WESTERN AUSTRALIAN INDUSTRIAL MAGISTRATES COURT

CITATION	**:**	2020 WAIRC 00836
CORAM	**:**	INDUSTRIAL MAGISTRATE D. SCADDAN
HEARD	**:**	WEDNESDAY, 2 SEPTEMBER 2020
DELIVERED	**:**	THURSDAY, 1 OCTOBER 2020
FILE NO.	**:**	M 24 OF 2020
BETWEEN	**:**	GIUSEPPE RIOLO **CLAIMANT** AND KISS KISS FOOD SUPPLIES PTY LTD **RESPONDENT**

CatchWords	**:**	INDUSTRIAL LAW – Small Claim under the *Fair Work Act 2009* (Cth) – Failing to pay ordinary wages – Failing to pay untaken paid annual leave upon termination of employment – Contravention of National Employment Standards – Contravention of a modern award – Withholding entitlements
Legislation	**:**	*Fair Work Act 2009* (Cth) *Corporation Act 2001* (Cth) *Industrial Magistrates Courts (General Jurisdiction) Regulations 2005* (WA) *Taxation Administration Act 1953* (Cth) *Industrial Relations Act 1979* (WA)
Instruments	**:**	*Food, Beverage and Tobacco Manufacturing Award 2010* (Cth)
Case(s) referred to in reasons:	**:**	***McShane v Image Bollards Pty Ltd*** [2011] FMCA 215 ***Mildren v Gabbusch*** [2014] SAIRC 15 ***Miller v Minister of Pensions*** [1947] 2 All ER 372 ***Briginshaw v Briginshaw*** [1938] HCA 34; (1938) 60 CLR 336
Result	**:**	Claim is proven
Representation:		
Claimant	**:**	Self-represented
Respondent	**:**	Ms M. Sultana on behalf of the Respondent (as a director)

REASONS FOR DECISION

1 It is unfortunate that employers do not obtain appropriate advice before acting against an employee. All too often the employer becomes entrenched in the indignity of the situation which unnecessarily clouds and infects their decisions. Had the employer obtained appropriate advice they may have saved themselves and others the time, expense and angst associated with litigation.

2 This claim is a good example of an employer who was, and still is, unable to get past allegations its director made against an employee. Leaving aside the truth of the allegations, the director's conduct on behalf of the employer opens up for scrutiny possible perversions, the irony of which is lost.

Admission Of Part Of The Claimant's Claim

3 During the course of the hearing, Ms Manuela Sultana (Ms Sultana), director of Kiss Kiss Food Supplies Pty Ltd, the Respondent, admitted the Respondent owed Mr Giuseppe Riolo, the Claimant, untaken paid annual leave. This admission was properly made, as there was never any basis for the Respondent failing to pay, or withholding, untaken paid annual leave upon the termination of the Claimant's employment.

4 The issue in dispute was the number of hours of accrued annual leave owing. However, to his credit the Claimant admitted he estimated the number of hours of accrued annual leave (112 hours)[1] and he was prepared to accept the Respondent's calculation of annual leave hours (84.13 hours).[2]

5 The National Employment Standards (NES) relevant to annual leave is contained in pt 2 - 2, div 6 of the *Fair Work Act 2009* (Cth) (FWA). Section 90(2) of the FWA provides that if an '*employee has a period of untaken paid annual leave*' at the cessation of employment, '*the employer must pay* [to] *the employee* [that] *amount that would have been payable … had the employee taken* [the] *period of leave*'.

6 Nothing in pt 2 - 2, div 6 of the FWA provides for the withholding of untaken paid annual leave owed at the cessation of employment.

7 In the absence of any employment instrument or other written law enabling the Respondent to withhold annual leave payments, the circumstances surrounding the Claimant leaving his employment are irrelevant to the Claimant's claim. The outcome in the Claimant's claim for the payment of untaken paid annual leave does not depend upon whether he voluntarily left his employment or whether he was summarily dismissed for misconduct.

8 Accordingly, in relation to the Claimant's claim as it relates to annual leave, I find that the Respondent contravened s 90(2) of the FWA by failing to pay the Claimant upon the termination of his employment an amount that would have been payable to him had he taken paid annual leave. I find that the number of hours of accrued annual leave at the time of the termination of the Claimant's employment was 84.13 hours.

