

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Collins v State of Queensland (Department of Education)* [2024] QIRC 086

PARTIES: **Collins, Sabrina Louise**
(Applicant)

v

State of Queensland (Department of Education)
(Respondent)

CASE NO: TD/2023/130

PROCEEDING: Application for Reinstatement

DELIVERED ON: 18 April 2024

MEMBER: McLennan IC

HEARD AT: On the papers

ORDERS:

- 1. The application for an extension of time in matter TD/2023/130 is dismissed.**
- 2. The application for reinstatement in matter TD/2023/130 is dismissed.**

CATCHWORDS: INDUSTRIAL LAW – APPLICATION FOR REINSTATEMENT – application filed beyond statutory time limit – factors informing discretion to extend time – whether a dismissal occurred

LEGISLATION: *Industrial Relations Act* 2016 (Qld) s 3, s 317

CASES: *Aon Risk Services Australia Limited v Australian National University* (2009) 239 CLR 175

Breust v QANTAS Airways Ltd (1995) 149 QGIG 777

Brisbane South Regional Health Authority v Taylor (1996) 186 CLR 541

Brodie-Hanns v MTV Publishing Ltd (1995) 67 IR 298

Bruce Anthony Piggott v State of Queensland
[2010] ICQ 35

*Cheval Properties Pty Ltd t/a Penrith Hotel
Motel v Smithers* (2010) 197 IR 403

*Geoffrey John Erhardt v Goodman Fielder
Food Services Limited* (1999) 163 QGIG 20

House v The King (1936) 55 CLR 499

Hurrell v Queensland Cotton Corporation Ltd
(2003) 125 IR 145

*Megan Reimers v Aramaki Company
(Australia) t/a Camira Child Care Centre*
[2002] 170 QGIG 1010

*Roger Carter Paterson v Medical Benefits
Fund of Australia Limited* (1998) 159 QGIG
232

*Susan Lloyd v State of Queensland
(Department of Communities, Child Safety and
Disability Services)* [2015] QIRC 138

Tonia Shelley v McRoberts Agency [2009] 190
QGIG 189

*Wantling v Department of Community Safety
(Queensland Corrective Services)* (2013)
QIRC 43

Reasons for Decision

Appeal Details

- [1] Ms Sabrina Collins (the Applicant) was formerly employed by the Department of Education (the Department), State of Queensland (the Respondent).
- [2] On 20 January 2020 Ms Collins commenced work with the Department, as a teacher employed on a temporary basis. She undertook various temporary engagements in South-East region schools.
- [3] Ms Collins' temporary engagement ceased on 9 December 2022. However, the last day that she actually attended work at Shailer Park State High School (SPSHS) was 26 August 2022. The Respondent submitted that Ms Collins came to work that day:

... appearing to be under the influence of illicit substances and / or alcohol. To manage the risk to the safety and welfare of staff and students at SPSHS arising from Ms Collins' attendance at SPSHS in a 'manic' state and while under the influence of alcohol and / or drugs, Ms Collins was directed to leave SPSHS immediately.¹

- [4] Having been sent home from work, Ms Collins was placed on paid special leave for that day² only.³
- [5] From 29 August 2022 onwards,⁴ Ms Collins failed to present for duty at SPSHS. The Department made multiple attempts to contact Ms Collins for a welfare check, including via the QPS.
- [6] Although the Department was finally able to reach Ms Collins by telephone on 31 August 2022, the Respondent stated that "During the conversation, Ms Collins did not indicate an intention to return to work at SPSHS."⁵
- [7] Ms Collins' failure to return to work caused the Department to place her on special leave without pay until the expiration of her temporary contract with SPSHS on 9 December 2022.
- [8] Perhaps unsurprisingly in such circumstances, the Department chose not enter into a further temporary employment contract with Ms Collins for the coming school year - nor had it promised to do so. The Respondent submitted that "At all times, Ms Collins was aware of the end date of her temporary contract with SPSHS, being 9 December 2022" and concluded that she "could not have had any reasonable expectation that she would continue to be employed by the Department in 2023."⁶
- [9] In correspondence dated 3 May 2023, the Department invited Ms Collins to respond to a spate of allegations made against her by staff and students at SPSHS, said to have occurred in August 2022.
- [10] Ms Collins sought an extension of time to respond to the allegations against her on medical grounds. The Department advised that such request ought be supported by a medical certificate. Ultimately, Ms Collins did not provide either a medical certificate or a response to the allegations.
- [11] In correspondence dated 3 August 2023, Ms Borger⁷ noted that whilst Ms Collins was no longer employed by the Department, she had so far failed to respond to the

¹ Employer Response to Application for Reinstatement filed 8 December 2023, [16].

