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; and

(f) if a casual employee's entitlement to long service leave is worked out under section 47 of the Act – the total hours, other than overtime, worked by the employee since the start of the period to which the entitlement relates, 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 section 371 of the Act; or an authorised industrial officer in accordance with sections 372 and 373 of the Act.

11.3 Trade union training leave

11.3.1 Upon application to the employer by the accredited employee representative which is endorsed by the Union and on giving at least one month's notice, such employee shall be granted up to 5 working days leave (non-cumulative) on ordinary pay each calendar year to attend courses and seminars conducted by the Trade Union:

Provided that an employee who has so applied for such leave has at least 12 months service with a current employer prior to trade union training leave being granted.

11.3.2 The granting of such leave shall be subject to the convenience of the employer and will not unduly affect the operations of the employer.

11.3.3 The scope, content and level of the course shall be such as to contribute to a better understanding of industrial relations within the employer's operations.

11.3.4 The employer may seek to verify with those employees who have been released on trade union training leave to satisfy the employer that such employees actually attend such trade union training leave.

11.3.5 Such paid leave will not affect other leave granted to employees.

11.3.6 Clause 11.3 shall not apply to employers who employ fewer than 15 employees covered by this Award.

11.4 Posting of award

A true copy of this Award shall be exhibited in a conspicuous and convenient place on the premises of the employer so as to be easily read by employees.

11.5 Union encouragement

Clause 11.5 gives effect to section 110 of the Act in its entirety. Consistent with section 110 a Full Bench of the Commission has issued a Statement of Policy on Union Encouragement (reported 165 QGIG 221) that encourages an employee to join and maintain financial membership of the Union.

11.5.1 *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 the employee.

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

11.5.2 *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.

11.5.3 *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.

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

Operative Date: 1 July 2005
Repeal of Industrial Agreement and New Award – Queensland Accommodation Clerical Award 2005.
Released: 30 August 2005

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INDUSTRIAL COURT OF QUEENSLAND

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

Merle Prizeman AND Q-COMP
(C/2005/30)

PRESIDENT HALL 14 September 2005

DECISION

By a letter dated 2 March 2004, a self insurer rejected Ms Prizeman's application for compensation under the *WorkCover Queensland Act 1996*. The claim was rejected because the psychiatric/psychological disorder relied upon was withdrawn from the definition of "injury" by the operation of s. 34(5)(a) of the *WorkCover Queensland Act 1996* (s. 32 of the *Workers' Compensation and Rehabilitation Act 2003* replicates s. 34 of the *WorkCover Queensland Act 1996* however it is unnecessary to determine which Act applies). Ms Prizeman sought a statutory review. By a letter of 4 June 2004 Q-COMP confirmed the decision of the self insurer. Ms Prizeman then appealed to the Industrial Magistrates Court. Her Appeal was unsuccessful. She now Appeals to this Court.

It is useful to make some preliminary observations.

One. Because Ms Prizeman had experienced significant stressors in her life which were entirely unrelated to her employment with Coles Myer Ltd, there was initially some apprehension that her admitted condition was not a condition to which her employment had been a significant contributing factor. A conclusion that the employment was not a significant contributing factor to the physical injury would have been fatal to the submission that Ms Prizeman suffered an "injury" for the purposes of the *WorkCover Queensland Act 1996*. In her dealings with the self insurer and in her dealings with Q-COMP and subsequently on the Appeal to the Industrial Magistrates Court, Ms Prizeman relied heavily on an opinion from a psychologist "Ms Dormer". By her report of 5 January 2003 Ms Dormer observed, *inter alia*:

> "Ms Prizeman's work history will be covered in the questions following. It is important to note though that it appears that Ms Prizeman's attitude to her work was one of dedication and enjoyment. It is apparent that her work was an integral part of her identity and that it offered her stability and outside support in some fairly difficult times in her personal life. She states that she has worked throughout her adult life and is reportedly a long term employee of Coles Myer.
>
> ... "As stated above and from the information that I have at this time, I consider the situation at Ms Prizeman's employment is a significant contributing factor to her anxiety and depression.".

Importantly, Ms Dormer also observed:

> "From my interview with her and from the documentation that I have read, it appears that Ms Prizeman perceived that a situation developed between Ms Sturgess, the Store Manager, and herself over the first half of 2003 (sic.) ... However it is important to note that it is Ms Prizeman's interpretation of events and her method of handling the events must be taken into consideration.".

