CUMULATIVE DIGEST

MATTERS REFERRED TO IN DECISIONS OF THE INDUSTRIAL APPEAL COURT, INDUSTRIAL RELATIONS COMMISSION AND INDUSTRIAL MAGISTRATES COURT CONTAINED IN VOL. 84 PART 2, SUB PARTS 1-**9.**

Digest Headings

Industrial Appeal Court
Full Bench
Commission In Court Session
President
Industrial Magistrate
Public Service Appeal Board
Public Service Arbitrator
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Editor's Note: The Registrar wishes to advise that as from January 2004, the format of the "Cumulative Digest" published at the back of the Western Australian Industrial Gazette has changed to incorporate "Catchword Phrases", please refer to the Notice at (83WAIG3937).

All documents within the above headings are in chronological order.

INDUSTRIAL APPEAL COURT

Industrial relations - Claim for unfair dismissal and claim for disallowed contractual benefits - Whether Commission may "deal with" claim for disallowed contractual benefit by awarding damages - Whether employee's contractual right to notice before termination of employment is a contractual "benefit" - Appeal allowed - Mr AG Matthews -v- Cool or Cosy Pty Ltd; Ceil Comfort Home Insulation Pty Limited - IAC 1 of 2004 - Industrial Appeal Court - - 01/06/04 - Construction Trade Services 2152

Industrial relations - Appeal incompetent - Grounds of appeal not grounds referred to in s90 Industrial Relations Act 1979 - Dismissed - Mr S May - Little Muppets Child Care Centre 4645805792 -v- Mrs CS Hedley - IAC 4 of 2004 - Industrial Appeal Court - Scott J./Parker J./Merriman J - 01/06/04 - Education 2163

Industrial law - Effect of non-compliance with time limit in s29(2) of the Industrial Relations Act - No application for, or acceptance of, referral under s29(3) - Whether can accept a referral nunc pro tunc - Whether waiver can apply - Whether denial of natural justice - Appeal upheld - Aurion Gold -v- Ms I Bilos - IAC 5 of 2004 - Industrial Appeal Court - - 22/11/04 - Other Mining 3759

FULL BENCH

Industrial Law (WA) - Claim for unfair dismissal and contractual entitlements - Dismissed for want of jurisdiction - Appeal against decision of single Commissioner - Alleged constructive dismissal - No constructive dismissal - Employee resigned - No course of deliberate conduct by employer designed to force resignation - No dismissal and no jurisdiction in the Commission - No error at first instance - Appeal dismissed - Industrial Relations Act 1979 (as amended), s29(1)(b)(i) and (ii), s49 - Mr G Berney -v- KDB Engineering Pty Ltd - FBA 21 of 2003 - Full Bench - SHARKEY P/GREGOR C/WOOD C - 08/06/04 - General Construction 2165

Industrial Law (WA) - Unfair dismissal claim - Appeal against the decision of a single Commissioner - No warning of dismissal - No notice - Failure to meet requirements of s41 of the Minimum Conditions of Employment Act 1993 - Failure to inform employee of other available employment - Lack of procedural fairness - No error in findings of unfairness - No error in findings on the evidence at first instance - No error in finding that employee able to continue in his employment - Error in calculation of loss and compensation - Appeal upheld in part and decision at first instance varied - Industrial Relations Act 1979 (as amended) s49 - Minimum Conditions of Employment Act 1993, s41(1) & (2) - Budget Airconditioning -v- Mr SR Penn - FBA 2 of 2004 - Full Bench - SHARKEY P/SMITH C/HARRISON C - 30/06/04 - Personal & Household Good W/sg 2171

Industrial Law (WA) - Application to Information Commissioner - Freedom of Information Act 1992 - Application to Commission constituted by the Public Service Arbitrator - Application for access to/provision of documents - S27(1)(a) application - Initial application for access to documents dismissed - Not in the public interest - Appeal to the Full Bench - Clear discretionary decision - Both bodies have jurisdiction over the subject matter of the application - 'Forum Shopping' not in public interest - No error in exercise of discretion - Appeal dismissed - Industrial Relations Act 1979 (as amended) s6(a)(b)&(c), s7, s23, s26(1)(c), s27(1)(o), s32, s33(1), s33(5), s44(9), s44 - Freedom of Information Act 1992 s23(2), s48(3), s63, s67, s77(3), s77(4) s78 - Western Australian Police Union of Workers -v- Western Australian Police Service - FBA 6 of 2004 - Full Bench - SHARKEY P/BEECH SC/KENNER C - 23/06/04 - Government Administration 2179

Industrial Law (WA) - Application by the Registrar to cancel the registration of an organisation - Organisation "defunct" - No duly elected office bearers - No duly elected Management Committee - No financial members - Organisation unable to validly conduct its affairs - Application granted - Industrial Relations Act 1979 (as amended) s7, s27(1)(v), s58(1), s73(12)(b), Interpretation Act 1984 s56, Industrial Relations Commission Regulations 1985 s89(2) - Registrar -v- Master Hairdressers' Association of Western Australia Industrial Union of Employers - FBM 4 of 2004 - Full Bench - SHARKEY P/COLEMAN CC/GREGOR C - 05/07/04 - Unions 2190

Industrial Law (WA) - Appeal against decision of a single Commissioner - Reasonable notice - Unfair dismissal - Applications jointed - Applications heard together by consent - Position made redundant - Express notice period - Custom and practice - Ability to negotiate a suitable redundancy package - Substantial unfairness - Compensation for injury - Loss of superannuation - Discretionary decision - Contract of employment - Mitigation of loss - Adequate discussions - Alternatives to termination - Paid leave of absence - Unfairness - Notice of retrenchment - Vary decision at first instance - Appeal otherwise dismissed - Industrial Relations Act 1979 (as amended), s29(1)(b)(i) - Minimum Conditions of Employment Act 1993, s41, s41(2), s41(2)(b)(iii), s43, Part 5 - Burswood Resort (Management) Limited -v- Mr TP Cranswick - FBA 16 of 2004 - Full Bench - SHARKEY P/BEECH SC/KENNER C - 13/09/04 - Accommodatn, Cafes&Restaurants 3111

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FULL BENCH—*continued*

Industrial Law (WA) - Appeal against the decision of a single Commissioner - Claim for unfair dismissal successful - Order made for compensation and contractual benefits owed - Both parties appealed the decision at first instance - Employee claimed contractual benefits owing as balance of fixed term contract or 18 months salary in lieu of notice - Employee 'assigned' overseas - Claim 'assignment' was fixed term contract for 4 years - Employer alleged that employee only entitled to 1 month notice pursuant to original contract - Alleged that employee was dismissed on basis of remuneration due under Australian contract - Alleged employee not entitled to benefits received whilst on assignment overseas - Held that employee only entitled to benefits due under Australian remuneration package - No 4 year fixed term 'assignment' contract - No entitlement to overseas benefits - Unfair dismissal occurred in Australia - Assignment was terminated at the discretion of the host company - Employee entitled to 12 months remuneration by way of reasonable notice - Compensation awarded at first instance reduced - Appeal dismissed - Industrial Relations Act (1979) (as amended), s23A(1)(ba), 26(1)a, s27(1)(c), s29(1)(b)(i) and (ii), s49(3) - Chevrontexaco Australia Pty Ltd (formerly Chevron Australia Pty Ltd) -v- Mr AR Ross - FBA 48,50 of 2003 - Full Bench - SHARKEY P/BEECH SC/SCOTT C - 26/08/04 - Oil and Gas Extraction 3120

Industrial Law (WA) - Appeal against decision of Public Service Arbitrator - Dispute about an industrial matter between an employee and employer - Conference sought - Fixed term contracts - Referral for hearing and determination - No agreement reached between parties - Lack of proper evidence - Application not heard and determined - Natural justice - Reasonable opportunity to be heard - Opportunity of successful outcome denied - Mandatory statutory requirement for reasons for decision to be given - Failure to give reasons - No sufficient reason for deciding not to refer the matter for hearing and determination - Decision of Arbitrator statutorily invalid and null and void - Exercise of discretion miscarried - Appeal upheld and decision at first instance quashed - Industrial Relations Act 1979 (as amended), s6(af), (b) and (c), s27, s 27(1), s27(1)(a), s32, s35, s44, s44(1), s44(9), s49, s49(2a) - Public Sector Management Act 1994, s64(1)(b) - Civil Service Association of Western Australia Incorporated -v- Director General, Department of Culture and the Arts - FBA 17 of 2004 - Full Bench - SHARKEY P/BEECH SC/HARRISON C - 16/09/04 - Government Administration 3147

