DECISION

Fair Work Act 2009
s 739—Dispute resolution

Transport Workers' Union of Australia
v
Qantas Ground Services Pty Limited t/a QGS
(C2017/1572)

DEPUTY PRESIDENT SAMS SYDNEY, 16 OCTOBER 2017

Application to deal with a dispute in accordance with a dispute settlement procedure – airline industry – correct classification of Commissionaires – Commissionaires transporting frail, disabled, elderly or less mobile passengers – meaning of 'passenger handling' – significance of customer service – principles of agreement interpretation – no ambiguity – Commissionaire's role involves 'passenger handling' – incorrect classification – determination made.

BACKGROUND

[1] On 23 March 2017, the Transport Workers' Union (the 'TWU' or 'Union') filed an application, pursuant to s 739 of the *Fair Work Act 2009* ('the Act'), which seeks to have the Fair Work Commission (the 'Commission') deal with a dispute under the dispute settlement procedure (DSP) of the *Qantas Ground Services Pty Ltd Ground Handling Agreement 2015* (the '2015 Agreement'). The respondent, Qantas Ground Services (QGS), is a wholly owned subsidiary of Qantas and provides ground handling services to Qantas as part of a labour hire arrangement.

[2] In brief, the dispute concerns the correct classification of a small group of Qantas employees (numbering 20 in Sydney, 5 in Melbourne and 10 in Brisbane) who are known as Commissionaires. These employees are engaged by QGS to transport elderly, disabled and less mobile passengers between check in areas and aircraft and around, and between terminals, using wheelchairs, or other motorised equipment. Commissionaires are presently classified as Ground Crew Level 2 (GC2) under the 2015 Agreement (and its predecessor). By this s 739 application, the Union seeks to have Commissionaires reclassified Ground Crew

Level 3 (GC3) Year 2, given that the work they undertake is appropriately described as 'passenger handling'. QGS disputes the proposition that Commissionaires are involved in 'passenger handling' and maintains the employees have, and always have been, correctly classified at GC2.

[3] Unsuccessful attempts at settling the dispute were made in conciliation proceedings before the Commission on 19 April, 2017. Consequently, the Commission issued directions for the filing and service of evidence and outlines of submissions for a hearing of the application on 14 June 2017. At the hearing, the Union was represented by Ms L *De Plater* and Mr T *Rogers*. Mr B *Rauf* of Counsel with Ms M *Azzi* and Mr M *O'Neill* appeared for QGS. I note that permission was not required for QGS to be legally represented, pursuant to s 596 of the Act, as cl 8.11 of the Agreement ('DSP') provides as follows:

> "The parties to the dispute are entitled to be represented including by legal and/or union representatives, in proceedings pursuant to this dispute resolution procedure."

[4] Before leaving the DSP, it is common ground that the Commission is empowered, by the DSP's express terms, to deal with this matter by arbitration (cl 8.1.3). I note there are no other barriers to the Commission moving to determine this dispute by that mechanism.

[5] After the Commission reserved its decision in the matter, the Full Bench of the Commission, on 9 June 2017, published a decision in *Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union* known as the *Australian Manufacturing Workers' Union v Berri Pty Ltd* [2017] FWCFB 3005 ('*Berri'*). The 'Berri' decision modified the principles of enterprise agreement interpretation, as previously set out in, and relied on by the Commission in *The Australasian Meat Industry Employees Union v Golden Cockerel Pty Ltd* [2014] FWCFB 7447 ('*Golden Cockerel*'). As the principles in *Golden Cockerel* were earlier relied on by both parties in this case, I sought further submissions as to the effect of the '*Berri* Principles', on the parties' earlier contentions. Both parties availed themselves of this opportunity and supplementary submissions were filed on 26 July 2017.

Agreement provisions

[6] It is contextually useful at this juncture, to set out the relevant terms of the Agreement which are the particular focus of this case. This logically begins with the definitions of the

work performed at the two competing classification levels under the 2015 Agreement. These are set out in Appendix B as follows:

"**Ground Crew 2 ("GC2")**

All of GC1 +

- Perform "hands-on" activities in all ground crew areas that are directly and indirectly associated with aircraft handling;
- Operate equipment and vehicles including tow motors, small vans, tarmac buses, mobile steps, belts, disabled passenger lift, aerobridges, fork-lift and equipment requiring similar operational skills associated with ramp, cargo, freight, catering, aircraft servicing and general transport operations;
- Undertake basic serviceability and maintenance checks of vehicles and/or equipment, including refuelling, for vehicles operated at this level;
- Undertake stores operations, loading and unloading of catering equipment and advanced preparation of foodstuffs;
- "Work down" as required.

Ground Crew 3 ("GC3")

All of GC1 and GC2 +

- Operate all in-hold systems and associated equipment on aircraft;
- Push back;
- Undertake basic serviceability and maintenance checks of vehicles and/or equipment, including refuelling, for vehicles operated at this level;
- Driving and operating high-lift catering vehicles;
- Compile operational reports and documents using designated systems and equipment;
- Required to work without direct supervision;
- All Team Leader and related duties for employees classified in GC1;
- "Work down" as required;

And

- **Passenger handling. For an employee employed after the Date of Commencement of this Agreement GC3 Year 2 rate of pay will apply for passenger handling**. (my emphasis)"

It is relevant to note that in the GC1 classification, provision is made for 'Trainee passenger handling'.

Agreed Statement of Facts

[7] The parties helpfully provided the following agreed statement of facts:

(a) The applicant and respondent are covered by the *Qantas Ground Services Pty Limited Ground Handling Agreement 2015* which was approved on 10 February 2017 (the 2015 Agreement);

(b) *Commissionaires* are employed by the respondent to transport frail, elderly, disabled and less mobile passengers between check in areas and aircraft and around and between terminals;

(c) *Commissionaires* transport elderly, disabled and less mobile passengers via wheelchair and by operating equipment and vehicles, including disabled passenger lifts and small motorised carts;

(d) *Commissionaires* are classified under the Agreement as Ground Crew Level 2. *Commissionaires* were also classified as Ground Crew Level 2 under the *Qantas Ground Services Pty Limited Ground Handling Agreement 2013* which was replaced by the 2015 Agreement;

(e) *Commissionaires* have not been trained for, and do not perform the following functions:
- Check-in (including groups) – collecting ticket coupons, tagging baggage, issuing boarding passes, checking passports and visas, accepting and weighing bags, and collecting excess baggage charges where appropriate;
- Performing functions at customer service desks, including flow forward, standby, upgrades and implementing delay handling procedures;

- Providing information on itineraries, fares and fare rules; or
- Utilising the respondent's ticketing system to quote, issue and re-issue tickets as appropriate.

