SUPREME COURT OF QUEENSLAND

CITATION:	*TWU (Qld) v Aust Document Exchange P/L* [2000] QCA 142
PARTIES:	**TRANSPORT WORKERS' UNION OF AUSTRALIA, UNION OF EMPLOYEES (QUEENSLAND BRANCH)** (applicant/respondent) v **AUSTRALIAN DOCUMENT EXCHANGE PTY LTD** ACN 000 817 621 (respondent/appellant)
FILE NO/S:	Appeal No 1484 of 2000 QIRComm No B1792 of 1999
DIVISION:	Court of Appeal
PROCEEDING:	Appeal from Full Bench of Queensland Industrial Relations Commission
ORIGINATING COURT:	Queensland Industrial Relations Commission at Brisbane
DELIVERED ON:	28 April 2000
DELIVERED AT:	Brisbane
HEARING DATE:	4 April 2000
JUDGES:	de Jersey CJ, McMurdo P and Davies JA Judgment of the Court
ORDER:	**Appeal dismissed**
CATCHWORDS:	INDUSTRIAL LAW – QUEENSLAND – INDUSTRIAL RELATIONS COMMISSION – JURISDICTION – APPEALS – whether construction of s 340 *Industrial Relations Act* 1999 permitted an appeal from a decision of the Full Bench of the Industrial Relations Commission INDUSTRIAL LAW – QUEENSLAND – APPLICABILITY OF LEGISLATION AND GENERALLY – consideration of the correct interpretation of "class" for the purposes of s 275 *Industrial Relations Act* 1999 – whether a "class" of persons may be defined by reference to the persons for whom work is performed under contracts for services *Industrial Relations Act* 1999 (Qld), s 275, s 276, s 340 *Cooper Brookes (Wollongong) Pty Ltd v Federal Commissioner of Taxation* (1981) 147 CLR 297, applied *Director-General of Social Services v Chaney* (1980) 31 ALR 571, distinguished

COUNSEL: G C Martin SC for the appellant
P D T Applegarth for the respondent

SOLICITORS: Dunhill Madden Butler for the appellant
Reidy & Tonkin for the respondent

[1] **THE COURT:** This is an appeal pursuant to s 340(2) of the *Industrial Relations Act* 1999 against a decision of the Full Bench of the Industrial Relations Commission including the President. It is on the ground of error of law namely an error in the construction of s 275 of the Act. There was a preliminary objection to the competency of the appeal which it is necessary to dispose of first.

The objection to competency

[2] The order the subject of the appeal was one refusing an application by the present appellant for summary dismissal of an application by the present respondent for an order, pursuant to s 275, that any person who owns or hires or leases a vehicle and drives the vehicle when it is being used for the carriage of goods or freight under a contract between the person and the present appellant be declared to be an employee. The application for summary dismissal was on the basis that the respondent's application was incompetent because it identified a class by reference to the party who engaged persons to perform work.[1] It was submitted by the present respondent that the order made by the Full Bench was not a decision within the meaning of s 340 because it was not a decision which constituted "the effective decision or determination" of the application before it, presumably because it was interlocutory in nature. The respondent conceded that the position might have been different had the Full Bench of the Commission decided that the application was incompetent and had dismissed it.

[3] The term decision is defined in the dictionary which is Schedule 5 to the Act in very wide terms to mean:

> "(a) a decision of the court, the commission, a magistrate or the registrar; or
> (b) an award, declaration, determination, direction, judgment, order or ruling; or
> (c) an agreement approved, certified, or amended by the commission and an extension of the agreement."

[4] The width of that definition, particularly par (b) thereof, makes the respondent's position almost unarguable. Its argument that the decision must be one which constitutes the effective decision or determination of the application was based on a decision of the Federal Court[2] upon quite different legislation including a provision having the effect that, if it applied at an intermediate stage of proceedings, it would involve a disruption of the proceedings. There is no similar indication of a legislative intent, in the Act, that the meaning of the term should be so restricted notwithstanding the very wide definition.

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1 The application was on the assumed basis that there were numerous such persons.

2 *Director-General of Social Services v Chaney* (1980) 31 ALR 571 at 593.

[5] In our view therefore the objection to competency fails.

