CUMULATIVE DIGEST

MATTERS REFERRED TO IN DECISIONS OF INDUSTRIAL APPEAL COURT, INDUSTRIAL COMMISSION AND INDUSTRIAL MAGISTRATES CONTAINED IN VOL. 68 PART 1, SUB PART 2.

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

Subject — Page

ABSENCE WITHOUT LEAVE —
Employee transferred for misconduct — Applicant Union claimed unfair disciplinary measures and sought compensation for resulting strike action — Respondent argued transfer had not been a disciplinary action and it was common ground that workers should not be paid when they were on strike — Commission found assertions and claims based on a conference pursuant to section 44 could not justify intervention of the Commission — Dismissed — Water Authority 334
Employee dismissed due to absenteeism — Applicant claimed unfair dismissal and denisl of contractual benefits and sought reinstatement or compensation — Respondent argued Applicant's absence from duty were excessive and that all benefits had been paid — Commission found failure to notify of absence had caused Respondent to conclude that applicant could not be relied upon to regularly attend to duties and there was further concern at failure to carry out implicit duties of contract of service — Commission found termination of contract open to Respondent in circumstances — Dismissed — Education services 573
Claim *re* unfair dismissal seeking reinstatement — Applicant Union claimed that the employee did not understand the implications of 54 hour week arrangement in force and further, his record of absences was not serious, comparatively speaking — Respondent argued that the employee was unreliable and had a record of unauthorised absences that caused the employer to have grave doubts about the value of continuing to employ him — Commission found that the employee's absences were serious enough to warrant attention and concern in the first place and the termination was not unreasonable especially as the cause of some of the employee's absences was self-inflicted, nor ws the dismissal unfair, given the counselling and warnings and the following procedures — Dismissed — Construction .. 899

ACT — INTERPRETATION OF —
[1]Appeal against decision of Full Bench (67 WAIG 1104) upholding Commission's decision to award compensation to employee found to have been unfairly dismissed — Industrial Appeal Court found Commission to have jurisdiction to order reinstatement or re-employment, however, compensation may only be awarded by means of a supplementary order that an employee be compensated for wages lost between the date of cessation of employment and date of re-employment (see also 67 WAIG 740) and as an incident to making an order for re-employment — Industrial Appeal Court found that by awarding an amount of compensation calculated other than on the basis prescribed by this principle Commission had exceeded its jurisdiction — Upheld — Iron Ore 11
[3]Preliminary legal point *re* whether appeal against decision of Long Service Leave Act Board of Reference had been lodged within the required time — Commission in Court Session found that time for lodging of appeal was not 21 days as per section 48 (11) of the Industrial Relations Act because in accordance with section 27 (1) (n) Commission could by order extend any prescribed time — Furthermore, Regulation 78 (3) was *ultra vires* insofar that it purports to limit the power given to the Commission in section 27 (1) (n) by requiring an application to extend time be made before the expiration of that time — As Respondent was unlikely to suffer prejudice majority of Commission in Court Session decided an application for time to be extended for such period necessary for appeal to proceed would be allowed — Wholesale/Retail 39
Application to cancel award prescribing an allowance to be paid to teachers renting Government accommodation as a result of appointment outside the metropolitan area — In accordance with Commission in Court Session decision at 67 WAIG 776 Government School Teachers Tribunal found rental subsidies or allowances not to be an "industrial matter" in respect of teachers as it is not a condition of their employment that the employer provide accommodation — Industrial Relations Act allows for cancellation of awards under specific circumstances [section 40 (3) (c) and section 47] and Tribunal found that as these circumstances did not apply it had no power to cancel award. Tribunal found itself to be "not restricted to the specific claim" [section 26 (2)] and therefore able to vary award — Tribunal found merit in Government's proposal to standardise rents payable on housing for Government employees and ordered variation of award so it no longer effectively limits amount of rent payable by teachers — Granted in Part — Education 200
[2]Appeal against finding of Commission where Interim Order purporting to restrain Appellant made without Appellant being served with copy of Notice of Application — Full Bench found matter to be significant and in the public interest that an "appeal should lie" pursuant to section 49(2)(a) — Full Bench found order to breach *audi alteram partem* rule of natural justice i.e. that one should not be condemned without opportunity to state one's case and refute allegations — Full Bench also found Commission further exceeded its jurisdiction by purporting to make an order under section 32(3)(c)(i) which empowers making of orders to assist "parties" to come to agreement when Appellant was not a "party" to proceedings as defined in section 29(b) due to Notice of Application not being served — Upheld — Timber 236
Application for conference *re* alleged non-payment of workers at training school — Respondent claimed that an employer-employee relationship did not exist between itself and trainee bricklayers and the matter, therefore, to be beyond jurisdiction of Commission — Commission determined whether an "industrial matter" existed in accordance with procedure outlined by Industrial Appeal Court in Spingdale Comfort *v.* B.T.A. (67 WAIG 325) — Commission found bricklaying work performed was an adjunct to the prime purpose of the training school, an "industrial matter" did not exist and Commission thus did not have jurisdiction to proceed — Dismissed — Construction 318
[2]Application for extension of time for Appeal against a decision of the Commission (68 WAIG 882), lodged out of time — Full Bench found there were insufficient reasons for the extensions evenif there were poer to do so — Dismissed — Farming 1204

ALLOWANCES —
Applicant sought order for payment of an allowance to employees of respondent, formerly employed in the "formwork industry" — Commission found respondent was not operating in the formwork industry but rather in the building construction industry and was not a party to the "Formwork Agreement" — Commission found it would be inequitable to inflict such an agreement on the respondent in this case — Dismissed — Building Construction 171
Application for variation of award — Parties had negotiated and reached agreement with regard to reduction in hours by introducing late night trading provisions to award — Applicant sought inclusion of meal allowance with quantum for the allowance to be that of most recently arbitrated comparable allowance — Respondent objected and argued meal money would be new allowance and New Allowances Principle required change in work or new work conditions — Commission found meal allowance met requirements of New Allowance Principle, however quantum was to remain in harmony with other allowances of award — Granted in Part — Photography 82

CUMULATIVE DIGEST—*continued*

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ALLOWANCES (*continued*) —

[3]Applicant sought variation of award to increase an allowance for first aid attendants holding enrolled nurse qualifications — Respondent claimed work value changes in duties of nurses under other awards can not be compared with the duties of first aid attendants — CICS found that a substantial change in the nature of the work, skill and responsibility could not be demonstrated — CICS found no justification to flow on the results of work value increases to employees whom those work value changes did not apply — Dismissed — Power/Electrical 44

[2]Appeal against decision of Commission at (68 WAIG 94) to grant a dual licence allowance for electricians holding dual licences and performing work outside of their classification without relief for that work — Full Bench found this new allowance was granted without full consideration of current wage fixing principles and that the Commission's discretion miscarried due to measures to implement improved efficiency in industry in those principles — Full Bench found time factor in hearing the application was a consideration and that matter should be remitted for further hearing pursuant to the New Allowance Principles — Upheld — Salt Production 28

Application to vary award to provide a dual licence allowance for electricians holding a licence for both fitting and installing but employed under one classification and required to work outside that classification — Respondent claimed wage principles were a bar to the claims success — Commission found principles would not be broken by granting the claim and that as a matter of merit the claim had been established by the Applicant — Granted — Salt Production 94

Interpretation sought *re* Visual Display Terminal allowance — Applicant claimed employees entitled to allowance should receive payment for all purposes of the award — Respondent refuted claim and argued allowance could only be seen as a flat rate — Commission found words in clause clear and unambiguous, "in addition to" clearly meant over and above and could not be construed as "part of weekly wage" — Furthermore words "who is required to operate" are quite distinct in meaning and effect from "who is capable of operating" — Commission found question posed by Applicant, answered in the negative, however equitably determined by declaration issued — Order accordingly — Printing 162

Applicant sought rate of pay for all welders on North West Shelf Project to be set at level of Welder Special Class and also that a quality allowance should apply to all welding work — Respondent objected to claim — Commission found work value principle did apply to the claim, based on the level of welding skills in question — Commission found decisions of Federal Commission and this Commission accepted that additional skills were involved in this welding work and that those skills were now being used again and should be rewarded as previously was the case, however the allowance must differentiate between carbon steel pipe and stainless steel pipe welding — Granted — Metal Industry 185

[2]Appeal against decision of Commission at (67 WAIG 1397) *re* disability allowance — Appellant claimed Commission had erred in ordering increase in level of allowance by placing undue weight on the existence of bans — Full Bench found there was insufficient evidence in preceding case for Commission to determine appropriate disability grouping — Furthermore Full Bench found no undue weight on the existence of industrial action was given by Commission rather it found it was a factor used in consideration — Dismissed — Transport/Rail 26

[2]Appeal against decision of Commission at (68 WAIG 185) to grant a rate of pay for all welders on North West Shelf Project at level of "Welder Special Class" and also the imposition of a quality allowance for welding work — Full Bench did not accept Respondent's arguments that a work value assessment in line with the principles was not required — Full Bench accepts Appellant's claim that insufficient weight had been given to the work value priniple — Commission had short-circuited analysis of the Principles by acting on a premise that work performed for one employer in 1981 and subject to a specific order established the datum from which work presently being performed for the Appellants should be assessed — Full Bench found Commission's discretion had miscarried — Upheld — Metal Industry 23

Application to cancel award prescribing an allowance to be paid to teachers renting Government accommodation as a result of appointment outside the metropolitan area — In accordance with Commission in Court Session decision at 67 WAIG 776 Government School Teachers Tribunal found rental subsidies or allowances not to be an "industrial matter" in respect of teachers as it is not a condition of their employment that the employer provide accommodation — Industrial Relations Act allows for cancellation of awards under specific circumstances [section 40 (3) (c) and section 47] and Tribunal found that as these circumstances did not apply it had no power to cancel award. Tribunal found itself to be "not restricted to the specific claim" [section 26 (2)] and therefore able to vary award — Tribunal found merit in Government's proposal to standardise rents payable on housing for Government employees and ordered variation of award so it no longer effectively limits amount of rent payable by teachers — Granted in Part — Education 200

Award variation sought prescribing payment of locality allowances to part-time teachers in direct proportion, that number of hours worked bears to full-time hours — School Teachers Tribunal found practices and precedents in industrial environment acknowledge the employers responsibility to pay employees commensurate to the time for which service to the employer is rendered therefore to not specify this allowance for part-time teachers would be manifestly unjust — In accordance with these special circumstances and section 39 of the Act award variation was granted — Granted — Education 196

Applicant Union sought site allowance for disabilities, safety boots and protective clothing — Respondent opposed claims, however, with respect to the site allowance the issue is confined to quantum — Commission granted claim of safety boots and protective clothing and set amount of site allowance on basis of work undertaken and exposure to disabilities — Granted in Part — Electrical Contracting 324

Application to vary Award — Applicant Union sought increases in allowances in line with the national wage decisions rather than the CPI and that these adjustments be dealt with under the old Principles — Further variations sought were wording changes as required by Equal Opportunity Act 1984 — Respondent consented to change — Commission found order to issue in terms of schedule lodged — Granted — State Government Administration 261

Applicant Union sought special allowance for site disabilities — Respondent argued there existed no significant nett addition to the work being done warranting the prescription of a new allowance — Commission found disabilities encountered were not justified for awarding allowances — Dismissed — Government Railways 322

[3]Application for variation of General Order for location allowances in private industry Awards to remove discrimination which occurs by use of marital status to determine entitlement and which is in contravention of Equal Opportunity Act — Applicant further argued existence of "anomaly and inequity" in order whereby couple may receive double the amount currently determined for a family unit and asked for rectification — Respondent claimed for "no reduction" provision on basis that otherwise removal of anomaly would breach Commission's *de facto* Principle — Commission acceded to changes to comply with Equal Opportunity Act and found anomaly did exist — Commission refused retrospectivity and rejected "no reduction" argument although providing a "phasing out" period to ease financial burden on those whose allowance will decrease — Granted in Part — Private Industry 227

Application to vary Award by inserting new 'on call allowance' — Applicant Union claimed current practice intrudes into the domestic life of its members and sought amendments to have Award provisions which reimburse officers required to stand by for duty — Respondent agreed to variation as it would be more efficient as well as cost saving to the Department — Commission noted that Principles prohibited the granting of a new allowance unless there have been changes in work practices — Commission however found that proposed amendment would increase efficiency within the organisation and Principles permitted such amendments — Granted — State Government Administration 260

Claim for increase in the quantum of an existing site allowance — Commission found that on evidence and inspection, the associated disabilities on the various sites warranted an increase in the present allowance — Question of quantum considered — Commission awarded an increase in the allowance for two different sites at Kwinana and Pinjarra which were set at different levels — Granted in Part 256

Variation to award sought by insertion of dual licence allowance — Matter remitted to Commission from Full Bench for hearing and determination in accordance with Principles pertaining to new allowances and restructuring and efficiency after appeal due to lack of reference to appropriate Principles in initial Decision — Commission found Principle relating to new allowances prescribes objective test that new allowance must result from creation of new work or conditions — Commission found it must then apply tests outlined in Work Value Principle and also satisfy the Restructuring and Efficiency Principle with regard to the second tier ceiling — Commission found application satisfied requirements of relevant Principles and was justified on equity and merit — Granted — Mining (Salt) 790

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ALLOWANCES — (*Continued*)

Claim for higher disabilities allowance for five fitters and three tradesmen's assistants at the Westrail Midland Workships — Applicant Union sought payment of Group 3 allowance while stripping bearings from wheel axles and the Group 2 allowance while otherwise employed — Respondent opposed claim and contended that the Group 1 allowance was appropriate in all circumstances — Commission found the Applicant's members had undergone more than a slight decrease in allowance payments following Order No. CR93 of 1985 (66 WAIG 1365) and ordered that they be paid as they were immediately prior to that Order — Granted — Government Railway .. 886

Interpretation of Award *re* multi-storey allowance — Applicant Union claimed renovations at building site qualified employees for allowance — respondent refuted claim as structural alterations were limited to two levels at site therefore provisions of clause could not apply — Commission found in favour of Union, there were more than two structural changes in project — Parties to comply — Building/Construction 898

Claim *re* site allowance — Applicant Union sought allowance on hourly basis — Respondent argued special rates and provision clause in Award provides a weekly allowance therefore no allowance warranted for disabilities encountered — Commission found in favour of a reduced hourly rate and weekly rate provided in Clause to be absorbed in site allowance — Granted In Part — Construction/Electrician 899

Claim for reinstatement of Special Condition of Employment payment withheld due to industrial action — Applicant Union stated stop work meetings held due to pay errors had been conducted according to disputes procedure — Respondent claimed that a breach of the disputes procedure had occurred and therefore the $100 per week Special Conditions of Employment payment was forfeited for that week — Commission found that the Union had adhered to provisions of the disputes procedure and ordered that time lost during the dispute was to be deducted on a *pro rata* basis of $1.85 per hour for each hour of time lost — Granted — Mining 891

Claim *re* site allowance for disabilities — Respondent opposed claim and argued that any allowance awarded should be in lieu of generally applicable payments fo certain disabilities prescribed in the Award, based on what he believed to be custom of this Commission — Respondent further argued that it was usual for such site allowances to be taken to the federal body where, it could be said, it was no less the custom for them to be in lieu of all other payments — Commission found certain disabilities associated with the site warranted an allowance, but found no evidence specific to some of the disabilities the Respondent claimed the site allowance should be in lieu of nor other payments or the likelihood of other payments for disabilities under the special rates provisions of the Award — Granted In Part — Construction 1135

Site allowance by consent *re* fumes and other disabilities encountered — Parties sought ratification of agreement from Commission — Commission found original application for a compulsory conference was an inappropriate mechanism by which to procure such ratification and that the section was not intended to be a vehicle for short cutting the Commission's other processes — Commission found each case to be treated on its own merit and approved agreement — Granted — Building Industry 1113

Claim for increase in allowance — Union sought increase in uniform and boot allowances — Respondent consents to application in toto — Parties suggested that allowance constitutes a reimbursement of expenses rather than one which relates to work or work conditions — Commission found Allowances Principle under heading of "Existing Allowances" permits adjustment for allowances which constitute a reimbursement of expenses incurred to be adjusted to reflect the change in level of such expenses — Granted — Government Administration 1069

Application to sanction an agreement between parties *re* allowances — Claims were for site, travelling and clothing allowances — Commission found agreement to be within New Allowances Principles and issued an order endorsing agreement — Granted — Building 1111

Claim for site allowance — Parties agreed that a site allowance was justified, however did not concur as to the quantum — Commission ratified allowance as per agreement reached at conference and noted unique site features and disabilities such as nature of soil, extensive dust problem as reasons for high rate of allowance set — Ordered accordingly — Building/Construction 1303

Claim for site allowance — Union described alleged excessive disabilities which justified site allowance — Employer denied claim arguing conditions did not warrant payment beyond prescribed industry allowance in award and furthermore site allowance provision should have no application to residential construction — Commission found no disabilities such as to warrant site allowance — Dismissed 1311

Claim *re* site allowance and provision of safety boots and protective clothing for disabilities encountered — Respondent objected to an Order in respect of clothing and argued for an additional allowance for the supply and maintenance of safety footwear, however disagreed in quantum with the amount sought by the Applicant Union for the site allowance — Commission found disabilities encountered warranted a site allowance and an amount per hour for the supply and maintenance of safety footwear — Granted In Part — Construction 1136

Claim *re* site allowance — Applicant Union sought site allowance in lieu of special rates and provisions contained in award — Respondent opposed claim in its entirety and argued Sapri decision together with other decisions of State and Federal Commissions established a 'site allowance pattern', however Applicant had not demonstrated that claim was justified within the pattern — Furthermore if claim is not for site allowance as contemplated by Sapri decision then it should be justified under the Wage Fixing Principles for a new allowance — Commission found no case had been made to establish need for a new allowance or for increase in existing allowance in accordance with Wage Fixation Principles — Dismissed 1314

Claim *re* site allowance — Applicant Union referred to site allowance for other trades on site by Commission and Australian Conciliation and Arbitration Commission — Respondent objected to claim — Commission found disability levels of previous site allowance case cited and instant case are capable of comparison and ratified site allowance — Granted — Construction 1313

Claim *re* site allowance — Parties subsequent to matter being referred for arbitration reached an agreement and seek endorsement of agreement — Commission found disabilities existed, in excessive dust and doing construction work while plant is still operational — Granted 1308

ANNUAL LEAVE —

Application by consent to vary Awards *re* recompense of officers recalled to Court duty whilst on annual leave — Commission found the variations to the Awards to have no flow-on or cost implications as the change only formalised what was already a practice of long standing — Granted — Police 776

Claim *re* contractual entitlements *re* monies in lieu of annual leave — No appearance by or on behalf of Respondent — Commission found annual leave had never been discussed between the parties and therefore contract of employment did not include an entitlement to annual leave or payment of monies in lieu thereof in the event of the termination of the contract of employment — Dismissed — Health .. 1287

APPEAL —

[2]Appeal against decision of Commission at (67 WAIG 1860) to dismiss a claim of unfair dismissal and compensation — Full Bench found no substance in any of the grounds of appeal — Dismissed — Metal Industry 30

[2]Appeal against decision of Commission at (68 WAIG 94) to grant a dual licence allowance for electricians holding dual licences and performing work outside of their classification without relief for that work — Full Bench found this new allowance was granted without full consideration of current wage fixing principles and that the Commission's discretion miscarried due to measures to implement improved efficiency in industry in those principles — Full Bench found time factor in hearing the application was a consideration and that matter should be remitted for further hearing pursuant to the New Allowance Principles — Upheld — Salt Production 28

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APPEAL (*continued*) —

[2]Appeal against decision of Commission at (66 WAIG 1252) *re* compensation awarded — Appellant claimed compensation awarded was inadequate as Commissioner had failed to take into account length of service, difference in income before and after dismissal, magnitude of disruption and Appellant's propsect of re-employment in comparable position in like industry — Full Bench found compensatory payment involved Commission's discretionary judgment as to just and equitable standard — Furthermore amount ordered should meet test of adequacy and not alignment with any perceived pattern — Full Bench found due weight was not given to length of service and the extent of drop in income and increased sum awarded — Upheld — Catering 31

[1]Appeals against decision of Full Bench (at 67 WAIG 1723) not to allow appeals against decision of Commission to vary Industrial Agreement by requiring Appellant to pay employees ordinary wages whilst attending union meetings during working hours — Section 90 (1) of Industrial Relations Act requires Industrial Appeal Court to allow appeal only if decision is "erroneous in law or is in excess of jurisdiction" — Industrial Appeal Court found Full Bench's jurisdiction to dismiss appeal unchallengeable — Industrial Appeal Court also found Commission in first instance and Full Bench subsequently to have been aware of relevant considerations and to have exercised discretion in accordance with their statutory obligations thus no error in law occurred — Dismissed — Iron Ore 4

[2]Appeal against decision of Commission at (67 WAIG 1397) *re* disability allowance — Appellant claimed Commission had erred in ordering increase in level of allowance by placing undue weight on the existence of bans — Full Bench found there was insufficient evidence in preceding case for Commission to determine appropriate disability grouping — Furthermore Full Bench found no undue weight on the existence of industrial action was given by Commission rather it found it was a factor used in consideration — Dismissed — Transport/Rail 26

[2]Appeal against decision of Commission at (68 WAIG 185) to grant a rate of pay for all welders on North West Shelf Project at level of "Welder Special Class" and also the imposition of a quality allowance for welding work — Full Bench did not accept Respondent's arguments that a work value assessment in line with the principles was not required — Full Bench accepts Appellant's claim that insufficient weight had been given to the work value priniple — Commission had short-circuited analysis of the Principles by acting on a premise that work performed for one employer in 1981 and subject to a specific order established the datum from which work presently being performed for the Appellants should be assessed — Full Bench found Commission's discretion had miscarried — Upheld — Metal Industry 23

[3]Preliminary legal point *re* whether appeal against decision of Long Service Leave Act Board of Reference had been lodged within the required time — Commission in Court Session found that time for lodging of appeal was not 21 days as per section 48 (11) of the Industrial Relations Act because in accordance with section 27 (1) (n) Commission could by order extend any prescribed time — Furthermore, Regulation 78 (3) was *ultra vires* insofar that it purports to limit the power given to the Commission in section 27 (1) (n) by requiring an application to extend time be made before the expiration of that time — As Respondent was unlikely to suffer prejudice majority of Commission in Court Session decided an application for time to be extended for such period necessary for appeal to proceed would be allowed — Wholesale/Retail 39