Industrial Law (WA) - Appeal to Full Bench against decision made by Public Service Arbitrator - Extension of time within which to institute appeal - Substantive position - Exercise of discretion - Failure to pursue matter at first instance - Reclassification of position - Absence of evidence - Natural justice - Reasonable opportunity to be heard - Request for hearing and determination - Application to Commission for a conference - Industrial matter unresolved by agreement and unresolved by arbitration - Uphold appeal and quash decision at first instance - Industrial Relations Act (1979) (as amended) s7, s26(1)(c), s27, s27(1), s44, s44(1), s44(9), s49, s49(2a) - Civil Service Association of Western Australia Incorporated -v- Commissioner of Police - FBA 9 of 2004 - Full Bench - SHARKEY P/BEECH SC/KENNER C - 01/09/04 - Government Administration 3152

Industrial Law (WA) - Appeal against decision of a single Commissioner - Appeal against enterprise order - Enterprise order not fair and reasonable in all of the circumstances - Cost impact on business - Proper method of assessment - Assessment of productivity trade-offs and flexibilities - Appellant's capacity to pay - Flow-on effect of order - Appellant's capacity to compete effectively in the market place - Good faith bargaining - Initiation of bargaining for an industrial agreement - Bargaining between parties ended - No reasonable prospect of negotiating parties reaching agreement - AWAs - EBAs - Grievance procedure defective - Comparison of industrial instruments - Collective agreement - Refusal to bargain - Statutory objects - Commission required to make order that is fair and reasonable in all of the circumstances - Appeal upheld and remitted and otherwise dismissed - Industrial Relations Act 1979 (as amended), s6, s6(a), (ab), (ac), (ad), (ae), (af), (ag), s6(c), (ca), s6(f), s6(g), s6(h), s26(1)(a), s26(1)(c), s26(1)(d)(iii), (v), (vi), (vii), s35, s42(1), s42I(1)(c), s42I(2)(a)(ii), s49 - Workplace Relations Act 1996 (Cth), Part VI, s170F, s170BE(1), s170BK, s170BQ(4), s170BR(1), s170VQ, s170VR - Sealanes (1985) Pty Ltd -v- The Shop, Distributive and Allied Employees' Association of Western Australia & Others - FBA 13 of 2004 - Full Bench - SHARKEY P/BEECH SC/WOOD C - 13/09/04 - Other Transport 3158

Industrial Law (WA) - Appeal against decision of single Commissioner - Want of jurisdiction - Application to adduce fresh evidence - Unfair dismissal - Fixed term contracts - Discretion to extend time within which to file application - Unsatisfactory performance - Termination of contract of employment - Application filed out of time - Continuing employment relationship - Contract of employment expired by effluxion of time - Appeal dismissed - Industrial Relations Act 1979 (as amended) s23A, s29, s29(1)(b)(i), s29(2), s29(3) - Public Sector Management Act 1994, s78, s78(2), s79, s79(1), s79(2), s79(3), s79(3)(c), s79(5) - School Education Act 199, s238, s239 - Mrs K Stobie -v- Director General, Department of Education and Training - FBA 15 of 2004 - Full Bench - SHARKEY P/SCOTT C/KENNER C - 21/09/04 – Education 3178

Industrial Law (WA) - Application to the Full Bench - s27(1)(l) and (m) - Power to correct errors in decisions - Functus officio - Application dismissed - Industrial Relations Act (1979) (as amended), s7, s26(1)(a) and (c), s27(1)(l) and (m), s34, s90 - Mr CR Boon -v- The Manager, Zest Health Club Pty Ltd - FBA 33 of 2003 - Full Bench - SHARKEY P/COLEMAN CC/BEECH SC - 27/08/04 - Health Services 3187

Industrial Law (WA) - Appeals against decision of Industrial Magistrate - Claims for "on-call" allowance - Claims alleged that employee was given a direction by a superior officer to attend call-outs - Provision of police vehicle and mobile phone - Employee only key holder of facility - Claims of breach of enterprise agreement - Non payment of "on-call" allowance to employee - Employer claimed no direction or authority for "on-call" - Claims allowed by Industrial Magistrate - Full Bench held a direction was given - Employee was "on-call" at the material times until directed to cease - Prejudgment interest to be award - Industrial Relations Act 1979 (as amended), s7, s83A(1), s114 - Police Act 1892, Part1, s7 - Calculation of quantum - Prejudgment interest - Industrial Relations Act 1979 (as amended), s84 _ Industrial Magistrates' Courts (General Jurisdiction) Regulations 2000, regulations 3, 54(1), (54)(1)(b) - Appeal upheld in part , but otherwise dismissed - Ms NM Hill -v- The Minister for Police and Barry Mathews, Commissioner of Police West Australian Police Service - FBA 12,14 of 2004 - Full Bench - SHARKEY P/SMITH C/HARRISON C - 24/08/04 - Government Administration 3189

Industrial Law (WA) - Application to add rule to extend coverage - Objection to the application - Application to alter rules amended - Amendment of rules - Reasonable notice given of rule change and reasons - Application authorised in accordance with rules - Reasonable steps taken to adequately inform members - Overlapping coverage - Customary industrial coverage - Application granted - Industrial Relations Act 1979 (as amended), s6, s6(e), s7, s26(1)(a) and (c), s53(1), s54(1), s55, s55(1), s55(2), s55(4)(a), (b),(c),(d), and (e), s55(5), s56, s56(1) and (2), s58(3), s62, s62(2), s62(4), Industrial Relations Commission Regulations 1985 - Health Services Union of Western Australia (Union of Workers) -v- (Not applicable) - FBM 7 of 2004 - Full Bench - SHARKEY P/COLEMAN CC/SCOTT C - 15/09/04 – Unions 3203

Industrial Law (WA) - Application to alter rules - Application to alter name rule to change the name of an organisation - Application to change eligibility for membership rule - Application to delete rule no longer required - No objection to application - Amalgamation - Clerical workers - Exemption granted - Name changed to correspond with that of its counterpart federal body - Application granted - Industrial Relations Act 1979 (as amended), s7, s55, s55(1), s55(3), s55(4)(a), (b), (c), (d) and (e), s55(5), s56, s56(1) and (2), s58(3), s59(1), and (2), s59(3), s62(2), s72, Industrial Relations Commission Regulations 1985 - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- (Not applicable) - FBM 3 of 2004 - Full Bench - SHARKEY P/COLEMAN CC/GREGOR C - 16/09/04 – Unions 3207

Industrial Law (WA) - Application by Registrar to cancel the registration of an organisation - Organisation "defunct" - No notification of a date of a current address - No current members - No members lawfully listed on the Registers of Members - No subscriptions received - Organisation requests its cancellation - Application granted - Industrial Relations Act 1979 (as amended), s7, s65, s73(12)(a), (b), (c), s73(13) - Interpretation Act 1984, s56 - The Registrar, Western Australian Industrial Relations Commission -v- Amalgamated Milk Vendors Union of Employers - FBM 6,8 of 2004 - Full Bench - SHARKEY P/KENNER C/WOOD C - 10/09/04 – Unions 3213

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Industrial Law (WA) - Application by Registrar to cancel the registration of an organisation - Organisation "defunct" - Request for cancellation of organisation - No financial members - No financial members of Committee of Management - No election in organisation - No Management Committee has met - Granted - Industrial Relations Act 1979 (as amended), s7, s65, s73(12)(a), (b), (c), s73(13) - Interpretation Act 1984, s56, Industrial Relations Commission Regulations 1985 (as amended), regulation 103 - The Registrar, Western Australian Industrial Relations Commission -v- The Metropolitan (Perth) Passenger Transport Trust Officers' Union of Workers, Perth - FBM 6,8 of 2004 - Full Bench - SHARKEY P/KENNER C/WOOD C - 10/09/04 – Unions ... 3216

