SUPREME COURT OF QUEENSLAND

CITATION:	*Watters v Queensland Rail* [2000] QCA 51
PARTIES:	**NEIL GARRY WATTERS** (plaintiff/respondent) **v** **QUEENSLAND RAIL** (defendant/appellant)
FILE NO/S:	Appeal No 4626 of 1999 SC No 187 of 1996
DIVISION:	Court of Appeal
PROCEEDING:	General civil appeal
ORIGINATING COURT:	Supreme Court at Rockhampton
DELIVERED ON:	3 March 2000
DELIVERED AT:	Brisbane
HEARING DATE:	16 February 2000
JUDGES:	McPherson JA, Thomas JA and Byrne J Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDER:	**Appeal dismissed with costs to be assessed**
CATCHWORDS:	LIMITATION OF ACTIONS – POSTPONEMENT OF THE BAR – EXTENSION OF PERIOD – CAUSE OF ACTION IN RESPECT OF PERSONAL INJURIES – KNOWLEDGE OF MATERIAL FACTS – MATERIAL FACTS OF A DECISIVE CHARACTER – Plaintiff train driver suffering from work-induced hearing loss – stood down from duties due to change in employer's attitude to enforcement of safety standards – serious economic loss not previously known – whether a material fact of a decisive character – economic consequences of injury capable of being material fact – *Electricity Commission of NSW v Plumb* (1992) 27 NSWLR 364 discussed and not followed – whether worthwhile cause of action existed before economic loss incurred – whether defendant prejudiced by destruction of personnel records *Limitation of Actions Act* 1974 (Qld) s 30(1), s 31(1), s 31(2) *Byers v Capricorn Coal Management Pty Ltd* [1990] 2 Qd R 306, followed *Do Carmo v Ford Excavations Pty Ltd* (1984) 154 CLR 234, considered

Electricity Commission of New South Wales v Plumb (1992) 27 NSWLR 364, discussed and not followed
Taggart v Workers Compensation Board of Queensland [1983] 2 Qd R 306, followed

COUNSEL: Mr SC Williams QC for the appellant
Mr RJ Douglas SC, with him Mr AS Mellick for the respondent

SOLICITORS: Queensland Rail Legal Services for the appellant
Rees R & Sydney Jones for the respondent

[1] **McPHERSON JA:** I agree with the reasons of Thomas JA for dismissing this appeal with costs. Essentially the question is whether the "nature and extent" of the personal injury was known to the plaintiff or within his means of knowledge before 1996. If so, it was a "material fact" relating to a right of action within the meaning of s 30(1)(a). In determining whether it was of a "decisive character" within s 30(1)(b), the matter falls to be judged, among other things, according to whether an action would have resulted in an award of damages sufficient to justify bringing it: s 30(1)(b)(1). Read in combination, these two provisions ordinarily mean that the quantum of damages likely to be recovered for economic loss is a relevant consideration in determining whether the limitation period should be extended. So much is implicit, if not explicit, in several of the Queensland decisions on the question. But there is no point in my simply repeating matters that are already dealt with so completely in the reasons for judgment of Thomas JA. The appeal should, as his Honour says, be dismissed with costs and for the reasons which he has given.

[2] **THOMAS JA:** This is a defendant's appeal against an order extending the period of limitation in the plaintiff's action against the defendant for damages for negligence. It will be convenient to refer to the parties as the plaintiff and the defendant.

[3] The basis of the allegation of negligence is that the defendant (Queensland Rail) exposed the plaintiff to excessive noise levels in train cabins over a lengthy period during his employment. The plaintiff commenced employment with the defendant in May 1980. He was then 31 years old, having worked previously as a fitter, mainly for the Plane Creek Central Mill at Sarina. From 1982 he worked as a member of a train crew initially as a fireman and later as a driver.

[4] On 15 November 1996, without prior notice he was stood down from train crew duty on the ground that he suffered from an unacceptable level of industrial deafness. He had for some time, probably since 1987, been aware of some hearing loss. The evidence suggests that the level of his hearing disability did not vary significantly between 1987 to 1996, although differing descriptions of it appear in various reports over that period. The evidence does not suggest that his disability had had any significant effect upon his lifestyle, and indeed until 1996 it had had nil effect on his employment. It had produced no economic loss whatever until he was stood down from train crew duties. The immediate effect of his relegation was a reduction of his income by $20,000 gross per year.