(f) There have been discussions between the respondent's management, the *Commissionaires* and the Transport Workers' Union of Australia, NSW Branch during 2016 with respect to whether *Commissionaires* are engaged in 'passenger handling' and ought to be classified as Ground Crew Level 3 under the 2015 Agreement; and

(g) There have been no changes to the duties and responsibilities of the *Commissionaires* since the Agreement was approved and commenced operation. Neither the definition of 'passenger handling' nor the grading of *Commissionaires* were topics which formed a part of the negotiations for the 2015 Agreement.

The Evidence

[8] The following persons provided written and oral evidence in the proceeding:

- Mr Camron Beach, Commissionaire, Leading Hand and Marshaller;
- Mr Christopher Price, Commissionaire;
- Mr Wayne Trinder, Regional Receive and Dispatch and Union Delegate; and
- Mr Brett Hardy, Head of Qantas Ground Services.

Mr Camron Beach

[9] Mr Beach has worked for QGS for over seven years during which time he has undertaken Commissionaire duties for Qantaslink. Mr Beach described his Commissionaire duties as follows:

a. Transporting disabled, elderly and otherwise mobility passengers and vision impaired passengers between check-in or the oversize counter and onto their aircraft, and also off their aircraft at the end of their journey and to the baggage carousel or taxi rank at the edge of the terminal;

b. If passengers require more help due to a higher level of impairment, it is often necessary for me to pick them up from or drop them off at their cars in the carpark or the train station;

c. I also transport their luggage in those circumstances;

d. Depending upon timing, I often transport passengers via wheelchair to and from terminal shops, cafes or toilets if required between check in and boarding the aircraft or between disembarking the aircraft and leaving the airport;

e. I sometimes assist passengers in the bathrooms to unbutton or unzip clothing if assistance is required in that respect;

f. When transferring passengers into, or out of, their seats on board the aircraft, I use various measures depending upon the level of impairment;

g. For completely disabled passengers with no movement, I am required to operate an Eagle Lift which picks these passengers up out of their wheelchairs, lifts them up over the top of the seats and places them down into their seats;

h. For less disabled passengers I either use Johnny Belts, which wrap around their torsos, along with a sliding board to slide them into their seats or an Aisle Chair, depending upon their level of movement;

i. Because I undertake work for Qantas Link, I am often required to push passengers in wheelchairs on to the tarmac and up into a bus or Commissionaire buggy to transport them to the aircraft;

j. When an Eagle Lift is used, I then need to transfer the passenger into the Eagle Lift from the wheelchair on the tarmac and then either push the Eagle Lift with the passenger in it up a 'Q Ramp' if there is one available or, if not, on to a DPL which is a lift that elevates the passengers to the aircraft door enabling me to then transfer them onto the aircraft and into their seats;

k. I am often required to push large passengers in wheelchairs up and down ramps;

l. Apart from just transporting passengers, I also transport their luggage and walking frames and so on at the same time;

m. I am required to transport passengers via wheelchair, along with their luggage, between terminals where necessary so that they can make their next flights with Qantas, Jetstar or another carrier;

n. I also regularly assist vision impaired passengers;

o. I assist any passengers who require assistance.

[10] Mr Beach said that the respondent expects a very high level of customer service requiring customer interaction and handling. Even when no passengers require assistance, Mr Beach helps out with other customer duties, including marshalling passengers from check in

to the aircraft. As he is required to wear a Qantas uniform and look neat and presentable at all times, he is often approached by other passengers seeking help or information other than those who require direct assistance. In oral evidence, Mr Beach gave examples of assisting passengers, such as physically assisting blind passengers in the direction they need to go and passengers who do not speak or understand English, but are not immobile or elderly.

[11] In **cross examination**, Mr Beach agreed that as he was currently being paid as a Leading Hand (GCB3), his rate of pay was higher than both the GC2 and GC3 rates. He has also performed the Leading Hand role for around three of his last seven years of employment. Mr Beach explained his early employment as a baggage handler and he has also performed ramp duties at GC2. Mr Beach acknowledged that when dealing with premium hand luggage, passengers may have interacted with him, but little more than saying 'hello'. Mr Beach also accepted that when he undertook ramp work, he was sometimes required to marshall passengers, under the GC2 classification. This involved pointing passengers in the right direction so as to keep them out of danger, including by speaking to or verbally directing the passengers (including directing a passenger to cease using a mobile phone). Mr Beach's evidence was that even when an employee is engaged as a Commissionaire, he or she may be called upon to assist on ramp duties.

[12] Mr Beach said that at the time he was successful in obtaining a Commissionaire role (around 2010), he was not particularly concerned with the rate of pay at GC2; rather, he saw the move as stepping up and moving through Qantas. Mr Beach was trained to undertake the role at the time, including how to use and operate the various equipment needed to transport passengers.

[13] Mr Beach explained that when he is asked to assist a passenger after a radio call from 'customer service', he does not always know what device might be necessary - although it is usually a wheelchair. He is not always told the name of the passenger. He conceded the initial interaction is with the passenger and 'customer service'. He rejected the suggestion that his contact may not require him to actually speak to the passenger. This would be rude and impolite. It was Mr Beach's evidence that if he is required to drop a passenger to their car or the train station, this is on the basis the supervisor is informed. If they are not busy, Commissionaires are expected to do so. The means of knowing how busy you are, is known

by accessing a computer screen at 'customer service', which includes information as to assisted passenger needs.

[14] Mr Beach agreed that all Qantas staff, whether working on the ramp, as a baggage handler, or interacting with passengers, are required to ensure the 'image' of Qantas and its high standards are maintained at all times. Mr Beach conceded that since he was first appointed to the Commissionaire role, the duties and procedures have not changed.

Mr Chris Price

[15] Mr Price has been employed by Qantas for six years and as a Commissionaire for about the last three years. Mr Price described his duties as including the following:

> 7. The duties that are required of me in my role as Commissionaire include the following:
>
> a. Picking up passengers who have a disability, are elderly or otherwise have an impacted level of mobility from the oversize counter and transporting them via wheelchair to their gate and on to their aircraft or transporting these passengers off their aircraft at the end of their journey and through the terminal to baggage collection;
>
> b. Once on the aircraft, I use different measures to transfer passengers to their assigned seats depending on the level of mobility impairment;
>
> c. For example, for fully immobile passengers, I am required to use an Eagle Lift which lifts passengers from their wheelchairs, carries them up over the seats and places them down into their seats;
>
> d. For passengers with some mobility, I utilise Aisle Chairs or Johnny Belts as necessary depending on the level of assistance which is required;
>
> e. I use the same processes to transfer passengers out of their seats and off their aircraft at the end of their journey;
>
> f. Depending on timing, I often transport passengers via wheelchair to and from Qantas lounges, terminal shops, cafes or the toilets between check in and boarding the aircraft or between disembarking the aircraft and leaving the airport;
>
> g. I also sometimes collect passengers prior to check-in from their cars or taxis or other modes of transportation used to arrive at the airport;

h. When I am transporting a passenger off an aircraft at the end of their journey, I am required to transport them to the baggage carousel or the taxi rank at the edge of the terminal;

i. However, I also sometimes take passengers who require more help beyond the baggage carousel and out to their vehicles or train station;

j. I sometimes organise transport home for passengers;

k. I am required to transport passengers via wheelchair between terminals as necessary;

l. I also handle boarding passes and luggage for these passengers.

