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CUMULATIVE CONTENTS AND DIGEST APPEAR AT THE END OF THIS PUBLICATION

INDUSTRIAL APPEAL COURT—Appeals against decision of Commission under s.33S of the Police Act 1892—

[2012] WASCA 170

JURISDICTION	:	WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT
CITATION	:	WALL -v- COMMISSIONER OF POLICE [2012] WASCA 170
CORAM	:	PULLIN J
		LE MIERE J
		KENNETH MARTIN J
HEARD	:	10 AUGUST 2012
DELIVERED	:	10 AUGUST 2012
FILE NO/S	:	IAC 3 of 2011
BETWEEN	:	PETER WALL
		Appellant
		AND
		COMMISSIONER OF POLICE
		Respondent

ON APPEAL FROM:

Jurisdiction	:	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
Coram	:	SCOTT ASC
		KENNER C
		HARRISON C
Citation	:	WALL v COMMISSIONER OF POLICE [2011] WAIRC 00828
File No	:	APPL 40 of 2009

Catchwords:

Industrial Appeal Court - Whether court has jurisdiction to hear appeal

Legislation:

Industrial Relations Act 1979 (WA)

Police Act 1892 (WA)

Result:

Appeal dismissed

Category: B

Representation:

Counsel:

Appellant	:	No appearance
Respondent	:	Mr J F O'Sullivan

Solicitors:

Appellant	:	No appearance
Respondent	:	Western Australian Police Service

Case(s) referred to in judgment(s):

Gordon v Commissioner of Police [2011] WASCA 168

1 **REASONS OF THE COURT**: This is an appeal against the decision of the Western Australian Industrial Relations Commission (Commission). The appeal was commenced by the appellant on 6 September 2011. Orders were made on 14 October 2011 requiring the appellant to file appeal books and submissions by 4 November 2011. The appellant sought an extension of time to comply with the programming orders and so on 4 November 2011 orders were made that the appellant file the appeal books and submissions by 2 December 2011.

2 The appellant then sought a further extension until 4 January for the filing of the appeal books and submissions. On 29 December 2011, the appellant sent an email to the Commission applying for an adjournment sine die, due to 'ongoing and acute personal distress and impairment'. As a result, the matter was listed for hearing on 3 February 2012. On that day, the appellant failed to attend and orders were made that the respondent, rather than the appellant, file the appeal books by 15 February 2012 and that the parties file and serve submissions by the same date.

3 The respondent has filed the appeal books and submissions. The appellant did not file his submissions. The appellant was sent a reminder by the registry on 22 February 2012 concerning his obligation to file submissions.

4 An affidavit has been filed on behalf of the respondent which reveals that when the appeal books were sent in the mail to the address for service which had been given by the appellant, they were returned 'No longer at this address return to sender'.

5 On the same day a copy of the documents was sent by email to the address which had been used by the appellant to communicate with the registry on 29 December 2011.

6 Subsequent inquiries by the police reveal that no one answered the door when they called at the address for service given by the appellant. Inquiries made with neighbours failed to establish whether the appellant still lived at the address.

7 On 14 March 2012 the appeal book and list of authorities were delivered by a police officer to the address for service. On 15 March 2012, the deponent of the affidavit filed on behalf of the respondent deposed that she received a telephone call from a person who said that in relation to the documents left at the address for service, the appellant no longer lived at the address and had not done so since April 2011 when she had bought the house. That is prior to the commencement of the appeal. This person said that the appellant had not left a forwarding address.

8 Other inquiries have been made to try and locate the appellant, without success. A notice of today's hearing was sent on 11 May 2012 to the appellant at the address for service which he had given. An email was also sent. The appellant has failed to appear today.

9 The above information suggests that the appellant has lost interest in and has abandoned the appeal. Although that would be a basis for dismissing the appeal, there is a more significant factor which supports that outcome. It is as follows: the background is that the respondent removed the appellant as a member of the Western Australian Police Force on 1 May 2009 pursuant to s 8 and s 33L of the *Police Act 1892* (WA). The appellant appealed to the Commission against that decision on the basis that the removal action was harsh, oppressive and unfair. This appeal was dismissed by the Commission on 16 August 2011.

10 It is against that decision that the appellant has appealed. The right of appeal to this court and the jurisdiction of this court is limited, as explained by this court in ***Gordon v Commissioner of Police*** [2011] WASCA 168 [8] - [10] and [13] - [23]. In [23] Le Miere J (Pullin & Buss JJ agreeing) said:

> Upon the proper construction of *Industrial Relations Act* s 90(1), as applied by *Police Act* s 33S, a member of the police has no right of appeal from a decision of the Commission dismissing his appeal on the grounds that his removal was not harsh, oppressive or unfair.

11 The appellant is appealing from a decision of the Commission dismissing his appeal on the grounds that his removal was not harsh, oppressive or unfair. The appellant's appeal is therefore incompetent and must be dismissed, so as a result of those reasons, the appeal should be dismissed, and that will be the order of the court.

2012 WAIRC 00824

APPEAL AGAINST THE DECISION OF THE COMMISSION IN MATTER NO. APPL 40 OF 2009 GIVEN ON 16 AUGUST 2011

WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT

PARTIES	PETER WALL
	APPELLANT
	-v-
	THE COMMISSIONER OF POLICE
	RESPONDENT
CORAM	PULLIN JA
	LE MIERE J
	KENNETH MARTIN J
DATE	FRIDAY, 10 AUGUST 2012
FILE NO/S	IAC 3 OF 2011
CITATION NO.	2012 WAIRC 00824

Result	Appeal dismissed
Representation	
Appellant	No appearance
Respondent	Mr JF O'Sullivan (of Counsel)

Order

THERE being no appearance for the Appellant and having heard Mr JF O'Sullivan (of Counsel) for the Respondent, THE COURT HEREBY ORDERS THAT:-

The appeal is dismissed.

(Sgd.) S BASTIAN,
[L.S.] Clerk of Court.

FULL BENCH—Unions—Application for registration—

2012 WAIRC 00114

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES PRINCIPALS' FEDERATION OF WESTERN AUSTRALIA

APPLICANT

-and-

THE STATE SCHOOL TEACHERS' UNION OF W.A. (INCORPORATED)
CECIL O'NEILL
EDMUND FREDRICK BLACK
JENNIFER BROZ
KAYE ROSALIND HOSKING
LESLIE BRUCE BANYARD
TREVOR STEPHEN VAUGHAN

OBJECTORS

CORAM FULL BENCH
THE HONOURABLE J H SMITH, ACTING PRESIDENT
ACTING SENIOR COMMISSIONER P E SCOTT
COMMISSIONER S M MAYMAN

DATE WEDNESDAY, 29 FEBRUARY 2012

FILE NO. FBM 8 OF 2011

CITATION NO. 2012 WAIRC 00114

Result Order issued

Appearances

Applicant Mr S P Kemp (of counsel)

Objectors Mr T J Dixon (of counsel) and with him Ms S Holmes (of counsel) for The State School Teachers' Union of W.A. (Incorporated)

Order

This matter having come on for hearing before the Full Bench on 29 February 2012, and having heard Mr Kemp (of counsel) on behalf of the applicant, Mr Dixon (of counsel) and with him Ms Holmes (of counsel) on behalf of the objector, The State School Teachers' Union of W.A. (Incorporated), it is ordered that:—

1. The objections listed in paragraphs 1 to 4 inclusive in Schedule A of The State School Teachers' Union of W.A. (Incorporated)'s Notice of objection dated 17 January 2012 be heard as preliminary issues.
2. The State School Teachers' Union of W.A. (Incorporated) (Union Objector) file and serve any applications for discovery and any summons for the production of documents relevant to the issues set out in Order 1 on or before 9 March 2012.
3. The summons filed and served in accordance with Order 2 is to be returnable on or before 4 April 2012.
4. All documents sought to be produced under Order 2 are to be produced on or before 4 April 2012.
5. The Union Objector file and serve further and better particulars of its objection in respect of the issues set out in Order 1 on or before 20 April 2012.
6. The matter be listed for further directions in the week commencing 23 April 2012.
7. There be liberty to apply.

By the Full Bench

(Sgd.) J H SMITH,
Acting President.

[L.S.]

2012 WAIRC 00247

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	PRINCIPALS' FEDERATION OF WESTERN AUSTRALIA
	APPLICANT
	-and-
	THE STATE SCHOOL TEACHERS' UNION OF W.A. (INCORPORATED)
	CECIL O'NEILL
	EDMUND FREDRICK BLACK
	JENNIFER BROZ
	KAYE ROSALIND HOSKING
	LESLIE BRUCE BANYARD
	TREVOR STEPHEN VAUGHAN
	OBJECTORS
CORAM	FULL BENCH
	THE HONOURABLE J H SMITH, ACTING PRESIDENT
	ACTING SENIOR COMMISSIONER P E SCOTT
	COMMISSIONER S M MAYMAN
DATE	MONDAY, 23 APRIL 2012
FILE NO	FBM 8 OF 2011
CITATION NO.	2012 WAIRC 00247

Result	Order varied

Order

This matter having come on for a directions hearing before the Full Bench on 29 February 2012, and having heard Mr Kemp (of counsel) on behalf of the applicant, Mr Dixon (of counsel) and with him Ms Holmes (of counsel) on behalf of the objector, The State School Teachers' Union of W.A. (Incorporated), by consent it is ordered —

THAT Order [2012] WAIRC 00114 be varied as follows:

3. The summons filed and served in accordance with Order 2 is to be returnable on or before 20 April 2012.

4. All documents sought to be produced under Order 2 are to be produced on or before 20 April 2012.

5. The Union Objector file and serve further and better particulars of its objection in respect of the issues set out in Order 1 on or before 7 May 2012.

6. The matter be listed for further directions on Thursday, 31 May 2012 in Court 3, 18th Floor, 111 St Georges Terrace, Perth at 10:30 am.

By the Full Bench

[L.S.]

(Sgd.) J H SMITH,
Acting President.

2012 WAIRC 00334

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	PRINCIPALS' FEDERATION OF WESTERN AUSTRALIA
	APPLICANT
	-and-
	THE STATE SCHOOL TEACHERS' UNION OF W.A. (INCORPORATED) CECIL O'NEILL EDMUND FREDRICK BLACK JENNIFER BROZ KAYE ROSALIND HOSKING LESLIE BRUCE BANYARD TREVOR STEPHEN VAUGHAN
	OBJECTORS
CORAM	FULL BENCH THE HONOURABLE J H SMITH, ACTING PRESIDENT ACTING SENIOR COMMISSIONER P E SCOTT COMMISSIONER S M MAYMAN
DATE	THURSDAY, 31 MAY 2012
FILE NO.	FBM 8 OF 2011
CITATION NO.	2012 WAIRC 00334

Result Directions hearing adjourned

Order

By consent, the parties agree to the following order —

1. The directions hearing listed at 10.30am on Thursday, 31 May 2012 be adjourned to a date on or after Friday, 15 June 2012.

By the Full Bench

[L.S.] (Sgd.) J H SMITH, Acting President.

2012 WAIRC 00689

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	PRINCIPALS' FEDERATION OF WESTERN AUSTRALIA
	APPLICANT
	-and-
	THE STATE SCHOOL TEACHERS' UNION OF W.A. (INCORPORATED) CECIL O'NEILL EDMUND FREDRICK BLACK JENNIFER BROZ KAYE ROSALIND HOSKING LESLIE BRUCE BANYARD TREVOR STEPHEN VAUGHAN
	OBJECTORS
CORAM	FULL BENCH THE HONOURABLE J H SMITH, ACTING PRESIDENT ACTING SENIOR COMMISSIONER P E SCOTT COMMISSIONER S M MAYMAN
DATE	TUESDAY, 24 JULY 2012
FILE NO.	FBM 8 OF 2011
CITATION NO.	2012 WAIRC 00689

Result Order issued

Order

The Full Bench, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders, by consent, that —

1. The applicant file and serve its witness statements and any documents upon which it intends to rely, on or before 17 August 2012.
2. The objectors file and serve their witness statements and any documents upon which they intend to rely, on or before 28 September 2012.
3. The parties file and serve any responsive witness statements upon which they intend to rely, on or before 19 October 2012.
4. The parties inform one another of any objections (and the grounds of those objections) to the admissibility of any of the other parties' witness statements or any part thereof, on or before 19 November 2012.
5. Any witness statements filed by the parties will stand as the evidence in chief of the maker. Evidence in chief other than that contained in the witness statements may only be adduced by leave of the Commission.
6. The matter be listed for further directions on a date not before 19 October 2012.
7. The parties have liberty to apply on three (3) days' notice.

By the Full Bench

[L.S.] (Sgd.) J H SMITH, Acting President.

2012 WAIRC 00762

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES PRINCIPALS' FEDERATION OF WESTERN AUSTRALIA

APPLICANT

-and-

THE STATE SCHOOL TEACHERS' UNION OF W.A. (INCORPORATED)
CECIL O'NEILL
EDMUND FREDRICK BLACK
JENNIFER BROZ
KAYE ROSALIND HOSKING
LESLIE BRUCE BANYARD
TREVOR STEPHEN VAUGHAN

OBJECTORS

CORAM FULL BENCH
THE HONOURABLE J H SMITH, ACTING PRESIDENT
ACTING SENIOR COMMISSIONER P E SCOTT
COMMISSIONER S M MAYMAN

DATE FRIDAY, 17 AUGUST 2012

FILE NO. FBM 8 OF 2011

CITATION NO. 2012 WAIRC 00762

Result Order issued

Order

The Full Bench, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders, by consent, that —

1. The applicant file and serve its witness statements and any documents upon which it intends to rely, on or before 10 September 2012.
2. The objectors file and serve their witness statements and any documents upon which they intend to rely, on or before 22 October 2012.
3. The parties file and serve any responsive witness statements upon which they intend to rely, on or before 12 November 2012.
4. The parties inform one another of any objections (and the grounds of those objections) to the admissibility of any of the other parties' witness statements or any part thereof, on or before 26 November 2012.
5. Any witness statements filed by the parties will stand as the evidence in chief of the maker. Evidence in chief other than that contained in the witness statements may only be adduced by leave of the Commission.
6. The matter be listed for further directions on a date not before 26 November 2012.
7. The parties have liberty to apply on three (3) days' notice.

By the Full Bench

[L.S.] (Sgd.) J H SMITH, Acting President.

PRESIDENT—Unions—Matters dealt with under Section 66—

2012 WAIRC 00799

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	JOSEPH WARRINGTON BULLOCK, SECRETARY AND CURRENT FINANCIAL MEMBER OF THE SALES REPRESENTATIVES' AND COMMERCIAL TRAVELLERS' GUILD OF W.A. INDUSTRIAL UNION OF WORKERS
	APPLICANT
	-and-
	SALES REPRESENTATIVES' AND COMMERCIAL TRAVELLERS' GUILD OF W.A. INDUSTRIAL UNION OF WORKERS
	RESPONDENT
CORAM	THE HONOURABLE J H SMITH, ACTING PRESIDENT
DATE	FRIDAY, 31 AUGUST 2012
FILE NO/S	PRES 2 OF 2012
CITATION NO.	2012 WAIRC 00799

Result	Order issued
Appearances	
Applicant	Mr T Pope, as agent
Respondent	Mr T Pope, as agent

Order

This matter having come on for hearing before me on 28 August 2012, and having heard Mr T Pope, as agent, on behalf of the applicant and on behalf of the respondent, the Acting President, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders that —

1. An interim executive committee of management (committee) is established, constituted as follows:

   Secretary – Mr Joseph Warrington Bullock

   Committee person – Mr Ben Coccaro

   Committee person – Mr Carl Miller

2. Until further order:
   (a) the committee shall exercise all the powers, functions and duties of the president, senior vice-president, junior vice-president, secretary, treasurer, trustees and committee under the rules;
   (b) without derogating from the powers conferred, the committee shall:
      (i) meet and decide whether or not an application should be made for deregistration of the union;
      (ii) if a decision is made to seek deregistration of the union:
         (A) manage the affairs of the union and meet the payment of outstanding accounts, including final audit;
         (B) deal with all matters necessary to wind the organisation up;
         (C) disburse remaining funds;
   (c) the committee shall have the power to appoint an auditor without the approval of an annual general meeting.
3. Until further order, compliance with rules 19, 29, 30, 31, 36, 37, 38, 39, 40 and 41 is waived.
4. There be liberty to apply to vary the terms of this order.