Industrial Law (WA) - Appeal against the decision of a single commissioner - Matter not settled at conference and referred for hearing and determination - Unfair dismissal - Discretionary decision - Breach of Rules - Inattention and dangerous driving of locomotive contract - Contract of employment - Consistency in treatment of employees - Dismissed - Industrial Relations Act 1979 (as amended), s44, s49, s49(5)(c), s49(6a) - The Construction, Forestry, Mining and Energy Union of Workers -v- BHP Billiton Iron Ore Pty Ltd - FBA 7 of 2004 - Full Bench - SHARKEY P/COLEMAN CC/BEECH SC - 15/10/04 - Metal Ore Mining ... 3456

Industrial Law (WA) - Appeal against decision of a single Commissioner - Contractual benefits - Driving a vehicle in the course of employment - Damage arising from an accident - Alleged miscarriage of the exercise of discretion at first instance - Adduce new or fresh evidence - Industrial express or implied term of a contract - Implied indemnity term - Appeal dismissed - Industrial Relations Act 1979 (as amended), s7, s29(1)(b)(ii) - Road Traffic Act 1974, s62 - Bayswater Powder Coaters Pty Ltd -v- The Shop, Distributive and Allied Employees' Association of Western Australia - FBA 22 of 2004 - Full Bench - SHARKEY P/COLEMAN CC/SCOTT C - 21/10/04 ... 3470

Industrial Law (WA) - Appeal against decision of Industrial Magistrate - Prejudgement interest - Unpaid leave wrongly deducted - Enforcement MCE Act 1993 - No penalty imposed at first instance - Payment of annual leave - Contract of employment - Caution imposed - Appeal upheld and decision at first instance varied - Industrial Relations Act 1979 (as amended), s32, s66, s83, s83B(5), s84 - Industrial Magistrates' Court (General Jurisdiction) Regulations 2000, Minimum Conditions of Employment Act 1993, s7(c), s23(1) - Ms C Penn -v- Patricia Edward of Verschuer Edward - FBA 23 of 2004 - Full Bench - SHARKEY P/COLEMAN CC/SMITH C - 01/11/04 ... 3474

Industrial Law (WA) - Appeal against decision of a single Commissioner - Matter not settled at conference and referred for hearing and determination - Unfair dismissal - Breach of rules - Failure to comply with lawful and reasonable directions of employer - Inconsistency of treatment of employees in disciplinary matters - Unfairness of dismissal - Appeal dismissed - Mines Safety and Inspection Regulations 1995 - Mines Safety and Inspection Act 1994 - Industrial Relations Act 1979 (as amended) s44 - Appeal dismissed - BHP Billiton Iron Ore Pty Ltd -v- The Construction, Forestry, Mining and Energy Union of Workers - FBA 8 of 2004 - Full Bench - SHARKEY P/COLEMAN CC/BEECH SC - 15/11/04 - Metal Ore Mining ... 3769

Industrial Law (WA) - Unfair dismissal claim - Appeal to Industrial Appeal Court - Remitted back to Full Bench - Unfair dismissal referred within the time prescribed - Jurisdiction - Appeal upheld and decision at first instance suspended and remitted - Industrial Relations Act 1979 (as amended), s29(1)(b)(i), s29(2), s29(3), s90 - Appeal upheld - Ms I Bilos -v- Aurion Gold Menzies Highway, Kalgoorlie - FBA 25 of 2003 - Full Bench - SHARKEY P/COLEMAN CC/HARRISON C - 29/11/04 - Other Mining ... 3785

Industrial Law (WA) - Appeal against the decision of a single Commissioner - Harsh, oppressive or unfair dismissal - Matter not settled at conference and referred for hearing and determination - Breach of rules - Inconsistency of treatment of employees in disciplinary matters - Appeal dismissed - Industrial Relations Act 1979 (as amended), s44, s49 - Mines Safety and Inspection Regulations 1995 - Appeal dismissed - The Construction, Forestry, Mining and Energy Union of Workers -v- BHP Billiton Iron Ore Pty Ltd - FBA 20 of 2004 - Full Bench - SHARKEY P/COLEMAN CC/KENNER C - 26/11/04 - Metal Ore Mining ... 3787

Industrial Law (WA) - Appeals against decision of a single Commissioner - Contractual benefits - Harsh, oppressive and unfair dismissal - Redundancy payment - Part-time employees - Casual employees - Casual loading - Employment relationship - Relationship ongoing - Jurisdiction - Contract of employment - Appeal upheld - Order at first instance varied - Industrial Relations Act 1979 (as amended), s29(1)(b)(i), s29(1)(b)(ii), s49, s49(6)(a), s83, s114 - Minimum Conditions of Employment Act 1993, s5, s23, s30 - Workplace Relations Act 1996 (Cth), s170NE - Appeal upheld - Ms JA Gibson & Other -v- Chubb Security Services Limited - FBA 27,28 of 2004 - Full Bench - SHARKEY P/COLEMAN CC/BEECH SC - 23/11/04 - Property Services ... 3798

Industrial Law (WA) - Appeal against the decision of a single Commissioner - Harsh, oppressive and unfair dismissal - Compensation for loss and injury - Reinstatement - Voluntary redundancies - Compulsory redundancies - Discretionary decision - Credibility of witnesses - Skills matrix - Opportunity to be consulted before dismissed - Genuine redundancy - Opportunity to work out notice - Retrenchment - Appeal upheld and order at first instance varied - Industrial Relations Act 1979 (as amended) s23A(6), s29(1)(b)(i), s49, s49(5)(c), s49(6a) - Appeal upheld and order at first instance varied. - Mr J Staltari -v- Electrolux Home Products Pty Ltd - FBA 19 of 2004 - Full Bench - SHARKEY P/COLEMAN CC/SCOTT C - 19/11/04 - Personal & Household Good W/sg ... 3809

Industrial Law (WA) - Appeal against the decision of a single Commissioner - Unfair dismissal - Summary dismissal - Reinstatement not sought - Discretionary decision - Probation - Loss - Harsh, oppressive or unfair dismissal - Compensation for loss - Appeal upheld - Industrial Relations Act 1979 (as amended), s29(1)(b)(i), s 49 - Appeal upheld and decision at first instance varied - Mr B Taylor -v- Frank Trevor Johnson T/As Crown Mushrooms - FBA 24 of 2004 - Full Bench - SHARKEY P/GREGOR C/SMITH C - 02/12/04 – Agriculture ... 3819

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Award - Award variations claimed State Wage Principles - Principle 10 - Safety net award - Enterprise award - Relevance of AWA employment conditions - Award varied - Industrial Relations Act 1979 (WA) s 26(1), s 40 - Application to vacate and re-open prior to issuing order - Principles of re-opening - Industrial Relations Act 1979 (WA) s 27 (1)(e)&(m), s 40 - Application to re-open dismissed - The Construction, Forestry, Mining & Energy Union of Workers & Others -v- BHP Billiton Iron Ore - APPL 157,1246 of 2003 - Commission in Court Session - COLEMAN CC/BEECH SC/WOOD C - 23/08/04 - Metal Ore Mining ... 3219

PRESIDENT

Industrial Law (WA) - Stay of operation of decision - General principles relating to stays - Order at first instance that the respondent pay the applicant a sum of money - Reinstatement of applicant impracticable - Requirements for the order of a stay not met - Application dismissed - Industrial relations Act 1979 (as amended), s27(1)(d), s29, s29(1)(b)(i), s29(1)(b)(ii), s49(11) - Canon Foods -v- Ms H McColl - PRES 5 of 2004 - President - SHARKEY P - 22/10/04 - Food Retailing ... 3479

INDUSTRIAL MAGISTRATE

Claim in relation to Industrial Agent - Alleged breach of the Industrial Relations (Industrial Agents) Regulation 1997 - Reasons for decision issued - Mrs EA Olivares -v- Mr BF Stokes - M 3 and M 4 of 2004 - Industrial Magistrate - Burton IM - 09/06/04 ... 2269