[16] Mr Price said that he is required to complete an online training course in customer service every two years and attend customer service workshops. Mr Price had previously worked on the ramp and when he was appointed as a Commissionaire, he understood his rate of pay remained the same. He claimed there is a high level of 'customer service' expected by QGS and Qantas. He noted that Commissionaires are the only staff at the airport who must physically handle passengers. It is a very specialised role.

[17] In **cross examination**, Mr Price accepted that when he was a baggage handler he would sometimes assist in receiving and loading premium hand luggage. This might involve dealing directly with the passengers. Mr Price reaffirmed that at the time he applied for the Commissionaire's role, he understood the rate of pay was at GC2. He agreed he attended specific Commissionaire training at the time, as to how to safely use and operate specific equipment necessary to perform his duties.

[18] Mr Price said that he responds to radio calls or uses the computer SNOW system as to the allocation of jobs and what equipment is necessary. However, sometimes the actual equipment required might be different. The inputs into the SNOW system are made by 'resources', not the Commissionaires. He agreed that nine times out of ten, the passenger had firstly interacted with someone else, in ordering their requirements. Mr Price gave similar testimony to Mr Beach as to the circumstances when a passenger is required to be conveyed to a car, special taxi, taxi rank or a pick up or drop off point.

[19] Mr Price said that there are no passengers in baggage handling, so there is no service to the customer. Nevertheless, he agreed he is required to be, and always is, well presented.

Further, saying 'hello' to passengers is just a common courtesy, consistent with the high standard of 'customer service' expected by the Company.

Mr Wayne Trinder

[20] Mr Trinder is the TWU Delegate for ground handling at the Sydney Domestic Terminal. He is currently employed as a regional receive and dispatch employee, having been employed by QGC for six and a half years. In 2016, Mr Trinder was approached by a number of Commissionaires who believed they were incorrectly classified, given their 'customer service' duties. He assembled various documents which included an Expression of Interest (EOI) for Relief Leading Hand Commissionaires in which the main responsibilities are set out to include:

- Assisting elderly and less mobile passengers
- Providing a high level of customer service
- Operating Disabled Passenger Lifters, Using correct manual handling techniques
- Communicating with a diverse range of customers and staff members from various departments
- Ability to lead by example and model exceptional behaviours

[21] A further document, headed Customer Service Local Procedures, records as follows:

6.0 Special Assistance Passengers

Check in

- Special Assistance passengers will check in via the Service Desk (nil Kiosk check).
- Qantas Customer Service check-in agent will direct the special assist passenger to the oversize baggage drop where the special assistance passenger will be registered and the QantasLink Customer Service Desk notified.
- If required the QantasLink Customer Service Desk will send a commissionaire to the oversize baggage area to collect the special assistance passenger.
- If passenger chooses to make their own way, staff member at the oversize baggage area to advise the special assistance passenger to report to the QantasLink Service Desk by -30.

Post Check in

- Special Assistance passengers will arrive to the secure area via one of three ways.

1. Passengers make their own way

2. With Commissionaire assistance to the Qantas Club

3. With Commissionaire assistance to the QantasLink Customer Service Desk

- Once the assistance passenger reports to the QantasLink Customer Service Desk (on their own, or with the Commissionaire) the wheelchair register is to be completed.

- Customer Service Agent is to advise MOCO of wheelchair requirements specific to flight for display in staff FID screens

- Customer Service Agent is to amend CM flight remarks to reflect special assistance passenger sighted.

[22] In **cross examination,** Mr Trinder said he had worked in the baggage room for around five years before moving to regional receive and dispatch (which involves aircraft pull and push back). In this later role he is employed at GC3, which is a higher rate of pay and requires extensive training. Mr Trinder acknowledged he had been involved in the negotiations for the 2015 Agreement and had attended most bargaining meetings. At the time, he knew the Commissionaire role was at GC2 and had been classified at this level in the predecessor Agreements in 2013 and 2009.

[23] In respect of the documents attached to his statement, Mr Trinder agreed the EOI was at level GC3 because it was for relief leading hands. This arose from the 2013 Agreement and carried over into the 2015 Agreement. As to the second document, Mr Trinder understood that it discloses that the first instance interaction of the passenger is with the 'customer service' staff.

Mr Brett Hardy

[24] Mr Hardy has been employed by Qantas since 1979. In his current role as Head of QGS (since 2011) he is responsible, *inter alia*, for fleet management and transport at Mascot and for Uniforms and Logistics across the Qantas Group.

[25] Mr Hardy was directly involved in the negotiations for the 2013 and 2015 Agreements which resulted in the classification structure to apply to specific ground handling duties. He summarised these duties as follows:

> 'The 2015 Agreement classification structure (at clause 13 and Attachment B) is functional, and designed to apply to specific ground handling duties, as follows:
>
> (a) GC1 – Non-driving duties;
>
> (b) GC2 – Driving duties for vehicles set out in classification structure: tow motors, small vans, tarmac buses, mobile steps, belts, disabled passenger lift (now called assisted passenger lift), aerobridges, fork-lift and equipment requiring similar operational skills associated with ramp, cargo, freight, catering, aircraft servicing and general transport operations;
>
> (c) GC3 – Driving or operations of vehicles and machinery set out in classification structure: in-hold systems and associated equipment on aircraft; pushback; driving and operating high-lift catering vehicles;
>
> (d) GC3A – Baggage Leading Hand, Fleet Leading Hand;
>
> (e) GC3B – Ramp Leading Hand, Towing aircraft;
>
> (f) GC4 – Shift Supervisor.'

[26] Mr Hardy noted that Commissionaires have been employed by QGS since 2009 at Level GC2 and all EOIs clearly set this out. He said that the primary role of Commissionaires is to transport frail, elderly, disabled and less mobile passengers in around the airport and on and off aircraft using a variety of equipment, for which they trained to use and operate safely. Mr Hardy provided the training modules relevant for that purpose. Part of the training includes what Commissionaires should not do such as:

(a) Assisting passengers beyond the kerb. This includes assisting passengers to enter or exit motor vehicles and get to and from the car park;
(b) Feeding passengers;
(c) Administering medication to passengers and accepting medication from passengers for storage or refrigeration; and
(d) Assisting passengers with toilet needs, other than assisting passengers to the toilet door.

[27] Mr Hardy distinguished the Commissionaire's role from typical 'passenger handling' roles, such as Customer Services Officers, Customer Service Assistants and Qantas Club staff, whose work is commonly undertaken by members of the ASU covered by the *ASU (Qantas Airways Limited) Agreement 11* (the 'ASU Agreement'). Their work includes:

(a) Check-in work;
(b) Transferring passengers between seats on flights and across flights;
(c) Sales and ticketing tasks;
(d) Qantas Club work;
(e) Assisting with minimising and dealing with issues arising out of flight disruptions and cancellations.