The Remainder Of The Claimant's Claim

9 The remaining aspect of the Claimant's claim relates to the Respondent's failure to pay him wages for work undertaken.

10 These reasons deal with this remaining aspect of the Claimant's claim.

11 The Claimant was employed by the Respondent as a full-time pastry chef from 25 February 2019 to 15 October 2019. He was employed pursuant to a contract of employment signed and dated 25 February 2019 (Contract of Employment), which expressly provided that the terms and conditions of the Claimant's employment was set out in the *Food, Beverage and Tobacco Manufacturing Award 2010* (Cth) (the Award), unless the Contract of Employment contained more generous provisions.[3]

12 The Claimant alleges the Respondent contravened the Award and the FWA in failing to pay him ordinary wages from 1 October 2019 to 4 October 2019, 7 October 2019 to 11 October 2019 and on 15 October 2019.[4]

13 The Claimant elected the small claims procedure under s 548 of the FWA.

14 Schedule I of these reasons for decision outline the jurisdiction, practice and procedure of the Industrial Magistrates Court of Western Australia (IMC).

15 The Respondent is an Australian proprietary company limited by shares registered pursuant to the *Corporations Act 2001* (Cth) and operates a food supply and preparation business. The Respondent is a '***constitutional corporation***' within the meaning of that term in s 12 of the FWA and is a '***national system employer***' within the meaning of that term in s 14(1)(a) of the FWA. The Claimant is an individual who was employed by the Respondent and is a '***national system employee***' within the meaning of that term in s 13 of the FWA.

16 I am satisfied the Award applied to the Claimant's employment having regard to the '*Job Purpose*' and '*Key Responsibilities*' referred to in the Contract of Employment and the definition of '***food, beverage and tobacco manufacturing***' in cl 3 of the Award and Award coverage referred to in cl 4 of the Award.[5] Further, the exclusions in cl 4 of the Award do not apply to the Claimant's employment.

17 Relevant to the Claimant's claim, the Contract of Employment contained the following terms:

- cl 5.1 – the employee is '*paid* ***monthly*** *at a rate of $20.22 per hour*' (original emphasis);
- cl 5.3 – the employee is '*paid … on the 15th day of the month*';
- cl 8.1 – consistent with the FWA, the employer can terminate the employee's employment upon giving the requisite notice in writing;
- cl 8.3 – the employee can terminate his employment consistent with the table in cl 8.1 (mirroring the employer's obligation);
- cl 10.2 – if the employee damages or breaks any property '*this must be repaired/replaced by the employee and costs incurred … will be deducted from the* [employee's] *pay at the* [employer's] *discretion*';
- cl 10.3 – if the employee produces '*second quality products that cannot be*' sold and do not meet certain standards, the employee is to '*pay for the cost of goods suffered as a loss*' with the costs to '*be deducted from the employees pay at the* [employer's] *discretion*';
- cl 11.1 – the terms and conditions in the Contract of Employment '*constitute all of the terms and conditions of* [the employee's] *employment and replace any prior understanding or agreement between* [the employee] *and the employer*'; and
- cl 11.2 – '[t]*he terms and conditions … may only be varied by a written agreement signed by both* [the employee] *and the employer*'.

18 The parties agreed the Claimant worked on the dates stated in his claim, save that there is a factual dispute concerning 30 minutes of work on 15 October 2019.

19 The Claimant claims 72.5 hours of unpaid wages for work performed for the Respondent.[6] The Respondent says the Claimant worked 72 hours, where for 30 minutes on 15 October 2019 the Claimant was in a meeting with Ms Sultana.

20 On 15 October 2019, the Claimant was summarily dismissed for serious misconduct. The circumstances surrounding the alleged serious misconduct are irrelevant where the Claimant admitted he was summarily dismissed for serious misconduct, and the IMC is not tasked with determining the merits of his dismissal.

21 On 18 November 2019, one month after his summary dismissal, the Claimant was provided with a letter signed by Ms Sultana giving written reasons for his dismissal.[7]

22 The Respondent withheld the whole of the Claimant's wages for his time worked because:

(a) the Claimant offered, and Ms Sultana agreed, for the whole of his wages to be withheld and, as a result, Ms Sultana would not 'pursue' a complaint to the police about the Claimant stealing the Respondent's property; and

(b) in the alternative, cl 18.1(d) of the Award enabled the Respondent to deduct one week's wages in lieu of the Claimant's failure to provide notice.

