

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Spears v Quantum Trading Enterprises Pty Ltd* [2024] QIRC 081

PARTIES: **Spears, Jody Madeline**
Applicant

v

Quantum Trading Enterprises Pty Ltd
Respondent

CASE NO: B/2024/10

PROCEEDING: Application for recovery of pro rata long service leave

DELIVERED ON: 11 April 2024

MEMBER: Pratt IC

HEARD AT: On the papers

ORDER: **The application is dismissed**

CATCHWORDS: INDUSTRIAL LAW – APPLICATION FOR RECOVERY OF PRO RATA LONG SERVICE LEAVE – where applicant employed by respondent for eight and a half years – where respondent sold business – where applicant resigned because the applicant was dissatisfied with the respondent's sale of business – where applicant resigned before reaching the requisite ten years of service – whether the Commission should refrain from hearing the application pursuant to s 541(b)(ii) of the *Industrial Relations Act 2016* (Qld) because further proceedings are not necessary or desirable in the public interest – consideration of entitlement to pro rata long service

pursuant to s 95 of the *Industrial Relations Act 2016* (Qld) where employee has resigned before employee has reached ten years of continuous service with employer – consideration of meaning of 'public interest' pursuant to s 541(b)(ii) of the *Industrial Relations Act 2016* (Qld) – whether applicant entitled to payment of pro rata long service pursuant to section 95(4)(b) of the *Industrial Relations Act 2016* (Qld) because of an illness or domestic or other pressing necessity – where applicant makes no claim that an illness or domestic or other pressing necessity caused the applicant to resign – held that resignation because of general dissatisfaction with employer not a basis for a claim for pro rata payment of long service leave pursuant to s 95 of the *Industrial Relations Act 2016* (Qld) – held that the Commission should refrain from hearing the application pursuant to s 541(b)(ii) of the *Industrial Relations Act 2016* (Qld) because further proceedings are not desirable in the public interest – application dismissed

LEGISLATION:

Industrial Relations Act 2016 (Qld) s 95, 475(1), s 541(b)(ii).

CASES:

AWU v Sunshine Coast Private Hospital [2003] 172 QGIG 1097.

Campbell v State of Queensland (Department of Justice and Attorney-General) [2019] ICQ 18.

GlaxoSmithKline Australia Pty Ltd v Makin (2010) 197 IR 266.

State of Queensland v Lockhart [2014] ICQ 006.

Reasons for Decision

- [1] On 14 February 2024, Ms Jody Madeline Spears ('the Applicant') made an application for proportionate payment of long service leave pursuant to section 475(1) of the *Industrial Relations Act 2016* (Qld) ('IR Act'). The Applicant contends that payment of pro rata long service leave was due upon termination of her employment.

Background

- [2] The parties agree that the Applicant's relevant employment period spans 10 November 2014 to her resignation tendered with four weeks' notice on 26 April 2023, making the last day of work 26 May 2023. It is not in dispute that the Applicant worked continuously between 10 November 2014 and 26 May 2023. The length of continuous service is therefore approximately eight and a half years. The Applicant's stated reason for resigning was that she "did not wish to continue with the new owners" after the sale of shares from Quantum Trading Enterprises Pty Ltd ('the Respondent') to CMT Group Pty Ltd ('CMT Group') in March 2023 ('the Sale').
- [3] The matter was mentioned on 27 February 2024. During that hearing the following exchange occurred:¹

COMMISSIONER: ...The application, Ms Spears, sets out quite clearly, as I can see it, that you resigned your employment essentially because you were dissatisfied with the way things had changed with some corporate changes and that you were – you did so in order to go to another job; is that right?

APPLICANT: Yes. I found other employment once I knew of the sale of the business. Yes.

- [4] During that hearing, I expressed concern that the Applicant resigned before she reached 10 years' service in circumstances where the resignation was apparently not because of illness or a domestic or other pressing necessity. I advised the parties that I was considering exercising the power to refrain from hearing the matter pursuant to s 541(b)(ii) of the IR Act and would be issuing orders seeking submissions on that point.
- [5] In a set of directions orders dated 27 February 2024, I ordered the parties to file written submissions addressing:
- whether the applicant is entitled to a proportionate payment for a long service leave pursuant to s 95(4) of the IR Act; and

¹ Transcript, Line 41-47 1-2

- whether the Queensland Industrial Relations Commission ('the Commission') should refrain from hearing the application pursuant to section 541(b)(ii) of the IR Act.