Minimum Conditions of Employment Act 1993 - Failure to pay annual leave entitlement - Reasons for Decision issued. - Ms C Penn -v- Patricia Edward of Verschuer Edward - M 63 of 2004 - Industrial Magistrate - Burton IM - 18/06/04 ... 2270

Claim re breach of the Transport Workers (Passenger Vehicles) Award No. R47 of 1978 - Reason for Decision Issued - Greg Logan-Scales, Department of Consumer & Employment Protection -v- Eco Tours Pty Ltd t/as Western Travel Bug - M 199 of 2003 - Industrial Magistrate - Burton IM - 09/07/04 - Other Transport ... 2584

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Claim re breach of award - Reasons for Decision Issued - AUST MUNICIPAL, CLERICAL & SER -v- City of Wanneroo - M 198 of 2003 - Industrial Magistrate - Burton IM - 25/08/04 2882

Claim re breach of Social Trainers General Agreement 2002 - Reasons for Decision issued - Civil Service Association of Western Australia Incorporated -v- Chief Executive Officer Disability Services Commission - M 87 of 2004 - Industrial Magistrate - Tarr IM - 19/08/04 - Government Administration 2887

Claim re breach of award - Reasons for Decision Issued - Ms J Potter -v- Clark's Bread & Patisserie - M 199 of 2003;M 104 of 2004 - Industrial Magistrate - Burton IM - 26/08/04 2888

Claims re alleged breaches of Local Government Officers (Western Australia) Award 1988 - Reasons for Decisions Issued - AUST MUNICIPAL, CLERICAL & SER -v- Shire of Mundaring -M 1,2 of 2004 - Tarr IM - 08/09/04 - Government Administration 3311

Claims re breaches of Western Australian Police Service Enterprise Agreement for Police No. PSAAG 8/2001 - Reasons for Decision issued - Dismissed - Mr MD Bailey -v- Barry Matthews, Commissioner of Police, WA Police Service - M 117 of 2003;M 129 of 2004 - Industrial Magistrate - Tarr IM - 14/09/04 - Government Administration 3316

Claims re alleged breaches of agreements - Reasons for Decision Issued - Mr IW Cornthwaite -v- Minister for Police - M 6,7,8,9 of 2004 - Industrial Magistrate - Burton IM - 10/09/04 - Government Administration 3319

Claim re alleged breach of Section 102(1)(a) of the I.R. Act 1979 - Reasons for Decision issued - Rebekah Lee Lothian, Department of Consumer and Employment Protection -v- Mr AR MacKay - M 196 of 2004 - Industrial Magistrate - Cicchini IM - 01/09/04 - Personal & Household Good Rtlg 3325

Minimum Conditions of Employment Act 1993 - Alleged failure to pay annual leave entitlements - Reasons for Decision issued - Dr E Sinclair -v- Startune Holdings Pty Ltd - M 24 of 2004 - Industrial Magistrate - Cicchini IM - 15/09/04 - Health Services 3590

Claim re breach of Network Design and Construction Limited 2000-2002 Enterprise Agreement - Adjournment by Claimant dismissed - Reasons for Decision Issued - Mr JP Harp -v- Telstra Corporation Limited (Infrastructure Services Network Design & Construction Group) - M 204 of 2004 - Industrial Magistrate - Cicchini IM - 03/11/04 3841

Claim re breach of Western Australia Police Service Enterprise Agreement for Police Act Employees No. AG 274 of 1996 - Reasons for Decision issued - Mr CL Hoath -v- Minister for Police - M 59,60,61 of 2004 - Industrial Magistrate - Tarr IM - 27/10/04 - Government Administration 3842

PUBLIC SERVICE ARBITRATOR

Employee required to take annual leave pending investigation - Investigation not part of formal disciplinary process - Annual leave re-credited by employer - Whether employee now overpaid - Application for an order that the period be leave with pay - Industrial Relations Act 1979 (WA) s44(9), s80E - Civil Service Association of Western Australia Incorporated -v- Director General, Department of Agriculture - PSACR 54 of 2003 - BEECH SC - 11/06/04 - Government Administration 2251

Agreement - Registration of Agreement - Parties agree to Public Service Arbitrator making orders as to term of Agreement - Relevant principles to be applied - Application of terms of Act - Level of salary increase -Increase in productivity - Management of work load - Statement of Principles - Relevance of comparative wage movements - The state of the national economy and the Western Australian economy - Relevant economic indicators to be considered - National and State Wage Case Decisions - Whether flat rate component be included - Gender equity - Industrial Relations Act 1979 (WA) s6, s26, s42G - Labour Relations Reform Act 2002, s133 - Minimum Conditions of Employment Act 1993 (WA) - Cashing out of annual leave - Purpose of annual leave - Minimum Conditions of Employment Act 1993 (WA) s8 - Commuted allowance - unique role and responsibilities of unions in negotiations - Level of salary increase determined - Cashing out of annual leave dismissed - Union participation in negotiations required - Civil Service Association of Western Australia Incorporated & Others -v- (Not applicable) - P 6 of 2004;PSAAG 2 of 2004 - Public Service Arbitrator - SCOTT C - 28/07/04 - Government Administration 2535

Public Service Arbitrator - Matter to be treated as Reclassification Appeal - Relevant principles to be applied - Work Value Principles - No significant net addition to the work - Matter dismissed - Industrial Relations Act 1979 (WA) s44 - Civil Service Association of Western Australia Incorporated -v- Governing Council Of The Challenger College Of Tafe - PSACR 2 of 2003 - SCOTT C - 06/08/04 – Education 2582

Industrial law - Application to invoke the jurisdiction of the Public Service Arbitrator - Respondents submit that Arbitrator should exercise its discretion to dismiss or refrain from further hearing the application - Arbitrator not persuaded that subject matter of application is beyond the jurisdiction of the Arbitrator - Discretion exercised to refrain from further hearing or determining the application - Order issued - Industrial Relations Act 1979 (WA) s44, s80C, s80E, s27(1)(a), meaning of "government officer"; Public Sector Management Act 1994 (WA) s97(1)(a); Workplace Relations Act 1996 (Cth) s152(1), s170LZ(1), 89A - The Australian Nursing Federation, Industrial Union of Workers Perth -v- The Minister for Health & Others - PSAC 24 of 2004 - Public Service Arbitrator - KENNER C - 17/08/04 - Health Services 2867

Public Service Arbitrator - Redeployment of employee - Appropriate level of registration for redeployment - Fairness and proper application of Regulations considered - Meaning of "pay" - Application granted - Industrial Relations Act 1979 (WA) s 29 - Public Sector Management Act 1994 (WA) s 94(6), s 94(6), s95(3), s95(4) - Public Sector Management (Redeployment and Redundancy) Regulations 1994 (WA) r3(1), r3(2) - M Banaszczyk -v- Minister for Public Sector Management & Other - APPL 378 of 2004 - Public Service Arbitrator - SCOTT C - 31/08/04 - Government Administration 2872

Public Service Arbitrator - Whether employer treated harshly, oppressively or unfairly towards employee - Employer directed employee to take annual leave and long service leave pending disciplinary process - Disciplinary process postponed upon request of employee pending outcome of criminal proceedings - Employee returned to work in alternative position - Employee decided to change pleas to guilty without informing employer - Employee resigned 3 days before pleading guilty - Employer acted fairly in the circumstances - Industrial Relations Act 1979 (WA) s 44(9), s 80E - Public Sector Management Act 1994 (WA) - Civil Service Association of Western Australia Incorporated -v- Director General Department of Housing and Works - PSACR 45 of 2003 - Public Service Arbitrator - SCOTT C - 07/09/04 - Government Administration 2875

Employee paid greater sick leave than his entitlement - Employer seeks to recover the overpayment - Whether industrial matter - Whether discretion should be exercised in favour of employee - Government Officer - Application granted - Industrial Relations Act 1979 s7(1), s44, s44(9), s80E; Property Law Act 1969 s125 - Civil Service Association of Western Australia Incorporated - v- Director General, Department of Justice - PSACR 21 of 2004 - Public Service Arbitrator - BEECH SC - 13/08/04 - Government Administration 2877

