

## QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Bezett v State of Queensland (Queensland Fire and Emergency Services)* [2023] QIRC 048

PARTIES: **Bezett, Peter**  
(Applicant)

v

**State of Queensland (Queensland Fire and Emergency Services)**  
(Respondent)

CASE NO: TD/2022/272

PROCEEDING: Application in existing proceedings

DELIVERED ON: 15 February 2023

WRITTEN SUBMISSIONS: Applicant's submissions filed 2 February 2023  
Respondent's submissions filed 7 February 2023

MEMBER: Pidgeon IC

HEARD AT: On the papers

ORDERS: **Leave is granted for the Respondent to be legally represented for any conciliation conferences regarding matter TD/2022/272 pursuant to s 530(1)(e) of the *Industrial Relations Act 2016* (Qld).**

CATCHWORDS: INDUSTRIAL LAW – QUEENSLAND – DISMISSALS – application in existing proceedings – application for leave to be legally represented – where Respondent applied for leave to be legally represented – where Applicant opposes application – factors to be

considered by the Commission in determining whether to allow legal representation – efficiency of proceedings – where leave is granted for legal representation

LEGISLATION:

*Industrial Relations Act 2016* s 317, s 320, s 529, s 530, s 530A, sch 5

*Public Service Act 2008* ch 7

CASES:

*Atkins v Brisbane City Council* [2020] QIRC 176

*E. Allen and Ors v Fluor Construction Services Pty Ltd* [2014] FWCFB 174; 240 IR 254

*Monstein v Brisbane City Council* [2022] QIRC 031

*State of Queensland (Department of Premier and Cabinet) v Dawson* [2021] QIRC 118

*State of Queensland (Queensland Health) v Hume* [2022] ICQ 001

*Wanninayake v State of Queensland (Department of Natural Resources and Mines)* [2014] QIRC 079

## Reasons for Decision

### Introduction

- [1] On 23 December 2022, Mr Peter Bezett (the Applicant) filed an application for reinstatement pursuant to s 317 of the *Industrial Relations Act 2016* (the IR Act), claiming that he was unfairly dismissed by the State of Queensland (Queensland Fire and Emergency Services) (the Respondent).
- [2] On 16 January 2023, the Respondent filed an application in existing proceedings seeking leave to be legally represented pursuant to s 530 of the IR Act.
- [3] Mr Bezett subsequently filed an application in existing proceedings objecting to the Respondent's application to be granted leave for legal representation.
- [4] Mr Bezett's application has been allocated to me for the purposes of conducting a conciliation to attempt to settle the application per section 318. It is generally the case that where a member of the Commission has conducted the conciliation of an

application for reinstatement and the matter, having not settled, is referred for arbitration, a different member of the Commission will conduct the hearing. Therefore, my decision on the application for leave to be legally represented relates only to the conciliation of the matter.

- [5] The question before me is therefore whether leave should be granted for the Respondent to be legally represented in any s 318 conciliation conferences held before the Queensland Industrial Relations Commission.

### **Legal framework**

- [6] Section 529 of the IR Act deals with representation of parties generally in proceedings before the Queensland Industrial Relations Commission and says:

#### **529 Representation of parties generally**

- (1) A party to proceedings, or a person ordered or permitted to appear or to be represented in the proceedings, may be represented in the proceedings by—  
 (a) a lawyer, only in accordance with section 530...

- [7] Section 530 of the IR Act addresses the issue of legal representation and relevantly states:

#### **530 Legal representation**

- (1A) This section applies in relation to proceedings other than a proceeding for a public service appeal.  
 (1) A party to proceedings, or person ordered or permitted to appear or to be represented in the proceedings, may be represented by a lawyer only if  
 ...  
 (e) for other proceedings before the commission, other than the full bench—  
 (i) all parties consent; or  
 (ii) for a proceeding relating to a matter under a relevant provision – the commission gives leave; or...

- [8] For context, the term 'public service appeal' is defined in the IR Act as follows:

*public service appeal* means an appeal against a decision under the *Public Service Act 2008*, chapter 7.<sup>1</sup>

- [9] Section 530(7) of the IR Act defines 'relevant provision' to include Chapter 8, of which Division 2, 'Unfair Dismissals', is a part.

- [10] Section 530(4) of the IR Act outlines the following considerations in determining whether to grant leave for legal representation:

- (4) An industrial tribunal may give leave under subsection (1) only if—  
 (a) it would enable the proceedings to be dealt with more efficiently, having regard to the complexity of the matter; or

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<sup>1</sup> *Industrial Relations Act 2016* sch 5.