(Sgd.) J H SMITH,
[L.S.] Acting President.

INDUSTRIAL MAGISTRATE—Claims before—

2012 WAIRC 00778

WESTERN AUSTRALIAN INDUSTRIAL MAGISTRATES COURT

CITATION	**:**	2012 WAIRC 00778
CORAM	**:**	INDUSTRIAL MAGISTRATE G. CICCHINI
HEARD	**:**	WEDNESDAY, 1 AUGUST 2012
DELIVERED	**:**	THURSDAY, 23 AUGUST 2012
FILE NO.	**:**	M 38 OF 2011
BETWEEN	**:**	UNITED VOICE WA
		CLAIMANT
		-v-
		DIRECTOR GENERAL, DEPARTMENT OF EDUCATION
		RESPONDENT

Catchwords	**:**	Breach of *Education Assistants' (Government) General Agreement 2010;* Failure to ensure that new employees and redeployees attend induction sessions within three months of commencement; Failure to give claimant at least 14 days' notice of the time and place of inductions and the names of those attending; Failure to allow the claimant its entitlement of at least 30 minutes to address new employees without employer representatives being present; Whether Court should issue a caution or otherwise impose a penalty; Whether an additional order pursuant to s.83(5) of the *Industrial Relations Act 1979* should be made.
Legislation	**:**	*Industrial Relations Act 1979* *Public Sector Management Act 1994*
Instruments	**:**	*Education Assistants' (Government) General Agreement 2007* *Education Assistants' (Government) General Agreement 2010*
Cases referred to in Decision	**:**	Australian Competition and Consumer Commission v Dermalogica Pty Ltd *([2005] 215 ALR 482)*
Result	**:**	Penalties imposed Penalties to be paid to the claimant No other order made
Representation	**:**	Ms E Palmer (as agent) appeared for the claimant Mr D Matthews (Counsel), instructed by the State Solicitor's Office, appeared for the respondent

REASONS FOR DECISION

Background

1 The claimant brings this claim pursuant to s.83(1) of the *Industrial Relations Act 1979* (IR Act). It alleges that the respondent has, between January 2011 and 5 June 2011, failed to comply with the *Education Assistants' (Government) General Agreement 2010* (the Agreement). The following breaches of Clause 10 - Induction (clause 10) of the Agreement are asserted:

1. Failing to ensure that new employees and redeployees attended an induction session within three months of commencement of employment (clause 10.1);
2. The District Offices not being responsible for conducting inductions (clause 10.3);
3. Failing to hold inductions for new employees twice each term during term time for new employees (clause 10.3);
4. Failing to give the claimant at least 14 days' notice of the time and place of inductions and the names of those attending (clause 10.4); and
5. Not allowing the claimant its entitlement of at least 30 minutes to address new employees without employer representatives being present (clause 10.4).

2 Early in this proceeding the respondent admitted having breached clauses 10.1 and 10.4 of the Agreement as outlined in 1, 4 and 5 above, but denied having breached clause 10.3. For reasons outlined in *United Voice WA v Director General, Department of Education [2012 WAIRC 00446]* delivered on 19 July 2012, I found that the alleged breaches of clause 10.3 were not made out. These reasons concern whether or not the respondent should be penalised for her 158 breaches of clause 10.1 and her 52 breaches of clause 10.4.

What remedies are available with respect to the admitted breaches?

3 Sections 83(4) and 83(5) of the IR Act provide:

> "(4) On the hearing of an application under subsection (1) the industrial magistrate's court may, by order —
>
> (a) if the contravention or failure to comply is proved —
>
> (i) issue a caution; or
>
> (ii) impose such penalty as the industrial magistrate's court thinks just but not exceeding $2 000 in the case of an employer, organisation or association and $500 in any other case;
>
> or
>
> (b) dismiss the application.
>
> (5) If a contravention or failure to comply with a provision of an instrument to which this section applies is proved against a person as mentioned in subsection (4) the industrial magistrate's court may, in addition to imposing a penalty under that subsection, make an order against the person for the purpose of preventing any further contravention or failure to comply with the provision."

4 The claimant seeks the imposition of a penalty of $1,000 for each breach and the making of an order, pursuant to s.83(5) of the IR Act, preventing the respondent from further breaching clauses 10.1 and 10.4 of the Agreement. The respondent says that she should not be penalised but rather be cautioned. She contends that because she is unlikely to commit further breaches that the making of an order pursuant to s.83(5) of the IR Act is unnecessary.

5 Any order made must be commensurate with the seriousness of the breaches committed. The seriousness of each breach must be determined by taking into account the statutory penalty for the breach, the circumstances of the commission of the breach, any aggravating factors, and any mitigating factors. Aggravating factors are factors which in the Court's opinion increases culpability. A breach is not aggravated by the fact that the respondent has been previously found to have breached the provisions of an Award or Agreement nor is it aggravated by the fact that it has a record of breaches. The fact that a previous penalty has not achieved the purpose for which it was imposed is also not an aggravating factor. Mitigating factors are factors which in the Court's opinion decreases culpability or which otherwise decreases the extent to which that party should be punished. An admission of guilt is a mitigating factor and the earlier in the proceedings that it is made, or indication is given that it will be made, the greater the mitigation. In circumstances where multiple breaches have occurred and the Court considers that penalties should be imposed, the Court must, in addition to the aforementioned factors, have regard to the total effect of individual penalties. The respondent's capacity to pay and the extent to which the total penalty will burden the culpable party must also be taken into account.

Is it appropriate to caution the respondent?

6 In considering whether the respondent should be cautioned, regard must be had to the number of breaches and the impact of those breaches, both upon Education Assistants and the claimant.

7 There can be no doubt that the respondent's failure to comply with the Agreement has considerably impacted both Education Assistants and the claimant. Indeed, numerous Education Assistants have missed out on their inductions. They were, at a time when it was most valuable to them, deprived of important information about their job, their roles, departmental policies, their contracts of employment, the conditions of their employment, available contacts and supports, and of matters appertaining to safety and health. Without the benefit of a proper induction process their knowledge and ability to fit in and perform their

duties was made much more difficult. Further, their ability to join the claimant was rendered more difficult. There can be no doubt that the failure to hold inductions has also negatively impacted on the claimant's ability to recruit members, and inform new employees of their rights and of ongoing industrial campaigns.

8 Bearing in mind those observations it is obvious that the breaches are not minor or incidental in nature, but rather, are of significant effect. In this instance the issuance of a caution will not be commensurate with the seriousness of the failure to comply. The issuance of a caution may well be appropriate in circumstances where there has been a technical breach which occurs as a result of some significant extenuating circumstance, or where the impact on the affected party is limited. These breaches do not fall into those categories. The breaches have occurred in circumstances where the respondent was, during the course of the Department of Education's (the Department) restructure, somewhat indifferent to the need to strictly comply with the Agreement. In the circumstances, only the imposition of a monetary penalty will be commensurate with the seriousness of the respondent's conduct.

What is the appropriate penalty?

9 The claimant calls for the imposition of a penalty set at half the maximum available. It says that in view of the respondent's "deliberate and wilful conduct" a deterrent penalty of that magnitude is necessary to ensure that she takes seriously her obligations under the Agreement. With respect, I do not accept that the respondent's conduct indicates a wilful defiance of clause 10 of the Agreement. Rather the evidence reveals that the breaches have flowed from ineffectiveness in the implementation of a new government policy concerning the delivery of school services which was announced in early September 2010.

10 It appears that changes in the delivery of school services occurred very quickly and in some respects without sufficient planning. The way in which the changes would affect the Agreement was not properly considered either before, or soon after the implementation of changes. That led to considerable confusion. In that state of confusion no-one within the Department took on the responsibility of complying with the Agreement, and it was not until May 2011 that the problem was rectified. By that time the opportunity for compliance with the requirements of clause 10 had passed. The need for compliance with the Agreement was not given the importance it should have been given during the planning and implementation phases of the restructure. That failure resulted from ineptitude rather than deliberate non-compliance with the Agreement. There were no aggravating factors in the commission of the breaches.

11 These breaches are at the low end of seriousness and should attract a commensurate penalty. In criminal proceedings, fines set at ten percent of the maximum penalty are often considered to be an appropriate starting point for first offences at the lower end of seriousness. In my view the same approach should be adopted in dealing with the imposition of penalties under s.83(4)(ii) of the IR Act. In this matter, even if the starting point were to be set at ten percent of the maximum penalty, the accumulation of individual penalties, given their number, would result in a significant total penalty with a condign deterrent effect.

12 Taking that as a starting point, I move to take into account mitigating factors. They include the fact that the respondent has not previously breached the Agreement or its predecessor, and that at a very early stage in the proceedings admitted her failure to comply. Her admission alleviated the need for the claimant to prove its case, a task which would have been logistically difficult given the nature and number of alleged breaches. Further, it is important to recognise that the breaches occurred as a result of a one-off event being the immediate implementation of new government policy. That occurrence can be viewed as an extenuating element in her failure to comply. Having regard to those significant mitigatory factors, I conclude that the appropriate penalty for each breach is $100. Given that there are 210 admitted breaches, the respondent will suffer a total penalty of $21,000. That total penalty is commensurate with what has occurred. It does not offend the totality principle and is of such significant proportion that it acts as a real and meaningful deterrent penalty. It is neither nominal nor crushing. When that total penalty is apportioned into its component parts it properly reflects the respondent's wrong doing. A total penalty of $15,800 for denying 158 employees their induction is commensurate with her conduct, as is the total penalty of $5,200 for failing to comply with clause 10.4 of the Agreement. I observe that the respondent has the capacity to pay the amount ordered.

Who should the penalties be paid to?

13 The claimant submits that the penalties should be paid to it rather than into consolidated revenue. It says that because it and its members were directly affected by the respondent's conduct that the penalties will only be meaningful they are paid to the union. Otherwise, there would merely be a transfer of money from one government department to another.

14 Section 83F of the IR Act enables that which is sought. It provides:

> "**83F. Payment of costs and penalties**
>
> (1) Where the industrial magistrate's court, by an order made under section 83, 83A, 83B or 83E, imposes a penalty or costs the industrial magistrate's court shall state in the order —
>
> (a) the name of the person liable to pay the penalty or costs; and
>
> (b) the name of the person to whom the penalty is, or costs are, payable.
>
> (2) An industrial magistrate's court imposing a penalty by order under section 83, 83A, 83B or 83E may order that the amount of the penalty, or part of that amount, be paid to —
>
> (a) a person directly affected by the conduct to which the contravention relates;
>
> (b) the applicant; or

(c) the Treasurer.

(3) In making an order for payment to a person referred to in subsection (2)(a) the court must take into account any other compensation that the person has received or is likely to receive in respect of the conduct concerned."

15 I accept that the claimant has been vigilant in ensuring compliance with the Agreement. It is important that parties who police compliance with industrial agreements be rewarded for their efforts. There can be no doubt that in this instance the claimant has expended considerable resources and time in bringing the claim. The payment of penalties to it will, in part, ameliorate its costs and the harm done. I propose to order that the penalties imposed be paid by the respondent to the claimant.

Further relief

16 The claimant argues that given the degree of irreparable damage which will be done in the event of a further breach that the respondent should be exposed to a higher penalty in the event of such. A real and significant deterrent sanction is required. That is particularly so, given that the Court has heard evidence that the respondent has, subsequent to the institution of these proceedings, continued to fail to appropriately inform the claimant of inductions. It says that an order pursuant to s.83(5) of the IR Act is required.

17 The s.83(5) order sought is injunctive in nature. In *Australian Competition and Consumer Commission v Dermalogica Pty Ltd ([2005] 215 ALR 482)*, His Honour Goldberg J said, at [110]:

> "In determining whether to grant an injunction proscribing future conduct, the court should consider whether all the circumstances of the case – including the scale of the prior contravening conduct, any evidence as to the contravener's future intentions and the likelihood of damage to other persons as a result of further proscribed conduct – call for the contravener being subject to the more onerous burdens, such as contempt of court, in relation to their future conduct. This consideration is required even though the power of the court to grant an injunction under s 80 is not limited by the requirement of a threat of future contravening conduct."

18 The same considerations apply in this matter. Prior to the restructure in September 2010 the respondent had been compliant with clause 10 of the Agreement. She only became non-compliant during the Department's restructure. That is now complete and there are clear lines of responsibility with respect to compliance with clause 10 of the Agreement. Further, because the respondent has been involved in this proceeding and now knows its outcome she will be acutely aware of the need to strictly comply with the Agreement and of the significant consequences which will flow in the event of further breach. The respondent, who is possibly this state's largest employer, has in the past been a responsible employer with limited minor breaches of industrial instruments. She is statutorily obliged to comply with the requirement of the Agreement and any non-compliance may render her in contravention of s.30(d) of the *Public Sector Management Act 1994*, with significant personal consequences. In light of the possible consequences in the event of further non-compliance there is a very strong incentive for compliance. In the circumstances, the making of an order pursuant to s.83(5) of the IR Act, is not required. The penalty imposed is adequate to serve as a specific deterrent.

19 I will now hear from the parties with respect to the specific terms of the orders to be made.

G. CICCHINI,
Industrial Magistrate.

UNFAIR DISMISSAL/CONTRACTUAL ENTITLEMENTS—

2012 WAIRC 00817

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES MR PETER BOURKE

APPLICANT

-v-

MR WAYNE COLLYER
MANAGING DIRECTOR
POLYTECHNIC WEST

RESPONDENT

CORAM COMMISSIONER S M MAYMAN
DATE MONDAY, 10 SEPTEMBER 2012
FILE NO/S U 67 OF 2012
CITATION NO. 2012 WAIRC 00817

Result	Application discontinued
Representation	
Applicant	Ms S Bourke (of counsel)
Respondent	Mr M Taylor

Order

WHEREAS this is an application pursuant to section 29(1)(b)(i) of the *Industrial Relations Act 1979*;

AND WHEREAS on 27 April 2012 the Commission convened a conference for the purpose of conciliating between the parties;

AND WHEREAS at the conclusion of the conference no agreement was able to be reached between the parties;

AND WHEREAS the matter was listed for hearing and determination on 12, 13 and 14 September 2012;

AND WHEREAS on 9 August 2012 a conference was held;

AND WHEREAS at the conclusion of the conference agreement was able to be reached between the parties;

AND WHEREAS on 20 August 2012 the applicant advised the Commission to file the Notice of Discontinuance in respect of the application;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

(Sgd.) S M MAYMAN,
[L.S.] Commissioner.

2012 WAIRC 00761

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	HAYDEN ASHLEY BURBIDGE
	APPLICANT
	-v-
	MINECORP VEHICLE SOLUTIONS PTY LTD (MINECORP) (AS AGENT FOR FORTUNE 8 LIFESTYLE PTY LTD AS TRUSTEE FOR THE P8 PROPERTY TRUST AND ITS NOMINEES PTY LTD AS TRUSTEE FOR THE SCHULTZ FAMILY TRUST 1)
	RESPONDENT
CORAM	ACTING SENIOR COMMISSIONER P E SCOTT
DATE	FRIDAY, 17 AUGUST 2012
FILE NO/S	U 121 OF 2012
CITATION NO.	2012 WAIRC 00761

Result	Application dismissed

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the *Industrial Relations Act 1979*; and

WHEREAS on the 30th day of July 2012 the Commission convened a conference for the purpose of conciliating between the parties; and

WHEREAS at the conclusion of that conference the applicant sought time to consider his position; and

WHEREAS on the 9th day of August 2012 the applicant filed a Notice of Discontinuance in respect of the application;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

(Sgd.) P E SCOTT,
[L.S.] Acting Senior Commissioner.

2012 WAIRC 00795

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	GRANT JOHN BUTLER
	APPLICANT
	-v-
	ANCHOR FOODS PTY LTD
	RESPONDENT
CORAM	COMMISSIONER S M MAYMAN
DATE	WEDNESDAY, 29 AUGUST 2012
FILE NO/S	U 126 OF 2012
CITATION NO.	2012 WAIRC 00795

Result	Application discontinued
Representation	
Applicant	Mr G J Butler
Respondent	Mr D Clapin and Ms S Beaumont

Order

WHEREAS this is an application pursuant to section 29(1)(b)(i) of the *Industrial Relations Act 1979*;

AND WHEREAS on 27 July 2012 the Commission convened a conference for the purpose of conciliating between the parties;

AND WHEREAS at the conclusion of the conference agreement was reached between the parties;

AND WHEREAS on 15 August 2012 the applicant advised the Commission to file the Notice of Discontinuance in respect of the application;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

(Sgd.) S M MAYMAN,
[L.S.] Commissioner.

