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CUMULATIVE DIGEST

MATTERS REFERRED TO IN DECISIONS OF INDUSTRIAL APPEAL COURT, INDUSTRIAL COMMISSION AND INDUSTRIAL MAGISTRATES CONTAINED IN VOL. 67 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

ACT — INTERPRETATION OF —

Clerk (Reception) — Promoting Authority claimed PAB lacked jurisdiction as vacancy was classified at same levels as position occupied by Appellant thus "promotion" was not involved — PAB found itself to have jurisdiction by virtue of section 80ZA(10) which provides for appeal provisions of Act to apply to such an applicant as if he were an applicant for promotion — PAB also found Appellant not to have better claim to vacancy — Dismissed — Hospital Services 1308

[2]Appeal aginst decision of Commission (67 WAIG 988) ordering compensation to employee found to be unfairly dismissed — Appellant argued Commission lacked power under the Industrial Relations Act to order compensation in lieu of reinstatement — Full Bench found that where dismissal was unfair and reinstatement inappropriate the assessment of adequate compensation was an appropriate alternative form of fair and equitable relief — Full Bench also found decision of Commission was fairly able to be reached from material before it — Dismissed — Iron Ore 1104

Applicant sought 2.3 per cent increase in allowances for Industrial Agreement — Applicant claimed increase should be backdated to date of operation of Commission General Order — Commission found Act did not empower it to give retrospective effect to Agreement variations — Granted in part — Iron Ore 1163

[2]Referral of question of law to Full Bench by Government School Teachers' Tribunal *re* whether appeal brought pursuant to section 78(1)(b)(iii) of Act should be heard as a strict appeal, rehearing or *de novo* — Full Bench found nothing in Act suggesting limitations of teacher's right to challenge punishments imposed — Full Bench found matter should be heard by way of rehearing if grounds of appeal so warrant — Education 1124

Interpretation sought of Industrial Relations Act with regard to jurisdiction *re* "employees" subject to Tertiary Education Academic Staff (Teachers College) Award — Commission found Industrial Relations Act of 1979 had excluded these employees from its jurisdiction by its definition of "industrial matter" which in effect negated the award provisions — Commission found, as no power existed over these employees by definition applicant should be free to withdraw application and made whatever fresh application it saw fit — Withdrawn by leave — Education — Lecturers 1206

[1]Appeal against reference of matter to Commission in Court Session by Government School Teachers' Tribunal purporting to use powers conferred by section 27 of Act — Industrial Appeal Court found Commission in Court Session to have no jurisdiction to hear and determine the application, the Government School Teachers' Tribunal to have exclusive jurisdiction to hear and determine the matter, and that Government School Teachers' Tribunal had no power to refer matter to Commission in Court Session — Upheld and remitted to Government School Teachers' Tribunal for further hearing and determination — Education 1523

[2]Appeal against decision of Commission (67 WAIG 850) to vary Agreement by including provision for paid union meetings — Appellant claimed Commission relied on material that was not properly before it and was therefore inadmissable — Appellant also claimed decision to be in contravention of Wage Fixing Principles and thus section 43 (2) of Act — Full Bench found material in question to have been before Commission in Court Session proceedings to which Appellant was party — Consequently Full Bench found Appellant to have been aware of material and further to have been afforded a hearing where it had opportunity to contest material — Full Bench also found not to have acted outside Principles, to have determined matter on merit and that it was open to Commission to find as it did as an exercise of discretionary judgment — Dismissed — Iron Ore 1723

[2]Question of law — Applicant claimed agent for Respondent was a "Legal Practitioner" within the meaning of the Industrial Relations Act and objected to his appearance for the Respondent — Agent had surrendered Practice Certificate with the intention to demonstrate that it could no longer be considered that he came within the definition — Full Bench found while agent was entitled to renounce his right to carry on practice, there were no provisions for him to revoke or surrender the Annual Practice Certificate and therefore it is still valid and current — Question answered in the affirmative 2233

ALLOWANCES —

Application to vary clause in award — Applicant sought increase in district allowance so as to reflect two movements in the consumer price index — Commission found variation to be within confines of wage fixing principles and set operative date of increase as being the date at which the rates were agreed by the parties — Granted — Health Welfare 1177

Claim for muster allowance and disability allowance for barge employees living and working on barge connected with North Rankin A project — Commission found claim for muster allowance was unnecessary as this was already included in "barge allowance" and that granting this part of claim would promote disputation — Commission granted an allowance for employees who were forced to attend muster drills outside of work hours and granted further disability allowance to barge employees for unique disabilities in their working environment — Granted in part — Oil and Gas Industry 1277

Claim for order declaring withdrawal from agreement to pay power subsidy to employee is fair and reasonable — Applicant claimed managerial prerogative and that due consultation had taken place — Respondent argued for no removal without justification — Commission found the dicta applying to managerial prerogative was relevant, the respondent had shown that substantial consultation had taken place and that removal of allowance was not harsh or unjustified — Commission noted that agreements made between parties for industrial relations purposes can change to meet changed circumstances given the parties' acceptance of the need to work within Industrial Relations Act — Declared in favour of Applicant — Mining Industry 1256

Applicant sought 2.3 per cent increase in allowances for Industrial Agreement — Applicant claimed increase should be backdated to date of operation of Commission General Order — Commission found Act did not empower it to give retrospective effect to Agreement variations — Granted in part — Iron Ore 1163

Variation of district allowance clause and automatic annual adjustment of this allowance based on CPI sought — Respondent opposed the claims, operational date and also the automatic adjust subclause — Commission granted variation as sought — Granted — Health and Welfare Industry 1162

[3]Claim for reinstatement of policy of over award payment for certain allowances and bonuses — Applicant said an inequity existed with conditions affecting employees of other companies in same industry — Respondent based objection on fact that claim was outside Wage Fixing Principle 9(c) and 6.—CICS stated the principles to be the only consideration in this case — CICS found no evidence of altered work value to justify a new allowance under Principle 9.—Allowances, and that the applicant could not solely rely on comparative wage justice to argue a case under Principle 6.—Anomalies and Inequities — Dismissed — Metal Industry 1132

Application to vary award — Applicant sought removal of entitlements to first class travel as it related to interstate and overseas air travel — Commission found that a traditional nexus existed between police and public sector employees and that the public sector employees no longer received these conditions, therefore it could not justify retention of these conditions for police — Commission found applicant only sought to remove the unqualified right to first class travel and that the strength of evidence meant police must comply with new public sector standards — Granted — State Government 1188

CUMULATIVE DIGEST—*continued*

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ALLOWANCES — *continued*

Application for industry allowance and amount for personal insurance on basis that other employees in fire fighting and fire prevention industry receive one — Commission found industry allowance paid to other employees to have no relevance to workshop metal trades employees — Commission also found wage structure of award comprehends disabilities for which allowance sought and there have been no changes to work or conditions which principle relating to allowances requires — Dismissed — Firefighting and Fire Prevention 1280

Site allowance sought for disabilities — Commission found workers were already compensated for associated disabilities by an allowance granted by Commission — Commission found employees on site whose presence prompted claim had not been engaged in construction work — Dismissed — Building 1278

Dispute *re* site allowance — Applicant sought allowances for disabilities not covered by award — Respondent claimed no unique site features — Commission found on evidence site allowance was necessary as award did not fully comprehend associated disabilities — Granted — Building 1434

Application for variation of vehicle allowances in award — Applicant claimed rates established by an agreed formula were out of date — Respondent initially opposed claim that formula was inappropriate but chose only to oppose date of operation — Commission found correct date was as the respondent had suggested this being the beginning of a fiscal year as specified in the award — Granted — Public Service 1362

Site allowance sought for disabilities — Commission found no above average disabilities existed and that there were insufficient grounds to warrant a claim for allowances of this nature — Dismissed — Public Works 1442

Application for variation of district allowance clause in award — Date of operation of adjustment to award clause in dispute — Commission found it had power to grant full retrospectivity in special circumstances and in this case a clear nexus had been established with this allowance and that being paid to government wages employees — Commission found equity demanded these employees be afforded full retrospectivity as a result of delays in formulating calculations of allowance rates and for period of hearing of application — Granted — Health and Welfare 1349

Applicant sought order that bans in support of award disability allowances for carpenters be lifted — Commission found that bans were imposed out of genuine sense of injustice at the inadequacies of disability allowances — Commission warned other groups with grievances about allowances that each claim must be considered on its merits and industrial action is merely one factor to be considered — Commission found full disability allowance should be applied — Dismissed — Transport (Rail) 1397

Application for site allowance for disabilities, supply of protective clothing and footwear, rest and recreation leave, living away from home allowance and an operative date for order based on time of first worker on site — Commission found unique site disabilities existed greater than those involved in the civil disciplines on the project; also that metal trades employees were not receiving the entitlement to footwear and that operative date could be determined by Commission as from the date of commencement of work — Other claims dismissed — Commission ordered site allowance, safety footwear and operative date — Granted in Part — Metal Construction 1438

Applicant sought order for a disability allowance to be paid to tradespersons and their assistants for repair/maintenance work performed in Rail workshop — CICS found applicant had not discharged the onus of establishing case — Dismissed — Mining (Iron Ore) 1532

Applicant sought order for new allowance to replace "on call and call back" allowance in award; also for cessation of gratuity payment, reduction of annual leave and imposition of rental charges on accommodation — Commission found the total package presented by the parties to be acceptable and represented a fair attempt at a balance between the needs of the State and the demands of the medical profession — Granted — Public Health and Welfare Services 1611

Applicant sought variation of power station allowance in award based on increased disabilities and comparison with work performed by engineer trades employees employed by the respondent — Respondent raised question of allowance increase being contrary to wage fixing principles and denied any historical nexus — Commission found no sound basis for comparison claimed however the allowance should be increased for storemen employed at Kwinana and Muja based on comparison of disabilities encountered at Bunbury — Commission found range of disabilities and time of exposure warranted increases at both Kwinana and Muja which were in accordance with work value wage fixing principle — Granted In Part — Electrical Power 1604

Application for site allowance for disabilities not covered by award — Commission found that the site did not fit the industry pattern for allowances — Dismissed — Construction 1675

Application for site allowance — Commission found no evidence of disabilities above the award provisions and the project was straightforward in nature — Dismissal — Construction 1676

Applicant sought order for special allowance for live line linesmen performing silicone grease removal from pole top insulators — Commission found that the definition and wages of linesmen — live line was included in the Engineering Trades (SEC) Award and that no meaningful comparison could be drawn with disabilities encountered by other classifications — Commission found that union could not show that this work was exclusively performed by live line linesmen and therefore a compensatory allowance was out of the question — Dismissed — Electrical Power 1671

[2]Appeal against decision of Commission at (67 WAIG 848) to grant a site allowance for construction work on Forrest Place Redevelopment site — Full Bench found that the allowance was not set in accordance with the provisions of the "Sapri" decision and also that the ratification of the agreement of the parties did not take into full account the wage fixing principles — Full Bench found that decision should be suspended and the Bench found that decision should be suspended and the matter remitted to the Commission for further hearing of an appropriate quantum allowance — Upheld — Construction 1731

[3]Applicant sought order for compensation of travel allowance for full period of employment — CICS found that onus of proof lay with applicant to establish entitlement to this allowance under his contract of employment and that this employee was employed subject to the Dairy Factory Workers Award therefore this was a matter for the Industrial Magistrate — Dismissed — Pastoral Industry 1753

Higher allowance sought for increased disabilities confronted in hosing down of ore trucks — Applicant union claimed installation of water cannon had created more discomfort i.e. need to wear protective gear and due to fixed positions of cannons, operators were being exposed to the elements — Respondent refuted claim and cited ratification of awards by Commission and thereby the acceptance of the Union that current allowance was appropriate to the task — Commission found on evidence and inspection that water cannon had introduced a higher level of disability in above task — However Commission was unable to conclude that the impact of the water cannon is sufficient to warrant the elevation of disability allowance to that of higher group — Dismissed — Mining 1882

[2]Appeal against decision at (67 WAIG 1604) *re* increase in disability allowance — Appellant alleged Commission erred in applying work value changes principle and submitted that claim had failed to satisfy the strict test required — Furthermore increase granted was against weight of evidence and contrary to substantial merit of case — Full Bench found no jurisdiction on the evidence to increase existing allowance — Furthermore Full Bench found any increase would be subject to the second tier ceiling — Upheld — Electrical Power 1745

Confirmation of Redundancy agreement — Applicant Union claimed agreement was to counter problem of redundancy and unemployment between jobs in the building construction industry and sought continuation of agreement — Respondent opposes claim with view of withdrawing from agreement and advanced reason that it would be *ultra vires* the Building Industry (Code of Conduct) Act 1986 — Code of Conduct (Obligations of Employers) 1986 — Commission found *prima facie* there is no prohibition in the legislation on the continuation of an agreement reached between the parties, however approval or ratification of such agreement is necessary by appropriate Industrial Tribunal — Furthermore Commission found no conflict with the present Wage Fixation Principles and concluded *status quo* to be maintained — Granted — Building and Construction 2367

Introduction of 38-hour week and question *re* date of operation of award variations — Employers largely consented to variations in terms claimed — Restriction sought for limitation to ordinary hours to 10 hours per day as offsets did not sufficiently minimise the costs of the introduction of the 38-hour week for the purposes of the Wages Principles — Commission found offsets are sufficient to satisfy the strictures of the Standard Hours Principle and the Allowance Principle for other variations — Granted — Food Processing. 2268

CUMULATIVE DIGEST—*continued*

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ALLOWANCES — *continued*

²Appeal against decision of Government School Teachers Tribunal (at 67 WAIG 1689) *re* interpretation of Locality Allowance — Appellant argued that allowance should apply equally to all teachers and not on a proportional basis according to hours worked for part-time teachers — Respondent refuted claim — Full Bench found Tribunal had erred in finding that clause in award was ambiguous and in using extrinsic aids to interpret the said award — Full Bench found true interpretation provided entitlement to allowance for part-time teachers at the same rate payable to full-time teachers — Upheld — Education 2232

Claim *re* site allowances — Applicant Unions claimed that rate of site allowance for electrical and metal tradesmen engaged in particular project to be in line with that of building tradesmen determined by Australian Arbitration Commission — Commission found from information presented that particular nature of the project warrants the payment of a site allowance as disabilities experienced by tradesmen are not comprehended under the awards — Commission found just and equitable that allowance be at rate determined for building trade — Exclusion of allowance for lift employees — Granted in Part — Electrical Contracting 2370

Claim *re* allowance for working in confined space — Board of Reference by majority found, using the established principles, claimant could not show that the work was "unusual" — Furthermore Board found wages contained a margin to compensate employees for difficult conditions experienced — Board noted claim that changing nature of railway wagons made working under them more cramped, stooped and confined and found claim could be for work value rather than confined space — Dismissed — Government Railways 2322

ANNUAL LEAVE —

Applicant sought order for payment of *pro rata* annual leave due following termination of contract of employment — Commission found verbal contract did include annual leave as a condition and that *pro rata* payment should be paid to applicant — Granted — Leisure Industry 1226

²Appeal against decision of Magistrate (67 WAIG 906) to dismiss complaint that employee had not received paid annual leave pursuant to Cliffs Robe River Iron Associates Iron Ore Production and Processing Agreement — Full Bench found employee had already been paid a proportion of his annual leave entitlement and as the amount of that prepayment exceeds the Respondent's liability it cannot sensibly be said that Agreement has been breached — Dismissed — Iron Ore 1121

APPEAL —

²Referral of question of law to Full Bench by Government School Teachers' Tribunal *re* whether appeal brought pursuant to section 78(1)(b)(iii) of Act should be heard as a strict appeal, rehearing or *de novo* — Full Bench found nothing in Act suggesting limitations of teacher's right to challenge punishments imposed — Full Bench found matter should be heard by way of rehearing if grounds of appeal so warrant — Education 1124

²Appeal against decision of Commission at (67 WAIG 1289) *re* compensation awarded — Appellant claimed Commission had erred in concluding employees conduct did not warrant summary dismissal and in awarding compensation which were beyond jurisdiction, pursuant to section 23 — Full Bench found that the usual tests as to whether the contract of service had been damaged and if employee's actions constituted a fundamental breach of rules and regulation were correctly applied — Furthermore Full Bench found that granting of compensation was open to the Commission and had been fairly applied — Dismissed — Liquor and Accommodation . 1529

²Appeal against decision of Commission (at 67 WAIG 893) regarding retrospective operation of wage increases still the subject of negotiations — Full Bench found it mandatory that a direction, order or direction given orally under section 32 (4) be reduced to writing "as soon as practicable" — Full Bench also found that such orders must be prefaced by a preamble to provide an explanation as to the circumstances in which it was made — The order in question was made against a background of industrial action which provided impetus for the decision to fix the operative date of wages increases under negotiation — Question as to whether Commissioner erred in law in making the order pursuant to section 32 (3) (c) — Full Bench found the Commissioner erred in failing to preface the order with a preamble, and in making the order pursuant section 32 (3) (c) when at least part of that order was the result of arbitration of the matter — Appeal upheld — Order suspended — Remitted for further hearing — Transport 1525

²Appeal against decision of Commission (67 WAIG 850) to refuse to stay or dismiss proceedings for variation of Agreement on grounds that same matter was already subject of application before Commission in Court Session — Full Bench found refusal to grant a stay or dismiss proceedings to be a "finding" and therefore appealable — Full Bench found issues in instant application to be the same as those before Commission in Court Session but application had been made in good faith and would not prejudice Appellant — Full Bench found Commission procedures to be sufficiently elastic to permit a new application in interests of maximum expedience and minimum legal form — Dismissed — Iron Ore 1723

²Appeal against decision of Commission at (67 WAIG 1410) to dismiss application for unfair dismissal — Full Bench found no substance to any of the grounds of appeal and that original reason for dismissal were substantial and not unfair — Dismissal — Construction 1736

²Appeal against decision of Commission at (67 WAIG 848) to grant a site allowance for construction work on Forrest Place Redevelopment site — Full Bench found that the allowance was not set in accordance with the provisions of the "Sapri" decision and also that the ratification of the agreement of the parties did not take into full account the wage fixing principles — Full Bench found that decision should be suspended and the Bench found that decision should be suspended and the matter remitted to the Commission for further hearing of an appropriate quantum allowance — Upheld — Construction 1731

²Appeal against decision of Commission at (67 WAIG 1251) *re* dismissal of claim for contractual entitlements — Appellant claimed there was evidence that was not produced at initial hearing which would have established the contract of employment — Full Bench found in favour of Appellant in that decision of an order for dismissal was due to lack of evidence — Full Bench found circumstances were extraordinary and remitted case for further hearing and determination — Upheld — Bloodstock Industry 1747

²Appeal against decision of Commission at (67 WAIG 1003) *re pro rata* long service leave being awarded — Full Bench found compensatory orders *re pro rata* long service leave entitlements were justified, where an employee has evinced an intention to continue indefinitely in employment but due to employers business had been retrenched or terminated — Full Bench found injury sustained by employee in accident prevented him from undertaking the duties of position and Appellant was required to compensate him for disability pursuant to the provisions of Workers Compensation and Assistance Act 1981 — Upheld — Meat Industry 1737

²Appeal against decision of Commission at (67 WAIG 1354) to grant paid leave during work time to non-english speaking employees for the purpose of english language tuition — Appellant claimed Commission lacked jurisdiction over what was essentially a social matter — Respondent argued the point as to the wide definition given by the Act to an "industrial matter" and that the question of english language leave was within that definition — Full Bench on examination of case law determined this to be an industrial matter over which the Commission had jurisdiction — Full Bench upheld the ground of appeal which claimed the order was incorrectly issued as being "by consent" but dismissed all other grounds for appeal — Upheld In Part — Public Works 1740

²Appeal against decision of Commission (at 67 WAIG 2300) to delete classification from one award, insert in another on basis of commonality and thereby enhance conditions of employees — Full Bench found presentation of appeal to have been merely an attempt to induce Full Bench to take different view of evidence rather than demonstrating an error of law or mistake of fact — Full Bench found decision to be result of Commission's discretionary judgment — Dismissed — Health and Welfare Services 2224

AWARDS —

Application to vary clause in award — Applicant sought increase in district allowance so as to reflect two movements in the consumer price index — Commission found variation to be within confines of wage fixing principles and set operative date of increase as being the date at which the rates were agreed by the parties — Granted — Health Welfare 1177

Applicant sought to standardise payment for "holding in readiness" and/or call-outs in five awards — Commission found that in light of there being no major differences between the parties the clause needed only to be redrafted — Commission dismissed a part of the respondent's counter proposal to do with "standby duty" as this was covered by new clause — Granted — Electrical Contracting 1158

CUMULATIVE DIGEST—*continued*

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AWARDS — *continued*

First award for parliamentary electorate secretaries sought — Wage Fixing Principles relating to first awards and work value require the maintenance of existing rates and conditions unless proved inappropriate — Commission found parties to have demonstrated that value of work performed warranted increased rates — Granted — State Government 1153

Variation of district allowance clause and automatic annual adjustment of this allowance based on CPI sought — Respondent opposed the claims, operational date and also the automatic adjust subclause — Commission granted variation as sought — Granted — Health and Welfare Industry 1162

Application to vary clauses in asward relating to allowances, wages, annual leave, hours, overtime, wet work, meals, contract of service, sick leave, protective clothing and inclusion of one new clause sought — Commission allowed application in part only and ordered the award be varied and consolidated — Granted in part — Maritime Industry 1169

