

**APPEAL AGAINST A DECISION OF THE INDUSTRIAL MAGISTRATE IN  
MATTER NO. M 76/2018 GIVEN ON 28 NOVEMBER 2019  
WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**

**CITATION** : 2020 WAIRC 00288

**CORAM** : SENIOR COMMISSIONER S J KENNER  
COMMISSIONER T EMMANUEL  
COMMISSIONER D J MATTHEWS

**HEARD** : WEDNESDAY, 26 FEBRUARY 2020, TUESDAY,  
17 MARCH 2020; WRITTEN SUBMISSIONS  
21 APRIL 2020, 5 MAY 2020 AND 15 MAY 2020

**DELIVERED** : THURSDAY, 21 MAY 2020

**FILE NO.** : FBA 2 OF 2020

**BETWEEN** : DR OLUMUYIWA SORUNMU  
Appellant

AND

DIRECTOR-GENERAL OF HEALTH  
First Respondent

NORTH METROPOLITAN HEALTH SERVICE BOARD  
Second Respondent

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**ON APPEAL FROM:**

**Jurisdiction** : Industrial Magistrate's Court  
**Coram** : Industrial Magistrate D Scaddan  
**Citation** : 2019 WAIRC 00840  
**File No** : M 76 OF 2018

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Catchwords : Industrial Law (WA) – Appeal against decision of Industrial Magistrate to dismiss appellant’s claim at first instance – Seeking Contract Completion Payment under cl 20(5) of the *Department of Health Medical Practitioners (Metropolitan Health Services) AMA Industrial Agreement 2013* – No error in reasoning of Industrial Magistrate – Appeal dismissed

Legislation : *Health Practitioners Regulation National Law (WA) Act 2010*

Result : *Appeal dismissed*

**Representation:**

Appellant : In person

Respondent : Mr R Andretich of counsel

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### *Reasons for Decision*

- 1 An extension for time for the appellant to file the present appeal was granted by the Full Bench on 17 March 2020: *Dr Sorunmu v Director-General Department of Health and Anor* [2020] WAIRC 00178. The claim at first instance before the Industrial Magistrates Court was that the respondent had contravened or failed to comply with the terms of cl 20(5) of the *Department of Health Medical Practitioners (Metropolitan Health Services) AMA Industrial Agreement 2013*, in relation to a Contract Completion Payment.

### **Brief background**

- 2 The brief background to the claim before the Industrial Magistrates Court is set out in my reasons in the extension of time application (Emmanuel and Matthews CC agreeing) where I observed:
  2. It was common ground before the court that the appellant was employed by the respondent as a medical practitioner on a series of fixed term contracts of employment from May 2003. The appellant's final fixed term contract of employment came to an end on 30 June 2016. It was also common ground that the appellant's registration as a medical practitioner with the Australian Health Practitioners Regulation Agency expired on 20 November 2015. The appellant was not successful in applying for registration in a limited area of need. From the time of the appellant's registration expiry to the cessation of his contract of employment on 30 June 2016, the appellant did not work for the respondent and he took both annual leave and later unpaid leave.
  3. In the proceedings at first instance the respondent brought an application under reg 7(1)(h) of the Industrial Magistrates Court (General Jurisdiction) Regulations 2005, effectively seeking an order that the appellant's claim be dismissed. The learned Industrial Magistrate granted the respondent's application and dismissed the appellant's claim. The learned Industrial Magistrate considered the terms of cl 20(5) of the Agreement and concluded that on its proper construction, in accordance with the definitions set out in cl 8 of the Agreement a "medical practitioner" (as defined) must, in order to meet the requirements of cl 20(5) of the Agreement, be registered under the Health Practitioners Regulation National Law (WA) Act 2010. This was because a medical practitioner could not "seek" a new contract of employment on the expiry of a fixed term contract with the respondent, if the practitioner was not able to work as a medical practitioner by reason of not being registered under the Health Practitioners Act. By their nature, the proceedings before the court did not involve a full hearing of the issues in dispute.
  4. Accordingly, as the reasoning went, given at the time of the cessation of the appellant's fixed term contract on 30 June 2016 the appellant was not so registered, he was not ready, willing and able to seek a new contract of employment with the

respondent and therefore the appellant did not qualify for a Contract Completion Payment under cl 20(5) of the Agreement.

