Accommodatn, Cafes&Restaurants..... 4906
- Application for allegedly denied contractual entitlements -Applicant argued that while it had been acknowledged at the commencement of his employment that work on Sundays may prove necessary at times it had never been envisaged that working Sundays was to become a regular practice-Respondent argued that the employment contract discussions had centred around the work requirements to accommodate the loading operation-Commission found that the incidence of a 7-day load out schedule was not in itself the basis upon which the adequacy of the wage was to be reviewed but the reasonableness of the demands made of the applicant -Granted. - Mr MJ Hartnett -v- Skilled Engineering Limited - APPL 16 of 1998 - COLEMAN CC - Rail Transport..... 4908
- Application re alleged unfair dismissal-Applicant argued that the failure to pay her wages at the time of her cessation of work amounted to unfair dismissal-Respondent argued the applicant had been a casual employee and had readily accepted the reason she would be offered no further work-Commission found that the fact the applicant was a casual employee does not mean she cannot be unfairly dismissed-Commission further found that the applicant did not challenge the reasons she was not given continuing work and therefore there was no basis for an unfair dismissal claim-Dismissed. - Ms EA Heslington -v- Penman Holdings Pty Ltd T/A Video Ezy Gosnells - APPL 1188 of 1998 - BEECH C - Motion Picture Radio & TV Serv 4910

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Application for compensation on the grounds of unfair dismissal-Issues of jurisdiction arose due to the applicant being covered by a federal award as opposed to a state award and that the terms of the Award are inconsistent with the terms of the Act in relation to harsh, oppressive or unfair dismissal-Applicant and Respondent both agreed to these issues being heard as threshold issues-Commission found that it was possible to discern a legislative intention by the Commonwealth to provide an exhaustive code in relation to termination of employment to the exclusion of State law-Commission further found that the above conclusion cannot affect the scope and application of the unfair dismissal provisions of the Act itself-Dismissed for want of jurisdiction. - Mr W Hull -v- City of Mandurah - APPL 706 of 1998 - KENNER C - Government Administration	4912
Application for allegedly denied contractual entitlements -Applicant argued that he never offered his resignation to the respondent company-Applicant further argued that all efforts made by him to discuss his contract were ignored -Respondent argued that he had had frequent discussions with the applicant in relation to running the business -Respondent further argued that the applicant had not been honest regarding his managerial abilities-Commission found that it was material to the case that the applicant at no time wrote down his version of events in protest at the respondent's alleged conduct-Commission further found that in the case of employment contracts, for a claim to be made for an ongoing salary, an employee must reject the purported termination by the employer and insist upon performance under the contract-Dismissed. - Mr GF O'Dea -v- South West Maintenance Services Pty Ltd - APPL 736 of 1998 - KENNER C - Services to Mining.....	4924
Application re Unfair Dismissal - Applicant argued that her resignation resulted from conduct by the Respondent designed to force her to resign so that "Resignation" actually amounted to an act of dismissal by the Respondent - Respondent argued that Applicant had resigned and that terms of the termination had been negotiated and agreed by the parties - Further costs against the Applicant's Industrial Agent was claimed because of negligent representation and serious dereliction of duty - Commission found Applicant resigned and for costs be made against the Applicant as the Agent was not a registered Industrial Agent - Dismissed and the Applicant to pay Respondent \$4000.00 costs. - Miss P Pisconeri -v- Laurens and Munns - APPL 555 of 1998 - CAWLEY C. - 12/11/98 - Business Services.....	4931
Application for reinstatement on the grounds of unfair dismissal - Applicant argued that dismissal from employment was unfair because he was the victim of illegal or otherwise unauthorised threats regarding his well-being - Respondent argued that it had no alternative but to terminate the Applicant because it could not guarantee a safe working environment - Commission found that Respondent could not guarantee a safe working place for the Applicant - Dismissed. - Mr W Reid -v- John Holland Construction & Engineering Pty Ltd - APPL 171 of 1998 - FIELDING C - 24/11/98 - Construction Trade Services	4935