[2]Appeal against decision of Commission at (66 WAIG 1252) *re* compensation awarded — Appellant claimed Commissioner had exceeded jurisdiction by awarding compensation in the absence of an order for re-employment — Full Bench found Commissioner had not erred in awarding compensation as employee had suffered a loss as a consequence of dismissal found to be unfair — Dismissed — Catering 31

[2]Appeal against decision of Commission at (67 WAIG 2145) *re* quantum of compensation awarded — Appellant alleged Commissioner had erred, in that awarding of compensation is outside Commission's jurisdiction and by attributing no weight to the expected duration of employee's employment with Company — Full Bench found erroneous Appellant's claim that assessment of compensation should have been restricted to expected period of employment — Furthermore even based on propostion of limited expected duration compensation would far exceed sum claimed by Appellant to be adequate and found it was open to Commissioner to calculate compensation in lieu of re-employment — Dismissed — Mining 234

[2]Appeal against decision of Commission at (67 WAIG 2347) to dismiss claim for motor vehicle expenses to which the appellant claime he ws entitled under his contract of service — Full Bench found the decision of the Commission to be unassailable as the Appellant's claim had not been for a benefit that he had not been allowed but rather was a claim for compensation for his failure for a time to receive that benefit — Dismissed — Weather Forecasting 682

[2]Appeal against decision at (67 WAIG 2146) *re* compensation awarded for unfair dismissal — Appellant claimed Commissioner erred in principle and discretion miscarried — Respondent sought to have matter remitted for further hearing in light of Industrial Appeal Court decision *re* compensation — Full Bench found time for appeal had expired and not proper to remit matter under accepted principles — Upheld — Mining/Iron Ore 680

[2]Application for extension of time for Appeal against a decision of the Commission (68 WAIG 882) lodged out of time — Full Bench found there were insufficient reasons for the extension even if there were power to do so — Dismissed — Farming 1204

AWARDS —

Applicant sought award variation to give it different right of entry conditions into the premises of the respondents from those conditions specified in the award — Commission found that the applicant had failed to produce sufficient evidence to make a case of any substantial merit — Dismissed — Timber 159

[3]Applicant sought variation of award to increase an allowance for first aid attendants holding enrolled nurse qualifications — Respondent claimed work value changes in duties of nurses under other awards can not be compared with the duties of first aid attendants — CICS found that a substantial change in the nature of the work, skill and responsibility could not be demonstrated — CICS found no justification to flow on the results of work value increases to employees whom those work value changes did not apply — Dismissed — Power/Electrical 44

Application to vary award to provide a dual licence allowance for electricians holding a licence for both fitting and installing but employed under one classification and required to work outside that classification —Respondent claimed wage principles were a bar to the claims success — Commission found principles would not be broken by granting the claim and that as a matter of merit the claim had been established by the Applicant — Granted — Salt Production 94

Award variation sought prescribing payment of locality allowances to part-time teachers in direct proportion, that number of hours worked bears to full-time hours — School Teachers Tribunal found practices and precedents in industrial environment acknowledge the employers responsibility to pay employees commensurate to the time for which service to the employer is rendered therefore to not specify this allowance for part-time teachers would be manifestly unjust — In accordance with these special circumstances and section 39 of the Act award variation was granted — Granted — Education 196

Applications to amend and consolidate Awards, principally to vary the salary structure to give effect to broadbanding by consent — Commission approved amendments to the Award to the extent that they applied to broadbanding, but was not prepared to consolidate Awards other than the "full and proper way" at a later date — Granted in Part — University Administration 267

Application to vary award *re* insertion of new redundancy procedure clause based on a private agreement between the parties — Applicant Union claimed that such an agreement should be secured by an Order of the Commission such that it is enforceable — Respondent argued that the agreement was gained during a dispute under duress and it was therefore wrong in principle for such an arrangement to be included in an award which could effect other employers and in any event it did not constitute the full arrangement made — Commission found that as a legal arrangement binding the parties, the agreement would be unenforceable and for the mutual protection of both the worker and the employer any doubt concerning the attachment of the agreement to the contract of service of individual workers then employed should be removed — Commission ordered amendement of the award such that the terms of settlement were applicable only to these persons subject to them — Granted In Part — Various 747

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AWARDS—*continued*

Variation to award sought by insertion of dual licence allowance — Matter remitted to Commission from Full Bench for hearing and determination in accordance with Principles pertaining to new allowances and restructuring and efficiency after appeal due to lack of reference to appropriate Principles in initial Decision — Commission found Principle relating to new allowances prescribes objective test that new allowance must result from creation of new work or conditions — Commission found it must then apply tests outlined in Work Value Principle and also satisfy the Restructuring and Efficiency Principle with regard to the second tier ceiling — Commission found application satisfied requirements of relevant Principles and was justified on equity and merit — Granted — Mining (Salt) 790

Application by consent to vary Awards *re* recompense of officers recalled to Court duty whilst on annual leave — Commission found the variations to the Awards to have no flow-on or cost implications as the change only formalised what was already a practice of long standing — Granted — Police 776

Application for four per cent second tier increase to Award salary and wage rates in accordance with Restructuring and Efficiency Principle — Commission found that whilst the Award had a slary nexus with the Public Service and that is to remain, the rates of pay between the two would be slightly different as the parties chose to adhere to the four per cent entitlement rather than directly adhere to the rates of pay applicable to the Public Service — Commission found costs of accommodating the second tier wage adjustment of four per cent were well within the Principles and were prepared to make an Order in the terms of the lodged Schedule, by consent — Granted — Transport 852

Application for four per cent second tier increase to Award salary and wage rates in accordance with Restructuring and Efficiency Principle — Commission found that whilst the Awards have a well recognised nexus with the Public Service and, by and large, reflect public service conditions they must be dealt with on their own merits and not by virtue of any nexii that may have existed in the past — Commission found the proposed changes if rigidly enforced would result in perceived cost savings and therefore sanctioned the agreement reached between the parties — Granted — Health and Welfare Services 808

Application to vary Award to implement broadbanding as it has been adopted in the Public Service and subsequently in State instrumentalities and in other tertiary institutions — Parties argued that the Commission use the earlier Principles in respect of this application as the agreement was reached at a time when those Principles were in force, whereafter a delay had arisen due to misinterpretation of the Award — Commission found that the delay would not be held against the parties and as there was no likelihood of any flow-on, dealt with the application under the old Principles, by consent — Granted — University Administration 786

Increase of wage rates of four per cent by consent under Second Tier Wage Adjustment Principle — Board found both spirit and the letter of the Principles had been met, which should result in significant savings to the Respondent — Award varied — Granted — Transport . 846

[3]Application for common rule superannuation award by consent of Respondents employing 75 per cent engaged in the industry — Consent of Respondents was conditional upon handing down of common rule award so there would be no competitie advantage to employers not party to application — Intervenor claimed Wage Fixing Principles allow for superannuation orders to apply only to parties to application and to grant a common rule award would "put the whole package under duress" — Commission in Court Session found that for claim to succeed it must demonstrate "special circumstances" in that common rule is the most orderly method by which superannuation may be introduced — Commission in Court Session also found that whilst claim did not conform to procedural structure demanded by Principles it was conducive to the establishment of an industrial relations environment fundamental to the success of the wage fixing package — Granted — Security 1031

[2]Appeal against Commission's decision (at 67 WAIG 2263) not to allow new award to cover veterinary surgeons — Appellant claimed commission erred in finding its constitution does not permit it to enrol veterinary surgeons as members — Full Bench comprehensively reviewed the authorities and principles for determining eligibility and construction of union rules and emphasised the need to adopt a generous approach to their interpretation — Full Bench found, however, that such an approach is not a license to interpret language so that it bears little resemblance to what is written which is what the Appellant is inviting Commission to do — Dismissed 1010

Award variation sought for purpose of establishing new classifications due to change in work standards — Parties were in agreement that duties constitute a significant net addition to the job, however, unable to agree on extent of changes and quantum of wage rates to be paid — Commission from evidence presented fixed rates for new classifications on work value — Ordered accordingly — Meat Industry 1064

[3]Application for new Award and new career stucture with increased rates of pay due to changes in work value — Due to other previous, extensive and closely related applications subject application was deemed to have been substantially part heard and would, therefore, be determined in accordance with the Wage Fixing Principles 1986 and the Second Tier Ceiling would not apply — Parties were in agreement *re* work value changes but not as to quantum of wage increases — Minister intervened, arguing that budget constraints did not allow it to exceed certain overall cost limits although it was sanguine about negotiating a flexible package within that context — Commission in Court Session found that increases must remain within parameters of previous agreement — Commission in Court Session conducted extensive review and determination of rates for different classifications and other conditions of employment — Award issued — Health Care 701

Application for second tier wage increase in accordance with Restructuring and Efficiency Principle and Supplementary Payments Principle — Applicant Union claimed State Award had a nexus with Federal Award that had been ratified — Commission found Union's claim for second tier increase did not satisfy the requirement of Restructuring and Efficiency Principle and failed to establish the value, if any, of the proposed changes to employers and the local industry — However Commission found dismissal should not prevent Applicant Union from making future second tier applications — Supplementary payments claim divided from application — Dismissed — Clothing 1242

Application for a joinder to an award and its cancellation thereof — Applicant Union were granted constitutional coverage of roof tile fixers by Full Bench and subsequently applied successfully for new classification of roof tile fixers to be added to Building Trades (Construction) Award — Union claimed as two rates apply currently, higher rates and conditions to apply — Respondent Union objected on grounds of perceived demarcation disputes in cottage industry — Commission found application does not violate rights of objecting Union — Granted 1325

BOARD OF REFERENCE —

Payment for *pro rata* long service leave sought — Applicant claimed continuous service of 13 years — Respondent only accepted as service the period covered by statutory time and wages records and for which group certificates could be produced — Board of Reference found a period of employment was not supported by documentary evidence but that on the strength of the evidence from the Applicant's testimony, that the onus of proof had been discharged by the applicant — Granted — Hotel Industry 167

[3]Appeal against decision of Board of Reference that employee was entitled to payment for *pro rata* long service leave — Appellant argued Board of Reference was wrong in fact and law in concluding Respondent's employment was continuous due to transmission of business — Commission in Court Session found no payment had been made for goodwill and as new Company did not take over current orders or existing liabilities particularly obligations under the subsisting maintenance contracts no transmission of the business occurred — Employment was, therefore, not continuous and no entitlement for payment for *pro rata* long service leave existed — Upheld — Wholesale/Retail 247

Applicant claimed *pro rata* long service leave payment on account of sickness and domestic circumstances resulting in his resignation — Respondent argued that the Applicant advised the Company of no medical or domestic requirement that necessitated his termination at the time of his resignation or prior to that event — Board of Reference found on evidence that the Applicant had not suffered from an illness which would have justified his termination and therefore attract a payment pursuant to the long service leave clause, nor did his circumstance fulfill the "domestic or other pressing necessity" requirement of the same clause — Dismissed 867

Claim *re* continuous service entitlements — Applicant sought entitlements under the standard Long Service Leave provisions incorporated in the Independent Schools' Teachers' Award based on the existence of a portability of long service leave scheme — Board of Reference found the portability scheme to be a private arrangement which was not reflected in the award and as such was not able to be considered by the Board of Reference — Dismissed 866

CUMULATIVE DIGEST—*continued*

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BONUS —
Claim *re* contractual entitlements — Applicant sought bonus payment claimed owing to him — Respondent argued contractual bonsus was subject to Applicant's performance which was incompetent and unreliable — Commission found the Applicant's employment in all essential respects to be terminated by notice and the Applicant was entitled to be paid the bonus he had earned — Commission ordered the Respondent to pay the Applicant the amount claimed but refused the Applicant's claim for legal costs incurred as there was no evidence that it was necessary for the Applicant to seek legal advise — Granted In Part — Primary Industry 882

BREACH OF AWARD —
[2]Appeal against decision of Industrial Magistrate (unreported) — Appellant argued that dismissal was through no fault of his own and claimed pay in lieu of notice as well as 20 per cent loading in accordance with the Award — Respondent refuted claim and argued that Appellant had resigned from or otherwise terminated his employment rather than accept a transfer — Full Bench found employment terminated as a result of ultimatum to transfer or else finish up and to suggest that resignation effected in that manner was a voluntary termination put an entirely unrealistic interpretation — Full Bench remitted matter to Magistrate for further determination *re* whether penalty is to be imposed and the recovery of moneys outstanding under the Award — Upheld 33
[1]Appeal against decision of Full Bench (at 68 WAIG 33) *re* application of casual loading in accordance with award and failure to award costs — Appellant argued that casual loading should have been calculated on his actual rate of pay — Industrial Appeal Court found the construction of the relevant clause of the award to be that loading is payable on the award rate of pay — Industrial Appeal Court further observed that the jurisdiction of the Industrial Magistrate only allows for "an order for payment of the appropriate amount payable in accordance with the relevant award during the relevant period of service and the amount actually paid to the employee for that period" — Industrial Appeal Court also found that due to a misunderstanding the Full Bench had not exercised its discretion as to whether costs should be awarded and matter should be remitted to Full Bench for further consideration — Granted in Part — Earthmoving 1004

CAPACITY TO PAY —
Employees dismissed due to closure of business — Applicant Union claimed unfair dismissals and sought reinstatement, however, due to budgetary deficit reinstatement was not practical where upon the Applicant sought redundancy payments — Respondent having previously paid two employees a sum agreed upon, firmly opposed any further payment on the basis of lack of funds available — Commission found in favour of the Applicant ruling that a manifest inequity existed in denying to other employees a similar settlement as that received by more than half the workforce — Respondent allowed extra period of time requested in order to make suitable arrangements — Granted in Part — Various 306
Appropriate redundancy payments sought due to closure of nursing home — Applicant Union argued level of severance payments offered to employes was inappropriate and submitted for consideration the question of capacity to pay Respondent refuted claim and provided detailed disclosure of financial situation to prove incapacity to pay — Commission found question of capacity to pay had been supported by direct testimony which was unassailable — Furthermore Commission found there had been a fair go all round in terms of sharing the unavoidable distress and inconvenience of the closure — Dismissed — Nursing Home 598

CASUAL WORK —
[1]Appeal against decision of Full Bench (at 68 WAIG 33) *re* application of casual loading in accordance with award and failure to award costs — Appellant argued that casual loading should have been calculated on his actual rate of pay — Industrial Appeal Court found the construction of the relevant clause of the award to be that loading is payable on the award rate of pay — Industrial Appeal Court further observed that the jurisdiction of the Industrial Magistrate only allows for "an order for payment of the appropriate amount payable in accordance with the relevant award during the relevant period of service and the amount actually paid to the employee for that period" — Industrial Appeal Court also found that due to a misunderstanding the Full Bench had not exercised its discretion as to whether costs should be awarded and matter should be remitted to Full Bench for further consideration — Granted in Part — Earthmoving 1004

CLASSIFICATION —
[2]Appeal against decision of Commission at (68 WAIG 94) to grant a dual licence allowance for electricians holding dual licences and performing work outside of their classification without relief for that work — Full Bench found this new allowance was granted without full consideration of current wage fixing principles and that the Commission's discretion miscarried due to measures to implement improved efficiency in industry in those principles — Full Bench found time factor in hearing the application was a consideration and that matter should be remitted for further hearing pursuant to the New Allowance Principles — Upheld — Salt Production 28
Application to vary award to provide a dual licence allowance for electricians holding a licence for both fitting and installing but employed under one classification and required to work outside that classification —Respondent claimed wage principles were a bar to the claims success — Commission found principles would not be broken by granting the claim and that as a matter of merit the claim had been established by the Applicant — Granted — Salt Production 94
Award variation sought for purpose of establishing new classifications due to change in work standards — Parties were in agreement that duties constitute a significant net addition to the job, however, unable to agree on extent of changes and quantum of wage rates to be paid — Commission from evidence presented fixed rates for new classifications on work value — Ordered accordingly — Meat Industry 1064
Application that employee be reclassified to lower position on basis that current position required performance of duties unacceptable to him i.e. instructing non-unionists — Respondent claimed granting application would be contrary to objects of the Industrial Relations Acts and certain other provisions — Commission found subject employee had only accepted promotion on condition he would not have to compromise his clearly stated principles *re* unionism and to allow application is not to promote unfair discrimination but to correct an error which should never have occurred — Granted — Iron Ore 1125

CLOTHING —
Applicant Union sought site allowance for disabilities, safety boots and protective clothing — Respondent opposed claims, however, with respect to the site allowance the issue is confined to quantum — Commission granted claim of safety boots and protective clothing and set amount of site allowance on basis of work undertaken and exposure to disabilities — Granted in Part — Electrical Contracting 324
Application to sanction an agreement between parties *re* allowances — Claims were for site, travelling and clothing allowances — Commission found agreement to be within New Allowances Principles and issued an order endorsing agreement — Granted — Building 1111
Claim *re* site allowance and provision of safety boots and protective clothing for disabilities encountered — Respondent objected to an Order in respect of clothing and argued for an additional allowance for the supply and maintenance of safety footwear, however disagreed in quantum with the amount sought by the Applicant Union for the site allowance — Commission found disabilities encountered warranted a site allowance and an amount per hour for the supply and maintenance of safety footwear — Granted In Part — Construction 1136

CUMULATIVE DIGEST—*continued*

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COMPENSATION —

[1]Appeal against decision of Full Bench (67 WAIG 1104) upholding Commission's decision to award compensation to employee found to have been unfairly dismissed — Industrial Appeal Court found Commission to have jurisdiction to order reinstatement or re-employment, however, compensation may only be awarded by means of a supplementary order that an employee be compensated for wages lost between the date of cessation of employment and date of re-employment (see also 67 WAIG 740) and as an incident to making an order for re-employment — Industrial Appeal Court found that by awarding an amount of compensation calculated other than on the basis prescribed by this principle Commission had exceeded its jurisdiction — Upheld — Iron Ore 11

[2]Appeal against decision of Industrial Magistrate (unreported) — Appellant argued that dismissal was through no fault of his own and claimed pay in lieu of notice as well as 20 per cent loading in accordance with the Award — Respondent refuted claim and argued that Appellant had resigned from or otherwise terminated his employment rather than accept a transfer — Full Bench found employment terminated as a result of ultimatum to transfer or else finish up and to suggest that resignation effected in that manner was a voluntary termination put an entirely unrealistic interpretation — Full Bench remitted matter to Magistrate for further determination *re* whether penalty is to be imposed and the recovery of moneys outstanding under the Award — Upheld 33

[2]Appeal against decision of Commission at (66 WAIG 1252) *re* compensation awarded — Appellant claimed compensation awarded was inadequate as Commissioner had failed to take into account length of service, difference in income before and after dismissal, magnitude of disruption and Appellant's propsect of re-employment in comparable position in like industry — Full Bench found compensatory payment involved Commission's discretionary judgment as to just and equitable standard — Furthermore amount ordered should meet test of adequacy and not alignment with any perceived pattern — Full Bench found due weight was not given to length of service and the extent of drop in income and increased sum awarded — Upheld — Catering 31

[2]Appeal against decision of Commission at (66 WAIG 1252) *re* compensation awarded — Appellant claimed Commissioner had exceeded jurisdiction by awarding compensation in the absence of an order for re-employment — Full Bench found Commissioner had not erred in awarding compensation as employee had suffered a loss as a consequence of dismissal found to be unfair — Dismissed — Catering .. 31

Employee summarily dismissed for insubordination — Applicant Union claimed employee had been unfairly dismissed and sought reinstatement and compensation — Respondent refuted claim and argued that Applicant's refusal to "strip timber" justified summary dismissal — Commissioner found permanent occupant of position in which Applicant was relieving, carried out duties in question and as such, refusal by Applicant was unreasonable — Dismissed — Timber 338

Employee dismissed for alleged incompetence and poor attitude — Applicant Union claimed unfair dismissal and sought compensation — Respondent argued employee's poor attitude and inability to handle various duties justified the dismissal — Commission found no evidence to suggest that Respondent had regard for other avenues than dismissal, nor was there any warnings to employee that her employment was in jeopardy — Commission found compensation inappropriate, however ordered re-employment — Ordered accordingly — Finance and Investment 324

Employee summarily dismissed for alleged incompetence — Applicant claimed unfair dismissal as no warnings or even opportunity to improve her performance was given and sought compensation — Respondent argued that it was not bound by the terms of award governing the retail trade — Commission found no misconduct, on contrary employee had been promoted — Commission found employee was not guided or informed of tasks of new position and Respondent was to blame for any shortcomings she had, and awarded compensation — Granted — Retail 313

Employee dismissed following period of rehabilitation and inability to continue gainful employment — Applicant claimed unfair dismissal and sought reasonable compensation — Respondent denies claims wholly — Commission found all parties to whom the Applicant has turned for assistance, have, including the Respondent, done their utmost for the Applicant and therefore dismissed claim for compensation — Dismissed — Airlines Industry 308

[2]Appeal against decision of Commission at (67 WAIG 2145) *re* quantum of compensation awarded — Appellant alleged Commissioner had erred, in that awarding of compensation is outside Commission's jurisdiction and by attributing no weight to the expected duration of employee's employment with Company — Full Bench found erroneous Appellant's claim that assessment of compensation should have been restricted to expected period of employment — Furthermore even based on propostion of limited expected duration compensation would far exceed sum claimed by Appellant to be adequate and found it was open to Commissioner to calculate compensation in lieu of re-employment — Dismissed — Mining 234

Employee alleged summary and unfair dismissal due to raised issues of mismanagement — Applicant sought reinstatement or compensation — Respondent refuted claims — Commission found evidence of bitter clashes between the parties over a period of time and that incipient hostility and mistrust was a consequence — Commission found breakdown in relationship between the parties and decision to end Applicant's contract of employment was reasonably open to Respondent — Dismissed — Welfare Services 311

Employee transferred for misconduct — Applicant Union claimed unfair disciplinary measures and sought compensation for resulting strike action — Respondent argued transfer had not been a disciplinary action and it was common ground that workers should not be paid when they were on strike — Commission found assertions and claims based on a conference pursuant to section 44 could not justify intervention of the Commission — Dismissed — Water Authority 334