Application to vary award — Applicant sought removal of entitlements to first class travel as it related to interstate and overseas air travel — Commission found that a traditional nexus existed between police and public sector employees and that the public sector employees no longer received these conditions, therefore it could not justify retention of these conditions for police — Commission found applicant only sought to remove the unqualified right to first class travel and that the strength of evidence meant police must comply with new public sector standards — Granted — State Government 1188

Applicant sought order that employees are performing storemen's duties and are covered by Foodland Associated Ltd (WA) Warehouse Award — Respondent opposed claim on grounds that work was security work properly covered by Cleaners and Caretakers Award — Commission found work in question was security work however declared that neither award adequately covered the employees — Wholesale/Retail 1300

Interpretation sought of Industrial Relations Act with regard to jurisdiction *re* "employees" subject to Tertiary Education Academic Staff (Teachers College) Award — Commission found Industrial Relations Act of 1979 had excluded these employees from its jurisdiction by its definition of "industrial matter" which in effect negated the award provisions — Commission found, as no power existed over these employees by definition applicant should be free to withdraw application and made whatever fresh application it saw fit — Withdrawn by leave — Education — Lecturers 1206

Application for award variation — Order sought for variation of Public Service Salaries Agreement by inclusion of new classification and various other amendments — Commission agreed to the proposed amendments and varied award by consent — Granted — Public Service 1365

Application to vary award — Applicant sought to vary scope of award to reflect new respondency due to amalgamation of teachers' colleges; amend hours of duty clause and adjust salary levels to reflect public service nexus and broadbanding — Commission chose to apply old wage fixing principles by consent and found costs of increase to be minimal — Commission also found other changes to merely formalise existing practices — Granted — Educational Services 1385

Application for new clause in award — Applicant claimed English language education should be made available to adult migrant employees without loss of pay during work hours — Respondent raised question of jurisdiction — Commission found it had jurisdiction over what was in this case an industrial matter — Commission found evidence that this practice would probably be successful and that long term benefits of granting leave on full wages for English tuition during working hours would be greater than immediate costs, therefore the claim would be allowed as stated in the application — Granted — Public Works 1354

Application to change scope of Public Authorities Salaries Award based on changes made to matching award "Public Service Salaries Agreement" in respect of classes 1 to 4 and to include other employees employed in statutory authorities under this award — Commission saw no obstacle to variation by consent — Granted — Public Authorities 1360

Application for payment of overtime rates to public servants required to travel for the purpose of working overtime — Respondent rejects claim as revoluntionary and against the wage fixing principles suggesting that such changes would produce award inconsistencies which would defeat the principles on which it was based — Commission found award was never designed to operate in the way that the Agriculture Department had applied it and that therefore this claim should fail as it is based on a false premise — Dismissed — Government Administration 1364

Applicant sought order for new allowance to replace "on call and call back" allowance in award; also for cessation of gratuity payment, reduction of annual leave and imposition of rental charges on accommodation — Commission found the total package presented by the parties to be acceptable and represented a fair attempt at a balance between the needs of the State and the demands of the medical profession — Granted — Public Health and Welfare Services 1611

Applicant sought order to give effect to concept of broadbanding and to make other modernising amendments to the award — Commission found that application should be dealt with under old wage fixing principles — Costs of introduction of broadbanding were minimal under the conditions of old principles and the benefits were not to be ignored — Commission found that a long standing nexus with conditions in the Public Service existed and that the application merely reflected that nexus — Granted — Transport 1607

Applicant sought variation of power station allowance in award based on increased disabilities and comparison with work performed by engineer trades employees employed by the respondent — Respondent raised question of allowance increase being contrary to wage fixing principles and denied any historical nexus — Commission found no sound basis for comparison claimed however the allowance should be increased for storemen employed at Kwinana and Muja based on comparison of disabilities encountered at Bunbury — Commission found range of disabilities and time of exposure warranted increases at both Kwinana and Muja which were in accordance with work value wage fixing principle — Granted In Part — Electrical Power 1604

Applicant claimed "electronics industry" should be regulated by an award — Commission concluded that "electronics industry" is appropriate under section 7 (d) of the Act — Commission found that industry should be regulated by a first award — Granted — Electronics 1639

Claim for payment of overtime — Commission found case for amending award — Question as to retrospectivity of amendments — Commission found that statute presumes against retrospectivity — Union case not sufficient to overcome that presumption — Claim dismissed — Electrical Power 1680

Matter remitted by Full Bench to be further dealt with according to law — Application divided and new matter joined to conference referred matter — New order issued in same terms as previous order where Commission found a need for a new award classification based on current work being done and levels of pay being received — Commission also found situation warranted a measure of retrospectivity being applied to the new clause in any award variation and that claim for paid leave for union business was justified on the basis of similar award provisions in other industries — Granted — Transport (Rail) 1677

Application for interpretation of clauses in award — Commission found that there can be no answers for questions raised in clauses concerning Lodging Allowance, Held Away From Home Allowance and Minimum Time Off Duty — Commission found that interpretation and construction of the meaning of the words "shunt" and "en route" could be defined and issued declaration accordingly — Granted in Part — Transport — Government Railways 1845

[2]Appeal against decision at (67 WAIG 1604) *re* increase in disability allowance — Appellant alleged Commission erred in applying work value changes principle and submitted that claim had failed to satisfy the strict test required — Furthermore increase granted was against weight of evidence and contrary to substantial merit of case — Full Bench found no jurisdiction on the evidence to increase existing allowance — Furthermore Full Bench found any increase would be subject to the second tier ceiling — Upheld — Electrical Power 1745

Application to vary clause in award — Applicant Union claimed entitlements sought had always been understood as such and want it confirmed — Applicant further argued that wage fixing principles were not a consideration as in a practical sense there is no change — Respondent rejected claims and proposed counterclaims — Commission found that Respondent's industrial interest and community's interest are better served in dismissing claims and counterclaims — However Commission issued order that *status quo* prior to Industrial Magistrate's decision be reinstated — Dismissed — Transport/Government 1843

CUMULATIVE DIGEST—*continued*

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AWARDS — *continued*

Application to vary award — Applicant Union sought inclusion of classification of linemen — live line in wages clause and deletion of special rate in Clause 31 (18) — Respondent objected arguing that it impinges on the flexibility of its operations and proposed a counterclaim — Commission found Respondent's proposal as a reaction to an incorrect construction of award and one which would have the effect of worsening employment conditions of employees who qualify as linemen — live line — Commission noted the point of equity based on comparisons and found substantial merit in Union's case to allow claim — Granted — Electrical Power 1770

Application for variation of award — Applicant Union sought classifications to be included in Wages clause — Claim involved employees who are members of various Unions and these Unions strongly objected to the proposals — Respondent neither supported nor opposed claims, however voiced its fears of future demarcation problems that may seriously disrupt efforts to obtain optimum production results — Commission found variation to award would give dual award coverage to some classifications — Furthermore Commission found Applicant Union claims for award coverage failed on constitutional grounds — Dismissed — Cement/Concrete Products 1838

[3]Application for new award to replace three existing awards covering workers at Hostels for aged and disabled persons — Applicant sought to replace FLAIEU award with one of its own — Commission in Court Session found principles of demarcation between the types of establishment that each organisation could cover (58 WAIG 503 at p. 504) were well established and still applicable — Commission in Court Session found Federal Government initiatives contributed to an ongoing trend towards provision of nursing care — Commission in Court Session found "No Reductions" clause meant application conformed to Wage Fixing Principles — Granted — Health 2243

[2]Appeal against decision of Commission (at 67 WAIG 2300) to delete classification from one award, insert in another on basis of commonality and thereby enhance conditions of employees — Full Bench found presentation of appeal to have been merely an attempt to induce Full Bench to take different view of evidence rather than demonstrating an error of law or mistake of fact — Full Bench found decision to be result of Commission's discretionary judgment — Dismissed — Health and Welfare Services 2224

Application to vary awards by removal of sexist verbiage as per Equal Opportunity Act 1984 — Commission found no obstacle to the variation however the use of one word in a specific clause change threatened the wage fixing principles by extending the benefit of an allowance somewhat — Commission found awards should be varied subject to this wording change being made — Granted — Public Service 2295

Award amendment *re* classification — Applicant sought order to include provisions covering the classification of "Assistant Supervisor" under one award into another award on the basis of a commonality of work done with that of the "Social Trainer" — Respondent raised objection and argument on philosophical rather than industrial grounds — Commission found the work of assistant supervisors used the same techniques and skills as those of the social trainer and that in equity and good conscience they should receive the same award conditions — Consideration of the wage fixing principles showed that the claim fitted in well with the second tier ceiling but that no future bonuses or anomalies could arise from the decision — Granted — Health and Welfare 2300

Application for new award to cover Veterinary Surgeons — Applicant Union submitted that its eligibility rules included a reference to "animal welfare officers or workers" and claimed veterinary surgeons fitted that description — Respondent argued that clause in the Eligibility rule which Union relied upon in general terms covered unskilled and semi-skilled people, and to include veterinary surgeons to that subparagraph would offend the principle of *eiusdem generis* — Commission found in favour of Respondent's argument — Commission found Union's Constitution does not allow it to enrol veterinary surgeons and dismissed application for want of jurisdiction — Dismissed — Veterinary 2263

BOARD OF REFERENCE —

Employee terminated due to unavailability of work and unsatisfactory levels of absenteeism and punctuality — Applicant union claimed unfair dismissal and sought reinstatement and compensation — Board of Reference's unanimous decision found grounds for termination to be unjustified and that the balance of probabilities suggested that termination was unfair — Granted — Building 1211

Claim for long service leave entitlements — Board of Reference determined that payment of compensation for these entitlements was warranted — Granted — Pastoral Industry 1214

Applicant sought exemption from registration as an "employer" under Construction Industry Portable Paid Long Service Leave Act 1985 — Board of Reference found that applicant was an employer under the definitions of the Act and there were therefore no provisions for any exemptions under the Act given these circumstances — Board of Reference found it was therefore without jurisdiction and that respondents decision to refuse the application was unaffected — Dismissed — Construction 1632

Application *re* Long Service Leave Provisions and calculation of rate of wage for *pro rata* entitlements upon termination — Applicant claims that payment should be on basis of 40 hour week — Respondent claims that basis should be an average of the actual hours worked by the employee over at least a 12 month period — Board found Conditions prescribed by general order are specific and prescribe rate of pay entitlements as those applicable at date leave commences, and that leave date commences immediately prior to termination — Board found interpretation of specific award unnecessary — Conditions specify hours entitlement limited to standard weekly hours prescribed by award therefore Board found that regardless of employee having worked 41 hour week, his entitlements were limited to the 40 hour week prescribed by award — Recreation 1633

Applicant Union claimed certain work experience should be included for the purpose of determining years of service for rate of pay — Award places onus on applicant to show experience is relevant — Experience in private nursing home not recognised — Dismissed — Nursing 1624

Claim for payment of *pro rata* long service leave — Applicant did not qualify for this benefit but claimed that changed rosters and pressing domestic necessity combined to make her termination one of constructive dismissal and Committee should, therefore, use its discretionary power to recommend payment — Majority of Committee found entitlement to *pro rata* long service leave payment to be a contingent benefit and that applicant had failed to meet contingencies — Dismissed — Welfare 1628

BONUS —

[3]Claim for reinstatement of policy of over award payment for certain allowances and bonuses — Applicant said an inequity existed with conditions affecting employees of other companies in same industry — Respondent based objection on fact that claim was outside Wage Fixing Principle 9(c) and 6.—CICS stated the principles to be the only consideration in this case — CICS found no evidence of altered work value to justify a new allowance under Principle 9.—Allowances, and that the applicant could not solely rely on comparative wage justice to argue a case under Principle 6.—Anomalies and Inequities — Dismissed — Metal Industry 1132

BREACH OF AWARD —

Employee claimed non-payment of wages — Applicant claimed moneys were deducted from wages for course attended when notice of resignation was given — Respondent refuted claim and argued moneys claimed were properly withheld in accordance with contract of service — Commission found parties were covered by an award and matter was that of enforcement of award, the exclusive jurisdiction of the Industrial Magistrate — Dismissed — Accounting 2339

CLASSIFICATIONS —

Application for award variation — Order sought for variation of Public Service Salaries Agreement by inclusion of new classification and various other amendments — Commission agreed to the proposed amendments and varied award by consent — Granted — Public Service 1365

CUMULATIVE DIGEST—*continued*

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CLASSIFICATION —*continued*

Matter remitted by Full Bench to be further dealt with according to law — Application divided and new matter joined to conference referred matter — New order issued in same terms as previous order where Commission found a need for a new award classification based on current work being done and levels of pay being received — Commission also found situation warranted a measure of retrospectivity being applied to the new clause in any award variation and that claim for paid leave for union business was justified on the basis of similar award provisions in other industries — Granted — Transport (Rail) 1677

Application for variation of award — Applicant Union sought classifications to be included in Wages clause — Claim involved employees who are members of various Unions and these Unions strongly objected to the proposals — Respondent neither supported nor opposed claims, however voiced its fears of future demarcation problems that may seriously disrupt efforts to obtain optimum production results — Commission found variation to award would give dual award coverage to some classifications — Furthermore Commission found Applicant Union claims for award coverage failed on constitutional grounds — Dismissed — Cement/Concrete Products 1838

Award amendment *re* classification — Applicant sought order to include provisions covering the classification of "Assistant Supervisor" under one award into another award on the basis of a commonality of work done with that of the "Social Trainer" — Respondent raised objection and argument on philosophical rather than industrial grounds — Commission found the work of assistant supervisors used the same techniques and skills as those of the social trainer and that in equity and good conscience they should receive the same award conditions — Consideration of the wage fixing principles showed that the claim fitted in well with the second tier ceiling but that no future bonuses or anomalies could arise from the decision — Granted — Health and Welfare 2300

CLOTHING —

Applicant sought order for overalls to be supplied as protective clothing for saw doctors — Commission found evidence supported claim and found no threat posed to wage fixing principles from "flow-on" costs to employers — Commission declared in favour of applicant — Granted — Timber 1445

COMPARATIVE WAGE JUSTICE —

[3]Adjustment of wage rates pursuant to Anomalies and Inequities Principles — Applicant Union claimed anomaly existed in wage rates of "non-production" and production employees of Respondent — Respondent supported claim — Commission in Court Session found claim within present principles and that no flow-on would occur — Furthermore increases are of a once only nature to establish an equitable base — Granted — Aerated Water 2240

COMPENSATION —

Applicant sought order for contractual benefits as an employee — Respondent denied claim and raised the question of jurisdiction based on claim that relationship was that of an "independent contractor" — Commission found that relationship between applicant and respondent exhibited all the features of that of an "independent contractor" and that applicant had failed to prove the claim — Commission found that it had no jurisdiction to entertain a claim where "independent contractor" status had been established — Dismissed — Transport 1246

Compensation for alleged unfair dismissal sought — Commission found on evidence dismissal was not harsh or unfair but that payment for the period of notice was required and thus ordered payment in lieu of notice — Granted — Furniture Manufacturing 1231

Applicant sought commissions purported to be due under contract of employment — Commission found contract of employment specified the conditions governing the payment of commissions and that employee was made well aware of these on appointment — Major portion of claim dismissed, however applicant was entitled to payment of cheque for commissions previously stopped by respondent — Dismissed — Personal Services 1242

Applicant claimed unfair dismissal and sought compensation — Applicant dismissed for breaches of company's "safety policies" — Commission found appicant could not be held responsible for breaches of policies as it was shown in evidence that other employees were knowingly transgressing those policies and attempting to conceal the practices from the applicant's knowledge which suggests that the respondent's grounds for dismissal were harsh and unfounded and therefore unfair — Commission found compensation to be in order — Granted — Catering Industry 1252

[2]Appeal aginst decision of Commission (67 WAIG 988) ordering compensation to employee found to be unfairly dismissed — Appellant argued Commission lacked power under the Industrial Relations Act to order compensation in lieu of reinstatement — Full Bench found that where dismissal was unfair and reinstatement inappropriate the assessment of adequate compensation was an appropriate alternative form of fair and equitable relief — Full Bench also found decision of Commission was fairly able to be reached from material before it — Dismissed — Iron Ore 1104

Order for unpaid salary arising from contract of service sought — Respondent refused to acknowledge responsibility for full amount of debt — Commission found reasons given by respondent for refusal to pay full amount were unjustified and the applicant's evidence showed he had performed completely and in accordance with contract — Commission found compensation of amount claimed be paid — Granted — Catering Industry 1230

Contract of employment — Applicant claimed entitlements due — Respondent claimed no jurisdiction, no entitlements due — Commission found Applicant an independent agent — No jurisdiction — Dismissed — Direct Sales Industry 1223

Applicant sought order for payment of *pro rata* annual leave due following termination of contract of employment — Commission found verbal contract did include annual leave as a condition and that *pro rata* payment should be paid to applicant — Granted — Leisure Industry 1226

Applicant sought order for compensation of salary in lieu of notice on grounds of unfair dismissal — Commission found no evidence that applicant's contract included a probationary period as had been suggested by the respondent and also that applicant despite this fact had not demonstrated a lack of counselling, therefore the dismnissal could not be found to be unfair — Dismissed — Liquor Industry 1231

Applicant claimed summary dismissal was unfair and sought compensation and entitlement — Entitlement found not due pursuant to section 29(b)(ii) but could nevertheless be considered pursuant to section 26 in the event of finding of unfair dismissal — Dismissal found to be lawful and not summary — Unfairness not established — Dismissed 1233

Applicant sought order for contractual entitlements arising from contract of employment — Commission found that applicant's commissions structure was "monthly average basis" and that applicant had misunderstood the original terms of the contract and that any claim arising from a legitimate change to that structure would need to show that benefits had in fact been denied — Dismissed — Wholesale/Retail Industry 1239

Applicant sought order for contractual entitlements not allowed under contract of service — Respondent denied claims but acknowledged liability for five days wages — Commission found contract did not specify any payments to be made in the terms expressed in the applicant's claim and that respondent was justified in summarily terminating contract — Commission ordered payment of wages for five days being the amount agreed as being owed — Dismissed — Construction Industry 1222

Applicant terminated due to unsatisfactory performance — Applicant claimed unfair dismissal and sought order of compensation for salary and other contractual entitlements — Commission found no evidence of unfair dismissal — Dismissed — Retail Industry 1229

Applicant sought order for compensation in form of wages in lieu of notice and wages allegedly due but not paid — Commission found compensation was due in line with the applicant's claim — Granted — Recreation Industry 1235

CUMULATIVE DIGEST—*continued*

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COMPENSATION — *continued*

Applicant claimed unfair dismissal and sought order of compensation for benefits under contract of service — Applicant dismissed due to refusal to accept terms and conditions of employment following probationary period — Commission found no evidence of harsh or oppressive exercise of respondents legal rights to terminate given the particular circumstances and that no contractual entitlement existed as claimed — Dismissed — University Accommodation 1236

Applicant sought order for compensation and outstanding wages arising from unfair dismissal — Commission found respondent was entitled to assume that, by leaving her place of employment following notice being served, applicant had abandoned her work and repudiated her contract of employment — Dismissed — Vehicle Industry 1241

Applicant sought order for compensation on grounds of unfair dismissal — Commission found on case evidence dismissal was not unfair — Applicant refused to work re-arranged working hours and resulted in there being no useful work for him to perform — Dismissed — Food, Beverage, Tobacco Industry 1244

Application for compensation for wages and benefits from periods of employment — No appearances by respondent — Commission found applicant had not established who was the employer for the purpose of the claim and that there were no expressed conditions of employment as a result — Dismissed — Bloodstock Industry 1251

Application for payment of wages due under contract of service — Applicant claimed no monies had been paid for any of the work performed — Commission found verbal contract between applicant and respondent did not contain any of the qualifications described by respondent as being terms of that contract and that respondent should pay applicant for tutoring services and office work performed at the agreed rate — Granted in part — Education Industry 1227

Application for payment of wages due under contract of service — Commission found verbal contract was constructed in way the applicant had suggested and that qualification imposed by respondent did not apply — Granted — Education Industry 1255

Applicant sought order for contractual benefits due under contract of employment mutually terminated — Respondent rejected claim and disputed completion of contract date — Commission found no entitlement to the amounts claimed but a small sundry amount was owing — Granted in part — Sunscreen Industry 1219

[2]Appeal against decision of Commission at (67 WAIG 292) to find an employee/employer relationship existed and to grant compensation — Appellant claimed insufficient weight given to written contract and that Commission erred in law in arriving at its decisions that employee relationship existed — Full Bench's majority decision found that Commission had correctly reviewed the evidence presented to it and that employee relationship was contained in the contract — Full Bench upheld that part of claim that related to the question of employee relationship but unanimously decided that matter should be remitted for further hearing *re* claims for compensation — Dismissed — Cleaning Services 1113

Employees dismissed due to redundancy — Applicant union sought order of compensation over and above amount already paid on termination — Commission confirmed respondent's right to reorganise business but found that insufficient weight had been given to employees' length of service, resultant hardship, age etc and it was unfair to terminate their contracts without these considerations — Commission found compensation was in order — Granted — Retail 1441