² 26 August 2022 was a Friday.

³ Employer Response to Application for Reinstatement filed 8 December 2023, [18].

⁴ 29 August 2022 was a Monday.

⁵ Employer Response to Application for Reinstatement filed 8 December 2023, [21].

⁶ Ibid [23] – [24].

⁷ Executive Director, Integrity and Employee Relations.

allegations letter of 3 May 2023. Ms Borger determined to place a Notice of Further Consideration on Ms Collins' employment record, meaning that should she "wish re-engage in employment with the department, these concerns must be resolved prior to any consideration of appointment. This includes the provision of your formal response to the letter dated 3 May 2023."⁸

- [12] On 27 October 2023, the Department referred the outstanding allegations against Ms Collins to the Queensland College of Teachers for management and action, in accordance with its statutory obligations.⁹ Ms Collins' registration to teach was subsequently cancelled.¹⁰

- [13] In the Application for Reinstatement filed on 16 November 2023, Ms Collins first stated that she was given notice of dismissal on 17 August 2022 and that the dismissal took effect on 19 August 2022.¹¹ Later in the application, Ms Collins asserted that on 17 November 2023 "the school principal entered into the staffroom at lunchtime and shouted my name loudly in front of my other colleagues, this humiliated and startled me".¹² (In my view, that cannot be true because the application itself was filed in the Industrial Registry on 16 November 2023. It cannot even have been 17 November 2022 because by that time, Ms Collins had been placed on special leave).

- [14] Ms Collins' account of the reasons for her dismissal included allegations that: the principal gave her 24 hours' notice to complete mandatory training "which I challenged wasn't mandatory"; Ms Collins had asked for "some support or time off" to cope with personal circumstances but that had been denied; Ms Collins received an email and was "being asked to complete additional duties which wasn't part of job role such as receiving sensitive information such as the school's accounts"; the principal told Ms Collins to "go to the Police with the accounts and then go home"; the principal "launched a student investigation over a few of my English students sending a postcard to the Queen of England"; and finally that "After I didn't turn up to work on Monday 22nd August 2023 believing that I had been dismissed, I received a number of allegations via HR. These allegations were of an inaccurate manner and added to my mental health breakdown and I was not able to process a response to them due to my mental health at the time."¹³ (Once again, the 22 August 2023 date cannot be accurate because the application itself stated the dismissal took effect on 19 August 2022. It cannot even have been 22 August 2022, for the same reason).

- [15] Self-evidently then, the circumstances of Ms Collins' cessation of employment are disputed. Ms Collins filed the Application for Reinstatement (TD/2023/130) on 16

⁸ Employer Response to Application for Reinstatement filed 8 December 2023, Attachment 8.

⁹ Ibid [33], Attachment 9.

¹⁰ Ibid Attachment 9.

¹¹ Application for Reinstatement filed on 16 November 2023, 3.

¹² Ibid 5.

¹³ Application for Reinstatement filed on 16 November 2023, 5.

November 2023. In doing so, Ms Collins seeks to be either 'reinstated' or 're-employed'.¹⁴

[16] Section 317(2) of the *Industrial Relations Act 2016* (Qld) (IR Act) requires the filing of an Application for Reinstatement within 21 days of the dismissal taking effect.

[17] With respect to the 'date of cessation of Ms Collins' employment with the Department, she had submitted that to be 19 August 2022¹⁵ and the Respondent submitted it to be 9 December 2022.¹⁶ Using the later date of 9 December 2022 for the purposes of the calculation, the effect of this provision is that Ms Collins was required to file the Application by 30 December 2022. In fact, she filed the Application on 16 November 2023 - ten months and 17 days out of time.

[18] The Respondent has raised two jurisdictional objections to the Application filed by Ms Collins. Firstly, that she was not dismissed at all, but that her temporary contract ended on 9 December 2022 "due to the effluxion of time". Secondly, that Ms Collins has filed the Application significantly 'out of time'.¹⁷ I will address the latter point first.