[28] It was Mr Hardy's evidence that QGS's current industrial arrangements are that it does not employ persons whose work is covered under the ASU Agreement. This is set out in a letter to the ASU in 2011 and further letters to the ASU in 2013 and 2016 in which it is stated:

> 'QGS currently has no plans for the period until 30 September 2016, to become a ground handler for above-wing activities for Emirates or other parties.
>
> …
>
> QGS currently has no plans for the period until 30 September 2020, to become a ground handler for above-wing activities for Emirates or other parties.'

[29] Mr Hardy acknowledged that these arrangements reflect a long standing agreement between the ASU and QGS that QGS employees would not perform 'passenger handling' roles undertaken by employees engaged under the ASU Agreement.

[30] Mr Hardy confirmed that the 2009 Agreement and its predecessor, the *Express Ground Handling Pty Limited Ground Crew Agreement 2006* (the 'EGH Agreement'), had included a reference to 'passenger handling' in the GC2 classification. This was intended for any future needs of the Company to have flexibility, but was subsequently overtaken by the agreement with the ASU. Mr Hardy believed that the term 'passenger handling' in the 2009 Agreement arose:

> 'Based on my experience and involvement in agreement negotiations and communications with both the ASU and TWU, the term "passenger handling" in the

> context of the 2009 Agreement refers to the manual check-in of passengers, transferring passengers to and from flights, and to and from sales desks, and other customer service duties including assisting customers with locating missing baggage.'

[31] Further, Mr Hardy maintained that no classification issues were raised by the TWU at the time of the 2009 Agreement negotiations. Mr Hardy referred to the negotiations for the 2013 Agreement and said the term 'passenger handling' was removed from the GC2 classification at the time because of concerns about compliance with the Better Off Overall Test ('BOOT'). It was retained in the GC3 classification to keep the option open for QGS to utilise 'customer service' roles in the future. He claimed that no classification issues, relating to Commissionaires, were raised during the 2013 negotiations.

[32] In respect to the negotiations for the 2015 Agreement, Mr Hardy said that his notes at the time (9 March 2016) reveal the Union had proposed 're-classifications', but this was not specific or pressed at future bargaining meetings. In any event, the GC2 classification for Commissionaires was retained in the 2015 Agreement. He agreed the Union had later raised the issue in August 2016 and again in early 2017.

[33] In response to the Union's evidence, Mr Hardy referred to the EOI documents training requirements for Commissionaires. The first EOI stated:

> '**Ground Crew**
>
> Qantas Ground Services (QGS) is a newly created entity under Qantas Airways. It has been established to provide ground handling services and support Qantas Airport Services when required.
>
> With the opportunity to work in an environment that fosters strong workplace relationships and inspires flexibility, your new position as Ground Crew will see you working in a fast paced team environment in different areas of the airport terminal. You will be actively providing further assistance to less mobile passengers and operating equipment to ensure on-time departure of aircraft.
>
> Should there be more than the required candidates a review of your current training and any resume experience relative to the role will be taken into account. If you are unsuccessful on this round of offers there may be further opportunity in the future as we look to rotate people through the role to build a pool of staff suitably trained and familiar with the function.
>
> **You will be responsible for:**
>
> • Providing professional, helpful assistance to customers who require extra care

- Anticipating the needs of those customers requiring special assistance and offer that assistance in a friendly and empathetic manner, appropriate to their needs

- Lifting customers baggage, pushing wheelchairs and facilitating the movement of customers to and from wheelchairs and aircraft seats'

[34] Applications for Relief Commissionaires referred to the following in the EOI of 11 September 2015:

> **Salary**
>
> Level GC2 of the Qantas Ground Services Pty Ltd Ground Handling Agreement 2013.

[35] Mr Hardy said that all QGS employees are required to use manual handling techniques. He agreed Commissionaires may assist in transporting passengers to a taxi rank or pick up or drop off points, but Commissionaires do not have the resources to book cars, or other modes of transport for passengers. Mr Hardy said that the Eagle Lift requires two operators at all times - not one. Mr Hardy agreed Commissionaires are expected to complete short online courses and undertake specific training on relevant machinery and equipment. However, they do not complete courses focused on customer-centric matters, typically undertaken by 'passenger handling' staff.

[36] In **cross examination**, Mr Hardy acknowledged that in addition to being trained on the safe operation of equipment, Commissionaires are also trained on how to engage with, and treat special needs customers, as they need to communicate with them and keep them informed. He claimed that this interaction might be just picking up the passenger, saying 'hello' and dropping them off. In any event, there is a high level of 'customer service' expected of all QGS and Qantas employees. He conceded that the level of interaction depends on the passenger's incapacity, and may include actually touching the passenger.

[37] Mr Hardy accepted that the ASU Agreement makes no mention of 'passenger handling', but the roles in that Agreement, from his 14 years of experience, are 'passenger handling' roles. In an exchange with me about the 'passenger handling' reference in the 2015 Agreement's GC3 classification it was said:

"His Honour: Well, how is it, Mr Hardy, that there is a passenger handling referred to in GC3 in the TWU agreement? Who is under that classification?---Sorry? What page is that on?

Mr Hardy: You go to attachment - you go to the 2015 agreement; attachment B describes the various GC classifications. GC3 - it refers it's the only classification that refers to passenger handling?---This agreement that you're referring to, Commissioner, is the QGS agreement. The QGS agreement is the agreement that I just mentioned came from, originally, the EGH agreement. We put that in there so that we could actually do customer service work. We are referring to passenger handling there, being the customer service work that is typically done by the ASU to give us the opportunity to do both customer service and baggage and provide a complete ground handling business if we're available to do. Does that answer your question, sir?

His Honour: Well, no. This agreement is with the TWU, isn't it?

Mr Hardy: Correct.

His Honour: What's the ASU got to do with it?

Mr Hardy: So, the reason it is with the - okay, it's the TWU. Some of the functions that are in here, are similar functions that are done by ASU predominantly and historically. The opportunity here was, so that we, as QGS under this TWU agreement, could also actually do some of that work, similar to some of the other ground handlers that now have that in their agreement, where predominantly, they only looked after ramp and baggage. It's an extension of our agreement to give us the opportunity to do - - -

His Honour: Who, under this agreement, is regarded as being involved with passenger handling?

Mr Hardy: Currently there is no one, because of the side letters with the ASU.

His Honour: No one?

Mr Hardy: Which, we've given assurance that we wouldn't do the work.

His Honour: I might ask your Counsel this, but I'm not quite sure what side letters with another Union has to do with the interpretation of this agreement. You might take that on notice Mr *Rauf*. Thank you."