2012 WAIRC 00712

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

CITATION	**:**	2012 WAIRC 00712
CORAM	**:**	COMMISSIONER S J KENNER
HEARD	**:**	MONDAY, 23 JULY 2012
DELIVERED	**:**	MONDAY, 23 JULY 2012
FILE NO.	**:**	U 113 OF 2012
BETWEEN	**:**	LEON STEPHEN COHEN
		Applicant
		AND
		BILL DONESKI TRADING AS CLEAN IMAGE CLEANING SERVICES WA
		Respondent

Catchwords	**:**	Industrial law (WA) - Alleged harsh, oppressive and unfair dismissal - Application referred outside of 28 day time limit - Principles applied - Commission satisfied that discretion should be exercised - Acceptance of referral outside of time granted.
Legislation	**:**	Industrial Relations Act 1979 s 29(1)(b)(iii), s 29(3)
Result	**:**	Application granted
REPRESENTATION:		
Applicant	**:**	Mr L Cohen
Respondent	**:**	No appearance

Case(s) referred to in reasons:

Malik v Director General Department of Education (2004) 84 WAIG 683

Ex Tempore

1 By this application, Mr Leon Stephen Cohen alleges that on or about 20 April 2012 he was harshly, oppressively or unfairly dismissed by the respondent Clean Image Cleaning Services WA. The applicant told the Commission in evidence that he was employed as the General Manager. In that position he was obliged to overall conduct the affairs of the business. Mr Cohen was engaged under a written contract of employment dated 23 March 2012 and commenced employment on 27 March 2012. It appears on the evidence that Mr Cohen's employment was short lived when, he informed the Commission, on or about 20 April he received a telephone call from the operator of the business Mr Doneski, who appears to have been representing the respondent employer. Mr Doneski informed Mr Cohen that he would not be able to continue to pay Mr Cohen his salary. Indeed, he informed him in that telephone conversation not to attend work anymore as he would not be able to pay him. Unsurprisingly, Mr Cohen took that as termination of his employment.

2 As I have indicated, Mr Cohen now claims that he was unfairly dismissed and seeks compensation by way of loss of earnings. As the application was filed some four days outside of the 28 day time limit prescribed by section 29(2) of the Act, the applicant seeks an extension of time to bring the claim under section 29(3) of the Act. The principles applicable to section 29(3) extension of time applications are well settled and I refer to the decision of the Industrial Appeal Court in *Malik v Director General Department of Education* (2004) 84 WAIG 683. In particular the observations of EM Heenan J at pars 73-74 of that judgement.

3 The applicant's evidence is that the reason for the filing of the application being out of time is there was some doubt as to jurisdiction. He originally referred the matter, on his evidence, to the Fair Work Ombudsman. He was then informed that the matter should be referred to Fair Work Australia. An application was lodged online with Fair Work Australia, however, according to Mr Cohen he was subsequently informed by Fair Work Australia that the matter should be referred as he put it, to "the Department of Commerce". Following a meeting and advice from them, Mr Cohen commenced proceedings in this jurisdiction, as I have said, some four days outside of the 28 day time limit established by the Act.

4 There is some doubt on the evidence as to the status of the respondent employer. The letter of appointment to which I have referred only refers to the business name of Clean Image Cleaning Services WA. There is no reference to any corporate entity standing behind that business name. The letter of appointment contains the signature purportedly of Mr Doneski on behalf of Clean Image Cleaning Services and he describes himself as "Director". However in his evidence, Mr Cohen informed the Commission that in conversations he had with the Australian Securities and Investments Commission, he was advised the business of Clean Image Cleaning Services WA is a sole trader operation. Furthermore, that Mr Doneski has been banned from managing corporations and therefore, seemingly, could not purport to act as a director of any corporate entity.

5 On the basis of the evidence before me, which is not in any way challenged, I am satisfied that the applicant's claim has some prospect of success. I am also satisfied on the evidence, on balance, even though there is an absence of documentary evidence, that the claim is within the Commission's jurisdiction. I am also satisfied on the evidence that by reason of the steps taken by Mr Cohen he expeditiously challenged the termination of his employment but appears to have done so in alternative and the wrong jurisdictions. Given the relatively short period of time over which the extension is sought the Commission will exercise its discretion in Mr Cohen's favour and accept the application out of time. The Commission will order that the time for filing of the application be extended to 22 May 2012.

2012 WAIRC 00713

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

CITATION	**:**	2012 WAIRC 00713
CORAM	**:**	COMMISSIONER S J KENNER
HEARD	**:**	MONDAY, 23 JULY 2012
DELIVERED	**:**	MONDAY, 23 JULY 2012
FILE NO.	**:**	U 113 OF 2012 AND B 113 OF 2012
BETWEEN	**:**	LEON STEPHEN COHEN
		Applicant
		AND
		BILL DONESKI TRADING AS CLEAN IMAGE CLEANING SERVICES WA
		Respondent

Catchwords	:	Industrial law (WA) - Alleged harsh, oppressive and unfair dismissal - Alleged denied contractual benefits - Principles applied - Applications upheld - Contractual benefits claim does not provide sufficient compensation for unfair dismissal - Additional compensation ordered.
Legislation	:	Industrial Relations Act 1979 ss 29(1)(b)(i), 29(1)(b)(ii)
Result	:	Applications upheld. Orders made
Representation:		
Applicant	:	Mr L Cohen
Respondent	:	No appearance

Ex Tempore

1 The Commission has before it two applications, the first is an unfair dismissal application brought by Mr Cohen against Clean Image Cleaning Services WA that was accepted out of time in earlier proceedings before the Commission today. The applicant's testimony in that matter has been adopted by the Commission for the purposes of these proceedings. The Commission also adopts its brief ex tempore reasons in relation to the background of the applicant's claim and the circumstances of the termination of his employment.

2 The second application is one brought under section 29(1)(b)(ii) of the Act that seeks the recovery of certain contractual entitlements which it is said by Mr Cohen were denied on termination of his employment. Specifically those claims are firstly, two weeks' salary for the final two weeks of his employment in the amount of $3076.92 gross. Secondly, one week's salary in lieu of notice in the sum of $1,538.46 gross. Thirdly, the sum of $200 for a travel allowance for a period of two weeks and finally, a pro rata sum in respect of a bonus under his contract in the amount of $1,316.67 nett.

3 The respondent business Clean Image Cleaning Services WA was engaged in the business of commercial cleaning. The applicant testified that he commenced as the general manager of the respondent business on 27 March 2012 under a written contract of employment which was executed by the parties to it, they being Mr Cohen and the principal of the respondent, Mr Doneski, on 23 March 2012. A copy of the contract was tendered as exhibit A1. The appointment of Mr Cohen as the general manager of the respondent followed an interview shortly before, with Mr Doneski.

4 The essential terms of the contract for present purposes include firstly, payment of a salary of $80,000 per annum which amounts to some $1,538.46 per week gross. Secondly, payment of a bonus, as it is described, of $5,000 every three months or per quarter. Mr Cohen in his testimony informed the Commission that in reality this was a part of his agreed remuneration of $100,000 per annum, which he discussed with Mr Doneski prior to accepting the position of general manager. Thirdly, payment of the sum of $100 per week in respect of a fuel allowance for the use of Mr Cohen's private motor vehicle and finally, that either party to the contract may terminate it in accordance with its terms by the giving of one week's notice. The applicant was also on three months' probation, which was specified in the contract, however, during that time, one week's notice was still required to be given by either party.

5 The applicant's uncontested evidence was that he performed well in accordance with his contract of employment and did all that was required of him by Mr Doneski in the performance of his duties as general manager from his commencement on 27 March 2012. In the first two weeks it appears that Mr Cohen was paid the salary and allowances in accordance with his contract although he informed the Commission that his payments were received at least one week late. The applicant was paid his salary and allowances at that time in cash. As has already been referred to in the extension of time proceedings earlier today, on or about 20 April 2012 Mr Cohen received a telephone call on his mobile phone when he was travelling home after work. He was informed by Mr Doneski that he would not be paid and furthermore, that the respondent could not pay his salary or other allowances. Mr Doneski informed Mr Cohen that he was not to come back to work.

6 In the Commission's view the applicant was, as a consequence of that telephone call, plainly dismissed by that event and was dismissed without notice. The Commission is also satisfied that the applicant was not paid his salary for the prior fortnight or paid his travel allowance to which he was entitled under his contract of employment. The applicant's evidence also was that there were no complaints or concerns raised by Mr Doneski or any other person on behalf of the respondent, about his work performance prior to 20 April 2012.

7 As to the contractual benefits claim brought by Mr Cohen, the Commission is satisfied and I find that the applicant has been denied contractual benefits due to him under his contract of employment. These denied contractual benefits include payment of salary for the fortnight prior to his dismissal on 20 April 2012 in the sum of $2,430.77 nett. Secondly payment of one weeks' salary in lieu of notice which I imply as a term into the contract of employment between Mr Cohen and the respondent in the sum of $1215.38 nett. Thirdly payment of a travel allowance of $200 at the rate of $100 per week in the sum of $200 nett.

8 Finally, as to the bonus, as it was described in the written contract of service, of $5000 per quarter, whilst the letter of appointment does not refer to its payment on a pro rata basis, in view of the unchallenged testimony of Mr Cohen that the bonus was in reality part of his agreed salary, the Commission is prepared to imply a term into the contract to the effect that it should be paid on a pro rata basis as part of Mr Cohen's overall remuneration. Therefore, the Commission will make an order in favour of Mr Cohen for denied contractual benefits in the total sum of $5,162.82 nett.

9 As to the claim for unfair dismissal, the applicant was dismissed for no fault of his own. On the evidence, the respondent in the Commission's view can only be described as unscrupulous. Mr Cohen is now out of work and with dependants to support. He has not yet obtained other employment, despite reasonable endeavours to do so. It is plain that for the purposes of the Commission's jurisdiction and power, unfair dismissal and contractual benefits claims are separate and distinct. Satisfaction of one by order does not necessarily satisfy the other. The Commission is not satisfied in the circumstances of this particular case, that the payment of three weeks' salary in the contractual benefits matter, will satisfactorily compensate the applicant for his unfair dismissal by the respondent.

10 The applicant has suffered considerable loss as a consequence of the conduct of the respondent, which loss is ongoing. According to his testimony, Mr Cohen gave up a position he had for some years to take his new position with the respondent. In all of the circumstances the Commission considers that a further two months compensation for loss arising from the unfair dismissal would be just and equitable. Accordingly an order will be made for compensation for unfair dismissal in the sum of $9,723.00 nett.

11 Finally, therefore, the Commission proposes to make the following orders in disposition of both applications.

12 Firstly in relation to the unfair dismissal that is application U 113 of 2012, as raised during the course of the proceedings the name of the respondent will be amended. That amendment will be that the present respondent in the application be deleted and in lieu thereof, the respondent be named as "Bill Doneski trading as Clean Image Cleaning Services WA".

13 Secondly there will be a declaration that the applicant was harshly, oppressively and unfairly dismissed by the respondent on or about 20 April 2012. Thirdly that the respondent pay to the applicant, as compensation for the unfair dismissal, the sum of $9,723.00 within 21 days.

14 Insofar as application B 113 of 2012 is concerned the Commission will make the following orders.

15 Firstly in the same terms as the unfair dismissal claim the name of the respondent be amended to read "Bill Doneski trading as Clean Image Cleaning Services WA".

16 Secondly that the respondent pay to the applicant, as denied contractual benefits, the total sum of $5,162.82 nett within 21 days.

2012 WAIRC 00715

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	LEON STEPHEN COHEN
	APPLICANT
	-v-
	BILL DONESKI TRADING AS CLEAN IMAGE CLEANING SERVICES WA
	RESPONDENT
CORAM	COMMISSIONER S J KENNER
DATE	MONDAY, 23 JULY 2012
FILE NO/S	U 113 OF 2012
CITATION NO.	2012 WAIRC 00715

Result	Order issued
Representation	
Applicant	Mr L Cohen
Respondent	No appearance

Order

HAVING heard Mr L Cohen on his own behalf and there being no appearance by the respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby –

1. ORDERS that the time for filing the application be and hereby is extended to 22 May 2012.
2. ORDERS that the notice of application be amended to delete the named respondent "Clean Image Cleaning Services WA" and insert in lieu thereof "Bill Doneski trading as Clean Image Cleaning Services".
3. DECLARES that the applicant was harshly, oppressively and unfairly dismissed on or about 20 April 2012.
4. ORDERS that the respondent pay to the applicant the sum of $9,723.00 less any amount payable to the Commissioner of Taxation pursuant to the Income Tax Assessment Act 1936 and within 21 days of the date of this order.

(Sgd.) S J KENNER,
[L.S.] Commissioner.

2012 WAIRC 00716

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	LEON STEPHEN COHEN
	APPLICANT
	-v-
	BILL DONESKI TRADING AS CLEAN IMAGE CLEANING SERVICES WA
	RESPONDENT
CORAM	COMMISSIONER S J KENNER
DATE	MONDAY, 23 JULY 2012
FILE NO/S	B 113 OF 2012
CITATION NO.	2012 WAIRC 00716

Result	Order issued
Representation	
Applicant	Mr L Cohen
Respondent	No appearance

Order

HAVING heard Mr L Cohen on his own behalf and there being no appearance by the respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders –

1. THAT the notice of application be amended to delete the named respondent "Clean Image Cleaning Services WA" and insert in lieu thereof "Bill Doneski trading as Clean Image Cleaning Services".
2. THAT the respondent pay to the applicant the sum of $5,162.82 nett as a denied contractual benefit within 21 days of the date of this order.

(Sgd.) S J KENNER,
[L.S.] Commissioner.

2012 WAIRC 00803

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	MS KAYO COX
	APPLICANT
	-v-
	MR ERIC LUMSDEN, DIRECTOR GENERAL, DEPARTMENT OF PLANNING
	RESPONDENT
CORAM	ACTING SENIOR COMMISSIONER P E SCOTT
DATE	WEDNESDAY, 5 SEPTEMBER 2012
FILE NO/S	B 136 OF 2012
CITATION NO.	2012 WAIRC 00803

Result	Application dismissed

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(ii) of the *Industrial Relations Act 1979*; and

WHEREAS on the 19th day of July 2012 the respondent raised the issue of jurisdiction in its Notice of Answer; and

WHEREAS the application was set down for a directions hearing on the 9th day of August 2012; and

WHEREAS the hearing was adjourned and the parties were to file closing submissions in respect of the issue of jurisdiction; and

WHEREAS on the 29th day of August 2012 the applicant filed a Notice of Discontinuance in respect of the application;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

(Sgd.) P E SCOTT,
[L.S.] Acting Senior Commissioner.

2012 WAIRC 00782

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	MATHEW CRIDLAND
	APPLICANT
	-v-
	PETER.J.DOYLE & CINDY PETRICKOVIC
	RESPONDENT
CORAM	COMMISSIONER S J KENNER
DATE	MONDAY, 27 AUGUST 2012
FILE NO/S	U 89 OF 2012
CITATION NO.	2012 WAIRC 00782

Result	Application dismissed for want of prosecution
Representation	
Applicant	No appearance
Respondent	No appearance

Order

THERE having been no appearance on behalf of the applicant and there being no compulsion for the respondent to attend, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders –

THAT the application be and is hereby dismissed for want of prosecution.

(Sgd.) S J KENNER,
[L.S.] Commissioner.

2012 WAIRC 00818

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	DAVID D'CRUZE
	APPLICANT
	-v-
	BOLOGNA PTY LTD
	RESPONDENT
CORAM	COMMISSIONER S M MAYMAN
DATE	MONDAY, 10 SEPTEMBER 2012
FILE NO/S	B 139 OF 2012
CITATION NO.	2012 WAIRC 00818

Result	Application discontinued
Representation	
Applicant	Mr M Darcy (as agent)
Respondent	Mr S Kemp (of counsel)

Order

WHEREAS this is an application pursuant to section 29(1)(b)(i) of the *Industrial Relations Act 1979*;

AND WHEREAS on 7 August 2012 the Commission convened a conference for the purpose of conciliating between the parties;

AND WHEREAS at the conclusion of the conference agreement was reached between the parties;

AND WHEREAS on 27 August 2012 the applicant filed a Notice of Discontinuance in respect of the application;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

(Sgd.) S M MAYMAN,
[L.S.] Commissioner.

