

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Reimers v Workers' Compensation Regulator*
[2024] QIRC 083

PARTIES: **Reimers, Linda**
(Appellant)

v

Workers' Compensation Regulator
(Respondent)

CASE NO: WC/2020/169

PROCEEDING: Workers' Compensation Appeal

DELIVERED ON: 16 April 2024

MEMBER: McLennan IC

HEARD AT: On the papers

ORDERS: **That the appeal is dismissed pursuant to
r 45(3)(a) of the *Industrial Relations (Tribunals)*
Rules 2011.**

CATCHWORDS: WORKERS' COMPENSATION APPEAL –
ENTITLEMENT TO COMPENSATION – where
appellant failed to comply with directions orders –
consideration of r 45 of the *Industrial Relations*
(Tribunals) Rules 2011 – where appeal is dismissed

LEGISLATION AND
INSTRUMENTS: *Industrial Relations (Tribunals) Rules 2011 (Qld)*
r 6, r 45

Workers' Compensation and Rehabilitation Act
2003 (Qld) s 32

CASES:

Cady v Capital SMART Repairs Australia Pty Ltd & Anor [2019] QIRC 144

Cooper v Hopgood & Ganim [1998] QCA 114

House v R (1936) 55 CLR 499

Lenijamar Pty Ltd and Ors v AGC (Advances) Ltd [1990] 98 ALR 200

Quinlan v Rothwell & Anor [2001] QCA 176

Seymour v Workers' Compensation Regulator [2017] QIRC 061

Smith v Workers' Compensation Regulator [2017] QIRC 070

Treanor v State of Queensland [2019] QIRC 146

Workers' Compensation Regulator v Bero [2019] QIRC 36

Workers' Compensation Regulator v Varga [2019] QIRC 028

Reasons for Decision

Background

- [1] On 18 December 2020, Ms Linda Reimers (the Appellant) filed an appeal against a decision of the Workers Compensation Regulator (the Respondent) dated 6 October 2020, where the Respondent confirmed the decision of WorkCover to reject the Appellant's application for compensation in accordance with s 32 of the *Workers' Compensation and Rehabilitation Act 2003* (Qld) (WCR Act).
- [2] On 21 December 2020, the Industrial Registrar issued a Directions Order requiring the parties to file and serve material. Various extensions were granted to the parties throughout compliance with the Directions Order.¹
- [3] At the time, the Appellant was represented by Kare Lawyers.

¹ Directions Order (2) dated 3 March 2021; Directions Order (3) dated 7 April 2021; Directions Order (4) dated 18 June 2021.

- [4] At the conclusion of the Directions Orders, the Respondent wrote to the Appellant's solicitors regarding the future conduct of the appeal and requested that the Appellant consider filing an Amended Statement of Facts and Contentions.² Kare Lawyers informed the Respondent that they no longer acted for the Appellant.³
- [5] On 21 July 2021, the Industrial Registry wrote to the parties to confirm if the matter was ready to proceed to a hearing. The Respondent wrote back advising they were of the view that the matter was not ready to proceed and relayed the information they received from Kare Lawyers, that the Appellant was in the process of altering her representation.⁴
- [6] The Appellant filed a Form 36 – Notice of change in lawyer or agent in the Industrial Registry appointing her husband, Mr Jason Reimers, to be her agent for the appeal.⁵ Mr Reimers wrote to the Industrial Registry advising that the Appellant was unwell and requested that the matter be placed in abeyance for a period of four to six weeks:

...

With regard to a time frame for the matter to be held in abeyance, I would think that four to six weeks would be ample - unless there is an undue processing delay or a dispute, over a request for information.

