CUMULATIVE DIGEST

MATTERS REFERRED TO IN DECISIONS OF THE INDUSTRIAL APPEAL COURT, INDUSTRIAL RELATIONS COMMISSION AND INDUSTRIAL MAGISTRATES COURT CONTAINED IN VOL. 87 PART 1, SUB PARTS 1 - 6.

Digest Headings

* Denotes New Heading

Industrial Appeal Court
Full Bench
Commission In Court Session
President
Industrial Magistrate
Public Service Appeal Board
Public Service Arbitrator
Commissioner
Board of Reference
Police Appeal

Page

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 law - Denied contractual benefits - Appeal against quantum of damages awarded by Full Bench - Whether appellant was denied the right to be heard - Whether appellant was denied procedural fairness - Whether Full Bench erred in construction of EBA - Appeal Dismissed - The St Cecilia's College School Board -v- Carmelina Grigson - IAC 3 of 2006 - Industrial Appeal Court - Wheeler J (Deputy Presiding Judge)/Pullin J/Le Miere J - 30/3/07 591

FULL BENCH

Industrial Law (WA) - Appeal against decision of Commission - Alleged harsh, oppressive or unfair dismissal - Whether Commission failed to adequately set out its findings of fact - Issues relating to assessing credibility of witnesses - Role of Full Bench in appeals against findings based on credibility of witnesses - Whether Commission properly considered documentary evidence before it - If appellant's evidence accepted in its entirety, would respondent's dismissal be harsh, oppressive or unfair - Appeal dismissed - Industrial Relations Act 1979 (WA) (as amended) - Fisher & Paykel Australia Pty Ltd -v- Kenneth James Skinner - FBA 24 of 2006 - Full Bench - The Honourable M T Ritter, Acting President / Commissioner S J Kenner / Commissioner S Wood - 13/12/2006 1

Industrial Law (WA) - Appeal against decision of Industrial Magistrate's Court - Alleged non-compliance by respondent with Metal Trades (General) Award 1966 or in alternative Minimum Conditions of Employment Act 1993 (WA) - Alleged failure to pay appellant accrued annual leave entitlements on termination of employment and paid sick leave and public holidays without loss of pay - Effect of appellant's Workplace Agreement and Australian Workplace Agreement on awards and legislation - Whether appellant was paid in advance for accrued annual leave - Paid leave entitlements under the Minimum Conditions of Employment Act - Whether there was underpayment for sick leave and public holiday leave - Defence of "set off" - Appeal upheld - Industrial Relations Act 1979 (WA) (as amended), s83, s83A, s84, s114(1) - Industrial Relations Commission Regulations 2005, reg 102(2) - Minimum Conditions of Employment Act 1993 (WA), s3, s5(1), (2), (3), (5), s7, s18, s19, s23, s24, s29, s30, s31 - Metal Trades (General) Award 1966, cl 23(1), (6), cl 24(1) - Wayne Hancock -v- Nu-Tech Engineering Pty Ltd - FBA 22 of 2006 - Full Bench - The Honourable M T Ritter, Acting President / Commissioner S J Kenner / Commissioner J L Harrison - 23/11/2006 21

Industrial Law (WA) - Appeal against decision of the Commission - Alleged harsh, oppressive or unfair dismissal - Whether behaviour of respondent justified his summary dismissal - Tests to be applied for summary dismissal - Anticipatory breach as repudation of contract - Threatening not to attend work unless demands met - Condoning past misconduct does not excuse fresh misconduct or change its character - Appeal upheld - Industrial Relations Act 1979 (WA) (as amended), s49 - Saybolt Australasia Pty Ltd -v- Milan Mall - FBA 29 of 2006 - Full Bench - The Honourable M T Ritter, Acting President / Chief Commissioner A R Beech / Senior Commissioner J H Smith - 20/12/2006 87

Industrial Law (WA) - Appeal against orders made by Industrial Magistrate's Court with respect to legal costs - Whether appellant frivolously defended the claim - Issues relating to which aspects of the respondent's claim were bound to succeed - Correct test to apply to whether proceedings were defended frivolously - Effect of appellant's concessions about certain aspects of the claim - Whether the Industrial Magistrate erred in his assessment of the totality of evidence relating to the respondent being 'in charge of the warehouse or other employees' - Order and directions made by Full Bench - Industrial Relations Act 1979 (WA) (as amended), s83(1), s83C(2), s84 - Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977, cl 6(2), cl 18, cl 28 Part III (1)(b), cl 28(2) - Kenji Auto Parts Ltd t/a SSS Auto Parts (WA) -v- Anthony Raymond Fisk - FBA 26 of 2006 - Full Bench - The Honourable M T Ritter, Acting President / Commissioner P E Scott / Senior Commissioner J H Smith - 1/12/2006 97