### Findings and conclusions at first instance

- 3 In considering the claim by the appellant that the respondent had contravened or failed to comply with cl 20(5) of the Agreement, the learned Industrial Magistrate relevantly found and concluded:
  - (a) The court should proceed with caution before concluding that a claim (or part of a claim) should be dismissed at an interlocutory stage;
  - (b) That the court should only do so where however the facts are found, there is no legal basis for the conclusion contended by a party;
  - (c) A key fact, that being that the appellant was not registered with AHPRA as of 30 June 2016, was not in dispute;
  - (d) By cl 8 of the Agreement "Medical practitioner" means a medical practitioner as defined under the *Health Practitioner Regulation National Law (WA) 2010* and "practitioner" means a medical practitioner employed under the Agreement;
  - (e) That the *National Law* includes definitions of "medical practitioner" as a person registered under the *National Law* in the medical profession;
  - (f) As the appellant was not registered as a registered health practitioner under the *National Law* in the medical profession, he was no longer entitled to practice in the profession from 20 November 2015 to 30 June 2016;
  - (g) The purpose of a Contract Completion Payment under cl 20(5) of the Agreement was to compensate a practitioner who genuinely wished to and was able to be further employed in the public health service, by the health service, but is not able to do so;
  - (h) The meaning of "practitioner" in the Agreement having regard to the terms of the *National Law* means a "*medical practitioner registered under the Health Practitioner Regulation National Law (WA) Act 2010*";
  - (i) If a practitioner is, at the time of seeking a new fixed term contract with the respondent, not able to work as a medical practitioner because they are not registered under the *National Law*, then they cannot do that which the Agreement provides for i.e. to work as a medical practitioner in the public health system; and

- (j) Based on the foregoing, as an unregistered practitioner at the time of the expiry of his fixed term contract on 30 June 2016, the appellant was not eligible for a Contract Completion Payment under cl 20(5) of the Agreement.
- 4 There is no challenge to the findings and conclusions of the learned Industrial Magistrate as set out above.
- 5 The material in relation to the cessation of the appellant's final fixed term contract of employment is at AB33 - 34. The Australian Health Practitioner Health Regulation Agency certified on 19 October 2016 that the appellant's registration under the *National Law* had the status of "unregistered" as at 20 November 2015. This "Certification of Registration Status" was before the court: AB47 - 48. Additionally, the Certificate records that in the period of registration from 21 November 2014 to 20 November 2015 the appellant was required to meet several conditions, one of which was that he had to pass several examinations.
- 6 In connection with these matters, by letter of 27 May 2016 the AHPRA set out the appellant's registration history and its reasons for refusing to grant the appellant further registration under the *National Law*. In the main, this was due to the appellant's failure to pass the required examinations in the period allowed: AB50 - 51.

## Grounds of appeal

- 7 The appellant's grounds of appeal as set out in the notice of appeal accepted for filing in the Registry on 9 January 2020 are restated and they are as follows:

Errors in law and facts were made in reaching this decision . the code of good faith as specified by the western Australian industrial relationst act(*sic*) of 1979 clause 42 C and essential facts of the situation with respect to my qualifications and experience, were ignored in reaching the decision.

The two issues brought before the industrial magistrate court were the contract completion payment and accrued long service leave, both of which are provions(*sic*) under the AMA industrial agreement of 2013 clause 20, however, the smaller amount was paid in part and the other payment refused. Under the industrial agreement, both parties are subject to all not part of the agreement.

Finally, my experience and qualifications, were adequate for registration but the employer (*sic*) decline(*sic*) to provide the administrative support that is mandatory under the contract signed with me. If employers are allowed to get away with this behaviour, it can be used to deny employees their legal entitlements.

- 8 At par 16 of the extension of time decision, as to the grounds of appeal, I said:

These are not grounds of appeal. There is no attempt to identify any such alleged “errors in law and facts” asserted in the Notice. No attempt has been made to state how it was that the Industrial Magistrates Court made errors, for example in the interpretation of the Agreement or the requirements imposed by the *Health Practitioners Act* or any other matter. There is no indication how, if at all, the Industrial Magistrates Court mistook the facts as asserted in the appeal grounds. Simply put, from the Notice of Appeal, the Full Bench has no real idea what the appellant’s complaint is about, concerning the learned Industrial Magistrate’s decision.

- 9 I further observed at par 17 that in the course of the extension of time proceedings, the appellant was given an opportunity to explain what he contended were the errors in the decision of the Industrial Magistrate, those being that he was treated unfairly by the respondent; that the respondent failed to demonstrate good faith; and that when forced to take leave in February 2016, this constituted the end of his contract. No application has been made by the appellant to amend his grounds of appeal and they stand for the purposes of the disposition of the appeal.

### **Relevant provisions of the Agreement**

- 10 It is convenient at this point to set out relevant provisions of the Agreement, considered by the court. Clause 20(5) provided:

#### **20. Contract of Service**

...

- (5) A practitioner, who upon expiry of a fixed term contract, is unsuccessful in seeking a new contract shall be paid a Contract Completion Payment equal to 10% of their final base salary, for each year of continuous service, or part thereof paid on a proportionate basis, calculated on completed months' of service up to a maximum of 5 years. No other termination, redundancy or severance payment shall be made except as provided for in this Agreement.

...