Application *re* alleged unfair dismissal, seeking compensation — Applicant claimed he had been unfairly dismissed for claiming and being paid overtime rates for extra curricula duties — Respondent argued Applicant's attitude towards the poor state of housekeeping in his area, for which he had been reprimanded at least twice, combined with over manning in the warehouse, had led to the dismissal — Commission found Applicant had been the subject of complaints on his "housekeeping" and did not discern any basic element of unfairness in the Respondent's decision to terminate the contract of employment — Dismissed — Wholesaling 586

Application *re* alleged unfair dismissal, seeking reinstatement or compensation — Applicant claimed he was dismissed following an incident in which he by-passed the Respondent's State Manager with a complaint to the Respondent's head office — Respondent argued Applicant was retrenched due to economic circumstances — Commission found Applicant was retrenched due to the Respondent's commercial performance and no unfairness was attached to the Respondent's decision — Dismissed — Wholesaling Industry 572

Application *re* unfair dismissal, seeking contractual entitlements — Respondent argued employment was based on a trial period during which time the employee was not entitled to any contractual benefit — Commission found that as the Applicant had not committed misconduct such that a summary termination was justified, it was reasonable to imply into the contract of employment a period of notice — Application dismissed in respect of unfair dismissal but order in favour of the Applicant issued for payment in lieu of notice — Granted In Part — Manufacturing 585

Claim *re* contractual entitlement — Applicant claimed contractual entitlement of monies withheld by the Respondent following the Applicant's resignation — Respondent argued his action in withholding monies from the Applicant was justified by the Applicant's failure to give at least two or three weeks' notice of intention to terminate — Commission found Respondent was unjustified in retaining the Applicant's wages and issued an order for the payment of that sum to the Applicant, but dismissed the claim for payment of annual leave as there was no evidence that this was a term of the contract of service — Granted In Part — Furniture Industry 583

Claim *re* contractual entitlements — no appearance by or on behalf of Applicant — Application dismissed for want of prosecution and payment of costs awarded against the Applicant being for costs incurred by the Respondents — Dismissed — Retail 571

Application for reinstatement on basis of alleged unfair dismissal — Respondent argued that Applicant was employed on probation and that matter was, therefore, beyond jurisdiction of Commission — Respondent further argued that whilst not doubting Applicant's integrity or competence it stood to suffer economic damage had employment continued due to media reports of police enquiries into an agent of Applicant's former employer — Commission found contract not to be probationary, Applicant to have been summarily dismissed, unfair dismissal to have been proved and re-employment warranted — Applicant changed claim to compensation due to having found alternative employment — Commission found it was not open to it to award compensation as a result of Industrial Appeal Court decision (68 WAIG 11) — Matter resolved between parties and leave to withdraw application granted — Finance 581

Employee sought payment due under contract of service — Applicant claimed payments in lieu of car, unauthorised deductions from wages and pro rata annual leave — Respondent refuted claims and argued deductions were to offset losses incurred by the Applicant — Commission rejected Respondent's claim and found by its action, Respondent had repudiated its contract with Applicant and therefore Applicant was due payment for paid leave and unauthorised deductions — However Commission found onus of proof had not been sufficiently discharged by Applicant with regard to claim for reimbursement of motor vehicle — Granted In Part — Retail 576

CUMULATIVE DIGEST—*continued*

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COMPENSATION —*continued*

Employee dismissed due to absenteeism — Applicant claimed unfair dismissal and denial of contractual benefits and sought reinstatement or compensation — Respondent argued Applicant's absence form duty were excessive and that all benefits had been paid — Commission found failure to notify of absence had caused Respondent to conclude that Applicant could not be relied upon to regularly attend to duties and there was further concern at failure to carry out implicit duties of contact of service — Commission found termination of contract open to Respondent in circumstances — Dismissed — Educational services 573

Application for reinstatement or compensation due to alleged unfair dismissal — Applicant submitted that his actions be viewed in context of frustration over Respondent's refusal to transfer him to area suitable to his allergies, unfounded allegations by Respondent and that Respondent did not adhere to the terms of disputes settling procedure set out in award — Respondent claimed termiantion due to Applicant's refusal to discuss issues arising from a record of unco-operative and disruptive behaviour and unwillingness to accept authority regarding which a written warning had been made — Commission found that Respondent exercised legal right to dismiss employee and that Applicant's actions converted situation from a warranted written warning to a justifiable dismissal — Local Government 579

[2]Appeal against decision of Commission at (67 WAIG 2347) to dismiss claim for motor vehicle expenses to which the Appellant claimed he was entitled under his contract of service — Full Bench found the decision of the Commission to be unassailable as the Appellant's claim had not been for a benefit that he had not been allowed but rather was a claim for compensation for his failure for a time to receive that benefit — Dismissed — Weather Forecasting 682

Order for compensation sought for employees on basis of alleged unfair dismissal — Aplicant sought finding that termination constituted redundancy and that a transmission of business had occurred — Commission found no transmission of business had occurred but this did not preclude consideration of employees prior service — Commission rejected Respondent's arguement that redundancy cannot occur if termination is effected purportedly due to factors beyond employer's control e.g. economic factors and found that redundancy had occurred but the employees concerned were not bound by any award provision relating to redundancy — Commission found dismissal was unfair but recent decision of Industrial Appeal Court (68 WAIG 11) prevents Commission from ordering compensation — Granted in Part — Newspaper Publishing 900

[2]Appeal against decision at (67 WAIG 2146) *re* compensation awarded for unfair dismissal — Appellant claimed Commissioner erred in principle and discretion miscarried — Respondent sought to have matter remitted for further hearing in light of Industrial Appeal Court decision *re* compensation — Full Bench found time for appeal had expired and not proper to remit matter under accepted principles — Upheld — Mining/Iron Ore 680

Employee summarily dismissed for misconduct — Applicant claimed unfair dismissal and sought reinstatement and compensation — Respondent claimed insubordination on part of Applicant — Commission found Applicant had embarked upon a course of defiance towards Respondent and had not given his co-operation in promoting interest of members as determined by Management Committee — Commission found dismissal was not harsh or oppressive — Dismissed — Union 876

[2]Appeal against decision of Commission (at 66 WAIG 2343) *re* compensation awarded. Appellant claimed Commission lacked jurisdiction to order compensation — Respondent sought Full Bench to exercise power and remit matter back so as to give effect to an order of reinstatement to which an order for the compensation may be supplementary — Full Bench found Respondent's argument for such an order will derogate from the findings of Commission and would constitute a subversion of present order under appeal — Full Bench found in light of Pepler decision and that amount was not a contractual entitlement but a bonus which depended on continued employment, Commission had exceeded jurisdiction — upheld — Building Industry 1013

Claim *re* unfair dismissal — seeking reinstatement and compensation — Respondent argued matter was beyond Commission's jurisdiction as no contract of employment existed between the parties — further, the Respondent made an economic decision that it could no longer afford to employ the Applicant — Finally, following the "Pepler Case" (68 WAIG 11) an award of compensation could not be made in the absence of an order for re-employment, and re-employment in light of the behaviour of the Applicant would be grossly unfair — Commission found the contract to be one for service as opposed to one of service and the employee/employer relationship fundamental to the ability of the Applicant to bring the matter to the Commission and within its jurisdiction was not proved — Dismissed for want of jurisdiction — Carbon Products — Technology 1122

Application for reinstatement with payment of lost salary or, alternatively, pay in lieu of notice plus pro-rata annual leave and loading due to allegedly unfair dismissal — Commission found Applicant to have been unfairly dismissed but declined to make order for reinstatement as in these circumstances it would be tantamount to awarding compensation equal to salary lost — Commission found that an implied term of the contract was the requirement of giving one month's notice of termination but there was no contractual entitlement to leave — Granted In Part — Manufacturing 1293

CONFERENCE —

Applicant Union sought special allowance for site disabilities — Respondent argued there existed no significant nett addition to the work being done warranting the prescription of a new allowance — Commission found disabilities encountered were not justified for awarding allowances — Dismissed — Government Railways 322

CONFINED SPACE —

Claim *re* site allowance — Applicant Union sought allowance on hourly basis — Respondent argued special rates and provision clause in Award provides a weekly allowance therefore no allowance warranted for disabilities encountered — Commission found in favour of a reduced hourly rate and weekly rate provided in clause to be absorbed in site allowance — Granted In Part — Construction/Electrician 899

CONTRACT OF SERVICE —

Applicant terminated seeking contractual entitlements — Respondent argued that it had not been a party to any employment contract with the Applicvant, however, a contractual arrangement existed between the Respondent and a separate legal entity by whom the Applicant was employed — Commission found Applicant unable to establish the existence of a contract of employment between the Applicant and the Respondent — Dismissed — Securities 309

Application for conference *re* alleged non-payment of workers at training school — Respondent claimed that an employer-employee relationship did not exist between itself and trainee bricklayers and the matter, therefore, to be beyond jurisdiction of Commission — Commission determined whether an "industrial matter" existed in accordance with procedure outlined by Industrial Appeal Court in Spingdale Comfort *v.* B.T.A. (67 WAIG 325) — Commission found bricklaying work performed was an adjunct to the prime purpose of the training school, an "industrial matter" did not exist and Commission thus did not have jurisdiction to proceed — Dismissed — Construction 318

Claim *re* contractual entitlement — Applicant claimed contractual entitlement of monies withheld by the Respondent following the Applicant's resignation — Respondent argued his action in withholding monies from the Applicant was justified by the Applicant's failure to give at least two or three weeks' notice of intention to terminate — Commission found Respondent was unjustified in retaining the applicant's wages and issued an order for the payment of that sum to the Applicant, but dismissed the claim for payment of annual leave as there was no evidence that this was a term of the contract of service — Granted In Part — Furniture Industry 583

CUMULATIVE DIGEST—*continued*

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CONTRACT OF SERVICE (*continued*) —

Employee sought payment due under contract of service — Applicant claimed payments in lieu of car, unauthorised deductions from wages and pro rata annual leave — Respondent refuted claims and argued deductions were to offset losses incurred by the Applicant — Commission rejected Respondent's claim and found by its action, Respondent had repudiated its contract with Applicant and therefore Applicant was due payment for paid leave and unauthorised deductions — However Commission found onus of proof had not been sufficiently discharged by Applicant with regard to claim for reimbursement of motor vehicle — Granted In Part — Retail 576

Claim *re* contractual entitlements — Respondent argued the applicant was seeking award entitlements pursuant to an award of this Commission and submits that the Commission as constituted hass no jurisdiction in this matter — Commission unsatisfied on evidence that the contract of employment between the applicant and Respondent was something other than as provided for in the terms of the award and dismissed the case for want of jurisdiction — Dismissed — Retail Household Fixtures 578

Claim *re* contractual entitlements — Applicant claimed the Respondent had withheld moneys owed to her on the grounds that she had failed to give the standard period of notice required — Commission found Respondent repudiated contract of employment when variation in terms of contract was imposed which were not accepted by Applicant — Commission found Applicant was under no obligation to give notice and ordered payment of moneys due — Granted — Postal Service 869

Employee summarily dismissed for alleged misconduct — Applicant claimed unfair dismissal and sought contractual entitlements — Commission found that the Applicant had agreed to the terms of a new agreement and could not claim benefits of the Award provision it superseded — Dismissed — Catering 874

²Appeal against decision of Commission at (67 WAIG 2347) to dismiss claim for motor vehicle expenses to which the Appellant claimed he was entitled under his contract of service — Full Bench found the decision of the Commission to be unassailable as the Appellant's claim had not been for a benefit that he had not been allowed but rather was a claim for compensation for his failure for a time to receive that benefit — Dismissed — Weather Forecasting 682

Claim *re* contractual entitlements — Applicant sought bonus payment claimed owing to him — Respondent argued contractual bonus was subject to Applicant's performance which was incompetent and unreliable — Commission found the Applicant's employment in all essential respects to be terminated by notice and the Applicant was entitled to be paid the bonus he had earned — Commission ordered the Respondent to pay the Applicant the amount claimed but refused the Applicant's claim for legal costs incurred as there was no evidence that it was necessary for the Applicant to seek legal advice — Granted In Part — Primary Industry 882

Claim *re* unfair dismissal seeking contractual entitlements — Applicant claimed contractual entitlements in the form of *pro rata* long service leave said to exist by virtue of a contract between the Applicant and the first Respondent — Respondent argued that no such contract existed as the arrangement was for payment of long service leave after the first 10 years with no on-going arrangement to make any other payments — Commission found the contract for payment of long service leave applied only for the first 10 years of employment and no other entitlement was outstanding — Dismissed — Automotive Maintenance 871

Application for reinstatement on grounds of unfair dismissal and alleged outstanding contractual benefits — Applicant claimed dismissal due to personal prejudices of superior and that contractual benefits had been denied after dismissal — Respondent claimed dismissal was due to a redundancy situation and that all payments under contract of service had been made — Commission found Applicant unable to establish his allegations by way of evidence and determined dismissal was due to redundancy — Furthermore it had been established that the Respondent had made redundancy payments to applicant in excess of amounts set down in contract of service — Dismissed — Newspaper 883

Employee sought payment of amount allegedly owing under contract of service — Applicant claimed amount based upon a gross weekly wage and a further amount for each bag of crayfish caught whilst he was a deckhand on the Respondent's boat — Respondent denied any liability to the Applicant — Commission found that the Applicant misunderstood the contract and that an amount paid by the Respondent made up fo the difference between the number of weeks worked at $300 per week and the number of bags per week at $50.00 per bag was sufficient under the terms of the contract of service — Dismissed — Cray Fishing 875

Employee terminated at end of probationary period — Employee sought payment in lieu of notice — Respondent refuted claim — Commission found claim not substantiated as employee was not entitled to draw a conclusion that she was not required to work during period of notice given — Dismissed — Hairdressing 1117

²Appeal against decision of Commission (at 66 WAIG 2343) *re* compensation aawarded. Appellant claimed Commission lacked jurisdiction to order compensation — Respondent sought Full Bench to exercise power and remit matter back so as to give effect to an order of reinstatement to which an order for the compensation may be supplementary — Full Bench found Respondent's argument for such an order will derogate from the findings of Commission and would constitute a subversion of present order under appeal — Full Bench found in light of Pepler decision and that amount was not a contractual entitlement but a bonus which depended on continued employment, Commission had exceeded jurisdiction — upheld — Building Industry 1013

Claim *re* unfair dismissal seeking contractual entitlements — Respondent argued the Applicant was not dismissed and had abandoned his employment — Commission found the Applicant had abandoned his employment thus forfeiting any right to a payment in lieu of notice — Dismissed — Fast Foods 1121

²Appeal against decision of Magistrate to dismiss complaint *re* non-payment of award entitlement to pro-rata annual leave due to finding that relationship between parties was not contract of employment — Appellant claimed Magistrate's decision was based on factors, such as regularity of payments and alleged employee's contractual relationships with other parties which are irrelevant to determining the existence of a contract of service — Further, Magistrate had given too great an emphasis onmethod of deducting tax and not enough to the power of control over the manner of doing the work — Full Bench reviewed the authorities and indicia for determining the existence of a contract of service before deciding that these principles when applied to the facts demonstrate the relationship was a contract of service and the Respondent had power of control over the work carried out — Upheld and remitted to Magistrate for determination according to law — Building Construction 1015

Claim *re* breach of contract, seeking re-employment — Applicant Union claimed an offer of re-employment was made to the employee and refusal by the Respondent to re-employ her therefore constituted a breach of contract — Further Applicant Union claimed that Union activity may have been a cause for the Respondent's action — Respondent argued that no such arrangement for re-employment was made — Commission found little substance in the allegations of victimisation on the basis of Union membership and found no firm contract was offered to the employee — Dismissed — Meat Industry 1140

Claim *re* contractual entitlements *re* monies in lieu of annual leave — No appearance by or on behalf of Respondent — Commission found annual leave had never been discussed between the parties and therefore contract of employment did not include an entitlement to annual leave or payment of monies in lieu thereof in the event of the termination of the contract of employment — Dismissed — Health .. 1287

Claim *re* Declaration that contracts of service for lifters employed by the Applicant include the preparedness to act as car and wagon examiners when required — Applicant further sought an order *re* alleged bans imposed by members of the Respondent Union employed in the capacity of lifter at the Applicant's depot — Respondent Union argued that there was no common approach to or application of terms and conditions by the Applicant so far as lifters acting as car and wagon examiners were concerned and such a Declaration would endorse multi-skilling by stealth — Respondent Union further argued that duties of lifters were limited by the Interpretation clause of the Railway Employees Award No. 18 of 1969 — Commission found no express term limiting the right to require lifters to act as car and wagon examiners, however, such a right was limited to what was reasonable in the circumstances — Granted In Part — Railways 1018

Claim *re* unfair dismissal seeking contractual entitlements — Respondent argued Applicant had abandoned his employment and was, therefore, due no entitlements — Commission found the contract of employment was terminated by abandonment as the Applicant's reasons for leaving did not include any authorisation by the Respondent or any situation which justified his action notwithstanding that lack of authorisation — Commission found Respondent was not entitled to make the deduction it claimed, however, it was not established that the Respondent made any deductions from benefits arising and due to the Applicant under the terms of his contract of employment — Dismissed — Catering 1289

Claims *re* contractual entitlements — No appearance by or on behalf of the Respondent — Commission found on considering the evidence available and on the balance of probabilities, that the Applicants were due sums of monies claimed as reimbursement for expenses as a consequence of their respective contracts of employment — Granted In Part 1285

CUMULATIVE DIGEST—*continued*

CONTRACT OF SERVICE (*continued*) — Page

Claim *re* contractual entitlements against an interstate Respondent arising from a contract made interstate — Commission was found to have jurisdiction over the subject matter of the application as it related to work in an industry in, or for, the STate of Western Australia and the alleged breach had occurred in this State — However Commission found Applicant had not established that the Commission had jurisdiction in the matter over the interstate Respondent and the matter was adjourned at least until the Notice of Application had been duly served — Adjourned — Entertainment and Broadcasting Industry 1291

Application for reinstatement with payment of lost salary or, alternatively, pay in lieu of notice plus pro-rata annual leave and loading due to allegedly unfair dismissal — Commission found Applicant to have been unfairly dismissed but declined to make order for reinstatement as in these circumstances it would be tantamount to awarding compensation equal to salary lost — Commission found that an implied term of the contract was the requirement of giving one month's notice of termination but there was no contractual entitlement to leave — Granted In Part — Manufacturing 1293

Application for reinstatement and compensation due to alleged unfair dismissal or, alternatively, one month's pay in lieu of notice as per the contract of service — Commission found dismissal was not sufficiently harsh or unreasonable to warrant intervention — Commission also found that as Applicant was paid fortnightly it is reasonable to imply that two weeks notice or two weeks pay in lieu were required to terminate the contract — Granted In Part — Fishmongery 1283

CONTRACT OUT OF AWARD —

Claim *re* contractual entitlements — Respondent argued the Applicant was seeking award entitlements pursuant to an award of this Commission and submits that the Commission as constituted has no jurisdiction in this matter — Commission unsatisfied on evidence that the contract of employment between the Applicant and Respondent was something other than as provided for in the terms of the award and dismissed the case for want of jurisdiction — Dismissed — Retail Household Fixtures 578

CUSTOM AND PRACTICE —

Application by consent to vary Awards *re* compense of officers recalled to Court duty whilst on annual leave — Commission found the variations to the Awards to have no flow-on or cost implications as the change only formalised what was already a practice of long standing — Granted — Police 776

Claim *re* site allowance for disabilities — Respondent opposed claim and argued that any allowance awarded should be in lieu of generally applicable payments for certain disabilities prescribed in the Award, based on what he believed to be custom of this Commission — Respondent further argued that it was usual for such site allowances to be taken to the federal body where, it could be said, it was no less the custom for them to be in lieu of all other payments — Commission found certain disabilities associated with the site warranted an allowance, but found no evidence specific to some of the disabilities the Respondent claimed the site allowance should be in lieu of nor other payments or the likelihood of other payments for disabilities under the special rates provisions of the Award — Granted In Part — Construction 1135

DATE OF OPERATION —

Claim *re* variation to Interim Order No. 771 of 1987 at (67 WAIG 2299) to reflect retrospectivity in date of operation — Respondent argued that the Commission is proscribed by section 39 of the Industrial Relations Act, 1979 from making an award which has retrospective effect prior to the date on which the application leading to the making of the award was filed in the Commission — Commission found date of operation of order to reflect the date on which the application was filed — Granted 1115

DEMARCATION —

Industrial dispute *re* fixing of pre-fabricated seats — Applicant Union claims that work of fixing seats is traditionally carried out by builders' labourers — Respondent objected to and opposed claims — Commission found constitutional coverage of work in issue not contested, however industrial coverage is strongly contested — Commission found skilled tasks of setting out, aligning and marking out to be performed by members of CMEU, whilst work of fixing into place the seating to be performed by member of ABLF — Ordered accordingly — Construction 323

[2]Appeal against decision of Commission (at 68 WAIG 323) *re* which union's members should have industrial coverage of fixing pre-fabricated seats — Commission based original decision on constitutional coverage of organisations involved and which vocations had customarily performed the work — Appellant argued that it made no sense to speak of constitutional coverage of work and the fundamental question was to identify which tasks were to be performed by which vocation — Appellant further argued that if the task were deemed properly part of carpenters' work there is no scope for a demarcation enquiry — Full Bench agreed that the correct approach was to firstly determine whether the task forms part of the work, substantially or incidentally, of carpenters or builders' labourers and secondly, whether the work should be performed exclusively by one vocation — Full Bench found this to be necessarily an exercise in deciding the true meaning of these terms as they are used in the award — Full Bench found task to be part of carpenters' work and not riggers or any other category of builders' labourer pursuant to the award — Upheld — Building Construction 1006

[1]Appeal against decision of Full Bench (at 67 WAIG 2226) to dismiss appeal against Commission declaration *re* which union is entitled to enrol wall and ceiling fixers as members — Industrial Appeal Court found both Full Bench and Commission had adopted correct approach to interpretation of eligiblity rules of unions involved — Dismissed — Building Construction 1201

DIRT MONEY —

Claim *re* site allowance — Applicant Union sought allowance on hourly basis — Respondent argued special rates and provision clause in Award provides a weekly allowance therefore no allowance warranted for disabilities encountered — Commission found in favour of a reduced hourly rate and weekly rate provided in clause to be absorbed in site allowance — Granted In Part — Construction/Electrician 899

CUMULATIVE DIGEST—*continued*

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DISABILITIES —

[2]Appeal against decision of Commission at (67 WAIG 1397) *re* disability allowance — Appellant claimed Commission had erred in ordering increase in level of allowance by placing undue weight on the existence of bans — Full Bench found there was insufficient evidence in preceding case for Commission to determine appropriate disability grouping — Furthermore Full Bench found no undue weight on the existence of industrial action was given by Commission rather it found it was a factor used in consideration — Dismissed — Transport/Rail 26