Industrial Law (WA) - Appeal against decision of Industrial Magistrate's Court - Application pursuant to s83 of the Industrial Relations Act 1979 (WA) (as amended) for enforcement of the Restaurant, Tearoom and Catering Workers' Award, 1979 - Alleged failure to comply with award by appellant in non-payment to respondent of correct wages and allowances prescribed by award - Whether award classification applied to the employment of the respondent - Consideration of the substantial nature of the respondent's employment and purpose of it - Whether the higher duties clause of the award applied - Appeal upheld - Industrial Relations Act 1979 (WA) (as amended), s7, s37, s83, s84 - Restaurant, Tearoom and Catering Workers' Award, 1979, cl 4, cl 6, cl 11, cl 21, cl 25 - Spring 2002 Pty Ltd -v- Katherine Sampson - FBA 30 of 2006 - Full Bench - The Honourable M T Ritter, Acting President / Chief Commissioner A R Beech / Commissioner P E Scott - 5/12/2006 110

Industrial Law (WA) - Appeal against decision of Industrial Magistrate's Court - Assessment of underpayment - Error in calculation of underpayment - Whether issue raised in notice of appeal - Relevance of amount of underpayment to amount of penalty - Role of Full Bench in reviewing a penalty order - Whether penalty ought to be reduced - Appeal upheld - Industrial Relations Act 1979 (WA) (as amended), s83, s83(4), s84 - Industrial Magistrates Court (General Jurisdiction) Regulations 2005, r.12 - Spring 2002 Pty Ltd -v- Katherine Sampson - FBA 30 of 2006 - Full Bench - The Honourable M T Ritter, Acting President / Chief Commissioner A R Beech / Commissioner P E Scott - 29/01/2007 122

CUMULATIVE DIGEST—*continued*

Page

FULL BENCH - *continued*

Industrial Law (WA) - Enforcement application pursuant to s84A of the Industrial Relations Act 1979 (WA) against order of Commission at s44 conference - Adjournment of hearing pending appeal against order made - Relevant principles - Consideration by Full Bench of information provided - Discretion exercised - Adjournment granted - Industrial Relations Act 1979 (WA) (as amended), s6(c), s26(1)(c), s44, s84A(1)(b) - Industrial Relations Commission Regulations 2005, r.60(5), r.103(7) - The Registrar of the Western Australian Industrial Relations Commission -v- Liquor, Hospitality and Miscellaneous Union, Western Australian Branch - FBM 1 of 2007 - Full Bench - The Honourable M T Ritter, Acting President / Chief Commissioner A R Beech / Commissioner P E Scott - 25/01/2007 126

Industrial Law (WA) - Appeal against decision of the Commission - Alleged harsh, oppressive or unfair dismissal - Appellant summarily dismissed - Whether appellant breached policy of respondent by sending email - Assessing seriousness of the breach - Whether email contained 'racial slur' or 'ethnic slur' - Whether email 'solicited support for a political cause' - Consideration of events leading up to the sending of the email - Whether termination on notice 'appropriate remedy' - Issue of compensation. Industrial Law (WA) - Relevant policy of the respondent - Consideration of reasons for policy - Vicarious liability - Workplace discrimination issues - International conventions relating to racial discrimination - Construction of the respondent's policy - Examination of the words used in the policy and relevant definitions. Industrial Law (WA) - Grounds of Appeal - Application to amend grounds during course of the hearing - Imprecise drafting of particulars to ground of appeal - Factors to consider when deciding to grant leave to amend grounds of appeal - Discretionary power of Full Bench to grant leave - Consideration of particular facts and circumstances of each case - Drafting grounds of appeal in accordance with Industrial Relations Commission Regulations 2005 - Importance of proper grounds of appeal. Industrial Law (WA) - Appeal against a discretionary decision - Exercise of a discretion based upon an evaluative judgment - Relevant authorities considered - Issues relating to questions of law and fact in appeals - What conclusions at first instance are reviewable by the Full Bench. Industrial Law (WA) - Majority decision that Commissioner erred in finding email policy breached - Context within which words are to be judged in policy - Issues of ethnic diversity in society - Alternatively dismissal on notice was unfair - Consideration of relevant circumstances effecting fairness of dismissal - Whether breach by appellant was minor or trivial in the circumstance. - Ian Anderson -v- Rogers Seller & Myhill Pty Ltd - FBA 33 of 2006 - Full Bench - The Honourable M T Ritter, Acting President / Chief Commissioner A R Beech / Commissioner P E Scott - 12/03/2007 289