- (b) it would be unfair not to allow the party or person to be represented because the party or person is unable to represent itself, himself or herself; or
- (c) it would be unfair not to allow the party or person to be represented having regard to fairness between the party or person, and other parties or persons in the proceedings.

[11] Deputy President Merrell considered the construction of ss 530(1) and 530(4) of the IR Act in *State of Queensland (Queensland Health) v Hume*.<sup>2</sup> His Honour said:

- [34] First, the purpose of the combined effect of s 530(1)(a)(ii) and s 530(4) of the IR Act is to confer on the Court discretion to give leave, for a party or person ordered or permitted to appear or to be represented in proceedings before it, to be represented by a lawyer if the Court forms one of the value judgments in s 530(4)(a) to (c).
- [35] Secondly, it is clear that the power conferred on the Court is discretionary and not obligatory. The use of the verb 'may' in s 530(4) of the IR Act logically imports an element of discretion on the part of the Court. The discretionary character is not displaced by the mandatory requirement that the Court must form a value judgment about whether, relevantly to the present case, the giving of the leave sought would enable the proceedings to be dealt with more efficiently, having regard to the complexity of the matter. That is to say, if the Court forms that value judgment, then there is still a discretion to be exercised. The formation of one of the value judgments in s 530(4)(a) to (c) does not dictate that the discretion is automatically exercised in favour of an applicant seeking leave to be represented by a lawyer.
- [36] Thirdly, s 530(4)(a) of the IR Act refers to the question of whether leave would enable '... the proceedings' to be dealt with more efficiently, having regard to the complexity of '... the matter.'
- [37] Chapter 11, pt 5, div 3 of the IR Act is headed 'Conduct of proceedings.' Division 3 contains s 529 and s 530 of the IR Act. Section 529(1) of the IR Act provides that a person or party may be represented in the proceedings by an agent appointed in writing or, if the party or person is an organisation, an officer or member of that organisation. In s 529(2)(a) of the IR Act, the noun 'proceedings' is relevantly defined to mean proceedings under the IR Act or another Act being conducted by the Court, the Commission, an Industrial Magistrates Court or the Registrar. The noun 'proceedings' is relevantly defined in the same way in s 530(7) of the IR Act.
- [38] Having regard to that context, when s 530(4)(a) of the IR Act refers to '... the proceedings', my opinion is that phrase, relevantly to matters such as the present, refers to an application for relief made by a person which an industrial tribunal has jurisdiction to grant.
- [39] By contrast, s 530(4)(a) of the IR Act then refers to the complexity of '... the matter.' Because of the different phrase used, my opinion is that '... the matter' is a reference to the particular controversy or controversies requiring determination by the industrial tribunal so as to make a decision about the application for relief or, put another way, to determine the proceedings.
- [40] Fourthly, s 530(4)(a) of the IR Act is otherwise to be construed according to the ordinary meaning of the words used in that provision. A value judgment has to be formed as to

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<sup>2</sup> [2022] ICQ 001.

whether or not the giving of leave to a party or person to be represented by a lawyer would enable the proceedings to be dealt with more efficiently, having regard to the complexity of the matter. The matter does not have to be complex, or compared to other matters that have or may become before the Court, be more complex; but regard must be had to the complexity of the matter.

- [41] Further, in having regard to that complexity, a judgment has to be formed as to whether allowing the party or person to be represented by a lawyer would enable the proceedings to be dealt with more efficiently. Section 530(4) of the IR Act is relevantly concerned with whether or not discretion should be exercised in favour of a party seeking leave to be represented by a lawyer in proceedings before the Court. As a consequence, my opinion is that the adverb 'efficiently', in the context that it is used in s 530(4)(a) of the IR Act, is concerned with, at least, timeliness.
- [42] Fifthly, if the Court forms one of the value judgments in s 530(4)(a) to (c) of the IR Act, s 530 is otherwise silent as to the factors the Court must consider in terms of exercising the discretion. In such a case, the relevant considerations must be determined from the scope and object of the provision conferring the discretion.
- [43] The object of s 530 of the IR Act is to set out the circumstances by which a party or person may be represented in the proceedings by a lawyer. The circumstances described in s 530(4), which enliven the discretion of the Court to give leave, concern efficiency in the conduct of the proceedings. The circumstances also concern fairness, having regard to the particular circumstances of the person or party seeking leave to be represented by a lawyer, and also fairness having regard to the other parties or persons in the proceedings.
- [44] As a consequence, depending on the circumstances of a particular case, matters such as efficiency and, or in the alternative, fairness, may be relevant considerations as to whether or not the discretion, once enlivened, should be exercised.

