

NAME	DATE	HOURS	AMOUNT	
LITTLE	17.7.91	1	9.94	
	26.7.91	8	79.54	
	29.7.91	8.5	84.53	
		17.50	174.01	✓ Claimed 14-11-91
LITTLE	17.7.91	1	10.98	
	26.7.91	8	87.88	
	29.7.91	8.50	93.39	
		17.50	192.25	✓ Claimed 14-11-91
UFFY	15.7.91	5	58.06	
	25.7.91	8.50		
	26.7.91	8	210.11	
	29.7.91	.50		
	2.8.91	8	95.23	*
	2.8.91	2	35.13	Overtime *
	7.8.91	8.50	98.71	
	8.8.91	8.50	98.71	
	8.8.91	1.50	25.71	Overtime
		50.50	621.66	✓ Claimed 14.11.91
MOSS	17.7.91	4		
	18.7.91	4.50	128.66	
		8.50	128.66	✓ Claimed 14.11.91
FERMAN	22.7.91	50		
	23.7.91	.50	20.22	
	25.7.91	1		
	29.7.91	2.75		Not a witness
	30.7.91	2	63.18	
	31.7.91	1		
	1.8.91	.50		
	5.8.91	3.50	35.38	
	19.8.91	1.50		
	23.8.91	1.25	27.80	
		14.50	146.58	

NAME	DATE	HOURS	AMOUNT	
HAYWARD	26-7-91	8	149.97	63
	29-7-91	5		
	29-7-91	2.50	45.41	
		15.50	195.38	
				Overtime
				Claimed 14 11 9
SINCLAIR	26-7-91	8	190.35	
	29-7-91	8.50		
		16.50	190.35	Claimed 14-11-9
MASLEN	26-7-91	8		
	29-7-91	8.50	194.85	
		16.50	194.85	Claimed 14.11.0
M RUSSELL	29-7-91	5.50	59.61	
	29-7-91	2.50	42.63	Overtime
		8	102.24	Claimed 14.11.9
GOULD	2-8-91	8	94.60	*
	2-8-91	4	81.44	Overtime *
	5-8-91	8.50	98.06	
	5-8-91	1	17.03	Overtime
		21.50	291.8	Claimed 14 11 9
ALBERT	7-8-91	8.50	196.12	
	8-8-91	8.50		
	7-8-91	3	102.15	Overtime
	8-8-91	3		Overtime
	12-8-91	8.50		
	13-8-91	8.50	392.25	
	14-8-91	8.50		
	15-8-91	8.50		
		57	690.52	Claimed 14 11 9

NAME	DATE	HOURS	AMOUNT	
WILLIAMSON	2.8.91	8	87.95	* 64
	6.8.91	8.50	273.52	
	7.8.91	8.50		
	8.8.91	8.50		
	6.8.91	2.50		
	7.8.91	2.50	126.48	Overtime
	8.8.91	2.50		Overtime
	12.8.91	8.50	364.69	
	13.8.91	8.50		
	14.8.91	8.50		
	15.8.91	8.50		
	15.8.91	4	73.78	Overtime
		79	926.42	✓ Claimed 14.11.91
JAMES	2.8.91	8.50	86.81	*
	5.8.91	8.50	338.12	
	6.8.91	8.50		
	7.8.91	8.50		
	8.8.91	8.50		
	5.8.91	2.50		Overtime
	6.8.91	2.50	156.13	Overtime
	7.8.91	2.50		Overtime
	8.8.91	2.50		Overtime
		52.50	581.06	Claimed 14.11.91
WEARDON	1.7.91	1	11.26	
	2.8.91	8.50	92.13	
		9.50	103.39	Claimed - 14.11.91
O'NEILL	24.7.91	2	92.79	Overtime
	24.7.91	1.75		Overtime
		3.75	92.79	Not witnesses
PAGE	2.8.91	2		Overtime
		5.75	222.55	
		7.75	222.55	