Industrial Law (WA) - Statutory construction of s83C(2) of Industrial Relations Act 1979 (WA) (as amended) - Whether "the proceedings" means proceedings as a whole or in part - Ascertaining the intention of the legislature - Structure of respondent's claim before the Industrial Magistrate's Court - Authorities on various meanings of "proceedings" - Appeal allowed - Industrial Relations Act 1979 (WA) (as amended), s27(1)(a), s49(11), s81A, s81AA, s81B, s81CA, s83(1), (2), (3), (4), s83A, s83C, s83C(2), s83F(2), s84(4), s113(3) - Industrial Relations Act 1988 (Cth), s347(1) - Interpretation Act 1984 (WA), s5 - Industrial Magistrates Court (General Jurisdiction) Regulations 2005, r.4, r.11, r.13 - Kenji Auto Parts Ltd t/as SSS Auto Parts (WA) -v- Anthony Raymond Fisk - FBA 26 of 2006 - Full Bench - The Honourable M T Ritter, Acting President / Commissioner P E Scott / Senior Commissioner J H Smith - 19/01/2007 328

Industrial Law (WA) - Application to alter rules of organisation relating to membership - Application to cancel the registration of an organisation - Difficulties arising from one application being contingent upon success of the other application - Whether "Catch 22" - Cancellation of the registration of one organisation and allowing its members to be covered by another organisation - Consideration of earlier decision of the Full Bench in a similar application - Consideration of the principal objects of the Industrial Relations Act 1979 (WA) (as amended) - Application to alter rules granted - Application to cancel registration of organisation granted. - The Registrar; -v- The West Australian Hairdressers and Wigmakers Employees' Union of Workers - FBM 2 of 2006 and FBM 3 of 2006 - Full Bench - The Honourable M T Ritter, Acting President / Senior Commissioner J H Smith / Commissioner J L Harrison - 6/03/2007 339

Industrial Law (WA) - Application to Supreme Court for writ of certiorari against a decision of the Commission - Appeal to Full Bench against decision of the Commission instituted concurrently - Correspondence between appellant and the Commission regarding discontinuance of appeal after certiorari granted - Whether Full Bench has power to discontinue an appeal - Practice of the Commission Registry. Industrial Law (WA) - Submissions made to Supreme Court in support of certiorari - Filing of a submitting appearance by a Commissioner of the Commission - Whether appropriate for Commissioner to appear - Issue of whether Commission has jurisdiction despite amendments to the Workplace Relations Act 1996 (Cth) - Duty of Commission to decide whether or not it has jurisdiction - Appeal against orders where Commissioner's jurisdiction disputed because of the Workplace Relations Act 1996 (Cth) - Appeal dismissed. - Crown Scientific Pty Ltd -v- Leslie Bruce Clarke - FBA 44 of 2006 - Full Bench - The Honourable M T Ritter, Acting President / Chief Commissioner A R Beech / Senior Commissioner J H Smith - 16/03/2007 598

Industrial Law (WA) - Appeal against decision of Public Service Arbitrator - Review sought of classification of position pursuant to s80E of the Industrial Relations Act 1979 (WA) - Jurisdiction of Arbitrator - Applicability of s80G(2) of the Industrial Relations Act 1979 (WA) - Meaning of the word "decision" in the context of s80G - Issues relating to "privative clause" and relevant authorities - Application of the Statement of Principles to the claim before the Arbitrator - Whether the error of the Arbitrator was a "jurisdictional error" and relevant authorities - Appeal allowed - Health Services Union of Western Australia (Union of Workers) -v- Director General of Health as delegate of the Hon. Minister for Health in his incorporated capacity under s.7 of the Hospitals and Health Services ACT 1927 (WA) AS THE METROPOLITAN HEALTH SERVICE - FBA 37 of 2006 - Full Bench - The Honourable M T Ritter, Acting President / Senior Commissioner J H Smith / Commissioner J L Harrison - 24/04/2007 737