23 The Respondent did not provide a final pay slip upon the Claimant's termination of employment.

Was The Respondent Entitled To Withhold The Claimant's Wages?

24 Clause 8.3 of the Contract of Employment provides that if the Claimant wants to terminate his employment, he is to provide the Respondent with notice of termination in accordance with the table in cl 8.1. Relevantly, the Claimant would need to give one week's notice.

25 The Contract of Employment makes limited reference to the Respondent being authorised to make deductions from the Claimant's wages and, according to cl 2.1 of the Contract of Employment, the terms and conditions referred to in the Contract of Employment may only be varied by a written agreement signed by both the Claimant and the Respondent.

26 No varied written agreement signed by both the Claimant and the Respondent was referred to by either party or said by either party to exist.

27 Clause 10.2 and cl 10.3 of the Contract of Employment provide for deductions for damage or breakage or substandard quality. The Respondent made no reference to the Claimant's wages being withheld for any of these reasons.

28 Clause 5.3 of the Contract of Employment provides that the Claimant '*will be paid monthly … on the 15th of the month*'.[8] However, cl 28.3 of the Award provides that on termination of employment, wages due to an employee must be paid on the day of termination or forwarded to the employee on the next working day.

29 It is common ground that the Claimant's unpaid wages were not paid on 15 November 2019 (being the 15th of the next month) or on the day of termination or forwarded to the Claimant on the next working day.[9] The amount remains outstanding.

Could the Respondent withhold the Claimant's wages under cl 18.1(d) of the Award?

30 Clause 18.1(d) of the Award, relied upon by the Respondent (in the alternative) provides:

> *If an employee who is at least 18 years old does not give the period of notice required under paragraph (b), then the employer may deduct from wages due to the employee under this award an amount that is no more than one week's wages for the employee.*

31 As identified, if the Claimant terminated his employment, he was required to provide one week's notice and the Respondent could have deducted one week's wages (such deduction being a discretion), if he did not do so.

32 The Claimant says he resigned from his employment on 9 October 2019 and gave two weeks' written notice to the Ms Gabriella Sgroi (Ms Sgroi), the Respondent's Production Manager and Ms Sultana's daughter.[10]

33 Both Ms Sgroi and Ms Sultana completely disavow the Claimant gave notice of termination of his employment, although Ms Sgroi says the Claimant informed her, he had a job offer from Crown and indicated a start date of 21 October 2019.

34 For the purposes of the Respondent's reliance on cl 18.1(d) of the Award, if I accept Ms Sgroi and Ms Sultana's evidence that the Claimant had not given written notice of termination, at the time of the Claimant's summary dismissal on 15 October 2019, the Claimant was not leaving the Respondent's employment and had merely evinced an intention to work at Crown in the future.

35 Thereafter, consistent with the Claimant continuing to attend work, the Respondent summarily terminated the Claimant's employment on 15 October 2019. In this circumstance, there was no basis for the Respondent to have recourse to cl 18.1(d) of the Award.

36 Further, the contents of the letter from Ms Sultana to the Claimant dated 18 November 2019 makes no reference to deducting the Claimant's wages under cl 18.1(d) of the Award.

37 Therefore, having regard to the Respondent's evidence, the Respondent was not entitled to withhold the Claimant's wages under cl 18.1(d) of the Award where:

- Ms Sgroi and Ms Sultana deny ever receiving notice of termination of employment from the Claimant;
- at its highest, Ms Sgroi said the Claimant told her that he had been offered a job at Crown and he could start on 21 October 2019, but she did not treat this as a resignation and left it to be discussed the following day;
- nothing further was said until the Claimant's employment was terminated on 15 October 2019; and
- in the meantime, the Claimant continued to attend work in the usual course.

38 Ultimately, it was the Respondent who terminated the Claimant's employment and cl 18.1(d) of the Award had no part to play. Notably, if the Claimant's evidence was accepted, the result is the same.

39 Therefore, the Respondent was not entitled to deduct one week's wages pursuant to cl 18.1(d) of the Award.

<u>Could the Respondent withhold the Claimant's wages as part of some other agreement?</u>

40 The Claimant denied any agreement with Ms Sultana for the Respondent to withhold his wages in return for her not pursuing any further complaint with the Western Australia Police (WA Police).

