

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Adams v State of Queensland (Queensland Police Service)* [2020] QIRC 110

PARTIES: **Adams, Heidi**
(Applicant)

v

State of Queensland (Queensland Police Service)
(Respondent)

CASE NO: D/2020/11

PROCEEDING: Notice of Industrial Dispute

DELIVERED ON: 28 July 2020

HEARING DATE: 22 July 2020

MEMBER: Merrell DP

HEARD AT: Brisbane

ORDER: **The application is dismissed.**

INDUSTRIAL LAW - ARBITRATION IF CONCILIATION UNSUCCESSFUL - decision to transfer second year constable from the Gold Coast Region to the St George Division, Southern Region of the Queensland Police Service - internal grievance commenced against the decision to transfer - internal review of the decision to transfer - notification of industrial dispute about the decision to transfer - consideration of whether the decision to transfer was unjust or unreasonable justifying intervention of the Commission in the exercise of the managerial prerogative to transfer - decision to transfer not unjust or unreasonable in all the circumstances

LEGISLATION: *Industrial Relations Act 2016*, s 262

Police Service Administration Act 1990, s 2.3,

s 2.5A, s 4.8 and s 4.10

Police Service Administration Regulation 2016,
s 7

CASES:

Case v State of Queensland (Department of Attorney-General, Queensland Corrective Services) [2017] QIRC 048

Construction, Forestry, Mining and Energy Union v HWE Mining Pty Ltd [2011] FWA 8288; (2011) 214 IR 194

Queensland Nurses Union of Employees v Sundale Garden Village, Nambour (No. 3) [2006] QIRC 98; (2006) 182 QGIG 683

The Automotive, Metals, Engineering, Printed and Kindred Industries Industrial Union of Employees v QR [2000] QIRC 123; (2000) 165 QGIG 526

APPEARANCES:

Ms H. Adams, the Applicant in person

Mr G. Carthew, Manager, Employee Relations, Public Safety Business Agency, for the Respondent

Reasons for Decision

Introduction

- [1] Ms Heidi Adams was appointed to the Queensland Police Service ('the Service') as a police recruit on 16 July 2018, she graduated from the Queensland Police Service Academy at Oxley ('the Academy') on 17 January 2019 and was then allocated, as a first year Constable under probation, to the Nerang Division, Gold Coast District, South Eastern Region of the Service.
- [2] Because of her prior service as a police officer in Western Australia, Ms Adams progressed to the rank of Senior Constable as of 14 April 2020. For ease of reference, I will refer to Ms Adams as Senior Constable Adams, although, at all times material to this matter, she held the rank of Constable.
- [3] On 20 November 2019, Senior Constable Adams was notified that her permanent allocation, as part of the second year allocation process of Constables, would be to the St George Division, South West District, Southern Region of the Service.
- [4] On 3 December 2019, Senior Constable Adams submitted a grievance, as was her right, outlining her personal circumstances that had changed since she joined the Service.

Senior Constable Adams requested she be allocated to the Gold Coast District so that she could remain with her family.

- [5] On 6 February 2020, Senior Constable Adams was advised of the decision, following an internal review of her grievance, to uphold her allocation to the St George Division ('the decision').
- [6] By notice of industrial dispute lodged on 25 February 2020, Senior Constable Adams notified the Industrial Registrar that she disputed the decision and requested the assistance of the Queensland Industrial Relations Commission.
- [7] The dispute was unable to be resolved by way of conciliation and has been referred to me for arbitration.
- [8] Senior Constable Adams applies for the Commission to intervene in the decision and determine that she remains serving as a police officer in the Gold Coast District.
- [9] The Service opposes the intervention of the Commission in relation to its decision.
- [10] The issue for determination is whether, in the exercise of the Commission's power pursuant to s 262(3)(b) of the *Industrial Relations Act 2016* ('the Act') to arbitrate an unresolved industrial dispute, the Commission should intervene in the Service's decision to allocate Senior Constable Adams to the St George Division. The specific question is whether, having regard to all the circumstances of this case, the decision to allocate Senior Constable Adams to the St George Division is unjust or unreasonable.
- [11] For the reasons that follow, I will not intervene in the decision to transfer Senior Constable Adams to the St George Division because that decision, having regard to all the circumstances, is not unjust or unreasonable.

Background

The Police Service Administration Act 1990

- [12] Senior Constable Adams is employed under the *Police Service Administration Act 1990* ('the PSAA').¹
- [13] The functions of the Service include the preservation of peace and good order in all areas of the State.² The Commissioner of the Service is responsible for the efficient and proper administration, management and functioning of the Service in accordance with law.³ Section 4.8(2) of the PSAA provides that a regulation may prescribe particular matters within the scope of the prescribed responsibility of the Commissioner.
- [14] Section 7(e) of the *Police Service Administration Regulation 2016* prescribes that the matter of deciding the number and deployment of police officers is within the scope of the Commissioner's prescribed responsibility.

¹ *Police Service Administration Act 1990*, s 2.5A.

² *Police Service Administration Act 1990*, s 2.3(a)(i).

³ *Police Service Administration Act 1990*, s 4.8(1).