Application was filed out of time

[19] As noted at [17] above, Ms Collins filed the Application more than ten months out of time.

[20] I am empowered by the IR Act to extend the time for allowing the applications, though only where the Applicant demonstrates to my satisfaction that there is a reasonable ground for that extension.

Relevant considerations in the exercise of discretion

[21] The question of whether to extend the time for filing an application under the IR Act is fundamentally an exercise of discretion.¹⁸ Such an exercise must be undertaken judicially and according to the rules of reason and justice, not arbitrarily or capriciously or according to private opinion.¹⁹ Several factors inform the exercise of my discretion.

[22] The Applicant bears the positive burden of demonstrating that the justice of the case requires the indulgence of an extension of time to file the application.²⁰

¹⁴ Ibid 3.

¹⁵ Ibid.

¹⁶ Employer Response to Application for Reinstatement filed 8 December 2023, 3.

¹⁷ Ibid.

¹⁸ *Industrial Relations Act* (Qld) s 317(2)(b).

¹⁹ *House v The King* (1936) 55 CLR 499, [2].

²⁰ *Megan Reimers v Aramaki Company (Australia) t/a Camira Child Care Centre* [2002] 170 QGIG 1010; *Brisbane South Regional Health Authority v Taylor* (1996) 186 CLR 541 at 547.

[23] In *Breust v Qantas Airways Ltd*,²¹ Hall CJ (as he then was) set out the following considerations:

- a. The length of the delay;
- b. The explanation for the delay;
- c. The prejudice to the Appellant if the extension of time is not granted;
- d. The prejudice to the Respondent if the extension of time is granted; and
- e. Any relevant conduct of the Respondent.

[24] Some additional considerations were provided by Linnane VP in *Geoffrey John Erhardt v Goodman Fielder Food Services Limited*.²² These were usefully summarised by Thompson IC in *Susan Lloyd v State of Queensland (Department of Communities, Child Safety and Disability Services)*,²³ which is paraphrased below:

- a. The 21 day time limit must be respected and should not easily be dispensed with; and
- b. The Applicant's prospects of success at a substantive hearing is always a relevant matter in that where it appears an Applicant has no, or very limited prospects of success, the Queensland Industrial Relations Commission (QIRC) would not normally grant an extension of time.

[25] Those cases were considering section 74(2)(b) of the *Industrial Relations Act 1999* (Qld). However, they were answering substantively the same question as in this case; what should inform the exercise of my discretion in extending the time to bring proceedings? As such, I find their assessment of the relevant factors to be highly persuasive in informing the exercise of my discretion.

[26] Additionally, my discretion is informed by the purposes of the IR Act, including providing an industrial relations framework that is fair and balanced.²⁴ In that regard, I am guided by the commentary of French CJ in *Aon Risk Services*:

*Also to be considered is the potential for loss of public confidence in the legal system which arises where a court is seen to accede to applications (for the exercise of discretion) made without adequate explanation or justification.*²⁵

Applicant submissions

²¹ *Breust v QANTAS Airways Ltd* (1995) 149 QGIG 777.

²² *Geoffrey John Erhardt v Goodman Fielder Food Services Limited* (1999) 163 QGIG 20; *Roger Carter Paterson v Medical Benefits Fund of Australia Limited* (1998) 159 QGIG 232.

²³ *Susan Lloyd v State of Queensland (Department of Communities, Child Safety and Disability Services)* [2015] QIRC 138.

²⁴ *Industrial Relations Act 2016* (Qld) s 3(a).

²⁵ *Aon Risk Services Australia Limited v Australian National University* (2009) 239 CLR 175, [30].

[27] With respect to the Application for Reinstatement (TD/2023/130) filed with the QIRC on 16 November 2023, Ms Collins listed the reasons for her delay in filing to be:²⁶

- a) As a British migrant, she has limited knowledge of Australian employment law and available remedies.
- b) She "experienced a mental health breakdown lasting a few months" which she "can prove through medical records". Ms Collins stated that "several doctors agree I have experienced PTSD due to workplace bullying and lack of support which has severely impacted my mental health."
- c) She did not receive "the correct information or support from the Department of Education's HR officer at the time, who shut down all communication..."
- d) She had "accessed some support from the Teachers' Union, but the information provided has not always been clear either due to a miscommunication issue or due to my mental health breakdown."
- e) She "spoke to a lawyer in January who advised I had missed the 21 day deadline and advised to go through Work Cover which I lodged in January 2023", though that process has not yet concluded.
- f) Her lawyer "advised not to contact HR or to respond to their Request for Written Submission until Work Cover had processed my application, however, my application is still being assessed and this has taken longer than expected."

