

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

Section 29 Application for Hearing of an Industrial Dispute

Peter Regester

Applicant

and

Minister administering the State Service Act 2000/Tasmanian Health Service

Respondent

(T14503 of 2017)

PRESIDENT D J BARCLAY

24 May 2017

Application for status quo to remain while dispute relating to resignation from employment determined – what is status quo – application refused

DECISION

[1] The Applicant has filed an application dated 26 April 2017 pursuant to s. 29(1) of the *Industrial Relations Act 1984* (the Act) for relief in respect to his resignation from employment as a registered nurse. The Applicant was employed in the Transition to Practice Programme as a psychiatric nurse at Spencer Clinic on the North West Coast.

[2] Briefly the Applicant resigned from his employment by email dated 30 March 2017. He apparently did so because he felt he had no choice because he was being unsupported in the workplace. He also had a grievance in respect to the manner in which two meetings relating to his performance were dealt with (although that grievance is not directly relevant for present purposes) although the resignation occurred a few hours after the second of those meetings.

[3] By 5 April 2017 the Applicant had determined to “rescind” his resignation and sought to do so by email dated that day to his employer. The employer did not accept the rescission of the employment.

[4] By his resignation email the Applicant indicated his last day would be 27 April 2017. It can be seen the Application was therefore filed before the resignation took effect. By that application the Applicant sought (amongst other things):

- (a) The status quo remain while this matter is addressed;
- (b) Mr Regester remain as an employee until the matter is resolved.

[5] I indicated at the hearing of the matter on 5 May 2017 that I refused to make those orders and I would publish reasons at a later date. These are my reasons for declining to make the orders.

[7] Mr Sales submitted that the status quo was the Applicants resignation and that as such the status quo did not assist the Applicant. Mr Sales did not directly address the award provision relating to status quo although he did mention it.

[8] I was not specifically directed to the award or agreement nor to any authority relating to status quo. It would be of assistance to the Commission if representatives of the parties came to the Commission prepared to make submissions about the issues being dealt with and where appropriate provide the Commission with useful authorities relevant to the point. It is to be remembered that representatives appear to assist not only their member, client or employer but also the Commission. Unlike the position of a lay person representatives appearing on behalf of parties should have knowledge of the issues required to be dealt with in the context of applications before the Commission.

[9] The starting point to the present application is clause 3(f) of Part VIII of the *Nurses and Midwives (Tasmanian State Service) Award* which provides that:

"Whilst a dispute/grievance is being dealt with through this process [the grievance and dispute resolution process] the status quo will remain and work will continue without disruption".

[10] The issue is – what was the status quo at the date of the creation of the dispute.¹ The dispute in the present case is the resignation of employment and more particularly the ability of the Applicant to withdraw (or to use his word) rescind the resignation and the Respondents obligation to accept the withdrawal or rescission of the resignation.

[11] It was not until the employer did not accept the rescission of the termination that the dispute arose. As such the status quo is the resignation.

[12] Accordingly I refuse the application as the status quo is not continuing employment but cessation of employment by resignation.



Appearances:

Ms Caroline Saint for the applicant
Mr Todd Sales for the respondent

Date and place of hearing:

5 May 2017

¹ *CEPU v. Tasmanian Water Sewerage Corporation Pty Ltd* [2015] FCCA 2382 at [55] and [60].