

SUPREME COURT OF QUEENSLAND

CITATION: *Chief Executive of the Public Service Commission v The President of the Industrial Court of Queensland & Anor (No 2)* [2014] QSC 246

PARTIES: **CHIEF EXECUTIVE OF THE PUBLIC SERVICE COMMISSION**
(applicant)

v

THE PRESIDENT OF THE INDUSTRIAL COURT OF QUEENSLAND
(first respondent)

and

TOGETHER QUEENSLAND, INDUSTRIAL UNION OF EMPLOYEES
(second respondent)

FILE NO/S: BS 6135 of 2013

DIVISION: Trial Division

PROCEEDING: Written submissions

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 1 October 2014

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGE: Philip McMurdo J

ORDER: **Applicant pay 80 per cent of the second respondent's costs of the proceeding**

CATCHWORDS: PROCEDURE – COSTS – DEPARTING FROM THE GENERAL RULE – OTHER CASES – SUBSTANTIAL SUCCESS – where the applicant brought proceedings challenging the decision of the first respondent – where the principal question was whether the Queensland Industrial Relations Commission had a power to award an interim wage increase – where the applicant failed on that question – where the applicant succeeded on a related question – whether the applicant should pay all or some of the second respondent's costs of the proceeding.

COUNSEL: J Murdoch QC, with C Murdoch, for the applicant

No submissions by the first respondent

S Keim SC, with J Merrell, for the second respondent

SOLICITORS: Minter Ellison for the applicant

Slater & Gordon for the second respondent

- [1] The applicant and the second respondent are parties to a proceeding to be conducted by the Queensland Industrial Relations Commission under an earlier version of s 149 of the *Industrial Relations Act* 1999 (Qld). Within that arbitration, the second respondent applied for an interim order that a certain wage increase be granted pending the Commission's final determination. The Commission held that it had no power to make such an interim order. The then President of the Industrial Court, upon appeal from that ruling by the Commission, disagreed. He held that there was a power and remitted the matter to the Commission. There was a related question of whether, if there was power to order an interim wage increase, it could be exercised only after a consideration of certain matters within s 149(5) of the Act as it then stood. The President did not decide that question.
- [2] But both those questions came before this court. The applicant asked this court to set aside the President's decision, arguing that there was no legal power in the Commission to order an interim wage increase. On that question, the applicant failed and I upheld the President's decision.
- [3] The parties also argued the related question concerning s 149(5). On that question, the applicant succeeded and I declared that the Commission must consider those matters before making any order for an interim wages increase.
- [4] What remains is the question of the cost of this case. The applicant submits that each side has had some success and that it is appropriate that either the parties bear their own costs or there be an order in favour of each party for the costs of the question upon which its argument was successful.
- [5] The second respondent submits that the principal question was that upon which it succeeded and that it should have an order for the payment of all or perhaps 90 per cent of its costs of the proceeding.
- [6] This proceeding resulted from the applicant's challenge to the President's decision that the Commission could give an interim wages increase. According to my judgment, the proceeding should not have been brought. One benefit of the proceeding, however, was that the s 149(5) question was determined. But the applicant did not have to come to this court simply for a ruling on that question and indeed, it could not have done so because the President had not ruled upon it. In substance, this proceeding and the costs from it were the result of an unmeritorious challenge by the applicant. That characterisation of the proceeding would not be recognised by an order for costs as the applicant suggests.
- [7] Nevertheless, some allowance must be made for the fact that on this related question, the applicant was successful. It occupied only a relatively small part of the hearing. In my conclusion, it is appropriate that the applicant pay 80 per cent of the second respondent's costs of the proceeding.