My apologies, but this estimate is made with no point of reference as to whether this time frame is unreasonably long, or unrealistically short. Its accuracy largely depends on turnaround times for release of information which is an unknown variable to me, plus a week or two in order to assess and utilise the information.⁶

- [7] The Industrial Registry advised the parties that the appeal would be placed into abeyance for a period of two months and that upon request from the Appellant, the matter could be listed at any time.⁷
- [8] After the period of two months had elapsed on 29 September 2021, the Industrial Registry wrote to the parties and asked that the Appellant confirm if the matter was ready to proceed to conference.⁸
- [9] On 30 September 2021, Mr Reimers replied to the Industrial Registry's correspondence, advising that the matter was still not ready to proceed to conference because:

...

I have been unable to attend to the matter in the time-frame you provided, primarily due to the fact that:

² Affidavit of Ms R. Jamieson filed on 1 September 2023, [6].

³ Ibid [6].

⁴ Email from Ms R. Jamieson to the Industrial Registry, cc the Appellant and Kare Lawyers dated 26 July 2021.

⁵ Form 36 – Notice of change in lawyer or agent filed 27 July 2021.

⁶ Email from Mr J. Reimers to the Industrial Registry dated 29 July 2021.

⁷ Email from the Industrial Registry to the Appellant, cc the Respondent dated 29 July 2021.

⁸ Email from the Industrial Registry to all parties dated 29 September 2021.

- Proximal to the change of representation, Linda developed some distressing and painful physical symptoms, and has had to undergo a range of tests and procedures to eliminate cancer and make a definitive diagnosis. Fortunately a definitive diagnosis which was not cancer, was made about two weeks ago, and appropriate treatment to alleviate her symptoms has started. As you may appreciate, the distress and distraction caused by a deep level of concern for my spouse's welfare and immediate care needs, has not been conducive to productivity and attention to detail. I have therefore not been cognizant of the approaching deadline or taken the appropriate action. I apologise for this oversight, and request that you take these circumstances into account in making your decision relating to holding the matter in abeyance further.
- Additionally, although of lesser impact, there are other concurrent and/or divergent administrative processes which have required submissions and correspondence to be prepared.⁹

...

[10] Mr Reimers requested that the matter be held in abeyance for a further eight weeks due to those circumstances. The appeal was placed in abeyance by the Industrial Registry as requested. No further communication was received from the Appellant.

[11] After around eight months had passed, the appeal was listed for call over on 19 May 2022 before Vice President O'Connor. The Appellant advised that the matter should proceed, and it was agreed that a s 552A conference was necessary to move forward.

[12] The Appeal was subsequently set for a conference before me on 2 November 2022. At the conference, I determined that it was necessary for the Directions to restart and later that day, I issued a Further Directions Order.¹⁰

[13] On 9 November 2022, Mr Reimers sought an extension of time to comply with the Further Directions Order issued on 2 November 2022 to serve the Respondent the Appellant's list of documents.¹¹ I granted the extension sought.

[14] On 23 December 2022, Mr Reimers wrote to the Industrial Registry regarding this matter and another that was before the Commission, claiming that "extraordinary circumstances" had precluded him from meeting the requirements of Directions Orders issued by the Commission.

[15] On 30 January 2023, the Respondent wrote to the Appellant as they had not received the Appellant's Statement of Facts and Contentions which were due on 16 December 2022.¹² Mr Reimers said that he "will be lodging a request for an extension tomorrow".¹³

[16] No extension was sought by the Appellant.

⁹ Email from Mr J. Reimers to all parties dated 30 September 2021.

¹⁰ Further Directions Order dated 2 November 2022.

¹¹ Email from Mr J. Reimers to the Industrial Registry, cc the Respondent dated 9 November 2022.

¹² Affidavit of Ms R. Jamieson filed 1 September 2023, [29].

¹³ Ibid, Exhibit J.