[5] The plaintiff then promptly consulted solicitors who arranged a medical examination which confirmed that he was suffering from severe sensory neural deafness related to continued noise exposure at work and that the loss would prevent him from being a train driver. The present action was commenced on 10 December 1996.

[6] Unless an extension is obtainable under s 31 of the *Limitation of Actions Act* 1974 his claim against the defendant will be limited to the consequences of negligent exposure to noise only over the period of three years preceding commencement of the action[1], that is to say to the period since December 1993. The evidence on which he wishes to rely suggests that the damage occurred earlier than this.

[7] The primary question in this case may be stated essentially in the terms of s 31(2)(a) of the Act. Was a material fact of a decisive character relating to his right of action not within his means of knowledge until 10 December 1995 or later? That date is chosen on the basis that if he was unaware of any material fact relating to his right of action until after that date, the court has power to extend the period of limitation for one year from that date, and it is common ground that the action was actually commenced on 10 December 1996.

[8] The contention for the plaintiff is that he was not aware, and it was not within his means of knowledge, that his condition made him unfit for train-driving duties until he was stood down. It is further contended that until he was stood down there was no sufficient basis for him to think (even on the constructive information and advice he is notionally presumed to have obtained under s 30(1)(b)) that any action brought against his employer would yield sufficient damages to justify the bringing of such an action, or that such an action ought in his own interests to be brought.

[9] The "material fact of a decisive character" relied on by the plaintiff is capable of formulation in a number of ways. That principally relied upon on appeal was that his condition was such that he was unsuitable for train-driving duties. The learned chamber judge considered that this fact only became known to the plaintiff when he was stood down, or when his condition and its consequences upon his future employment were subsequently confirmed to him by Dr Robinson. His Honour considered that upon this happening a new and material fact about the nature and extent of his injuries became known to him. That fact was regarded by his Honour as converting a claim that was not worth pursuing into one that was.

[10] Counsel for the defendant however sought to characterise the relevant events of 1996 as a mere "change of policy" on the part of the defendant, contending that such a fact is incapable of being a material fact "relating to the right of action". The evidence suggests that there was no actual change of rules, but rather that the defendant started in 1996 to enforce standards that had not previously been enforced. It is only in that sense that the defendant's policy changed. The defendant's preference for this formulation of the material fact is no doubt based upon a desire to align the facts to those of the decision of the NSW Court of Appeal in *Electricity Commission of New South Wales v Plumb*[2]. It was held in that case that a change in an employer's policy which imperilled a plaintiff's economic

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1 *Limitation of Actions Act* 1974 s 11.

2 (1992) 27 NSWLR 364.

interest failed to satisfy the definition of "material fact … relating to the right of action". It is however difficult to reconcile that decision with a number of decisions of this court. It will therefore be necessary to consider these authorities.

[11] This court has consistently treated the consequences of injury including economic consequences, as a potentially material fact of a decisive character relating to the right of action[3]. In *Byers* the material fact was that the plaintiff's injury was such as to necessitate his changing to a different and lighter job. The court (Lee J, with whom McPherson and de Jersey JJ (as their Honours then were) agreed) observed that "this new fact transformed his case into one which would then probably result in a substantial award of damages" and held that it was a sufficient basis for extending the limitation period. Such cases are almost invariably concerned with assessments of degree as to whether the plaintiff's actual knowledge of physical injury and its warning signs and consequences had by a given date already afforded sufficient information to have justified the commencement of proceedings. The fact that a plaintiff's injury was more serious than he or she had hitherto realised has long been recognised as capable of being a material fact. Such a fact of course needs to be weighed in context with facts already known and reasonably capable of being known[4]. In *Taggart* the fact that the plaintiff's injury was more serious than he had hitherto realised was regarded as capable of being a material fact. The plaintiff failed on the footing that in the light of what he already knew the additional information could not be regarded as of a decisive character. By necessary implication a fact of this kind going to enlargement of damages could be a material fact of a decisive character if it converted such a person's claim from one that was not worth bringing into one that was.

[12] The issue now raised is whether, contrary to the interpretation so far applied to s 30 of the Act, the fact that the consequences of an injury are more serious than had previously been actually or constructively known (and specifically in the present case the fact that the plaintiff's condition was such as to render him unsuitable for his former type of employment), is incapable of constituting a "material fact" for the purposes of s 30(1) of the *Limitation of Actions Act* 1974.

