SUPREME COURT OF QUEENSLAND

CITATION:	*Squires v President of Industrial Court Qld* [2002] QSC 272
PARTIES:	**PHILLIP ALAN SQUIRES** **(applicant/respondent)** **v** **PRESIDENT OF INDUSTRIAL COURT QUEENSLAND** **(first respondent)** **and** **STATE OF QUEENSLAND** **(second respondent/applicant)** **and** **WORKCOVER QUEENSLAND** **(third respondent/respondent)**
FILE NO:	S3990 of 2002
DIVISION:	Trial Division
DELIVERED ON:	11 September 2002
DELIVERED AT:	Brisbane
HEARING DATE:	14 June 2002
JUDGE:	Mullins J
ORDER:	**Application filed on 3 May 2002 be dismissed.**
CATCHWORDS:	JUDICIAL REVIEW - application for prerogative order - no reasonable basis for application - *Judicial Review Act* 1991(*Q*), s 48(1) JUDICIAL REVIEW - POWERS AND DISCRETION OF COURT - JURISDICTIONAL ERROR - whether President of Industrial Court Queensland had jurisdiction to determine on appeal that Industrial Magistrate had power to allow a party to appear in an appeal to Industrial Magistrate under s 498 *WorkCover Queensland Act* 1996(*Q*) - whether decision of Industrial Magistrate invoked s 341(2) *Industrial Relations Act* 1999(*Q*) - decision of President of Industrial Court Queensland did not involve jurisdictional error *Industrial Relations Act* 1999 *Judicial Review Act* 1991 *WorkCover Queensland Act* 1996 *Craig v South Australia* (1995) 184 CLR 163 *Hockey v Yelland* (1985) 157 CLR 124 *Houssein v Under Secretary, Department of Industrial Relations and Technology (NSW)* (1982) 148 CLR 88 *Middleton and Teys Bros (Holdings) Pty Ltd* (2001) 166

QGIG 138
Public Service Association of South Australia v Federated Clerks' Union of Australia, *South Australian Branch* (1991) 173 CLR 132
R v The Industrial Court and the Honourable Mostyn Hanger President of the Industrial Court and Mt Isa Mines Limited [1966] QdR 245

COUNSEL: JS Douglas QC and DP O'Gorman for the applicant/respondent
No appearance for the first respondent
JE Murdoch SC and CJ Murdoch for the second respondent/applicant
GC Rhead for the third respondent/respondent

SOLICITORS: Carne & Herd for the applicant/respondent
Crown Solicitor for the second respondent/applicant
WorkCover Queensland for the third respondent/respondent

[1] **MULLINS J:** On 3 May 2002 Mr Phillip Alan Squires filed an application for review seeking a prerogative order under s 43(1) of the *Judicial Review Act* 1991 ("*JRA*") quashing the decision of the President of the Industrial Court of Queensland given on 1 May 2002 allowing an appeal by the State of Queensland ("the second respondent") against a decision of the Industrial Magistrates Court refusing the second respondent leave to appear in an appeal to that court by Mr Squires. On 17 May 2002 the second respondent filed an application seeking an order that Mr Squires' application be dismissed under s 48(1) of the *JRA*.

[2] At the hearing of the application under s 48(1) of the *JRA*, there was, as to be expected, no appearance on behalf of the first respondent and WorkCover Queensland ("the third respondent") adopted the position of neither opposing nor consenting to the application and was prepared to abide by the decision of this Court on the application. The second respondent's application was opposed by Mr Squires.

Background

[3] In May 2001 Mr Squires lodged an application for worker's compensation in relation to stress and depression which he claimed to be suffering as a result of unreasonable management action taken by his employer the Queensland Ambulance Service which is a manifestation of the second respondent. That application was accepted by the third respondent on 17 July 2001. On 17 October 2001 the second respondent applied pursuant to s 491 of the *WorkCover Queensland Act* 1996 ("*WQA*") for review of the decision by the third respondent to accept Mr Squires' application for compensation.

[4] A decision was made by Q-Comp, the review unit of the third respondent, on 4 January 2002 that the original decision of the third respondent was to be set aside and the application for compensation was rejected on the basis that Mr Squires' injury arose from reasonable management action of his employer.

[5] Mr Squires initiated an appeal to the Industrial Magistrates Court pursuant to s 498 of the *WQA* by notice of appeal dated 1 February 2002 seeking to appeal against the decision of the review unit of the third respondent.

[6] On 8 April 2002 the second respondent filed an application for leave to appear in the appeal to the Industrial Magistrates Court. That application was heard on 11 April 2002 by Industrial Magistrate, Mr J Gordon.

