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CUMULATIVE CONTENTS AND DIGEST APPEAR AT THE END OF THIS PUBLICATION

## NOTICES—Application for General Order—

2019 WAIRC 00126

THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

111 St Georges Terrace, Perth

### Submissions for the 2019 WA Minimum Wage and Equal Remuneration Principle

The Western Australian Industrial Relations Commission is required to set the minimum wage to apply to employers and employees covered by the WA industrial relations system. It must do this before 1 July each year. The current minimum wage for an adult employee of \$726.90 per week was set in June 2018 to apply from 1 July 2018. Additionally, the Commission is considering an Equal Remuneration Principle to implement equal remuneration for work of equal or comparable value.

The Commission invites interested persons and organisations to make a submission to the Commission on what minimum wage should be set in 2019 and the draft Equal Remuneration Principle. The Commission will hear oral submissions on Wednesday, 22 and if necessary Thursday, 23 May 2019. The proceedings are open to the public and will be webcast. Any person who wishes to make an oral submission at that time should notify the Registrar of the Commission stating the basis of their interest. This must be done by Tuesday, 14 May 2019.

Written submissions are also welcome. Any person or organisation who wishes to make a written submission should do so by Tuesday, 14 May 2019. Copies of written submissions may be made public. Anonymous submissions will not be considered.

In making its decision, the Commission is required to consider the need to —

- ensure that Western Australians have a system of fair wages and conditions of employment; and
- meet the needs of the low paid; and
- provide fair wage standards in the context of living standards generally prevailing in the community; and
- contribute to improved living standards for employees; and
- protect employees who may be unable to reach an industrial agreement; and
- encourage ongoing skills development; and
- provide equal remuneration for men and women for work of equal or comparable value.

It is also required to consider:

- the state of the economy of Western Australia and the likely effect of its decision on that economy and, in particular, on the level of employment, inflation and productivity in Western Australia; and
- to the extent that it is relevant, the state of the national economy; and
- to the extent that it is relevant, the capacity of employers as a whole to bear the costs of increased wages, salaries, allowances and other remuneration; and
- the need to ensure that the Western Australian award framework represents a system of fair wages and conditions of employment; and
- relevant decisions of other industrial courts and tribunals; and
- any other relevant matters.

People interested in making a submission are invited to address those issues.

Further particulars may be obtained from the Registry of the Commission and from the Commission's website at [www.wairc.wa.gov.au](http://www.wairc.wa.gov.au).

All correspondence should be addressed to the Registrar at the above address or by email to registry@wairc.wa.gov.au quoting matter number APPL 1 of 2019.

DATED at Perth, Tuesday, 12 March 2019.

(Sgd.) S BASTIAN,  
Registrar.

[L.S.]

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## PRESIDENT—Matters dealt with—

2019 WAIRC 00098

**A STAY OF OPERATION OF THE ORDER IN MATTER NO. APPL 86 OF 2017 WHICH IS THE SUBJECT OF FBA 2 OF 2019 AND FBA 3 OF 2019**

**WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**

<b>CITATION</b>	:	2019 WAIRC 00098
<b>CORAM</b>	:	CHIEF COMMISSIONER P E SCOTT
<b>HEARD</b>	:	MONDAY, 25 FEBRUARY 2019
<b>DELIVERED</b>	:	THURSDAY, 28 FEBRUARY 2019
<b>FILE NO.</b>	:	PRES 1 OF 2019
<b>BETWEEN</b>	:	PHARMACY GUILD OF WESTERN AUSTRALIA ORGANISATION OF EMPLOYERS Applicant AND THE SHOP, DISTRIBUTIVE AND ALLIED EMPLOYEES' ASSOCIATION OF WESTERN AUSTRALIA, MINISTER FOR COMMERCE AND INDUSTRIAL RELATIONS, SAMUEL GANCE (ABN 50 577 312 446) T/A CHEMIST WAREHOUSE PERTH Respondents
<b>FILE NO.</b>	:	PRES 2 OF 2019
<b>BETWEEN</b>	:	SAMUEL GANCE (ABN 50 577 312 446) T/AS CHEMIST WAREHOUSE PERTH Applicant AND SHOP, DISTRIBUTIVE & ALLIED EMPLOYEES ASSOCIATION OF WESTERN AUSTRALIA, PHARMACY GUILD OF WESTERN AUSTRALIA, THE MINISTER FOR COMMERCE AND INDUSTRIAL RELATIONS Respondents

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Catchwords	:	Industrial Law (WA) – Application to stay operation of order – Declaration of scope of award – An appeal instituted – Special circumstances relating to employers' incurring irrecoverable costs and changes to rosters, working arrangements, and back pay – Appeal grounds arguable – Balance of convenience
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Legislation	:	Industrial Relations Act 1979 (WA)
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Result	:	Order issued
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**Representation:**

Counsel:

Pharmacy Guild of Western Australia Organisation of Employers	:	Mr T Dixon of counsel and Mr A Drake-Brockman, industrial agent
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Samuel Gance (ABN 50 577 312 446) t/as Chemist Warehouse Perth	:	Mr N Tindley of counsel
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The Shop, Distributive and Allied Employees' Association of Western Australia	:	Mr D Rafferty of counsel
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The Minister for Commerce and Industrial Relations	:	Mr R Andretich of counsel
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**Case(s) referred to in reasons:**

*Freshwest Corporation Pty Ltd v Transport Workers' Union, Industrial Union Of Workers, WA Branch* (1991) 71 WAIG 1746

*John Holland Group Pty Ltd v The Construction, Forestry, Mining And Energy Union Of Workers* [2005] WAIRC 02983; (2005) 85 WAIG 3918

*RJ Donovan And Associates Pty. Ltd. v Federated Clerks Union Of Australia Industrial Union Of Workers, W.A. Branch* (1977) 57 WAIG 1317

*Seacode Nominees Pty Ltd As Trustee For The Stonehouse Family Trust v Nigel Anthony Penfold* (2005) 85 WAIG 3926

*The Automotive, Food, Metals, Engineering, Printing And Kindred Industries Union Of Workers – Western Australian Branch And Another v Anodisers W.A. And Others* [2001] WAIRC 03164; (2001) 81 WAIG 1598

*Western Australian Carpenters And Joiners, Bricklayers And Stoneworkers Industrial Union Of Workers v Terry Glover Pty Ltd* (1970) 50 WAIG 704

*Reasons for Decision*

- 1 These are applications made under s 49(11) of the *Industrial Relations Act 1979* (the Act) seeking to stay the operation of the decision of the Commission in APPL 86 of 2017 ([2019] WAIRC 00015), pending the hearing and determination of appeals FBA 2 of 2019 and FBA 3 of 2019.

**Background**

- 2 The Shop, Distributive and Allied Employees' Association of Western Australia (the SDA) and Samuel Gance (ABN 50 577 312 446) t/as Chemist Warehouse Perth (Chemist Warehouse) are in dispute about, in essence, whether the scope of the Shop and Warehouse (Wholesale and Retail Establishments) Award 1977 (the Award) covers the retail pharmacy industry. The SDA sought an interpretation of the Award (APPL 86 of 2017) pursuant to s 46 of the Act.
- 3 The question posed in the interpretation application was:
  - 'Does the Shop and Warehouse Award, as varied, apply to workers employed in any calling or callings mentioned in the Award in the Retail pharmacy industry and to employers employing those workers?'
- 4 The Commission issued Reasons for Decision and a declaration that answered 'yes' to that question.
- 5 The Pharmacy Guild of Western Australia (Pharmacy Guild) was an intervenor in the proceedings before the Commission at first instance. It appeals against the decision (FBA 2 of 2019). Chemist Warehouse also appeals the decision (FBA 3 of 2019). The appeals are in essence in identical terms and seek that the declaration be quashed.
- 6 Both the Pharmacy Guild and Chemist Warehouse filed applications for a stay of the order of the Commission pending the outcome of the appeals (PRES 1 of 2019 and 2 of 2019, respectively).
- 7 Application PRES 1 of 2019 by the Pharmacy Guild sets out the following grounds for the stay of the order:
  1. The errors identified in the Notice of Appeal are strongly arguable.
  2. The Guild's members have not applied the Shop Award in the past (this is the status quo). If the status quo is not maintained pending the outcome of the appeal, the members of the Guild will suffer prejudice for the reasons outlined in the Statutory Declaration including that they will:
    - (a) have to bear the immediate cost and expense of adjusting the pay of its current employees and backpay to past and present employees; and
    - (b) need to take steps to ameliorate the consequences of such expenses including by inter alia making staff redundant or adjusting pharmacy operating hours.
- 8 The application attaches a Statutory Declaration by Anthony McAnuff, the Business Development Manager for the Pharmacy Guild of Australia (WA Branch) (PGAWA). Through a service arrangement with the Pharmacy Guild, which is the applicant in this stay application, the PGAWA provides for members to obtain representation in the Western Australian Industrial Relations Commission. Mr McAnuff's Statutory Declaration indicates that in addition to the 13 members of the PGWA, there are approximately 280 PGAWA members who require representation from time to time in the Western Australian industrial relations system.
- 9 Mr McAnuff says that the Commission's Decision is far reaching and has an impact on members who, in good faith, have proceeded on the basis that the Shop Award does not apply to the pharmacy industry.
- 10 Mr McAnuff also notes that the PGWA applied for a new award in application A 1 of 2014. The Commission ordered that that application not proceed pending the outcome of the application for interpretation, APPL 86 of 2017, the matter the subject of the appeals to the Full Bench.
- 11 Mr McAnuff sets out the consequences he says will occur for pharmacy owners should the Decision not be stayed pending the appeal. They will be immediately required to consider and take steps to effect:
  - a. Back pay for current and former employees; and
  - b. Review rates of pay for pharmacy assistants.
- 12 He says that 'the financial and organisational structure impact of proceeding with these steps while the process of appealing the Decision will result in significant cost in terms of time and expense to many Pharmacies which cannot be undone once implemented'.

- 13 He also says that pharmacies may be forced to review their staffing levels, which may result in redundancies and job losses during the period in which the Decision is being appealed.
- 14 According to Mr McAnuff, pharmacies may be forced to reduce their opening hours and services provided to the community.
- 15 Mr McAnuff also says that these costs and adjustments, which may not be necessary if the appeal is successful, will then have been unnecessary and cannot be 'recanted'.
- 16 Application PRES 2 of 2019 by Chemist Warehouse attaches a Statutory Declaration by Sunil Narula, a pharmacist who is the Western Australian State Manager of Chemist Warehouse brand including Chemist Warehouse Perth, and owns four Chemist Warehouse pharmacies in Western Australia.
- 17 Mr Narula says that there are 24 retail pharmacies in Western Australia which operate under the Chemist Warehouse brand. Chemist Warehouse provides, amongst other things, employee relations support to the pharmacies under that brand. He says that it has advised those pharmacies, in good faith, that the Award did not apply to the pharmacy industry.
- 18 Mr Narula sets out the likely consequences for Chemist Warehouse pharmacies if the stay is not granted. They are similar in nature and scope to those set out by Mr McAnuff.
- 19 The SDA answered the applications to stay the order saying that:
1. The grounds of the appeals lack merit;
  2. The balance of convenience does not favour the granting of a stay because pending the hearing and determination of these 2 appeals, the SDA will not:
    - a) initiate or pursue any further Award enforcement proceedings against retail pharmacy employers in its own right or on behalf of its members, other than industrial magistrate's court proceedings:
      - i) M 46 of 2018, in which decision is reserved to 9.30 am, 28 February 2019; and
      - ii) M 33 of 2018, which was lodged on 24 January 2019, prior to the lodgement of the Notices of Appeal in FBA 2 and FBA 3 of 2019;
    - b) make application to terminate application A 1 of 2014, in which the appellants in FBA 2 and FBA 3 of 2019 are applicant and a party respectively.
- 20 The SDA filed an affidavit sworn by Benjamin Alick Harris, the General Assistant Secretary of the SDA, in which he elaborates on the matters set out in the SDA's answers.
- 21 The Minister, an intervenor at first instance, does not object to the applications for a stay.

#### Decision at first instance

- 22 In her decision, the learned Commissioner noted that the parties agree that in the current version of the Award, there are no known respondents carrying on the retail pharmacy industry. However, the parties disagree about whether clauses which make reference to chemist shops or pharmacies, such as cl 40 – Chemist Shops, can have an effect on the scope of the Award.
- 23 The controversy was the proper construction of clauses 3 – Scope; 28 – Wages; 40 – Chemist Shops; Schedule B, which explains what can be sold at a 'special retail shop', and Schedule C, which contains a list of respondents, and whether the scope of the award extends to the retail pharmacy industry.
- 24 The Commissioner considered evidence of the history of the Award. She noted that the parties and intervenors agreed that the Award applied to retail pharmacy employees at the date the Award was made. Only two retail pharmacies operating at that time, Boans Ltd of Murray Street, Perth, and Perth United Friendly Society Chemists (PUFSC) of 84 Beaufort Street, Perth, were named as respondents. Both are no longer named in Schedule C. PUFSC was the last of the known retail pharmacy respondents named in the schedule, and it was removed from Schedule C by the Commission of its own motion under s 47 of the Act on 5 April 1995.
- 25 The Commissioner went on to note that clause 3 – Scope, says that the Award applies 'to all workers employed in any calling or callings herein mentioned in the industry or industries carried on by the Respondents named in Schedule C and to all employers employing those workers.'
- 26 Clause 40 – Chemist Shops says that '(a)ny worker employed in a chemist's shop shall be subject to the terms of this Award up to the time he or she becomes indentured to the profession'.
- 27 The Commissioner described the scope clause as a 'Glover' scope clause, that is one which states that the Award applies to industries carried on by the respondents set out in the schedule to the Award, per the *Western Australian Carpenters and Joiners, Bricklayers and Stoneworkers Industrial Union of Workers v Terry Glover Pty Ltd* (1970) 50 WAIG 704 (Glover). This is as opposed to a 'Donovan' scope clause which states that it applies to the employees of employers named and engaged in industries specified in the schedule to that Award, which also sets out the employers and industries in the schedule to that Award (*RJ Donovan and Associates Pty. Ltd. v Federated Clerks Union of Australia Industrial Union of Workers, W.A. Branch* (1977) 57 WAIG 1317 (Donovan)). The Commission noted that the parties agreed that the Award is a common rule award with a Glover scope clause, not a Donovan scope clause.
- 28 The Commissioner set out the parties' and intervenors' arguments regarding what the Commission could consider including an argument as to ambiguity.
- 29 The learned Commissioner did not agree that she was limited to considering the scope clause when considering the scope of an award, and said that it was appropriate to interpret the scope in light of all the clauses in the Award.

- 30 The approach required was to determine the objective intention of the parties as it is embodied in the words they have used. The Commissioner said she had construed the award as a whole, giving its words, in particular those in cl 40, their ordinary meaning. She concluded that the Shop Award is intended to cover the retail pharmacy industry. She found ‘that in this case, interpreting the Shop Award is finally and not just primarily a matter of construction’.
- 31 The Commissioner then said that if she was:
- ‘wrong about that, then interpreting the Shop Award is only primarily a matter of construction. A plain reading of cl 3 and schedule C does not reveal the industries covered by the Shop Award so, although the scope may not be impossible to determine, to do so it is necessary to find relevant facts as set out in *Freshwest Corporation Pty Ltd v Transport Workers’ Union, Industrial Union of Workers, WA Branch* (1991) 71 WAIG 1746 (Freshwest) and *Glover*. This means the Shop Award’s scope is inherently ambiguous and it is appropriate for the Commission to interpret it.’
- 32 In reference to *Glover*, the Commissioner noted that in awards of this type, the scope clause requires findings of fact as to the industry carried on by the named respondents as at the date of the award. This establishes the limits of the industry. This approach, she said, was reinforced in *Freshwest Corporation Pty Ltd v Transport Workers’ Union, Industrial Union of Workers, WA Branch* (1991) 71 WAIG 1746.
- 33 By reference to *Glover*, *Freshwest* and *The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers – Western Australian Branch and Another v Anodisers W.A. and Others* [2001] WAIRC 03164; (2001) 81 WAIG 1598, the learned Commissioner then found that, as at the date the award was made:
- Boans and PUFSC owned and operated retail pharmacy businesses;
  - they carried on the retail pharmacy industry; and
  - the Award applied to employees working in the retail pharmacy industry.
- 34 The Commissioner went on to say that a strict grammatical interpretation of cl 3 should not be adopted when interpreting the scope of the award and that the language used by the parties to the award is not the sole determinant of the Awards’ legal effect in relation to scope.
- 35 When the scope of an award is to be varied, the Commissioner noted, s 29A requires certain steps to be taken. There was no evidence of those steps having occurred when Boans and PUFSC were removed as respondents to the Award.
- 36 She examined the Act as it relates to scope, under s 29A, varying awards under s 40 and the removal of listed respondents under s 47. The learned Commissioner found that s 47 is a special power, and when the Commission removes a listed respondent no longer carrying on business in an industry to which the awards applies, it goes no further than removing the listed respondent, and ‘does not have the effect of removing an industry, thereby reducing the award’s scope’. She found that this was supported by the limited notice provisions that apply to s 47.
- 37 She found that nothing in the application to remove PUFSC in 1995, the transcript or Reasons for Decision ‘suggest that the parties or the Commission intended or contemplated the removal of PUFSC to have the effect of removing the retail pharmacy industry from the Shop Award’s scope’.
- 38 The learned Commissioner found that the 1995 order, made under s 47 of the Act, did no more than remove PUFSC as a named respondent because it no longer carried on business in an industry to which the shop award applied. The retail pharmacy industry continued to be an industry to which the Award applied.
- 39 The learned Commissioner then dealt with the effects of the *Labour Relations Reform Act 2002* (WA) in 2002. She concluded that since 2002, the effect of adding an employer carrying on an industry to which the Award did not previously apply was to also add that new industry to the Award’s coverage.
- 40 The Commissioner concluded that ‘the Shop Award has always applied to the retail pharmacy industry and continues to apply to it’. She answered the question posed as ‘yes’, and made a declaration that the Shop Award ‘as varied applies to workers employed in any calling or callings mentioned in the award in the retail pharmacy industry and to employers employing those workers’.

#### The test for a stay

- 41 In *John Holland Group Pty Ltd v The Construction, Forestry, Mining and Energy Union of Workers* [2005] WAIRC 02983; (2005) 85 WAIG 3918 at [32] – [38], Ritter A/P set out the authorities in respect of the tests to be applied in an application for a stay in the case of an appeal to the Full Bench in the following way:

[38] Accordingly, in my opinion, the primary focus is upon the consequences of a stay being granted or not granted. Where, for example, the absence of a stay would render the appeal nugatory or futile, special circumstances warranting the grant of a stay may exist. It will also be necessary to consider matters such as the arguability of the appeal and the balance of convenience. The parties, in their submissions, emphasised that the Commission should consider whether there is a serious question to be tried and where the balance of convenience would lie. In considering the latter consideration, the circumstances of the respondent or any other affected party, such as Mr Kavanagh, can be important.

#### Consideration

- 42 Section 49(11) of the Act provides that at any time after an appeal to the Full Bench has been instituted a person who has sufficient interest may apply to the Commission for an order that the operation of the decision appealed against be stayed pending the hearing and determination of the appeal. There is no challenge that the applicants have sufficient interest, and that they have appealed to the Full Bench.

### Special Circumstances

- 43 Special circumstances need to be demonstrated to justify the departure from the ordinary rule that a successful litigant is entitled to the fruits of judgment pending the appeal (see *John Holland Group Pty Ltd v CFMEU* and *Seacode Nominees Pty Ltd as Trustee for the Stonehouse Family Trust v Nigel Anthony Penfold* (2005) 85 WAIG 3926). Special circumstances may include when an order needs to be made to preserve the integrity of the appeal so that the appeal is not rendered nugatory.
- 44 The applicants say that the effect of the order is to overturn their belief, held in good faith, and their acting on that belief, that the Award does not apply to the retail pharmacy industry.
- 45 The SDA does not seriously challenge what the applicants say will be the effects of the stay not being granted, but says that, leaving to one side the proceedings in M 33 of 2019, it will not be taking action to enforce the Award against any retail pharmacies, pending the hearing and determination of the appeal. Also, it says that the Minister does not oppose the granting of a stay suggests that the Minister's Department, likewise, does not intend to take any such enforcement action. The SDA says the applicants 'are seeking a stay to prevent themselves from taking action against themselves'.
- 46 I note that while the SDA and the Minister may not intend to pursue enforcement, employees in their own right are able to seek to enforce an award.
- 47 I find that the applicants, now having a declaration that the Award applies to them and their employees, are obliged at law to apply the Award. It is not optional. Whether enforcement action will be taken pending the appeal does not alter their legal obligations.
- 48 I find that should the order not be stayed, pending the hearing and determination of the appeals, the applicants will be required to:
1. audit, consider and recalculate the rates of pay of employees for the future, and make any necessary payments of backpay for employees, past and present; and
  2. reassess their operating hours, rosters and staffing generally. This may have the effect of changing their opening hours, the number of employees they employ and rearranging those employees' working hours.
- 49 These steps will have significant structural, financial and staffing consequences. If the appeals are successful and the order is quashed, all of this work and change will have been disruptive, unnecessary, wasted and irrecoverable. They will not be able to be restored substantially to their former position.
- 50 Secondly, in the circumstances of a finding that an award applies and has always applied to a business and its employees where the employer had, on advice, believed no award applied, a prudent business operator would take the actions the applicants say are necessary and not await the outcome of an appeal where a stay might prevent likely unnecessary, expensive and irrecoverable consequences, including the recovery of back pay to former employees.
- 51 I find these constitute special circumstances.

### Prospects of success of the appeals

- 52 The applicants say that grounds 1 and 2 of the appeals identify that the learned Commissioner erred in going beyond the scope clause and residency schedule to determine the scope of the Award. They say that the Industrial Appeal Court decisions in *Glover* and *Freshwest* do not support the approach taken by the Commission. The SDA says that the approach taken by the learned Commissioner was orthodox and according to the well-established principles.
- 53 The applicants say the reasons for decision do not disclose the Commission's reasoning in considering clauses beyond the scope clause and residency schedule. While there may be some validity to this argument, it is likely that a proper analysis of the Reasons actually discloses the Commissioner's reasons or they may be inferred.
- 54 In respect of grounds 3 and 4 of the appeals, the applicants say that the Commissioner's conclusion regarding the effect of the provisions of the Act and the removal of the named respondents is in error. The Commission's approach is said to be contrary to the established principles and unprecedented. This is a matter worthy of further elaboration.
- 55 The applicants also raise an issue relating to ground 5 of the appeals. This is a ground in the alternative and asserts that the learned Commissioner erred in constructively failing to exercise jurisdiction by not dealing with the submission of the Pharmacy Guild as to the effect of an application by the SDA made under s 40 of the Act. This application resulted in an order of the Commission in No. 423 of 1995, made subsequent to the order under s 47, to remove PUFSC from Schedule C, to replace the entire schedule of respondents.
- 56 The SDA did not specifically respond to this particular ground.
- 57 I conclude that the grounds of appeal identify arguable matters. Grounds 1 and 2 relate to the proper application of the authorities. Whether it is proper to consider clauses beyond those dealing directly with scope is significant in the proper interpretation of the Award, given the conclusion that it was a *Glover* scope provision.
- 58 The application of the provisions of the Act and the effect of the 2002 amendments are both arguable matters in relation to the reasons at first instance as raised in grounds 3 and 4.
- 59 The failure to address a relevant submission which relates to an amendment to the schedule of respondents which may affect the outcome, is a matter of substance and arguable.

### The balance of convenience

- 60 The circumstances I have set out above in relation to special circumstances also demonstrate that the balance of convenience lies with the granting of a stay. The SDA has not raised any issue of inconvenience or prejudice it may suffer from the stay being granted, whereas the matters of special circumstance demonstrate inconvenience and prejudice to the applicants.

**Conclusion**

61 In these circumstances, I intend to issue an order staying the operation of the order pending the hearing and determination of the appeals.

2019 WAIRC 00099

**A STAY OF OPERATION OF THE ORDER IN MATTER NO. APPL 86 OF 2017 WHICH IS THE SUBJECT OF FBA 2 OF 2019**

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
<b>PARTIES</b>	PHARMACY GUILD OF WESTERN AUSTRALIA ORGANISATION OF EMPLOYERS; SAMUEL GANCE (ABN 50 577 312 446) T/AS CHEMIST WAREHOUSE PERTH	<b>APPLICANTS</b>
	-v-	
	THE SHOP, DISTRIBUTIVE AND ALLIED EMPLOYEES' ASSOCIATION OF WESTERN AUSTRALIA, MINISTER FOR COMMERCE AND INDUSTRIAL RELATIONS, SAMUEL GANCE (ABN 50 577 312 446) T/A CHEMIST WAREHOUSE PERTH; SHOP, DISTRIBUTIVE & ALLIED EMPLOYEES ASSOCIATION OF WESTERN AUSTRALIA, PHARMACY GUILD OF WESTERN AUSTRALIA, THE MINISTER FOR COMMERCE AND INDUSTRIAL RELATIONS	<b>RESPONDENTS</b>
<b>CORAM</b>	CHIEF COMMISSIONER P E SCOTT	
<b>DATE</b>	THURSDAY, 28 FEBRUARY 2019	
<b>FILE NO/S</b>	PRES 1 OF 2019, PRES 2 OF 2019	
<b>CITATION NO.</b>	2019 WAIRC 00099	

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<b>Result</b>	Order issued
<b>Representation:</b>	
Counsel:	
Pharmacy Guild of Western Australia Organisation of Employers	: Mr T Dixon of counsel and Mr A Drake-Brockman, industrial agent
Samuel Gance (ABN 50 577 312 446) t/as Chemist Warehouse Perth	: Mr N Tindley of counsel
The Shop, Distributive and Allied Employees' Association of Western Australia	: Mr D Rafferty of counsel
The Minister for Commerce and Industrial Relations	: Mr R Andretich of counsel

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*Order*

Pursuant to the powers conferred under the *Industrial Relations Act 1979*, I hereby order that –

The decision made by the Commission on 31 January 2019 in application No APPL 86 of 2017 [2019] WAIRC 00016 is stayed pending the hearing and determination of appeals FBA 2 of 2019 and FBA 3 of 2019 or until further order.

[L.S.]

(Sgd.) P E SCOTT,  
Chief Commissioner.

## INDUSTRIAL MAGISTRATE—Claims before—

2019 WAIRC 00104

### WESTERN AUSTRALIAN INDUSTRIAL MAGISTRATES COURT

**CITATION** : 2019 WAIRC 00104  
**CORAM** : INDUSTRIAL MAGISTRATE D. SCADDAN  
**HEARD** : WEDNESDAY, 23 JANUARY 2019  
**DELIVERED** : THURSDAY, 28 FEBRUARY 2019  
**FILE NO.** : M 46 OF 2018  
**BETWEEN** : SHERYL REARDON

CLAIMANT

AND

GAETANO ANTHONY LAGANA (ABN 85 867 757 829) T/A STRATTON PARK PHARMACY

RESPONDENT

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**CatchWords** : INDUSTRIAL LAW (WA) – Alleged contravention of *Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977* regarding the non-payment of overtime – Construction of clauses 7 and 13 and whether a casual worker is entitled to payment of overtime – Alleged failure to pay pro-rata long service leave under *Long Service Leave Act 1958 (WA)* – Meaning of ‘serious misconduct’ – Whether the claimant’s conduct, and termination, amounted to ‘serious misconduct’ within the meaning of the *Long Service Leave Act 1958 (WA)* – Imposition of a penalty under s 83(4) of the *Industrial Relations Act 1979 (WA)*

**Legislation** : *Industrial Relations Act 1979 (WA)*  
*Long Service Leave Act 1958 (WA)*  
*Long Service Leave Act 1955 (NSW)*  
*Taxation Administration Act 1953 (Cth)*

**Case(s) referred to in reasons** : *Reardon v Gaetano Anthony Lagana t/as Stratton Park Pharmacy* (2018) WAIRC 00663  
*Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue* (2009) 239 CLR 27  
*Australasian Meat Industry Employees Union v Australian Meat Holdings Pty Ltd* (1999) 93 IR 308  
*BHP Billiton Iron Ore Pty Ltd v Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers (Western Australian Branch)* [2006] WASCA 124  
*City of Wanneroo v Australian Municipal, Administrative, Clerical and Services Union* [2006] FCA 813  
*City of Wanneroo v Holmes* (1989) 30 IR 362  
*Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v QR Limited (No 2)* [2010] FCA 652  
*Concut Pty Ltd v Ivor Worrell & Anor* [2000] HCA 64  
*Geo A Bond & Co Ltd (in liq) v McKenzie* [1929] AR(NSW) 498  
*Health Services Union of Western Australia (Union of Workers) v The Director General of Health* (2012) 93 WAIG 1  
*North v Television Corporation Ltd* (1976) ALR 599  
*Norwest Beef Industries Limited v West Australian Branch, Australian Meat Industry Employees Union, Industrial Union of Workers* (1984) 64 WAIG 2124  
*Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355  
*The Australian Rail, Tram and Bus Industry Union of Employees, West Australian Branch v Public Transport Authority of Western Australia* [2017] WAIRC 00830  
*Wall v Wescott* (1982) 1 IR 252  
*Commissioner of Taxation v Consolidated Media Holdings Ltd (2012)* 250 CLR 503

**Result** : Claim proven in part

**Representation:**

Claimant : Mr D. Rafferty of counsel  
 Respondent : Mr R. Jones (agent)

**REASONS FOR DECISION**

- 1 On 3 May 2018, Sheryl Reardon, claimed the respondent, Gaetano Anthony Lagana t/as Stratton Park Pharmacy, failed to comply with the *Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977* (the Award) and contravened or failed to comply with provisions in the *Long Service Leave Act 1958* (WA) (LSL Act).
- 2 The claim for enforcement of the Award is made to the Industrial Magistrates Court (IMC) pursuant to s 83(1)(e) of the *Industrial Relations Act 1979* (WA) (IR Act) and the claim for the payment of long service leave is made pursuant to s 8(2) of the LSL Act.
- 3 On 25 June 2018, Ms Reardon amended her claim. On 9 July 2018, the respondent admitted one aspect of Ms Reardon's claim, namely the failure to pay loading for late night trading in breach of cl 48(2) of the Award in the agreed amount of \$203.35.
- 4 On 22 January 2019, Ms Reardon discontinued part of her claim.
- 5 The net effect of the admission and the partial discontinuance of Ms Reardon's claim is now limited to a determination of the following:
  - unpaid pro-rata long service leave on termination of her employment pursuant to s 8(2) of the LSL Act;
  - unpaid overtime pursuant to clauses 7(1) and 13 of the Award; and
  - the imposition of a penalty pursuant to s 83(4) of the IR Act.
- 6 The parties lodged an Agreed Statement of Facts (ASF). Subject to two minor amendments the parties adopted the ASF and the associated attachments, a short hand table and source documents, and did not adduce or seek to adduce any other evidence in respect of the claim or the response to the claim. The respondent also relied upon an associated decision and orders by Commissioner Matthews in *Reardon v Gaetano Anthony Lagana t/as Stratton Park Pharmacy* (2018) WAIRC 00663 (Unfair Dismissal Decision).
- 7 I do not intend to recite the facts but annex the ASF (including the minor amendments) in Schedule 1 of these reasons and will refer to the ASF and attachments where relevant to do so.
- 8 Save for in one issue (the respondent's allegation of 'serious misconduct'), Ms Reardon has the burden of proving her claim. The standard of proof required to discharge the burden of proof 'on the balance of probabilities'. Where I state that 'I am satisfied' of a fact or matter I am saying that 'I am satisfied on the balance of probabilities' of that fact or matter. Conversely, where I stated that 'I am not satisfied' of a fact or matter I am saying that 'I am not satisfied on the balance or probabilities' of that fact or matter.