Applicant Union sought site allowance for disabilities, safety boots and protective clothing — Respondent opposed claims, however, with respect to the site allowance the issue is confined to quantum — Commission granted claim of safety boots and protective clothing and set amount of site allowance on basis of work undertaken and exposure to disabilities — Granted in Part — Electrical Contracting 324

Claim *re* site allowance for disabilities — Respondent opposed claim and argued that any allowance awarded should be in lieu of generally applicable payments for certain disabilities prescribed in the Award, based on what he believed to be custom of this Commission — Respondent further argued that it was usual for such site allowances to be taken to the federal body where, it could be said, it was no less the custom for them to be in lieu of all other payments — Commission found certain disabilities associated with the site warranted an allowance, but found no evidence specific to some of the disabilities the Respondent claimed the site allowance should be in lieu of nor other payments or the likelihood of other payments for disabilities under the special rates provisions of the Award — Granted In Part — Construction 1135

Site allowance by consent *re* fumes and other disabilities encountered — Parties sought ratification of agreement from Commission — Commission found original application for a compulsory conference was an inappropriate mechanism by which to procure such ratification and that the section was not intended to be a vehicle for short cutting the Commission's other processes — Commission found each case to be treated on its own merit and approved agreement — Granted — Building Industry 1113

Claim *re* site allowance and provision of safety boots and protective clothing for disabilities encountered — Respondent objected to an Order in respect of clothing and argued for an additional allowance for the supply and maintenance of safety footwear, however disagreed in quantum with the amount sought by the Applicant Union for the site allowance — Commission found disabilities encountered warranted a site allowance and an amount per hour for the supply and maintenance of safety footwear — Granted In Part — Construction 1136

Claim *re* site allowance — Applicant Union referred to site allowance for other trades on site by Commission and Australian Conciliation and Arbitration Commission — Respondent objected to claim — Commission found disability levels of previous site allowance case cited and instant case are capable of comparison and ratified site allowance — Granted — Construction 1313

Claim *re* site allowance — Parties subsequent to matter being referred for arbitration reached an agreement and seek endorsement of agreement — Commission found disabilities existed, in excessive dust and doing construction work while plant is still operational — Granted 1308

DISCRIMINATION —

Application to vary Award — Applicant Union sought increases in allowances in line with the national wage decisions rather than the CPI and that these adjustments be dealt with under the old Principles — Further variations sought were wording changes as required by Equal Opportunity Act 1984 — Respondent consented to change — Commission found order to issue in terms of schedule lodged — Granted — State Government Administration 261

[3]Application for variation of General Order for location allowances in private industry Awards to remove discrimination which occurs by use of marital status to determine entitlement and which is in contravention of Equal Opportunity Act — Applicant further argued existence of "anomaly and inequity" in order whereby couple may receive double the amount currently determined for a family unit and asked for rectification — Respondent claimed for "no reduction" provision on basis that otherwise removal of anomaly woudl breach Commission's *de facto* Principle — Commission acceded to changes to comply with Equal Opportunity Act and found anomaly did exist — Commission refused retrospectivity and rejected "no reduction" argument although providing a "phasing out" period to ease financial burden on those whose allowance will decrease — Granted in Part — Private Industry 227

Application that employee be reclassified to lower position on basis that current position required performance of duties unacceptable to him i.e. instructing non-unionists — Respondent claimed granting application would be contrary to objects of the Industrial Relations Acts and certain other provisions — Commission found subject employee had only accepted promotion on condition he would not have to compromise his clearly stated principles *re* unionism and to allow application is not to promote unfair discrimination but to correct an error which should never have occurred — Granted — Iron Ore 1125

EMPLOYEE —

Complaint *re* enforcement of award — Complainant claimed employee was employed by defendants in a master and servant relationship and by virtue of Clause 37 the award extends to and binds the defendants — Defendant argued employee was at all time a subcontractor — Magistrate found in deciding nature of relationship the fact that with the full knowledge and acquiescence of employee tax was deducted in manner applicable to subcontractors — Magistrate noted that no doubt it did not solely determine the matter it favoured the defendant's case — Dismissed — Building Trades 166

[2]Appeal against decision of Magistrate to dismiss complaint *re* non-payment of award entitlement to pro-rata annual leave due to finding that relationship between parties was not contract of employment — Appellant claimed Magistrate's decision was based on factors, such as regularity of payments and alleged employee's contractual relationships with other parties which are irrelevant to determining the existence of a contract of service — Further, Magistrate had given too great an emphasis onmethod of deducting tax and not enough to the power of control over the manner of doing the work — Full Bench reviewed the authorities and indicia for determining the existence of a contract of service before deciding that these principles when applied to the facts demonstrate the relationship was a contract of service and the Respondent had power of control over the work carried out — Upheld and remitted to Magistrate for determination according to law — Building Construction 1015

ENFORCEMENT OF AWARDS/ORDERS —

Complaint *re* enforcement of award — Complainant claimed employee was employed by defendants in a master and servant relationship and by virtue of Clause 37 the award extends to and binds the defendants — Defendant argued employee was at all time a subcontractor — Magistrate found in deciding nature of relationship the fact that with the full knowledge and acquiescence of employee tax was deducted in manner applicable to subcontractors — Magistrate noted that no doubt it did not solely determine the matter it favoured the defendant's case — Dismissed — Building Trades 166

[2]Appeals against order of Industrial Magistrate with respect to enforcement proceedings arising from section 29(b) application — Appellant claimed case was proceeded with when a hearing date had not been set, he was not allowed to present evidence, no orders existed against him to beginwith and that Magistrate had not been impartial — Full Bench found no basis for appeal — Dismissed — Tuition 239

[2]Appeal against decision of Magistrate to dismiss complaint *re* non-payment of award entitlement to pro-rata annual leave due to finding that relationship between parties was not contract of employment — Appellant claimed Magistrate's decision was based on factors, such as regularity of payments and alleged employee's contractual relationships with other parties which are irrelevant to determining the existence of a contract of service — Further, Magistrate had given too great an emphasis onmethod of deducting tax and not enough to the power of control over the manner of doing the work — Full Bench reviewed the authorities and indicia for determining the existence of a contract of service before deciding that these principles when applied to the facts demonstrate the relationship was a contract of service and the Respondent had power of control over the work carried out — Upheld and remitted to Magistrate for determination according to law — Building Construction 1015

CUMULATIVE DIGEST—*continued*

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ENTRY — RIGHT OF —
Applicant sought award variation to give it different right of entry conditions into the premises of the respondents from those conditions specified in the award — Commission found that the applicant had failed to produce sufficient evidence to make a case of any substantial merit — Dismissed — Timber 159

HOURS OF WORK —
Application for variation of award — Parties had negotiated and reached agreement with regard to reduction in hours by introducing late night trading provisions to award — Applicant sought inclusion of meal allowance with quantum for the allowance to be that of most recently arbitrated comparable allowance — Respondent objected and argued meal money would be new allowance and New Allowances Principle required change in work or new work conditions — Commission found meal allowance met requirements of New Allowance Principle, however quantum was to remain in harmony with other allowances of award — Granted in Part — Photography 82
Application to amend Agreement — Parties reached agreement on amendment sought so as to allow greater flexibility in shift work arrangements and provide earlier publication of rosters — Commission found no additional cost incurred and amended agreement accordingly — Granted — State Government 1220
Claim *re* unfair treatment, seeking increase in working hours to full-time employment or maintenance of weekly wage at the rate applicable to a full-time nursing assistant — Respondent argued Applicant's hours of work were reduced due to a reduction in staffing levels for reasons of economic efficiency — Commission found the Respondent to have demonstrated a genuine attempt to offer relief to the Applicant and found the Applicant had not shown that the Respondent had been unfair towards her — Dismissed — Health and Welfare Services 1142

INDUSTRIAL ACTION —
Claim for reinstatement of Special Condition of Employment payment withheld due to industrial action — Applicant Union stated stop work meetings held due to pay errors had been conducted according to disputes procedure — Respondent claimed that a breach of the disputes procedure had occurred and therefore the $100 per week Special Conditions of Employment payment ws forfeited for that week — Commission found that the Union had adhered to provisions of the disputes procedure and ordered that time lost during the dispute was to be deducted on a *pro rata* basis of $1.85 per hour for each hour of time lost — Granted — Mining 891

INDUSTRIAL MATTER —
[1]Appeal against decision of Full Bench (67 WAIG 1104) upholding Commission's decision to award compensation to employee found to have been unfairly dismissed — Industrial Appeal Court found Commission to have jurisdiction to order reinstatement or re-employment, however, compensation may only be awarded by means of a supplementary order that an employee be compensated for wages lost between the date of cessation of employment and date of re-employment (see also 67 WAIG 740) and as an incident to making an order for re-employment — Industrial Appeal Court found that by awarding an amount of compensation calculated other than on the basis prescribed by this principle Commission had exceeded its jurisdiction — Upheld — Iron Ore 11
Application to cancel award prescribing an allowance to be paid to teachers renting Government accommodation as a result of appointment outside the metropolitan area — In accordance with Commission in Court Session decision at 67 WAIG 776 Government School Teachers Tribunal found rental subsidies or allowances not to be an "industrial matter" in respect of teachers as it is not a condition of their employment that the employer provide accommodation — Industrial Relations Act allows for cancellation of awards under specific circumstances [section 40 (3) (c) and section 47] and Tribunal found that as these circumstances did not apply it had no power to cancel award. Tribunal found itself to be "not restricted to the specific claim" [section 26 (2)] and therefore able to vary award — Tribunal found merit in Government's proposal to standardise rents payable on housing for Government employees and ordered variation of award so it no longer effectively limits amount of rent payable by teachers — Granted in Part — Education 200
Industrial dispute *re* fixing of pre-fabricated seats — Applicant Union claims that work of fixing seats is traditionally carried out by builders' labourers — Respondent objected to and opposed claims — Commission found constitutional coverage of work in issue not contested, however industrial coverage is strongly contested — Commission found skilled tasks of setting out, aligning and marking out to be performed by members of CMEU, whilst work of fixing into place the seating to be performed by member of ABLF — Ordered accordingly — Construction 323
Application for conference *re* alleged non-payment of workers at training school — Respondent claimed that an employer-employee relationship did not exist between itself and trainee bricklayers and the matter, therefore, to be beyond jurisdiction of Commission — Commission determined whether an "industrial matter" existed in accordance with procedure outlined by Industrial Appeal Court in Spingdale Comfort *v.* B.T.A. (67 WAIG 325) — Commission found bricklaying work performed was an adjunct to the prime purpose of the training school, an "industrial matter" did not exist and Commission thus did not have jurisdiction to proceed — Dismissed — Construction 318
Employee transferred for misconduct — Applicant Union claimed unfair disciplinary measures and sought compensation for resulting strike action — Respondent argued transfer had not been a disciplinary action and it was common ground that workers should not be paid when they were on strike — Commission found assertions and claims based on a conference pursuant to section 44 could not justify intervention of the Commission — Dismissed — Water Authority 334
Claim that company had acted harshly and oppressively by placing warning letters on employees personal file for alleged repudiation of contract of service — Applicant Union sought order from Commission requiring withdrawal of letters — Respondent opposed claim on grounds that Commission lacked jurisdiction to deal with matter as order sought did not constitute an industrial matter — Commission found that Unions legitimate concern for employment security of members, and its ongoing capacity to protect andpromote the industrial interest of members made claim an industrial matter — Commission found in favour of Applicant Union — Granted Mining 1317

INDUSTRY —
Applicant sought order for payment of an allowance to employees of respondent, formerly employed in the "formwork industry" — Commission found respondent was not operating in the formwork industry but rather in the building construction industry and was not a party to the "Formwork Agreement" — Commission found it would be inequitable to inflict such an agreement on the respondent in this case — Dismissed — Building Construction 171
[2]Application for registration and alteration of registered Union Rules — Applicant sought authority of Full Bench to amend Eligibility for Membership rule to enrol as members roof tile fixers — FBTPU objected to application — Full Bench found advantage for roof tile fixers to have industrial representation in construction industry and that demarcation disputes with objector were minimal — Full Bench permitted registration of proposed alteration — Granted 36
[2]Appeal against decision of Industrial Magistrate *re* failure to pay wages as prescribed in accordance with Award — Appellant claimed Indusrial Magistrate had erred in not finding erection of buildings or structure within meaning of construction work as defined in Award and that Respondent was not a Respondent to the Award by force of common rule — Full Bench found in favour of Appellant as evidence clearly disclosed that Respondent did more than design and prefabricate it, it also assembled them to form a substantial, albeit removable building — Full Bench remitted complaints to Industrial Magistrate for further hearing and determination according to law — Upheld — Building Construction 683

CUMULATIVE DIGEST—*continued*

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INDUSTRY ALLOWANCE —
Claim for site allowance — Union described alleged excessive disabilities which justified site allowance — Employer denied claim arguing conditions did not warrant payment beyond prescribed industry allowance in award and furthermore site allowance provision should have no application to residential construction — Commission found no disabilities such as to warrant site allowance — Dismissed 1311

INTERPRETATION — WORDS AND PHRASES —
Applicant sought true interpretation of meal break and smoko provisions in award — Applicant claimed that the second specified smoko break could not be combined with the meal break — Respondent refuted claim, no ambiguity existed in the award and they were applying the ordinary meaning of the words "smoko" and "break" and were entitled to combine the meal break with the second smoko break — Commission found that the true interpretation was that a "smoko was a break from duties being performed and that on analysis of the award, this could not be combined with the meal break" — Iron Ore 160
Interpretation sought *re* Visual Display Terminal allowance — Applicant claimed employees entitled to allowance should receive payment for all purposes of the award — Respondent refuted claim and argued allowance could only be seen as a flat rate — Commission found words in clause clear and unambiguous, "in addition to" clearly meant over and above and could not be construed as "part of weekly wage" — Furthermore words "who is required to operate" are quite distinct in meaning and effect from "who is capable of operating" — Commission found question posed by Applicant, answered in the negative, however equitably determined by declaration issued — Order accordingly — Printing 162
Application for interpretation of Redundancy clause in Award — Applicant Union claimed employee made redundant pursuant to Redundancy clause — Respondent argued termination falls outside the clause and is therefore not applicable to the employee concerned — Commission found true interpretation of the clause had no application as the work formally performed by the employee remained in existence and was required to be performed by the employer — Dismissed — Construction 301
Application for interpretation of Public Holidays clause of Award — Respondent claimed employees should be paid penalty rates if required to work any time on Christmas Day or Good Friday irrespective of being granted a paid holiday at another time — Commission found that Award requires payment for one public holiday to be taken on Christmas Day or Boxing Day and Good Friday or Easter Monday — Award amended to clearly reflect this — Printing 335
[4]Application for declaration of true interpretation of organisations rules *re* who may call a general meeting of members — President found that authority to be conferred on the Council and not otherwise — Declaration issued in terms of Applicant's request — Nursing 690
Conference to hear and determine whether the replacement of the Applicant by another employee constituted redundancy under Award Respondent considered that the Applicant was employed to perform certain tasks and was later dismissed and replaced by a person with different skills to perform those tasks plus additional tasks not with the terminated employee's competence — Commission found that although a welder was replaced by a boilermaker the job being performed continued — for redundancy to apply employer must decide that job will no longer be done by anyone and this not due to the ordinary and customary turnover of labour — Dismissed — Engineering 894
Interpretation of Award *re* multi-storey allowance — Applicant Union claimed renovations at building site qualified employees for allowance — Respondent refuted claim as structural alterations were limited to two levels at site therefore provisions of clause could not apply — Commission found in favour of Union, there were more than structural changes in project — Parties to comply — Building/Construction 898
Interpretation of Construction Allowance subclause of award sought to assist parties in differentiating "construction work" from "maintenance work" — Commission referred to dicta for interpretation of awards laid down by Industrial Appeal Court (67 WAIG 1097) particularly that material extrinsic to the actual award may only be used if the "ordinary and natural meaning" of the words are ambiguous in the context of the whole award — Commission analysed clause in terms of whole Award and found no ambiguity — Commission applied tests arising from previous consideration of this question by Court of Arbitration (28 WAIG 98) and found "construction work" is new work or an addition to existing work but not repair or renewal of existing works — Commission further found allowance should not be paid in substitution for any other allowance — Iron Ore..... 1106
[2]Appeal against Commission's decision (at 67 WAIG 2263) not to allow new award to cover veterinary surgeons — Appellant claimed commission erred in finding its constitution does not permit it to enrol veterinary surgeons as members — Full Bench comprehensively reviewed the authorities and principles for determining eligibility and construction of union rules and emphasised the need to adopt a generous approach to their interpretation — Full Bench found, however, that such an approach is not a license to interpret language so that it bears little resemblance to what is written which is what the Appellant is inviting Commission to do — Dismissed 1010
[2]Appeal against decision of Commission (at 68 WAIG 323) *re* which union's members should have industrial coverage of fixing prefabricated seats — Commission based original decision on constitutional coverage of organisations involved and which vocations had customarily performed the work — Appellant argued that it made no sense to speak of constitutional coverage of work and the fundamental question was to identify which tasks were to be performed by which vocation — Appellant further argued that if the task were deemed properly part of carpenters' work there is no scope for a demarcation enquiry — Full Bench agreed that the correct approach was to firstly determine whether the task forms part of the work, substantially or incidentally, of carpenters or builders' labourers and secondly, whether the work should be performed exclusively by one vocation — Full Bench found this to be necessarily an exercise in deciding the true meaning of these terms as they are used in the award — Full Bench found task to be part of carpenters' work and not riggers or any other category of builders' labourer pursuant to the award — Upheld — Building Construction 1006
[1]Appeal against decision of Full Bench (at 68 WAIG 33) *re* application of casual loading in accordance with award and failure to award costs — Appellant argued that casual loading should have been calculated on his actual rate of pay — Industrial Appeal Court found the construction of the relevant clause of the award to be that loading is payable on the award rate of pay — Industrial Appeal Court further observed that the jurisdiction of the Industrial Magistrate only allows for "an order for payment of the appropriate amount payable in accordance with the relevant award during the relevant period of service and the amount actually paid to the employee for that period" — Industrial Appeal Court also found that due to a misunderstanding the Full Bench had not exercised its discretion as to whether costs should be awarded and matter should be remitted to Full Bench for further consideration — Granted in Part — Earthmoving 1004
[1]Appeal against decision of Full Bench (at 67 WAIG 2226) to dismiss appeal against Commission declaration *re* which union is entitled to enrol wall and ceiling fixers as members — Industrial Appeal Court found both Full Bench and Commission had adopted correct approach to interpretation of eligiblity rules of unions involved — Dismissed — Building Construction 1201
Claim *re* Declaration that contracts of service for lifters employed by the Applicant include the preparedness to act as car and wagon examiners when required — Applicant further sought an order *re* alleged bans imposed by members of the Respondent Union employed in the capacity of lifter at the Applicant's depot — Respondent Union argued that there was no common approach to or application of terms and conditions by the Applicant so far as lifters acting as car and wagon examiners were concerned and such a Declaration would endorse multi-skilling by stealth — Respondent Union further argued that duties of lifters were limited by the Interpretation clause of the Railway Employees Award No. 18 of 1969 — Commission found no express term limiting the right to require lifters to act as car and wagon examiners, however, such a right was limited to what was reasonable in the circumstances — Granted In Part — Railways 1018

INTERVENTION —
Claim that company had acted harshly and oppressively by placing warning letters on employees personal file for alleged repudiation of contract of service — Applicant Union sought order from Commission requiring withdrawal of letters — Respondent opposed claim on grounds that Commission lacked jurisdiction to deal with matter as order sought did not constitute an industrial matter — Commission found that Unions legitimate concern for employment security of members, and its ongoing capacity to protect andpromote the industrial interest of members made claim an industrial matter — Commission found in favour of Applicant Union — Granted Mining 1317

CUMULATIVE DIGEST—*continued*

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JURISDICTION —

[1]Appeal against decision of Full Bench (67 WAIG 1104) upholding Commission's decision to award compensation to employee found to have been unfairly dismissed — Industrial Appeal Court found Commission to have jurisdiction to order reinstatement or re-employment, however, compensation may only be awarded by means of a supplementary order that an employee be compensated for wages lost between the date of cessation of employment and date of re-employment (see also 67 WAIG 740) and as an incident to making an order for re-employment — Industrial Appeal Court found that by awarding an amount of compensation calculated other than on the basis prescribed by this principle Commission had exceeded its jurisdiction — Upheld — Iron Ore 11

[1]Appeals against decision of Full Bench (at 67 WAIG 1723) not to allow appeals against decision of Commission to vary Industrial Agreement by requiring Appellant to pay employees ordinary wages whilst attending union meetings during working hours — Section 90 (1) of Industrial Relations Act requires Industrial Appeal Court to allow appeal only if decision is "erroneous in law or is in excess of jurisdiction" — Industrial Appeal Court found Full Bench's jurisdiction to dismiss appeal unchallengeable — Industrial Appeal Court also found Commission in first instance and Full Bench subsequently to have been aware of relevant considerations and to have exercised discretion in accordance with their statutory obligations thus no error in law occurred — Dismissed — Iron Ore 4

Application to cancel award prescribing an allowance to be paid to teachers renting Government accommodation as a result of appointment outside the metropolitan area — In accordance with Commission in Court Session decision at 67 WAIG 776 Government School Teachers Tribunal found rental subsidies or allowances not to be an "industrial matter" in respect of teachers as it is not a condition of their employment that the employer provide accommodation — Industrial Relations Act allows for cancellation of awards under specific circumstances [section 40 (3) (c) and section 47] and Tribunal found that as these circumstances did not apply it had no power to cancel award. Tribunal found itself to be "not restricted to the specific claim" [section 26 (2)] and therefore able to vary award — Tribunal found merit in Government's proposal to standardise rents payable on housing for Government employees and ordered variation of award so it no longer effectively limits amount of rent payable by teachers — Granted in Part — Education 200

[2]Appeal against decision of Commission at (66 WAIG 1252) *re* compensation awarded — Appellant claimed Commissioner had exceeded jurisdiction by awarding compensation in the absence of an order for re-employment — Full Bench found Commissioner had not erred in awarding compensation as employee had suffered a loss as a consequence of dismissal found to be unfair — Dismissed — Catering .. 31

