CUMULATIVE DIGEST

MATTERS REFERRED TO IN DECISIONS OF INDUSTRIAL APPEAL COURT, INDUSTRIAL COMMISSION AND INDUSTRIAL MAGISTRATES CONTAINED IN VOL. 66 PART 2, SUB PART 6.

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

Subject — Page

ABSENCE WITHOUT LEAVE —

Employee made redundant due to closure of mine — Applicant union claimed employee entitled to award benefit *re* redundancy — Union members struck to ensure re-employment — Respondent submitted employee unsuitable for further work due to alcohol and drug offence, threat to safety, bad attitude towards supervisors and unauthorised absenteeism and company had no obligation toward his future employment — Commission stated burden of proof lay with company — Commission found no connection between drug conviction and unsuitability for employment, witnesses testimony not reliable and that company made no case against employee's attitude to supervisors, threat to safety or absenteeism — Commission found on evidence and submissions that company had not made case against employee and declared employee entitled to benefits prescribed in award — Granted — Mining (Iron Ore) 1099

Employee dismissed for alleged unsuitability for employment — Applicant claimed unfair dismissal, sought reinstatement and submitted respondent forwarded false allegations to justify dismissal — Respondent asserted failure to keep correct time procedures, adhere to callout schedules, complete register, hold courses, conduct meetings, organise overtime crew to check stock and organise clean-up of spilt chemicals and continued to do so despite counselling — Further during investigation that applicant signed false time cards, absent without authority, gave false information, was abusive and showed poor attitude towards supervisor — Commissioner noted only one person responsible for termination present at investigation — Commission on evidence found overtime sheets inaccurate and falsified, that failure to comply with policy *re* callout register not dereliction of duty — Commission found respondent's documentary evidence *re* investigation frail with interpretation and interpolation and matter result of personality conflict — Commission declared applicant unfairly dismissed and issued interim order that respondent offer applicant three month contract of employment — Final order issued at later hearing where Commission satisfied both parties agreed contract could continue — Granted — Hydrocarbons 1085

Employee dismissed after suspension on full pay during investigation of actions and review of behaviour — Applicant submitted termination harsh and unjust and claimed reinstatement without loss of wages and entitlements — Respondent opposed claim and submitted applicant was absent without leave and had history of complaints *re* abusive language, refusal to accept authority, attitude to work and consumption of alcohol — Respondent claimed applicant incapable of performing duties required of an employee — Commission noted applicant not summarily dismissed for misconduct but terminated in accordance with provision of award — Commission stated hospital did not adhere to established disciplinary dismissal procedure and found termination did not satisfy requirements of fairness — Commission ordered reinstatement with specific limitations imposed on continuing employment and deemed applicant to have been on leave without pay — Granted — Hospital (Engineering) 1097

Claim for reinstatement as a result of redundancy — Necessary to look at actions by employer to ensure actions are not harsh or unreasonable — Performance of work and attitude were criteria that were not in question; however applicant had very poor attendance record — Dismissed — Nickel Mining 1780

ACT — INTERPRETATION OF —

[2]Appeal to Full Bench against order of the Commission at 66 WAIG 1359 — Interpretation of Act relating to interim orders made from conciliation conferences — Section 44 provides that final and binding orders can only be made at conclusion of conciliation process — Full Bench found orders pursuant to section 32 cannot be issued in section 44 applications — As Commission purported to make interim order under section 32 in matter brought under section 44 it had exceeded its jurisdiction — Upheld — Halliwell — dissented — Iron Ore 1405

Claim that Industrial Magistrate cannot order discovery of documents — Inconsistency in Industrial Relations Act — Discussion of provisions of section 81 (2) (a), section 83 (8), section 113 (3) — Provisions of Justices Act — Industrial Magistrate Regulations do not empower an Industrial Magistrate to require a defendant to produce documents — Building Industry 1712

Appeal against Full Bench decision relating to no case to answer — Evidence of order of Commission against newspaper employees — Does the definition of "decision" contained in section 7 (1) control the meaning of the word decision in section 84 (2) — Full Bench and Appeal Court found that definition in section 7 (1) does not apply to section 84 — Principles of statutory construction — Intention of legislature to leave appeal rights from Magistrate unaffected — Different nature of jurisdictions — Appeal dismissed — Newspaper Industry 1563

Appeal as to power of Commission to order production of documents — Not all confidential information relating to the work place is a trade secret — Meaning of trade secret — Information to be revealed not to be used for ulterior purposes — Not open to Full Bench to alter a decision merely on grounds of a preferred alternative — Appeal dismissed — Discussion on meaning of sections 24, 44, 33 (5), 27 (1), 27, 27 (1) (o), 49 (2a), 27 (1) (a), 44 (6) (b) 1582

Application for exemption from provisions of Long Service Leave Act — Provisions of legislation relating to long service leave — Scheme approved by Federal and Other State Tribunals — Industrially unsound not to approve it — Approved — Oil Industry 1731

Appeal from order of CICS — Poor company performance led to attempts to change work practices including restrictive work practices — Moratorium order from Compulsory Conference led to lockout — Industrial Appeal Court found orders can issue under section 32 to aid conciliation processes — Claim of denial of natural justice because Commission conferred separately with other parties dismissed — section 32 (2) confers a general power to Commission and should not be read down — Provisions of section 26 (3) — Definition of industrial matter — Appeal dismissed — Iron Ore Industry 1553

Senior Officer — Parties to appeal had equal qualification, service, experience and knowledge — As required by Act, PAB made completely new assessment of parties' merits unencumbered by preconceived ideas such as evidence of interviewing officers and staff appraisal forms — Appellant failed to establish better claim — Dismissed — Prisons 1869

Resources Officer — Leave given to withdraw appeals against promotion to Items number 54 5064, 54 5065, 54 5057, 54 5059 and 54 5062 — Remaining appeals heard concurrently by agreement between parties and PAB measured appellant's claims agains each recommended officer — PAB accepted necessity to appoint experienced persons but found Recommending Authority came close to discounting qualifications too heavily especially in light of Act's section 80 (x) (1) definition of an "eligible employee" with regard to academic qualifications — Dismissed — Community Services 1866

Senior Draughtsman — Appellant based claim on greater experience but PAB must select person who will do job best — Immediate supervisor had opportunity to observe both parties acting in position and gave direct evidence that recommended applicant was better suited to the duties — PAB found recommended applicant had better aptitude — Dismissed — SEC 1869

Appeal from decision of Commission to allow Robe River Iron Associates to dismiss an employee — Detailed reasons by President as to legal principles involved in cases of misconduct justifying summary dismissal — President found Commission's decision should not be overturned — Other members of Bench disagreed with President's opinion and ordered reinstatement on their interpretation of the Act and evidence — Lengthy discussion of sections 6, 26, 32 (7), 32 — Iron Ore Industry 1570

Appeal by former public servant for reinstatement under general powers of the Act — Public Service Arbitrator has exclusive jurisdiction in respect of industrial matters — Applicant of interpretation rule "*generalia specialibus non derogant*" — Rule that wherever there is a particular enactment and a general enactment in the same statute, the particular overules — Prior to incorporation of Constituent Authorities, Commission did not have jurisdiction for further evidence — Public Service 1579

CUMULATIVE DIGEST—*continued*

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ACT — INTERPRETATION OF — *continued*

Appeal *re* decision not to appoint employee as a permanent officer — Appellant asserted entitlement for permanent officers position under section 32 (1) of Public Service Act — Respondent refuted claim and argued that initial employment was that of contract officer, as such appellant did not conform to the requirements of the abovementioned section of Act — Respondent also claimed that appellants employment depended on availability of funds which are subject to annual reviews — Appeal Board found appellant had not been done an injustice — Dismissed — Public Service 1863

[2]Appeal against order of Commission at 66 WAIG 1359 which directed appellant to do certain things — Full Bench found this appeal to raise identical issues to those of appeal No. 736 of 1986 at 66 WAIG 1405 — Upheld — Halliwell dissented — Iron Ore 1567

[2]Appeal against Direction issued by Commission — Appellant claimed Commission had exceeded jurisdiction in issuing Direction pursuant to section 32 of IR Act 1979 out of a compulsory conference called pursuant to section 44 — Full Bench found appeal to be parallel to matter reported (at 66 WAIG 1405) — Upheld — Mining 1925

ALLOWANCES —

Variation to motor vehicle hire clause sought — Applicant claimed a nexus to other awards recently varied (at 65 WAIG 1130 and 66 WAIG 166), within Commission's jurisdiction — Applicant relied on established Australian Commission principle (Print No. F2436) *re* argument based on ". . . incapacity to pay . . . requires oral and/or documentary evidence capable of analysis and evaluation" — Further, applicant stressed allowance sought was merely a reimbursement of expenses incurred by employee on employer's behalf — Respondent argued incapacity to pay due to increase in expenses and viability and efficiency of business threatened — Commission found, claim within wage fixation guidelines — Further, argument based on incapacity to pay fails/failed for want of sufficient evidence to allow for evaluation — Granted — Law Enforcement (Bailiffs) 1037

Composite allowance sought for maintenance minor works employees and in addition a responsibility allowance for leading hands — Parties agreed that due to additional supervisory duties for leading hands the work value Principle applied — However parties disagreed *re* composite allowance — Applicant claimed employees suffer various disabilities during conduct of duties and should qualify for an averaged rate of Special Rates and Provisions in award — Respondent suggested a 12 month collection period for statistical data to assess an appropriate amount should claim be granted — Further rejected suggestion by claimant that similar allowance to case at 59 WAIG 1312 applicable as no new character of work — Commission granted responsibility allowance on ground it met criteria of the Principles and total cost minimal — Commission accepted principle of claim for composite allowance but dismissed it due to lack of evidence to indicate a correct quantum — Granted in Part — Engineering (Govt) 1108

Alleged non-payment of benefits — Complainant claimed use of own car entitled him to car allowance — Defendant argued ability to enter into agreement with employee not less favourable than other provisions of the award — Further that to reach agreement without union involvement did not invalidate agreement — Magistrate disagreed with defendants proposition *re* validity of agreement and found on evidence that circumstances did not establish that company required him to use his own vehicle thus not entitled to be paid allowance in accordance with award — Dismissed — Manufacturing (Aluminium) 1080

Payment sought for salary at higher rate allegedly offered at interview — Respondent denied offer made and objected — Commission found no contract of employment existed as written offer of respondent not accepted by applicant and applicant entitled to redress from serious disadvantage *re* dislocation — Commission ordered additional annual allowance — Commission held speaking to the minutes conference at which respondent referred to district allowance and applicant claimed higher salary level and district allowance — Commission admitted arithmetical error and varied order by deleting previous allowance and awarding new allowance — Granted in part — Education 1115

[2]Appeal against Commission's decision to grant extraneous responsibility allowance for boilermakers employed at Pannawonica working without the supervision of a Foreman (at 66 WAIG 277) — Full Bench found the claim contravened the Wage Fixation Principles as it failed to meet the requirement to demonstrate changes in work value sufficient to warrant payment of the allowance — Upheld — Mining (Iron Ore) 1007

Allowance sought by power station operators based on alleged extra responsibility arising from technological change — Applicant union claimed change in work value warranted increase in wage rates — Respondent objected to and opposed claim — Commission stated previous CICS decision (64 WAIG 605) applied to proceedings considering submissions and evidence *re* significant nett addition to work requirements — Further that lack of co-operation of employees to install equipment and differences in opinion of witnesses made impossible Commission conclusion that proposed technology would increase skills of operating personnel to warrant higher remuneration — Commission found union's evidence failed to satisfy requirements of Wage Principles — Dismissed — Mining (Iron Ore) 1110

[3]Allowance sought for survey wages employees for camping and/or miscellaneous allowances not less than surveyors — Applicant union claimed discrimination between camping allowances, the anomaly having manifested as result of amalgamation of Metropolitan Water Authority and Public Works Department — Respondent objected to and opposed the claim as larger anomaly would be created with other survey wages employees and that matter should be considered across Public Sector wages workforce due to flow-on — CICS considered concern of Minister for Industrial Relations for costs of flow-on in application of Wage Principle and stated applicant had not made case due to absence of evidence for additional expense incurred — CICS found respondent had not argued against principle of non-discrimination and stated burden lies with union who did not show inadequacy of allowance amounting to discrimination — Dismissed — Surveying 1113

Variation sought *re* wage rates and meal breaks/allowances for Out of School Care—Playleaders — Applicant submitted claim was to rectify oversight to include 2.6 per cent national wage increase from April 1985 to restore parities upon which original award was erected — Respondent opposed claim and adduced evidence that wages increase would not be in the public interest at that time as award seriously threatened the viability of some centres where need was greatest — Commission found review of situation in progress and took into account competing interests of workers and children — Commission stated wages variation sought would not be in public interest but ordered that meal breaks and allowances clause be varied — Granted in part — Childrens Services 1038

[2]Appeal against Commission's decision (at 66 WAIG 330) to grant a licence allowance to electrical fitters — Appellant alleged Commission had erred in that allowance granted was in breach of Wage Fixation Principles and broke a well established nexus and wage rate relativities within the company — Furthermore Commission disregarded settled rule of Principles *re* new awards; ie where consideration is given to rate and conditions which are provided at the time the award issues — Respondent argued that an anomally existed as employees working for appellant instituted the only part of the electrical workforce not currently paid an allowance — Full Bench found appellant's submission of Principle 10, was not an absolute rule — Full Bench found principles do not exclude the need for independent judgment and stated Commissions obligation was to determine whether granting of allowance was fair and equitable, which the Commission had done having been satisfied that there was no scope for flow-on claims — Dismissed — Printing 1010

New award sought for electricians employed by WA Newspapers — Parties consented to all provisions except *re* — licence allowance — Commission found respondents argument based on total wage rates was answered by applicants submission that widely varying rates paid to electricians in numerous industries showed that they received the licence allowance in addition to and despite the size of their base rate — Commission found claim in favour of applicant — Granted — Printing 1295

[3]Allowances sought for employees at Midland or Midland Salvage Yard — Applicant claimed for a Workshop allowance and Salvage allowance at a rate of $8.00 per week except where total amount payable under the clause exceeds the allowances — Respondent objects to claim and counter-claimed that future allowance payments be made in accordance with provisions of clause, provided in award and abandon other existing disability payments — Furthermore respondent argued that it was against the Wage Fixation Principles — CICS found "Pope Report" the key document in case, had in unequivocal terms described a situation which cannot be allowed to continue — CICS analysing "Pope Report" provided for a re-arrangement of allowances in that it would give compensation which is appropriate to type of work performed and found that this decision would not prejudice the operation of the Principles — Ordered Accordingly — Transport (Railways) 1365

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ALLOWANCES — *continued*

²Appeal against Commission's decision (at 66 WAIG 1115) to grant increased remuneration package *re* — salary and district allowance — Appellant alleged that Commission had erred in that Order issued relates to a remuneration package which does not correspond to an appropriate point in the relevant salary scale — Furthermore appellant argued it was inequitable that the Order provided for a reduction in allowance determined by any increase in salary pursuant to the award — Full Bench found Commissions decision provided the expected remuneration and the reduction of the allowance by the amount of any increase to salary not inconsistent with the purpose of fixing the minimum level of remuneration — Dismissed — Education 1292

Site Allowance, safety footwear and protective clothing allowances sought at sites — Question of interpreting of safety footwear clause in Award — Commission stated and applied established principle *re* interpretations and found clause was silent *re* source of initial supply of safety footwear — Commission stated and applied principle *re* provision of work clothing and found approved safety footwear should be supplied by the employer — Commission refused claims *re* protective clothing due to insufficient evidence — Granted in Part — Electrical Engineering 1371

