

INDUSTRIAL COURT OF QUEENSLAND

CITATION: *Perry v State of Queensland (Queensland Health)*
(No. 2) [2024] ICQ 008

PARTIES: **SANDRA (ANDREA) PERRY**
(Appellant)

v

**STATE OF QUEENSLAND (QUEENSLAND
HEALTH)**
(Respondent)

CASE NO.: C/2023/49

PROCEEDING: Appeal

DELIVERED ON: 11 April 2024

HEARING DATE: 11 April 2024

MEMBER: Merrell DP

HEARD AT: Brisbane

ORDER: **The Appellant's application to adjourn the
appeal is dismissed.**

CATCHWORDS: APPEAL AND NEW TRIAL – PROCEDURE –
QUEENSLAND – POWERS OF COURT –
OTHER MATTERS – Appellant is a public
service employee employed by the Respondent –
Appellant was the subject of a disciplinary finding
decision – Appellant appealed to the Queensland
Industrial Relations Commission against the
disciplinary finding decision – Commission
confirmed the disciplinary finding decision –
Appellant appealed to the Industrial Court of
Queensland against the Commission decision –
Appellant initially self-represented – Directions
Orders made for the hearing and determination of
the Appellant's appeal – three days before hearing
the Appellant's appeal, the Appellant, by email to
the Industrial Registry only, stated that she
requested an adjournment so she could be
represented by lawyers – Appellant subsequently
applied for an adjournment of the appeal at the
commencement of the hearing of the appeal –
whether the Court should grant the adjournment –

factors to consider in exercising discretion to grant an adjournment in these circumstances – no sufficiently cogent explanation provided by the Appellant for adjournment – application for adjournment refused

LEGISLATION:

Industrial Relations Act 2016, s 529 and s 562C

Industrial Relations (Tribunals) Rules 2011, r 5, r 6 and r 41

CASES:

Aon Risk Services Australia Ltd v Australian National University [2009] HCA 27; (2009) 239 CLR 175

Dahdah v Platinum Distributors Australia Pty Ltd [2023] FCAFC 65

Perry v State of Queensland (Queensland Health) [2024] ICQ 5

COUNSEL:

Mr G. Perry as agent on behalf of the Appellant

Mr E. Shorten of Counsel for the Respondent

SOLICITORS:

MinterEllison for the Respondent

Delivered *ex tempore*, revised from transcript

Reasons for Decision

Introduction

- [1] These reasons assume familiarity with paragraphs [1] to [5] of the earlier decision in *Perry v State of Queensland (Queensland Health)* ('*Perry No. 1*').¹ Unless otherwise stated, the definitions used in *Perry No. 1* are repeated in these reasons.
- [2] The present question for my determination is whether I should exercise my discretion and grant the oral application made today by Ms Perry, who is the Appellant in this proceeding, to adjourn her appeal.

Background

- [3] Ms Perry is employed in the Department in the position of Team Leader, Operational Services, at the Gold Coast University Hospital which is operated by the Gold Coast Hospital and Health Service ('the Health Service').

¹ [2024] ICQ 5.

- [4] By letter dated 26 April 2023 from Mr Grant Brown, Acting Executive Director, People and Operations of the Health Service, Ms Perry was informed that two disciplinary allegations made against her were found to be substantiated ('the disciplinary finding decision').
- [5] In 2023, Ms Perry commenced a public service appeal against the disciplinary finding decision.
- [6] By the Primary Decision, the Commission, pursuant to s 562C(1)(a) of the IR Act, confirmed the disciplinary finding decision.
- [7] By application to appeal filed on 20 December 2023, Ms Perry appealed to this Court against the Primary Decision.
- [8] Before this Court, prior to today, Ms Perry has always been self-represented.
- [9] By Directions Order made on 19 January 2024, I ordered, pursuant to r 41 of the *Industrial Relations (Tribunals) Rules 2011* ('the Rules') as follows:
1. That the Appellant file in the Industrial Registry and serve on the Respondent a written submission (of no more than 10 pages in length, type-written, line and a-half spaced, 12-point font size and with numbered paragraphs and numbered pages) by **4.00pm on 16 February 2024**. Such submission must specify which, if any, grounds of appeal are no longer being pursued.
 2. That the Respondent file in the Industrial Registry and serve on the Appellant a written submission (of no more than 10 pages in length, type-written, line and a-half spaced, 12-point font size and with numbered paragraphs and numbered pages) by **4.00pm on 15 March 2024**.
 3. That the Appellant file in the Industrial Registry and serve on the Respondent any written submission in reply (of no more than 10 pages in length, type-written, line and a-half spaced, 12-point font size and with numbered paragraphs and numbered pages) by **4.00pm on 29 March 2024**.
 4. That the matter be heard before Deputy President Merrell, at the Industrial Court of Queensland, Level 22, Central Plaza 2, 66 Eagle Street (corner Elizabeth and Creek Streets), Brisbane at **10.00am on Thursday, 11 April 2024**.
- [10] Apart from Ms Perry filing her submissions in reply on 2 April 2024, the parties complied with these orders.
- [11] By email sent only to the Industrial Registrar on Monday, 8 April 2024, Ms Perry requested an adjournment of her appeal to allow her lawyers '... to adequately prepare for the proceedings' and that there was an anticipation that her solicitors will submit an application for her to be represented by a lawyer '... within a reasonable timeframe.'
- [12] Ms Perry and the Department were advised by an email on 9 April 2024, sent to them on behalf of my chambers, that the appeal set down for today would proceed and that, if she wished, Ms Perry could make application to adjourn the appeal during the hearing.

