(i) the authorised industrial officer alerts the employer or other person in charge of the workplace to their presence; and

(ii) shows their authorisation upon request.

(b) Clause 11.1.2(a)(i) does not apply if the authorised industrial officer established that the employer or other person in charge is absent.

(c) A person must not obstruct or hinder any authorised industrial officer exercising their right of entry.

(d) If the aurthorised industrial officer intentionally disregards a condition of clause 11.1.2 the authorised industrial officer may be treated as a trespasser.

11.1.3 *Inspection of records*

(a) An authorised industrial officer is entitled to inspect the time and wages record required to be kept under s. 366 of the Act.

(b) An authorised industrial officer is entitled to inspect such time and wages records of any former or current employee except if the employee:

(i) is ineligible to become a member of the Union; or
(ii) is a party to a QWA or ancillary document, unless the employee has given written consent for the records to be inspected; or
(iii) has made a written request to the employer that they do not want their record inspected.

(c) The authorised industrial officer may make a copy of the record, but cannot require any help from the employer.

(d) A person must not coerce an employee or prospective employee into consenting, or refusing to consent, to the inspection of their records by an authorised industrial officer.

11.1.4 *Discussions with employees*

An authorised industrial officer is entitled to discuss with the employer, or a member or employee eligible to become a member of the Union:

(a) matters under the Act during working or non-working time; and

(b) any other matter with a member or employee eligible to become a member of the Union, during non-working time.

11.1.5 *Conduct*

An authorised industrial officer must not unreasonably interfere with the performance of work in exercising a right of entry.

**11.2 Time and wages record**

11.2.1 An employer must keep, at the place of work in Queensland, a time and wages record that contains the following particulars for each pay period for each employee, including apprentices and trainees:

(a) the employee's award classification;

(b) the employer's full name;

(c) the name of the award under which the employee is working;

(d) the number of hours worked by the employee during each day and week, the times at which the employee started and stopped work, and details of work breaks including meal breaks;

(e) a weekly, daily or hourly wage rate – details of the wage rate for each week, day, or hour at which the employee is paid;

(f) the gross and net wages paid to the employee;

(g) details of any deductions made from the wages; and

(h) contributions made by the employer to a superannuation fund.

11.2.2 The time and wages record must also contain:

(a) the employee's full name and address;

(b) the employee's date of birth;

(c) details of sick leave credited or approved, and sick leave payments to the employee;

(d) the date when the employee became an employee of the employer;

(e) if appropriate, the date when the employee ceased employment with the employer;

(f) if a casual employee's entitlement to long service leave is worked out under s. 47 of the Act – the total hours, other than overtime, worked by the employee since the start of the period to which the entitlement related, worked out to and including 30 June in each year.

11.2.3 The employer must keep the record for 6 years.

11.2.4 Such records shall be open to inspection during the employer's business hours by an inspector of the Department of Industrial Relations, in accordance with s. 371 of the Act or an authorised industrial officer in accordance with sections 372 and 373 of the Act.



**11.3 Union encouragement**

Clause 11.3 give effect to s. 110 of the Act in its entirety. Consistent with s. 110 a Full Bench of the Commission has issued a Statement of Policy on Union Encouragement (reported 165 QGIG 221) that encourages employees to join the Union.

11.3.1 *Documentation to be provided by employer*

At the point of engagement, an employer to whom this Award applies shall provide employees with a document indicating that a Statement of Policy on Union Encouragement has been issued by the Commission, a copy of which is to be kept on the premises of the employer in a place readily accessible by each employee.

The document provided by the employer shall also identify the existence of a Union encouragement clause in this Award.

11.3.2 *Union delegates*

Union delegates and job representatives have a role to play within a workplace. The existence of accredited Union delegates and/or job representatives is encouraged.

The employer shall not unnecessarily hinder accredited Union delegates and/or job representatives in the reasonable and responsible performance of their duties.