[13] Section 30(1) of the Act provides:

> "For the purposes of this section and sections 31, 32, 33 and 34-
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> (a) the material facts relating to a right of action include the following-
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> (i) the fact of the occurrence of negligence, trespass, nuisance or breach of duty on which the right of action is founded;
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> (ii) the identity of the person against whom the right of action lies;
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> (iii) the fact that the negligence, trespass, nuisance or breach of duty causes personal injury;
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> (iv) the nature and extent of the personal injury so caused;

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3 *Taggart v Workers Compensation Board of Queensland* [1983] 2 Qd R 19; *Moriarty v Sunbeam Corporation Limited* [1988] 2 Qd R 325; *Byers v Capricorn Coal Management Pty Ltd* [1990] 2 Qd R 306.

4 *Taggart v Workers Compensation Board of Queensland* [1983] 2 Qd R 19.

(v) the extent to which the personal injury is caused by the negligence, trespass, nuisance or breach of duty.

(b) material facts relating to a right of action are of a decisive character if but only if a reasonable person knowing those facts and having taken the appropriate advice on those facts, would regard those facts as showing-

(i) that an action on the right of action would (apart from the effect of the expiration of a period of limitation) have a reasonable prospect of success and of resulting in an award of damages sufficient to justify the bringing of an action on the right of action; and

(ii) that the person whose means of knowledge is in question ought in the person's own interests and taking the person's circumstances into account to bring an action on the right of action;

(c) a fact is not within the means of knowledge of a person at a particular time if, but only if-

(i) the person does not know the fact at that time; and

(ii) as far as the fact is able to be found out by the person – the person has taken all reasonable steps to find out the fact before that time."

(The term "appropriate advice" is then defined in subsection (2)).

[14] *Plumb's* case was decided upon legislation which although not identical with s 30 and s 31 of the Queensland Act is not properly distinguishable from it. The New South Wales legislation however since 1990 contains some additional provisions[5].

[15] In *Plumb* the primary judge (McInerney J) found that the plaintiff at material times had knowledge that he had suffered a serious back injury in the course of his employment. It had necessitated spinal surgery and his condition had gradually worsened over a number of years and had resulted in his being placed on light duties. Having asked whether the reasonable man having taken appropriate medical and legal advice on the facts would regard them as showing recovery of damages sufficient to justify bringing an action, his Honour concluded that he would have to answer that question "Yes", in which case the application had to be refused. Such a conclusion seems, with respect, to be impeccable. However the leading judgment written by Handley JA (with which Mahoney and Sheller JJA agreed) found a different reason for coming to the same conclusion. It is that the employer's change of policy with respect to the employment of injured workers on light duties was not a material fact relating to the plaintiff's cause of action. Handley JA recognised that such a fact "may be a most material fact in relation to an employee's damages" but considered that it did not satisfy the requirements of s 58(2)(a) of the Act[6].

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5 Additional provisions were added to the *Limitation Act* 1969 (NSW) by the *Limitation (Amendment) Act* 1990 (NSW). The *Limitation (Amendment) Act* 1990 (NSW) had the further consequence of renumbering the relevant provisions of the *Limitation Act* 1969 (NSW). In particular, s 57 of the *Limitation Act* 1969 (NSW) was renumbered s 57B. To avoid confusion all references here will be to the provisions as renumbered.

6 This may be compared with s 30(1)(a) of the *Limitation of Actions Act* 1974 (Qld).

[16] His Honour placed some reliance upon the following statement of Deane J in *Do Carmo v Ford Excavations Pty Ltd*[7]:

> "… material facts relating to a cause of action include all those facts which, in combination, constitute the cause of action and resulting personal injury".

