

# QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *State of Queensland (Department of Education) and Queensland Teachers' Union of Employees [2019] QIRC 121*

PARTIES: **State of Queensland (Department of Education)**

and

**Queensland Teachers' Union of Employees**

CASE NO: B/2019/35

PROCEEDING: Facilitation request

DELIVERED ON: 26 August 2019

HEARING DATE: 8 August 2019

HEARD AT: Brisbane

MEMBER: Knight IC

ORDER: **1. That Ms Kaylene White has completed 26 years of meritorious service within the Queensland Public Sector and, as such, enjoys an entitlement to meritorious sick leave.**

CATCHWORDS: INDUSTRIAL LAW – APPLICATION – FACILITATION REQUEST – Where Commission may provide assistance upon request – Whether employee has reached 26 years' meritorious service.

LEGISLATION: *Industrial Relations Act 2016*

*Financial Accountability Act 2009*

*Directive 10/18: Sick Leave*

APPEARANCES: Ms. P. Spalding of the Queensland Teachers' Union of Employees.

Mr. R. Patterson of the State of Queensland (Department of Education).

### Reasons for Decision

- [1] The State of Queensland (Department of Education) ("the Department") and the Queensland Teachers' Union of Employees ("the Union") seek the assistance of the Commission by way of a facilitation request pursuant to s 469 of the *Industrial Relations Act 2016* ("the Act").
- [2] The Commission is to determine whether Ms Kaylene White has completed 26 years of meritorious service within the Queensland Public Sector and is therefore entitled to 13 weeks' meritorious sick leave under *Directive 10/18: Sick Leave*.
- [3] After an initial conference before me on 1 July 2019, the application was listed for hearing. Ms White, who resides in northern Queensland, joined the Commission to give sworn evidence by telephone. The parties agreed, in writing, for this decision to be binding. For the reasons which follow, I find that Ms White has completed her 26 years of meritorious service.

### The Act

- [4] Section 469 of the Act provides:

#### Commission may provide assistance

- (1) If the parties to an industrial cause agree in writing, the parties may ask the commission to assist the parties in negotiating or resolving a matter relevant to the industrial cause (a *facilitation request*), whether or not the matter is within the jurisdiction of the commission.
- (2) The facilitation request must be agreed between the parties, and may–
  - (a) be in the form agreed between the parties; and
  - (b) include a request about how the matter may be resolved, including, for example, by–
    - (i) facilitating negotiations or discussions between the parties; or
    - (ii) deciding an issue or question relating to the matter; or
    - (iii) conciliation; or
    - (iv) arbitration; and
  - (c) be amended by agreement between the parties at any time.

- (3) On receiving a facilitation request, the commission may provide the assistance requested by the parties.
- (4) A decision made by the commission in providing the assistance binds the parties to the industrial cause only if the parties agree, in writing, for the decision to bind the parties.
- (5) This section does not limit a function or power of the commission under another provision of this Act to conciliate, arbitrate or otherwise decide a matter.

## **Background**

- [5] In October 2017, Ms White sought the assistance of the Union to receive recognition for her service with the Department for the purposes of applying for meritorious sick leave. She avers that she has worked with the Department almost every year since 1988.
- [6] As part of the application process, Ms White was required to request a statement of service.<sup>1</sup> It outlines that she commenced employment at Mossman State School on 12 September 1988. According to Ms White, the statement contained a number of "anomalies" in respect of her employment history, namely, there was no mention of four particular years: 1994, 1995, 1996, 1997 ("the missing years"). Accordingly, she fell short of 26 years' service.
- [7] Ms White was able to source and provide the Department with a 1995 staff photo from Mossman State School<sup>2</sup> and a 1996 staff photo from Rocky Point State School.<sup>3</sup> She also proffered a statutory declaration to the effect that she was employed with the Department during the missing years.<sup>4</sup>
- [8] Having regard to its obligations under the *Code of Conduct* for the Queensland Public Service and to administer the State's finances responsibly,<sup>5</sup> the Department was unwilling to approve Ms White's application in circumstances where there was a paucity of records and information which might corroborate her account of the employment relationship during the missing years. Essentially, the Department required a higher bar of documentary evidence.

## **Was Ms White employed by the Department during 1994, 1995, 1996 and 1997?**

- [9] During the proceedings, Ms Spalding adduced the evidence-in-chief of Ms White by asking her a series of questions in respect of her recollection of the period for which records were missing. Mr Patterson declined to cross-examine Ms White.

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<sup>1</sup> Exhibit 1.

<sup>2</sup> Exhibit 4.

<sup>3</sup> Exhibit 5.

<sup>4</sup> Exhibit 2.

<sup>5</sup> *Financial Accountability Act 2009* (Qld).

- [10] I accept that Ms White was employed by the Department in 1995 and 1996 given the staff photos taken during those years which were tendered as evidence. I note she was also able to recall the roles she undertook at the time.
- [11] It is necessary, then, to consider the evidence in support of Ms White's contention that she was employed during 1994 and 1997.
- [12] In addition the questions posed by Ms Spalding during the hearing, I questioned Ms White in relation to the schools at which she worked during the relevant periods, the roles she undertook, the nature of her duties and the staff she worked alongside.
- [13] In her evidence, Ms White told the Commission she was employed as an administrative officer in the front office at Mossman State School in 1994. She was easily able to recall some of her colleagues at the time, including the principal, Mr Justin Newbecker, and another administrative officer, Ms Judy Taylor.<sup>6</sup>
- [14] Ms White also submitted that she was employed as an administrative officer in 1997 at Rocky Point State School. The school is now known as Wonga Beach State School. She commented that she was the only administrative officer at the school and worked under the principal, Ms Jan Durie.<sup>7</sup>
- [15] Although Ms White could not obtain the staff photo for 1997, her representative tendered the Rocky Point staff photo from 1996, as mentioned earlier.

### **Consideration and Conclusion**

- [16] I found Ms White to be a credible witness. She readily conceded where appropriate that she had been unable to marshal documentary material which might corroborate her account. During her evidence, however, she recalled with sufficient detail the circumstances of her employment at the time to warrant the conclusion I have reached.
- [17] She was able to tell the Commission the names of the principles under whom she worked, the names of several her colleagues and the nature of the work she performed. Moreover, the missing years were also bookended by other periods of employment with the Department.
- [18] Although not strictly relevant to Ms White's matter, a representative for the Department confirmed during the proceedings that the employment records for several other employees who were in the official staff photos provided by Ms White for the relevant periods were also unable to be located. This is somewhat consistent with Ms White's

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<sup>6</sup> T-9, 124 – T1-10, 17.

<sup>7</sup> T1-10, 11 11-19.

concerns that the Department's central record keeping systems had not adequately captured her service for the relevant period.

[19] I am satisfied on the balance of probabilities that Ms White was employed by the Department during the missing years.

[20] Accordingly, I make the following Order:

- 1. That Ms Kaylene White has completed 26 years of meritorious service within the Queensland Public Sector and, as such, enjoys an entitlement to meritorious sick leave in accordance with the relevant Directive.**