[2]Appeal against finding of Commission where Interim Order purporting to restrain Appellant made without Appellant being served with copy of Notice of Application — Full Bench found matter to be significant and in the public interest that an "appeal should lie" pursuant to section 49(2)(a) — Full Bench found order to breach *audi alteram partem* rule of natural justice i.e. that one should not be condemned without opportunity to state one's case and refute allegations — Full Bench also found Commission further exceeded its jurisdiction by purporting to make an order under section 32(3)(c)(i) which empowers making of orders to assist "parties" to come to agreement when Appellant was not a "party" to proceedings as defined in section 29(b) due to Notice of Application not being served — Upheld — Timber 236

Application for conference *re* alleged non-payment of workers at training school — Respondent claimed that an employer-employee relationship did not exist between itself and trainee bricklayers and the matter, therefore, to be beyond jurisdiction of Commission — Commission determined whether an "industrial matter" existed in accordance with procedure outlined by Industrial Appeal Court in Spingdale Comfort *v.* B.T.A. (67 WAIG 325) — Commission found bricklaying work performed was an adjunct to the prime purpose of the training school, an "industrial matter" did not exist and Commission thus did not have jurisdiction to proceed — Dismissed — Construction 318

Application for reinstatement on basis of alleged unfair dismissal — Respondent argued that Applicant was employed on probation and that matter was, therefore, beyond jurisdiction of Commission — Respondent further argued that whilst not doubting Applicant's integrity or competence it stood to suffer economic damage had employment continued due to media reports of police enquiries into an agent of Applicant's former employer — Commission found contract not to be probationary, Applicant to have been summarily dismissed, unfair dismissal to have been proved and re-employment warranted — Applicant changed claim to compensation due to having found alternative employment — Commission found it was not open to it to award compensation as a result of Industrial Appeal Court decision (68 WAIG 11) — Matter resolved between parties and leave to withdraw application granted — Finance 581

Claim *re* contractual entitlements — Respondent argued the Applicant was seeking award entitlements pursuant to an award of this Commission and submits that the Commission as constituted has no jurisidction in this matter — Commission unsatisfied on evidence that the contract of employment between the Applicant and Respondent was something other than as provided for in the terms of the award and dismissed the case for want of jurisdiction — Dismissed — Retail Household Fixtures 578

[4]Application *re* Order for calling of a Special Meeting of the Union — Respondent challenged the jurisdiction to deal with the application — President found that the application was brought pursuant to section 66, which confers wide power to be exercised according to discretion, extending to the issuance of Orders or directions relating to the observance or non-observance of the Rules of the Union and therefore fell within the jurisdiction — Granted 692

[2]Appeal against decision at (67 WAIG 2146) *re* compensation awarded for unfair dismissal — Appellant claimed Commissioner erred in principle and discretion miscarried — Respondent sought to have matter remitted for further hearing in light of Industrial Appeal Court decision *re* compensation — Full Bench found time for appeal had expired and not proper to remit matter under accepted principles — Upheld — Mining/Iron Ore 680

[2]Appeal against decision of Commission at (67 WAIG 2365) *re* Order of re-employment of employee dismissed for misconduct — Appellant claimed Commissioner had erred as Respondent had failed to discharge onus that employee had been unfairly dismissed, in ordering re-employment having failed to properly consider employee's misconduct and finally had exceed jurisdiction in making Order — Full Bench noted Order of re-employment was designed to restore a useful employment relationship, however found Commissioner's discretion miscarried as there was no valid basis for intervention — Furthermore Full Bench found Commissioner had failed to give proper consideration to employee's cnduct and it was not open to usurp the prerogative of the employer in the absence of a valid finding of unfair dismissal — Full Bench found Commission not empowered to make Order which appears to abrogate employer's right of termination — Upheld — Mining 677

[2]Appeal against decision of Commission (at 66 WAIG 2343) *re* compensation awarded. Appellant claimed Commission lacked jurisdiction to order compensation — Respondent sought Full Bench to exercise power and remit matter back so as to give effect to an order of reinstatement to which an order for the compensation may be supplementary — Full Bench found Respondent's argument for such an order will derogate from the findings of Commission and would constitute a subversion of present order under appeal — Full Bench in light of Pepler decision and that amount was not a contractual entitlement but a bonus which depended on continued employment, Commission had exceeded jurisdiction — upheld — Building Industry 1013

Claim *re* unfair dismissal — seeking reinstatement and compensation — Respondent argued matter was beyond Commission's jurisdiction as no contract of employment existed between the parties — further, the Respondent made an economic decision that it could no longer afford to employ the Applicant — Finally, following the "Pepler Case" (68 WAIG 11) an award of compensation could not be made inthe absence of an order for re-employment, and re-employment in light of the behaviour of the Applicant would be grossly unfair — Commission found the contract to be one for service as opposed to one of service and the employee/employer relationship fundamental to the ability of the Applicant to bring the matter to the Commission and within its jurisdiction was not proved — Dismissed for want of jurisdiction — Carbon Products — Technology 1122

[1]Appeal against decision of Full Bench (at 68 WAIG 33) *re* application of casual loading in accordance with award and failure to award costs — Appellant argued that casual loading should have been calculated on his actual rate of pay — Industrial Appeal Court found the construction of the relevant clause of the award to be that loading is payable on the award rate of pay — Industrial Appeal Court further observed that the jurisdiction of the Industrial Magistrate only allows for "an order for payment of the appropriate amount payable in accordance with the relevant award during the relevant period of service and the amount actually paid to the employee for that period" — Industrial Appeal Court also found that due to a misunderstanding the Full Bench had not exercised its discretion as to whether costs should be awarded and matter should be remitted to Full Bench for further consideration — Granted in Part — Earthmoving 1004

CUMULATIVE DIGEST—*continued*

JURISDICTION (*continued*) — Page

Claim *re* contractual entitlements against an interstate Respondent arising from a contract made interstate — Commission was found to have jurisdiction over the subject matter of the application as it related to work in an industry in, or for, the State of Western Australia and the alleged breach had occurred in this State — However Commission found Applicant had not established that the Commission had jurisdiction in the matter over the interstate Respondent and the matter was adjourned at least until the Notice of Application had been duly served — Adjourned — Entertainment and Broadcasting Industry 1291

LONG SERVICE LEAVE —

Payment for *pro rata* long service leave sought — Applicant claimed continuous service of 13 years — Respondent only accepted as service the period covered by statutory time and wages records and for which group certificates could be produced — Board of Reference found a period of employment was not supported by documentary evidence but that on the strength of the evidence from the Applicant's testimony, that the onus of proof had been discharged by the applicant — Granted — Hotel Industry 167

[3]Appeal against decision of Board of Reference that employee was entitled to payment for *pro rata* long service leave — Appellant argued Board of Reference was wrong in fact and law in concluding Respondent's employment was continuous due to transmission of business — Commission in Court Session found no payment had been made for goodwill and as new Company did not take over current orders or existing liabilities particularly obligations under the subsisting maintenance contracts no transmission of the business occurred — Employment was, therefore, not continuous and no entitlement for payment for *pro rata* long service leave existed — Upheld — Wholesale/Retail 247

Applicant claimed *pro rata* long service leave payment on account of sickness and domestic circumstances resulting in his resignation — Respondent argued that the Applicant advised the Company of no medical or domestic requirement that necessitated his termination at the time of his resignation or prior to that event — Board of Reference found on evidence that the Applicant had not suffered from an illness which would have justified his termination and therefore attract a payment pursuant to the long service leave clause, nor did his circumstance fulfill the "domestic or other pressing necessity" requirement of the same clause — Dismissed 867

Claim *re* continuous service entitlements — Applicant sought entitlements under the standard Long Service Leave provisions incorporated in the Independent Schools' Teachers' Award based onthe existence of a portability of long service leave scheme — Board of Reference found the portability scheme to be a private arrangement which was not reflected in the Award and as such was not able to be considered by the Board of Reference — Dismissed 866

Claim *re* unfair dismissal seeking contractual entitlements — Applicant claimed contractual entitlements in the form of *pro rata* long service leave said to exist by virtue of a contract between the Applicant and the first Respondent — Respondent argued that no such contract existed as the arrangement was for payment of long service leave after the first 10 years with no on-going arrangement to make any other payments — Commission found the contract for payment of long service leave applied only for the first 10 years of employment and no other entitlement was outstanding — Dismissed — Automotive Maintenance 871

MANAGERIAL PREROGATIVE —

Employee dismissed for alleged insubordination — Applicant Union claimed action was unfair and harsh and sought reinstatement — Respondent argued dismissal was justified as employee repeated conduct for which a final warning was previously given — Commission found in favour of Respondent and concluded that it would not intervene with the Respondent's right to terminate the contract of employment — Dismissed — Labourer — Meat Industry 329

Employee dismissed for alleged unsatisfactory performance and overall incompetence — Applicant Union claimed unfair dismissal and sought re-employment — Respondent claimed the dismissal was justified by poor performance and overall incompetence — Commission found employee behaved as if appropriate performance or competence standards for his duties were those he set for himself rather than that required of him — Commission found employer had sufficient reason to exercise legal right to terminate employee's contract — Dismissed — Services (Hospital) 331

Employee alleged summary and unfair dismissal due to raised issues of mismanagement — Applicant sought reinstatement or compensation — Respondent refuted claims — Commission found evidence of bitter clashes between the parties over a period of time and that incipient hostility and mistrust was a consequence — Commission found breakdown in relationship between the parties and decision to end Applicant's contract of employment was reasonably open to Respondent — Dismissed — Welfare Services 311

[2]Appeal against decision of Commission at (67 WAIG 2365) *re* Order of re-employment of employee dismissed for misconduct — Appeallant claimed Commissioner had erred as Respondent had failed to discharge onus that employee had been unfairly dismissed, in ordering re-employment having failed to properly consider employee's misconduct and finally had exceeded jurisdiction in making Order — Full Bench noted Order of re-employment relationship, however found Commissioner's discretion miscarried as there was no valid basis for intervention — Furthermore Full Bench found Commissioner had failed to give proper consideration to employee's conduct and it was not open to usurp the prerogative of the employer in the absence of a valid finding of unfair dismissal — Full Bench found Commissioner not empowered to make Order which appears to abrogate employer's right of termination — Upheld — Mining .. 677

MANNING —

Application *re* alleged unfair dismissal, seeking compensation — Applicant claimed he had been unfairly dismissed for claiming and being paid overtime rates for extra curricula duties — Respondent argued Applicant's attitude towards the poor state of housekeeping in his area, for which he had been reprimanded at least twice, combined with over manning in the warehouse, had led to the dismissal — Commission found Applicant had been the subject of complaints on his "housekeeping" and did not discern any basic element of unfairness in the Respondent's decision to terminate the contract of employment — Dismissed — Wholesaling 586

MEAL BREAKS —

Applicant sought true interpretation of meal break and smoko provisions in award — Applicant claimed that the second specified smoko break could not be combined with the meal break — Respondent refuted claim, no ambiguity existed in the award and they were applying the ordinary meaning of the words "smoko" and "break" and were entitled to combine the meal break with the second smoko break — Commission found that the true interpretation was that a "smoko was a break from duties being performed and that on analysis of the award, this could not be combined with the meal break" — Iron Ore 160

CUMULATIVE DIGEST—*continued*

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MEAL MONEY —
Application for variation of award — Parties had negotiated and reached agreement with regard to reduction in hours by introducing late night trading provisions to award — Applicant sought inclusion of meal allowance with quantum for the allowance to be that of most recently arbitrated comparable allowance — Respondent objected and argued meal money would be new allowance and New Allowances Principle required change in work or new work conditions — Commission found meal allowance met requirements of New Allowance Principle, however quantum was to remain in harmony with other allowances of award — Granted in Part — Photography 82

MISCONDUCT —
Employee dismissed for alleged insubordination — Applicant Union claimed action was unfair and harsh and sought reinstatement — Respondent argued dismissal was justified as employee repeated conduct for which a final warning was previously given — Commission found in favour of Respondent and concluded that it would not intervene with the Respondent's right to terminate the contract of employment — Dismissed — Labourer — Meat Industry 329
Employee summarily dismissed for insubordination — Applicant Union claimed employee had been unfairly dismissed and sought reinstatement and compensation — Respondent refuted claim and argued that Applicant's refusal to "strip timber" justified summary dismissal — Commissioner found permanent occupant of position in which Applicant was relieving, carried out duties in question and as such, refusal by Applicant was unreasonable — Dismissed — Timber 338
Employee dismissed for poor attendance — Applicant Union claimed dismissal was harsh and unfair and sought re-employment — Respondent refuted claim and argued prior warnings and attempts to counsel employee proved negative — Commission was satisfied appropriate warnings were given — However Commission found although attendance had improved prior to termination, improvement was not to the extent that justified Commission's interference with the employer's legal right to terminate contract — Dismissed .. 330
Employee summarily dismissed for behaviour contrary to the contract of employment — Applicant claimed unfair dismissal and sought compensation — Respondent opposed claims — Commission found Applicant had acted contrary to his contract of employment and the Respondent was justified in terminating that contract of employment — Dismissed — Manufacturing 315
Employee transferred for misconduct — Applicant Union claimed unfair disciplinary measures and sought compensation for resulting strike action — Respondent argued transfer had not been a disciplinary action and it was common ground that workers should not be paid when they were on strike — Commission found assertions and claims based on a conference pursuant to section 44 could not justify intervention of the Commission — Dismissed — Water Authority 334
Application *re* alleged unfair dismissal — Respondent argued Applicant's dismissal was warranted by a breach of confidence by him which constituted serious misconduct — Commissioner found the Applicant unable to rebut the Respondent's case and any intervention by the Commission was therefore unwarranted — Dismissed — Pharmaceutical Industry 587
Employee dismissed for alleged misconduct and sought reinstatement — Applicant Union claimed unfair dismissal and argued Respondent had been unreasonably and uncharacteristically harsh with employee so as to avoid payment of generous redundancy package — Respondent refuted claims — Commission found alcoholism the cause of alleged misconduct is an illness that should be treated rather than punished and was satisfied employer-employee relationship could be re-established — Commission found reinstatement with some entitlements restored as just penalty for the degree of misconduct — Granted In Part — Printing 599
Application for reinstatement or compensation due to alleged unfair dismissal — Applicant submitted that his actions be viewed in context of frustraiton over Respondent's refusal to transfer him to area suitable to his allergies, unfounded allegations by Respondent and that Respondent did not adhere to the terms of disputes settling procedure set out in award — Respondent claimed termination due to Applicant's refusal to discuss issues arising from a record of unco-operative and disruptive behaviour and unwillingness to accept authority regarding which a written warning had been made — Commission found that Respondent exercised legal right to dismiss employee and that Applicant's actions converted situation from a warranted written warning to a justifiable dismissal — Local Government 579
Employee summarily dismissed for alleged misconduct — Applicant claimed unfair dismissal and sought contractual entitlements — Commission found that the Applicant had agreed to the terms of a new arrangement and could not claim benefits of the Award provision it superseded — Dismissed — Catering 874
Claim *re* unfair dismissal seeking reinstatement — Applicant Union claimed that the employee did not understand the implications of a 54 hour week arrangement in force and further, his record of absences was not serious, comparatively speaking — Respondent argued that the employee wss unrelaible and had a record of unauthorised absences that caused the employer to have grave doubts about the value of continuing to employ him — Commission found that the employee's absences were serious enough to warrant attention and concern in the first place and the termination was not unreasonable especially as the cause of some of the employee's absences was self-inflicted, nor was the dismissal unfair, given the counselling and warnings and the following procedures — Dismissed — Construction . 899
Employee summarily dismissed for alleged abusive behaviour in response to counselling for absence from work station — Applicant union claimed unfair dismissal and sought reinstatement — Respondent argued dismissal effected with the payments of benefits normally expected when dismissed by way of notice and as such not a summary dismissal, therefore onus in establishing whether employer acted harshly rests upon applicant — Commission found employee's single act of misconduct did not warrant summary dismissal and ordered reinstatement without payment for loss of earnings — Granted In Part — Timber 1143
Appeal *re* alleged unfair dismissal — Respondent argued Appellant was terminated for striking an inmate in contravention of the rules of the Authority — Appellant denied that such an incident occurred — Public Service Appeal Board found on balance that the Appellant had struck the individual concerned and had, therefore, committed a break of the Authority's rules — Board found the dismissal to have been neither harsh nor unfair — Dismissed — Health and Welfare Services 1149
Application for reinstatement of employee following "constructive dismissal" due to alleged unfair dismissal — Commission found that employee's action in falsifying Medical Certificate rendered him liable to summary dismissal and there is no evidence of harsh, oppressive action by the employer in the circumstances of the termination — Dismissed — Iron Ore 1294

MIXED FUNCTIONS —
Claim *re* Declaration that contracts of service for lifters employed by the Applicant include the preparedness to act as car and wagon examiners when required — Applicant further sought an order *re* alleged bans imposed by members of the Respondent Union employed in the capacity of lifter at the Applicant's depot — Respondent Union argued that there was no common approach to or application of terms and conditions by the Applicant so far as lifters acting as car and wagon examiners were concerned and such a Declaration would endorse multi-skilling by stealth — Respondent Union further argued that duties of lifters were limited by the Interpretation clause of the Railway Employees Award No. 18 of 1969 — Commission found no express term limiting the right to require lifters to act as car and wagon examiners, however, such a right was limited to what was reasonable in the circumstances — Granted In Part — Railways 1018

NATURAL JUSTICE —
[2]Appeal against finding of Commission where Interim Order purporting to restrain Appellant made without Appellant being served with copy of Notice of Application — Full Bench found matter to be significant and in the public interest that an "appeal should lie" pursuant to section 49(2)(a) — Full Bench found order to breach *audi alteram partem* rule of natural justice i.e. that one should not be condemned without opportunity to state one's case and refute allegations — Full Bench also found Commission further exceeded its jurisdiction by purporting to make an order under section 32(3)(c)(i) which empowers making of orders to assist "parties" to come to agreement when Appellant was not a "party" to proceedings as defined in section 29(b) due to Notice of Application not being served — Upheld — Timber 236
Application *re* alleged unfair dismissal — Matter remitted for rehearing by Full Bench at (67 WAIG 1527) as original proceedings constituted a denial of natural justice — Commission found employer for valid reasons was unhappy with Applicant's work performance and had not acted unfairly in exercising right to terminate — Dismissed 310

CUMULATIVE DIGEST—*continued*

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NEXUS —

Application for four per cent second tier increase to Award salary and wage rates in accordance with Restructuring and Efficiency Principle — Commission found that whilst the Award had a slary nexus with the Public Service and that is to remain, the rates of pay between the two would be slightly different as the parties chose to adhere to the four per cent entitlement rather than directly adhere to the rates of pay applicable to the Public Service — Commission found costs of accommodating the second tier wage adjustment of four per cent were well within the Principles and were prepared to make an Order in the terms of the lodged Schedule, by consent — Granted — Transport 852

Application for four per cent second tier increase to Award salary and wage rates in accordance with Restructuring and Efficiency Principle — Commission found that whilst the Awards have a well recognised nexus with the Public Service and, by and large, reflect public service conditions they must be dealt with on their own merits and not by virtue of any nexii that may have existed in the past — Commission found the proposed changes if rigidly enforced would result in perceived cost savings and therefore sanctioned the agreement reached between the parties — Granted — Health and Welfare Services 808

Application to vary Award to implement broadbanding as it has been adopted in the Public Service and subsequently in State instrumentalities and in other tertiary institutions — Parties argued that the Commission use the earlier Principles in respect of this application as the agreement was reached at a time when those Principles were in force, whereafter a delay had arisen due to misinterpretation of the Award — Commission found that the delay would not be held against the parties and as there was no likelihood of any flow-on, dealt with the application under the old Principles, by consent — Granted — University Administration 786

[3]Application for variation of award rates of pay in accordance with Anomalies and Inequities Principle — Applicant argued that grnating of claim would restore nexus with Victorian award and allow re-establishment of equitable base — Commission in Court Session found nexus did not exist in the manner claimed by the Applicant and that as the establishment of an equitable base has been interpreted as "the restoration of a pre-existing relationship where a firm recognised nexus existed (67 WAIG 1142) the application must fail — Dismissed — Ambulance Service 1205

ON CALL —

Application to vary Award by inserting new 'on call allowance' — Applicant Union claimed current practice intrudes into the domestic life of its members and sought amendments to have Award provisions which reimburse officers required to stand by for duty — Respondent agreed to variation as it would be more efficient as well as cost saving to the Department — Commission noted that Principles prohibited the granting of a new allownce unless there have been changes in work practices — Commission however found that proposed amendment would increase efficiency within the organisation and Principles permitted such amendments — Granted — State Government Administration 260

ORDER —

Claim *re* variation to Interim Order No. 771 of 1987 at (67 WAIG 2299) to reflect retrospectivity in date of operation — Respondent argued that the Commission is proscribed by section 39 of the Industrial Relations Act, 1979 from making an award which has retrospective effect prior to the date on which the application leading to the making of the award was filed in the Commission — Commission found date of operation of order to reflect the date on which the application was filed — Granted 1115

OVERTIME —

Employee summarily dismissed for alleged misconduct — Applicant claimed unfair dismissal and sought contractual entitlements — Commission found that the Applicant had agreed to the terms of a new arrangement and could not claim benefits of the Award provision it superseded — Dismissed — Catering 874

PART-TIME —

Award variation sought prescribing payment of locality allowances to part-time teachers in direct proportion, that number of hours worked bears to full-time hours — School Teachers Tribunal found practices and precedents in industrial environment acknowledge the employers responsibility to pay employees commensurate to the time for which service to the employer is rendered therefore to not specify this allowance for part-time teachers would be manifestly unjust — In accordance with these special circumstances and section 39 of the Act award variation was granted — Granted — Education 196

PRINCIPLES —

Application for variation of award — Parties had negotiated and reached agreement with regard to reduction in hours by introducing late night trading provisions to award — Applicant sought inclusion of meal allowance with quantum for the allowance to be that of most recently arbitrated comparable allowance — Respondent objected and argued meal money would be new allowance and New Allowances Principle required change in work or new work conditions — Commission found meal allowance met requirements of New Allowance Principle, however quantum was to remain in harmony with other allowances of award — Granted in Part — Photography 82