[15] The Commissioner is authorised to do, or cause to be done, all such lawful acts and things as the Commissioner considers to be necessary or convenient for the efficient and proper discharge of the prescribed responsibility.⁴ The combined effect of s 4.10(1)(a) and s 4.10(1)(f)(i) of the PSAA with s 4.10(2) of the PSAA is that the Commissioner may delegate the power to discharge the prescribed responsibility to, amongst other persons, a police officer or an appropriately qualified person in the Public Safety Business Agency ('PSBA').

Matters not in dispute

[16] There are a number of matters that are not in dispute between the parties.

The acceptance of the offer of appointment

[17] On 21 June 2018, when Senior Constable Adams accepted the written offer of appointment to the Service as a police recruit to commence at the Academy at Oxley on 16 July 2018, she expressly acknowledged that:

- she had been provided with a document entitled 'Allocation of Constables'; and
- she agreed and accepted that, as a police officer, she may be required to serve at any location within the State of Queensland, subject to the operational requirements of the Service.⁵

[18] The 'Allocation of Constables' document relevantly provided that:

- upon completion of a recruit's probation period and successful completion of the first year constable program, a Constable would, prior to receiving confirmation of appointment as a Constable, participate in an allocation process to determine the Constable's permanent allocation;
- the Constable's permanent allocation would be to a general duties officer position and could be to any police station in Queensland;
- the minimum tenure for a Constable's permanent allocation was generally three years, although that may be reduced in some remote or regional locations;
- allocations were subject to the operational requirements of the Service; and
- if the Constable completed his or her first year training at a centre in South East Queensland, the Constable should not have an expectation that their permanent allocation will be in the same area.⁶

⁴ *Police Service Administration Act 1990*, s 4.8(3).

⁵ Exhibit 3, exhibit 2F, pages 1 and 2.

⁶ Exhibit 3, exhibit 1F, page 4.

First year constable allocation process

[19] By email dated 3 August 2018, from Senior Sergeant Bruce Dudley, Senior Constable Adams was informed of the allocation process to enable her to be placed at her initial training location, as a sworn officer, following completion of her training at the Academy.

[20] In that email, Senior Sergeant Dudley relevantly stated:

The allocation process to enable you to be placed at your initial training location as a sworn officer has commenced. This allocation **ONLY** relates to your initial training location and your permanent allocation at the completion of the First Year Constable Program is completely separate. There is a **HIGH** probability that you can be transferred from your training location to another station in line with the operational needs of the Service as they exist at the completion of your First Year Constable Program.⁷

Appointment to the Nerang Police Station

[21] Upon Senior Constable Adams completing her training as a recruit at the Academy, she was appointed, for the purposes of completing her First Year Constable Program, to the Nerang Police Station in the Gold Coast District of the South Eastern Region of the Service.⁸

Second year constable allocation process

[22] By email dated 17 September 2019 from Ms Tricia O'Hanlon, Senior HR Business Partner, Human Resources, of the PSBA ('PSBA HR'), Senior Constable Adams was advised that the Service, in conjunction with PSBA HR, would manage her permanent second year allocation, which was to be first done by a voluntary nomination of her preference for a location and then by a mandatory nomination of her preference for a location.

[23] In that email, Senior Constable Adams was informed that, in respect of the permanent second year allocation, the Deputy Commissioner, Regional Operations, had approved the process contained in the email and the list of locations referred to in the email.⁹

[24] Relevantly to Senior Constable Adams' dispute, that email also provided:

How will you be allocated?

You will be given **two** opportunities to nominate your preferences for locations on the list provided below:

1. **volunteer** now using the **online volunteer selection form which will be distributed today** (volunteer phase) to be completed by **12pm, Tuesday, 24th September 2019**; and
2. complete the online mandatory preference nomination form (mandatory phrase).

The permanent allocation of confirmed Constables will be determined by operational and establishment requirements that consider the current and future state of work locations. Therefore

⁷ Exhibit 4, exhibit 1, page 2.

⁸ Exhibit 4, para. 5.

⁹ Exhibit 5, exhibit 1T, page 1.

occasionally the list of locations below may be subject to change at short notice due to urgent and changing operational demands.

Whilst all nominated preferences given through the volunteer and mandatory phases will be given fair consideration, there will be instances where preferences **cannot be** accommodated.

Your participation in this process is your opportunity to have input in where you may be located after you are confirmed. Failure to provide this input may result in your location preferences not being considered in the second year allocation process.

During this time you are encouraged to research these locations and the opportunities they offer. You are also encouraged to speak to your ETO,¹⁰ the Officers in Charge of these locations and your Principal HR Business Partner about issues such as allowances, accommodation and tenure. This research and liaison is encouraged even if you don't intend to volunteer now.

...

If one of the locations identified below would suit your circumstances, you can volunteer for that position during the volunteer phase. **It is encouraged that if you do wish to volunteer for a location listed below due to specific circumstances, you must include those details in your volunteer request.** This information will assist the regional Assistant Commissioner in determining placement. Placements in South East Queensland will be prioritised to officers experiencing exceptional hardship or pressing personal circumstances. **If volunteering for these locations please provide supporting documentation.**

...

It is expected that all information you provide in support of your preferences will be truthful and accurate. It is also your responsibility to provide all necessary additional information including documentary evidence (specialist medical reports etc) to support your request.

...