[13] Ms Perry made such an application today. Ms Perry is represented by her husband, as an agent, pursuant to s 529(1)(e) of the IR Act.

[14] The Department opposes the application.

Ms Perry' submissions

[15] Ms Perry submits that her appeal should be adjourned because:

- she has some doubt about what material was before the Industrial Commissioner who made the Primary Decision;
- she asked the Registrar for that material one week ago;
- she sought a referral through her trade union, for legal representation, on about 11 March 2024, which was as a consequence of my decision in *Perry No. 1* to grant leave to the Department to be represented by a lawyer in her appeal, because up until that time, Ms Perry was content to prosecute her appeal where the Department was represented by its own officers;
- a letter of referral was sent by her trade union to solicitors for the purposes of seeking legal representation, but it was only last Monday (8 April 2024) that it was realised by the solicitors that letter had been misplaced, which resulted in her email to the Registrar on 8 April 2024 as referred to earlier in these reasons; and
- through her trade union, yesterday she consulted a solicitor, by telephone, who advised her to seek an adjournment at the hearing today.

The Department's submissions

[16] The Department submits that Ms Perry's appeal should proceed today because:

- there is no affidavit material explaining the issue raised by Ms Perry about the miscommunication involving her trade union and the solicitors;
- there was no appearance from her solicitors today;
- Ms Perry only first raised the application for an adjournment on Monday this week when her appeal was filed in December 2023 and the Directions Order for her appeal was made on 19 January 2024;
- Ms Perry made no application to the Court for leave to be represented by a lawyer at the time the Department made its application for it to be represented by a lawyer, which was on 15 February 2024;
- Ms Perry's submissions, including up to her submissions in reply filed on 2 April 2024, were made by her without the assistance of, or representation by, lawyers;

- no good reason has been given by Ms Perry for the adjournment; and
- having regard to the principles set out in *Aon Risk Services Australia Ltd v Australian National University*,² material considerations in respect of the granting of an adjournment are justice to all litigants and the loss of public confidence in the legal system if an application, such as the present, is granted too readily.

Ms Perry's appeal should not be adjourned

[17] By r 41(1) of the Rules, the Court has discretionary power to adjourn Ms Perry's appeal.

[18] However, following Ms Perry commencing her appeal against the Primary Decision, on 19 January 2024, pursuant to r 41 of the Rules, I made the Directions Order, referred to earlier in these reasons, for the hearing and determination of Ms Perry's appeal, which included that her appeal would be heard today.

[19] By r 5 of the Rules, the Rules apply to a proceeding before the Court. Further, as the Department points out, by r 6 of the Rules, the purpose of the Rules is, relevantly, to provide for the just and expeditious disposition of the business of the Court at a minimum of expense.

[20] As was recently stated by the Full Court of the Federal Court of Australia in *Dahdah v Platinum Distributors Australia Pty Ltd* ('*Platinum Distributors*'),³ in relation to the equivalent rules that govern that Court:

[N]o litigant has an entitlement to an adjournment for the obvious reason that the business of the Court must be managed with the objective of efficient organisation in the interests of all litigants that come before the Court. Similarly, in *Gabrielle v Abood (No 2)* [2023] NSWCA 28, Bell CJ (Kirk and Adamson JJA agreeing) stated at [6], in connection with applications for adjournments of hearings of appeals in the Court of Appeal of the Supreme Court of New South Wales:

... When matters are set down in this Court there is an expectation that they will be heard on the day on which they are set down. Matters are set down having regard to the demands of the Court, including other cases and litigants, and it is a significant and inefficient waste of Court resources where matters are required to be adjourned. That is not to say that in a sufficiently meritorious case, adjournment applications will not be entertained but they are typically only entertained and granted where there are cogent reasons for doing so.

[21] In my view, there is no reason the principles from these cases are not equally applicable to this Court.

[22] There are a number of reasons why Ms Perry's application to adjourn her appeal should not be granted.

² [2009] HCA 27; (2009) 239 CLR 175 ('*Aon*'), [30] (French CJ), [94] and [98] (Gummow, Hayne, Crennan, Kiefel and Bell JJ).