[17] No further communication was received by the Industrial Registry from the Appellant until 6 March 2023, when Mr Reimers wrote to the Industrial Registry and the Respondent to advise the Appellant would like to continue with the Appeal, and that he had been "precluded from meeting the obligations of the directions order in the allotted time frame, or seeking an extension earlier". Mr Reimers provided:

I understand that this request tests the patience of the commission, and probably the bounds of what can be accommodated, so I respectfully ask that the commission take the following into account when deliberating this request:

1. There are a raft of factors which have precluded me, the representative, meeting the obligations of the directions order or seeking an ealier (sic) extension. Some of which have been touched on in my correspondence to the commission on the 23/12/22. **However there have been other, more exigent circumstances which I am unable to disclose, other than in person, for security and privacy reasons.**
2. I am happy to make myself available briefly to the commission in person to explain the nature of these impediments if required, at the time and date scheduled for the conference 9/3/23 (or any other time of the commissions choosing). I won't be able to go into great detail, merely invoke the issues in general terms, and provide the commissioner with an authoritative source for confirmation.
3. In light of the alleged detriment suffered:
 1. As these circumstances are beyond the appellant's control and not of their making, it is argued that - **It would not be in the interest of the administration of Justice to deny the appellant the opportunity to proceed, if there is potential merit to their appeal.**
4. Most of the issues impeding the ability ot (sic) he appellant's representative to conduct the appeal, seem to have recently been ameliorated at least, even if not completely resolved. Therefor in light of more favourable circumstances I do feel in a position to proceed with the appeal in a more timely fashion if given leave to so by the commission.¹⁴

[18] In that email correspondence Mr Reimers requested that the upcoming conference which was listed on 9 March 2023 (in three days' time) be adjourned, and the matter be placed in abeyance so that he may furnish the Respondent with the required information required by the Further Directions Order issued on 2 November 2022. The Respondent consented to that course of action.¹⁵

[19] I advised the parties through the Industrial Registry that I was not willing to place the appeal in abeyance indefinitely, however, I would vacate the conference scheduled on the understanding that a future conference would be set in August 2023. I also issued an Amended Further Directions Order with extended timeframes, directing the Appellant to file and serve her Statement of Facts and Contentions by 4:00 pm on 2 June 2023 (in almost three months' time).¹⁶

[20] The Appellant did not file her Statement of Facts and Contentions by the due date, nor did she request an extension of time to comply.

¹⁴ Email from Mr J. Reimers to the Industrial Registry and Respondent dated 6 March 2023.

¹⁵ Email from Ms R. Jamieson to the Industrial Registry and Mr J. Reimers dated 6 March 2023.

¹⁶ Amended Further Directions Order dated 7 March 2023.

- [21] It was not until the Respondent emailed the Industrial Registry on 26 June 2023 requesting that the Amended Further Directions Order be vacated, that Mr Reimers emailed the Industrial Registry acknowledging failure to comply with the directions and expressing a desire to continue with the appeal. Mr Reimers did not provide a reason for non-compliance, just that:

If the Commissioner requires clarification of the issues which have precluded compliance with the directions order, and the apparent recent improvement in circumstances, prior to acceding to this request, I am happy to provide this information.

If this is the case, it may be appropriate, at the commissioner's discretion of course, to hold those discussions in person - with the regulator's representative (sic) present if appropriate, and any third party the commissioner sees fit.¹⁷

- [22] Notwithstanding the considerable amount of time that had already passed where the Appellant had failed to comply with the direction to file and serve her Statement of Facts and Contentions (in the Further Directions Order dated 2 November 2022 and the Amended Further Directions Order dated 7 March 2023) I granted a small extension of time to provide the Appellant with an opportunity to comply, by filing and serving her Statement of Facts and Contentions by 4:00 pm on 13 July 2023.

- [23] On 3 July 2023, I wrote to the parties through the Industrial Registry:

A Further Directions Order was issued on 2 November 2022 directing the Appellant to file and serve on the Respondent a Statement of Facts and Contentions, by 16 December 2022. This Direction was extended upon request of the Appellant to 2 June 2023, in the Amended Further Directions Order issued on 7 March 2023.