Granting of site allowances at oil refinery — Unusual flammable hazards present together with fumes and other site elements — Granted — Oil/Building 1519

Appeal against decision increasing penalty payments at Narngalu abattoir — Evidence supported unions claim and decision of Commission was found to be reasonably open to it — Meat Industry 1594

Increase granted in car allowance based on previous indexation flow ons — Electrical Industry 1647

Claim for payment under inclement weather provision — Both parties concluded weather was such that work would not commence — Applicant claimed a continuous period of four hours inclement weather allowed the men to leave the site — Respondent claimed there was not four continuous hours of inclement weather — Employees who left site were docked, others who didn't leave till a later stage were not — Commission determined that all employees were entitled to be paid — Building Trades 1785

Site allowance of 50 cents per hour granted to building workers building four luxury units valued at $800 000 — Federal decision revealed site fell within Building Industry pattern — Building Industry 1788

An allowance of 10 per cent of salary in lieu of overtime was allowed for district officers who perform out of hours work — Officers in several localities who were receiving a 20 per cent allowance were placed on a no reduction basis for total income until lower salary rate was achieved — Water Supply 1864

Claim for an inclement weather clause modelled on provisions of an unregistered Building Industry agreement — Not a proper base for determining merits of claim — Discussion of contractual history of building industry, inclement weather including heat — Building Industry conditions had genesis 50 years ago when conditions were far more primitive than today — Doubt on the efficacy of present inclement weather provisions in the building industry awards — Flexibility now available to deploy employees in other areas when weather requires it — Claim refused — Electrical Contracting 1605

Granting of site allowance for fabrication of gold treatment plant — Flow on decisions relating to similar constructions — 60 cents per hour granted — Construction Industry 1777

Claim for site allowance of $2.00 for building workers building 20 units — Evidence and reference to Federal decisions granting allowances for construction work — Commission found the work did not fall within the established pattern for site allowances — Dismissed — Building Industry 1783

Cancellation of Metal Trades (Worsley Alumina Refinery) Construction Order — Commission found that the construction work was completed and the conditions on site had changed considerably — Metal Trades 1778

Commission was asked to determine whether starting and finishing times of 11.00 a.m. and 7.00 p.m. are to be included in the calculation of a motor vehicle allowance — Legal interpretation given of the construction of the award — Starting and finishing times deemed to be inclusive for the purposes of calculating an entitlement — Extensive list of legal authorities cited — Hospital Industry 1704

Application to vary Hotel and Tavern Workers' Award — Whilst consenting to parts of claim Respondent objected "in principle" to indexation of service increments and additional rates for ordinary hours — Respondent reserved right to oppose subsequent claims to vary these provisions brought on same grounds — Commission found application to conform with wage fixing principles — Granted — Hotel 1947

²Appeal against decision of Commission at 66 WAIG 1647 insofar that it relates to car allowances — Appellant alleged that this decision arose from an error of interpretation — Respondent did not dispute that assertion — Upheld — Electrical Contracting 1926

ANNUAL LEAVE —

Employee resigned when refused annual leave at requested time — Applicant claimed "constructive termination" and sought compensation — Respondent denied claims contending refusal was not "harsh or unjust" — Commission concluded question *re* "constructive dismissal" did not arise — Furthermore that the annual leave clause charged the employer with the obligation to initiate the leave; "to be taken as soon as is practicable after falling due" — Commission found it was not practical for employee to take leave at time requested — Dismissed — Nursing (Private) 1111

Employee summarily dismissed for alleged unsatisfactory performance — Applicant claimed unfair dismissal and denied he did not perform contract satisfactorily and claimed compensation, annual leave and car allowance — Respondent argued applicant employed on six month trial and exercised right not to reaffirm contract due to applicants inability to turn around profitability — Commission noted claim might be seen as for contractual benefits, where reinstatement not suggested as compensation — Commission preferred evidence of respondents witnesses, found applicant employed for six months with review, performance less than ideal and failed to increase level of sales as said at outset — Commission stated contract terminable on one month's notice short of conduct justifying summary dismissal — Commission ordered balance of salary due for month of January and compensation for lost benefit for use of car — Granted in part — Manufacturing (Electrical) 1082

Employee dismissed for "fault" of service — Complainant alleged dismissal due to inability of employer to afford to keep employee and claimed accrued annual leave payments — Defendant maintained employee did not keep records of stock and receipts and banking of moneys — Magistrate satisfied termination of employment due to blame-worthiness amounting to fault and therefore employee not entitled to accrued annual leave — Dismissed — Retail 1080

Complaint that defendants failed to pay *pro rata* annual leave and pay in lieu of notice in accordance with award — Defendants argued that complaints were "out of time" and therefore beyond Magistrate's jurisdiction — Magistrate found that amendment to section 82 of Act extended time within which application must be made from 12 months to six years — As amendment occurred within time limitation of existing law the new limitation would apply retrospectively and complaints may be appropriately determined — Subsequent to ruling on jurisdiction defendants pleaded guilty — Meat (Smallgoods) 1248

Does a stoppage of 1½ hours break continuity of service to determine which rate annual leave should be paid at — Cases referring to meaning of continuous employment — Balance of day after stoppage was completed at the higher rate of pay — Commission found annual leave should be paid at the higher rate — Railway Industry 1780

Claim to vary holiday entitlements for shop assistants in the Mandurah locality — Granted — Shop Assistants 1695

Alleged breach of annual leave provisions of award — Employee was rostered to commence work when he was rostered to be on annual leave — Magistrate found this constituted breach — Proved — Railway 1981

APPEAL —

²Appeal to Full Bench against order of the Commission at 66 WAIG 1359 — Interpretation of Act relating to interim orders made from conciliation conferences — Section 44 provides that final and binding orders can only be made at conclusion of conciliation process — Full Bench found orders pursuant to section 32 cannot be issued in section 44 applications — As Commission purported to make interim order under section 32 in matter brought under section 44 it had exceeded its jurisdiction — Upheld — Halliwell — dissented — Iron Ore 1405

CUMULATIVE DIGEST—*continued*

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APPEAL — *continued*

Appeal *re* decision not to appoint employee as a permanent officer — Appellant asserted entitlement for permanent officers position under section 32 (1) of Public Service Act — Respondent refuted claim and argued that initial employment was that of contract officer, as such appellant did not conform to the requirements of the abovementioned section of Act — Respondent also claimed that appellants employment depended on availability of funds which are subject to annual reviews — Appeal Board found appellant had not been done an injustice — Dismissed — Public Service 1863

Appeal against Full Bench decision relating to no case to answer — Evidence of order of Commission against newspaper employees — Does the definition of "decision" contained in section 7 (1) control the meaning of the word decision in section 84 (2) — Full Bench and Appeal Court found the definition in section 7 (1) does not apply to section 84 — Principles of statutory construction — Intention of legislature to leave appeal rights from Magistrate unaffected — Different nature of jurisdictions — Appeal dismissed — Newspaper Industry 1563

AWARDS —

[3]Registration of seven industrial agreements sought — Union stated the intention was to standardise employment conditions in Child Care Centres — Union claimed that as it sought no more than the conditions of an existing "standard" award of the Commission there was no breach of the Act or General Order principles — CICS stated conditions in the "standard" award constituted a breach of the Wage Fixation Principles — CICS refused to register the agreements due to the inconsistencies between their conditions and a common rule award it considered best provided a "standard" for subsidised child care centres — CICS stated other reservations *re* cost implications — Dismissed — Childrens' Services 1026

[2]Alteration to Constitutional rule sought by BBU — Applicant union claimed employees of can plant connected to brewing industry should be eligible for membership and constitutional coverage and disclaimed interest in any other can plant — Objections were received from AMWSU who have constitutional coverage of machinery and press operators — Qualified engineers evidenced operators not strictly metal workers — Representatives of buyers of can plant asserted operations would best be served by AMWSU maintaining constitutional and award coverage for production and mechanical activities to avoid demarcation disputes — Full Bench stated production or dependence by brewery upon regular and substantial supply did not provide sufficient connection which must be shown to permit altered constitutional rule to operate to have practical effect — Full Bench stated obligation to refuse application unless satisfied *re* matters subsections 4 and 5 of Act and is consistent with Act — Obligations of Full Bench *re* section 55 at 62 WAIG 511 — Full Bench unanimously found application not successful as result of absence of necessary connection with brewing industry and acquisition of plant by new owner, strength of intervenors case *re* demarcation and AMWSU coverage previously successfully contended — Dismissed 1017

[3]Extension of compassionate leave for particular government wages employees sought by ASEMFW — Applicant union sought extension to include leave granted on death of parents-in-law and to delete restriction that deaths occur in Australia — Union claimed that a prior CICS ratification of similar amendments had been "in principle" for all government wage employees — Respondent opposed application on merit — CICS stated insufficiency of evidence to warrant amendments sought, but the Act demanded consistency over Government wages workforce — CICS approved variations as they applied to in-laws but refused extension of claim to include deaths outside Australia according to current standards which restrict leave to deaths within nation — Granted in part — Engineering, Education 1043

New award sought for gardeners — Parties basically agreed as new award was an exercise to replace and consolidate existing awards and include other employees who were award free — Commission found issue of disagreement *re* ceiling equivalent of "Average weekly earnings" in subclause academic in view of existing circumstances — Commission however reserved liberty to the respondents to apply for a variation should need arise — Granted — Sport and Recreation (Parks and Gardens) 1163

New award sought for electricians employed by WA Newspapers — Parties consented to all provisions except *re* — licence allowance — Commission found respondents argument based on total wage rates was answered by applicants submission that widely varying rates paid to electricians in numerous industries showed that they received the licence allowance in addition to and despite the size of their base rate — Commission found claim in favour of applicant — Granted — Printing 1295

New award sought to cover non-academic salaried staff employed by WAIT — Union claimed for broad-banding amongst other things as previous agreement had a recognised nexus — with Public Service Conditions — Parties eventually reached an agreement on the terms of award — Commission found broad-banding to be most significant change and noted that unlike Public Service Board the respondent would have a minimal increase in labour costs — Commission found respondents proposal to multi-skill level one employees as a significant change in work value to justify the small increase in wage costs — Commission found changes well within the guidelines and stated that applicant's members had to accept broadening of duties while respondent had to implement them rather than regard changes as academic — Granted — Education 1179

Claim for nexus between public service salaries and conditions and those applicable to Statutory Boards — Since Boards are not part of public service, actual rates should be specified in awards — Similar decision for flexible working hours and leave — Statutory Authorities 1419

Interpretation of award to determine if it covers employees in the assembling and packaging of outside furniture — Respondent a named party to award — Transcript of original hearing where award was handed down assisted in determining which workers were covered — Award found to apply — Furniture Industry 1702

Application for new award in the brewing industry — Establishment of new brewery at Canning Vale — Not the intention that this award has common rule application — The new award clarifies and codifies existing practices — Brewing Industry 1630

Interpretation of meat industry award — Discussion on legal principles established to interpret awards — If there is no ambiguity then the ordinary commonsense language applies and it is not necessary or permissable to look at the intention of the parties — Meat Industry .. 1706

BOARD OF REFERENCE —

Claim by Field Supervisor Nurse for payment of *pro rata* Long Service Leave on termination — Award conveyed no entitlement as Applicant resigned prior to completion of qualifying period — Board found Applicant's resignation caused by deleterious effect of work on her health and Respondent's refusal to transfer her to a less demanding position — Circumstances warranted *ex gratia* payment to applicant — Granted — Health (Nursing) 1984

Application to change number of days of the week on which medical laboratory technologists can work ordinary hours — Board found that change from a four day week to a nine day fortnight would better allow Applicant to efficiently manage its human resources — Granted — Barker dissented — Hospital Services 1982

BONUS —

Lump sum bonus payment sought — Bonus provided by AWU Pipeline Construction (WA) Award 1983 but as Respondent not party to award Applicant must prove that there was a clear agreement that bonus be paid — Respondent's receipt signed by Applicant for part-payment of bonus did not expressly or impliedly make payment of bonus a term of employment — Dismissed — Construction (Pipeline) 1755

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BREACH OF AWARD —

Alleged non-payment of benefits as prescribed in Commercial Travellers and Sales Representatives Award — Complainant claimed employer failed to pay commission — Defendant argued commission claimed did not fall within provisions of award — Magistrate found award did not provide for payment of commission therefore no jurisdiction to hear and determine the matter — Dismissed — Manufacturing (Aluminium) 1080

Alleged non-payment of benefits — Complainant claimed use of own car entitled him to car allowance — Defendant argued ability to enter into agreement with employee not less favourable than other provisions of the award — Further that to reach agreement without union involvement did not invalidate agreement — Magistrate disagreed with defendants proposition *re* validity of agreement and found on evidence that circumstances did not establish that company required him to use his own vehicle thus not entitled to be paid allowance in accordance with award — Dismissed — Manufacturing (Aluminium) 1080

Employee dismissed for "fault" of service — Complainant alleged dismissal due to inability of employer to afford to keep employee and claimed accrued annual leave payments — Defendant maintained employee did not keep records of stock and receipts and banking of moneys — Magistrate satisfied termination of employment due to blame-worthiness amounting to fault and therefore employee not entitled to accrued annual leave — Dismissed — Retail 1080

Alleged breach of Award *re* failure to pay overtime as prescribed in Award — Question *re* whether employee held himself in readiness as required by the clause — Magistrate found employee had been required to do after hours service — However Magistrate found restrictions upon employee during rostered period was not of quality or nature that would bring him within the category of a person who holds himself in readiness as envisaged in clause — Dismissed — Airconditioning and Refrigeration 1246

Complaint that defendants failed to pay *pro rata* annual leave and pay in lieu of notice in accordance with award — Defendants argued that complaints were "out of time" and therefore beyond Magistrate's jurisdiction — Magistrate found that amendment to section 82 of Act extended time within which application must be made from 12 months to six years — As amendment occurred within time limitation of existing law the new limitation would apply retrospectively and complaints may be appropriately determined — Subsequent to ruling on jurisdiction defendants pleaded guilty — Meat (Smallgoods) 1248

Alleged breach of annual leave provisions of award — Employee was rostered to commence work when he was rostered to be on annual leave — Magistrate found this constituted breach — Proved — Railway 1981

Alleged underpayment of award wages — Applicant argued that employee concerned was performing work of a floorcovering tradesman and should have been paid accordingly — Magistrate found Applicant's interpretation of duties defining that wage classification in the award to be incorrect — Dismissed — Furniture Trades 1979

CAPACITY TO PAY —

Variation to motor vehicle hire clause sought — Applicant claimed a nexus to other awards recently varied (at 65 WAIG 1130 and 66 WAIG 166), within Commission's jurisdiction — Applicant relied on established Australian Commission principle (Print No. F2436) *re* argument based on ". . . incapacity to pay . . . requires oral and/or documentary evidence capable of analysis and evaluation" — Further, applicant stressed allowance sought was merely a reimbursement of expenses incurred by employee on employer's behalf — Respondent argued incapacity to pay due to increase in expenses and viability and efficiency of business threatened — Commission found, claim within wage fixation guidelines — Further, argument based on incapacity to pay fails/failed for want of sufficient evidence to allow for evaluation — Granted — Law Enforcement (Bailiffs) 1037

Major case *re* exemption from provisions of 38-hour week in the Shop, Warehouse and Licensed Establishment industry — Discussions of advertisements and processes for hearing objectors — Discussions on economic, general and specific grounds — Shop, Warehouse, Licensed Stores 1445

Claim for relief from operation of Wage Fixing Principles in the tantalum mining industry — Company argued depressed world prices resulted in reduced capacity to pay — CIC's not convinced circumstances had changed sufficiently since last application was made — Refused — Tantalum Mining 1605