[3]Applicant sought variation of award to increase an allowance for first aid attendants holding enrolled nurse qualifications — Respondent claimed work value changes in duties of nurses under other awards can not be compared with the duties of first aid attendants — CICS found that a substantial change in the nature of the work, skill and responsibility could not be demonstrated — CICS found no justification to flow on the results of work value increases to employees whom those work value changes did not apply — Dismissed — Power/Electrical 44

[2]Appeal against decision of Commission at (68 WAIG 94) to grant a dual licence allowance for electricians holding dual licences and performing work outside of their classification without relief for that work — Full Bench found this new allowance was granted without full consideration of current wage fixing principles and that the Commission's discretion miscarried due to measures to implement improved efficiency in industry in those principles — Full Bench found time factor in hearing the application was a consideration and that matter should be remitted for further hearing pursuant to the New Allowance Principles — Upheld — Salt Production 28

Application to vary award to provide a dual licence allowance for electricians holding a licence for both fitting and installing but employed under one classification and required to work outside that classification —Respondent claimed wage principles were a bar to the claims success — Commission found principles would not be broken by granting the claim and that as a matter of merit the claim had been established by the Applicant — Granted — Salt Production 94

CUMULATIVE DIGEST—*continued*

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PRINCIPLES (*continued*)—

Applicant sought rate of pay for all welders on North West Shelf Project to be set at level of Welder Special Class and also that a quality allowance should apply to all welding work — Respondent objected to claim — Commission found work value principle did apply to the claim, based on the level of welding skills in question — Commission found decisions of Federal Commission and this Commission accepted that additional skills were involved in this welding work and that those skills were now being used again and should be rewarded as previously was the case, however the allowance must differentiate between carbon steel pipe and stainless steel pipe welding — Granted — Metal Industry 185

[2]Appeal against decision of Commission at (68 WAIG 185) to grant a rate of pay for all welders on North West Shelf Project at level of "Welder Special Class" and also the imposition of a quality allowance for welding work — Full Bench did not accept Respondent's arguments that a work value assessment in line with the principles was not required — Full Bench accepts Appellant's claim that insufficient weight had been given to the work value priniple — Commission had short-circuited analysis of the Principles by acting on a premise that work performed for one employer in 1981 and subject to a specific order established the datum from which work presently being performed for the Appellants should be assessed — Full Bench found Commission's discretion had miscarried — Upheld — Metal Industry 23

Application to vary Award — Applicant Union sought increases in allowances in line with the national wage decisions rather than the CPI and that these adjustments be dealt with under the old Principles — Further variations sought were wording changes as required by Equal Opportunity Act 1984 — Respondent consented to change — Commission found order to issue in terms of schedule lodged — Granted — State Government Administration 261

[3]Application for variation of General Order for location allowances in private industry Awards to remove discrimination which occurs by use of marital status to determine entitlement and which is in contravention of Equal Opportunity Act — Applicant further argued existence of "anomaly and inequity" in order whereby couple may receive double the amount currently determined for a family unit and asked for rectification — Respondent claimed for "no reduction" provision on basis that otherwise removal of anomaly would breach Commission's *de facto* Principle — Commission acceded to changes to comply with Equal Opportunity Act and found anomaly did exist — Commission refused retrospectivity and rejected "no reduction" argument although providing a "phasing out" period to ease financial burden on those whose allowance will decrease — Granted in Part — Private Industry 227

Application to vary Award by inserting new 'on call allowance' — Applicant Union claimed current practice intrudes into the domestic life of its members and sought amendments to have Award provisions which reimburse officers required to stand by for duty — Respondent agreed to variation as it would be more efficient as well as cost saving to the Department — Commission noted that Principles prohibited the granting of a new allownce unless there have been changes in work practices — Commission however found that proposed amendment would increase efficiency within the organisation and Principles permitted such amendments — Granted — State Government Administration 260

Application for four per cent second tier increases in award rates of pay in accordance with Restructuring and Efficiency Principle — Commission found agreed changes on such matters as accommodation allowances, camping allowances, overtime, shift penalties, the "metropolitan policing plan", civilisation and others ensured additional remuneration involved no cost to State and was thus consistent with Principles — Award amended accordingly — Granted — Police 539

Application for four per cent second tier increase to award salary and wage rates in accordance with Restructuring and Efficiency Principle — Parties approached matter on an enterprise basis for Building Management Authority and WA Water Authority, and on a global basis for other employer parties although not disregarding idiosyncracies of each enterprise — Public Service Arbitrator found that the manner in which agreement increases productivity and reduces overheads to comply with both spirit and letter of Principles — Award amended accordingly — Granted — Public Authorities 543

Variation to award sought by insertion of dual licence allowance — Matter remitted to Commission from Full Bench for hearing and determination in accordance with Principles pertaining to new allowance and restructuring and efficiency after appeal due to lack of reference to appropriate Principles in initial Decision — Commission found Principle relating to new allowances prescribes objective test that new allowance must result from creation of new work or conditions — Commission found it must then apply tests outlined in Work Value Principle and also satisfy the Restructuring and Efficiency Principle with regard to the second tier ceiling — Commission found application satisfied requirements of relevant Principles and was justified on equity and merit — Granted — Mining (Salt) 790

Application for four per cent second tier increase to Award salary and wage rates in accordance with Restructuring and Efficiency Principle — Commission found that whilst the Award had a salary nexus with the Public Service and that is to remain, the rates of pay between the two would be slightly different as the parties chose to adhere to the four per cent entitlement rather than directly adhere to the rates of pay applicable to the Public Service — Commission found costs of accommodating the second tier wage adjustment of four per cent were well within the Principles and were prepared to make an Order in the terms of the lodged Schedule, by consent — Granted — Transport 852

Application for four per cent second tier increase to Award salary and wage rates in accordance with Restructuring and Efficiency Principle — Commission found that whilst the Awards have a well recognised nexus with the Public Service and, by and large, reflect public service conditions they must be dealt with on their own merits and not by virtue of any nexii that may have existed in the past — Commission found the proposed changes if rigidly enforced would result in perceived cost savings and therefore sanctioned the agreement reached between the parties — Granted — Health and Welfare Services 808

Application to vary Award to implement broadbanding as it has been adopted in the Public Service and subsequently in State instrumentalities and in other tertiary institutions — Parties argued that the Commission use the earlier Principles in respect of this application as the agreement was reached at a time when those Principles were in force, whereafter a delay had arisen due to misinterpretation of the Award — Commission found that the delay would not be held against the parties and as there was no likelihood of any flow-on, dealt with the application under the old Principles, by consent — Granted — University Administration 786

Increase of wage rates of four per cent by consent under Second Tier Wage Adjustment Principle — Board found both spirit and the letter of the Principles had been met, which should result in significant savings to the Respondent — Award varied — Granted — Transport 846

[3]Application for common rule superannuation award by consent of Respondents employing 75 per cent engaged in the industry — Consent of Respondents was conditional upon handing down of common rule award so there would be no competitie advantage to employers not party to application — Intervenor claimed Wage Fixing Principles allow for superannuation orders to apply only to parties to application and to grant a common rule award would "put the whole package under duress" — Commission in Court Session found that for claim to succeed it must demonstrate "special circumstances" in that common rule is the most orderly method by which superannuation may be introduced — Commission in Court Session also found that whilst claim did not conform to procedural structure demanded by Principles it was conducive to the establishment of an industrial relations environment fundamental to the success of the wage fixing package — Granted — Security 1031

Site allowance by consent *re* fumes and other disabilities encountered — Parties sought ratification of agreement from Commission — Commission found original application for a compulsory conference was an inappropriate mechanism by which to procure such ratification and that the section was not intended to be a vehicle for short cutting the Commission's other processes — Commission found each case to be treated on its own merit and approved agreement — Granted — Building Industry 1113

Application for four per cent second tier wage increases in accordance with Restructuring and Efficiency Principle — Commission found changes on matters such as right to accrue long service, no pro rata entitlement to annual leave upon regisnation, payment of partial rather than full higher duties and other fits within the Principles — Award amended accordingly — Granted — University Administration 1090

[3]Application for variation of award rates of pay in accordance with Anomalies and Inequities Principle — Applicant argued that grnating of claim would restore nexus with Victorian award and allow re-establishment of equitable base — Commission in Court Session found nexus did not exist in the manner claimed by the Applicant and that as the establishment of an equitable base has been interpreted as "the restoration of a pre-existing relationship where a firm recognised nexus existed (67 WAIG 1142) the application must fail — Dismissed — Ambulance Service 1205

CUMULATIVE DIGEST—*continued*

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PRINCIPLES (*continued*) —

[3]Application for new Award and new career stucture with increased rates of pay due to changes in work value — Due to other previous, extensive and closely related applications subject application was deemed to have been substantially part heard and would, therefore, be determined in accordance with the Wage Fixing Principles 1986 and the Second Tier Ceiling would not apply — Parties were in agreement *re* work value changes but not as to quantum of wage increases — Minister intervened, arguing that budget constraints did not allow it to exceed certain overall cost limits although it was sanguine about negotiating a flexible package within that context — Commission in Court Session found that increases must remain within parameters of previous agreement — Commission in Court Session conducted extensive review and determination of rates for different classifications and other conditions of employment — Award issued — Health Care 701

Application for second tier wage increase in accordance with Restructuring and Efficiency Principle and Supplementary Payments Principle — Applicant Union claimed State Award had a nexus with Federal Award that had been ratified — Commission found Union's claim for second tier increase did not satisfy the requirement of Restructuring and Efficiency Principle and failed to establish the value, if any, of the proposed changes to employers and the local industry — However Commission found dismissal should not prevent Applicant Union from making future second tier applications — Supplementary payments claim divided from application — Dismissed — Clothing 1242

Claim *re* site allowance — Applicant Union sought site allowance in lieu of special rates and provisions contained in award — Respondent opposed claim in its entirety and argued Sapri decision together with other decisions of State and Federal Commissions established a 'site allowance pattern', however Applicant had not demonstrated that claim was justified within the pattern — Furthermore if claim is not for site allowance as contemplated by Sapri decision then it should be justified under the Wage Fixing Principles for a new allowance — Commission found no case had been made to establish need for a new allowance or for increase in existing allowance in accordance with Wage Fixation Principles — Dismissed 1314

PROCEDURAL MATTERS —

[2]Appeals against order of Industrial Magistrate with respect to enforcement proceedings arising from section 29(b) application — Appellant claimed case was proceeded with when a hearing date had not been set, he was not allowed to present evidence, no orders existed against him to beginwith and that Magistrate had not been impartial — Full Bench found no basis for appeal — Dismissed — Tuition 239

[2]Application for extension of time for Appeal against a decision of the Commission (68 WAIG 882) lodged out of time — Full Bench found there were insufficient reasons for the extension even if there were power to do so — Dismissed — Farming 1204

PROMOTION APPEALS —

Leading Hand Westrail — Board found on paper recommended Applicant would seem very difficult to challenge, however special nature of Appellant's long experience and success with Kwinana workers were given by expert observers — Board having considered all of the evidence found that justic and equity will be served by upholding appeal — Granted — Transport 1151

PUBLIC HOLIDAYS —

Application for interpretation of Public Holidays clause of Award — Respondent claimed employees should be paid penalty rates if required to work any time on Christmas Day or Good Friday irrespective of being granted a paid holiday at another time — Commission found that Award requires payment for one public holiday to be taken on Christmas Day or Boxing Day and Good Friday or Easter Monday — Award amended to clearly reflect this — Printing 335

PUBLIC INTEREST —

[2]Appeal against finding of Commission where Interim Order purporting to restrain Appellant made without Appellant being served with copy of Notice of Application — Full Bench found matter to be significant and in the public interest that an "appeal should lie" pursuant to section 49(2)(a) — Full Bench found order to breach *audi alteram partem* rule of natural justice i.e. that one should not be condemned without opportunity to state one's case and refute allegations — Full Bench also found Commission further exceeded its jurisdiction by purporting to make an order under section 32(3)(c)(i) which empowers making of orders to assist "parties" to come to agreement when Appellant was not a "party" to proceedings as defined in section 29(b) due to Notice of Application not being served — Upheld — Timber 236

[4]Application for stay of Order of Commission at (68 WAIG 323) — Applicant Union argued that if the work subject of the Order is carried out prior to the hearing and determination of the appeal, then the subject matter of the appeal will have ceased to exist at the time the appeal is heard, thereby rendering the same nugatory — Respondent opposed application — Commission found that the application for a stay would rsult in a process that would be likely to detrimentally affect a great number of members of the community — Commission found that even though there was a serious question to be tried, there was no justification on the balance of convenience to find in favour of the Applicant — Dismissed — Construction 687

REDUNDANCY/RETRENCHMENT —

Application for interpretation of Redundancy clause in Award — Applicant Union claimed employee made redundant pursuant to Redundancy clause — Respondent argued termination falls outside the clause and is therefore not applicable to the employee concerned — Commission found true interpretation of the clause had no application as the work formally performed by the employee remained in existence and was required to be performed by the employer — Dismissed — Construction 301

Employee terminated due to closure of business — Applicant Union sought redundancy payment — Respondent rejected claim for redundancy payment on the grounds the employee had been offered suitable alternative employment and refused to avail himself of that offer — Commission found that whilst there may have been communication difficulties between the parties, employee would still have been employed, had he indicated the desire or asked for consideration of his position — Under such circumstances a claim for redundancy payments could not be sustained — Dismissed — Health Industry 333

Employees dismissed due to closure of business — Applicant Union claimed unfair dismissals and sought reinstatement, however, due to budgetary deficit reinstatement was not practical where upon the Applicant sought redundancy payments — Respondent having previously paid two employees a sum agreed upon, firmly opposed any further payment on the basis of lack of funds available — Commission found in favour of the Applicant ruling that a manifest inequity existed in denying to other employees a similar settlement as that received by more than half the workforce — Respondent allowed extra period of time requested in order to make suitable arrangements — Granted in Part — Various 306

CUMULATIVE DIGEST—*continued*

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REDUNDANCY/RETRENCHMENT (*continued*) —

Employee dismissed due to closure of unit in which she was employed — Applicant Union claimed that employee was entitled to severance pay based on the standard applied to Public Service officers in this State, rather than the formula prescribed by the Australian Conciliation and Arbitration Commission in the Termination, Change and Redundancy Case — Respondent refuted claim — Commission found severance payment to be equitable on individual merits — Dismissed — Health and Welfare Services 326

Application *re* alleged unfair dismissal seeking reinstatement or compensation — Applicant claimed he was dismissed following an incident in which he by-passed the Respondent's head office — Respondent argued Applicant was retrenched due to economic circumstances — Commission found Applicant was retrenched due to the Respondent's commercial performance and no unfairness was attached to the Respondent's decision — Dismissed — Wholesaling Industry 572

Appropriate redundancy payments sought due to closure of nursing home — Applicant Union argued level of severance payments offered to employees was inappropriate and submitted for consideration the question of capacity to pay Respondent refuted claim and provided detailed disclosure of financial situation to prove incapacity to pay — Commission found question of capacity to pay had been supported by direct testimony which was unassailable — Furthermore Commission found there had been a fair go all round in terms of sharing the unavoidable distress and inconvenience of the closure — Dismissed — Nursing Home 598

Employee made redundant due to economic rationalisation — Applicant claimed unfair dismissal and sought reinstatement — Respondent argued Applicant was dismissed due to economic circumstances — Commission found, given the overall context of the situation, the Application was not dismissed unfairly and the Respondent had the right to terminate the contract of employment — Dismissed — Retail 868

Employee made redundant due to loss of account — Applicant claimed unfair dismissal — Respondent argued that the Applicant was retrenched in favour of another employee on the basis of who was "best suited to the needs of the agency" — Commission found that the employee was not unfairly dismissed and would not substitute its own view for that of the Respondents in deciding who was "best suited to the needs of the agency" — Dismissed — Advertising 873

Application to vary award *re* insertion of new redundancy procedure clause based on a private agreement between the parties — Applicant Union claimed that such an agreement should be secured by an Order of the Commission such tht it is enforceable — Respondent argued that the agreement was gained during a dispute under duress and it was therefore wrong in principle for such an arrangement to be included in an award which could effect other employers and in any event it did not constitte the full arrangement made — Commission found that as a legal instrument binding the parties, the agreement would unenforceable and for the mutual protection of both the worker and the employer any doubt concerning the attachment of the agreement to the contract of service of individual workers then employed should be removed — Commission ordere amendment of the award such that the terms of settlement were applicable only to these persons subject to them — Granted In Part — Various 747

Order for compensation sought for employees on basis of alleged unfair dismissal — Applicant sought finding that termination constituted redundancy and that a transmission of business had occurred — Commission found no transmission of business had occurred but this did not preclude consideration of employees prior service — Commission rejected Respondent's argument that redundancy cannot occur if termination is effected purportedly due to factors beyond the employer's control e.g. economic factors and found that redundancy had occurred but the employees concerned were not bound by any award provision relating to redundancy — Commission found dismissal was unfair but recent decision of Industrial Appeal Court (68 WAIG 11) prevents Commission from ordering compensation — Granted In Part — Newspaper Publishing 900

Conference to hear and determine whether the replacement of the Applicant by another employee constituted redundancy under Award — Respondent considered that the Applicant was employed to perform certain tasks and was later dismissed and replaced by a person with different skills toperform those tasks plus additional tasks not within the terminated employee's competence — Commission found that although a welder was replaced by a boilermaker the job being performed continued — for redundancy to apply employer must decide that job will no longer be done by anyone and this not due to the ordinary and customary turnover of labour — Dismissed — Engineering 894

Application for reinstatement on grounds of unfair dismissal and alleged outstanding contractual benefits — Applicant claimed dismissal due to personal prejudices of superior and that contractual benefits had been denied after dismissal — Respondent claimed dismissal was due to a redundancy situation and that all payments under contract of service had been made — Commission found Applicant unable to establish his allegations by way of evidence and determined dismissal was due to redundancy — Furthermore it had been established that the Respondent had made redundancy payments to Applicant in excess of amounts set down in contract of service — Dismissed — Newspaper 883

REGISTRATION —

[2]Application for registration — SDA objected to constitution rule but withdrew after appropriate amendment by Applicant — Sales Representatives and Commercial Travellers' Guild object on grounds that its rules entitle it to enrol as a member persons eligible pursuant to constitution rule of Applicant and that some rules were against best interests of employees — Full Bench found there was no overlapping of eligibility for membership of the respective organisations and that rules provided machinery for members themselves to amend rules not in their best interest — Granted — Real Estate Sales 243

[2]Application for amalgamation of Unions — Objections to amalgamation were withdrawn — Full Bench found requirements of the Act were fulfilled and authorised registration — Granted 242

REINSTATEMENT —

Employee summarily dismissed for insubordination — Applicant Union claimed employee had been unfairly dismissed and sought reinstatement and compensation — Respondent refuted claim and argued that Applicant's refusal to "strip timber" justified summary dismissal — Commissioner found permanent occupant of position in which Applicant was relieving, carried out duties in question and as such, refusal by Applicant was unreasonable — Dismissed — Timber 338

Employee dismissed for alleged unsatisfactory performance and overall incompetence — Applicant Union claimed unfair dismissal and sought re-employment — Respondent claimed the dismissal was justified by poor performance and overall incompetence — Commission found employee behaved as if appropriate performance or competence standards for his duties were those he set for himself rather than that required of him — Commission found employer had sufficient reason to exercise legal right to terminate employee's contract — Dismissed — Services (Hospital) 331

Employees dismissed due to closure of business — Applicant Union claimed unfair dismissals and sought reinstatement, however, due to budgetary deficit reinstatement was not practical where upon the Applicant sought redundancy payments — Respondent having previously paid two employees a sum agreed upon, firmly opposed any further payment on the basis of lack of funds available — Commission found in favour of the Applicant ruling that a manifest inequity existed in denying to other employees a similar settlement as that received by more than half the workforce — Respondent allowed extra period of time requested in order to make suitable arrangements — Granted in Part — Various 306

Claim *re* unfair dismissal seeking reinstatement without loss of benefits or entitlements — Applicant Union claimed the employee, after such long and faithful service should not have been dismissed without notice — Respondent argued employee dismissed due to economic circumstances — Commission found dismissal was not unfair and employee was dismissed principally because he was redundant — Dismissed — Retail Industry 602

CUMULATIVE DIGEST—*continued*

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REINSTATEMENT (*continued*—

Applicant *re* alleged unfair dismissal seeking reinstatement or compensation — Applicant claimed he was dismissed following an incident in which he by-passed the Respondent's State Manager with a complaint to the Respondent's head office — Respondent argued Applicant was retrenched due to economic circumstance — Commission found Applicant was retrenched due to the Respondent's commercial performance and no unfairness was attached to the Respondent's decision — Dismissed — Wholesaling Industry 572

Employee dismissed for alleged misconduct and sought reinstatement — Applicant Union claimed unfair dismissal and argued Respondent had been unreasonably and uncharacteristically harsh with employee so as to avoid payment of generous redundancy package — Respondent refuted claims — Commission found alcoholism the cause of alleged misconduct is an illness that should be treated rather than punished and was satisfied employer-employee relationship could be re-established — Commission found reinstatement with some entitlements restored as just penalty for the degree of misconduct — Granted In Part — Printing 599

Application for reinstatement on basis of alleged unfair dismissal — Respondent argued that Applicant was employed on probation and that matter weas, therefore, beyond jurisdiction of Commission — Respondent further argued that whilst not doubting Applicant's integrity or competence it stood to suffer economci damage had employment continued due to media reports of police enquiries into an agent of Applicant's former employer — Commission found contract not to be probationary, Applicant to have been summarily dismissed, unfair dismissal to have been proved and re-employment warranged — Applicant changed claim to compensation due to having found alternative employment — Commission found it was not open to it to award compensation as a result of Industrial Appeal Court decision (68 WAIG 11) — Matter resolved between parties and leave to withdraw application granted — Finance 581

Application for reinstatement or compensation due to alleged unfair dismissal — Applicant submitted that his actions be viewed in context of frustration over Respondent's refusal to transfer him to area suitable to his allergies, unfounded allegations by Respondent and that Respondent did not adhere to the terms of disputes settling procedure set out in award — Respondent claimed termination due to Applicant's refusal to discuss issues arising from a record of unco-operative and disruptive behaviour and unwillingness to accept authority regarding which a written warning had been made — Commission found that Respondent exercised legal right to dismiss employee and that Applicant's actions converted situation from a warranged written warning to a justifiable dismissal — Local Government 579