Clause 20 - DISCIPLINARY PROCEDURES

- (i) Where an employee's work performance or conduct is considered to be unsatisfactory, the employee shall be informed in the first instance of the nature of the unsatisfactory performance or conduct and of the required standard to be achieved by the appropriate officer of Council or the Mayor, President or Chairman or the Council or an appropriate Committee of Council.
- Unsatisfactory work performance or conduct shall include neglect of duties, breach of discipline, absenteeism and non-compliance with safety standards. A written record shall be kept on the appropriate file of such initial warning. The employee shall be entitled to sight and sign such written record and add any notations regarding the contents of such record.
- (ii) Where there is a re-occurrence of unsatisfactory performance or conduct, the employee shall be warned formally in writing and counselled.
- Counselling should reinforce the standard of work or conduct expected and, where the employee is failing to meet these required standards, a suitable review period for monitoring the employee's performance; the severity of the situation; and whether disciplinary action will follow should the employee's work performance or conduct not improve. A written record shall be kept of such formal warning and counselling.
- The employee shall be entitled to sight and sign such written record and add any notations regarding the contents of such record.
- (iii) If the employee's unsatisfactory performance or conduct continues or resumes following the formal warning and counselling, the employee shall be given a "final warning", in writing, giving notice of disciplinary action should the unsatisfactory work performance or conduct not cease immediately.
- (iv) If the employee's performance or conduct does not improve after the "final warning", further disciplinary action shall be taken under the terms of the Award or Section 99 of the Local Government Act.
- (v) This shall not affect the rights of the Council to suspend under Section 99 of the Local Government Act or take other disciplinary action before and/or during the above procedure in cases of misconduct or where the employee's performance warrants such action.
- (vi) Either Council or the employee may request the presence of a Union representative at any stage in the above procedure.
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- (vii) This procedure shall not affect either party's right to institute the dispute procedure of the award or to notify the Industrial Registrar as to the existence of an industrial dispute.
- (viii) Employees shall have access to their personal file and may take notes and/or obtain copies of the contents of the file.

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Other provisions not affected

244. (1) This Part does not affect any other rights of a dismissed employee under this or any other Act or under any award, agreement or contract of employment.

(2) No contract or agreement (whether made or entered into before or after the commencement of this section) operates to annul, vary or exclude any of the provisions of this Part.

PART 8—UNFAIR DISMISSALS

Application of Part

245. (1) This Part applies only to the dismissal or threatened dismissal of:

- (a) an employee for whom any conditions of employment are fixed by an award or agreement; or
- (b) an employee of the Crown; or
- (c) any other employee of a class prescribed by the regulations as a class of persons to whom this Part applies.

(2) This Part does not apply to the dismissal or a threat of dismissal of any such employee who is a trainee or an apprentice or who is declared by the regulations not to have the benefit of this Part, despite subsection (1).

(3) This Part does not apply to a person to whom Part 2A of the Public Sector Management Act 1988 or Part 5 of the Police Service Act 1990 applies.

(4) This Part applies to any dismissal, or threat of dismissal, of an employee that occurs on or after 5 July 1991 (being the date of commencement of the Industrial Arbitration (Unfair Dismissals) Amendment Act 1991).

(5) In this Part, a reference to the dismissal, or threatened dismissal, of an employee includes, in relation to a person employed in the public sector, a reference:

- (a) to the Crown's dispensing with, or proposing to dispense with, the services of the person; and
- (b) to the dismissal, or the proposed dismissal, of a person as a consequence of disciplinary proceedings against, or the commission of an offence by, the person.

Applications

246. (1) If an employer dismisses, or threatens to dismiss, a person who is an employee of the employer and the person claims that the dismissal was, or that the threatened dismissal would be, harsh, unreasonable or unjust, the person (or an industrial organisation of employees on behalf of the person) may apply to the Commission for the claim to be dealt with under this Part.