Volunteer Phase

The volunteer phase is **now open** - you can volunteer for a location from the list **now**. You will all be sent a link to the online form today. If you wish to volunteer, complete this form with your location preference/s and any reasons you have for preferring this/these location/s by **12 pm Tuesday, 24th September 2019**.¹¹

- [25] Senior Constable Adams selected only one preference, as part of the volunteer phase, being the Broadbeach Police Station. However, she was unsuccessful in obtaining that allocation.

The second year allocation of Senior Constable Adams to the St George Division

- [26] In about November 2019, Senior Constable Adams then had to participate in the mandatory phase regarding her second year allocation. The Police Districts in respect of which, as part of this phase, Senior Constable Adams had to express her preference for allocation, were:

- Aurukun;
- Kowanyama;
- Cloncurry;

¹⁰ Education and Training Officer.

¹¹ Exhibit 5, exhibit 1T, pages 2-3.

- Normanton;
- Mt Morgan;
- Longreach;
- Nanango; and
- St George.¹²

[27] In the hearing of this matter, Senior Constable Adams informed me that she put Nanango as her first most preferred location and St George as her second most preferred location.

[28] On 20 November 2019, Senior Constable Adams was advised that a decision had been made by, I assume, the authorised delegate of the Commissioner, that she be allocated to the St George Division, South West District of the Southern Region of the Service ('the second year allocation decision').

[29] On 3 December 2019, Senior Constable Adams lodged a grievance against the second year allocation decision.

Senior Constable Adams' grievance against the second year allocation decision

[30] Senior Constable Adams' grievance against the second allocation decision was that there had been significant changes in her circumstances since the time she signed the document saying that she would serve, as a police officer, anywhere in Queensland.¹³

[31] The changes were that:

- in June 2019, her husband was given an opportunity to run a used car dealership in Tweed Heads;¹⁴
- her youngest son started playing basketball for the first time and had been accepted into Year 7 for 2020 in the Basketball Excellence Program at Kings Christian College and had also been selected in the under 14 Boys Gold Coast Basketball Region Representative Team, Division 2;¹⁵
- her daughter was working part-time in Tweed Heads and was saving money to commence a career as a flight attendant with a flight attendant training school located on the Gold Coast;¹⁶ and

¹² Exhibit 5, exhibit 1T, page 7 of 9.

¹³ Exhibit 7, para. 10.

¹⁴ Exhibit 7, para. 11.

¹⁵ Exhibit 7, para. 12.

¹⁶ Exhibit 7, para. 13.

- if she was forced to relocate to St George, it would be a move she would have to make on her own:
 - placing immense pressure on her husband to care solely for their family; and
 - causing undue stress to her children.¹⁷

[32] Senior Constable Adams also stated that the relocation to the St George Division would cause severe financial hardship. Senior Constable Adams explained that this would arise because:

- it would not be financially viable, if her husband had to leave his current place of employment, to continue paying down debt, which she and her husband had been doing; and
- there would be two sets of living expenses, along with high petrol expenses from regular travel to and from the Gold Coast to spend time with her family.¹⁸

[33] Senior Constable Adams also submitted in the grievance that:

- the move would be psychologically damaging for her whole family, especially her youngest son, who was about to start a whole new chapter in his life and was reaching the precarious adolescent stage;
- both her son and daughter required daily maternal care and guidance;
- the separation would be detrimental to her family's mental well-being and place unwanted stress on her 26 year relationship; and
- she would find it extremely difficult to conduct work effectively knowing that she could not be with her family.¹⁹

[34] Senior Constable Adams concluded her written grievance by submitting:

- there was no suitable employment available for her husband in St George, therefore placing her and her family under unnecessary financial hardship;
- as at 2 December 2019, on the Seek Australia Website, there were no jobs in the car sales industry in St George, with only one job showing in the closest major town, being Toowoomba, which was for a Used Car Sales Consultant;
- relocating her family to '... these remote locations and/or me driving in and out' would place her family under '... unnecessary personal, financial and mental strain' and that the separation would also be detrimental to their mental well-being;

¹⁷ Exhibit 7, para. 14.

¹⁸ Exhibit 7, para. 14.

¹⁹ Exhibit 7, para. 14.

- with her son receiving placement in an educational institution suitable to meet his educational and sporting/physical development, those needs would not be able to be met in the St George Division, placing further hardship on her and her family;
- her son would not be able to further his sporting needs for basketball in St George, with the closest town for competitive basketball being Toowoomba, which would be an eight hour round trip to get him to training; and
- if her son had to withdraw from the Gold Coast Representative Team, he would become ineligible from the Gold Coast Representative Team for the current and following full representative season, including the State championships, which would have a detrimental effect on him as he had worked extremely hard to get to where he was at that time.²⁰

[35] Senior Constable Adams also stated that her current Officer in Charge stated that he was more than happy for her to remain at the Nerang Police Station and was prepared to provide a reference if required. Senior Constable Adams also stated that her Officer in Charge had advised that there were current vacancies at the Nerang Police Station.²¹

The consideration of Senior Constable Adams' grievance by the Public Safety Business Agency

[36] Senior Constable Adams' grievance, against the second year allocation decision, was forwarded to the General Manager, PSBA HR and was investigated by Ms Kerry Edmondson of the PSBA.

