

# INDUSTRIAL COURT OF QUEENSLAND

CITATION: *Shaw v Workers' Compensation Regulator (No. 2)*  
[2022] ICQ 28

PARTIES: **Shaw, Trent**  
(Appellant)

v

**Workers' Compensation Regulator**  
(Respondent)

CASE NO.: C/2022/5

PROCEEDING: Application in existing proceedings

DELIVERED ON: 7 September 2022

HEARING DATE: On the papers

DATES OF WRITTEN SUBMISSIONS: Respondent's written submissions filed on 26 August 2022

MEMBER: Merrell DP

HEARD AT: Brisbane

ORDER: **That the Appellant pays the Respondent's costs fixed in the sum of \$8,211.20.**

CATCHWORDS: INDUSTRIAL LAW - QUEENSLAND - APPEALS - APPEAL TO INDUSTRIAL COURT - PROCEDURE - COSTS - Appellant appealed to Industrial Court of Queensland against a decision of the Queensland Industrial Relations Commission regarding a decision of the Respondent which confirmed the rejection of the Appellant's application for workers' compensation - pursuant to r 226(2)(f) of the *Industrial Relations (Tribunals) Rules 2011*, the Appellant's application to appeal was dismissed - Respondent seeks costs pursuant to s 563 of the *Workers' Compensation and Rehabilitation Act 2003* - whether Appellant's appeal made without reasonable cause - Appellant's application to appeal made without reasonable cause - costs awarded in favour of Respondent

- LEGISLATION: *Industrial Relations (Tribunals) Rules 2011*, r 70 and r 226
- Uniform Civil Procedure Rules 1999*, sch 1
- Workers' Compensation and Rehabilitation Act 2003*, s 32 and s 563
- CASES: *Kanan v Australian Postal and Telecommunications Union* [1992] FCA 366; (1992) 43 IR 257
- Shaw v Workers' Compensation Regulator* [2022] ICQ 024
- Yousif v Workers' Compensation Regulator* [2019] ICQ 10
- APPEARANCES: The Appellant in person.
- Mr P. O'Neill of Counsel instructed by Ms R. Jamieson of the Respondent.

## Reasons for Decision

### Introduction

- [1] After a hearing on 16 June 2022, by decision dated 9 August 2022, pursuant to r 226(2)(f) of the *Industrial Relations (Tribunals) Rules 2011* ('the Rules'), I granted the Respondent's application in existing proceedings to dismiss the Appellant's application to appeal ('the Appellant's appeal') in this matter. The parties were also ordered to exchange and file submissions on the costs of the hearing.<sup>1</sup>
- [2] I granted the Respondent's application in existing proceedings to dismiss the Appellant's appeal because it disclosed no competent or arguable grounds of appeal against the decision of the Industrial Commissioner which had dismissed the Appellant's appeal against the review decision of the Respondent. The review decision of the Respondent confirmed a decision of WorkCover Queensland that the Appellant did not suffer an injury within the meaning of s 32 of the *Workers' Compensation and Rehabilitation Act 2003* ('the Act').<sup>2</sup>
- [3] By email dated 26 August 2022, the Appellant confirmed that he would not be making any submissions as to costs of the hearing.
- [4] The Respondent has filed submissions about costs. The Respondent, pursuant to s 563 of the Act, seeks its costs of the hearing. Further, the Respondent seeks its costs in

<sup>1</sup> *Shaw v Workers' Compensation Regulator* [2022] ICQ 024, [79].

<sup>2</sup> *Ibid* [51]-[77].

accordance with r 70(2)(b) of the Rules, namely, that its costs be payable on the scale of costs for the Supreme and District Court under the *Uniform Civil Procedure Rules 1999*, sch 1.

- [5] For the reasons that follow, I will order that the Appellant pays the Respondent's costs fixed in the sum of \$8,211.20.

***The Workers' Compensation and Rehabilitation Act 2003***

- [6] Section 563 of the Act provides:

**563 Costs of appeal to industrial court**

- (1) On an appeal, the industrial court may order a party to pay costs incurred by another party only if satisfied the party made the application vexatiously or without reasonable cause.
- (2) Costs of the order are to be in accordance with the *Industrial Relations (Tribunals) Rules 2011*, rule 70.

