# CUMULATIVE DIGEST

MATTERS REFERRED TO IN DECISIONS OF THE INDUSTRIAL APPEAL COURT, INDUSTRIAL RELATIONS COMMISSION AND INDUSTRIAL MAGISTRATES COURT CONTAINED IN VOL. 95 PART 2, SUB PARTS 1 - 9.

## Digest Headings

* Denotes New Heading

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

Page

Editor's Note: The Registrar wishes to advise that as from January 2004, the format of the "Cumulative Digest" published at the back of the Western Australian Industrial Gazette has changed to incorporate "Catchword Phrases", please refer to the Notice at (83WAIG3937).

All documents within the above headings are in chronological order.


INDUSTRIAL APPEAL COURT

Industrial Appeal Court-Appeals from Western Australian Industrial Relations Commission-Jurisdiction of Industrial Appeal Court-No error in construction-Application dismissed-The Public Transport Authority of Western Australia -v- The Australian Rail, Tram and Bus Industry Union of Employees, West Australian Branch-IAC 4 of 2014-Industrial Appeal Court-Buss J/Le Miere J/Murphy J/-15/09/2015 ..... 1593

Costs-Awarding costs incurred for legal services provided in Industrial Appeal Court proceedings-Whether appeal instituted frivolously or vexatiously-Application dismissed-The Public Transport Authority of Western Australia -v- The Australian Rail, Tram and Bus Industry Union of Employees, West Australian Branch-IAC 4 of 2014-Industrial Appeal Court-Buss J/Le Miere J/Murphy J/-15/09/2015 ..... 1597

Extending time in which to institute appeal - Power of the Full Bench of the Western Australian Industrial Relations Commission to extend the time in which a party may institute an appeal - Statutory construction of s 49(3) of the Industrial Relations Act 1979 (WA) - Appeal Dismissed - Director General, Department of Education -v- United Voice WA - IAC 1 of 2015 - Industrial Appeal Court - BUSS J/LE MIERE J/MURPHY J - 23/09/2015 ..... 1600

FULL BENCH

Industrial Law (WA) - Appeal against a decision of a single Commissioner - Entitlements of rail car drivers to credit hours in a fortnightly cycle when taking a week of annual leave - Interpretation of industrial agreement - Principles of construction considered - New point raised by appellant - Point allowed - The Australian Rail, Tram and Bus Industry Union of Employees, West Australian Branch -v- Public Transport Authority of Western Australia - FBA 3 of 2015 - Full Bench - The Honourable J H Smith, Acting President/Acting Senior Commissioner P E Scott/Commissioner J L Harrison - 12/08/2015 ..... 1503

Industrial Law (WA) - Speaking to the minutes of an order - Principles considered - Amendment made to proposed order - The Australian Rail, Tram and Bus Industry Union of Employees, West Australian Branch -v- Public Transport Authority of Western Australia - FBA 3 of 2015 - Full Bench - The Honourable J H Smith, Acting President/Acting Senior Commissioner P E Scott/Commissioner J L Harrison - 27/08/2015 ..... 1510

Industrial Law (WA) - Applications to strike out appeals - Claims for accrued annual leave accrued under Minimum Conditions of Employment Act 1993 (WA) terms of which became a NAPSA pursuant to Workplace Relations Act 1996 (Cth) and later a transitional instrument pursuant to Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth) - Commission is a court for the purposes of s 78B of the Judiciary Act 1903 (Cth) - s 79 of the Judiciary Act considered - The right to appeal a decision of the Industrial Magistrate in s 84 of the Industrial Relations Act 1979 (WA) by operation of s 109 Commonwealth Constitution inconsistent with s 565 of the Fair Work Act 2009 (Cth) - Section 565 creates an exclusive right of appeal from the Industrial Magistrate's Court exercising its civil jurisdiction under the Fair Work Act - Appeals dismissed for want of jurisdiction - Hugh Sutherland Rogers -v- J-Corp Pty Ltd - FBA 1 of 2015 and FBA 2 of 2015 - Full Bench - The Honourable J H Smith, Acting President/Acting Senior Commissioner P E Scott/Commissioner J L Harrison - 4/09/2015 ..... 1513