11.3.3 *Deduction of union fees*

Where arrangements can be entered into, employers are encouraged to provide facilities for the deduction and remittance of Union fees for employees who signify in writing to their employer, their desire to have such membership fees deducted from their wages.

**11.4 Posting of Award**

This Award must be exhibited by each employer on their premises in a place accessible to all employees.

Dated 7 February 2005.

By the Commission,
[L.S.] G.D. SAVILL,
Industrial Registrar.

Operative Date: 7 February 2005
Repeal and New Award – Footwear Manufacturing Award – State 2005
Released: 21 March 2005

##########

INDUSTRIAL COURT OF QUEENSLAND

*Worker's Compensation and Rehabilitation Act 2003* – s. 561 – appeal against decision of industrial magistrate

**Gregory Versace AND Ronald Evan Braun (Case No. C73 of 2004)**

PRESIDENT HALL

17 March 2005

DECISION

On 2 December 2003 a Q-COMP Review Officer confirmed an earlier decision by WorkCover Queensland to reject a claim for worker's compensation by Ronald Evan Braun. There was an appeal to an Industrial Magistrate. The Industrial Magistrate allowed the appeal. The Q-COMP Review Unit now appeals to this Court. It is the effect of s. 603 of the *Worker's Compensation and Rehabilitation Act 2003* that the matter is to be dealt with under the *WorkCover Queensland Act 1996* (the Act).

For the purposes of the appeal it is accepted that on or about 8 May 2003, Mr Braun suffered a moderately severe major depressive episode with secondary anxiety, which amounted to an "injury" within the meaning of s. 34(1) of the Act, and that the employment was "a significant contributing factor to the injury". The issue is whether the Industrial Magistrate was correct in finding that s. 34(5)(a) did not withdraw the injury from the scope of s. 34(1) of the Act.

Mr Braun was the manager of a bakery in Yeppoon. The bakery was one of a number of bakeries operated by a nationwide company. The company was taken over. The management of the new employer set about a restructuring exercise. Mr Braun was amongst those affected by the restructuring program. It was in the course of the restructuring program that Mr Braun decompensated.

The Industrial Magistrate's reasons, though brief, make it tolerably clear that His Honour did not hold that the new employer's decision to undertake a restructuring exercise was other than reasonable management action. Neither did the Industrial Magistrate hold that it was other than reasonable management action to include within the restructuring exercise of both the bakery at Yeppoon and Mr Braun's position at that bakery. His Honour held s.34(5)(a) to be inapplicable because perfectly reasonable management action is not taken in a "reasonable way". The lack of reasonableness was found in inadequacies in the "consultation" and/or "negotiations" between Mr Braun and the employer's representative, (*viz.* Mr Spurway) which occurred spasmodically over the period from on or about 21 April 2003 to 6 May 2003.

The first attack upon the Industrial Magistrate's decision is that in finding that Mr Braun's restructured position was a "new" position, the Industrial Magistrate exaggerated the changes being imposed upon Mr Braun. The submission is that the position was substantially the same after it was restructured and that in those circumstances the "consultations" and/or "negotiations" were perfectly adequate. The submission does some injustice to the Industrial Magistrate. The revealing passage within His Honour's decision occurs several paragraphs prior to the passage which the adjective "new" is applied to the restructured position offered to Mr Braun. The passage is:

> "There seems to have been some discussion and argument here about this position that is involved. Mr Braun was, of course, the manager of this bakery, prior to the restructure, and in the course of that he seems to have said that about 50 per cent of his activity was involved in sales, and that he had other areas of responsibility, as in about 10 per cent on administration, and about 40 per cent on production, but he did have a production manager working for him. With the restructuring to take place it would seem that this production manager's position was to go; that the new position of site operations manager was to be created, whose job was supposed to include, or supposed to, it would seem, in some arguments put before me, to remain the same type of position which Mr Braun had done previously. But the position was going to be less in this respect: that the sales part of his position was to be taken, along with administration. But, of course, what Mr Spurway says is that Mr Braun was expected to continue in much the same type of role he had previously.".