CASUAL WORK —

[2]Appeal against decision of Commission (at 66 WAIG 245) *re* interpretation of part-time casual workers clauses — Appellant alleged Commission had erred in interpretation and declaration of award, and argued that the factual circumstances relating to performance of contract of employment compelled a conclusion that casual workers were in fact part-time workers — Full Bench found there was no basis for claim as Commission's declaration simply expressed the meaning which provisions clearly bore, and Commission was entitled to find that regularity of work was no more than an expression of intention which either party could reject — Full Bench stated although ongoing feature of work indicated employees concerned were not employed casually, it was not to say that their employment was not of a casual nature — Full Bench found it was not proven that employees concerned were incorrectly classified and suggested method for appropriate remedy would be to seek an amendement of the Award — Dismissed — Retail 1014

Claim for payment for casual workers who reported for duty but could not be employed because of a strike — Discussion as to how casuals make themselves available for employment — Claimant had no work available because of strike — Dismissed — Newspaper Industry 1803

CLASSIFICATION —

Wage increase and alteration to the classification structure sought for boiler controllers, turbine drivers, unit auxiliary attendant and auxiliary plant attendant — Applicant union claimed alteration of mode of operation of power station had caused increased responsibilities — Respondent contended changes in boiler controller and turbine drivers duties minimal — Commission accepted duty changes were minimal but found on evidence that change to mode of operation of plant and importance of continued operation to entire system measurably increased responsibilities of classifications under review — Commission concluded that increase in wage rates awarded in recent decision (at 66 WAIG 538) should be applied to maintain relativity — Commission refused to alter present classification structure shown as satisfactory and directed parties to confer *re* schedule — Granted in part — Energy 1041

Wage increase sought for instrument hands due to increased duties and responsibilities — Applicant union sought to retain differential between two elements of two man team whem amalgamations of two sections into one resulted in employees learning new skills and modes of operation — Respondent submitted work value not changed after amalgamation therefore increased wage rate not warranted — Commission found first issue on Wage Fixation Principle (63 WAIG 2210) *re* Work Value Changes was not satisfied — Commission on evidence concluded changes not significant for creation of new classification and stated existing wage rates equitable — Commission refused claim and directed parties to confer *re* title of positions — Dismissed — Water Supply 1059

Defendant incorrectly named in complaint but point for no case to answer not taken — Poor wording of complaint led to complaint being amended — Designation found to exist and complaint proved — Railways 1710

Determination of the functions of the classification "service technician" — Work found to be akin to that performed by electricians — Order issued — Electrical Industry 1789

Claim for a higher classification for an electronics worker — Criteria for progression to a higher grade were clearly spelt out in the award — Shop floor management recommended progression towards a higher classification, but this was rejected by senior management who imposed different criteria found to be more appropriate to a higher level of classification — Claim granted — Electronics — Public Service 1721

Claim for higher classification for foreman based on the number of apprentices supervised — Commission agreed with evidence of applicant and granted the claim — Government — Foremen 1793

CUMULATIVE DIGEST—*continued*

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CLOTHING —
Site Allowance, safety footwear and protective clothing allowances sought at sites — Question of interpretation of safety footwear clause in Award — Commission stated and applied established principle *re* interpretations and found clause was silent *re* source of initial supply of safety footwear — Commission stated and applied principle *re* provision of work clothing and found approved safety footwear should be supplied by the employer — Commission refused claims *re* protective clothing due to insufficient evidence — Granted in Part — Electrical Engineering 1371

COMMON RULE —
[3]Registration of seven industrial agreements sought — Union stated the intention was to standardise employment conditions in Child Care Centres — Union claimed that as it sought no more than the conditions of an existing "standard" award of the Commission there was no breach of the Act or General Order principles — CICS stated conditions in the "standard" award constituted a breach of the Wage Fixation Principles — CICS refused to register the agreements due to the inconsistencies between their conditions and a common rule award it considered best provided a "standard" for subsidised child care centres — CICS stated other reservations *re* cost implications — Dismissed — Childrens' Services 1026
Lump sum bonus payment sought — Bonus provided by AWU Pipeline Construction (WA) Award 1983 but as Respondent not party to award Applicant must prove that there was a clear agreement that bonus be paid — Respondent's receipt signed by Applicant for part-payment of bonus did not expressly or impliedly make payment of bonus a term of employment — Dismissed — Construction (Pipeline) 1755

COMPARATIVE WAGE JUSTICE —
Wage increase and alteration to the classification structure sought for boiler controllers, turbine drivers, unit auxiliary attendant and auxiliary plant attendant — Applicant union claimed alteration of mode of operation of power station had caused increased responsibilities — Respondent contended changes in boiler controller and turbine drivers duties minimal — Commission accepted duty changes were minimal but found on evidence that change to mode of operation of plant and importance of continued operation to entire system measurably increased responsibilities of classifications under review — Commission concluded that increase in wage rates awarded in recent decision (at 66 WAIG 538) should be applied to maintain relativity — Commission refused to alter present classification structure shown as satisfactory and directed parties to confer *re* schedule — Granted in part — Energy 1041
[3]Allowance sought for survey wages employees for camping and/or miscellaneous allowances not less than surveyors — Applicant union claimed discrimination between camping allowances, the anomaly having manifested as result of amalgamation of Metropolitan Water Authority and Public Works Department — Respondent objected to and opposed the claim as larger anomaly would be created with other survey wages employees and that matter should be considered across Public Sector wages workforce due to flow-on — CICS considered concern of Minister for Industrial Relations for costs of flow-on in application of Wage Principle and stated applicant had not made case due to absence of evidence for additional expense incurred — CICS found respondent had not argued against principle of non-discrimination and stated burden lies with union who did not show inadequacy of allowance amounting to discrimination — Dismissed — Surveying 1113
[2]Appeal against Commission's decision (at 66 WAIG 330) to grant a licence allowance to electrical fitters — Appellant alleged Commission had erred in that allowance granted was in breach of Wage Fixation Principles and broke a well established nexus and wage rate relativities within the company — Furthermore Commission disregarded settled rule of Principles *re* new awards; ie where consideration is given to rate and conditions which are provided at the time the award issues — Respondent argued that an anomaly existed as employees working for appellant instituted the only part of the electrical workforce not currently paid an allowance — Full Bench found appellant's submission of Principle 10, was not an absolute rule — Full Bench found principles do not exclude the need for independent judgment and stated Commissions obligation was to determine whether granting of allowance was fair and equitable, which the Commission had done having been satisfied that there was no scope for flow-on claims — Dismissed — Printing 1010

COMPASSIONATE LEAVE —
[3]Extension of compassionate leave for particular government wages employees sought by ASEMFW — Applicant union sought extension to include leave granted on death of parents-in-law and to delete restriction that deaths occur in Australia — Union claimed that a prior CICS ratification of similar amendments had been "in principle" for all government wage employees — Respondent opposed application on merit — CICS stated insufficiency of evidence to warrant amendments sought, but the Act demanded consistency over Government wages workforce — CICS approved variations as they applied to in-laws but refused extension of claim to include deaths outside Australia according to current standards which restrict leave to deaths within nation — Granted in part — Engineering, Education 1043

COMPENSATION —
Employee resigned when refused annual leave at requested time — Applicant claimed "constructive termination" and sought compensation — Respondent denied claims contending refusal was not "harsh or unjust" — Commission concluded question *re* "constructive dismissal" did not arise — Furthermore that the annual leave clause charged the employer with the obligation to initiate the leave; "to be taken as soon as is practicable after falling due" — Commission found it was not practical for employee to take leave at time requested — Dismissed — Nursing (Private) 1111
Employee summarily dismissed for alleged unsatisfactory performance — Applicant claimed unfair dismissal and denied he did not perform contract satisfactorily and claimed compensation, annual leave and car allowance — Respondent argued applicant employed on six month trial and exercised right not to reaffirm contract due to applicants inability to turn around profitability — Commission noted claim might be seen as for contractual benefits, where reinstatement not suggested as compensation — Commission preferred evidence of respondents witnesses, found applicant employed for six months with review, performance less than ideal and failed to increase level of sales as said at outset — Commission stated contract terminable on one month's notice short of conduct justifying summary dismissal — Commission ordered balance of salary due for month of January and compensation for lost benefit for use of car — Granted in part — Manufacturing (Electrical) 1082
Employee summarily dismissed for alleged misconduct — Applicant claimed unfair dismissal and sought reinstatement and compensation for earnings foregone — Respondent claimed negligence or complicity with former manager dismissed for theft of stock — Commission found nothing in evidence to implicate applicant in theft and declared dismissal unfair and unreasonable in all circumstances — Commission ordered reinstatement and compensatory payment for period of unemployment but applicant found alternative employment — Commission ordered respondent pay applicant as final settlement of compensation claim — Granted — Hotel 1091

CUMULATIVE DIGEST—*continued*

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COMPENSATION — *continued*

[2]Appeal against Commission's decision (at 66 WAIG 782) to order reinstatement and compensation to employee dismissed for alleged social misconduct committed away from work and outside work hours — Appellant argued that termination was justified on grounds that employees misconduct was detrimental to the working relationship [see Tomlinson's Case (1944) 1 AII ER 537) and would have had an adverse effect on the company's desire in securing maximum efficiency — Full Bench acknowledged circumstances of a "closed town" and accepted that employer had an interest in affairs within the community outside the work place and noted that where no police are in permanent residence, conduct of a similar nature could justify termination — However Full Bench found there was no direct connection between the incident and employees employment and furthermore incident had not struck at essential elements in the contract of services [see (1959) 32 AII ER 285) — Full Bench found circumstances quite different to Tomlinsons case and Commission decision fair having regard for all of the circumstances — Dismissed — Mining 1008

Employee dismissed for alleged unsatisfactory service — Applicant claimed unfair dismissal, sought compensation and stated she would not accept reinstatement — Respondent submitted dissatisfaction with employees performance and dress — Commission stated principles from Undercliffe case (65 WAIG 1985) applied *re* right of employer to terminate contract — Commission found applicant had not been unfairly dismissed — Dismissed — Retail (Fast Food) 1090

Employee dismissed for inability to remember instructions and repeated errors in handling financial transactions, and claimed compensation for unfair dismissal — Commission found it had no jurisdiction to entertain claim as applicants employment was governed by Federal Award in which specific clauses are provided to deal with questions in dispute — Commission however found, it could deal with the non "award" contractual benefits and granted claim for non "award" benefits — Granted in part — Government (Local) 1256

Employee dismissed for unsatisfactory work performance and sought compensation for unfair dismissal — Commission found from evidence employee carried out duties as required but without conscientious effort expected or required therefore final warning would have been ineffective or short lived — Commission found termination fair and *ex gratia* payment made should stand — Dismissed — Cleaning 1373

Question of whether a retrenchment was due to a downturn in business or dismissal on the grounds of performance — Sales performance of applicant of concern to Company — Administrative procedures should have been implemented to insure formal counselling and warning — $17 000 compensation granted — Machinery Sales Industry 1760

Commission erred in law — Employee never actually commenced employment and therefore it was not possible to order one week's wages as compensation because no service had been rendered under contract of service — Appeal upheld 1594

Dismissal of employee due to decline in work performance — Earlier work performance most satisfactory — Employee not given warning — Dismissal not only course of action available to employer — Compensation of $4 500 granted — Warehouse Employee 1815

Employee resigned due to alleged loss of seniority in company and claimed compensation on grounds of constructive dismissal — Commission found contractual entitlements for sick leave and redundancy pay must fail as principles applied in cases of constructive dismissal cannot be quoted in this instance because employee was not given the alternative of resignation as opposed to dismissal — Commission found contractual benefits were made under correct category in accordance with contract of service — Dismissed — Motor Vehicle 1740

Alleged unfair dismissal — Applicant claimed reduction in working hours amounted to constructive dismissal in that it offered new employment under a significantly different contract and sought reinstatement in previous position or compensation — Respondent objected arguing that applicant had failed to resume her employment which meant applicant had either resigned or abandoned her employment — Commission found it was beyond its jurisdiction as presently constituted to deal with matter — Dismissed — Public Service 1758

CONFERENCE —

Appeal from order of CICS — Poor company performance led to attempts to change work practices including restrictive work practices — Moratorium order from Compulsory Conference led to lockout — Industrial Appeal Court found orders can issue under section 32 to aid conciliation processes — Claim of denial of natural justice because Commission conferred separately with other parties dismissed — Sectioon 32 (2) confers a general power to Commission and should not be read down — Provisions of section 26 (3) — Definition of industrial matter — Appeal dismissed — Iron Ore Industry 1553

CONSUMER PRICE INDEX —

[3]General Order for 2.3 per cent increase in awards of Commission pursuant to section 51 (2) sought — No party argued that there were good reasons that effect not be given to the National Wage Decision — Granted subject to each union's committment to make no claims outside Wage Principles 1139

CONTRACT OF SERVICE —

Payment sought for salary at higher rate allegedly offered at interview — Respondent denied offer made and objected — Commission found no contract of employment existed as written offer of respondent not accepted by applicant and applicant entitled to redress from serious disadvantage *re* dislocation — Commission ordered additional annual allowance — Commission held speaking to the minutes conference at which respondent referred to district allowance and applicant claimed higher salary level and district allowance — Commission admitted arithmetical error and varied order by deleting previous allowance and awarding new allowance — Granted in part — Education 1115

Employee dismissed for alleged unsuitability for employment — Applicant claimed unfair dismissal, sought reinstatement and submitted respondent forwarded false allegations to justify dismissal — Respondent asserted failure to keep correct time procedures, adhere to callout schedules, complete register, hold courses, conduct meetings, organise overtime crew to check stock and organise clean-up of spilt chemicals and continued to do so despite counselling — Further during investigation that applicant signed false time cards, absent without authority, gave false information, was abusive and showed poor attitude towards supervisor — Commissioner noted only one person responsible for termination present at investigation — Commission on evidence found overtime sheets inaccurate and falsified, that failure to comply with policy *re* callout register not dereliction of duty — Commission found respondent's documentary evidence *re* investigation frail with interpretation and interpolation and matter result of personality conflict — Commission declared applicant unfairly dismissed and issued interim order that respondent offer applicant three month contract of employment — Final order issued at later hearing where Commission satisfied both parties agreed contract could continue — Granted — Hydrocarbons 1085

Employee summarily dismissed for alleged unsatisfactory performance — Applicant claimed unfair dismissal and denied he did not perform contract satisfactorily and claimed compensation, annual leave and car allowance — Respondent argued applicant employed on six month trial and exercised right not to reaffirm contract due to applicants inability to turn around profitability — Commission noted claim might be seen as for contractual benefits, where reinstatement not suggested as compensation — Commission preferred evidence of respondents witnesses, found applicant employed for six months with review, performance less than ideal and failed to increase level of sales as said at outset — Commission stated contract terminable on one month's notice short of conduct justifying summary dismissal — Commission ordered balance of salary due for month of January and compensation for lost benefit for use of car — Granted in part — Manufacturing (Electrical) 1082

CUMULATIVE DIGEST—*continued*

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CONTRACT OF SERVICE — *continued*

Complaint that defendants failed to pay *pro rata* annual leave and pay in lieu of notice in accordance with award — Defendants argued that complaints were "out of time" and therefore beyond Magistrate's jurisdiction — Magistrate found that amendment to section 82 of Act extended limit within which application must be made from 12 months to six years — As amendment occurred within time limitation of existing law the new limitation would apply retrospectively and complaints may be appropriately determined — Subsequent to ruling on jurisdiction defendants pleaded guilty — Meat (Smallgoods) 1248