Industrial Law (WA) - Appeal against decision of the Commission - Industrial matter - Finding made by the Commission that there were reasonable grounds for the employer to find an employee guilty of knowingly giving false accounts of an incident - Allegations among most serious an employer could make against an employee - Error demonstrated - Evidence and material before the Commission not analysed by applying the requisite standard of proof - Must be more than inconsistent accounts to support a finding of reasonable grounds to form the belief employee had knowingly given a false account - The Australian Rail, Tram and Bus Industry Union of Employees, West Australian Branch -v- Public Transport Authority of Western Australia - FBA 6 of 2015 - Full Bench - The Honourable J H Smith, Acting President/Chief Commissioner A R Beech/Commissioner J L Harrison - 12/10/2015 ..... 1605

Industrial Law (WA) - Appeal against decision made by Industrial Magistrate's Court - Finding respondent entitled to payment for pro-rata long service leave - Issue of construction of Long Service Leave Act 1958 (WA) - Whether respondent an employee for the purposes of the Long Service Leave Act on grounds respondent is entitled to, or eligible to become entitled to, long service leave under an industrial agreement that is at least equivalent to the entitlement to long service leave under the Long Service Leave Act - Appeal dismissed - The Public Transport Authority of Western Australia -v- Junghee Yoon - FBA 7 of 2015 - Full Bench - The Honourable J H Smith, Acting President/Chief Commissioner A R Beech/Commissioner S J Kenner - 6/10/2015 ..... 1620

Industrial Law (WA) - Applications to vary awards to restore relativities between classifications and as between classifications and the minimum wage - Compression of wage relativities - Orders sought to vary award rates to reflect percentage increases of adjustments to the state minimum wage - National Wage Decisions and State Wage Decisions considered - Applications dismissed at first instance - No error demonstrated - The Australian Rail, Tram and Bus Industry Union of Employees, West Australian Branch -v- Public Transport Authority of Western Australia - FBA 4 of 2015 and FBA 5 of 2015 - Full Bench - The Honourable J H Smith, Acting President/Chief Commissioner A R Beech/Acting Senior Commissioner P E Scott - 24/11/2015 ..... 1801

CUMULATIVE DIGEST—*continued*

Page

INDUSTRIAL MAGISTRATE

Alleged contravention of Children's Services Award 2010 (MA000120); Alleged payment of incorrect rate of pay; Alleged failure to pay annual leave entitlement upon termination. - Pratyasha Gungabissoon -v- Ashani Holdings Pty Ltd - M 92 of 2014 - Industrial Magistrate - INDUSTRIAL MAGISTRATE G. CICCHINI - 9/07/2015 ..... 800

Alleged breach of the Restaurant Industry Award 2010 (MA000119) by failing to pay wages and annual leave entitlements - Gunjan Rajeshkumar Shah -v- Gogo's Food Service Pty Ltd - M 147 of 2014 - Industrial Magistrate - INDUSTRIAL MAGISTRATE G. CICCHINI - 23/07/2015 ..... 1406

Alleged failure to make correct redundancy payment; Whether Claimant was, for three years of employment, a permanent employee despite being classified as a "casual" employee; Whether for the purposes of calculating his redundancy pay out the period that the Claimant was employed as a "casual" should be regarded as "service". - Alexander Joseph Winter -v- Forest Products Commission - M 26 of 2015 - Industrial Magistrate - INDUSTRIAL MAGISTRATE G. CICCHINI - 30/07/2015 ..... 1412

Alleged failure to comply with the General Retail Industry Award 2010 (MA000004); Alleged underpayment; Small Claim; Limitation of claim to bring it within Small Claims jurisdiction. - Timothy William Barlow -v- FWA Media Pty Ltd, Trading As Fishing Western Australia Protackle - M 66 of 2015 - Industrial Magistrate - INDUSTRIAL MAGISTRATE G. CICCHINI - 10/09/2015 ..... 1530