Industrial Law (WA) - Appeal against decision of the Commission - Whether the Commission had jurisdiction to hear and determine the application at first instance - Effect of the Workplace Relations Act 1996 (Cth) on the jurisdiction of the Commission in relation to 'constitutional corporations' - Consideration of relevant High Court authorities on the issue of the meaning of 'trading corporation' - Whether the appellant is a 'trading corporation' - Examination of the meaning of 'trading' and 'trading corporation' - Whether contract with the Commonwealth government was 'trading' - Leave sought by Minister to intervene - Appeal dismissed - Aboriginal Legal Service of Western Australia Incorporated -v- Mark James Lawrence - FBA 1 of 2007 - Full Bench - The Honourable M T Ritter, Acting President / Chief Commissioner A R Beech / Senior Commissioner J H Smith - 11/05/2007 856

COMMISSION IN COURT SESSION

General Order - conditions for school-based and part-time apprentices - Industrial Relations Act, 1979 (WA) s50; Industrial Training Act 1979 (WA) ss23A, 33(2) - Minister for Employment Protection -v- Trades and Labor Council of Western Australia and others - APPL 158 of 2006 - Commission in Court Session - Chief Commissioner A R Beech / Senior Commissioner J H Smith / Commissioner S Wood - 16/04/2007 733

Award - Award variation - on Commission's own motion to reflect statutory requirements - Proposed variations - Industrial Relations Act 1979 (WA) s 40B - (COMMISSION'S OWN MOTION) -v- (NOT APPLICABLE) - APPL 555 of 2005 - Commission in Court Session - Chief Commissioner A R Beech Commissioner / Senior Commissioner J H Smith / S J Kenner - 23/11/2005 898

Award - Award variation - on Commission's own motion to reflect statutory requirements - Further Proposed variations - Industrial Relations Act 1979 (WA) s 40B - (Commission's own motion) -v- (Not applicable) - APPL 555 of 2005 - Commission in Court Session - Chief Commissioner A R Beech / Senior Commissioner J H Smith / Commissioner S J Kenner - 4/04/2007 903

Award - Award variation - on Commission's own motion to reflect statutory requirements - Award varied - Industrial Relations Act 1979 (WA) s 40B - (Commission's own motion) -v- (Not applicable) - APPL 555 of 2005 - Commission in Court Session - Chief Commissioner A R Beech / Senior Commissioner J H Smith / Commissioner S J Kenner - 16/05/2007 909

CUMULATIVE DIGEST—*continued*

Page

PRESIDENT

Industrial Law (WA) - Application to stay order of the Commission - Stay of order principles - No opposition to stay by respondent - Issues relating to financial circumstances of the applicant - Whether special circumstances warrant the granting of a stay - Application granted - Industrial Relations Act 1979 (WA) (as amended), s49(11) - Merredin Customer Service Pty Ltd as Trustee for Hatch Family Trust t/a Donovan Ford/Merredin Nissan and Donovan Tyres -v- Roslyn Green - PRES 13 of 2006 - President - The Honourable M T Ritter, Acting President - 15/01/2007 133

INDUSTRIAL MAGISTRATE

Breach of award; scope of award; Resident Master; whether an employee or volunteer; section 114 of the Industrial Relations Act, 1979. - Danny Michael Pagoda -v- Wesley College - M 89 of 2006 - Industrial Magistrate - INDUSTRIAL MAGISTRATE W.G. TARR - 28/02/2007 500

Acting or relieving duties, Classification, Ambulance Network Coordinator; Over award rate; Award picking up over award rate - Liquor, Hospitality and Miscellaneous Union -v- St John Ambulance Australia (Western Australia) Inc - M 90 of 2006 - Industrial Magistrate - INDUSTRIAL MAGISTRATE G. CICCHINI - 11/04/2007 660

Claim re breach of award - Claim proven in part - Reasons for Decision Issued - Terence William Miles -v- Brendon Penn Nominees Pty Ltd - M 238 of 2004 - Industrial Magistrate - INDUSTRIAL MAGISTRATE W.G. TARR - 29/03/2007 786

Breach of award - Claimant found to be part-time employee - Supplementary Reasons for Decision Issued - Danny Michael Pagoda -v- Wesley College - M 89 of 2006 - Industrial Magistrate - INDUSTRIAL MAGISTRATE W.G. TARR - 5/04/2007 787