Public Service Arbitrator - Whether employer acted unfairly, inequitably or in an oppressive manner towards employee - Employee on number of absences from work - Whether permission ought to have been given to convert sick leave without pay to other forms of paid leave - Leave ought be converted for those days that the employee met the criteria of the employer's policy for conversion of sick leave - Claim regarding converting sick leave to other form of leave granted in part - Civil Service Association of Western Australia Incorporated -v- Director General, Department of Indigenous Affairs - PSACR 11 of 2004 - Public Service Arbitrator - SCOTT C - 18/10/04 - Government Administration 3577

Reclassification Appeal - Whether in public interest for appeal to proceed - Appellant agreed not to pursue appeal whilst review of structure undertaken - Position subsequently abolished - Relevant principles for reclassification considered - In the public interest that the appeal proceed - Application to dismiss the appeal in the public interest dismissed - Industrial Relations Act 1979 (WA) s27(1)(a)(ii), s80I - Dismissed - Mr S Wall -v- Department of Fisheries - PSA 71 of 2003 - Public Service Arbitrator - SCOTT C - 06/10/04 - Government Administration 3895

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Termination of employment - Harsh, oppressive and unfair dismissal - Acceptance of referral out of time - Application referred outside of 28 day time limit - Relevant principles to be applied - Commission satisfied applying principles that discretion should be exercised - Acceptance referral out of time granted - Industrial Relations Act 1979 (WA) s29(1)(b)(i), (2)&(3) - BW Doughty -v- Roadstone Quarries Pty Ltd - APPL 493 of 2004 - SMITH C - 27/08/04 - Accommodatn, Cafes&Restaurants 2893

Industrial law - Termination of employment - Harsh, oppressive and unfair dismissal - Whether resignation or dismissal - Intent of parties considered - No dismissal at the initiative of the employer - Commission lacks jurisdiction - Application dismissed for want of jurisdiction - Order issued - Industrial Relations Act 1979 (WA) s 23A & s 29(1)(b)(i) - Mr CJ Egan -v- City Wide Trading Pty Ltd - APPL 1730 of 2003 - KENNER C - 23/08/04 - Motor Vehicle Rtlg & Services 2895

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Contractual entitlements claim - Entitlements under contract of employment - Matter heard ex parte - Minimum Adult Wage - Entitlements granted in part - Mrs PD Holt -v- Mr R Flavell - APPL 223 of 2004 - WOOD C - 03/08/04 - Other Services 2911

Termination of employment - Matter adjourned on Commission's own motion - Intention of applicant to proceed - Matter re-listed - Claim of unfair dismissal - Applicant no longer in jurisdiction - Delay - Whether in public interest to continue - Non appearance by Applicant - Application discontinued - Industrial Relations Act 1979 (WA) s29(1)(b)(i); s27(1) - Miss MJ Homeyard -v- Dr N K Chew Karratha Dental Centre - APPL 843 of 2003 - BEECH SC - 19/08/04 - Health Services 2913

Application for an entitlement under a contract of employment - Applicant left the country - No appearance in person in writing - Industrial Relations Act 1979 s27(1), 29(1)(b)(ii) - Application struck out for want of prosecution - Mr AH Illston -v- C & G Mackenzie - APPL 522 of 2004 - BEECH SC - 13/08/04 – Agriculture 2915

Industrial law - Termination of employment - Harsh, oppressive and unfair dismissal - Allegation of serious misconduct - Employer conducted investigation prior to dismissal - Principles applied - Applicant not harshly, oppressively and unfairly dismissed - Application dismissed - Order issued - Industrial Relations Act 1979 (WA) s26(1)(c) - Mr B Jiang -v- The Nuance Group (Australia) Pty Ltd trading as Downtown Duty Free - APPL 1725 of 2003 - KENNER C - 26/08/04 - Personal & Household Good W/sg 2916

Termination of employment - Harsh, oppressive and unfair dismissal - Outstanding contractual entitlements - Redundancy - Minimum Conditions of Employment Act 1993 s 41(2) - Whether another position should have been offered - Industrial Relations Act 1979 (WA) s 29(1)(b)(i) & (ii) - Genuine redundancy - No discussion of alternatives - Breach of Minimum Conditions of Employment Act 1993 s 41(2) - Whether fair go all round afforded - Express term of notice payment in contract - Application dismissed - Mr J Knight -v- Spotless Group Limited - APPL 1566 of 2003 - WOOD C - 01/09/04 - Other Services 2922

Termination of employment - Harsh, oppressive and unfair dismissal - Issues in relation to Applicant's performance - Procedural fairness considered - Principles applied - Applicant not harshly, oppressively and unfairly dismissed - Application dismissed - Industrial Relations Act 1979 (WA) s 29(1)(b)(i) - Mr D Lewis -v- RAC - APPL 1449 of 2003 - SCOTT C - 26/08/04 - Motor Vehicle Rtlg & Services 2927

Contractual benefits - No employment contract - Principles discussed - Application dismissed - Industrial Relations Act, 1979 s.29(1)(b)(ii) - Mr WS Magness -v- Philip Meagher of SAS Financial Services - APPL 900 of 2003 - GREGOR C - 27/08/04 - Other Services 2935

Termination of employment - Harsh, oppressive and unfair dismissal - Outstanding contractual entitlement - Failure to comply with management instructions - Written warnings - Fair go all round afforded - Benefit not denied - Application dismissed - Industrial Relations Act 1979 (WA) s 29(1)(b)(i)&(ii) - Ms PR McPherson -v- Panto Pty Ltd - APPL 1405 of 2003 - WOOD C - 13/08/04 - Other Services 2936

Contractual benefits claim - Entitlements under contract of employment - Implied terms - Tests to be applied - Termination of employment - Claim of unfair dismissal by reason of the process followed - Identity of employer - Application granted in part - Industrial Relations Act 1979 s23A; s 29(1)(b)(ii); Minimum Conditions of Employment Act 1993 (WA) s 41 - - Mrs DA Miller-Smith -v- Richardson Pacific Ltd - APPL 979,980 of 2003 - BEECH SC - 25/08/03 - Metal Product Manufacturing 2942

Termination of employment - Harsh, oppressive and unfair dismissal - Whether Applicant a casual employee - Principles applied - Lack of procedural fairness - Applicant harshly, oppressively and unfairly dismissed - Application upheld - Compensation ordered - Industrial Relations Act 1979 (WA) s 29(1)(b)(i) - Mr I Mitchell -v- Civil Infrastructure Pty Ltd - APPL 50 of 2004 - HARRISON C - 11/08/04 - Construction Trade Services 2948

Termination of employment - Harsh, oppressive and unfair dismissal - Acceptance of referral out of time - Application referred outside of 28 day time limit - Relevant principles to be applied - Whether employee or sub -contractor - Commission satisfied applying principles that discretion should not be exercised - Acceptance of referral out of time not granted - Industrial Relations Act 1979 (WA), s29(1)(b)(i),(2)&(3) - Mr B Pierce -v- KG Transport Pty Ltd - APPL 832 of 2004 - BEECH SC - 26/08/04 - Road Transport 2952

Termination of employment - Harsh, oppressive and unfair dismissal - Outstanding contractual entitlements - Minimum Condition of Employment Act 1993 - Industrial Relations Act 1979 (WA) s 29(1)(b)(i) & (ii) - Summary termination - Credibility of witnesses - Whether conduct repudiates contract - Fair go all round afforded - Contractual entitlements claim not proven - Application dismissed - Mr RG Salter -v- Buick Holdings Pty Ltd t/as DVG - APPL 1019 of 2003 - WOOD C - 03/09/03 - Other Services 2953

Industrial law - Termination of employment - Harsh, oppressive and unfair dismissal - Acceptance of referral out of time - Application referred outside of 28 day time limit - Relevant principles to be applied - Commission satisfied applying principles that discretion should not be exercised - Acceptance of referral out of time not granted - Application dismissed - Industrial Relations Act 1979 (WA) s 29(1)(b)(i), s29(2), s 29(3) - Mr PW Shea -v- Marc Environmental Solutions Pty Ltd - APPL 161 of 2004 - KENNER C - 10/03/04 - Other Services 2964

