

Court clerks: a worthy dispute?



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Litigation and debt recovery in the Magistrates' and County Courts jurisdictions are a large part of the work that I do. So on or about 2 December 2003, when a notice was distributed around the office informing solicitors of the work bans to be imposed by the Community and Public Sector Union (CPSU) members employed as Clerk of Courts, I thought it was an appropriate moment to quietly panic.

The work bans extended also to the Coroner's Court, the Children's Court, PERIN Court, the Victims of Crime Assistance Tribunal and the Metropolitan Electoral Tribunal. As a part of the Clerks of Courts industrial action, a few of the curtailments included:

- Registries hours were 9:30am to 4pm, closed for an hour at 1pm.
- Generally any court processes (summonses, applications, warrants, subpoenas and orders) requiring a filing or issuing fee were not accepted. There were a number of exceptions to this ban including summonses and warrants authorised under the *Crimes (Family Violence) Act 1987* (Vic) and applications and warrants for the protection of children under the *Family Law Act 1975* (Cth) and *Children and Young Persons Act 1989* (Vic).
- No fines were to be paid to the Department of Justice or to Treasury, and any such fines received were to be held in the Trust account until the work bans were lifted.
- No incoming mail or faxes were processed.
- No incoming telephone call inquiries were answered.

The industrial action was in support of the CPSU's claim for a 2003 enterprise bargaining agreement. Broadly, this agreement relates to an increase of wages, work conditions and classification of Clerks of Courts and other Victorian Public Servants.

The Clerks of Courts also served an auxiliary claim on the Department of Justice in February 2002 regarding an appropriate review of their career structure. In February 2003, the CPSU threatened industrial action in the form of a strike, but such action did not eventuate as the CPSU and the Department of Justice reached an agreement on

aspects of the claim including the classification structure. Following nearly nine months of negotiations the Clerks of Courts sought to take protected industrial action in November 2003 in support of both their claim and the enterprise bargaining agreement. As a consequence, the Clerks of Courts Agency Specific Occupational Category (ASOC) claim was brought before the Australian Industrial Relations Commission on 3 November 2003 by the Department of Justice.

The Department of Justice received a notice of protected industrial action from the CPSU on 29 October 2003, which proposed commencement of work bans from 5 November 2003. The focus of the hearing on 3 November 2003, however, was whether the action was considered to be in contravention of s170MP of the *Workplace Relations Act 1996* (Vic), which provides, *inter alia*, that negotiations must take place before industrial action would be sanctioned. The matter was adjourned to a conference and was before the Commission again on 3 December 2003. There was no resolution and the claim was adjourned to 9 March 2004.

As Clerks of Courts waited for a positive conclusion to their industrial dispute, the public's access to the justice system was severely affected. It was a trial explaining to a number of clients that their matters could not be initiated or progressed due to the court work bans. Although, many of my clients were sympathetic toward the clerks' grievances, they were ultimately frustrated by the delays and extra costs incurred in the interim.

On 16 January 2004, a memorandum of understanding was signed between Mick Francis (CEO of the Magistrates' Court) and John Bennett (Secretary Clerk of Courts & Judicial Administration Branch Section of CPSU). In summary, the memorandum stipulates:

- an immediate reclassification for the majority of Clerks of Courts with increased salaries backdated to 1 November 2003;
- industrial action to be suspended for one month commencing 19 January 2004 to enable further negotiations between the CPSU and the Department of Justice;
- that it does not constitute an agreement in respect of the ASOC claim;

- that it does not derogate from the purpose of the bans, which were in support of the 2003 enterprise bargaining agreement; and
- that it is made without prejudice to the rights of either party in respect of the ASOC claim currently before the Commission.

Although the memorandum implies that work bans would resume on or around 19 February 2004, everyone at the office is breathing healthily as the Magistrates' and County Courts are operating normally for the time being. Of course, some of the anxious clients have now requested commencement or progress of their matters to be completed by yesterday in anticipation of revived industrial action.

The memorandum of understanding signed on the 16 January 2004 is a tentative step toward resolution of the Clerks of Courts claim. Negotiations are still in progress leading up to the hearing on 9 March 2004 before the Australian Industrial Relations Commission. ■

References

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