Notwithstanding the considerable length of time that has passed, that Direction has still not been complied with. Further, no communication was received from the Appellant requesting an extension of time before that due date. This point of non-compliance with Directions combined with a lack of communication with the Industrial Registry seeking an extension of time enlivens the question as to why this Appeal should not be dismissed under r 45 of the *Industrial Relations (Tribunals) Rules 2011* (Qld).

In light of the above, Commissioner McLennan is only minded to grant a short extension of time. Please find attached Amended Further Directions Order (2) requiring the Appellant to file a Statement of Facts and Contentions by 4:00pm on 13 July 2023. The timeframes for the other directions have also been extended.

- [24] The Appellant did not file and serve a Statement of Facts and Contentions on 13 July 2023. No further communication was from the Appellant requesting an extension of time to comply.
- [25] On 25 August 2023, I issued a Directions Order requiring submissions as to why these proceedings should not be dismissed under r 45 of the *Industrial Relation (Tribunals) Rules 2011* (Qld) (the Tribunal Rules). I wrote through the Industrial Registry to the parties:

¹⁷ Email from Mr J. Reimers to the Industrial Registry, cc the Respondent dated 26 June 2023.

Ms Reimers' Statement of Facts and Contentions was due to be served and filed in the Industrial Registry by no later than 4:00pm on 13 July 2023. Considerable time has now passed and upon review, the Directions Order amended on 3 July 2023 has not been complied with. Neither has an extension been sought to comply.

Therefore, Commissioner McLennan has issued a Directions Order seeking submissions from both parties with respect to why this appeal should not be dismissed under r 45 of the *Industrial Relations (Tribunals) Rules 2011* (Qld) for failure to comply with directions. For your reference, r 45 provides:

45 Failure to attend or to comply with directions order

- (1) This rule applies if—
 - (a) a party to a proceeding receives notice of a directions order made by the court, commission or registrar stating a time, date and place for a hearing or conference for the proceeding; and
 - (b) the party fails to attend the hearing or conference.
- (2) This rule also applies if—
 - (a) a party to a proceeding receives notice of a directions order made by the court, commission or registrar; and
 - (b) the party fails to comply with the order.
- (3) The court, commission or registrar may—
 - (a) dismiss the proceeding; or
 - (b) make a further directions order; or
 - (c) make another order dealing with the proceeding that the court, commission or registrar considers appropriate, including, for example, a final order; or
 - (d) make orders under paragraphs (b) and (c).

Further to the above, the Directions Order amended on 3 July 2023 and the conference listed for 8 September 2023 are vacated.

Submissions

- [26] The Appellant filed submissions on 30 August 2023 in accordance with the Directions Order dated 25 August 2023.
- [27] The Respondent filed submissions on 4 September 2023 in accordance with the Directions Order 25 August 2023.
- [28] The Appellant did not file any submissions in reply to the submissions of the Respondent.
- [29] I have carefully considered the parties submissions and have determined not to approach the writing of this decision by summarising the entirety of those submissions but will instead refer to the key arguments in my consideration.

Relevant Principles

[30] Rule 45 of the Tribunal Rules:

45 Failure to attend or to comply with directions order

- (1) This rule applies if—
 - (a) a party to a proceeding receives notice of a directions order made by the court, commission or registrar stating a time, date and place for a hearing or conference for the proceeding; and
 - (b) the party fails to attend the hearing or conference.
- (2) This rule also applies if—
 - (a) a party to a proceeding receives notice of a directions order made by the court, commission or registrar; and
 - (b) the party fails to comply with the order.
- (3) The court, commission or registrar may—
 - (a) dismiss the proceeding; or
 - (b) make a further directions order; or
 - (c) make another order dealing with the proceeding that the court, commission or registrar considers appropriate, including, for example, a final order; or
 - (d) make orders under paragraphs (b) and (c).

Consideration

[31] In the 25 August 2023 Directions Order, the parties were directed to make submissions with respect to r 45 of the Tribunal Rules. Rule 45 was extracted and provided to the Appellant for ease of reference in the cover email attaching the Directions Order as outlined in [25] above.