41 Again, for the purposes of the Respondent's reliance on an oral agreement with the Claimant to withhold wages, if I accept Ms Sultana's evidence that:

- on 18 November 2019, she spoke with the Claimant on the telephone, who 'offered' to forego his wages in return for her not pursuing a complaint with the WA Police that he stole the Respondent's property;
- she agreed to this offer and withheld the wages;
- the letter from her to the Claimant dated 18 November 2019 reflects the content of the conversation between her and the Claimant; and
- there was no signed written agreement of the oral agreement between the Claimant and the Respondent,

a number of issues arise.

42 The letter terminating the Claimant's employment was written one month after the Claimant's termination for serious misconduct and is dated three days after the Claimant anticipated being paid in accordance with cl 5.3 of the Contract of Employment.

43 The Respondent has never disputed the Claimant worked on the days he claims he was not paid for.

44 Arising from this, the contents of the letter raised no issue with the Claimant attending work on the days he said he did or that he failed to perform functions of his employment while attending work. Therefore, it is apparent, consistent with the Claimant's evidence, the Claimant performed work for the Respondent giving rise to a requirement for the Respondent to pay the Claimant's wages, in accordance with cl 5.3 of the Contract of Employment and cl 28.1(b) of the Award.

45 To the extent the Respondent could vary the terms and conditions of the Contract of Employment, it could only do so in accordance with cl 11.2 of the Contract of Employment. That is, in writing signed by the Claimant and the Respondent.

46 Therefore, leaving aside the moral turpitude of an employer agreeing to forgo a police complaint in exchange for wages (and later saying that a police investigation would be pursued if the employee continued a court claim),[11] even if I accept Ms Sultana's evidence of an oral agreement with the Claimant, the terms of the oral agreement sought to vary cl 5 of the Contract of Employment, and any such variation could only be in writing signed by both parties. No such written variation exists.

47 Further, the letter dated 18 November 2019 purports to terminate the Claimant for stealing and makes no mention of the Claimant damaging or breaking property, or producing unsaleable second quality products, or not meeting quality assurance standards or the costs associated with this, if any costs were incurred.[12]

48 Accordingly, there were no grounds for the Respondent to make any deductions from the Claimant's wages under cl 10.2 or cl 10.3 of the Contract of Employment.

49 Section 324(1) of the FWA provides that '[a]*n employer may deduct an amount from an amount payable to an employee*', but only in respect of the reasons given in s 324(1)(a) to s 324(1)(d) of the FWA, and none of these reasons apply in the Claimant's case.

50 Therefore, in the circumstances having regard to the Respondent's evidence, the Respondent was not entitled to withhold the Claimant's wages in accordance with an alleged oral agreement between the Claimant and Ms Sultana where:

- the oral agreement purported to vary a term of the Contract of Employment for the payment of monthly wages;
- the oral agreement was not reduced to writing and signed by the Claimant and the Respondent;
- the Contract of Employment expressly required variation of its terms only by written agreement signed by the Claimant and the Respondent;
- no grounds exist to invoke cl 10.2 or cl 10.3 of the Contract of Employment; and
- section 324(1) of the FWA does not apply to the Claimant and the Respondent.

51 Therefore, in the circumstances, the Respondent was not entitled to withhold the Claimant's wages for the period claimed pursuant to an alleged oral agreement (even if I were to accept such an agreement, in fact, existed).

52 The remaining disputed factual issue is whether the Respondent is required to pay the equivalent of 72 or 72.5 hours for the period worked. I find the Respondent is required to pay 72.5 hours for the following reasons:

- according to Ms Sultana, the final 30 minutes of the Claimant's attendance at work on 15 October 2019 involved him being at a meeting leading to his dismissal;
- on Ms Sultana's evidence, the Claimant was required to attend a meeting at the employer's direction;
- the Claimant's attendance at the meeting demonstrates the Claimant's compliance with the employer's direction; and
- therefore, the Claimant continued to perform work in accordance with the employer's direction.

Outcome

53 Section 545(3) of the FWA enables an eligible State court (of which the IMC is an eligible State court) to '*order an employer to pay an amount to, or on behalf of, an employee of the employer if the court is satisfied that:*

(a) the employer was required to pay the amount under this Act or a fair work instrument; and

(b) the employer has contravened a civil remedy provision by failing to pay the amount'.