Alleged failure to comply with the General Retail Industry Award 2010 (MA000004); Alleged underpayment; Small Claim; Limitation of claim to bring it within Small Claims jurisdiction. - Timothy William Barlow -v- FWA Media Pty Ltd, Trading As Fishing Western Australia Protackle - M 66 of 2015 - Industrial Magistrate - INDUSTRIAL MAGISTRATE G. CICCHINI - 15/10/2015 ..... 1633

Alleged breach of the Transport Workers (General) Award No. 10 of 1961 and the Minimum Conditions of Employment Act 1993 by reason of the failure to pay annual leave entitlements; Whether there was an agreement to pay annual leave payments as part of an "all-in rate". - Andrew Forster -v- Paul Long - M 183 of 2014 - Industrial Magistrate - INDUSTRIAL MAGISTRATE G. CICCHINI - 7/10/2015 ..... 1635

Alleged breach of the Transport Workers (General) Award No. 10 of 1961 and the Minimum Conditions of Employment Act 1993 (MCE Act); Consideration of whether there was non-compliance with section 8 of the MCE Act. - Andrew Forster -v- Paul Long - M 183 of 2014 - Industrial Magistrate - INDUSTRIAL MAGISTRATE G. CICCHINI - 14/10/2015 ..... 1637

Alleged breach of the Community Pharmacy Award 1998 and the Pharmacy Industry Award 2010 [MA000012] by failing to pay the correct hourly rate, overtime, meal break allowance, holiday pay and public holiday pay; Alternate claim alleging breaches of the Community Pharmacy Multiple Business Agreement (Western Australia) constituted by the same alleged failures; Claim for pro-rata long service leave pursuant to the Long Service Leave Act 1958 - Maurice Czarniak -v- Stockbridge (WA) Pty Ltd - M 123 of 2014 - Industrial Magistrate - INDUSTRIAL MAGISTRATE G. CICCHINI - 5/11/2015 ..... 1691

Alleged non-payment of annual leave entitlements payable pursuant to s 87(1)(a) of the Fair Work Act 2009 - Whether the claimant's engagement was as a "casual" employee - Dayle Somers -v- S.E.T.S Enterprises Pty Ltd , Kevin James Broadbent - M 153 of 2014 - Industrial Magistrate - INDUSTRIAL MAGISTRATE G. CICCHINI - 22/10/2015 ..... 1699

Respondents' application for costs - Claimant wholly unsuccessful as against each respondent - Whether proceedings instituted without reasonable cause - Whether claimant's acts or omissions were unreasonable, causing the respondents to incur costs - Whether the award of costs is appropriate - Dayle Somers -v- S.E.T.S Enterprises Pty Ltd , Kevin James Broadbent - M 153 of 2014 - Industrial Magistrate - INDUSTRIAL MAGISTRATE G. CICCHINI - 9/12/2015 ..... 1853

PUBLIC SERVICE ARBITRATOR

Industrial Law (WA) - Dispute regarding industrial action relating to workloads of school support staff - Whether consent order should be revoked and application closed - Consent order revoked and application dismissed - Department of Education and Training -v- The Civil Service Association of Western Australia Incorporated - PSAC 1 of 2009 - Public Service Arbitrator - Commissioner J L Harrison - 30/06/2015 ..... 835

Reclassification appeal – Application to dismiss for want of prosecution – Higher level duties – Work value change – Comparison of claims in 2006 and 2014 – Organisational change and restructure - Bruce Mighall -v- Director General of Health as delegate of the Minister for Health in his incorporated capacity under s7 of the Hospitals and Health Services Act 1927 as the WA Country Health Service - PSA 21 of 2014 - Public Service Arbitrator - Acting Senior Commissioner P E Scott - 3/07/2015 ..... 853