The operation of s 275

[6] That section is in the following terms:

> "(1) The full bench may, on application by an organisation, a State peak council or the Minister, make an order declaring a class of persons who perform work in an industry under a contract for services to be employees.
>
> (2) The full bench may make an order only if it considers the class of persons would be more appropriately regarded as employees.
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> (3) In considering whether to make an order, the commission may consider –
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> (a) the relative bargaining power of the class of persons; or
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> (b) the economic dependency of the class of persons on the contract; or
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> (c) the particular circumstances and needs of low-paid employees; or
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> (d) whether the contract is designed to, or does, avoid the provisions of an industrial instrument; or
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> (e) the particular circumstances and needs of employees including women, persons from a non-English speaking background, young persons and outworkers; or
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> (f) the consequences of not making an order for the class of persons.
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> (4) In this section –
>
> '**contract**' includes –
>
> (a) an arrangement or understanding; and
>
> (b) a collateral contract relating to a contract.
>
> '**industrial instrument**' includes an award or agreement made under the Commonwealth Act."

[7] The question is whether a class of persons for the purpose of s 275(1) may be defined by reference to the person or persons for whom persons perform work under contracts for services. The majority of the Full Bench held that it could. The dissenting member held that it could not. The appellant's argument was that a class for the purpose of s 275(1) must be defined by and only by the nature of the work performed under a contract for services. Inexplicably the term is not defined.[3]

[8] The ordinary meaning of a class of persons is a group of persons having in common one or a number of similar attributes.[4] If that ordinary meaning were given to the phrase "class of persons" in s 275 it would give that section a prima facie broad operation because it would mean that any common attribute possessed by a number of persons would make them a class for the purpose of s 275(1); and that subsection would apply to that class provided all of such persons perform work in

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[3] The failure of the legislation to define it has caused this litigation.

[4] Cf Oxford Dictionary, class 6; Macquarie Dictionary, 3rd ed, class 1.

the same industry under a contract for services. Section 275(2) would not permit the making of an order of the kind referred to in s 275(1) unless the Full Bench considered that the class would be more appropriately regarded as employees. Some of the factors relevant to considering that question are set out in s 275(3).

[9] Mr Martin, for the appellant, contends that the class of persons referred to in s 275(1) should be defined only by reference to performance of work in an industry. In other words, he would construe the words "declaring a class of persons who perform work in an industry under a contract for services to be employees" as if they said "declaring ***all*** persons who perform work in an industry under a contract for services to be employees". An immediate answer to that is, of course, that that is not what the section says; and that it appears on its ordinary meaning to contemplate the definition of a class of persons among those who perform work in an industry under a contract for services. However Mr Martin relied for his contention both on the wording of s 275(1) and on a comparison with s 276.

[10] As to the first of these Mr Martin submitted that the fact that an application under the section may be made only by an organization, a State peak council or the Minister is an indication that the class is intended to consist of all persons performing work in a particular industry under a contract for services, presumably because, if it were otherwise, the section would permit an application also by all of the members of the class. We do not see why that must necessarily be so and why it would require the section to be given a meaning other than its ordinary one.

[11] It is then said that s 276 gives the Commission power to amend or avoid a contract for services if it considers it to be unfair; that that would permit the Commission to deal with unfairness in a situation such as this, where there are a number of contracts with a particular employer; and that that supports the contention that s 275 was intended to confer a power to be exercised only upon an industry wide basis. However, as Mr Applegarth for the respondent has pointed out, s 276 plainly has an operation consistently with an operation of s 275 which permits the phrase "class of persons" to be given its ordinary meaning. In the first place s 276 applies only to an individual contract which is unfair; whereas s 275 can apply only where there are a number of contractors having a common attribute and where the contractors would be more appropriately regarded as employees but may apply whether or not their individual contracts are unfair. And secondly, s 276 permits an existing contract to be amended or avoided whereas s 275 permits a declaration that a class of persons, formerly under contracts for services, to be employees with all the benefits which that brings, sick leave, annual leave, parental leave and long service leave being examples.[5] The sections thus apply in different situations and perform different functions.

[12] Mr Applegarth also submitted that the construction contended for by the appellant would deprive the section of practical application to situations where it might be thought to operate beneficially and would cause it to operate inconveniently or unjustly in some others. But it is not necessary, in our view, to go to those

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[5] See Chapter 2 of the Act. There may be cases where it can be seen to be more appropriate for a particular class of persons to have the advantages which employees have under Chapter 2 of the Act notwithstanding that the individual contracts for services under which the members of that class are engaged are not unfair.

arguments. What has been said so far demonstrates, in our view, that s 275, on its ordinary meaning, does not create any absurd or meaningless result or one which cannot be said to conform to the legislative intent as ascertained from the provisions of the Act including the policy which may be discerned from them.[6]

[13] The appeal should therefore be dismissed.

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6 *Cooper Brookes (Wollongong) Pty Ltd v Federal Commissioner of Taxation* (1981) 147 CLR 297 at 304 – 305, 310 – 311, 320 – 321.