[32] The power under r 45(3)(a) of the Tribunal Rules involves an exercise of discretion. Foremost, discretionary powers must be "exercised judicially, according to rules of reason and justice, and not arbitrarily or capriciously or according to private opinion."¹⁸ In exercising that discretion, I am informed by several factors, which are set out below. Ultimately, however, I must consider the particular circumstances of this case.¹⁹

[33] In *Lenijamar Pty Ltd and Ors v AGC (Advances) Ltd*,²⁰ their Honours Wilcox and Gummow JJ considered a provision under the Federal Court Rules which is materially similar to r 45 of the Tribunal Rules. In that case, their Honours identified two broad

¹⁸ *House v R* (1936) 55 CLR 499, 503.

¹⁹ *Cooper v Hopgood & Ganim* [1998] QCA 114, 6; citing *Witten v Lombard Australia Ltd* (1968) 88 W.N. (Pt. 1) N.S.W. 405.

²⁰ [1990] 98 ALR 200.

types of failure to comply with directions which would warrant the dismissal of a matter (emphasis added):

As it is impossible to foresee all of the circumstances under which the rule might be sought to be used, it is undesirable to make any exhaustive statement of the circumstances under which the power granted by the rule will appropriately be exercised. We will not attempt to do so. But two situations are obvious candidates for the exercise of the power: cases in which the history of non-compliance by an applicant is such as to indicate an inability or unwillingness to co-operate with the Court and the other party or parties in having the matter ready for trial within an acceptable period and cases - whatever the applicant's state of mind or resources - in which the non-compliance is continuing and occasioning unnecessary delay, expense or other prejudice to the respondent. Although the history of the matter will always be relevant, it is more likely to be decisive in the first of these two situations. Even though the most recent non-compliance may be minor, the cumulative effect of an applicant's defaults may be such as to satisfy the Judge that the applicant is either subjectively unwilling to co-operate or, for some reason, is unable to do so. Such a conclusion would not readily be reached; but, where it was, fairness to the respondent would normally require the summary dismissal of the proceeding.

In the second of the two situations we postulate, a significant continuing default, it does not really matter whether there have been earlier omissions to comply with the Court's directions. Ex hypothesi the default is continuing and is imposing an unacceptable burden on the respondent.²¹

- [34] Such reasoning was followed by O'Connor VP in *Workers' Compensation Regulator v Varga*²² and *Seymour v Workers' Compensation Regulator*,²³ as well as by Merrell DP in *Cady v Capital SMART Repairs Australia Pty Ltd & Anor*.²⁴
- [35] The Appellant's default is certainly continuing, given her ongoing failure to comply with the substantive requirements outlined in the Directions Orders. On multiple occasions Mr Reimers has repeated the same excuses as to why the Directions Orders are simply incapable of the Appellant's compliance at the relevant time. Such excuses have had a history of being unable to be rectified, despite false promises made by Mr Reimers of their pending resolution.
- [36] The Appellant submitted that the "appellant will demonstrate that many of the circumstances precluding the appellant's conduct of the appeal have been resolved or mitigated".²⁵ I am not convinced that any of the representations made by the Appellant necessitate the continuation of this appeal.
- [37] The Appellant's submissions seek indulgence from the Commission based on "personal adversity and being a self-represented litigant".²⁶
- [38] I have acknowledged that the Appellant is a self-represented litigant and have afforded her many extensions of time for that reason. In that regard, I would note that a lack of representation is a misfortune that should be met with necessary procedural assistance,

²¹ *Lenijamar Pty Ltd and Ors v AGC (Advances) Ltd* [1990] 98 ALR 200, 210.

²² [2019] QIRC 028.

²³ [2017] QIRC 061.

²⁴ [2019] QIRC 144.

²⁵ Appellant's submissions filed 30 August 2023, 1.