Ms Dormer then went on to list particular dealings which Ms Prizeman had informed her had proved stressful. I do not repeat the list, because the list relied upon before the Industrial Magistrate was marginally different. But it was plainly that list which triggered concern that the "injury" had been withdrawn from the definition by s. 34(5)(a) of the *WorkCover Queensland Act 1996*. And it must be remembered that it is a consequence of s. 34(5)(b) of the *WorkCover Queensland Act 1996* that, in determining whether action was reasonable management action taken in a reasonable way by the employer in connection with the worker's employment, it is the reality of the employer's conduct and not the employee's perception of it which must be taken into account.

Two. The case developed at first instance was that each of the work related stressors relied upon by Ms Prizeman was withdrawn from consideration because it arose in the course of reasonable management action taken in a reasonable way. In light of the subsequent decision in *Q-COMP v Education Queensland* (2005) 179 QGIG 491, that approach may well be argued to be flawed. It will be necessary to return to that matter subsequently. However, for present purposes, it is important to note that the case developed at first instance let in a side issue *viz.* whether any particular stressor had in fact contributed to Ms Prizeman's decompensation. Some of the language in the Industrial Magistrates Decision is, in my view, properly to be understood as developing that alternative basis for putting a particular stressor aside.

Three. Very early on in His Honour's decision, the Industrial Magistrate records that on an "overall" basis the evidence of Ms Prizeman was to be preferred to the evidence of Ms Sturgess. It has been contended that the Industrial Magistrate did not resolve conflicts in the evidence in accordance with that finding. In my view, the Industrial Magistrate did resolve conflicts in the evidence in accordance with that finding. His Honour did accept that dealings identified by Ms Prizeman did occur. The point at which the Industrial Magistrate (on some occasions) declined to act upon the evidence of Ms Prizeman was in terms of the detail about that which had occurred. The Industrial Magistrate was simply distinguishing between Ms Prizeman's perceptions and that which had in fact occurred. And there is no suggestion that in taking that course, the Industrial Magistrate was acting on the view that the perceptions and/or recollections of perceptions of a person who has decompensated are inherently unreliable.

Four. The Industrial Magistrate examined the alleged stressful situations *seriatim*. For convenience, I shall follow that course. However, I do wish to stress, that at the end of the day the Industrial Magistrate (consistently with His Honour's preliminary observations) rolled the dealings together and made a global inquiry about whether the case fell within s. 34(5)(a) of the *WorkCover Queensland Act 1996*.

Five. Consistently with decisions such as *Delaney v Q-COMP* (2005) 178 QGIG 197, I stress that the Appeal against the decision of Q-COMP is an Appeal to the Industrial Magistrates Court. The further Appeal to this Court is an Appeal for the purposes of correction of error. Conclusions upon factual matters reasonably open to the Industrial Magistrate are not to be interfered with. Subject to the limitations developed in *Fox v Percy* (2003) 214 CLR 118, the findings of primary fact based on an evaluation of a witness seen and heard by the Industrial Magistrate are not to be departed from. I turn then to the dealings examined by the Industrial Magistrate. At the outset, the Industrial Magistrate summarised the dealings relied upon as follows:

> "The main incidents, apparently initially relied upon by the Appellant, are as follows:
>
> 1. the so-called "Black dress" matter.
> 2. the initial staff meeting held by Ms Sturgess when she advised the staff, inter alia, that their jobs were on the line.
> 3. the one-on-one meeting of 2/6/03 about the need for spot balances – the discussion planner document, the discrepancy of $40.00, and the attitude and demeanour of Ms Sturgess during that meeting.
> 4. the "red basket" incident.
> 5. the spillage on the floor, on the same date.
> 6. the claims made about Ms Sturgess, calling her into her office, one Friday, and asking her if she wanted her job or not, before she commenced recreation leave.".

In the end result, the transactions labelled 1 and 2 were not relied upon before the Industrial Magistrate. Neither were they relied upon on the Appeal to this Court. I put them aside.