Applicant sought compensation for allegedly unfair dismissal — Commission found no warnings were formally conveyed but that this in itself did not prove a case of unfair dismissal based on FMWU *v.* Uniting Church of Australia, Trinity Parish, Perth Property Committee (66 WAIG 1291) — Commission found that respondent's view that applicant was unable to perform job effectively was correct and that applicant could not have improved his performance to a satisfactory level despite duties being added to the job — Dismissed — Oil and Gas 1410

Applicant sought order of unfair dismissal and compensation — Commission found no evidence of unfair use of respondent's right to terminate and that clearly the applicant failed to meet the criteria required by respondent's operations for adequate performance — Dismissed — Wholesale/Retail 1406

Applicant sought order for contractual benefits not allowed under contract of service — Commission found applicant was employed only in one area of respondent's business structure therefore he was not entitled to contractual benefits in the form of commissions from the respondent's total operations — Dismissed — Transport 1411

Applicant sought order for compensation as a result of unfair dismissal — Question raised *re* casual or permanent part-time contract — Commission found contract was of a casual nature and that this was reasonable in all circumstances — Commission found this condition was supported by applicant's acceptance of the hourly rate of pay and that therefore dismissal was not unfair or of a summary nature — Dismissed — Hospitality Industry 1403

Applicant sought order for compensation of a benefit claimed to be owing from contract of service — Respondent denied claim but accepted liability for wages arising from period of service under provisions of Furniture Trades Award — Commission found appointment was on basis of payment by results or as a "contractor" therefore no contract of service could be established — Applicant had misunderstood or was not fully informed of these arrangements — Commission found it had no power to determine wages claimed under award — Dismissed — Courier Delivery Service 1413

Applicant sought order of contractual entitlements said to have arisen from a contract of service — Respondent claimed on contract existed — Commission found that it was vital to establish whether a contract existed for the Commission to have jurisdiction over such a claim and that in this instance no contractual liability could be established from the evidence of the parties — Dismissed — Finance ... 1415

Applicant sought order of compensation for employee summarily dismissed for misconduct — Commission found actions of employee in question showed that he had not intended to repudiate his contract of employment but that he correctly questioned the authority of his work mate over him and had received less than a fair go all round as a consequence of this — Commission found compensation in order, there being no claim for re-employment — Granted — Timber Industry 1446

Applicant sought order of compensation for alleged unfair dismissal — Commission found termination had resulted so as to avoid the respondent any inconvenience in having applicant on sick leave and that the fundamental notion of "a fair go all round" had been neglected — Commission found the consideration given to the applicant had been inadequate and that compensation for unfair dismissal would be granted on the strength of accrued sick leave — Granted — Furniture Manufacture 1648

Applicant sought order for reinstatement or compensation following from an alleged unfair termination of employment — Commission found respondent had shown disregard for the applicant, abrogated its managerial responsibility by termination of applicant's employment, that the reasons cited for this termination were unfounded and that the real reason was that the position was to be given to an associate of the respondent — Commission found this action to be unfair and ordered compensation as reinstatement was not tenable — Granted — Hospitality 1641

Employee (Manager) claimed unfair dismissal and sought contractual entitlements — Respondent claimed misconduct — Onus on employer to specify terms of alleged gross misconduct at time of dismissal — Commission found that summary dismissal of applicant was unfair, and that respondent failed to establish misconduct — Commission also found that in granting redress it is not restricted to specific claim and that overriding consideration is that any remedy is just and equitable — Granted — Retail 1654

Claim for contractual entitlements — Applicant failed to secure re-election as Secretary and sought further severance payment, superannuation payment, payment in lieu of leave not taken for travelling time and rostered days off, incorporation of expense allowance into total salary for purposes of calculation of entitlements, and reimbursement of wine purchases — All claims dismissed other than claim for further severance payment — Commission found that claim for further severance pay rested on interpretation of contract of service — Granted in Part — Unions 1643

Applicant sought order for compensation arising from unfair termination of employment — Commission found that termination was open to the respondent following a number of warnings to applicant for unsatisfactory performance and that applicant was well aware of the respondent's requirements for him to improve his performance and attitude — Dismissed — Metal Industry 1860

Applicant sought order for reinstatement with compensation, or compensation for unfair dismissal — Commission found that respondent had not acted unfairly and that applicant had received more than a fair go following the period of recuperation after a road accident — Commission found respondent did have cause to consider applicant a poor risk for future employment — Dismissed — Ship Building 1852

CUMULATIVE DIGEST—*continued*

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COMPENSATION — *continued*

Applicant sought order for unfair dismissal and compensation of contractual entitlements due under terms of a contract of employment — Commission found there existed an entitlement to annual leave but that "loading" on that leave was not a part of the contract — Commission found on evidence that dismissal was summary in nature and unfair as it was carried out in response to a direction that could not have been complied with — Granted — Retail Industry 1854

Alleged non-payment of contractual benefits — case remitted by Full Bench at (67 WAIG 1747) — Commission found fresh evidence given by Applicant and witnesses had established that a *bona fide* employment contract existed and relieved previous doubts concerning the entitlement to *pro rata* leave payments — Commission accepted calculations provided by Applicant in the absence of any argument to the contrary by Respondent — Granted — Bloodstock Industry 1863

[2]Appeal against decision of Commission at (67 WAIG 1003) *re pro rata* long service leave being awarded — Full Bench found compensatory orders *re pro rata* long service leave entitlements were justified, where an employee has evinced an intention to continue indefinitely in employment but due to employers business had been retrenched or terminated — Full Bench found injury sustained by employee in accident prevented him from undertaking the duties of position and Appellant was required to compensate him for disability pursuant to the provisions of Workers Compensation and Assistance Act 1981 — Upheld — Meat Industry 1737

Employee terminated for alleged lack of professionalism and disruptive influence — Applicant Union claimed unfair dismissal and sought compensation — Respondent refuted claim and argued that employee had resigned — Commission in relation to employees misdemeanours, found that on evidence those transgressions did not provide sufficient grounds for dismissal and awarded compensation for the distress and loss of employment — Granted — Health and Welfare Services 1890

[2]Appeal against decision at (67 WAIG 916) *re* unfair dismissal seeking compensation — Appellant claimed Commission erred in law and did not determine the claim for unfair dismissal properly in accordance with the weight of evidence — Furthermore Appellant identified a number of deficiencies in matters presented by the Respondent — Full Bench found upon evidence provided, it was open to the Commission to conclude on the balance of probabilities the given notice prior to dismissal — Full Bench found that there was insufficient evidence *re* grounds that justified summary dismissal, however in the circumstances it was well within the powers of the Commission to decline to make any award *re* compensation — Dismissed — Hospitality 1728

Applicant sought order of compensation for contractual entitlement unpaid following alleged unfair dismissal — Respondent raised question of Commission's jurisdiction to determine the claim, it being subject to a federal award — Commission found that the verbal contract operated in the manner described by the Respondent and that the resultant termination of that contract was not unfair nor was there failure to pay the full contractual entitlement at the conclusion of this contract — Commission found question of jurisdiction was established in the Respondent's favour and that the Commission, based on case evidence was without power to entertain the claim — Dismissed — Pastoral Industry 1856

[2]Appeal against decision at (67 WAIG 1215) *re* dismissal of claim for severance payments — Appellant claimed Commission erred in finding that seasonal employees are excluded from consideration for severance payments in the event of redundancy — Full Bench found industry clearly seasonal in which employment was intermittent and upon evidence employees had no reasonable expectation of re-employment nor any right to severance pay — Full Bench found Appellant had failed to establish error on the part of Commission — Dismissed — Meat Industry 1739

Employee terminated for economic reasons — Applicant claimed unfair dismissal and sought compensation — Respondent refuted claim — Commission found respondent having lost two agencies had to prune its cost of operations and decision of termination for commercial (or economic) reasons was not unfair — Dismissed — Wholesale 2118

Applicant sought order for compensation following an order of the Commission to grant re-employment, was appealed, and has now been remitted for hearing on the appropriate quantum of compensation that should arise — Commission found on the basis of cost incurral, loss of employment, and loss of salary prior to the issuing of the order, compensation of $10 000 was warranted — Granted — Mining 2145

Employee dismissed for alleged incompetence — Applicant Union claimed unfair dismissal and sought reinstatement — Union argued that no proper investigation or counselling was conducted — Respondent argued that the absence of a procedure to review the dismissal did not detract from its right to terminate and the lack of counselling was not fatal when considering the correctness of its action — Commission found in favour of Union as respondent had ignored employees Line Supervisors advice of caution and then dismissed employee in a pre-emptory fashion when problems occurred — Commission however found that reinstatement would be impractical and awarded compensation — Granted — Mining/Iron Ore 2146

Applicant claimed unfair dismissal and sought order for contractual entitlements arising from a contract of employment — Respondent refuted claim — Commission found there existed as part of that contract an entitlement to a car allowance as claimed as well as entitlement to two weeks' notice which was not received — Commission concluded that dismissal was unfair but that the claim could not be completely substantiated — Granted In Part — Transport Industry 2326

Employee summarily dismissed for alleged misconduct — Applicant claimed unfair dismissal and sought compensation — Respondent denied claim — Commission found Respondent's action of summary dismissal following suspicion of theft on the part of the Applicant was unfair — Commission found that to take the option of dismissal rather than pursuing an action through the courts was open to the Respondent but that dismissal, if it was to be fair in an industrial sense should have been done subject to the terms of the contract of employment — Summary dismissal was unfair in these circumstances and compensation should be awarded — Granted — Hairdressing 2327

Employee summarily dismissed for alleged prejudicial conduct — Applicant sought order for salary in lieu of notice following summary dismissal — Commission found dismissal was unjustifiable and that the contract of employment specified a period of only two weeks and that therefore the Applicant was entitled to payment for only that period of notice — Granted In Part — Health Industry 2328

Employee claimed unfair dismissal — Applicant argued that no notice or payment in lieu of notice was received and sought order for reinstatement, "outstanding moneys" and compensation — Respondent refuted claim and argued services provided were on a voluntary basis — Furthermore Applicant was not an employee pursuant to the Industrial Relations Act and therefore Commission did not have jurisdiction to hear the matter — Commission found there were offers of employment and at best "negotiations" *re* contract of employment between the parties — However Commission found there is no or insufficient evidence to establish that the offer was accepted by Applicant — Commission found Applicant was not an employee and dismissed claim for want of jurisdiction — Dismissed — Health and Welfare 2334

Employee claimed non-payment of wages — Applicant claimed moneys were deducted from wages for course attended when notice of resignation was given — Respondent refuted claim and argued moneys claimed were properly withheld in accordance with contract of service — Commission found parties were covered by an award and matter was that of enforcement of award, the exclusive jurisdiction of the Industrial Magistrate — Dismissed — Accounting 2339

Applicant sought order of unfair dismissal and compensation — Commission found question to answer was that, was termination reasonably open to the employer in all the circumstances following Applicant's disregard for the standing of the Respondent's business — Commission concluded that the evidence suggested the Respondent had not acted harshly or unfairly in exercising its legal right to terminate the Applicant's employment — Dismissed — Marine Broking 2340

[4]Stay of operation of Commission order — Applicant claimed that the Commissioner had erred in law and exceeded his jurisdiction by issuing a compensatory order — Respondent resisted claim on grounds that proposed appeal discloses no serious ground of appeal — President found order was for repayment of wages to employee who was unfairly dismissed and balance of convenience favoured employee — Dismissed 2259

Employee dismissed due to economic downturn and restructuring — Applicant sought order of unfair dismissal and compensation — Commission found employee was terminated pursuant to all award entitlements and that the dismissal was not unfair on evidence of the Respondent's enforced restructuring — Applicant's position was made redundant and that the claim had not been established — Dismissed — Timber Industry 2342

CUMULATIVE DIGEST—*continued*

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COMPENSATION —*continued*

Employee alleged to have been dismissed following refusal to accept (a) requirement to pay a management fee to parent company and (b) management restructuring — Applicant sought order for compensation of salary and motor vehicle expenses and reinstatement — Respondent refuted claims — Commission found no evidence of constructive dismissal due to no established threat to employment from Respondent — Managerial prerogative exists to change organisational structure therefore claims for compensation and reinstatement must fail as they do not come under the scope of the Act as Applicant had resigned — Commission found on evidence no entitlement to motor vehicle expenses and that a review after six months was obligatory in terms of appointment and that this having not occurred Applicant was entitled to payment of salary at a level determined as fair by the Commission — Compensation ordered — Granted in Part — Weather Forecasting 2347

Employee dismissed due to poor work performance and unsuitability — Applicant sought order for compensation arising from an unfair dismissal due to no warning or counselling being given — Respondent claimed Applicant resigned and questioned jurisdiction of Commission to hear the claim — Commission found constructive dismissal of Applicant had occurred, however the claim as to the unfair nature of that dismissal was not supported by evidence from the Applicant — Commission made no finding on question of compensation — Dismissed — Oil and Gas Industry 2350

Employee dismissed for failure to attain a satisfactory level of construction quality on project homes — Applicant claimed unfair dismissal and sought compensation for an unpaid bonus — Respondent rejected claims — Commission found no warning of a substantial nature was ever conveyed to Applicant, and that responsibility for the duties of the Applicant was shared primarily with the supervisor therefore it was unfair to level blame for building construction inadequacies completely on Applicant — Primary responsibility falls with supervisor — Commission found dismissal was unfair — Compensation of the bonus payment awarded — Granted — Building Industry 2343

CONFINED SPACE —

Claim *re* allowance for working in confined space — Board of Reference by majority found, using the established principles, claimant could not show that the work was "unusual" — Furthermore Board found wages contained a margin to compensate employees for difficult conditions experienced — Board noted claim that changing nature of railway wagons made working under them more cramped, stooped and confined and found claim could be for work value rather than confined space — Dismissed — Government Railways 2322

CONTRACT OF SERVICE —

Payment for time lost due to stoppage due to allegedly unsafe working conditions sought — Commission found working conditions not to be unsafe — Commission also found that whether employer's obligation to individually notify employees *re* matters involving contract of service may be discharged via third party depends on circumstances of particular case — Dismissed — Meat Industry 1295

[2]Appeals against decision of Commission (67 WAIG 1006) to dismiss application on jurisdictional grounds after finding contract of employment to have been legally determined and consequently no dismissal to have occurred — Full Bench found contract not to have expired according to its terms but to have been terminated by notice — Full Bench thus found dismissal had occurred and that matter should be remitted to Commission for determination on its merits — Upheld — Education 1118

Applicant sought order for contractual entitlements arising from contract of employment — Commission found that applicant's commissions structure was "monthly average basis" and that applicant had misunderstood the original terms of the contract and that any claim arising from a legitimate change to that structure would need to show that benefits had in fact been denied — Dismissed — Wholesale/Retail Industry 1239

Applicant sought order for contractual entitlements not allowed under contract of service — Respondent denied claims but acknowledged liability for five days wages — Commission found contract did not specify any payments to be made in the terms expressed in the applicant's claim and that respondent was justified in summarily terminating contract — Commission ordered payment of wages for five days being the amount agreed as being owed — Dismissed — Construction Industry 1222

Applicant sought order for contractual benefits due under contract of employment mutually terminated — Respondent rejected claim and disputed completion of contract date — Commission found no entitlement to the amounts claimed but a small sundry amount was owing — Granted in part — Sunscreen Industry 1219

Application to vary award to give Applicant right to require employees to temporarily perform work other than work in their usual classification — Commission found principles outlined by Full Bench at 61 WAIG 477 in dealing with question of implied conditions in contracts of service of certain railway employees to be binding on this case — Commission also found no merit in application and strongly recommended Respondent lift bans — Dismissed — Railway Industry 1204

[2]Appeal against decision of Commission at (67 WAIG 292) to find an employee/employer relationship existed and to grant compensation — Appellant claimed insufficient weight given to written contract and that Commission erred in law in arriving at its decisions that employee relationship existed — Full Bench's majority decision found that Commission had correctly reviewed the evidence presented to it and that employee relationship was contained in the contract — Full Bench upheld that part of claim that related to the question of employee relationship but unanimously decided that matter should be remitted for further hearing *re* claims for compensation — Dismissed — Cleaning Services 1113

[1]Appeal against decision of Full Bench (67 WAIG 745) to dismiss appeal against Commission's interpretation of Agreement — Industrial Appeal Court found both Commission and Full Bench applied correct principles of interpretation but erred in law by finding construction of relevant clause to be ambiguous within context of Agreement as a whole — Industrial Appeal Court found that as no ambiguity exists the ordinary and natural meaning of words used must be the true interpretation — Upheld — Iron Ore 1097

Applicant sought order for contractual benefits not allowed under contract of service — Commission found applicant was employed only in one area of respondent's business structure therefore he was not entitled to contractual benefits in the form of commissions from the respondent's total operations — Dismissed — Transport 1411

Applicant sought order for compensation of a benefit claimed to be owing from contract of service — Respondent denied claim but accepted liability for wages arising from period of service under provisions of Furniture Trades Award — Commission found appointment was on basis of payment by results or as a "contractor" therefore no contract of service could be established — Applicant had misunderstood or was not fully informed of these arrangements — Commission found it had no power to determine wages claimed under award — Dismissed — Courier Delivery Service 1413

Claim for contractual entitlements — Applicant failed to secure re-election as Secretary and sought further severance payment, superannuation payment, payment in lieu of leave not taken for travelling time and rostered days off, incorporation of expense allowance into total salary for purposes of calculation of entitlements, and reimbursement of wine purchases — All claims dismissed other than claim for further severance payment — Commission found that claim for further severance pay rested on interpretation of contract of service — Granted in Part — Unions 1643

Applicant claimed unfair dismissal and sought contractual benefits — Commission found Applicant not to have been unfairly dismissed, preferring Respondent's evidence — Commission also found Applicant to have been employed under provisions of Farm Employees Award and determined entitlements accordingly — Granted in Part — Agriculture 1646

Employee dismissed due to failure to notify of absence from work — Applicant Union claimed unfair dismissal as employee's absence was covered by doctors certificates — Respondent refuted claim and alleged that employee had abandoned his employment — Commission found Union claims could not be sustained as retrospective medical certificates could not re-constitute the contract of employment and avoid the deeming provisions whereby employee had abandoned his employment — Commission furthermore found that claims were without merit and did not warrant the Commission's inferrention — Dismissed — Mining (Iron Ore) 1635

[2]Appeal against decision of Commission at (67 WAIG 1251) *re* dismissal of claim for contractual entitlements — Appellant claimed there was evidence that was not produced at initial hearing which would have established the contract of employment — Full Bench found in favour of Appellant in that decision of an order for dismissal was due to lack of evidence — Full Bench found circumstances were extraordinary and remitted case for further hearing and determination — Upheld — Bloodstock Industry 1747

CUMULATIVE DIGEST—*continued*

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CONTRACT OF SERVICE —*continued*

Alleged non-payment of contractual benefits — case remitted by Full Bench at (67 WAIG 1747) — Commission found fresh evidence given by Applicant and witnesses had established that a *bona fide* employment contract existed and relieved previous doubts concerning the entitlement to *pro rata* leave payments — Commission accepted calculations provided by Applicant in the absence of any argument to the contrary by Respondent — Granted — Bloodstock Industry 1863

Employee wrongly classified when employed — Applicant Union claimed that employee should have been at a higher level of incremental scale and sought order for appropriate amount of back-pay — Respondent refuted claim and argued on grounds of Commission's jurisdiction to interpret, evidence to show the significant difference between teachers aide and Child Care Worker and the true nature of contract where employee agreed to be appointed at the base level — Commission found employee's qualifications and work experience to be in accordance with provisions provided in award — Commission found in favour of Respondent *re* nature of employment contract however stated that equity would be served if employee was given credit for her experience at first incremental date — Granted In Part — Health and Welfare Services 1887

Alleged non-payment of contractual benefits — Applicant claimed commission on seven contracts was owed — Respondent refuted claim and denied there was any employment contract — Commission found Applicant had failed to establish that employer/employee relationship had existed — Dismissed — Securities Industry 2331

Employee claimed non-payment of wages — Applicant claimed moneys were deducted from wages for course attended when notice of resignation was given — Respondent refuted claim and argued moneys claimed were properly withheld in accordance with contract of service — Commission found parties were covered by an award and matter was that of enforcement of award, the exclusive jurisdiction of the Industrial Magistrate — Dismissed — Accounting 2339

CUSTOM AND PRACTICE —

Claim for declaration that stools be provided for "door greeters" in department store — Question of erosion of conditions of employment contrary to wage fixing principles by removal of stools raised — Respondent claimed that stools were never universal policy and as door greeters work part-time they were not required to stand for more than two hours — Commission found that if door greeters were employed full-time health regulations would require provision of a stool but the Respondent only employs part-time door greeters — Dismissed — Retail 1684

Application to vary clause in award — Applicant Union claimed entitlements sought had always been understood as such and want it confirmed — Applicant further argued that wage fixing principles were not a consideration as in a practical sense there is no change — Respondent rejected claims and proposed counterclaims — Commission found that Respondent's industrial interest and community's interest are better served in dismissing claims and counterclaims — However Commission issued order that *status quo* prior to Industrial Magistrate's decision be reinstated — Dismissed — Transport/Government 1843

DATE OF OPERATION —

Applicant sought 2.3 per cent increase in allowances for Industrial Agreement — Applicant claimed increase should be backdated to date of operation of Commission General Order — Commission found Act did not empower it to give retrospective effect to Agreement variations — Granted in part — Iron Ore 1163