**The Respondent's submissions**

- [7] The Respondent submits that:

- the test to be applied when considering whether an application to appeal was 'without reasonable cause' is whether the application could not succeed at the time it was made;<sup>3</sup>
- the Appellant's appeal was brought without reasonable cause, as it was neither concise, nor did it identify any error of law or want of jurisdiction;
- by a letter dated 4 March 2022, it afforded the Appellant the opportunity of amending his application to appeal to include proper grounds of appeal,<sup>4</sup> but he failed to do so and in that correspondence the Respondent noted the very issues which led to the appeal being dismissed;
- my decision concluded that the grounds of appeal contained no grounds that were concise and clear, and further there were no competent or arguable grounds of appeal; and
- the Appellant was put on notice of this deficiency by way of its correspondence dated 4 March 2022 and by its application in existing proceedings, but the Appellant nonetheless continued with the appeal in circumstances in which the Appellant had no reasonable prospect of success and, as a consequence, the appeal was bound to fail.

- [8] The Respondent submits that, in those circumstances the Court would be satisfied that the appeal has been brought without reasonable cause and that it is entitled, pursuant to

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<sup>3</sup> Citing *Yousif v Workers' Compensation Regulator* [2019] ICQ 10, [31] (Martin J, President) and *Kanan v Australian Postal and Telecommunications Union* [1992] FCA 366; (1992) 43 IR 257 ('*Kanan*'), 264 (Wilcox J).

<sup>4</sup> The Appellant did not dispute this assertion.

s 563 of the Act, to an award of costs in the amount of \$8,431.25 in accordance with the table below, namely

<b>Schedule of Industrial Court Costs</b>		
In accordance with the Uniform Civil Procedure Rules, Schedule 1 - Supreme Court and District Court All scale items are inclusive of GST		
<b>Trent Shaw v Workers' Compensation Regulator (C/2022/5)</b>		
Item 4	Drafting documents (\$24.45 per 100 words) - Submissions to dismiss appeal (1,208 words)	\$513.45
Item 8	Perusing document (\$5.90 for each 100 words) - to read hearing transcript (120, 814 words)	\$7,127.20
Item 8	Perusing documents (\$5.90 for each 100 words) - to read QIRC decision (13, 071 words)	\$767.00
Item 8	Perusing documents (\$5.90 for each 100 words) - Appellant submissions - Application to appeal (406 words)	\$23.60
<b>TOTAL</b>		<b>\$8,431.25</b>

### **The Respondent is entitled to its costs**

- [9] As the Respondent submitted, in *Kanan v Australian Postal and Telecommunications Union*,<sup>5</sup> in respect of the question of whether a party will have made an application without reasonable cause, Wilcox J stated:

It seems to me that one way of testing whether a proceeding is instituted "without reasonable cause" is to ask whether, upon the facts apparent to the applicant at the time of instituting the proceeding, there was no substantial prospect of success. If success depends upon the resolution in the applicant's favour of one or more arguable points of law, it is inappropriate to stigmatise the proceeding as being "without reasonable cause". But where it appears that, on the applicant's own version of the facts, it is clear that the proceeding must fail, it may properly be said that the proceeding lacks a reasonable cause.

- [10] In my primary decision, I set out why the Appellant's appeal contained no concise, competent or arguable grounds of appeal. In my view, having regard to the Industrial Commissioner's decision and to the grounds of appeal contained in the Appellant's appeal, on those facts known to the Appellant at the time he filed his appeal, it must have been apparent to him that there was no substantial prospect of success of his appeal.
- [11] For this reason, my discretion to award costs to the Respondent, pursuant to s 563 of the Act, is triggered.
- [12] Because the Respondent put the Appellant on notice of the deficiencies in his appeal and invited to him to amend his appeal within 7 days of its letter dated 4 March 2022, being an invitation that the Appellant did not accept, my view is that to do justice between the parties, this is a case where I should exercise my discretion and award costs in favour of the Respondent.

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<sup>5</sup> *Kanan* (n 3), 264-265.

[13] Having regard to the costs payable on the scale of costs for the Supreme and District Court in sch 1 of the *Uniform Civil Procedure Rules 1999*, the following amounts claimed by the Respondent, in respect of the relevant items, appear to me to be reasonable, namely:

Item 4	Drafting documents (\$24.45 per 100 words) - Submissions to dismiss appeal (1,208 words)	\$293.40
Item 8	Perusing document (\$5.90 for each 100 words) - to read hearing transcript (120,814 words)	\$7,127.20
Item 8	Perusing documents (\$5.90 for each 100 words) - to read QIRC decision (13,071 words)	\$767.00
Item 8	Perusing documents (\$5.90 for each 100 words) - Appellant submissions - Application to appeal (406 words)	\$23.60
<b>TOTAL</b>		<b>\$8,211.20</b>

### **Conclusion**

[14] For the reasons given, I will order that the Appellant pays the Respondent's costs fixed in the sum of \$8,211.20.

### **Order**

[15] I make the following order:

**That the Appellant pays the Respondent's costs fixed in the sum of \$8,211.20.**