The transaction labelled 3 was a serious one and was treated as such by the Industrial Magistrate. His Honour reviewed the evidence over six pages. There is no doubt that Ms Prizeman felt that she was being accused of stealing. There is equally no doubt that Ms Prizeman did not steal the money. Neither is there any doubt that she was not being accused of stealing the money. The evidence of Ms Prizeman was that she became very upset. (The evidence was corroborated). The Industrial Magistrate concluded:

> "It is the case though, that in the final analysis, in relation to the meeting conducted in the manner it was, the following points emerge:
>
> (a) the meeting itself was completely justified, for the reason stated.
> (b) the appellant whilst addressed firmly, and with authority by her manager, was not spoken to aggressively, or in any abusive manner.
> (c) the appellant was given the opportunity to reply, to comment on the issue under discussion, but for the greater part, for reasons not revealed, chose not to.
> (d) a satisfactory resolution was reached, and the appellant did sign off on what was agreed, although she seems to suggest now, that signing off was not entirely voluntary or that she at least had some misgivings about doing so.
> (e) the perception, of the appellant is that she was indirectly being accused of acting inappropriately – dishonestly, in connection with the missing cash, and this was unfair.
> (f) the perception, of the appellant that with there being no review, that she was thereby going to suffer some unfairness, in relation to this issue, at some later date.
>
> How the appellant considered any unfairness actually manifested itself was not expanded upon by the appellant. I am not sure if she at any time actually referred to the situation being one that resulted in unfairness to her. I accept that she considered her integrity and reputation might be impugned because of (e), but in reality the respondent never any time suggested any punitive action being taken against her, and had plans to continue with her employment, after she stopped work with her illness, and at no time, in fact, considered she was dishonest. Any such argument, therefore lacks a degree of substance, in reality. As to (f), the unfairness she perceived, was also not detailed. I take it that, it was just the fact that a review was not specifically provided for, as is normally the case that gave her some cause for concern, rather than any specific issue as such. It was a general concern on her behalf. It seems that she considered that this might have the potential, in some way, to disadvantage her, at some future date, in relation to circumstances not able to be specified. Again, in the absence of other material, of the proof of that unfairness or unjust situation, this argument is not a compelling one.".

Granted that it was Ms Prizeman who carried the onus of proof in the approach taken by the Industrial Magistrate and the findings which His Honour made seem to me to be entirely understandable and, indeed, predictable.

The transactions labelled 4 and 5 were potentially significant because both occurred on the same day and because both involved Ms Sturgess causing embarrassment to Ms Prizeman in the presence of customers. The "red basket incident" concerned Ms Sturgess chiding Ms Prizeman in the presence of customers about a red plastic basket belonging to the employer which she (Ms Sturgess) had located in the car park. The latter incident concerned Ms Sturgess chastising Ms Prizeman in the presence of others about a spillage of water from defective refrigeration equipment. In relation to both incidents, the Industrial Magistrate was comfortable with finding that in taking action about the "red basket" and about the "spillage" Ms Sturgess was engaging in reasonable management action. That view, particularly in the case of the "water spillage" which gave rise to safety issues, was plainly open to the Industrial Magistrate. The critical issue was whether the reasonable management action was "reasonably taken". Although the Industrial Magistrate was critical of the way in which Ms Sturgess had conducted herself, on balance, His Honour came to the view that the lapses from "proper or reasonable staff treatment" were but "blemishes". Consistently with that view and (I think) giving consideration to the issue whether the stressors should be put aside in any event, the Industrial Magistrate commented that "neither incident was of long duration" and that it was "difficult to assess the actual effect that same had on the appellant, based on comparatively brief evidence provided to the court in relation to both incidents.". Notwithstanding the skill with which Mr Lippett has argued his case I am unable to conclude that the Industrial Magistrates' conclusions were not reasonably open to His Honour.

The transaction labelled 6 was a matter of major significance. In the event, though expressly (once again) preferring the evidence of Ms Prizeman that the transaction had occurred to the evidence of Ms Sturgess that it had not occurred, the Industrial Magistrate concluded:

> "In the absence of some corroboration of the claim, I find that I cannot be satisfied that the appellant was spoken to when and in the manner alleged.".

I have gone to the transcript. The transcript shows that Ms Prizeman twice said that she had been left with the "impression" that Ms Sturgess "didn't want me in that position" and Ms Prizeman said that she was "shocked". There is also evidence of Ms Prizeman that Ms Sturgess had asked her to "think if I wanted my job or not" and asked Ms Prizeman "whether I wanted a job or not". The evidence has to be read also with Ms Prizeman's inability to articulate what she had found upsetting about the meeting of 2 June 2003. On one view the noun "impression" was not Ms Prizeman's language but was suggested by a leading question. There was certainly a fresh complaint. But the fresh complaint stifled an attack upon the evidence about the incident. It does not go to what was said. At the end of the day in an issue about the reliability of evidence I must defer to the Industrial Magistrate who saw and observed the witness over quite a period of time.