[6] The parties opted for the matter to be decided on the papers.

Issue

[7] The issue to be determined is whether the Commission should refrain from hearing the application pursuant to section 541(b)(ii) of the IR Act.

Relevant law

[8] Subsection 95(2) of the IR Act gives employees an entitlement to long service leave on full pay after 10 years of continuous service. However, subsection 95(3) entitles employees to a proportionate payment of long service leave on termination after the completion of at least 7 years continuous service under certain circumstances. Subsection 95(4) outlines such circumstances.

[9] Subsection 95(4) of the IR Act says:

(4) However, if the employee's service is terminated before the employee has completed 10 years continuous service, the employee is entitled to a proportionate payment only if—

(a) the employee's service is terminated because of the employee's death; or

(b) the employee terminates the service because of—

(i) the employee's illness; or

(ii) a domestic or other pressing necessity; or

(c) the termination is because the employer—

(i) dismisses the employee because of the employee's illness; or

(ii) dismisses the employee for another reason other than the employee's conduct, capacity or performance; or

(iii) unfairly dismisses the employee; or

(d) the termination is because of the passing of time and—

(i) the employee had a reasonable expectation that the employment with the employer would continue until the employee had completed at least 10 years continuous service; and

(ii) the employee was prepared to continue the employment with the employer.

[10] Section 541(b)(ii) if the IR Act says:

The court or commission may, in an industrial cause do any of the following—

... (b) dismiss the cause, or refrain from hearing, further hearing, or deciding the cause, if the court or commission considers—

... (ii) further proceedings by the court or commission are not necessary or desirable in the public interest...

[11] In *Campbell v State of Queensland (Department of Justice and Attorney-General)* ('*Campbell*'),² his Honour, Martin J, considered the meaning of 'public interest' in the context of s 541(b)(ii).³ In the course of considering the matter, his Honour cited the decision of O'Connor DP, as his Honour then was, in *State of Queensland v Lockhart* ('*Lockhart*').⁴ In *Lockhart*, his Honour cited a Full Bench of Fair Work Australia's understanding of 'public interest' in *GlaxoSmithKline Australia Pty Ltd v Makin* ('*GlaxoSmithKline*').⁵

Appeals have lain on the ground that it is in the public interest that leave should be granted in the predecessors to the Act for decades. It has not been considered useful or appropriate to define the concept in other than the most general terms and we do not intend to do so. **The expression 'in the public interest', when used in a statute, classically imports a discretionary value judgment to be made by reference to undefined factual matters, confined only by the objects of the legislation in question.**

Although the public interest might be attracted where a matter raises issues of importance and general application, or where there is a diversity of decisions at first instance so that guidance from an appellate court is required, or where the decision at first instance manifests an injustice, or the result is counter intuitive, or that the legal principles applied appear disharmonious when compared with other recent decisions dealing with similar matters, it seems to us that none of those elements is present in this case.'

[12] In *Campbell*, his Honour, Martin J, adopted the approach outlined by the Full Bench of Fair Work Australia in *GlaxoSmithKline* and stated that "[i]n considering the public interest, regard must be had to the legislative basis of the principal relief sought and the evidence before the Commission."⁶ His Honour also observed that the power in s 541 should be exercised with "due circumspection on a proper consideration of relevant materials".⁷ In other words, the power in s 541 should be exercised cautiously after taking into account of all of the relevant circumstances.

² [2019] ICQ 18 ('*Campbell*').

³ Ibid [13]-[34].

⁴ Ibid [24], citing in *State of Queensland v Lockhart* [2014] ICQ 006 ('*Lockhart*').

⁵ Emphasis added; *Lockhart* (n 4) [22], citing *GlaxoSmithKline Australia Pty Ltd v Makin* (2010) 197 IR 266.

⁶ *Campbell* (n 1) [30].

⁷ *Campbell* (n 1) [29].

- [13] His Honour considered what the decision-maker should be guided by and observed that the "value judgment incorporated in s 541(b)(ii) is a broad one."⁸ The decision-maker therefore has significant latitude pursuant to s 541 about what evidence they will choose to consider.