54 Therefore, there are three preconditions to an order by the IMC under s 545(3) of the FWA:

(1) an amount payable by the employer to the employee;

(2) a requirement to pay the amount by reference to an obligation under the FWA or a fair work instrument; and

(3) the failure to pay constitutes a civil remedy provision under s 539(1) and s 539(2) of the FWA.

55 I note further that the Claimant elected the small claim procedure. Thus, the amount referred to in s 548(1)(a) and s 548(1A)(a) of the FWA refers to '*an amount that an employer was required to pay to … an employee:*

(i) under [the FWA] *or a fair work instrument; or*

(ii) because of a safety net contractual entitlement; or

(iii) because of an entitlement of the employee arising under subsection 542(1)' of the FWA.

56 I am satisfied the Claimant has proven to the requisite standard the following:

- the Respondent failed to pay the Claimant for work undertaken from 1 October 2019 to 4 October 2019, 7 October 2019 to 11 October 2019 and on 15 October 2019, and I am satisfied the amount owed remains outstanding;
- the Claimant worked 72.5 hours during this same period and the Respondent was required to pay to the Claimant the amount of $1,509.45 on termination of his employment in accordance with cl 28.3 of the Award;[13]
- in failing to pay the Claimant in relation to the performance of work, the Respondent has contravened s 45 of the FWA and such a contravention is a civil remedy provision: s 539(2) of the FWA, pt 2 - 1, item 2;
- the Respondent failed to pay the Claimant's untaken paid annual leave accrued between 25 February 2019 and 15 October 2019 upon the cessation of the Claimant's employment, and I am satisfied the amount owed remains outstanding;
- the Claimant accrued 84.13 hours in untaken paid annual leave and the Respondent is required to pay to the Claimant the amount of $1,753.39 pursuant to s 90(2) of the FWA and $306.84 in leave loading pursuant to cl 34.5(a) of the Award;[14]
- in failing to pay the Claimant untaken paid annual leave upon the termination of employment, the Respondent has contravened s 44(1) of the FWA and such a contravention is a civil remedy provision: s 539(2) of the FWA, pt 2 - 1, item 1; and
- in failing to pay the Claimant leave loading, the Respondent has contravened s 45 of the FWA and such a contravention is a civil remedy provision: s 539(2) of the FWA, pt 2 - 1, item 2.

57 I also make the following final observation. It is of concern that Ms Sultana stated that if the Claimant continued his claim she will '*reopen the Police investigation with new evidence coming from the meeting with the Industrial Magistrates Court*'.[15]

58 The reference to '*Industrial Magistrates Court*' is in fact a reference to a pre-trial conference before the Registrar conducted in April 2020. Anything said by a party for the purpose of attempting to settle a case at a pre-trial conference is said without prejudice to any evidence adduced or may adduce.[16] The clear intention of pre-trial conferences is to enable parties to have frank discussions with a view to resolving claims. This clear intention would be undermined if parties were later prejudiced by their frank discussions.

59 Further to that, it is a dangerous course for an employer to attempt to dissuade a current or former employee from pursuing their legitimate legal interests by suggesting a detriment if they do.

Result

60 I make the following order:

- Pursuant to s 545(3) of the FWA and subject to any liability to the Commissioner of Taxation under the *Taxation Administration Act 1953* (Cth), the Respondent is to pay to the Claimant the amount of $3,569.68 within 30 days of the date of this order.

D. SCADDAN
INDUSTRIAL MAGISTRATE

[1] Originating Claim and the Claimant's oral evidence.
[2] Exhibit 2 – Witness Statement of Manuela Sultana dated 17 August 2020 at Annexure 15.
[3] Exhibit 1 – Witness Statement of Giuseppe Riolo dated 4 August 2020 at Attachment 1.
[4] Exhibit 1 – Attachment 4 (time sheet).
[5] Section 47(1) of the FWA.
[6] Exhibit 1 – Attachment 4.
[7] Exhibit 2 – Annexure 7.
[8] Consistent with this, the Claimant was last paid on 15 October 2019 for work undertaken from 1 to 30 September 2019 as shown in Exhibit 1, Attachment 3.
[9] See Exhibit 1, Attachment 3 for the last payslip provided to the Claimant for the work undertaken from 1 to 30 September 2019.
[10] Exhibit 1 – Attachment 2.
[11] Exhibit 2 – Annexure 11.
[12] I note s 325 of the FWA and observe that this section may have applied to cl 10.2 and cl 10.3 of the Contract of Employment.
[13] See s 46(1) of the FWA.
[14] See s 46(1) of the FWA.
[15] Exhibit 2 – Annexure 11.
[16] Regulation 23(2) of the *Industrial Magistrates Courts (General Jurisdiction) Regulations 2005* (WA).