Public Service Arbitrator – Reclassification appeals – Pharmacy Assistants – Pharmacy Technicians – Senior Pharmacy Technicians – Job Description Forms – Work Value Principle in State Wage Order – Work Value test – BiPERS – Higher level duties – Classification Assessment Report– Pharmacy Board of Australia Code of Conduct and Guidelines for Dispensing of Medications – Society of Hospital Pharmacists of Australia Code of Ethics - Elizabeth Balshaw and others -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 Employer - PSA 24 of 2014 and PSA 25 of 2014 and PSA 26 of 2014 and PSA 27 of 2014 and PSA 28 of 2014 and PSA 29 of 2014 and PSA 30 of 2014 and PSA 31 of 2014 and PSA 32 of 2014 and PSA 33 of 2014 and PSA 34 of 2014 and PSA 35 of 2014 and PSA 36 of 2014 and PSA 37 of 2014 and PSA 38 of 2014 and PSA 39 of 2014 and PSA 40 of 2014 and PSA 41 of 2014 and PSA 42 of 2014 and PSA 43 of 2014 and PSA 44 of 2014 and PSA 45 of 2014 and PSA 46 of 2014 and PSA 47 of 2014 and PSA 49 of 2014 and PSA 50 of 2014 and PSA 51 of 2014 and PSA 52 of 2014 and PSA 53 of 2014 and PSA 54 of 2014 and PSA 55 of 2014 and PSA 56 of 2014 and PSA 57 of 2014 and PSA 58 of 2014 and PSA 59 of 2014 and PSA 60 of 2014 and PSA 61 of 2014 and PSA 62 of 2014 and PSA 63 of 2014 and PSA 64 of 2014 - Public Service Arbitrator - Acting Senior Commissioner P E Scott - 31/07/2015 ..... 1488

Industrial Law (WA) - Reclassification appeal - Principles applied - Work presently performed is largely accommodated within existing JDF - Not persuaded that appellant has established a significant net addition to the value of the work attached to the position - Appellant previously performed higher level duties - Special allowance did not adequately compensate appellant for the value provided to the respondent - Arbitrator not restricted to the specific claim made - Jurisdiction to be exercised consistent with equity, good conscience and the substantial merits of the case - Arbitrator limited to matters concerning the salary ascribed to "the office" occupied by the individual officer - Despite a clear inequity, not persuaded that Arbitrator has jurisdiction and power to make an order for compensation - Substantive appeal dismissed - Recommendation that respondent make a further payment to the appellant in recognition of the higher level work she performed for some years - Cheryl Belinda Jones -v- Western Australian Police - PSA 1 of 2015 - Public Service Arbitrator - Commissioner S J Kenner - 3/11/2015 ..... 1777

Reclassification appeal – Increased work value – Administrative and managerial responsibilities – Health professionals specified callings – Health Professionals Classification Descriptors – BiPERS assessment – Statement of Principles - John Shehade -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 Employer - PSA 100 of 2013 - Public Service Arbitrator - Acting Senior Commissioner P E Scott - 29/10/2015 ..... 1786

COMMISSIONER

Contractual benefits claim - Entitlements under contract of employment - Claim for payment of wages and pay in lieu of notice - Whether applicant had a contract of service with the respondent - Commission finds no binding contract - Applicant not employed by respondent - Application dismissed - Andrew Noad -v- Steve Cotchin, Butler Interiors Pty Ltd - B 176 of 2014 - Commissioner J L Harrison - 30/06/2015 ..... 827

Industrial Relations (WA) - Dispute regarding use of contractors to undertake duties at Victoria Park train station - Orders sought that a new base roster be developed for Passenger Ticketing Assistants incorporating the duties undertaken between 2.45 pm and 4.45 pm on weekdays - Not appropriate for Commission to interfere with respondent's decision to roster contractors instead of Passenger Ticketing Assistants - Application dismissed - The Australian Rail, Tram and Bus Industry Union of Employees, West Australian Branch -v- Public Transport Authority of Western Australia - CR 29 of 2012 - Commissioner J L Harrison - 19/06/2015 ..... 837

CUMULATIVE DIGEST—*continued*

Page

Commissioner—*continued*

Matter Referred for Hearing and Determination pursuant to s 44 – Application for an extension of time in which to file witness statements – Minimum reporting requirements on teachers in student reports – Workload – Change in representation – Conduct of the parties and their representatives – Prejudice to the parties – Deterioration of industrial relations – Objects and requirements of the Industrial Relations Act 1979 - The State School Teachers' Union of W.A. (Incorporated) -v- The Director General, Department of Education - CR 15 of 2014 - Acting Senior Commissioner P E Scott - 7/07/2015 ..... 844