[38] Mr Hardy said that Commissionaires are not the only employees who deal with customers. Other examples are employees engaged in marshalling passengers to or from aircraft, dealing with premium luggage, interactions at bag drop off where tubs are used. Mr Hardy believed the primary function of the Commissionaire is to transport the passenger. 'Customer service' staff have a different level of responsibility.

[39] Mr Hardy explained that his reference to 'above wing activities' in the correspondence with the ASU is generally understood to mean 'customer service' roles. Nevertheless, he maintained that 'passenger handling' is 'customer service'.

[40] Mr Hardy explained that during the negotiations for the 2009 Agreement he had been involved in the negotiations for the ASU Agreement. At the time, the ASU was worried that the term 'passenger handing' actually meant 'customer service' and QGS might be seeking to take their members' jobs. Hence, the side letters earlier referred to. However, he confirmed he was not involved with the TWU in the negotiations for the 2009 Agreement, when the term 'passenger handling' was first introduced. He had understood what the term meant after talking to QGS incumbents at the time.

[41] Ms *de Plater* put to Mr Hardy that the EOIs he had included in his evidence do not say that transporting passengers is the primary duty of Commissionaires. It is just one of a number of descriptors. He insisted it was a major point of the EOI document and a high level of 'customer service' is expected of all staff. In answer to a question from me, Mr Hardy said the same work performed by Commissionaires in the International Terminal is an ASU function, and not a TWU function.

[42] In re-examination, Mr Hardy acknowledged that the TWU could cover 'customer service' roles which may also be 'passenger handling' roles, but the ASU side letter would need to be taken into account. Mr Hardy said that in respect to the various recruitment exercises for Commissionaires, no one to his knowledge, had questioned the rate of pay at GC2.

SUBMISSIONS

For the Union

[43] In written submissions, the Union set out the background to the dispute, the relevant terms and classifications in the relevant Agreements and the applicable principles arising from the authorities which have dealt with the interpretation of enterprise agreements. As these matters are not in dispute between the parties and are dealt with elsewhere in this decision, I need not rehearse them here.

[44] The Union's fundamental submission is that the ordinary and usual meaning of the term 'passenger handling' is clear and unambiguous; therefore, no evidence of 'surrounding circumstances' to aid the interpretation, should be admitted. Further, the meaning of the words reflect the intention of the parties that employees engaged in 'passenger handling' would be classified at GC3 Year 2 of the 2015 Agreement.

[45] In reviewing the evidence of Messrs Price, Beach and Trinder, as to their undisputed duties and tasks in assisting elderly, or mobile impaired passengers, the Union submitted that the role is entirely 'customer focussed' and requires a high level of 'customer service'. It sometimes requires Commissionaires to physically handle passengers - which no other staff are required to do.

[46] Ms *de Plater* said the emphasis on exemplary 'customer service' is demonstrated by the training requirements for Commissionaires and the EOI documents tendered in the case through Mr Hardy. Given their role and duties, it is difficult to see how Commissionaire work is anything but 'passenger handling'. The fact the Commissionaire may use a piece of equipment (lifts, wheelchairs, mobile carts etc.) is merely peripheral to their primary function of 'passenger handling'.

[47] The Union sought the following relief from the proceeding:

A declaration that:

a. Commissionaires employed by the respondent are classified as GC3 employees;

b. The pay rate applicable to Commissionaires is GC3 Year 2;

c. All work performed by Commissionaires since the commencement of the 2013 Agreement be classified as GC3 attaching the GC3 Year 2 pay rate.

For QGS

[48] Unsurprisingly, Mr *Rauf* opposed the reclassification of the Commissionaires on the following bases:

- As the Union's claim seeks a reclassification of the roles, it is contrary to the No Extra Claims provision (cl 30) of the Agreement and would be contrary to s 739(5) of the Act;
- in so far as the claim involves an order for back pay, such a claim is outside the Commission's jurisdiction; see: *Re Ranger Uranium Mines Pty Ltd; Ex parte Federated Miscellaneous Workers' Union of Australia* (1987) 163 CLR 656.

[49] In any event, Mr *Rauf* submitted that the Commissionaires are correctly classified at GC2 for the following reasons:

(a) The principles of construction cannot give the term 'passenger handling' the meaning contended for by the Union.

(b) The meaning of the words 'passenger handling' require consideration of their plain and ordinary meaning in the context of the 2015 Agreement and the relevant 'surrounding circumstances'. These circumstances include:

i. the making of the 2015 Agreement and its predecessor agreements (2013 and 2009).

ii. the inclusion of the GC2 and GC3 classifications and the use of the term 'passenger handling' in each of the Agreements.

iii. Although not defined in the 2015 Agreement, the commonplace knowledge of the meaning of the term 'passenger handling' within the Qantas Group and the airline industry.

(c) The Commissionaire's primary function is to operate equipment and vehicles – a function which falls under the GC2 classification.

[50] Mr *Rauf* dealt with the merits of the matter by reference to the relevant classifications; see: para [6] above and the principles of agreement interpretation; see: *Kucks v CSR Ltd* [1996] IRCA 166 ('*Kucks*'); (1996) 66 IR 182 , *Transport Workers' Union of Australia v Linfox Australia Pty Ltd* [2012] FWAFB 8958 and *City of Wanneroo v Australian Municipal, Administrative, Clerical and Services Union* [2006] FCA 813; 153 IR 426 ('*City of Wanneroo*'). Mr *Rauf* submitted that the Union's contention that the term 'passenger handling' is clear and unambiguous, in that it relates to physical transportation of passengers, is a narrow and too literal interpretation, divorced from its context. The GC2 role clearly encompasses roles involving the operation of vehicles associated with the physical

transportation of passengers; whereas the roles in GC3 are of a more sophisticated and dedicated nature, involving the operation of complex machinery, with greater accountability and responsibility on the operator.

[51] Mr *Rauf* put that in the alternative, if there is any ambiguity with the words, the history of the 2015 Agreement and its context give effect to the meaning of the words. Mr *Rauf* set out the history of the GC2 and GC3 classification as they originated in the EGH Agreement. GC2 in the EGH Agreement included the following duties:

> Operate equipment and vehicles including two motors, small vans, tarmac buses, mobile steps, belts, disabled passenger lift, aerobridges, fork-lift and equipment requiring similar operational skills associated with ramp, cargo, freight, catering, aircraft servicing and general transport operations.

[52] The GC3 classification did not refer to 'passenger handling' duties. However, in the 2009 Agreement, both classifications made reference to 'passenger handling'. This was so, Mr *Rauf* said, so that QGS would have flexibility in the future to employ staff to perform customer centric roles, typically performed by employees under the ASU Agreement. Mr *Rauf* continued - the reference to 'passenger handling' was removed from the GC2 classification in the 2013 Agreement (but not GC3) and this continued into the 2015 Agreement. Mr *Rauf* contended that the term 'passenger handling' is generally used to describe work performed by staff under the ASU Agreement, such as check in, issuing boarding passes, Qantas Club and the sales desk. In addition, Commissionaires were historically engaged at GC2 in the 2009, 2013 and 2015 Agreements, because their focus was on operating equipment and vehicles. No claim was ever pressed to reclassify them before this application.