(2) Any such application should be lodged with the Industrial Registrar not later than 21 days after, or (in the case of a threat of dismissal) may be lodged with the Industrial Registrar before, termination of the employment.

(3) The Commission may accept an application that is lodged out of time if the Commission considers there is a sufficient reason to do so.

(4) In deciding whether there is a sufficient reason, the Commission is to have regard to:

- (a) the reason for, and the length of, the delay in lodging the application; and
- (b) any hardship that may be caused to the applicant or the employer if the application is or is not rejected; and
- (c) the conduct of the employer relating to the dismissal or threat of dismissal; and
- (d) such other matters as the Commission considers appropriate.

Conciliation

247. The Commission must endeavour, by all means it considers proper and necessary, to settle the applicant's claim by conciliation.

Arbitration

248. (1) When, in the opinion of the Commission, all reasonable attempts to settle the claim by conciliation have been made but have been unsuccessful, the Commission is to determine the claim by making an order under this Part.

(2) Nothing in this section prevents further conciliation from being attempted, or the parties from settling the claim, at any time before an order is made determining the claim.

Matters to be considered

249. In determining a claim, the Commission may, if appropriate, take into account:

- (a) whether a reason for the dismissal or threatened dismissal was given to the applicant and, if the applicant sought but was refused reinstatement or re-employment with the employer, whether a reason was given for the refusal to re-employ; and
- (b) if any such reason was given—its nature, whether it had a basis in fact, and whether the applicant was given an opportunity to make out a defence or give an explanation for his or her behaviour or to justify his or her reinstatement or re-employment; and
- (c) whether a warning of unsatisfactory performance was given before the dismissal or threat of dismissal; and
- (d) the nature of the duties of the applicant immediately before the dismissal or when the threat was made and, if the applicant sought but was refused reinstatement or re-employment, the likely nature of those duties if the applicant were to be reinstated or re-employed; and
- (e) whether or not the applicant requested reinstatement or re-employment with the employer; and
- (f) such other matters as the Commission considers relevant.

"B"

Orders for reinstatement

250. (1) The Commission may order the employer to

- (a) to reinstate the applicant on terms favourable to the applicant; and
- (b) if the Commission is satisfied that, at the time, an amount of money is due to the applicant, to pay that amount to the applicant.

(2) If the applicant is reinstated in a position of substantially the same status as that held by the applicant immediately before the dismissal, the Commission may

- (a) to re-employ the applicant on terms determined by the Commission.

(b) if the Commission is satisfied that, at the time, an amount of money is due to the applicant, to pay that amount to the applicant.

(3) If the applicant is reinstated in a position of substantially the same status as that held by the applicant immediately before the dismissal, the Commission may order the employer to pay to the applicant an amount of money exceeding 6 months' wages over the period of the applicant's absence.

(4) In determining whether to order the employer to pay an amount of money to the applicant, the Commission may order the employer to pay that amount to the applicant.

(5) When assessing the amount of money to be paid to the applicant, the Commission may take into account whether the applicant had succeeded in obtaining employment elsewhere.

Effect of reinstatement

251. (1) If the applicant is reinstated or re-employed, the period of employment broken by the dismissal or threat of dismissal is to be treated as a period of continuous employment.

(2) Any such period of employment is to be treated as if it were a period of continuous employment.

Orders for reinstatement, re-employment or lost wages

250. (1) The Commission may determine a claim relating to dismissal by ordering the employer:

- (a) to reinstate the applicant in his or her former position on terms not less favourable to the applicant than those that would have been applicable if the applicant had not been dismissed; and
- (b) if the Commission thinks fit, to pay to the applicant, within a specified time, an amount stated in the order that does not exceed the remuneration the applicant would, but for being dismissed, have received before being reinstated in accordance with the order.