Although that particular passage does not in my view constrain the above result, other parts of Deane J's judgment however support a more restrictive view of the "material facts" that are covered by the section. In particular Deane J drew a distinction between primary facts relating to a cause of action and facts "which are material to the cause of action in the sense that they provide the context in which, or reference to which, the significance of the particular or primary facts should be assessed …"[8]. Facts of the latter kind, his Honour thought, were not material facts relating to the cause of action. However as I read *Do Carmo,* only Wilson J supported Deane J's approach on this issue. A wider view of the material facts was taken by Dawson J with whose judgment Brennan J agreed. Dawson J specifically rejected the suggested distinction between primary and secondary facts, noting that it was certainly not one that had been drawn by the legislation itself. The newly discovered fact on which Mr Do Carmo relied related to the issue of negligence. It consisted of information as to the steps which might have been taken by his employer to minimise or eliminate the risk of injury to him from exposure to dust. He had known for many years that his employer had exposed him to dust and that no protection had been supplied against it. The fifth member of the Court, Murphy ACJ, would have allowed the appeal on the ground that the existence of a right of action was itself a material fact. There was no support for that view from any other member of the court. However his Honour, consistently with the view of Dawson J and Brennan J, considered that:

> "The appellant did not know until after the commencement of the year preceding the expiration of the limitation period that the risk of injury was real or proximate and could reasonably have been foreseen and avoided by his employer. He thus did not know 'material facts … of a decisive character' before the period expired"[9].

[17] I do not think that *Do Carmo* provides an authoritative answer to the present question. It would seem to have been concerned with "the fact of the occurrence of negligence … on which the right of action is founded" under s 30(1)(a)(i) (NSW s 57B(1)(b)(i)) rather than with "the nature and extent of the personal injury so caused" under s 30(1)(a)(iv) (NSW s 57B(1)(b)(iv)). The former concept is expressly tied to the concept of the foundation of the cause of action while the latter is not. Moreover, the designation in sub-paras (i) to (v) of the material facts relating to a right of action in s 30(1)(a) is inclusive only. Five specific examples are given and there is a residuum of unspecified instances. The breadth of the connecting words "relating to" in the introductory part of s 30(1)(a) hardly requires emphasis.

[18] The critical reasoning in *Plumb* does not contain any direct discussion of *Do Carmo*, other than citation of the short statement of Deane J quoted above, followed

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7 (1984) 154 CLR 234, 251.
8 *Do Carmo* above at 252.
9 Ibid p 239.

by reference to a statement by Samuels JA in another case[10] expressing the view that the opinion of Deane J in the passage earlier quoted had the support of three of the other members of the court in *Do Carmo*. I cannot agree with that statement, and note that in any event that particular statement does not demand the construction that was adopted in *Plumb.*

[19] With respect I consider the interpretation given to s 30(1)(a)(iv) (NSW s 57B(1)(b)(iv)) in *Plumb* is unduly restrictive, and that there are good reasons why a wider interpretation is to be preferred.

[20] Damages are an essential element of a right of action for damages for negligence. The essential requirement for an extension of time is set out in s 31(2)(a) which requires proof that "a material fact of a decisive character relating to the right of action was not within the means of knowledge of the applicant …". That composite test is extrapolated by definitions of its three main components in s 30(1)(a), s 30(1)(b) and s 30(1)(c). The section contemplates analysis of the character of the material fact. One particular matter that s 30(1)(b) specifically requires the material fact to bear is an economic characteristic. It must produce the conclusion that the action would result in an award of damages sufficient to justify the bringing of an action. In this context it would seem inappropriate to limit the connotation of "the nature and extent of the personal injury so caused" to medical concepts or to the mere consequences to the person of the plaintiff. The economic effects of the injury are encompassed, whether one adverts to s 30(1)(a)(iv) or to the residuum of s 30(1)(a).

[21] In the present case it may be thought that the plaintiff was aware of the nature of the injury he had sustained at a very early stage but was not aware of its true nature and extent until 1996. Of course if economic consequences of personal injury are necessarily excluded from the concept of "material facts relating to a right of action", then the plaintiff must fail, notwithstanding that he was at no time aware and could not reasonably be expected to have ascertained that his injury would be productive of serious economic consequences. Such a restrictive interpretation would produce a potentially affirmative result in the case where a doctor informed a plaintiff that his injuries were such that he would not be able to continue with this former class of work, and a negative result in a case where an employer informed the plaintiff that it had changed its policy and that persons with his disability would, contrary to former practice, be precluded from such work. Such a distinction is neither desirable nor necessary.

[22] The question whether a plaintiff on reasonable inquiry from qualified persons might have been able to find out such a fact is a separate question. A plaintiff may well fail on that separate basis; but I am presently concerned with the preliminary question whether a plaintiff in such a situation must fail at the threshold.