[37] Ms Edmondson made a written recommendation, dated 17 January 2020, in respect of Senior Constable Adams' grievance.²² Ms Edmondson spoke to Senior Constable Adams as part of her investigation of the grievance. Senior Constable Adams, in speaking with Ms Edmondson, reiterated all the issues she referred to in her written grievance against the second year allocation decision and provided further information in relation to those issues.

[38] There are some matters allegedly conceded or stated by Senior Constable Adams, as referred to in Ms Edmondson's written recommendation, with which Senior Constable Adams disagrees. When those matters are material, I refer to them later in these reasons for decision.

[39] Ms Edmondson considered the grounds raised by Senior Constable Adams in her grievance against the second year allocation decision.

The voluntary phase

[40] One issue clarified as part of the grievance was the claim made by Senior Constable Adams that she was unaware that she could nominate more than

²⁰ Exhibit 7, para. 16.

²¹ Exhibit 7, para. 15.

²² Exhibit 6, exhibit A.

one location during the voluntary phase. Senior Constable Adams stated that she believed she had been disadvantaged by selecting only one location (the Broadbeach Police Station).

[41] After reviewing the voluntary round preference process, Ms Edmondson stated she was unable to identify anything that would indicate misinformation about volunteering for more than one location.²³

[42] Ms Edmondson stated that in their discussion, Senior Constable Adams advised that she had misunderstood the instructions. Ms Edmondson, as a result, formed the view that Senior Constable Adams had not been inappropriately disadvantaged during the voluntary round.²⁴

Senior Constable Adams' daughter

[43] In relation to Senior Constable Adams' daughter, who had obtained part-time employment since Senior Constable Adams became a first year Constable and who was still living at home to save for the purposes of attending flight attendant training school, Ms Edmondson stated that no information was provided for that matter to be considered as an exceptional or compelling circumstance.²⁵

[44] Ms Edmondson was of the view that while it was a change in Senior Constable Adams' circumstances, it did not warrant consideration for reallocation.²⁶

Senior Constable Adams' husband

[45] In relation to Senior Constable Adams' husband, it appears that information was provided by Senior Constable Adams that:

- her husband was a highly valued member of a team at a Tweed Heads independent motor dealership and that the dealership anticipated it may have to close its doors and put a number of employees off if her husband were to leave;²⁷ and
- as this was an opportunity for her husband to do something he had always wanted, Senior Constable Adams did not want to take that away from him; and there was only one car dealership in St George and no private car dealerships for her husband to obtain similar employment.²⁸

[46] Ms Edmondson stated that her research indicated there were two other motor dealerships in St George.²⁹

²³ Exhibit 6, exhibit A, para. 9.

²⁴ Exhibit 6, exhibit A, paras. 10 and 11.

²⁵ Exhibit 6, exhibit A, para. 12.

²⁶ Exhibit 6, exhibit A, para. 14.

²⁷ Exhibit 6, exhibit A, para. 15.

²⁸ Exhibit 6, exhibit A, para. 16.

²⁹ Exhibit 6, exhibit A, para. 16.

[47] In any event, Ms Edmondson:

- found that Senior Constable Adams' husband accepted his job with the knowledge that Senior Constable Adams could be placed anywhere in Queensland as a second year police officer; and
- concluded that discussions with Senior Constable Adams resulted in acknowledgement that her husband's employment may not be considered an exceptional or compelling circumstance when advised of similar employment matters being considered on review in the Queensland Industrial Relations Commission and the review being dismissed.³⁰

[48] Despite the above, Senior Constable Adams requested that this issue be referred to the Deputy Commissioner, Regional Operations, for favourable consideration based upon compassionate grounds.³¹

Senior Constable Adams' son

[49] Senior Constable Adams referred to the fact that during her time as a first year Constable, her son was selected to play basketball at representative level for the upcoming school year and that, in addition, the school basketball coach identified that her son held a natural talent for the game and confirmed that her son would be participating in the basketball excellence program for the upcoming school year.³²

[50] Senior Constable Adams stated that should her family relocate to St George, her son would not be able to participate in the basketball teams and program for which he had achieved selection.³³

[51] Ms Edmondson noted that whilst Senior Constable Adams acknowledged that these matters may not constitute grounds for exceptional and/or compelling circumstances, she requested the Deputy Commissioner, Regional Operations, consider her relocation on compassionate grounds.³⁴

Financial hardship and relationship strain

[52] Prior to coming to Queensland to undertake training at the Academy, Senior Constable Adams had been a police officer in Western Australia. Senior Constable Adams' husband moved to Queensland from Western Australia in November 2017 and then obtained employment, in car sales, in Tweed Heads. In December 2017, Senior Constable Adams accompanied her children when they moved to Queensland. Senior Constable Adams then returned to Western Australia and remained there until June 2018, when she permanently moved to Queensland to commence training at the Academy. As a consequence, Senior Constable Adams lived separately to her family, prior to undertaking training at the Academy, for approximately six months.

³⁰ Exhibit 6, exhibit A, paras. 17-18.

³¹ Exhibit 6, exhibit A, para. 19.

³² Exhibit 6, exhibit A, para. 20.

³³ Exhibit 6, exhibit A, para. 21.

³⁴ Exhibit 6, exhibit A, para. 22.