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Termination of employment - Harsh, oppressive and unfair dismissal - Whether applicant terminated due to redundancy - Termination found to be due to redundancy - Whether compliance with obligations under implied term of contract as to redundancy and significant effects - Principles applied - Lack of procedural fairness - Applicant unlawfully terminated - Applicant harshly, oppressively and unfairly dismissed - Upheld and Order Issued - Industrial Relations Act1979 (WA) ss 26 and 29(1)(b)(i), Minimum Conditions of Employment Act 1993 (WA) ss 41 and 43 - Mr I West -v- Farm Fresh Wholesalers - APPL 1472 of 2003 - HARRISON C - 07/07/04 - Food Retailing 2970

Industrial law - Termination of employment - Harsh, oppressive and unfair dismissal - Whether dismissal harsh, oppressive and unfair - Conduct of parties considered - Assault by Applicant on a manager of the Respondent - Principles applied - Application dismissed - Order issued - Industrial Relations Act 1979 (WA) s 29(1)(b)(i), s 26 (1)(c), s 26(1)(a); Occupational Safety & Health Act 1984 (WA) s 20 - Mr PJ Whelan -v- City of Joondalup - APPL 28 of 2004 - KENNER C - 03/09/04 - Government Administration 2975

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Industrial law - Appropriate classification of an employee under the Motor Vehicle (Service Stations, Sales Establishments, Rust Prevention and Paint Protection) Industry Award - Duties performed considered - Relevant principles to be applied - Industrial Relations Act 1979 (WA) s.44(9) - Declaration issued - The Australian Workers' Union, West Australian Branch, Industrial Union of Workers -v- Melville Motors - CR 49 of 2004 - KENNER C - 09/08/04 - Motor Vehicle Rtlg & Services 2981

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Termination of employment - Harsh, oppressive and unfair dismissal - Conference Referred - Alleged tampering with safety device - Safety and disciplinary inquiry - Whether lack of procedural fairness - Whether penalty too harsh - Fair go all round afforded - Dismissed - Industrial Relations Act 1979 (WA) s29(1)(b)(i) - Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch -v- BHP Billiton Iron Ore - CR 54 of 2004 - WOOD C - 11/08/04 - Metal Ore Mining 2999

Enterprise Order - Application to dismiss - Employees covered by Australian Workplace Agreements - Principles discussed - Granted - Industrial Relations Act, 1979, s27, s.42I, s42J, s42K - Workplace Relations Act 1996, s4, s170VA, s170VQ - The Construction, Forestry, Mining and Energy Union of Workers -v- Hanssen Pty Ltd Project Management - APPL 439 of 2004 - GREGOR C - 31/08/04 - General Construction..... 3039

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Termination of employment - Harsh, oppressive and unfair dismissal - Claim for compensation for injury - Dismissal harsh and oppressive - Compensation for injury ordered - Outstanding contractual benefits - Notice period required - Whether dismissal occurred during period of probationary employment - Contractual benefits claims upheld in part - Industrial Relations Act 1979 (WA) s 29 (1)(b)(i) and (ii) - Mr RC Bahemia -v- Termipest - APPL 1828 of 2003 - SCOTT C - 15/09/04 - Property Services..... 3329

Industrial law - Termination of employment - Harsh, oppressive and unfair dismissal - Applicant alleges that he was unfairly targeted for redundancy - Respondent suffering significant financial stress - Principles applied - Applicant's redundancy bona fide - Applicant wrongfully dismissed due to employer's failure to discuss certain matters in accordance with the Minimum Conditions of Employment Act 1993 (WA) - Applicant failed to establish loss resulting from manner of retrenchment - Applicant not harshly, oppressively and unfairly dismissed - Application dismissed - Industrial Relations Act 1979 (WA) s29(1)(b)(i); Minimum Conditions of Employment Act 1993 (WA) s5, s41, s40(1), s40(2), meaning of "significant effect" - Mr FL Cass -v- South Metropolitan Personnel Inc. - APPL 253 of 2004 - KENNER C - 30/09/04 - Other Services 3332

Industrial Law - Termination of employment - Contractual benefits claim - Contractual benefit in the form of a bonus payment - Applicant has not established claim - Application dismissed - Industrial Relations Act 1979 (WA) s 29(1)(b)(ii), Workers Compensation and Rehabilitation Act 1981 (WA) - Mr SC Catarino -v- Woolworths Ltd - APPL 118 of 2004 - KENNER C - 12/10/04 - Personal & Household Good Rtlg..... 3335

Termination of employment - Contractual benefits claim - Entitlement to annual leave under contract of employment - Declaration and Order Issued - Industrial Relations Act 1979 (WA), s 29(1)(b)(ii) - Mr PM Czekalski -v- Mr R Walsh - APPL 496 of 2004 - SMITH C - 16/09/04 - Food Retailing..... 3341

Contractual benefits - So called application fee - No appearance by respondent - Proceeding continued in absence of respondent - Benefit owing - Industrial Relations Act, 1979, s.27(1)(d), s.29(1)(b)(ii), Employment Agents Act s.24 - Mr B Griffiths -v- Express Labour Hire - APPL 735 of 2004 - GREGOR C - 27/09/04 - Other Services 3344

Harsh, oppressive and unfair dismissal - Whether dismissal or resignation - No dismissal at the initiative of the employer - Commission lacks jurisdiction - Application dismissed - Industrial Relations Act 1979 ss 23 & 29(1)(b)(i) - Ms TM Heffernan -v- Tyremarketers - APPL 489 of 2004 - SCOTT C - 24/09/04 - Services to Transport 3345

Termination of employment - Unfair dismissal - Principles applied - Dismissed - Industrial Relations Act, 1979 s.23A, s.29 - Ms SL McAlwey -v- Cherry Internet Services Pty Ltd - APPL 326 of 2004 - GREGOR C - 09/09/04 - Communication Services 3347

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Termination of employment - Harsh, oppressive and unfair dismissals - Whether Applicants terminated due to redundancy - Termination found to be due to redundancy - Applicants unlawfully terminated - Failure to meet all requirements of s 41 of the Minimum Conditions of Employment Act 1993 - Applicants unfairly dismissed - Reinstatement/Redeployment impracticable - Determination of quantum of compensation - No loss demonstrated - No compensation for injury ordered - Industrial Relations Act 1979 (WA) ss 26 and 29(1)(b)(i) Minimum Conditions of Employment Act 1993 ss 41 and 43 - Contractual benefits claim - Entitlements claimed under contracts of employment - Principles - Application - Applications upheld in part - Industrial Relations Act 1979 WA s29(1)(b)(ii) - Mr SS Rana -v- Rachid Fares Enterprises of Australia Pty Ltd - APPL 1612,1613 of 2003 - HARRISON C - 14/09/04 - Services to Transport..... 3359

Contractual benefits claim - Entitlements under contract of employment - Principals applied - Claim not made out - Application dismissed - Industrial Relations act 1979 (WA) s29(1)(b)(ii) - Mrs TM Revell -v- Dewsons Cooloongup - APPL 1760 of 2003 - HARRISON C - 07/10/04 - Personal & Household Good Rtlg 3375

Termination of employment - Harsh oppressive and unfair dismissal - Whether Applicant's salary exceeds the prescribed amount - Application adjourned to allow further evidence - whether roster allowance was part of salary prescribed in contract of employment - Industrial Relations Act 1979 (WA) s29AA(3) and (5); Industrial Relations Regulations (General) Amendment Regulations 2002 (WA) r5 - Held that roster allowance not part of salary for the purposes of 29AA(3); Declaration issued that salary does not exceed prescribed amount under s.29AA(5) - Mr SM Shields -v- WMC Resources Ltd - APPL 1832 of 2003 - BEECH SC - 03/03/04 - Other Mining..... 3378

Industrial law - Termination of employment - Harsh, oppressive and unfair dismissal and denied contractual benefits - Whether constructive dismissal or resignation - Intent of parties considered - No dismissal at the initiative of the employer - Commission lacks jurisdiction - Alleged contractual benefits not due under contract of employment - Application dismissed - Industrial Relations Act 1979 (WA) s29(1)(b)(i), s29(1)(b)(ii) - Mr BD Taylor -v - I Kelly - APPL 16 of 2004 - KENNER C - 22/09/04 - Property Services 3384