### **Respondent's application for legal representation**

- [12] On 16 January 2023, the Respondent filed an employer response to Mr Bezett's application for reinstatement, an application in existing proceedings seeking leave to be legally represented, and a lawyer's notice of address for service nominating Holding Redlich as the Respondent's legal representative.
- [13] The Respondent seeks leave from the Commission to be represented by both solicitors and counsel. In Schedule A to the application, the Respondent makes a number of submissions as to why it says that the Commission should exercise its discretion to grant leave. Its submissions address the complexity and efficiency of proceedings as well as fairness to the parties in granting leave for the Respondent to be legally represented.

### ***Efficiency and complexity***

- [14] In summary, the Respondent says that legal representation will:

- Be more likely to provide prospects of the matter being dealt with more efficiently and with a focus on the relevant issues.<sup>3</sup>
- Will assist the Commission, as a lawyer's paramount duty is to the Commission and supersedes any duties to their client.<sup>4</sup>
- Ensure that the Commission's policies and procedures are adhered to in order to facilitate the just resolution of the dispute as quickly, inexpensively and efficiently as possible.<sup>5</sup>

[15] With regard to the substantive application, the Respondent says that the specific issues which are likely to be disputed, both in fact and law, include:

- (a) The reason for Mr Bezett's dismissal;
- (b) Whether Mr Bezett's dismissal was unfair;
- (c) Whether Mr Bezett was notified of the reason for his dismissal;
- (d) The date Mr Bezett was notified he was dismissed; and
- (e) Whether the [Respondent] has complied with its obligations under the *Human Rights Act 2019* (Qld), the Public Service Commission's Discipline Directive (14/20) and Public Service Commission's Guideline (01/17): Discipline, throughout the discipline process and in dismissing Mr Bezett.

[16] The Respondent says that the presence of legal representation will ensure the proceedings remain focused on the real issues of fact and law, the distinction between evidence and submissions is observed, and that submissions are confined to matters which the Commission must decide.<sup>6</sup>

[17] With specific reference to the matter before the Commission, the Respondent says that legal representation will be particularly beneficial given the amount of material that will need to be reviewed. Relevantly, the Respondent says that 'findings of misconduct were made against Mr Bezett after (among other reasons) he engaged in inappropriate workplace conduct when he sent more than 420 pieces of communication about mandatory vaccinations to his colleagues between around December 2021 and August 2022.' The Respondent says that Mr Bezett also sent pieces of communication broadly, in one case to 136 of his co-workers. The content of the communication is also relevant to the matter as the inappropriate nature of the communications is one of the reasons his employment was terminated. The Respondent says that Mr Bezett also sent 131 letters to its employees. As a result, the Respondent submits that each of these 550 pieces of correspondence will need to be considered in determining whether his termination was unfair.

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<sup>3</sup> *State of Queensland (Department of Premier and Cabinet) v Dawson* [2021] QIRC 118, [20] ('Dawson').

<sup>4</sup> *E. Allen and Ors v Fluor Construction Services Pty Ltd* [2014] FWCFB 174; 240 IR 254, [48].

<sup>5</sup> *Dawson* (n 3).

<sup>6</sup> *Monstein v Brisbane City Council* [2022] QIRC 031, [18].

- [18] Further to this, the Respondent says that it expects to call a number of witnesses to give evidence about the workplace conduct which gave rise to Mr Bezett's termination, as well as the management action that Mr Bezett was subject to for approximately two years prior to his employment being terminated.
- [19] The Respondent submits that at the hearing, the Commission will be required to make findings of credit in respect of various witnesses and that the Commission would be assisted by skilful, relevant and appropriate examination and cross-examination of the parties' witnesses.
- [20] The Respondent acknowledges that it has access to in-house resources and qualified solicitors through Crown Law. However, it says that the question to be determined is not whether it can be represented by in-house resources or lawyers, but whether, having regard to the complexity of the matter, permitting it to be represented by a lawyer would enable the matter to be dealt with more efficiently.

