

## QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Queensland Services, Industrial Union of Employees v Council of the City of Gold Coast (No. 2)* [2020] QIRC 062

PARTIES: **Queensland Services, Industrial Union of Employees**  
(Applicant)

v

**Council of the City of Gold Coast**  
(Respondent)

CASE NOS: D/2019/125

PROCEEDING: Arbitration of industrial dispute

DELIVERED ON: 30 April 2020

MEMBER: Merrell DP

HEARD AT: On the papers

ORDERS: **1. The question for arbitration is:**

**Should the position occupied by Ms Adrianna Nissel, namely, Workplace Health and Safety Specialist (Assurance and Compliance), Level 6, be reclassified to Level 7 as described in the *Queensland Local Government Industry (Stream A) Award - 2017, Division 2 - Section 1 - Schedule 1 (Classifications - Administrative, technical, community service, supervisory and managerial services)*?**

CATCHWORDS: INDUSTRIAL LAW - notice of industrial dispute concerning employee's rejected request for reclassification of position and allegation of breach of confidentiality made against same employee - dispute not resolved in conciliation - dispute to be arbitrated - determination of question for arbitration

LEGISLATION: *Industrial Relations Act 2016*, s 261, s 451 and s 452

CASES: *Queensland Services, Industrial Union of Employees v Council of the City of Gold Coast* [2020] QIRC 056

APPEARANCES: Ms M. Robertson of the Queensland Services, Industrial Union of Employees

Ms U. Bhalla of the Council of the City of Gold Coast

### Reasons for Decision

#### Introduction

- [1] In *Queensland Services, Industrial Union of Employees v Council of the City of Gold Coast*<sup>1</sup>, I dismissed an application by the Council of the City of Gold Coast ('the Council') to be represented by a lawyer in the arbitration of an industrial dispute between the Council and the Queensland Services, Industrial Union of Employees ('the Union').
- [2] The industrial dispute concerns Ms Adrianna Nissel, a member of the Union, who is employed by the Council and holds the position of Workplace Health and Safety Specialist - Assurance and Compliance ('Ms Nissel's position'). Ms Nissel's position is classified at Level 6 under the *Queensland Local Government Industry (Stream A) Award - State 2017* ('the Award').
- [3] The *Gold Coast City Council Certified Agreement 2012* ('the certified agreement') applied to Ms Nissel. In September 2018, Ms Nissel made an application to the Council, in accordance with the reclassification process provided for in sch 3 to the certified agreement, to have her position reclassified to Level 7 under the Award.
- [4] The parties have been unable to resolve their industrial dispute. Therefore, the matter will proceed to arbitration. Further, the parties cannot agree on the question for arbitration
- [5] In *Queensland Services, Industrial Union of Employees v Council of the City of Gold Coast*, I indicated that if the parties could not reach agreement about the question for arbitration, I would determine the question.<sup>2</sup> Pursuant to s 451(1) of the *Industrial Relations Act 2016* ('the Act'), the Commission has the power to do all things necessary or convenient to be done in the performance of its functions. Furthermore, unless the Act otherwise provides, the Commission may exercise its powers on its own initiative.<sup>3</sup>

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<sup>1</sup> [2020] QIRC 056.

<sup>2</sup> Ibid [50].

<sup>3</sup> *Industrial Relations Act 2016*, s 452(1)(a).

## **The parties' positions**

### *The Union*

[6] The Union proposes the following question:

Should the Level 6 position of WHS Specialist (Assurance & Compliance) at the City of Gold Coast be reclassified to a Level 7 position as described in the Queensland Local Government Industry (Stream A) Award - 2017, Division 2 - Section 1 (Administrative, clerical, technical, professional, community service, supervisory and managerial services) Schedule 1?

### *The Council*

[7] The Council proposes the following question:

Was the Respondent's decision on 20 December 2018, to refuse Adrianna Nissel's application for reclassification from Level 6 to Level 7, as those positions are described in the Queensland Local Government Industry (Stream A) Award - 2017, Division 2 - Section 1 (Administrative, clerical, technical, professional, community service, supervisory and managerial services) Schedule 1, correct?