[28] On 25 March 2024, Ms Collins filed various medical certificates "to support my claims that I have experienced mental health issues due to what I perceive to be due to work related stress and work related bullying":

- a) A medical certificate issued by Dr Grigoreva on 16 September 2022 stating "Miss Sabrina Collins had a medical condition due to work related stress..."
- b) A work capacity certificate - workers' compensation dated 7 March 2023, issued by Dr Fieldhouse, that stated the:
 - Date of examination was "07/03/2023".
 - Patient's stated date of injury was "07/03/2023".
 - Patient was first seen at this practice / hospital for this injury / disease on "25/08/2022".
 - The patient is / was suffering from "Post traumatic stress disorder".
 - Patient's stated mechanism of injury was "Reports bullying and harassment". That was further described as "Reports bullying and

²⁶ Application for Reinstatement filed on 16 November 2023, 4.

harassment in the workplace over an extended period of time. Claim on August 2022 related to incident with principal. Initial difficulties commenced in 2020. Threatened by a student with a deadly weapon in 2020. Physical assault by student in 2021."

- The Treatment Plan set out that the "Patient requires treatment from 07/03/2023 to 07/06/2023".
 - There was "No functional capacity for any type of work" for a period that was "unclear".
- c) A letter from Dr Islam dated 19/11/2022 asking for consideration of early release of Ms Collins' superannuation because she "has been going through a lot of stress" due to personal issues and needed the funds "to cover her legals" to deal with those non-work matters. (I note that correspondence made no mention of any work stressor).
- d) A Centrelink medical certificate dated 06/10/2023, issued by Dr Zwar, that provided a diagnosis of "Suspected PTSD triggered by workplace bullying". Dr Zwar noted the duration to be "Less than 13 weeks", with the incapacity "From 06/10/2023 to 20/10/2023".
- e) A letter of referral to Dr Whittington dated 13/01/2023, including that Ms Collins:
- "states she is victim of workplace bullying";
 - had experienced challenges of a personal nature, not related to work;
 - "stated onset about 31.07.2022";
 - "has been off work for 20 weeks";
 - "has now resumed work part time as casual in 2 different language schools".
- f) A letter of referral to Dr Egan dated 07/03/2023, including that Ms Collins:
- ""has a complex initial W/C claim" about "bullying and harassment allegations related to her workplace as a school teacher";
 - has challenges of a personal nature, not related to work;
 - was certified unfit for work for the next three months.

Respondent submissions

[29] With respect to the Application for Reinstatement (TD/2023/130), the Respondent submitted that:²⁷

²⁷ Employer Response to Application for Reinstatement filed 8 December 2023, [3]-[10].

- a) Ms Collins' application is "so significantly out of time that the Commission should not exercise its discretion to extend the time limitation and accept the application."
- b) The Application was filed 10 months and 17 days late. The delay is significant.
- c) The statutory time limits of 21 days has been consistently recognised and should not easily be dispensed with.
- d) Extensions to legislative timeframes should only be allowed in exceptional circumstances. "None of these reasons alone or in combination would justify accepting an application for reinstatement filed over 10 months late. Notably, Ms Collins has submitted no medical evidence supporting her alleged mental breakdown or that she was unable to file the application at an earlier time. Ms Collins bears the onus of establishing exceptional circumstances."
- e) The application has low prospects of success because Ms Collins was not dismissed from her employment but rather her temporary contract ended. Further, Ms Collins' teacher registration was cancelled on 25 November 2022 and so the Department cannot legally employ her as a teacher.
- f) There is no compelling reason for the Commission to accept the application out of time.

[30] In oral submissions made on 18 March 2024, the Respondent emphasised matters raised in its written submissions. Further, the Respondent asserted that:

- Ms Collins' statement that she was unaware of her legal rights is not sufficient reason for the application to be accepted out of time.
- Ms Collins has not yet provided any medical information regarding her mental health at the relevant time.
- The Work Cover process is separate from, and irrelevant to, the Application for Reinstatement matter.

Length of delay

[31] The Application was filed more than ten months out of time.