**Issues for determination**

- 9 Is Ms Reardon entitled to be paid pro-rata long service leave pursuant to s 8(2) of the LSL Act?
- 10 This issue requires consideration of the meaning of 'serious misconduct', what constitutes 'serious misconduct' and whether Ms Reardon's employment was or was not terminated for 'serious misconduct' within the meaning of s 8(2)(c)(ii) of the LSL Act.
- 11 Is Ms Reardon entitled to be paid overtime rates pursuant to clauses 7(1) and 13 of the Award?
- 12 Given the admission made by the respondent in failing to pay loading for late night trading in breach of cl 48(2) of the Award and if the respondent failed to pay overtime rates in contravention of the Award, should he be penalised for failing to do so under s 83(4) of the IR Act?
- 13 In determining the issue in paragraph 11, the IMC is required to determine the proper construction of clauses 7 and 13 of the Award, which I note the respondent contends is something properly left to the Western Australian Industrial Relations Commission under s 46 of the IR Act.

**Parties' Contentions**

- 14 Ms Reardon's contentions on the issues are:
  - (i) the reason(s) for Ms Reardon's dismissal from her employment do not amount to 'serious misconduct' as that term in the LSL Act is properly understood;
  - (ii) the respondent is to satisfy the court by leading direct evidence that Ms Reardon was in fact guilty of 'serious misconduct' and cannot rely on the reasons for decision in the Unfair Dismissal Decision;
  - (iii) clause 7(1) when read with cl 13 of the Award entitles to Ms Reardon to overtime where she works more than 30 hours in a working week as part of her ordinary hours;
  - (iv) the exception in paragraph cl 7(1) of the Award does not apply to Ms Reardon because she never worked or was required to work 38 hours per week at any time as part of her ordinary hours; and
  - (v) the IMC should impose a penalty pursuant to s 83(4)(ii) of the IR Act as a matter of specific and general deterrence with any such penalty payable to Ms Reardon pursuant to s 83F(2)(a) of the IR Act.

- 15 The respondent's contentions on the issues are:
- (i) there has been no explicit contravention of the Award as it relates to the failure to pay overtime with Ms Reardon relying on an interpretation of several clauses of the Award (cf. late night penalties admitted by the respondent in cl 48 of the Award);
  - (ii) the reference to 'ordinary hours' in clause 9, Part II as it relates to 'General Retail Shops' includes hours of work between 7.00 am and 6.00 pm from Monday to Saturday inclusive. Clause 13 of the Award makes no reference to 'casual staff' and the exception in clause 7 has no application for hours worked between 30 and 38 hours;
  - (iii) Ms Reardon is seeking to set out an interpretation of the Award to justify the alleged contravention which ought to be dealt with under s 46 of the IR Act and not in the IMC;
  - (iv) the Unfair Dismissal Decision contains numerous references and findings of fact in respect of Ms Reardon's conduct upon which it is open to the IMC to be satisfied that she engaged in 'serious misconduct' and is not entitled to pro-rata long service leave under the LSL Act;
  - (v) there is no requirement for the respondent to separately demonstrate 'serious misconduct' for the purposes of this hearing; and
  - (vi) if any contravention is found to have occurred, such contravention is only based on an interpretation of several clauses of the Award and, as such, there is no need or basis upon which a deterrent penalty should be applied.
- 16 I do not agree with the respondent's contention as it relates to the interpretation of the Award in this case. Determining whether in the circumstances Ms Reardon is entitled to overtime payments necessarily involves consideration of the proper construction of the Award to answer the question. It is a circular contention.

#### Principles of Construction of an Award

17 Award construction begins with a consideration of the natural and ordinary meaning of its words, which should be read as a whole and in context: *City of Wanneroo v Holmes* (1989) 30 IR 362 at (378 – 379); *City of Wanneroo v Australian Municipal, Administrative, Clerical and Services Union* [2006] FCA 813 [53] and [57]; *The Australian Rail, Tram and Bus Industry Union of Employees, West Australian Branch v Public Transport Authority of Western Australia* [2017] WAIRC 00830.

18 In *Geo A Bond & Co Ltd (in liq) v McKenzie* [1929] AR(NSW) 498, at 503, Street J stated (referred to by French J in *Holmes* at 379):

*...in construing an award, one must always be careful to avoid a too literal adherence to the strict technical meaning of words, and must view the matter broadly, and after giving consideration and weight to every part of the award, endeavour to give it a meaning consistent with the general intention of the parties to be gathered from the whole award.*

19 Further in *Health Services Union of Western Australia (Union of Workers) v The Director General of Health* (2012) 93 WAIG 1 [38], relying on *Geo A Bond*, Smith AP and Beech CC stated that the task of construction of industrial instruments is to be approached in a way that allows for a generous construction. See also Pullin J (with whom Wheeler and Roberts-Smith JJ agreed) in *BHP Billiton Iron Ore Pty Ltd v Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers (Western Australian Branch)* [2006] WASCA 124:

*French J in [Holmes], also referred to what Street J has said in [Geo A Bond], reminding courts that awards were made in the light of customs and working conditions of each industry and that they frequently result from an agreement between parties couched in terms intelligible to themselves but often framed without that careful attention to form and draftsmanship which one expects to find an Act of Parliament [23].*

20 Olney J in *Norwest Beef Industries Limited v West Australian Branch, Australian Meat Industry Employees Union, Industrial Union of Workers* (1984) 64 WAIG 2124, at 2133, stated:

*If it be the case that the correct approach to the interpretation of an industrial award is to read the document itself and give to the words used their ordinary common sense English meaning... then the first task in every case will be to determine whether the words are capable in their ordinary sense of having unambiguous meaning. If that question is answered in the affirmative, then the further consideration of the award making tribunal does not fall to be considered.*

#### Principles of Statutory Construction

21 The starting point to determine the meaning of a statutory provision is the text of the statute, having regard to context in which the text appears and the general purpose and policy of the legislation: *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355; *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v QR Limited* (No 2) [2010] FCA 652.

22 Extrinsic materials cannot be relied upon to displace the clear meaning of the language contained in the text of the legislation: *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue* (2009) 239 CLR 27.

23 Where only one meaning is reasonably open on the language of a provision, the court must adopt that meaning. Even if a drafting error is suspected or the literal meaning gives rise to absurdity, that meaning must prevail unless an alternative interpretation is reasonably open on the language in fact used by the legislature: *Commissioner of Taxation v Consolidated Media Holdings Ltd* (2012) 250 CLR 503.

24 Where more than one meaning is reasonably open, the court may adopt that meaning which best achieves the purpose or object of the statutory provision. The court must always consider context and extrinsic material in the first instance regardless of whether ambiguity appears on the face of the legislation: *Alcan (NT) Alumina Pty Ltd*.

**Is Ms Reardon Entitled to a Payment for Pro-Rata Long Service Leave?**

25 Relevantly, s 8(2) of the LSL Act provides:

*An employee who has completed at least 10 years of such continuous employment, as is referred to in subsection (1), is entitled to an amount of long service leave as follows —*

- (a) *in respect of 10 years so completed, 8<sup>2</sup>/<sub>3</sub> weeks;*
  - (b) *in respect of each 5 years' continuous employment so completed after such 10 years, 4<sup>1</sup>/<sub>3</sub> weeks; and*
  - (c) *on the termination of the employee's employment —*
    - (i) *by his death;*
    - (ii) *in any circumstances otherwise than by his employer for serious misconduct,*
- in respect of the number of years of such continuous employment completed since the employee last became entitled under this Act to an amount of long service leave, a proportionate amount on the basis of 8<sup>2</sup>/<sub>3</sub> weeks for 10 years of such continuous employment.*

- 26 The parties agree that if Ms Reardon is entitled to a payment for pro-rata long service leave, on and immediately before 13 October 2017, she accrued long service leave entitlement of 3.47 weeks, which has been calculated at the agreed amount of \$2,309.54<sup>1</sup>.
- 27 The respondent terminated Ms Reardon's employment on 13 October 2017 when he handed her a letter stating she was 'no longer required to attend the workplace' and stating 'in view of your service I am prepared to provide with the equivalent of 4 weeks pay'<sup>2</sup>.
- 28 I note the respondent relies upon the contents of the Unfair Dismissal Decision in these proceedings and thus I infer that he takes no issue with certain findings of fact that may be adverse to him including that: prior to terminating Ms Reardon she had not been warned at any time her employment was in jeopardy; there had been no proper investigation at the time; or at least any investigation had not sought her side of the story with her knowing any allegation may potentially affect her employment<sup>3</sup>.
- 29 Commissioner Matthews found Ms Reardon's dismissal to be unfair<sup>4</sup> and thereafter determined the appropriate remedy.
- 30 The relevance of this is that in the absence of any other evidence, either in the ASF or other witness evidence in these proceedings, the question is what to make of certain findings in the Unfair Dismissal Decision and whether the contents of that decision enable the IMC to make as a finding of fact that Ms Reardon's conduct amounted to 'serious misconduct'.

**Relevance of the decision in the Unfair Dismissal Decision**

31 At [56] of the Unfair Dismissal Decision, Commissioner Matthews found that Ms Reardon has engaged in misconduct by:

- (1) going behind the respondent's back by ringing the Amelia Heights Pharmacy to investigate his plan to give her hours at that business and his sincerity in raising this as a solution to the problems at the Stratton Park Pharmacy; and
- (2) ringing the Amelia Heights Pharmacy about the new employee and expressing herself in the way she did to Ms Schwarzer, where when directed to assist in the training of the new employee she told Ms Schwarzer that the person giving the direction 'can get stuffed'.

- 32 Further, at [57], Commissioner Matthews found that had the respondent put to Ms Reardon these allegations and gathered all relevant evidence, including Ms Reardon's comment, the respondent could have and would have decided to dismiss Ms Reardon and fairly have done so.
- 33 At [58], Commissioner Matthews considered that the respondent would have reasonably found that Ms Reardon responded completely inappropriately by independently investigating the respondent's plan to give her hours at the Amelia Heights Pharmacy and did so in a way that revealed she had no confidence in, or respect for, him and his role as her employer and a small business owner.
- 34 At [59], Commissioner Matthews considered the respondent would have found the contents of the telephone call to Ms Shwarzer completely inappropriate in terms of expression and content.
- 35 Commissioner Matthews found that Ms Reardon's telephone calls were evidence that she had lost trust in the respondent and was now behaving without regard to his proper interests. That is a breakdown in the employment relationship that could reasonably occasion an employer bringing it to an end.
- 36 Relevantly, at [61], Commissioner Matthews also found that Ms Reardon's conduct was such that the appropriate response to her conduct was not counselling or a warning, but while not sufficient to warrant summary dismissal, her 'conduct was serious enough to warrant dismissal'. He observed the Stratton Park Pharmacy was a 'tiny business', with three employees present on the premises at any one time. Further, he observed the respondent was entitled to employ people and hope that they could work together productively and harmoniously.
- 37 Ms Reardon says that any opinion expressed in the unfair dismissal proceedings did not and cannot operate as a binding declaration of rights on the parties and any findings are not binding on the IMC.
- 38 Further, opinions expressed in the unfair dismissal proceedings was to determine whether Ms Reardon was unfairly dismissed from her employment and, if so, what remedy should follow. Whereas, the purpose of these proceedings is to determine what, if any, legal entitlements Ms Reardon's may be entitled to.
- 39 While Ms Reardon did not appeal the unfair dismissal proceedings (either as a matter of law or fact), she does not agree with the findings and disagrees that she is guilty of any misconduct justifying dismissal.

40 Finally, she says that her conduct does not amount to serious misconduct.

41 I have considered whether the IMC can rely upon the findings made in the unfair dismissal proceedings (in the manner sought by the respondent). There are three reasons why it can and in this case it should:

- first, the IMC has limited jurisdiction in relation to state industrial matters and has no jurisdiction to determine claims for unfair dismissal;
- second, in the unfair dismissal proceedings the same parties adduced evidence and were cross-examined on that evidence which required Commissioner Matthews to make findings of fact in relation to Ms Reardon's alleged misconduct, albeit for the purposes of determining an appropriate remedy where he found the respondent had dismissed Ms Reardon unfairly; and
- third, in the absence of an appeal the unfair dismissal proceedings is a final decision on an industrial matter precluding both parties from disputing against the other in later litigation the correctness of the decision thereby underpinning two policy considerations: termination of disputes and finality in litigation; and protecting litigants from repetition in legal proceedings.

42 Therefore, in the circumstances of these proceedings the parties have already litigated before a competent authority having jurisdiction over the parties and subject matter where, in part, the decision maker was required to make findings of fact [to the same standard] on the nature and character of Ms Reardon's alleged misconduct.

43 This does not mean that in these proceedings the IMC must merely adopt the findings or opinions outlined in the unfair dismissal proceedings, but the respondent can rely on those findings and the IMC may have regard to the nature and character of Ms Reardon's conduct in determining whether her termination was as a result of 'serious misconduct'.

What does 'serious misconduct' mean?

44 'Serious misconduct' is not defined in the LSL Act. Ms Reardon refers principally to *Australasian Meat Industry Employees Union v Australian Meat Holdings Pty Ltd* (1999) 93 IR 308 where Dowsett J considered authorities discussing the meaning of 'serious' and 'misconduct', although it should be noted that this was in the context of the meaning of 'serious or wilful misconduct' in the relevant Award.

45 Distillation of his Honour's reasons appear to do no more than say that whether misconduct can be considered 'serious' is a question of fact in the context of the employment relationship, albeit that he noted the meaning of the words were in the context of entitlement to pro-rata long service leave payments. His Honour noted, at [87], that an employee's alleged misconduct could be such as to justify his or her dismissal while not being serious or wilful misconduct for the purposes of the provision relating to loss of long service leave benefits.

46 In *Concut Pty Ltd v Ivor Worrell & Anor* [2000] HCA 64 Kirby J, at [51], sets out a number of points as it relates to summary dismissal for misconduct (noting that the employee/employer relationship was not governed by any statute, regulation or industrial award):

- the ordinary relationship of employer and employee at common law is one importing implied duties of loyalty, honesty, confidentiality and mutual trust;
- it is only in exceptional circumstances that an ordinary employer is entitled at common law to dismiss an employee summarily. Whatever the position may be in relation to isolated acts of negligence, incompetence or unsuitability, it cannot be disputed (statute or express contractual provisions aside) that acts of dishonesty or similar conduct destructive of the mutual trust between the employer and the employee, once discovered, ordinarily fall within the class of conduct which, without more, authorises summary dismissal. Exceptions to this general position may exist for trivial breaches of the express or implied terms of the contract of employment. Other exceptions may arise where the breaches are ancient in time and where they may have been waived in the past, although known to the employer. Some breaches may be judged irrelevant to the duties of the particular employee and an ongoing relationship with the employer.

47 Relevantly, the majority in *Concut* at [17] stated (citations omitted):

*The issues which must be determined are to be understood in the context of the law respecting employment relationships. It would be unusual for this to be purely contractual. Statute may impose obligations to observe industrial awards and agreements, and in some instances the relevant terms of the employment relationship may be found in the industrial award which binds the parties at the relevant time. Further, as Mason J pointed out in *Hospital Products Ltd v United States Surgical Corporation*, the relationship between employee and employer is one of the accepted fiduciary relationships; their critical feature is that the fiduciary undertakes or agrees to act for or on behalf of, or in the interests of, another person in the exercise of a power or discretion that will affect the interests of that other person in a legal or practical sense.*

48 Further, at [25] (citations omitted):

*In **Pearce v Foster**, Lord Esher MR stated it to be a "rule of law" that "where a person has entered into the position of servant, if he does anything incompatible with the due or faithful discharge of his duty to his master, the latter has a right to dismiss him". In **Blyth Chemicals Ltd v Bushnell**, in the course of considering the position of the respondent, who was the manager of the appellant's business, Starke and Evatt JJ said:*

*"As manager for the appellant, the respondent was in a confidential position. And it is clear that he might be dismissed without notice or compensation if he acted in a manner incompatible with the due and faithful performance of his duty, or inconsistent with the confidential relation between himself and the appellant".*

*In the same case, Dixon and McTiernan JJ said:*

*“Conduct which in respect of important matters is incompatible with the fulfilment of an employee’s duty, or involves an opposition, or conflict between his interest and his duty to his employer, or impedes the faithful performance of his obligations, or is destructive of the necessary confidence between employer and employee, is a ground for dismissal”.*

- 49 In *North v Television Corporation Ltd* (1976) ALR 599 Smithers and Evatt JJ stated (in the context of summary dismissal without notice):

*It is of assistance to consider the expression “misconduct” by reference to subject matter to which it is related and the context in which it appears. The subject matter is the termination by one party against the will of another of a continuing contract of employment on the ground of breach of one of the terms of the contract. And the context is such as to indicate that certain breaches of a non-serious nature, some of which would be within the connotation of misconduct, are not regarded as grounds for termination. In such a situation it is reasonable to interpret the expression “misconduct” as referring to conduct so seriously in breach of the contract that by standards of fairness and justice the employer should not be bound to continue the employment.*

- 50 Furthermore, arguably, the burden of proving the relevant misconduct is on the respondent: *North* at page 599. The standard of proof being on the balance of probabilities.

- 51 In *Wall v Wescott* (1982) 1 IR 252 (Industrial Commission of New South Wales, 12 March 1982), Watson J considered the meaning of ‘serious and wilful misconduct’ in the context of the *Long Service Leave Act 1955* (NSW) stating, at 256, (omitting citations):

*Misconduct justifying termination of employment includes misconduct outside the particular employment which is incompatible with the continuance of the employment relationship. The misconduct must be at least such as would justify termination, to be relevant under s. 4(2)(a)(iii) of the Long Service Leave Act, but with a further element, comprehended by the terms “serious and wilful”. The category of misconduct thus intended is a particular type of misconduct which, in terms of gravity, must be capable of being described as serious beyond circumstances which would simply justify termination. Secondly, it must be subjectively considered in view of the requirement that it be ‘wilful’.*

- 52 ‘Serious misconduct’ in s 8 of the LSL Act does not include the word ‘wilful’. Further, s 8 of the LSL Act does not refer to an employee’s termination in the context of summary dismissal. Therefore, in my view, for an employee to have engaged in ‘serious misconduct’ for the purposes of the LSL Act, the employer need not have summarily dismissed the employee so as to highlight the gravity of the misconduct. Otherwise a careful and prudent employer will be prejudiced by a sense of fair play before deciding to terminate an employee.

- 53 For the purposes of the LSL Act, the misconduct must be of sufficient gravity such as to justify termination of the employment relationship in the context of beneficial legislation. That is, the misconduct must be of a type that justifies not only termination but is of a gravity capable of denying the employee an entitlement to a statutory benefit where they have worked for an employer for a lengthy period of time.

- 54 Having regard to this framework, did Ms Reardon’s conduct amount to ‘serious misconduct’ in the context of s 8 of the LSL Act?

- 55 In determining this question, the following agreed facts in the ASF and findings of fact in the Unfair Dismissal Decision are relevant:

- the respondent operated two small businesses with Ms Reardon working at the Stratton Park Pharmacy. Three people worked at the Stratton Park Pharmacy at any one time<sup>5</sup>;
- Ms Reardon was employed on a casual basis at the Stratton Park Pharmacy from 31 March 2003 to 13 October 2017 or approximately 14.5 years<sup>6</sup>;
- Ms Reardon first became entitled to long service leave in March 2013 and took the total first entitlement in April to June 2014<sup>7</sup>;
- there was a personality clash between Ms Reardon and a pharmacist at the Stratton Park Pharmacy and the respondent initially sought to separate the two by having them work different shifts<sup>8</sup>;
- while the relationship between Ms Reardon and the pharmacist was poor from the outset, it appears that the real deterioration in the relationship manifested in early 2017 and continued until Ms Reardon ceased working for the respondent<sup>9</sup>;
- sometime either in or after July 2017, Ms Reardon, unhappy with the respondent asking her if she wished to work at the other pharmacy operated by him, decided to investigate behind the respondent’s back his reasons for asking to work at the other pharmacy thereby demonstrating a lack of confidence and respect in her employer<sup>10</sup>; and
- when directed by another pharmacist to train a new person to take over the combined role of weekend Pharmacy Assistant at Stratton Park Pharmacy, Ms Reardon told a third person the pharmacist could ‘get stuffed’ because she felt aggrieved that someone else was working ‘taking [her] hours’, irrespective of the respondent’s reasons for making this decision<sup>11</sup>.

### **Determination**

- 56 The combined effect of some of these factors demonstrated a lack of respect and trust by Ms Reardon for the respondent and his business interests in a small business and undermined his role as her employer and was destructive of the employment relationship.

- 57 However, and notwithstanding, I accept the respondent was entitled to terminate the employment relationship where it had in all reality irretrievably broken down, I am not satisfied the termination of Ms Reardon's employment was for 'serious misconduct' as that term is defined in the LSL Act.
- 58 Simply put, Ms Reardon had worked for the respondent for long period of time. To the extent her employment relationship with him had soured to the point of termination this was towards the end of her employment period. Irrespective of her relationship with the other pharmacist, there is no evidence before the IMC upon which I could be satisfied to the requisite standard that she did not otherwise carry out her duties in a satisfactory manner.
- 59 True enough the behaviour that ultimately saw her employment terminated was poor and no doubt justified her termination, but I am not satisfied that the behaviour or misconduct was in all the circumstances of a gravity capable of denying her an entitlement to a statutory benefit where she had otherwise worked for the respondent for a lengthy period.
- 60 Accordingly, I am satisfied Ms Reardon is entitled to pro-rata long service leave payment in the agreed amount of \$2,309.54 for the period 31 March 2013 to 13 October 2017 pursuant to s 8(2)(c) of the LSL Act.

**Is Ms Reardon Entitled to be Paid Overtime Rates Pursuant to Clauses 7(1) and 13 of the Award?**

- 61 Clause 7(1) of the Award defines 'casual worker' to mean '*a worker engaged by the hour and who may be dismissed or leave the employer's service at any moment without notice and except as hereinafter provided shall not be engaged for more than 30 hours per week in ordinary hours*'.
- 62 Further, cl 7(1) of the Award provides '*[n]otwithstanding the aforementioned a casual worker may be engaged in ordinary hours for 38 hours per week for period not in excess of 4 consecutive weeks*'.
- 63 In respect of how a casual worker is to be paid, cl 7(3) of the Award provides that '*the rate for casual workers within ordinary time shall unless otherwise stated, be determined by dividing the appropriate wage rate prescribed in Clause 28 – Wages of this Award by thirty eight (38) and adding the appropriate loading prescribed by the award*'. Clause 7(4) of the Award provides for the calculation of the additional loading. Clause 7(5) of the Award provides for the calculation of Saturday rates for casual workers during ordinary time.
- 64 The parties agree the respondent operated a 'General Retail Shop' rather than a 'Small Retail Shop' or 'Special Retail Shop' (I accept the respondent's business is not a 'Small Retail Shop' and there is nothing before the court demonstrating a certificate has been issued by the Permanent Head of the Department of Labour in respect of the business being a 'Special Retail Shop'). Therefore, Clause 9 - Part II Ordinary Hours – subclause (1)(b) applies in relation to the ordinary hours of work relevant to a 'General Retail Shop' and the applicable ordinary hours of work applicable to the respondent's business is the hours worked '*on any or all days of the week between 7.00am and 6.00pm Monday to Saturday inclusive, excepting the day of late night trading when the ordinary hours of work may be worked between 7.00am and 9.00pm*'.
- 65 In respect of overtime, cl 13(1)(a) of the Award provides that '*subject to the provisions of Clause 9 – Hours, all time worked outside of ordinary hours shall be deemed to be overtime, payable in accordance with this clause*'. Further and relevantly, cl 13(1)(b) and cl 13(3) of the Award provides overtime is also where more than 76 ordinary hours are worked in a two-week period (where 38 hours are worked in any week during a period of two consecutive weeks) or all time worked before the usual starting time or after the usual finishing time in any establishment.
- 66 Clause 28 of the Award outlines the applicable minimum rates of wages. Clause 28(1) of the Award is relevant to Ms Reardon who is classed as an adult 'Shop Assistant' and the ordinary hours are divided into:
- (i) Monday to Friday;
  - (ii) ordinary hours between Monday and 1.00 pm Saturday; and
  - (iii) ordinary hours between Monday and Saturday with the completion of ordinary hours after 1.00 pm on Saturday.
- 67 Ms Reardon contends that as a casual employee any hours worked in excess of 30 hours per week should be paid at the overtime rate. Ms Reardon submits that cl 7(1) when read with cl 13(1)(a) of the Award supports her contention and nothing in cl 9 qualifies this entitlement.
- 68 The respondent contends that provided the number of hours worked does not exceed 38 hours in a four-week consecutive period (which would attract different rules), a casual worker who works between 30 and 38 hours per week during the period of time referred to as ordinary hours is not eligible for overtime. That is, and by way of example, a casual employee in a 'General Retail Shop' who works between 6.00 am and 7.00 pm on Saturday would be entitled to overtime because the casual employee is working outside of ordinary hours. The respondent submits that unlike late night trading, a time period explicitly referred to in the Award, there is no specific contravention of the Award by the respondent as it relates to casual employees where the casual employee works more than 30 hours and less than 38 hours per week.

**What is meant by ordinary hours as it relates to casual employees?**

- 69 'Ordinary hours' is not defined in the Award. However, Clause 9 – Part I – Hours of Work states that unless provided elsewhere in the Award the ordinary hours of work shall be 38 per week, or an average of 38 per week, to be worked in one of the four ways provided.
- 70 Clause 9 – Part II – Ordinary Hours – subclause (1)(a) states subject to Part I, '*[e]stablishments shall arrange the ordinary hours of work each day according to the provisions herein*' and relevant to 'General Retail Shops' the ordinary hours of work may be worked on any or all days of the week between the hours of 7.00 am and 6.00 pm Monday to Saturday inclusive. The exception to this is the day of late night trading (Thursday) when the ordinary hours of work may be worked between 7.00 am and 9.00 pm.

- 71 Notwithstanding a 'casual worker' is by definition is a worker who is not engaged for more than 30 hours per week in ordinary hours, there does not appear to be any prohibition on an employer and casual employee agreeing for the casual employee to work more than 30 hours per week from time to time.
- 72 The only provision in the Award for working more than 30 hours per week is contained in cl 7(1) of the Award where a casual employee maybe engaged to work 38 hours per week for periods not in excess of four consecutive weeks, thus enabling an employer to cover annual leave of part-time or full-time employees (by way of example, but which could also apply to covering sick leave). This is consistent with the entitlements referred to in Clause 15 – Annual Leave.
- 73 A separate question is, however, what rate of pay applies to any time worked after 30 hours per week but up to 38 hours per week?
- 74 Having regard to the language of the Award applied consistently in clauses 7, 9, 13 and 28(5) of the Award, the respondent's construction of ordinary hours is preferred. That is, a casual employee who works more than 30 hours per week but less than 38 hours per week and works those hours between 7.00 am and 6.00 pm Monday to Saturday inclusive is working within ordinary hours. The reasons are as follows:
- the ordinary hours of work are 38 hours per week;
  - in 'General Retail Shops' the ordinary hours of work are worked between 7.00 am and 6.00 pm Monday to Saturday inclusive, save for late night trading where the ordinary hours of work are between 7.00 am and 9.00 pm;
  - overtime includes (relevantly): time worked outside of ordinary hours of work which is deemed overtime; or where more than 76 ordinary hours are worked in a two-week period (where 38 hours are worked in any week during a period of two consecutive weeks); or all time worked before the usual starting time or after the usual finishing time in any establishment;
  - if overtime is worked after 12 o'clock noon on Saturday, the rate of pay is double time and double time is paid for work on a Sunday;
  - an employer may require any worker, other than a part-time worker, to work reasonable overtime at overtime rates and such worker shall work overtime in accordance with such requirement;
  - an employee who has completed continuous employment with the employer is entitled to a period of four-weeks annual leave with payment of ordinary wages;
  - a casual worker may be engaged in ordinary hours for 38 hours per week for periods not in excess of four consecutive weeks; and
  - the rate of pay for a casual worker within ordinary time is determined by dividing the appropriate wage rate prescribed by cl 28 of the Award by 38 and adding the appropriate loading (as set out in cl 7(4) save that for Saturday casual workers the formula is set out in cl 7(5) of the Award).
- 75 The Award consistently applies the concept of overtime to work either outside of the ordinary hours of work or over the ordinary hours of work in a prescribed period. There is no reason to otherwise apply this concept of overtime differently to casual workers who work more than 30 hours per week but less than 38 hours per week where the work is carried out during the ordinary hours of work.

What is the rate of pay for the casual worker who works overtime and when is it payable?

- 76 The purpose of the Award in limiting the amount of work undertaken by a casual worker to 30 hours per week is no doubt to preserve the rights of full and part time workers (that is, discouraging an employer from employing a casual workforce), but there is nothing to prevent an employee and employer from agreeing for the casual worker to work more than 30 hours per week.
- 77 Provided the casual worker works less than 38 hours per week, but if the casual worker works more than 38 hours in one week and less than 38 hours in the consecutive week, and works those hours any time during the ordinary hours of work (Monday to Saturday from 7.00 am to 6.00 pm or 7.00 am to 9.00 pm for late night trading), the casual worker will be paid at the rate calculated by reference to clauses 28 and 7(3) to 7(5) of the Award. That is, the rate within ordinary time with the requisite loading.
- 78 If the casual worker works outside the applicable ordinary hours of work in a 'General Retail Shop' they are deemed to have worked overtime irrespective of the number of hours worked during the week. By way of example, if the casual worker works 5.00 am to 12.00 pm on one day but works a total of 20 hours during that week, the casual worker in a 'General Retail Shop' is entitled to be paid two hours of overtime for the period 5.00 am to 7.00 am and the remaining 18 hours to be paid at the usual casual rate of pay.
- 79 Similarly, if the casual worker works 40 hours one week and 38 hours in the following consecutive week, the casual worker is entitled to be paid two hours of overtime for the two hours worked more than 76 hours in the fortnight and the remaining 76 hours to be paid at the usual casual rate of pay.
- 80 Clause 10(5)(a) of the Award has no application unless the time worked is properly characterised as overtime and if the overtime is worked after midday on Saturday it is paid at double time.