[8] In support of its position, the Council has submitted that:

- the Union has stated to the Council that the 'classification is in question not the individual';
- the Council's position is that the current dispute is as a result of the decision made on 20 December 2018 to reject Ms Nissel's application for a reclassification and as a result of that decision, Ms Nissel engaged the Union and pursued her grievance through the grievance resolution process as set out in the certified agreement;
- it is as a result of an unfavourable outcome for Ms Nissel specifically, through the grievance resolution process in the certified agreement, that the parties find themselves in dispute before the Commission;
- the application made by the Union is expressed to be only in respect of Ms Nissel and contains facts and circumstances peculiar to Ms Nissel alone and further, the supporting documentation provided by both parties to date relates only to Ms Nissel; and
- accordingly, the Council submits that the question to be arbitrated must be confined to whether the decision to refuse Ms Nissel's application for reclassification was correct.

[9] In my view, the question for arbitration can only be determined by the applicable provisions of the relevant industrial instrument and the facts.

## The certified agreement

[10] Ms Nissel made an application to the Council, to have her position reclassified to Level 7 in the Award, in accordance with the reclassification process provided for in sch 3 to the certified agreement.

[11] Schedule 3 to the certified agreement relevantly provided:

### Schedule 3

#### Classification / reclassification process

Employees will be classified in accordance with the classification definitions contained in the relevant parent Award. Council will ensure that each position shall have a written job description available, detailing the duties that the occupant of the position is required to undertake.

Applications for Reclassification of positions will be considered on a twice-yearly basis. Employees may submit Requests for Reclassification by March 31 or by September 30 each year for consideration, and Council will provide a decision within 12 weeks of those dates. Whilst requests for reclassification may be submitted at any time, unless exceptional circumstances exist (such as substantial change or restructuring of the position), consideration of the request will not occur until the next round of the reclassifications cycle.

Reclassifications are based on the evaluation of the duties, responsibilities and skills required to perform the inherent requirements of the role, and not necessarily the capabilities of the person filling the position. Generally a position may be reviewed for reclassification if the duties, responsibilities and/or skills required to perform the role have increased, require greater complexity or have significantly changed.<sup>4</sup>

Employees shall be given a written response to their request, including reasons where a request for reclassification to a higher level has been refused.

An employee may dispute the classification determined by Council. Any disputes that are initiated regarding classification shall be dealt with in accordance with this agreement.

...

[12] That application was refused by the Council.

[13] Clause 1.10 of the certified agreement contained the grievance/dispute avoidance and settlement procedures. Relevantly, that clause provided that in the event of any grievance arising and/or disagreement between Council and its employee in relation to the certified agreement, the procedures set out in that clause had to be followed. That included the matter being arbitrated by the Commission.

[14] As can be seen, sch 3 to the certified agreement provided that reclassifications are based on the evaluation of the duties, responsibilities and skills required to perform the inherent requirements of the role.

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<sup>4</sup> My emphasis.

**The notice of industrial dispute**

- [15] In Appendix A to the notice of industrial dispute filed by the Union on 11 October 2019, the Union contended that the characteristics, responsibilities, organisational relationships and the extent of Ms Nissel's authority aligned with that of Level 7 rather than Level 6.

**The question for arbitration**

- [16] For these reasons, the question to be arbitrated is the industrial matter in dispute. That is whether the position occupied by Ms Nissel should be reclassified to Level 7 as described in the Award.
- [17] To characterise the question in any other way would be to ignore the industrial instrument and the facts of the dispute.
- [18] The question to be arbitrated is:

Should the position occupied by Ms Adrianna Nissel, namely, Workplace Health and Safety Specialist (Assurance and Compliance), Level 6, be reclassified to Level 7 as described in the *Queensland Local Government Industry (Stream A) Award - 2017*, Division 2 - Section 1 - Schedule 1 (Classifications - Administrative, technical, community service, supervisory and managerial services)?