²⁶ *Ibid*.

but it is not a privilege entitling a self-represented litigant to special consideration at the expense of the party or parties who are represented or more experienced in the jurisdiction.²⁷ In *Gambaro v Workers' Compensation Regulator*,²⁸ President Martin observed that being self-represented does not excuse non-compliance – that too applies in this case.

[39] Under Section 1 of her submissions, the Appellant lists the reasons she has been unable to comply with the Directions Orders as she has:

- Pursued a 21-month administrative and medico/legal battle with the Metro North.²⁹
- Attempted to resolve over payments by the department.³⁰
- Experienced ongoing IT/Network issues.³¹
- Had her representative suffer from "a protracted bout of idiopathic illness".³²

[40] With regard to her submission that she engaged in a "protracted 21 month administrative and medico/legal battle with the Metro North", during which she provided a clearance and willingness to return to work, the Appellant's ability to progress her "medico/legal battle with the Metro North" and provide necessary medical clearances, means she chose to give that appeal priority. Her choice to further that appeal to the detriment of this one, does not mean that she should be given latitude in this case.³³

[41] The Appellant submits that she has "been trying to sort out repeated over payments by the department, totalling approximately \$18 000" and attached supporting documentation to that effect. Upon review of the supporting documentation attached to the Appellant's submissions, money has been owed to the Appellant's employer for a long period of time, starting on 1 October 2012, and an overpayment on 15 November 2021. These entries can have no relationship whatsoever with the Appellant's delay in these proceedings.

[42] In relation to the other overpayment entries made on 3 April 2023 and 29 May 2023, the Respondent submitted that they provide "provide no basis whatsoever to accept the

²⁷ See *Workers' Compensation Regulator v Bero* [2019] QIRC 36; *Treanor v State of Queensland* [2019] QIRC 146.

²⁸ [2017] ICQ 005.

²⁹ Appellant's submissions filed 30 August 2023, 2.

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

³³ See *Singh v Hill & Anor* [2019] QSC 79.

appellant's obligation to repay those monies, in more recent times, can explain her disregard of the prosecution of her appeal since July 2021". I agree.

- [43] Regarding the Appellant's IT/Network issues, I am unable to accept the validity of this argument, or at least that "there has been great improvement very recently" on this front as the Appellant submits.
- [44] The Appellant has on previous occasions used network issues as a basis for which she could not comply with the Directions Orders. The email sent by Mr Reimers to the Industrial Registry and the Respondent on 9 November 2022, requested an extension to file the Appellant's list of documents due to the Appellant being unwell and experiencing IT technical issues.
- [45] On 6 March 2023, Mr Reimers sent an email to the Industrial Registry and the Respondent where he represented that "most of the issues impeding the ability" of the "appellant's representative to conduct the appeal, seem to have recently been ameliorated at least, even if not completely resolved". Mr Reimers continued by expressing that he felt he was in a position to "proceed with the appeal in a more timely fashion" if given leave to do so.
- [46] Based on these representations I issued an Amended Further Directions Order on 7 March 2023, granting an extension until 2 June 2023 for the Appellant to file and serve her Statement of Facts and Contentions.
- [47] Despite being given that indulgence, Mr Reimers' statement that he was able to proceed with the appeal in a timelier fashion has proven to be false, evidenced by his failure to comply with the Directions Orders dated:
 - 7 March 2023; and
 - 3 July 2023.
- [48] If the network issues Mr Reimers referred to on 9 November 2022 were an issue impeding the Appellant's ability to comply with the Directions Orders, by virtue of his email on 6 March 2023, they would have been resolved or at least improved at that juncture, given that he told the Commission that "in light of more favourable circumstances I do feel in a position to proceed with the appeal in a more timely fashion if given leave to so by the commission". This clearly has not been the case and there is no evidence before me to suggest that this would be the case if another set of directions were issued.
- [49] I put no value in the unsupported representations that the reasons for the delay in these proceedings included network issues, or for that matter, the following submission of Mr Reimers suffering a "protracted bout of idiopathic illness". Mr Reimers has proven

himself to be disingenuous and no evidence has been submitted to support his statements.