[3]Application for increased rates of pay to reflect increased rates in NSW award with which there is nexus — Increase in NSW award due to work value case from technological change — Evidence given that same technology used in WA but this application is to establish equitable base — Commission in Court Session found anomaly to exist, no equitably base application to have been brought previously and Wage Fixing Principles to have been satisfied — Commission in Court Session allowed retrospective date of operation as agreed by parties — Granted — Brewing 1134

Application for variation of vehicle allowances in award — Applicant claimed rates established by an agreed formula were out of date — Respondent initially opposed claim that formula was inappropriate but chose only to oppose date of operation — Commission found correct date was as the respondent had suggested this being the beginning of a fiscal year as specified in the award — Granted — Public Service 1362

Application for variation of district allowance clause in award — Date of operation of adjustment to award clause in dispute — Commission found it had power to grant full retrospectivity in special circumstances and in this case a clear nexus had been established with this allowance and that being paid to government wages employees — Commission found equity demanded these employees be afforded full retrospectivity as a result of delays in formulating calculations of allowance rates and for period of hearing of application — Granted — Health and Welfare 1349

Variation of awards and agreements *re* salary rates — Applicant sought increase by four per cent pursuant to current Wage Fixing Principles, more particularly the Restructuring and Efficiency Principle — Respondent agreed to the increase after extensive negotiations — Commission found papers lodged in support of these applications complied with both the spirit and the letter of Commission's Wage Fixing Principles — Commission however found notwithstanding that the claims were lodged sometime back, the operative date of order should be effective from the next pay period — Granted — State Government Administration 2310

[2]Appeal against decision of Commission to vary award by including new classifications and definitions — Commission fixed retrospective date of operation prior to fixing actual wage rate to enable further negotiation without penalising those employees whose work value had in the opinion of both parties significantly increased as of that date — Full Bench found decision to constitute an exercise of discretion and not to be wrong in any material sense — Dismissed — Transport (Rail) 2223

Introduction of 38-hour week and question *re* date of operation of award variations — Employers largely consented to variations in terms claimed — Restriction sought for limitation to ordinary hours to 10 hours per day as offsets did not sufficiently minimise the costs of the introduction of the 38-hour week for the purposes of the Wages Principles — Commission found offsets are sufficient to satisfy the strictures of the Standard Hours Principle and the Allowance Principle for other variations — Granted — Food Processing . 2268

DEMARCATION —

Demarcation dispute over whether placement of foam rubber blocks inside coupling of ore cars should be undertaken by tradesmen (fitters) in workshop or car and wagon examiners "in situ" — Commission rejected Applicant's assertion of the existence of an underlying principle which determines such work as the exclusive domain of fitters — Commission found car and wagon examiners possess skill and technical competency to perform task and that safety is not jeopardised — Dismissed — Iron Ore 1286

Declaration sought that Applicant's requirement that tradesmen/fiters carry out modifications to rolling stock bogies is reasonable — Commission found principles outlined in AMWSU *v.* Hamersley Iron Pty Ltd (66 WAIG 100) were applicable — Commission also found work to come within general scope of work of fitters and that Respondent had not acted unfairly — Granted — Railways 1277

Applicant sought order for cab installed radios to be used and operated by engine drivers — Respondent unions reject claim on basis of threat to employment security and safety and sought a contrary order — Commission found rules governing operation to trains prevented engine drivers from performing such duties, also that issuance of such an order as requested by applicant could weaken ARU position and give support to applicant's projected plans for one man crews — Commission declared the use of radios by engine drivers was unreasonable — Transport/Rail 1294

Applicant sought order that the work of tube surveying be undertaken by trainee operators — AWU and AMWSU reject claim saying work in question is outside scope of CMEWU which covered these employees and that the work is a part of the maintenance process — Commission found central issue to be the scope of managerial prerogative — Work in question found to be not akin to work already performed by these employees nor was it maintenance work — Commission found that in view of fact that AWU and AMWSU could not do the work due to current workload, and there being no submission from the CMEWU it would order that the work be carried out by trainee operators, without prejudice to the position of the respondent unions — Dismissed — Mining (Iron Ore) 1428

CUMULATIVE DIGEST—*continued*

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DEMARCATION — *continued*

Application for variation of award — Applicant Union sought classifications to be included in Wages clause — Claim involved employees who are members of various Unions and these Unions strongly objected to the proposals — Respondent neither supported nor opposed claims, however voiced its fears of future demarcation problems that may seriously disrupt efforts to obtain optimum production results — Commission found variation to award would give dual award coverage to some classifications — Furthermore Commission found Applicant Union claims for award coverage failed on constitutional grounds — Dismissed — Cement/Concrete Products 1838

[2]Claim that work of wall and ceiling fixers to be performed exclusively by members of the Operative Plasterers and Plaster Workers Federation — Counterclaim by Building Workers Industrial Union that persons employed as wall and ceiling fixers ineligible for membership of either Union; also that wall and ceiling work traditionally done by carpenters — Threshold question considered: what are plasters and fibrous plaster workers according to words used in constitution rule? — Question determined on record and evidence of witnesses — Constitution rule construed according to decision of Western Australian Industrial Appeals Court, Transport Workers Union *v.* Hamersley Iron Pty Ltd and Australian Workers Union (53 WAIG 1103 at 1105) — Historical development of award definitions relevant in construction of Union constitution rule — Commission found that to uphold the Applicant's construction of its own rule must be to permit membership of persons who are engaged on wall and ceiling work in which plaster will never be used; result would be absurd — Commission found on evidence produced that carpenters have traditionally performed wall and ceiling work except for wet plaster jointing — Declared that persons qualified and employed as wall and ceiling fixers not eligible for membership of Applicant or Respondent Unions — Range of wall and ceiling work performed by persons eligible for membership of either Union also declared — Discretionary judgment of Commission to be left undisturbed in this case — Commission formally recognised legitimate areas of coverage between Appellent and Respondent — Appeal dismissed — Building Industry 2226

[3]Application for new award to replace three existing awards covering workers at Hostels for aged and disabled persons — Applicant sought to replace FLAIEU award with one of its own — Commission in Court Session found principles of demarcation between the types of establishment that each organisation could cover (58 WAIG 503 at p. 504) were well established and still applicable — Commission in Court Session found Federal Government initiatives contributed to an ongoing trend towards provision of nursing care — Commission in Court Session found "No Reductions" clause meant application conformed to Wage Fixing Principles — Granted — Health 2243

DISABILITIES —

Claim for muster allowance and disability allowance for barge employees living and working on barge connected with North Rankin A project — Commission found claim for muster allowance was unnecessary as this was already included in "barge allowance" and that granting this part of claim would promote disputation — Commission granted an allowance for employees who were forced to attend muster drills outside of work hours and granted further disability allowance to barge employees for unique disabilities in their working environment — Granted in part — Oil and Gas Industry 1274

Applicant sought order for special allowance for live line linesmen performing silicone grease removal from pole top insulators — Commission found that the definition and wages of linesmen — live line was included in the Engineering Trades (SEC) Award and that no meaningful comparison could be drawn with disabilities encountered by other classifications — Commission found that union could not show that this work was exclusively performed by live line linesmen and therefore a compensatory allowance was out of the question — Dismissed — Electrical Power 1671

Higher allowance sought for increased disabilities confronted in hosing down of ore trucks — Applicant union claimed installation of water cannon had created more discomfort i.e. need to wear protective gear and due to fixed positions of cannons, operators were being exposed to the elements — Respondent refuted claim and cited ratification of awards by Commission and thereby the acceptance of the Union that current allowance was appropriate to the task — Commission found on evidence and inspection that water cannon had introduced a higher level of disability in above task — However Commission was unable to conclude that the impact of the water cannon is sufficient to warrant the elevation of disability allowance to that of higher group — Dismissed — Mining 1882

[2]Appeal against decision at (67 WAIG 1604) *re* increase in disability allowance — Appellant alleged Commission erred in applying work value changes principle and submitted that claim had failed to satisfy the strict test required — Furthermore increase granted was against weight of evidence and contrary to substantial merit of case — Full Bench found no jurisdiction on the evidence to increase existing allowance — Furthermore Full Bench found any increase would be subject to the second tier ceiling — Upheld — Electrical Power 1745

DISCRIMINATION —

Employee terminated due to unavailability of work and unsatisfactory levels of absenteeism and punctuality — Applicant union claimed unfair dismissal and sought reinstatement and compensation — Board of Reference's unanimous decision found grounds for termination to be unjustified and that the balance of probabilities suggested that termination was unfair — Granted — Building 1211

EMPLOYEE —

Applicant sought order for contractual benefits as an employee — Respondent denied claim and raised the question of jurisdiction based on claim that relationship was that of an "independent contractor" — Commission found that relationship between applicant and respondent exhibited all the features of that of an "independent contractor" and that applicant had failed to prove the claim — Commission found that it had no jurisdiction to entertain a claim where "independent contractor" status had been established — Dismissed — Transport 1246

[2]Appeal against decision of Commission at (67 WAIG 292) to find an employee/employer relationship existed and to grant compensation — Appellant claimed insufficient weight given to written contract and that Commission erred in law in arriving at its decisions that employee relationship existed — Full Bench's majority decision found that Commission had correctly reviewed the evidence presented to it and that employee relationship was contained in the contract — Full Bench upheld that part of claim that related to the question of employee relationship but unanimously decided that matter should be remitted for further hearing *re* claims for compensation — Dismissed — Cleaning Services 1113

Alleged non-payment of contractual benefits — Applicant claimed commission on seven contracts was owed — Respondent refuted claim and denied there was any employment contract — Commission found Applicant had failed to establish that employer/employee relationship had existed — Dismissed — Securities Industry 2331

Employee claimed unfair dismissal — Applicant argued that no notice or payment in lieu of notice was received and sought order for reinstatement, "outstanding moneys" and compensation — Respondent refuted claim and argued services provided were on a voluntary basis — Furthermore Applicant was not an employee pursuant to the Industrial Relations Act and therefore Commission did not have jurisdiction to hear the matter — Commission found there were offers of employment and at best "negotiations" *re* contract of employment between the parties — However Commission found there is no or insufficient evidence to establish that the offer was accepted by Applicant — Commission found Applicant was not an employee and dismissed claim for want of jurisdiction — Dismissed — Health and Welfare 2334

CUMULATIVE DIGEST—*continued*

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HOURS OF WORK —
Applicant sought order that operation of 38-hour week be maintained as per a "Working Party" agreement on requirement that Administrative Nurses be excluded from afternoon shifts as a trade off in 38-hour week negotiations — Commission found a Memorandum of Agreement clearly established that Administrative Nurses would work late shifts and not that this condition had been the subject of a trade off on 38-hour week implementation or that its inclusion as a condition of the Memorandum was an error — Question of wage fixation principles — Commission found no breach of their implementation — Dismissed — Health 1680
Introduction of 38-hour week and question *re* date of operation of award variations — Employers largely consented to variations in terms claimed — Restriction sought for limitation to ordinary hours to 10 hours per day as offsets did not sufficiently minimise the costs of the introduction of the 38-hour week for the purposes of the Wages Principles — Commission found offsets are sufficient to satisfy the strictures of the Standard Hours Principle and the Allowance Principle for other variations — Granted — Food Processing . 2268

INDUSTRIAL ACTION —
Payment for time lost due to stoppage due to allegedly unsafe working conditions sought — Commission found working conditions not to be unsafe — Commission also found that whether employer's obligation to individually notify employees *re* matters involving contract of service may be discharged via third party depends on circumstances of particular case — Dismissed — Meat Industry 1295
Application to vary award to give Applicant right to require employees to temporarily perform work other than work in their usual classification — Commission found principles outlined by Full Bench at 61 WAIG 477 in dealing with question of implied conditions in contracts of service of certain railway employees to be binding on this case — Commission also found no merit in application and strongly recommended Respondent lift bans — Dismissed — Railway Industry 1204
Applicant sought order that bans in support of award disability allowances for carpenters be lifted — Commission found that bans were imposed out of genuine sense of injustice at the inadequacies of disability allowances — Commission warned other groups with grievances about allowances that each claim must be considered on its merits and industrial action is merely one factor to be considered — Commission found full disability allowance should be applied — Dismissed — Transport (Rail) 1397
Application for order to lift industrial action by underground miners and surface employees so that negotiation for new piecework rates can proceed — Respondent union claims applicant should comply with previous agreement reached between parties and that this agreement be re-negotiated forthwith — Commission found the transfer of specific mining operations to a subcontracting company in effect negated the agreement but that on return of control of these operations to the applicant, re-negotiation of conditions and piecework provisions should have taken place — Commission ordered continuation of original agreement but that it should be suspended for a 30 day period for re-negotiation — Granted — Mining (Gold) 1398
Applicant sought order that all bans on transportation of driver's assistants in motor vehicles be lifted — Respondent objected to proposed order on basis this threatened its industrial rights of representation and also members were being required to perform work outside classifications — Commission found it was reasonable to include this task in the duties of ARU members as no evidence was produced to suggest that it was exclusively the work of one classification but that it was an incidental task in the substantive work of "examiners" and "shunters" and reasonably so — Granted — Transport (Rail) 1396
Applicant sought order for wages to be paid to employees for period of a strike and imposed black bans — Commission found nothing in circumstances of events established a situation that restored the payment of wages for this period — There was not any contract to pay the workers in the way submitted by the Applicant — Dismissed 1881
Dispute *re* warning letters on personal files — Applicant Union sought order to have final warning letters removed from members personal files following industrial action — Respondent refuted suggestion that letters constituted formal warnings but merely conveyed information regarding contracts of employment; no victimisation occurred nor were the letters disciplinary — Commission found on examination of the text of these letters that they were a mere recitation of fact and events — Commission found no warnings issued — Dismissed — Mining Industry 2363

INDUSTRIAL MATTER —
[2]Appeal aginst decision of Commission (67 WAIG 988) ordering compensation to employee found to be unfairly dismissed — Appellant argued Commission lacked power under the Industrial Relations Act to order compensation in lieu of reinstatement — Full Bench found that where dismissal was unfair and reinstatement inappropriate the assessment of adequate compensation was an appropriate alternative form of fair and equitable relief — Full Bench also found decision of Commission was fairly able to be reached from material before it — Dismissed — Iron Ore 1104
Claim that employees be permitted leave of absence during work hours to attend to industrial matters on behalf of union — Commission found claim was an industrial matter which fell within its jurisdiction — Granted — Construction 1289
Interpretation sought of Industrial Relations Act with regard to jurisdiction *re* "employees" subject to Tertiary Education Academic Staff (Teachers College) Award — Commission found Industrial Relations Act of 1979 had excluded these employees from its jurisdiction by its definition of "industrial matter" which in effect negated the award provisions — Commission found, as no power existed over these employees by definition applicant should be free to withdraw application and made whatever fresh application it saw fit — Withdrawn by leave — Education — Lecturers 1206
Application for new clause in award — Applicant claimed English language education should be made available to adult migrant employees without loss of pay during work hours — Respondent raised question of jurisdiction — Commission found it had jurisdiction over what was in this case an industrial matter — Commission found evidence that this practice would probably be successful and that long term benefits of granting leave on full wages for English tuition during working hours would be greater than immediate costs, therefore the claim would be allowed as stated in the application — Granted — Public Works 1354
[2]Appeal against decision of Commission at (67 WAIG 1354) to grant paid leave during work time to non-english speaking employees for the purpose of english language tuition — Appellant claimed Commission lacked jurisdiction over what was essentially a social matter — Respondent argued the point as to the wide definition given by the Act to an "industrial matter" and that the question of english language leave was within that definition — Full Bench on examination of case law determined this to be an industrial matter over which the Commission had jurisdiction — Full Bench upheld the ground of appeal which claimed the order was incorrectly issued as being "by consent" but dismissed all other grounds for appeal — Upheld In Part — Public Works 1740
Award amendment *re* classification — Applicant sought order to include provisions covering the classification of "Assistant Supervisor" under one award into another award on the basis of a commonality of work done with that of the "Social Trainer" — Respondent raised objection and argument on philosophical rather than industrial grounds — Commission found the work of assistant supervisors used the same techniques and skills as those of the social trainer and that in equity and good conscience they should receive the same award conditions — Consideration of the wage fixing principles showed that the claim fitted in well with the second tier ceiling but that no future bonuses or anomalies could arise from the decision — Granted — Health and Welfare 2300

INDUSTRY —
Applicant claimed "electronics industry" should be regulated by an award — Commission concluded that "electronics industry" is appropriate under section 7 (d) of the Act — Commission found that industry should be regulated by a first award — Granted — Electronics 1639

CUMULATIVE DIGEST—*continued*

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INDUSTRY ALLOWANCE —
Claim *re* site allowances — Applicant Unions claimed that rate of site allowance for electrical and metal tradesmen engaged in particular project to be in line with that of building tradesmen determined by Australian Arbitration Commission — Commission found from information presented that particular nature of the project warrants the payment of a site allowance as disabilities experienced by tradesmen are not comprehended under the awards — Commission found just and equitable that allowance be at rate determined for building trade — Exclusion of allowance for lift employees — Granted in Part — Electrical Contracting 2370

INTERPRETATION — WORDS AND PHRASES —
Clerk (Reception) — Promoting Authority claimed PAB lacked jurisdiction as vacancy was classified at same levels as position occupied by Appellant thus "promotion" was not involved — PAB found itself to have jurisdiction by virtue of section 80ZA(10) which provides for appeal provisions of Act to apply to such an applicant as if he were an applicant for promotion — PAB also found Appellant not to have better claim to vacancy — Dismissed — Hospital Services 1308
[1]Appeal against decision of Full Bench (67 WAIG 745) to dismiss appeal against Commission's interpretation of Agreement — Industrial Appeal Court found both Commission and Full Bench applied correct principles of interpretation but erred in law by finding construction of relevant clause to be ambiguous within context of Agreement as a whole — Industrial Appeal Court found that as no ambiguity exists the ordinary and natural meaning of words used must be the true interpretation — Upheld — Iron Ore 1097
Application for interpretation of clause in award — Applicant claimed annual salary increments should be paid on anniversary date of employees commencement — Commission found rates of interpretation were well established and did not support the union's claim — Commission declared the clause did not specify a date on which annual increments should be paid — Dismissed — Health and Welfare 1390
Conflict as to interpretation of annual leave after higher duties clause in Award — Applicant claims that two months acting time which confers entitlement for annual leave at higher rate of pay must be uninterrupted, and end no more than two weeks prior to leave — Respondent claims words "for not less than two months" include case where time is made up of discrete periods of time and that as long as any part of said acting time falls in the period two weeks prior to leave, leave should be paid at the higher rate — Commission stated that where award is clear and unambiguous they must be given their plain meaning — Commission found "for not less than two months" unqualified by "continuously" or "without interruption" is unambiguous and carries meaning ascribed by Respondent — Declaration answered Applicant's claim in negative — Railway Industry 1618
Union seeks interpretation of clause of award relating to annual leave — Question as to whether an employee, whose employment is terminated after 12 months' continuous service, is entitled to leave loading on untaken leave, accrued during that 12 months — Union claims that employee is entitled to loading on balance of untaken leave — Respondent claims proper construction of award, and custom and practice deny entitlement to loading — Question answered in negative — Power Industry 1616
Applicant sought interpretation of Clause 5.—Locality Allowances of "Government School Teachers' (Education Department) Locality Allowances" Award 1984 as a result of complaint before Industrial Magistrate — Question of application of Award to part-time teacher — Tribunal doubted that award is "written law" or "subsidiary legislation" as defined in section 5 of Interpretation Act 1984 — Majority decision of Tribunal held that the award does apply to part-time teachers on a *pro rata* basis due to the fact that this was established practice — Education 1689
Application for interpretation of clauses in award — Commission found that there can be no answers for questions raised in clauses concerning Lodging Allowance, Held Away From Home Allowance and Minimum Time Off Duty — Commission found that interpretation and construction of the meaning of the words "shunt" and "en route" could be defined and issued declaration accordingly — Granted in Part — Transport — Government Railways 1845
[2]Question of law — Applicant claimed agent for Respondent was a "Legal Practitioner" within the meaning of the Industrial Relations Act and objected to his appearance for the Respondent — Agent had surrendered Practice Certificate with the intention to demonstrate that it could no longer be considered that he came within the definition — Full Bench found while agent was entitled to renounce his right to carry on practice, there were no provisions for him to revoke or surrender the Annual Practice Certificate and therefore it is still valid and current — Question answered in the affirmative 2233
[2]Appeal against decision of Government School Teachers Tribunal (at 67 WAIG 1689) *re* interpretation of Locality Allowance — Appellant argued that allowance should apply equally to all teachers and not on a proportional basis according to hours worked for part-time teachers — Respondent refuted claim — Full Bench found Tribunal had erred in finding that clause in award was ambiguous and in using extrinsic aids to interpret the said award — Full Bench found true interpretation provided entitlement to allowance for part-time teachers at the same rate payable to full-time teachers — Upheld — Education 2232