Denied contractual entitlements – Contract of employment – Repudiation of contract – Summary dismissal – Implication of a term in the contract – Misconduct – Termination of employment – Payment for completion or part completion of projects – Annual leave – Pay in lieu of notice – Superannuation - Fikret Becirbasic -v- Building West Pty Ltd - B 234 of 2014 - Acting Senior Commissioner P E Scott - 3/07/2015 ..... 1416

Industrial law (WA) – Termination of employment – Harsh, oppressive and unfair dismissal – Alleged breach of a policy – Duty to obey lawful and reasonable directions – Principles applied – Employee's deliberate attempts to avoid a meeting to discuss work related matters – Failure and refusal to comply with lawful and reasonable requests to attend a meeting – Application dismissed – Order made - Eveline Wiyenka Fombason -v- Kimberley Individual and Family Support Association Incorporated - U 184 of 2014 - Commissioner S J Kenner - 6/07/2015 ..... 1430

Unfair dismissal – Denied contractual entitlements – Jurisdiction – Contract of employment – Employment connection to the State of Western Australia – Trading corporation – Industrial instrument – Prescribed salary amount – NAPSA – Employer-Employee Agreement – Common law contract - Andries Lucas Hoffman -v- Paladin Energy Ltd ACN 061 681 098 - U 59 of 2015 and B 59 of 2015 - Acting Senior Commissioner P E Scott - 10/08/2015 ..... 1436

Industrial Law (WA) - Contractual benefits claim - Entitlements under contract of employment - Claim for payment of outstanding commission and a percentage of the proceeds from the sale price of the business - No entitlement to benefits claimed - Application dismissed - Jenna Jones -v- Orange Recruitment Australia Pty Ltd - B 237 of 2014 - Commissioner J L Harrison - 3/08/2015 ..... 1439

Industrial Law (WA) - Termination of employment - Claim of harsh, oppressive or unfair dismissal - Whether the applicant resigned or was dismissed - No dismissal at the initiative of the employer - Commission lacks jurisdiction - Application dismissed - Contractual benefits claim - Entitlements under contract of employment - Claim for payment of wages, pay in lieu of notice and severance pay - Application dismissed - Gillian Denise Miller -v- Mr Graeme Mounsey - President Newman Senior High School Parent's & Citizens Association Inc. - U 18 of 2015 and B 18 of 2015 - Commissioner J L Harrison - 7/07/2015 ..... 1444

Industrial law (WA) – Contractual benefits claim – Written contract of employment – Implied terms – Claim for six months' salary, relocation and leasing costs, travel costs, membership fees and practising certificate costs – Principles applied – BP Refinery criteria – Business efficacy – Probationary employment – No basis for the implication of the terms sought – Application dismissed – Order made - Peter Milford Weston -v- WA Property Lawyers - B 215 of 2014 - Commissioner S J Kenner - 26/06/2015 ..... 1455

Matter Referred for Hearing and Determination pursuant to s 44 – Deputy Principal/School Administrator – Alleged misconduct and breaches of discipline – Breach of duty of care – Aggressive and inappropriate behaviour – Penalties imposed were disproportionate, harsh and oppressive – Reduction in classification – Transfer of employment – Code of Conduct policy – Duty of Care for Students policy – Standards and Integrity Directorate Investigation Report - The State School Teachers' Union of W.A. (Incorporated) -v- The Director General, Department of Education - CR 10 of 2015 - Acting Senior Commissioner P E Scott - 17/07/2015 ..... 1461

Matter Referred for Hearing and Determination pursuant to s 44 – Lecturer – Termination of employment– Fixed term contracts – Contract extensions – Conversion to permanent employment – Compliance with the Agreement – Business case for fixed term appointment – Indicia for casual employment – SSTUWA/TAFE Employee Relations Committee (STERC) – Fixed Term Contract Policy – Equitable estoppel - The State School Teachers' Union of W.A. (Incorporated) -v- The Governing Council of Challenger Institute of Technology - CR 36 of 2014 - Acting Senior Commissioner P E Scott - 27/07/2015 ..... 1470