³ [2023] FCAFC 65, [166] ('*Platinum Distributors*') (Rangiah, Goodman and McElwaine JJ). See also *Aon* (n 2), [94].

- [23] First, Ms Perry has not advanced a cogent reason to adjourn her appeal. Since the time Ms Perry commenced her appeal in December 2023, she has been self-represented. Ms Perry status as a self-represented litigant extended right up until 2 April 2024 when Ms Perry filed and served her submissions in reply ('Ms Perry's reply submissions') in observance of the Directions Order I made on 19 January 2024. That is to say, since December 2023, Ms Perry has had the opportunity to arrange for legal representation and to either seek the consent of the Department for her to be legally represented or, in the alternative, to seek the leave of the Court for her to be represented by a lawyer.
- [24] Ms Perry submits however, that her desire to be represented by a lawyer changed after my decision in *Perry No 1*. That may be so, but that decision was released on 11 March 2024. It seems that Ms Perry, through her trade union, sought a referral from that organisation to its lawyers at about that time, but there was some miscommunication about that matter which was not discovered until Monday this week, which resulted in her email to the Registrar on that day as I have referred to earlier.
- [25] That may be unfortunate, but what seems clear to me from the emails about this issue between her trade union and the solicitors handed up to me today and from Ms Perry's explanation of what has occurred about that issue is that, as at today, Ms Perry has not secured or confirmed any legal representation for her appeal and that it is still something she is attempting to secure.
- [26] Certainly, no email or letter has been produced by Ms Perry confirming that she has retained lawyers to represent her in this appeal. No lawyer appeared today on her behalf to confirm such representation.
- [27] That is to say, as at today, Ms Perry cannot categorically state that she has retained lawyers and given them instructions to represent her in her appeal at some future date if her appeal is adjourned.
- [28] In my view, it is now too late, at most, as of Monday of this week when Ms Perry sent her email to the Registrar seeking an adjournment, or at least, today, for Ms Perry to seek an adjournment of her appeal so that she can now try to secure lawyers to represent her in her appeal.
- [29] Further, Ms Perry has filed two sets of written submissions in support of her appeal, namely, the principal submissions she filed on 16 February 2024 and her reply submissions. In addition, Ms Perry's application to appeal contains a document headed 'Appellant's Outline of the Argument' which is a nine page document consisting of 57 paragraphs of submissions as to why her appeal should be allowed. For these reasons, Ms Perry has had every opportunity to make written submissions in support of why her appeal should be allowed. Of course, Ms Perry, through her agent, will be entitled to make oral submissions addressing the reasons why she says her appeal should be allowed. For these reasons, I am not persuaded that Ms Perry will suffer any prejudice, in advancing to this Court, the reasons why she claims her appeal should be allowed in the absence of her being granted an adjournment so that she can arrange for lawyers to represent her in the appeal.

- [30] In addition, if Ms Perry had a concern about the material that was before the Industrial Commissioner, she could have pursued that matter before one week ago.
- [31] Therefore, I am not of the view that Ms Perry has advanced a cogent reason to grant her an adjournment of her appeal.
- [32] Secondly, I accept the Department's submission that there is a prejudice to it if the appeal is adjourned off to a date in respect of which Ms Perry may be able to secure legal representation. The Department is entitled to a timely conclusion of the disciplinary process against Ms Perry. As I understand the material before me, that process was formally commenced by it in March 2022.
- [33] Finally, I must take into account the circumstances of other litigants.
- [34] As the Full Court of the Federal Court stated in *Platinum Distributors*:⁴

173 *Finally*, granting the adjournment would have had prejudicial consequences for the Court and for other litigants, whose interests must be considered see: *Expense Reduction Analysts Group Pty Ltd v Armstrong Strategic Management and Marketing Pty Ltd* [2013] HCA 46; (2013) 250 CLR 303 at 321 [51] (French CJ, Kiefel, Bell, Gageler and Keane JJ); *Alhalek* at [26]; *Gabrielle* at [6]. In particular, the prejudice to other litigants awaiting hearing dates which would have flowed from the vacation of the hearing on 16 and 17 February 2023 and the allocation of fresh dates.

- [35] There are other litigants who wish to have their matters heard before this Court and also before the Commission. As a Deputy President of the Court, I am also a Deputy President of the Commission. Today's date has been set aside for the hearing of Ms Perry's appeal since 19 January 2024. To adjourn Ms Perry's appeal today would have the practical effect of denying other litigants, before this Court and before the Commission, the opportunity of having their matters heard today and of not having their matters heard on the day to which Ms Perry's appeal may be adjourned.

Conclusion

- [36] For the reasons given, Ms Perry's application to adjourn her appeal is dismissed.

Order

- [37] I make the following order:

The Appellant's application to adjourn her appeal is dismissed.

⁴ *Platinum Distributors* (n 3).