***Fairness to the parties***

- [21] The Respondent says that the involvement of legal representation will balance fairness between the parties because it will aid in proper case and courtroom management.
- [22] The Respondent notes that Mr Bezett has stated that he does not have a representative and says that Mr Bezett's choice not to engage representation should not be a determinative factor in relation to the criteria in section 530(4)(c) of the IR Act. The Respondent refers to *Atkins v Brisbane City Council*, where Dwyer IC said that the decision not to engage legal representation 'does not mean that the BCC should be denied the opportunity to efficiently present a case involving... complexities'.<sup>7</sup>
- [23] The Respondent also notes the comment of Neate IC in *Wanninayake v State of Queensland (Department of Natural Resources and Mines)*, when the Commissioner said:

The fact that one party, either by choice or circumstances, is not represented by a lawyer is no reason to deny the other party or parties of legal representation, particularly in significant and potentially complex cases. That point is strengthened when, as in this case, the respondent party is meant to act as a model litigant in accordance with Model Litigant Principles.<sup>8</sup>

- [24] With regard to the model litigant principles, the Respondent says that among other things, the principles require the power of the State to be used for a public good and in the public interest; and the principles of fairness are adhered to in the conduct of all litigation. The Respondent says that it will conduct the proceedings consistently with the model litigant principles will not take unfair advantage of Mr Bezett.

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<sup>7</sup> [2020] QIRC 176, [23].

<sup>8</sup> [2014] QIRC 079, [6].

### **Mr Bezett's application in existing proceedings**

[25] In his application in existing proceedings filed on 23 January 2023, the Applicant outlines the details of the decision sought.

[26] Mr Bezett refers to the legal principles regarding legal representation in proceedings before the Commission and says:

I bring your attention to the rules regarding representation.

Legal Representation

In most instances, parties may be represented by a lawyer only if:

all parties consent;  
or  
the Court or Commission gives leave.

However, in relation to public service appeals, a party may not be legally represented.

Further information regarding representation can be found at sections 529, 530 and 530A of the Industrial Relations Act 2016.

So, "however" applies to both parties.<sup>9</sup>

[27] After reviewing Mr Bezett's application, I issued a Directions Order on 25 January 2023 directing the parties to file written submissions.

### **Applicant's submissions**

[28] Mr Bezett filed brief submissions objecting to leave being granted for the Respondent to be legally represented.

[29] In summary, the Applicant contends the following:

- The 'Commission is at error' as parties in public service appeals may not be legally represented.
- The Directions Order issued on 25 January 2023 is 'unlawful' in that it incorrectly names the State of Queensland (Queensland Fire and Emergency Service) as the

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<sup>9</sup> Application in existing proceedings filed by the Applicant on 23 January 2023, 3.



Respondent. Instead, the Applicant submits that Mr Steve Depinto should be the Respondent in the proceedings.

- The Commission should have refused all correspondence from the Respondent's legal representatives as the correspondence 'is a breach of privacy' and 'the lawyer has no right to ask for leave'.
- Finally, the Applicant makes submissions regarding the substantive proceedings brought for unfair dismissal in that he did not receive correspondence from his employer before the 'interaction with Steve Depinto on the 10 December 2022', a reason was not given for his 'instant dismissal', and Mr Depinto 'lacked authority'.

[30] Attached to the Applicant's submissions is a copy of ss 529 and 530A of the IR Act and what appears to be an excerpt from the 'Frequently asked questions' page on the Queensland Industrial Relations Commission's website. The excerpt concerns legal representation and says:

**Legal Representation**

In most instances, parties may be represented by a lawyer only if:

all parties consent; or  
the Court or Commission gives leave.

However, in relation to public service appeals, a party may not be legally represented.

Further information regarding representation can be found at sections 529, 530 and 530A of the *Industrial Relations Act 2016*.

**Respondent's submissions**

[31] The Respondent filed its submissions in reply on 7 February 2023.

[32] The Respondent submits that the Commission has the discretion to grant leave for the Respondent to be legally represented and says, 'unfortunately the Applicant has erroneously conflated the Application, being an application for reinstatement, with a public service appeal, which is a separate proceeding under Chapter 7 of the *Public Service Act 2008* and Chapter 11 of the IR Act.'

[33] With regard to Mr Bezett's submission that the State of Queensland (QFES) is the incorrect respondent in this matter, the Respondent says that the legal entity employing AC Smith is the State of Queensland, through QFES, and is therefore the correct respondent in the matter.

[34] With regard to Mr Bezett's submission that all correspondence from the Respondent's lawyers should have been refused and is a breach of privacy, the Respondent says that

it is not a breach of privacy for a lawyer to represent their clients. The Respondent also notes that if the application for reinstatement proceeds to hearing, a decision will be published that will be publicly available on the Supreme Court website and that accordingly, Mr Bezett's privacy may not be maintained throughout the proceeding.

- [35] The Respondent disagrees with Mr Bezett's submissions that he received no correspondence regarding his termination, that no reason was given for his dismissal and that A/Chief Superintendent Depinto had no authority to hand him a copy of AC Smith's termination letter.