Industrial Law (WA) - Termination of employment - Harsh, oppressive and unfair dismissal - Principles applied - Applicant not harshly, oppressively and unfairly dismissed - Application dismissed - Industrial Relations Act 1979 (WA) s 29(1)(b)(i) - Mr J Thom -v- Darcy and Jodie Scholtz t/a Brumbys Duncraig - APPL 2335 of 2001 - COLEMAN CC - 16/09/04 - Food, Beverage and Tobacco Mfg 3387

Industrial law - Termination of employment - Alleged unfair dismissal - Application for interim reinstatement order - Principles applied - Interim order refused - Matter referred for arbitration - Industrial Relations Act 1979 (WA) s 44(6)(bb)(ii), s 26(1)(a), s 66, s 44(6)(ba), s 44(6)(bb), s 44(9); Federal Court of Australia Act 1976 (Cth) s 23 - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- National Foods Milk Ltd - C 90 of 2004 - SMITH C - 27/04/04 - Food, Beverage and Tobacco Mfg..... 3395

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Industrial Relations Act 1979 (WA) s.44 - Refusal to employ - Joint employment - Implied contract - Labour hire - Whether intervention of Commission required - Application dismissed - The Construction, Forestry, Mining and Energy Union of Workers -v- BHP Billiton Iron Ore Pty Ltd & Other - CR 128 of 2004 - WOOD C - 13/09/04 - Metal Ore Mining 3400

Termination of employment - Harsh, oppressive and unfair dismissal - Principles applied - Summary dismissal - Procedural fairness - Employee not harshly, oppressively or unfairly dismissed - Employee reported to work under the influence of alcohol - Turns on own facts - Application dismissed - Industrial Relations Act 1979 (WA) s 44 - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- National Foods Milk Ltd - CR 90 of 2004 - SMITH C - 17/09/04 - Food, Beverage and Tobacco Mfg 3412

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Interpretation of award - Declare true interpretation of Clause 18 - Annual leave - the Printing (Newspaper) Award 1979 - Calculation of rate of pay - Declaration made - Industrial Relations Act 1979 (WA) s46; Minimum Conditions of Employment Act 1993 (WA) ss5, 18 and 23 - AUTO, FOOD, METAL, ENGIN UNION -v- West Australian Newspapers Pty Ltd & Other - APPL 745 of 2004 - SMITH C - 12/10/04 - Printg, Publishg & Rcdd Media 3571

Board of Reference - Whether service continuous within the meaning of the Long Service Leave General Order - Declaration made - Mr SS Larosa -v- MCPBD Pty Ltd trading as Modern Joinery - BOR 2 of 2004 - SMITH C - 28/10/04 3598

Termination of employment - Harsh, oppressive and unfair dismissal - Show cause hearing - No appearance by applicant - Want of prosecution - Dismissed - Mr MC Bowlay -v- Alberts Car Stereo - APPL 434 of 2002 - WOOD C - 27/10/04 - Motor Vehicle Rtlg & Services 3601

Termination of employment - Harsh, oppressive and unfair dismissal - Outstanding contractual entitlements - Industrial Relations Act 1979 (WA) s29(1)(b)(i) & (ii) - Summary termination - credibility of witnesses - Procedural fairness - Jurisdiction of the Commission - s29AA prescribed amount - Definition of salary for purposes of s29AA - Authority to make contract - Whether contract valid - Whether fair go all round afforded - Contractual entitlements claim awarded - Ms DE Downs-Stoney -v- Vanessa Davies, CEO Derbarl Ye - APPL 12 of 2004 - WOOD C - 10/09/04 - Health Services 3602

Termination of employment - Harsh, oppressive and unfair dismissal - Lack of procedural and substantive fairness - Applicant unfairly terminated - Compensation for loss and injury ordered - Industrial Relations Act 1979 (WA) s29(1)(b)(i) and (ii) - Ms JA Gardner -v- Aesthetics Dental Group Pty Ltd - APPL 185 of 2004 - SMITH C - 05/10/04 - Health Services 3628

Outstanding contractual entitlements - Whether the on-call allowance in the Workplace Agreement retrospectively incorporated into the contract of employment - Findings made as to the terms of the contract of employment - Application dismissed - Industrial Relations Act 1979 (WA) s29(1)(b)(ii) - Dr J Gill -v- Commissioner of Health - APPL 1325 of 2003 - SCOTT C - 19/10/04 - Health Services 3634

Termination of employment - Harsh, oppressive and unfair dismissal - Whether applicant terminated due to redundancy - Termination found to be due to redundancy - Applicant unlawfully terminated - Failure to meet all requirements of s41 of the Minimum Conditions of Employment Act 1993 and requirement to afford procedural fairness - Applicant unfairly dismissed - Reinstatement/Re-employment impracticable - Determination of quantum of compensation - No loss demonstrated - Compensation for injury ordered - Industrial Relations Act 1979 (WA) ss26 and 29(1)(b)(i) - Minimum Conditions of Employment Act 1993 (WA) ss41 and 43 - Ms BA Golding -v- P.I.H.A. Pty Ltd - APPL 1712 of 2003 - HARRISON C - 11/10/04 - Other Services 3639

Termination of employment - Harsh, oppressive and unfair dismissal - Lack of procedural and substantive fairness. Industrial Relations Act 1979 (WA) s29(1)(b)(i) - Declaration made that the Applicant was unfairly dismissed. Order made that the Respondent pay the Applicant $2,450.00 (gross) and $1,000.00 (net) - Ms J Grover -v- Container Handling Systems Pty Limited t/as Hannan Containerised Furniture Removals - APPL 366 of 2004 - SMITH C - 21/10/04 - Other Transport 3644

Termination of employment - Harsh, oppressive and unfair dismissal - Acceptance of referral out of time - Application referred outside of 28 day time limit - Relevant principles to be applied - Commission satisfied applying principles that discretion should not be exercised - Acceptance of referral out of time not granted - Dismissed - Industrial Relations Act 1979 (WA) s29(1)(b)(i),(2)&(3) - Mr JY Hong -v- Metro Fresh - APPL 1316 of 2004 - BEECH SC - 10/11/04 3649

Termination of employment - Harsh, oppressive and unfair dismissal - Employment contract terminated by frustration - No dismissal at the initiative of the employer - whether application referred outside of 28 day time limit considered - Commission lacks jurisdiction - Contractual benefits claim - Entitlements under contract of employment - Principles applied - Application dismissed - Industrial Relations Act 1979 (WA) s23, s29(1)(b)(i) & (ii) and s29(3) - Mr G James -v- Kalumburru Aboriginal Community - APPL 69 of 2004 - SCOTT C - 09/11/04 - Community Services 3651

Termination of employment - Harsh, oppressive and unfair dismissal - Acceptance of referral out of time - Application referred outside of 28 day time limit - relevant principles to be applied - Commission satisfied applying principles that discretion should be exercised - Acceptance referral out of time granted - Industrial Relations Act 1979 (WA) s29(1)(b)(i),(2)&(3) - Mr GE Maverick-Phillips -v- Artifex Australia - APPL 1019 of 2004 - HARRISON C - 11/10/04 3654

Industrial Law - Termination of employment - Harsh, oppressive and unfair dismissal - Whether genuine redundancy - No discussions with applicant about means to avoid significant effect or redundancy - Allegations of age discrimination - Applicant unfairly dismissed - Order and Declaration issued - Industrial Relations Act 1979 (WA) s23A & s29(1)(b)(i); Minimum Conditions of Employment Act 1993 (WA) s41, s40(2); Equal Opportunity Act 1984 (WA) s66V, s66W; Human Rights and Equal Opportunity Commission Act 1986 (Cth); Interpretation Act 1984 (WA) s19(2)(d) - Mr P Richards -v- Webforge Australia Pty Ltd - APPL 269 of 2004 - KENNER C - 02/11/04 - Other Services 3657

Termination of employment - Harsh, oppressive and unfair dismissal - Acceptance of referral out of time - Application referred outside of 28 day time limit - Relevant principles to be applied - Commission not satisfied discretion should be exercised - Dismissed - Industrial Relations Act 1979 (WA) s29(1)(b)(i) & s29(3) - Mr WA Saunders -v- Del Basso Smallgoods - APPL 845 of 2004 - SMITH C - 15/10/04 - Food, Beverage and Tobacco Mfg 3664