- [32] The 21 day period has been determined by the legislature to be the appropriate period for a person to file an application. Even a cursory review of the IR Act would have revealed that time period to Ms Collins.²⁸
- [33] The character of the delay, be it excessive, reasonable or otherwise, takes its colour from the surrounding circumstances.²⁹ It is true that in some cases delays of several weeks have been considered to be not excessive.³⁰ However, in such cases the delay is usually accompanied by a substantial explanation such as legal representative error, natural disasters or the like.³¹ That is not the case here.
- [34] Given the circumstances of this case (including consideration of the factors below), I have determined the delay of more than ten months to be both significant and unreasonable.

Explanation for the delay

- [35] Ms Collins has set out several reasons for the delay in filing the Application for Reinstatement. Those are listed at [27] above.
- [36] Ms Collins submitted that she has limited knowledge of Australian employment law and available remedies as she is a British migrant. In some limited circumstances, a lack of familiarity with, or knowledge of the processes of, a particular jurisdiction may be an acceptable reason for some amount of delay in initiating proceedings.³² However, I am satisfied that Ms Collins is an educated person³³ and adept at using technology.³⁴ It follows then that Ms Collins is capable of independently identifying both the fundamental requirements of, and the appropriate mechanism for, filing applications for reinstatement.
- [37] Though as it happened, Ms Collins was not without support and advice about her workplace rights. Ms Collins stated that advice had been received from both her union and a lawyer in this matter. Ms Collins said her lawyer told her that she had missed the 21-day deadline for filing a reinstatement application in January 2023. She went on to explain that she did not file a reinstatement application then because she was "advised to go through Work Cover which I lodged in January 2023". So while Ms Collins

²⁸ *Susan Lloyd v State of Queensland (Department of Communities, Child Safety and Disability Services)* [2015] QIRC 138, [32].

²⁹ *Ibid* [40]; *Tonia Shelley v McRoberts Agency* [2009] 190 QGIG 189.

³⁰ See, eg, *Susan Lloyd v State of Queensland (Department of Communities, Child Safety and Disability Services)* [2015] QIRC 138.

³¹ *Ibid*.

³² *Hurrell v Queensland Cotton Corporation Ltd* (2003) 125 IR 145; *Cheval Properties Pty Ltd t/a Penrith Hotel Motel v Smithers* (2010) 197 IR 403, 406.

³³ Teacher.

³⁴ Given both her employment as a teacher, and with respect to the nature of allegations regarding social media platforms.

knew both that she could apply for reinstatement and the requisite timeframes for filing by January 2023 at the latest - she chose not to do so until November 2023.

- [38] Ms Collins submitted that her lawyer advised that she "go through Work Cover which I lodged in January 2023", though that process has not yet concluded. A change of mind is not a good reason to be heard out of time. Ms Collins elected not to commence an application for reinstatement during the 21 day time limit (or even in January 2023), in preference for alternative means of redress through the Work Cover claim. I note that the legislation requires an Applicant to make a decision about the intended avenue of redress within the specified time limit, rather than attempt to revive an expired option in the event that a successful outcome proves elusive.
- [39] Ms Collins further stated that the delay in filing this application was due to "a mental health breakdown lasting a few months". Despite Ms Collins' assertions that she could provide medical evidence in support of that, I note that she did not actually do so until 25 March 2024. That is despite bearing the onus of demonstrating why the Commission ought exercise its discretion to accept her application out of time. A summary of the medical documentation filed by Ms Collins is set out at [28] above.
- [40] The Respondent contended that Ms Collins's employment ceased on 9 December 2022, so Ms Collins was required to file the Application by 30 December 2022. I note that the medical documents filed do not state that Ms Collins was incapacitated during the month of December.
- [41] Ms Collins has demonstrated her ability to seek early release of her superannuation (November 2022) and pursue redress through WorkCover (January 2023), before turning her energies to remedy through the QIRC in November 2023.
- [42] In these various undertakings she has sought out several medical practitioners, a lawyer and her union.
- [43] Those exertions demonstrate Ms Collins is capable of identifying potential mechanisms for remedy; navigating the process requirements for doing so; and is familiar with the concept of complying with deadlines for filing material. I find that particularly persuasive in considering the reasonableness, or lack thereof, of the length of the delay in filing her application with the QIRC.
- [44] Simply put, if it were possible for Ms Collins to lodge an application with WorkCover in January 2023, it would also have been possible for her to file a reinstatement application in the QIRC.
- [45] In fact, a letter of referral to Dr Whittington dated 13/01/2023 included that Ms Collins "has now resumed work part time as casual in 2 different language schools". Therefore, in the period between her last day in attendance at SPSHS and filing the Application for Reinstatement, Ms Collins recommenced paid work. On the face of it,

that seemingly would have been beyond the reach of a person claiming to be so defeated by their medical condition that they were unable to file an application by January 2023 at least.

