SUPREME COURT OF QUEENSLAND

CITATION:	*WorkCover Queensland v Australia Meat Holdings Pty Ltd* [2002] QSC 167
PARTIES:	**WORKCOVER QUEENSLAND** **(**applicant) v **AUSTRALIA MEAT HOLDINGS PTY LIMITED (ACN 011 062 338)** **(**respondent)
FILE NO/S:	S 7053/01
DIVISION:	Trial Division
PROCEEDING:	Chamber application
ORIGINATING COURT:	Supreme Court, Brisbane
DELIVERED ON:	12 June 2002
DELIVERED AT:	Brisbane
HEARING DATE:	6 June 2002
JUDGE:	Douglas J
ORDER:	**1. That on the proper construction of the *WorkCover Queensland Act* 1996 and the Dinmore Enterprise Agreement 2000, the Beef City Enterprise Agreement 2000, and the Rockhampton Enterprise Agreement (2000), that the words "the weekly rate of wages" in s 132 of the Act referred to and only to, the weekly rates of pay set out in the wage rates clause in each of the Agreements; and** **2. That the respondent pay the applicant's costs of and incidental to this application on the ordinary basis.**
CATCHWORDS:	STATUTES – CONSTRUCTION OF STATUTES – INTERPRETATION OF LEGISLATION – PARTICULAR WORDS AND PHRASES – General Principles – Specific Interpretations - *WorkCover Queensland Act* 1966 – whether the words "the weekly rate of wages" in s 132 of the Act referred to and only to the weekly rates of pay set out in the wage rates clause in each of the agreements CONSTRUCTION OF DEEDS, CONTRACTS IN WRITING AND OTHER INSTRUMENTS – INTERPRETATION OF INSTRUMENTS – Enterprise Agreements

WORKERS' COMPENSATION – ENTITLEMENT TO AND LIABILITY FOR COMPENSATION – ASSESSMENT AND AMOUNT OF COMPENSATION – ASSESSMENT BY AGREEMENT – WEEKLY EARNINGS

Industrial Relations Act 1988
WorkCover Queensland Act 1996, s 132, s 132(1), s 174, s 174(1), s 174(1)(a)(i), s 174(1)(a)(ii)
Workplace Relations Act 1996 (Cth)

Ardino v Count Financial (1994) 1 IRCR 221
Automatic Fire Sprinklers Pty Ltd v Watson (1946) 72 CLR 435
FCT v J Walter Thompson (Australia) Pty Ltd (1944) 69 CLR 227
Gurran v Tarbook Pty Ltd (IRCA, Unreported, 13.9.96)
Hargreaves v National Safety Council (1997) 74 IR 19

COUNSEL: P A Keane SG QC G C Martin SC for applicant
A K Herbert for respondent

SOLICITORS: C W Lohe, Crown Solicitor, for applicant

[1] **Douglas J:** This application is made by the applicant, WorkCover Queensland against the respondent, Australia Meat Holdings Pty Ltd for the following declaration:

1. A declaration that, on the proper construction of the Act and the Agreements, the words "the weekly rate of wages" in s 132 of the Act refer to, and only to, the weekly rates of pay set out in the wage rates clause in each of the agreements.

[2] The Act referred to is the *WorkCover Queensland Act* 1996 ("the Act") and the agreements referred to are in respect of employment of employees at the meatworks conducted by the respondent, and regulated by an agreement certified under the *Workplace Relations Act* 1996 (Cth).

[3] There are in fact three meatworks regulated by such agreements, however, it appears to be common ground that each of them has a common purpose and for the purposes of the application, the clause from the Dinmore Enterprise Agreement 2000 can be taken as typical of the other two. It provides:

> "26. Worker's Compensation
> 26.1 Notwithstanding any other provision of this Agreement, if an employee is totally or partially incapacitated from performing work by reason of a circumstance which entitles the employee of a weekly payment of compensation under Division 4 or Division 5 of Part 8 of Chapter 3 of the

WorkCover Act 1996 (or any provision enacted in substitution therefor), the weekly rate of wages to which the employee is entitled during the period of such incapacity on account of the engagement of the employee under this Agreement, shall be the rate which is equal to:

(i) In the case of a Regular Daily employee – 85% of the classification rate set out in Clause 25 of this Agreement which relates to the position in which the employee is engaged; or
(ii) In the case of all other types of employee – the proportion of the rate specified in (i) which is relevant to the employment status of the employee.