Application re allegedly denied contractual entitlements -Supreme Court of WA appointed a liquidator to the respondent company after the respondent's filing of an answer and counter proposal but prior to this hearing -Respondent liquidator argued that the matter before the Commission could not proceed without the consent of the Supreme Court-Commission found that the relevant legislation precludes any proceedings being commenced or continued in a court that may affect the property of a corporation under official management or in liquidation -Direction Order. - Mrs DB Rokita -v- Jay Brock Pty Ltd T/A Drake Brockman First National Real Estate - APPL 155 of 1998 - KENNER C - Property Services.....	4936
Application for compensation on the grounds of Unfair Dismissal.- Applicant argued that he was not a casual employee but employed on a single and ongoing contract of indefinite duration.- Respondent argued that Applicant was a casual employee and further had a bad attitude.- Commission found Applicant was employed on a single and ongoing contract of indefinite duration during the Lobster Fishing season, further no warning or counselling given regarding Applicant's performance. As reinstatement was not practical, compensation was awarded.- Granted. - Mr ET Watson -v- JK Colero Enterprises - APPL 343,627 of 1998 - GREGOR C - 01/12/98 - Commercial Fishing	4943
TRANSFER	
Application for transfer on the grounds that member had been unfairly dealt with - Applicant argued that member had competently served in previous position until unwillingly transferred out of it, and now sought to be transferred back into it as duties had not extensively changed. - Respondent argued poor performance and lack of required skills and abilities were reasons as to why she was not successful for the position. - Arbitrator found that Applicant had not made out sufficient grounds as to members suitability for position and that the new position was significantly different from old one - Application dismissed - The Civil Service Association of Western Australia Incorporated -v- Perth Theatre Trust - PSAC 29 of 1995 - PARKS C - Government Administration.....	3378
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Application for reinstatement on the grounds of unfair dismissal and allegedly denied contractual entitlements -Applicant argued that the dismissal was procured through stealth without either substantive or procedural fairness -Respondent argued that Applicant withdrew his services and refused to undertake the duties required of him under his contract of service-Respondent also argued that access to a credit card was not a term of Applicant's employment contract-Commission found that rather than taking steps to formally terminate the Applicant's employment, the Respondent restructured its organisation and in effect demoted him without proper notice or discussion-Compensation and denied contractual entitlements granted. - Mr V Tranchita -v- Wavemaster International Pty Ltd - APPL 1117 of 1997 - FIELDING C - 21/10/98 - Water Transport.....	4463
UNIONS	
³ State Wage Case 1998 —CICS reviewed whether to give effect to the decision of the Full Bench of the AIRC re the Safety Net Review —Wage and increase in the Adult Minimum Wage —Subject to qualifications arising out of the Western Australian legal framework and industrial ramifications of dealing with breakdowns in enterprise bargaining, the Minister for Labour Relations, CCI, TLC,& AMMA supported giving effect to the National Wage Decision —CCI and the Minister also gave detailed submissions on the State Economy —The Minister, CCI and AMMA argued that to meet economic objectives identified by the AIRC the wages increases should only be available by application and from the date the award is varied — Minister further asked the Commission not to adopt the Minimum Wage increases as that could be achieved under the Minimum Conditions of Employment Act —TLC argued that the safety net adjustments should be effected by general order as previous general orders had not had an adverse economic impact —TLC further argued that the differences between State and Federal laws conspired to disadvantage Trade Unions in the State and sought the deletion of the Enterprise Bargaining Principle —CICS found no good reason not to give effect to the National Wage Decision with Safety Net adjustments to be absorbed and available on application no earlier than the date of variation —CICS found that the Adult Minimum Wage was an integral part of the National Wage Decision and the abolition of the Enterprise Bargaining Principle would militate against a workplace focus —Statement of Principles and General Order issued —(Commission's own motion) -v- Trades and Labor Council of Western Australia & Others —APPL 757 of 1998 —Commission in Court Session —COLEMAN CC/FIELDING C/GREGOR C —12/06/98 —Various	2579
Application for compensation on the grounds of unfair dismissal —Applicant argued the dismissal was unfair as it was because of her union membership, her concerns with matters of safety and security and the friction between herself and the Respondent's son —Respondent argued that his company's financial status required a reduction in staff numbers and working hours — Commission found that the employer had good cause to terminate the Applicant's employment and had not done so for any reason other than the need to reduce operating costs —Dismissed —Mrs F Camlin -v- Stakehill Enterprises Pty Ltd T/A Low Cost Cleaning Enterprises —APPL 2044 of 1997 —SCOTT C. —17/06/98 —Other Services	2928