[7] On 22 April 2002 the Industrial Magistrate delivered his reasons for decision in respect of the application for leave to appear. The Industrial Magistrate found that there was jurisdiction to hear an application for leave by an employer to appear on an appeal by an employee to the Industrial Magistrate against the decision of the review unit of the third respondent. In considering the exercise of the discretion whether or not that leave should be given, the Industrial Magistrate stated:

> "At all material times, the State of Queensland, acting through the QAS, was the employer of the appellant. This is an application by the State of Queensland, acting through the QAS, to have the employer granted leave to appear at the appeal.
>
> In the circumstances of this matter, I am not convinced, on balance, that the interests of the employer cannot and will not be adequately protected by the respondent. It is simply a matter of taking proper and appropriate instructions from the employer who is, after all, the State of Queensland acting through the QAS.
>
> Without labouring the point, because it was not the subject of any submission, section 332, subsection 1 of the WorkCover Queensland Act states that, 'Workcover represents the State.'
>
> I have no doubt that the respondent will take all necessary steps before and at the appeal to adequately protect the interests of the employer. Accordingly, I see no good reason to exercise my discretion in favour of the applicant I hereby dismiss the application."

[8] On 24 April 2002 the second respondent appealed to the Industrial Court of Queensland against the decision of the Industrial Magistrate. That appeal was argued on 1 May 2002 and judgment was delivered by the learned President of the Industrial Court of Queensland on that date. The learned President was satisfied that the Industrial Magistrate had power to grant the application made by the second respondent for leave to appear for the reasons advanced in *Middleton and Teys Bros (Holdings) Pty Ltd* (2001) 166 QGIG 138 ("*Middleton*") and that for the reasons advanced in *Middleton* the second respondent had standing to appeal against the decision of the Industrial Magistrate. In *Middleton* it was held that s 320(2) of the *Industrial Relations Act* 1999 ("the *IRA*") vested the Industrial Magistrates Court with a discretion to allow a person to be heard on proceedings before the Industrial Magistrate. Coincidentally *Middleton* also involved an appeal to the Industrial Magistrate under s 498 of the *WQA*.

[9] The learned President found that Industrial Magistrate Gordon erred in law in equating the third respondent with the second respondent and that it would not be a proper discharge of the third respondent to proceed on the basis that its interests

were those of the second respondent in respect of the appeal by Mr Squires to the Industrial Magistrates Court and to accept instruction from the second respondent as to the way in which it should conduct its case. The learned President therefore set aside the exercise of discretion of the Industrial Magistrate and remitted the matter to the Industrial Magistrate to be determined according to law.

[10] The grounds on which Mr Squires is seeking the prerogative order are set out in para 13 of the affidavit of Mr WT McMillan filed on 3 May 2002 in support of Mr Squires' application. It is claimed that the learned President erred in law in deciding that the Industrial Magistrate had the power to grant to the second respondent leave to appear on the appeal, as there was no power in the Industrial Magistrate to grant such leave to appear to the employer in the appeal by the employee to the Industrial Magistrates Court against the decision of the review unit of the third respondent.

Jurisdiction of the Industrial Court

[11] Under s 242 of the *IRA* the Industrial Court, as formerly established as a superior court of record in Queensland, is continued in existence as the Industrial Court of Queensland. It is referred to in the *IRA* as the "court".

[12] The Industrial Court's jurisdiction is set out in s 248(1) of the *IRA*:

> "**248.(1)** The court may-
>
> (a) perform all functions and exercise all powers prescribed for the court by this or another Act; and
>
> (b) hear and decide cases stated to it by the commission; and
>
> (c) hear and decide an offence against this Act, other than an offence for which jurisdiction is expressly conferred on a magistrate; and
>
> (d) hear and decide appeals from an industrial magistrate's decision in proceedings for-
>
> (i) an offence against this Act; or
>
> (ii) recovery of damages, or other amounts, under this Act; and
>
> (e) exercise the jurisdiction and powers of the Supreme Court to ensure, by prerogative order or other appropriate process-
>
> (i) the commission and magistrates exercise their jurisdictions according to law; and
>
> (ii) the commission and magistrates do not exceed their jurisdictions."

[13] Section 341(2) of the *IRA* provides:

> "**(2)** A person may appeal to the court if dissatisfied with a decision of a magistrate in relation to a matter for which the magistrate has jurisdiction."

[14] The only basis on which the appeal to the first respondent by the second respondent could have proceeded in this matter was if s 341(2) of the *IRA* were invoked. Although s 509 of the *WQA* also provides a possible avenue of appeal from the decision of the Industrial Magistrate to the Industrial Court, its application is limited to a party aggrieved by the Industrial Magistrate's decision and therefore did not

permit an appeal by the second respondent which was not a party before the Industrial Magistrate.