[53] Mr *Rauf* set out the duties of Commissionaires as transporting passenger, by means of wheelchairs, passenger buggies, EagleLifts, Aisle Chairs and Johnny Belts. It was submitted that physical acts using correct manual handling techniques does not fall within the definition of 'passenger handling'. In addition, undertaking online training courses in 'customer service' is not a relevant determinative factor of the meaning of the term 'passenger handling'. Accordingly, the dispute application should be dismissed.

[54] In **reply** submissions, Ms *de Plater* conceded that the Commission has no power to make a back pay order. The relief sought by the Union was a determination that Commissionaires, employed by QGS, should be classified as GC3 Year 2 under the 2015 Agreement. This is a resolution of the dispute by the exercise of arbitral power.

[55] Ms *de Plater* addressed the No Extra Claims submission of the respondent by distinguishing the decision in *Toyota Motor Corporation Australia Limited v Marmara and others* [2014] FCAFC 84 (‘*Toyota*’) from the circumstances here. In *Toyota*, it was found that proposing extensive variations to an agreement, in order to secure cost savings and reduce employee entitlements, was inconsistent with the No Extra Claims clause in that agreement. In this case, the Union is not seeking to change or vary any terms of the 2015 Agreement, nor was any such claim made during bargaining. The Union maintains the words used in Attachment B, in reference to ‘passenger handling’ in GC3 are clear and unambiguous and do not need any change. This dispute is about the wrong interpretation by QGS of the classifications.

[56] As to the meaning of ‘passenger handling’ it is accepted that Commissionaires may utilise equipment and vehicles to assist in transporting passengers with mobility issues. However, to confine their role merely to the operator of equipment is to unfairly minimise the work performed. Other duties may include taking passengers to shops and cafes, assisting them to the restrooms or organising transport home. The focus in the respondent’s own documents places little emphasis on ‘transport’; rather, the focus is on assisting customers in a friendly and empathetic manner, anticipate their needs, provide a high level of customer care when communicating with a diverse range of clients.

[57] Ms *de Plater* put that the fact the GC3 position description might include operating more complex machinery, with greater accountability and responsibility, is ‘*neither here nor there*’ to the issue the Commission is to determine - what is meant by ‘passenger handling’. Moreover, there is no reason why duties which are entirely customer-centric would not fit comfortably within the interpretation of ‘passenger handling’, even as recognised by the respondent itself.

[58] In relying on the principles of agreement interpretation, Ms *de Plater* said the exercise must begin with a consideration of the ordinary meaning of the words. If no ambiguity exists,

it is impermissible to consider evidence of 'surrounding circumstances' to contradict the plain language; see: *Golden Cockerel*. It was put that the plain meaning of the term 'passenger handling' is the dealing with, or management of passengers. The work of Commissionaires clearly fits within that definition.

[59] In the alternative, Ms *de Plater* put that even if ambiguity exists, the 'surrounding circumstances', such as the history of classifications in the 2009 Agreement, the negotiations for the 2009, 2013 and 2015 Agreements and the alleged commonplace understanding as to the terms within Qantas and the industry, does not assist the respondent's interpretation. Ms *de Plater* set out the history of the term being in the GC2 classifications in the 2009 Agreement and its removal from the 2013 Agreement. Ms *de Plater* rejected the submission that the term 'passenger handling' is generally used to describe work which is performed under the ASU Agreement. There was no evidence to support that conclusion or understanding. Moreover, the ASU Agreement is of no assistance, as it too does not define the term. There is no reference to the tasks performed under the ASU Agreement as being 'passenger handling' tasks.

[60] As to the negotiations for the 2013 and 2015 Agreements, there was no evidence that there was any discussion - let alone a common understanding - as to the intended meaning of the term. The only inference available from the history is that 'passenger handling' was recognised at GC2 and GC3 in the 2009 Agreement and GC3 Year 2 in the 2013 and 2015 Agreements. Ms *de Plater* concluded by observing that the fact a provision was carried through successive agreements does not sustain an assertion of a common understanding; see: *Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union v EnergyAustralia Yallourn Pty Ltd* (2017) 262 IR 300 at 40.

[61] In **oral submissions**, Ms *de Plater* dealt with QGS's submission that the Union's application and relief sought was an 'extra claim' not permitted by the 2015 Agreement's No Extra Claims clause 30. She maintained that there was no new claim and no application to vary the 2015 Agreement to provide for any new claim; see: *Toyota.* The present exercise is purely an interpretation of an existing provision which has been incorrectly interpreted by the employer. Such an exercise is consistent with the DSP in the Agreement.

[62] As to the merits, Ms *de Plater* said that the ordinary meaning of the words 'passenger handling' should not be constrained by a narrow or pedantic approach to construction. By giving a generous construction to the meaning of the words, the work performed by check in staff and the Commissionaires can both be covered by the definition. The 'customer service' work of 'passenger handling' is not incidental, as it might be for baggage handlers, but it is the entire job of Commissionaires. Ms *de Plater* put that the assertion by QGS that the term has a well known meaning in the history of agreement making with Qantas and the airline industry generally, is not supported by the evidence. It is not confined to so called 'above wing' activities. There was no evidence of any common understanding during the negotiations for the 2009, 2013 or the 2015 Agreements. Indeed, the evidence of the long standing employee witnesses in this case is to the contrary.

[63] As to the ASU issue, Ms *de Plater* said that the term 'passenger handling' is not even found in the ASU Agreement and no threat arises from a finding that the term could be applied to work under either Agreement. In any event, 'surrounding circumstances' do not supplement the plain language of the Agreement. In answer to a query from me, Ms *de Plater* confirmed that what is being sought in this exercise is a rate of $851.80 (GC3) compared to the existing pay rate of $818.56 (GC2). Ms *de Plater* accepted that any determination in the Union's favour may have significant back pay implications for existing and former Commissionaires. However, the Union neither seeks - nor could it seek - orders to that effect from the Commission.

[64] In **oral submissions**, Mr *Rauf* noted that the back pay claim was not pressed by the Union. However, he developed his written submissions as to this dispute being an extra claim inconsistent with cl 30 of the Agreement. He rejected the Union's attempt to distinguish the *Toyota* Full Federal Court decision and the submission that there is no material change here and no attempt to vary the Agreement. Mr *Rauf* put that this is not a correct understanding of the decision or the correct test to be applied. Mr *Rauf* said that the decision related to an attempt by Toyota to vary the terms of an Agreement which was ultimately found to be an extra claim impermissible under the Agreement because of the no extra claims provision. Mr *Rauf* noted that the provisions in the 2015 Agreement are much broader and refer to a bar on 'any other terms and conditions of employment' being claimed.