Employee made redundant due to economic rationalisation — Applicant claimed unfair dismissal and sought reinstatement — Respondent argued Applicant was dismissed due to economic circumstances — Commission found, given the overall context of the situation, the Applicant was not dismissed unfairly and the Respondent had the right to terminate the contract of employment — Dismissed — Retail 868

Application for reinstatement on grounds of unfair dismissal and alleged outstanding contractual benefits — Applicant claimed dismissal due to personal prejudices of superior and that contractual benefits had been denied after dismissal — Respondent claimed dismissal was due to a redundancy situation and that all payments under contract of service had been made — Commission found Applicant unable to establish his allegations by way of evidence and determined dismissal was due to redundancy — Furthermore it had been estalbished that the Respondent had made redundancy payments to Applicant in excess of amounts set down in contract of service — Dismissed — Newspaper 883

Employee summarily dismissed for misconduct — Applicant claimed unfair dismissal and sought reinstatement and compensation — Respondent claimed insubordination on part of Applicant — Commission found Applicant had embarked upon a course of defiance towards Respondent and had not given his co-operation in promoting interest of members as determined by Management Committee — Commission found dismissal was not harsh or oppressive — Dismissed — Union 876

Claim *re* unfair dismissal seeking reinstatement — Applicant Union claimed that the employee did not understand the implications of a 54 hour week arrangement in force and further, his record of absences was not serious, comparatively speaking — Respondent argued that the employee was unreliable and had a record of unauthorised absences that caused the employer to have grave doubts about the value of continuing to employ him — Commission found that the employee's absences were serious enough to warrant attention and concern in the first place and the termination was not unreasonable especially as the cause of some of the employee's absences was self-inflicted, nor was the dismissal unfair, given the counselling and warnings and the following procedeures — Dismissed — Construction 899

[2]Appeal against decision of Commission at (67 WAIG 2365) *re* Order of re-employment of employee dismissed for misconduct — Appellant claimed Commissioner had erred as Respondent had failed to discharge onus that employee had been unfairly dismissed, in ordering re-employment having failed to properly consider employees misconduct and finally had exceed jurisdiction in making Order — Full Bench noted order of re-employment was designed to restore a useful employment relationship, however found Commissioner's discretion miscarried as there was no valid bais for intervention — Furthermore Full Bench found Commissioner had failed to give proper consideration to employees conduct and it was not open to usurp the prerogative of the employer inthe absence of a valid finding of unfair dismissal — Full Bench found Commissioner not empowered to make Order which appears to abrogate employer's right to termination — Upheld — Mining 677

Employee summarily dismissed for alleged abusive behaviour in response to counselling for absence from work station — Applicant union claimed unfair dismissal and sought reinstatement — Respondent argued dismissal effected with the payments of benefits normally expected when dismissed by way of notice and as such not a summary dismissal, therefore onus in establishing whether employer acted harshly rests upon applicant — Commission found employee's single act of misconduct did not warrant summary dismissal and ordered reinstatement without payment for loss of earnings — Granted In Part — Timber 1143

Claim *re* unfair dismissal seeking reinstatement — Respondent argued that there had been no dismissal and that the Applicant had given notice — Respondent further argued that the doctrine of estoppel should apply as far as the Applicant's claim of relief was concerned because of the claim as filed, and that, in any event, there were no positions available for him to fill and the Respondent should not be forced into arrangements as a result of an order from the Commission which would result in it being overstaffed and operating inefficiently — Commission found the dismissal to have been unfair — Commission found also that the doctrine of estoppel had no substance in the matter and that the Respondent had not established circumstances which would warrant any preclusion of relief in the form of an order for re-employment — Granted In Part — Clerical 1118

Claim *re* unfair dismissal — seeking reinstatement and compensation — Respondent argued matter was beyond Commission's jurisdiction as no contract of employment existed between the parties — further, the Respondent made an economic decision that it could no longer afford to employ the Applicant — Finally, following the "Pepler Case" (68 WAIG 11) an award of compensation could not be made in the absence of an order for re-employment, and re-employment in light of the behaviour of the Applicant would be grossly unfair — Commission found the contract to be one for service as opposed to one of service and the employee/employer relationship fundamental to the ability of the Applicant to bring the matter to the Commission and within its jurisdiction was not proved — Dismissed for want of jurisdiction — Carbon Products — Technology 1122

Employee unfairly dismissed for alleged inability to carry out duties — Applicant Union sought reinstatement without loss of entitlements pursuant to contract of employment — Respondent sought adjournment — Commission found no merit to respondent's request — Commission from evidence found alleged shortcomings were never raised with employee and as such employee had reasons to believe that management had endorsed her work performance — Commission ordered re-employment without loss — Granted — Hostelry 1139

Claim *re* breach of contract, seeking re-employment — Applicant Union claimed an offer of re-employment was made to the employee and refusal by the Respondent to re-employ her therefore constituted a breach of contract — Further Applicant Union claimed that Union activity may have been a cause for the Respondent's action — Respondent argued that no such arrangement for re-employment was made — Commission found little substance in the allegations of victimisation on the basis of Union membership and found no firm contract was offered to the employee — Dismissed — Meat Industry 1140

Application for reinstatement of employee following "constructive dismissal" due to alleged unfair dismissal — Commission found that employee's action in falsifying Medical Certificate rendered him liable to summary dismissal and there is no evidence of harsh, oppressive action by the employer in the circumstances of the termination — Dismissed — Iron Ore 1294

CUMULATIVE DIGEST—*continued*

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REST PERIODS —

Applicant sought true interpretation of meal break and smoko provisions in award — Applicant claimed that the second specified smoko break could not be combined with the meal break — Respondent refuted claim, no ambiguity existed in the award and they were applying the ordinary meaning of the words "smoko" and "break" and were entitled to combine the meal break with the second smoko break — Commission found that the true interpretation was that a "smoko was a break from duties being performed and that on analysis of the award, this could not be combined with the meal break" — Iron Ore 160

SHIFT WORK —

Application to amend Agreement — Parties reached agreement on amendment sought so as to allow greater flexibility in shift work arrangements and provide earlier publication of rosters — Commission found no additional cost incurred and amended agreement accordingly — Granted — State Government 1220

STAY OF PROCEEDINGS —

[4]Stay of operation of order of Commission sought pending an appeal — President found a serious issue to be tried and that the balance of convenience favoured granting of a stay — Granted — Building Industry 48

[4]Stay of operation of order of Commission sought pending an appeal — Appellants claimed danger of industrial disputation if order was not stayed — President found a serious issue existed to be tried thehefore the balance of convenience justified a stay — Granted — Metal Construction 47

[4]Application for stay of Interim Order of Commission which prescribed payment of site allowance, termination allowance and imposed obligations *re* clothing and safety boots pending outcome of appeal — President found that if appeal were successful it would be difficult for Applicant to recover moneys from employees and as the amount involved is substantial the balance of convenience favours stay — President required Applicant to properly keep records of moneys involved and current addresses of employees until appeal determined — Granted — Electric Power 250

[4]Application for stay of Order of Commission *re* site allowance pending appeal — Application follows stay of Interim Order since withdrawn — President expressed concern that there be delay between time when Order is made and ought to be commenced to be complied with, and the time when application for stay is made which may be seen as disregarding Commission's Order — President found granting of stay to be appropriate on condition that Applicants properly keep records of monies involved, current addresses of employees until appeal determined and that monies accruing to employees be paid into interest bearing account and held in trust — Granted — Electric Power 386

[4]Stay of operation of Order of Commission sought pending an appeal — President found serious issues to be tried and ordered a stay of proceedings on condition that the Applicant set aside the entitlement in a bank account on behalf of each employee whose services are terminatd prior to the appeal being determined and the money to be paid out to those ex-employees in the event that the appeal is unsuccessful — Granted — Metal Industry 687

[4]Application for stay of Order of Commission at (68 WAIG 323) — Applicant Union argued that if the work subject of the Order is carried out prior to the hearing and determintaion of the appeal, then the subject matter of the appeal will have ceased to exist at the time the appeal is heard, thereby rendering the same nugatory — Respondent opposed application — Commission found that the application for a stay would result in a process that would be likely to detrimentally affect a great number of members of the community — Commission found that even though there was a serious question to be tried, there was no justification on the balance of convenience to find in favour of the Applicant — Dismissed — Construction 687

[4]Stay of operation of Commission order (at 68 WAIG 882) *re* order for payment of contractual entitlement — President found unusual features of appeal being lodged out of time for which hearing pending to decide if Appeal is to be accepted. Furthermore President found balance of convenience was not established in Applicant's favour and was doubtful if there is a serious issue to be tried — Dismissed — Farming 1017

SUPERANNUATION —

[3]Application for common rule superannuation award by consent of Respondents employing 75 per cent engaged in the industry — Consent of Respondents was conditional upon handing down of common rule award so there would be no competitie advantage to employers not party to application — Intervenor claimed Wage Fixing Principles allow for superannuation orders to apply only to parties to application and to grant a common rule award would "put the whole package under duress" — Commission in Court Session found that for claim to succeed it must demonstrate "special circumstances" in that common rule is the most orderly method by which superannuation may be introduced — Commission in Court Session also found that whilst claim did not conform to procedural structure demanded by Principles it was conducive to the establishment of an industrial relations environment fundamental to the success of the wage fixing package — Granted — Security 1031

SUPPLEMENTARY AND SERVICE PAYMENTS —

Application for second tier wage increase in accordance with Restructuring and Efficiency Principle and Supplementary Payments Principle — Applicant Union claimed State Award had a nexus with Federal Award that had been ratified — Commission found Union's claim for second tier increase did not satisfy the requirement of Restructuring and Efficiency Principle and failed to establish the value, if any, of the proposed changes to employers and the local industry — However Commission found dismissal should not prevent Applicant Union from making future second tier applications — Supplementary payments claim divided from application — Dismissed — Clothing 1242

Claim *re* site allowance — Applicant Union sought site allowance in lieu of special rates and provisions contained in award — Respondent opposed claim in its entirety and argued Sapri decision together with other decisions of State and Federal Commissions established a 'site allowance pattern', however Applicant had not demonstrated that claim was justified within the pattern — Furthermore if claim is not for site allowance as contemplated by Sapri decision then it should be justified under the Wage Fixing Principles for a new allowance — Commission found no case had been made to establish need for a new allowance or for increase in existing allowance in accordance with Wage Fixation Principles — Dismissed 1314

TERMINATION —

[2]Appeal against decision of Commission at (67 WAIG 1860) to dismiss a claim of unfair dismissal and compensation — Full Bench found no substance in any of the grounds of appeal — Dismissed — Metal Industry 30

[2]Appeal against decision of Commission at (66 WAIG 1252) *re* compensation awarded — Appellant claimed compensation awarded was inadequate as Commissioner had failed to take into account length of service, difference in income before and after dismissal, magnitude of disruption and Appellant's propsect of re-employment in comparable position in like industry — Full Bench found compensatory payment involved Commission's discretionary judgment as to just and equitable standard — Furthermore amount ordered should meet test of adequacy and not alignment with any perceived pattern — Full Bench found due weight was not given to length of service and the extent of drop in income and increased sum awarded — Upheld — Catering 31

[2]Appeal against decision of Commission at (66 WAIG 1252) *re* compensation awarded — Appellant claimed Commissioner had exceeded jurisdiction by awarding compensation in the absence of an order for re-employment — Full Bench found Commissioner had not erred in awarding compensation as employee had suffered a loss as a consequence of dismissal found to be unfair — Dismissed — Catering .. 31

CUMULATIVE DIGEST—*continued*

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TERMINATION (*continued*) —

Employee dismissed for alleged insubordination — Applicant Union claimed action was unfair and harsh and sought reinstatement — Respondent argued dismissal was justified as employee repeated conduct for which a final warning was previously given — Commission found in favour of Respondent and concluded that it would not intervene with the Respondent's right to terminate the contract of employment — Dismissed — Labourer — Meat Industry 329

Employee summarily dismissed for insubordination — Applicant Union claimed employee had been unfairly dismissed and sought reinstatement and compensation — Respondent refuted claim and argued that Applicant's refusal to "strip timber" justified summary dismissal — Commissioner found permanent occupant of position in which Applicant was relieving, carried out duties in question and as such, refusal by Applicant was unreasonable — Dismissed — Timber 338

Employee dismissed for alleged unsatisfactory performance and overall incompetence — Applicant Union claimed unfair dismissal and sought re-employment — Respondent claimed the dismissal was justified by poor performance and overall incompetence — Commission found employee behaved as if appropriate performance or competence standards for his duties were those he set for himself rather than that required of him — Commission found employer had sufficient reason to exercise legal right to terminate employee's contract — Dismissed — Services (Hospital) 331

Employee dismissed for poor attendance — Applicant Union claimed dismissal was harsh and unfair and sought re-employment — Respondent refuted claim and argued prior warnings and attempts to counsel employee proved negative — Commission was satisfied appropriate warnings were given — However Commission found although attendance had improved prior to termination, improvement was not to the extent that justified Commission's interference with the employer's legal right to terminate contract — Dismissed .. 330

Employee dismissed for alleged incompetence and poor attitude — Applicant Union claimed unfair dismissal and sought compensation — Respondent argued employee's poor attitude and inability to handle various duties justified the dismissal — Commission found no evidence to suggest that Respondent had regard for other avenues than dismissal, nor was there any warnings to employee that her employment was in jeopardy — Commission found compensation inappropriate, however ordered re-employment — Ordered accordingly — Finance and Investment 324

Employee summarily dismissed for alleged incompetence — Applicant claimed unfair dismissal as no warnings or even opportunity to improve her performance was given and sought compensation — Respondent argued that it was not bound by the terms of award governing the retail trade — Commission found no misconduct, on contrary employee had been promoted — Commission found employee was not guided or informed of tasks of new position and Respondent was to blame for any shortcomings she had, and awarded compensation — Granted — Retail 313

Employee summarily dismissed for behaviour contrary to the contract of employment — Applicant claimed unfair dismissal and sought compensation — Respondent opposed claims — Commission found Applicant had acted contrary to his contract of employment and the Respondent was justified in terminating that contract of employment — Dismissed — Manufacturing 315

Employee dismissed following period of rehabilitation and inability to continue gainful employment — Applicant claimed unfair dismissal and sought reasonable compensation — Respondent denies claims wholly — Commission found all parties to whom the Applicant has turned for assistance, have, including the Respondent, done their utmost for the Applicant and therefore dismissed claim for compensation — Dismissed — Airlines Industry 308

[2]Appeal against decision of Commission at (67 WAIG 2145) *re* quantum of compensation awarded — Appellant alleged Commissioner had erred, in that awarding of compensation is outside Commission's jurisdiction and by attributing no weight to the expected duration of employee's employment with Company — Full Bench found erroneous Appellant's claim that assessment of compensation should have been restricted to expected period of employment — Furthermore even based on propostion of limited expected duration compensation would far exceed sum claimed by Appellant to be adequate and found it was open to Commissioner to calculate compensation in lieu of re-employment — Dismissed — Mining 234

Employee alleged summary and unfair dismissal due to raised issues of mismanagement — Applicant sought reinstatement or compensation — Respondent refuted claims — Commission found evidence of bitter clashes between the parties over a period of time and that incipient hostility and mistrust was a consequence — Commission found breakdown in relationship between the parties and decision to end Applicant's contract of employment was reasonably open to Respondent — Dismissed — Welfare Services 311

Applicant terminated seeking contractual entitlements — Respondent argued that it had not been a party to any employment contract with the Applicvant, however, a contractual arrangement existed between the Respondent and a separate legal entity by whom the Applicant was employed — Commission found Applicant unable to establish the existence of a contract of employment between the Applicant and the Respondent — Dismissed — Securities 309

Employee terminated due to closure of business — Applicant Union sought redundancy payment — Respondent rejected claim for redundancy payment on the grounds the employee had been offered suitable alternative employment and refused to avail himself of that offer — Commission found that whilst there may have been communication difficulties between the parties, employee would still have been employed, had he indicated the desire or asked for consideration of his position — Under such circumstances a claim for redundancy payments could not be sustained — Dismissed — Health Industry 333

Application *re* alleged unfair dismissal — Matter remitted for rehearing by Full Bench at (67 WAIG 1527) as original proceedings constituted a denial of natural justice — Commission found employer for valid reasons was unhappy with Applicant's work performance and had not acted unfairly in exercising right to terminate — Dismissed 310

Application *re* alleged unfair dismissal, seeking compensation — Applicant claimed he had been unfairly dismissed for claiming and being paid overtime rates for extra curricula duties — Respondent argued Applicant's attitude towards the poor state of housekeeping in his area, for which he had been reprimanded at least twice, combined with over manning in the warehouse, had led to the dismissal — Commission found Applicant had been the subject of complaints on his "housekeeping" and did not discern any basic element of unfairness in the Respondent's decision to terminate the contract of employment — Dismissed — Wholesaling 586

Claim *re* unfair dismissal seeking reinstatement without loss of benefits or entitlements — Applicant Union claimed the employee, after such long and faithful service should not have beren dismissed without notice — Respondent argued employee dismissed due to economic circumstances — Commission found dismissal was not unfair and employee was dismissed principally because he was redundant — Dismissed — Retail Industry 602

Application *re* alleged unfair dismissal — Respondent argued Applicant's dismissal was warranted by a breach of confidence by him which constituted serious misconduct — Commissioner found the Applicant unable to rebut the Respondent's case and any intervention by the Commission was therefore unwarranted — Dismissed — Pharmaceutical Industry 587

Application *re* alleged unfair dismissal seeking reinstatement or compensation — Applicant claimed he was dismissed following an incident in which he by-passed the Respondent's State Manager with a complaint to the Respondent's head office — Respondent argued Applicant was retrenched due to economic circumstances — Commission found Applicant was retrenched due to the Respondent's commercial performance and no unfairness was attached to the Respondent's decision — Dismissed — Wholesaling Industry 572

Application *re* unfair dismissal, seeking contractual entitlements — Respondent argued employment was based on a trial period during which time the employee was not entitled to any contractual benefit — Commission found that as the Applicant had not committed misconduct such that a summary termination was justified, it was reasonable to imply into the contract of employment a period of notice — Application dismissed in respect of unfair dismissal but order in favour of the Applicant issued for payment in lieu of notice — Granted In Part — Manufacturing 585

Claim *re* contractual entitlement — Applicant claimed contractual entitlement of monies withheld by the Respondent following the Applicant's resignation — Respondent argued his action in withholding monies from the Applicant was justified by the Applicant's failure to give at least two or three weeks' notice of intention to terminate — Commission found Respondent was unjustified in retaining the Applicant's wages and issued an order for the payment of that sum to the Applicant, but dismissed the claim for payment of annual leave as there was no evidence that this was a term of the contract of service — Granted In Part — Furniture Industry 583

Claim *re* contractual entitlements — no appearance by or on behalf of Applicant — Application dismissed for want of prosecution and payment of costs awarded against the Applicant being for costs incurred by the Respondents — Dismissed — Retail 571

Employee dismissed for alleged misconduct and sought reinstatement — Application Union claimed unfair dimissal and argued Respondent had been unreasonably and uncharacteristically harsh with employee so as to avoid payment of generous redundancy package — Respondent refuted claims — Commission found alcoholism the cause of alleged misconduct is an illness that should be treated rather than punished and was satisfied employer-employee relationship could be re-established — Commission found reinstatement with some entitlements restored as just penalty for the degree of misconduct — Granted In Part — Printing 599

CUMULATIVE DIGEST—*continued*

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TERMINATION (*continued*) —

Application for reinstatement on basis of alleged unfair dismissal — Respondent argued that Applicant was employed on probation and that matter was, therefore, beyond jurisdiction of Commission — Respondent further argued that whilst not doubting Applicant's integrity or competence it stood to suffer economic damage had employment continued due to media reports of police enquiries into an agent of Applicant's former employer — Commission found contract not to be probationary, Applicant to have been summarily dismissed, unfair dismissal to have been proved and re-employment warranted — Applicant changed claim to compensation due to having found alternative employment — Commission found it was not open to it to award compensation as a result of Industrial Appeal Court decision (68 WAIG 11) — Matter resolved between parties and leave to withdraw application granted — Finance 581

Employee dismissed due to absenteeism — Applicant claimed unfair dismissal and denial of contractual benefits and sought reinstatement or compensation — Respondent argued Applicant's absence from duty were excessive and that all benefits had been paid — Commission found failure to notify of absence had caused Respondent to conclude that Applicant could not be relied upon to regularly attend to duties and there was further concern at failure to carry out implicit duties of contract of service — Commission found termination of contract open to Respondent in circumstances — Dismissed — Educational services 573

Application for reinstatement or compensation due to alleged unfair dismissal — Applicant submitted that his actions be viewed in context of frustration over Respondent's refusal to transfer him to area suitable to his allergies, unfounded allegations by Respondent and that Respondent did not adhere to the terms of disputes settling procedure set out in award — Respondent claimed termination due to Applicant's refusal to discuss issues arising from a record of unco-operative and disruptive behaviour and unwillingness to accept authority regarding which a written warning had been made — Commission found that Respondent exercised legal right to dismiss employee and that Applicant's actions converted situation from a warranted written warning to a justifiable dismissal — Local Government 579

Employee made redundant due to economic rationalisation — Applicant claimed unfair dismisal and sought reinstatement — Respondent argued Applicant was dismissed due to economic circumstances — Commission found, given the overall context of the situation, the Applicant was not dismissed unfairly and the Respondent had the right to terminate the contract of employment — Dismissed — Retail 868

Employee made redundant due to loss of account — Applicant claimed unfair dismissal — Respondent argued that the Applicant was retrenched in favour of another employee on the basis of who was "best suited to the needs of the agency" — Commission found that the employee was not unfairly dismissed and would not substitute its own view for that of the Respondents in deciding who was "best suited to the needs of the agency" — Dismissed — Advertising 873

Employee summarily dismissed for allleged misconduct — Applicant claimed unfair dismissal and sought contractual entitlements — Commission found that the Applicant had agreed to the terms of a new agreement and could not claim benefits of the Award provision it superseded — Dismissed — Catering 874

Claim *re* contractual entitlements — Applicant sought bonus payment claimed owing to him — Respondent argued contractual bonus was subject to Applicant's performance which was incompetent and unreliable — Commission found the Applicant's employment in all essential respects to be terminated by notice and the Applicant was entitled to be paid the bonus he had earned — Commission order the Respondent to pay the Applicant the amount claimed but refused the Applicant's claim for legal costs incurred as there was no evidence that it was necessary for the Applicant to seek legal advice — Granted In Part — Primary Industry 882