[15] Whether s 341(2) of the *IRA* was able to be invoked depends on whether the second respondent's appeal to the Industrial Court was in respect of "a decision of a Magistrate in relation to a matter for which the Magistrate has jurisdiction".

[16] The Industrial Magistrate's jurisdiction is conferred by s 292(1) of the *IRA*. Under s 292(1)(a) the Magistrate has jurisdiction to exercise powers conferred on, or jurisdiction given to, magistrates by the *IRA* or another State Act. Under s 292(1)(b) the Industrial Magistrate has jurisdiction to hear and decide proceedings about the matters that are described in that paragraph such as claims for wages or damages for contravention of an agreement made under an industrial instrument.

[17] Industrial Magistrate Gordon had jurisdiction in relation to Mr Squires' appeal against the decision of the review unit of the third respondent, as a result of the jurisdiction given by s 498 of the *WQA* which relevantly provided:

> "A claimant, worker or employer aggrieved by the decision (the **"appellant"**) may appeal to an industrial magistrate against the decision of the review unit, WorkCover or the self-insurer (the **"respondent"**).

[18] It is submitted on behalf of Mr Squires that Industrial Magistrate Gordon fell into jurisdictional error in concluding that s 320 of the *IRA* enabled him to grant leave to an employer such as the second respondent to be made a party to proceedings before the Industrial Magistrates Court pursuant to s 498 of the *WQA*. Relying on *R v The Industrial Court and the Honourable Mostyn Hanger President of the Industrial Court and Mt Isa Mines Limited* [1966] QdR 245, 284, it was submitted on behalf of Mr Squires that the first respondent could not give itself jurisdiction on the appeal from the Industrial Magistrate by failing to find that the Industrial Magistrate did not have jurisdiction pursuant to s 320 of the *IRA* to grant the type of leave the first respondent concluded the Industrial Magistrate could give.

[19] It is implicit in this submission that the jurisdiction of the Industrial Court under s 341(2) of the *IRA* depends on the decision of the Industrial Magistrate being one for which the Industrial Magistrate has jurisdiction to make. This submission, however, does not appear to take into account the express terms of s 341(2) of the *IRA* where the appeal is from a decision and the decision is described as being "in relation to a matter for which the Magistrate has jurisdiction".

[20] The reference to "a matter for which the Magistrate has jurisdiction" in s 341(2) of the *IRA* must be a reference to the matters which are covered by s 292(1) of the *IRA*. Mr Squires' appeal pursuant to s 498 of the *WQA* was a matter for which the Industrial Magistrate had been given jurisdiction. Although the decision of Industrial Magistrate Gordon which was appealed to the first respondent was not the decision disposing of Mr Squires' appeal against the decision of the review unit of the third respondent, the decision on whether or not to give the second respondent leave to appear in Mr Squires' appeal was a decision "in relation to" Mr Squires' appeal.

[21] The alternative construction of s 341(2) of the *IRA* which underlies the submission of Mr Squires is that the appeal to the Industrial Court can be only from a decision of the Magistrate which itself is within jurisdiction, even though the matter in

respect of which the decision is made is one for which the Industrial Magistrate has jurisdiction. This construction unduly circumscribes the operation of s 341(2) of the *IRA* and would mean that an appeal from the Industrial Magistrate's decision would not lie if the Magistrate had acted in excess or want of jurisdiction in making the decision, even though the matter to which the decision relates is the type of matter under s 292(1) of the *IRA* for which the Magistrate has jurisdiction.

[22] It is submitted on behalf of the second respondent that that would be an absurd result. I agree. The use of the words "in relation to a matter for which the Magistrate has jurisdiction" in s 341(2) of the *IRA* supports that the decision of the Industrial Magistrate under appeal need not be a decision actually within the jurisdiction of an Industrial Magistrate, in order for the appeal to be competent, provided the decision is made in relation to a matter for which the Magistrate has jurisdiction under s 292(1) of the *IRA*.

[23] It was not in issue that the second respondent was a person dissatisfied with the decision of Industrial Magistrate Gordon in respect of its application for leave to appear on Mr Squires' appeal.

[24] It can therefore be concluded that s 341(2) of the *IRA* was properly invoked in respect of the appeal by the second respondent to the first respondent in respect of the Industrial Magistrate's dismissal of the second respondent's application for leave to appear on the appeal by Mr Squires before the Industrial Magistrate.