Schedule I: Jurisdiction, Practice And Procedure Of The Industrial Magistrates Court (WA) Under The *Fair Work Act 2009* (Cth)

Jurisdiction

[1] An employee, an employee organization or an inspector may apply to an eligible State or Territory court for orders regarding a contravention of the civil penalty provisions identified in s 539(2) of the FWA.

[2] The IMC, being a court constituted by an industrial magistrate, is an '***eligible State or Territory court***': FWA s 12 (see definitions of '***eligible State or Territory court***' and '***magistrates court***'); *Industrial Relations Act 1979* (WA) s 81, s 81B.

[3] The application to the IMC must be made within six years after the day on which the contravention of the civil penalty provision occurred: FWA s 544.

[4] The civil penalty provisions identified in s 539 of the FWA include contravening a term of the NES and failing to pay in full an amount owed under the FWA: FWA s 44(1), s 323 respectively.

[5] An obligation upon an '***employer***' is an obligation upon a '***national system employer***' and that term, relevantly, is defined to include '*a corporation to which paragraph 51(xx) of the Constitution applies*': FWA s 12, s 14, s 42, s 47. A NES entitlement of an employee is an entitlement of an '***employee***' who is a '***national system employee***' and that term, relevantly, is defined to include '*an individual so far as he or she is employed … by a national system employer*': FWA s 13, s 42, s 47.

Small Claims Procedure

[6] The FWA provides that in 'small claims proceedings, the court is not bound by any rules of evidence and procedure and may act in an informal manner and without regard to legal forms and technicalities': FWA s 548(3). In ***McShane v Image Bollards Pty Ltd*** [2011] FMCA 215 [7], Judge Lucev explained this provision as follows:

> *Although the Court is not bound by the rules of evidence, and may act informally, and without regard to legal forms and technicalities in small claims proceedings in the Fair Work Division, this does not relieve an applicant from the necessity to prove their claim. The Court can only act on evidence having a rational probative force.*

Contravention

[7] Where the IMC is satisfied that there has been a contravention of a civil penalty provision, the court may make orders for '*an employer to pay* [to an employee] *an amount … that the employer was required to pay*' under the modern award (emphasis added): FWA, s 545(3)(a).

[8] The civil penalty provisions identified in s 539 of the FWA includes:

- The Core provisions (including s 44(1) and s 45) set out in pt 2 - 1 of the FWA: FWA s 61(2), s 539.

[9] Where the IMC is satisfied that there has been a contravention of a civil penalty provision, the court may make orders for:

- An employer to pay to an employee an amount that the employer was required to pay under the FWA: FWA s 545(3).

[10] In contrast to the powers of the Federal Court and the Federal Circuit Court, an eligible State or Territory court has no power to order payment by an entity other than the employer of amounts that the employer was required to pay under the FWA. For example, the IMC has no power to order that the director of an employer company make payments of amounts payable under the FWA: ***Mildren v Gabbusch*** [2014] SAIRC 15.

Burden and standard of proof

[11] In an application under the FWA, the party making an allegation to enforce a legal right or to relieve the party of a legal obligation carries the burden of proving the allegation. The standard of proof required to discharge the burden is proof 'on the balance of probabilities'. In ***Miller v Minister of Pensions*** [1947] 2 All ER 372, 374, Lord Denning explained the standard in the following terms:

> *It must carry a reasonable degree of probability but not so high as is required in a criminal case. If the evidence is such that the tribunal can say 'we think it more probable than not' the burden is discharged, but if the probabilities are equal it is not.*

[12] In the context of an allegation of the breach of a civil penalty provision of the FWA it is also relevant to recall the observation of Dixon J said in ***Briginshaw v Briginshaw*** [1938] HCA 34; (1938) 60 CLR 336:

> *The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences* [362].