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¹ Appeal from decision of President whereby the President declined to make orders in favour of the Appellant on an application under s.66 Industrial Relations Act alleging non-observance of the rules of the State School Teachers Union (Inc) - The Appellant submitted 177 grounds of appeal - The Respondents sought costs on the grounds that the proceedings are frivolously and vexatiously instituted. The Court held that the Appellant failed to establish that there were any errors of Law on the part of the President and further that the proceedings were not instituted frivolously or vexatiously - Appeal dismissed and no award of costs against Appellant. - Ms R Bannon -v- The State School Teachers Union of W.A. (Incorporated) & Other - IAC 1 of 1998 - Kennedy J./Franklyn J./Anderson J. - Education	3003
⁴ Application for orders restraining Respondent Registrar from proceeding with action under s84E to have party struck out of award or industrial agreement - Applicant argued that jurisdiction was founded on interalia ss26 and 94 of the IR ACT - Respondent argued that the application was incompetent as it did not pertain to any matters referred to in s66 of the IR ACT - President found that the orders sought did not relate to the rules of the Applicant organisation, their observance or non observance, but to the discharge of the Registrar's statutory duty under s84E - Dismissed - COMM, ELECTRIC, ELECT, ENERGY -v- Registrar, Western Australian Industrial Relations Commission - APPL 1181 of 1998 - President - SHARKEY P - 27/07/98 - Other Services	3026
⁴ Application for orders re observance or non-observance of Union rules - Applicant sought to rely on an affidavit and sought to discontinue the application when President did not admit it into evidence - President found the contents of the affidavit were substantially irrelevant - President further found that having regard to the lack of evidence and the nature of proceedings the application should be dismissed - Dismissed - Mr JW Turner & Others -v-Australian Railways Union of Workers, West Australian Branch - APPL 1603 of 1998 - President - SHARKEY P - 07/09/98 - Other Services	3421
² Appeal against decision of Commission (78 WAIG 2691) re dismissed application for an award - Full Bench found the appeal was determinable primarily on the interpretation of the Appellant Union's Rules - Full Bench found, having regard to the Fish Resources Management Act 1994 and the evidence, it was open to the Commission to find that the Respondent and its officers were not engaged in a service that bore any relationship to the Mercantile Marine - Full Bench further found the Commission correctly found that the fisheries officers were not eligible to be members of the Appellant and that the application for an award should be dismissed - Dismissed - Merchant Service Guild of Australia, Western Australian Branch, Union of Workers -v- Fisheries Department of Western Australia - APPL 1354 of 1998 - Full Bench - SHARKEY P/COLEMAN CC/KENNER C - 18/09/98 - Government Administration	3648
Application to register an industrial agreement pursuant to section 41 - Both the CEPU and AFMEPKIU opposed the registration of the Agreement and are aware that an objection to a registering of an Agreement is quite limited - Both unions argued that the ARU did not act in accordance with its rules - The Agreement is not a bona fide Agreement in the sense it is not a genuine Agreement as some members have opposed the Agreement - Commission found that objections were unable to be made out - The ARU is a registered organisation under the Act and this status is of a principal and not merely an agent - Further if members are opposed to the Agreement they may take action against the union as prescribed - Commission registered the Agreement. - Western Australian Government Railways Commission -v- Australian Railways Union of Workers, West Australian Branch - AG 159 of 1998 - BEECH C - Rail Transport	3744
Application for Commission to determine issues between parties to Award-Applicant and Respondent sought Commission's determination on ordinary hours of work, overtime and cumulative sick leave-Applicant argued for recognition of seasonality of industry-Respondent argued about the economic consequences of overtime pay and sick leave accumulation-Commission found that discussions should continue toward an award that reflected annualised salaries and the equality of accumulating sick leave-No order issued by request. - Merchant Service Guild of Australia, Western Australian Branch, Union of Workers & Other -v- Boat Torque Cruises Pty Ltd & Others - A 9 of 1996 - BEECH C - 15/09/98 - Water Transport	4356