[53] Senior Constable Adams referred to the fact that when she lived separately to her family, a financial debt was incurred and that the financial circumstances of her family had just returned to where they were prior to the family living separately. Senior Constable Adams stated that she did not want to experience debt again.³⁵

[54] Furthermore, Senior Constable Adams stated that her family struggled with separation and that she felt like she had lost connection with her family and did not want to experience that again.³⁶

[55] Senior Constable Adams requested that the decision-maker consider reallocating her to the Gold Coast District on those compassionate grounds.³⁷

Nerang Police Station positions

[56] Ms Edmondson stated that:

- it was not uncommon for aggrieved members of the Service to advise of vacancies in the location they would like to be placed for their second year allocation; and
- it is not for the station Officer in Charge to decide where a second year police officer is placed, the decision is delegated to a higher level and is made in conjunction with Human Resources information, considering where the greatest need arises along with other organisational and operational factors.³⁸

[57] Ms Edmondson stated that during their initial discussion, Senior Constable Adams:

- acknowledged that her grounds for reallocation from St George to the Gold Coast District may not be seen to be compelling and/or exceptional, but requested that consideration be given to a favourable outcome for the compassionate reasons that she described; and
- referred to the fact that the Service had invested in her, that she enjoyed her work and that if it was decided that St George remained as her allocated second year location, she would resign.³⁹

Ms Edmondson's recommendation

[58] Ms Edmondson recommended, after considering all the information she had gathered, that:

- the decision to allocate Senior Constable Adams to St George be confirmed; and

³⁵ Exhibit 6, exhibit A, para. 23.

³⁶ Exhibit 6, exhibit A, para. 24.

³⁷ Exhibit 6, exhibit A, para. 25.

³⁸ Exhibit 6, exhibit A, para. 26.

³⁹ Exhibit 6, exhibit A, para. 27.

- Senior Constable Adams negotiate a suitable commencement date at St George with the Officers in Charge at St George and Nerang.⁴⁰

The decision of Acting Deputy Commissioner Taylor

- [59] By email dated 22 January 2020, Ms Edmondson's recommendation was forwarded to the Deputy Commissioner, Regional Operations.
- [60] By decision dated 4 February 2020, the occupant of that position, Acting Deputy Commissioner Taylor, considered the matter and determined that the original, permanent allocation of Senior Constable Adams to St George was to be upheld.
- [61] By email dated 6 February 2020, Senior Constable Adams was informed of the decision of Acting Deputy Commissioner Taylor.

The relevant principles in the arbitration of an industrial dispute of this kind

- [62] The Service did not submit that, in the particular circumstances of this case, the Commission lacked power to grant the relief sought by Senior Constable Adams by exercise of its arbitration power pursuant to s 262(3)(b) of the Act.
- [63] Having regard to the above-mentioned provisions of the PSAA, the decision to deploy a police officer is an exercise of the prescribed responsibility of the Commissioner of the Service. Such a decision is made in the discharge of the Commissioner's ultimate responsibility for the efficient and proper administration, management and functioning of the Service in accordance with law.
- [64] In my view, the decision to transfer Senior Constable Adams is an exercise of managerial prerogative by the authorised delegate of the Commissioner. This is because it is a decision taken for the efficient and proper administration, management and functioning of the Service as determined by the delegate of the Commissioner of the Service.
- [65] The approach of industrial relations tribunals in Australia in respect of the arbitration of industrial disputes involving the exercise of managerial prerogative is settled.
- [66] If an employer's exercise of managerial prerogative is not prevented by statute, an award, a statutory agreement or the contract of employment, the basis for a tribunal, acting as an arbitrator of a dispute, in interfering with what would otherwise be a lawful exercise of managerial prerogative, is for the tribunal to examine all the facts and not to interfere with the right of an employer to manage its own business unless the employer is seeking from the employees something which is unjust or unreasonable.⁴¹

⁴⁰ Exhibit 6, exhibit A, para. 31.

⁴¹ *The Automotive, Metals, Engineering, Printed and Kindred Industries Industrial Union of Employees v QR* [2000] QIRC 123; (2000) 165 QGIG 526, 530 (Commissioner Asbury), *Queensland Nurses' Union of Employees v Sundale Garden Village, Nambour (No. 3)* [2006] QIRC 98; (2006) 182 QGIG 683, 711 (Commissioner Asbury), *Construction, Forestry, Mining and Energy Union v HWE Mining Pty Ltd* [2011]

[67] This is the approach I will take in determining whether I will intervene in the industrial dispute as notified by Senior Constable Adams to this Commission.

Is the decision to allocate Senior Constable Adams to the St George Division unjust or unreasonable?

Senior Constable Adams' submissions

[68] After setting out the background to her employment in the Service,⁴² Senior Constable Adams' submissions to the Commission reiterated the issues to which she referred in her grievance against the second year allocation decision.

[69] However, there were some further points and clarifications that Senior Constable Adams made to the Commission. These mainly related to events that had occurred since the decision of Acting Deputy Commissioner Taylor.