[65] Mr *Rauf* quoted and relied on the reference to the meaning of the word 'claim' in the *Toyota* decision in para [35]. The Full Court held the character of the changes, like here, were significant, such as to suggest an attempt to strike a new bargain. But this did not mean that a claim must always involve a significant variation. As the word must be understood in the 'limited sense of an assertion of a right or entitlement whether legal or moral', such claims could not be supported by industrial action during the operation of the agreement. Accordingly, Mr *Rauf* put that the word claim has a 'broad understanding'.

[66] Mr *Rauf* also relied on *Australian Municipal, Administrative, Clerical and Services Union v North East Water* [2014] FWC 6922, which concerned claims to limit the private use by employees of Company owned and maintained vehicles. Under that Agreement, there was no change proposed, but a change was made to Company policy. So whether a further claim is inconsistent with the Agreement's No Extra Claims provision may not require a variation to the Agreement, but requires an examination of all the circumstances of the proposal and its effect on employees in the context of the relevant clause. Mr *Rauf* submitted that this application amounts to a claim, which has an outcome on rates of pay (possibly retrospectively), conditions of employment and has the effect of altering the Agreement's classification structure.

[67] Mr *Rauf* then developed his submissions on the construction issue by referring to the well known authorities on interpreting provisions in enterprise agreements. He referred to cl 13 of the 2015 Agreement as the starting point:

> (a) Employees will be classified as either:
>
> (i) Trainee
> (ii) Ground Crew 1 (GC1)
> (iii) Ground Crew 2 (GC2)
> (iv) Ground Crew 3 (GC3)
> (v) Ground Crew 3A (GC3A)
> (vi) Ground Crew 3B (GC3B)
> (vii) Ground Crew 4 (GC4)
>
> (b) The Company has the right to determine the size, composition and duties and other work practices in place at any of its work sites.
>
> (c) The roles and duties for each classification are provided at Attachment B. Both management and ground crew will work in a flexible and cooperative way to ensure that their responsibilities are met.

> (d) The parties acknowledge that aircraft types and operating requirements will evolve over the life of the Agreement and that the duties relating to the functions identified at Attachment B will change from time to time in meeting those operating requirements.
>
> (e) The Company will provide training, in paid time, to ensure that the appropriate industry standards are applied and maintained in the handling of aircraft and associated equipment and when dealing with guests and their property.

[68] Reliance was had on the duties set out in the classifications in Attachment B. GC2 specifically refers to operating particular equipment, including the disabled passenger lift. Applying a literal interpretation to words 'passenger handling', without more, would create an inconsistency between GC2 and GC3. This is to be contrasted with the more sophisticated operation under GC3, such as 'push back' of aircraft. Despite reference to 'passenger handling' in GC3 and the trainee classification, no one performs that work, or is trained in that work as a trainee.

[69] Mr Hardy's evidence was that since 2009 a decision had been made by QGS not to engage any employee in 'passenger handling' under the 2015 Agreement, the 2009 and the 2013 Agreements. It merely reflected a possible intention of the Company to have greater flexibility in the future. However, that has not been taken up '*so as not to offend the ASU or cause issues on that front*'. Mr *Rauf* explained that a deliberate decision was taken to take the reference 'passenger handling' in the 2009 Agreement out of the 2013 Agreement, because of concerns that the lower rate of pay for 'passenger handling' under GC2 (although never so described) may appear to be a 'customer service' classification and thereby cause issues for the BOOT in the Agreement's approval process.

[70] Mr *Rauf* observed that since 2009 there had been no issue raised that Commissionaires were wrongly classified. This fact should account for something and reinforces the interpretation pressed by the respondent. Mr *Rauf* referred to the evidence of Mr Beach that instructions of what was required, as to assisting particular passengers, did not come directly to Commissionaires, but through a computer screen or from calls from 'customer service' employees. Mr Beach had agreed an important function of his role was to transport passengers using appropriate manual handling techniques and equipment safety. Mr Beach had also understood, when he had applied for the role, what the rate of pay was pitched at. Similar evidence was given by Mr Trinder and Mr Price. Mr *Rauf* submitted that the primary role of Commissionaires was transporting passengers, using the appropriate equipment safety. The

level of customer interaction or service was a secondary function, and may be as little as common courtesy.

[71] Mr *Rauf* agreed that employees at Level GC3 may be required to operate machinery identified in GC2, but their primary function was to operate more sophisticated equipment for which they had been trained and which requires a high level of responsibility.

[72] Mr *Rauf* referred to the decision of the Full Bench in *Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union (AMWU) v Silcar Pty Ltd* [2011] FWAFB 2555 to emphasise the importance of the historical context, as reflecting the objective intent of the parties. The Union had proposed a narrow and pedantic approach to construction which should ordinarily be avoided; see: *Kucks.* What the Union is attempting to do in this case is to ignore the context in which the functional aspect of the classification appears. The history over three successive bargaining periods and eight years, discloses a clear understanding of where Commissionaires fit in the classification structure of the respective Agreements.

[73] In **reply**, Ms *de Plater* rejected the no extra claims submission and said that all the authorities point to a 'claim' being an attempt to strike a new bargain. This is a dispute regarding the application of the 2015 Agreement, which the parties have agreed can be resolved through the DSP. Moreover, the Agreement does not prevent any changes whatsoever, during the term of the 2015 Agreement, as the consultation clause relating to major change makes clear.

[74] As to the argument that no issue has been taken since 2009, Ms *de Plater* said that this is not relevant to the interpretive exercise or an indicia of any common understanding between the parties. Ms *de Plater* noted that 'passenger handling' had been in the GC2 classification in the 2009 Agreement, but then removed from that classification, but retained at the GC3 level in the 2013 and 2015 Agreements. In other words, the duties in GC2 in 2009 were carried across to GC3 in subsequent Agreements. Ms *de Plater* added that references to particular types of machinery was not helpful. In addition, it is irrelevant who has first contact with the passenger. It cannot mean that the role of Commissionaires is not 'passenger handling', given the evidence of the degree of interaction with passengers when performing

the role. Ms *de Plater* put that there was no evidence that transporting passengers was a primary role; rather, Mr Hardy's evidence was that it was at least equal to 'customer service'.

Further submissions as to the '*Berri* Principles'

For the Union

[75] Ms *de Plater* put that the *Berri* principles did not modify the general starting point that the disputed words should be given their plain, ordinary meaning. It is only if ambiguity exists or the words are susceptible to more than one meaning that 'surrounding circumstances' may be called in to assist the meaning. This step must be based on evidence which establishes objective facts which were known to both parties. Ms *de Plater* submitted that the *Berri* decision modified the interpretive principles in the following ways:

1. Primacy is given to the ordinary meaning of the words, having regard to the context and purpose of the agreement.
2. An enterprise agreement is an instrument made when the majority of the employees to be covered by the agreement vote to approve the agreement. This is an important contextual consideration and it may be inferred that such agreements are intended to establish binding obligations. This will be a relevant factor in identifying the common intention of the parties.
3. While agreements are not instruments to which the *Acts Interpretation Act 1901* applies, the modes of textual analysis developed in the general law, may assist in the interpretative exercise, providing an overly technical approach is eschewed.
4. Post agreement conduct, which amounts to no more than the absence of a complaint, is insufficient to establish a common understanding.