[25] Section 349 of the *IRA* deals with the finality of decisions of industrial tribunals. The Industrial Court is an industrial tribunal for the purpose of that provision. Section 349 of the *IRA* states:

> "**349.(1)** This section applies to the following decisions-
> (a) a decision of the Court of Appeal under section 340;
> (b) a decision of the court under section 341;
> (c) a decision of the full bench under section 342;
> (d) a decision of the commission under section 343 or 344;
> (e) another decision of the court, the full bench, the commission, an Industrial Magistrates Court or the registrar.
> **(2)** The decision-
> (a) is final and conclusive; and
> (b) can not be impeached for informality or want of form; and
> (c) can not be appealed against, reviewed quashed or invalidated in any court.
> **(3)** The industrial tribunal's jurisdiction is exclusive of any court's jurisdiction and an injunction or prerogative order can not be issued, granted or made in relation to proceedings in the court within its jurisdiction.
> **(4)** This section does not apply to a decision mentioned in subsection (1) to the extent that this Act or another Act provides for a right of appeal from the decision.
> **(5)** In this section-
> **'industrial tribunal'** includes an Industrial Magistrates Court and the registrar."

[26] It was submitted by the second respondent that even if the decision of the first respondent were not a decision under s 341 of the *IRA*, the second respondent could

rely on the fact that the Industrial Court could have dealt with the second respondent's dissatisfaction with the Industrial Magistrate's decision pursuant to s 248(1)(e) of the *IRA*. The second respondent did not, however, seek to invoke s 248(1)(e) in appealing to the first respondent from the Industrial Magistrate's decision. It is not appropriate to deal with this matter by reference to a process that the second respondent did not invoke.

Further issues

[27] In summary, the second respondent submits that Mr Squires by his application does not assert a jurisdictional error of law on the part of the first respondent and that s 349(3) of the *Industrial Relations Act* 1999 ("*IRA*") precludes the obtaining of a prerogative order in respect of the first respondent's decision.

[28] Although the applicant submitted that it could be shown that there was jurisdictional error on the part of the first respondent (when the first respondent concluded that the Industrial Magistrate had jurisdiction to grant the second respondent leave to appear in the appeal to the Industrial Magistrate) which enabled the application under s 43 of the *JRA* to be made, the applicant also adopted the position that the application under s 48 of the *JRA* should be heard with the substantive application and not dealt with as a threshold issue.

[29] The further issues which therefore arise on the hearing of the application under s 48(1) of the *JRA* are:

(a) what is the effect of s 349 of the *IRA*?

(b) is it possible that there could be a finding that there was jurisdictional error on the part of the first respondent in the making of the decision?

(c) if not, should the discretion conferred by s 48(1) of the *JRA* be exercised at this stage?

Section 349 of the *IRA*

[30] The form which ss 349(2) and (3) take is similar to many other privative clauses which have been judicially considered. It was therefore not in issue that s 349(2) ousts jurisdiction to grant a prerogative order in the nature of certiorari in respect of errors of law not going to the jurisdiction of the industrial tribunal: *Houssein v Under Secretary, Department of Industrial Relations and Technology (NSW)* (1982) 148 CLR 88, 93; *Hockey v Yelland* (1985) 157 CLR 124, 130; *Public Service Association of South Australia v Federated Clerks' Union of Australia*, *South Australian Branch* (1991) 173 CLR 132, 141.

[31] Whereas s 349(2) states the effect of the industrial tribunal's decision, s 349(3) complements that provision by confirming that the industrial tribunal's jurisdiction is exclusive of any court's jurisdiction which is not an industrial tribunal for the purpose of the *IRA* and by specifically proscribing prerogative orders of such a court in relation to proceedings in the industrial tribunal within the jurisdiction of the industrial tribunal.

[32] The express provisions of ss 349(2) and (3) of the *IRA* therefore have the effect of excluding this Court's jurisdiction in granting prerogative relief in respect of the decision of the first respondent, if it was made within jurisdiction.

[33] The effect of ss 349(2) and (3) of the *IRA* is preserved by s 349 of the *IRA* being listed in Pt 1 of Sch 1 to the *JRA*. Section 18(2) of the *JRA* expressly provides that the *JRA* does not affect the operation of an enactment mentioned in Sch 1, Pt 1 of the *JRA*.