(2) If the applicant has been dismissed and, when determining the claim, the Commission considers that it would be impracticable to reinstate the applicant, the Commission may order the employer:

- (a) to re-employ the applicant, on terms and conditions determined by the Commission, in another position that the employer has available and that, in the Commission's opinion, is suitable; and
- (b) if the Commission thinks fit, to pay to the applicant, within a specified time, an amount stated in the order that does not exceed the remuneration the applicant would, but for being dismissed, have received before being re-employed in accordance with the order.

(3) If the applicant has been dismissed and, in determining the claim, the Commission considers that it would be impracticable to make an order for reinstatement or re-employment, the Commission may order the employer to pay to the applicant, within a specified time, an amount of compensation not exceeding 6 months' remuneration of the applicant at the average rate received over the period of 6 months immediately before being dismissed.

(4) In determining a claim relating to a threat of dismissal, the Commission may order the employer not to dismiss the employee in accordance with that threat.

(5) When assessing any compensation payable, the Commission is to take into account whether the applicant made a reasonable attempt to find alternative employment and the remuneration that would have been payable if the applicant had succeeded in obtaining alternative employment.

Effect of reinstatement or re-employment

251. (1) If the Commission makes an order requiring the reinstatement or re-employment of an applicant, the Commission may also order that the period of employment of the applicant with the employer is taken not to have been broken by the dismissal.

(2) Any such order has effect according to its tenor.

[1312] Retirement of certain servants

96A (1) Any servant of a council to whom the Local Government (Superannuation) Act, 1927, as amended by the Local Government (Superannuation) Amendment Act, 1935, applies shall on his attaining the retiring age as fixed by such Act immediately retire from the service of the council employing him unless the council by resolution and with the consent of the servant extend the period of service or employment of such servant for one year or less period and so on from time to time as the council may see fit:

Provided that such extensions shall not exceed in the aggregate five years.

(2) This section shall not operate until the expiration of two years after the commencement of the Local Government (Superannuation) Amendment Act, 1935.

[s 96A insrt Act 24 of 1935 s 7]

[1313] Gratuities of servants

97 Subject to section 15CE of the Local Government and Other Authorities (Superannuation) Act, 1927, when terminating the employment of any servant for any reason other than misconduct, or on the death of any servant, a council may as an act of grace grant to him or to his dependants a gratuity not exceeding the amount of two weeks' salary or wages (such salary or wages being reckoned at the average of the last fifty-two weeks, or, if he has not been continuously employed so long, at the average of his term of employment) for each year of his service with such council, and proportionately for a fraction of a year.

[s 97 am Act 33 of 1983 s 4 and Sch 2]

[1314] Certain rights conferred on council's servants

98 Any certificated town or shire clerk, or certificated local government engineer, who is in the service of a council shall, if otherwise qualified, be eligible for appointment to any vacant office in the Public Service connected with the administration of this Act as if he were an officer of the Public Service, and the words "Public Service" where they occur in sections thirty-four, thirty-five, and thirty-six of the Public Service Act, 1902, shall, for the purpose of this section, be taken to extend to and include such clerks and engineers. All such appointments shall be made subject to the provisions of the Public Service Act, 1902, and the regulations made thereunder.

[1315] Inquiry before dismissal of certain employees

99 (1) The provisions of this section shall apply to county, town, or shire clerks, engineers, health surveyors, gas managers, electrical engineers, persons in charge of trading undertakings of a council for the supply of electricity or hydraulic power, and overseers.

This section shall also apply to all servants of a council who have had at least one year's continuous service with the council.

[sub-s (1) am Act 33 of 1927 s 6; Act 41 of 1928 s 5; Act 19 of 1945 s 7; Act 74 of 1980 s 5 and Sch 4; Act 117 of 1990 s 3 and Sch 4]

(2) Where the council proposes to terminate the employment of any such servant except where he is retired under section 96A of this Act it shall either order an inquiry hereunder or suspend him.

[sub-s (2) am Act 24 of 1935 s 7]

(3) Where any such servant is suspended the council shall state the reasons for the suspension.