Alleged non-payment of contractual benefits during final week of applicant's employment — Question of entitlement — Commission found that, two contracts of service existed and the applicant was entitled to one week's wages plus payment for overtime worked during final week — Granted — Transport 1351

[2]Appeal against Commission's decision (at 66 WAIG 1115) to grant increased remuneration package *re* — salary and district allowance — Appellant alleged that Commission had erred in that Order issued relates to a remuneration package which does not correspond to an appropriate point in the relevant salary scale — Furthermore appellant argued it was inequitable that the Order provided for a reduction in allowance determined by any increase in salary pursuant to the award — Full Bench found Commissions decision provided the expected remuneration and the reduction of the allowance by the amount of any increase to salary not inconsistent with the purpose of fixing the minimum level of remuneration — Dismissed — Education 1292

Commission erred in law — Employee never actually commenced employment and therefore it was not possible to order one week's wages as compensation because no service had been rendered under contract of service — Appeal upheld 1594

Claim for $35 800 redundancy payment under contract of service — Applicant was distinguishable from other non award employees by his rank and career path — Benefit of redundancy package for award employees is not necessarily an implied term of contract of service — Commission bound to proceed under legal principles when considering claim pursuant to section 29 (b) (ii) — Dismissed — Oil Industry 1747

Appeal to Full Bench as to conditions of employment — Rare that a ground alleging insufficient weight given to an argument, will be successful — Dismissed — Clerical Industry 1591

Refusal to wear safety glasses continually — Workers stood down — Onus on employer to show cause — Obligation of employer to provide a safe system of work — Obligation of employee to avoid exposure to unnecessary risk — Commands must fall within scope of contract of service and must be reasonable — Direction was unreasonable and did not give rise to a contractual obligation of obedience — Railways 1568

Employee resigned due to alleged loss of seniority in company and claimed compensation on grounds of constructive dismissal — Commission found contractual entitlements for sick leave and redundancy pay must fail as principles applied in cases of constructive dismissal cannot be quoted in this instance because employee was not given the alternative of resignation as opposed to dismissal — Commission found contractual benefits were made under correct category in accordance with contract of service — Dismissed — Motor Vehicle 1740

Lump sum bonus payment sought — Bonus provided by AWU Pipeline Construction (WA) Award 1983 but as Respondent not party to award Applicant must prove that there was a clear agreement that bonus be paid — Respondent's receipt signed by Applicant for part-payment of bonus did not expressly or impliedly make payment of bonus a term of employment — Dismissed — Construction (Pipeline) 1755

Alleged unfair dismissal — Applicant claimed reduction in working hours amounted to constructive dismissal in that it offered new employment under a significantly different contract and sought reinstatement in previous position or compensation — Respondent objected arguing that applicant had failed to resume her employment which meant applicant had either resigned or abandoned her employment — Commission found it was beyond its jurisdiction as presently constituted to deal with matter — Dismissed — Public Service 1758

DATE OF OPERATION —

[2]Alteration of rules and declaration *re* State branch of Federal organisation sought by MWU — Applicant union sought to substitute new set of rules and change name — No party desiring to be heard in opposition to application — Full Bench satisfied that procedural requirements complied with and proposed to make order authorising Registrar to register rules in accordance with application after errors and omissions corrected — Full Bench ordered and directed Registrar, upon receipt of advice from union that Federal Industrial Registrar allowed alteration of rules of Seamen's Union of Australia, to register substituted rules — Operative date prospective — Granted — Maritime 1022

DEMARCATION —

[2]Alteration to Constitutional rule sought by BBU — Applicant union claimed employees of can plant connected to brewing industry should be eligible for membership and constitutional coverage and disclaimed interest in any other can plant — Objections were received from AMWSU who have constitutional coverage of machinery and press operators — Qualified engineers evidenced operators not strictly metal workers — Representatives of buyers of can plant asserted operations would best be served by AMWSU maintaining constitutional and award coverage for production and mechanical activities to avoid demarcation disputes — Full Bench stated production or dependence by brewery upon regular and substantial supply did not provide sufficient connection which must be shown to permit altered constitutional rule to operate to have practical effect — Full Bench stated obligation to refuse application unless satisfied *re* matters subsections 4 and 5 of Act and is consistent with Act — Obligations of Full Bench *re* section 55 at 62 WAIG 511 — Full Bench unanimously found application not successful as result of absence of necessary connection with brewing industry and acquisition of plant by new owner, strength of intervenors case *re* demarcation and AMWSU coverage previously successfully contended — Dismissed 1017

[2]Appeal against decision of Commission at 66 WAIG 495 to make FLAIEU and WATAEA joint applicants for first award for Burswood Island Casino — In previous decision Commission exercised discretionary judgement pursuant to the Act thus for appeal to succeed "some fundamental error afflicting the exercise of discretion" must be proved — Full Bench found no errors of fact demonstrated and that Commission had acted in fairness, having due regard for the interests of both persons directly affected and the community at large — Dismissed 1151

DIRT MONEY —

[3]Allowances sought for employees at Midland or Midland Salvage Yard — Applicant claimed for a Workshop allowance and Salvage allowance at a rate of $8.00 per week except where total amount payable under the clause exceeds the allowances — Respondent objects to claim and counter-claimed that future allowance payments be made in accordance with provisions of clause, provided in award and abandon other existing disability payments — Furthermore respondent argued that it was against the Wage Fixation Principles — CICS found "Pope Report" the key document in case, had in unequivocal terms described a situation which cannot be allowed to continue — CICS on analysing "Pope Report" provided for a re-arrangement of allowances in that it would give compensation which is appropriate to type of work performed and found that this decision would not prejudice the operation of the Principles — Ordered Accordingly — Transport (Railways) 1365

CUMULATIVE DIGEST—*continued*

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DISCRIMINATION —

[3]Allowance sought for survey wages employees for camping and/or miscellaneous allowances not less than surveyors — Applicant union claimed discrimination between camping allowances, the anomaly having manifested as result of amalgamation of Metropolitan Water Authority and Public Works Department — Respondent objected to and opposed the claim as larger anomaly would be created with other survey wages employees and that matter should be considered across Public Sector wages workforce due to flow-on — CICS considered concern of Minister for Industrial Relations for costs of flow-on in application of Wage Principle and stated applicant had not made case due to absence of evidence for additional expense incurred — CICS found respondent had not argued against principle of non-discrimination and stated burden lies with union who did not show inadequacy of allowance amounting to discrimination — Dismissed — Surveying 1113

Car and Wagon Examiner — PAB found appellant to be best applicant on Application Forms — No interviews conducted — Appellant passed over due to adverse comment by District Officer who do not give evidence and thereby substantiate opinion — Appeal upheld — Transport (Rail) 1378

Principle that a male prison officer should not supervise female prisoners on night shift unless in the company of another officer — Officers face disproportionate risk and are in different situations from other workers — Complaints by females bring automatic suspension while investigations are carried out — Granted — Prison Officers 1819

EMPLOYEE —

Complaint of breach of award failed because contract of employment was independent contractor not employer/employee — Case references summarising the law in this area — (60 ALJR 194) — Discussion on evidence as to nature of contractual relationship — Majority of indica point to independent contractor — Dismissed — Building Industry 1715

ENFORCEMENT OF AWARD —

Employee made redundant due to closure of mine — Applicant union claimed employee entitled to award benefit *re* redundancy — Union members struck to ensure re-employment — Respondent submitted employee unsuitable for further work due to alcohol and drug offence, threat to safety, bad attitude towards supervisors and unauthorised absenteeism and company had no obligation toward his future employment — Commission stated burden of proof lay with company — Commission found no connection between drug conviction and unsuitability for employment, witnesses testimony not reliable and that company made no case against employee's attitude to supervisors, threat to safety or absenteeism — Commission found on evidence and submissions that company had not made case against employee and declared employee entitled to benefits prescribed in award — Granted — Mining (Iron Ore) 1099

ENTRY — RIGHT OF —

Stay of order relating to right of entry — Serious issues in grounds of appeal including overlapping jurisdiction between Commission and Industrial Magistrate — Stay on right of entry ordered — Building 1417

Alleged failure to allow entry to a building construction site to three officials — Accreditation of one official did not contain the name of the organisation he represented — Building firm refused to allow entry despite verbal requests — Complainant never demonstrated an employer/employee relationship existed on site — No case to answer submission was upheld — Building Industry 1717

HOURS OF WORK —

Major case *re* exemption from provisions of 38-hour week in the Shop, Warehouse and Licensed Establishment industry — Discussions of advertisements and processes for hearing objectors — Discussions on economic, general and specific grounds — Shop, Warehouse, Licensed Stores 1445

INDUSTRIAL ACTION —

Payment sought for time lost during stoppage over safety issue — Union claimed emergency vehicle and fire extinguisher essential for employees safety and held stoppage after incident involving injured truck driver — Respondent argued stoppage not related to safety issues and no payment should be made as claim had left employer in untenable position — Commission stated question to answer was whether hazard of sufficient moment existed to extent to justify action taken — Commission found substance in respondent's proposition that stoppage was due to reaction to other industrial matters on site, not apprehension of unsafe working conditions — Commission refuse to accept safety conditions claim as *bona fide* — Dismissed — Construction (Civil Engineering) 1103

Allowance sought by power station operators based on alleged extra responsibility arising from technological change — Applicant union claimed change in work value warranted increase in wage rates — Respondent objected to and opposed claim — Commission stated previous CICS decision (64 WAIG 605) applied to proceedings considering submissions and evidence *re* significant nett addition to work requirements — Further that lack of co-operation of employees to install equipment and differences in opinion of witnesses made impossible Commission conclusion that proposed technology would increase skills of operating personnel to warrant higher remuneration — Commission found union's evidence failed to satisfy requirements of Wage Principles — Dismissed — Mining (Iron Ore) 1110

Employee made redundant due to closure of mine — Applicant union claimed employee entitled to award benefit *re* redundancy — Union members struck to ensure re-employment — Respondent submitted employee unsuitable for further work due to alcohol and drug offence, threat to safety, bad attitude towards supervisors and unauthorised absenteeism and company had no obligation toward his future employment — Commission stated burden of proof lay with company — Commission found no connection between drug conviction and unsuitability for employment, witnesses testimony not reliable and that company made no case against employee's attitude to supervisors, threat to safety or absenteeism — Commission found on evidence and submissions that company had not made case against employee and declared employee entitled to benefits prescribed in award — Granted — Mining (Iron Ore) 1099

Strike action taken when employee dismissed for alleged failure to comply with company policy, notwithstanding warning — Employees claimed unfair dismissal, victimisation and reinstatement — Further that dismissal was an example to others from new manager — Respondent refuted claims — Commission rejected conspiracy theory and stated dismissal a result of a "new broom policy" — Commission found dismissal unwarranted and would not resolve "troublesome state of affairs" at warehouse and suggested introduction of agreed policy to prevent strikes *re* future dismissals — Granted in Part — Retail 1374

Claim for payment for casual workers who reported for duty but could not be employed because of a strike — Discussion as to how casuals make themselves available for employment — Claimant had no work available because of strike — Dismissed — Newspaper Industry 1803

Appeal from order of CICS — Poor company performance led to attempts to change work practices including restrictive work practices — Moratorium order from Compulsory Conference led to lockout — Industrial Appeal Court found orders can issue under section 32 to aid conciliation processes — Claim of denial of natural justice because Commission conferred separately with other parties dismissed — Section 32 (2) confers a general power to Commission and should not be read down — Provisions of section 26 (3) — Definition of industrial matter — Appeal dismissed — Iron Ore Industry 1553

CUMULATIVE DIGEST—*continued*

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INDUSTRIAL MATTER —

[2]Appeal to Full Bench against order of the Commission at 66 WAIG 1359 — Interpretation of Act relating to interim orders made from conciliation conferences — Section 44 provides that final and binding orders can only be made at conclusion of conciliation process — Full Bench found orders pursuant to section 32 cannot be issued in section 44 applications — As Commission purported to make interim order under section 32 in matter brought under section 44 it had exceeded its jurisdiction — Upheld — Halliwell — dissented — Iron Ore 1405

INTERPRETATION — WORDS AND PHRASES —

Interpretation of payment for travelling time clause in Award — Applicant sought declaration that travelling time in excess of four hours but less than seven did not entitle workers to payment for minimum shift of seven hours — Respondent argued worker entitled to payment for whole of shift as long as travelling time amounts to four hours or more — Commission found no need to rely on historical controversy as interpretation of the normal and natural meaning of the words sufficient to make meaning clear — Commission declared affirmative view that worker entitled to payment for minimum shift of seven hours — Railways 1065

Interpretation sought *re* hours clause in relevant award — Question *re* whether an officer called to work on a day (Tuesday) on which he was "booked" off is/was entitled to a rate of not less than time and a half — Respondent argued applicant was not "booked off" and further, provision under review was designed to recompense officers for having to work an extra or sixth shift in any particular week — Respondent argued in instant case applicant was not entitled to the penalty prescribed in the clause as he was not required to work a sixth shift — Board noted letter and spirit of award provided that if an officer is required to work on his rostered day off, he should be paid for work on that day at the rate of time and a half unless given 12 hours' notice of changed requirement — Further, there was no warrant for the conclusion that the provision applied only in cases where a sixth shift was worked — Board stated Award was directed at work "on any day" on which an officer "has been booked off" and found applicant in the circumstances entitled to be paid as stated in award *re* all time worked on Tuesday at not less than time and a half — Railways 1066

[2]Appeal against decision of Commission (at 66 WAIG 245) *re* interpretation of part-time casual workers clauses — Appellant alleged Commission had erred in interpretation and declaration of award, and argued that the factual circumstances relating to performance of contract of employment compelled a conclusion that casual workers were in fact part-time workers — Full Bench found there was no basis for claim as Commission's declaration simply expressed the meaning which provisions clearly bore, and Commission was entitled to find that regularity of work was no more than an expression of intention which either party could reject — Full Bench stated although ongoing feature of work indicated employees concerned were not employed casually, it was not to say that their employment was not of a casual nature — Full Bench found it was not proven that employees concerned were incorrectly classified and suggested method for appropriate remedy would be to seek an amendment of the Award — Dismissed — Retail 1014

Site Allowance, safety footwear and protective clothing allowances sought at sites — Question of interpretation of safety footwear clause in Award — Commission stated and applied established principle *re* interpretations and found clause was silent *re* source of initial supply of safety footwear — Commission stated and applied principle *re* provision of work clothing and found approved safety footwear should be supplied by the employer — Commission refused claims *re* protective clothing due to insufficient evidence — Granted in Part — Electrical Engineering 1371

Appeal against Full Bench decision relating to no case to answer — Evidence of order of Commission against newspaper employees — Does the definition of "decision" contained in section 7 (1) control the meaning of the word decision in section 84 (2) — Full Bench and Appeal Court found the definition in section 7 (1) does not apply to section 84 — Principles of statutory construction — Intention of legislautre to leave appeal rights from Magistrate unaffected — Different nature of jurisdictions — Appeal dismissed — Newspaper Industry 1563

Appeal as to power of Commission to order production of documents — Not all confidential information relating to the work place is a trade secret — Meaning of trade secret — Information to be revealed not to be used for ulterior purposes — Not open to Full Bench to alter a decision merely on grounds of a perferred alternative — Appeal dismissed — Discussion of meaning of sections 24, 44, 33 (5), 27 (1), 27, 27 (1) (o), 49 (2a), 27 (1) (a), 44 (6) (b) 1582

Engine driver booked off at foreign station without request on Easter Monday — Meaning of the term "booked off" — When a driver is not "booked on" he is "booked off" — Complaint proved — Railway Industry 1714