2012 WAIRC 00756

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	HEATHER ELDRIDGE
	APPLICANT
	-v-
	TREVOR BLACK
	RESPONDENT
CORAM	ACTING SENIOR COMMISSIONER P E SCOTT
DATE	WEDNESDAY, 15 AUGUST 2012
FILE NO/S	B 167 OF 2011
CITATION NO.	2012 WAIRC 00756

Result	Application dismissed

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(ii) of the *Industrial Relations Act 1979*; and

WHEREAS on the 12th day of December 2011, the 29th day of December 2011 and the 16th day of March 2012 the Commission convened conferences for the purpose of conciliating between the parties; and

WHEREAS at the conclusion of the last such conference a resolution had not been reached and the matter was to be listed for hearing; and

WHEREAS the application was set down for hearing and determination on the 7th day of May 2012; and

WHEREAS by email on the 20th day of April 2012 the applicant's representative requested a hearing be convened to deal with the issue of discovery; and

WHEREAS the application for discovery was set down for hearing on the 23rd day of April 2012 which resulted in the Commission issuing an Order; and

WHEREAS on the 4th day of May 2012 the parties advised that the matter had been settled; and

WHEREAS on the 1st day of August 2012 the applicant filed a Notice of Discontinuance in respect of the application;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

(Sgd.) P E SCOTT,
[L.S.] Acting Senior Commissioner.

2012 WAIRC 00794

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	KEVIN FEAR
	APPLICANT
	-v-
	ACTIVE GLASS
	RESPONDENT
CORAM	COMMISSIONER S M MAYMAN
DATE	WEDNESDAY, 29 AUGUST 2012
FILE NO/S	U 102 OF 2012
CITATION NO.	2012 WAIRC 00794

Result	Application discontinued
Representation	
Applicant	Mr K Fear
Respondent	Mr C Cheaib, Ms L Walker and Mr P Lama

Order

WHEREAS this is an application pursuant to section 29(1)(b)(i) of the *Industrial Relations Act 1979*;

AND WHEREAS on 15 August 2012 the Commission convened a conference for the purpose of conciliating between the parties;

AND WHEREAS at the conclusion of the conferences agreement was able to be reached between the parties;

AND WHEREAS on 15 August 2012 the applicant filed a Notice of Discontinuance in respect of the application;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

(Sgd.) S M MAYMAN,
Commissioner.

[L.S.]

2012 WAIRC 00730

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	GILLES GAUDET
	APPLICANT
	-v-
	DEPARTMENT OF CORRECTIVE SERVICES
	RESPONDENT
CORAM	COMMISSIONER S J KENNER
DATE	FRIDAY, 10 AUGUST 2012
FILE NO/S	U 133 OF 2012
CITATION NO.	2012 WAIRC 00730

Result	Discontinued
Representation	
Applicant	Mr G Gaudet
Respondent	Mr P Budd

Order

WHEREAS the applicant filed a notice of discontinuance, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders –

THAT the application be and is hereby discontinued.

(Sgd.) S J KENNER,
[L.S.] Commissioner.

2012 WAIRC 00826

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	NICHOLAS ROGER GREEN
	APPLICANT
	-v-
	PEEL AUTO GROUP
	RESPONDENT
CORAM	COMMISSIONER S M MAYMAN
DATE	WEDNESDAY, 12 SEPTEMBER 2012
FILE NO/S	B 135 OF 2012
CITATION NO.	2012 WAIRC 00826

Result	Application discontinued
Representation	
Applicant	No appearance
Respondent	No appearance

Order

WHEREAS this is an application pursuant to section 29(1)(b)(ii) of the *Industrial Relations Act 1979*;

AND WHEREAS on 28 August 2012 the applicant filed a Notice of Discontinuance in respect of the application;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

(Sgd.) S M MAYMAN,
[L.S.] Commissioner.

2012 WAIRC 00758

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	CHRISTINE HALL
	APPLICANT
	-v-
	NARDINE WIMMIN'S REFUGE
	RESPONDENT
CORAM	COMMISSIONER S M MAYMAN
DATE	THURSDAY, 16 AUGUST 2012
FILE NO/S	B 110 OF 2012
CITATION NO.	2012 WAIRC 00758

Result	Application discontinued
Representation	
Applicant	No appearance
Respondent	No appearance

Order

WHEREAS this is an application pursuant to section 29(1)(b)(ii) of the *Industrial Relations Act 1979*;

AND WHEREAS on 6 July 2012 the applicant filed a Notice of Discontinuance in respect of the application;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

(Sgd.) S M MAYMAN,
[L.S.] Commissioner.

2012 WAIRC 00759

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	CHRISTINE HALL
	APPLICANT
	-v-
	NARDINE WIMMIN'S REFUGE
	RESPONDENT
CORAM	COMMISSIONER S M MAYMAN
DATE	THURSDAY, 16 AUGUST 2012
FILE NO/S	U 110 OF 2012
CITATION NO.	2012 WAIRC 00759

Result	Application discontinued
Representation	
Applicant	No appearance
Respondent	No appearance

Order

WHEREAS this is an application pursuant to section 29(1)(b)(i) of the *Industrial Relations Act 1979*;

AND WHEREAS on 6 July 2012 the applicant filed a Notice of Discontinuance in respect of the application;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

(Sgd.) S M MAYMAN,
[L.S.] Commissioner.

2012 WAIRC 00383

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	MALCOLM HARRIS
	APPLICANT
	-v-
	FOREST HERITAGE CENTRE INC
	RESPONDENT
CORAM	COMMISSIONER S J KENNER
DATE	FRIDAY, 22 JUNE 2012
FILE NO/S	B 28 OF 2012
CITATION NO.	2012 WAIRC 00383

Result	Application discontinued
Representation	
Applicant	Mr M Harris
Respondent	Ms S Holster

Order

WHEREAS the applicant filed a notice of discontinuance, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders –

THAT the application be and is hereby discontinued.

(Sgd.) S J KENNER,
[L.S.] Commissioner.

2012 WAIRC 00831

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES TREVOR DAVID HOFFMAN

APPLICANT

-v-

PERTH MOBILE GP SERVICES LTD ACN 129 336 803

RESPONDENT

CORAM	ACTING SENIOR COMMISSIONER P E SCOTT
DATE	THURSDAY, 13 SEPTEMBER 2012
FILE NO/S	U 93 OF 2012
CITATION NO.	2012 WAIRC 00831

Result	Order issued

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the *Industrial Relations Act 1979*; and

WHEREAS by letter dated the 30th day of August 2012 the applicant made application for discovery and particularly those documents listed in the applicant's letters of the 17th, the 19th and the 30th day of August 2012; and

WHEREAS on the 10th day of September 2012 the Commission heard that application;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT the application for discovery and particulars by letter dated the 30th day of August 2012 be, and is hereby dismissed.

(Sgd.) P E SCOTT,
[L.S.] Acting Senior Commissioner.

2012 WAIRC 00765

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES LEON HOVELL

APPLICANT

-v-

KONE ELEVATORS

RESPONDENT

CORAM	COMMISSIONER S J KENNER
DATE	MONDAY, 20 AUGUST 2012
FILE NO/S	U 125 OF 2012, B 125 OF 2012
CITATION NO.	2012 WAIRC 00765

Result	Order issued
Representation	
Applicant	Ms L Hovell
Respondent	Mr M Wilson

Order

WHEREAS the applicant filed a notice of discontinuance, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders –

THAT these applications be and are hereby discontinued.

(Sgd.) S J KENNER,
[L.S.] Commissioner.

2011 WAIRC 01155

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	GERARD MICHAEL JOSEPH
	APPLICANT
	-v-
	NULSEN HAVEN ASSOCIATION (INC)
	RESPONDENT
CORAM	COMMISSIONER S J KENNER
DATE	TUESDAY, 13 DECEMBER 2011
FILE NO/S	U 189 OF 2011
CITATION NO.	2011 WAIRC 01155

Result	Order issued
Representation	
Applicant	Ms F Clarke of counsel
Respondent	Not applicable

Order

WHEREAS on 9 November 2011 the applicant made application to the Commission under s 29(1)(b)(i) of the Industrial Relations Act 1979 alleging that on or about 11 October 2011 the applicant was harshly, oppressively and unfairly dismissed by the respondent;

AND WHEREAS by notice of application filed on 9 December 2011 the respondent filed an application under reg 36 of the Industrial Relations Commission Regulations 2005 seeking an order that the time for the respondent to file a notice of answer in the application be extended to 23 December 2011;

AND WHEREAS having considered the grounds in support of the application for an extension of time for filing an answer the Commission is satisfied that an order should be made;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders –

THAT the time for the filing of a notice of answer by the respondent be and is hereby extended to 23 December 2011.

(Sgd.) S J KENNER,
[L.S.] Commissioner.

2011 WAIRC 01184

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	GERARD MICHAEL JOSEPH
	APPLICANT
	-v-
	NULSEN HAVEN ASSOCIATION (INC)
	RESPONDENT
CORAM	COMMISSIONER S J KENNER
DATE	FRIDAY, 23 DECEMBER 2011
FILE NO/S	U 189 OF 2011
CITATION NO.	2011 WAIRC 01184

Result	Order issued
Representation	
Applicant	Ms F Clarke of counsel
Respondent	Not applicable

Order

WHEREAS on 9 November 2011 the applicant made application to the Commission under s 29(1)(b)(i) of the Industrial Relations Act 1979 alleging that on or about 11 October 2011 the applicant was harshly, oppressively and unfairly dismissed by the respondent;

AND WHEREAS by notice of application filed on 9 December 2011 the respondent filed an application under reg 36 of the Industrial Relations Commission Regulations 2005 seeking an order that the time for the respondent to file a notice of answer in the application be extended to 23 December 2011;

AND WHEREAS the Commission issued an order to extended the time for filing a notice of answer until 23 December 2011;

AND WHEREAS by further notice of application filed on 23 December 2011 the respondent seeks a further extension of time to file a notice of answer to 20 January 2012 on the ground that provision of information to the respondent from a third party, the ground for the first extension of time, has yet to occur but is anticipated to occur by January 2012;

AND WHEREAS having considered the grounds in support of the application for an extension of time for filing an answer the Commission is satisfied that an order should be made;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders –

THAT the time for the filing of a notice of answer by the respondent be and is hereby extended to 20 January 2012.

(Sgd.) S J KENNER,
[L.S.] Commissioner.

2012 WAIRC 00225

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	GERARD MICHAEL JOSEPH
	APPLICANT
	-v-
	NULSEN ASSOCIATION INC
	RESPONDENT
CORAM	COMMISSIONER S J KENNER
DATE	FRIDAY, 13 APRIL 2012
FILE NO.	U 189 OF 2011
CITATION NO.	2012 WAIRC 00225

Result	Recommendation made
Representation	
Applicant	In person
Respondent	Ms F Clarke of counsel

Recommendation

WHEREAS by notice of application filed on 9 November 2011 the applicant alleged that on or about 11 October 2011 the respondent had dismissed him harshly, oppressively and unfairly;

AND WHEREAS by notice of answer and counter-proposal filed on 20 January 2012 whilst reserving its rights in relation to jurisdiction, the respondent admitted that it terminated the applicant's employment by letter dated 11 October 2011 but says it did so as a result of administrative error and offered to reinstate the applicant;

AND WHEREAS at a conciliation conference under s 32 of the Industrial Relations Act 1979 on 23 March 2012 the applicant complained that the respondent's conduct and errors leading to its issuance to him of a letter of termination of employment has caused him considerable distress;

AND WHEREAS during the course of the conciliation conference the respondent re-affirmed its offer to reinstate the applicant on the basis of its earlier error and the Commission informed the applicant that it would take into account the respondent's offer of reinstatement in determining the future course of the matter;

AND WHEREAS on 10 April 2012 the applicant made further written submissions in relation to his claims which have been considered by the Commission. The respondent has elected not to make any further submissions at this stage of the proceedings;

AND WHEREAS the Commission informed the parties that it would make a recommendation in an endeavour to resolve the issues in dispute;

NOW THEREFORE the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby makes the following recommendation:

(1) That the applicant by close of business on Monday 16 April 2012 advise the respondent as to whether he will accept the respondent's offer of reinstatement.

(2) That if the applicant accepts the respondent's offer of reinstatement that the respondent confirm that offer in writing and include a statement to the effect that the respondent's original letter of termination of employment of 11 October 2011 was issued in error for which error the respondent apologises.

(3) That the period of service from the date of the applicant's termination of employment to his reinstatement be regarded as continuous for the purposes of the accrual of leave and other entitlements.

(Sgd.) S J KENNER,
[L.S.] Commissioner.

2012 WAIRC 00721

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	GERARD MICHAEL JOSEPH
	APPLICANT
	-v-
	NULSEN ASSOCIATION INC
	RESPONDENT
CORAM	COMMISSIONER S J KENNER
DATE	MONDAY, 6 AUGUST 2012
FILE NO/S	U 189 OF 2011
CITATION NO.	2012 WAIRC 00721

Result	Order issued
Representation	
Applicant	Mr G Joseph
Respondent	Ms F Clarke

Order

WHEREAS the applicant filed a notice of discontinuance, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders –

THAT the application be and is hereby discontinued.

(Sgd.) S J KENNER,
[L.S.] Commissioner.

2012 WAIRC 00829

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	DARREN RAY MARSHALL
	APPLICANT
	-v-
	T.L. DOZING CONTRACTOR
	RESPONDENT
CORAM	COMMISSIONER J L HARRISON
DATE	WEDNESDAY, 12 SEPTEMBER 2012
FILE NO/S	U 37 OF 2012
CITATION NO.	2012 WAIRC 00829
Result	Dismissed

Order

WHEREAS this is an application pursuant to s 29(1)(b)(i) of the *Industrial Relations Act 1979* (the Act); and

WHEREAS the application has not been served in accordance with the regulations under the Act; and

WHEREAS between 22 March 2012 and 1 May 2012 the Commission attempted to contact the applicant by telephone on numerous occasions without success; and

WHEREAS on 1 May 2012 the Commission wrote to the applicant advising that if service of the application was not effected on the respondent by 15 May 2012 the matter may be dismissed for want of prosecution; and

WHEREAS the application was not served on the respondent by 15 May 2012; and

WHEREAS on 29 May 2012 the Commission wrote to the applicant advising him that if no written or verbal advice was received from him by the close of business on 8 June 2012 the matter would be listed for a show cause hearing as to why the matter should not be dismissed pursuant to s 27(1) of the Act; and

WHEREAS the applicant did not contact the Commission by the due date and the matter was listed for a show cause hearing on 12 September 2012; and

FURTHER the applicant was advised that non-attendance by him at these proceedings will result in an order being issued dismissing the application for want of prosecution; and

WHEREAS the applicant did not attend the show cause hearing on 12 September 2012 nor did he advise the Commission beforehand as to any reason why he was unable to attend the hearing;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be and is hereby dismissed.

(Sgd.) J L HARRISON,
[L.S.] Commissioner.

2012 WAIRC 00781

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	MS SUMAN MARRI
	APPLICANT
	-v-
	MR PETER BURTON
	PRINCIPAL
	KINGSWAY CHRISTIAN COLLEGE
	RESPONDENT
CORAM	ACTING SENIOR COMMISSIONER P E SCOTT
DATE	MONDAY, 27 AUGUST 2012
FILE NO/S	U 6 OF 2012
CITATION NO.	2012 WAIRC 00781

Result Application dismissed

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the *Industrial Relations Act 1979*; and

WHEREAS on the 4th day of April 2012 the Commission convened a conference for the purpose of conciliating between the parties; and

WHEREAS the Commission adjourned that conference in order for the applicant to consider her position; and

WHEREAS on the 21st day of August 2012 the applicant filed a Notice of Discontinuance in respect of the application;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

(Sgd.) P E SCOTT,
[L.S.] Acting Senior Commissioner.