(4) Within one week after suspension the servant may (if any inquiry hereunder has not already been held) apply to the council for an inquiry. Thereupon the council shall order an inquiry. If the servant does not apply for an inquiry the council may proceed to determine the matter.

(5) The inquiry shall be held by some person appointed by the Minister.

[sub-s (5) am Act 21 of 1958 s 3]

(6) (a) The person holding the inquiry shall make a report in writing.

(b) The original of the report shall be furnished by him to the council, and copies of the report shall at the same time be furnished by him to the Minister and the servant respectively.

(c) The report shall be read in open council.

[sub-s (6) subst Act 19 of 1945 s 7]

(7) Where an inquiry is ordered the decision of the council shall not be given until after the reading of the report as aforesaid.

(8) For the purposes of any inquiry under this section any person appointed to hold such inquiry shall have the powers, authorities, protections and immunities conferred on a commissioner, and—

(a) where such person is the only person appointed to hold the inquiry — on a sole commissioner; or

(b) where such person is one of two or more persons appointed to hold the inquiry and has been appointed as chairman of the inquiry — on a chairman of a commission,

by Division 1 of Part II of the Royal Commissions Act, 1923, as amended by subsequent Acts, and the provisions of section one hundred and fifty-two of the Justices Act, 1902, as amended by subsequent Acts, shall mutatis mutandis apply to any witness or person summoned by or appearing before such person.

The provisions of the Royal Commissions Act, 1923, as amended by subsequent Acts, (section thirteen and Division 2 of Part II excepted) shall, mutatis mutandis, apply to and in respect of any such inquiry and to and in respect of any witness or person summoned by or appearing before the person or persons holding any such inquiry.

[sub-s (8) subst Act 11 of 1961 s 3]

(9) The council shall pay to the Minister the expenses of the person holding the inquiry (including the salary of any public servant engaged thereon) or such portion thereof as the Minister may decide.

[sub-s (9) insrt Act 41 of 1928 s 5]

(10) The person holding the inquiry may award costs and expenses (including the expenses of the person holding the inquiry) to an amount assessed by him against either the council or the servant. Any costs or expenses so awarded may be recovered as a debt.

[sub-s (10) insrt Act 41 of 1928 s 5]

(11) The person holding the inquiry shall also determine whether the servant shall or shall not be paid his salary or any part thereof for the period of his suspension.

[sub-s (11) insrt Act 41 of 1928 s 5]

(11A) (a) In any case where the council decides to terminate the services of the servant notwithstanding that the report of the person holding the inquiry is substantially favourable to the servant, the Minister, on the application of the servant made within fourteen days after termination of his services, may, after such inquiry as he deems sufficient, direct the council to pay to the servant as from the date of termination of his services compensation not exceeding an amount equivalent to the amount of four weeks' salary or wages for each year of service, such salary or wages being reckoned on the average of the weekly salary or wages paid to him during the fifty-two weeks immediately preceding the date upon which the inquiry was ordered or the date of his suspension as the case may be.

(b) The council shall pay to the servant the amount of compensation as directed by the Minister, and if the council fails to do so the servant may recover the amount as a debt due to him by the council.

[sub-s (11A) insrt Act 19 of 1945 s 7]

(12) For the purpose of this section "council" includes county council and an urban committee.

[A council employee was fined by his union for "dobbing in" a fellow unionist under his control after the employee's lawful instruction had been disobeyed. When the employee refused to pay a union fine for the "dobbing in" and the union refused to allow its members to work while it was unpaid, the council suspended the employee, saying his continued employment was prejudicial to the provision of local government services. Held: Although s 99 provides an exclusive procedure for a person aggrieved, a court can decide whether the powers under s 99 have been properly exercised. Here, the suspension was valid: the council had not acted under dictation from the union - it had merely had regard to compelling circumstances: *Latham v Broken Hill CC* 35 LGRA 129.]

[sub-s (12) insrt Act 41 of 1928 s 5]