### **Consideration**

- [36] Mr Bezett's substantive matter before the Commission is an application for reinstatement. It is not a public service appeal. His submission that the Commission is at error with regard to considering an application for legal representation is wrong.
- [37] A/Chief Superintendent Depinto may be the person who handed Mr Bezett a copy of the termination letter, however this does not serve to make him the Respondent in this matter. The Respondent for the matter, as indicated on Mr Bezett's own Form 12 filed on 23 December 2022, is the State of Queensland (Queensland Fire and Emergency Services). The correct way to refer to the Respondent in future filed material is therefore State of Queensland (Queensland Fire and Emergency Services). The order from the Commission, noting the Respondent as State of Queensland (Queensland Fire and Emergency Services), is not unlawful. I address this as a practical or procedural matter in order to support Mr Bezett in the conduct of the matter. This is not a matter I need to take into account in determining whether to exercise the discretion to grant leave for the Respondent to be represented in this matter.
- [38] I remain unclear as to how enabling the Respondent's representatives to file correspondence prior to the objection being raised is a breach of Mr Bezett's privacy. If Mr Bezett is referring to the Employer Response to his application for reinstatement, I note that there are a large number of documents attached to that response. Some of those documents relate to the disciplinary process and management action related to Mr Bezett's employment. Many of those documents are pieces of communication Mr Bezett sent to his colleagues and which formed part of the basis of the allegations against him. These are all documents which will be considered throughout the hearing of Mr Bezett's matter and may be referred to in the decision of his application for reinstatement. The Respondent rightly points out that the decision issued following the hearing of Mr Bezett's matter will be publicly available on the Supreme Court website. In any case, this is not a matter that I need to consider in determining if I should exercise the discretion to grant leave for the Respondent to be represented in this matter.

- [39] Section 530(1) of the IR Act sets out the matters to be considered in determining whether to exercise the discretion to grant leave for a party to be legally represented. In considering these factors, I adopt the analysis of the section set out by Merrell DP in *Hume*.

***Section 530(4)(a) Enabling the proceedings to be dealt with more efficiently, having regard to the complexity of the matter***

- [40] Mr Bezett has made no submissions with regard to this consideration. The Respondent's submissions are set out above.
- [41] An unfair dismissal requires a specific set of matters to be considered per section 320 of the IR Act. It appears to me, based on the material available and the submissions of the parties, that the parties are in disagreement regarding most, if not all, elements to be considered by the Commission in deciding the application. Having reviewed the application and the employer response, I note that there are a large number of documents to be considered. Mr Bezett's views regarding whether he was informed of the termination, when he was informed of his termination, and the timeline regarding the disciplinary matter all add complexity to the matter. I also note that the termination was, in part, based on the content of the correspondence Mr Bezett had sent to his colleagues, and further correspondence sent after he had been counselled to not send any further material of that nature. The large amount of correspondence and contents of the correspondence add additional complexity to the matter.
- [42] I am of the view that the presence of a legal representative will assist the parties to focus on the issues at hand and may assist the parties to narrow the issues in dispute. If the issues in dispute can be narrowed, this will likely result in the matter being dealt with more efficiently.
- [43] I note the submissions of the Respondent regarding the role of legal representation at the hearing of the matter, specifically with regard to examination and cross-examination of witnesses. These are matters which will need to be considered by one of my colleagues in the event that conciliation before me is unsuccessful, the matter progresses to hearing, and Mr Bezett again objects to legal representation for the Respondent at hearing.
- [44] Mr Bezett made no submissions with regard to the matters of fairness set out at s 530(4)(b) and (c) of the IR Act. I note the Respondent's submissions regarding fairness, specifically that it is bound to observe the model litigant principles and also that Mr Bezett's choice to not be represented in the matter should not mean that the Respondent is precluded from being represented, particularly where the matter involves a level of complexity. I am unable to identify anything which would lead me to consider that it would be unfair to Mr Bezett to allow the Respondent to be legally represented at the conciliation conference.

[45] Having determined that legal representation would enable the proceeding, being the conciliation conference, to be dealt with more efficiently having regard to the complexity of the matter, I am then required to consider whether to exercise the discretion to grant leave. On the basis of my reasoning above at [41] and [42], I am persuaded that it is appropriate to exercise discretion to grant leave for the Respondent to be legally represented at the conciliation conference.

### **Order**

- 1. Leave is granted for the Respondent to be legally represented for any conciliation conferences regarding matter TD/2022/272 pursuant to s 530(1)(e) of the *Industrial Relations Act 2016* (Qld).**