Industrial Inspector; Appointment of Industrial Inspector; Proof of Appointment of Industrial Inspector; Presumption of Regularity; Doctrine of De Facto Officers; Transport Workers (Passenger Vehicles) Award 1978; casual; "bus driver"; "tour guide"; Particulars of Claim; Accuracy of Calculations. - Warren Graham Milward, Department of Consumer & Employment Protection; Warren Graham Milward, Department of Consumer & Employment Protection -v- Melrose Farm Pty Ltd t/as Milesaway Tours; Christine Anne Miles and Richard Glinton Miles t/as Milesaway Tours - M 99 of 2006 and M 15 of 2007 - Industrial Magistrate - INDUSTRIAL MAGISTRATE G. CICCHINI - 23/05/2007 1089

Industrial Inspector; Appointment of Industrial Inspector; Proof of Appointment of Industrial Inspector; Presumption of Regularity; Doctrine of De Facto Officers; Transport Workers (Passenger Vehicles) Award 1978; casual; "bus driver"; "tour guide"; Particulars of Claim; Accuracy of Calculations. - Warren Graham Milward; Warren Graham Milward, Department of Consumer &Employment Protection -v- Melrose Farm Pty Ltd t/as Milesaway Tours; Christine Anne Miles & Richard Glinton Miles t/as Milesaway Tours - M 99 of 2006 and M 15 of 2007 - Industrial Magistrate - INDUSTRIAL MAGISTRATE G. CICCHINI - 23/05/2007 1098

PUBLIC SERVICE ARBITRATOR

Public Service Arbitrator - Claim for Temporary Special Allowance - Previous appeal withdrawn and Deed of Severance signed - Whether an Industrial Matter - Employment relationship ended not to be restored - No jurisdiction - Appellant has no standing to bring claim - No enforcement of existing entitlement - Appeal Dismissed - Industrial Relations Act 1979 (WA) ss 7 and 80E - Peter Ernest Bullen -v- Workers' Compensation & Injury Management Commission - PSA 30 of 2006 - Public Service Arbitrator - Commissioner P E Scott - 30/04/2007 837

COMMISSIONER

Contractual benefits claim -- Entitlements claimed under contract of employment - Principles applied - Application upheld in part - Industrial Relations Act 1979 (WA) s 29(1)(b)(ii) - Ellen Elizabeth Croft -v- Donnybrook District Transport - B 61 of 2006 - Commissioner J L Harrison - 15/12/2006 37

Industrial Law (WA) - 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 of referral out of time granted - Whether dismissal or constructive dismissal – Intent of parties considered – No dismissal at the initiative of the employer – Commission lacks jurisdiction – Application dismissed - Contractual benefits claim — Entitlements under contract of employment - Applicant advised he is not pursing claim - Application made at short notice to pursue new benefits claim - Disadvantage considered - Application to amend claim refused - Application dismissed - Industrial Relations Act 1979 (WA) s 29(1)(b)(i) and (ii), s 29(2) and (3) - Alan Ray MacGregor -v- Geographe Bay Real Estate Investments Pty Ltd - U 41 of 2006 and B 41 of 2006 - Commissioner J L Harrison - 27/12/2006 39

Contractual benefits claim - Entitlements under contract of employment - Annual Leave - Wages - Performance allowance - Industrial Relations Act 1979 (WA) s.29(1)(b)(ii) - Derek Mann -v- Compower Aces - B 434 of 2006 - Commissioner S Wood - 13/12/2006 56

Termination of employment - Harsh, oppressive and unfair dismissal claim - Principles applied - Applicant unfairly dismissed - Contractual benefits claim - Entitlements under contract of employment - Application granted - Industrial Relations Act 1979 (WA) s 5, s 7, s 23A(6), (7), (8) & (9) & s 29(1)(b)(i) & (ii); & Minimum Conditions of Employment Act 1993 (WA) s 5, s 7(c) & s 24(2)(b) - Dale Christopher Miles -v- J.L.F. Commercial Pty Limited - U 239 of 2006 and B 239 of 2006 - Senior Commissioner J H Smith - 13/12/2006 58

Termination of employment - Constructive dismissal -Application referred outside of 28 day time limit - Not unfair not to accept out of time - Industrial Relations Act 1979 (WA) s 29(3) - Talit Mahmood Ahmed Paul -v- The Director, Australian Federation of Islamic Councils - U 527 of 2006 - Commissioner S Wood - 14/12/2006 73

Termination of Employment - Application compromised - Jurisdiction - Power to make orders in terms of compromise - Whether terms of compromise have substantially been complied with by the Respondent - Whether the application should be dismissed in the public interest - Industrial Relations Act 1979 (WA) s 7, s 23 s 23A, s 27(1)(a)(ii), s 29(1) & s 29(1)(b)(i) - Shelley Taylor -v- WAVSG & Linc Inc - U 296 of 2005 - Senior Commissioner J H Smith - 20/12/2006 75