[50] Although the Appellant may intend to proceed, her non-compliance demonstrates an unwillingness or inability to proceed in accordance with the Tribunal Rules. The only substantial steps that have been taken to progress this appeal occurred in July 2021.

[51] The Respondent submitted that since that time:

- (a) the appeal was placed in a lengthy periods of abeyance at the request of the appellant;
- (b) on 2 November 2022, a conference was convened by Industrial Commissioner McLennan. It was agreed that the appeal needed to be re-set and a further directions order was issued;
- (c) on 11 November 2022 the appellant filed a list of documents in purported compliance with part of those directions. It did no more than refer to the list of documents that had been previously filed on 18 January 2021 and a "third-party nondisclosure form" filed on 11 November 2022; and
- (d) the appellant has repeatedly failed to file and serve an amended statement of facts and contentions, despite agreeing to do that in the conference on 2 November 2022, and having been directed to do so in directions orders issued on:
 - (i) 2 November 2022;
 - (ii) 7 March 2023; and
 - (iii) 3 July 2023.³⁴

[52] I agree with the Respondent, that since 27 July 2021, the Appellant "has demonstrated a complete lack of interest in the proper prosecution of her appeal and a complete disregard of the Commission's directions and processes".³⁵

[53] The Appellant's default imposes an unacceptable burden on the Respondent, as it is unable to meaningfully respond to the appeal and comply with the Directions Orders without first considering the Appellant's statement of facts and contentions.

[54] By failing to respond to the Directions Orders, the Appellant has and continues to extend the time between now and the determination of this appeal. The Appellant initiated this appeal over three years ago. Whilst the appeal is on foot, the Respondent continues to incur the expense of defending the matter. That is a compelling reason to deal with this matter as expeditiously as possible.

[55] If I permitted the Appeal to continue, the Respondent would have to start afresh with its defence of the appeal, over three years after it was first initiated. This would result in unnecessary expenses to be incurred by the Respondent.

[56] I am persuaded that this Appeal ought to be dismissed in circumstances where:

³⁴ Respondent's submissions filed 4 September 2023, [10].

³⁵ Ibid [11].

- This proceeding was initiated over three years ago;
- There have been consistent delays in the progression of this proceeding;
- The Appellant has previously been allowed extensions of time to comply with orders made by the Commission;
- The Appellant has repeatedly failed to comply with directions or to contact the Respondent or Commission regarding non-compliance unless prompted; and
- The Appellant's submissions do not address sufficient reasons for non-compliance.

[57] The Appellant's continuous disregard for timelines has evinced in my mind that this behaviour will be repeated, and this matter will be drawn out substantially to the Respondent's detriment. For that reason, I am not convinced that giving further chances to explain and adhere to the Directions Orders is appropriate as the Appellant has already evinced disregard and an intention to proceed with the matter on her own terms (if at all).

[58] Noting that the Appellant has failed to comply with multiple sets of Directions Orders, the cumulative effect of her non-compliance is substantial enough to satisfy me that the Appellant is either unwilling to comply or unable to do so and as a result, the Respondent's case is prejudiced.

[59] In the exercise of my discretion under r 45 of the Tribunal Rules, I am also minded to consider the purpose of the Tribunal Rules, as set out in r 6:

6 Purpose of rules

The purpose of these rules is to provide for the just and expeditious disposition of the business of the court, the commission, a magistrate and the registrar at a minimum of expense.