Provided that this clause shall not entitle the employee to be paid such wages for any period that the employee receives their full entitlement to weekly payments of compensation under Division 4 or Division 5 of Part 8 of Chapter 3 of the WorkCover Act 1996."

[4] The respondent claims that this clause entitles it to pay an amount not exceeding 85% of the relevant classification rate to employees who are totally or partially incapacitated from performing work. Further, the respondent claims that, by complying with this clause it complies with the Act.

[5] Section 174 of the Act provides:

"174.(1) The compensation payable to a totally incapacitated worker whose employment is governed by an industrial instrument is, for each week –

(a) for the first 26 weeks of the incapacity, the greater of the following –
    (i) 85% of the worker's NWE;
    (ii) the amount payable under the worker's industrial instrument; and
(b) from the end of the first 26 weeks of the incapacity until the end of the first 2 years of the incapacity, the greater of the following –
    (i) 65% of the worker's NWE;
    (ii) 60% of QOTE; and
(c) from the end of the first 2 years of the incapacity until the end of the first 5 years of the incapacity –
    (i) if a worker demonstrates to WorkCover that the injury could result in a WRI of more than 15% - the greater of the following –
        (A) 65% of the worker's NWE
        (B) 60% of QOTE; or
    (ii) otherwise – an amount equal to the single pension rate.

> (2) However, the amount paid under subsection (1)(b) or (c) must not be more than the amount to which the worker would be entitled under subsection (1)(a).

[6] The phrase "the amount payable under the worker's industrial instrument" is defined in s 132 of the Act as follows:

> "132.(1) An amount payable under an industrial instrument to a worker is the weekly rate of wages to which the worker is entitled for the time being under the industrial instrument.
>
> (2) However, if a worker is employed in an industry that is seasonal in nature, the amount payable must reflect the relevant season under the industrial instrument."

[7] The respondent argues that the words in s 132(1) "for the time being" allow it to pay the rates specified in the clause set out above, rather than a rate equivalent to the wages which would be otherwise paid to the worker. The clause referred to is clause 26 of the relevant agreement.

[8] In order to determine the amount which is payable for the first 26 weeks of an incapacity, one must calculate both of the figures provided for in s 174(1)(a)(i) and s 74(1)(a)(ii). It is common ground between the parties that it is the latter figure with which this application is concerned.

[9] In order to determine what the "weekly rate of wages" in the industrial instrument is, one needs to take into account the meaning of the word "wages". That word is defined for the purposes of the Act in schedule 3 which provides:

> "wages" means the total amount paid, or provided by, an employer to, or on account of, a worker as wages, salary or other earnings by way of money or entitlements having monetary value, but does not include –
>
> (a) allowances payable in relation to any travelling, car, removal, meal, education, living in the country or away from home, entertainment, clothing, tools and vehicle expenses; and
>
> (b) contribution by an employer to a scheme for superannuation benefits for a worker, other than contribution made from money payable to the worker; and
>
> (c) lump sum payments on termination of a worker's services for superannuation, accrued holidays, long service leave or any other purpose; and
>
> (d) an amount payable under section 70."

[10] It was submitted by the applicant, and I agree, that it is apparent that the definition is intended to tell the reader that certain payments to employees are not to be included as the wages of the employee for the purposes of the Act. It is further submitted, and I agree, that the definition otherwise appears to rely upon the usual and accepted meaning of the word "wages" in order to provide a full meaning.

[11] The term "wages" indicates that there be a payment of money in exchange for services. In *FCT v J Walter Thompson (Australia) Pty Ltd* (1944) 69 CLR 227, the

High Court considered the meaning of "wages" in a tax statute. The definition with which the Court was concerned in that case was one which said "any wages, salary, commission, bonuses or allowances paid or payable … to any employee as such …". Latham CJ at 234 said:

> "In my opinion, in the Payroll Tax Assessment Act, the word "wages" should be held to include any remuneration paid or payable to an employee as a reward for his services as an employee."