Contractual benefits claim - Entitlements under a contract of employment - Claim for commission - Terms of the contract - Contract partly written and oral - Did a statement constitute a term or a representation - Application dismissed - Industrial Relations Act 1979 (WA) s 29(1)(b)(ii) - Adam Gardner -v- Rheem Australia Pty Ltd - B 364 of 2006 - Senior Commissioner J H Smith - 18/01/2007 232

Industrial law - Termination of employment - Harsh, oppressive and unfair dismissal and denied contracual benefits - Whether Commission has jurisdiction - Whether named respondent applicant's employer - Principles applied - Applications dismissed - Industrial Relations Act 1979 (WA) s 29(1)(b)(i). s 29(1)(b)(ii), Workplace Relations Act 1996 (Cth) s 6(a), s16. - Sally Anne Read -v- Meredith Hunter & Associates - U 510 of 2006 - Commissioner S J Kenner - 2/02/2007 238

Industrial law - Termination of employment - Harsh, oppressive and unfair dismissal - Application for an adjournment pending determination of High Court - Point of jursidiction raised by respondent - Principles applied - Commission not persuaded that application should be adjourned - Application dismissed - Directions issued - Industrial Relations Act 1979 (WA) s 29(1)(b)(i); Workplace Relations Act 1996 (Cth) s 4, s 6, s 16(1) - Darryn Ward -v- Capel Vale Wines Pty Ltd - U 446 of 2006 - Commissioner S J Kenner - 16/10/2006 242

Industrial law - termination of employment - Harsh, oppressive and unfair dismissal - Whether Commission has jursidiction - Applicant failed to appear - Application dismissed - Industrial Relation Act, 1979 (WA) s29(1)(b)(i), Workplace Relations Act 1996 (Cth) s 4, s16(1). - Darryn Ward -v- Capel Vale Wines Pty Ltd - U 446 of 2006 - Commissioner S J Kenner - 24/01/2007 246

CUMULATIVE DIGEST—*continued*

Page

COMMISSIONER - *continued*

Industrial Law (WA) - Termination of employment - Harsh, oppressive and unfair dismissal - Issues in relation to employee'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), 44(9) and 80C; Public Sector Management Act, 1994 (WA) s 78(1) and (2), 79(3) and (5); School Education Act 1999 (WA) s 235(1)(b) and 239 - The State School Teachers Union of W.A. (Incorporated) -v- Paul Albert, Director General, Department of Education and Training - CR 83 of 2005 - Commissioner J L Harrison - 19/01/2007.... 256

Award – Award modernisation – Current wages and conditions of employment – Provisions incorporated from orders, unregistered agreements and EBA - Removal of obsolete provisions to give effect to s.40B considerations – Award varied and consolidated – Industrial Relations Act 1979 (WA) s 40; s 40A - Western Australian Prison Officers' Union of Workers -v- Minister for Corrective Services - APPL 87 of 2003 - Chief Commissioner A R Beech - 29/09/2006..... 377

Award - Award modernisation - Current wages and conditions of employment - Provisions incorporated from orders, unregistered agreements and Enterprise Bargaining Agreement - Removal of obsolete provisions to give effect to s.40B considerations - Award varied and consolidated - Industrial Relations Act 1979 (WA) s 40; s 40A - Western Australian Prison Officers' Union of Workers -v- Minister for Corrective Services - APPL 87 of 2003 - Chief Commissioner A R Beech - 2/03/2007 379

Industrial law - Termination of employment - Harsh, oppressive or unfair dismissal and denied contractual benefit - Request for adjournment - Relevant principles as to adjournments - Adjournment refused - Entitlements under contract of employment - Principles applied - Applicants summary dismissal justified - Applicant denied contractual benefit - Work related expenses - Application upheld in part - Order issued - Industrial Relations Act 1979 (WA), s 29(1)(b)(i), s 29(1)(b)(ii), s 6(c), s 22B, s 26(1)a, s 32 - Gary Edward Friend -v- Rainer Offermann and Warren Rowson Directors, Road Safety Shop - U 501 of 2006 and B 501 of 2006 - Commissioner S J Kenner - 14/03/2007 502