Determination

- 81 'Agreed 1' to the ASF is a summary table of Ms Reardon's work in 'Agreed 2', which is a spreadsheet of hours worked and wages paid for the period 8 April 2012 to 15 October 2017<sup>12</sup>.

- 82 A review of Agreed 2 reveals that all the hours worked by Ms Reardon were worked between 7.00 am and 6.00 pm from Monday to Saturday inclusive, save that on Thursday she regularly worked until 7.00 pm. I reasonably infer that Thursday was the respondent's day of late night trading where the ordinary hours of work are extended to include work up until 9.00 pm.
- 83 Therefore, pursuant to cl 13(1)(a) of the Award she worked no time outside of the ordinary hours of work for a 'General Retail Shop' and thus no time was capable of being deemed overtime.
- 84 Further, Agreed 2 reveals that Ms Reardon never worked more than 76 ordinary hours in a two-week period, notwithstanding that on two occasions she worked more than 38 hours in a week, namely the weeks of 26 May to 1 June 2013 and 13 May to 19 May 2012 where she worked 39.5 and 40 hours respectively.
- 85 On both of those occasions in the weeks either side of those weeks, Ms Reardon worked less than 38 hours and the cumulative total is less than 76 ordinary hours.
- 86 Further, Agreed 2 does not reveal that Ms Reardon worked before what appears to be the usual starting time or after the usual finishing time. Her hours were very stable and consistent and correlate to what appear to be general retail hours befitting a 'General Retail Shop'.
- 87 No work was performed on a Sunday and to the extent she worked 1.00 pm to 4.00 pm on a Saturday, Ms Reardon was not working overtime but working ordinary hours of work.
- 88 Therefore, I am not satisfied Ms Reardon is entitled to overtime for the hours worked over 30 hours per week in the manner she claims.
- 89 I am not satisfied the respondent has contravened clauses 7 and 13 of the Award as it relates to the payment of overtime.
- 90 Ms Reardon's claim as it relates to the payment of overtime is unsuccessful.

#### **Payment of a pecuniary penalty**

- 91 I am not satisfied the respondent has contravened of the Award as it relates to the non-payment of overtime under the Award thus consideration of s 83(4) of the IR Act does not apply where this alleged contravention has not been proved.
- 92 On 9 July 2018, two months after the claim was first lodged, the respondent admitted that he failed to pay loading for late night trading in breach of cl 48(2) of the Award in the agreed amount of \$203.35. Therefore, s 83(4) of the IR Act does apply for consideration where the contravention has been proven (or admitted).
- 93 However, given the respondent's early admission and the failure to pay loading for late night trading was a contravention at the low end of the spectrum and I am satisfied that it is highly unlikely to be repeated, I do not intend to make any order under s 88(4)(a) of the IR Act.

#### **Orders**

- 94 Subject to the effect of the *Taxation Administration Act 1953* (Cth) (if any), the respondent is to liable to pay to the claimant the following amounts:
- (1) \$203.35 for loading for late night trading; and
  - (2) \$2,309.54 for pro-rata long service leave payment.
- 95 The claimant also seeks pre-judgment interest on any amount assessed by the court and I will hear from the parties on that or any other proposed order.

#### **D. SCADDAN**

#### **INDUSTRIAL MAGISTRATE**

- <sup>1</sup> ASF at [17] to [23].
- <sup>2</sup> ASF at [12] and Unfair Dismissal Decision at [1].
- <sup>3</sup> Unfair Dismissal Decision at [2].
- <sup>4</sup> Unfair Dismissal Decision at [3], [5] and [6].
- <sup>5</sup> Unfair Dismissal Decision at [11].
- <sup>6</sup> ASF at [6].
- <sup>7</sup> ASF at [15] and [16].
- <sup>8</sup> Unfair Dismissal Decision at [12] to [20].
- <sup>9</sup> Unfair Dismissal Decision at [23] to [26].
- <sup>10</sup> Unfair Dismissal Decision at [31] and [35] to [37].
- <sup>11</sup> Unfair Dismissal Decision at [47] and [48].
- <sup>12</sup> ASF at [30] to [31] and Agreed 2.

**Schedule I: Agreed Statement of Facts**

IN THE INDUSTRIAL MAGISTRATES COURT OF  
WESTERN AUSTRALIA

M46 of 2018

BETWEEN

**SHERYL REARDON**

Claimant

AND

**GAETANO ANTHONY LAGANA (ABN 85 867 757  
829) T/A STRATTON PARK PHARMACY**

Respondent

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**AGREED STATEMENT OF FACTS**

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WE THE PARTIES to this claim agree on the following facts for the purpose of this claim.

Dated the 18<sup>th</sup> day of January 2019.

\_\_\_\_\_  
Lawyer for the Claimant

\_\_\_\_\_  
Agent for the Respondent

**The Parties**

*The Claimant*

1. Ms Sheryl Diane Reardon is the claimant in this claim ("**Ms Reardon**", "**Claimant**").
2. The Claimant is 62 years of age having been born on 18 July 1956.

*The Respondent*

3. Mr Gaetano Anthony Lagana is the respondent to this claim ("**Mr Lagana**", "**Respondent**").
4. The Respondent carries on a retail pharmacy business as a sole trader at Shop 15, Stratton Park Shopping Centre, Farrell Road, Stratton, Western Australia, trading as 'Stratton Park Pharmacy' ("**Stratton Park Pharmacy**").
5. The Respondent is a non-constitutional corporation employer.

**Employment**

6. From on or about 31 March 2003 to 13 October 2017, the Claimant was employed by the Respondent in Stratton Park Pharmacy as a casual pharmacy assistant ("**Claimant's employment**").
7. During the Claimant's employment, the Claimant and the Respondent did not have any written contract or contracts of employment.
8. At all material times during the Claimant's employment, the Claimant and the Respondent have treated *The Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977* ("**Award**") as the instrument applicable to the Claimant's employment.
9. Since at least 2008, the Claimant's duties always included, among other things:
  - (a) serving customers;
  - (b) processing payments;
  - (c) using the computer for ordering stock;
  - (d) receiving, unpacking, putting away stock;
  - (e) general cleaning such as cleaning shelves and vacuuming.
10. Since about 2008, from time to time the Claimant also trained other pharmacy assistants.
11. At all material times during the employment, the Claimant's hours of work were set by the Respondent.
12. On 13 October 2017, the Respondent terminated the Claimant's employment.

**Respondent's pay arrangements**

13. At Stratton Park Pharmacy, in the dispensary, the Respondent had a wages book in which the hours worked by each employee and the calculations of wages and tax were manually recorded each week.

*Long Service Leave*

14. During the Claimant's employment:
  - (a) the Claimant was an 'employee' within the meaning of s 4(1) of the *Long Service Leave Act 1958* (WA) ("**LSL Act**");
  - (b) the Claimant's employment was 'continuous' within the meaning of ss 6(1) and 8(1) of the LSL Act; and
  - (c) the Claimant did not take, and was not paid for, any periods of long service leave other than the period referred to in paragraph 16 below.

15. On or about 31 March 2013, the Claimant became entitled to a period of 8 and 2/3 weeks' long service leave in respect to her first 10 years of continuous service for the Respondent.
16. From about 24 April 2014 to 21 June 2014, the Claimant took her full entitlement to 8 and 2/3 weeks' paid long service leave in respect to her first 10 years of service for the Respondent.
17. During the period of on or about 31 March 2013 to the termination of the Claimant's employment on 13 October 2017, the Claimant completed a further 4 full years of continuous service.
18. By reason of the matters referred to in paragraph 17, and pursuant to s 8(2)(c) of the LSL Act, on and immediately before 13 October 2017, if the Claimant's employment was terminated by the Respondent in any circumstances otherwise than for serious misconduct, the Claimant had an accrued long service leave entitlement of 3.47 weeks (4 full years of service x 0.86667 weeks of long service leave per year of service).
19. The Claimant's hours of work varied during that further 4 year period.
20. The Claimant's 'average weekly number of hours worked' by the Claimant within the meaning of s 4(2)(c) of the LSL Act during that further 4 year period was 27.3 hours per week.
21. On and immediately before 13 October 2017, the Claimant was paid by the Respondent an hourly rate of \$24.38.
22. By reason of the matters referred to in paragraphs 19 to 21, on and immediately before 13 October 2017, the Claimant's 'ordinary pay' within the meaning of ss 4(1) and 4(2)(c) of the LSL Act was \$665.57 gross per week (\$24.38 x 27.3 hours per week).
23. By reason of the matters referred to in paragraphs 17 to 22, on and immediately before 13 October 2017, if the Claimant's employment was terminated by the Respondent in any circumstances otherwise than for serious misconduct, the Claimant had an accrued long service leave entitlement in the amount of \$2,309.54 gross (3.47 weeks x \$665.57 gross per week).
24. The Respondent has not paid to the Claimant the amount referred to in paragraph 23.

#### *Overtime rates*

25. At all material times during the limitation period, the Respondent has not made any overtime payments to the Claimant in respect of weeks in which the Claimant worked in excess of 30 hours.
26. Attached and marked as "**AGREED-1**" are particulars of the number of hours exceeding 30 in certain weeks worked before 12pm on Saturdays, and worked after 12pm on Saturdays.

#### *Part-day rates*

27. The Claimant intends to discontinue her claim relating to unpaid part-day loading pursuant to clause 7(4) of the Award.

#### *Tea breaks*

28. The Claimant intends to discontinue her claim relating to failure to provide tea breaks pursuant to clause 11(2) of the Award.

#### *Late Night Trading Loading*

29. The Respondent is liable to the Claimant for unpaid late night trading loadings in the amount of \$203.35 pursuant to clause 48(2) of the Award.

#### **Hours worked by Claimant and amounts paid by Respondent to Claimant**

30. Attached and marked as "**AGREED-2**" is a spreadsheet particularising the hours worked by the Claimant and the amounts paid by the Respondent to the Claimant for the period of 8 April 2012 to 13 October 2017, that is, for the period of six years immediately preceding 3 April 2018, which was the date on which this claim was lodged ("**limitation period**").
31. The spreadsheet is based on the records of the wages book referred to in paragraph 13 above.

#### **Award hourly rate during limitation period**

32. During the limitation period, the casual adult hourly rate of pay applicable for ordinary hours pursuant to clauses 7(3) and 7(4)(a) of the Award was as follows:
  - 32.1 \$24.38 per hour, commencing first pay period on or after 1 July 2017;
  - 32.2 \$23.87 per hour, commencing first pay period on or after 1 July 2016;
  - 32.3 \$23.46 per hour, commencing first pay period on or after 1 July 2015;
  - 32.4 \$22.98 per hour, commencing first pay period on or after 1 July 2014;
  - 32.5 \$22.34 per hour, commencing first pay period on or after 1 July 2013;
  - 32.6 \$21.77 per hour, commencing first pay period on or after 1 July 2012; and
  - 32.7 \$21.05 per hour, commencing first pay period on or after 1 July 2011.

#### **WAIRC Unfair Dismissal Proceedings**

33. The Claimant made an unfair dismissal application in made in the Western Australian Industrial Relations Commission ("**Commission**") challenging her dismissal, which was designated matter number U145 of 2017 and allocated to Commissioner Matthews.

34. On 9 May, 10 May and 15 June 2018, Commissioner Matthews heard matter number U145 of 2017.
35. On 23 July 2018, Commissioner Matthews delivered his reasons for decision in matter number U145 of 2017, including a finding that the Claimant's dismissal was unfair.; 2018 WAIRC 00663 + 00665
36. On 26 July 2018, Commissioner Matthews made an order for the Respondent to pay the Claimant \$3,999.12 less tax as compensation to the Claimant's for the Claimant's unfair dismissal; 2018 WAIRC 00663 + 00665
37. Since that time, the Respondent has complied with the order referred to in paragraph 36.

**"Agreed-1"**

<b>Pay Week Start</b>	<b>Week End</b>	<b>Total Hours for week</b>	<b>Number of hours in excess of 30 for week worked before 12pm Saturday</b>	<b>Number of hours in excess of 30 for week worked after 12pm Saturday</b>
9/10/2017	15/10/2017	23.7		
2/10/2017	8/10/2017	23.7		
25/09/2017	1/10/2017	30.95		0.95
18/09/2017	24/09/2017	23.7		
11/09/2017	17/09/2017	30.7		0.7
4/09/2017	10/09/2017	23.7		
28/08/2017	3/09/2017	30.7		0.7
21/08/2017	27/08/2017	23.7		
14/08/2017	20/08/2017	30.7		0.7
7/08/2017	13/08/2017	23.7		
31/07/2017	6/08/2017	30.7		0.7
24/07/2017	30/07/2017	23.7		
17/07/2017	23/07/2017	30.7		0.7
10/07/2017	16/07/2017	23.7		
3/07/2017	9/07/2017	30.5		0.5
26/06/2017	2/07/2017	23.5		
19/06/2017	25/06/2017	30.5		0.5
12/06/2017	18/06/2017	23.5		
5/06/2017	11/06/2017	30.5		0.5
29/05/2017	4/06/2017	23.5		
22/05/2017	28/05/2017	30.5		0.5
15/05/2017	21/05/2017	23.5		
8/05/2017	14/05/2017	31.5		1.5
1/05/2017	7/05/2017	24.5		
24/04/2017	30/04/2017	31.5		1.5
17/04/2017	23/04/2017	24.5		
10/04/2017	16/04/2017	24		
3/04/2017	9/04/2017	24.5		
27/03/2017	2/04/2017	31.5		1.5
20/03/2017	26/03/2017	24.5		
13/03/2017	19/03/2017	31.5		1.5
6/03/2017	12/03/2017	24		
27/02/2017	5/03/2017	31.5		1.5
20/02/2017	26/02/2017	24.5		
13/02/2017	19/02/2017	31.5		1.5
6/02/2017	12/02/2017	24.5		

<b>Pay Week Start</b>	<b>Week End</b>	<b>Total Hours for week</b>	<b>Number of hours in excess of 30 for week worked before 12pm Saturday</b>	<b>Number of hours in excess of 30 for week worked after 12pm Saturday</b>
30/01/2017	5/02/2017	33		3
23/01/2017	29/01/2017	15		
16/01/2017	22/01/2017	31.5		1.5
9/01/2017	15/01/2017	24.5		
2/01/2017	8/01/2017	31.5		1.5
26/12/2016	1/01/2017	24.5		
19/12/2016	25/12/2016	31.5		1.5
12/12/2016	18/12/2016	25.5		
5/12/2016	11/12/2016	30.5		0.5
28/11/2016	4/12/2016	24.5		
21/11/2016	27/11/2016	31.5		1.5
14/11/2016	20/11/2016	24.5		
7/11/2016	13/11/2016	31.5		1.5
31/10/2016	6/11/2016	24.5		
24/10/2016	30/10/2016	0		
17/10/2016	23/10/2016	24.5		
10/10/2016	16/10/2016	31.5		1.5
3/10/2016	9/10/2016	26		
26/09/2016	2/10/2016	31.5		1.5
18/09/2016	24/09/2016	24.5		
11/09/2016	17/09/2016	31.5		1.5
4/09/2016	10/09/2016	24.5		
28/08/2016	3/09/2016	31.5		1.5
21/08/2016	27/08/2016	26		
14/08/2016	20/08/2016	31.5		1.5
7/08/2016	13/08/2016	24.5		
31/07/2016	6/08/2016	33		3
24/07/2016	30/07/2016	24.5		
17/07/2016	23/07/2016	14.5		
10/07/2016	16/07/2016	17		
3/07/2016	9/07/2016	31.5		1.5
26/06/2016	2/07/2016	24.5		
19/06/2016	25/06/2016	32		2
12/06/2016	18/06/2016	24.5		
5/06/2016	11/06/2016	31.5		1.5
29/05/2016	4/06/2016	24.5		
22/05/2016	28/05/2016	31.5		1.5
15/05/2016	21/05/2016	24.5		
8/05/2016	14/05/2016	31.5		1.5
1/05/2016	7/05/2016	24.5		
24/04/2016	30/04/2016	32		2
17/04/2016	23/04/2016	24.5		

<b>Pay Week Start</b>	<b>Week End</b>	<b>Total Hours for week</b>	<b>Number of hours in excess of 30 for week worked before 12pm Saturday</b>	<b>Number of hours in excess of 30 for week worked after 12pm Saturday</b>
10/04/2016	16/04/2016	31.5		1.5
3/04/2016	9/04/2016	24.5		
27/03/2016	2/04/2016	24.5		
20/03/2016	26/03/2016	24		
13/03/2016	19/03/2016	31.5		1.5
6/03/2016	12/03/2016	24.5		
28/02/2016	5/03/2016	31.5		1.5
21/02/2016	27/02/2016	24.5		
14/02/2016	20/02/2016	31.5		1.5
7/02/2016	13/02/2016	24.5		
31/01/2016	6/02/2016	31.5		1.5
24/01/2016	30/01/2016	24.5		
17/01/2016	23/01/2016	31.5		1.5
10/01/2016	16/01/2016	24.5		
3/01/2016	9/01/2016	31.5		1.5
27/12/2015	2/01/2016	16		
20/12/2015	26/12/2015	16		
13/12/2015	19/12/2015	24.5		
6/12/2015	12/12/2015	31.5		1.5
29/11/2015	5/12/2015	24.5		
22/11/2015	28/11/2015	31.5		1.5
15/11/2015	21/11/2015	24.5		
8/11/2015	14/11/2015	29.5		
1/11/2015	7/11/2015	24.5		
25/10/2015	31/10/2015	31.5		1.5
18/10/2015	24/10/2015	24.5		
11/10/2015	17/10/2015	14.5		
4/10/2015	10/10/2015	0		
27/09/2015	3/10/2015	0		
20/09/2015	26/09/2015	31.5		1.5
13/09/2015	19/09/2015	31.5		1.5
6/09/2015	12/09/2015	24.5		
30/08/2015	5/09/2015	31.5		1.5
23/08/2015	29/08/2015	24.5		
16/08/2015	22/08/2015	7		
9/08/2015	15/08/2015	17		
2/08/2015	8/08/2015	31.5		1.5
26/07/2015	1/08/2015	24.5		
19/07/2015	25/07/2015	31.5		1.5
12/07/2015	18/07/2015	24.5		
5/07/2015	11/07/2015	31.5		1.5
28/06/2015	4/07/2015	24.5		

<b>Pay Week Start</b>	<b>Week End</b>	<b>Total Hours for week</b>	<b>Number of hours in excess of 30 for week worked before 12pm Saturday</b>	<b>Number of hours in excess of 30 for week worked after 12pm Saturday</b>
21/06/2015	27/06/2015	31.5		1.5
14/06/2015	20/06/2015	24.5		
7/06/2015	13/06/2015	31.5		1.5
31/05/2015	6/06/2015	24.5		
24/05/2015	30/05/2015	31.5		1.5
17/05/2015	23/05/2015	32		
10/05/2015	16/05/2015	31.5		1.5
3/05/2015	9/05/2015	24.5		
26/04/2015	2/05/2015	31.5		1.5
19/04/2015	25/04/2015	24.5		
12/04/2015	18/04/2015	31.5		1.5
5/04/2015	11/04/2015	24.5		
29/03/2015	4/04/2015	24		
22/03/2015	28/03/2015	24.5		
15/03/2015	21/03/2015	31.5		1.5
8/03/2015	14/03/2015	24.5		
1/03/2015	7/03/2015	33		3
22/02/2015	28/02/2015	24.5		
15/02/2015	21/02/2015	31.5		1.5
8/02/2015	14/02/2015	24.5		
1/02/2015	7/02/2015	31.5		1.5
25/01/2015	31/01/2015	24.5		
18/01/2015	24/01/2015	31.5		1.5
11/01/2015	17/01/2015	24.5		
4/01/2015	10/01/2015	31.5		1.5
28/12/2014	3/01/2015	0		
21/12/2014	27/12/2014	14.5		
14/12/2014	20/12/2014	24.5		
7/12/2014	13/12/2014	31.5		1.5
30/11/2014	6/12/2014	24.5		
23/11/2014	29/11/2014	31.5		1.5
16/11/2014	22/11/2014	24.5		
9/11/2014	15/11/2014	31.5		1.5
2/11/2014	8/11/2014	24.5		
26/10/2014	1/11/2014	31.5		1.5
19/10/2014	25/10/2014	24.5		
12/10/2014	18/10/2014	31.5		1.5
5/10/2014	11/10/2014	24.5		
28/09/2014	4/10/2014	33		3
21/09/2014	27/09/2014	24.5		
14/09/2014	20/09/2014	31.5		1.5
7/09/2014	13/09/2014	24.5		

<b>Pay Week Start</b>	<b>Week End</b>	<b>Total Hours for week</b>	<b>Number of hours in excess of 30 for week worked before 12pm Saturday</b>	<b>Number of hours in excess of 30 for week worked after 12pm Saturday</b>
31/08/2014	6/09/2014	31.5		1.5
24/08/2014	30/08/2014	24.5		
17/08/2014	23/08/2014	31.5		1.5
10/08/2014	16/08/2014	24.5		
3/08/2014	9/08/2014	31.5		1.5
27/07/2014	2/08/2014	24.5		
20/07/2014	26/07/2014	31.5		1.5
13/07/2014	19/07/2014	24.5		
6/07/2014	12/07/2014	31.5		1.5
29/06/2014	5/07/2014	24.5		
22/06/2014	28/06/2014	31.5		1.5
15/06/2014	21/06/2014	0		
8/06/2014	14/06/2014	0		
1/06/2014	7/06/2014	0		
25/05/2014	31/05/2014	0		
18/05/2014	24/05/2014	0		
11/05/2014	17/05/2014	0		
4/05/2014	10/05/2014	0		
27/04/2014	3/05/2014	0		
20/04/2014	26/04/2014	17		
13/04/2014	19/04/2014	24		
6/04/2014	12/04/2014	24.5		
30/03/2014	5/04/2014	31.5		1.5
23/03/2014	29/03/2014	24.5		
16/03/2014	22/03/2014	31.5		1.5
9/03/2014	15/03/2014	24.5		
2/03/2014	8/03/2014	31.5		1.5
23/02/2014	1/03/2014	24.5		
16/02/2014	22/02/2014	31.5		1.5
9/02/2014	15/02/2014	31.5		1.5
2/02/2014	8/02/2014	24.5		
26/01/2014	1/02/2014	24.5		
19/01/2014	25/01/2014	31.5		1.5
12/01/2014	18/01/2014	24.5		
5/01/2014	11/01/2014	31.5		1.5
29/12/2013	4/01/2014	17		
22/12/2013	28/12/2013	14.5		
15/12/2013	21/12/2013	24.5		
8/12/2013	14/12/2013	31.5		1.5
1/12/2013	7/12/2013	24.5		
24/11/2013	30/11/2013	31.5		1.5
17/11/2013	23/11/2013	24.5		

<b>Pay Week Start</b>	<b>Week End</b>	<b>Total Hours for week</b>	<b>Number of hours in excess of 30 for week worked before 12pm Saturday</b>	<b>Number of hours in excess of 30 for week worked after 12pm Saturday</b>
10/11/2013	16/11/2013	31.5		1.5
3/11/2013	9/11/2013	24.5		
27/10/2013	2/11/2013	31.5		1.5
20/10/2013	26/10/2013	24.5		
13/10/2013	19/10/2013	31.5		1.5
6/10/2013	12/10/2013	24.5		
29/09/2013	5/10/2013	31.5		1.5
22/09/2013	28/09/2013	24.5		
15/09/2013	21/09/2013	31.5		1.5
8/09/2013	14/09/2013	24.5		
1/09/2013	7/09/2013	31.5		1.5
25/08/2013	31/08/2013	24.5		
18/08/2013	24/08/2013	31.5		1.5
11/08/2013	17/08/2013	24.5		
4/08/2013	10/08/2013	31.5		1.5
28/07/2013	3/08/2013	26		
21/07/2013	27/07/2013	31.5		1.5
14/07/2013	20/07/2013	24.5		
7/07/2013	13/07/2013	31.5		1.5
30/06/2013	6/07/2013	24.5		
23/06/2013	29/06/2013	31.5		1.5
16/06/2013	22/06/2013	24.5		
9/06/2013	15/06/2013	31.5		1.5
2/06/2013	8/06/2013	24.5		
26/05/2013	1/06/2013	39.5	4	5.5
19/05/2013	25/05/2013	24.5		
12/05/2013	18/05/2013	31.5		1.5
5/05/2013	11/05/2013	24		
28/04/2013	4/05/2013	0		
21/04/2013	27/04/2013	15		
14/04/2013	20/04/2013	31.5		1.5
7/04/2013	13/04/2013	24.5		
31/03/2013	6/04/2013	31.5		1.5
24/03/2013	30/03/2013	21		
17/03/2013	23/03/2013	31.5		1.5
10/03/2013	16/03/2013	24.5		
3/03/2013	9/03/2013	31.5		1.5
24/02/2013	2/03/2013	24.5		
17/02/2013	23/02/2013	32		2
10/02/2013	16/02/2013	24.5		
3/02/2013	9/02/2013	31.5		1.5
27/01/2013	2/02/2013	24.5		

<b>Pay Week Start</b>	<b>Week End</b>	<b>Total Hours for week</b>	<b>Number of hours in excess of 30 for week worked before 12pm Saturday</b>	<b>Number of hours in excess of 30 for week worked after 12pm Saturday</b>
20/01/2013	26/01/2013	31.5		1.5
13/01/2013	19/01/2013	24.5		
6/01/2013	12/01/2013	31.5		1.5
30/12/2012	5/01/2013	24.5		
23/12/2012	29/12/2012	24		
16/12/2012	22/12/2012	24.5		
9/12/2012	15/12/2012	31.5		1.5
2/12/2012	8/12/2012	24.5		
25/11/2012	1/12/2012	31.5		1.5
18/11/2012	24/11/2012	24.5		
11/11/2012	17/11/2012	31.5		1.5
4/11/2012	10/11/2012	24.5		
28/10/2012	3/11/2012	31.5		1.5
21/10/2012	27/10/2012	24.5		
14/10/2012	20/10/2012	31.5		1.5
7/10/2012	13/10/2012	24.5		
30/09/2012	6/10/2012	31.5		1.5
23/09/2012	29/09/2012	24.5		
16/09/2012	22/09/2012	31.5		1.5
9/09/2012	15/09/2012	24.5		
2/09/2012	8/09/2012	0		
26/08/2012	1/09/2012	17		
19/08/2012	25/08/2012	31.5		1.5
12/08/2012	18/08/2012	24.5		
5/08/2012	11/08/2012	31.5		1.5
29/07/2012	4/08/2012	24.5		
22/07/2012	28/07/2012	31.5		1.5
15/07/2012	21/07/2012	33		3
8/07/2012	14/07/2012	32.5		
1/07/2012	7/07/2012	32		2
24/06/2012	30/06/2012	0		
17/06/2012	23/06/2012	0		
10/06/2012	16/06/2012	31.5		1.5
3/06/2012	9/06/2012	24.5		
27/05/2012	2/06/2012	33		3
20/05/2012	26/05/2012	33		3
13/05/2012	19/05/2012	40	4	6
6/05/2012	12/05/2012	24.5		
29/04/2012	5/05/2012	32		2
22/04/2012	28/04/2012	24.5		
15/04/2012	21/04/2012	31.5		1.5
8/04/2012	14/04/2012	32.5		2.5

"Agreed-2"

The following spreadsheet is the annexure marked "Agreed-2" referred to in the Agreed Statement of Facts.