[12] Further, in *Ardino v Count Financial* (1994) 1 IRCR 221, Wilcox CJ considered the meaning of the word "wages" when used in the part of the *Industrial Relations Act* 1988 concerned with reinstatement applications. At 228, he referred to the definition in the Shorter Oxford Dictionary as:

> "A payment to a person for service rendered; now esp the amount paid periodically for the labour or service of a workman or servant."

[13] Similar observations were made in *Gurran v Tarbook Pty Ltd* (IRCA, Unreported, 13.9.96), and in *Hargreaves v National Safety Council* (1997) 74 IR 19 where Marshall J agreed with the view of Lee J, in *Gurran supra*, that "wage" was not the same as "remuneration".

[14] The respondent referred to the judgment of Dixon J in *Automatic Fire Sprinklers Pty Ltd v Watson* (1946) 72 CLR 435 at 466 where his Honour said:

> "Some difficulty has been felt in saying what is the service which carries wages. The wages are incident to the subsisting relationship of master and servant. A master who sends his servant upon a holiday upon full pay can be sued for wages under the contract, although not on a common counter for work and labour done. They also serve who only stand and wait. Difficulties, too, arise from the fact that a refusal to work on the part of a servant, who neither leaves his master's services nor is discharged, may thus entitle him to wages for the period of the refusal. That is for nonfulfilment of the conditions by which wages are earned. But, broadly speaking, it is enough to say that wages are for the service reasonably demanded under a subsisting relationship of master and servant."

[15] Furthermore, and in essence, the respondent relied upon the fact that each of the Agreements, including the Dinmore Agreement, prescribes a rate of wages in the certified agreement to apply to workers at that time which wages contained in an agreement certified under the *Workplace Relations Act* 1996, and has, it is submitted, the force of law between the parties. This is misconceived because of the provisions of s 170LZ (2) of the *Workplace Relations Act* 1996 (Cth) which reads:

> "Provisions in a certified agreement that deal with the following matters operate subject to the provisions of a State law that deals with the matter:
>
> (a) occupational health and safety;
> (b) workers' compensation;
> (c) apprenticeship;

(d) any other matter prescribed by the regulations."

[16] From all of the above, it appears to me, as submitted by the applicant, that when one looks to an industrial instrument to find "the weekly rate of wages to which the worker is entitled" one goes to that part of the industrial instrument which sets out the wages normally paid to employees for work done.

[17] Section 174(1)(a) does not require a comparison between the amount which is 85% of the worker's Normal Weekly Earnings (NWE) and the amount payable under an industrial instrument to a "worker who is totally incapacitated". The comparison which should be made is with the amount which is payable to a "worker". There is no mention in the Explanatory Notes which accompanied the relevant bill which covers the situation put in place by the respondent. The Notes relevantly said"

> "*Meaning of "amount payable under an industrial instrument"*
>
> Clause 132 defines the meaning of "amount payable under an industrial instrument" for use in calculating the rate of weekly compensation under part 8 of this chapter. Industrial instrument is defined in schedule 3 and has been changed to reflect contemporary industrial relations practice. It replaces section 124A of the *Workers' Compensation Act* 1990 and adds a provision for seasonal workers such that the amount of weekly compensation payable must reflect the relevant season under the industrial instrument. The intent is that a seasonal worker should not receive more on compensation than they would have received had they not been injured and were still at work.
>
> Under the previous provision in the *Workers' Compensation Act* 1990, a worker could potentially be paid more on compensation than they would have received at work, particularly for seasonal workers. This situation acts as a disincentive for the injured worker to return to work.. This clause ensures that the worker's compensation would be reduced to the off-season rate."

[18] In my view there is a clear intention that seasonal workers should receive what they otherwise would have received, had they remained at work. There is therefore nothing to suggest that ordinary workers should be paid less than they would have received had they remained at work.

[19] It follows that I should make the declaration sought.

1. I declare that on the proper construction of the *WorkCover Queensland Act* 1996 and the Dinmore Enterprise Agreement 2000, the Beef City Enterprise Agreement 2000, and the Rockhampton Enterprise Agreement (2000), that the words "the weekly rate of wages" in s 132 of the Act referred to and only to, the weekly rates of pay set out in the wage rates clause in each of the Agreements.

2. I order that the respondent pay the applicant's costs of and incidental to this application on the ordinary basis.