Termination of employment - Harsh, oppressive and unfair dismissal claim - whether Applicant constructively dismissed - no express or implied duty to provide work - claim not made out - turns on own facts - Contractual benefits claim for pay in lieu of notice on termination - claim dismissed as no finding that the employer terminated the Applicant's employment - jurisdictional challenge - obiter pre Work Choices contractual benefits claim within jurisdiction - obiter post Work Choices contractual benefits claims not within jurisdiction - Industrial Relations Act 1979 (WA) s 23(1), s 26(1)(a), s 26(2), s 27, s 29(1)(b)(i), s 29(1)(b)(ii), s 34, s 35 and s 36; Workplace Relations Act 1996 (Cth) s 4(1), s 5, s 16(1) and s 16(2); Judiciary Act 1903 (Cth) s 78B; Workplace Relations Regulations 2006 (Cth) reg 1.2 of div 2 of pt 1 of ch 2 - Gwenda May Smith -v- Albany Esplanade Pty Ltd T/as The Esplanade Hotel - U 164 of 2006 and B 164 of 2006 - Senior Commissioner J H Smith - 2/03/2007 509

Contractual benefits claim - Entitlements under contract of employment - Claim for payment of Senior Teacher 2 allowance - Enforcement of an order of the Commission - Commission lacks jurisdication - Application dismissed - Industrial Relations Act 1979 (WA) s 29(1)(b)(ii) - Mary Tampalini -v- Our Lady of Assumption School - B 351 of 2005 - Commissioner J L Harrison - 14/03/2007..... 539

Industrial Law (WA) - Dispute regarding complaint about union delegates and subsequent distress - Claim for order that respondent retract comments and/or apologise - Application upheld - Industrial Relations Act 1979 s 26, s 27 and s 44 - Independent Education Union of Western Australia, Union of Employees -v- Corpus Christi College - CR 188 of 2005 - Commissioner J L Harrison - 12/02/2007..... 553

Industrial law - Termination of employment - Harsh, oppressive and unfair dismissal - Whether Commission has jursidiction - Trading corporation - Principles applied - Commission satisfied respondent is a constitutional corporation - Claim beyond Commission's jursidiction - Application dismissed - Industrial Relations Act 1979 (WA) s 29(1)(b)(i), Commonweath Consititution, s51 (xx), Workplace Relation Act 1996 (Cth), s 6, s 16, Corporations Act 2001. - Denis Mate Erceg -v- AGC Industries Pty Ltd - U 558 of 2006 - Commissioner S J Kenner - 6/03/2007 666

Termination of employment - Constructive dismissal - Dismissal or resignation - Harassment, humiliation, ostracism - no jurisdiction - application dismissed - Crystal Abbegail Gadenne -v- W & A Gillespie Family Trust - U 559 of 2006 - Commissioner S Wood - 27/03/2007 668

Industrial Law (WA) - Termination of employment - Harsh, oppressive and unfair dismissals - Application 159 of 2005 - Whether applicant an employee - Principles applied - Applicant held not to be an employee - Application dismissed - Application 160 of 2005 - Applicant unfairly dismissed - Application upheld - Reinstatement impracticable - Compensation for loss and injury ordered - Contractual benefits claims - Entitlements under contracts of employment - Application 159 of 2005 - Whether applicant an employee - Principles applied - Applicant held not to be an employee - Application dismissed - Application 160 of 2005 - Principles applied - Application upheld - Industrial Relations Act 1979 (WA) s 7, s 27, s 29(1)(b)(i) and s 29(1)(b)(ii) - Andrew Charles Guerin; Gloria Maureen Guerin -v- Nannup River Cottages; Nannup River Cottages - APPL 159 of 2005 and APPL 160 of 2005 - Commissioner J L Harrison - 2/04/2007 671

Contractual benefits claim - Entitlements under contract of employment interpretation of express terms - Terms implied by custom and practice - Application granted - Industrial Relations Act 1979 (WA) s 27(1)(c), s 29(1)(b)(ii) - Brigid Martina Murphy -v- Zin Zan (WA) Pty Ltd t/a WA Prestige Properties - B 511 of 2006 - Senior Commissioner J H Smith - 30/03/2007 689

Termination of employment – Harsh, oppressive and unfair dismissal –Whether application referred outside of 28 day time limit – Whether Commission functus officio in respect of earlier application – Industrial Relations Act 1979 (WA) s 29(3) - Melissa Lee Stankovic -v- MoveWell Pty Ltd ACN 100 277 405 t/as MoveWell Physiotherapy - U 494 of 2006 - Commissioner S Wood - 22/11/2006..... 702