The voluntary round preference process

[70] Senior Constable Adams submitted that she recalls saying to Ms Edmondson that the email, about the voluntary preference round, stated it was not mandatory for her to select more than one location and she did not say to Ms Edmondson, as referred to paragraph 8 of Ms Edmondson's recommendation, that she was disadvantaged during the voluntary preference round.⁴³

[71] Senior Constable Adams submitted that it was not articulated in the original instruction that the inclusion of more than one option, if any, in the volunteer stage would be to benefit the applicant and that should she have known that, she would have applied for multiple Gold Coast positions and even positions in surrounding areas such as Logan.⁴⁴

Senior Constable Adams' daughter

[72] Senior Constable Adams submitted that her daughter had lost her job due to COVID-19 and because she did not qualify for the Commonwealth government Job Keeper or Job Seeker benefits, she was financially dependent on Senior Constable Adams and her husband.⁴⁵

[73] However, as at the date of hearing, Senior Constable Adams informed the Commission that her daughter had obtained work shifts and that her daughter was, therefore, not totally financially dependent upon Senior Constable Adams and her husband.

Senior Constable Adams' husband

FWA 8288; (2011) 214 IR 194, [7]-[11] (Vice-President Lawler) and *Case v State of Queensland (Department of Attorney-General, Queensland Corrective Services)* [2017] QIRC 048, [131]-[132] (Commissioner Knight).

⁴² Exhibit 8, paras. 1-9.

⁴³ Exhibit 8, para. 18.

⁴⁴ Exhibit 8, para. 18.

⁴⁵ Exhibit 8, para. 12.

[74] Senior Constable Adams submitted that her husband has made numerous enquiries to car dealerships in St George about job availability but had yet to receive a reply.⁴⁶

[75] In paragraph 16 of Ms Edmondson's recommendation, reference was made to there being one car dealership in St George. Senior Constable Adams submitted that she never said there was only one car dealership in St George, rather, she said that as of the morning Ms Edmondson spoke to her, there were no jobs advertised on the Seek Australia Website for her husband and that it was her support person who was with her during the conversation who stated that there was 'a' Toyota car dealership.⁴⁷

[76] Senior Constable Adams disputes acknowledging, as set out in paragraph 18 of Ms Edmondson's recommendation, that her husband's employment may not be considered an exceptional and/or compelling circumstance. Senior Constable Adams also submitted that she was never advised of similar employment matters being considered on review in the Queensland Industrial Relations Commission and the review being dismissed.⁴⁸

Senior Constable Adams' son

[77] Senior Constable Adams submitted that:

- her son's basketball team had moved up to Division One and will participate in the State Championships in Cairns, which has now been moved to the September school holidays;⁴⁹
- her son had also been selected into the First Team for rugby in his age group and that his school had reduced his school fees as the school did not want to lose him as a student who has the potential to do well;⁵⁰
- there is only one high school in St George, and after inquiring, she was informed that it did not have any sporting excellence programs and only offered general sport programs;⁵¹ and
- her son keeps asking if he is going to have to give up his spot on the representative basketball team and change schools.⁵²

Financial hardship and relationship strain

[78] Senior Constable Adams submitted that her family's financial situation has now been exacerbated by COVID-19 as her husband is currently in receipt of Job Keeper benefits and that due to the current climate, it would be hard to find employment anywhere,

⁴⁶ Exhibit 8, para. 13.

⁴⁷ Exhibit 8, para. 18.

⁴⁸ Exhibit 8, para. 19.

⁴⁹ Exhibit 8, para. 11.

⁵⁰ Exhibit 8, para. 15.

⁵¹ Exhibit 8, para. 15.

⁵² Exhibit 8, para. 23.

especially in the car sales industry, as the industry has been detrimentally affected in terms of sales.⁵³

[79] Senior Constable Adams also submitted that her husband is not eligible for Job Seeker benefits and that there were still no jobs in St George for husband's skill set as at 9 June 2020.⁵⁴ Exhibit 2 is an affidavit of Senior Constable Adams which exhibited searches undertaken on 17 July 2020, through the Seek Australia Website, for vacant positions in St George in which there appeared to be no jobs available for a person involved in car sales through a dealership.⁵⁵

[80] Senior Constable Adams further submitted that:

- relocating (to the St George Division) will again place immense pressure on her husband to care solely for the family;⁵⁶
- undue stress had already been displayed by her children when she told them she had to move, the six months of living apart previously had been psychologically damaging and that relocating to the St George Division would be for an even longer time frame;⁵⁷
- for these reasons, relocating to the St George Division would have a detrimental impact on her personally, their children, her husband and their marriage;⁵⁸
- since she received the decision of Acting Deputy Commissioner Taylor, she has been under an immense amount of stress and had been speaking to the Police Chaplain regularly, as well as the '... HSO for the South Eastern region about how that one email has and still is impacting my and my family's lives.'⁵⁹ and
- the whole process is affecting her relationship with her husband which has resulted in her '... snapping at him for the smallest things', it has been detrimentally affecting her eating and sleeping and she feels a mixture of anger, resentment, hurt, disappointment, regret and acceptance.⁶⁰

[81] In respect of paragraphs 22 and 27 of Ms Edmondson's recommendation, Senior Constable Adams submitted that she did not recall ever acknowledging that her grounds for reallocation may not seem to be compelling and/or exceptional.⁶¹

[82] In relation to paragraph 26 of Ms Edmondson's recommendation, which dealt with vacancies at the Nerang Police Station, Senior Constable Adams submitted that at no

⁵³ Exhibit 8, para. 13.