- [46] The Department asked Ms Collins to provide medical evidence in support of her request for an extension of time to respond to the allegations letter of 3 May 2023. She had failed to do so until filing the various medical documents on 25 March 2024. Neither has Ms Collins as yet responded to the allegations letter, despite indicating she would do so when able.
- [47] Even considering the medical documentation filed, there is no cogent and credible explanation as to why the application was submitted so much later than the required timeframe.
- [48] As such, I find that Ms Collins has not offered an adequate explanation or justification for the delay in making her application.

Prejudice to the Applicant

- [49] Ms Collins' filed material did not explore the prejudice she would suffer should the application be dismissed for filing out of time, though there is the obvious prejudice that she would lose the opportunity for a decision to be made on the substantive matter of her Application for Reinstatement. However, I note the challenge inherent in achieving the remedy sought by Ms Collins, in circumstances where her teacher registration has been cancelled.
- [50] That outcome is of course not an insubstantial detriment to Ms Collins.

Prejudice to the Respondent

- [51] The Respondent has indicated specific prejudice it would suffer should the Application be heard out of time, including the impossibility of re-employing Ms Collins as a teacher due to the suspension of her teacher registration.
- [52] It is also noteworthy that Ms Collins was employed by the Department as a teacher. Since that time, the Respondent has no doubt taken steps to ensure that the school community of SPSHS continues to be served by a full complement of teaching staff. The confidence to take such action relies on the relative certainty of the application timeframe established by the IR Act. As such, to hear these applications out of time would unfairly intrude on the alternative professional staffing arrangements made by the Respondent and negatively impact the educational services to the SPSHS school community.

[53] It is important to note that delay itself is considered to give rise to a general presumption of prejudice to the Respondent.³⁵ Furthermore, minimal additional prejudice to the Respondent in and of itself is an insufficient basis to grant an extension of time.³⁶

[54] The impediments to re-employment as a teacher is also relevant.

[55] For those reasons, I find that the prejudice to be suffered by the Respondent, should I decide to exercise my discretion to hear the application out of time, would be both substantial and insupportable in the circumstances.

Conduct of the Respondent

[56] Ms Collins contends that actions of the Respondent caused or contributed to the delay in bringing these proceedings, asserting that "I didn't receive the correct information or support from the Department of Education's HR officer at the time, who shut down all communication at the time."

[57] Ms Collins' assertions are not borne out by the documentary evidence of the Department's correspondence to her, attached to the Employer response to application for reinstatement. Rather, it appears to me that it was Ms Collins who 'shut down all communication' with the Department, refusing to respond to the allegations letter even now and further failing to supply the medical evidence requested upon which to substantiate her request for an extension of time in which to do so. As previously noted, such medical information was not filed in this matter until 25 March 2024, despite making broad reference to it in Ms Collins' application filed 16 November 2023.

[58] I find this certainly convincing to support the propositions that the length of the delay was unreasonable, and that the explanation for the delay provided by Ms Collins was manifestly inadequate.³⁷

Prospects of success

[59] The Applicant's prospects of success at a substantive Hearing are a relevant consideration.³⁸ However, I note the guidance on this factor provided by President Hall in *Bruce Anthony Piggott v State of Queensland* (emphasis added and citations removed):

³⁵ *Brisbane South Regional Health Authority v Taylor* (1996) 186 CLR 541, 556.

³⁶ *Brodie-Hanns v MTV Publishing Ltd* (1995) 67 IR 298, 300.

³⁷ *Susan Lloyd v State of Queensland (Department of Communities, Child Safety and Disability Services)* [2015] QIRC 138, [32].

³⁸ *Geoffrey John Erhardt v Goodman Fielder Food Services Limited* (1999) 163 QGIG 20; *Roger Carter Paterson v Medical Benefits Fund of Australia Limited* (1998) 159 QGIG 232.