Interpretation of Locomotive Engine Drivers award as to what hours make up time spent "off duty" — Transcript of earlier hearing revealed history of how parties initially meant the clause to be interpreted — Case histories dealing with words "off" and "on" duty — Railways 1703

ISOLATION ALLOWANCE —

Payment sought for salary at higher rate allegedly offered at interview — Respondent denied offer made and objected — Commission found no contract of employment existed as written offer of respondent not accepted by applicant and applicant entitled to redress from serious disadvantage *re* dislocation — Commission ordered additional annual allowance — Commission held speaking to the minutes conference at which respondent referred to district allowance and applicant claimed higher salary level and district allowance — Commission admitted arithmetical error and varied order by deleting previous allowance and awarding new allowance — Granted in part — Education 1115

JURISDICTION —

Alleged non-payment of benefits as prescribed in Commercial Travellers and Sales Representatives Award — Complainant claimed employer failed to pay commission — Defendant argued commission claimed did not fall within provisions of award — Magistrate found award did not provide for payment of commission therefore no jurisdiction to hear and determine the matter — Dismissed — Manufacturing (Aluminium) 1080

[2]Appeal against Commission's decision at 66 WAIG 264 to order one week's pay in lieu of notice in section 29 claim of unfair dismissal — Appellant argued that Commission had exceeded its jurisdiction as pay in lieu was an award provision — Full Bench found matter of respondent's dismissal to be within Commission's jurisdiction and the amount of any subsequent compensatory payment to be a discretionary judgement — Dismissed — Retail (Motor Vehicles) 1155

Employee dismissed for inability to remember instructions and repeated errors in handling financial transactions, and claimed compensation for unfair dismissal — Commission found it had no jurisdiction to entertain claim as applicants employment was governed by Federal Award in which specific clauses are provided to deal with questions in dispute — Commission however found, it could deal with the non "award" contractual benefits and granted claim for non "award" benefits — Granted in part — Government (Local) 1256

Employee not re-engaged at end of fixed term contract and claimed unfair dismissal — Question of jurisdiction — Commission found that the Public Service Arbitrator and Appeals Board had exclusive jurisdiction over industrial matters concerning government officers — Decision based on examination of IR Act and the established approach "that the general provision gives way to the specific" — Dismissed — Public Service 1254

CUMULATIVE DIGEST—*continued*

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JURISDICTION — *continued*

Complaint that defendants failed to pay *pro rata* annual leave and pay in lieu of notice in accordance with award — Defendants argued that complaints were "out of time" and therefore beyond Magistrate's jurisdiction — Magistrate found that amendment to section 82 of Act extended time within which application must be made from 12 months to six years — As amendment occurred within time limitation of existing law the new limitation would apply retrospectively and complaints may be appropriately determined — Subsequent to ruling on jurisdiction defendants pleaded guilty — Meat (Smallgoods) 1248

²Appeal to Full Bench against order of the Commission at 66 WAIG 1359 — Interpretation of Act relating to interim orders made from conciliation conferences — Section 44 provides that final and binding orders can only be made at conclusion of conciliation process — Full Bench found orders pursuant to section 32 cannot be issued in section 44 applications — As Commission purported to make interim order under section 32 in matter brought under section 44 it had exceeded its jurisdiction — Upheld — Halliwell — dissented — Iron Ore 1405

Claim that Industrial Magistrate cannot order discovery of documents — Inconsistency in Industrial Relations Act — Discussion of provisions of section 81 (2) (a), section 83 (8), section 113 (3) — Provisions of Justices Act — Industrial Magistrate Regulations do not empower an Industrial Magistrate to require a defendant to produce documents — Building Industry 1712

Notice of appeal lodged out of time — Notice of promotion sent to applicant's home within statutory time period — Appellant away from home relieving — Statutory provisions met — Appeal dismissed for want of jurisdiction — Hospital/Health Industry 1867

Appeal by former public servant for reinstatement under general powers of the Act — Public Service Arbitrator has exclusive jurisdiction in respect of industrial matters — Application of interpretation rule "*generalia specialibus non derogant*" — Rule that wherever there is a particular enactment and a general enactment in the same statute, the particular overules — Prior to incorporation of Constituent Authorities, Commission did not have jurisdiction for further evidence — Public Service 1579

²Appeal against order of Commission at 66 WAIG 1359 which directed appellant to do certain things — Full Bench found this appeal to raise identical issues to those of appeal No. 736 of 1986 at 66 WAIG 1405 — Upheld — Halliwell dissented — Iron Ore 1567

Alleged unfair dismissal — Applicant claimed reduction in working hours amounted to constructive dismissal in that it offered new employment under a significantly different contract and sought reinstatement in previous position or compensation — Respondent objected arguing that applicant had failed to resume her employment which meant applicant had either resigned or abandoned her employment — Commission found it was beyond its jurisdiction as presently constituted to deal with matter — Dismissed — Public Service 1758

²Appeal against Direction issued by Commission — Appellant claimed Commission had exceeded jurisdiction in issuing Direction pursuant to section 32 of IR Act 1979 out of a compulsory conference called pursuant to section 44 — Full Bench found appeal to be parallel to matter reported (at 66 WAIG 1405) — Upheld — Mining 1925

LEAVE WITHOUT PAY —

Employee dismissed after suspension on full pay during investigation of actions and review of behaviour — Applicant submitted termination harsh and unjust and claimed reinstatement without loss of wages and entitlements — Respondent opposed claim and submitted applicant was absent without leave and had history of complaints *re* abusive language, refusal to accept authority, attitude to work and consumption of alcohol — Respondent claimed applicant incapable of performing duties required of an employee — Commission noted applicant not summarily dismissed for misconduct but terminated in accordance with provision of award — Commission stated hospital did not adhere to established disciplinary dismissal procedure and found termination did not satisfy requirements of fairness — Commission ordered reinstatement with specific limitations imposed on continuing employment and deemed applicant to have been on leave without pay — Granted — Hospital (Engineering) 1097

LONG SERVICE LEAVE —

Claim to Appeal Committee for *ex gratia* payment of *pro rata* long service leave — As applicant failed to complete qualifying period specified by Long Service Leave (Government Wages Employees) Conditions no entitlement accrued — For appeal to succeed circumstances such as to warrant special consideration must be demonstrated — Dismissed — Beech dissented — Health 1250

Question of continuity of service and transmission of business — Discussion on onus of proof and shifting of onus from applicant to defendant when applicant makes out a *prima facie* case — Discussion on transfer of land and buildings, plant and equipment, consumables, records, legal nexus at privity, employees, business, business name, goodwill, licence, book debts, liabilities — Nursing Industry 1723

Claim for severances pay for cleaners based on long service leave criteria — Cleaning task in private hospital let to private contractors who consequently absorbed the two cleaners — Employees denied right to long service leave through no fault of their own — Payment granted — Private Hospital 1800

Application for exemption from provisions of Long Service Leave Act — Provisions of legislation relating to long service leave — Scheme approved by Federal and Other State Tribunals — Industrially unsound not to approve it — Approved — Oil Industry 1731

Claim by Field Supervisor Nurse for payment of *pro rata* Long Service Leave on termination — Award conveyed no entitlement as Applicant resigned prior to completion of qualifying period — Board found Applicant's resignation caused by deleterious effect of work on her health and Respondent's refusal to transfer her to a less demanding position — Circumstances warranted *ex gratia* payment to applicant — Granted — Health (Nursing) 1984

MANAGERIAL PREROGATIVE —

²Appeal against decision of Commission (at 66 WAIG 1373) to dismiss claim of unfair dismissal — Union claimed that Commission had not given proper weight to employees length of service, wrongly concluded employees performance and attitude towards his duties and failed to apply contemporary standards of industrial justice which were said to "require fair warning of conduct of performance" by an employer, before effecting dismissal on grounds of unsatisfactory service — Full Bench found preference of testimony is a matter of credibility entirely for the Commission — Full Bench found Commission's suggestion of "*ex gratia* payment" dispells appellants assertion of disregard for employees service and stated on issue of contemporary standards that each case must be looked at in light of its own circumstances — Full Bench found Commission correct in concluding that a further warning was not warranted — Dismissed — Cleaning 1291

²Appeal to Full Bench against order of the Commission at 66 WAIG 1359 — Interpretation of Act relating to interim orders made from conciliation conferences — Section 44 provides that final and binding orders can only be made at conclusion of conciliation process — Full Bench found orders pursuant to section 32 cannot be issued in section 44 applications — As Commission purported to make interim order under section 32 in matter brought under section 44 it had exceeded its jurisdiction — Upheld — Halliwell — dissented — Iron Ore 1405

Proposed change in store arrangements to employ storemen only on day shift — Principle of managerial prerogative means union must demonstrate employer exercising its right unfairly if claim is to succeed — Claim not proven and application dismissed — Iron Ore Industry 1779

CUMULATIVE DIGEST—*continued*

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MEAL BREAKS —
Variation sought *re* wage rates and meal breaks/allowances for Out of School Care—Playleaders — Applicant submitted claim was to rectify oversight to include 2.6 per cent national wage increase from April 1985 to restore parities upon which original award was erected — Respondent opposed claim and adduced evidence that wages increase would not be in the public interest at that time as award seriously threatened the viability of some centres where need was greatest — Commission found review of situation in progress and took into account competing interests of workers and children — Commission stated wages variation sought would not be in public interest but ordered that meal breaks and allowances clause be varied — Granted in part — Childrens Services 1038

MISCONDUCT —
Employee summarily dismissed for alleged misconduct — Applicant claimed unfair dismissal and sought reinstatement and compensation for earnings foregone — Respondent claimed negligence or complicity with former manager dismissed for theft of stock — Commission found nothing in evidence to implicate applicant in theft and declared dismissal unfair and unreasonable in all circumstances — Commission ordered reinstatement and compensatory payment for period of unemployment but applicant found alternative employment — Commission ordered respondent pay applicant as final settlement of compensation claim — Granted — Hotel 1091
[2]Appeal against Commission's decision (at 66 WAIG 782) to order reinstatement and compensation to employee dismissed for alleged social misconduct committed away from work and outside work hours — Appellant argued that termination was justified on grounds that employees misconduct was detrimental to the working relationship [see Tomlinson's Case (1944) 1 AII ER 537] and would have had an adverse effect on the company's desire in securing maximum efficiency — Full Bench acknowledged circumstances of a "closed town" and accepted that employer had an interest in affairs within the community outside the work place and noted that where no police are in permanent residence, conduct of a similar nature could justify termination — However Full Bench found there was no direct connection between the incident and employees employment and furthermore incident had not struck at essential elements in the contract of services [see (1959) 32 AII ER 285] — Full Bench found circumstances quite different to Tomlinsons case and Commission decision fair having regard for all of the circumstances — Dismissed — Mining 1008
Demotion of iron ore shovel driver and assistant — Driver left assistant in charge of shovel to attend to private business — Driver claimed shovel was always in view and he had radio access to assistant at all times — Problems were compounded by drivers refusing to answer questions at time of incident — Commission's view was that penalty was too harsh — Drivers were to be reclassified to previous positions after three months — Iron Ore Industry 1790
Employee (check out chick) showed impatience to customer and was given official notice on a warning card — Evidence given as to the time and precise nature of the offence — Warning was reduced in severity by order of Commission — Retail Shopping 1814

NATURAL JUSTICE —
Assistant Industrial Inspector — Appellant claimed denial of natural justice as neither party was interviewed prior to selection for position — PAB decision must be as per criteria in section 80Z A (5) which means hearing matter "*de novo*" and not merely reviewing decision of recommending authority — PAB found both applicants of equal experience with recommended applicant possessing superior communcation skills — Appellant unable to establish better claim — Dismissed — Industrial Relations 1379
Appeal from order of CICS — Poor company performance led to attempts to change work practices including restrictive work practices —
Moratorium order from Compulsory Conference led to lockout — Industrial Appeal Court found orders can issue under section 32 to aid conciliation processes — Claim of denial of natural justice because Commission conferred separately with other parties dismissed — Section 32 (2) offers a general power to Commission and should not be read down — Provisions of section 26 (3) — Definition of industrial matter — Appeal dismissed — Iron Ore Industry 1553

NEXUS —
Wage increase and alteration to the classification structure sought for boiler controllers, turbine drivers, unit auxiliary attendant and auxiliary plant attendant — Applicant union claimed alteration of mode of operation of power station had caused increased responsibilities — Respondent contended changes in boiler controller and turbine drivers duties minimal — Commission accepted duty changes were minimal but found on evidence that change to mode of operation of plant and importance of continued operation to entire system measurably increased responsibilities of classifications under review — Commission concluded that increase in wage rates awarded in recent decision (at 66 WAIG 538) should be applied to maintain relativity — Commission refused to alter present classification structure shown as satisfactory and directed parties to confer *re* schedule — Granted in part — Energy 1041
[2]Appeal against Commission's decision (at 66 WAIG 330) to grant a licence allowance to electrical fitters — Appellant alleged Commission had erred in that allowance granted was in breach of Wage Fixation Principles and broke a well established nexus and wage rate relativities within the company — Furthermore Commission disregarded settled rule of Principles *re* new awards; ie where consideration is given to rate and conditions which are provided at the time the award issues — Respondent argued that an anomaly existed as employees working for appellant instituted the only part of the electrical workforce not currently paid an allowance — Full Bench found appellant's submission of Principle 10, was not an absolute rule — Full Bench found principles do not exclude the need for independent judgment and stated Commissions obligation was to determine whether granting of allowance was fair and equitable, which the Commission had not done having been satisfied that there was no scope for flow-on claims — Dismissed — Printing 1010
[3]Wage increase sought by union in that an inequity existed between Federal and State Awards — Union claimed *prima facie* evidence proved, the Federal Commission had recognised "over award payments" by increasing them by indexation movements affected to award rates of wages — Respondent refuted claim and argued that the method of operation with the Australian Commission had resulted in an indexation of over award payments automatically without proper and careful consideration as envisaged by Wage Fixation Principles and should not be construed as recognition or authorisation — CICS noted that implementation of wage freeze while ratification for increase was sought had disadvantaged workers in the industry in this State — CICS stated that to ensure a "fair go all round" and in applying principle espoused by this Commission in that workers in this State should not be disadvantaged when compared with comparable employees in the Commonwealth found that the claim should be allowed — Granted — Manufacturing (Soft Drinks) 1317
New award sought to cover non-academic salaried staff employed by WAIT — Union claimed for broad-banding amongst other things as previous agreement had a recognised nexus — with Public Service Conditions — Parties eventually reached an agreement on the terms of award — Commission found broad-banding to be most significant change and noted that unlike Public Service Board the respondent would have a minimal increase in labour costs — Commission found respondents proposal to multi-skill level one employees as a significant change in work value to justify the small increase in wage costs — Commission found changes well within the guidelines and stated that applicant's members had to accept broadening of duties while respondent had to implement them rather than regard changes as academic — Granted — Education 1179

CUMULATIVE DIGEST—*continued*

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ON-CALL —
Alleged breach of Award *re* failure to pay overtime as prescribed in Award — Question *re* whether employee held himself in readiness as required by the clause — Magistrate found employee had been required to do after hours service — However Magistrate found restrictions upon employee during rostered period was not of quality or nature that would bring him within the category of a person who holds himself in readiness as envisaged in clause — Dismissed — Airconditioning and Refrigeration 1246