JURISDICTION —
Applicant sought order for contractual benefits as an employee — Respondent denied claim and raised the question of jurisdiction based on claim that relationship was that of an "independent contractor" — Commission found that relationship between applicant and respondent exhibited all the features of that of an "independent contractor" and that applicant had failed to prove the claim — Commission found that it had no jurisdiction to entertain a claim where "independent contractor" status had been established — Dismissed — Transport 1246
[2]Appeals against decision of Commission (67 WAIG 1006) to dismiss application on jurisdictional grounds after finding contract of employment to have been legally determined and consequently no dismissal to have occurred — Full Bench found contract not to have expired according to its terms but to have been terminated by notice — Full Bench thus found dismissal had occurred and that matter should be remitted to Commission for determination on its merits — Upheld — Education 1118
Claim that employees be permitted leave of absence during work hours to attend to industrial matters on behalf of union — Commission found claim was an industrial matter which fell within its jurisdiction — Granted — Construction 1289
Interpretation sought of Industrial Relations Act with regard to jurisdiction *re* "employees" subject to Tertiary Education Academic Staff (Teachers College) Award — Commission found Industrial Relations Act of 1979 had excluded these employees from its jurisdiction by its definition of "industrial matter" which in effect negated the award provisions — Commission found, as no power existed over these employees by definition applicant should be free to withdraw application and made whatever fresh application it saw fit — Withdrawn by leave — Education — Lecturers 1206
Application for new clause in award — Applicant claimed English language education should be made available to adult migrant employees without loss of pay during work hours — Respondent raised question of jurisdiction — Commission found it had jurisdiction over what was in this case an industrial matter — Commission found evidence that this practice would probably be successful and that long term benefits of granting leave on full wages for English tuition during working hours would be greater than immediate costs, therefore the claim would be allowed as stated in the application — Granted — Public Works 1354
[1]Appeal against reference of matter to Commission in Court Session by Government School Teachers' Tribunal purporting to use powers conferred by section 27 of Act — Industrial Appeal Court found Commission in Court Session to have no jurisdiction to hear and determine the application, the Government School Teachers' Tribunal to have exclusive jurisdiction to hear and determine the matter, and that Government School Teachers' Tribunal had no power to refer matter to Commission in Court Session — Upheld and remitted to Government School Teachers' Tribunal for further hearing and determination — Education 1523
Applicant sought order of compensation for contractual entitlement unpaid following alleged unfair dismissal — Respondent raised question of Commission's jurisdiction to determine the claim, it being subject to a federal award — Commission found that the verbal contract operated in the manner described by the Respondent and that the resultant termination of that contract was not unfair nor was there failure to pay the full contractual entitlement at the conclusion of this contract — Commission found question of jurisdiction was established in the Respondent's favour and that the Commission, based on case evidence was without power to entertain the claim — Dismissed — Pastoral Industry 1856

CUMULATIVE DIGEST—*continued*

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JURISDICTION — *continued*

Employee claimed unfair dismissal — Applicant argued that no notice or payment in lieu of notice was received and sought order for reinstatement, "outstanding moneys" and compensation — Respondent refuted claim and argued services provided were on a voluntary basis — Furthermore Applicant was not an employee pursuant to the Industrial Relations Act and therefore Commission did not have jurisdiction to hear the matter — Commission found there were offers of employment and at best "negotiations" *re* contract of employment between the parties — However Commission found there is no or insufficient evidence to establish that the offer was accepted by Applicant — Commission found Applicant was not an employee and dismissed claim for want of jurisdiction — Dismissed — Health and Welfare 2334

Employee dismissed due to poor work performance and unsuitability — Applicant sought order for compensation arising from an unfair dismissal due to no warning or counselling being given — Respondent claimed Applicant resigned and questioned jurisdiction of Commission to hear the claim — Commission found constructive dismissal of Applicant had occurred, however the claim as to the unfair nature of that dismissal was not supported by evidence from the Applicant — Commission made no finding on question of compensation — Dismissed — Oil and Gas Industry 2350

LONG SERVICE LEAVE —

Claim for long service leave entitlements — Board of Reference determined that payment of compensation for these entitlements was warranted — Granted — Pastoral Industry 1214

Application *re* Long Service Leave Provisions and calculation of rate of wage for *pro rata* entitlements upon termination — Applicant claims that payment should be on basis of 40 hour week — Respondent claims that basis should be an average of the actual hours worked by the employee over at least a 12 month period — Board found Conditions prescribed by general order are specific and prescribe rate of pay entitlements as those applicable at date leave commences, and that leave date commences immediately prior to termination — Board found interpretation of specific award unnecessary — Conditions specify hours entitlement limited to standard weekly hours prescribed by award therefore Board found that regardless of employee having worked 41 hour week, his entitlements were limited to the 40 hour week prescribed by award — Recreation 1633

Applicant claimed unfair dismissal and sought *pro rata* long service leave payments — Burden of proof on Applicant — Commission found this not discharged — Dismissed 1674

Claim for payment of *pro rata* long service leave — Applicant did not qualify for this benefit but claimed that changed rosters and pressing domestic necessity combined to make her termination one of constructive dismissal and Committee should, therefore, use its discretionary power to recommend payment — Majority of Committee found entitlement to *pro rata* long service leave payment to be a contingent benefit and that applicant had failed to meet contingencies — Dismissed — Welfare 1628

[2]Appeal against decision of Commission at (67 WAIG 1003) *re pro rata* long service leave being awarded — Full Bench found compensatory orders *re pro rata* long service leave entitlements were justified, where an employee has evinced an intention to continue indefinitely in employment but due to employers business had been retrenched or terminated — Full Bench found injury sustained by employee in accident prevented him from undertaking the duties of position and Appellant was required to compensate him for disability pursuant to the provisions of Workers Compensation and Assistance Act 1981 — Upheld — Meat Industry 1737

MANAGERIAL PREROGATIVE —

Claim for order declaring withdrawal from agreement to pay power subsidy to employee is fair and reasonable — Applicant claimed managerial prerogative and that due consultation had taken place — Respondent argued for no removal without justification — Commission found the dicta applying to managerial prerogative was relevant, the respondent had shown that substantial consultation had taken place and that removal of allowance was not harsh or unjustified — Commission noted that agreements made between parties for industrial relations purposes can change to meet changed circumstances given the parties' acceptance of the need to work within Industrial Relations Act — Declared in favour of Applicant — Mining Industry 1256

Demarcation dispute over whether placement of foam rubber blocks inside coupling of ore cars should be undertaken by tradesmen (fitters) in workshop or car and wagon examiners "in situ" — Commission rejected Applicant's assertion of the existence of an underlying principle which determines such work as the exclusive domain of fitters — Commission found car and wagon examiners possess skill and technical competency to perform task and that safety is not jeopardised — Dismissed — Iron Ore 1286

Declaration sought that Applicant's requirement that tradesmen/fiters carry out modifications to rolling stock bogies is reasonable — Commission found principles outlined in AMWSU *v.* Hamersley Iron Pty Ltd (66 WAIG 100) were applicable — Commission also found work to come within general scope of work of fitters and that Respondent had not acted unfairly — Granted — Railways 1277

Applicant sought order that the work of tube surveying be undertaken by trainee operators — AWU and AMWSU reject claim saying work in question is outside scope of CMEWU which covered these employees and that the work is a part of the maintenance process — Commission found central issue to be the scope of managerial prerogative — Work in question found to be not akin to work already performed by these employees nor was it maintenance work — Commission found that in view of fact that AWU and AMWSU could not do the work due to current workload, and there being no submission from the CMEWU it would order that the work be carried out by trainee operators, without prejudice to the position of the respondent unions — Dismissed — Mining (Iron Ore) 1428

Applicant sought declaration to confirm questions posed *re* applicant's ability to direct Unit Attendant Grades 1 and 2 and Auxiliary Plant Attendants to be trained in operation of plant at all three stages and also that applicant direct employees to work on any stage for which they are trained — Commission found flexibility to be an integral part of consideration in this matter and that it followed that the applicant should be able to direct work as it sees fit — Declaration issued answering claim in favour of applicant — Granted — Electrical Power 1884

Employee dismissed for alleged incompetence — Applicant Union claimed unfair dismissal and sought reinstatement — Union argued that no proper investigation or counselling was conducted — Respondent argued that the absence of a procedure to review the dismissal did not detract from its right to terminate and the lack of counselling was not fatal when considering the correctness of its action — Commission found in favour of Union as respondent had ignored employees Line Supervisors advice of caution and then dismissed employee in a pre-emptory fashion when problems occurred — Commission however found that reinstatement would be impractical and awarded compensation — Granted — Mining/Iron Ore 2146

MANNING —

Applicant sought order for cab installed radios to be used and operated by engine drivers — Respondent unions reject claim on basis of threat to employment security and safety and sought a contrary order — Commission found rules governing operation to trains prevented engine drivers from performing such duties, also that issuance of such an order as requested by applicant could weaken ARU position and give support to applicant's projected plans for one man crews — Commission declared the use of radios by engine drivers was unreasonable — Transport/Rail 1294

Applicant sought declaration to confirm questions posed *re* applicant's ability to direct Unit Attendant Grades 1 and 2 and Auxiliary Plant Attendants to be trained in operation of plant at all three stages and also that applicant direct employees to work on any stage for which they are trained — Commission found flexibility to be an integral part of consideration in this matter and that it followed that the applicant should be able to direct work as it sees fit — Declaration issued answering claim in favour of applicant — Granted — Electrical Power 1884

CUMULATIVE DIGEST—*continued*

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MANNING —*continued*

Application for "gangway watchmen" to be employed to work on foreign registered vessels when berthed at Kwinana Steelworks in the Port of Fremantle — Claimant based claim on custom and practice and security — Respondent rejected the need for any such person to be employed in this capacity — Commission found Fremantle Port Authority provisions made it necessary for gangway watchmen to be employed on such vessels and that Respondent's arguments *re* existing security arrangements were not relevant — Commission also found Memorandum of Understanding applied to berths for common or general use and that the berth was now being used in such a way and therefore the conditions of the Memorandum should apply — Granted — Maritime Industry 1893

Dispute *re* roster system — Applicant sought declaration to the existence of an agreement between parties and upon declaration issue an order setting out the terms and conditions — Union opposed continuation of agreement and claimed that they were at liberty to retire from it — Furthermore Union argued being rostered meant domestic and family disturbances and due to a greater call-out demand, the issue of safety — Commission found burden of proof on Unions and justification in Applicant's claim in terms of an order is "certainty", as well as public interest — Commission found on question of safety, nothing in agreement can over-ride an employee's legal right to refuse to comply with an unlawful and unreasonable command — Commission concluded that an order to substantially preserve existing agreement be made — Granted — Government Railways 2353

MISCONDUCT —

Reinstatement sought for employee alleged to have been unfairly dismissed — Respondent claimed employee justifiably dismissed for misconduct — Commission found employee had received less than a "fair go all round" — Granted in part — Casino 1289

Applicant sought order of compensation for employee summarily dismissed for misconduct — Commission found actions of employee in question showed that he had not intended to repudiate his contract of employment but that he correctly questioned the authority of his work mate over him and had received less than a fair go all round as a consequence of this — Commission found compensation in order, there being no claim for re-employment — Granted — Timber Industry 1446

Employee dismissed for alleged misconduct — Union sought reinstatement as respondent's action was harsh, oppressive and unfair — Union claimed alleged threat of violence by employee was misconstrued and made in jocular manner without intent to execute — Respondent argued it had an obligation to protect its employees from interference with their employment — Furthermore all employees are under an implied duty to conduct themselves in a reasonable manner with fellow employees especially in isolated communities — Commission found respondent had right for concern on facts provided *re* police inquiry into threats of violence and concern for safety of particular members of workforce — Commission drew attention of parties *re* "final warning" and stated that it should be brought to an employee's attention — Commission found no ground in the instant case to conclude that it should interfere with company's right to terminate — Dismissed — Mining Industry 1431

[2]Appeal against Commission's decision at (67 WAIG 1431) to dismiss claim for reinstatement of employee dismissed for alleged misconduct — Appellant alleged Commission erred in holding that dismissal was not of a harsh, oppressive or unfair manner and that employee in question was an "unsuitable employee" in remote community — Furthermore dismissal was a pretence to circumvent proper investigation as prescribed — Full Bench found Commission rightly recognised respondent's obligation to protect other employees against physical risks and noted that respondent could be held liable at law for failing to take steps to prevent injury or harm to employees — Furthermore Full Bench noted respondent had exercised its right to terminate contract of service in a prescribed manner and found Commissioner was right in declining to interfere — Dismissed — Mining 1329

[2]Appeal against decision of Commission at (67 WAIG 1289) *re* compensation awarded — Appellant claimed Commission had erred in concluding employees conduct did not warrant summary dismissal and in awarding compensation which were beyond jurisdiction, pursuant to section 23 — Full Bench found that the usual tests as to whether the contract of service had been damaged and if employee's actions constituted a fundamental breach of rules and regulation were correctly applied — Furthermore Full Bench found that granting of compensation was open to the Commission and had been fairly applied — Dismissed — Liquor and Accommodation . 1529

Employee (Manager) claimed unfair dismissal and sought contractual entitlements — Respondent claimed misconduct — Onus on employer to specify terms of alleged gross misconduct at time of dismissal — Commission found that summary dismissal of applicant was unfair, and that respondent failed to establish misconduct — Commission also found that in granting redress it is not restricted to specific claim and that overriding consideration is that any remedy is just and equitable — Granted — Retail 1654

Applicant claimed unfair dismissal and sought reinstatement — Respondent claimed termination was due to misconduct — Commission found that on balance Respondent failed to prove misconduct, however, as Respondent had reasonable grounds to suspect Applicant to be guilty of misconduct the termination was not unfair — Dismissed — Security 1650

Employee dismissed for alleged insubordination — Applicant Union claimed dismissal as harsh and unreasonable and sought reinstatement — Respondent refuted claim — Commission found in Union's favour as act of insubordination was not deliberate or wilful or of such nature as to strike at an essential element in contract of service — Furthermore Commission found act was committed in a situation of stress and not a question of disobedience which would impose on an employers right to enforce discipline — Granted — Meat Industry 1885

NATURAL JUSTICE —

[2]Appeal against decision of Commission [(1987) 67 WAIG 1231] to dismiss claim for unfair dismissal and for contractual benefits — Full Bench found Commission mistook Appellant's intention to lead evidence in original proceedings and its failure to allow evidence subsequently constituted a denial of natural justice — Upheld and remitted to Commission for further hearing and determination — Furniture Manufacturing 1527

ON CALL —

Applicant sought to standardise payment for "holding in readiness" and/or call-outs in five awards — Commission found that in light of there being no major differences between the parties the clause needed only to be redrafted — Commission dismissed a part of the respondent's counter proposal to do with "standby duty" as this was covered by new clause — Granted — Electrical Contracting 1158

Dispute *re* roster system — Applicant sought declaration to the existence of an agreement between parties and upon declaration issue an order setting out the terms and conditions — Union opposed continuation of agreement and claimed that they were at liberty to retire from it — Furthermore Union argued being rostered meant domestic and family disturbances and due to a greater call-out demand, the issue of safety — Commission found burden of proof on Unions and justification in Applicant's claim in terms of an order is "certainty", as well as public interest — Commission found on question of safety, nothing in agreement can over-ride an employee's legal right to refuse to comply with an unlawful and unreasonable command — Commission concluded that an order to substantially preserve existing agreement be made — Granted — Government Railways 2353

ORDER —

[4]Application for stay of order of Commission pending outcome of appeal to Full Bench — President found Applicant must establish that there is a serious question to answer and that the balance of convenience favours the granting of a stay — President found as it was likely Applicant will continue to be obliged to pay sum in order or larger amount by virtue of appeal being that order is insufficient, there is no question to be tried — Dismissed — Furniture Manufacturing 1335

Application for cancellation of an order which specified 48 hours maintenance checks of Haulpaks on grounds that it limited flexibility of operations — New arrangements agreed by parties ensure that safety standards are maintained — Commission found order should be cancelled subject to terms of new order issued — Granted — Mining 1637

CUMULATIVE DIGEST—*continued*

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ORDER —*continued*

[2]Appeal against decision of Commission at (67 WAIG 1003) *re pro rata* long service leave being awarded — Full Bench found compensatory orders *re pro rata* long service leave entitlements were justified, where an employee has evinced an intention to continue indefinitely in employment but due to employers business had been retrenched or terminated — Full Bench found injury sustained by employee in accident prevented him from undertaking the duties of position and Appellant was required to compensate him for disability pursuant to the provisions of Workers Compensation and Assistance Act 1981 — Upheld — Meat Industry 1737

Dispute *re* roster system — Applicant sought declaration to the existence of an agreement between parties and upon declaration issue an order setting out the terms and conditions — Union opposed continuation of agreement and claimed that they were at liberty to retire from it — Furthermore Union argued being rostered meant domestic and family disturbances and due to a greater call-out demand, the issue of safety — Commission found burden of proof on Unions and justification in Applicant's claim in terms of an order is "certainty", as well as public interest — Commission found on question of safety, nothing in agreement can over-ride an employee's legal right to refuse to comply with an unlawful and unreasonable command — Commission concluded that an order to substantially preserve existing agreement be made — Granted — Government Railways 2353

OVER AWARD PAYMENTS —

[3]Claim for reinstatement of policy of over award payment for certain allowances and bonuses — Applicant said an inequity existed with conditions affecting employees of other companies in same industry — Respondent based objection on fact that claim was outside Wage Fixing Principle 9(c) and 6.—CICS stated the principles to be the only consideration in this case — CICS found no evidence of altered work value to justify a new allowance under Principle 9.—Allowances, and that the applicant could not solely rely on comparative wage justice to argue a case under Principle 6.—Anomalies and Inequities — Dismissed — Metal Industry 1132

OVERTIME —

Applicant sought to standardise payment for "holding in readiness" and/or call-outs in five awards — Commission found that in light of there being no major differences between the parties the clause needed only to be redrafted — Commission dismissed a part of the respondent's counter proposal to do with "standby duty" as this was covered by new clause — Granted — Electrical Contracting 1158

Claim for payment of overtime — Commission found case for amending award — Question as to retrospectivity of amendments — Commission found that statute presumes against retrospectivity — Union case not sufficient to overcome that presumption — Claim dismissed — Electrical Power 1680

PART-TIME —

[2]Appeal against decision of Government School Teachers Tribunal (at 67 WAIG 1689) *re* interpretation of Locality Allowance — Appellant argued that allowance should apply equally to all teachers and not on a proportional basis according to hours worked for part-time teachers — Respondent refuted claim — Full Bench found Tribunal had erred in finding that clause in award was ambiguous and in using extrinsic aids to interpret the said award — Full Bench found true interpretation provided entitlement to allowance for part-time teachers at the same rate payable to full-time teachers — Upheld — Education 2232

PENALTY RATES —

Salary payable to shift supervisors — Remuneration claimed to be restricted by imposition of ceiling on shift penalties — Held that ceiling is one small facet of a complicated salary package no employee has been treated unfairly or prejudiced by introduction — Dismissed — Mining Industry 1284

PIECEWORK —

Application for order to lift industrial action by underground miners and surface employees so that negotiation for new piecework rates can proceed — Respondent union claims applicant should comply with previous agreement reached between parties and that this agreement be re-negotiated forthwith — Commission found the transfer of specific mining operations to a subcontracting company in effect negated the agreement but that on return of control of these operations to the applicant, re-negotiation of conditions and piecework provisions should have taken place — Commission ordered continuation of original agreement but that it should be suspended for a 30 day period for re-negotiation — Granted — Mining (Gold) 1398

PRINCIPLES —

Application to vary clause in award — Applicant sought increase in district allowance so as to reflect two movements in the consumer price index — Commission found variation to be within confines of wage fixing principles and set operative date of increase as being the date at which the rates were agreed by the parties — Granted — Health Welfare 1177

Restructuring of ordinary hours of work during which shift loadings are payable sought — Commission found Applicant to be seeking erection of new allowance for ordinary hours of work falling beyond specified time — Commission found this not a matter appropriate for variation of shift work provisions and that claims lacked substantial merit — Dismissed — Hospital Services 1201

First award for parliamentary electorate secretaries sought — Wage Fixing Principles relating to first awards and work value require the maintenance of existing rates and conditions unless proved inappropriate — Commission found parties to have demonstrated that value of work performed warranted increased rates — Granted — State Government 1153

[3]Claim for reinstatement of policy of over award payment for certain allowances and bonuses — Applicant said an inequity existed with conditions affecting employees of other companies in same industry — Respondent based objection on fact that claim was outside Wage Fixing Principle 9(c) and 6.—CICS stated the principles to be the only consideration in this case — CICS found no evidence of altered work value to justify a new allowance under Principle 9.—Allowances, and that the applicant could not solely rely on comparative wage justice to argue a case under Principle 6.—Anomalies and Inequities — Dismissed — Metal Industry 1132

[3]Application for increased rates of pay to reflect increased rates in NSW award with which there is nexus — Increase in NSW award due to work value case from technological change — Evidence given that same technology used in WA but this application is to establish equitable base — Commission in Court Session found anomaly to exist, no equitably base application to have been brought previously and Wage Fixing Principles to have been satisfied — Commission in Court Session allowed retrospective date of operation as agreed by parties — Granted — Brewing 1134

Application for industry allowance and amount for personal insurance on basis that other employees in fire fighting and fire prevention industry receive one — Commission found industry allowance paid to other employees to have no relevance to workshop metal trades employees — Commission also found wage structure of award comprehends disabilities for which allowance sought and there have been no changes to work or conditions which principle relating to allowances requires — Dismissed — Firefighting and Fire Prevention 1280

Claim that salaries for Commissioned Police Officers be increased by 4.7 per cent to reflect lack of payment for overtime and shiftwork — Commission accepted evidence that due to increase public accountability and requirement that the become more involved in day to day activities of Police Force Commissioned Officers have had to perform more "after hourts" work over past three to four years — Commission found claim satisfied Work Value Principle but warned that this material can not now be relied on in any case for second tier increase — Granted — Police 1187