Termination of employment - Harsh, oppressive and unfair dismissal - Applicant validly entered into contract of employment - Intent of parties considered - Applicant entered into contract of employment for a specified period of time - Contract came to an end by effluxion of time - No dismissal at the initiative of employer - Commission lacks jurisdiction - Application dismissed - Industrial Relations Act 1979 (WA) s 29(1)(b)(i) - Contractual benefits claim - Period of reasonable notice - Entitlement under contract of employment - Fixed term contract - No entitlement - Industrial Relations Act 1979 (WA) s29(1)(b)(ii) - Application alleging unfair dismissal dismissed. Application for contractual benefits dismissed - Ms JM Seaton -v- 6PR Southern Cross Radio Pty Limited - APPL 15 of 2004 - HARRISON C - 28/10/04 - Communication Services 3666

Contractual benefits claim - Entitlements under contract of employment - Application successful in part - Claim for costs dismissed - Industrial Relations Act 1979 (WA) s26 and s29(1)(b)(ii) - Miss S Underdown -v- Dowford Investments Pty Ltd - APPL 376 of 2004 - SMITH C - 12/10/04 – Agriculture 3678

Termination of employment - harsh, oppressive and unfair dismissal - claim dismissed - contractual benefits claim dismissed - Industrial Relations Act 1979 (WA) s29(1)(b)(i) and (ii) - Mr M Watts -v- Norwatch Pty Ltd and Ron Watts Investments Pty Lt trading as Capel Marron - APPL 1525 of 2003 - SMITH C - 29/10/04 - Commercial Fishing 3685

Termination of employment - Harsh, oppressive and unfair dismissal - Acceptance of referral out of time - Application referred outside of 28 day time limit - Relevant principles to be applied - Application dismissed - Industrial Relations Act 1979 (WA) s29(1)(b)(i), (2) & (3) - Mr SM Windass -v- Wammco International - APPL 431 of 2004 - SMITH C - 10/11/04 3697

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Termination of Employment - Harsh, oppressive and unfair dismissal - Applicant no longer represented and not able to be contacted - Application dismissed for want of prosecution - Industrial Relations Act 1979 (WA) s27(1) - Mr BJ Winmar -v- Callacabardee Aboriginal Corporation Inc. (ABN 38 664 495 651) & Other - APPL 252 of 2003 - BEECH SC - 08/11/04 - Construction Trade Services 3700

Industrial dispute - Proposal to engage part time publishing hands - Whether authorised by the terms of the West Australian Newspapers Production Employees (Enterprise Bargaining) Agreement 2003 - Declaration and Order made - Industrial Relations Act 1979 (WA) s44 - West Australian Newspapers Ltd -v- AUTO, FOOD, METAL, ENGIN UNION - CR 116 of 2004 - SMITH C - 14/10/04 - Printg, Publishg & Rcdd Media 3706

Termination - Unfair dismissal - Constructive dismissal - Principles applied - No terminator at the initiative of the employer - No power to award costs at motion of a witness - Dismissed and Application for costs by WorkSafe dismissed - Industrial Act, 1979 s.27(1)(c), s.44 - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Anglican Homes (Inc) - CR 86 of 2004 - GREGOR C - 09/11/04 - Community Services 3711

Industrial Relations (WA) - Application for order to redeploy employee to valet position without entering into an AWA - Whether employee is a new employee or redeployee - Corporate veil lifted - Fairness and equity considered - Entities viewed as single employer - Objects of the Act considered - Employer ordered to redeploy employee into valet position under award conditions - Order issued - Industrial Relations Act 1979 (WA) s6, s26 and s44(9) - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Burswood Resort (Management) Limited & Others - CR 11 of 2004 - HARRISON C - 08/10/04 3718

Interpretation - Agreements are awards for the purpose of interpretation - Principles applied - Industrial Relations Act, 1979, s46 - Declaration issued - The Royal Automobile Club Of WA (Incorporated)(Rac) -v- The Automotive, Food, Metals, - APPL 1097 of 2004 - GREGOR C - 01/10/04 - Motor Vehicle Rtlg & Services 3827

Industrial law - Termination of employment - Harsh, oppressive and unfair dismissal - Whether constructive dismissal or resignation - Evidence of applicant considered - Applicant harshly, oppressively and unfairly dismissed - Compensation ordered - Declaration and order issued - Mr AS Barker -v- Gull Service Station Wangara - APPL 246 of 2004 - KENNER C - 26/10/04 - Motor Vehicle Rtlg & Services 3844

Termination of employment - Harsh, oppressive and unfair dismissal claim dismissed - Contractual benefits claim - entitlements under contract of employment - Metal Trades (General) Award 1966 expressly incorporated into contract - Industrial Relations Act 1979 (WA) s29(1)(b)(i) and (ii) - Order made that the Respondent pay the Applicant $995 (net) and $1,758.57 (gross) - Mr G Bower -v- North West Engineering Pty Ltd - APPL 1092 of 2004 - SMITH C - 29/11/04 - Metal Product Manufacturing 3847

Industrial law - Termination of employment - Harsh, oppressive and unfair dismissal - Whether applicant an employee or independent contractor - Principles applied - Applicant not an employee - Application dismissed - Order issued - Industrial Relations Act 1979 (WA) s7(1), meaning of "employee", s29(1)(b) - Dismissed - Mr PE Dallaston -v- Canon Foods - APPL 52 of 2004 - KENNER C - 09/11/04 - Food, Beverage and Tobacco Mfg 3850

Termination of employment - harsh, oppressive and unfair dismissal - Applicant a casual employee - Applicant unfairly terminated - compensation for loss and injury ordered - Claim for outstanding contractual benefits dismissed - Industrial Relations Act 1979 (WA) Section 29(1)(b)(i) and (ii) - Declaration and Order issued - Mr P Fowler -v- Anthony & Sons T/As Oceanic Cruises - APPL 782 of 2004 - SMITH C - 26/11/04 - Community Services 3855

Contractual benefits claim - entitlements under contract of employment - Interpretation of terms of contract - terms of redundancy payment - Industrial Relations Act 1979 (WA) s26 and s29(1)(b)(ii) - Dismissed - Mrs LM Gollan-Neale -v- Roche Mining Pty Ltd - APPL 868 of 2004 - SMITH C - 17/11/04 - Metal Ore Mining 3860

Termination of Employment - Unfair Dismissal - Fitness for Work - Industrial Relations Act, 1979 (WA) s 29(1)(b)(i) - Dismissed - Mr CL Jones -v- Boodarie Iron - APPL 837 of 2004 - WOOD C - 12/11/04 - Metal Ore Mining 3864

Termination of employment - Harsh, oppressive and unfair dismissal - Whether applicant an employee or independent contractor - Principles applied - Applicant found to be employee - Whether dismissal or resignation - Intent or parties considered - No dismissal at the initiative of the employer - Commission lacks jurisdiction - Application dismissed - Industrial Relations Act 1979 (WA) s29(1)(b)(i) - Contractual benefits claim - Entitlements under contract of employment - Application upheld in part - Industrial Relations Act 1979 (WA) s29(1)(b)(ii) - Mr GM McGowan -v- Bayview Garage Doors & Other - APPL 1690 of 2003 - HARRISON C - 17/11/04 - Metal Product Manufacturing 3868

Industrial dispute - Harsh, oppressive and unfair dismissal - Issues in relation to applicant union member's performance - No opportunity to improve or respond to allegations of misconduct - Summary dismissal - Procedural fairness considered - Applicant not harshly, oppressively and unfairly dismissed - Summary dismissal justified - Application dismissed - Industrial Relations Act 1979 (WA) S6A, s26, s44, s97D - Dismissed - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Christian Funeral Company - CR 238 of 2002 - COLEMAN CC - 29/11/04 - Community Services 3879

BOARD OF REFERENCE

Board of Reference - Whether service continuous within the meaning of the Long Service Leave General Order - Declaration made - Mr SS Larosa -v- MCPBD Pty Ltd trading as Modern Joinery - BOR 2 of 2004 - SMITH C - 28/10/04 3598