Order for compensation sought for employees on basis of alleged unfair dismissal — Applicant sought finding that termination constituted redundancy and that a transmission of business had occurred — Commission found no transmission of business had occurred but this did not preclude consideration of employees prior service — Commission rejected Respondent's argument that redundancy cannot occur if termination is effected purportedly due to factors beyond the employer's control e.g. economic factors and found that redundancy had occurred but the employees concerned were not bound by any award provision relating to redundancy — Commission found dismissal was unfair but recent decision of Industrial Appeal Court (68 WAIG 11) prevents Commission from ordering compensation — Granted in Part — Newspaper Publishing 900

Claim *re* unfair dismissal seeking contractual entitlements — Applicant claimed contractual entitlements in the form of *pro rata* long service leave said to exist by virtue of a contract between the Applicant and the first Respondent — Respondent argued that no such contract existed as the arrangement was for payment of long service leave after the first 10 years with no on-going arrangement to make any other payments — Commission found the contract for payment of long service leave applied only for the first 10 years of employment and no other entitlement was outstanding — Dismissed — Automotive Maintenance 871

Conference to hear and determine whether the replacement of the Applicant by another employee constituted redundancy under Award — Respondent considered that the Applicant was employed to perform certain tasks and was later dismissed and replaced by a person with different skills to perform those tasks plus additional tasks not within the terminated employees competence — Commission found that although a welder was replaced by a boiler maker the job being performed continued — for redundancy to apply employer must decide that job will no longer be done by anyone and this not due to the ordinary and customary turnover of labour — Dismissed — Engineering 894

[2]Appeal against decision at (67 WAIG 2146) *re* compensation awarded for unfair dismissal — Appellant claimed Commissioner erred in principle and discretion miscarried — Respondent sought to have matter remitted for further hearing in light of Industrial Appeal Court decision *re* compensation — Full Bench found time for appeal had expired and not proper to remit matter under accepted principles — Upheld — Mining/Iron Ore 680

Employee summarily dismissed for misconduct — Applicant claimed unfair dismissal and sought reinstatement and compensation — Respondent claimed insubordination on part of Applicant — Commission found Applicant had embarked upon a course of defiance towards Respondent and had not given his co-operation in promoting interest of members as determined by Management Committee — Commission found dismissal was not harsh or oppressive — Dismissed — Union 876

Claim *re* unfair dismissal seeking reinstatement — Applicant Union claimed that the employee did not understand the implications of a 54 hour week arrangement in force and further, his record of absences was not serious, comparatively speaking — Respondent argued that the employee was unreliable and had a record of unauthorised absences that caused the employer to have grave doubts about the value of continuing to employ him — Commission found that the employee's absences were serious enough to warrant attention and concern in the first place and the termination was not unreasonable especially as the cause of some of the employee's absences was self-inflicted, nor was the dismissal unfair, given the counselling and warnings and the following procedures — Dismissed — Construction 899

[2]Appeal against decision of Commission at (67 WAIG 2365) *re* Order of re-employment of employee dismissed for misconduct — Appellant claimed Commissioner had erred as Respondent had failed to discharge onus that employee had been unfairly dismissed, in ordering re-employment having failed to properly consider employees misconduct and finally had exceeded jurisdiction in making Order — Full Bench noted Order of re-employment was designed to restore a useful employment relationship, however found Commissioner's discretion miscarried as there was no valid basis for intervention — Furthermore Full Bench found Commissioner had failed to give proper consideration to employees conduct and it was not open to usurp the prerogative of the employer in the absence of a valid finding of unfair dismissal — Full Bench found Commissioner not empowered to make Order which appears to abrogate employer's right of termination — Upheld — Mining 677

Employee terminated at end of probationary period — Employee sought payment in lieu of notice — Respondent refuted claim — Commission found claim not substantiated as employee was not entitled to draw a conclusion that she was not required to work during period of notice given — Dismissed — Hairdressing 1117

Employee summarily dismissed for alleged abusive behaviour in response to counselling for absence from work station — Applicant union claimed unfair dismissal and sought reinstatement — Respondent argued dismissal effected with the payments of benefits normally expected with dismissed by way of notice and as such not a summary dismissal, therefore onus in establishing whether employer acted harshly rests upon applicant — Commission found employee's single act of misconduct did not warrant summary dismissal and ordered reinstatement without payment for loss of earnings — Granted In Part — Timber 1143

Claim *re* unfair dismissal seeking contractual entitlements — Respondent argued the Applicant was not dismissed and had abanondoned his employment — Commission found the Applicant had abandoned his employment thus forfetiing any right to a payment in lieu of notice — Dismissed — Fast Foods 1121

CUMULATIVE DIGEST—*continued*

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TERMINATION (*continued*) —

Claim *re* unfair dismissal seeking reinstatement — Respondent argued that there had been no dismissal and that the Applicant had given notice — Respondent further argued that the doctrine of estoppel should apply as far as the Applicant's claim of relief was concerned because of the claim as filed, and that, in any event, there were no positions available for him to fill and the Respondent should not be forced into arrangements as a result of an order from the Commission which would result in it being overstaffed and operating inefficiently — Commission found the dismissal to have been unfair — Commission found also that the doctrine of estoppel had no substance in the matter and that the Respondent had not established circumstances which would warranty any preclusion of relief in the form of an order for re-employment — Granted In Part — Clerical 1118

Claim *re* unfair dismissal — seeking reinstatement and compensation — Respondent argued matter was beyond Commission's jurisdiction as no contract of employment existed between the parties — further, the Respondent made an economic decision that it could no longer afford to employ the Applicant — Finally, following the "Pepler Case" (68 WAIG 11) an award of compensation could not be made in the absence of an order for re-employment, and re-employment in light of the behaviour of the Applicant would be grossly unfair — Commission found the contract to be one for service as opposed to one of service and the employer/employer relationship fundamental to the ability of the Applicant to bring the matter to the Commission and within its jurisdiction was not proved — Dismissed for want of jurisdiction — Carbon Products — Technology 1122

Employee unfairly dismissed for alleged inability to carry out duties — Applicant Union sought reinstatement without loss of entitlements pursuant to contract of employment — Respondent sought adjournment — Commission found no merit to respondent's request — Commission from evidence found alleged shortcomings were never raised with employee and as such employee had reasons to believe that management had endorsed her work performance — Commission ordered re-employment without loss — Granted — Hostelry 1139

Claim *re* breach of contract, seeking re-employment — Applicant Union claimed an offer of re-employment was made to the employee and refusal by the Respondent to re-employ her therefore constituted a breach of contract — Further Applicant Union claimed that Union activity may have been a cause for the Respondent's action — Respondent argued that no such arrangement for re-employment was made — Commission found little substance in the allegations of victimisation on the basis of Union membership and found no firm contract was offered to the employee — Dismissed — Meat Industry 1140

Appeal *re* alleged unfair dismissal — Respondent argued Appellant was terminated for striking an inmate in contravention of the rules of the Authority — Appellant denied that such an incident occurred — Public Service Appeal Board found on balance that the Appellant had struck the individual concerned and had, therefore, committed a break of the Authority's rules — Board found the dismissal to have been neither harsh nor unfair — Dismissed — Health and Welfare Services 1149

Claim *re* contractual entitlements *re* monies in lieu of annual leave — No appearance by or on behalf of Respondent — Commission found annual leave had never been discussed between the parties and therefore contract of employment did not include an entitlement to annual leave or payment of monies in lieu thereof in the event of the termination of the contract of employment — Dismissed — Health .. 1287

Claim *re* unfair dismissal seeking contractual entitlements — Respondent argued Applicant had abandoned his employment and was, therefore, due no entitlements — Commission found the contract of employment was terminated by abandonment as the Applicant's reasons for leaving did not include any authorisation by the Respondent or any situation which justified his action notwithstanding that lack of authorisation — Commission found Respondent was not entitled to make the deduction it claimed, however, it was not established that the Respondent made any deductions from benefits arising and due to the Applicant under the terms of his contract of employment — Dismissed — Catering 1289

Application for reinstatement with payment of lost salary or, alternatively, pay in lieu of notice plus pro-rata annual leave and loading due to allegedly unfair dismissal — Commission found Applicant to have been unfairly dismissed but declined to make order for reinstatement as in these circumstances it would be tantamount to awarding compensation equal to salary lost — Commission found that an implied term of the contract was the requirement of giving one month's notice of termination but there was no contractual entitlement to leave — Granted In Part — Manufacturing 1293

Application for reinstatement and compensation due to alleged unfair dismissal or, alternatively, one month's pay in lieu of notice as per the contract of service — Commission found dismissal was not sufficiently harsh or unreasonable to warrant intervention — Commission also found that as Applicant was paid fortnightly it is reasonable to imply that two weeks notice or two weeks pay in lieu were required to terminate the contract — Granted In Part — Fishmongery 1283

Application for reinstatement of employee following "constructive dismissal" due to alleged unfair dismissal — Commission found that employee's action in falsifying Medical Certificate rendered him liable to summary dismissal and there is no evidence of harsh, oppressive action by the employer in the circumstances of the termination — Dismissed — Iron Ore 1294

TRANSFER —

[2]Appeal against decision of Industrial Magistrate (unreported) — Appellant argued that dismissal was through no fault of his own and claimed pay in lieu of notice as well as 20 per cent loading in accordance with the Award — Respondent refuted claim and argued that Appellant had resigned from or otherwise terminated his employment rather than accept a transfer — Full Bench found employment terminated as a result of ultimatum to transfer or else finish up and to suggest that resignation effected in that manner was a voluntary termination put an entirely unrealistic interpretation — Full Bench remitted matter to Magistrate for further determination *re* whether penalty is to be imposed and the recovery of moneys outstanding under the Award — Upheld 33

Application that transference of Guidance Officer to country be deferred on basis that it is "harsh and oppressive" and against public interest in terms of transferee's responsibilities as Mayor of Claremont — Tribunal found application without substance in context of Respondent's requirement to provide services to community and that Respondent is best judge of the appropriate allocation of its resources to provide those resources — Dismissed 1154

UNIONS —

[1]Appeals against decision of Full Bench (at 67 WAIG 1723) not to allow appeals against decision of Commission to vary Industrial Agreement by requiring Appellant to pay employees ordinary wages whilst attending union meetings during working hours — Section 90 (1) of Industrial Relations Act requires Industrial Appeal Court to allow appeal only if decision is "erroneous in law or is in excess of jurisdiction" — Industrial Appeal Court found Full Bench's jurisdiction to dismiss appeal unchallengeable — Industrial Appeal Court also found Commission in first instance and Full Bench subsequently to have been aware of relevant considerations and to have exercised discretion in accordance with their statutory obligations thus no error in law occurred — Dismissed — Iron Ore 4

[4]Inquiry into Union election — Applicant alleged irregularity and lodged various complaints — President found guidance to be derived from the common law of elections — Furthermore President found election not vitiated by any breach of rule or any irregularity, rather it was conducted in accordance with the law — Dismissed 49

[2]Application for registration and alteration of registered Union Rules — Applicant sought authority of Full Bench to amend Eligibility for Membership rule to enrol as members roof tile fixers — FBTPU objected to application — Full Bench found advantage for roof tile fixers to have industrial representation in construction industry and that demarcation disputes with objector were minimal — Full Bench permitted registration of proposed alteration — Granted 36

[2]Application for amalgamation of Unions — Objections to amalgamation were withdrawn — Full Bench found requirements of the Act were fulfilled and authorised registration — Granted 242

[2]Application for registration — SDA objected to constitution rule but withdrew after appropriate amendment by Applicant — Sales Representatives and Commercial Travellers' Guild object on grounds that its rules entitle it to enrol as a member persons eligible pursuant to constitution rule of Applicant and that some rules were against best interests of employees — Full Bench found there was no overlapping of eligibility for membership of the respective organisations and that rules provided machinery for members themselves to amend rules not in their best interest — Granted — Real Estate Sales 243

CUMULATIVE DIGEST—*continued*

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UNIONS—*continued*

[4]Application for declaration of true interpretation of organisations rules *re* who may call a general meeting of members — President found that authority to be conferred on the Council and not otherwise — Declaration issued in terms of Applicant's request — Nursing 690

[4]Application *re* Order for calling of a Special Meeting of the Union — Respondent challenged the jurisdiction to deal with the application — President found that the application was brought pursuant to section 66, which confers wide power to be exercised according to discretion, extending to the issuance of Orders or directions relating to the observance or non-observance of the Rules of the Union and therfore fell within the jurisdiction — Granted 692

[4]Application for adjournement *re* an Order of the Commission giving directions arising out of industrial disputation — Commission found no reason for the application not to proceed to hearing but considered in light of the current industrial dispute involving the Respondent such hearing should occur following the disposal of the industrial dispute — Commission found there also to be substance in the leg of the application which relied upon the need for the presence of the Secretary who was forced by virtue of her role as Secretary to be absent from these proceedings for the purpsoe of discussions involving the current industrial disputation — Granted — Nursing 689

[2]Application for alteration of rules — Full Bench found applicatin in accordance with Act and Regulations — Full Bench found objectors had been accommodated by the amendments made to the original application and allowed rule change — Granted — Union . 685

[2]Appeal against Commission's decision (at 67 WAIG 2263) not to allow new award to cover veterinary surgeons — Appellant claimed commission erred in finding its constitution does not permit it to enrol veterinary surgeons as members — Full Bench comprehensively reviewed the authorities and principles for determining eligibility and construction of union rules and emphasised the need to adopt a generous approach to their interpretation — Full Bench found, however, that such an approach is not a license to interpret language so that it bears little resemblance to what is written which is what the Appellant is inviting Commission to do — Dismissed 1010

[2]Appeal against decision of Commission (at 68 WAIG 323) *re* which union's members should have industrial coverage of fixing prefabricated seats — Commission based original decision on constitutional coverage of organisations involved and which vocations had customarily performed the work — Appellant argued that it made no sense to speak of constitutional coverage of work and the fundamental question was to identify which tasks were to be performed by which vocation — Appellant further argued that if the task were deemed properly part of carpenters' work there is no scope for a demarcation enquiry — Full Bench agreed that the correct approach was to firstly determine whether the task forms part of the work, substantially or incidentally, of carpenters or builders' labourers and secondly, whether the work should be performed exclusively by one vocation — Full Bench found this to be necessarily an exercise in deciding the true meaning of these terms as they are used in the award — Full Bench found task to be part of carpenters' work and not riggers or any other category of builders' labourer pursuant to the award — Upheld — Building Construction 1006

Application that employee be reclassified to lower position on basis that current position required performance of duties unacceptable to him i.e. instructing non-unionists — Respondent claimed granting application would be contrary to objects of the Industrial Relations Acts and certain other provisions — Commission found subject employee had only accepted promotion on condition he would not have to compromise his clearly stated principles *re* unionism and to allow application is not to promote unfair discrimination but to correct an error which should never have occurred — Granted — Iron Ore 1125

[1]Appeal against decision of Full Bench (at 67 WAIG 2226) to dismiss appeal against Commission declaration *re* which union is entitled to enrol wall and ceiling fixers as members — Industrial Appeal Court found both Full Bench and Commission had adopted correct approach to interpretation of eligiblity rules of unions involved — Dismissed — Building Construction 1201

VICTIMISATION —

Employee dismissed due to absenteeism — Applicant claimed unfair dismissal and denial of contractual benefits and sought reinstatement or compensation — Respondent argued Applicant's absence from duty were excessive and that all benefits had been paid — Commission found failure to notify of absence had caused Respondent to conclude that Applicant could not be relied upon to regularly attend to duties and there was further concern at failure to carry out implicit duties of contract of service — Commission found termination of contract open to Respondent in circumstances — Dismissed — Educational services 573

Claim *re* breach of contract, seeking re-employment — Applicant Union claimed an offer of re-employment was made to the employee and refusal by the Respondent to re-employ her therefore constituted a breach of contract — Further Applicant Union claimed that Union activity may have been a cause for the Respondent's action — Respondent argued that no such arrangement for re-employment was made — Commission found little substance in the allegations of victimisation on the basis of Union membership and found no firm contract was offered to the employee — Dismissed — Meat Industry 1140

Claim that company had acted harshly and oppressively by placing warning letters on employees personal file for alleged repudiation of contract of service — Applicant Union sought order from Commission requiring withdrawal of letters — Respondent opposed claim on grounds that Commission lacked jurisdiction to deal with matter as order sought did not constitute an industrial matter — Commission found that Unions legitimate concern for employment security of members, and its ongoing capacity to protect andpromote the industrial interest of members made claim an industrial matter — Commission found in favour of Applicant Union — Granted Mining 1317

WAGES —

Application for four per cent second tier increases in award rates of pay in accordance with Restructuring and Efficiency Principle — Commission found agreed changes on such matters as accommodation allowances, camping allowances, overtime, shift penalties, the "metropolitan policing plan", civilisation and others ensured additional remuneration involved no cost to State and was thus consistent with Principles — Award amended accordingly — Granted — Police 539

Application for four per cent second tier increase to award salarty and wage rates in accordance with Restructuring and Efficiency Prin— ciple — Parties approached matter on an enterprise basis for Building Management Authority and WA Water Authority, and on a global basis for other employer parties although not disregarding idiosyncracies of each enterprise — Public Service Arbitrator found that the manner in which agreement increases productivity and reduces overheads to comply with both spirit and letter of Principles — Award amended accordingly — Granted — Public Authorities 543

Employee sought payment of amount allegedly owing under contract of service — Applicant claimed amount based upon a gross weekly wage and a further amount for each bag of crayfish caught whilst he was a deckhand on the Respondent's boat — Respondent denied any liability to the Applicant — Commission found that the Applicant misunderstood the contract and that an amount paid by the Respondent made up of the difference between the number of weeks worked at $300 per week and the number of bags per week at $5.00 per bag was sufficient under the terms of the contract of service — Dismissed — Cray Fishing 875

[2]Appeal against decision of Industrial Magistrate *re* failure to pay wages as prescribed in accordance with Award — Appellant claimed Industrial Magistrate had erred in not finding erection of buildings or structure within meaning of construction work as defined in Award and that Respondent was not a Respondent to the Award by force of common rule — Full Bench found in favour of Appellant as evidence clearly disclosed that Respondent did more than design and prefabricate it, it also assembled them to form a substantial, albeit removable building — Full Bench remitted complaints to Industrial Magistrate for further hearing and determination according to law — Upheld — Building Construction 683

Increase of wage rates of four per cent by consent under Second Tier Wage Adjustment Principle — Board found both spirit and the letter of the Principles had been met, which should result in significant savings to the Respondent — Award varied — Granted — Transport 846

CUMULATIVE DIGEST—*continued*

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WAGES —*continued*

Application for four per cent second tier wage increases in accordance with Restructuring and Efficiency Principle — Commission found changes on matters such as right to accrue long service, no pro rata entitlement to annual leave upon regisnation, payment of partial rather than full higher duties and other fits within the Principles — Award amended accordingly — Granted — University Administration 1090

[3]Application for variation of award rates of pay in accordance with Anomalies and Inequities Principle — Applicant argued that granting of claim would restore nexus with Victorian award and allow re-establishment of equitable base — Commission in Court Session found nexus did not exist in the manner claimed by the Applicant and that as the establishment of an equitable base has been interpreted as "the restoration of a pre-existing relationship where a firm recognised nexus existed (67 WAIG 1142) the application must fail — Dismissed — Ambulance Service 1205

Claim *re* unfair treatment, seeking increase in working hours to full-time employment or maintenance of weekly wage at the rate applicable to a full-time nursing assistant — Respondent argued Applicant's hours of work were reduced due to a reduction in staffing levels for reasons of economic efficiency — Commission found the Respondent to have demonstrated a genuine attempt to offer relief to the Applicant and found the Applicant had not shown that the Respondent had been unfair towards her — Dismissed — Health and Welfare Services 1142

[3]Application for new Award and new career stucture with increased rates of pay due to changes in work value — Due to other previous, extensive and closely related applications subject application was deemed to have been substantially part heard and would, therefore, be determined in accordance with the Wage Fixing Principles 1986 and the Second Tier Ceiling would not apply — Parties were in agreement *re* work value changes but not as to quantum of wage increases — Minister intervened, arguing that budget constraints did not allow it to exceed certain overall cost limits although it was sanguine about negotiating a flexible package within that context — Commission in Court Session found that increases must remain within parameters of previous agreement — Commission in Court Session conducted extensive review and determination of rates for different classifications and other conditions of employment — Award issued — Health Care 701

WORK VALUE —

[3]Applicant sought variation of award to increase an allowance for first aid attendants holding enrolled nurse qualifications — Respondent claimed work value changes in duties of nurses under other awards can not be compared with the duties of first aid attendants — CICS found that a substantial change in the nature of the work, skill and responsibility could not be demonstrated — CICS found no justification to flow on the results of work value increases to employees whom those work value changes did not apply — Dismissed — Power/Electrical 44

[2]Appeal against decision of Commission at (68 WAIG 185) to grant a rate of pay for all welders on North West Shelf Project at level of "Welder Special Class" and also the imposition of a quality allowance for welding work — Full Bench did not accept Respondent's arguments that a work value assessment in line with the principles was not required — Full Bench accepts Appellant's claim that insufficient weight had been given to the work value priniple — Commission had short-circuited analysis of the Principles by acting on a premise that work performed for one employer in 1981 and subject to a specific order established the datum from which work presently being performed for the Appellants should be assessed — Full Bench found Commission's discretion had miscarried — Upheld — Metal Industry 23

Award variation sought for purpose of establishing new classifications due to change in work standards — Parties were in agreement that duties constitute a significant net addition to the job, however, unable to agree on extent of changes and quantum of wage rates to be paid — Commission from evidence presented fixed rates for new classifications on work value — Ordered accordingly — Meat Industry 1064

[3]Application for new Award and new career stucture with increased rates of pay due to changes in work value — Due to other previous, extensive and closely related applications subject application was deemed to have been substantially part heard and would, therefore, be determined in accordance with the Wage Fixing Principles 1986 and the Second Tier Ceiling would not apply — Parties were in agreement *re* work value changes but not as to quantum of wage increases — Minister intervened, arguing that budget constraints did not allow it to exceed certain overall cost limits although it was sanguine about negotiating a flexible package within that context — Commission in Court Session found that increases must remain within parameters of previous agreement — Commission in Court Session conducted extensive review and determination of rates for different classifications and other conditions of employment — Award issued — Health Care 701

Western Australian Industrial Gazette

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