OVER-AWARD PAYMENT —
[3]Wage increase sought by union in that an inequity existed between Federal and State Awards — Union claimed *prima facie* evidence proved, the Federal Commission had recognised "over award payments" by increasing them by indexation movements affected to award rates of wages — Respondent refuted claim and argued that the method of operation within the Australian Commission had resulted in an indexation of over award payments automatically without proper and careful consideration as envisaged by Wage Fixation Principles and should not be construed as recognition or authorisation — CICS noted that implementation of wage freeze while ratification for increase was sought had disadvantaged workers in the industry in this State — CICS stated that to ensure a "fair go all round" and in applying principle espoused by this Commission in that workers in this State should not be disadvantaged when compared with comparable employees in the Commonwealth found that the claim should be allowed — Granted — Manufacturing (Soft Drinks) 1317

OVERTIME —
Alleged breach of Award *re* failure to pay overtime as prescribed in Award — Question *re* whether employee held himself in readiness as required by the clause — Magistrate found employee had been required to do after hours service — However Magistrate found restrictions upon employee during rostered period was not of quality or nature that would bring him within the category of a person who holds himself in readiness as envisaged in clause — Dismissed — Airconditioning and Refrigeration 1246
Failure to pay correct overtime — Applicants were paid for some overtime and had worked outside of normal hours at request of employer — Furniture Trades 1720

PART-TIME —
[2]Appeal against decision of Commission (at 66 WAIG 245) *re* interpretation of part-time casual workers clauses — Appellant alleged Commission had erred in interpretation and declaration of award, and argued that the factual circumstances relating to performance of contract of employment compelled a conclusion that casual workers were in fact part-time workers — Full Bench found there was no basis for claim as Commission's declaration simply expressed the meaning which provisions clearly bore, and Commission was entitled to find that regularity of work was no more than an expression of intention which either party could reject — Full Bench stated although ongoing feature of work indicated employees concerned were not employed casually, it was not to say that their employment was not of a casual nature — Full Bench found it was not proven that employees concerned were incorrectly classified and suggested method for appropriate remedy would be to seek an amendment of the Award — Dismissed — Retail 1014

PENALTY RATES —
Averaging system to fix penalties — System at Geraldton higher than other abattoirs due to area conditions — Defailed history of the averaging system including mulesing operations — Aged structure of kill, one per cent increase granted — Penalty for mulesing increased two per cent — Geraldton increased three per cent — Averaging system inserted in Meat Industry Award — Ram lambs excluded — Meat Industry 1794

PROCEDURAL MATTERS —
Stay of order relating to right of entry — Serious issues in grounds of appeal including overlapping jurisdiction between Commission and Industrial Magistrate — Stay on right of entry ordered — Building 1417
Application stay of order pending appeal — Intention of Commission to inspect a site prior to making an order out of a conference — Claim of no jurisdiction on grounds that an "industrial matter" didn't exist — Application refused — Building Industry — Building ... 1415
[1]Application for further and better particulars in matter 758 of 1986 — CICS found that the particulars in question had already been made sufficiently clear — Dismissed — Iron Ore 1414
Appeal from order of CICS — Poor company performance led to attempts to change work practices including restrictive work practices — Moratorium order from Compulsory Conference led to lockout — Industrial Appeal Court found orders can issue under section 32 to aid conciliation processes — Claim of denial of natural justice because Commission conferred separately with other parties dismissed — Section 32 (2) confers a general power to Commission and should not be read down — Provisions of section 26 (3) — Definition of industrial matter — Appeal dismissed — Iron Ore Industry 1553
New rosters introduced — Stay normally requested on the ground that the appellant would suffer serious inconvenience — Applicant did not discharge obligation of showing a balance of convenience in its favour — Dismissed — Newspaper Industry 1625
Application for a stay against a minute of a proposed declaration not to order reinstatement — President found there was at that stage no order to be appealed — Application not correctly founded and was dismissed — Iron Ore Industry 1619
Procedural discussion *re* awarding of costs under section 27 (c) 1753
Application to stay order for the production of documents — Tests to be adopted are similar to other jurisdictions (i.e.) a serious issue to be tried and the balance of convenience favouring a stay — Refusal of adjournment to seek representation by legal counsel not a breach of natural justice — Orders of the kind are not unusual or exceptional — Applicant did not demonstrate there is a serious question to be tried — Application for stay of order refused — Shop and Retail Industry 1627
Stay of operation on order pending appeal — Question of recovery of moneys if appeal successful — Granted — SEC 1625

CUMULATIVE DIGEST—*continued*

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PROMOTION APPEAL —

Clerk in Charge — Appellant raised issue of discovery of documents relevant to preparation of his appeal — PAB's view is that documentation particularly relating to reasons for appointment should be freely available — Application may be made for Commission to exercise its power under section 27 (O) to issue an Order of Discovery should documentation be withheld — PAB found appellent failed to establish better claim to position — Dismissed — Crown Law 1379

Car and Wagon Examiner — PAB found appellant to be best applicant on Application Forms — No interviews conducted — Appellant passed over due to adverse comment by District Officer who do not give evidence and thereby substantiate opinion — Appeal upheld — Transport (Rail) 1378

Assistant Industrial Inspector — Appellant claimed denial of natural justice as neither party was interviewed prior to selection for position — PAB decision must be as per criteria in section 80Z A (5) which means hearing matter "*de novo*" and not merely reviewing decision of recommending authority — PAB found both applicants of equal experience with recommended applicant possessing superior communication skills — Appellant unable to establish better claim — Dismissed — Industrial Relations 1379

Appellant did not possess the necessary academic pre-requisites and had no right of appeal — Appellant acknowledged he couldn't meet qualification criteria — To be an "eligible employee" under section 80ZA requires completion of training — Not an "eligible" employee — Appeal incompetent — Public Service 1868

Notice of appeal lodged out of time — Notice of promotion sent to applicant's home within statutory time period — Appellant away from home relieving — Statutory provisions met — Appeal dismissed for want of jurisdiction — Hospital/Health Industry 1867

Senior Officer — Parties to appeal had equal qualification, service, experience and knowledge — As required by Act, PAB made completely new assessment of parties' merits unencumbered by preconceived ideas such as evidence of interviewing officers and staff appraisal forms — Appellant failed to establish better claim — Dismissed — Prisons 1869

Resources Officer — Leave given to withdraw appeals against promotion to Items number 54 5064, 54 5065, 54 5057, 54 5059 and 54 5062 — Remaining appeals heard concurrently by agreement between parties and PAB measured appellant's claims against each recommended officer — PAB accepted necessity to appoint experienced persons but found Recommending Authority came close to discounting qualifications too heavily especially in ligh of Act's section 80 (x) (1) definition of an "eligible employee" with regard to academic qualifications — Dismissed — Community Services 1866

Senior Draughtsman — Appellant based claim on greater experience but PAB must select person who will do job best — Immediate supervisor had opportunity to observe both parties acting in position and gave direct evidence that recommended applicant was better suited to the duties — PAB found recommended applicant had better aptitude — Dismissed — SEC 1869

Director of Nursing Services — PAB discounted question of "availability to take up the post in a reasonable time" as being criterion unfair to appellant who was on approved study leave — Recommended applicant had previously held position in question which showed better experience as appellant had only relieving experience — Dismissed — Hospital Services 1870

PUBLIC INTEREST —

Variation sought *re* wage rates and meal breaks/allowances for Out of School Care—Playleaders — Applicant submitted claim was to rectify oversight to include 2.6 per cent national wage increase from April 1985 to restore parities upon which original award was erected — Respondent opposed claim and adduced evidence that wages increase would not be in the public interest at that time as award seriously threatened the viability of some centres where need was greatest — Commission found review of situation in progress and took into account competing interests of workers and children — Commission stated wages variation sought would not be in public interest but ordered that meal breaks and allowances clause be varied — Granted in part — Childrens Services 1038

²Appeal to Full Bench against order of the Commission at 66 WAIG 1359 — Interpretation of Act relating to interim orders made from conciliation conferences — Section 44 provides that final and binding orders can only be made at conclusion of conciliation process — Full Bench found orders pursuant to section 32 cannot be issued in section 44 applications — As Commission purported to make interim order under section 32 in matter brought under section 44 it had exceeded its jurisdiction — Upheld — Halliwell — dissented — Iron Ore 1405

REDUNDANCY —

Employee made redundant due to closure of mine — Applicant union claimed employee entitled to award benefit *re* redundancy — Union members struck to ensure re-employment — Respondent submitted employee unsuitable for further work due to alcohol and drug offence, threat to safety, bad attitude towards supervisors and unauthorised absenteeism and company had no obligation toward his future employment — Commission stated burden of proof lay with company — Commission found no connection between drug conviction and unsuitability for employment, witnesses testimony not reliable and that company made no case against employee's attitude to supervisors, threat to safety or absenteeism — Commission found on evidence and submissions that company had not made case against employee and declared employee entitled to benefits prescribed in award — Granted — Mining (Iron Ore) 1099

Claim for reinstatement as a result of redundancy — Necessary to look at actions by employer to ensure actions are not harsh or unreasonable — Performance of work and attitude were criteria that were not in question; however applicant had very poor attendance record — Dismissed — Nickel Mining 1780

Termination due to economic climate and deterioration in nickel prices — Criteria for selection in redundancy programme were efficiency attitude, attendance record — Last on first off not an automatic policy — Evidence indicated applicant was a person capable of major disruption — Right of respondent to restructure its business in a *bona fide* manner — Comment on convenor system in mining industry and difficulties in disciplining convenors — Mining Industry 1750

REINSTATEMENT —

Applicant claimed harsh/unfair dismissal and sought reinstatement or some other assistance considered fair and reasonable — Respondent argued burden of proof on applicant to satisfactorily demonstrate company had acted harshly, unjustly or unfairly — Commission preferred evidence of company's witnesses where conflict of testimony — Further, original testimony of applicant, when subjected to long and rigorous cross examination was seriously weakened — Commission found no case of unfair dismissal was made — Dismissed — Mining (Iron Ore) 1103

Employee dismissed for alleged unsuitability for employment — Applicant claimed unfair dismissal, sought reinstatement and submitted respondent forwarded false allegations to justify dismissal — Respondent asserted failure to keep correct time procedures, adhere to callout schedules, complete register, hold courses, conduct meetings, organise overtime crew to check stock and organise clean-up of spilt chemicals and continued to do so despite counselling — Further during investigation that applicant signed false time cards, absent without authority, gave false information, was abusive and showed poor attitude towards supervisor — Commissioner noted only one person responsible for termination present at investigation — Commission on evidence found overtime sheets inaccurate and falsified, that failure to comply with policy *re* callout register not dereliction of duty — Commission found respondent's documentary evidence *re* investigation frail with interpretation and interpolation and matter result of personality conflict — Commission declared applicant unfairly dismissed and issued interim order that respondent offer applicant three month contract of employment — Final order issued at later hearing where Commission satisfied both parties agreed contract could continue — Granted — Hydrocarbons 1085

CUMULATIVE DIGEST—*continued*

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REINSTATEMENT — *continued*

Employee dismissed after suspension on full pay during investigation of actions and review of behaviour — Applicant submitted termination harsh and unjust and claimed reinstatement without loss of wages and entitlements — Respondent opposed claim and submitted applicant was absent without leave and had history of complaints *re* abusive language, refusal to accept authority, attitude to work and consumption of alcohol — Respondent claimed applicant incapable of performing duties required of an employee — Commission noted applicant not summarily dismissed for misconduct but terminated in accordance with provision of award — Commission stated hospital did not adhere to established disciplinary dismissal procedure and found termination did not satisfy requirements of fairness — Commission ordered reinstatement with specific limitations imposed on continuing employment and deemed applicant to have been on leave without pay — Granted — Hospital (Engineering) 1097

Employee summarily dismissed for alleged misconduct — Applicant claimed unfair dismissal and sought reinstatement and compensation for earnings foregone — Respondent claimed negligence or complicity with former manager dismissed for theft of stock — Commission found nothing in evidence to implicate applicant in theft and declared dismissal unfair and unreasonable in all circumstances — Commission ordered reinstatement and compensatory payment for period of unemployment but applicant found alternative employment — Commission ordered respondent pay applicant as final settlement of compensation claim — Granted — Hotel 1091

[2]Appeal against Commission's decision (at 66 WAIG 782) to order reinstatement and compensation to employee dismissed for alleged social misconduct committed away from work and outside work hours — Appellant argued that termination was justified on grounds that employees misconduct was detrimental to the working relationship [see Tomlinson's Case (1944) 1 AII ER 537] and would have had an adverse effect on the company's desire in securing maximum efficiency — Full Bench acknowledged circumstances of a "closed town" and accepted that employer had an interest in affairs within the community outside the work place and noted that where no police are in permanent residence, conduct of a similar nature could justify termination — However Full Bench found there was no direct connection between the incident and employees employment and furthermore incident had not struck at essential elements in the contract of services [see (1959) 32 AII ER 285] — Full Bench found circumstances quite different to Tomlinsons case and Commission decision fair having regard for all of the circumstances — Dismissed — Mining 1008

Strike action taken when employee dismissed for alleged failure to comply with company policy, notwithstanding warning — Employees claimed unfair dismissal, victimisation and reinstatement — Further that dismissal was an example to others from new manager — Respondent refuted claims — Commission rejected conspiracy theory and stated dismissal a result of a "new broom policy" — Commission found dismissal unwarranted and would not resolve "troublesome state of affairs" at warehouse and suggested introduction of agreed policy to prevent strikes *re* future dismissals — Granted in Part — Retail 1374

Demotion of iron ore shovel driver and assistant — Driver left assistant in charge of shovel to attend to private business — Driver claimed shovel was always in view and he had radio access to assistant at all times — Problems were compounded by drivers refusing to answer questions at time of incident — Commission's view was that penalty was too harsh — Drivers were to be reclassified to previous position after three months — Iron Ore Industry 1790

Appeal from decision of Commission to allow Robe River Iron Associates to dismiss an employee — Detailed reasons by President as to legal principles involved in cases of misconduct justifying summary dismissal — President found Commission's decision should not be overturned — Other members of Bench disagreed with President's opinion and ordered reinstatement on their interpretation of the Act and evidence — Lenghty discussion of sections 6, 26, 32 (7), 32 — Iron Ore Industry 1570

Bulldozer driver was ascertained to be unfit for work due to alcohol and was given a later starting time — The driver continued to drink — The employer terminated his employment as a result stating the safe operation of the mine under the Mines Act and Regulations as one reason — Application dismissed — Mining Industry 1739

SAFETY —

Payment sought for time lost during stoppage over safety issue — Union claimed emergency vehicle and fire extinguisher essential for employees safety and held stoppage after incident involving injured truck driver — Respondent argued stoppage not related to safety issues and no payment should be made as claim had left employer in untenable position — Commission stated question to answer was whether hazard of sufficient moment existed to extent to justify action taken — Commission found substance in respondent's proposition that stoppage was due to reaction to other industrial matters on site, not apprehension of unsafe working conditions — Commission refused to accept safety conditions claim as *bona fide* — Dismissed — Construction (Civil Engineering) 1103

Employee considered unsuitable for work requirements — Applicant alleged employee presented forseeable risk caused by epileptic condition and sought order allowing it to transfer employee to another section — Respondent union claimed company treated employee unfairly and employee not prepared to accept reduction of income, loss of overtime earnings and loss of opportunity to gain experience and job satisfaction — Commission stated event forseeable risk on medical evidence and weight of onus on company to ensure no occurrence outweighed probability consideration — Commission stated no evidence to support loss of income from overtime earnings — Commission declared company's original decision to dismiss employee not a consideration and found transference fair solution — Granted — Mining (Iron Ore) 1106