Alleged outstanding contractual entitlements claim - Whether claims are properly made - whether items claimed to be struck out - Industrial Relations Act 1979 (WA) - Melissa Lee Stankovic -v- MoveWell Pty Ltd ACN 100 277 405 t/as MoveWell Physiotherapy - B 494 of 2006 - Commissioner S Wood - 22/11/2006..... 703

Termination of employment - Harsh, oppressive and unfair dismissal -Denied Contractual entitlements - Application referred outside of 28 day time limit - Industrial Relations Act 1979 (WA) s 29(3) - Extension of time not granted - Claim for unfair dismissal dismissed - Contractual benefits claim for lost income struck out. - Melissa Lee Stankovic -v- MoveWell Pty Ltd ACN 100 277 405 t/as MoveWell Physiotherapy - B 494 of 2006 and U 494 of 2006 - Commissioner S Wood - 20/03/2007..... 704

Award - Award variation - Conditions of employment - Application for new allowances/provisions - Special Case - Statement of Principles July 2006 applied - Award varied - Industrial Relations Act 1979 (WA) s 40 - Liquor, Hospitality and Miscellaneous Union, Western Australian Branch -v- Unions WA AND OTHERS - APPL 52 of 2006 - Commissioner J L Harrison - 26/04/2007 757

Contractual benefits claim - contract of employment - application upheld - Industrial Relations Act 1979 (WA) s.29 (1)(b)(ii) - Jennifer Louise Kirk -v- In The Seen Promotions - B 505 of 2006 - Commissioner S M Mayman - 27/04/2007 794

Industrial Law (WA) - Termination of employment - Harsh, oppressive and unfair dismissal - Issues in relation to employee's performance - Procedural fairness considered - Principles applied - Applicant harshly, oppressively and unfairly dismissed - Industrial Relations Act, 1979 (WA) s 29(1)(b)(i) - Reinstatement or Re-employment or Compensation - Principles for loss applied - Rita Maria Mazalevskis -v- Woodside Energy Ltd - APPL 843 of 2005 - Commissioner S M Mayman - 21/11/2006 796

Consideration of remuneration for the purposes of compensation of loss as per the Industrial Relations Act 1979 - Rita Maria Mazalevskis -v- Woodside Energy Ltd - APPL 843 of 2005 - Commissioner S M Mayman - 10/04/2007..... 811

Industrial Law - Termination of employment - Harsh, Oppressive and unfair dismissal -Whether applicant dismissed - Relevant principles applied - No dismissal to attract Commission's jurisdiction - Industrial Relation Act 1979 29(1)(b)(i) - Lorretta Bernardette Rollinson -v- Commissioner Department of Corrective Services - U 561 of 2006 - Commissioner S J Kenner - 9/05/2007 814

CUMULATIVE DIGEST—*continued*

Page

COMMISSIONER - *continued*

Public Service Arbitrator - Application to cease respondent's disciplinary proceedings regarding allegations against applicant's member - Whether allegations are baseless - Whether grounds on which the respondent could suspect breach of discipline - Applicant's members explanation not to be considered by the Public Service Arbitrator - Allegations found not to be baseless - Matter dismissed - Industrial Relations Act 1979 (WA) ss 27(1)(a)(iv) and 44 - Public Sector Management Act 1994 (WA) ss 9(a)(iii) and (b), 83(1)(b) and 86(4)(a) - WA Police Administrative Policy AD s 17.6 - WA Police Code of Conduct - The Civil Service Association of Western Australia Incorporated -v- Commissioner of Police, Western Australian Police - PSACR 1 of 2007 - Commissioner P E Scott - 16/04/2007..... 822

POLICE APPEAL

New evidence sought to be tendered - some documents giving particulars - some unrelated to grounds of appeal - Police Act, 1892 s.33R(3) and (4) - Maria Letizia Jones -v- Commissioner of Police - APPL 44 of 2006 - Police Appeal - Chief Commissioner A R Beech Commissioner S Wood Commissioner S M Mayman - 20/12/2006 1099

Removal of police officer – Loss of confidence by Commissioner of Police – Whether harsh, oppressive or unfair – Police Act 1892 (WA) s.8, s.33P, s.33U. - Maria Letizia Jones -v- Commissioner of Police - APPL 44 of 2006 - Police Appeal - Chief Commissioner A R Beech Commissioner S Wood Commissioner S M Mayman - 14/05/2007 1101