Week Number	Week Start	Week Finish	Monday		Tuesday		Wednesday		Thursday		Friday		Saturday		Total Hours Worked	Gross Pay	Tax Deducted	Net Pay
759	9/10/2017	15/10/2017			8.30am - 1.06pm	7.6	8.30am - 1.06pm	7.6	8.5			8.30am - 1.06pm	7.6		23.7	\$577.80	\$59.80	\$518.00
758	2/10/2017	8/10/2017					8.30am - 1.06pm	7.6	8.5	8.30am - 1.06pm	7.6	8.5			23.7	\$577.80	\$59.80	\$518.00
757	25/09/2017	1/10/2017					8.30am - 1.06pm	7.6	8.5	8.30am - 1.06pm	7.6	8.5	8.30am - 12.30pm	7.25	30.95	\$785.00	\$110.00	\$675.00
756	18/09/2017	24/09/2017					8.30am - 1.06pm	7.6	8.5	8.30am - 1.06pm	7.6	8.5			23.7	\$577.80	\$59.80	\$518.00
755	11/09/2017	17/09/2017					8.30am - 1.06pm	7.6	8.5	8.30am - 1.06pm	7.6	8.5	8.30am - 12.30pm	7	30.7	\$777.86	\$110.86	\$667.00
754	4/09/2017	10/09/2017					8.30am - 1.06pm	7.6	8.5	8.30am - 1.06pm	7.6	8.5			23.7	\$577.80	\$59.80	\$518.00
753	28/08/2017	3/09/2017					8.30am - 1.06pm	7.6	8.5	8.30am - 1.06pm	7.6	8.5	8.30am - 12.30pm	7	30.7	\$777.86	\$110.86	\$667.00
752	21/08/2017	27/08/2017					8.30am - 1.06pm	7.6	8.5	8.30am - 1.06pm	7.6	8.5			23.7	\$577.80	\$59.80	\$518.00
751	14/08/2017	20/08/2017					8.30am - 1.06pm	7.6	8.5	8.30am - 1.06pm	7.6	8.5	8.30am - 12.30pm	7	30.7	\$777.86	\$110.86	\$667.00
750	7/08/2017	13/08/2017					8.30am - 1.06pm	7.6	8.5	8.30am - 1.06pm	7.6	8.5			23.7	\$577.80	\$59.80	\$518.00
749	31/07/2017	6/08/2017					8.30am - 1.06pm	7.6	8.5	8.30am - 1.06pm	7.6	8.5	8.30am - 12.30pm	7	30.7	\$777.86	\$110.86	\$667.00
748	24/07/2017	30/07/2017					8.30am - 1.06pm	7.6	8.5	8.30am - 1.06pm	7.6	8.5			23.7	\$577.80	\$59.80	\$518.00
747	17/07/2017	23/07/2017					8.30am - 1.06pm	7.6	8.5	8.30am - 1.06pm	7.6	8.5	8.30am - 12.30pm	7	30.7	\$777.86	\$105.86	\$672.00
746	10/07/2017	16/07/2017					8.30am - 1.06pm	7.6	8.5	8.30am - 1.06pm	7.6	8.5			23.7	\$577.80	\$54.80	\$523.00

Week Number	Week Start	Week Finish	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Total Hours Worked	Gross Pay	Tax Deducted	Net Pay
745	3/07/2017	9/07/2017			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-6pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	30.5	\$772.99	\$103.99	\$669.00
744	26/06/2017	2/07/2017			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-6pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	23.5	\$560.95	\$56.95	\$504.00
743	19/06/2017	25/06/2017			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-6pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	30.5	\$757.43	\$105.43	\$652.00
742	12/06/2017	18/06/2017			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-6pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	23.5	\$560.95	\$56.95	\$504.00
741	5/06/2017	11/06/2017			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-6pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	30.5	\$757.43	\$105.43	\$652.00
740	29/05/2017	4/06/2017			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-6pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	23.5	\$560.95	\$56.95	\$504.00
739	22/05/2017	28/05/2017			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-6pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	30.5	\$757.43	\$105.43	\$652.00
738	15/05/2017	21/05/2017			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-6pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	23.5	\$560.95	\$56.95	\$504.00
737	8/05/2017	14/05/2017			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	31.5	\$785.59	\$108.59	\$677.00
736	1/05/2017	7/05/2017			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	24.5	\$589.15	\$50.15	\$539.00
735	24/04/2017	30/04/2017			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	31.5	\$785.59	\$108.59	\$677.00
734	17/04/2017	23/04/2017			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	24.5	\$589.15	\$50.15	\$539.00
733	10/04/2017	16/04/2017			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	24	\$660.72	\$71.72	\$589.00
732	3/04/2017	9/04/2017			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	24.5	\$589.15	\$50.15	\$539.00
731	27/03/2017	2/04/2017			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	31.5	\$785.59	\$108.59	\$677.00
730	20/03/2017	26/03/2017			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	24.5	\$604.00	\$69.00	\$535.00
729	13/03/2017	19/03/2017			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	31.5	\$800.44	\$120.44	\$680.00
728	6/03/2017	12/03/2017			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	24	\$614.00	\$74.00	\$540.00

Week Number	Week Start	Week Finish	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Total Hours Worked	Gross Pay	Tax Deducted	Net Pay
727	27/02/2017	5/03/2017			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$800.44	\$120.44	\$680.00
726	20/02/2017	26/02/2017			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$604.00	\$69.00	\$535.00
725	13/02/2017	19/02/2017			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$800.44	\$120.44	\$680.00
724	6/02/2017	12/02/2017			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$604.00	\$69.00	\$535.00
723	30/01/2017	5/02/2017			8:30am-12:30pm 1pm-6pm 9	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	33	\$838.00	\$133.00	\$705.00
722	23/01/2017	29/01/2017			8:30am-1pm 2pm-5pm 7.5		8:30am-1pm 2pm-5pm 7.5		15	\$373.00	\$8.00	\$365.00
721	16/01/2017	22/01/2017			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$800.44	\$120.44	\$680.00
720	9/01/2017	15/01/2017			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$604.00	\$69.00	\$535.00
719	2/01/2017	8/01/2017			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$800.44	\$120.44	\$680.00
718	26/12/2016	1/01/2017			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$604.00	\$69.00	\$535.00
717	19/12/2016	25/12/2016			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$800.44	\$120.44	\$680.00
716	12/12/2016	18/12/2016			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-6pm 9		25.5	\$628.86	\$78.86	\$550.00
715	5/12/2016	11/12/2016			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-6pm 9	8:30am-1pm 4.5	30.5	\$767.55	\$102.55	\$665.00
714	28/11/2016	4/12/2016			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$604.00	\$69.00	\$535.00
713	21/11/2016	27/11/2016			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$800.44	\$120.44	\$680.00
712	14/11/2016	20/11/2016			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$604.00	\$69.00	\$535.00
711	7/11/2016	13/11/2016			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$800.44	\$120.44	\$680.00

Week Number	Week Start	Week Finish	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Total Hours Worked	Gross Pay	Tax Deducted	Net Pay
710	31/10/2016	6/11/2016			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-5pm	24.5	\$604.00	\$69.00	\$535.00
709	24/10/2016	30/10/2016							0			
708	17/10/2016	23/10/2016			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm		24.5	\$604.00	\$69.00	\$535.00
707	10/10/2016	16/10/2016			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	31.5	\$800.44	\$120.44	\$680.00
706	3/10/2016	9/10/2016			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-6pm		26	\$641.00	\$71.00	\$570.00
705	26/09/2016	2/10/2016			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	31.5	\$800.44	\$120.44	\$680.00
704	18/09/2016	24/09/2016			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm		24.5	\$604.00	\$69.00	\$535.00
703	11/09/2016	17/09/2016			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	31.5	\$800.44	\$120.44	\$680.00
702	4/09/2016	10/09/2016			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm		24.5	\$604.00	\$69.00	\$535.00
701	28/08/2016	3/09/2016			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	31.5	\$800.44	\$120.44	\$680.00
700	21/08/2016	27/08/2016			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-6pm		26	\$641.00	\$71.00	\$570.00
699	14/08/2016	20/08/2016			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	31.5	\$800.44	\$120.44	\$680.00
698	7/08/2016	13/08/2016			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm		24.5	\$604.00	\$69.00	\$535.00
697	31/07/2016	6/08/2016			8:30am-1pm 2pm-6pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	33	\$838.00	\$133.00	\$705.00
696	24/07/2016	30/07/2016			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm		24.5	\$604.00	\$69.00	\$535.00
695	17/07/2016	23/07/2016					8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	14.5	\$383.00	\$8.00	\$375.00
694	10/07/2016	16/07/2016			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm			17	\$417.50	\$15.50	\$402.00
693	3/07/2016	9/07/2016			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	31.5	\$800.44	\$120.44	\$680.00
692	26/06/2016	2/07/2016			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm		24.5	\$582.00	\$65.00	\$517.00

Week Number	Week Start	Week Finish	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Total Hours Worked	Gross Pay	Tax Deducted	Net Pay
681	19/06/2016	25/06/2016			8.30am-1pm 2pm-5pm 7.5	8.30am-1pm 1.30pm-7pm 7.5	8.30am-1pm 2pm-5pm 7.5	8.30am-12.30pm 1pm-4pm 7	32	\$800.00	\$120.00	\$680.00
680	12/06/2016	18/06/2016			8.30am-1pm 2pm-5pm 7.5	8.30am-1pm 2pm-7pm 9.5	8.30am-1pm 2pm-5pm 7.5		24.5	\$582.00	\$65.00	\$517.00
689	5/06/2016	11/06/2016			8.30am-1pm 2pm-5pm 7.5	8.30am-1pm 2pm-7pm 9.5	8.30am-1pm 2pm-5pm 7.5	8.30am-12.30pm 1pm-4pm 7	31.5	\$788.00	\$118.00	\$670.00
688	29/05/2016	4/06/2016			8.30am-1pm 2pm-5pm 7.5	8.30am-1pm 2pm-7pm 9.5	8.30am-1pm 2pm-5pm 7.5		24.5	\$582.00	\$65.00	\$517.00
687	22/05/2016	28/05/2016			8.30am-1pm 2pm-5pm 7.5	8.30am-1pm 2pm-7pm 9.5	8.30am-1pm 2pm-5pm 7.5	8.30am-12.30pm 1pm-4pm 7	31.5	\$788.00	\$118.00	\$670.00
686	15/05/2016	21/05/2016			8.30am-1pm 2pm-5pm 7.5	8.30am-1pm 2pm-7pm 9.5	8.30am-1pm 2pm-5pm 7.5		24.5	\$582.00	\$65.00	\$517.00
685	8/05/2016	14/05/2016			8.30am-1pm 2pm-5pm 7.5	8.30am-1pm 2pm-7pm 9.5	8.30am-1pm 2pm-5pm 7.5	8.30am-12.30pm 1pm-4pm 7	31.5	\$788.00	\$118.00	\$670.00
684	1/05/2016	7/05/2016			8.30am-1pm 2pm-5pm 7.5	8.30am-1pm 2pm-7pm 9.5	8.30am-1pm 2pm-5pm 7.5		24.5	\$582.00	\$65.00	\$517.00
683	24/04/2016	30/04/2016	9am-1pm	8	8.30am-1pm 2pm-5pm 7.5	8.30am-1pm 2pm-7pm 9.5	8.30am-1pm 2pm-5pm 7.5	8.30am-12.30pm 1pm-4pm 7	32	\$800.00	\$120.00	\$680.00
682	17/04/2016	23/04/2016			8.30am-1pm 2pm-5pm 7.5	8.30am-1pm 2pm-7pm 9.5	8.30am-1pm 2pm-5pm 7.5		24.5	\$582.00	\$65.00	\$517.00
681	10/04/2016	16/04/2016			8.30am-1pm 2pm-5pm 7.5	8.30am-1pm 2pm-7pm 9.5	8.30am-1pm 2pm-5pm 7.5	8.30am-12.30pm 1pm-4pm 7	31.5	\$788.00	\$118.00	\$670.00
680	3/04/2016	9/04/2016			8.30am-1pm 2pm-5pm 7.5	8.30am-1pm 2pm-7pm 9.5	8.30am-1pm 2pm-5pm 7.5		24.5	\$582.00	\$65.00	\$517.00
679	27/03/2016	2/04/2016			8.30am-1pm 2pm-5pm 7.5	8.30am-1pm 2pm-7pm 9.5	8.30am-1pm 2pm-5pm 7.5		24.5	\$582.00	\$65.00	\$517.00
678	20/03/2016	26/03/2016			8.30am-1pm 2pm-5pm 7.5	8.30am-1pm 2pm-7pm 9.5	8.30am-1pm 2pm-5pm 7.5	8.30am-12.30pm 1pm-4pm 7	24	\$701.00	\$86.00	\$615.00
677	13/03/2016	19/03/2016			8.30am-1pm 2pm-5pm 7.5	8.30am-1pm 2pm-7pm 9.5	8.30am-1pm 2pm-5pm 7.5	8.30am-12.30pm 1pm-4pm 7	31.5	\$788.00	\$118.00	\$670.00
676	6/03/2016	12/03/2016			8.30am-1pm 2pm-5pm 7.5	8.30am-1pm 2pm-7pm 9.5	8.30am-1pm 2pm-5pm 7.5		24.5	\$582.00	\$65.00	\$517.00
675	28/02/2016	5/03/2016			8.30am-1pm 2pm-5pm 7.5	8.30am-1pm 2pm-7pm 9.5	8.30am-1pm 2pm-5pm 7.5	8.30am-12.30pm 1pm-4pm 7	31.5	\$788.00	\$118.00	\$670.00
674	21/02/2016	27/02/2016			8.30am-1pm 2pm-5pm 7.5	8.30am-1pm 2pm-7pm 9.5	8.30am-1pm 2pm-5pm 7.5		24.5	\$582.00	\$65.00	\$517.00
673	14/02/2016	20/02/2016			8.30am-1pm 2pm-5pm 7.5	8.30am-1pm 2pm-7pm 9.5	8.30am-1pm 2pm-5pm 7.5	8.30am-12.30pm 1pm-4pm 7	31.5	\$788.00	\$118.00	\$670.00

Week Number	Week Start	Week Finish	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Total Hours Worked	Gross Pay	Tax Deducted	Net Pay
672	7/02/2016	13/02/2016			8:30am-1pm, 2pm-5pm	8:30am-1pm, 2pm-7pm	8:30am-1pm, 2pm-5pm	7.5	24.5	\$582.00	\$65.00	\$517.00
671	31/01/2016	6/02/2016			8:30am-1pm, 2pm-5pm	8:30am-1pm, 2pm-7pm	8:30am-1pm, 2pm-5pm	8:30am-12:30pm, 1pm-4pm	31.5	\$788.00	\$118.00	\$670.00
670	24/01/2016	30/01/2016			8:30am-1pm, 2pm-5pm	8:30am-1pm, 2pm-7pm	8:30am-1pm, 2pm-5pm	7.5	24.5	\$582.00	\$65.00	\$517.00
669	17/01/2016	23/01/2016			8:30am-1pm, 2pm-5pm	8:30am-1pm, 2pm-7pm	8:30am-1pm, 2pm-5pm	8:30am-12:30pm, 1pm-4pm	31.5	\$788.00	\$118.00	\$670.00
668	10/01/2016	16/01/2016			8:30am-1pm, 2pm-5pm	8:30am-1pm, 2pm-7pm	8:30am-1pm, 2pm-5pm	7.5	24.5	\$582.00	\$65.00	\$517.00
667	3/01/2016	9/01/2016			8:30am-1pm, 2pm-5pm	8:30am-1pm, 2pm-7pm	8:30am-1pm, 2pm-5pm	8:30am-12:30pm, 1pm-4pm	31.5	\$788.00	\$118.00	\$670.00
666	27/12/2015	2/01/2016			8:30am-1pm, 2pm-5pm	8:30am-1pm, 2pm-7pm			16	\$383.00	\$13.00	\$370.00
665	20/12/2015	26/12/2015			8:30am-1pm, 2pm-5pm	8:30am-1pm, 2pm-7pm			16	\$383.00	\$13.00	\$370.00
664	13/12/2015	19/12/2015			8:30am-1pm, 2pm-5pm	8:30am-1pm, 2pm-7pm	8:30am-1pm, 2pm-5pm	7.5	24.5	\$582.00	\$65.00	\$517.00
663	6/12/2015	12/12/2015			8:30am-1pm, 2pm-5pm	8:30am-1pm, 2pm-7pm	8:30am-1pm, 2pm-5pm	8:30am-12:30pm, 1pm-4pm	31.5	\$788.00	\$118.00	\$670.00
662	29/11/2015	5/12/2015			8:30am-1pm, 2pm-5pm	8:30am-1pm, 2pm-7pm	8:30am-1pm, 2pm-5pm	7.5	24.5	\$582.00	\$65.00	\$517.00
661	22/11/2015	28/11/2015			8:30am-1pm, 2pm-5pm	8:30am-1pm, 2pm-7pm	8:30am-1pm, 2pm-5pm	8:30am-12:30pm, 1pm-4pm	31.5	\$788.00	\$118.00	\$670.00
660	15/11/2015	21/11/2015			8:30am-1pm, 2pm-5pm	8:30am-1pm, 2pm-7pm	8:30am-1pm, 2pm-5pm	7.5	24.5	\$582.00	\$65.00	\$517.00
659	8/11/2015	14/11/2015	8:30am-1pm, 2pm-5pm		8:30am-1pm, 2pm-5pm		8:30am-1pm, 2pm-5pm	8:30am-12:30pm, 1pm-4pm	29.5	\$744.00	\$104.00	\$640.00
658	1/11/2015	7/11/2015			8:30am-1pm, 2pm-5pm	8:30am-1pm, 2pm-7pm	8:30am-1pm, 2pm-5pm	7.5	24.5	\$582.00	\$65.00	\$517.00
657	25/10/2015	31/10/2015			8:30am-1pm, 2pm-5pm	8:30am-1pm, 2pm-7pm	8:30am-1pm, 2pm-5pm	8:30am-12:30pm, 1pm-4pm	31.5	\$788.00	\$118.00	\$670.00
656	18/10/2015	24/10/2015			8:30am-1pm, 2pm-5pm	8:30am-1pm, 2pm-7pm	8:30am-1pm, 2pm-5pm	7.5	24.5	\$582.00	\$65.00	\$517.00
655	11/10/2015	17/10/2015			8:30am-1pm, 2pm-5pm		8:30am-1pm, 2pm-5pm	8:30am-12:30pm, 1pm-4pm	14.5	\$377.00	\$7.00	\$370.00
654	4/10/2015	10/10/2015							0			
653	27/09/2015	3/10/2015							0			

Week Number	Week Start	Week Finish	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Total Hours Worked	Gross Pay	Tax Deducted	Net Pay
652	20/08/2015	26/08/2015			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$788.00	\$118.00	\$670.00
651	13/08/2015	19/08/2015			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$788.00	\$118.00	\$670.00
650	6/09/2015	12/09/2015			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$594.00	\$69.00	\$525.00
649	30/08/2015	5/09/2015			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$788.00	\$118.00	\$670.00
648	23/08/2015	29/08/2015			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$594.00	\$69.00	\$525.00
647	16/08/2015	22/08/2015						8:30am-12:30pm 1pm-4pm 7	7	\$194.00	\$0.00	\$194.00
646	9/08/2015	15/08/2015			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5			17	\$410.00	\$10.00	\$400.00
645	2/08/2015	8/08/2015			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$788.00	\$118.00	\$670.00
644	26/07/2015	1/08/2015			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$594.00	\$69.00	\$525.00
643	19/07/2015	25/07/2015			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$788.00	\$118.00	\$670.00
642	12/07/2015	18/07/2015			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$594.00	\$69.00	\$525.00
641	5/07/2015	11/07/2015			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$788.00	\$118.00	\$670.00
640	28/06/2015	4/07/2015			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$582.00	\$65.00	\$517.00
639	21/06/2015	27/06/2015			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$771.00	\$111.00	\$660.00
638	14/06/2015	20/06/2015			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$582.00	\$65.00	\$517.00
637	7/06/2015	13/06/2015			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$771.00	\$111.00	\$660.00
636	31/05/2015	6/06/2015			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$582.00	\$65.00	\$517.00
635	24/05/2015	30/05/2015			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$771.00	\$111.00	\$660.00
634	17/05/2015	23/05/2015	8:30am-1pm	2pm-5pm 7.5	8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5		32	\$761.25	\$101.00	\$660.00

Week Number	Week Start	Week Finish	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Total Hours Worked	Gross Pay	Tax Deducted	Net Pay
633	10/05/2015	16/05/2015			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7.5	31.5	\$771.00	\$111.00	\$660.00
632	3/05/2015	9/05/2015			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$582.00	\$65.00	\$517.00
631	26/04/2015	2/05/2015			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$771.00	\$111.00	\$660.00
630	19/04/2015	25/04/2015			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$582.00	\$65.00	\$517.00
629	12/04/2015	18/04/2015			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$771.00	\$111.00	\$660.00
628	5/04/2015	11/04/2015			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$582.00	\$65.00	\$517.00
627	29/03/2015	4/04/2015			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5		8:30am-12:30pm 1pm-4pm 7	24	\$686.70	\$86.70	\$600.00
626	22/03/2015	28/03/2015			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$582.00	\$65.00	\$517.00
625	15/03/2015	21/03/2015			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$771.00	\$111.00	\$660.00
624	8/03/2015	14/03/2015			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$582.00	\$65.00	\$517.00
623	1/03/2015	7/03/2015			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-12:30pm 1pm-6pm 9	8:30am-12:30pm 1pm-4pm 7	33	\$807.00	\$125.00	\$682.00
622	22/02/2015	28/02/2015			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$582.00	\$65.00	\$517.00
621	15/02/2015	21/02/2015			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$771.00	\$111.00	\$660.00
620	8/02/2015	14/02/2015			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$582.00	\$65.00	\$517.00
619	1/02/2015	7/02/2015			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$771.00	\$111.00	\$660.00
618	25/01/2015	31/01/2015			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$582.00	\$65.00	\$517.00
617	18/01/2015	24/01/2015			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$771.00	\$111.00	\$660.00
616	11/01/2015	17/01/2015			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$582.00	\$65.00	\$517.00

Week Number	Week Start	Week Finish	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Total Hours Worked	Gross Pay	Tax Deducted	Net Pay
615	4/01/2015	10/01/2015			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 9.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$771.00	\$111.00	\$660.00
614	28/12/2014	3/01/2015							0			
613	21/12/2014	27/12/2014			8:30am-1pm 2pm-5pm 7.5			8:30am-12:30pm 1pm-4pm 7	14.5	\$369.00	\$9.00	\$360.00
612	14/12/2014	20/12/2014			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 9.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$582.00	\$65.00	\$517.00
611	7/12/2014	13/12/2014			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 9.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$771.00	\$111.00	\$660.00
610	30/11/2014	6/12/2014			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 9.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$582.00	\$65.00	\$517.00
609	23/11/2014	29/11/2014			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 9.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$771.00	\$111.00	\$660.00
608	16/11/2014	22/11/2014			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 9.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$582.00	\$65.00	\$517.00
607	9/11/2014	15/11/2014			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 9.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$771.00	\$111.00	\$660.00
606	2/11/2014	8/11/2014			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 9.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$582.00	\$65.00	\$517.00
605	26/10/2014	1/11/2014			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 9.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$771.00	\$111.00	\$660.00
604	19/10/2014	25/10/2014			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 9.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$582.00	\$65.00	\$517.00
603	12/10/2014	18/10/2014			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 9.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$771.00	\$111.00	\$660.00
602	5/10/2014	11/10/2014			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 9.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$582.00	\$65.00	\$517.00
601	28/09/2014	4/10/2014			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 9.5	8:30am-1pm 2pm-6pm 9	8:30am-12:30pm 1pm-4pm 7	33	\$806.00	\$116.00	\$690.00
600	21/09/2014	27/09/2014			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 9.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$582.00	\$65.00	\$517.00
599	14/09/2014	20/09/2014			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 9.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$771.00	\$111.00	\$660.00
598	7/09/2014	13/09/2014			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 9.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$582.00	\$65.00	\$517.00
597	31/08/2014	6/09/2014			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 9.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$771.00	\$111.00	\$660.00

Week Number	Week Start	Week Finish	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Total Hours Worked	Gross Pay	Tax Deducted	Net Pay
596	24/08/2014	30/08/2014			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-5pm	24.5	\$582.00	\$65.00	\$517.00
595	17/08/2014	23/08/2014			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	31.5	\$771.00	\$111.00	\$660.00
594	10/08/2014	16/08/2014			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm		24.5	\$582.00	\$65.00	\$517.00
593	3/08/2014	9/08/2014			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	31.5	\$771.00	\$111.00	\$660.00
592	27/07/2014	2/08/2014			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm		24.5	\$582.00	\$65.00	\$517.00
591	20/07/2014	26/07/2014			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	31.5	\$771.00	\$111.00	\$660.00
590	13/07/2014	19/07/2014			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm		24.5	\$582.00	\$65.00	\$517.00
589	6/07/2014	12/07/2014			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	31.5	\$771.00	\$111.00	\$660.00
588	29/06/2014	5/07/2014			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm		24.5	\$566.00	\$61.00	\$505.00
587	22/06/2014	28/06/2014			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	31.5	\$751.00	\$106.00	\$645.00
586	15/06/2014	21/06/2014							0			
585	8/06/2014	14/06/2014							0			
584	1/06/2014	7/06/2014							0			
583	25/05/2014	31/05/2014							0			
582	18/05/2014	24/05/2014							0			
581	11/05/2014	17/05/2014							0			
580	4/05/2014	10/05/2014							0			
579	27/04/2014	3/05/2014							0			
578	20/04/2014	26/04/2014			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm		17	\$390.00	\$10.00	\$380.00
577	13/04/2014	19/04/2014			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	24	\$669.00	\$84.00	\$585.00
576	6/04/2014	12/04/2014			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm		24.5	\$566.00	\$61.00	\$505.00

Week Number	Week Start	Week Finish	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Total Hours Worked	Gross Pay	Tax Deducted	Net Pay
575	30/03/2014	5/04/2014			8.30am-1pm 2pm-5pm 7.5	8.30am-1pm 2pm-7pm 9.5	8.30am-1pm 2pm-5pm 7.5	8.30am-12.30pm 1pm-4pm 7	31.5	\$751.00	\$106.00	\$645.00
574	23/03/2014	29/03/2014			8.30am-1pm 2pm-5pm 7.5	8.30am-1pm 2pm-7pm 9.5	8.30am-1pm 2pm-5pm 7.5		24.5	\$566.00	\$61.00	\$505.00
573	16/03/2014	22/03/2014			8.30am-1pm 2pm-5pm 7.5	8.30am-1pm 2pm-7pm 9.5	8.30am-1pm 2pm-5pm 7.5	8.30am-12.30pm 1pm-4pm 7	31.5	\$751.00	\$106.00	\$645.00
572	9/03/2014	15/03/2014			8.30am-1pm 2pm-5pm 7.5	8.30am-1pm 2pm-7pm 9.5	8.30am-1pm 2pm-5pm 7.5		24.5	\$566.00	\$61.00	\$505.00
571	2/03/2014	8/03/2014			8.30am-1pm 2pm-5pm 7.5	8.30am-1pm 2pm-7pm 9.5	8.30am-1pm 2pm-5pm 7.5	8.30am-12.30pm 1pm-4pm 7	31.5	\$751.00	\$106.00	\$645.00
570	23/02/2014	1/03/2014			8.30am-1pm 2pm-5pm 7.5	8.30am-1pm 2pm-7pm 9.5	8.30am-1pm 2pm-5pm 7.5		24.5	\$566.00	\$61.00	\$505.00
569	16/02/2014	22/02/2014			8.30am-1pm 2pm-5pm 7.5	8.30am-1pm 2pm-7pm 9.5	8.30am-1pm 2pm-5pm 7.5	8.30am-12.30pm 1pm-4pm 7	31.5	\$751.00	\$106.00	\$645.00
568	9/02/2014	15/02/2014			8.30am-1pm 2pm-5pm 7.5	8.30am-1pm 2pm-7pm 9.5	8.30am-1pm 2pm-5pm 7.5		24.5	\$566.00	\$61.00	\$505.00
567	2/02/2014	8/02/2014			8.30am-1pm 2pm-5pm 7.5	8.30am-1pm 2pm-7pm 9.5	8.30am-1pm 2pm-5pm 7.5	8.30am-12.30pm 1pm-4pm 7	31.5	\$751.00	\$106.00	\$645.00
566	26/01/2014	1/02/2014			8.30am-1pm 2pm-5pm 7.5	8.30am-1pm 2pm-7pm 9.5	8.30am-1pm 2pm-5pm 7.5		24.5	\$566.00	\$61.00	\$505.00
565	19/01/2014	25/01/2014			8.30am-1pm 2pm-5pm 7.5	8.30am-1pm 2pm-7pm 9.5	8.30am-1pm 2pm-5pm 7.5	8.30am-12.30pm 1pm-4pm 7	31.5	\$751.00	\$106.00	\$645.00
564	12/01/2014	18/01/2014			8.30am-1pm 2pm-5pm 7.5	8.30am-1pm 2pm-7pm 9.5	8.30am-1pm 2pm-5pm 7.5		24.5	\$566.00	\$61.00	\$505.00
563	5/01/2014	11/01/2014			8.30am-1pm 2pm-5pm 7.5	8.30am-1pm 2pm-7pm 9.5	8.30am-1pm 2pm-5pm 7.5	8.30am-12.30pm 1pm-4pm 7	31.5	\$751.00	\$106.00	\$645.00
562	29/12/2013	4/01/2014				8.30am-1pm 2pm-7pm 9.5	8.30am-1pm 2pm-5pm 7.5		17	\$391.00	\$10.00	\$381.00
561	22/12/2013	28/12/2013					8.30am-1pm 2pm-5pm 7.5	8.30am-12.30pm 1pm-4pm 7	14.5	\$360.00	\$5.00	\$355.00
560	15/12/2013	21/12/2013			8.30am-1pm 2pm-5pm 7.5	8.30am-1pm 2pm-7pm 9.5	8.30am-1pm 2pm-5pm 7.5		24.5	\$566.00	\$61.00	\$505.00
559	8/12/2013	14/12/2013			8.30am-1pm 2pm-5pm 7.5	8.30am-1pm 2pm-7pm 9.5	8.30am-1pm 2pm-5pm 7.5	8.30am-12.30pm 1pm-4pm 7	31.5	\$751.00	\$106.00	\$645.00
558	1/12/2013	7/12/2013			8.30am-1pm 2pm-5pm 7.5	8.30am-1pm 2pm-7pm 9.5	8.30am-1pm 2pm-5pm 7.5		24.5	\$566.00	\$61.00	\$505.00
557	24/11/2013	30/11/2013			8.30am-1pm 2pm-5pm 7.5	8.30am-1pm 2pm-7pm 9.5	8.30am-1pm 2pm-5pm 7.5	8.30am-12.30pm 1pm-4pm 7	31.5	\$751.00	\$106.00	\$645.00

Week Number	Week Start	Week Finish	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Total Hours Worked	Gross Pay	Tax Deducted	Net Pay
556	17/11/2013	23/11/2013			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 9.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$566.00	\$61.00	\$505.00
555	10/11/2013	16/11/2013			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 9.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$751.00	\$106.00	\$645.00
554	3/11/2013	9/11/2013			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 9.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$566.00	\$61.00	\$505.00
553	27/10/2013	2/11/2013			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 9.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$751.00	\$106.00	\$645.00
552	20/10/2013	26/10/2013			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 9.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$566.00	\$61.00	\$505.00
551	13/10/2013	19/10/2013			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 9.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$751.00	\$106.00	\$645.00
550	6/10/2013	12/10/2013			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 9.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$566.00	\$61.00	\$505.00
549	29/09/2013	5/10/2013			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 9.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$751.00	\$106.00	\$645.00
548	22/09/2013	28/09/2013			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 9.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$566.00	\$61.00	\$505.00
547	15/09/2013	21/09/2013			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 9.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$751.00	\$106.00	\$645.00
546	8/09/2013	14/09/2013			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 9.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$566.00	\$61.00	\$505.00
545	1/09/2013	7/09/2013			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 9.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$751.00	\$106.00	\$645.00
544	25/08/2013	31/08/2013			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 9.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$566.00	\$61.00	\$505.00
543	18/08/2013	24/08/2013			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 9.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$751.00	\$106.00	\$645.00
542	11/08/2013	17/08/2013			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 9.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$566.00	\$61.00	\$505.00
541	4/08/2013	10/08/2013			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 9.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$751.00	\$106.00	\$645.00
540	28/07/2013	3/08/2013			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 9.5	8:30am-1pm 2pm-5pm 7.5		26	\$592.00	\$62.00	\$530.00
539	21/07/2013	27/07/2013			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 9.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$751.00	\$106.00	\$645.00

Week Number	Week Start	Week Finish	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Total Hours Worked	Gross Pay	Tax Deducted	Net Pay
538	14/07/2013	20/07/2013			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$556.00	\$61.00	\$495.00
537	7/07/2013	13/07/2013			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$737.00	\$102.00	\$635.00
536	30/06/2013	6/07/2013			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$556.00	\$61.00	\$495.00
535	23/06/2013	29/06/2013			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$737.00	\$102.00	\$635.00
534	16/06/2013	22/06/2013			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$556.00	\$61.00	\$495.00
533	9/06/2013	15/06/2013			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$737.00	\$102.00	\$635.00
532	2/06/2013	8/06/2013			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$556.00	\$61.00	\$495.00
531	26/05/2013	1/06/2013	9am-1pm	2pm-6pm 8	8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	39.5	\$918.00	\$173.00	\$745.00
530	19/05/2013	25/05/2013			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$556.00	\$61.00	\$495.00
529	12/05/2013	18/05/2013			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$737.00	\$102.00	\$635.00
528	5/05/2013	11/05/2013			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	24	\$567.00	\$52.00	\$515.00
527	28/04/2013	4/05/2013							0			
526	21/04/2013	27/04/2013			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5		15	\$340.20	\$0.00	\$340.00
525	14/04/2013	20/04/2013			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$737.00	\$102.00	\$635.00
524	7/04/2013	13/04/2013			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$556.00	\$61.00	\$495.00
523	31/03/2013	6/04/2013			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$737.00	\$102.00	\$635.00
522	24/03/2013	30/03/2013			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5	9am-1pm 4	21	\$489.12	\$33.12	\$456.00
521	17/03/2013	23/03/2013			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5	8:30am-12:30pm 1pm-4pm 7	31.5	\$737.00	\$102.00	\$635.00
520	10/03/2013	16/03/2013			8:30am-1pm 2pm-5pm 7.5	8:30am-1pm 2pm-7pm 7.5	8:30am-1pm 2pm-5pm 7.5		24.5	\$556.00	\$61.00	\$495.00

