

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Rosenlund Contractors Pty Ltd v Tricon Mining Equipment Pty Ltd* [2020] QCATA 34

PARTIES: **ROSENLUND CONTRACTORS PTY LTD**
(Applicant)

v

TRICON MINING EQUIPMENT PTY LTD
(Respondent)

APPLICATION NO: APL100-19

ORIGINATING APPLICATION NO: MCD0263-18 Brisbane

MATTER TYPE: Appeals

DELIVERED ON: 25 March 2020

HEARING DATE: 23 March 2020

HEARD AT: Brisbane

DECISION OF: Dr J R Forbes, Member

ORDERS:

- 1. Subject to any objection by the parties the application for leave to appeal is deemed to be an application under section 135 of the QCAT Act.**
- 2. Any such objection must be notified to the Tribunal registry and the other party within 14 days of delivery of this decision.**
- 3. In the absence of such objection, the parties may file and serve written submissions with respect to the correction application within 14 days of delivery of this decision.**
- 4. In the event that a correction application proceeds, it is remitted to the Adjudicator who made the original decision on 22 March 2019.**
- 5. Absent acceptance of the change envisaged in Order [1] this matter will revert to the list of applications for leave to appeal, to be decided on the papers.**

CATCHWORDS: APPEAL – APPLICATION FOR LEAVE TO APPEAL – sole ground of appeal questioning arithmetical calculations in primary judgment – whether matter better dealt with under the slip rule – whether to deem existing application for leave an application under the slip rule – whether change enabled by QCAT Act s 61 – order for change made subject to parties’ objection, if any – matter remitted to primary decision maker for consideration and resolution of slip rule application

Queensland Civil and Administrative Tribunal Act 2009 (Qld) sections 32, 61, 135, 143

Queensland Civil and Administrative Tribunal Rules 2009 (Qld) r 90

Fox v Percy (2003) 214 CLR 118

Harrison & Anor v Meehan [2018] QCATA 191

Medical Board of Australia v Andersen [2018] QCAT 101

Officer JXR v Deputy Commissioner Gollschewski [2018] QCATA 55

APPEARANCES & This matter was heard and determined on the papers
REPRESENTATION: pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act).

REASONS FOR DECISION

- [1] Under an agreement in writing dated 13 April 2017 the Applicant (‘Rosenlund’) hired a Metso VSI stone crushing machine from the Respondent (‘Tricon’) to carry out works on the Sunshine Coast. Triton delivered the machine to Rosenlund on 2 May 2017 and retrieved it on 2 June 2017.
- [2] The machine had a propensity to break down from time to time, causing Rosenlund to lose a number of potentially productive hours.
- [3] On 19 February 2018 Rosenlund commenced these proceedings, claiming *inter alia* \$13,585 as a refund of hiring charges paid in advance.
- [4] On 22 March 2019 the Tribunal awarded Rosenlund the less impressive amount of \$3,146.
- [5] Rosenlund now seeks leave¹ to appeal that decision. The application for leave sets out a ground of appeal that is solely and simply mathematical:

¹ As required by QCAT Act s 143(3).

I believe the Member made mathematical errors in his final conclusions.

- [6] Just where or why the calculations are said to have gone astray is not clearly particularised, and the relief sought is expressed in Delphic fashion:

To review his maths based upon the agreed hours worked by both parties and then extended out does not match the decision amount.

- [7] The Adjudicator reached these conclusions which, on the facts as found², may require some clarification:

As for the 3rd of M 2017, the tribunal accepts there was an issue with the metal detector. ... The problem was fixed, and Rosenlund was able to get in two hours crushing. Six hours down time was allowed on the basis of minimum weekly 40 hours. That is \$1716.

The crusher broke down [again] at 2.15 pm on Friday the 12th of May 2017. That was the bulk/ring issue. The wrong graded bolt inside the cylinder. ... Usage ... [on] 12 May 2017 was five hours, a loss on that day of three hours. Hours lost at eight hours per day 15 May through to 18 May inclusive is 32 hours; \$9152, plus the three hours lost at \$858. The total loss on the first three weeks, ie Monday 1st of May '17 through to Friday the 19th of May '17 was \$1716 plus \$9152 plus \$858, a total of \$11,726. Tricon's charge for three weeks, \$34,320, less \$11,726 is a total of \$22,594. ...

[O]n 1st of June, the crusher was down from 7 am to 11.30 am ... A downtime of two hours is allowed, at \$572. ... The hire continued, as per contract, for their two week period less one day, ie Monday 22nd of May 2017 through to the first of June 2017 and 40 hours, because that is what the contract's dated. Forty hours weekly. That transpired, less the one day, that is 72 hours at \$286, less the \$572 was a net figure of \$20,020. The total liability of \$22,594 as explained earlier, plus \$20,020 is a sum of \$42,614. Rosenlund paid a total of \$45,760. Tricon is due to refund \$3146 to Rosenlund. ... The order today will be that the Respondent, Tricon, pay to the applicant Rosenlund the sum of \$3146. I will allow the application fee.³

- [8] An application for leave to appeal is not a suitable opportunity to decide whether Rosenlund's arithmetic is preferable to that of the Adjudicator. This application would be better presented as a request for correction. In the circumstances of this case, I consider that the primary decision maker is the person best placed to elucidate his reasons and to rationalise his calculations, if need be.
- [9] Section 135 of the Act provides that the Tribunal, at first instance, may correct 'a clerical mistake, or an error arising from an accidental slip or omission, or a material miscalculation of figures'.⁴
- [10] Rosenlund's only complaint is within the province of this 'slip rule'. Section 61 of the Act confers a wide discretion to relieve litigants from procedural requirements. See for example *Officer JXR v Deputy Commissioner Gollschewski*⁵ where the Tribunal, on its own initiative, waived compliance with several provisions of the Act and Rules.

² Those findings are not now in question: cf *Fox v Percy* (2003) 214 CLR 118.

³ Transcript of reasons for decision 22 March 2019 pages 7-8.

⁴ QCAT Act s 135(1).

⁵ [2018] QCATA 55.

[11] It is in the interests of the parties that this matter be simplified and resolved in an economical manner. Subject to any objection on their part I propose to treat the application for leave to appeal as a 'correction' application under the slip rule. That will relieve the application from a formal withdrawal of the present application⁶ and the making of a correction application⁷ subject to an extension of time to do so.⁸ In a forum dedicated to expedition, economy and non-technicality that is a stately saraband to which we should not subject them.

ORDERS

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2. Any such objection must be notified to the Tribunal registry and the other party within 14 days of delivery of this decision.
3. In the absence of such objection, the parties may file and serve written submissions with respect to the correction application within 14 days of delivery of this decision.
4. In the event that a correction application proceeds, it is remitted to the Adjudicator who made the subject decision on 22 March 2019.
5. Absent acceptance of the change envisaged in Order [1] this matter will revert to the list of applications for leave to appeal, to be decided on the papers.

⁶ As was done in *Harrison & Anor v Meehan* [2018] QCATA 191. A correction application may not be made if another application is pending: s 135(4).

⁷ QCAT Act s 135(4).

⁸ As in *Medical Board of Australia v Andersen* [2018] QCAT 101. The time limit appears in QCAT Rules r 90(b).