Employee made redundant due to closure of mine — Applicant union claimed employee entitled to award benefit *re* redundancy — Union members struck to ensure re-employment — Respondent submitted employee unsuitable for further work due to alcohol and drug offence, threat to safety, bad attitude towards supervisors and unauthorised absenteeism and company had no obligation toward his future employment — Commission stated burden of proof lay with company — Commission found no connection between drug conviction and unsuitability for employment, witnesses testimony not reliable and that company made no case against employee's attitude to supervisors, threat to safety or absenteeism — Commission found on evidence and submissions that company had not made case against employee and declared employee entitled to benefits prescribed in award — Granted — Mining (Iron Ore) 1099

Claim for the provision of a light vehicle to be used by spotters when assisting iron ore trucks to unload — Arguments that the provision of light vehicles in the pit was an unsafe work practice — Problems of maintaining vehicles — Nature of environment claim granted — Iron Ore Industry 1816

Refusal to wear safety glasses continually — Workers stood down — Onus on employer to show cause — Obligation of employer to provide a safe system of work — Obligation of employee to avoid exposure to unnecessary risk — Commands must fall within scope of contract of service and must be reasonable — Direction was unreasonable and did not give rise to a contractual obligation of obedience — Railways 1568

SHIFT WORK —

Interpretation of payment for travelling time clause in Award — Applicant sought declaration that travelling time in excess of four hours but less than seven did not entitle worker to payment for minimum shift of seven hours — Respondent argued worker entitled to payment for whole of shift as long as travelling time amounts to four hours or more — Commission found no need to rely on historical controversy as interpretation of the normal and natural meaning of the words sufficient to make meaning clear — Commission declared affirmative view that worker entitled to payment for minimum shift of seven hours — Railways 1065

Interpretation sought *re* hours clause in relevant award — Question *re* whether an officer called to work on a day (Tuesday) on which he was "booked" off is/was entitled to a rate of not less than time and a half — Respondent argued applicant was not "booked off" and further, provision under review was designed to recompense officers for having to work an extra or sixth shift in any particular week —

CUMULATIVE DIGEST—*continued*

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SHIFT WORK —*continued*

Respondent argued in instant case applicant was not entitled to the penalty prescribed in the clause as he was not required to work a sixth shift — Board noted letter and spirit of award provided that if an officer is required to work on his rostered day off, he should be paid for work on that day at the rate of time and a half unless given 12 hours' notice of changed requirement — Further, there was no warrant for the conclusion that the provision applied only in cases where a sixth shift was worked — Board stated Award was directed at work "on any day" on which an officer "has been booked off" and found applicant in the circumstance entitled to be paid as stated in award *re* all time worked on Tuesday at not less than time and a half — Railways 1066

Reconstructed roster required because of closure of newspapers — Wage indexation principles and discussion of pernicious claims — Rostered day off no longer obligatory — Rotating rostered day off granted rather than a fixed rostered day off — Newspaper Industry 1805

Growth in business necessitated introduction of new plant and equipment and an afternoon shift — Current workforce would not agree to work a rotating day and afternoon shift — Union claimed that the non rotatability of the afternoon shift should lead to higher compensation for those employed on afternoon shift — Previous Commission decisions regarding compensation for non rotatable shifts discussed (65 WAIG 457; 65 WAIG 1117) — Found there should be no additional penalty on company for agreeing to employees wishes — Brushware Industry 1640

STAY OF PROCEEDINGS —

'Stay of operation of Commission Order (at 66 WAIG 768) sought, pending outcome of appeal — Appellant claimed if order is/was not stayed, the appeal would be rendered wholly nugatory — Further substantial question of law and *prima facie* raised a sufficient case to warrant staying of the order — Respondent argued there was no serious issue to be tried and balance of convenience favoured dismissing application — President applied two questions *re* whether there was a serious question to be answered and whether balance of convenience favoured a stay being granted — President found material presented demonstrated an affirmation to both questions — Further, President disagreed with respondents view *re* issues not of such importance as to be within the public interest and noted the appeal raises/raised a matter relating to the powers of the Commission — President found appellant would be deprived of the right which it asserts by result of a successful appeal if it was required to comply with the order pending the appeal — Granted — Building 1024

SUPPLEMENTARY AND SERVICE PAYMENTS —

Increase in wages granted to furniture tradesmen on ground that current classification of carpenter and joiner is suspect to a "proper rate of pay" within meaning of principle 6 (b) (4) of wage fixation principles — History of principle 6 (b) (4) of wage fixation principles — History of incidence of supplementary payments in awards from 1976 to 1986 — Furniture Trades 1608

TECHNOLOGICAL CHANGE —

[2]Alteration to Constitutional rule sought by BBU — Applicant union claimed employees of can plant connected to brewing industry should be eligible for membership and constitutional coverage and disclaimed interest in any other can plant — Objections were received from AMWSU who have constitutional coverage of machinery and press operators — Qualified engineers evidenced operators not strictly metal workers — Representatives of buyers of can plant asserted operations would best be served by AMWSU maintaining constitutional and award coverage for production and mechanical activities to avoid demarcation disputes — Full Bench stated production or dependence by brewery upon regular and substantial supply did not provide sufficient connection which must be shown to permit altered constitutional rule to operate to have practical effect — Full Bench stated obligation to refuse application unless satisfied *re* matters subsections 4 and 5 of Act and is consistent with Act — Obligations of Full Bench *re* section 55 at 62 WAIG 511 — Full Bench unanimously found application not successful as result of absence of necessary connection with brewing industry and acquisition of plant by new owner, strength of intervenors case *re* demarcation and AMWSU coverage previously successfully contended — Dismissed 1017

Allowance sought by power station operators based on alleged extra responsibility arising from technological change — Applicant union claimed change in work value warranted increase in wage rates — Respondent objected to and opposed claim — Commission stated previous CICS decision (64 WAIG 605) applied to proceedings considering submissions and evidence *re* significant nett addition to work requirements — Further that lack of co-operation of employees to install equipment and differences in opinion of witnesses made impossible Commission conclusion that proposed technology would increase skills of operating personnel to warrant higher remuneration — Commission found union's evidence failed to satisfy requirements of Wage Principles — Dismissed — Mining (Iron Ore) 1110

TERMINATION —

Applicant claimed harsh/unfair dismissal and sought reinstatement or some other assistance considered fair and reasonable — Respondent argued burden of proof on applicant to satisfactorily demonstrate company had acted harshly, unjustly or unfairly — Commission preferred evidence of company's witnesses where conflict of testimony — Further, original testimony of applicant, when subjected to long and rigorous cross examination was seriously weakened — Commission found no case of unfair dismissal was made — Dismissed — Mining (Iron Ore) 1103

Employee resigned when refused annual leave at requested time — Applicant claimed "constructive termination" and sought compensation — Respondent denied claims contending refusal was not "harsh or unjust" — Commission concluded question *re* "constructive dismissal" did not arise — Furthermore that the annual leave clause charged the employer with the obligation to initiate the leave; "to be taken as soon as is practicable after falling due" — Commission found it was not practical for employee to take leave at time requested — Dismissed — Nursing (Private) 1111

Employee considered unsuitable for work requirements — Applicant alleged employee presented forseeable risk caused by epileptic condition and sought order allowing it to transfer employee to another section — Respondent union claimed company treated employee unfairly and employee not prepared to accept reduction of income, loss of overtime earnings and loss of opportunity to gain experience and job satisfaction — Commission stated event forseeable risk on medical evidence and weight of onus on company to ensure no occurrence outweighed probability consideration — Commission stated no evidence to support loss of income from overtime earnings — Commission declared company's original decision to dismiss employee not a consideration and found transference fair solution — Granted — Mining (Iron Ore) 1106

Employee dismissed for alleged unsuitability for employment — Applicant claimed unfair dismissal, sought reinstatement and submitted respondent forwarded false allegations to justify dismissal — Respondent asserted failure to keep correct time procedures, adhere to callout schedules, complete register, hold courses, conduct meetings, organise overtime crew to check stock and organise clean-up of spilt chemicals and continued to do so despite counselling — Further during investigation that applicant signed false time cards, absent

CUMULATIVE DIGEST—*continued*

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TERMINATION — *continued*

without authority, gave false information, was abusive and showed poor attitude towards supervisor — Commissioner noted only one person responsible for termination present at investigation — Commission on evidence found overtime sheets inaccurate and falsified, that failure to comply with policy *re* callout register not dereliction of duty — Commission found respondent's documentary evidence *re* investigation frail with interpretation and interpolation and matter result of personality conflict — Commission declared applicant unfairly dismissed and issued interim order that respondent offer applicant three month contract of employment — Final order issued at later hearing where Commission satisfied both parties agreed contract could continue — Granted — Hydrocarbons 1085

Employee dismissed after suspension on full pay during investigation of actions and review of behaviour — Applicant submitted termination harsh and unjust and claimed reinstatement without loss of wages and entitlements — Respondent opposed claim and submitted applicant was absent without leave and had history of complaints *re* abusive language, refusal to accept authority, attitude to work and consumption of alcohol — Respondent claimed applicant incapable of performing duties required of an employee — Commission noted applicant not summarily dismissed for misconduct but terminated in accordance with provision of award — Commission stated hospital did not adhere to established disciplinary dismissal procedure and found termination did not satisfy requirements of fairness — Commission ordered reinstatement with specific limitations imposed on continuing employment and deemed applicant to have been on leave without pay — Granted — Hospital (Engineering) 1097

Employee summarily dismissed for alleged unsatisfactory performance — Applicant claimed unfair dismissal and denied he did not perform contract satisfactorily and claimed compensation, annual leave and car allowance — Respondent argued applicant employed on six month trial and exercised right not to reaffirm contract due to applicants inability to turn around profitability — Commission noted claim might be seen as for contractual benefits, where reinstatement not suggested as compensation — Commission preferred evidence of respondents witnesses, found applicant employed for six months with review, performance less than ideal and failed to increase level of sales as said at outset — Commission stated contract terminable on one month's notice short of conduct justifying summary dismissal — Commission ordered balance of salary due for month of January and compensation for lost benefit for use of car — Granted in part — Manufacturing (Electrical) 1082

Employee summarily dismissed for alleged misconduct — Applicant claimed unfair dismissal and sought reinstatement and compensation for earnings foregone — Respondent claimed negligence or complicity with former manager dismissed for theft of stock — Commission found nothing in evidence to implicate applicant in theft and declared dismissal unfair and unreasonable in all circumstances — Commission ordered reinstatement and compensatory payment for period of unemployment but applicant found alternative employment — Commission ordered respondent pay applicant as final settlement of compensation claim — Granted — Hotel 1091

Employee dismissed for alleged unsatisfactory service — Applicant claimed unfair dismissal, sought compensation and stated she would not accept reinstatement — Respondent submitted dissatisfaction with employees performance and dress — Commission stated principles from Undercliffe case (65 WAIG 1985) applied *re* right of employer to terminate contract — Commission found applicant had not been unfairly dismissed — Dismissed — Retail (Fast Food) 1090

Employee dismissed for "fault" of service — Complainant alleged dismissal due to inability of employer to afford to keep employee and claimed accrued annual leave payments — Defendant maintained employee did not keep records of stock and receipts and banking of moneys — Magistrate satisfied termination of employment due to blame-worthiness amounting to fault and therefore employee not entitled to accrued annual leave — Dismissed — Retail 1080

[2]Appeal against Commission's decision (at 66 WAIG 782) to order reinstatement and compensation to employee dismissed for alleged social misconduct committed away from work and outside work hours — Appellant argued that termination was justified on grounds that employees misconduct was detrimental to the working relationship [see Tomlinson's Case (1944) 1 All ER 537] and would have had an adverse effect on the company's desire in securing maximum efficiency — Full Bench acknowledged circumstances of a "closed town" and accepted that employer had an interest in affairs within the community outside the work place and noted that where no police are in permanent residence, conduct of a similar nature could justify termination — However Full Bench found there was no direct connection between the incident and employees employment and furthermore incident had not struck at essential elements in the contract of services [see (1959) 32 All ER 285] — Full Bench found circumstances quite different to Tomlinsons case and Commission decision fair having regard for all of the circumstances — Dismissed — Mining 1008

[2]Appeal against Commission's decision at 66 WAIG 264 to order one week's pay in lieu of notice in section 29 claim of unfair dismissal — Appellant argued that Commission had exceeded its jurisdiction as pay in lieu was an award provision — Full Bench found matter of respondent's dismissal to be within Commission's jurisdiction and the amount of any subsequent compensatory payment to be a discretionary judgement — Dismissed — Retail (Motor Vehicles) 1155

Employee dismissed for inability to remember instructions and repeated errors in handling financial transactions, and claimed compensation for unfair dismissal — Commission found it had no jurisdiction to entertain claim as applicants employment was governed by Federal Award in which specific clauses are provided to deal with questions in dispute — Commission however found, it could deal with the non "award" contractual benefits and granted claim for non "award" benefits — Granted in part — Government (Local) 1256

Employee not re-engaged at end of fixed term contract and claimed unfair dismissal — Question of jurisdiction — Commission found that the Public Service Arbitrator and Appeals Board had exclusive jurisdiction over industrial matters concerning government officers — Decision based on examination of IR Act and the established approach "that the general provision gives way to the specific" — Dismissed — Public Service 1254

[2]Appeal against decision of Commission (at 66 WAIG 1373) to dismiss claim of unfair dismissal — Union claimed that Commission had not given proper weight to employees length of service, wrongly concluded employees performance and attitude towards his duties and failed to apply contemporary standards of industrial justice which were said to "require fair warning of conduct of performance" by an employer, before effecting dismissal on grounds of unsatisfactory service — Full Bench found preference of testimony is a matter of credibility entirely for the Commission — Full Bench found Commission's suggestion of "*ex gratia* payment" dispells appellants assertion of disregard for employees service and stated on issue of contemporary standards that each case must be looked at in light of its own circumstances — Full Bench found Commission correct in concluding that a further warning was not warranted — Dismissed — Cleaning 1292

Employee dismissed for unsatisfactory work performance and sought compensation for unfair dismissal — Commission found from evidence employee carried out duties as required but without conscientious effort expected or required therefore final warning would have been ineffective or short lived — Commission found termination fair and *ex gratia* payment made should stand — Dismissed — Cleaning 1373

Strike action taken when employee dismissed for alleged failure to comply with company policy, notwithstanding warning — Employees claimed unfair dismissal, victimisation and reinstatement — Further that dismissal was an example to others from new manager — Respondent refuted claims — Commission rejected conspiracy theory and stated dismissal a result of a "new broom policy" — Commission found dismissal unwarranted and would not resolve "troublesome state of affairs" at warehouse and suggested introduction of agreed policy to prevent strikes *re* future dismissals — Granted in Part — Retail 1374

Claim for reinstatement — Evidence of verbal and physical abuse — Legal principles dealing with employer, employees and Commissions rights — Non compliance with code of practise only one factor — Dismissed Iron Ore Industry — Iron Ore 1484

Question of whether a retrenchment was due to a downturn in business or dismissal on the grounds of performance — Sales performance of applicant of concern to Company — Administrative procedures should have been implemented to insure formal counselling and warning — $17 000 compensation granted — Machinery Sales Industry 1760

Appeal from decision of Commission to allow Robe River Iron Associates to dismiss an employee — Detailed reasons by President as to legal principles involved in cases of misconduct justifying summary dismissal — President found Commission's decision should not be overturned — Other members of Bench disagreed with President's opinion and ordered reinstatgement on their interpretation of the Act and evidence — Lengthy discussion of sections 6, 26, 32 (7), 32 — Iron Ore Industry 1570

Termination of teacher — Complaints by students — Assessment by Head of Department and Superintendent — Inefficient as Lecturer Grade A — Applicant had not completed an obligatory course in teacher training — Dismissed — Technical Lecturer 1871