*In addition to these factors, the prospects of an application succeeding at a substantive hearing are also relevant, so that where it appears that an applicant has no, or very limited, prospects of success, the Commission should not grant an extension of time. However, the occasions for rejecting an application for an extension of time on the ground that the applicant has poor prospects of success will be few, and generally, the merits of an application are part of the general consideration of all relevant factors. **In assessing the prospects of the substantive application succeeding, in the context of deciding an application to extend time, the merits or lack thereof of the substantive application must be clear cut, and will usually flow from formation of a view that there is an obstacle that no amount of evidence can overcome.** Cases where a view may be formed so adverse to the applicant as to justify the refusal to extend time on that ground, will be rare.³⁹*

- [60] Ms Collins' application for reinstatement contains obstacles that would be extremely challenging to overcome.
- [61] In the first instance, Ms Collins would be required to demonstrate that there was indeed a dismissal. The Respondent contends Ms Collins was not dismissed, but rather was placed on unpaid special leave from 29 August 2022 (when she failed to attend work at SPSHS) until 9 December 2022 (date of expiry of her temporary contract). That sequence followed Ms Collins being sent home from work on 26 August 2022 due to her attendance in an unfit state. The Department made several attempts to contact Ms Collins, including via QPS, to conduct a welfare check. When she was able to be reached, Ms Collins expressed no intention of returning to work at SPSHS.
- [62] Secondly, Ms Collins' teacher registration has been cancelled. That prevents the Department from employing her as a teacher.
- [63] Finally, the Department wrote to Ms Collins on 3 May 2023 setting out several allegations relating to her conduct in August 2022 for her response. Ultimately, no response to those allegations has yet been provided by Ms Collins. As a consequence, the Department has now placed a Notice of Further Consideration on Ms Collins' employment record, meaning that should she "wish re-engage in employment with the department, these concerns must be resolved prior to any consideration of appointment. This includes the provision of your formal response to the letter dated 3 May 2023."⁴⁰
- [64] In considering this criterion as it applied to the Application, I have thoroughly reviewed the materials before me and can conclude with the requisite level of confidence, namely on the balance of probabilities, that those matters are quite 'clear cut' as described by the President above.
- [65] I find Ms Collins' very poor prospects of success to be a compelling reason as to why the Application should not be heard out of time.

Conclusion

³⁹ *Bruce Anthony Piggott v State of Queensland* [2010] ICQ 35, [6].

⁴⁰ Employer Response to Application for Reinstatement filed 8 December 2023, Attachment 8.

- [66] Ms Collins filed the Application for Reinstatement out of time (ten months and 17 days) and seeks that I exercise my discretion under IR Act to extend the time for filing that appeal.⁴¹
- [67] There exists a suite of relevant considerations in exercising such a discretion, but foremost I must be satisfied that the Applicant had a reasonable ground for extending the time.⁴²
- [68] In this matter, I will follow a previous decision of Deputy President O'Connor (as he then was) that the reasons provided by Ms Collins in this case do not amount to 'the most compelling of circumstances' nor is an extension necessary in order to 'ensure that justice is done between the parties'.⁴³
- [69] I find that the delay in filing the application was significant and Ms Collins has failed to provide adequate reason for her delay.
- [70] Foundationally, I am not minded to grant an extension of time to an Applicant where such a request is made without adequate explanation or justification.
- [71] Ms Collins will suffer some prejudice resulting from my decision to decline to hear the application out of time; namely, that she will lose the opportunity for a decision to be made on the substantive matter of her Application for Reinstatement.
- [72] However, while the prejudice to Ms Collins cannot be ignored, it is substantially overshadowed by the likely prejudice to the Respondent.
- [73] For the reasons above, I have decided not to exercise my discretion to extend time for Ms Collins to pursue her application for reinstatement. She has failed to make the case that there are reasonable grounds for doing so.
- [74] Accordingly, I dismiss application TD/2023/130.

Order

- 1. The application for an extension of time in matter TD/2023/130 is dismissed.**
- 2. The application for reinstatement in matter TD/2023/130 is dismissed.**

⁴¹ *Industrial Relations Act* (Qld) s 317(2).

⁴² *Ibid.*

⁴³ *Wantling v Department of Community Safety (Queensland Corrective Services)* (2013) QIRC 43.