

**CONTRACTUAL BENEFIT CLAIM**  
**WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**

**CITATION** : 2021 WAIRC 00054

**CORAM** : COMMISSIONER T B WALKINGTON

**HEARD** : ON THE PAPERS

**DELIVERED** : TUESDAY, 9 MARCH 2021

**FILE NO.** : B 167 OF 2019

**BETWEEN** : ADRIAN DOYLE  
Applicant  
  
AND  
  
ROMAN CATHOLIC BISHOP OF BUNBURY  
Respondent

CatchWords : Application to set aside summons under s 33(2) of the *Industrial Relations Act 1979* - Summons set aside - Order issued

Legislation : *Industrial Relations Act 1979* (WA)

Result : Summons to witness set aside

**Representation:**

Applicant : Mr A Doyle

Respondent : Mr I Curlewis (of counsel)

*Reasons for Decision*

- 1 On 1 July 2020 the name of the respondent was changed to the ‘Roman Catholic Bishop of Bunbury’ (RCBB) by order [2020] WAIRC 00385.
- 2 On 12 February 2021 Mr Adrian Doyle issued a summons for Bishop Holohan to give evidence in this matter.
- 3 The Roman Catholic Bishop of Bunbury (**RCBB**) applied for the summons to be set aside on 26 February 2021. Mr Doyle maintains that the summons ought not be set aside. Both parties consented to this issue being considered and determined on the papers.
- 4 The RCBB says that the operational and management of employment matters concerning Mr Doyle was at all material times delegated by the Bishop of each Diocese to the Catholic Education Commission of Western Australia (**CEWA**) which in turn delegated operational power to the principal of each school. Bishop Holohan has no knowledge about the terms of the employment contract and is not able to respond to questions concerning the employment contract. The RCBB submits that it would be inefficient and unnecessary for Bishop Holohan to give evidence in this matter.
- 5 Mr Doyle submitted that the ‘legal’ employer needs to be verified before the hearing and that CEWA did not become CEWA Ltd until January 2020. Mr Doyle submitted letters dated 14 November 2019 and 22 July 2020 from CEWA contending that the employment authority changed between the Bishop of Bunbury, CEWA and the College Principal several times.
- 6 Mr Doyle further submits that the attendance of Bishop Holohan is required because he has been misdirected by the RCBB on the issue of the legal identity. Mr Doyle contends that CEWA and the principal have rejected the delegated authority and that witnesses at the hearing will answer questions differently in the presence of Bishop Holohan. Mr Doyle maintains that Bishop Holohan is aware of the employment position, contract, and this matter.
- 7 The Mr Doyle submitted a letter dated 3 March 2021 he received from Bishop Holohan. The letter advises that Bishop Holohan is unable to say anything about the contract or anything concerning this matter. Mr Doyle states in an email on 4 March 2021 that he ‘accept(s) his written response as long as it is included (as papers) in the Commissioner’s considerations to set aside the summons by papers’.
- 8 The RCBB agrees that the letter ought to be considered by the Western Australian Industrial Relations Commission (**Commission**). The RCBB submits that the letter is the only evidence before the Commission and supports the contention that Bishop Holohan’s attendance will not assist the Commission; that Bishop Holohan is unable to say anything about the matters in dispute and Mr Doyle has accepted the content of Bishop Holohan’s letter.

**Principles**

- 9 The purpose of requiring a person to attend before a court or tribunal to give evidence is to ensure that relevant evidence is put before the court or tribunal at the hearing so that justice can be done between the parties.

**Application**

- 10 Mr Doyle’s submissions in support of refusing to set aside the summons, concerns the legal identity of the employer. I find that the employing authority is the Roman Catholic Bishop of Bunbury as per order [2020] WAIRC 00385. The issue of the legal

employing authority was considered and determined at the time this order was made. Mr Doyle has confirmed that he is now not seeking to change the name of RCBB. The RCBB agrees that the named RCBB is the legal employing authority. Therefore, there is no contest as to the legal employing authority and it follows no requirement to adduce evidence as to the legal employing authority.

- 11 Mr Doyle has not provided any evidence to support his assertion that the RCBB has sought to misdirect him as to the legal employing authority. In any event, if Mr Doyle believes the RCBB in this matter is not the true identity of the employer and the order issued by the Commission ought to be corrected Mr Doyle would need to make an application to amend the name of the RCBB.
- 12 There is also no evidence concerning Mr Doyle's assertion that other witnesses will answer questions differently in the presence of Bishop Holohan. In any event, a summons requires a person to give evidence and does not require a person be present during the evidence of other persons.
- 13 The letter from Bishop Holohan to Mr Doyle submitted by Mr Doyle for the consideration of the Commission in this matter sets out that Bishop Holohan does not have any knowledge of the matters before the Commission and therefore does not have any evidence to give.
- 14 For the reasons set out above I would set aside the summons and an Order to do so will issue.