[23] I conclude that the material facts referred to in s 30(1)(a) may include the consequences of injury to the plaintiff including economic consequences. The notion that a fact cannot be a material fact if it is a fact external to the injury itself would exclude for example a medical discovery revealing that the consequences of

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10 *Royal North Shore Hospital v Henderson* (1986) 7 NSWLR 283, 290-291 (Hope JA concurred with Samuels JA).

a particular kind of injury were far more serious than had hitherto been thought. In principle it is difficult to think that a fact of that kind could be disqualified from consideration especially when it is recognised that we are dealing with remedial legislation which it has been held should be interpreted liberally[11]. Such a fact of course will not qualify a plaintiff for an extension of time unless it is of a decisive character such as, for example, a fact of sufficient importance to convert an action that was not worthwhile into one that is. Further, in order to qualify, such a fact must not only be actually unknown by the plaintiff; it must also be a fact that the plaintiff would not have discovered if he or she had taken all reasonable steps to find it out.

[24] The present circumstances are in my view not properly distinguishable from those in *Byers* where the Full Court considered the material fact (injury necessitating change of job) to be capable of satisfying the section. There does not appear to be sufficient reason to overrule *Byers* and other decisions in this court in the same line, or to lay down a new interpretation based upon that adopted in *Plumb.*

[25] The primary ground of appeal therefore fails.

Worthwhile cause of action before 1996?

[26] It was initially contended on the appeal that the learned chamber judge failed to make any finding as to whether or not the plaintiff had a worthwhile cause of action before he was stood down. The submission was incorrect. His Honour clearly found that prior to his being stood down the bringing of an action was not warranted. The following findings are relevant:

> "From 1987 onwards, [the plaintiff] suffered from a binaural hearing loss which did not prevent him passing regular medical tests to determine whether he was fit to continue in the work for which he was employed. The nature of his injury was known and its extent did not warrant the bringing of an action. His employment was secure, he was passing examinations and attending courses, as his work history (ex "H" to the affidavit of Mr Houlihan) shows. Then, in 1996, he was stood down from the train crews and his income was reduced by $20,000 gross per year. It seems to me that this indicates that the extent of the personal injury, namely its impact upon his economic capacity, changed dramatically. He now had such a loss that, in his own interest, he should bring an action on his right of action. It seems to me that the "extent" of an injury must include the impact that injury has upon the various matters considered in an award for damages for such personal injury. I am satisfied that, when Mr Watters was stood down and it was subsequently confirmed by Dr Robinson that his hearing loss prevented him from carrying out his duties as a train driver, a new fact about the nature and extent of his injury became known to him."

[27] The plaintiff was made aware after audio-metric testing in June 1987 that he suffered a bilateral loss which was moderately severe in the high frequencies, and

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11 *Briggs v James Hardie & Co Pty Ltd* (1989) 16 NSWLR 549; *Ditchburn v Seltsam Ltd* (1989) 17 NSWLR 697, 703-4 per Kirby P.

was advised to consider canal hearing aids. Subsequent treatment and advice in 1991 by Drs Godsell and Tiang did not suggest that his problem was one that would affect his work capacity. It would seem that the attitude of the defendant changed at the end of 1995. This was followed by an examination of the plaintiff in May 1996 which showed that he was outside the guidelines for train crew. A practical test was then arranged some months later. Finally on 15 November 1996 he was stood down from train crew duty.

[28] The plaintiff submitted to medical examination from time to time at the behest of his employer. These reported details such as "poor hearing" but the defendant's examiners continued to certify him as fit for employment in the same position.

[29] The determination of the defendant to enforce the standards in question was something to which the plaintiff was not privy. It was no doubt a commendable if belated determination in the interests of public safety; but there is nothing to suggest any timely release of information that would have made it predictable by the plaintiff. It was a matter upon which, in the words of the plaintiff's counsel, the employer was the oracle.