Matter Referred for Hearing and Determination pursuant to s 44 – Harsh, oppressive or unfair dismissal – Interim Restraining Order – Misconduct – Inappropriate behaviour – Disciplinary process – Code of Conduct – Occupational Health and Safety policy – Public Sector Code of Ethics – Appropriate penalty – Reinstatement - The State School Teachers' Union of W.A. (Incorporated) -v- The Governing Council of Kimberley Training Institute - CR 13 of 2015 - Acting Senior Commissioner P E Scott - 13/08/2015 ..... 1477

Matter referred for hearing and determination - Application for leave to file witness statements late - The State School Teachers' Union of W.A. (Incorporated) -v- The Director General, Department of Education - CR 15 of 2014 - Acting Senior Commissioner P E Scott - 24/07/2015 ..... 1485

Industrial law (WA) – Contractual benefits claim – Claim for unpaid wages, accrued annual leave and redundancy payment – Principles applied – Wages and accrued annual leave found to be denied contractual benefits – Application upheld in part – Declaration and order made - Cheryl Arundel -v- OK Youth Services Inc. C/O M. Parker - B 22 of 2015 - Commissioner S J Kenner - 10/07/2015 ..... 1542

Industrial law (WA) – Contractual benefits claim – Whether the Commission has jurisdiction – Whether a director is an employee – Principles applied – Multi-factor test – Totality of the relationship considered – Director found not to be an employee on the evidence – Application dismissed for want of jurisdiction – Order made - Kerry Donovan -v- Stewart Martincic / Marc Marusco M3 Building & Construction Pty Ltd - B 47 of 2015 - Commissioner S J Kenner - 3/08/2015 ..... 1545

Industrial Law (WA) - Termination of employment - Harsh, oppressive or unfair dismissal claim - Whether Commission has jurisdiction - Trading activities of respondent considered - Commission satisfied respondent is a trading corporation - Application dismissed - Ian Hallybone -v- Jeff Keiles - Managing Director - Workwear Industries - U 70 of 2015 - Commissioner J L Harrison - 1/09/2015 ..... 1549

Industrial law (WA) – Termination of employment – Alleged harsh, oppressive and unfair dismissal – Application filed outside of 28 day time limit – Application for an extension of time – Principles applied – Action taken to contest the dismissal – Federal unfair dismissal claim – Partnership – Advice sought – Reasonable explanation for delay – Claim is not without merit – Commission satisfied that discretion should be exercised – Acceptance of application out of time – Order made - Shaun Maddock -v- Ken Gratton-Wilson Redlion Bus and Coach - U 53 of 2015 - Commissioner S J Kenner - 25/05/2015 ..... 1553

Industrial law (WA) – Contractual benefits claim – Whether the Commission has jurisdiction – Whether a Police Officer is an "employee" for the purposes of s 7 of the Industrial Relations Act 1979 (WA) – Whether a Police Officer is an "employee" at common law – Principles applied – Police Officers are not employees at common law or for the purposes of s 7 of the Act – Application dismissed for want of jurisdiction – Order made - Peter Milford Weston -v- Commissioner of Police, Western Australia - B 30 of 2015 - Commissioner S J Kenner - 15/07/2015 ..... 1566

Industrial law (WA) – Termination of employment – Harsh, oppressive and unfair dismissal – Whether clinic premises were properly secured - Commission satisfied employee did not ensure the clinic premises were secure – Employee not put on notice of possible termination of employment – Not an act of serious or gross misconduct – Confusion as to line of responsibility for security of premises – Dismissal unfair – Compensation awarded – Order made - Donna Ann MARIE Baker -v- DR J Vandenbergh TRADING AS Collie Veterinary Services - U 207 of 2014 - Commissioner S J Kenner - 8/09/2015 ..... 1639

Employment law - benefit under a contract of employment - terms of employment - reasonable notice - Mark Fernandes -v- Dunea Group LTD - B 91 of 2015 - Chief Commissioner A R Beech - 23/09/2015 ..... 1644