2012 WAIRC 00796

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	FRANK MORETTI
	APPLICANT
	-v-
	H J HEINZ CO AUSTRALIA LTD
	RESPONDENT
CORAM	ACTING SENIOR COMMISSIONER P E SCOTT
DATE	WEDNESDAY, 29 AUGUST 2012
FILE NO/S	B 64 OF 2012
CITATION NO.	2012 WAIRC 00796

Result Application dismissed

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(ii) of the *Industrial Relations Act 1979*; and

WHEREAS on the 27th day of August 2012 the applicant filed a Notice of Discontinuance in respect of the application;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

(Sgd.) P E SCOTT,
[L.S.] Acting Senior Commissioner.

2012 WAIRC 00774

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	FRANCISZEK NOWAK
	APPLICANT
	-v-
	CATHOLIC EDUCATION OFFICE
	RESPONDENT
CORAM	COMMISSIONER S J KENNER
DATE	TUESDAY, 21 AUGUST 2012
FILE NO/S	U 19 OF 2012
CITATION NO.	2012 WAIRC 00774

Result	Application discontinued
Representation	
Applicant	Ms R Airey
Respondent	Ms M Ryan

Order

WHEREAS the applicant sought and was granted leave to discontinue the application, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders –

THAT the application be and is hereby discontinued by leave.

(Sgd.) S J KENNER,
[L.S.] Commissioner.

2012 WAIRC 00830

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	NICOLE PENDLEBURY
	APPLICANT
	-v-
	RAMADAN ABAS
	RESPONDENT
CORAM	COMMISSIONER J L HARRISON
DATE	WEDNESDAY, 12 SEPTEMBER 2012
FILE NO/S	U 106 OF 2012, B 106 OF 2012
CITATION NO.	2012 WAIRC 00830

Result	Dismissed

Order

WHEREAS these are applications pursuant to s 29(1)(b)(i) and (ii) of the *Industrial Relations Act 1979* (the Act); and

WHEREAS the applications have not been served in accordance with the regulations under the Act; and

WHEREAS on 15 June 2012 the Commission attempted to contact the applicant by telephone and left a message requesting she telephone the Commission however this did not occur; and

WHEREAS on 18 June 2012 the Commission wrote to the applicant advising that if service of the applications were not effected on the respondent by 25 June 2012 the matters may be dismissed for want of prosecution; and

WHEREAS the applications were not served on the respondent by 25 June 2012; and

WHEREAS on 29 June 2012 the Commission wrote to the applicant advising her that if no written or verbal advice was received from her by the close of business on 13 July 2012 the matters would be listed for a show cause hearing as to why the matters should not be dismissed pursuant to s 27(1) of the Act; and

WHEREAS the applicant did not contact the Commission by the due date and the matters were listed for a show cause hearing on 12 September 2012; and

FURTHER the applicant was advised that non-attendance by her at these proceedings will result in an order being issued dismissing the applications for want of prosecution; and

WHEREAS the applicant did not attend the show cause hearing on 12 September 2012 nor did she advise the Commission beforehand as to any reason why she was unable to attend the hearing;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT these applications be and are hereby dismissed.

(Sgd.) J L HARRISON,
[L.S.] Commissioner.

2012 WAIRC 00827

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	CHISTOPHER SHANE QUIRK
	APPLICANT
	-v-
	JOSEPH GALLUCCI TRADING AS PARK LANE MOTOR COMPANY
	RESPONDENT
CORAM	COMMISSIONER S M MAYMAN
DATE	WEDNESDAY, 12 SEPTEMBER 2012
FILE NO/S	U 156 OF 2012
CITATION NO.	2012 WAIRC 00827

Result	Application discontinued
Representation	
Applicant	Mr C S Quirk
Respondent	Mr J Gallucci

Order

WHEREAS this is an application pursuant to section 29(1)(b)(i) of the *Industrial Relations Act 1979*;

AND WHEREAS on 17 August 2012 the Commission convened a conference for the purpose of conciliating between the parties;

AND WHEREAS at the conclusion of the conference agreement was reached between the parties;

AND WHEREAS on 31 August 2012 the applicant filed a Notice of Discontinuance in respect of the application;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

(Sgd.) S M MAYMAN,
[L.S.] Commissioner.

2012 WAIRC 00776

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	ANTHONY REPACHOLI
	APPLICANT
	-v-
	BILL MCKAY (PILBARA MECHANICAL SERVICES)
	RESPONDENT
CORAM	COMMISSIONER S M MAYMAN
DATE	WEDNESDAY, 22 AUGUST 2012
FILE NO/S	U 108 OF 2012
CITATION NO.	2012 WAIRC 00776

Result	Application discontinued
Representation	
Applicant	no appearance
Respondent	no appearance

Order

WHEREAS this is an application pursuant to section 29(1)(b)(i) of *the Industrial Relations Act 1979;*

AND WHEREAS on 4 July 2012 the Commission convened a conference for the purpose of conciliating between the parties;

AND WHEREAS at the conclusion of the conference an agreement was reached between the parties;

AND WHEREAS on 15 August 2012 the applicant advised the Commission to file the Notice of Discontinuance in respect of the application;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

(Sgd.) S M MAYMAN,
[L.S.] Commissioner.

2012 WAIRC 00820

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	KULWANT SINGH
	APPLICANT
	-v-
	KUMAR & SINGH PTY LTD. (TRADING AS REAL FLAVOUR OF INDIA)
	RESPONDENT
CORAM	COMMISSIONER S M MAYMAN
DATE	MONDAY, 10 SEPTEMBER 2012
FILE NO/S	B 44 OF 2012
CITATION NO.	2012 WAIRC 00820

Result	Application discontinued
Representation	
Applicant	Mr K Singh
Respondent	Mr D Singh (of counsel) and Mr S Kumar

Order

WHEREAS this is an application pursuant to section 29(1)(b)(ii) of the *Industrial Relations Act 1979*;

AND WHEREAS on 17 April 2012 the Commission convened a conference for the purpose of conciliating between the parties;

AND WHEREAS at the conclusion of the conference no agreement was reached between the parties;

AND WHEREAS the respondent raised the issue that the Commission did not have the jurisdiction to deal with the application;

AND WHEREAS the parties provided written submissions with respect to the jurisdictional issue;

AND WHEREAS the Commission issued a decision on 7 August 2012 granting jurisdiction;

AND WHEREAS the Commission issued a declaration on 15 August 2012 granting jurisdiction;

AND WHERE on 24 August 2012 the Commission convened a further conference;

AND WHEREAS at the conclusion of the conference agreement was able to be reached between the parties;

AND WHEREAS on 24 August 2012 the applicant filed a Notice of Discontinuance in respect of the application;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

(Sgd.) S M MAYMAN,
[L.S.] Commissioner.

2012 WAIRC 00786

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	BRADLEY KEVIN SKINNER
	APPLICANT
	-v-
	CHEVRON AUSTRALIA PTY LTD
	RESPONDENT
CORAM	COMMISSIONER S J KENNER
DATE	MONDAY, 27 AUGUST 2012
FILE NO/S	B 85 OF 2012
CITATION NO.	2012 WAIRC 00786

Result	Application discontinued
Representation	
Applicant	In person
Respondent	Mr P Willox of counsel

Order

WHEREAS the applicant sought and was granted leave to discontinue the application, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders –

THAT the application be and is hereby discontinued by leave.

(Sgd.) S J KENNER,
[L.S.] Commissioner.

2012 WAIRC 00773

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	HELEN MARCIA SLATER
	APPLICANT
	-v-
	CATHOLIC EDUCATION OFFICE
	RESPONDENT
CORAM	COMMISSIONER S J KENNER
DATE	TUESDAY, 21 AUGUST 2012
FILE NO/S	U 18 OF 2012
CITATION NO.	2012 WAIRC 00773

Result	Application discontinued
Representation	
Applicant	Ms R Airey
Respondent	Ms M Ryan

Order

WHEREAS the applicant sought and was granted leave to discontinue the application, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders –

THAT the application be and is hereby discontinued by leave.

(Sgd.) S J KENNER,
[L.S.] Commissioner.

2012 WAIRC 00785

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	NADIA MIREZ TOOHEY
	APPLICANT
	-v-
	HAROLD HAWTHORNE SENIOR CITIZENS CENTRE AND HOMES INC.
	RESPONDENT
CORAM	COMMISSIONER S J KENNER
DATE	MONDAY, 27 AUGUST 2012
FILE NO/S	B 81 OF 2012
CITATION NO.	2012 WAIRC 00785

Result	Application discontinued
Representation	
Applicant	Mr R Jones as agent
Respondent	Mr G McCorry as agent

Order

WHEREAS the applicant sought and was granted leave to discontinue the application, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders –

THAT the application be and is hereby discontinued by leave.

(Sgd.) S J KENNER,
[L.S.] Commissioner.

2012 WAIRC 00766

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	PETA VENABLES
	APPLICANT
	-v-
	SILVER CHAIN NURSING ASSOCIATION (INCORPORATED)
	RESPONDENT
CORAM	COMMISSIONER S J KENNER
DATE	MONDAY, 20 AUGUST 2012
FILE NO/S	U 147 OF 2012
CITATION NO.	2012 WAIRC 00766

Result	Order issued
Representation	
Applicant	Ms P Venables
Respondent	Ms S Schneider

Order

WHEREAS the applicant filed a notice of discontinuance, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders –

THAT the application be and is hereby discontinued.

(Sgd.) S J KENNER,
[L.S.] Commissioner.

2012 WAIRC 00772

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	MARIE ANN WATSON-BROWN
	APPLICANT
	-v-
	CATHOLIC EDUCATION OFFICE
	RESPONDENT
CORAM	COMMISSIONER S J KENNER
DATE	TUESDAY, 21 AUGUST 2012
FILE NO/S	U 17 OF 2012
CITATION NO.	2012 WAIRC 00772

Result	Application discontinued
Representation	
Applicant	Ms R Airey
Respondent	Ms M Ryan

Order

WHEREAS the applicant sought and was granted leave to discontinue the application, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders –

THAT the application be and is hereby discontinued by leave.

(Sgd.) S J KENNER,
[L.S.] Commissioner.

2012 WAIRC 00806

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

CITATION	**:**	2012 WAIRC 00806
CORAM	**:**	ACTING SENIOR COMMISSIONER P E SCOTT
HEARD	**:**	THURSDAY, 9 AUGUST 2012
DELIVERED	**:**	WEDNESDAY, 5 SEPTEMBER 2012
FILE NO.	**:**	U 109 OF 2012
BETWEEN	**:**	SOPHIE WEATHERHEAD
		Applicant
		AND
		DR TERRY FENN
		MOSMAN DENTAL CENTRE
		Respondent

CatchWords	**:**	Unfair dismissal – Trading corporation – National system employer – Lack of jurisdiction
Legislation	**:**	*Industrial Relations Act 1979* s 29(1)(b)(i)
		Fair Work Act 2009 (Cth) s 26
Result	**:**	Application dismissed for lack of jurisdiction

Representation:

Applicant	Ms Sophie Weatherhead on her own behalf
Respondent	Ms M Ivanovski of counsel

Reasons for Decision

(Given extemporaneously at the conclusion of the proceedings

taken from transcript as edited by the Commission)

1 This is a claim by the applicant that she has been unfairly dismissed from her employment with the respondent, and that application is referred to the Commission pursuant to section 29(1)(b)(i) of the *Industrial Relations Act 1979*.

2 The applicant has named the respondent as Dr Terry Fenn Mosman Dental Centre. However, the respondent filed a Notice of Answer and Counter Proposal in which it says that the employer was Mosman Dental Centre Pty Ltd, that that company is a constitutional corporation and that by virtue of the provisions of the *Fair Work Act 2009* (Cth), this Commission is without jurisdiction to hear the application or otherwise deal with it.

3 The first question that needs to be answered is: who was the applicant's employer? I have heard the evidence of Trudy Ann Fenn, who is the Accounts Manager for the Mosman Dental Centre Pty Ltd and, it appears, previously for Dr Terry Fenn as a sole trader and for a company called Fennleigh Pty Ltd, which changed its name to Mosman Dental Centre Pty Ltd from 1 July 2011. From 1 July 2011, the business of the Mosman Dental Centre, however previously operated and financially arranged, was undertaken by Mosman Dental Centre Pty Ltd. Mosman Dental Centre Pty Ltd is a proprietary company limited by shares. The evidence of Trudy Ann Fenn is that the applicant was employed and paid by Mosman Dental Centre Pty Ltd. She has explained why the applicant's payslip and other documents do not refer to the full name of the employer. However, it is clear from the Tax File Number Declaration that the applicant was employed by Mosman Dental Centre Pty Ltd and was to pay the applicant.

4 In all of the circumstances I find that the applicant was employed by Mosman Dental Centre Pty Ltd. The ASIC records demonstrate that Mosman Dental Centre Pty Ltd is a proprietary company limited by shares.

5 The question then is: does the Commission have jurisdiction to hear this matter? I think it is now beyond contention that the Commission does not have jurisdiction to deal with a claim of unfair dismissal by an employee of a trading corporation because of the provisions of section 26 of the *Fair Work Act 2009* (Cth), (*Aboriginal Legal Services of WA Incorporated v Lawrence* [2007] WAIRC 435).

6 The evidence demonstrates that the respondent is a corporation which operates a dental clinic performing dental services for patients who pay a fee for those services and it also sells certain dental products. The evidence also demonstrates that the trading activity of the respondent is its substantial business activity.

7 Accordingly, I find that the respondent is a trading corporation and, as such, is a national system employer. Therefore, in accordance with the *Fair Work Act 2009* (Cth) section 26, the jurisdiction of the Commission to deal with this matter is excluded and the application will be dismissed.

2012 WAIRC 00805

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	SOPHIE WEATHERHEAD
	APPLICANT
	-v-
	DR TERRY FENN
	MOSMAN DENTAL CENTRE
	RESPONDENT
CORAM	ACTING SENIOR COMMISSIONER P E SCOTT
DATE	WEDNESDAY, 5 SEPTEMBER 2012
FILE NO/S	U 109 OF 2012
CITATION NO.	2012 WAIRC 00805

Result	Application dismissed for lack of jurisdiction

Order

HAVING heard the applicant on her own behalf and Ms M Ivanovski of counsel on behalf of the respondent, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed for lack of jurisdiction.

(Sgd.) P E SCOTT,
[L.S.] Acting Senior Commissioner.

2012 WAIRC 00810

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	HARLEY JAMES WESTON
	APPLICANT
	-v-
	BURSWOOD ENTERTAINMENT COMPLEX
	RESPONDENT
CORAM	COMMISSIONER S M MAYMAN
DATE	THURSDAY, 6 SEPTEMBER 2012
FILE NO/S	U 97 OF 2012
CITATION NO.	2012 WAIRC 00810

Result	Application dismissed
Representation	
Applicant	No appearance
Respondent	No appearance

Order

WHEREAS this is an application pursuant to section 29(1)(b)(i) of the *Industrial Relations Act 1979*;

AND WHEREAS this matter was listed for hearing on 29 August 2012 for the applicant to show cause why his application should not be dismissed;

AND WHEREAS the applicant failed to attend the hearing;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders -

THAT this application be, and is hereby, dismissed.

(Sgd.) S M MAYMAN,
[L.S.] Commissioner.

2012 WAIRC 00763

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	CHRISTOPHER JAYCN MILLARD WRIGHT
	APPLICANT
	-v-
	DEPARTMENT OF CORRCTIVE SERVICES
	RESPONDENT
CORAM	COMMISSIONER S J KENNER
DATE	MONDAY, 20 AUGUST 2012
FILE NO/S	U 128 OF 2011
CITATION NO.	2012 WAIRC 00763

Result	Order issued
Representation	
Applicant	Mr P Mullally as agent
Respondent	Mr P Budd

Order

HAVING HEARD Mr P Mullally as agent on behalf of the applicant and Mr P Budd on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders –

THAT the notice of application be amended to delete the named respondent "Department of Corrctive Services" and insert in lieu thereof "Department of Corrective Services".

(Sgd.) S J KENNER,
[L.S.] Commissioner.