Week Number	Week Start	Week Finish	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Total Hours Worked	Gross Pay	Tax Deducted	Net Pay
519	3/03/2013	9/03/2013			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	31.5	\$737.00	\$102.00	\$635.00
518	24/02/2013	2/03/2013			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm		24.5	\$556.00	\$61.00	\$495.00
517	17/02/2013	23/02/2013			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	32	\$748.23	\$103.23	\$645.00
516	10/02/2013	16/02/2013			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm		24.5	\$556.00	\$61.00	\$495.00
515	3/02/2013	9/02/2013			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	31.5	\$737.00	\$102.00	\$635.00
514	27/01/2013	2/02/2013			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm		24.5	\$556.00	\$61.00	\$495.00
513	20/01/2013	26/01/2013			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	31.5	\$737.00	\$102.00	\$635.00
512	13/01/2013	19/01/2013			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm		24.5	\$556.00	\$61.00	\$495.00
511	6/01/2013	12/01/2013			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	31.5	\$737.00	\$102.00	\$635.00
510	30/12/2012	5/01/2013			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm		24.5	\$556.00	\$61.00	\$495.00
509	23/12/2012	29/12/2012				8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	24	\$737.00	\$102.00	\$635.00
508	16/12/2012	22/12/2012			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm		24.5	\$556.00	\$61.00	\$495.00
507	9/12/2012	15/12/2012			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	31.5	\$737.00	\$102.00	\$635.00
506	2/12/2012	8/12/2012			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm		24.5	\$556.00	\$61.00	\$495.00
505	25/11/2012	1/12/2012			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	31.5	\$737.00	\$102.00	\$635.00
504	18/11/2012	24/11/2012			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm		24.5	\$556.00	\$61.00	\$495.00
503	11/11/2012	17/11/2012			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	31.5	\$737.00	\$102.00	\$635.00
502	4/11/2012	10/11/2012			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm		24.5	\$556.00	\$61.00	\$495.00
501	28/10/2012	3/11/2012			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-12:30pm 1pm-4pm	31.5	\$737.00	\$102.00	\$635.00

Week Number	Week Start	Week Finish	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Total Hours Worked	Gross Pay	Tax Deducted	Net Pay				
500	21/10/2012	27/10/2012			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	7.5	9.5	8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-5pm	7.5	24.5	\$556.00	\$61.00	\$495.00
499	14/10/2012	20/10/2012			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	7.5	9.5	8:30am-1pm 2pm-5pm	8:30am-12:30pm 2pm-5pm	7.5	31.5	\$737.00	\$102.00	\$635.00
498	7/10/2012	13/10/2012			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	7.5	9.5	8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-5pm	7.5	24.5	\$556.00	\$61.00	\$495.00
497	30/09/2012	6/10/2012			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	7.5	9.5	8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-5pm	7.5	31.5	\$737.00	\$102.00	\$635.00
496	23/09/2012	29/09/2012			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	7.5	9.5	8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-5pm	7.5	24.5	\$556.00	\$61.00	\$495.00
495	16/09/2012	22/09/2012			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	7.5	9.5	8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-5pm	7.5	31.5	\$737.00	\$102.00	\$635.00
494	9/09/2012	15/09/2012			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	7.5	9.5	8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-5pm	7.5	24.5	\$556.00	\$61.00	\$495.00
493	2/09/2012	8/09/2012							0							
492	26/08/2012	1/09/2012			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	7.5	9.5	8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-5pm	7.5	17	\$386.00	\$6.00	\$380.00
491	19/08/2012	25/08/2012			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	7.5	9.5	8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-5pm	7.5	31.5	\$737.00	\$102.00	\$635.00
490	12/08/2012	18/08/2012			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	7.5	9.5	8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-5pm	7.5	24.5	\$555.66	\$60.66	\$495.00
489	5/08/2012	11/08/2012			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	7.5	9.5	8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-5pm	7.5	31.5	\$736.89	\$101.89	\$635.00
488	29/07/2012	4/08/2012			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	7.5	9.5	8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-5pm	7.5	24.5	\$556.66	\$60.66	\$496.00
487	22/07/2012	28/07/2012			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	7.5	9.5	8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-5pm	7.5	31.5	\$736.89	\$101.89	\$635.00
486	15/07/2012	21/07/2012	9am-1pm 2pm-6pm	8	8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	7.5	10	8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-5pm	7.5	33	\$748.44	\$108.44	\$640.00
485	8/07/2012	14/07/2012	9am-1pm	8	8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	7.5	9.5	8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-5pm	7.5	32.5	\$761.18	\$111.18	\$650.00
484	1/07/2012	7/07/2012	9am-1pm	8	8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	7.5	9.5	8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-5pm	7.5	32	\$748.23	\$108.23	\$640.00
483	24/06/2012	30/06/2012							0							
482	17/06/2012	23/06/2012							0							

Week Number	Week Start	Week Finish	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Total Hours Worked	Gross Pay	Tax Deducted	Net Pay
481	10/06/2012	16/06/2012			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-5pm	31.5	\$717.64	\$102.64	\$615.00
480	3/06/2012	9/06/2012			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-5pm	24.5	\$528.22	\$65.22	\$463.00
479	27/05/2012	2/06/2012			8:30am-1pm 1:30pm-6pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-5pm	33	\$717.64	\$102.64	\$615.00
478	20/05/2012	26/05/2012	9am-1pm 2pm-6pm	9am-1pm 2pm-6pm		8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm		33	\$711.48	\$101.48	\$610.00
477	13/05/2012	19/05/2012	9am-1pm 2pm-6pm	9am-1pm 2pm-6pm		8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-4pm	40	\$868.56	\$158.56	\$710.00
476	6/05/2012	12/05/2012	9am-1pm 2pm-6pm	9am-1pm 2pm-6pm		8:30am-1pm 2pm-7pm		8:30am-1pm 2pm-4pm	24.5	\$534.38	\$67.38	\$467.00
475	29/04/2012	5/05/2012	9am-1pm 2pm-6pm	9am-1pm 2pm-6pm		8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-4pm	32	\$696.05	\$91.05	\$605.00
474	22/04/2012	28/04/2012			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-4pm	24.5	\$534.38	\$67.38	\$467.00
473	15/04/2012	21/04/2012			8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-4pm	31.5	\$685.30	\$97.30	\$588.00
472	8/04/2012	14/04/2012	9am-1pm 2pm-6pm	9am-1pm 2pm-6pm	8:30am-1pm 2pm-5pm	8:30am-1pm 2pm-7pm	8:30am-1pm 2pm-5pm		32.5	\$700.70	\$95.70	\$605.00

## UNFAIR DISMISSAL/CONTRACTUAL ENTITLEMENTS—

2019 WAIRC 00028

### WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**CITATION** : 2019 WAIRC 00028  
**CORAM** : COMMISSIONER D J MATTHEWS  
**HEARD** : WEDNESDAY, 19 DECEMBER 2018, THURSDAY, 20 DECEMBER 2018 AND  
 SUBSEQUENTLY BY WRITTEN SUBMISSIONS  
**DELIVERED** : WEDNESDAY, 6 FEBRUARY 2019  
**FILE NO.** : U 16 OF 2018  
**BETWEEN** : PETER BARNETT  
 Applicant  
 AND  
 THE WESTERN AUSTRALIAN EDUCATION DEPARTMENT  
 Respondent

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**CatchWords** : Unfair dismissal claim - Applicant failed to disclose past misconduct in employment declaration - Respondent summarily dismissed applicant - Applicant argued that declaration not false - Applicant alternatively argued his period of good service post-employment was not given any or proper weight by respondent - Facts considered - Respondent made out grounds for summary dismissal - Application dismissed

**Legislation** : *Industrial Relations Act 1979*

**Result** : Application dismissed

**Representation:**

**Counsel:**

**Applicant** : Dr P Monk (as agent)

**Respondent** : Ms J Vincent (of counsel)

**Solicitors:**

**Applicant** : Not applicable

**Respondent** : State Solicitors Office

*Reasons for Decision*

- 1 By letter dated 13 December 2017 the respondent wrote to the applicant purporting to “rescind” his contract of employment and ending his employment with immediate effect.
- 2 The applicant filed a notice claiming that he had been harshly, oppressively or unfairly dismissed on 6 February 2018.
- 3 The notice was filed outside of the 28-day time limit provided by the *Industrial Relations Act 1979* to do so, but this issue was not prosecuted separately by the respondent and the matter, not having settled through conciliation, proceeded to hearing in December 2018 with written closing submissions being lodged subsequently.
- 4 I find at the outset that the applicant was summarily dismissed from his employment and that, leaving to one side the time limit question, the application is within the jurisdiction of the Western Australian Industrial Relations Commission to hear and determine applications relating to “dismissals”.
- 5 That is, I find there is nothing material in the respondent characterising the ending of the applicant’s employment as being by way of “rescission” of his contract of employment.
- 6 The applicant having been summarily dismissed, the onus is on the respondent to make out that there were grounds for such action.
- 7 The respondent dismissed the applicant, quoting from the letter of termination dated 13 December 2017 (Exhibit 4), because she had formed the view that the applicant had made a declaration at the time he was employed which was “false”, that the false declaration had “induced” the respondent to offer the applicant employment, that she was, therefore, entitled to end the applicant’s employment and had decided to do so with immediate effect.
- 8 The applicant at hearing ran two arguments as follow:
  - (1) The applicant had not made a false declaration because he was unaware of the state of affairs that made his declaration false and that, accordingly, he made the impugned declaration “in good faith” and without fraudulent intent; and
  - (2) In any event, the penalty of dismissal was, in all of the circumstances, too harsh.
- 9 The following facts are uncontroversial.

- 10 At a time prior to 8 February 2005 the applicant had been found by an employer in Victoria to have committed various breaches of discipline. The findings led the Victorian Institute of Teaching to consider whether the applicant should remain registered as a teacher under the relevant Victorian legislation at the time and it held a hearing on that question.
- 11 Without attempting an exhaustive rehearsal of the Victorian legislation, and the force and effect of processes under that legislation, it is plain that the Victorian Institute of Teaching was a superior body to employers in that State and that its findings would stand in place of any findings made by an employer.
- 12 So much is clear given that the Victorian Institute of Teaching conducted a full hearing into all of the matters found against the applicant by his employer, which took three days and at which it heard primary oral evidence from witnesses. It is also clear given the Victorian Institute of Teaching couched its decision (Exhibit 6) in terms of the allegations against the applicant being, on the basis of the evidence it heard, “substantiated” or “not substantiated”.
- 13 The Victorian Institute of Teaching found some of the allegations to be substantiated. On some occasions in its decision it expressly used the language “the Panel finds this allegation to be substantiated”, or similar, while on other occasions it made factual findings consistent with the gravamen of an allegation but did not expressly state that it had found the allegation substantiated, or similar.
- 14 Ultimately, the Victorian Institute of Teaching found that the matters proven against the applicant amounted to “misconduct” and not “serious misconduct”. As explained in its decision this was a distinction of materiality for the Victorian Institute of Teaching. It found that “because the Panel did not find the teacher guilty of serious misconduct the teacher is fit to continue to teach.” It was evidently only “serious misconduct” which would cause the Victorian Institute of Teaching to find the applicant was not fit to teach.
- 15 The applicant continued his teaching career in Victoria unaffected by the disciplinary action taken against him by his employer and the decision of the Victorian Institute of Teaching because that body had not found him unfit to teach.
- 16 On 2 April 2008 the applicant completed an application to teach as an employee of the respondent (Exhibit 5) and declared as follows:

“I am of good character, suitable for teaching and that I have provided full details of any investigation of my behaviour or disciplinary action taken against me by previous employer(s) where I was not fully exonerated by that employer in respect of conduct relevant to assessing whether or not I am of good character.”
- 17 I interpose here that where an employer had taken disciplinary action and that action was the subject of an appeal, or a process equivalent to an appeal, it is the decision of the appellate body which is relevant and not that of the employer. The applicant did not seek to argue otherwise. It could hardly be the case that an applicant for employment would have to declare he or she had been found guilty of breaches of discipline if an appellate body had quashed those findings. That is, the declaration can only be sensibly be read as requiring an applicant to not make the declaration if they had not “been fully exonerated by that employer or upon a review, however described, of a decision of that employer.”
- 18 I would find any argument that a person could be said to have made a false declaration if they had been found guilty by an employer of a breach of discipline but then fully exonerated on appeal or review to be perverse.
- 19 Returning to the uncontroversial facts, the applicant was successful in his application to be employed by the respondent and rendered her good service until he was dismissed from that employment on 13 December 2017.
- 20 The evidence reveals that the respondent became aware of the decision of the Victorian Institute of Teaching in mid-2017 (Exhibit 11) and put an allegation to the applicant, by letter dated 29 August 2017 (Exhibit 9), that he had been untruthful in his declaration made as part of Exhibit 5.
- 21 The applicant asserted to the respondent in response, (Exhibit 10), that the question before the Victorian Institute of Teaching had been whether he was fit to teach and that, as they had found that he was, he had been “fully exonerated” by that body and, accordingly, his declaration was not untruthful.
- 22 The applicant asserted that he had been “cleared” by the Victorian Institute of Teaching. He asserted that while he was aware that the decision of the Victorian Institute of Teaching left some “allegations” on the record, he was told he could not challenge these as they were not germane to that body’s ultimate finding.
- 23 The applicant wrote that he felt “frustrated” by this but that:
  - (1) The allegations were the result of misunderstandings and the findings of the Victorian Institute of Teaching in relation to them lacked rigour;
  - (2) That a body applying the appropriate rigour to the evidence would have dismissed them; and
  - (3) He had received legal advice that “I was not obliged to jeopardise my future employment prospects by telling any future employer or any other professional body about an historical not guilty finding, which had placed no restrictions on my teaching.”
- 24 The respondent did not accept the applicant’s assertions. I have already referred to her letter of 13 December 2017. In that letter the respondent found there was “an absence of any actual or reasonable belief in the basis which you claim allowed you to avoid the requirement to disclose the investigation” and rejected the applicant’s assertion that he acted in good faith. The respondent also made a positive finding that the applicant had knowingly made a false declaration to avoid the truth coming out and prejudicing his chances of securing employment with her.
- 25 So those are the uncontroversial facts.
- 26 At the hearing before me the applicant ran the two arguments set out at [8] above.

- 27 The first of those arguments was to the effect that while, on its face, the declaration might appear to be false, the applicant had not knowingly made a false declaration because he was simply unaware that he had not been exonerated of the allegations made against him by his employer in Victoria. The argument was that while the Victorian Institute of Teaching had not, in fact, exonerated him, he thought it had because:
- (1) He only scanned the decision of the Victorian Institute of Teaching;
  - (2) His scan led him to conclude that while some matters of evidence had gone against him he did not realise that allegations against him had been upheld;
  - (3) That it was reasonable for him to believe, and he did believe, that no allegations against him had been upheld because the Victorian Institute of Teaching allowed him to continue teaching, that is that he “won” the case; and
  - (4) He was emboldened in his belief by legal advice to the effect that the declaration could be made despite the process before the Victorian Institute of Teaching and its decision.
- 28 This argument requires factual findings to be made by me.
- 29 The applicant gave evidence in chief that he read the decision of the Victorian Institute of Teaching cursorily during a meeting with his lawyers after it was delivered, that he did not recall ever having had possession of the document and that he did not know that some of the allegations against him had been “substantiated”.
- 30 The applicant admitted that the decision upset him and that, at the time, he wanted to do something about the matters which were upsetting him but was told by his lawyers that he could not because those matters were not germane to the ultimate decision of the Victorian Institute of Teaching to allow him to continue to teach.
- 31 In relation to exactly what upset him about the decision, the applicant said in evidence in chief that, in effect, he thought, when he read it, that evidence against him seemed to be allowed to stand which he knew to be false.
- 32 However, the applicant gave evidence that he did not understand that that evidence had been relied upon for positive findings against him. He gave evidence that this was because he had only cursorily read the decision and that he does not recall reading words within it to the effect that allegations had been substantiated.
- 33 He says he also came to the conclusion that nothing material had been found against him because the ultimate decision of the Victorian Institute of Teaching had been in his favour, that is his registration to teach had not been affected.
- 34 The applicant repeatedly stated in evidence that, insofar as the decision of the Victorian Institute of Teaching made unfavourable findings against him, he had not, in his reading of the decision, “focussed” on these.
- 35 The applicant also gave evidence in chief before me that he was emboldened in his belief that no findings against him had survived the Victorian Institute of Teaching process because, before making the declaration in Exhibit 5, he had spoken over the telephone with a lawyer, who had some years previously read the decision of the Victorian Institute of Teaching and to whom he read the material part of Exhibit 5, and the lawyer had told him that the Victorian Institute of Teaching decision need not be viewed by him as being an impediment to making the declaration.
- 36 I find the applicant’s evidence to be inherently unbelievable and I do not believe it.
- 37 To be specific I find that it is unbelievable that he could have come to and held the conclusion that he had been fully exonerated of all allegations against him by the Victorian Institute of Teaching. Even a cursory reading of the decision makes it abundantly clear that the Victorian Institute of Teaching did exactly the opposite. It found many of the allegations against the applicant to be substantiated. It would have been a remarkable exercise in selective reading of the document to know from it that in some instances evidence that the applicant rejected had been accepted by the Victorian Institute of Teaching but to not know that the Victorian Institute of Teaching had relied upon that evidence to make findings against him.
- 38 That an intelligent and interested reader, which the applicant certainly was, could come to the conclusion that the decision had fully exonerated him cannot be accepted. I reject the applicant’s evidence as being inherently unbelievable.
- 39 In any event, the evidence really points to the applicant well knowing that he had not been fully exonerated.
- 40 This conclusion best explains why the applicant was upset by the decision at the time and wanted his lawyers to do something about the decision and best explains his frustration when he was told nothing could be done.
- 41 The idea that the applicant was upset and motivated to action, and frustrated by his inability to take action, only makes sense if it was understood by him that the Victorian Institute of Teaching had accepted evidence against him in a way that was prejudicial to him.
- 42 That is, the emotions the applicant described only make sense if he knew that the evidence he believed to have been false or misunderstood was linked to findings against him.
- 43 The evidence of the applicant’s reaction to the decision, and the advice that he could do nothing about the aspects of it to which he reacted unfavourably, is only explicable if the applicant understood that findings had been made against him, that is that he had not been fully exonerated.
- 44 Further, and perhaps most tellingly, the applicant accepted under cross-examination that he was “furious” about the decision of the Victorian Institute of Teaching because “there were allegations made against me which were false or misunderstood and I thought that was unreasonable that that should be allowed to stand” (ts 123).
- 45 This, in my view, is evidence which establishes that the applicant was fully aware that he had not been “fully exonerated” by the Victorian Institute of Teaching. This was no mere slip of the tongue from the applicant, it was a clear and complete sentence containing an admission against interest which I watched the applicant make without confusion or reservation. That is, the applicant was not confused or unfairly wrongfooted by cross-examination when he made the admission.
- 46 The applicant quickly reverted to evidence that he had not “focussed” on the findings of misconduct but I find that the admission above rings true and that the evidence of not being aware of findings of misconduct because he did not “focus” on them does not.

- 47 The findings against the applicant are as plain as day even upon a cursory reading of the decision of the Victorian Institute of Teaching and it makes perfect sense that it was these findings the applicant was “furious” about.
- 48 There is no assistance to the applicant to be found in the evidence of the lawyer he spoke to before he made the declaration or the evidence of the applicant’s construction of that advice.
- 49 The advice, such as it was, was given to the applicant over the telephone by a friend of his who was a lawyer.
- 50 The lawyer did not have to hand a copy of the Victorian Institute of Teaching decision, although it seems that he may have seen it a couple of years before.
- 51 The lawyer did not have to hand a copy of Exhibit 5 and relied upon the applicant reading it out to him.
- 52 What exactly was said is not a matter free from dispute given that no contemporaneous note was kept, something the lawyer admitted after initially, and evasively and irrelevantly, answering a question on the matter by saying such records need only be kept for seven years in Victoria.
- 53 The applicant himself gave evidence that the discussion was “just cursory”.
- 54 As best I can make out from the evidence, the tenor of the advice was that as the Victorian Institute of Teaching had found that the applicant was fit to teach, or had not found he was not unfit to teach, the applicant was free to hold himself out to the respondent as being a person without relevant blemish on his record, that is that he could hold himself out as someone who was fit to teach.
- 55 I find the advice ended up being that as the applicant was registered to teach in Victoria he could hold himself out to a prospective Western Australian employer as having no impediment to his ability or suitability to teach in Western Australia.
- 56 However, there is simply no way a lawyer could have positively advised that the applicant had, in terms of what Exhibit 5 was clearly interested in, no relevant blemish on his record.
- 57 It is simply impossible that a lawyer, if the lawyer had to hand the Victorian Institute of Teaching decision and the relevant part of Exhibit 5, could have given considered and unqualified advice to the effect that the applicant could declare that he had been fully exonerated of all allegations made against him by previous employers.
- 58 The oral advice apparently addressed different questions. I find that the questions it addressed, and its content, were completely, in the result of this case, irrelevant.
- 59 It is possible that the lawyer got the idea that the declaration referred to “serious misconduct”, in which regard I refer to the lawyer referring to this several times in his evidence in chief. (ts 14, 15, 16). It is possible that, by the declaration’s reference to an applicant’s “suitability” for teaching, the lawyer got the idea that it was this question being addressed and gave advice that the decision of the Victorian Institute of Teaching had not impugned that (see ts 28).
- 60 However, it is also very clear that the declaration dealt with whether the applicant had been fully exonerated of all and of any allegations made by a previous employer and I maintain that there is no way a properly informed lawyer could have given advice that this declaration could be made.
- 61 The issue cannot have been dealt with by the advice obtained, perhaps because the lawyer did not have the relevant documents to hand or because the advice was being given informally to a friend.
- 62 I find that no intelligent person aware of all of the facts, as the applicant was, could have come away from the discussion with the lawyer with a clear mind that the declaration could be honestly made.
- 63 That the applicant sought legal advice on the implications of the Victorian Institute of Teaching decision before he completed Exhibit 5 merely emboldens me in my belief that he was aware that the one bore upon the other.
- 64 I further find that he could not possibly have come away from his conversation with the lawyer believing that it did not. Indeed, according to the evidence of the lawyer at ts 28, the applicant told him “some of the allegations had been found to be proven.”
- 65 That knowledge on the part of the applicant means, in light of the clear terms of the declaration, that the advice must have skirted around and not addressed the core and key issue.
- 66 The advice that I have found was given would have provided no comfort whatsoever to an intelligent and reasonable person.
- 67 It would have been clear that the advice had simply missed the point, either because the lawyer did not have the relevant documents to hand or had not given the matter sufficient attention to truly understand what was being asked of him.
- 68 The applicant took away from the discussion what he wanted to take away from it and I find that he, being an intelligent person, could not possibly have honestly believed at any time, either before or after the discussion, that he had been “fully exonerated” of all and any allegations that had been made against him by his previous employers and that he could make the declaration he did.
- 69 I reject the applicant’s first argument.
- 70 I find the respondent has established that the applicant made a false declaration. In fact, having considered all of the evidence, I largely agree with what the respondent wrote to the applicant in her letter dated 13 December 2017. Contrary to the opening submission for the applicant I find that there is no “tenable, honest and alternative interpretation” of the declaration to that the respondent put upon it.
- 71 In relation to the second argument it may be disposed of quickly.
- 72 It is not, prima facie, an abuse of an employer’s right to dismiss an employee where that employee has made a material and false declaration as part of obtaining employment. The applicant did that here.
- 73 The applicant, however, points to his ten years of service in employment with the respondent and says that it was unfair or harsh or oppressive for the respondent to have exercised her right to dismiss him from his employment once that is taken into account and given proper weight.

- 74 I disagree. I find that the applicant has given ten years of good service to the respondent and I accept all of the impressive evidence as to his character and performance presented on his behalf without qualification.
- 75 However, that evidence does not render the decision to dismiss him unfair, harsh or oppressive.
- 76 I suppose a “good record” is given weight in various situations to ameliorate negative consequences flowing from bad behaviour, although I question how much weight can actually be given to someone simply discharging, albeit very well, their contractual duties and obligations.
- 77 However, I find that such evidence cannot possibly be determinative of anything much in a case such as this.
- 78 Firstly, it is the wrongdoing at the time it was committed that is really relevant here and at that time there was no good record of service with the respondent.
- 79 Secondly, it cannot possibly be the case that the rendering of good service, once a job has been secured through dishonesty, can sensibly excuse that dishonesty. This would be a positive encouragement to job seekers to lie to their prospective employers in the hope that they can remedy the lie with subsequent good service once the dishonesty has had its intended effect.
- 80 I further say that even if I had taken into account, and given great weight to, evidence about his service and the positive things people said about him, and leaving to one side the propositions of logic above upon which I rely, it would still have been a very difficult task to convince me that the applicant should be re-instated or re-employed.
- 81 The person I saw in these proceedings was one who, while quite clearly intelligent, earnest and reasonable, in that he was capable of reason, had a “blind spot” when it came to his own conduct and the way in which it might be viewed by others.
- 82 To use a colloquial term, the applicant was obviously “stropky” about the Victorian Institute of Teaching finding him guilty of misconduct, even though they conducted a thorough hearing at which he was represented by counsel, and about the respondent finding him to have been dishonest in making the material declaration, even though this was clearly a conclusion she could have reasonably come to.
- 83 There was no basis whatsoever for such an attitude on the part of the applicant. It showed him to be a person who simply becomes upset when the world does not see things his way. This hearing was an occasion for the applicant to show grace, humility and insight. He demonstrated none of these things in the face of facts that clearly called for them. He was, instead, indignant and obdurate.
- 84 I would have been very slow to put such a person back into the respondent’s employ given the obligations she discharges on behalf of the people of Western Australia.
- 85 I find the applicant was summarily dismissed for dishonesty. I find the respondent has established in the proceedings before me that the applicant had been dishonest as alleged and that that dishonesty could properly and reasonably ground a decision to summarily dismiss the applicant from his employment. No abuse of the respondent’s right to dismiss has been established.
- 86 Accordingly, in terms of the disposition of this matter, there is nothing unfair to the applicant in refusing to accept his claim out of time and I refuse to do so.
- 87 The application will be dismissed.
- 88 In closing I wish to expressly acknowledge the tremendous assistance provided to me by the applicant’s agent, Dr Monk, in terms of the articulation and presentation of the applicant’s case. He was able to give his client’s case a veneer of respectability and believability to which the facts did not entitle it.

2019 WAIRC 00031

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

PETER BARNETT

**APPLICANT**

-v-

THE WESTERN AUSTRALIAN EDUCATION DEPARTMENT

**RESPONDENT****CORAM**

COMMISSIONER D J MATTHEWS

**DATE**

WEDNESDAY, 6 FEBRUARY 2019

**FILE NO/S**

U 16 OF 2018

**CITATION NO.**

2019 WAIRC 00031

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<b>Result</b>	Application dismissed
<b>Representation</b>	
<b>Applicant</b>	Dr P Monk (as agent)
<b>Respondent</b>	Ms J Vincent (of counsel)

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*Order*

HAVING HEARD from Dr P Monk, as agent for the applicant, and Ms J Vincent of counsel, for the respondent, on Wednesday, 19 December 2019 and Thursday 20 December 2019;

AND WHEREAS the application was filed outside of the prescribed time to file an unfair dismissal claim and I have determined that there is nothing unfair to the applicant in refusing to accept his claim out of time;

NOW THEREFORE I, the undersigned, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby order that the application be and is hereby dismissed.

(Sgd.) D J MATTHEWS,  
Commissioner.

[L.S.]

**2019 WAIRC 00092**

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
<b>PARTIES</b>	KYLIE MARIE CHIPLIN	<b>APPLICANT</b>
	-v-	
	ALL THINGS ENTERPRISES PTY LTD TRADING AS PEARD REAL ESTATE SCARBOROUGH	<b>RESPONDENT</b>
<b>CORAM</b>	SENIOR COMMISSIONER S J KENNER	
<b>DATE</b>	WEDNESDAY, 27 FEBRUARY 2019	
<b>FILE NO/S</b>	B 113 OF 2018	
<b>CITATION NO.</b>	2019 WAIRC 00092	

<b>Result</b>	Order issued
<b>Representation</b>	
<b>Applicant</b>	Ms K Chiplin in person
<b>Respondent</b>	Ms M Farrell

*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,  
Senior Commissioner.

[L.S.]

**2018 WAIRC 00736**

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
<b>PARTIES</b>	STEVE KEANE; NOEL WALTON; DARRYL ISSAC FRANK	<b>APPLICANTS</b>
	-v-	
	BHP BILLITON IRON ORE PTY LTD	<b>RESPONDENT</b>
<b>CORAM</b>	SENIOR COMMISSIONER S J KENNER	
<b>DATE</b>	WEDNESDAY, 12 SEPTEMBER 2018	
<b>FILE NO.</b>	B 51 OF 2018, B 52 OF 2018, B 53 OF 2018	
<b>CITATION NO.</b>	2018 WAIRC 00736	

<b>Result</b>	Direction issued
<b>Representation</b>	
<b>Applicants</b>	Mr C Young as agent
<b>Respondent</b>	Ms O Klimczak of counsel

*Direction*

HAVING heard Mr C Young as agent on behalf of the applicants and Ms O Klimczak of counsel on behalf of the respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby directs –

- (1) THAT the herein applications be heard and determined together.
- (2) THAT each applicant file and serve on or before 14 September 2018 further and better particulars of each of the applicants' claims as follows:
  - (a) Specify whether the terms of the contract of employment for each of the applicants are wholly or partly in writing, oral or to be implied, and
    - (i) insofar as any terms are in writing, identify each document constituting the terms of the employment contract;
    - (ii) insofar as any terms are oral, state the precise terms which are oral and the time, date, location and persons said to have agreed the oral terms, and the conversation constituting the agreement of the oral term, including whether it took place in person or by telephone; or
    - (iii) insofar as any terms are to be implied, state the precise term to be implied, and whether it is to be implied by fact or law, and the acts, facts, matters, circumstances, things or basis, and when and where they occurred or arose, from which the implication is to be drawn.
  - (b) Specify the term of the contract giving rise to the benefit claimed.
  - (c) Specify precisely the benefit claimed.
  - (d) Specify precisely the terms of the order sought as the remedy.
- (2) THAT the applicants and respondent are to confer and file a statement of agreed facts no later than 14 days prior to the date of hearing.
- (3) THAT the applicants and respondent are to file and serve an outline of submissions and any list of authorities upon which they intend to rely no later than 3 days prior to the date of the hearing.
- (4) THAT the parties have liberty to apply on short notice.