Termination of employment - Claim of harsh, oppressive and unfair dismissal - Acceptance of referral out of time - Application referred outside of 28 day time limit - Conduct outside working hours - Relevant principles to be applied - Commission satisfied applying principles that discretion should not be exercised - Application dismissed - Annette Tracy Garlett -v- Wirnda Barna Artists Inc. - U 60 of 2015 - Chief Commissioner A R Beech - 30/09/2015 ..... 1645

Industrial law – Termination of employment – Claim of unfair dismissal – Whether former employer correctly named – Company as trustee of a trust – Business name – Whether Commission has jurisdiction – Hearing adjourned to allow applicant to seek legal advice - Dora Flores Gonzalez -v- Mr Ben Bryant / Mr Theirry Berard (New Focus Commercial Cleaning) - U 123 of 2015 - Chief Commissioner A R Beech - 26/08/2015 ..... 1649

CUMULATIVE DIGEST—*continued*

Page

Commissioner—*continued*

Industrial law – Termination of employment – Claim of unfair dismissal – Identification of employer – Trust – Trustee a company – National system employer - Dora Flores Gonzalez -v- Mr Ben Bryant / Mr Theirry Berard (New Focus Commercial Cleaning) - U 123 of 2015 - Chief Commissioner A R Beech - 24/09/2015 ..... 1651

Industrial Law (WA) - Contractual Benefits Claim - Claim for Unpaid Wages - Costs - Lisa Irissarri -v- RSM Holdings INT Pty Ltd - B 117 of 2015 - Chief Commissioner A R Beech - 1/10/2015 ..... 1652

Industrial Law (WA) - Contractual benefits claim - Entitlements under contract of employment - Claim for payment of pay in lieu of notice, annual leave accrual and superannuation on notice payment - No entitlement to benefits claimed - Application dismissed - Aaron Logan -v- MR, Dave Caldwell Peel Tinting- (formally known as AAA windscreens) - B 34 of 2015 - Commissioner J L Harrison - 6/10/2015 ..... 1654

Employment law - benefit under a contract of employment - terms of employment - reasonable notice - Yoshiyasu Yonezuka -v- Dunea Group LTD - B 90 of 2015 - Chief Commissioner A R Beech - 23/09/2015 ..... 1660

Refusal to employ – industrial matter – notation on employment file – jurisdiction – public sector standard – whether res judicata created – whether abuse of process – whether unreasonable delay - State School Teachers' Union of W.A. (Incorporated) -v- Director General, Department of Education - C 9 of 2015 - Chief Commissioner A R Beech - 16/09/2015 ..... 1661

Practice and procedure – Discovery, inspection and production of documents – Relevant principles – Orders made - Dr Mark Granitto -v- RSC Dental Pty Ltd t/as Keys Dental Centre - B 29 of 2015 - Chief Commissioner A R Beech - 17/09/2015 ..... 1670

Industrial Law (WA) - Contractual benefits claim - Entitlements under contract of employment - Claim for payment of balance of contract, time off in lieu and rental subsidy - Application upheld in part - Counter claim that any monies owed be offset against personal purchases made on respondent's credit card - Counter claim dismissed - Order issued - Keith Hudson -v- Derby Media Aboriginal Corporation - B 226 of 2014 - Commissioner J L Harrison - 22/10/2015 ..... 1714

Unfair dismissal – Teacher – Breaches of discipline – Department of Education Code of Conduct – Breaches of the Code of Conduct – Maintaining professional boundaries with student – Teacher-Student relationships – Standards and Integrity Directorate – Application to receive new evidence – Whether to re-open the hearing – Rules of evidence - Paul Ralph Kendall -v- Government of Western Australia Department of Education - U 99 of 2014 - Acting Senior Commissioner P E Scott - 3/11/2015 ..... 1723

Application for production of documents - Relevant principles applied - Application for agent to be restrained from acting - Relevant principles applied - Directions made - Jude McCulloch -v- Australian Nursing Federation Industrial Union of Workers Perth - U 131 of 2014 - Commissioner S J Kenner - 4/12/2014 ..... 1738