- 11 Additionally, under cl 8 of the Agreement, definitions of “Medical Practitioner” and “Practitioner” were as follows:

“*Medical Practitioner*” means a medical practitioner as defined under the Health Practitioner Regulation National Law (WA) Act 2010 as amended from time to time

“*Practitioner*” means a medical practitioner employed under this Agreement

## Contentions on the appeal

- 12 In his written submissions, as in the extension of time proceedings referred to above, the appellant maintained that the actions of the respondent were not fair in that in a manner not specified in his submissions, the respondent contravened its duty of good faith under s 42C of the Act. Furthermore, the appellant contended that the respondent deliberately decided to avoid responsibilities it had under the appellant's contract of employment. It was not said what those deliberate decisions were. The appellant also referred to various provisions of the Agreement, other than those providing for a Contract Completion Payment, none of which, however, are relevant for present purposes. The appellant also maintained, as he did in the extension of time proceedings, that whilst he was at the material time taking steps to obtain his specialist registration, he could not continue to do so because the respondent had not provided relevant documents.
- 13 The respondent contended that the appellant has not maintained any arguable grounds of appeal. The reference to good faith and s 42C of the Act are not relevant to the issues arising in this matter but are only relevant to bargaining for an industrial agreement under the legislation. The respondent further submitted that the other provisions of the Agreement referred to by the appellant were not relevant to his claim before the court.
- 14 As to the final reference to the supposed failure by the respondent to assist the appellant with the provision of documents, the respondent contended that there was no such obligation on the respondent under the appellant's contract of employment, whether express or implied. And such matters, were not in any event, relevant to his claim for a Contract Completion Payment under cl 20(5) of the Agreement. Also, the respondent pointed to the letter to the appellant from AHPRA of 27 May 2016 (AB50 - 51) which set out that the appellant had sufficient time to meet registration requirements and there was no mention in the letter of anything the respondent could or should have done.
- 15 In submissions in reply, albeit filed later than the Full Bench's directions permitted, the appellant reasserted his view as to the unfairness of the respondent's actions and that it did not provide relevant documents to enable him to complete the registration process. The appellant also referred to what he described as "administrative requirements for registration" by AHPRA under the *National Law* and that the failure of the respondent to provide him with a further 12 month contract was a reason that he was not able to complete his registration. The appellant also again referred to other provisions of the Agreement especially that relating to pro rata long service leave and added that the Agreement, as to a Contract Completion Payment, did not distinguish between a former or current practitioner.

## Consideration

- 16 Having now given the appellant the opportunity to put his case, I am not persuaded that the appeal has any merit. The appellant has not ultimately challenged findings of fact made by the learned Industrial Magistrate or the conclusions that she reached in the interpretation of cl 20(5) of the Agreement, read with the relevant provisions of the *National Law*. The appellant has not attempted to do so. Matters raised by the appellant in his grounds of appeal and in his submissions, including those in the extension of time proceedings, are not relevant to the refusal of his claim for a Contract Completion Payment under cl 20(5) of the Agreement.
- 17 I consider that her Honour's reasoning as to the interpretation of the relevant provisions of the *National Law* and cl 20(5) of the Agreement, on the undisputed facts of this case, to be entirely correct. Her Honour made no error of principle and engaged in orthodox interpretation of both the relevant provisions of the legislation and the Agreement. As I have already said, it was not contended to the contrary by the appellant. Put simply, the appellant was not registered as a medical practitioner under the *National Law* on the expiry of his fixed term contract on 30 June 2016, under the Agreement. He had to be, under cls 8 and 20(5) of the Agreement, to be considered "A 'practitioner' who, upon expiry of a fixed term contract, is unsuccessful in seeking a new contract...". A person cannot seek a new fixed term contract under the Agreement, if they cannot work as a "practitioner" (as defined in the Agreement), due to not being registered. It was also plainly not the case that a former practitioner may have been eligible for a Contract Completion Payment. The eligibility was and could only have been a person who was a registered practitioner and who was able to practice in the health system in this State.
- 18 Whilst the appellant has maintained in these and the extension of time proceedings that the respondent acted unfairly towards him, which, I might add, was strongly denied by the respondent, these are not considerations relevant to whether the appellant was, as at the time of the cessation of his fixed term contract, entitled to a Contract Completion Payment under the Agreement. The entitlement to such a payment under the Agreement was the only matter the court was dealing with and the only matter that we can consider on this appeal from the decision of the court.



## **Conclusion**

<sup>19</sup> The appeal should be dismissed.

### **EMMANUEL C:**

<sup>20</sup> I have had the benefit of reading the draft reasons of the Senior Commissioner. I agree with those reasons and have nothing to add.

### **MATTHEWS C:**

<sup>21</sup> I also have read the draft reasons of the Senior Commissioner. I too, agree with those reasons and have nothing further to add.