

APPEAL AGAINST A DECISION OF THE INDUSTRIAL MAGISTRATE IN MATTER NO.
M 201/2020 GIVEN ON 8 JULY 2020
WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

FULL BENCH

CITATION : 2020 WAIRC 00809

CORAM : CHIEF COMMISSIONER P E SCOTT
COMMISSIONER D J MATTHEWS
COMMISSIONER T B WALKINGTON

HEARD BY : WRITTEN SUBMISSIONS

DELIVERED : TUESDAY, 22 SEPTEMBER 2020

FILE NO. : FBA 8 OF 2020

BETWEEN : LAUNDRY HOLDINGS PTY LTD
Appellant

AND

NATHAN THOMAS
Respondent

ON APPEAL FROM:

Jurisdiction : **INDUSTRIAL MAGISTRATES COURT**
Coram : **INDUSTRIAL MAGISTRATE M FLYNN**
File No : **M 201/2019**

CatchWords : Industrial law (WA) – Appeal against decision of the Industrial Magistrate – Jurisdiction of Full Bench to deal with entitlements under the *Fair Work Act 2009* (Cth) – Commission not an eligible State or Territory court to exercise jurisdiction under FW Act – Extension of time to respond to jurisdictional issue – Appeal dismissed

Legislation : *Fair Work Act 2009*
Industrial Relations Act 1979, s 84

Result : Appeal dismissed

Representation:

Appellant : Mr C Silke
Respondent : Mr N Thomas on his own behalf

Case(s) referred to in reasons:

Ghimere v Karriview Management Pty Ltd (No 2.) [2019] FCA 1627

Adrian Manescu v Baker Hughes Australia Pty Limited [2020] WAIRC 00683

Rogers v J-Corp Pty Ltd [2015] WAIRC 00862; (2015) 95 WAIG 1513

Reasons for Decision

SCOTT CC:

Introduction

- 1 This is an appeal to the Full Bench of the Western Australian Industrial Relations Commission said to be made pursuant to s 84 of the *Industrial Relations Act 1979*, against the decision of the Industrial Magistrate's Court in matter M 201 of 2019, issued on 8 July 2020.

Background

- 2 The appeal was filed on 29 July 2020, along with an application for an extension of time in which to file the appeal book. The reason given by Mr Clifford Silke, representing the appellant, for the application to extend time was that the appellant is self-represented and its director, who has carriage of the matters, is not available until mid-October 2020 because he is sailing in the Kimberleys. He is only contactable and able to provide instructions intermittently. For those reasons, an extension of time until 28 October 2020 was sought to file the appeal book.
- 3 It is clear from the Reasons for decision of the Industrial Magistrate's Court that the matter before the industrial magistrate was a claim relating to entitlements said to arise under the *Fair Work Act 2009* (Cth) (FW Act) and an award made under that Act, the *Hospitality Industry General Award 2010*.
- 4 By letter dated 14 August 2020, at the direction of the Full Bench, the Associate wrote to Mr Silke, saying that:

The Full Bench notes that the matter before the Industrial Magistrates Court related to entitlements said to arise under the Fair Work Act 2009 (Cth) (FW Act) and an award made under that act. You are referred to s 562, 563(f) and 565 of the FW Act and the definition of 'eligible State or Territory court' in s 12 of the Act, which set out the appropriate avenue for an appeal against a decision of the Industrial Magistrates Court in those circumstances. You are referred to the decisions of the Full Bench in *Rogers v J-Corp* [2015] WAIRC 00862; (2015) WAIG 1513 and *Manescu v Baker Hughes* [2020] WAIRC 00683. I attach copies of the sections of the FW Act and those decisions for your information.

The Full Bench has directed that:

1. the appellant is to file written submissions about whether the Full Bench has jurisdiction to hear this appeal by 4:30 PM on Friday, 28 August 2020; and
 2. the respondent is to file written submissions in reply by 4:30 PM on Friday, 4 September 2020.
- 5 On 24 August 2020, Mr Silke telephoned the Associate and said that he would respond by email the next day. On 25 August 2020, the Associate received an email from Mr Silke in which he noted his previous request for an extension of time in which to file the appeal book, and asked for an extension of time to reply to the issue of jurisdiction as he was '[n]ot in a position to consider the facts carefully with limited access to expert opinion'.

- 6 The respondent, Mr Nathan Thomas, was invited to respond to the issue of the application for an extension of time in which to respond to the issue of jurisdiction. By email dated 31 August 2020, Mr Thomas objected to the extension being granted to the appellant. He noted that Mr Silke's solicitors had been in contact with him many times during the entirety of the matter before the Industrial Magistrate's Court. Mr Thomas said that the matter related to entitlements under the FW Act and the National Employment Standards. He said that it was his understanding that an appeal against the decision of an eligible State or Territory court in regard to the FW Act lies to the Federal Court. He asked that the appeal be dismissed.
- 7 By letter dated 4 September 2020, the Associate again wrote to Mr Silke at the direction of the Full Bench. The Associate noted the request for the extension of time in which to respond to the letter of 14 August 2020 and that the Full Bench had taken account of the respondent's objection. The letter went on to note:
- The Full Bench has considered all of the circumstances and is concerned by the delay created by the extension proposed by the appellant of 28 October 2020.
- The Full Bench has directed me to inform you that an extension has been granted, however the extension is for a further 14 days. You will be required to respond to the issue raised in my letter of 14 August 2020 by no later than 4:00 PM on Friday 18 September 2020.
- Should you fail to respond by that time, the Full Bench will proceed to consider whether the appeal is within jurisdiction based on the material it currently has before it.
- 8 This email was sent to the same email address as the previous correspondence directed to Mr Silke and was sent on Friday, 4 September 2020. In effect, the time for the appellant to respond had been extended from 28 August to 18 September 2020, a period of 21 days.
- 9 By 4 pm on Friday, 18 September 2020, there had been no response received from the appellant.

Consideration and conclusion

- 10 In accordance with the notice given to the appellant, the Full Bench now proceeds to consider whether the appeal is within jurisdiction based on the material it currently has before it. That material is that this is an appeal against the decision of the Industrial Magistrate. The matter before the Magistrate arose under the FW Act and the *Hospitality Industry (General) Award 2010*.
- 11 I note the decisions of the Full Bench in *Rogers v J-Corp Pty Ltd* [2015] WAIRC 00862; (2015) 95 WAIG 1513; Colvin J in *Ghimere v Karriview Management Pty Ltd (No 2.)* [2019] FCA at 1627 at [19]; and the Full Bench in *Adrian Manescu v Baker Hughes Australia Pty Limited* [2020] WAIRC 00683. These decisions make clear that the appropriate jurisdiction for an appeal against a decision of the Industrial Magistrate's Court in dealing with a matter under the FW Act, 'lies to the Federal Court from an eligible State or Territory court exercising jurisdiction under this Act' (s 565(1) of the FW Act). In those circumstances, there is no jurisdiction in the Full Bench to deal with the matter.
- 12 Further, I am of the view that had the appellant wished to make a submission, he has been provided with a reasonable opportunity to do so. His unavailability in the particular circumstances is, in my view, not sufficient to warrant the matter being delayed further and it is

not in the public interest for the matter to remain on foot. In all the circumstances, an order should issue dismissing the appeal.

MATTHEWS C:

13 I agree with the Reasons for decision of Chief Commissioner Scott and have nothing to add.

WALKINGTON C:

14 I also agree and have nothing to add.