(Sgd.) S J KENNER,  
Senior Commissioner.

[L.S.]

**2018 WAIRC 00836**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

STEVE KEANE

**APPLICANT**

-v-

BHP BILLITON IRON ORE PTY LTD

**RESPONDENT**

**CORAM** SENIOR COMMISSIONER S J KENNER

**DATE** THURSDAY, 8 NOVEMBER 2018

**FILE NO/S** B 51 OF 2018

**CITATION NO.** 2018 WAIRC 00836

**Result** Order issued

**Representation**

**Applicant** Mr C Young as agent

**Respondent** Mr R Dalton 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,  
Senior Commissioner.

[L.S.]

2019 WAIRC 00089

## WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**CITATION** : 2019 WAIRC 00089  
**CORAM** : SENIOR COMMISSIONER S J KENNER  
**HEARD** : WEDNESDAY, 12 SEPTEMBER 2018, TUESDAY, 6 NOVEMBER 2018  
**DELIVERED** : THURSDAY, 21 FEBRUARY 2019  
**FILE NO.** : B 52 OF 2018, B 53 OF 2018  
**BETWEEN** : NOEL WALTON;  
 DARRYL ISSAC FRANK  
 Applicant  
 AND  
 BHP BILLITON IRON ORE PTY LTD  
 Respondent

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**Catchwords** : *Industrial Relations Law (WA) - Contractual benefits claim - Claim that written notification of shift roster change read with contracts impose benefit of maximum working hours - Claim that work commences at main gate prior to handover of equipment - Interpretation of contracts - Principles applied - Maximum period of time specified to work under contracts may constitute a benefit - Contracts do not impose limitation as contended by applicants - Applications dismissed - Order issued*

**Legislation** : *Industrial Relations Act 1979 (WA)*

**Result** : Applications dismissed

**Representation:**

**Counsel:**

**Applicants** : Mr C Young as agent

**Respondent** : Mr R Dalton of counsel and with him Ms O Klimczak of counsel

**Solicitors:**

**Respondent** : Herbert Smith Freehills

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**Case(s) referred to in reasons:**

*Black Box Control Pty Ltd v Terravision Pty Ltd* [2016] WASCA 219  
*Bowtell v Goldsbrough, Mort & Co Ltd* (1905) 3 CLR 444  
*Codelfa Construction Pty Ltd v State Rail Authority of New South Wales* (1982) 149 CLR 337  
*Hancock Prospecting Pty Ltd v Wright Prospecting Pty Ltd* (2012) 45 WAR 29  
*Hotcopper Australia Ltd v David Saab* (2001) 81 WAIG 2704  
*King v Griffin Coal Mining Company Pty Ltd* (2017) 97 WAIG 527  
*Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd* (2004) 219 CLR 165

**Case(s) also cited:**

*Ahern v Australian Federation of Totally and Permanently Incapacitated Ex-Service Men and Women (WA Branch Inc)* (1999) 79 WAIG 1876  
*Australian Broadcasting Commission v Australasian Performing Right Association Limited* [1973] HCA 36  
*Australian Medical Association (WA) Incorporated v The Minister for Health* [2015] WAIRComm 8  
*Balfour v Travelstrength Ltd* (1980) 60 WAIG 1015  
*Brown v Northern Suburb Hebrew Congregation Inc* [2013] WAIRComm 244  
*CFMMEU v Hay Point Services Pty Ltd* [2018] FCAFA 182  
*Ferguson v TNT Australia Pty Ltd* [2014] WAIRComm 21  
*Gartside v Qantas Airlines Limited* [2013] WAIRComm 1083  
*GEC Marconi Systems Pty Ltd v BHP Information Technology Pty Ltd* [2003] FCA 50  
*Joyce v Qantas Airways Limited* [2014] WAIRComm 87  
*Landsheer v Morris Corporation (WA) Pty Ltd* [2014] WAIRComm 34  
*MacDonald v Shinko Australia Pty Ltd* [1999] 2 Qd R 152  
*Pacific Carriers Ltd v BNP Paribas* [2004] HCA 35

*Perth Finishing College Pty Ltd v Watts* (1989) 69 WAIG 2307

*Tamara Bartlett v Brumbys Coogee* [2008] WAIRComm 750

*Toll (FGCT) Pty Limited v Alphapharm Pty Limited* (2004) 219 CLR 165

*Tracey Ferguson v The Salvation Army* [2014] WAIRComm 370

*Triantopoulos v Shell Company of Australia Ltd* [2011] WAIRComm 1083

*Qantas Airways Limited v Joyce* [2014] WAIRComm 1192

#### *Reasons for Decision*

#### **The claims and introduction**

- 1 The respondent, BHP Billiton Iron Ore Pty Ltd, mines iron ore in the Pilbara region of the State. Mount Whaleback is a large open cut mine located close to the town of Newman. It is a complex mining operation and commenced approximately 52 years ago. It operates on a traditional “truck and shovel” basis, whereby excavators dig material from predetermined mining locations in the pit, which material is then transported by truck to the mine crushers over a lengthy and complex network of haul roads. Mount Whaleback produces approximately 76 million tonnes of iron ore per annum.
- 2 The mine employs about 470 employees (the majority are employed directly by the respondent), most of whom reside in the local community. Given the capital investment involved in the mining operations, Mount Whaleback operates on a 24 hour per day, seven days per week basis over the 365 days of the year. Two 12-hour shifts are worked by employees on a “back to back” basis 6 am/pm to 6 pm/am each day. The residential employees have worked on a 4/5 panel even time “lifestyle” roster since February 2018, following discussions with the workforce in late 2017. A part of the shift system, comprises a shift change process involving a “handover” and a “hot seat change”, the meanings of which have some significance and will be explored later in these reasons.
- 3 Two employees of the respondent, Mr Walton and Mr Frank, are the applicants in these proceedings. Both are equipment operators. They both claim that changes to shift rosters introduced by the respondent in February 2018, and prior, mean they are now required to work longer than their contracts of employment permit. In the case of Mr Walton, he claimed that his contract of employment obliged him to work no more than 42 hours per week. A consequence of the shift roster change is that he is now required to work longer. In the case of Mr Frank, he claims that the respondent now requires him to work greater than 12 hours per day (excluding changeover). One consequence of the 2018 change asserted by the applicants, is that there is an express reference in both cases, to a limit on their working hours to “12 hours plus handover”. Both applicants maintained that the respondent has denied them the benefit of their contracts of employment, that being not working more than these hours. Declarations and orders are sought.

#### **The mining operations and shift work system**

- 4 The description of the mining operations including the summary outlined above, and the changes to the shift roster, were outlined in some detail by Mr O’Hanlon, the Manager Mining Production at Mount Whaleback. Mr O’Hanlon was previously the Manager Production and Planning at the mine. In his evidence Mr O’Hanlon was taken to exhibit R1, an aerial photo of the Mount Whaleback mine. This provided a general layout of the mine, including its working areas, waste dumps, park up areas and crib rooms. From the layout in exhibit R1, there are considerable distances between the mine front gate where all employees access the mine site and the various points within the mine to which employees are required to travel to commence work each day. Mr O’Hanlon estimated that it takes approximately 15 to 20 minutes to travel from the front gate to various active mining locations within the mine, depending on the mining configuration.
- 5 Mine haulage times vary from between 30 to 50 minutes from the pit to crushers and return, with the current average cycle time being approximately 27 minutes. At the front gate of the mine employees enter via turnstiles where they “swipe in and out” electronically each day. A photo showing the mine entry gate turnstiles was exhibit R2. Once through the turnstiles and behind a shade cloth area, there is a car park from which busses depart to transport employees to their work locations. On the left side after entering, are screens containing information in relation to what equipment employees will be operating and work locations for their upcoming shift (see exhibit R3). In summary, what occurs is employees pass through the turnstiles and check their equipment allocation for the shift displayed on the screens. This information is displayed on a rolling basis, which shows the operator’s name, equipment they are to be operating, such as a truck, and the location to access the equipment. This may be by way of a boarding ramp (see exhibit R6), in which case transport is by bus to the relevant crib room location. Another means of equipment access is by slip lane. In this case, employees generally travel to the location in a light vehicle as directed by their supervisor. At the time the employees access the screens for information, they may also be spoken to by supervisors or geologists and given information and instructions relevant to their upcoming shift.
- 6 A typical crib room location is the Rabbit’s Flat crib room, on the far west of the mine layout as marked on exhibit R2. A copy of a photo of this building described by Mr O’Hanlon as typical of crib rooms at the mine, was exhibit R4. The typical setup is a demountable crib room, park up areas for trucks and boarding ramps. The boarding ramps are positioned at the level of a truck cab to allow a “hot seat change”. This involves the interchange of drivers of equipment whilst the machine is in operational mode. The other method of operator changeover is, as mentioned, the use of slip lanes, which are located on the haul routes and enable the drivers to change over “off circuit”. Trucks may also be parked in park up areas, awaiting changeover of operators.
- 7 In terms of bus transport, employees are required to be at the mine site gate prior to the bus departure time which is 5.40 am/pm. Mr Frank testified that this means he would need to be at the gate by 5.20 to 5.30 am/pm to enter the site, check the screens, receive any necessary information and instructions and be ready to board the bus. As an excavator operator, Mr Frank is also required to find a light vehicle which is then driven to the swap out location. Shift changeover for excavator operators is by way of a hot seat change in the active mining areas.

- 8 The evidence was that the prestart (Safety Information Management System – or SIMS) commences at 6 am/pm and is normally conducted on the bus. This prestart is the nominal shift commencement time. Mr O’Hanlon estimated that normally the SIMS takes approximately four to ten minutes, but the respondent aims for an average time of about six minutes. Just prior to this, employees have a small amount of time to get refreshments for their shift from the crib huts and to assemble prior to the commencement of prestart. Once employees have completed the necessary preliminaries they proceed to the relevant boarding ramp or park up area to get into their designated vehicle. In terms of outgoing employees, the respondent aims to have them on buses to depart between 6.10 am/pm to 6.15 am/pm, to return to the mine front gate.
- 9 The overall objective of the shift change process is to minimise the time taken so that the mining equipment is operating in production mode for as long as possible on each shift. In this respect, a bar chart tendered as exhibit R13 showed that since changes have been made to the shift change over process, by moving the designated start point to crib rooms and the introduction of boarding ramps and changes to bus timetables, total time involved in shift changeovers per truck has fallen from an average of 366 hours per annum in late 2013 to 58 hours per annum in late 2018. Another consequence of the shift changeover procedures, and 15 minute earlier start time of 6 am/pm to 6.00pm/am, appears to be that employees, including the applicants, have spent fewer total hours on site over the period 2012-2018. This was reflected in the swipe gate records tendered as exhibit R14 and an overall derivative summary document of site access records tendered as exhibit R16. When these contentions were put to him, apart from a few cases where adverse weather or equipment breakdown may have had an impact, Mr Frank accepted that this appeared to be the case.
- 10 As an overall assessment of the impact of the applicant’s claims, if the limitations contended by them applied across the truck fleet, Mr O’Hanlon estimated that the total cost in terms of unproductive time, could be approximately 600 hours per truck per annum in lost production. Over the total truck fleet this is the equivalent of 6 extra haul trucks at a cost of \$2.1 million per truck in lost production or \$12 million per annum for all six trucks, plus the capital cost of each truck, at approximately \$20 million each.

### Contracts of employment

- 11 As a part of the statement of agreed facts in this case, a copy of the applicant’s written contracts of employment and the letter advising of the variation to shift rosters were annexed. In both claims, the contract documents comprise a standard covering letter of offer enclosing an attached Staff Contract of Employment. It appeared not to be in dispute that the attachment to the letter of offer had contractual effect, which it plainly does. For Mr Walton, the relevant provisions of his contract of employment dated 18 August 2009, which are the Hours of Work and Remuneration clauses, are in the following terms:

#### HOURS OF WORK

It is expected that your work in this position will be completed on the basis of **42 hours per week**. Circumstances may require you to work outside your normal hours to ensure that the full requirements of your role are met. This has been taken into account in setting your Base Salary and Operational Components 1 and 2 where applicable.

It is a requirement that you will perform shift work if required. Additionally, in order to meet operational requirements, the Company reserves the right to, from time to time, change the shift system in operation or require you to transfer from day work to shift work, from shift work to day work or from one shift to another.

#### REMUNERATION

##### Base Salary Component

Your commencing base salary will be **\$77 500** per annum which has been set to reflect the requirements of the job including consideration for unscheduled additional hours as required by this position from time to time. The salary also incorporates consideration for all aspects of working at site operations.

Your salary will be paid fortnightly, directly into your nominated bank, building society or credit union account.

Salaries are reviewed annually and are adjusted at the Company's discretion to take into account the Company's performance, your individual performance and industry salary movements generally. Your salary will next be reviewed in 2010.

##### Operational Component 1

In consideration of all the additional work time directly associated with your shift roster (eg. handover, hot seat changes, 40-42 hours etc.) you will receive Operational Component 1 of **\$10 276** per annum paid pro rata on a fortnightly basis.

##### Defined Salary

Your defined salary of **\$87 776** is the salary for Superannuation and Incentive Program purposes. This salary is calculated by adding Operational Components (where applicable) to your Base Salary.

##### Shift Component

For the requirement to perform shift work in accordance with the current shift requirements and roster pattern which operates in your department you will receive a Shift Component of **\$19 375** per annum which will be paid fortnightly on a pro rata basis in consideration of the demands of this roster.

##### Total Salary

This is the sum of all applicable remuneration components.

- 12 In the case of Mr Frank, his contract of employment documents dated 20 May 2010 are in the same terms.

### Shift changes and variations

- 13 As mentioned at the outset of these reasons, the applicants contended that a change to their shift roster as discussed in the workplace in late 2017 and introduced in February 2018, has led to them working more hours than are prescribed by their contracts of employment. To put the variation to the shift roster in context, it is helpful to sketch the prior changes to shift changeover arrangements that occurred in 2012 and 2014.
- 14 Prior to about mid-2012, operations employees at Mount Whaleback swiped in at the main gate as they do now. However, instead of getting buses or light vehicles to the relevant work areas, employees were able to drive their own vehicles to a location known as a “shift change building”. Employees had to be at this location by 6.15 am/pm, as the then nominal shift start time. At this location, employees undertook the prestart (SIMS). The same process that now occurs at the front gate, i.e. the reading of screens and the receiving of information and instruction from supervisors and geologists etc, took place at the shift change building. Employees then travelled into the pit by bus or light vehicle. Mr Frank agreed that under this system employees still had to get to the shift change building by 6 am/pm.
- 15 In mid-2002, because of safety considerations, employees were no longer permitted to drive their own vehicles onto the mine site. Buses were used instead, and they departed the main gate between 5.55 am/pm to 6.05 am/pm to get to the shift change area. This required employees to be at the main gate in time to catch one of the buses. The buses then departed the shift change point at 6.15 am/pm and the SIMS took place on the bus, en route to the designated work area. This change was set out in a presentation to the employees (see exhibits R9 and R10). The respondent’s objective at the time with these changes was to have employees on their equipment by about 6.30 am/pm.
- 16 In early 2014, the requirement for employees to be transported to a shift change building in the mine was removed. Instead, the process that occurred at the shift change building, that being the allocation of work areas, equipment and provision of relevant information, moved to the front gate, which is the current procedure. At the same time, in response to employee preferences, the nominal start time was brought forward from 6.15 am/pm to 6 am/pm. This meant that, to catch the buses in time to get to the designated starting points in the mine by about 6 am/pm, employees would be required to be at the mine gate in time to read the information screens and be on the bus for departure at 5.40 am/pm. Following the usual SIMS process and equipment handover by about 6.05 am/pm to 6.10 am/pm, employees would be expected to be operating the equipment shortly after.
- 17 These changes to shift start arrangements were also covered in the evidence of Mr Frank. After being taken through the stages of the changes from prior to 2012 to early 2014, Mr Frank accepted that they had led to improvements in the way the respondent had managed shift changeovers. The data put in evidence as to time spent on the mine site by employees, showed that generally, employees have been able to leave the mine site more promptly than under former arrangements. Mr Frank accepted that it was not part of the applicants’ cases, that changes made prior to 2017, that being the shift roster change, were in some way outside of the applicants’ contracts of employment at that time.
- 18 The 2017 shift roster variation was set out in a letter to the applicants dated 7 November 2017. Relevantly, formal parts omitted, that letter was in the following terms:

#### **ROSTER CHANGE**

In October 2017, it was announced that Whaleback will implement changes to the operational rosters undertaken by our residential, frontline workforce. These changes aim to implement a simplified suite of rosters to improve integration and alignment across departments, manage fatigue, improve productivity and enable a culture of high engagement and flexibility for our workforce.

The following letter outlines the details of your new roster arrangement, including any impacts to the terms and conditions of your employment.

#### **Roster Arrangement**

New Roster:	Lifestyle - 5040 5N50 4050 5N40 5050 4N50
Line Leader:	Donald Hayward
Crew Name:	Load and Haul C Crew 1
Shift Length:	12 hrs plus handover
Shift Start and Finish Times:	Remain unchanged from current roster arrangement
Effective Date for Change:	19 February 2018

As you transition from your current roster pattern to your new roster pattern, your working days will be adjusted to ensure a smooth transition. Please refer to the attached roster pattern for your rostered working days through this period.

#### **Terms and Conditions**

Your current terms and conditions of employment, including remuneration remain unchanged.

Should you have any questions regarding this change, please continue to discuss with your leader in the first instance. Our Employee Assistance Program, a free, confidential, third party counselling service is also available to you and your family members, in person in Newman or via phone on 1800 30 30 90.

Thank you for your continued contribution and commitment and I look forward to a smooth transition.

- 19 It was not contended by the applicants that the shift roster change set out above, was not permitted by the applicants’ contract of employment. In his evidence, Mr Frank accepted that the change introduced at this time, only affected the shift roster and all else remained the same.

### Contentions of the parties

- 20 In short, the applicants submitted that the 2017 roster variation imposed a restriction on the respondent to the effect that their shift hours were to be “12 hours plus handover”. In context, the applicants contended that “handover” means the same thing as a “hot seat change” and refers to the physical handover of a piece of equipment from one operator to another. The applicants maintained that in effect, by arriving at the main gate in time to catch a departing bus at 5.40 am/pm and being required to accept instructions and review allocation screens, they are “working” from this time. As this occurs prior to the actual “handover” of the equipment, either a truck or excavator, to the incoming shift worker, then according to the applicants, they are working about 12.5 hours per day “plus handover”. On the applicants’ construction of their contracts of employment, they are only obliged to work a maximum of 12 hours per shift plus handover. This benefit of a maximum number of working hours per shift, has been denied to them by the respondent, as the argument went.
- 21 The respondent maintained that the applicants could not make out their contention that words used in the 2017 shift roster variation letter being “12 hours plus handover” established any entitlement and imposed a restriction on the respondent in terms of the handover process from one shift to another. The respondent maintained that the one line relied on by the applicants in the 2017 roster variation letter, must be read in the context of the applicants’ contracts of employment, when read as a whole. The 2017 variation, when it referred to “handover”, must be understood in the context of how shift changeovers have been performed at Mount Whaleback as an established process over a lengthy period. The submission was that this has always involved a designated starting point and a nominated shift start time, with one being referable to the other. The respondent therefore contended that the shift changeover arrangement has not changed since 2014. This system is part of the “current roster arrangement” referred to in the 2017 shift roster variation letter.
- 22 In other respects, the respondent also submitted that the relevant terms of the applicants’ contracts of employment, should be read expansively and not in a restrictive fashion, as contended by the applicant. So construed, the respondent contended that there is ample scope in the applicants’ contracts of employment to accommodate their current working arrangements.

### Consideration

- 23 The principles in relation to denied contractual benefits claims are well settled. The relevant claim must relate to an “industrial matter”; the claimant must be an employee; the claimed benefit must be a “contractual benefit” as being one to which the employee is entitled under their contract of service; the relevant contract must be one of service; the benefit must not arise under an award or order of the Commission; and the benefit must have been denied by the employer: *Hotcopper Australia Ltd v David Saab* [2001] WAIRC 00102; (2001) 81 WAIG 2704 at 2707.
- 24 As to the approach to the interpretation of contracts generally, in *King v Griffin Coal Mining Company Pty Ltd* (2017) 97 WAIG 527 I said at pars 11-13 as follows:

11 Some rules have been developed in the cases as to the approach to adopt in construing the terms of a contract. A recent summary of the relevant principles to be applied was set out by the Court of Appeal (WA) in *Black Box Control Pty Ltd v Terravision Pty Ltd* [2016] WASCA 219. In this case, Newnes and Murphy JJA and Beech J observed at par 42:

#### Construction of contracts: general principles

- 42 The principles relevant to the proper construction of instruments are well known, and were not in dispute in this case. In summary:
- (1) The process of construction is objective. The meaning of the terms of an instrument is to be determined by what a reasonable person would have understood the terms to mean.<sup>50</sup>
  - (2) The construction of a contract involves determination of the meaning of the words of the contract by reference to its text, context and purpose.<sup>51</sup>
  - (3) The commercial purpose or objects sought to be secured by the contract will often be apparent from a consideration of the provisions of the contract read as a whole.<sup>52</sup> Extrinsic evidence may nevertheless assist in identifying the commercial purpose or objects of the contract where that task is facilitated by an understanding of the genesis of the transaction, its background, the context and the market in which the parties are operating.<sup>53</sup>
  - (4) Extrinsic evidence may also assist in determining the proper construction where there is a constructional choice, although it is not necessary in this case to determine the question of whether matters external to a contract can be resorted to in order to identify the existence of the constructional choice.<sup>54</sup>
  - (5) If an expression in a contract is unambiguous and susceptible of only one meaning, evidence of surrounding circumstances cannot be adduced to contradict its plain meaning.<sup>55</sup>
  - (6) To the extent that a contract, document or statutory provision is referred to, expressly or impliedly, in an instrument, that contract, document or statutory provision can be considered in construing the instrument, without any need for ambiguity or uncertainty of meaning.<sup>56</sup>
  - (7) There are important limits on the extent to which evidence of surrounding circumstances (when admissible) can influence the proper construction of an instrument. Reliance on surrounding circumstances must be tempered by loyalty to the text of the instrument. Reference to background facts is not a licence to ignore or rewrite the text.<sup>57</sup> The search is for the meaning of what the parties said in the instrument, not what the parties meant to say.<sup>58</sup>

- (8) There are also limits on the kind of evidence which is admissible as background to the construction of a contract, and the purposes for which it is admissible. Insofar as such evidence establishes objective background facts known to the parties or the genesis, purpose or objective of the relevant transaction, it is admissible. Insofar as it consists of statements and actions of the parties reflecting their actual intentions and expectations it is inadmissible. Such statements reveal the terms of the contract which the parties intended or hoped to make, and which are superseded by, or merged into, the contract.<sup>59</sup>
- (9) An instrument should be construed so as to avoid it making commercial nonsense or giving rise to commercial inconvenience.<sup>60</sup> However, it must be borne in mind that business common sense may be a topic on which minds may differ.<sup>61</sup>
- (10) An instrument should be construed as a whole. A construction that makes the various parts of an instrument harmonious is preferable.<sup>62</sup> If possible, each part of an instrument should be construed so as to have some operation.<sup>63</sup>
- (11) Definitions do not have substantive effect. A definition is not to be construed in isolation from the operative provision(s) in which the defined term is used. Rather, the operative provision is ordinarily to be read by inserting the definition into it.<sup>64</sup>
- 12 One question addressed in this matter was the most recent debate in the cases in relation to the need for ambiguity or differences in meaning, in order for a court to have regard to extrinsic evidence. This arises from the principles discussed in *Codelfa Construction Pty Ltd v State Rail Authority of New South Wales* (1982) 149 CLR 337. In this case, Mason J, in what is described as the “true rule” said at par 22:
- 22 The true rule is that evidence of surrounding circumstances is admissible to assist in the interpretation of the contract if the language is ambiguous or susceptible of more than one meaning. But it is not admissible to contradict the language of the contract when it has a plain meaning.
- 13 As to the application of the “true rule”, in *Hancock Prospecting Pty Ltd v Wright Prospecting Pty Ltd* (2012) 45 WAR 29 McLure P observed as follows at pars 74-80:

**The scope of the “true rule” of construction**

- 74 Both parties rely on extrinsic material in support of their submissions as to the proper construction of the 1984 and 1989 Agreements. Accordingly, it is necessary to enlarge on the scope of the “true rule” in *Codelfa*.
- 75 The role of the court in construing a written contract is to give effect to the common intention of the parties. The common intention of the parties is to be ascertained objectively. That is, the meaning of the terms of a contract in writing is to be determined by what a reasonable person would have understood them to mean: *Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd* (2004) 219 CLR 165. The subjective intention or actual understanding of the parties as to their contractual rights and liabilities are irrelevant in the construction exercise.
- 76 The practical limitation flowing from the *Codelfa* true rule is that surrounding circumstances cannot be relied on to give rise to an ambiguity that does not otherwise emerge from a consideration of the text of the document as a whole, including whatever can be gleaned from that source as to the purpose or object of the contract.
- 77 The word “ambiguous”, when juxtaposed by Mason J with the expression “or susceptible of more than one meaning”, means any situation in which the scope or applicability of a contract is doubtful: *Bowtell v Goldsbrough, Mort & Co Ltd* (1905) 3 CLR 444, 456 - 457. Ambiguity is not confined to lexical, grammatical or syntactical ambiguity.
- 78 Moreover, the extent to which admissible evidence of surrounding circumstances can influence the interpretation of a contract depends, in the final analysis, on how far the language of the contract is legitimately capable of stretching. Generally, the language can never be construed as having a meaning it cannot reasonably bear. There are exceptions (absurdity or a special meaning as the result of trade, custom or usage) that are of no relevance in this context.
- 79 Further, on my reading of *Codelfa*, pre-contractual surrounding circumstances are admissible for the purpose of determining whether a term is implied in fact. That may be because the stringent test for the implication of a term in fact excludes any possibility of an implied term contradicting the express terms.
- 80 If extrinsic evidence is admissible, the next issue is the scope of the “surrounding circumstances” for the purpose of construction. Mason J in *Codelfa* also answered that question. He said:

“Generally speaking facts existing when the contract was made will not be receivable as part of the surrounding circumstances as an aid to construction, unless they were known to both parties, although ... if the facts are notorious knowledge of them will be presumed.

It is here that a difficulty arises with respect to the evidence of prior negotiations. Obviously the prior negotiations will tend to establish objective background facts which were known to both parties and the subject matter of the contract. To the extent to which they have this tendency they are admissible. But in so far as they consist of statements and actions of the parties which are reflective of their actual intentions and expectations they are not receivable (352).”

- 25 I am prepared to accept, and the respondent concedes, in my view properly so, that a limit on the time over which an employee may be required to work could constitute a “benefit” under s 29(1)(b)(ii) of the *Industrial Relations Act 1979* (WA). Nonetheless, such a restriction or limitation must still be found in the terms of the contract itself, express or implied. An applicant must also establish, even if the threshold requirements above have been met, that the relevant benefit has been denied. For the applicants to succeed in relation to the denied contractual benefit claims they assert, they need to be able to identify with certainty and precision, the entitlement to work “not more than” the maximum hours contended and the contractual basis for this.
- 26 The applicants place most reliance on the words in the 2017 roster variation letter “12 hours plus handover”. As I understood the applicants’ contentions, it was submitted that at least for the two applicants, this was the first occasion where specific reference was made in writing to shift length and in some manner, this constituted a contractual limitation on the applicants’ hours of work, despite the evidence that shifts have for a long time, been 12 hours in length.
- 27 It needs to be noted at this point, that the letters of 7 November 2017 to the applicants, were about the notification of a change in roster. This notification of change in roster was in accordance with the second paragraph of the Hours of Work clause in the applicants’ contract of employment documents, as set out above. So characterised, the letters from the respondent to the applicants, about which there seems to have been considerable discussion on site in late 2017, involved the exercise by the respondent of a contractual right to change the shift system in operation at Mount Whaleback for “residential frontline workers”, as described in the letter.
- 28 The purpose of the letter, from the first paragraph, was to inform the applicants of the reasons for the change in rosters and what the new roster would be. The terms of the new “roster arrangement” were outlined. Under that heading, the letter was clearly intended, in my view, to provide a short summary of the proposed change for the information of the recipient. The reference to shift length of “12 hours plus handover” does not appear to be a change in any meaningful sense. The evidence of all those who testified in this case, was that the production employees at Mount Whaleback have always, over at least recent history, worked two 12 hour shifts back to back, seven days per week all year round. The start and finish times were not changed. Importantly, there is reference to the “roster arrangement” on two occasions in the letter. The letter expressly states that current “terms and conditions of employment including remuneration, remain unchanged”. This tends to emphasise the purpose of the letter as relating to notification under the applicants’ contracts of employment of the change of roster.
- 29 It is trite to observe that contracts are generally not forged in a vacuum. As is noted in *Blackbox Control*, cited above, background and context are important, especially in the case of ambiguity in terms of contracts. An important part of the background and context in this case, is arrangements for shift changeovers at Mount Whaleback. This is so because the mine is a large and complex operation. One is not dealing with employees arriving at work at a shop, factory or office building. It was clear on the evidence, and it seemed well understood by those who gave evidence and from the considerable documentary material in evidence too, that the process of a shift changeover for operations employees at Mount Whaleback is a significant logistical exercise involving the movement of a substantial number of people in a coordinated fashion to achieve a change in operators of trucks and excavators in the most efficient manner possible. Various iterations of the shift change process were outlined in the evidence, from prior to 2012, in mid-2012 and from early 2014.
- 30 In short and simply put, what has changed over this period is that instead of employees driving themselves to the designated shift start points, they are now transported in buses and light vehicles. Secondly, instead of receiving information from screens as to work locations etc at designated start points, they now receive that information at the front gate, when swiping in at the turnstile. On either system, employees still had and now must arrive at the mine in time to either formerly drive themselves to the designated start point or now, to get the bus or light vehicle to the same location. The evidence seemed to be, and I accept, that one consequence of these changes since 2012, is that now, employees spend less time on the mine site in total, not more.
- 31 It is in this context that the concept of a “handover” must be understood. It is not a term defined in the contract of employment documents. It is referred to separately from “hot seat change” and in my view is not to be regarded as synonymous with the latter concept. Its meaning is informed by practice and custom on the site. That is, the concept of a “handover”, should be construed as part and parcel of the shift change process. To divorce the concept of handover and to isolate it in some way from the process of a change from one shift to another at Mount Whaleback, is in my view, not in accordance with what a reasonable person in the position of the parties to the transaction, at the time they entered into it, that being the shift roster variation, and with the knowledge they then possessed, would conclude. It was common ground that the process of handover, so construed, as part of the shift change as it now operates, had been in place for nearly five years at the time of the hearing of these proceedings. Thus, the words in the roster change variation letter, “Shift Length: ..... 12hrs plus handover”, are to be understood in this context. Whilst nominally so, the total length of a shift is not limited to just 12 hours, as it includes the “handover” process too.
- 32 In view of these observations, I return then to the specific terms of the applicants’ contracts of employment. The first thing to note in relation to the contracts as a general observation, is that they are drafted in language which expresses breadth of meaning and not limitation. Nowhere is it stated in the Hours of Work provision for example, that there is a “maximum” or “not more than” or words to this effect, where reference is made to, for example, “normal hours” as 42 per week. The clause starts with the words “it is expected that ...”. The paragraph then goes on to state that “Circumstances may ...”. Again, these are words of expansion and not of contraction. Importantly, the last sentence, which reads “This has been taken into account in setting your Base Salary ...” makes it clear in my view, that the Hours of Work clause and the Remuneration clause of the contracts are to be read together.
- 33 Accepting this to be correct, I move then to the Remuneration clauses in the contracts of employment. I start with the last subclause first, that dealing with the Shift Component. Shift work is an essential feature of the operations at Mount Whaleback. The words “in accordance with the current shift requirements and roster pattern” sensibly understood, must include, again taken in context, not only the demands of night shift and the disabilities associated with it, but also the “shift requirements”. The words “shift requirements”, in my view, must be taken to also include the arrangements necessary to attend for the relevant working shift, whether it be day or night shift.