[60] The terms 'just' and 'expeditious' may sometimes appear to be at odds. Australian Courts and Tribunals often wrestle with the task of maintaining the precarious balance between expeditious resolutions, and the ability of parties to prepare for and present their case. In considering that balance while dealing with an application to dismiss for want of prosecution, his Honour Thomas JA in *Quinlan v Rothwell & Anor* provided (emphasis added):

There is now a consciousness of the need for some level of efficiency in the use of the courts as a public resource. That, of course, must not displace the need for reasonable access to the courts and the provision of justice according to law in each matter, but it highlights the fact that the former *laissez faire* attitude by courts towards the leisurely conduct of actions at the will of the parties has ended. At the same time the rules of court are not an end in themselves. They do not exist for the discipline of practitioners or clients, or for the protection of courts from inefficient litigants,

but rather as a means of ensuring that issues will be defined in an orderly way and that parties have the opportunity of full preparation of their case before the trial commences. The rules also afford defendants the means of bringing to an end actions in which the other party will not abide by the rules.³⁶

[61] While his Honour was considering the *Uniform Civil Procedure Rules 1999* (Qld), that passage has been adopted in this jurisdiction on a number of occasions³⁷ as the underlying question to be determined is consistent with the exercise of discretion under r 45 of the Tribunal Rules.

[62] In *Smith v Workers' Compensation Regulator*, O'Connor DP (as he then was) concluded:

The Commission has an obligation to actively manage the matters filed in the Industrial Registry and to ensure the parties comply with the directions orders issued by it. The Rules aid the Commission to case manage its list; to assist the parties to prepare their cases; to ensure the efficient use of the Commission's time and resources; and to assist in the resolution of the real issues in the proceedings.³⁸

[63] Time limits are imposed to ensure fairness between the parties as well as to ensure the expeditious advancement of the matter. Repeated failure to comply with Directions is inconsistent with r 6 of the Tribunal Rules. Further delay would create a futile and unnecessary impediment to the expeditious resolution of this matter.

[64] Therefore, in my opinion, the purpose of the Tribunal Rules is best fulfilled in this case by exercising the discretion under r 45 of the Tribunal Rules to dismiss the Appellant's appeal.

Appellant's request to make oral submissions

[65] In her written submission filed on 30 August 2023, the Appellant requests that "if the circumstances in Section 1 do not justify a Directions order to continue the appeal, the appellant's representative will seek leave to make an oral submission relating to more exigent circumstances".³⁹

[66] The Directions Order I issued on 25 August 2023 clearly stated:

Unless any party files an application by **4:00pm on 6 September 2023** for leave to make oral submissions or further written submissions, the matter will be dealt with on the papers pursuant to s 451(1) of the *Industrial Relations Act 2016* (Qld).

³⁶ *Quinlan v Rothwell & Anor* [2001] QCA 176, 8.

³⁷ See *Quaadvlieg and Ors v Boral Resources (Qld) Pty Ltd* [2005] QIC 73; *Workers' Compensation Regulator v Varga* [2019] QIRC 028, 5-6.

³⁸ [2017] QIRC 070, [10].

³⁹ Appellant's submissions filed 30 August 2023, 2.

[67] It is not open to the Appellant to apply for leave to make oral submissions if, and when, their written submissions do not persuade the decision maker. That opportunity ought to be taken by the stipulated date. There is no indefinite invitation open for the Appellant to make oral submissions *if* I decide to reject the arguments she has raised in her written submissions.

[68] In fact, the Appellant's request itself demonstrates the utter disregard the Appellant has for complying with Directions Orders issued by the Commission. If the Appellant wished to make oral submissions, then she ought to have applied to do so on or before 6 September 2023. That opportunity has passed.

[69] It is worth noting that the Appellant was offered an opportunity to file written submissions in reply to those of the Respondent, if needed, by 4.00 pm on 5 September 2023. The Appellant did not take the opportunity to file any submissions in reply.

Conclusion

[70] Based on the reasons I have outlined above, these proceedings ought to be dismissed under r 45(3)(a) of the Tribunal Rules.

Order

[71] I make the following order:

That the appeal is dismissed pursuant to r 45(3)(a) of the *Industrial Relations (Tribunals) Rules 2011*.