2012 WAIRC 00764

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

CITATION	**:**	2012 WAIRC 00764
CORAM	**:**	COMMISSIONER S J KENNER
HEARD	**:**	TUESDAY, 27 MARCH 2012, MONDAY, 14 MAY 2012, TUESDAY, 27 SEPTEMBER 2011
DELIVERED	**:**	MONDAY, 20 AUGUST 2012
FILE NO.	**:**	U 128 OF 2011
BETWEEN	**:**	CHRISTOPHER JAYCN MILLARD WRIGHT
		Applicant
		AND
		DEPARTMENT OF CORRECTIVE SERVICES
		Respondent

Catchwords	**:**	Industrial law (WA) - Alleged harsh, oppressive and unfair dismissal - Summary dismissal - Alleged abandonment of employment - Leave without pay - Whether there was repudiation of contract - Application upheld.
Legislation	**:**	Industrial Relations Act 1979 (WA) s 29(1)(b)(i)
Result	**:**	Application upheld. Order issued
Representation:		
Applicant	**:**	Mr P Mullally as agent
Respondent	**:**	Mr P Budd

Case(s) referred to in reasons:

Koompahtoo Local Aboriginal Land Council v Sanpine Pty Ltd (2007) 233 CLR 115

State of South Australia v McDonald (2009) 185 IR 45

Undercliffe Nursing Home v FMWU (1985) 65 WAIG 385

Reasons for Decision

1 This matter has a lengthy history. Mr Wright was employed by the Department of Corrective Services as a Vocational Support Officer at the Bungarun Work Camp. The Bungarun Work Camp was located approximately 25 kilometres from Derby in the north of the State. It is now closed. Mr Wright started work in January 2006. In his position, he was responsible for looking after low risk prisoners. In late 2008, some incidents occurred at the workplace, which culminated in Mr Wright making allegations that he had been bullied and harassed by other officers. In December 2008, as a consequence of these events, Mr Wright took leave of absence and made a workers' compensation claim on the basis that he was unfit for work. In February 2009, pending the resolution of his workers compensation claim, Mr Wright was informed by the Business Manager at the Broome Regional Prison, Ms Morgan, that effective from 14 March 2009, he would be on leave without pay. Attempts to resolve Mr Wright's grievances with the other officers were not successful. His workers' compensation claim was denied by the insurer.

2 In the meantime, Mr Wright has suffered a number of serious health problems. In September 2009 he was diagnosed with cancer and was required to undergo treatment. He had surgery in December 2009 and ongoing treatment in 2010. Mr Wright said he kept the Department informed of his condition and provided regular medical certificates. In November 2008 the Department referred Mr Wright to a psychiatrist for assessment, arising from the workplace issues referred to above. A report was prepared by the psychiatrist to which reference will be made later in these reasons.

3 By letter of 1 June 2011, the Department wrote to Mr Wright and alleged that he had abandoned his employment. Mr Wright replied by letter of 12 June 2011, to the effect that he had not and did not intend to abandon his employment. He referred to his extensive absence on account of illness. The Department subsequently replied by letter of 12 July 2011, concluding that Mr Wright had abandoned his employment and terminated his contract of employment, effective from the date of the letter.

4 Mr Wright now says that the conduct of the Department was unfair. The Department was aware of his position in particular, the suggestions contained in the report of the psychiatrist of November 2010, to remedy the workplace issues, but took no action. Although the Bungarun Work Camp has now closed, Mr Wright seeks re-employment in another position as his health has sufficiently recovered.

Workplace incidents

5 Mr Wright testified that the Bungarun Work Camp fell under the jurisdiction of the Broome Regional Prison. His role was to attend to the prisoners' welfare needs, including personal requirements, food, work, clothing, accommodation and allocation of spending of their prison wages.

6 In his evidence, Mr Wright outlined the incidents which occurred in late 2008, commencing in about October, which led to the lodging of his workers' compensation claim. He said that he was the subject of constant harassment and bullying by the Senior Officer, and some of the fellow officers. This occurred over some period of time, and ultimately led to a confrontation between himself and the Senior Officer concerned. Mr Wright testified that at the time these events were causing him considerable anxiety and stress. A workers' compensation claim was made by Mr Wright, a copy of which was contained in the agreed book of documents, exhibit A1, at pp 24-27. In it, Mr Wright refers generally to suffering symptoms of anxiety and stress, as a result of the conduct of the other officers. Subsequently, Mr Wright was informed by the Department's insurer by letter of 4 August 2009 that his workers' compensation claim had been denied. A copy of this letter was at pp 28-29 of exhibit A1.

7 Additionally, earlier in 2009, and prior to the rejection of his workers' compensation claim, Mr Wright, in email communications with Ms Morgan at the Broome Regional Prison, was informed that from 14 March 2009, he would be on leave without pay. A copy of the email from Ms Morgan to Mr Wright was at p 35 of exhibit A1. Mr Wright has not been paid since that time. Furthermore, it was Mr Wright's uncontradicted testimony that at no time since that advice has his leave without pay been formally revoked by the Department. Mr Wright was placed on leave without pay because he had used up all of his sick leave entitlements.

8 In the meantime, in response to a formal grievance process being instituted by the Senior Officer, Mr Wright agreed to participate in mediation in an attempt to resolve the issues. However, there were some delays because on Mr Wright's testimony, the Department initially nominated the Superintendent of the prison, and then the Business Manager, to act as the mediator. Mr Wright said that he objected to this course as in his view, both had a conflict of interest and were not sufficiently independent. Subsequently an independent mediator was appointed and the process commenced in about September 2009.

Illness

9 However, regrettably, at about the same time, Mr Wright was diagnosed with cancer and had to undergo a course of extensive medical treatment, including surgery. Mr Wright said that there was one mediation conference that took place in September 2009. However, because of his illness, he could not continue with the process. Mr Wright said that after his surgery in December 2009 in Perth, he returned to Broome in early 2010. He described his overall condition physically and mentally, as being very low and he was required to have monthly medical attendances. Mr Wright said he was required to go to the Department of Oncology at the Sir Charles Gairdner Hospital and was under the supervision of Dr Spry. It was recommended

that he undergo intensive radiation treatment, however, Mr Wright said that he needed some months to recover from the surgery before that treatment commenced. From October 2010, he undertook a programme of intensive radiation treatment, for approximately 11 weeks. This required Mr Wright to attend hospital daily during each weekday in that period. He described that physically, this treatment slowed him down considerably with side effects, including nausea, fatigue, loss of appetite, aches and pains and he said in his evidence, it was a "pretty debilitating outcome which got worse."

Medical certificates and reports

10 During all of this time, Mr Wright testified that he was seeing his general practitioner Dr Singh, in Broome. Each time he visited Dr Singh, Mr Wright said that he obtained a medical certificate, the first of which covered the period from 22 October 2009 to 1 December 2009. The medical certificate was endorsed, to make it clear that the illness was "completely unrelated to his workers compensation health issues". A bundle of the medical certificates, including the first, and covering the period up to and including 1 December 2011, were at pp 14-22 of exhibit A1. It was Mr Wright's evidence that all medical certificates, except the last two, were sent to the Department. The final two, for the period 13 December 2010 to 1 December 2011 were sent to the Department after his dismissal.

11 Whilst there was some suggestion from the Department that these medical certificates had not been received, the chronology prepared by the Department, and set out at pp 36-39 of exhibit A1, in particular at p 38, at least in part, refers to the receipt of medical certificates from Mr Wright from February 2010 to September 2010. Additionally, Mr Wright testified that from time to time he had social contact with some of his colleagues from the Broome Regional Prison, who were well aware that he was unwell.

12 In late 2010, Mr Wright testified that he was contacted by the Department in relation to seeing a psychiatrist in Perth, Dr Spear. As at the time Mr Wright was undergoing radiation treatment for cancer, he informed the Department that he would be travelling to Perth in November for his treatment. His airfares were paid for by the Patient Assisted Travel Scheme. Mr Wright testified he told the Department he could attend Dr Spear in November without additional travel costs to the Department. Accordingly, he attended an appointment with Dr Spear on 11 November 2010 for an assessment. When making arrangements to attend on Dr Spear, Mr Wright said that he spoke with the relevant person at the Department, who agreed that a copy of the medical report would be given to him once it was issued. Ultimately, as it turns out, Mr Wright said he did not receive a copy of the report until the end of April 2011. This was despite a number of email exchanges between himself and the Department, set out at pp 30-34 of exhibit A1. In those communications, Mr Wright had, repeatedly, from 6 December 2010 until 29 April 2011, sought a copy of the report following his assessment by Dr Spear.

13 A copy of the report, dated 22 November 2010, is at pp 6-13 of exhibit A1. Relevantly for present purposes, on p 8 of the report, Dr Spear made a number of recommendations in relation to Mr Wright's return to work in his normal role as a Vocational Support Officer at the Bungarun Work Camp. These included Mr Wright engaging in mediation; the identification of any performance management issues that need to be addressed; and an "in vivo desensitisation programme" recommended to help Mr Wright overcome his apprehension about returning to the workplace. Having received the report and having read it and the accompanying recommendations, Mr Wright said he heard nothing further from the Department.

Abandonment of employment

14 The next communication he had was the letter of 1 June 2011, referred to above, alleging that he had abandoned his employment. This letter also referred to Mr Wright's "continued unauthorised absence from work." The letter also refers to Mr Wright being unfit for work by reason of other medical conditions between December 2009 and March 2010. Reference is made to medical certificates for that period. However, the letter goes on to say "Since that time the Department has not received any further communication or certificates from you." This seems to be at odds with the testimony of Mr Wright and at least in part, the Department's chronology, referred to above, which makes reference to communications with Mr Wright between February 2010 and September 2010 regarding medical certificates. In particular, an entry in the chronology for 1 September 2010 contains the following reference "emailed to CW informing him that we had received his medical certs, but that Broome Prison and Employee Welfare manage sickness matters".

15 Mr Wright, as noted above, responded to the Department by letter of 12 June 2011 which is at p 2-3 of exhibit A1. In the letter, Mr Wright refers to his absence due to medical conditions and says "I agree that I have not continually updated the DCS the circumstances medically related prevented me from doing so …" In the letter Mr Wright also referred to what he regarded as ongoing bullying harassment, and that "I have not abandoned my employment and I have no intention of doing so and I respectfully request you move towards a negotiated settlement process." The Department replied by letter of 12 July 2011, a copy of which is at p 4 of exhibit A1. In it the Department refers to Mr Wright's letter of 12 June and states:

> "You do not indicate any intention of returning to work or provide any satisfactory evidence for your ongoing absence.
>
> Your response is unsatisfactory and demonstrates that you do not appreciate the seriousness of the situation, namely that your employment may be terminated."

16 The letter concludes by advising that Mr Wright's employment was now terminated with effect from the date of the letter.

17 In cross-examination, Mr Wright was emphatic that he forwarded all of his medical certificates, except the last one, he thought, by fax to the Broome Regional Prison to the attention of the Business Manager Ms Morgan.

18 On behalf of the Department, evidence was led from Ms Hayes. Ms Hayes is a Senior Human Resources Officer who was involved in the administration of Mr Wright's matter. Ms Hayes referred to making arrangements for a mediation session conducted by an independent mediator and confirmed that Mr Wright was willing to participate. Additionally, Ms Hayes

referred to the Department becoming aware that Mr Wright was unwell. In her testimony, Mr Wright also referred to the fact that the Department did receive medical certificates from Mr Wright up to 30 September 2010. There was also a suggestion on Ms Hayes' evidence of an offer put to Mr Wright of an alternative position at the Broome Regional Prison.

19 During the course of her cross-examination, it appeared from Ms Hayes' testimony that three areas of the Department, Human Resources, Employee Welfare and Industrial Relations, were having dealings with Mr Wright's case. Each section was responsible for different aspects of Mr Wright's case. Ms Hayes, who was in the Human Resources section, testified that she was not aware of the medical report from Dr Spear or its recommendations. This was at the time that the letter to Mr Wright of 1 June 2011, to Mr Wright, alleging he had abandoned his employment, was being prepared. Ms Hayes, however, did say that she was aware that another officer, Ms Courtney, from Employee Welfare, was arranging Mr Wright's medical appointment with Dr Spear in late 2010.

20 It would also appear from the Department's chronology, in exhibit A1, as confirmed by Ms Hayes, that the Department was also considering the issue of abandonment of employment at the same time as arranging the appointment with Dr Spear.. When it was put to her, Ms Hayes had no knowledge of the email from Ms Morgan to Mr Wright, of 17 February 2009, confirming that Mr Wright would be on leave without pay from 14 March 2009. Furthermore, Ms Hayes confirmed in cross-examination, that when the letter of 1 June 2011 from the Department was being prepared, Ms Hayes accepted that the Department was in possession of Dr Spear's report and the recommendations that it made, but she had no knowledge of them. Ms Hayes accepted that for the purposes of dealing with Mr Wright's case, there appeared to be no interface between the Human Resources and Employee Welfare sections, concerning his medical review.

21 In light of the fact that Mr Wright's testimony was largely uncontradicted, and my assessment of Mr Wright as a credible witness, I accept his testimony and find accordingly.

Consideration

22 The Department appears, from the correspondence in evidence, to have relied upon the doctrine of repudiation to assert that Mr Wright had abandoned his employment. A repudiation is a contractual principle, in which a party to a contract evinces an intention to no longer be bound by the contract, or alternatively, to perform it in a fundamentally different way than originally agreed: *Koompahtoo Local Aboriginal Land Council v Sanpine Pty Ltd* (2007) 233 CLR 115; *State of South Australia v McDonald* (2009) 185 IR 45. As the learned authors in *Macken's Law of Employment* 7th Ed observe at par 8.30:

> "The test is objective. It is not necessary to prove a subjective intention to repudiate. Whether there has been a repudiation of the contract in the individual case is not a question of law but a question of fact. It is not to be inferred lightly. A refusal to perform contractual obligations if sufficiently serious will suffice. Similarly, misconduct of a serious nature inconsistent with the fulfilment of express or implied conditions of service will constitute repudiation. Repudiation will exist, for example, where there has been a wrongful dismissal of an employee or an employee leaves the job without notice or with insufficient notice, or where an employee has accepted an offer of employment which is then withdrawn by the employer before commencement of the employment, or where an employer reduces the wages of an employee without that person's consent, or a serious non-consensual intrusion on the nature of the employee's status and responsibilities in a way which is not permitted by the contract." *(Footnotes omitted)*

23 Furthermore, in an employment setting, where there is said to have been an abandonment of employment as a result of a repudiation of contract, there is generally no dismissal. The employee, by their conduct, terminates the contract.

24 On the facts of this case, in my view, there was no repudiatory breach of contract by Mr Wright which could constitute an abandonment of employment. I have reached this view for two reasons. Firstly, the uncontradicted evidence was that from March 2009, Mr Wright was granted leave without pay, and hence his absence from the workplace was authorised. On the evidence, this leave without pay was never revoked or varied in material terms. Secondly, in Mr Wright's letter to the Department of 12 June 2011, whilst it could have been expressed more clearly as to his future intentions, Mr Wright expressly disavowed any notion that the was abandoning his employment with the Department. Whilst Mr Wright, at that time, seems to have been searching for an alternative outcome, in my opinion, objectively considered, the conclusion that he was abandoning his employment was not one reasonably open.

25 In any event, however, it is plain that the Department did not ultimately rely upon Mr Wright's alleged abandonment of employment. This is because the Department itself terminated the contract of employment summarily, effective from 12 July 2011.

26 Having regard to all of the evidence, and the circumstances as they arose, I have come to the conclusion that applying the principles in *Undercliffe's Case* (1985) 65 WAIG 385, the dismissal of Mr Wright was harsh, oppressive and unfair. As I have already mentioned, Mr Wright was properly led to believe that following his leaving the Bungarun Work Camp, and because his workers' compensation payments were not approved, he was on leave without pay as an authorised absence from the workplace. Also, Mr Wright did co-operate and was endeavouring to participate in the mediation process commenced in 2009, in order to resolve the workplace issues then arising. His non-work related illness, which was serious, intervened in this process and the evidence was that Mr Wright was quite seriously ill for a considerable period of time.

27 Whilst Mr Wright's absence from the workplace was extensive, I am satisfied that Mr Wright did furnish medical evidence by way of medical certificates to the Department at least for the majority of the period of his illness. I accept, however, that some of Mr Wright's communications with the Department could have been clearer. Additionally, it is the case that Mr Wright co-operated with the Department in arrangements made to have him assessed by Dr Spear in Perth, following which a detailed

medical report was prepared. It is also the case that despite undertakings given to him at the time, it took some months for Mr Wright to receive the Dr Spear's report, and in particular, Dr Spear's recommendations for a resolution of the issues identified in the report.