Application for interpretation of Enterprise Bargaining Agreement as regards salary and productivity improvement plan clauses-Applicant argued that the correct measure to apply for the purpose of ascertaining any salary increase due was actuarial model used previously by the Respondent -Respondent argued that it applied the methodology for calculation provided for in the Agreement for justification of any salary increase-Commission found that the 1997 actuarial model not~ model to be applied for the purpose of the Agreement-Order issued accordingly - The Civil Service Association of Western Australia Incorporated -v- Insurance Commission of Western Australia - P 7 of 1998 - Public Service Arbitrator - CAWLEY C. - 10/09/98 - Insurance.....	4393
Application for reinstatement or compensation on the grounds of unfair dismissal-Applicant argued that the dismissal was unjustified-Respondent argued that its employee's behaviour had been tolerated over many years often to the detriment of fellow workers-Commission found that the employee had been counselled or warned about her conduct but had refused to acknowledge the conduct of the problem caused-Dismissed. - The Forest Products, Furnishing and Allied Industries Industrial Union of Workers, W.A. Branch -v- Curtain World - CR 187 of 1998 - SCOTT C. - 06/11/98 - Textile, Clothing, Footwear.....	4420
Application for reinstatement on the grounds of unfair dismissal-Applicant argued that the allegation of assault made against former employee is part of a conspiracy by Respondent's senior officers to get rid of former employee due to his active membership of the Applicant union -Respondent argued that employment was terminated with five weeks' pay in lieu of notice due to the assault on the maintenance superintendent-Commission found that the Respondent gave fair opportunity to discuss the incident but that industrial law does not require employers to keep an inquiry alive indefinitely-Dismissed. - AUTO, FOOD, METAL, ENGIN UNION -v- Dampier Salt Operations Ltd - CR 214 of 1998 - FIELDING C - 20/10/98 - Other Mining	4476
Application re unfair dismissal-Applicant argued he had done his best to notify the site manager of his leaving the mine and admitted he failed to comply with the tagging procedure-Respondent argued that the the former employee displayed a blatant disregard for the Respondent's safety rules and his subsequent comments on the matter confirm this-Respondent further argued that safety on a mine site was of paramount importance to ensure working conditions for all on site-Commission found that although it may have reacted differently to the Respondent to this transgression of safety rules it is only for the Commission to determine whether a reasonable employer would have reacted as the Respondent did in this case-Dismissed - The Australian Workers' Union, West Australian Branch, Industrial Union of Workers -v- Barminto Pty Ltd - CR 186 of 1998 - FIELDING C - 22/10/98 - Metal Ore Mining	4478
Application to order Respondent not to require any employee to participate in the Personal Performance Review process or alternatively to first negotiate terms for an increase in pay rates to reflect the resultant productivity increases-Applicant argued that there was no consultation with the Applicant unions prior to the implementation of the review process-Applicant further argued that review was another example of the Respondent constantly changing policies-Respondent argued that it has an obligation under the Public Sector Management Act 1994 to comply with relevant standards and prior to the implementation of the review the Respondent had been advised it was not complying with these standards-Commission found that an employee has an obligation to provide information on his or her work to the employer upon request of such-Dismissed. - Australian Railways Union of Workers, West Australian Branch -v- Western Australian Government Railways Commission & Others - APPL 684,685 of 1998; CR 146 of 1998 - BEECH C - 15/10/98 - Rail Transport.....	4484
UTILISATION OF CONTRACTORS	
Application for unfair dismissal- Applicant claimed he was unfairly dismissed by Respondent - Respondent argued that Applicant was a contractor and not an employee and had signed a contract for services agreement - Commission found Applicant to be a contractor and not an employee - Dismissed for Want of Jurisdiction. - Mr I Zovko -v- KLM Fabricators - APPL 382 of 1998 - GREGOR C - General Construction	3866

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VICTIMISATION

- Application re unfair dismissal-Applicant argued over the validity of the reason given for his dismissal which was redundancy due to amalgamation of operations-Applicant further argued he had suffered harassment and victimisation during the course of his employment-Respondent argued that the amalgamation was a legitimate business decision which subsequently demanded certain positions be made redundant -Commission found that the Applicant may have been selected for redundancy because of poor work performance but that the reason for dismissal was the need to reduce the workforce-Granted - Mr AD Pether -v- Chubb Security Holdings Australia Limited & Others - APPL 23 of 1998 - BEECH C - 13/10/98 - Property Services 4446