Jurisdictional error

[34] For Mr Squires to be able to show that there was jurisdictional error on the part of the first respondent, he must point to some error which goes to the existence of the jurisdiction of the first respondent, rather than an error in the exercise of the jurisdiction of the first respondent. Although the Industrial Court is a superior court of record, the observations made by the High Court as to what constitutes jurisdictional error on the part of an inferior court in *Craig v South Australia* (1995) 184 CLR 163, 177-178 are apposite:

> "An inferior court falls into jurisdictional error if it mistakenly asserts or denies the existence of jurisdiction or if it misapprehends or disregards the nature or limits of its functions or powers in a case where it correctly recognises that jurisdiction does exist. Such jurisdictional error can infect either a positive act or a refusal or failure to act. Since certiorari goes only to quash a decision or order, an inferior court will fall into jurisdictional error for the purposes of the writ where it makes an order or decision (including an order or decision to the effect that it lacks, or refuses to exercise, jurisdiction) which is based upon a mistaken assumption or denial of jurisdiction or a misconception or disregard of the nature or limits of jurisdiction.
>
> Jurisdictional error is at its most obvious where the inferior court purports to act wholly or partly outside the general area of its jurisdiction in the sense of entertaining a matter or making a decision or order of a kind which wholly or partly lies outside the theoretical limits of its functions and powers. An inferior court would, for example, act wholly outside the general area of its jurisdiction in that sense if, having jurisdiction strictly limited to civil matters, it purported to hear and determine a criminal charge. Such a court would act partly outside the general area of its jurisdiction if, in a matter coming within the categories of civil cases which it had authority to hear and determine, it purported to make an order of a kind which it lacked power to make, such as an order for specific performance of a contract when its remedial powers were strictly limited to awarding damages for breach. Less obviously, an inferior court can, while acting wholly within the general area of its jurisdiction, fall into jurisdictional error by doing something which it lacks authority to do. If, for example, it is an essential condition of the existence of jurisdiction with respect to a particular matter that a certain event or requirement has in fact occurred or been satisfied, as distinct from the inferior court's own conclusion that it has, there will be jurisdictional error if the court or tribunal purports to act in circumstances where that event has not in fact occurred or that requirement has not in fact been satisfied even though the matter is the kind of matter which the court has jurisdiction to entertain. Similarly, jurisdictional error will occur where an inferior court disregards or takes account of some matter in circumstances where

> the statute or other instrument establishing it and conferring its jurisdiction requires that that particular matter be taken into account or ignored as a pre-condition of the existence of any authority to make an order or decision in the circumstances of the particular case. Again, an inferior court will exceed its authority and fall into jurisdictional error if it misconstrues that statute or other instrument and thereby misconceives the nature of the function which it is performing or the extent of its powers in the circumstances of the particular case. In the last-mentioned category of case, the line between jurisdictional error and mere error in the exercise of jurisdiction may be particularly difficult to discern." (*footnote omitted*)

[35] The error of law which it is asserted on behalf of Mr Squires was made by the first respondent appears to go to the substance of the decision made by the first respondent and its correctness, rather than the existence of the jurisdiction of the first respondent. It is neither appropriate nor necessary to consider the correctness of the decision of the first respondent on the hearing of this application.

[36] Once it is established that there was jurisdiction under s 341(2) of the *IRA* for the second respondent to appeal against the decision of the Industrial Magistrate to the first respondent, then the question of whether or not the first respondent was correct in deciding that the Industrial Magistrate had power to grant to the second respondent leave to appear on the appeal goes to the correctness of the decision made by the first respondent, rather than the existence of jurisdiction on the part of the first respondent to make that decision.

[37] It is therefore not possible for there to be a finding that there was jurisdictional error on the part of the first respondent in the making of the decision on the appeal from Industrial Magistrate Gordon.

Whether application should be dismissed at this stage

[38] In view of my conclusion that Mr Squires will be unable to show jurisdictional error on the part of the first respondent in allowing the appeal from the Industrial Magistrate refusing the second respondent leave to appear in an appeal to the Industrial Magistrate by Mr Squires, no reasonable basis for Mr Squires' application under s 43 of the *JRA* has been disclosed. It is therefore possible for the court to exercise the jurisdiction that is conferred by s 48(1) of the *JRA*.

[39] The issues that are raised by Mr Squires' application are matters of law. There is no suggestion on behalf of Mr Squires that there is any further material which could be relied on in support of Mr Squires' claim for a prerogative order. There are no further factual matters to be resolved which could affect the determination of the matters of law. Apart from asserting that the second respondent's application should not be determined in advance of the substantive application, no reasons were advanced on behalf of Mr Squires as to why that should be so.

[40] No point would be served in allowing Mr Squires' application to proceed to hearing, when I have reached the conclusion that his application cannot succeed.

Orders

[41] I therefore order that the application filed on 3 May 2002 be dismissed.

[42] The second respondent seeks an order that Mr Squires pay its costs. That would be the usual order following the dismissal of such an application. I will hear the parties, however, on whether it is appropriate in all the circumstances for that order for costs to be made.