28 It is also of some significance that despite making arrangements for Mr Wright to be medically assessed, and having received recommendations from Dr Spear, there was no further contact by the Department to Mr Wright to consider the implementation of Dr Spear's recommendations. The Commission is not persuaded that Mr Wright was unreceptive to this course, by reason of any prior conduct. He had certainly willingly participated in the initial mediation, but fell seriously ill and as the evidence disclosed, was in no proper state to actively take part for some time.

29 The evidence of Mr Wright was that he "loved the job…and working with aboriginal people". I am satisfied on the evidence that Mr Wright is now sufficiently medically fit to resume work. However, in light of the conclusions of Dr Spear in his report, active consideration should be given to the matters identified by him at par 14 of the report.

30 Given the closure of the Bungarun Work Camp, the Department forwarded to my Chambers after the hearing of the application, a list of vacant Vocational Support Officer positions at the Department's regional prisons. Whether those positions still remain available may be an open question. Regardless, however, the Commission will order that Mr Wright be re-employed in a Vocational Support Officer position at a regional prison. In the circumstances of Mr Wright being on extended unpaid leave, no order as to compensation for loss of salary or entitlements will be made.

31 An order now issues.

2012 WAIRC 00777

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	CHRISTOPHER JAYCN MILLARD WRIGHT
	APPLICANT
	-v-
	DEPARTMENT OF CORRECTIVE SERVICES
	RESPONDENT
CORAM	COMMISSIONER S J KENNER
DATE	WEDNESDAY, 22 AUGUST 2012
FILE NO/S	U 128 OF 2011
CITATION NO.	2012 WAIRC 00777

Result	Order issued
Representation	
Applicant	Mr P Mullally as agent
Respondent	Mr P Budd

Order

HAVING HEARD Mr P Mullally as agent on behalf of the applicant and Mr P Budd on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby –

(1) DECLARES that Mr C Wright was harshly, oppressively and unfairly dismissed from his employment on 12 July 2011.

(2) ORDERS that the respondent re-employ the applicant in the position of Vocational Support Officer at a regional prison within 21 days.

(3) ORDERS that on re-employment the applicant's service for benefit purposes be deemed continuous.

(Sgd.) S J KENNER,
Commissioner.

[L.S.]

CONFERENCES—Matters arising out of—

2012 WAIRC 00768

DISPUTE RE ALLEGED BREACH OF TERMS OF EMPLOYMENT & REDUCTION OF ENTITLEMENTS TO UNION MEMBERS

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	THE AUSTRALIAN RAIL, TRAM AND BUS INDUSTRY UNION OF EMPLOYEES, WEST AUSTRALIAN BRANCH
	APPLICANT
	-v-
	PUBLIC TRANSPORT AUTHORITY
	RESPONDENT
CORAM	COMMISSIONER S J KENNER
DATE	MONDAY, 20 AUGUST 2012
FILE NO/S	C 46 OF 2010
CITATION NO.	2012 WAIRC 00768

Result	Order issued
Representation	
Applicant	Mr G Ferguson
Respondent	Mr R Farrell

Order

HAVING heard Mr G Ferguson on behalf of the applicant and Mr R Farrell on behalf of the respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders –

THAT the application be and is hereby discontinued.

(Sgd.) S J KENNER,
[L.S.] Commissioner.

2012 WAIRC 00369

DISPUTE RE DISCIPLINARY PROCESS

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED
	APPLICANT
	-v-
	COMMISSIONER IAN JOHNSON
	DEPARTMENT OF CORRECTIVE SERVICES
	RESPONDENT
CORAM	PUBLIC SERVICE ARBITRATOR
	COMMISSIONER S J KENNER
DATE	TUESDAY, 19 JUNE 2012
FILE NO	PSAC 10 OF 2012
CITATION NO.	2012 WAIRC 00369

Result	Application discontinued
Representation	
Applicant	Mr D Wayda
Respondent	Mr D Hughes

Order

WHEREAS the applicant filed a notice of discontinuance, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders –

THAT the application be and is hereby discontinued.

(Sgd.) S J KENNER,
[L.S.] Commissioner.

2012 WAIRC 00332

DISPUTE RE INVESTIGATION OF UNION MEMBER

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA (INCORPORATED)
	APPLICANT
	-v-
	DIRECTOR GENERAL, DEPARTMENT OF MINES AND PETROLEUM
	RESPONDENT
CORAM	PUBLIC SERVICE ARBITRATOR
	COMMISSIONER S J KENNER
DATE	WEDNESDAY, 30 MAY 2012
FILE NO	PSAC 12 OF 2012
CITATION NO.	2012 WAIRC 00332

Result	Interim order issued
Representation	
Applicant	Ms K Hagan of counsel
Respondent	Mr D Matthews of counsel

Interim Order

WHEREAS by application filed on 16 May 2012 the Association sought a compulsory conference in relation to a dispute between the Association and the Department concerning disciplinary action against, and the suspension of, a member of the Association, Mr Ihdayhid;

AND WHEREAS on 25 May 2012 the Arbitrator convened a compulsory conference at which the Association informed the Arbitrator that Mr Ihdayhid and another employee, Mr Fiori, had been suspended on full pay under s 82 of the Public Sector Management Act 1994 pending the outcome of an investigation into an alleged breach of discipline. The alleged breach of discipline concerns the sending by Mr Fiori of several emails to Mr Ihdayhid, which emails attached cartoons allegedly containing derogatory and insulting depictions of senior management of the Department. At the time of the alleged conduct, Mr Ihdayhid was the Manager Petroleum Pipelines and Mr Fiori was the Senior Safety Assessor Petroleum Pipelines;

AND WHEREAS the Arbitrator was informed by the Department that whilst Mr Ihdayhid was not involved in sending any of the emails concerned and admits he received them, Mr Ihdayhid was, at the material time, Mr Fiori's line manager. As the line manager, the Department says Mr Ihdayhid had an obligation to report the receipt of the emails because they may have breached the Department's information technology policy and the Public Sector Code of Ethics. In failing to report them, Mr Ihdayhid may have contravened the implied term of fidelity and good faith in his contract of employment;

AND WHEREAS the Association contended that the content of the cartoons received by Mr Ihdayhid is not offensive or defamatory. In any event, the Association says that the action taken by the Department against Mr Ihdayhid is, given his 23 years of loyal and unblemished service, in all of the circumstances, harsh;

AND WHEREAS the Association seeks interim orders under s 44(6)(ba) of the Act that the investigation and suspension cease to prevent a deterioration of industrial relations between the parties;

AND WHEREAS the Arbitrator has considered the submissions made by the parties and the nature of the allegations; the terms of the Public Sector Commissioner's Instruction: Discipline - General, as to whether Mr Ihdayhid, by remaining in the workplace, may lead to a serious risk to employee or public safety; to the integrity of evidence concerning the matter; to the operations of the Department; or to the conduct of the investigation into the matter;

AND WHEREAS the Arbitrator, having considered these matters, and in accordance with equity and good conscience, has decided to make an interim order;

NOW THEREFORE the Arbitrator, to prevent any further deterioration of industrial relations in respect of the matters in question, pursuant to the powers vested in it by the Industrial Relations Act 1979, and in particular s 44(6)(ba) hereby orders –

(1) THAT the suspension on full pay of Mr Ihdayhid immediately cease and My Ihdayhid resume undertaking duties assigned to him by the Department pending the outcome of the investigation into the alleged breaches of discipline.

(2) THAT otherwise the application for interim orders is dismissed.

(Sgd.) S J KENNER,
Commissioner,
[L.S.] Public Service Arbitrator.

2012 WAIRC 00767

DISPUTE RE INVESTIGATION OF UNION MEMBER

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA (INCORPORATED)
	APPLICANT
	-v-
	DIRECTOR GENERAL, DEPARTMENT OF MINES AND PETROLEUM
	RESPONDENT
CORAM	COMMISSIONER S J KENNER
DATE	MONDAY, 20 AUGUST 2012
FILE NO/S	PSAC 12 OF 2012
CITATION NO.	2012 WAIRC 00767

Result	Order issued
Representation	
Applicant	Ms K Hagan of counsel
Respondent	Mr D Matthews of counsel

Order

WHEREAS the applicant filed a notice of discontinuance, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders –

THAT the application be and is hereby discontinued.

(Sgd.) S J KENNER,
[L.S.] Commissioner.

2012 WAIRC 00828

DISPUTE RE CLASSIFICATION

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	UNITED VOICE WA
	APPLICANT
	-v-
	THE DIRECTOR GENERAL DEPARTMENT OF EDUCATION
	RESPONDENT
CORAM	COMMISSIONER S M MAYMAN
DATE	WEDNESDAY, 12 SEPTEMBER 2012
FILE NO/S	C 51 OF 2012
CITATION NO.	2012 WAIRC 00828

Result	Interim order issued
Representation	
Applicant	Ms C Collins (of counsel)
Respondent	Ms K Johnson

Interim Order

WHEREAS on 31 August 2012 United Voice WA (the union) notified the Western Australian Industrial Relations Commission (the Commission) of the dispute between the union and the employer and requested an urgent conference under s.44 of the *Industrial Relations Act 1979* (the Act);

AND WHEREAS having heard the union and the employer at a conference on 12 September 2012;

The COMMISSION, under the powers conferred on it under the Act orders –

1. That Ms Spence will not be removed from her current duties at Burbridge School.
2. That the current role of swimming teacher that Ms Spence holds at Burbridge School and has been held for 7 years will not be advertised or otherwise filled so long as this interim order is in force.
3. That Mr Dodd review the correspondence (D 12/0537077) in particular paragraphs 6, 7, 8 and 9, and provide his response in writing to the union.
4. By way of discovery the employer is to provide to the union a list of names (including classification and start dates) of full time or part time employed swimming teacher(s) employed in education support schools in a similar capacity as Ms Spence.
5. The union and the employer will enter into attempts to resolve the dispute either with or without the Commission.
6. That liberty to apply is reserved to the parties in relation to this order.

(Sgd.) S M MAYMAN,
[L.S.] Commissioner.

2012 WAIRC 00769

DISPUTE RE NON COMPLETION OF AGREEMENT

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	WESTERN AUSTRALIAN MUNICIPAL, ROAD BOARDS,PARKS AND RACECOURSE EMPLOYEES UNION OF WORKERS, PERTH
	APPLICANT
	-v-
	SHIRE OF GINGIN
	RESPONDENT
CORAM	COMMISSIONER S J KENNER
DATE	MONDAY, 20 AUGUST 2012
FILE NO/S	C 43 OF 2012
CITATION NO.	2012 WAIRC 00769

Result	Application discontinued
Representation	
Applicant	Mr A Johnson
Respondent	Mr S Camillo

Order

WHEREAS the applicant filed a notice of discontinuance, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders –

THAT the application be and is hereby discontinued.

(Sgd.) S J KENNER,
[L.S.] Commissioner.

2012 WAIRC 00821

DISPUTE RE DISCIPLINARY ACTION BY EMPLOYER DUE TO SICK LEAVE TAKEN BY UNION MEMBER

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	WESTERN AUSTRALIAN PRISON OFFICERS' UNION OF WORKERS
	APPLICANT
	-v-
	THE MINISTER FOR CORRECTIVE SERVICES
	RESPONDENT
CORAM	COMMISSIONER S J KENNER
DATE	MONDAY, 10 SEPTEMBER 2012
FILE NO/S	C 66 OF 2011
CITATION NO.	2012 WAIRC 00821

Result	Application discontinued
Representation	
Applicant	Mr J Walker
Respondent	Mr P Budd

Order

WHEREAS the applicant filed a notice of discontinuance, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders –

THAT the application be and is hereby discontinued.

(Sgd.) S J KENNER,
[L.S.] Commissioner.

CONFERENCES—Notation of—

Parties		Commissioner	Conference Number	Dates	Matter	Result
Health Services Union of Western Australia (Union of Workers)	The Director General of Health as a delegate of the Minister of Health in his incorporated capacity under section 7 of the Hospitals and Health Services Act 1927 for the Metropolitan Health Services B	Scott A/SC	PSAC 26/2010	N/A	Dispute re suspension of union member	Discontinued
The Australian Nursing Federation, Industrial Union of Workers Perth	The Minister for Health in his incorporated capacity under s 7 of the Hospitals and Health Services Act 1927 (WA) as the hospitals formerly comprised in the Metropolitan Health Services Board	Scott A/SC	C 41/2012	N/A	Dispute re change of roster	Concluded

CONFERENCES—Notation of—continued

The Civil Service Association of Western Australia Incorporated	Legal Aid Commission of Western Australia	Scott A/SC	PSAC 20/2012	N/A	Dispute re clauses 47 and 48 of the Public Service and Government Officers General Agreement 2011	Discontinued
The State School Teachers' Union of Western Australia (Inc)	Director-General of the Department of Education and Training	Scott A/SC	C 21/2012	26/04/2012	Dispute re alleged misconduct	Discontinued
The State School Teachers' Union of Western Australia (Inc.)	Director-General of the Department of Education and Training	Scott A/SC	C 22/2012	26/04/2012	Dispute re alleged misconduct	Discontinued
Western Australian Municipal, Administrative, Clerical and Services Union of Employees	City of Albany	Harrison C	C 15/2012	18/05/2012	Dispute re long service leave	Discontinued

INDUSTRIAL AGREEMENTS—Notation of—

Agreement Name/Number	Date of Registration	Parties		Commissioner	Result
Employment Law Centre of Western Australia (Inc) Enterprise Bargaining Agreement 2012 - The AG 31/2012	6/09/2012	The Employment Law Centre of Western Australia (Inc)	Western Australian Municipal, Administrative, Clerical and Services Union of Employees	Chief Commissioner A R Beech	Agreement registered
Shire of Laverton Enterprise Bargaining Agreement 2012 AG 30/2012	6/09/2012	Western Australian Municipal, Administrative, Clerical and Services Union of Employees	Shire of Laverton	Chief Commissioner A R Beech	Agreement registered
Shire of Murray (Administration Staff) Enterprise Bargaining Agreement 2012 AG 28/2012	27/08/2012	Western Australian Municipal, Administrative, Clerical and Services Union of Employees	Shire of Murray	Commissioner S J Kenner	Agreement registered

PUBLIC SERVICE APPEAL BOARD—

2012 WAIRC 00727

APPEAL AGAINST THE DECISION TO TERMINATE THE EMPLOYMENT ON 17 JUNE 2011

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

CITATION	**:**	2012 WAIRC 00727
CORAM	**:**	PUBLIC SERVICE APPEAL BOARD COMMISSIONER S J KENNER- CHAIRMAN MR GAVIN RICHARDS - BOARD MEMBER MR MARK TAYLOR - BOARD MEMBER
HEARD	**:**	FRIDAY, 14 OCTOBER 2011, TUESDAY, 24 JULY 2012, THURSDAY, 10 MAY 2012
DELIVERED	**:**	THURSDAY, 9 AUGUST 2012
FILE NO.	**:**	PSAB 9 OF 2011
BETWEEN	**:**	GWENDA HANSEN Appellant AND DEPARTMENT OF CORRECTIVE SERVICES Respondent

Catchwords	**:**	Industrial law (WA) – Appeal against decision to terminate employment – Application from respondent that appeal be dismissed for want of prosecution – Principles applied – Failure of appellant to attend hearing – Failure of appellant to serve the respondent with a copy of the appeal – Difficulty of establishing employment was terminated – Appeal dismissed
Legislation	**:**	Industrial Relations Act 1979 s 27(1), 80I
Result	**:**	Appeal dismissed
Representation:		
Appellant	**:**	No appearance
Respondent	**:**	Ms I Rizmanoska

Case(s) referred to in reasons:

Annetts v McCann (1990) 170 CLR 596

Laurie v Carroll (1958) 98 CLR 310

Reasons for Decision

1 This is the unanimous decision of the Appeal Board. This matter has some history. The appeal was filed on 5 July 2011. The appellant, Ms Hansen, alleges that on about 17 June 2011 her employment as an Aboriginal Visitor under the Department's Aboriginal Visitor Scheme, was terminated without a valid reason. Ms Hansen alleged that she accepted an offer of employment as an Aboriginal Visitor effective from 31 May 2011. Although Ms Hansen never commenced work, she alleged that by reason of an offer of employment from the manager of the Aboriginal Visitor Scheme, Ms Sellers, a contract of employment came into existence from that time. The failure of the Department to continue with her alleged employment was said to constitute a dismissal for the purposes of s 80I of the Act, which Ms Hansen says is unfair.