- Appeal against decision of Commission re application for compensation on the grounds of unfair dismissal-Appellant argued the Commissioner had erred in law and fact by failing to consider an employer's vicarious liability for causal negligence of servants towards another-Appellant further argued that the employer failed to conduct a proper enquiry and that employment benefits such as accommodation were withdrawn before a thorough investigation of the complaint was made-Respondent argued that although the Appellant had been told to vacate his on site accommodation he had not been dismissed-Commission found that the Appellant had failed to dismiss the onus on him to show, on the balance of probabilities, that he had been dismissed -Dismissed - Mr AG Wood -v- National Mine Management Pty Ltd - APPL 2218 of 1997 - Full Bench - SHARKEY P/COLEMAN CC/FIELDING C - Services to Mining 4853

WAGES

- ²State Wage Case 1998 —CICS reviewed whether to give effect to the decision of the Full Bench of the AIRC re the Safety Net Review —Wage and increase in the Adult Minimum Wage —Subject to qualifications arising out of the Western Australian legal framework and industrial ramifications of dealing with breakdowns in enterprise bargaining, the Minister for Labour Relations, CCI, TLC,& AMMA supported giving effect to the National Wage Decision —CCI and the Minister also gave detailed submissions on the State Economy —The Minister, CCI and AMMA argued that to meet economic objectives identified by the AIRC the wages increases should only be available by application and from the date the award is varied —Minister further asked the Commission not to adopt the Minimum Wage increases as that could be achieved under the Minimum Conditions of Employment Act —TLC argued that the safety net adjustments should be effected by general order as previous general orders had not had an adverse economic impact —TLC further argued that the differences between State and Federal laws conspired to disadvantage Trade Unions in the State and sought the deletion of the Enterprise Bargaining Principle —CICS found no good reason not to give effect to the National Wage Decision with Safety Net adjustments to be absorbed and available on application no earlier than the date of variation —CICS found that the Adult Minimum Wage was an integral part of the National Wage Decision and the abolition of the Enterprise Bargaining Principle would militate against a workplace focus —Statement of Principles and General Order issued —(Commission's own motion) -v- Trades and Labor Council of Western Australia & Others —APPL 757 of 1998 —Commission in Court Session —COLEMAN CC/FIELDING C/GREGOR C —12/06/98 —Various 2579
- ²Appeal against decision of Commission (78 WAIG 756) re denied contractual entitlements —Appellant argued Commission erred in not finding that the Respondent had abandoned his employment, that the Minimum Conditions of Employment Act applied as there was no award and the Commission did not have jurisdiction to deal with deductions from wages —Full Bench found that there was no jurisdiction in the Industrial Magistrate's Court and that the Commission correctly found that there was no term in the contract that the applicant forfeit a week's pay for leaving without notice —Dismissed —J & R Sacca Poultry -v —Mr C Pearson —APPL 206 of 1998 —Full Bench —SHARKEY P/COLEMAN CC/KENNER C —30/06/98 —Agriculture 2588
- ³Conference referred re enterprise bargaining claims —Claimant Union argued proposed work changes were little different from those which would have been expected under a workplace agreement, that the remuneration offered under the workplace agreement was a good guide to the value of the proposed changes and sought a 15 % wage increase in return —Respondent argued that the Applicants were offering little more than what they were required to do and had not put in place the 'whole of job' concept in response to previous wage increases and little increase in productivity —CICS found that it was not the purpose or the object of the Enterprise Bargaining Principle that the Commission manufacture an enterprise bargaining agreement for the parties but to arbitrate to assist the parties to strike a bargain where there are aspects of a potential agreement which could not be resolved by negotiation —CICS found that the measures designed by the Applicants had not actually been implemented as the Enterprise Bargaining and the Special Case Principles required —Dismissed —LIQUOR, HOSPITALITY & MISC -v- SCM Chemicals —CR 52 of 1997 —Commission in Court Session —FIELDING C —19/06/98 —Petroleum Coal Chemical Assoc 2963
