

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

s29 application for hearing of an industrial dispute

Tony Hourigan
(T14240 of 2014)

and

Grundfos Pumps Pty Ltd

PRESIDENT T J ABEY

HOBART, 13 February 2015

DECISION

(1) On 25 August 2014 Mr Hourigan (the applicant) lodged an application under s29(1A) of the Act against Grundfos Pumps Pty Ltd (the respondent) seeking a pro-rata long service leave (LSL) entitlement.

(2) The application was the subject of a conciliation conference in Devonport on 20 November 2014. The matter failed to resolve and the hearing was adjourned on the basis that the applicant would seek further advice.

(3) Under cover of an email dated 28 January 2015 the applicant submitted a report from Ms Annie Cook (non-practicing psychologist) dated 16 January 2015.

(4) Subsequently by email dated 12 February 2015 the applicant advised:

"In relation to my recently submitted report I would like to proceed this matter to hearing in accordance with Section (2)(b), 3(b)."

(5) By correspondence dated 3 February 2015 the respondent submits ... *"that these proceedings should be dismissed without the need for further attendance of the parties for the following reasons:*

- 1. this matter was adjourned on 20 November 2014 to enable the Applicant to receive advice and to advise the Commission whether he wished to press his claim. The Applicant has not done this;*
- 2. there is nothing in the Report that relates to any matter raised before the Commission, and therefore the Report is irrelevant;*
- 3. there is a 21 day time limit under section 29(1B) of the Industrial Relations Act 1984 (Tas) to bring a claim relating to the non-payment of long service leave. If the Report relates in any way to a new component of the Applicant's claim (and it is not clear that it does), the time for raising it has elapsed; and*
- 4. in the alternative, if the Applicant's claim is continued, the Report refers to consultations which occurred almost 12 months' earlier*

than the Applicant's resignation and contains factual errors, including the amount of service shortfall. The Respondent repeats, with respect, that the Report has no relevance to the proceedings."

(6) Point 1 is answered by the applicant's correspondence of 12 February 2015.

(7) In relation to point 2, and without reflecting in any way on the merit or otherwise of the applicant's case, I note that Mr Hourigan's statement of 18 November 2014 includes the following:

"In my time with Grundfos I have travelled extensively and spent many nights away from my family and even though this was part of the job I found that this created ongoing stress on both myself and my family. This is one of the main reasons that I made the decision to leave the company."

(8) On its face there may well be a connection between this statement and the report of Ms Cook.

(9) Section 29(1B) imposes a 21 day timeline for disputes relating to termination of employment or severance pay relating to redundancy. There is no timeline limits for disputes relating to LSL.

(10) The contention raised in point 4 is a merit consideration which can only properly be dealt with in a hearing environment.

(11) Section 29(2) states that on receipt of an application the President must "*allocate to a Commissioner for hearing an application made under this section.*" (my emphasis) There is no provision for matters to be determined 'on the papers.'

(12) The applicant is entitled to pursue this matter to formal hearing. Accordingly the application will be listed for hearing in Devonport. It is likely that this will be during the week commencing 20 April 2015. It is my expectation that the parties will be present in person at the hearing.

(13) A Notice of Hearing with Directions will follow shortly.

(14) In the meantime the parties are invited to confer as to possible settlement.



Tim Abey
PRESIDENT

Appearances:

Mr T Hourigan in person
Mr S Dowd for the respondent via telephone

Date and place of hearing:

2014
20 November
Devonport