Industrial Law (WA) - Termination of employment - Harsh, oppressive and unfair dismissal - Principles applied - Refusal to comply with a lawful and reasonable request to return to work - Allegations of fraud made without any evidence to support them - Breach of employee's duty of good faith and fidelity towards employer - Union within its contractual rights to terminate employment - Application dismissed - Jude McCulloch -v- Australian Nursing Federation Industrial Union of Workers Perth - U 131 of 2014 - Commissioner S J Kenner - 19/10/2015 ..... 1742

Termination of employment - Harsh, oppressive or unfair dismissal - Acceptance of referral out of time - Claim filed in Fair Work Commission - Applications referred outside of 28 day time limit - Relevant principles applied - Commission satisfied applying principles that discretion should be exercised - Applications accepted out of time - Orders issued - Patricia Anne White; James Richard Garratt -v- Legacy Fund of Perth Inc - U 98 of 2015 and U 99 of 2015 - Chief Commissioner A R Beech - 21/10/2015 ..... 1764

Industrial Law (WA) - Contractual benefits claim - Entitlements under contract of employment - Payment of wages - Application for an order that the Commission refrain from further hearing of this application - Application for stay order dismissed - Peter Christie -v- Steelfab Engineering Pty Ltd T/as Steelfab Water Solutions - B 110 of 2015 - Commissioner J L Harrison - 25/11/2015 ..... 1858

Industrial Law (WA) - contractual benefits - Annual salary - whether paid hourly - whether entitled to be paid for accrued time off untaken - whether entitled to responsibility bonus - Mr Johnny Girons -v- FMC Technologies Australia Limited ABN: 21 004 030 317 - B 125 of 2015 - Chief Commissioner A R Beech - 19/11/2015 ..... 1860

Industrial Law (WA) - Termination of employment - Harsh, oppressive or unfair dismissal claim - Whether Commission has jurisdiction - Name of the respondent the applicant undertook work for - Whether a trading corporation - Commission satisfied respondent is a trading corporation - Application dismissed - Michael Martin Kennelly -v- Jason Paul Pymm - U 63 of 2015 - Commissioner J L Harrison - 23/11/2015 ..... 1866

Industrial Law (WA) - Termination of employment - Contractual benefits claim - Whether agreement reached to settle applications - Whether order should issue in terms of settlement - Agreement reached to settle applications - Order issued in terms of settlement - Uwe Zahradnik -v- Cafe Saturn - U 95 of 2015 and B 95 of 2015 - Commissioner J L Harrison - 12/11/2015 ..... 1870

Industrial Law (WA) - Contractual benefits claim - Entitlements under contract of employment - Claim for payment of wages, annual leave, superannuation, sick leave and medical expenses - Preliminary issue - Whether applicant was an employee or independent contractor - Principles applied - Applicant found not to be an employee - Commission lacks jurisdiction - Application dismissed - Jason Zhou -v- Curtin University - B 58 of 2015 - Commissioner J L Harrison - 7/12/2015 ..... 1873

Industrial Law (WA) - Dispute regarding terms of Public Transport Authority Salaried Officers Industrial Agreement 2014 - Whether clauses 3.3.2 and 5.3.7 of the Agreement are ambiguous - Whether employees are entitled to a minimum overtime payment of three hours' pay when rostered for "on call" or "availability" - Relevant provisions are not ambiguous - Employees that are rostered for "on call" or "availability" have a legitimate expectation that they may be required to perform additional work - Employees only entitled to payment for those hours recalled to duty when rostered for "on call" or "availability" - Recommendation issued - Western Australian Municipal, Administrative, Clerical and Services Union of Employees -v- Public Transport Authority of Western Australia - C 17 of 2015 - Commissioner S J Kenner - 3/11/2015 ..... 1877

POLICE APPEAL

Removal of Police Officer – Loss of confidence by Commissioner of Police – Officer permanently unfit for duty - Removal due to medical incapacity - Appeal against removal – Whether removal harsh, oppressive or unfair to be judged objectively – Distinction between submissions and grounds of appeal - Susan Leanne Moran -v- The Commissioner of Police - APPL 19 of 2014 - Police Appeal - Chief Commissioner A R Beech/Commissioner S J Kenner/Commissioner S M Mayman - 25/06/2015 ..... 804