(For completeness, I should add that the Industrial Magistrate also considered a transaction outside the original list relating to the cleanliness of the tills and service area but concluded that any stressors arising from the transaction were not an issue. Having regard to the transcript and the way in which the matter was argued on appeal, that conclusion seems to me to have been correct).

Having considered each of the items separately, the Industrial Magistrate then entered upon a global consideration of three incidents, *viz.* the transactions labelled 3, 4 and 5. On His Honour's findings about the transaction labelled 6 it was inevitable that His Honour would leave that issue out of account. Having referred to the item involving the "red basket" and the item involving "spillage on the floor" as "blemishes", the Industrial Magistrate returned to the points which His Honour had found to emerge from the evidence about the pre-recreation leave meeting (set about above), reiterated that there was nothing untoward about points (a) to (d), returned to the point that any "unfairness" said to arrive out of (e) and (f) had not been identified and concluded spelling the word in higher case that "overall", the Appellant had failed to prove that the incidents were other than reasonable management action taken reasonably. Given the findings of primary fact, I am unable to conclude that the Industrial Magistrate's decision was not open to His Honour.

I should return briefly to the decision in *Q-COMP v Education Queensland* (2005) 179 QGIG 491. I do so because an Appeal by way of rehearing is to be determined on the basis of the law as it is understood to be at the time that the Appeal is determined, *Victorian Stevedoring and General Contracting Co Pty Ltd and Meakes v Dignan* (1931) 46 CLR 73 at 107 per Dixon J.

With hindsight, the Industrial Magistrate's inability to make findings about what was said and done at the pre-recreation leave meeting labelled 6 is decisive. Although Ms Dormer's report seems to suggest that it was the combination of stressors which caused Ms Prizeman to decompensate, in re-examination the following exchange occurred between Mr Lippett (for Ms Prizeman) and Ms Dormer:

> "Q. Was it just the changes that seemed to make her anxious or was it a combination of things?
> A. No, it was mostly the request that – that did she still want her job?".

The Industrial Magistrate's inability to make a finding about what was said in the course of the meeting makes it impossible to class the transaction as other than "reasonable management action reasonably taken" and on the test in *Q-COMP v Education Queensland, op cit*, that was sufficient to remove the psychiatric/psychological disorder from the definition of "injury".

I dismiss the Appeal.

I reserve all questions as to costs.

Dated 14 September 2005.

D.R. HALL, President.

Released: 14 September 2005

Appearances:
Mr F. Lippett instructed by Sciacca's Lawyers and Consultants for the Appellant.
Mr P. Major directly instructed for the Respondent.

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INDUSTRIAL COURT OF QUEENSLAND

Industrial Relations Act 1999 – s. 341(1) – appeal against decision of industrial magistrate

Queensland Independent Education Union of Employees AND Educang Limited (C/2005/28)

PRESIDENT HALL

16 September 2005

REPORT ON DECISION (as edited)

In giving his decision from the Bench on 8 September 2005, the President stated:

> "On 20 February 2004, Queensland Independent Education Union of Employees sought relief pursuant to Part 2 of Chapter 3 of the *Industrial Relations Act 1999*, in relation to the termination of the employment of one of its members, *viz.* Mr Paul Collins.
>
> A number of jurisdictional issues were raised. By a decision reported at 177 QGIG 89, a member of the Queensland Industrial Relations Commission sitting alone determined some of those issues adversely to the applicant. The application for relief was dismissed. There was an Appeal to this Court. The Appeal was successful. Amongst other things, it was held that the *Teachers' Award – Non-Governmental Schools* applied to Mr Collins' engagement and that Mr Collins fell within clause 2(18) of the Award, which dealt with the matter of "fixed term appointees". It was held to be a consequence of the operation of section 135(2) of the *Industrial Relations Act 1999*, upon clause 2(18) of the Award and upon the contract into which Mr Collins had entered, that the contract had to be read to accord with the Award.
>
> In those circumstances, the matter was remitted to the Commission. The task confronting the Commission was to determine whether or not Mr Collins' engagement had come to an end at the initiative of the employer. The Commission had, of course, previously dealt with that matter but had acted on a view of the contract, which in view of the outcome of the Appeal, was no longer sustainable.