Applicant sought order to give effect to concept of broadbanding and to make other modernising amendments to the award — Commission found that application should be dealt with under old wage fixing principles — Costs of introduction of broadbanding were minimal under the conditions of old principles and the benefits were not to be ignored — Commission found that a long standing nexus with conditions in the Public Service existed and that the application merely reflected that nexus — Granted — Transport 1607

CUMULATIVE DIGEST—*continued*

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PRINCIPLES — *continued*

Applicant sought variation of power station allowance in award based on increased disabilities and comparison with work performed by engineer trades employees employed by the respondent — Respondent raised question of allowance increase being contrary to wage fixing principles and denied any historical nexus — Commission found no sound basis for comparison claimed however the allowance should be increased for storemen employed at Kwinana and Muja based on comparison of disabilities encountered at Bunbury — Commission found range of disabilities and time of exposure warranted increases at both Kwinana and Muja which were in accordance with work value wage fixing principle — Granted In Part — Electrical Power 1604

Applicant sought order that operation of 38-hour week be maintained as per a "Working Party" agreement on requirement that Administrative Nurses be excluded from afternoon shifts as a trade off in 38-hour week negotiations — Commission found a Memorandum of Agreement clearly established that Administrative Nurses would work late shifts and not that this condition had been the subject of a trade off on 38-hour week implementation or that its inclusion as a condition of the Memorandum was an error — Question of wage fixation principles — Commission found no breach of their implementation — Dismissed — Health 1680

[2]Appeal against decision of Commission at (67 WAIG 848) to grant a site allowance for construction work on Forrest Place Redevelopment site — Full Bench found that the allowance was not set in accordance with the provisions of the "Sapri" decision and also that the ratification of the agreement of the parties did not take into full account the wage fixing principles — Full Bench found that decision should be suspended and the Bench found that decision should be suspended and the matter remitted to the Commission for further hearing of an appropriate quantum allowance — Upheld — Construction 1731

Applicant sought declaration to confirm questions posed *re* applicant's ability to direct Unit Attendant Grades 1 and 2 and Auxiliary Plant Attendants to be trained in operation of plant at all three stages and also that applicant direct employees to work on any stage for which they are trained — Commission found flexibility to be an integral part of consideration in this matter and that it followed that the applicant should be able to direct work as it sees fit — Declaration issued answering claim in favour of applicant — Granted — Electrical Power 1884

Variation of awards and agreements *re* salary rates — Applicant sought increase by four per cent pursuant to current Wage Fixing Principles, more particularly the Restructuring and Efficiency Principle — Respondent agreed to the increase after extensive negotiations — Commission found papers lodged in support of these applications complied with both the spirit and the letter of Commission's Wage Fixing Principles — Commission however found notwithstanding that the claims were lodged sometime back, the operative date of order should be effective from the next pay period — Granted — State Government Administration 2310

[3]Adjustment of wage rates pursuant to Anomalies and Inequities Principles — Applicant Union claimed anomaly existed in wage rates of "non-production" and production employees of Respondent — Respondent supported claim — Commission in Court Session found claim within present principles and that no flow-on would occur — Furthermore increases are of a once only nature to establish an equitable base — Granted — Aerated Water 2240

Confirmation of Redundancy agreement — Applicant Union claimed agreement was to counter problem of redundancy and unemployment between jobs in the building construction industry and sought continuation of agreement — Respondent opposes claim with view of withdrawing from agreement and advanced reason that it would be *ultra vires* the Building Industry (Code of Conduct) Act 1986 — Code of Conduct (Obligations of Employers) 1986 — Commission found *prima facie* there is no prohibition in the legislation on the continuation of an agreement reached between the parties, however approval or ratification of such agreement is necessary by appropriate Industrial Tribunal — Furthermore Commission found no conflict with the present Wage Fixation Principles and concluded *status quo* to be maintained — Granted — Building and Construction 2367

Award amendment *re* classification — Applicant sought order to include provisions covering the classification of "Assistant Supervisor" under one award into another award on the basis of a commonality of work done with that of the "Social Trainer" — Respondent raised objection and argument on philosophical rather than industrial grounds — Commission found the work of assistant supervisors used the same techniques and skills as those of the social trainer and that in equity and good conscience they should receive the same award conditions — Consideration of the wage fixing principles showed that the claim fitted in well with the second tier ceiling but that no future bonuses or anomalies could arise from the decision — Granted — Health and Welfare 2300

PROCEDURAL MATTERS —

[2]Applications by Registrar for enforcement of summonses issued by Commission — Full Bench found one application established and the failure to attend when summoned proved — Full Bench ordered fine of $350 — Proven — Electrical Industry 1124

[2]Failure to attend compulsory conference — Facts conceded by Respondent — Fine imposed 1531

[2]Appeal against decision of Commission (67 WAIG 850) to refuse to stay or dismiss proceedings for variation of Agreement on grounds that same matter was already subject of application before Commission in Court Session — Full Bench found refusal to grant a stay or dismiss proceedings to be a "finding" and therefore appealable — Full Bench found issues in instant application to be the same as those before Commission in Court Session but application had been made in good faith and would not prejudice Appellant — Full Bench found Commission procedures to be sufficiently elastic to permit a new application in interests of maximum expedience and minimum legal form — Dismissed — Iron Ore 1723

[2]Appeal against decision of Commission (67 WAIG 850) to vary Agreement by including provision for paid union meetings — Appellant claimed Commission relied on material that was not properly before it and was therefore inadmissable — Appellant also claimed decision to be in contravention of Wage Fixing Principles and thus section 43 (2) of Act — Full Bench found material in question to have been before Commission in Court Session proceedings to which Appellant was party — Consequently Full Bench found Appellant to have been aware of material and further to have been afforded a hearing where it had opportunity to contest material — Full Bench also found not to have acted outside Principles, to have determined matter on merit and that it was open to Commission to find as it did as an exercise of discretionary judgment — Dismissed — Iron Ore 1723

PROMOTION APPEAL —

Clerk (Reception) — Promoting Authority claimed PAB lacked jurisdiction as vacancy was classified at same levels as position occupied by Appellant thus "promotion" was not involved — PAB found itself to have jurisdiction by virtue of section 80ZA(10) which provides for appeal provisions of Act to apply to such an applicant as if he were an applicant for promotion — PAB also found Appellant not to have better claim to vacancy — Dismissed — Hospital Services 1308

Appeal against promotion of recommended applicant to position of Conductor with Westrail — Promotion Appeal Board found work was more closely aligned to the experience and skills of the recommended applicant and that on balance the appeal should be dismissed — Dismissed — Transport (Passenger) 1906

Appeal against promotion of recommended applicant to position of "Photographic Technician" with Department of Land Administration — Promotions Appeal Board found appellant has the onus to show that he met the selection criteria fully and that this had been found not to be the case — Dismissed 1906

Appeal against promotion of recommended applicants to positions of special craftsman, at the Perth Mint — Promotion Appeal Board found applicant had now shown the Board reasons to believe he would make a more suitable applicant than any of the four recommended applicants — Dismissed 1906

Appeal against promotion of recommended Applicant to position of Administrative Assistant (Sick Leave and Compensation) ROA Class 5 with Westrail — Promotion Appeal Board found Appellant did have a strong case, however evidence brought out the fact that problems of supervision and with communication tipped the balance in favour of the recommended Applicant — Dismissed 2379

Appeal against promotion of recommended Applicant to position of Unit Attendant Grade 2 with the SEC at Muja Power Station — Promotion Appeal Board found all parties had required experience but that the recommended Applicant had superior knowledge and understanding of equipment and duties — Dismissed 2378

Appeal against promotion of recommended Applicant to position of Technical Specifications Officer with Westrail — Promotion Appeal Board found Appellants would all require training and familiarisation periods to perform the duties effectively but that the recommended Applicant had already demonstrated this skill and training — Dismissed 2379

CUMULATIVE DIGEST—*continued*

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REDUNDANCY/RETRENCHMENT —

Applicant sought order of redundancy payments to employees terminated followng closure of seasonally operating meat works — Commission found seasonality was well established and that Termination, Change and Redundancy Case established redundancy guidelines in all awards in this state, therefore on evidence employees had already been adequately compensated — Dismissed — Meat Industry 1215

Applicant sought order to establish that an employee made redundant was treated unfairly — Commission found that employee was made redundant, that Western Australian Government Policies concerning redundancy matters applied to employees singularly made redundant and thus the employee should be accorded the benefits of that policy — Granted in part — Public Works 1218

Employees dismissed due to redundancy — Applicant union sought order of compensation over and above amount already paid on termination — Commission confirmed respondent's right to reorganise business but found that insufficient weight had been given to employees' length of service, resultant hardship, age etc and it was unfair to terminate their contracts without these considerations — Commission found compensation was in order — Granted — Retail 1441

Claim for redundancy payments for cleaners to be retrenched due to a reduction in activity of principal company — Commission found Commission in Court Session decision for Metal Trades' Award [(1986) 66 WAIG 580] to provide benchmark on redundancy in Western Australia and ordered accordingly — Granted in Part — Contact Cleaning 1678

²Appeal against decision at (67 WAIG 1215) *re* dismissal of claim for severance payments — Appellant claimed Commission erred in finding that seasonal employees are excluded from consideration for severance payments in the event of redundancy — Full Bench found industry clearly seasonal in which employment was intermittent and upon evidence employees had no reasonable expectation of re-employment nor any right to severance pay — Full Bench found Appellant had failed to establish error on the part of Commission — Dismissed — Meat Industry 1739

Confirmation of Redundancy agreement — Applicant Union claimed agreement was to counter problem of redundancy and unemployment between jobs in the building construction industry and sought continuation of agreement — Respondent opposes claim with view of withdrawing from agreement and advanced reason that it would be *ultra vires* the Building Industry (Code of Conduct) Act 1986 — Code of Conduct (Obligations of Employers) 1986 — Commission found *prima facie* there is no prohibition in the legislation on the continuation of an agreement reached between the parties, however approval or ratification of such agreement is necessary by appropriate Industrial Tribunal — Furthermore Commission found no conflict with the present Wage Fixation Principles and concluded *status quo* to be maintained — Granted — Building and Construction 2367

Employee dismissed due to economic downturn and restructuring — Applicant sought order of unfair dismissal and compensation — Commission found employee was terminated pursuant to all award entitlements and that the dismissal was not unfair on evidence of the Respondent's enforced restructuring — Applicant's position was made redundant and that the claim had not been established — Dismissed — Timber Industry 2342

REGISTRATION —

²Registration of new organisation entitled Construction, Mining and Energy Workers' Union sought — New Organiation results from amalgamation of BWIU with FEDFU — Various other organisations objected on grounds that proposed name was misleading and that by virtue of amalgamation the amalgamating organisations will be registered in relation to industries to which they were not previously registered — Majority decision of Full Bench found objections unjustified and requirements of Act satisfied — Granted — Unions 1127

²Application for amalgamation of FMWU and Metropolitan Laundry Employees Union — FLAEU objected, however, Full Bench found the membership of the organisation would not be extended by the proposed amalgamation — Granted — Unions 1130

REINSTATEMENT —

Reinstatement sought for employee alleged to have been unfairly dismissed — Respondent claimed employee justifiably dismissed for misconduct — Commission found employee had received less than a "fair go all round" — Granted in part — Casino 1289

Order sought *re* conditions of employment of employees who have been offered re-employment following dismissals — Commission determined matter by the issuing of a consent order in the terms of agreement reached by the parties — Granted — Meat Industry 1299

Applicant union sought order that a safety officer, dismissed under "last on first off" policy be reinstated and that such officers be exempt from this policy — Commission found an agreement between the applicant and respondent confirmed the appointment of this particular employee as third safety rep on site to be legitimate, but that this did not specify continuing employment for this worker or exemption from "last on first off" policy — Commission dismissed the claim submitted for arbitration but ordered maintenance of existing policy of requiring a safety rep for each construction site — Dismissed — Building Industry 1435

Employee dismissed for alleged misconduct — Union sought reinstatement as respondent's action was harsh, oppressive and unfair — Union claimed alleged threat of violence by employee was misconstrued and made in jocular manner without intent to execute — Respondent argued it had an obligation to protect its employees from interference with their employment — Furthermore all employees are under an implied duty to conduct themselves in a reasonable manner with fellow employees especially in isolated communities — Commission found respondent had right for concern on facts provided *re* police inquiry into threats of violence and concern for safety of particular members of workforce — Commission drew attention of parties *re* "final warning" and stated that it should be brought to an employee's attention — Commission found no ground in the instant case to conclude that it should interfere with company's right to terminate — Dismissed — Mining Industry 1431

²Appeal against Commission's decision at (67 WAIG 1431) to dismiss claim for reinstatement of employee dismissed for alleged misconduct — Appellant alleged Commission erred in holding that dismissal was not of a harsh, oppressive or unfair manner and that employee in question was an "unsuitable employee" in remote community — Furthermore dismissal was a pretence to circumvent proper investigation as prescribed — Full Bench found Commission rightly recognised respondent's obligation to protect other employees against physical risks and noted that respondent could be held liable at law for failing to take steps to prevent injury or harm to employees — Furthermore Full Bench noted respondent had exercised its right to terminate contract of service in a prescribed manner and found Commissioner was right in declining to interfere — Dismissed — Mining 1329

Applicant sought order for reinstatement or compensation following from an alleged unfair termination of employment — Commission found respondent had shown disregard for the applicant, abrogated its managerial responsibility by termination of applicant's employment, that the reasons cited for this termination were unfounded and that the real reason was that the position was to be given to an associate of the respondent — Commission found this action to be unfair and ordered compensation as reinstatement was not tenable — Granted — Hospitality 1641

Employee dismissed due to failure to notify of absence from work — Applicant Union claimed unfair dismissal as employee's absence was covered by doctors certificates — Respondent refuted claim and alleged that employee had abandoned his employment — Commission found Union claims could not be sustained as retrospective medical certificates could not re-constitute the contract of employment and avoid the deeming provisions whereby employee had abandoned his employment — Commission furthermore found that claims were without merit and did not warrant the Commission's inferrention — Dismissed — Mining (Iron Ore) 1635

Applicant sought order for reinstatement with compensation, or compensation for unfair dismissal — Commission found that respondent had not acted unfairly and that applicant had received more than a fair go following the period of recuperation after a road accident — Commission found respondent did have cause to consider applicant a poor risk for future employment — Dismissed — Ship Building 1852

Applicant sought order of unfair dismissal and reinstatement — Commission found that a new offer of employment achieved through the conciliation processes of the Commission had been made to the Applicant — Commission found that this offer had been refused by the Applicant for various reasons — this action caused Respondent to consider the matter of an offer of employment to be at an end — Commission, after being satisfied that the object of the Act had been considered fully, dismissed the claim under section 27 (1) (a) (iv) — Dismissed — Catering Industry 1865

CUMULATIVE DIGEST—*continued*

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REINSTATEMENT — *continued*

Employee dismissed for alleged insubordination — Applicant Union claimed dismissal as harsh and unreasonable and sought reinstatement — Respondent refuted claim — Commission found in Union's favour as act of insubordination was not deliberate or wilful or of such nature as to strike at an essential element in contract of service — Furthermore Commission found act was committed in a situation of stress and not a question of disobedience which would impose on an employers right to enforce discipline — Granted — Meat Industry 1885

Employee terminated for non-compliance of Company's orders — Applicant Union claimed that order to transfer was not lawful under the terms of contract of service — However Union argued if it were lawful then termination of employment was unreasonable and that employee was not given a "fair go" — Respondent rejected claims and argued that an unqualified right exists to order employees' transfers, and having refused the employee repudiated his contract of employment — Commission accepted Company's right to temporarily transfer its employees to resolve operational needs — However Commission found where circumstances of the transfer involve the employer's right to terminate was exercised, then intervention by Commission is justified to protect employee against an unjust or unfair exercise — Commission found employee's objective was not to be disruptive nor to undermine Respondent's attempts to resolve operational requirements and ordered re-employment — Granted — Mining — Mechanical Fitter 1867

Employee dismissed for alleged negligence — Applicant Union claimed Company had acted harshly and oppressively and that employee had been denied natural justice in the conduct of the enquiry — Furthermore the Company had failed to show beyond reasonable doubt that damage to equipment had been caused by employees negligence and sought reinstatement — Respondent argued dismissal was with notice, having found employees continuing negligence contributed to unsafe behaviour and attitude — Comission found termination in accordance with contract of employment and that Union had not discharged the onus it carried in this matter — Dismissed — Mining 2143

Applicant sought order for compensation following an order of the Commission to grant re-employment, was appealed, and has now been remitted for hearing on the appropriate quantum of compensation that should arise — Commission found on the basis of cost incurral, loss of employment, and loss of salary prior to the issuing of the order, compensation of $10 000 was warranted — Granted — Mining 2145

Employee dismissed for alleged incompetence — Applicant Union claimed unfair dismissal and sought reinstatement — Union argued that no proper investigation or counselling was conducted — Respondent argued that the absence of a procedure to review the dismissal did not detract from its right to terminate and the lack of counselling was not fatal when considering the correctness of its action — Commission found in favour of Union as respondent had ignored employees Line Supervisors advice of caution and then dismissed employee in a pre-emptory fashion when problems occurred — Commission however found that reinstatement would be impractical and awarded compensation — Granted — Mining/Iron Ore 2146

Employee summarily dismissed for alleged insubordination — Employee claimed his priority was to work in the most efficient and effective way and this view often differed from managements — Respondent argued that employee is the antithesis of the model employee and both counselling and warnings had failed to change his behaviour — Commission found employees duty is to work as directed and ordered probationary employment with employers common law right to dismiss employee if misconduct occurred during that period — Granted — Mining/Gold 2365

Employee dismissed for alleged misconduct — Applicant sought declaration that dismissal from employment was unfair and sought an order for reinstatement — Applicant claimed no warnings or counselling or indication of poor performance was ever given — Respondent claimed misconduct was of a nature that threatened the contract of employment and under those circumstances was not unfair — Commission found evidence of Applicant to be most consistent and that dismissal was based on unreliable reports of the Applicant's work performance and nature and that such action on such evidence was harsh and unfair — Reinstatement found to be suitable — Granted — Retail Industry 2329

Employee alleged to have been dismissed following refusal to accept (a) requirement to pay a management fee to parent company and (b) management restructuring — Applicant sought order for compensation of salary and motor vehicle expenses and reinstatement — Respondent refuted claims — Commission found no evidence of constructive dismissal due to no established threat to employment from Respondent — Managerial prerogative exists to change organisational structure therefore claims for compensation and reinstatement must fail as they do not come under the scope of the Act as Applicant had resigned — Commission found on evidence no entitlement to motor vehicle expenses and that a review after six months was obligatory in terms of appointment and that this having not occurred Applicant was entitled to payment of salary at a level determined as fair by the Commission — Compensation ordered — Granted in Part — Weather Forecasting 2347

SAFETY —

Payment for time lost due to stoppage due to allegedly unsafe working conditions sought — Commission found working conditions not to be unsafe — Commission also found that whether employer's obligation to individually notify employees *re* matters involving contract of service may be discharged via third party depends on circumstances of particular case — Dismissed — Meat Industry 1295

Applicant sought order for cab installed radios to be used and operated by engine drivers — Respondent unions reject claim on basis of threat to employment security and safety and sought a contrary order — Commission found rules governing operation to trains prevented engine drivers from performing such duties, also that issuance of such an order as requested by applicant could weaken ARU position and give support to applicant's projected plans for one man crews — Commission declared the use of radios by engine drivers was unreasonable — Transport/Rail 1294

Applicant sought order for overalls to be supplied as protective clothing for saw doctors — Commission found evidence supported claim and found no threat posed to wage fixing principles from "flow-on" costs to employers — Commission declared in favour of applicant — Granted — Timber 1445

Applicant union sought order that a safety officer, dismissed under "last on first off" policy be reinstated and that such officers be exempt from this policy — Commission found an agreement between the applicant and respondent confirmed the appointment of this particular employee as third safety rep on site to be legitimate, but that this did not specify continuing employment for this worker or exemption from "last on first off" policy — Commission dismissed the claim submitted for arbitration but ordered maintenance of existing policy of requiring a safety rep for each construction site — Dismissed — Building Industry 1435

Claim for declaration that stools be provided for "door greeters" in department store — Question of erosion of conditions of employment contrary to wage fixing principles by removal of stools raised — Respondent claimed that stools were never universal policy and as door greeters work part-time they were not required to stand for more than two hours — Commission found that if door greeters were employed full-time health regulations would require provision of a stool but the Respondent only employs part-time door greeters — Dismissed — Retail 1684

Application for cancellation of an order which specified 48 hours maintenance checks of Haulpaks on grounds that it limited flexibility of operations — New arrangements agreed by parties ensure that safety standards are maintained — Commission found order should be cancelled subject to terms of new order issued — Granted — Mining 1637

Employee dismissed for alleged negligence — Applicant Union claimed Company had acted harshly and oppressively and that employee had been denied natural justice in the conduct of the enquiry — Furthermore the Company had failed to show beyond reasonable doubt that damage to equipment had been caused by employees negligence and sought reinstatement — Respondent argued dismissal was with notice, having found employees continuing negligence contributed to unsafe behaviour and attitude — Comission found termination in accordance with contract of employment and that Union had not discharged the onus it carried in this matter — Dismissed — Mining 2143