Relevant facts and submissions

- [14] As mentioned above, the Applicant's application and her submissions set out the reason for her resignation. Specifically, the Applicant resigned due to dissatisfaction with the Respondent's actions during and after the Sale. One reason why the Applicant was dissatisfied was because she believed that she had been "demoted to an order entry position". The Respondent denies that it demoted the Applicant. The Applicant also says that her dissatisfaction was motivated by the Respondent's decision to move its warehouse and a change to her working hours. The Applicant submits that those changes "did not align with me" and resigned on that basis.
- [15] The Applicant submits that a further basis for her dissatisfaction was that she felt that she was being treated 'like furniture'. The Applicant submits that, had she known about the Sale, she would have ended her employment with the Respondent before the Sale and requested that the Respondent pay out her long service leave. The Applicant submits that it is unfair that she was not given this choice.
- [16] In support of the claim, the Applicant alleges that "[t]he previous owners of Quantum in goodwill passed the amount of long service leave onto [the Respondent], in the sale they had the amounts for myself and others taken off the price of the sale as they wanted there (sic) long serving staff to be looked after". However, the Applicant gives no evidence supporting that allegation.
- [17] The Applicant's resignation was by way of an email to the Respondent. In that email the Applicant expressed that she "was not happy with my future employment & position in the changeover with [the Respondent]" and that she felt that "the knowledge I've gained working here for the past 8.5 years has been disregarded."
- [18] The Respondent submits that the Applicant's role and working hours did not change. The Respondent also submits that, far from disregarding the Applicant, the Respondent had in fact attempted to help accommodate the Applicant. In support of this submission, the Respondent points to its email in reply to the Applicant's resignation. The Respondent's Managing Director said in that email that the Respondent was worried about placing extra pressure on the Applicant and that the Respondent was "very happy to tailor the role to suit what you are looking for."

⁸ *Campbell* (n 1) [31]-[32].

Consideration

- [19] As noted above, subsection 95(4)(b) of the IR Act applies limits to when an employee with more than 7, but less than 10, years continuous service is entitled to a proportionate payment of long service leave upon resignation. Those limits are confined to resignations either because of illness,⁹ or because of a domestic or other pressing necessity.¹⁰
- [20] The Applicant advances two arguments in support of her claim. The first is that there is a lack of fairness to her being denied the choice to take an exit package (including a proportionate payment of long service leave) before the Sale. The second is that it would be unfair for the Respondent to benefit from any allowance made in the Sale price where no such payment would be made the Applicant. Obviously, neither of those two arguments address the essential requirements of subsection 95(4)(b). The Applicant does not allege that she resigned because of an illness or a domestic or other pressing necessity.
- [21] On the Applicant's own case, the Applicant resigned because she was dissatisfied and wished to pursue other employment. However, that does not meet the threshold of section 95(4)(b). The reason for the resignation must be one that falls within the section.¹¹ In other words, the reason for resignation must either be for illness or a domestic or other pressing necessity before that section of the Act is enlivened.
- [22] In this case the Applicant has made no claim that illness played any part in why she resigned, so the question of whether a claim for proportionate payment of long service leave cannot arise under that heading. Much of the same can be said in relation to a resignation for a domestic or other pressing necessity. No such claim is made under that heading either.
- [23] Arguments around the fairness of not being offered an exit package prior to the Sale, or allowances in the Sale price for accrued leave, form no basis for a lawful claim pursuant to s 95(4) of the IR Act. The Applicant has not made a claim that falls within the section.
- [24] As noted above, I should only exercise the power to dismiss or refrain from hearing pursuant to s 541(b)(ii) cautiously after considering all of the circumstances. I find that this is an obvious case, however. It is immediately apparent that the Applicant does not identify any cause of action by which she would be entitled to a proportionate payment of long service leave following her resignation. Accordingly, I conclude that it is not in the public interest to hear the matter. It is also immediately apparent to me that the application cannot possibly succeed because it fails to make out an actionable claim for a proportionate payment of long service leave. I therefore also conclude that it is unnecessary to hear the application or conduct further proceedings. I dismiss the application for the foregoing reasons.

⁹ *Industrial Relations Act 2016* (Qld), s 95(4)(b)(i).

¹⁰ *Ibid* s 95(4)(b)(ii).

¹¹ *AWU v Sunshine Coast Private Hospital* [2003] 172 QGIG 1097, 1100-1102.

Order

The application is dismissed