I accept the submission of Counsel for the Appellant that there was evidence upon which the Industrial Magistrate might have found that Mr Braun's substantial salary remained unchanged, and might have been found that notwithstanding some change in terminology, Mr Braun was to remain the manager of the Yeppoon bakery. It might have been found also that although the post of "production manager" was to disappear and the production manager with it, the post of "production foreman" was to remain as was the production foreman. For the purposes of the appeal, I am prepared to make those findings. However, infelicitous though the adjective "new" may have been, it is plain that what the Industrial Magistrate had in mind were the changes which His Honour had found would occur and it is perfectly understandable that His Honour would concentrate upon the changes. Mr Braun's case was that he had decompensated in consequence of the changes, not in consequence of that which would remain the same. In particular, since Mr Braun had come from the "sales side" of the business of baking rather than the "production side", it was the challenge of being responsible for "production" which he found especially threatening.

The second attack upon the Industrial Magistrate's decision is that Mr Braun decompensated, not because of the inadequacies in the "consultations" and/or "negotiations" but because of the employer's refusal to offer him a redundancy payment. It is plain from the transcript passages from which I have been taken, and in particular from the medical evidence, that Mr Braun's omission to secure a redundancy payment was a factor in Mr Braun decompensating. The correct analysis seems to be that Mr Braun was distressed about the new employer's decision to restructure his position, that he was upset that he was being required to fill the position rather than being handed the parachute of a redundancy payment and, that he was angered that others in not dissimilar positions had been offered redundancy payments. I eschew any suggestion that a restructuring employer who fails to offer redundancy payments to employees disaffected by the restructure is engaging in other than "reasonable management action". But the Industrial Magistrate did not base his decision on the taking of other than "reasonable management action". His Honour's decision was all about whether the management action had been taken in a "reasonable way".

It is perhaps regrettable that the Industrial Magistrate did not make findings about what was said between Messrs Braun and Spurway in their face-to-face meetings, but even on Mr Spurway's version, the exchanges were (on his part) to work business like, terse and resolute rather than sympathetic. Clearly Mr Braun's departure on a period of leave created difficulties in communication, but the responsibility for implementing management decisions in a "reasonable way" lies with management.

I appreciate that restructuring a major workforce may require an employer to show resolution and determination, rather than the consideration that the employer might otherwise extend to the disaffected and stressed. I also accept that reasonable people will from time to time differ about whether a particular management decision has been reasonably implemented. However, on the view of the evidence most favourable to the Appellant, I am unable to say that it was not open to the Industrial Magistrate to treat the firmness of Mr Spurway's dealings with the Appellant, the communications by way of leaving short sentences on the Appellant's mobile message bank and by leaving SMS messages on that phone and in particular the distribution of a memorandum indicating that the Appellant had accepted the new position when he had not done so, amounted to a failure to implement the restructuring exercise in a "reasonable way". The appeal being by way of rehearing, it follows that the appeal must be dismissed.

I dismiss the appeal.

I reserve all questions as to costs.

Dated 17 March 2005.

D.R. HALL, President.

Released: 17 March 2005

*Appearances:*
Mr P. Rashleigh directly instructed for the Appellant.
Mr C. Press instructed by Robert Harris & Co, Solicitors, for the Respondent.

##########

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999* – s. 125 – application for amendment

**The Queensland Public Sector Union of Employees AND Queensland Nursing Council (No. B197 of 2005)**

**QUEENSLAND NURSING COUNCIL EMPLOYEES' AWARD – STATE 2002**

COMMISSIONER FISHER

11 March 2005

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 11 March 2005, this Commission orders that the said Award be amended as follows as from 11 March 2005:

1. By renumbering clauses 6.2.2(a), (b), (c), (d), (e) and (f) as clauses 6.2.2(b), (c), (d), (e), (f) and (g).

2. By inserting a new clause 6.2.2(a) as follows:

"(a) These provisions provide a framework within which hours of work arrangements and related conditions are to be implemented with the express purpose of providing all relevant employees with access to an accrued full day/s off within a work cycle:

Provided that nothing will limit the ability of a chief executive and an employee to agree to access accrued time off in part-days off.".