[30] Counsel for the appellant submitted that his Honour ought to have found that the plaintiff had enough warning signs and awareness of incapacity to know or to be presumed under s 30(1)(b)(i) to know that he had a worthwhile cause of action. He submitted that the plaintiff was aware that he had a significant hearing loss and that this would have entitled him to "a not insignificant amount" for pain and suffering, plus potentially the cost of hearing aids for the rest of his life. However the evidence placed before the learned chamber judge does not suggest that the plaintiff's hearing loss impacted upon his day to day activities. It does not follow from technical findings such as "neural hearing loss of mild degree in lower frequencies gradually increasing to moderate degree in both ears in the higher frequencies" or "bilateral mild to moderately severe sensori neural hearing loss and hypermobile middle ear systems" that significant pain or suffering is produced, or that such a condition of itself demonstrates the prospect of monetary damages sufficient to justify the bringing of an action against his employer. To the contrary, Dr Robinson stated in cross-examination "the correlation between the audio metric findings and the sort of level of inconvenience or how people are coping or what they can understand by it all, I have not found very great". He added that measured hearing loss and what people tell him do not correlate well. It would perhaps have been foolish for the plaintiff to commence a legal action that would disturb a relatively satisfactory status quo. The evidence given in these proceedings is sufficient to support the judge's finding that the bringing of an action was not warranted until the plaintiff was stood down.

[31] This ground of appeal also fails.

Prejudice

[32] Finally it was submitted that his Honour erred in holding that the defendant would not be prejudiced by the delay.

[33] Counsel for the defendant contended on appeal that his Honour should have held that prejudice was shown to a sufficient extent on the part of the defendant to

require a determination that it would not be just to permit the matter to proceed. He referred to the practice of the defendant of destroying its personnel records after six years. Certain records of the work performed by the plaintiff were commenced in 1984 and destroyed in 1990. As a consequence it cannot now produce all the records of the plaintiff's assignments to work. It was said that those records would allow the defendant to ascertain the engines upon which he travelled as fireman or driver, the routes they took and the number of carriages that they drew. This, it was submitted, would allow assessments to be made of the level of noise trip by trip, which is dependent upon the size of the train, the topography over which the train moves and the nature of the track. It would seem however that there are still other variables, some of which are unknown and unknowable, such as whether the window was open, the weight of the train, the speed, how hard the engine had to work and other details, the absence of which might cast doubt upon the feasibility of an exercise of this nature.

[34] Apart from the plaintiff's employment details 1984 to 1990 all other relevant records are available. Train crew members that the plaintiff worked with remain employed by the appellant and can identify the types of trains he worked on and at least in a general sense the types of information which would enable a similar assessment to be made to that which the defendant now desires. The plaintiff has already identified to the defendant the types of trains upon which he worked.

[35] It is clear that the defendant has extensive information available to it as to tests which it has taken over the years (including the period 1982 to 1990) of noise levels in various kinds of trains.

[36] Available evidence resulting from the defendant's own studies includes an exercise concerning the noise level in trains on the Brisbane/Toowoomba route, apparently revealing a decibel level high enough to support the plaintiff's case. The evidence also includes a report made in 1988 for the defendant assessing that the noise levels in the cabins of diesel/electric locomotives at that time ranged between 85 and 105 dbA. The defendant's position would seem to be that it now wishes to perform retrospectant experiments in an attempt to distinguish any reliance that the plaintiff might place upon the defendant's own records in this respect. It is not known whether such an exercise would enable the defendant successfully to distinguish the present results or whether they would make matters worse for the defendant. The exercise which counsel described could fairly be described as a fishing expedition based upon eager hope rather than solid expectation.

[37] The submission in any event seems to go beyond the evidence presented by the defendant on this point. The affidavit of Mr Harris states that the destroyed records contained the hours worked each day, the train number, the type of diesel locomotive, the type of shifts worked by the employee and the journeys the employee travelled each day. This would not supply sufficient data to enable calculations of the kind that counsel submitted his client would be anxious to perform if it still had such records. In short the missing records are not shown to be of the kind that would enable the exercise described by counsel to be satisfactorily undertaken.

[38] Some disadvantage should be recognised in the possible loss of opportunity by the defendant to refute the apparent effect of its own current records, though on the evidence this seems very tenuous.

[39] In all the circumstances the material shows that the grant of the extension sought would not result in significant prejudice to the defendant, and it is insufficient to call for a discretionary refusal of the extension of the limitation period[12].

[40] The appeal should be dismissed with costs to be assessed.

[41] **BYRNE J:** I agree with Thomas JA.

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12 Cf. *Brisbane South Regional Health Authority v Taylor* (1996) 186 CLR 541.