- 34 The Operational Component 1 clause has an even more emphatic link between the salaries paid to the applicants and their hours of work. This subclause directly refers to “all additional work time directly associated with your shift roster”. It must be the case that getting to the designated start point, at the beginning of a shift, in the context of a large and complex open cut mining operation, from the front gate, is time “associated with” a shift roster. In my view those words are in and of themselves, broad enough to cover time spent by employees getting from the mine main gate to the designated start point, as a part of the shift change process. This conclusion implicitly accepts the applicants’ contention that when receiving instructions and reading information after having entered the mine site, employees are at work and are working. In my view such instructions and taking directions as to work could only be reasonably seen as lawful directions given by the respondent to employees, as an incident of the common law contract of employment.
- 35 Moreover, the language that follows in this same sentence is even more specific, when it refers by way of example to “handover, hot seat change, 40-42 hours etc ...”. I have already discussed above my view as to how “handover” should be construed. In the case of excavators and in some cases trucks too, on the evidence, a hot seat change occurs where the outgoing operator gets out of the machine and the incoming operator gets into it, whilst it is in operating mode. This is of course, to minimise non-productive time and in the case of excavators, occurs in active mining locations in the pit. Thus, this has a specific and well understood meaning. Logically, again in the context of the evidence, “additional work time associated with” a hot seat change, must include the time to get from the mine entrance to the location of the machine, having regard to the nominal shift start time of 6 am/pm. This must mean, in the context of the evidence in these proceedings, the need to be at the location of the buses for a 5.40 am/pm departure, all of which is time “associated with” this process.
- 36 As to the Base Salary component subclause, I accept the applicants’ contention that the words “unscheduled additional hours” are not applicable in this case. This contemplates, for example, an unplanned interruption to operations of some kind that may require an employee to work additional hours. This could be weather related, a breakdown or some such event. This is not the case here. However, other aspects of this clause, such as the words “considerations for all aspects of working at site operations”, are very broad in scope.
- 37 When one considers these provisions of the applicants’ contracts of employment as a whole, which one must do, and accepting the contention that the applicants, when “swiping in” at the turnstiles and receiving information and instructions about the shift work ahead, are “working”, there is ample to conclude that such time on the mine site when engaging in such activities, is within the scope of the applicants’ contracts of employment. It is for the applicants to establish that their contracts of employment contain the claimed limitation on working hours and that this limitation has been denied to them by the respondent. I am not persuaded that the applicants have established this.

#### Other issues

- 38 The respondent also raised two other contentions in their submission. The first related to the effect of s 23(3) of the Act on the applicants’ claim. The second related to the operation of s 26(1)(a) and (d) of the Act. Given my conclusions in relation to the applicants’ denied contractual benefits claims, it is not necessary for me to consider these issues further.

#### Conclusion

- 39 For the foregoing reasons the applications must be dismissed.

2019 WAIRC 00087

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

#### PARTIES

NOEL WALTON

APPLICANT

-v-

BHP BILLITON IRON ORE PTY LTD

RESPONDENT

#### CORAM

SENIOR COMMISSIONER S J KENNER

#### DATE

THURSDAY, 21 FEBRUARY 2019

#### FILE NO/S

B 52 OF 2018

#### CITATION NO.

2019 WAIRC 00087

#### Result

Order issued

#### Representation

#### Applicant

Mr C Young as agent

#### Respondent

Mr R Dalton of counsel and with him Ms O Klimczak of counsel

#### Order

HAVING heard Mr C Young as agent on behalf of the applicant and Mr R Dalton of counsel and with him Ms O Klimczak of counsel 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 dismissed.

[L.S.]

(Sgd.) S J KENNER,  
Senior Commissioner.

2019 WAIRC 00088

<b>PARTIES</b>	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION DARRYL ISSAC FRANK	<b>APPLICANT</b>
	-v-	
	BHP BILLITON IRON ORE PTY LTD	<b>RESPONDENT</b>
<b>CORAM</b>	SENIOR COMMISSIONER S J KENNER	
<b>DATE</b>	THURSDAY, 21 FEBRUARY 2019	
<b>FILE NO/S</b>	B 53 OF 2018	
<b>CITATION NO.</b>	2019 WAIRC 00088	
<b>Result</b>	Order issued	
<b>Representation</b>		
<b>Applicant</b>	Mr C Young as agent	
<b>Respondent</b>	Mr R Dalton of counsel and with him Ms O Klimczak of counsel	

*Order*

HAVING heard Mr C Young as agent on behalf of the applicant and Mr R Dalton of counsel and with him Ms O Klimczak of counsel 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 dismissed.

[L.S.]

(Sgd.) S J KENNER,  
Senior Commissioner.

2019 WAIRC 00080

	<b>WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION</b>	
<b>CITATION</b>	:	2019 WAIRC 00080
<b>CORAM</b>	:	COMMISSIONER D J MATTHEWS
<b>HEARD</b>	:	TUESDAY, 12 FEBRUARY 2019
<b>DELIVERED</b>	:	WEDNESDAY, 20 FEBRUARY 2019
<b>FILE NO.</b>	:	B 98 OF 2018
<b>BETWEEN</b>	:	DAVID LIGHTFOOT Claimant AND JOSIO PTY LTD Respondent
<b>CatchWords</b>	:	Denied contractual benefits claim - Dispute about terms of contract of employment - Contract partly written and partly oral - Claimant entitled to 80% of money received by respondent for leasing properties - Application granted
<b>Legislation</b>	:	<i>Industrial Relations Act 1979</i>
<b>Result</b>	:	<i>Application granted</i>
<b>Representation:</b>		
<b>Counsel:</b>		
<b>Applicant</b>	:	Mr D Lightfoot
<b>Respondent</b>	:	Ms S Duffy and with her Mr J Barndon

**Case(s) referred to in reasons:**

*County Securities Pty Ltd v Challenger Group Holdings Pty Ltd* [2008] NSWCA 193

*Masterton Homes Pty Ltd v Palm Assets Pty Ltd* (2009) 261 ALR 382

*Reasons for Decision*

- 1 The claimant commenced employment with the respondent as a “Property Sales Representative” under a contract of employment signed by the parties in November 2015.
- 2 His employment ended on 31 October 2017.
- 3 A dispute has now arisen between the parties over whether, when the claimant leased out a property during his employment with the respondent, he was entitled to 80% of the money paid to the respondent by the owner or 50% of the money paid to the respondent by the owner.
- 4 The parties agree that if the claimant is right he is owed \$14,511.49 by the respondent. That is, quantum is not in dispute.
- 5 Clause 5 of the contract of employment is headed “Remuneration” and provides that the claimant will be remunerated on a commission only basis and goes on to provide that “in respect of each completed sale” the claimant will receive the percentage of net commission set out in Appendix A of the contract of employment.
- 6 What may be observed immediately is that neither clause 5, nor any other clause of the contract of employment, makes express provision for the remuneration to be received in the event of the leasing of a property.
- 7 Item 7 of Appendix A is entitled “Incentive Commission”.
- 8 The first paragraph against the heading reads as follows:

The amount of incentive commission to which the employee shall be entitled shall be 80 % of the nett commission received by the Agent.
- 9 The second paragraph against the heading reads as follows:

Property Management fees will be paid as 50% nett of the gross fees received by the Agent.
- 10 The respondent says that the first paragraph cannot apply because it marries up with clause 5 which is about sales and sales only. The respondent says “commissions” are paid only on sales and not on leases.
- 11 The respondent says that, even though the contract of employment does not make this express provision, “leasing” is an incident of “Property Management” and thus is covered by the second paragraph set out above. The respondent says its argument is bolstered because a “fee” is payable upon leasing a property and not a “commission” and the second paragraph refers to “fees”.
- 12 The claimant says he had a discussion with the manager of the respondent soon after the contract of employment was entered into and it was agreed that 80% of the money received by the respondent from owners for the leasing of properties would be paid to the claimant.
- 13 The claimant says, and this is accepted by the respondent, that he was paid 80% of money received from owners for leasing properties throughout his employment and it was only after his employment ended that the respondent decided that he should only have been paid 50% of money received.
- 14 The respondent has withheld money earned from the leasing of two properties by way of reckoning of the difference between the 80% the claimant was paid throughout his employment and the 50% the respondent has decided ought to have been paid. As noted above, the amount withheld is \$14,511.49.
- 15 The respondent’s defence to the claim, which involves reliance entirely on the written terms of the contract of employment and a particular construction of those terms, basically ignores the claimant’s case.
- 16 The evidence of the claimant was that his contract of employment was partly written and partly oral. This evidence was to the effect that there was an agreement between the claimant and the respondent that the claimant would be paid 80% of money received by the respondent from owners in relation to the leasing of properties by him. The claimant says this conversation was necessitated by the fact that the contract of employment was not clear on what was to be paid to him in the event he leased out a property for an owner.
- 17 I watched the claimant give his evidence and saw no obvious reason why I would, without more, reject it. There was no hesitation or obfuscation on the part of the claimant.
- 18 The crucial evidence of the conversation was not challenged or contradicted as part of the respondent’s case. It was not put to the claimant in cross-examination that this had not been agreed and the respondent did not go into evidence.
- 19 I accept the evidence given by the claimant and find that the contract of employment was partly written and partly oral. It is, of course, open for a party to a written agreement to prove that, even though there is a document that on its face appears to be a complete contract, the parties have agreed orally on terms additional to those contained in writing (see *Masterton Homes Pty Ltd v Palm Assets Pty Ltd* (2009) 261 ALR 382).
- 20 The full terms of the contract are established not only by the claimant’s credible testimony but by the conduct of the parties. Where, as I have found here, the contract is only partly in writing I am not prevented from looking at the way the parties acted for the purposes of ascertaining what terms were agreed but not written down (see *County Securities Pty Ltd v Challenger Group Holdings Pty Ltd* [2008] NSWCA 193).

- 21 Throughout his employment the claimant was paid 80% of the money received by the respondent from owners when he leased a property.
- 22 It is hardly surprising that the claimant and respondent had to come to an oral agreement about payment for the leasing of properties. The contract of employment does not specifically deal with it.
- 23 The alleged treatment of the issue as being one within the term "Property Management fees" was, on the evidence, not sufficiently free from doubt as to obviate the need for the conversation the claimant says occurred. For instance, the claimant was able to establish that there were separate agreements with owners for the "leasing" of properties and the "management" of properties, something which raises doubt in my mind about whether "leasing" is truly an incident of, and understood by all to be an incident of, "property management".
- 24 In my view, the terms of the contract of employment were so vague as to invite the conversation which I find occurred.
- 25 The claimant's version of events has a solid ring of truth about it, especially in light of the terms of the contract of employment and the conduct of the parties, and I accept it.
- 26 Accordingly, the full relevant terms of the contract were that:
- (1) The claimant would get 80% of commission received by the respondent when he sold a property (written);
  - (2) The claimant would get 80% of money received by the respondent when he leased a property (oral);
  - (3) The claimant would get 50% of Property Management fees which, in this case, were fees paid for management of a property subsequent to it being leased by the claimant (written).
- 27 Pursuant to (2) above the claimant is owed \$14,511.49.
- 28 I will make an order that this amount be paid forthwith.

2019 WAIRC 00121

<b>PARTIES</b>	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION DAVID LIGHTFOOT	<b>APPLICANT</b>
	-v-	
	JOSIO PTY LTD	<b>RESPONDENT</b>
<b>CORAM</b>	COMMISSIONER D J MATTHEWS	
<b>DATE</b>	MONDAY, 11 MARCH 2019	
<b>FILE NO/S</b>	B 98 OF 2018	
<b>CITATION NO.</b>	2019 WAIRC 00121	

<b>Result</b>	Application granted
<b>Representation</b>	
<b>Applicant</b>	Mr D Lightfoot
<b>Respondent</b>	Ms S Duffy and with her Mr J Barndon

*Order*

HAVING heard from the applicant in person and Ms S Duffy and with her Mr J Barndon for the respondent on Tuesday, 12 February 2019; and

HAVING given Reasons for Decision in which I determined to uphold the application; and

HAVING issued a minute of proposed order on Wednesday, 20 February 2019; and

HAVING heard from the respondent in person and Ms S Duffy and with her Mr J Barndon for the respondent on Friday, 8 March 2019 in relation to the minute of proposed order;

NOW THEREFORE I, the undersigned, pursuant to the powers conferred on me under the *Industrial Relations Act 1979* make the following order:

THAT the respondent pay to the applicant \$14,511.49 on or before 4:00 pm on Monday, 13 May 2019

[L.S.]

(Sgd.) D J MATTHEWS,  
Commissioner.

2019 WAIRC 00081

## WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**CITATION** : 2019 WAIRC 00081  
**CORAM** : COMMISSIONER T EMMANUEL  
**HEARD** : TUESDAY, 19 FEBRUARY 2019  
**DELIVERED** : WEDNESDAY, 20 FEBRUARY 2019  
**FILE NO.** : B 122 OF 2018  
**BETWEEN** : JONATHAN MC CANN  
                   Applicant  
                   AND  
                   DAVID POLAK  
                   DAVLYN ENTERPRISES (WA) PTY LTD  
                   Respondent

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**CatchWords** : Denied contractual benefits – Unpaid wages – Parties have reached an agreement to compromise the claim – Unimpeached compromise agreement – Commission can make orders in the terms of the agreement  
**Legislation** : *Industrial Relations Act 1979* (WA) s 26(1)(a)  
**Result** : Order issued  
**Representation:**  
**Applicant** : In person  
**Respondent** : Mr D Polak (as agent)

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**Cases referred to in reasons:**

*Jaclyn Harrop-Marriner v Tahlia Ferguson trading as Playful Ink* [2018] WAIRC 00739; (2018) 98 WAIG 1241

*Reasons for Decision*

- 1 Mr Mc Cann was employed by the respondent as a project manager from January 2017 until June 2018.
- 2 Soon after Mr Mc Cann referred his claim for denied contractual benefits to the Commission, the parties reached an agreement to settle application B 122 of 2018. The respondent did not comply with that agreement and Mr Mc Cann asked the Commission to hear and determine his claim.
- 3 The respondent has never disputed that Mr Mc Cann was its employee, that the benefit claimed by Mr Mc Cann arises under his contract of employment, nor that it denied Mr Mc Cann a contractual benefit by failing to pay his salary for work performed.
- 4 On the undisputed evidence and submissions, I find that Mr Mc Cann was the respondent's employee and his claim relates to an industrial matter. The benefit claimed by Mr Mc Cann, being his salary, arises under his contract of service and not under an award or order of the Commission. I find the benefit was denied by the respondent.
- 5 The parties agree that they reached an agreement to settle application B 122 of 2018 on the following terms:
  - a. The respondent will pay Mr Mc Cann the entire amount sought by Mr Cann in his application B 122 of 2018, which is \$16,326.16.
  - b. The respondent will pay this amount to Mr Mc Cann in instalments of \$1,000 per week, starting 3 November 2018, until the full amount is paid.
  - c. Mr Mc Cann will discontinue application B 122 of 2018 once the full amount is paid.
- 6 The parties agree that the respondent did not comply with the settlement agreement and instead paid Mr Mc Cann just \$3,500. The respondent says it is unfortunately experiencing financial difficulties which mean it has not been able to comply with the settlement agreement and pay Mr Mc Cann his contractual benefits. The respondent says it owes Mr Mc Cann \$12,826.16.
- 7 I adopt the reasons set out from [15] to [16] of *Jaclyn Harrop-Marriner v Tahlia Ferguson trading as Playful Ink* [2018] WAIRC 00739; (2018) 98 WAIG 1241.
- 8 Now before the Commission is not the claim for denied contractual benefits but the agreement in settlement of that claim. The Commission has inherent power to make an order in the terms of a settlement agreement.
- 9 I find the respondent has not complied with the settlement agreement. For the Commission to make an order in the terms of the settlement agreement is within the Commission's jurisdiction, consistent with the objects of the *Industrial Relations Act 1979* (WA) (**IR Act**) and in accordance with s 26(1)(a) of the IR Act.

- 10 Given the respondent has paid Mr Mc Cann \$3,500 and under the settlement agreement the entire amount was due by 2 March 2019, I will order that the respondent pay Mr Mc Cann \$12,826.16 within 14 days of today's date.

2019 WAIRC 00082

<b>PARTIES</b>	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION JONATHAN MC CANN	<b>APPLICANT</b>
	-v- DAVID POLAK DAVLYN ENTERPRISES (WA) PTY LTD	
<b>CORAM</b>	COMMISSIONER T EMMANUEL	<b>RESPONDENT</b>
<b>DATE</b>	WEDNESDAY, 20 FEBRUARY 2019	
<b>FILE NO/S</b>	B 122 OF 2018	
<b>CITATION NO.</b>	2019 WAIRC 00082	

<b>Result</b>	Order issued
<b>Representation</b>	
<b>Applicant</b>	In person
<b>Respondent</b>	Mr D Polak (as agent)

*Order*

HAVING heard from the applicant in person and Mr D Polak (as agent) on behalf of the respondent, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), orders –

THAT the respondent pay Mr Mc Cann \$12,826.16 within 14 days of today's date.

[L.S.]

(Sgd.) T EMMANUEL,  
Commissioner.

2019 WAIRC 00077

<b>PARTIES</b>	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION PAUL MCGUINNESS	<b>APPLICANT</b>
	-v- PERKINS BUILDERS	
<b>CORAM</b>	SENIOR COMMISSIONER S J KENNER	<b>RESPONDENT</b>
<b>DATE</b>	WEDNESDAY, 20 FEBRUARY 2019	
<b>FILE NO/S</b>	U 133 OF 2018	
<b>CITATION NO.</b>	2019 WAIRC 00077	

<b>Result</b>	Order issued
<b>Representation</b>	
<b>Applicant</b>	No appearance
<b>Respondent</b>	No appearance

*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.

[L.S.]

(Sgd.) S J KENNER,  
Senior Commissioner.

**2019 WAIRC 00076**

**PARTIES** WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION  
VIKAS SAINI **APPLICANT**

-v-  
BUNBURY TAXIS CO-OPERATIVE LIMITED **RESPONDENT**

**CORAM** SENIOR COMMISSIONER S J KENNER  
**DATE** WEDNESDAY, 20 FEBRUARY 2019  
**FILE NO/S** U 125 OF 2018  
**CITATION NO.** 2019 WAIRC 00076

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**Result** Order issued  
**Representation**  
**Applicant** Mr V Saini  
**Respondent** Ms S Davey

*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.

[L.S.]

(Sgd.) S J KENNER,  
Senior Commissioner.

**2019 WAIRC 00129**

**PARTIES** WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION  
THEODORA J. SLOOT **APPLICANT**

-v-  
ALLEGRO GATE AUTOMATION PTY LTD T/A LITESTART AUTOMATIC GATES ABN: 40  
095 334 526 **RESPONDENT**

**CORAM** COMMISSIONER D J MATTHEWS  
**DATE** MONDAY, 18 MARCH 2019  
**FILE NO/S** B 6 OF 2019  
**CITATION NO.** 2019 WAIRC 00129

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**Result** Application dismissed  
**Representation**  
**Applicant** In person  
**Respondent** Mr D Cohen

*Order*

HAVING heard from the applicant in person and Mr D Cohen for the respondent at a conference between the parties on Monday, 11 March 2019;

AND WHEREAS at the conference the parties agreed to settle the matter upon payment from the respondent to the applicant of the sum of \$701.23 and payment from the respondent to the applicant's nominated superannuation fund of the sum of \$1,335.55;

AND WHEREAS the respondent has informed the Western Australian Industrial Relations Commission the settlement amounts were paid on Tuesday, 12 March 2019;

AND WHEREAS the applicant has confirmed payment of the settlement amounts;

NOW THEREFORE I, the undersigned, pursuant to the power conferred on me under the *Industrial Relations Act 1979* hereby order that the application be and is hereby dismissed.

[L.S.]

(Sgd.) D J MATTHEWS,  
Commissioner.

2019 WAIRC 00075

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

SHANE TREW

**APPLICANT**

-v-

FLUOR AUSTRALIA

**RESPONDENT****CORAM**

SENIOR COMMISSIONER S J KENNER

**DATE**

WEDNESDAY, 20 FEBRUARY 2019

**FILE NO/S**

B 109 OF 2018

**CITATION NO.**

2019 WAIRC 00075

<b>Result</b>	Order issued
<b>Representation</b>	
<b>Applicant</b>	Mr S Trew
<b>Respondent</b>	Ms V Stamper 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.

[L.S.]

(Sgd.) S J KENNER,  
Senior Commissioner.

**SECTION 29(1)(b)—Notation of—**

Parties		Number	Commissioner	Result
Kerstin Pielage	Merrill Carmody	B 136/2018	Commissioner T B Walkington	Discontinued
Peter John Fowler	RL & PJ Knight ABN: 87 229 852 161 Ronald L Knight Ptnr Nukleen Drycleaners & New Rag Supplies	U 3/2019	Commissioner T B Walkington	Discontinued
Pippino Pintabona	McCarthy Prestige ABN: 16009070142	U 153/2018	Commissioner T B Walkington	Discontinued
Samantha Fawcett	Merrill Carmody	B 135/2018	Commissioner T B Walkington	Discontinued

**CONFERENCES—Notation of—**

Parties		Commissioner	Conference Number	Dates	Matter	Result
Health Services Union of Western Australia (Union of Workers)	The Chief Executive East Metropolitan Health Service	Emmanuel C	PSAC 2/2018	31/01/2018 05/06/2018 05/06/2018 23/01/2019	Dispute re Union member's substantive working arrangement	Discontinued

**PROCEDURAL DIRECTIONS AND ORDERS—****2019 WAIRC 00091****REVIEW OF DECISION OF THE CONSTRUCTION INDUSTRY LSL PAYMENTS BOARD GIVEN ON 12 JULY 2018**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

PROGRAMMED INDUSTRIAL MAINTENANCE PTY LTD ACN 133892350

**APPLICANT**

-v-

THE CONSTRUCTION INDUSTRY LONG SERVICE LEAVE PAYMENTS BOARD

**RESPONDENT****CORAM**

CHIEF COMMISSIONER P E SCOTT

**DATE**

TUESDAY, 26 FEBRUARY 2019

**FILE NO/S**

APPL 58 OF 2018

**CITATION NO.**

2019 WAIRC 00091

**Result**

Order amended

**Representation****Applicant**

Mr S Davies SC and with him Mr G Giorgi and Ms E Jones of counsel

**Respondent**

Ms R Harding and Ms B Swanson of counsel

*Order*

On Tuesday, 18 December 2018 the Commission issued orders for the hearing of this matter [2018] WAIRC 00904.

On Tuesday, 25 February 2019, the parties advised the Commission that they had conferred about the timing of the requirements set out in the order and sought that the Commission vary Order 4 in respect of the dates for compliance, and provided a Minute of Consent Order.

The Commission has considered the parties' proposal to amend the order and is satisfied that it is appropriate.

Now therefore, pursuant to the powers conferred under the *Industrial Relations Act 1979* and the *Construction Industry Portable Paid Long Service Leave Act 1985* the Commission hereby orders:

1. That Order 4 of [2018] WAIRC 00904 be amended to state that by no later than 4:00 pm on Friday, 15 March 2019 the parties each file and serve:
  - (a) an outline of submissions in relation to the preliminary questions;
  - (b) any additional evidence on which they wish to rely; and
  - (c) a list of authorities.
2. That Order 5 of [2018] WAIRC 00904 be amended to state that by no later than 4:00pm Friday, 29 March 2019 the parties each file and serve an outline of submissions and any evidence in reply.
3. The parties have liberty to apply.

[L.S.]

(Sgd.) P E SCOTT,  
Chief Commissioner.**2019 WAIRC 00114**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

JO ANNE STONES

**APPLICANT**

-v-

DIRECTOR TROY BARBAGALLO

THE HOROLOGIST PTY LTD

**RESPONDENT****CORAM**

COMMISSIONER T B WALKINGTON

**DATE**

THURSDAY, 7 MARCH 2019

**FILE NO.**

B 139 OF 2018

**CITATION NO.**

2019 WAIRC 00114

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<b>Result</b>	Directions issued
<b>Representation</b>	
<b>Applicant</b>	Ms Jo Anne Stones
<b>Respondent</b>	Mr Michael Baldwin (of counsel)

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*Direction*

HAVING heard Ms J Stones on her own behalf and Mr M Baldwin (of counsel) on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979 (WA)* hereby orders –

1. THAT each party shall give an informal discovery by serving its list of documents by Thursday, 21 March 2019;
2. THAT inspection and provision of the documents to each other shall be completed by Thursday, 4 April 2019;
3. THAT the evidence in chief in this matter be adduced by signed witness statements which will stand as the evidence in chief on this matter;
4. THAT the parties file and serve upon one another any signed witness statements upon which they intend to rely on no later than Friday, 26 April 2019;
5. THAT the parties give notice to one another of witnesses they require to attend at the proceedings for the purposes of cross-examination by Friday, 3 May 2019;
6. THAT the applicant and respondent file and serve an outline of submissions and any list of authorities upon which they intend to rely on no later than Friday, 10 May 2019;
7. THAT the matter be listed for hearing for one (1) day after Friday, 17 May 2019; and
8. THAT the parties have liberty to apply at short notice.

(Sgd.) T B WALKINGTON,  
Commissioner.

[L.S.]

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**2019 WAIRC 00125**

**PARTIES**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION  
TRACY CORLESS-CRANE

**APPLICANT**

**-v-**

THE FURNITURE GALLERY OSBORNE PARK PTY LTD TRADING AS THE FURNITURE  
GALLERY OSBORNE PARK

**RESPONDENT**

**CORAM** COMMISSIONER T B WALKINGTON  
**DATE** WEDNESDAY, 13 MARCH 2019  
**FILE NO.** B 148 OF 2018  
**CITATION NO.** 2019 WAIRC 00125

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<b>Result</b>	Direction
<b>Representation</b>	
<b>Applicant</b>	Mr Stephen Edwards of counsel
<b>Respondent</b>	Mr Tom Lankester as agent

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*Direction*

The Commission orders, by consent, that paragraphs (3) - (4) of the Commission's orders of 8 February 2019 be varied as follows:

- (1) THAT the date under paragraph (3) which provides that each party shall give informal discovery by serving its list of documents on the other party be extended from 8 March 2019 to 29 March 2019; and
- (2) THAT the date under paragraph (4) which provides for inspection of documents be extended from 4 April 2019 to 18 April 2019.

(Sgd.) T B WALKINGTON,  
Commissioner.

[L.S.]

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2018 WAIRC 00378

**DISPUTE RE ALLEGED UNFAIR DISMISSAL OF UNION MEMBER**WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION  
STATE SCHOOL TEACHERS' UNION OF W.A. (INCORPORATED)**PARTIES****APPLICANT**

-v-

DIRECTOR GENERAL, DEPARTMENT OF EDUCATION

**RESPONDENT****CORAM** COMMISSIONER D J MATTHEWS**DATE** WEDNESDAY, 20 JUNE 2018**FILE NO.** C 10 OF 2018**CITATION NO.** 2018 WAIRC 00378**Result** Directions made**Representation****Applicant** Mr D Stojanoski, of counsel**Respondent** Mr D Anderson, of counsel and with him Ms A Gifford*Directions*

HAVING heard Mr D Stojanoski, of counsel, for the applicant and Mr D Anderson, of counsel, and with him Ms A Gifford for the respondent on Wednesday, 20 June 2018;

I, the undersigned, pursuant to the powers conferred under the *Industrial Relations Act 1979* hereby direct that:

- (1) The matter be set down for hearing on 8 and 9 October 2018;
- (2) The parties draw up and file an agreed statement of facts no later than 28 days before the date of the hearing;
- (3) The applicant file and serve outlines of evidence no later than 14 days before the date of the hearing;
- (4) The respondent file and serve outlines of evidence no later than seven days before the date of the hearing;
- (5) The applicant file and serve an outline of submissions no later than five working days before the date of the hearing;
- (6) The respondent file and serve an outline of submissions no later than three working days before the date of the hearing;
- (7) Discovery be informal; and
- (8) The parties have liberty to apply at short notice.

(Sgd.) D J MATTHEWS,  
Commissioner.

[L.S.]

2019 WAIRC 00111

**REFERRAL OF DISPUTE**THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL  
HANSSSEN PTY LTD**PARTIES****APPLICANT**

-v-

WORKSAFE WESTERN AUSTRALIA COMMISSIONER

**RESPONDENT****CORAM** COMMISSIONER T B WALKINGTON**DATE** WEDNESDAY, 6 MARCH 2019**FILE NO.** OSH 2, 3 & 4 OF 2018**CITATION NO.** 2019 WAIRC 00111**Result** Consent Order*Order*

The Occupational Safety and Health Tribunal orders by consent that paragraphs (9) - (11) of the Tribunal's orders of 1 November 2018 be varied as follows:

1. The date under paragraph (9) which provides for the applicant to file and serve upon the respondent any affidavits on which the applicant intends to rely be extended from 21 December 2018 to 7 February 2019; and
2. The date under paragraph (10) which provides for the respondent to file and serve upon the applicant any affidavits on which the respondent intends to rely be extended from 1 March 2019 to 22 March 2019; and

3. The date under paragraph (11) which provides for the applicant to file and serve upon the respondent any affidavits in reply on which the applicant intends to rely be extended from 15 March to 5 April 2019.

[L.S.]