- ³Applicant sought a declaration that 25 staff of Westrail whose jobs had been substantially changed, had been dealt with unfairly and as such sought an Order that their existing rates of pay (including an aggregate of allowances) and a productivity payment of 10% - Union Applicant claims that staff had carried out duties under new work arrangement which were beyond the scope of the award, on the understanding that they would soon enter into an Industrial agreement with Westrail. It is further claimed that now Westrail has reneged on that arrangement and is in the process of contracting out the work of these employees. The Minister for Labour Relations stated that the claim would undermine the intent and effect of the Public Sector Management Act, as previous employees in the same area had either accepted severance payments, had been redeployed or were awaiting redeployment. Further the Minister argued that the tasks undertaken by the employees were within the terms of the award, conditions attracting allowances were paid as entitlements and as such there was no enterprise for which a bargain could be determined. The Commission in Court Session found that within the context of the Enterprise Bargaining Principle there was no claim, and that the matters before the Commission should be considered under the Workvalue Changes Principles and because that was not the current claim before the Commission, the claim as it stood must fail - Application dismissed. - Australian Railways Union of Workers, West Australian Branch -v- Western Australian Government Railways Commission - CR 165 of 1997 - Commission in Court Session - COLEMAN CC/PARKS C/SCOTT C. - Rail Transport 3022
- ¹Appeal against decision of Commission in Court Session (78 WAIG 2346) varying awards re salary packaging - Appellants argued it was not open to CICS to judge a government policy and attempt to circumvent it, and CICS impermissably had regard for the content of workplace agreements - Appellant argued CICS failed to: receive written evidence; give full consideration to the tax implications of the clause, and to have regard to matters of public interest, flow on and structural efficiency - Appellant further argued that any salary packaging would be contracting out of the award and contravene s14 of the IR Act - IAC found that CICS was not precluded from holding that industrial conduct was unfair because it may stem from a government policy from which the Commission has no jurisdiction - IAC further found that there was nothing in the award variation which would require the parties to enter into a salary packaging arrangement which was unfair to either one - IAC found that salary packaging was not mandatory - Arrangements entered into would not have the effect of annulling or varying the award, nor would they affect the rights of anyone other than the parties to the particular arrangement - Dismissed - Commissioner, Public Service Commission & Others -v- The Civil Service Association of Western Australia Incorporated - IAC 3 of 1998 - Industrial Appeal Court - Kennedy J./Anderson J./Scott J. - 09/09/98 - Government Administration 3630
- Application for interpretation of Enterprise Bargaining Agreement as regards salary and productivity improvement plan clauses-Applicant argued that the correct measure to apply for the purpose of ascertaining any salary increase due was actuarial model used previously by the Respondent -Respondent argued that it applied the methodology for calculation provided for in the Agreement for justification of any salary increase-Commission found that the 1997 actuarial model not model to be applied for the purpose of the Agreement-Order issued accordingly - The Civil Service Association of Western Australia Incorporated -v- Insurance Commission of Western Australia - P 7 of 1998 - Public Service Arbitrator - CAWLEY C. - 10/09/98 - Insurance 4393

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Application for allegedly denied contractual entitlements -Applicant argued Respondent had failed to pay for work completed after Respondent's business stopped trading - Respondent failed to appear-Commission found that it was a straightforward mathematical exercise to work out what monies were due-Granted. - Ms J Farka -v- Artwise Graphic Design - APPL 493,494 of 1998 - BEECH C - 31/08/98 - Printg, Publishg & Rcd Media.....	4419
Application re unfair dismissal and allegedly denied contractual entitlements-Applicant argued that the terms of the dismissal were unfair-Respondent argued that economic circumstances forced company restructuring which meant the Applicant's position was no longer required in the form it had existed-Commission found that it is required to discover all the circumstances of a dismissal and balance them out-Commission further found that the dismissal must be considered from both the employee's and employer's points of view-Dismissed - Mrs CD Miskiewicz -v- Ledge Point Charters Pty Ltd T/A Trimview Building Industries - APPL 250 of 1998 - GREGOR C - 23/09/98 - General Construction.....	4439
Application re unfair dismissal and allegedly denied contractual entitlements-Applicant argued that during her interview with the Respondent there was no indication that she was to be other than in his employ and she understood she was to receive a regular wage-Respondent argued that the Applicant was never an employee and thus the Commission lacked jurisdiction in this matter-Commission found that the Applicant had applied for the advertised position in order to receive payment for her work-Granted in full. - Ms K Moodley -v- Datastream Productivity Pty Ltd - APPL 645 of 1998 - KENNER C - 12/10/98 - Communication Services.....	4441