CUMULATIVE DIGEST—*continued*

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SAFETY —*continued*

Dispute *re* roster system — Applicant sought declaration to the existence of an agreement between parties and upon declaration issue an order setting out the terms and conditions — Union opposed continuation of agreement and claimed that they were at liberty to retire from it — Furthermore Union argued being rostered meant domestic and family disturbances and due to a greater call-out demand, the issue of safety — Commission found burden of proof on Unions and justification in Applicant's claim in terms of an order is "certainty", as well as public interest — Commission found on question of safety, nothing in agreement can over-ride an employee's legal right to refuse to comply with an unlawful and unreasonable command — Commission concluded that an order to substantially preserve existing agreement be made — Granted — Government Railways 2353

SHIFT WORK —

Restructuring of ordinary hours of work during which shift loadings are payable sought — Commission found Applicant to be seeking erection of new allowance for ordinary hours of work falling beyond specified time — Commission found this not a matter appropriate for variation of shift work provisions and that claims lacked substantial merit — Dismissed — Hospital Services 1201

Salary payable to shift supervisors — Remuneration claimed to be restricted by imposition of ceiling on shift penalties — Held that ceiling is one small facet of a complicated salary package no employee has been treated unfairly or prejudiced by introduction — Dismissed — Mining Industry 1284

Applicant sought order that operation of 38-hour week be maintained as per a "Working Party" agreement on requirement that Administrative Nurses be excluded from afternoon shifts as a trade off in 38-hour week negotiations — Commission found a Memorandum of Agreement clearly established that Administrative Nurses would work late shifts and not that this condition had been the subject of a trade off on 38-hour week implementation or that its inclusion as a condition of the Memorandum was an error — Question of wage fixation principles — Commission found no breach of their implementation — Dismissed — Health 1680

SICK LEAVE —

Applicant sought order of compensation for alleged unfair dismissal — Commission found termination had resulted so as to avoid the respondent any inconvenience in having applicant on sick leave and that the fundamental notion of "a fair go all round" had been neglected — Commission found the consideration given to the applicant had been inadequate and that compensation for unfair dismissal would be granted on the strength of accrued sick leave — Granted — Furniture Manufacture 1648

STAY OF PROCEEDINGS —

'Stay of operation of decision of Commission pending hearing and determination of appeal sought — President found questions of jurisdiction of Commission and its power to award compensation were of a serious nature and that the balance of convenience favoured staying the order — Granted — Liquor Industry 1138

'Application for stay of order of Commission pending outcome of appeal to Full Bench — President found Applicant must establish that there is a serious question to answer and that the balance of convenience favours the granting of a stay — President found as it was likely Applicant will continue to be obliged to pay sum in order or larger amount by virtue of appeal being that order is insufficient, there is no question to be tried — Dismissed — Furniture Manufacturing 1335

'Stay of operation of decision pending hearing of an appeal sought — President found that on the balance of convenience no prejudice would be done to either party by not granting a stay — Dismissed — Education 1753

'Stay of operation of Commission order *re* compensation sought — President found serious question to be tried i.e. Commissions jurisdiction to award compensation, which is subject of an appeal — Furthermore President found balance of convenience favours applicant — Granted — Mining Industry 1956

'Stay of operation or order of Commission sought pending an appeal — Applicant questioned the issue of Commissions jurisdiction to award compensation and also the quantum of such compensation — President found there was a serious question to be tried *re* compensation and the Commissions jurisdiction and that this could not be overlooked — President found order to be stayed pending appeal and that the amount of compensation be set in a joint party names interest bearing account until resolution of the matter — Granted — Mining 1955

'Application for stay of operation of enforcement orders issued by the Industrial Magistrate on Orders of the Commission pending an appeal — President found no provision in the Act enabling orders of the Industrial Magistrate to be stayed — Dismissed 2261

'Stay of operation of Commission order — Applicant claimed that the Commissioner had erred in law and exceeded his jurisdiction by issuing a compensatory order — Respondent resisted claim on grounds that proposed appeal discloses no serious ground of appeal — President found order was for repayment of wages to employee who was unfairly dismissed and balance of convenience favoured employee — Dismissed 2259

Application for Stay of Order pending outcome of Appeal — Applicant Union claimed continuance of Order created a position of considerable prejudice in relation to the disaffection of members — President found no point in maintaining the effect of the restraint which order imposed as Rules of Union imposed on equal restraint and Secretary's undertaking imposes a moral compulsion to ensure that members official adhered to Rules — President found balance of convenience favoured Stay of Order — Granted — Timber 2262

SUPERANNUATION —

Applicant sought order for moneys due from a staff superannuation scheme following retrenchment — Respondent denied retrenchment and claimed contract was terminated at applicant's own volition thus rendering a full pay out under the superannuation scheme impossible — Commission found the question of retrenchment was central to determining the claim — Evidence suggested that the applicant was in fact retrenched and therefore applicant was entitled to full benefit from the superannuation fund — Granted — Rail Industry 1856

TERMINATION —

Employee terminated due to unavailability of work and unsatisfactory levels of absenteeism and punctuality — Applicant union claimed unfair dismissal and sought reinstatement and compensation — Board of Reference's unanimous decision found grounds for termination to be unjustified and that the balance of probabilities suggested that termination was unfair — Granted — Building 1211

Applicant sought order of redundancy payments to employees terminated following closure of seasonally operating meat works — Commission found seasonality was well established and that Termination, Change and Redundancy Case established redundancy guidelines in all awards in this state, therefore on evidence employees had already been adequately compensated — Dismissed — Meat Industry 1215

Applicant sought order for contractual benefits as an employee — Respondent denied claim and raised the question of jurisdiction based on claim that relationship was that of an "independent contractor" — Commission found that relationship between applicant and respondent exhibited all the features of that of an "independent contractor" and that applicant had failed to prove the claim — Commission found that it had no jurisdiction to entertain a claim where "independent contractor" status had been established — Dismissed — Transport 1246

Reinstatement sought for employee alleged to have been unfairly dismissed — Respondent claimed employee justifiably dismissed for misconduct — Commission found employee had recieved less than a "fair go all round" — Granted in part — Casino 1289

CUMULATIVE DIGEST—*continued*

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TERMINATION — *continued*

Compensation for alleged unfair dismissal sought — Commission found on evidence dismissal was not harsh or unfair but that payment for the period of notice was required and thus ordered payment in lieu of notice — Granted — Furniture Manufacturing 1231

²Appeals against decision of Commission (67 WAIG 1006) to dismiss application on jurisdictional grounds after finding contract of employment to have been legally determined and consequently no dismissal to have occurred — Full Bench found contract not to have expired according to its terms but to have been terminated by notice — Full Bench thus found dismissal had occurred and that matter should be remitted to Commission for determination on its merits — Upheld — Education 1118

Applicant claimed unfair dismissal and sought compensation — Applicant dismissed for breaches of company's "safety policies" — Commission found appicant could not be held responsible for breaches of policies as it was shown in evidence that other employees were knowingly transgressing those policies and attempting to conceal the practices from the applicant's knowledge which suggests that the respondent's grounds for dismissal were harsh and unfounded and therefore unfair — Commission found compensation to be in order — Granted — Catering Industry 1252

Applicant sought order of compensation for unfair dismissal — Commission found no evidence to support the claim — Dismissed — Vehicle Industry 1274

Applicant sought order for payment of *pro rata* annual leave due following termination of contract of employment — Commission found verbal contract did include annual leave as a condition and that *pro rata* payment should be paid to applicant — Granted — Leisure Industry 1226

Applicant sought order for compensation of salary in lieu of notice on grounds of unfair dismissal — Commission found no evidence that applicant's contract included a probationary period as had been suggested by the respondent and also that applicant despite this fact had not demonstrated a lack of counselling, therefore the dismnissal could not be found to be unfair — Dismissed — Liquor Industry 1231

Applicant claimed summary dismissal was unfair and sought compensation and entitlement — Entitlement found not due pursuant to section 29(b)(ii) but could nevertheless be considered pursuant to section 26 in the event of finding of unfair dismissal — Dismissal found to be lawful and not summary — Unfairness not established — Dismissed 1233

Order sought *re* conditions of employment of employees who have been offered re-employment following dismissals — Commission determined matter by the issuing of a consent order in the terms of agreement reached by the parties — Granted — Meat Industry 1299

Applicant terminated due to unsatisfactory performance — Applicant claimed unfair dismissal and sought order of compensation for salary and other contractual entitlements — Commission found no evidence of unfair dismissal — Dismissed — Retail Industry 1229

Applicant sought order for compensation in form of wages in lieu of notice and wages allegedly due but not paid — Commission found compensation was due in line with the applicant's claim — Granted — Recreation Industry 1235

²Appeal against decision of Commission at (67 WAIG 620) to dismiss a claim that employee was dismissed — Full Bench found section 27(l)(a) of Act provided for dismissal of trivial matters if Commission is satisfied public interest is not served and if person referring the matter does not show sufficient interest in pursuing the matter — Full Bench found Commission was entitled to reach the opinion which lead to the issue of an order of dismissal of proceedings — Dismissed — Retail Industry 1112

Applicant claimed unfair dismissal and sought order of compensation for benefits under contract of service — Applicant dismissed due to refusal to accept terms and conditions of employment following probationary period — Commission found no evidence of harsh or oppressive exercise of respondents legal rights to terminate given the particular circumstances and that no contractual entitlement existed as claimed — Dismissed — University Accommodation 1236

Applicant sought order for compensation and outstanding wages arising from unfair dismissal — Commission found respondent was entitled to assume that, by leaving her place of employment following notice being served, applicant had abandoned her work and repudiated her contract of employment — Dismissed — Vehicle Industry 1241

Applicant sought order for compensation on grounds of unfair dismissal — Commission found on case evidence dismissal was not unfair — Applicant refused to work re-arranged working hours and resulted in there being no useful work for him to perform — Dismissed — Food, Beverage, Tobacco Industry 1244

²Appeal against decision of Commission at (67 WAIG 292) to find an employee/employer relationship existed and to grant compensation — Appellant claimed insufficient weight given to written contract and that Commission erred in law in arriving at its decisions that employee relationship existed — Full Bench's majority decision found that Commission had correctly reviewed the evidence presented to it and that employee relationship was contained in the contract — Full Bench upheld that part of claim that related to the question of employee relationship but unanimously decided that matter should be remitted for further hearing *re* claims for compensation — Dismissed — Cleaning Services 1113

Employees dismissed due to redundancy — Applicant union sought order of compensation over and above amount already paid on termination — Commission confirmed respondent's right to reorganise business but found that insufficient weight had been given to employees' length of service, resultant hardship, age etc and it was unfair to terminate their contracts without these considerations — Commission found compensation was in order — Granted — Retail 1441

Applicant sought compensation for allegedly unfair dismissal — Commission found no warnings were formally conveyed but that this in itself did not prove a case of unfair dismissal based on FMWU *v.* Uniting Church of Australia, Trinity Parish, Perth Property Committee (66 WAIG 1291) — Commission found that respondent's view that applicant was unable to perform job effectively was correct and that applicant could not have improved his performance to a satisfactory level despite duties being added to the job — Dismissed — Oil and Gas 1410

Applicant sought order of unfair dismissal and compensation — Commission found no evidence of unfair use of respondent's right to terminate and that clearly the applicant failed to meet the criteria required by respondent's operations for adequate performance — Dismissed — Wholesale/Retail 1406

Applicant union claimed employees were unfairly dismissed and sought order for reinstatement — Commission found central questions were whether employees were on specific short term contracts and if notwithstanding this, there existed an undertaking by respondent that persons so employed were to be classified solely as "permanent employees" — Commission found on evidence contracts were of a specific set period and it was not unfair to dismiss employee given the agreed conditions of employment that existed, also that no agreement or undertaking as expressed by the applicant to make all employees permanent existed, rather that it was a statement that in future, permanent employees could not regard their employment as being permanent — Dismissed — Government Building 1443

Applicant sought order for compensation as a result of unfair dismissal — Question raised *re* casual or permanent part-time contract — Commission found contract was of a casual nature and that this was reasonable in all circumstances — Commission found this condition was supported by applicant's acceptance of the hourly rate of pay and that therefore dismissal was not unfair or of a summary nature — Dismissed — Hospitality Industry 1403

Applicant sought order of compensation for employee summarily dismissed for misconduct — Commission found actions of employee in question showed that he had not intended to repudiate his contract of employment but that he correctly questioned the authority of his work mate over him and had received less than a fair go all round as a consequence of this — Commission found compensation in order, there being no claim for re-employment — Granted — Timber Industry 1446

Applicant sought order of unfair dismissal — Commission found no "trial" period existed in the terms of the contract and that the onus of proof was therefore on applicant to prove unfair dismissal — Commission said the issue of "competence in all circumstances" and of misleading information *re* qualification combined to give respondent sound reason to dismiss — Dismissed — Catering 1407

Applicant union sought order that a safety officer, dismissed under "last on first off" policy be reinstated and that such officers be exempt from this policy — Commission found an agreement between the applicant and respondent confirmed the appointment of this particular employee as third safety rep on site to be legitimate, but that this did not specify continuing employment for this worker or exemption from "last on first off" policy — Commission dismissed the claim submitted for arbitration but ordered maintenance of existing policy of requiring a safety rep for each construction site — Dismissed — Building Industry 1435

CUMULATIVE DIGEST—*continued*

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TERMINATION — *continued*

Employee dismissed for alleged misconduct — Union sought reinstatement as respondent's action was harsh, oppressive and unfair — Union claimed alleged threat of violence by employee was misconstrued and made in jocular manner without intent to execute — Respondent argued it had an obligation to protect its employees from interference with their employment — Furthermore all employees are under an implied duty to conduct themselves in a reasonable manner with fellow employees especially in isolated communities — Commission found respondent had right for concern on facts provided *re* police inquiry into threats of violence and concern for safety of particular members of workforce — Commission drew attention of parties *re* "final warning" and stated that it should be brought to an employee's attention — Commission found no ground in the instant case to conclude that it should interfere with company's right to terminate — Dismissed — Mining Industry 1431

²Appeal against Commission's decision at (67 WAIG 1431) to dismiss claim for reinstatement of employee dismissed for alleged misconduct — Appellant alleged Commission erred in holding that dismissal was not of a harsh, oppressive or unfair manner and that employee in question was an "unsuitable employee" in remote community — Furthermore dismissal was a pretence to circumvent proper investigation as prescribed — Full Bench found Commission rightly recognised respondent's obligation to protect other employees against physical risks and noted that respondent could be held liable at law for failing to take steps to prevent injury or harm to employees — Furthermore Full Bench noted respondent had exercised its right to terminate contract of service in a prescribed manner and found Commissioner was right in declining to interfere — Dismissed — Mining 1329

Applicant sought order of compensation for alleged unfair dismissal — Commission found termination had resulted so as to avoid the respondent any inconvenience in having applicant on sick leave and that the fundamental notion of "a fair go all round" had been neglected — Commission found the consideration given to the applicant had been inadequate and that compensation for unfair dismissal would be granted on the strength of accrued sick leave — Granted — Furniture Manufacture 1648

Applicant sought order for reinstatement or compensation following from an alleged unfair termination of employment — Commission found respondent had shown disregard for the applicant, abrogated its managerial responsibility by termination of applicant's employment, that the reasons cited for this termination were unfounded and that the real reason was that the position was to be given to an associate of the respondent — Commission found this action to be unfair and ordered compensation as reinstatement was not tenable — Granted — Hospitality 1641

Applicant union claimed harsh and unfair dismissal of worker over absences — Respondent claims dismissal was justified due to previous warnings and to the fact that the Company undertook an investigation into the absences prior to effecting termination — Commission found that employee knew his obligation to inform his employer of absences, and that his absence was in wanton disregard of the consequences — Dismissed — Mining 1673

²Appeal against decision of Commission at (67 WAIG 1289) *re* compensation awarded — Appellant claimed Commission had erred in concluding employees conduct did not warrant summary dismissal and in awarding compensation which were beyond jurisdiction, pursuant to section 23 — Full Bench found that the usual tests as to whether the contract of service had been damaged and if employee's actions constituted a fundamental breach of rules and regulation were correctly applied — Furthermore Full Bench found that granting of compensation was open to the Commission and had been fairly applied — Dismissed — Liquor and Accommodation . 1529

Employee (Manager) claimed unfair dismissal and sought contractual entitlements — Respondent claimed misconduct — Onus on employer to specify terms of alleged gross misconduct at time of dismissal — Commission found that summary dismissal of applicant was unfair, and that respondent failed to establish misconduct — Commission also found that in granting redress it is not restricted to specific claim and that overriding consideration is that any remedy is just and equitable — Granted — Retail 1654

Applicant claimed unfair dismissal and sought *pro rata* long service leave payments — Burden of proof on Applicant — Commission found this not discharged — Dismissed 1674

Claim for contractual entitlements — Applicant failed to secure re-election as Secretary and sought further severance payment, superannuation payment, payment in lieu of leave not taken for travelling time and rostered days off, incorporation of expense allowance into total salary for purposes of calculation of entitlements, and reimbursement of wine purchases — All claims dismissed other than claim for further severance payment — Commission found that claim for further severance pay rested on interpretation of contract of service — Granted in Part — Unions 1643

Applicant claimed unfair dismissal and sought contractual benefits — Commission found Applicant not to have been unfairly dismissed, preferring Respondent's evidence — Commission also found Applicant to have been employed under provisions of Farm Employees Award and determined entitlements accordingly — Granted in Part — Agriculture 1646

Employee dismissed due to failure to notify of absence from work — Applicant Union claimed unfair dismissal as employee's absence was covered by doctors certificates — Respondent refuted claim and alleged that employee had abandoned his employment — Commission found Union claims could not be sustained as retrospective medical certificates could not re-constitute the contract of employment and avoid the deeming provisions whereby employee had abandoned his employment — Commission furthermore found that claims were without merit and did not warrant the Commission's inferrention — Dismissed — Mining (Iron Ore) 1635

²Appeal against decision of Commission [(1987) 67 WAIG 1231] to dismiss claim for unfair dismissal and for contractual benefits — Full Bench found Commission mistook Appellant's intention to lead evidence in original proceedings and its failure to allow evidence subsequently constituted a denial of natural justice — Upheld and remitted to Commission for further hearing and determination — Furniture Manufacturing 1527

Applicant claimed unfair dismissal and sought reinstatement — Respondent claimed termination was due to misconduct — Commission found that on balance Respondent failed to prove misconduct, however, as Respondent had reasonable grounds to suspect Applicant to be guilty of misconduct the termination was not unfair — Dismissed — Security 1650

²Appeal against decision of Commission at (67 WAIG 1410) to dismiss application for unfair dismissal — Full Bench found no substance to any of the grounds of appeal and that original reason for dismissal were substantial and not unfair — Dismissal — Construction 1736

Application appealing against decision of respondent to dismiss applicant for inefficiency subject to regulation 86A of the Education Act 1960 — School Teachers Tribunal found grounds for the action taken against applicant were well founded and that he had been given the chance to improve and remedy the problem — Respondent found to be justified in taking action and that the application of regulation 86A had been equitable and fair — Dismissed 1910

Applicant sought order for compensation arising from unfair termination of employment — Commission found that termination was open to the respondent following a number of warnings to applicant for unsatisfactory performance and that applicant was well aware of the respondent's requirements for him to improve his performance and attitude — Dismissed — Metal Industry 1860

Applicant sought order for reinstatement with compensation, or compensation for unfair dismissal — Commission found that respondent had not acted unfairly and that applicant had received more than a fair go following the period of recuperation after a road accident — Commission found respondent did have cause to consider applicant a poor risk for future employment — Dismissed — Ship Building 1852

Applicant sought order for moneys due from a staff superannuation scheme following retrenchment — Respondent denied retrenchment and claimed contract was terminated at applicant's own volition thus rendering a full pay out under the superannuation scheme impossible — Commission found the question of retrenchment was central to determining the claim — Evidence suggested that the applicant was in fact retrenched and therefore applicant was entitled to full benefit from the superannuation fund — Granted — Rail Industry 1856

Applicant sought order for unfair dismissal and compensation of contractual entitlements due under terms of a contract of employment — Commission found there existed an entitlement to annual leave but that "loading" on that leave was not a part of the contract — Commission found on evidence that dismissal was summary in nature and unfair as it was carried out in response to a direction that could not have been complied with — Granted — Retail Industry 1854

²Appeal against decision of Commission at (67 WAIG 1251) *re* dismissal of claim for contractual entitlements — Appellant claimed there was evidence that was not produced at initial hearing which would have established the contract of employment — Full Bench found in favour of Appellant in that decision of an order for dismissal was due to lack of evidence — Full Bench found circumstances were extraordinary and remitted case for further hearing and determination — Upheld — Bloodstock Industry 1747

CUMULATIVE DIGEST—*continued*

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TERMINATION —*continued*

Alleged non-payment of contractual benefits — case remitted by Full Bench at (67 WAIG 1747) — Commission found fresh evidence given by Applicant and witnesses had established that a *bona fide* employment contract existed and relieved previous doubts concerning the entitlement to *pro rata* leave payments — Commission accepted calculations provided by Applicant in the absence of any argument to the contrary by Respondent — Granted — Bloodstock Industry 1863