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TERMINATION — *continued*

Termination due to economic climate and deterioration in nickel prices — Criteria for selection in redundancy programme were efficiency attitude, attendance record — Last on first off not an automatic policy — Evidence indicated applicant was a person capable of major disruption — Right of respondent to restructure its business in a *bona fide* manner — Comment on convenor system in mining industry and difficulties in disciplining convenors — Mining Industry 1750

Appeal by former public servant for reinstatement under general powers of the Act — Public Service Arbitrator has exclusive jurisdiction in respect of industrial matters — Application of interpretation rule "*generalia specialibus non derogant*" — Rule that wherever there is a particular enactment and a general enactment in the same statute, the particular overules — Prior to incorporation of Constituent Authorities, Commission did not have jurisdiction for further evidence — Public Service 1579

Dismissal of employee due to decline in work performance — Earlier work performance most satisfactory — Employee not given warning — Dismissal not only course of action available to employer — Compensation of $4 500 granted — Warehouse Employee 1815

Alleged unfair dismissal — Applicant claimed reduction in working hours amounted to constructive dismissal in that it offered new employment under a significantly different contract and sought reinstatement in previous position or compensation — Respondent objected arguing that applicant had failed to resume her employment which meant applicant had either resigned or abandoned her employment — Commission found it was beyond its jurisdiction as presently constituted to deal with matter — Dismissed — Public Service 1758

TRANSFER —

Employee considered unsuitable for work requirements — Applicant alleged employee presented forseeable risk caused by epileptic condition and sought order allowing it to transfer employee to another section — Respondent union claimed company treated employee unfairly and employee not prepared to accept reduction of income, loss of overtime earnings and loss of opportunity to gain experience and job satisfaction — Commission stated event forseeable risk on medical evidence and weight of onus on company to ensure no occurrence outweighed probability consideration — Commission stated no evidence to support loss of income from overtime earnings — Commission declared company's original decision to dismiss employee not a consideration and found transference fair solution — Granted — Mining (Iron Ore) 1106

TRAVELLING —

Interpretation of payment for travelling time clause in Award — Applicant sought declaration that travelling time in excess of four hours but less than seven did not entitle worker to payment for minimum shift of seven hours — Respondent argued worker entitled to payment for whole of shift as long as travelling time amounts to four hours or more — Commission found no need to rely on historical controversy as interpretation of the normal and natural meaning of the words sufficient to make meaning clear — Commission declared affirmative view that worker entitled to payment for minimum shift of seven hours — Railways 1065

UNIONS —

[2]Alteration to Constitutional rule sought by BBU — Applicant union claimed employees of can plant connected to brewing industry should be eligible for membership and constitutional coverage and disclaimed interest in any other can plant — Objections were received from AMWSU who have constitutional coverage of machinery and press operators — Qualified engineers evidenced operators not strictly metal workers — Representatives of buyers of can plant asserted operations would best be served by AMWSU maintaining constitutional and award coverage for production and mechanical activities to avoid demarcation disputes — Full Bench stated production or dependence by brewery upon regular and substantial supply did not provide sufficient connection which must be shown to permit altered constitutional rule to operate to have practical effect — Full Bench stated obligation to refuse application unless satisfied *re* matters subsections 4 and 5 of Act and is consistent with Act — Obligations of Full Bench *re* section 55 at 62 WAIG 511 — Full Bench unanimously found application not successful as result of absence of necessary connection with brewing industry and acquisition of plant by new owner, strength of intervenors case *re* demarcation and AMSWU coverage previously successfully contended — Dismissed 1017

[2]Alteration of rules and declaration *re* State branch of Federal organisation sought by MWU — Applicant union sought to substitute new set of rules and change name — No party desiring to be heard in opposition to application — Full Bench satisfied that procedural requirements complied with and proposed to make order authorising Registrar to register rules in accordance with application after errors and omissions corrected — Full Bench ordered and directed Registrar, upon receipt of advice from union that Federal Industrial Registrar allowed alteration of rules of Seamen's Union of Australia, to register substituted rules — Operative date prospective — Granted — Maritime 1022

[2]Appeal against decision of Commission at 66 WAIG 495 to make FLAIEU and WATAEA joint applicants for first award for Burswood Island Casino — In previous decision Commission exercised discretionary judgement pursuant to the Act thus for appeal to succeed "some fundamental error afflicting the exercise of discretion" must be proved — Full Bench found no errors of fact demonstrated and that Commission had acted in fairness, having due regard for the interests of both persons directly affected and the community at large — Dismissed 1151

Application for union to observe its rules by allowing a position of shop steward to remain intact — Homeswest are engaged in maintenance work and the question was argued that maintenance work should not attract a shop steward, rather it should be construction work — President determined good and sufficient reason was needed for cancellation of long existing position — Position of shop steward to remain — Building Industry 1621

Running of election for six candidates — Claim that a number of candidates were not eligible — Proper construction of union rules indicated candidates were eligible to nominate — College Academics 1617

Complaint that a membership roll for a non existing branch of a Federal union was used to determine eligibility to vote in State election — Further complaint that financial state members were excluded from the roll — Problems of co-existence of State and Federal unions when one identity is claimed — An error in relation to the register of members was found — Building Industry 1623

Application by Collieries Staff Association to add various engineering and professional staff to its constitution — Objecting unions claimed overlapping coverage would result — Application granted with deletion of reference to professional and graduate engineers — Coal Mining Industry 1598

CUMULATIVE DIGEST—*continued*

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VICTIMISATION —
Strike action taken when employee dismissed for alleged failure to comply with company policy, notwithstanding warning — Employees claimed unfair dismissal, victimisation and reinstatement — Further that dismissal was an example to others from new manager — Respondent refuted claims — Commission rejected conspiracy theory and stated dismissal a result of a "new broom policy" — Commission found dismissal unwarranted and would not resolve "troublesome state of affairs" at warehouse and suggested introduction of agreed policy to prevent strikes *re* future dismissals — Granted in Part — Retail 1374

WAGES —
Alleged non-payment of benefits as prescribed in Commercial Travellers and Sales Representatives Award — Complainant claimed employer failed to pay commission — Defendant argued commission claimed did not fall within provisions of award — Magistrate found award did not provide for payment of commission therefore no jurisdiction to hear and determine the matter — Dismissed — Manufacturing (Aluminium) 1080
Payment sought for salary at higher rate allegedly offered at interview — Respondent denied offer made and objected — Commission found no contract of employment existed as written offer of respondent not accepted by applicant and applicant entitled to redress from serious disadvantage *re* dislocation — Commission ordered additional annual allowance — Commission held speaking to the minutes conference at which respondent referred to district allowance and applicant claimed higher salary level and district allowance — Commission admitted arithmetical error and varied order by deleting previous allowance and awarding new allowance — Granted in part — Education 1115
[2]Appeal against Commission's decision to grant extraneous responsibility allowance for boilermakers employed at Pannawonica working without the supervision of a Foreman (at 66 WAIG 277) — Full Bench found the claim contravened the Wage Fixation Principles as it failed to meet the requirement to demonstrate changes in work value sufficient to warrant payment of the allowance — Upheld — Mining (Iron Ore) 1007
Wage increase and alteration to the classification structure sought for boiler controllers, turbine drivers, unit auxiliary attendant and auxiliary plant attendant — Applicant union claimed alteration of mode of operation of power station had caused increased responsibilities — Respondent contended changes in boiler controller and turbine drivers duties minimal — Commission accepted duty changes were minimal but found on evidence that change to mode of operation of plant and importance of continued operation to entire system measurably increased responsibilities of classifications under review — Commission concluded that increase in wage rates awarded in recent decision (at 66 WAIG 538) should be applied to maintain relativity — Commission refused to alter present classification structure shown as satisfactory and directed parties to confer *re* schedule — Granted in part — Energy 1041
Allowance sought by power station operators based on alleged extra responsibility arising from technological change — Applicant union claimed change in work value warranted increase in wage rates — Respondent objected to and opposed claim — Commission stated previous CICS decision (64 WAIG 605) applied to proceedings considering submissions and evidence *re* significant nett addition to work requirements — Further that lack of co-operation of employees to install equipment and differences in opinion of witnesses made impossible Commission conclusion that proposed technology would increase skills of operating personnel to warrant higher remuneration — Commission found union's evidence failed to satisfy requirements of Wage Principles — Dismissed — Mining (Iron Ore) 1110
Variation sought *re* wage rates and meal breaks/allowances for Out of School Care—Playleaders — Applicant submitted claim was to rectify oversight to include 2.6 per cent national wage increase from April 1985 to restore parities upon which original award was erected — Respondent opposed claim and adduced evidence that wages increase would not be in the public interest at that time as award seriously threatened the viability of some centres where need was greatest — Commission found review of situation in progress and took into account competing interests of workers and children — Commission stated wages variation sought would not be in public interest but ordered that meal breaks and allowances clauses be varied — Granted in part — Childrens Services 1038
Wage increase sought for instrument hands due to increased duties and responsibilities — Applicant union sought to retain differential between two elements of two man team when amalgamations of two sections into one resulted in employees learning new skills and modes of operation — Respondent submitted work value not changed after amalgamation therefore increased wage rates not warranted — Commission found first issue on Wage Fixation Principle (63 WAIG 2210) *re* Work Value Changes was not satisfied — Commission on evidence concluded changes not significant for creation of new classification and stated existing wage rates equitable — Commission refused claim and directed parties to confer *re* title of positions — Dismissed — Water Supply 1059
[3]General Order for 2.3 per cent increase in awards of Commission pursuant to section 51 (2) sought — No party argued that there were good reasons that effect not be given to the National Wage Decision — Granted subject to each union's committment to make no claims outside Wage Principles 1139
[3]Wage increase sought by union in that in inequity existed between Federal and State Awards — Union claimed *prima facie* evidence proved, the Federal Commission had recognised "over award payments" by increasing them by indexation movements affected to award rates of wages — Respondent refuted claim and argued that the method of operation within the Australian Commission had resulted in an indexation of over award payments automatically without proper and careful consideration as envisaged by Wage Fixation Principles and should not be construed as recognition or authorisation — CICS noted that implementation of wage freeze while ratification for increase was sought had disadvantaged workers in the industry in this State — CICS stated that to ensure a "fair go all round" and in applying principle espoused by this Commission in that workers in this State should not be disadvantaged when compared with comparable employees in the Commonwealth found that the claim should be allowed — Granted — Manufacturing (Soft Drinks) 1317
[2]Appeal against Commission's decision (at 66 WAIG 1115) to grant increased remuneration package *re* — salary and district allowance — Appellant alleged that Commission had erred in that Order issued relates to a remuneration package which does not correspond to an appropriate point in the relevant salary scale — Furthermore appellant argued it was inequitable that the Order provided for a reduction in allowance determined by any increase in salary pursuant to the award — Full Bench found Commissions decision provided the expected remuneration and the reduction of the allowance by the amount of any increase to salary not inconsistent with the purpose of fixing the minimum level of remuneration — Dismissed — Education 1292
Does a stoppage of 1½ hours break continuity of service to determine which rate annual leave should be paid at — Cases referring to meaning of continuous employment — Balance of day after stoppage was completed at the higher rate of pay — Commission found annual leave should be paid at the higher rate — Railway Industry 1780
Increase in wages granted to furniture tradesmen on ground that current classification of carpenter and joiner is suspect to a "proper rate of pay" within meaning of principle 6 (b) (4) of wage fixation principles — History of incidence of supplementary payments in awards from 1976 to 1986 — Furniture Trades 1608
Appeal against decision granting increased rates of power station workers — Circumstances of the case gave scope to the application of comparative wage justice without circumventing Wage Fixation Principle 4 — SEC Power Workers 1589
Complaint that income tax was deducted from sum required to be paid as compensation — Income Tax Assessment Act obliges deduction — Complaint dismissed — Entertainment/Music Industry 1714
Dispute referred from anomalies conference *re* the rates of wage to be paid for small construction work principally in service work and workshop work in Air Conditioning and Thermal Insulation awards — Disagreement as to the nature and extent of agreement in anomalies conference — Claim granted on grounds of injustices — Metal Trades 1600
Increase in rate of wage to engine drivers in emergency power house — Changes of duties minimal but mode of operation of station and importance have increased the responsibilities of the classifications — SEC 1652

CUMULATIVE DIGEST—*continued*

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WORK VALUE —

Composite allowance sought for maintenance minor works employees and in addition a responsibility allowance for leading hands — Parties agreed that due to additional supervisory duties for leading hands the work value Principle applied — However parties disagreed *re* composite allowance — Applicant claimed employees suffer various disabilities during conduct of duties and should qualify for an averaged rate of Special Rates and Provisions in award — Respondent suggested a 12 month collection period for statistical data to assess an appropriate amount should claim be granted — Further rejected suggestion by claimant that similar allowance to case at 59 WAIG 1312 applicable as no new character of work — Commission granted responsibility allowance on ground it met criteria of the Principles and total cost minimal — Commission accepted principle of claim for composite allowance but dismissed it due to lack of evidence to indicate a correct quantum — Granted in Part — Engineering (Govt) 1108

[1]Appeal against Commission's decision to grant extraneous responsibility allowance for boilermakers employed at Pannawonica working without the supervision of a Foreman (at 66 WAIG 277) — Full Bench found the claim contravened the Wage Fixation Principles as it failed to meet the requirement to demonstrate changes in work value sufficient to warrant payment of the allowance — Upheld — Mining (Iron Ore) 1007

Wage increase and alteration to the classification structure sought for boiler controllers, turbine drivers, unit auxiliary attendant and auxiliary plant attendant — Applicant union claimed alteration of mode of operation of power station had caused increased responsibilities — Respondent contended changes in boiler controller and turbine drivers duties minimal — Commission accepted duty changes were minimal but found on evidence that change to mode of operation of plant and importance of continued operation to entire system measurably increased responsibilities of classifications under review — Commission concluded that increase in wage rates awarded in recent decision (at 66 WAIG 538) should be applied to maintain relativity — Commission refused to alter present classification structure shown as satisfactory and directed parties to confer *re* schedule — Granted in part — Energy 1041

Allowance sought by power station operators based on alleged extra responsibility arising from technological change — Applicant union claimed change in work value warranted increase in wage rates — Respondent objected to and opposed claim — Commission stated previous CICS decision (64 WAIG 605) applied to proceedings considering submissions and evidence *re* significant nett addition to work requirements — Further that lack of co-operation of employees to install equipment and differences in opinion of witnesses made impossible Commission conclusion that proposed technology would increase skills of operating personnel to warrant higher remuneration — Commission found union's evidence failed to satisfy requirements of Wage Principles — Dismissed — Mining (Iron Ore) 1110

Wage increase sought for instrument hands due to increased duties and responsibilities — Applicant union sought to retain differential between two elements of two man team when amalgamations of two sections into one resulted in employees learning new skills and modes of operation — Respondent submitted work value not changed after amalgamation therefore increased wage rate not warranted — Commission found first issue on Wage Fixation Principle (63 WAIG 2210) *re* Work Value Changes was not satisfied — Commission on evidence concluded changes not significant for creation of new classification and stated existing wage rates equitable — Commission refused claim and directed parties to confer *re* title of positions — Dismissed — Water Supply 1059

New award sought to cover non-academic salaried staff employed by WAIT — Union claimed for broad-banding amongst other things as previous agreement had a recognised nexus — with Public Service Conditions — Parties eventually reached an agreement on the terms of award — Commission found broad-banding to be most significant change and noted that unlike Public Service Board the respondent would have a minimal increase in labour costs — Commission found respondents proposal to multi-skill level one employees as a significant change in work value to justify the small increase in wage costs — Commission found changes well within the guidelines and stated that applicant's members had to accept broadening of duties while respondent had to implement them rather than regard changes as academic — Granted — Education 1179