Dated 11 March 2005.

By the Commission,
[L.S.] G.D. SAVILL,
Industrial Registrar.

Operative Date: 11 March 2005
Amendment – Accrued days off
Released: 16 March 2005

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999*

**GOPRINT AWARD – STATE 2003**

**(Gazette 16 May 2003)**

(AR43 of 2002)

DEPUTY PRESIDENT SWAN
COMMISSIONERS EDWARDS AND BECHLY

14 March 2005



AWARD REVIEW
(Correction of Error)

WHEREAS an error occurred in the Award as published in the *Queensland Government Industrial Gazette* of 16 May 2003, Vol. 173, No. 2, pages 209-229, the following correction is made to be effective as from 28 April 2003.

By deleting "$17.90 per week" from where it appears in clause 10.2 and inserting "$18.60 per fortnight" in lieu thereof.

Dated 14 March 2005.

G.D. SAVILL,
Industrial Registrar.

##########

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999*

**QUEENSLAND FIRE AND RESCUE SERVICE INTERIM AWARD – STATE 2003**

**(Gazette 20 June 2003)**

(AR115 of 2002)

DEPUTY PRESIDENT SWAN
COMMISSIONERS EDWARDS AND BECHLY

14 March 2005

AWARD REVIEW
(Correction of Error)

WHEREAS errors occurred in the Award as published in the *Queensland Government Industrial Gazette* of 20 June 2003, Vol. 173, No. 7, pages 637-658, the following corrections are made to be effective as from 2 June 2003.

By deleting clause 5.6 and inserting the following in lieu thereof:

**"5.6 Occupational superannuation**

5.6.1 *Definitions*

(a) "Eligible Employee" means an employee of the Queensland Fire and Rescue Service who is employed under this Award.

(b) "Superannuation Fund" means "The Queensland Fire and Rescue Service Superannuation Plan – Accumulation Account", Q Super or Go Super or any other scheme as approved by the Governor in Council in accordance with the *Fire and Rescue Service Act 1990.*

(c) "Ordinary Time Earnings" means the applicable classification rate under this Award plus divisional and district parities and shift and weekend penalty rates in relation to those employees who are entitled to such penalties.

5.6.2 *Contributions*

(a) The Queensland Fire and Rescue Service will contribute to the "Superannuation Fund" on behalf of each eligible employee, an amount equal to 3% of ordinary time earnings:

Provided that this payment will not be in addition to contributions currently made by the Commissioner of Fire and Rescue Service to an approved superannuation scheme for full-time and eligible Temporary Employees of the Queensland Fire and Rescue Service.

(b) Eligible employees must have completed a continuous period of 4 weeks' service before contributions to the Q Super or Go Super funds will commence, provided that on permanent appointment, no eligibility period is required for Q Super.

(c) Subsequent to eligible employees completing the eligibility period, contributions to the superannuation fund are to be retrospective to the employee's date of commencement.

(d) The Queensland Fire and Rescue Service may suspend for the applicable period, contributions made on behalf of an employee if the employee is absent from the workplace whilst on unpaid leave including unpaid sick leave and unpaid leave of absence. Contributions will not be suspended for leave of absence on workers' compensation.

(e) The employer shall remit contributions to the "Superannuation Fund" on a fortnightly basis.

(f) The Queensland Fire and Rescue Service will not be required to make any further contributions on behalf of an employee after the end of the last day from which the employee's resignation or dismissal becomes effective.".

Dated 14 March 2005.

G.D. SAVILL,
Industrial Registrar.