⁵⁴ Exhibit 8, para. 13.

⁵⁵ Exhibit 2, exhibit B.

⁵⁶ Exhibit 8, para. 14.

⁵⁷ Exhibit 8, para. 14.

⁵⁸ Exhibit 8, para. 14.

⁵⁹ Exhibit 8, para. 22.

⁶⁰ Exhibit 8, para. 23.

⁶¹ Exhibit 8, para. 20.

time did she say that her Officer in Charge at the Nerang Station had offered her a position.⁶²

[83] Senior Constable Adams concluded by submitting:

25. Where has common sense gone? I know of people in my intake and in my squad, who are single, with no kids or medical issues to keep them on the Coast. They got to stay, yet the QPS wants to break up my family by sending me St George? I have heard of other people with less compelling reasons than mine, who were also allowed to stay. I am really struggling to understand how they can feel ok with putting families through this amount of pressure and stress.
26. The QPS have a strategy called "Our people matter" and I would like to feel like I matter to the QPS, because at the moment, I don't feel like I matter. The fact that I have diligently served the community, risking my life every time I go to work, albeit by choice, missing special family occasions because I had to work, for over 7 years and my current family situation, makes me feel that I am just a number. QPS have a guiding principle of "person and family centred" but is this what they are practising right now? I know and understand that technically I was a First Year Constable but only a First Year to the QPS. I could understand if I was an actual "First Year Constable" and they wanted to send me out to the country to gain experience, but I have been doing this job since April 2013. I am not saying that I am better than other FYC's at all, all I'm asking for is for some recognition and compassion. I have also been gazetted as a Senior Constable to Nerang station, on 14 April 2020.
27. I have also learnt that the QPS have what they call 2 in 1 positions at most stations, which means 2 people share the same position number. Why can't this be an option for me? An email was sent to the GC District on 19 May, seeking EOI's for Lateral Transfers within the GC District, so surely there are some positions available? How can giving 1 person a position in the GC district, have such a major impact on the QPS? I feel as if I'm being used as an example for other FYC's and I'm being punished for choosing 1 option in the volunteer phase.

[84] In oral submissions, Senior Constable Adams touched upon all these points and further submitted that:

- her and her family's mental health were compelling reasons against the allocation to the St George division;
- to move her family to St George would not be financially viable as there is no work in St George and there is only one high school which does not have a sporting excellence program;
- she came to Queensland for her husband's mental health and opportunities for her son, she cannot take away that opportunity for her son and cannot take away the employment opportunity that her husband presently has in a position in which he is doing well;
- if she was required to live in St George without her family, she would probably split from her husband; and

⁶² Exhibit 8, para. 21.

- she is aware that there are positions available within the Service on the Gold Coast that she could perform as a police officer.

The Service's submissions

[85] The Service submitted that:

- in executing the Acceptance of Offer form on 21 June 2018, Senior Constable Adams accepted that, as a police officer, she could be required to serve at any location within the State of Queensland;⁶³
- that commitment remains throughout the career of all police officers, including at the recruitment and probation stage for new appointees into the Service;⁶⁴
- by the email to Senior Constable Adams on 17 September 2019, the explanation of the process of voluntary and mandatory allocation identified, unambiguously, the documentation needed to reinforce acceptable, extenuating and compelling circumstances that needed to be supplied in order that a first year constable be considered for a specific location;⁶⁵
- Senior Constable Adams provided information regarding family issues that were taken into consideration in respect of the one preference she sought, however those circumstances were not considered as compelling as others;⁶⁶
- while Senior Constable Adams submits, in respect of the voluntary phase for allocation, that the email she received on 17 September 2019 did not state she could choose one or more options, the documentation did explain the consequences of selecting preferences or one preference and that where only one preference was selected, and the first year constable did not get the preference, then they would have an opportunity to seek a preference under the mandatory round;⁶⁷
- Ms Adams had given a commitment that she could be moved to any location within the State of Queensland and that there was no guarantee of gaining the one preference that she nominated, even in circumstances where Senior Constable Adams perceived the reasons for that one preference were sufficient;⁶⁸
- the Service has established policy and procedures concerning the allocation of new officers to stations throughout the State and that the Commissioner has the responsibility of policing in the State and is committed to the process employed in appointing and training new recruits and their allocations to stations within the

⁶³ Exhibit 9, para. 4.

⁶⁴ Exhibit 9, para. 5.

⁶⁵ Exhibit 9, paras. 6-7.

⁶⁶ Exhibit 9, para. 7.

⁶⁷ Exhibit 9, paras. 8-9.

⁶⁸ Exhibit 9, para. 17.

State at the conclusion and confirmation of appointment after the probation period;⁶⁹ and

- the process for allocation has been adopted and confirmed by union representatives which provides the Commissioner with the reassurance that procedural fairness applies and that all circumstances or concerns from officers are taken into account within the Service.⁷⁰

[86] In oral submissions, Mr Carthew, on behalf of the Service, reiterated the points made in the Service's written submissions and further submitted that:

- the only circumstance that had changed since Senior Constable Adams agreed and accepted, on 21 June 2018, that she may be required to serve at any location within Queensland, was that her son had advanced in respect of the sport of basketball; and
- if there was to be acquiescence to Senior Constable Adams' request that she remain on the Gold Coast, that may deny other police officers, who had performed three years' service in remote or regional locations, an opportunity to transfer to South East Queensland.