Application re unfair dismissal-Applicant understood at all times that her employer was the Respondent-Respondent argued that administrative staff in the dental practice were employed by a separate entity and questioned the Commission's jurisdiction to hear this case-Commission found that due to the strict 28 day time limit for proceedings to be instituted it was imperative that such proceedings are done so correctly from the start-Commission further found that the obligation rests with the employee to establish the identity of the former employer-Dismissed for want of jurisdiction. - Mrs CM Roe -v- Bradley Gordon Shepherd - APPL 792,843,887 of 1998 - GREGOR C - 21/10/98 - Health Services.....	4451
Application for allegedly denied contractual entitlements -Applicant argued that at time of resignation both parties agreed to the payment of two week's pay in lieu of notice of termination-Respondent argued that a Workplace Agreement between the Respondent and the Applicant was in existence and this did not include an express term giving rise to a right for payment in lieu of notice-Commission found it has a specific duty in such cases to determine the meaning or effect of the Agreement-Dismissed for want of jurisdiction. - Mr WR Forrest -v- Shane Scholes on behalf of Metro Brick Malaga - WAG 6 of 1998 - GREGOR C - 29/10/98 - Construction Trade Services.....	4496
WORKERS COMPENSATION	
Application for compensation on the grounds of Unfair Dismissal.- Applicant argued that he was not a casual employee but employed on a single and ongoing contract of indefinite duration.- Respondent argued that Applicant was a casual employee and further had a bad attitude.- Commission found Applicant was employed on a single and ongoing contract of indefinite duration during the Lobster Fishing season, further no warning or counselling given regarding Applicant's performance. As reinstatement was not practical, compensation was awarded.- Granted. - Mr ET Watson -v- JK Colero Enterprises - APPL 343,627 of 1998 - GREGOR C - 01/12/98 - Commercial Fishing.....	4943
WORKER PARTICIPATION	
² Appeal against decision of Commission (78 WAIG 1393) re dismissal of unfair dismissal application-Appellant argued Commission had erred in law in not finding that the dismissal was harsh, oppressive or unfair because the employer causally linked the appellant's conduct with the theft of money in the letter of dismissal-Full Bench found that no ground of appeal had been made out-Dismissed - Ms C D'Agostino -v- P & O Food Services Pty Ltd - APPL 497 of 1998 - Full Bench - SHARKEY P/PARKS C/SCOTT C. - 30/10/98 - Food Retailing.....	4311
Application for compensation on the grounds of unfair dismissal-Applicant argued that the termination was without warning and without valid reason-Respondent argued that the Applicant was dismissed because of an unsatisfactory attitude to his work and failure to comply with instructions-Commission found that it needs to adopt a pragmatic and practical approach to matters like this in looking at the relationship between a farmer and his farm hands-Commission further found that the manner of dismissal is only one of the factors to be considered in a case of alleged unfair dismissal-Dismissed - Mr GB Johnson -v- DC & CM Richards - APPL 44 of 1998 - FIELDING C - 25/09/98 - Agriculture.....	4430
WORK VALUE	
Application re unfair dismissal and allegedly outstanding contractual entitlements-Commission firstly established that as the Applicant was covered by an award it had no jurisdiction in the question of denied contractual entitlements-Applicant argued that after an argument between himself and the Respondent he understood the Respondent had demanded he leave the premises which he had done so immediately-Respondent argued that the Applicant left the job entirely of his own volition after the argument when he refused to continue the job for which he had been employed-Commission found that the Applicant terminated his own employment on the balance of probabilities-Dismissed. - Mr T Mott -v- Sign Supermarket - APPL 792,843,887 of 1998 - GREGOR C - 21/10/98 - Business Services.....	4443
Application for reinstatement on the grounds of unfair dismissal and allegedly denied contractual entitlements -Applicant argued that the dismissal was procured through stealth without either substantive or procedural fairness -Respondent argued that Applicant withdrew his services and refused to undertake the duties required of him under his contract of service-Respondent also argued that access to a credit card was not a term of Applicant's employment contract-Commission found that rather than taking steps to formally terminate the Applicant's employment, the Respondent restructured its organisation and in effect demoted him without proper notice or discussion-Compensation and denied contractual entitlements granted. - Mr V Tranchita -v- Wavemaster International Pty Ltd - APPL 1117 of 1997 - FIELDING C - 21/10/98 - Water Transport.....	4463