(Sgd.) T B WALKINGTON,  
Commissioner.**2019 WAIRC 00112**WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION  
ANNIE DERKACS**PARTIES****APPLICANT**

-v-

TETYANA PODKAS TRADING AS PHOENIX PODIATRY

**RESPONDENT**

**CORAM** COMMISSIONER T B WALKINGTON  
**DATE** WEDNESDAY, 6 MARCH 2019  
**FILE NO.** U 152 OF 2018  
**CITATION NO.** 2019 WAIRC 00112

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**Result** Directions Order

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*Direction*

The Commission, having heard from the applicant, Ms Annie Derkacs and from the respondent, Ms Tetyana Podkas, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

1. THAT each party shall give an informal discovery by serving its list of documents on each other by Friday, 22 March 2019.
2. THAT inspection and provision of the documents to each other shall be completed by Wednesday, 3 April 2019.
3. THAT evidence in chief in this matter be adduced by signed witness statements which will stand as the evidence in chief on this matter.
4. THAT the parties file and serve upon one another any signed witness statements upon which they intend to rely on no later than Wednesday, 24 April 2019.
5. THAT the parties give notice to one another of witnesses they require to attend at the proceedings for the purposes of cross-examination by Wednesday, 1 May 2019.
6. THAT the applicant and respondent file and serve an outline of submissions and any list of authorities upon which they intend to rely on no later than Wednesday, 8 May 2019.
7. THAT the matter be listed for hearing for 1 day on Wednesday, 15 May 2019.
8. THAT the parties have liberty to apply on short notice.

[L.S.]

(Sgd.) T B WALKINGTON,  
Commissioner.**INDUSTRIAL AGREEMENTS—Notation of—**

Agreement Name/Number	Date of Registration	Parties		Commissioner	Result
Department of Justice Prison Officers' Industrial Agreement 2018 AG 3/2019	02/20/2019	The Director General The Department of Justice	The Secretary Western Australian Prison Officers' Union of Workers	Commissioner D J Matthews	Agreement registered
WA Health System Engineering and Building Services Industrial Agreement 2019 AG 22/2018	03/13/2019	The Health Service Providers established pursuant to section 32(1)(b) of the Health Services Act 2016 (WA) which include: (i) Child and Adolescent Health Service; (ii) East Metropolitan Health Service	Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers' Union of Australian Engineering and Electrical Division, Western Australia Branch; Plumbers and Gasfit	Commissioner T Emmanuel	Agreement registered

**NOTICES—Appointments—****2019 WAIRC 00106**APPOINTMENTADDITIONAL PUBLIC SERVICE ARBITRATOR

I, the undersigned Chief Commissioner of the Western Australian Industrial Relations Commission, acting pursuant to the provisions of section 80D(2) of the *Industrial Relations Act 1979*, hereby appoint, subject to the provisions of the Act, Commissioner D J Matthews to be an additional Public Service Arbitrator for an additional period from the 21<sup>st</sup> day of March 2019 until the 30<sup>th</sup> day of June 2019.

Dated the 5<sup>th</sup> day of March 2019.

[L.S.]

(Sgd.) P E SCOTT,  
Chief Commissioner.

**2019 WAIRC 00107**APPOINTMENTADDITIONAL PUBLIC SERVICE ARBITRATOR

I, the undersigned Chief Commissioner of the Western Australian Industrial Relations Commission, acting pursuant to the provisions of section 80D(2) of the *Industrial Relations Act 1979*, hereby appoint, subject to the provisions of the Act, Commissioner T Emmanuel to be an additional Public Service Arbitrator for an additional period from the 8<sup>th</sup> day of March 2019 to the 30<sup>th</sup> day of June 2019.

Dated the 5<sup>th</sup> day of March 2019.

[L.S.]

(Sgd.) P E SCOTT,  
Chief Commissioner.

**PUBLIC SERVICE APPEAL BOARD—****2019 WAIRC 00120****APPEAL AGAINST THE DECISION GIVEN ON 20 JULY 2018**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

LORRAINE ALLEN

**APPELLANT****-v-**

THE DIRECTOR GENERAL, DR ADAM TOMISON  
THE DEPARTMENT OF JUSTICE

**RESPONDENT****CORAM**

PUBLIC SERVICE APPEAL BOARD  
COMMISSIONER T EMMANUEL - CHAIR  
MS B CONWAY - BOARD MEMBER  
MR M HAMMOND - BOARD MEMBER

**DATE**

MONDAY, 11 MARCH 2019

**FILE NO**

PSAB 18 OF 2018

**CITATION NO.**

2019 WAIRC 00120

<b>Result</b>	Appeal discontinued
<b>Representation</b>	
<b>Appellant</b>	In person
<b>Respondent</b>	Mr J Carroll (of counsel)

*Order*

WHEREAS this is an appeal to the Public Service Appeal Board pursuant to s 80I of the *Industrial Relations Act 1979* (WA); and  
WHEREAS on 18 January 2019 the appellant informed the Public Service Appeal Board she intended to discontinue this appeal and file a notice of discontinuance; and

WHEREAS the respondent does not object to this appeal being discontinued;

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

THAT this appeal be, and hereby is, discontinued.

[L.S.]

(Sgd.) T EMMANUEL,  
Commissioner,  
On behalf of the Public Service Appeal Board.

2019 WAIRC 00122

APPEAL AGAINST THE DECISION TO TAKE DISCIPLINARY ACTION ON 14 DECEMBER 2017

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**CITATION** : 2019 WAIRC 00122  
**CORAM** : PUBLIC SERVICE APPEAL BOARD  
 COMMISSIONER T EMMANUEL – CHAIR  
 MR D HILL – BOARD MEMBER  
 MS R SINTON – BOARD MEMBER  
**HEARD** : TUESDAY, 19 FEBRUARY 2019  
**DELIVERED** : MONDAY, 11 MARCH 2019  
**FILE NO.** : PSAB 25 OF 2018  
**BETWEEN** : LYNETTE ANN CALVERT  
 Appellant  
 AND  
 PATHWEST LABORATORY MEDICINE WA  
 Respondent

**CatchWords** : Public Service Appeal Board – Out of time – Significant delay and prejudice to the respondent – Appeal dismissed  
**Legislation** : Regulation 107(2) of the *Industrial Relations Commission Regulations 2005* (WA)  
**Result** : Appeal dismissed  
**Representation:**  
**Appellant** : In person  
**Respondent** : Mr J Carroll (of counsel)

**Cases referred to in reasons:**

*Jackamara v Krakouer* [1998] HCA 27; (1998) 195 CLR 516

*Michael Christian Nicholas v Department of Education and Training* [2008] WAIRC 01645; (2009) 89 WAIG 817

*Reasons for Decision*

- 1 These are the unanimous reasons of the Public Service Appeal Board (**Board**).
- 2 At the time of her appeal, Ms Lynette Calvert was employed as a Medical Scientist by PathWest Laboratory Medicine WA (**PathWest**). On 10 January 2018 Ms Calvert received a letter from PathWest confirming that an allegation she breached WA Health Code of Conduct requirements was substantiated, and that she had been given a final written warning.
- 3 More than nine months later, Ms Calvert filed an appeal to the Board asking for ‘alteration of the Final Warning for a Disciplinary Action for alleged Breach of the Code of Conduct’ and for ‘PathWest to adhere to the Public Sector of Grievance and Discipline Standards’.
- 4 Appeals of this type should be made within 21 days. In summary, Ms Calvert says her appeal is more than eight months out of time because of:
  - a. anxiety and stress ‘from [six] years of bullying behaviours’;
  - b. feeling intimidated by PathWest’s disciplinary process and approach to confidentiality;
  - c. being unaware of the Western Australian Industrial Relations Commission;
  - d. continued bullying from managers; and
  - e. a realisation, after she received a second set of allegations on 14 May 2018, that she ‘was not being treated fairly or impartially and wanted procedural fairness’.
- 5 PathWest argues the Board should not accept Ms Calvert’s appeal out of time.

**What must the Board decide?**

- 6 The Board must decide whether it should accept Ms Calvert’s appeal out of time.

**Relevant principles**

- 7 The principles the Board must consider are set out in *Michael Christian Nicholas v Department of Education and Training* [2008] WAIRC 01645; (2009) 89 WAIG 817 from paragraphs [10]-[14].

- 8 They include the length of the delay, the reason for the delay, whether the appellant has an arguable case and whether there would be any prejudice to the respondent if the appeal is accepted out of time.

#### **Length of the delay**

- 9 The decision to take disciplinary action was made on 10 January 2018.
- 10 Regulation 107(2) of the *Industrial Relations Commission Regulations 2005* (WA) provides the time limit for filing an appeal to the Board. It states:
- An appeal may be commenced within 21 days after the date of the decision, finding, determination or recommendation in respect of which the appeal is made or where that decision, finding, determination or recommendation is published in the *Government Gazette* within one month of the date of that publication.
- 11 Ms Calvert had until 31 January 2018 to appeal. Her appeal is more than eight months out of time.
- 12 PathWest argues a delay of more than eight months is very long where the appeal period is 21 days.
- 13 The Board finds the delay is significant.

#### **Reason for the delay**

- 14 Ms Calvert gave evidence that she was experiencing anxiety and stress as a result of the disciplinary processes, had lost confidence in her managers and was being bullied by those managers.
- 15 Ms Calvert says she was unaware that she could appeal the decision to take disciplinary action. Although Ms Calvert says she was a union member in late November 2017, her union was not able to assist her with her appeal because she was not a member until late in the first disciplinary process.
- 16 Broadly, Ms Calvert says she was not aware she could have filed an appeal to the Board until after the second set of allegations had been put to her in May 2018, when she 'decided to be more proactive'. At that time, she did some research, including online research and became aware of WorkSafe. She made a complaint to WorkSafe around June 2018.
- 17 Ms Calvert gave evidence that she was told by WorkSafe to make a complaint to the Public Sector Commission about her concerns in relation to public sector standards, which she did in around June 2018. Ms Calvert says someone at the Public Sector Commission told her about the Western Australian Industrial Relations Commission (**Commission**) in around August 2018.
- 18 Ms Calvert was asked questions in cross-examination about why she did not take active steps to find out how to contest the decision to take disciplinary action. She gave a range of answers, including that her union was not helpful about bullying, she did not 'come across anything' and she did not have the time. Ms Calvert's evidence was that she did not want to put in another complaint, because there was no point. She was not aware of the appeal process and the Commission. She thought 'it was best to just hope for the best.' Ms Calvert found it time consuming to respond twice to the allegations put to her in May 2018. Her priority from May 2018 was to respond to those allegations and that took weeks.
- 19 Ms Calvert agreed in cross-examination that she was given a copy of PathWest's discipline policy in November 2017. It included the following:

#### **9. APPEAL RIGHTS**

The right of appeal depends on the particular terms of an employee's engagement. Depending on what is being claimed, a right of appeal may fall within the jurisdiction of the Western Australian Industrial Relations Commission or another administrative tribunal.

When it was put to Ms Calvert in cross-examination that she had the ability to find out for herself how to challenge the decision but she did not, in circumstances where she was able to make complaints to WorkSafe and the Public Sector Commission, as well as internal grievances about bullying, Ms Calvert replied that the appeal avenue should have been made clear in the letter confirming the disciplinary action.

- 20 When asked in cross-examination why she was not talking to her union about what she could do about the January decision to take disciplinary action before May 2018, Ms Calvert said it was because she was not a member until after she received the 10 January 2018 letter and her union was not helpful about bullying, although she conceded bullying is different to appealing disciplinary action.
- 21 PathWest says stress, anxiety and intimidation do not explain the delay between June and October 2018 because Ms Calvert agreed she was quite happy in June 2018 to lodge complaints with two external agencies and make internal complaints as well. Any stress, anxiety or intimidation must have lifted by that point.
- 22 PathWest says the policy Ms Calvert agrees she received in November 2017 had some information about appeal rights. Further, Ms Calvert was a member of a union and she was also able to research complaint options for herself. That Ms Calvert 'decided to be proactive' after she received the second allegations in May 2018 is not a reason for the delay and it does not explain the delay between June and October 2018.

#### **Consideration**

- 23 It was apparent from Ms Calvert's evidence that she did not actively seek industrial or legal advice about how she could appeal the decision to take disciplinary action. Nor did she take steps to research how to appeal an employer's decision to take disciplinary action, for example by doing internet research about that. While the Board accepts that Ms Calvert was stressed and anxious, she did not provide any medical evidence or other evidence to support a finding that she was incapable of bringing her appeal earlier or within the time limit. To the contrary, Ms Calvert's evidence is that she was not on personal leave at the relevant time. Further, it is apparent Ms Calvert had the ability to, and did, follow up her concerns about the workplace, internally and externally, months before she finally appealed to the Board.
- 24 Ms Calvert has not adequately explained why she did not take active steps to find out how to appeal the disciplinary action within the time limit, nor why she did not make her appeal as soon as she was told about the Commission in August 2018.
- 25 In the circumstances, the Board is not satisfied that Ms Calvert has an adequate reason for the long delay.

**Whether Ms Calvert has an arguable case**

- 26 Ms Calvert says she has an arguable case because the investigation was poor, PathWest breached public sector standards and did not provide procedural fairness, and the penalty was disproportionate.
- 27 PathWest says Ms Calvert's arguments about a lack of procedural fairness because she was not given sufficient detail about the allegations fall away, because she conceded in her response to the allegations that she had acted inappropriately by overreacting and losing control of her emotions. She must have been sufficiently aware of the allegations to make that concession. At the hearing Ms Calvert did not deny making the concession but said she now retracts it.
- 28 PathWest says Ms Calvert's arguments that a particular decision maker was not impartial fall away as well, because Ms Calvert accepted in cross-examination that she had never engaged with the decision maker and he had had no involvement with her either. There is no substance to her suggestion that he was not impartial. Ms Calvert's argument that she was intimidated due to other allegations has no bearing on whether she has an arguable case.

**Consideration**

- 29 It would not be unfair to dismiss an appeal that was filed out of time if it could not succeed.
- 30 At this preliminary stage, the Board's assessment of the merits is 'fairly rough and ready': *Jackamarra v Krakouer* [1998] HCA 27; (1998) 195 CLR 516 [9] (Brennan CJ & McHugh J). The Board does not consider that Ms Calvert's claim could not succeed. Her case is arguable.

**Whether there would be any prejudice to PathWest**

- 31 Ms Calvert says there would be no prejudice to PathWest if her appeal is accepted out of time.
- 32 PathWest says it would be prejudiced, because of the obvious and significant disharmony that will result in its workplace if Ms Calvert is allowed to make allegations of bullying, more than eight months after the decision, against almost everyone in her workplace. Such a matter needs to be brought quickly, so that the matter and the upheaval it will cause to the workplace can be resolved.

**Consideration**

- 33 The Board accepts PathWest's submission that it would be prejudiced if Ms Calvert's appeal is accepted out of time.

**Conclusion**

- 34 The Board has considered the delay of more than eight months, Ms Calvert's reasons for the delay, that the case is arguable and that PathWest would be prejudiced.
- 35 In the circumstances, the Board considers that Ms Calvert could have done much more, much earlier, to find out how she could appeal the decision to take disciplinary action. Her reasons do not adequately explain the significant delay.
- 36 The Board is not persuaded it should accept Ms Calvert's appeal out of time. Her appeal is dismissed.

2019 WAIRC 00119

**APPEAL AGAINST THE DECISION TO TAKE DISCIPLINARY ACTION ON 14 DECEMBER 2017**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

LYNETTE ANN CALVERT

**APPELLANT**

-v-

PATHWEST LABORATORY MEDICINE WA

**RESPONDENT****CORAM**

PUBLIC SERVICE APPEAL BOARD  
 COMMISSIONER T EMMANUEL – CHAIR  
 MR D HILL – BOARD MEMBER  
 MS R SINTON – BOARD MEMBER

**DATE**

MONDAY, 11 MARCH 2019

**FILE NO**

PSAB 25 OF 2018

**CITATION NO.**

2019 WAIRC 00119

**Result**

Appeal dismissed

**Representation****Appellant**

In person

**Respondent**

Mr J Carroll (of counsel)

*Order*

HAVING heard from the appellant in person and Mr J Carroll (of counsel) on behalf of the respondent, the Public Service Appeal Board, pursuant to the powers conferred under the *Industrial Relations Act 1975* (WA), orders –

THAT this appeal be, and by this order is, dismissed.

[L.S.]

(Sgd.) T EMMANUEL,  
Commissioner,  
On behalf of the Public Service Appeal Board.

2018 WAIRC 00059

**APPEAL AGAINST THE DECISION TO TERMINATE EMPLOYMENT ON 3 OCTOBER 2017**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

LUKE KRISTIAN DYMOCK

**APPELLANT**

**-v-**

LANDGATE

**RESPONDENT**

**CORAM**

PUBLIC SERVICE APPEAL BOARD  
COMMISSIONER D J MATTHEWS - CHAIRMAN  
MR G RICHARDS - BOARD MEMBER  
MR N WITKOWSKI - BOARD MEMBER

**DATE**

TUESDAY, 30 JANUARY 2018

**FILE NO**

PSAB 21 OF 2017

**CITATION NO.**

2018 WAIRC 00059

<b>Result</b>	Orders made
<b>Representation</b>	
<b>Appellant</b>	In person
<b>Respondent</b>	Mr J Carroll of counsel

*Orders*

HAVING heard the appellant on his own behalf and Mr J Carroll, of counsel, for the respondent, the Public Service Appeal Board pursuant to the powers conferred on it under the *Industrial Relations Act 1979* (WA) hereby orders:

1. That the respondent provide informal discovery to the appellant.
2. That the matter be listed for a one day hearing on a date to be fixed.
3. That the parties have liberty to apply.

[L.S.]

(Sgd.) D J MATTHEWS,  
Commissioner,  
On behalf of the Public Service Appeal Board.

2018 WAIRC 00172

**APPEAL AGAINST THE DECISION TO TERMINATE EMPLOYMENT ON 3 OCTOBER 2017**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**CITATION**

: 2018 WAIRC 00172

**CORAM**

: PUBLIC SERVICE APPEAL BOARD  
COMMISSIONER D J MATTHEWS- CHAIRMAN  
MR G RICHARDS - BOARD MEMBER  
MR N WITKOWSKI - BOARD MEMBER

**HEARD**

: WEDNESDAY, 21 FEBRUARY 2018

**DELIVERED**

: MONDAY, 12 MARCH 2018

**FILE NO.**

: PSAB 21 OF 2017

**BETWEEN**

: LUKE KRISTIAN DYMOCK  
Appellant  
AND  
LANDGATE  
Respondent

CatchWords : Application to stay appeal - Legislation and principles considered - Appeal stayed  
 Legislation : *Industrial Relations Act 1979*  
 Result : Appeal stayed

**Representation:**

Counsel:  
 Appellant : In person  
 Respondent : Mr J Carroll of counsel  
 Solicitors:  
 Respondent : State Solicitors Office

*Reasons for Decision*

- 1 On 27 October 2017 the appellant lodged a Notice of Appeal to the Public Service Appeal Board in which he contests the respondent's decision to terminate his employment on 2 October 2017 and seeks reinstatement.
- 2 It now transpires that the appellant has been charged by the Western Australian Police Service with a criminal offence (or offences) arising out of the matter in relation to which the respondent terminated the appellant's employment.
- 3 The appellant now seeks a stay of these proceedings until such time as the criminal charge (or charges) relating to the matter have been resolved at first instance.
- 4 That is, the appellant seeks a stay of these proceedings until the criminal charge (or charges) have been determined following a trial or plea.
- 5 While the Board notes that it has a legislative duty upon it to resolve matters expeditiously, and understands that the respondent's preference is that the matter be heard expeditiously, the Board takes the view that an accused person's right to silence in a criminal jurisdiction is an important one and where the person seeking a remedy from the Board wishes to delay the seeking of that remedy to preserve the right that is to be given great weight.
- 6 The respondent did not point to any particular prejudice to it that would, or might, result from the present proceedings being stayed and, commendably and sensibly, its opposition to the stay was not strong.
- 7 The present appeal will be stayed pending further communication from the parties in relation to the resolution of the criminal matter (or matters).

**2018 WAIRC 00173****APPEAL AGAINST THE DECISION TO TERMINATE EMPLOYMENT ON 3 OCTOBER 2017**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

LUKE KRISTIAN DYMOCK

**APPELLANT**

-v-

LANDGATE

**RESPONDENT****CORAM**

PUBLIC SERVICE APPEAL BOARD  
 COMMISSIONER D J MATTHEWS - CHAIRMAN  
 MR G RICHARDS - BOARD MEMBER  
 MR N WITKOWSKI - BOARD MEMBER

**DATE**

MONDAY, 12 MARCH 2018

**FILE NO**

PSAB 21 OF 2017

**CITATION NO.**

2018 WAIRC 00173

**Result** Appeal stayed  
**Representation**  
**Appellant** In person  
**Respondent** Mr J Carroll of counsel

*Order*

HAVING heard the appellant on his own behalf and Mr J Carroll, of counsel, for the respondent, the Public Service Appeal Board pursuant to the powers conferred on it under the *Industrial Relations Act 1979* (WA) hereby orders:

THAT the appeal be stayed pending further order for the reasons given in the reasons for decision published Monday, 12 March 2018.

[L.S.]

(Sgd.) D J MATTHEWS,  
Commissioner,  
On behalf of the Public Service Appeal Board.

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## RECLASSIFICATION APPEALS—

2019 WAIRC 00090

**PARTIES**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION  
RUSSELL HEALY

**APPLICANT**

-v-

DEPARTMENT OF JUSTICE

**RESPONDENT****CORAM**

COMMISSIONER D J MATTHEWS

**DATE**

MONDAY, 25 FEBRUARY 2019

**FILE NO/S**

PSA 1 OF 2018

**CITATION NO.**

2019 WAIRC 00090

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**Result** Order issued

**Representation****Applicant**

Mr R Healy

**Respondent**

Mr F Furey

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*Order*

HAVING heard from the applicant in person and Mr F Furey for the respondent on Monday, 25 February 2019;

NOW THEREFORE I, the undersigned, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby order that the respondent comply with clause 2 of Practice Note No. 1 of 2018, by close of business on Friday, 8 March 2019.

[L.S.]

(Sgd.) D J MATTHEWS,  
Commissioner.

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## ROAD FREIGHT TRANSPORT INDUSTRY TRIBUNAL—Matters Dealt With—

2016 WAIRC 00938

IN THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION  
SITTING AS

THE ROAD FREIGHT TRANSPORT INDUSTRY TRIBUNAL

**PARTIES**

GUY COURT

**APPLICANT**

-v-

MATT SHARP, BIS INDUSTRIES

**RESPONDENT****CORAM**

COMMISSIONER D J MATTHEWS

**DATE**

FRIDAY, 16 DECEMBER 2016

**FILE NO/S**

RFT 8 OF 2016

**CITATION NO.**

2016 WAIRC 00938

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**Result** Orders made

**Representation****Applicant**

Mr S Sandhu (of Counsel)

**Respondent**

Ms J Scott (of Counsel) and with her Mr G Brentson (of Counsel)

*Order*

HAVING heard Mr S Sandhu, of Counsel, for the applicant and Ms J Scott, of Counsel, and with her Mr G Brentson, of Counsel, for the respondent on 16 December 2016;

NOW THEREFORE I, the undersigned, pursuant to the powers conferred on me under the *Industrial Relations Act 1979* and by the consent of the parties make the following orders:

1. The respondent will provide discovery, by way of redacted documents, of the fuel supply agreements referred to in paragraph 21.3 of its amended Notice of Answer by 23 December 2016.
2. The respondent will provide inspection to the applicant's accountant of spreadsheets from the fuel suppliers on the price at which the respondent purchased fuel by 23 December 2016.
3. The respondent will seek particulars from the applicant by close of business 21 December 2016.
4. The applicant will give such particulars within 21 days of receipt of the request referred to in Order 3.

(Sgd.) D J MATTHEWS,  
Commissioner.

[L.S.]

2018 WAIRC 00289

**REFERRAL OF DISPUTE**

IN THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION  
SITTING AS

THE ROAD FREIGHT TRANSPORT INDUSTRY TRIBUNAL

**PARTIES**

GUY COURT

**APPLICANT**

-v-

MATT SHARP, BIS INDUSTRIES

**RESPONDENT**

**CORAM**

COMMISSIONER D J MATTHEWS

**DATE**

MONDAY, 7 MAY 2018

**FILE NO/S**

RFT 8 OF 2016

**CITATION NO.**

2018 WAIRC 00289

**Result**

Orders made

**Representation**

**Applicant**

Mr S Sandhu of counsel

**Respondent**

Mr R Lilburne of counsel

*Orders*

HAVING heard Mr S Sandhu of counsel for the applicant and Mr R Lilburne of counsel for the respondent of Monday, 7 May 2018;

NOW THEREFORE I, the undersigned, pursuant to the powers conferred under the *Owner-Drivers (Contract and Disputes) Act 2007* hereby order:

- (1) The applicant file and serve an amended statement of claim by Friday, 18 May 2018.
- (2) The respondent file and serve an amended response to the applicant's amended statement of claim by Friday, 1 June 2018.
- (3) That the name of the respondent in RFT 8 of 2016 be amended to "BIS Industries Ltd".
- (4) The application be relisted for a directions hearing in the week commencing 10 June 2018.

(Sgd.) D J MATTHEWS,  
Commissioner.

[L.S.]

2019 WAIRC 00096

**REFERRAL OF DISPUTE  
IN THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION  
SITTING AS**

**THE ROAD FREIGHT TRANSPORT INDUSTRY TRIBUNAL**

**CITATION** : 2019 WAIRC 00096  
**CORAM** : COMMISSIONER D J MATTHEWS  
**HEARD** : TUESDAY, 22 JANUARY 2019, WEDNESDAY, 23 JANUARY 2019  
**DELIVERED** : WEDNESDAY, 27 FEBRUARY 2019  
**FILE NO.** : RFT 8 OF 2016  
**BETWEEN** : GUY COURT  
 Applicant  
 AND  
 BIS INDUSTRIES LTD  
 Respondent

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**CatchWords** : Referral of dispute - Owner-driver contract - Whether respondent engaged in unconscionable conduct in relation to acquisition of the applicant's services - Whether contract breached in relation to fuel prices - Claims dismissed

**Legislation** : *Owner-Drivers (Contracts and Disputes) Act 2007*

**Result** : Claims dismissed

**Representation:**

**Counsel:**

**Applicant** : Mr R Moore as agent

**Respondent** : Mr T Russell of counsel

**Solicitors:**

**Applicant** : (Not applicable)

**Respondent** : Ashurst

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*Reasons for Decision*

- 1 On 25 June 2016 Mr Guy Court, an "owner-driver" for the purposes of the *Owner-Driver (Contracts and Disputes) Act 2007*, referred several matters to this Tribunal. Those matters arose out of an "owner-driver contract" between Mr Court and the respondent as that term is defined by the *Owner-Driver (Contracts and Disputes) Act 2007*.
- 2 Between 25 June 2016 and the date of the hearing to which this decision relates, there was a great deal of activity on the matter, and some disputes were resolved. Ultimately, two issues were litigated before the Tribunal being:
  - (1) Mr Court's claim that the respondent had engaged in conduct that was, in all the circumstances, unconscionable with respect to him in relation to the acquisition of his services; and
  - (2) Mr Court's claim that, contrary to the owner-driver contract, the respondent had not facilitated his receipt of fuel at a price "substantially cheaper than bowser price."
- 3 At the end of the two day hearing Mr Court was told by me that his claims would fail and that my reasons for this would be delivered in due course.
- 4 These are those reasons.
- 5 In relation to (1) above, Mr Court led no evidence that even raised a question about the quality of the respondent's conduct, let alone entered the territory of having me consider whether the conduct was unconscionable as that term is used in section 30 *Owner-Driver (Contracts and Disputes) Act 2007*.
- 6 The evidence led by Mr Court of alleged relevance was that other owner-drivers engaged by the respondent to do broadly similar work to that done by Mr Court paid less for fuel than Mr Court did under their agreements with the respondent.
- 7 That other owner-drivers may have paid less for fuel than Mr Court cannot without more, establish unconscionable conduct. There has to be some evidence actually going to unconscionability for the issue to arise.
- 8 In this case there was no such evidence.
- 9 Mr Court may have imagined that it might be enough to point to different treatment to make out unconscionable conduct, perhaps encouraged by such magnification of section 30(2)(f) *Owner-Driver (Contracts and Disputes) Act 2007* that it no longer took its place, in Mr Court's mind, as merely a possible indicia of unconscionability among many other relevant matters.

- 10 In truth, not only was section 30(2)(f) *Owner-Driver (Contracts and Disputes) Act 2007* blown out of all proportion by Mr Court, there was no evidence really led to even bring it properly into play. I learned nothing about whether the respondent's conduct toward Mr Court was consistent with its conduct in similar transactions between the respondent and other similar owner-drivers. All Mr Court could tell me was that some of them paid less for fuel. The differences, to the extent they were established, do not even give rise to a suspicion of unconscionability let alone make it out.
- 11 It is to be noted that Mr Court raised nothing about the circumstances which led to him entering the owner-driver contract as being unfair or that the owner-driver contract was in itself uncommercial or unfair in any way. It was only said to be unfair due to a supposed comparison which I ultimately find to be so limited, and so uninformed, as to be, in a matter where all the circumstances should be considered, completely meaningless.
- 12 In relation to (2) above, Mr Court said he got, over the course of his engagement with the respondent, a discount on fuel of 11%, as compared to the bowser price. No evidence was led or argument made to the effect that this was not "substantially cheaper than the bowser price".
- 13 Mr Court's claims litigated before me fail and are dismissed.

2019 WAIRC 00097

**REFERRAL OF DISPUTE**

IN THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION  
SITTING AS

THE ROAD FREIGHT TRANSPORT INDUSTRY TRIBUNAL

**PARTIES**

GUY COURT

**APPLICANT**

-v-

BIS INDUSTRIES LTD

**RESPONDENT****CORAM**

COMMISSIONER D J MATTHEWS

**DATE**

WEDNESDAY, 27 FEBRUARY 2019

**FILE NO/S**

RFT 8 OF 2016

**CITATION NO.**

2019 WAIRC 00097

**Result**

Claims dismissed

**Representation****Applicant**

Mr R Moore as agent

**Respondent**

Mr T Russell of counsel

*Order*

HAVING heard Mr R Moore, as agent, for the applicant and Mr T Russell, of counsel, for the respondent on Tuesday, 22 January 2019 and Wednesday, 23 January 2019; and

HAVING given Reasons for Decision in which I determined to dismiss the claims;

NOW THEREFORE I, the undersigned, pursuant to the powers conferred on me under the *Industrial Relations Act 1979* and the *Owner-Drivers (Contracts and Disputes) Act 2007* hereby order that the applicant's claims be, and are hereby, dismissed.

(Sgd.) D J MATTHEWS,  
Commissioner.

[L.S.]