[87] In her submissions in reply, Senior Constable Adams informed me that an additional circumstance that had changed, since 21 June 2018, was that in July 2019, her husband had been given a different and more beneficial opportunity to run a car sales yard in Tweed Heads which was different to the employment opportunity he had taken up when he first moved to Queensland from Western Australia in November 2017.

My determination

[88] The question is whether, in the exercise of the managerial prerogative of the delegate of the Commissioner, the decision to allocate Senior Constable Adams to the St George Division is unjust or unreasonable.

[89] In my view, that decision is not unjust or unreasonable. There are a number of reasons for this.

[90] First, by signing the acceptance of offer on 21 June 2018, Senior Constable Adams expressly agreed and accepted that, as a police officer, she may be required to serve at any location within the State of Queensland, subject to the operational requirements of the Service. That agreement and acceptance was unequivocal.

[91] Secondly, Senior Sergeant Dudley, in his email to Senior Constable Adams dated 3 August 2018, made it clear that there was a high probability that Senior Constable Adams could be transferred from her initial training location (the Gold Coast) to another station in line with the operational needs of the Service as they existed at the completion of her First Year Constable Program.

⁶⁹ Exhibit 9, para. 23.

⁷⁰ Exhibit 9, para. 23.

- [92] Thirdly, the email Senior Constable Adams received dated 17 September 2019, about her second year allocation, was clear in its terms, namely, that in respect of the voluntary and mandatory phases of allocation, whilst all nominated preferences would be given fair consideration, there would be instances where preferences could not be accommodated.
- [93] Fourthly, by reference to the passages from the 17 September 2019 email, that are referred to in paragraph [24] of these reasons for decision, that email made it clear that in the voluntary phase, more than one location could be listed as a preference. Senior Constable Adams made the decision only to list one location, being the Broadbeach Police Station. Senior Constable Adams was unsuccessful in obtaining that preferred location and then, as was made clear in the email, she was able to submit a preference in respect of the mandatory phase. It was as a result of the mandatory phase that Senior Constable Adams was allocated to the St George Division.
- [94] Fifthly, when, on 21 June 2018, Senior Constable Adams agreed that she could be required to serve at any location within the State, it was made clear to her, by the provision of the document entitled 'Allocation of Constables,' that she could be permanently allocated as a general duties officer to any police station in Queensland as a second year constable, for a minimum tenure period of generally three years. Given her knowledge of her husband's employment in Queensland, and the ages and stages of life of her son and daughter at the time she gave her agreement to serve as a police officer in any part of Queensland, Senior Constable Adams must have appreciated that her agreement to so serve may require her to relocate from the Gold Coast. That appreciation must have included the possibility that such a relocation could cause disruption to her family's circumstances as they were evolving.
- [95] As in any family, circumstances may change, including in relation to employment and a child's educational or sporting opportunities. The changed circumstances concerning Senior Constable Adams' husband's employment, and the changed circumstances of her son and daughter, are ordinary circumstances that may affect any family. Those changes do not render the decision to allocate Senior Constable Adams to the St George Division, when regard is had to all the facts, including Senior Constable Adams' June 2018 agreement to serve anywhere in the State, to be unreasonable.
- [96] Sixthly, Senior Constable Adams refers to the stress that she and her family would be under if she relocated to the St George Division on her own. I do not, for one moment, dispute that Senior Constable Adams, and her family, would suffer from such separation stress. However, the possibility of later separation must have been within Senior Constable Adams' contemplation when she agreed to serve anywhere in the State upon accepting the offer of employment on 21 June 2018.
- [97] Finally, as referred to earlier in these reasons for decision, the Commissioner is responsible for the efficient and proper administration, management and functioning of the Service in accordance with law. One of the Commissioner's prescribed responsibilities is to decide the deployment of police officers. The Commissioner has the authority to do, or cause to be done, all such lawful acts and things as the Commissioner considers to be necessary or convenient for the discharge of that responsibility. All of the Commissioner's responsibilities are for the functioning of the

Service which includes the preservation of peace and good order in all areas of the State.

[98] The ultimate assessment of the Commissioner's delegate was that the efficient and proper administration, management and functioning of the Service necessitated the allocation of Senior Constable Adams to the St George Division. There is no evidence that decision was motivated by any unlawful or improper reason.

Conclusion

[99] The question in the present case is whether the Commission should intervene in the exercise of the managerial prerogative, by the authorised delegate of the Commissioner of the Service, to allocate Senior Constable Adams to the St George Division.

[100] That decision was not constrained by any provision in a statute, or award, certified agreement or contract of employment. In such a case, the Commission will not interfere with the right of an employer to manage its business unless what it is seeking from an employee is unjust or unreasonable.

[101] I have sympathy for Senior Constable Adams' circumstances. However, that is not a basis for my intervention. For the reasons I have given, the decision to allocate Senior Constable Adams to the St George Division is not unjust or unreasonable.

[102] Senior Constable Adams' application to arbitrate the dispute in her favour is dismissed.