2 There were considerable procedural difficulties with this appeal. Ms Hansen was repeatedly requested to formally serve the Department with a copy of her notice of appeal and to file a statutory declaration of service to prove service of the notice. She failed to do so. The Department only became aware of the appeal because it was required to nominate a representative for the Appeal Board.

3 Subsequently by notice of hearing dated 28 September 2011, the appeal was listed for show cause as to why it should not be dismissed for want of prosecution on 14 October 2011. Ms Hansen was put on notice that should she fail to appear an order would issue dismissing the appeal for want of prosecution. At approximately 8.45am on 14 October 2011, Ms Hansen telephoned the Chairman's Associate to inform her that she had fallen ill and would not be able to attend the hearing. This follows earlier repeated attempts by the Chairman's Associate to make contact with Ms Hansen, all of which had been unsuccessful. The hearing was accordingly adjourned.

4 On 10 May 2012 the appeal was listed for mention. Regrettably because of difficulties experienced by a Member of the Appeal Board on that day, the hearing could not proceed. The Appeal Board was reconstituted.

5 On 14 June 2012, the Department made an application under s 27(1) of the Act that the appeal be discontinued. The grounds advanced in support of the application included that the Department had yet to be formally served with the appeal by Ms Hansen; that she had failed to expeditiously proceed with her appeal; and in any event, the appeal was unmeritorious in that there was no contract of employment ever entered into between Ms Hansen and the Department to ground jurisdiction for her appeal. The Department's application was listed for hearing on 24 July 2012. The notice of hearing listing the application to dismiss the appeal was dated 3 July 2012 and was sent to Ms Hansen and the Department at their addresses for service. Even though the Department has yet to be formally served with the notice of appeal, given it has now made application for an order under s 27(1) of the Act, it must be taken to have submitted to the jurisdiction of the Appeal Board: *Annetts v McCann* (1990) 170 CLR 596; *Laurie v Carroll* (1958) 98 CLR 310.

6 At the hearing of the application to dismiss, Ms Hansen failed to appear. Being duly satisfied that Ms Hansen had been notified of the hearing the Appeal Board unanimously decided to hear and determine the Department's application in the absence of Ms Hansen.

7 The Department briefly outlined the procedural history to which we have referred above. It submitted that despite previous requests, the notice of appeal had yet to be formally served on the Department. Furthermore, there had been a failure by Ms Hansen to adequately prosecute her appeal, her having failed to appear before the Appeal Board on at least two occasions. Furthermore, as to the merits, it was submitted that there was no basis to Ms Hansen's claim that she had a contract of employment with the Department as an Aboriginal Visitor at any time. This was on the basis that the discussions that Ms Hansen had with Ms Sellers about the prospect of her engagement as an Aboriginal Visitor were informal and the formal requirements for the entering into of a contract of employment, in the Department's procedures, had not been completed. Ms Hansen's potential appointment was only at the early assessment stage. A police check was required and a formal written contract of employment was necessary for the employment to be formalised.

8 Accordingly, the Department submitted that regardless of the other difficulties faced by Ms Hansen, her appeal had no prospect of success.

9 After adjourning for a short period of time the Appeal Board announced its decision to dismiss the appeal with reasons to be published in due course. These are our reasons which we can shortly state.

10 Self-evidently, from the brief narration of the history of the appeal set out above, the appeal has not been proceeded with expeditiously by Ms Hansen. She has failed to appear before the Appeal Board on two occasions, the latter being, perhaps most importantly, on this application by the Department for the appeal to be dismissed. The prior history and the events of this hearing demonstrate a complete lack of intent by Ms Hansen to prosecute her appeal with any genuine interest or endeavour.

11 Furthermore, from what we have before us, it would appear that even if Ms Hansen had appeared on this application and opposed it, ultimately her appeal has little prospect of success. It seems clear enough on the submissions of the Department, that any discussions that Ms Hansen had with Ms Sellers as the Manager of the Aboriginal Visitor Scheme were preliminary only. Formal requirements for assessing candidates for appointment, including police checks, had yet to be complied with. No written contract of employment had been prepared, which was a necessary step. Because of this, it appears to us that it would be extremely difficult for Ms Hansen to establish that she was dismissed for the purposes of s 80I of the Act, in order to ground jurisdiction in the Appeal Board to determine her appeal.

12 For all of these reasons the appeal was dismissed.

2012 WAIRC 00728

APPEAL AGAINST THE DECISION TO TERMINATE THE EMPLOYMENT ON 17 JUNE 2011

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES GWENDA HANSEN

APPELLANT

-v-

DEPARTMENT OF CORRECTIVE SERVICES

RESPONDENT

CORAM PUBLIC SERVICE APPEAL BOARD

COMMISSIONER S J KENNER - CHAIRMAN

MR GAVIN RICHARDS - BOARD MEMBER

MR MARK TAYLOR - BOARD MEMBER

DATE TUESDAY, 24 JULY 2012

FILE NO PSAB 9 OF 2011

CITATION NO. 2012 WAIRC 00728

Result	Appeal dismissed
Representation	
Appellant	No appearance
Respondent	Ms I Rizmanoska

Order

THERE being no appearance on behalf of the applicant and having heard Ms I Rizmanoska on behalf of the respondent the Appeal Board, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders –

THAT the appeal be and is hereby dismissed.

(Sgd.) S J KENNER,
Commissioner.
[L.S.] On behalf of the Public Service Appeal Board.

2012 WAIRC 00784

APPEAL AGAINST DECISION TO DISMISS

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	SHERRY MARTIN
	APPELLANT
	-v-
	THE DIRECTOR GENERAL OF HEALTH IN HIS INCORPORATED CAPACITY UNDER S.7 OF THE HOSPITALS AND HEALTH SERVICES ACT 1927 (WA)
	RESPONDENT
CORAM	PUBLIC SERVICE APPEAL BOARD
	ACTING SENIOR COMMISSIONER P E SCOTT - CHAIRMAN
	MS C SEENIKATTY - BOARD MEMBER
	MS K HEAL - BOARD MEMBER
DATE	MONDAY, 27 AUGUST 2012
FILE NO.	PSAB 4 OF 2012
CITATION NO.	2012 WAIRC 00784

Result	Direction issued

Direction

WHEREAS this is an appeal to the Public Service Appeal Board pursuant to Section 80I of the *Industrial Relations Act 1979*; and

WHEREAS this appeal was set down for a Directions hearing on the 27th day of August 2012; and

WHEREAS on the 24th day of August 2012 the parties requested that hearing be adjourned;

NOW THEREFORE, the Public Service Appeal Board, pursuant to the powers conferred under the *Industrial Relations Act 1979*, and by consent, hereby directs:

THAT the Directions hearing set down for Monday the 27th day of August 2012 be adjourned to a date to be fixed.

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
[L.S.] On behalf of the Public Service Appeal Board.

2012 WAIRC 00825

APPEAL AGAINST DISMISSAL

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	STEPHEN BRENT MEWETT
	APPELLANT
	-v-
	DIRECTOR OF EDUCATION
	MS SHARYN O'NEILL
	RESPONDENT
CORAM	PUBLIC SERVICE APPEAL BOARD
	ACTING SENIOR COMMISSIONER P E SCOTT - CHAIRMAN
	MS D HOPKINSON - BOARD MEMBER
	MR K TRENT - BOARD MEMBER
DATE	TUESDAY, 11 SEPTEMBER 2012
FILE NO	PSAB 10 OF 2012
CITATION NO.	2012 WAIRC 00825

Result Direction issued

Direction

WHEREAS this is an appeal to the Public Service Appeal Board (the Board) pursuant to Section 80I of the *Industrial Relations Act 1979*; and

WHEREAS this appeal was set down for a scheduling hearing on the 13th day of August 2012; and

WHEREAS the Board is of the opinion that the issuing of the directions will assist in the conduct of the hearing of the scope of the appeal and the application for an extension of time;

NOW THEREFORE, the Public Service Appeal Board, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby directs:

1. THAT the appellant file and serve on the respondent any witness statements setting out all evidence in chief, attaching appropriate documents, and an Outline of Submissions by the 19th day of October 2012.

2. THAT the respondent file and serve on the appellant any witness statements setting out all evidence in chief, attaching appropriate documents, and an Outline of Submissions by the 2nd day of November 2012.

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
[L.S.] On behalf of the Public Service Appeal Board.

2012 WAIRC 00801

APPEAL AGAINST DENIED ACCESS TO PERSONNEL FILES

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	GLENN ROSS
	APPELLANT
	-v-
	PETER CONRAN
	DIRECTOR GENERAL, DEPARTMENT OF THE PREMIER AND CABINET
	RESPONDENT
CORAM	PUBLIC SERVICE APPEAL BOARD
	THE HONOURABLE J H SMITH, ACTING PRESIDENT - CHAIRMAN
	MR G RICHARDS - BOARD MEMBER
	MR E ISAILOVIC - BOARD MEMBER
DATE	MONDAY, 3 SEPTEMBER 2012
FILE NO	PSAB 14 OF 2012
CITATION NO.	2012 WAIRC 00801

Result	Order issued

Order

WHEREAS on 29 June 2012, the appellant filed a notice of appeal to the Public Service Appeal Board; and

WHEREAS on 27 August 2012, the appellant filed a notice of withdrawal or discontinuance in respect of the appeal to the Public Service Appeal Board;

NOW THEREFORE, the Public Service Appeal Board, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders —

THAT the appeal to the Public Service Appeal Board be, and is hereby discontinued by leave.

(Sgd.) THE HONOURABLE J H SMITH,
Acting President,
[L.S.] On behalf of the Public Service Appeal Board

RECLASSIFICATION APPEALS—

2012 WAIRC 00804

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	KRISTIN JONES
	APPLICANT
	-v-
	DIRECTOR GENERAL OF HEALTH AS DELEGATE OF THE MINISTER FOR HEALTH IN HIS INCORPORATED CAPACITY UNDER S7 OF THE HOSPITAL AND HEALTH SERVICE ACT 1927 AS THE METROPOLITAN HEALTH SERVICE
	RESPONDENT
CORAM	PUBLIC SERVICE ARBITRATOR
	ACTING SENIOR COMMISSIONER P E SCOTT
DATE	WEDNESDAY, 5 SEPTEMBER 2012
FILE NO	PSA 31 OF 2006
CITATION NO.	2012 WAIRC 00804

Result	Appeal dismissed

Order

WHEREAS this is a reclassification appeal made pursuant to the *Industrial Relations Act 1979*; and

WHEREAS on the 30th day of August 2012 the applicant filed a Notice of Discontinuance in respect of the appeal;

NOW THEREFORE, the Public Service Arbitrator, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

THAT this appeal be, and is hereby dismissed.

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
[L.S.] Public Service Arbitrator.

2012 WAIRC 00760

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	GORDON HUGH STACEY
	APPLICANT
	-v-
	DIRECTOR GENERAL OF HEALTH AS DELEGATE OF THE MINISTER FOR HEALTH IN HIS INCORPORATED CAPACITY UNDER S7 OF THE HOSPITAL AND HEALTH SERVICES ACT 1927 AS THE WA COUNTRY HEALTH SERVICE
	RESPONDENT
CORAM	PUBLIC SERVICE ARBITRATOR
	ACTING SENIOR COMMISSIONER P E SCOTT
DATE	FRIDAY, 17 AUGUST 2012
FILE NO	PSA 12 OF 2011
CITATION NO.	2012 WAIRC 00760
Result	Application dismissed

Order

WHEREAS this is a reclassification appeal made pursuant to the *Industrial Relations Act 1979*; and

WHEREAS on the 6th day of August 2012 the applicant filed a Notice of Discontinuance in respect of the appeal;

NOW THEREFORE, the Public Service Arbitrator, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

THAT this appeal be, and is hereby dismissed.

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
[L.S.] Public Service Arbitrator.

EMPLOYMENT DISPUTE RESOLUTION MATTERS—Notation of—

The following were matters before the Commission under the Employment Dispute Resolution Act 2008 that concluded without an order issuing.

Application Number	Matter	Commissioner	Dates	Result
APPL 49/2012	Dispute re alleged resignment from employment	Beech CC	N/A	Concluded
APPL 16/2012	Request for mediation re request for information	Beech CC	N/A	Withdrawn
APPL 11/2012	Request for mediation in relation to workplace behaviour	Beech CC	21/05/2012	Concluded

ROAD FREIGHT TRANSPORT INDUSTRY TRIBUNAL—Matters Dealt With—

2012 WAIRC 00814

REFERRAL OF DISPUTE RE PAYMENT UNDER OWNER-DRIVER CONTRACT

IN THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

SITTING AS

THE ROAD FREIGHT TRANSPORT INDUSTRY TRIBUNAL

PARTIES	SUMMERSANDS PTY LTD T/AS CHASE HAULIERS
	APPLICANT
	-v-
	ADVANCED LOGISTIC SOLUTIONS PTY LTD
	RESPONDENT
CORAM	COMMISSIONER S J KENNER
DATE	THURSDAY, 6 SEPTEMBER 2012
FILE NO/S	RFT 22 OF 2011
CITATION NO.	2012 WAIRC 00814

Result	Application discontinued by leave
Representation	
Applicant	Mr A Dzieciol of counsel
Respondent	Mr B McHugh

Order

WHEREAS the applicant sought and was granted leave to discontinue the application, the Commission, pursuant to the powers conferred on it under the Owner-Drivers (Contracts and Disputes) Act 2007 hereby orders –

THAT the application be and is hereby discontinued by leave.

(Sgd.) S J KENNER,
[L.S.] Commissioner.

2012 WAIRC 00813

REFERRAL OF DISPUTE RE PAYMENT UNDER OWNER-DRIVER CONTRACT

IN THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

SITTING AS

THE ROAD FREIGHT TRANSPORT INDUSTRY TRIBUNAL

PARTIES	TOO FAR NOMINEES PTY LTD
	APPLICANT
	-v-
	NORTHLINE PTY LTD
	RESPONDENT
CORAM	COMMISSIONER S J KENNER
DATE	THURSDAY, 6 SEPTEMBER 2012
FILE NO/S	RFT 25 OF 2011
CITATION NO.	2012 WAIRC 00813

Result	Application discontinued by leave
Representation	
Applicant	Mr A Dzieciol of counsel
Respondent	Mr B Williams

Order

WHEREAS the applicant sought and was granted leave to discontinue the application, the Commission, pursuant to the powers conferred on it under the Owner-Drivers (Contracts and Disputes) Act 2007 hereby orders –

THAT the application be and is hereby discontinued by leave.

(Sgd.) S J KENNER,
[L.S.] Commissioner.

2011 WAIRC 01081

REFERRAL OF DISPUTE RE PAYMENT UNDER OWNER-DRIVER CONTRACT

IN THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

SITTING AS

THE ROAD FREIGHT TRANSPORT INDUSTRY TRIBUNAL

PARTIES	TOO FAR NOMINEES PTY LTD
	APPLICANT
	-v-
	NORTHLINE PTY LTD
	RESPONDENT
CORAM	COMMISSIONER S J KENNER
DATE	WEDNESDAY, 30 NOVEMBER 2011
FILE NO/S	RFT 25 OF 2011
CITATION NO.	2011 WAIRC 01081

Result	Order issued
Representation	
Applicant	Mr A Dzieciol of counsel
Respondent	Not applicable

Order

WHEREAS on 29 November 2011 the applicant made application to the Tribunal under s 40(a) and/or (d) of the Owner-Drivers (Contracts and Disputes) Act 2007 alleging that the respondent has failed to pay the applicant outstanding monies owed to the applicant under an owner-driver contract;

AND WHEREAS also on 29 November 2011 the applicant filed an application under reg 99D(4) of the Industrial Relations Commission Regulations 2005 seeking an order that the time for the respondent to file a notice of answer in the application be shortened to seven days from the date of service of the notice of referral;

AND WHEREAS having considered the grounds in support of the application for shortened time for filing answers the Tribunal is satisfied that an order should be made;

NOW THEREFORE, the Tribunal, pursuant to the powers conferred on it under the Owner-Drivers (Contracts and Disputes) Act 2007, hereby orders –

THAT the time for the filing a notice of answer by the respondent be and is hereby shortened to seven days from the date of service of the notice of referral on the respondent.

(Sgd.) S J KENNER,
[L.S.] Commissioner.