Applicant sought order of unfair dismissal and reinstatement — Commission found that a new offer of employment achieved through the conciliation processes of the Commission had been made to the Applicant — Commission found that this offer had been refused by the Applicant for various reasons — this action caused Respondent to consider the matter of an offer of employment to be at an end — Commission, after being satisfied that the object of the Act had been considered fully, dismissed the claim under section 27 (1) (a) (iv) — Dismissed — Catering Industry 1865

Employee dismissed for alleged insubordination — Applicant Union claimed dismissal as harsh and unreasonable and sought reinstatement — Respondent refuted claim — Commission found in Union's favour as act of insubordination was not deliberate or wilful or of such nature as to strike at an essential element in contract of service — Furthermore Commission found act was committed in a situation of stress and not a question of disobedience which would impose on an employers right to enforce discipline — Granted — Meat Industry 1885

Employee terminated for alleged lack of professionalism and disruptive influence — Applicant Union claimed unfair dismissal and sought compensation — Respondent refuted claim and argued that employee had resigned — Commission in relation to employees misdemeanours, found that on evidence those transgressions did not provide sufficient grounds for dismissal and awarded compensation for the distress and loss of employment — Granted — Health and Welfare Services 1890

²Appeal against decision at (67 WAIG 916) *re* unfair dismissal seeking compensation — Appellant claimed Commission erred in law and did not determine the claim for unfair dismissal properly in accordance with the weight of evidence — Furthermore Appellant identified a number of deficiencies in matters presented by the Respondent — Full Bench found upon evidence provided, it was open to the Commission to conclude on the balance of probabilities the given notice prior to dismissal — Full Bench found that there was insufficient evidence *re* grounds that justified summary dismissal, however in the circumstances it was well within the powers of the Commission to decline to make any award *re* compensation — Dismissed — Hospitality 1728

Applicant sought order of compensation for contractual entitlement unpaid following alleged unfair dismissal — Respondent raised question of Commission's jurisdiction to determine the claim, it being subject to a federal award — Commission found that the verbal contract operated in the manner described by the Respondent and that the resultant termination of that contract was not unfair nor was there failure to pay the full contractual entitlement at the conclusion of this contract — Commission found question of jurisdiction was established in the Respondent's favour and that the Commission, based on case evidence was without power to entertain the claim — Dismissed — Pastoral Industry 1856

Employee terminated for non-compliance of Company's orders — Applicant Union claimed that order to transfer was not lawful under the terms of contract of service — However Union argued if it were lawful then termination of employment was unreasonable and that employee was not given a "fair go" — Respondent rejected claims and argued that an unqualified right exists to order employees' transfers, and having refused the employee repudiated his contract of employment — Commission accepted Company's right to temporarily transfer its employees to resolve operational needs — However Commission found where circumstances of the transfer involve the employer's right to terminate was exercised, then intervention by Commission is justified to protect employee against an unjust or unfair exercise — Commission found employee's objective was not to be disruptive nor to undermine Respondent's attempts to resolve operational requirements and ordered re-employment — Granted — Mining — Mechanical Fitter 1867

Employee terminated for economic reasons — Applicant claimed unfair dismissal and sought compensation — Respondent refuted claim — Commission found respondent having lost two agencies had to prune its cost of operations and decision of termination for commercial (or economic) reasons was not unfair — Dismissed — Wholesale 2118

Employee dismissed for alleged negligence — Applicant Union claimed Company had acted harshly and oppressively and that employee had been denied natural justice in the conduct of the enquiry — Furthermore the Company had failed to show beyond reasonable doubt that damage to equipment had been caused by employees negligence and sought reinstatement — Respondent argued dismissal was with notice, having found employees continuing negligence contributed to unsafe behaviour and attitude — Comission found termination in accordance with contract of employment and that Union had not discharged the onus it carried in this matter — Dismissed — Mining 2143

Applicant sought order for compensation following an order of the Commission to grant re-employment, was appealed, and has now been remitted for hearing on the appropriate quantum of compensation that should arise — Commission found on the basis of cost incurral, loss of employment, and loss of salary prior to the issuing of the order, compensation of $10 000 was warranted — Granted — Mining 2145

Employee dismissed for alleged incompetence — Applicant Union claimed unfair dismissal and sought reinstatement — Union argued that no proper investigation or counselling was conducted — Respondent argued that the absence of a procedure to review the dismissal did not detract from its right to terminate and the lack of counselling was not fatal when considering the correctness of its action — Commission found in favour of Union as respondent had ignored employees Line Supervisors advice of caution and then dismissed employee in a pre-emptory fashion when problems occurred — Commission however found that reinstatement would be impractical and awarded compensation — Granted — Mining/Iron Ore 2146

Applicant claimed unfair dismissal and sought order for contractual entitlements arising from a contract of employment — Respondent refuted claim — Commission found there existed as part of that contract an entitlement to a car allowance as claimed as well as entitlement to two weeks' notice which was not received — Commission concluded that dismissal was unfair but that the claim could not be completely substantiated — Granted In Part — Transport Industry 2326

Employee summarily dismissed for alleged misconduct — Applicant claimed unfair dismissal and sought compensation — Respondent denied claim — Commission found Respondent's action of summary dismissal following suspición of theft on the part of the Applicant was unfair — Commission found that to take the option of dismissal rather than pursuing an action through the courts was open to the Respondent but that dismissal, if it was to be fair in an industrial sense should have been done subject to the terms of the contract of employment — Summary dismissal was unfair in these circumstances and compensation should be awarded — Granted — Hairdressing 2327

Employee summarily dismissed for alleged prejudicial conduct — Applicant sought order for salary in lieu of notice following summary dismissal — Commission found dismissal was unjustifiable and that the contract of employment specified a period of only two weeks and that therefore the Applicant was entitled to payment for only that period of notice — Granted In Part — Health Industry 2328

Employee claimed unfair dismissal — Applicant argued that no notice or payment in lieu of notice was received and sought order for reinstatement, "outstanding moneys" and compensation — Respondent refuted claim and argued services provided were on a voluntary basis — Furthermore Applicant was not an employee pursuant to the Industrial Relations Act and therefore Commission did not have jurisdiction to hear the matter — Commission found there were offers of employment and at best "negotiations" *re* contract of employment between the parties — However Commission found there is no or insufficient evidence to establish that the offer was accepted by Applicant — Commission found Applicant was not an employee and dismissed claim for want of jurisdiction — Dismissed — Health and Welfare 2334

Applicant sought order of unfair dismissal and compensation — Commission found question to answer was that, was termination reasonably open to the employer in all the circumstances following Applicant's disregard for the standing of the Respondent's business — Commission concluded that the evidence suggested the Respondent had not acted harshly or unfairly in exercising its legal right to terminate the Applicant's employment — Dismissed — Marine Broking 2340

Employee summarily dismissed for alleged insubordination — Employee claimed his priority was to work in the most efficient and effective way and this view often differed from managements — Respondent argued that employee is the antithesis of the model employee and both counselling and warnings had failed to change his behaviour — Commission found employees duty is to work as directed and ordered probationary employment with employers common law right to dismiss employee if misconduct occurred during that period — Granted — Mining/Gold 2365

CUMULATIVE DIGEST—*continued*

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TERMINATION —*continued*

Employee dismissed for alleged misconduct — Applicant sought declaration that dismissal from employment was unfair and sought an order for reinstatement — Applicant claimed no warnings or counselling or indication of poor performance was ever given — Respondent claimed misconduct was of a nature that threatened the contract of employment and under those circumstances was not unfair — Commission found evidence of Applicant to be most consistent and that dismissal was based on unreliable reports of the Applicant's work performance and nature and that such action on such evidence was harsh and unfair — Reinstatement found to be suitable — Granted — Retail Industry 2329

Employee dismissed due to economic downturn and restructuring — Applicant sought order of unfair dismissal and compensation — Commission found employee was terminated pursuant to all award entitlements and that the dismissal was not unfair on evidence of the Respondent's enforced restructuring — Applicant's position was made redundant and that the claim had not been established — Dismissed — Timber Industry 2342

Employee alleged to have been dismissed following refusal to accept (a) requirement to pay a management fee to parent company and (b) management restructuring — Applicant sought order for compensation of salary and motor vehicle expenses and reinstatement — Respondent refuted claims — Commission found no evidence of constructive dismissal due to no established threat to employment from Respondent — Managerial prerogative exists to change organisational structure therefore claims for compensation and reinstatement must fail as they do not come under the scope of the Act as Applicant had resigned — Commission found on evidence no entitlement to motor vehicle expenses and that a review after six months was obligatory in terms of appointment and that this having not occurred Applicant was entitled to payment of salary at a level determined as fair by the Commission — Compensation ordered — Granted in Part — Weather Forecasting 2347

Employee dismissed due to poor work performance and unsuitability — Applicant sought order for compensation arising from an unfair dismissal due to no warning or counselling being given — Respondent claimed Applicant resigned and questioned jurisdiction of Commission to hear the claim — Commission found constructive dismissal of Applicant had occurred, however the claim as to the unfair nature of that dismissal was not supported by evidence from the Applicant — Commission made no finding on question of compensation — Dismissed — Oil and Gas Industry 2350

Employee dismissed for failure to attain a satisfactory level of construction quality on project homes — Applicant claimed unfair dismissal and sought compensation for an unpaid bonus — Respondent rejected claims — Commission found no warning of a substantial nature was ever conveyed to Applicant, and that responsibility for the duties of the Applicant was shared primarily with the supervisor therefore it was unfair to level blame for building construction inadequacies completely on Applicant — Primary responsibility falls with supervisor — Commission found dismissal was unfair — Compensation of the bonus payment awarded — Granted — Building Industry 2343

TRAVELLING —

Application to vary award — Applicant sought removal of entitlements to first class travel as it related to interstate and overseas air travel — Commission found that a traditional nexus existed between police and public sector employees and that the public sector employees no longer received these conditions, therefore it could not justify retention of these conditions for police — Commission found applicant only sought to remove the unqualified right to first class travel and that the strength of evidence meant police must comply with new public sector standards — Granted — State Government 1188

UNIONS —

[2]Registration of new organisation entitled Construction, Mining and Energy Workers' Union sought — New organisation results from amalgamation of BWIU with FEDFU — Various other organisations objected on grounds that proposed name was misleading and that by virtue of amalgamation the amalgamating organisations will be registered in relation to industries to which they were not previously registered — Majority decision of Full Bench found objections unjustified and requirements of Act satisfied — Granted — Union 1127

[2]Application for amalgamation of FMWU and Metropolitan Laundry Employees Union — FLAEU objected, however, Full Bench found the membership of the organisation would not be extended by the proposed amalgamation — Granted — Unions 1130

Applicant sought order that SSTU observe rules by treating as a nullity a decision by executive of said union to expel the applicant for a breach of its misconduct rule — Respondent conceded its actions were against natural justice and further conceded to the order as asked — Commission ordered in favour of applicant — Granted — Union 1336

[2]Applicant sought order to increase constitutional coverage of FMWU to include occupation of enrolled nurses — RANF opposed claim to increase coverage on grounds that overlapping would occur and also that it already had coverage of this group — Full Bench unanimously found that sound practical reasons had been established to support the claim and that no serious overlapping would occur — Granted — Health and Welfare 1333

[4]Applicant sought order for an inquiry into a union election on grounds that one nominee was ineligible for executive office, some eligible members were not entitled to vote and that membership roll was deficient with regard to requirements of the Act — President found insufficient evidence to support claim of an ineligible nominee also that problem of financial members not appearing on roll would be overcome and finally that claim *re* deficiencies in membership roll were unfounded — Dismissal — Unions 1535

[4]Failure by union to assist its member — Applicant sought order that union had failed to assist with recovery of moneys and entitlements or to offer legal assistance to him, as a member, against former employer — Respondent raised question of jurisdiction of Commission under section 66 — President found question of applicant's financial membership need not be answered and that on interpretation of union rules it was found that union was not obliged to assist industrial members, but that the union was empowered to discharge its obligations under the rules as it saw fit — Dismissal — Metal Trades 1533

[2]Appeal against decision of Commission (67 WAIG 850) to vary Agreement by including provision for paid union meetings — Appellant claimed Commission relied on material that was not properly before it and was therefore inadmissable — Appellant also claimed decision to be in contravention of Wage Fixing Principles and thus section 43 (2) of Act — Full Bench found material in question to have been before Commission in Court Session proceedings to which Appellant was party — Consequently Full Bench found Appellant to have been aware of material and further to have been afforded a hearing where it had opportunity to contest material — Full Bench also found not to have acted outside Principles, to have determined matter on merit and that it was open to Commission to find as it did as an exercise of discretionary judgment — Dismissed — Iron Ore 1723

[4]Dispute *re* eligibility to nominate for Union Office — Applicant claimed eligibility to nominate for office — Respondent rejected claim — President found upon proper construction of the Rules of the Union, Returning Officer was entitled to reject Applicant's nomination as he was not at that time a financial member — Dismissed — Union 1755

[4]Alleged misinterpretation of Rules — Applicant claimed eligibility for Union position and requested interpretation thereof — President found resolution which gave effect to the election in which Applicant participated was not an election for Branch Executive Member and was therefor not subject to restrictions on the eligibility to vote which are imposed by virtue of particular rules in respect of an election for above office — President found no need to issue order — Unions 1754

Application for variation of award — Applicant Union sought classifications to be included in Wages clause — Claim involved employees who are members of various Unions and these Unions strongly objected to the proposals — Respondent neither supported nor opposed claims, however voiced its fears of future demarcation problems that may seriously disrupt efforts to obtain optimum production results — Commission found variation to award would give dual award coverage to some classifications — Furthermore Commission found Applicant Union claims for award coverage failed on constitutional grounds — Dismissed — Cement/Concrete Products 1838

CUMULATIVE DIGEST—*continued*

Page

UNIONS —*continued*

[2]Claim that work of wall and ceiling fixers to be performed exclusively by members of the Operative Plasterers and Plaster Workers Federation — Counterclaim by Building Workers Industrial Union that persons employed as wall and ceiling fixers ineligible for membership of either Union; also that wall and ceiling work traditionally done by carpenters — Threshold question considered: what are plasters and fibrous plaster workers according to words used in constitution rule? — Question determined on record and evidence of witnesses — Constitution rule construed according to decision of Western Australian Industrial Appeals Court, Transport Workers Union *v.* Hamersley Iron Pty Ltd and Australian Workers Union (53 WAIG 1103 at 1105) — Historical development of award definitions relevant in construction of Union constitution rule — Commission found that to uphold the Applicant's construction of its own rule must be to permit membership of persons who are engaged on wall and ceiling work in which plaster will never be used; result would be absurd — Commission found on evidence produced that carpenters have traditionally performed wall and ceiling work except for wet plaster jointing — Declared that persons qualified and employed as wall and ceiling fixers not eligible for membership of Applicant or Respondent Unions — Range of wall and ceiling work performed by persons eligible for membership of either Union also declared — Discretionary judgment of Commission to be left undisturbed in this case — Commission formally recognised legitimate areas of coverage between Appellent and Respondent — Appeal dismissed — Building Industry 2226

Application for new award to cover Veterinary Surgeons — Applicant Union submitted that its eligibility rules included a reference to "animal welfare officers or workers" and claimed veterinary surgeons fitted that description — Respondent argued that clause in the Eligibility rule which Union relied upon in general terms covered unskilled and semi-skilled people, and to include veterinary surgeons to that subparagraph would offend the principle of *eiusdem generis* — Commission found in favour of Respondent's argument — Commission found Union's Constitution does not allow it to enrol veterinary surgeons and dismissed application for want of jurisdiction — Dismissed — Veterinary 2263

Application for Stay of Order pending outcome of Appeal — Applicant Union claimed continuance of Order created a position of considerable prejudice in relation to the disaffection of members — President found no point in maintaining the effect of the restraint which order imposed as Rules of Union imposed on equal restraint and Secretary's undertaking imposes a moral compulsion to ensure that members official adhered to Rules — President found balance of convenience favoured Stay of Order — Granted — Timber 2262

VICTIMISATION —

Employee terminated for alleged lack of professionalism and disruptive influence — Applicant Union claimed unfair dismissal and sought compensation — Respondent refuted claim and argued that employee had resigned — Commission in relation to employees misdemeanours, found that on evidence those transgressions did not provide sufficient grounds for dismissal and awarded compensation for the distress and loss of employment — Granted — Health and Welfare Services 1890

Employee terminated for non-compliance of Company's orders — Applicant Union claimed that order to transfer was not lawful under the terms of contract of service — However Union argued if it were lawful then termination of employment was unreasonable and that employee was not given a "fair go" — Respondent rejected claims and argued that an unqualified right exists to order employees' transfers, and having refused the employee repudiated his contract of employment — Commission accepted Company's right to temporarily transfer its employees to resolve operational needs — However Commission found where circumstances of the transfer involve the employer's right to terminate was exercised, then intervention by Commission is justified to protect employee against an unjust or unfair exercise — Commission found employee's objective was not to be disruptive nor to undermine Respondent's attempts to resolve operational requirements and ordered re-employment — Granted — Mining — Mechanical Fitter 1867

Dispute *re* warning letters on personal files — Applicant Union sought order to have final warning letters removed from members personal files following industrial action — Respondent refuted suggestion that letters constituted formal warnings but merely conveyed information regarding contracts of employment; no victimisation occurred nor were the letters disciplinary — Commission found on examination of the text of these letters that they were a mere recitation of fact and events — Commission found no warnings issued — Dismissed — Mining Industry 2363

WAGES —

Salary payable to shift supervisors — Remuneration claimed to be restricted by imposition of ceiling on shift penalties — Held that ceiling is one small facet of a complicated salary package no employee has been treated unfairly or prejudiced by introduction — Dismissed — Mining Industry 1284

Application for order to lift industrial action by underground miners and surface employees so that negotiation for new piecework rates can proceed — Respondent union claims applicant should comply with previous agreement reached between parties and that this agreement be re-negotiated forthwith — Commission found the transfer of specific mining operations to a subcontracting company in effect negated the agreement but that on return of control of these operations to the applicant, re-negotiation of conditions and piecework provisions should have taken place — Commission ordered continuation of original agreement but that it should be suspended for a 30 day period for re-negotiation — Granted — Mining (Gold) 1398

Applicant sought order for wages to be paid to employees for period of a strike and imposed black bans — Commission found nothing in circumstances of events established a situation that restored the payment of wages for this period — There was not any contract to pay the workers in the way submitted by the Applicant — Dismissed 1881

Application to vary award — Applicant Union sought inclusion of classification of linemen — live line in wages clause and deletion of special rate in Clause 31 (18) — Respondent objected arguing that it impinges on the flexibility of its operations and proposed a counterclaim — Commission found Respondent's proposal as a reaction to an incorrect construction of award and one which would have the effect of worsening employment conditions of employees who qualify as linemen — live line — Commission noted the point of equity based on comparisons and found substantial merit in Union's case to allow claim — Granted — Electrical Power 1770

Variation of awards and agreements *re* salary rates — Applicant sought increase by four per cent pursuant to current Wage Fixing Principles, more particularly the Restructuring and Efficiency Principle — Respondent agreed to the increase after extensive negotiations — Commission found papers lodged in support of these applications complied with both the spirit and the letter of Commission's Wage Fixing Principles — Commission however found notwithstanding that the claims were lodged sometime back, the operative date of order should be effective from the next pay period — Granted — State Government Administration 2310

Alleged non-payment of contractual benefits — Applicant claimed commission on seven contracts was owed — Respondent refuted claim and denied there was any employment contract — Commission found Applicant had failed to establish that employer/employee relationship had existed — Dismissed — Securities Industry 2331

[3]Adjustment of wage rates pursuant to Anomalies and Inequities Principles — Applicant Union claimed anomaly existed in wage rates of "non-production" and production employees of Respondent — Respondent supported claim — Commission in Court Session found claim within present principles and that no flow-on would occur — Furthermore increases are of a once only nature to establish an equitable base — Granted — Aerated Water 2240

CUMULATIVE DIGEST—*continued*

WORK VALUE —

First award for parliamentary electorate secretaries sought — Wage Fixing Principles relating to first awards and work value require the maintenance of existing rates and conditions unless proved inappropriate — Commission found parties to have demonstrated that value of work performed warranted increased rates — Granted — State Government 1153

[2]Appeal against decision at (67 WAIG 1604) *re* increase in disability allowance — Appellant alleged Commission erred in applying work value changes principle and submitted that claim had failed to satisfy the strict test required — Furthermore increase granted was against weight of evidence and contrary to substantial merit of case — Full Bench found no jurisdiction on the evidence to increase existing allowance — Furthermore Full Bench found any increase would be subject to the second tier ceiling — Upheld — Electrical Power 1745

Variation of awards and agreements *re* salary rates — Applicant sought increase by four per cent pursuant to current Wage Fixing Principles, more particularly the Restructuring and Efficiency Principle — Respondent agreed to the increase after extensive negotiations — Commission found papers lodged in support of these applications complied with both the spirit and the letter of Commission's Wage Fixing Principles — Commission however found notwithstanding that the claims were lodged sometime back, the operative date of order should be effective from the next pay period — Granted — State Government Administration 2310

[2]Appeal against decision of Commission to vary award by including new classifications and definitions — Commission fixed retrospective date of operation prior to fixing actual wage rate to enable further negotiation without penalising those employees whose work value had in the opinion of both parties significantly increased as of that date — Full Bench found decision to constitute an exercise of discretion and not to be wrong in any material sense — Dismissed — Transport (Rail) 2223