

CUMULATIVE DIGEST

MATTERS REFERRED TO IN DECISIONS OF THE INDUSTRIAL APPEAL COURT, INDUSTRIAL RELATIONS COMMISSION AND INDUSTRIAL MAGISTRATES COURT CONTAINED IN VOL. 91 PART 2, SUB PARTS 1 - 9.

Digest Headings

* Denotes New Heading

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| Industrial Appeal Court | Public Service Appeal Board |
| Full Bench | Public Service Arbitrator |
| Commission In Court Session | Commissioner |
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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

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| Industrial law (WA) - Application pursuant to s 71 for a declaration relating to qualifications of persons for membership of a State Branch of a Federal organisation and offices that exist within the Branch - qualifications for membership rules substantially the same - not satisfied offices are the same or can be deemed to be the same. - The Construction Forestry Mining and Energy Union of Workers -v- (Not applicable) - FBM 15 of 2010 - Full Bench - The Honourable J H Smith, Acting President/Chief Commissioner A R Beech/Commissioner S M Mayman - 16/06/2011 | 1034 |
| Industrial law (WA) – Appeal against finding of a single Commissioner – application for an adjournment – relevant principles considered – denial of procedural fairness – in the public interest an appeal should lie – decision quashed - Rainbow Coast Neighbourhood Centre Inc -v- Kylie Wood - FBA 6 of 2011 - Full Bench - The Honourable J H Smith, Acting President/Chief Commissioner A R Beech/Acting Senior Commissioner P E Scott - 11/08/2011 | 1831 |
| Industrial Law (WA) - Appeal against order of Industrial Magistrate - Alleged breach of Cleaners and Caretakers (Government) Award 1975 - Whether employee a shift employee or rostered employee within meaning of the Award considered - Principles upon which a court can exercise its discretion to allow new point being raised for first time on appeal considered - Appellant refused leave to rely upon new point raised in grounds of appeal - Minister for Education -v- Liquor Hospitality and Miscellaneous Union, Western Australian Branch - FBA 17 of 2010 - Full Bench - The Honourable J H Smith, Acting President/Acting Senior Commissioner P E Scott/Commissioner J L Harrison - 10/08/2011..... | 1839 |
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| Industrial Law (WA) – Application pursuant to s 62(2) of the Industrial Relations Act 1979 (WA) for the Full Bench to authorise alterations to qualification of membership rule and to provide for each office to be held by the person who holds a corresponding office in the counterpart Federal body – Application divided – Alterations to eligibility rule authorised and granted – Other divided matter adjourned sine die pending proposed application under s 71 of the Act - The State School Teachers’ Union of W.A. (Incorporated) -v- (Not applicable) - FBM 6 of 2011 - Full Bench - The Honourable J H Smith, Acting President/Acting Senior Commissioner P E Scott/Commissioner S J Kenner - 23/11/2011 | 2307 |

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| Alleged breach of the Plumbing and Fire Sprinklers Award 2010 constitutes by the failure to make redundancy payment; Meaning of "redundancy" in industry specific award; Whether service prior to the commencement of a modern award can be considered part of continuous service; Consideration of decision of Fair Work Australia in of Master Builders Association of New South Wales Fair Work Australia (AM2010/257); Imposition of penalty; Turns on its own facts. - Bruce Lilburne -v- Allstate Plumbing Pty Ltd - M 29 of 2011 - Industrial Magistrate - INDUSTRIAL MAGISTRATE G. CICCHINI - 9/11/2011..... | 2335 |
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| Industrial Law (WA) - Public Service Appeal Board - Appeal against a 'decision' not to vary the classification of the appellant - Did the notification of the outcome of a review of the appellant's classification by the Public Sector Commissioner constitute a 'decision' - Did the respondent have the power to vary the classification of the appellant pursuant to s 29(1)(h) of the Public Sector Management Act 1994 (WA) - Pre-conditions for the exercise of power under s 29(1)(h) discussed - No power under s 29(1)(h) to classify an officer independently of classifying the officer's office, post or position - Approved Procedure 1, Approved Procedure 2 and the Re-Employment of Public Service Officers Employed in Statutory Offices Policy considered - In the circumstances respondent had no power to classify or re-classify the appellant - Rule against bias considered - Duty to act fairly considered. - Glenn Ross -v- Mr Peter Conran, Director General Dept of the Premier and Cabinet - PSAB 18 of 2010 - Public Service Appeal Board - The Honourable J H Smith, Acting President - 11/10/2011 | 2261 |
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| Contractual benefits claim - Claim for balance of retainer, telephone allowance and fuel allowance - Preliminary issue - Whether applicant an employee or independent contractor - Principles applied - Applicant found not to be an employee - Commission lacks jurisdiction - Application dismissed - Industrial Relations Act 1979 (WA) s 29(1)(b)(ii) - Davide Iuliano -v- Southern Cross Tiling Pty Ltd - B 186 of 2010 - Commissioner J L Harrison - 6/07/2011 | 1088 |
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