[76] Ms *de Plater* submitted that in applying the *Berri* Principles, the Union's position as to the ordinary meaning of the term 'passenger handling' is clear and unambiguous as found in the GC3 Year 2 classification. The work set out in GC3 is the work of the Commissionaires. This approach is supported by the context of the words in the Agreement as a whole and the history of its references in the 2009, 2013 and 2015 Agreements. While 'passenger handling' is not defined, it means dealing with, or management of passengers. Even on the respondent's own case, this is the work of Commissionaires.

[77] Ms *de Plater* submitted that to the extent of any ambiguity, the respondent relied on Mr Hardy's contention that the term 'passenger handling' was to be interpreted by reference to the work performed under the ASU Agreement. This was based on his own personal understanding, drawn from unspecified conversations with his predecessors, and with the ASU, and not on any objective evidence. Indeed, Mr Hardy conceded he has never discussed the meaning of the term with anyone from the TWU. His evidence does not establish a common intention or notorious fact. Such evidence should not be admitted to contradict the plain language. As to post conduct, the respondent's claim amounts to little more than the absence of a complaint, or common inadvertence, which is insufficient to establish a common understanding.

For QGS

[78] Mr *Rauf* set out the facts in the *Berri* decision (concerning the payment of a laundry allowance) and the changes which modified the *Golden Cockerel* principles. He put that the *Berri* Principles further assist in the Commission's determination of this matter. Mr *Rauf* firstly put that the contested words in the Agreement have a plain meaning, having regard to the context and purpose of the 2015 Agreement, in particular by reference to the duties performed on more sophisticated machinery at GC3, rather than the primary role of operating specific equipment identified in GC2.

[79] As to the assistance of general law principles, in constructing the 2015 Agreement, the Full Bench in *Berri* said that this test should be exercised with some caution. The Full Bench determined that all words in an enterprise agreement must *prima facie* be given some meaning and effect and not be regarded as superfluous or insignificant. In this case, there was no inadvertent error. Mr Hardy's evidence demonstrates there is a purpose to the provision. His evidence was that 'passenger handling' was included in the 2013 and 2015 in the hope QGS may engage such 'customer service' roles at GC3 in the future. The fact of such an aspiration or objective (not realised) does not render the provision otiose. Therefore, the general law principles do not arise in this case. Mr *Rauf* noted that in the *Berri* decision, the Full Bench found it was unclear in what circumstances, how frequent, and to whom a laundry allowance was to be paid. In this case, the term 'passenger handling', is not defined or used anywhere else in the Agreement. In addition, the title or position of Commissionaire is not found

anywhere in the Agreement and there is no express provision that Commissionaires are exclusively classified at GC3.

[80] Mr *Rauf* submitted that by relying on inferences that 'passenger handling' is synonymous with 'customer service', the Union imports extrinsic matters to support its interpretation. It was accepted Mr Hardy also made the same point. The Union witnesses gave their subjective understanding as to 'passenger handling', which is not relevant under the *Berri* Principles. Further, the contextual matters relied on by the Union suffer the same deficiency as identified in *Berri*. These matters do not necessarily lead to a conclusion that there is an entitlement. Mr *Rauf* put that these matters suggest an ambiguity, or at least that the disputed provisions are susceptible to more than one meaning.

[81] Mr *Rauf* referred to the *Berri* Principles dealing with reliance on antecedent agreements and evidence of the parties understanding of the positions of the parties during earlier negotiations. Mr *Rauf* set out extracts from *Berri*, in particular highlighting para 96 which reads:

> [96] Further, even if there had been evidence that the laundry allowance had been discussed during the negotiations of the 2014 Agreement, such evidence would need to be approached with a degree of caution. As mentioned above, while the 2014 Agreement was negotiated by Berri and the AMWU, it was ultimately a 'tripartite document between a body of employees, a corporation with numerous officers and an industrial association'. **In these circumstances evidence as to what, if anything, the employees covered by the 2014 Agreement were told about the laundry allowance (either during the course of the negotiations or pursuant to s.180(5) of the FW Act) may be of more assistance than evidence of the bargaining positions taken by the employer or a bargaining representative during the negotiation of the agreement.** This is so because an enterprise agreement is 'made' when a majority of the employees asked to approve the agreement cast a valid vote to approve the agreement.

[82] Mr *Rauf* accepted that Mr Hardy had not been involved in the negotiations for the 2009 Agreement (and his evidence is not of assistance), but he was involved in the negotiations for the 2013 and 2015 Agreements. He is able to give evidence establishing objective background facts known to both parties.

[83] In respect to the 2013 Agreement, there were some notable changes:

(a) New classifications of GC3A and GC3B were introduced, with increased responsibilities.
(b) The term 'passenger handling' was removed because of concerns as to compliance with the BOOT and the understanding of 'customer service' roles being typically performed under the ASU Agreement.

[84] While Mr *Rauf* accepted that the 2013 Agreement may not be relevant to the interpretation of the 2015 Agreement, it is clear the classification structure was rolled over into the 2015 Agreement; see: Mr Hardy's and Mr Trinder's evidence. In addition, all employee witnesses understood when they applied for their roles that they would not be paid a different rate of pay (to GC2). This was evidence of what the parties understood to be the intention of the classification structure under the 2013 and 2015 Agreements. Moreover, it was not disputed at the time. These considerations support a construction that employees of QGS employed as Commissionaires are correctly classified as GC2.

CONSIDERATION

Jurisdictional Objection – No Extra Claims Submission

[85] At the outset, it is necessary to deal with QGS's submission that this dispute is a *de facto* extra claim, impermissible under the No Extra Claims provision (cl 30) of the 2015 Agreement. Clause 30 reads as follows:

> **30. No Extra Claims**
>
> The parties bound and employees covered by this Agreement will not pursue any claims relating to any matter or employment condition during the life of this Agreement.

[86] Firstly, no extra claims provisions, like the one above, are usually intended to prohibit the making of claims for conditions (usually benefits), by either the employees or the employer, outside of those already provided for in the relevant industrial instrument. This is not the case here. 'Passenger handling' is an existing term of the 2015 Agreement; so it cannot be regarded as a condition outside of those conditions already in the 2015 Agreement.

[87] Secondly, in my view, it would be a perverse result indeed, if the capacity of a party to invoke the DSP in an Agreement, which empowers the Commission to deal with a dispute by arbitration, was effectively stymied by the invocation of a No Extra Claims provision in the Agreement; *a fortiori* in a case such as this, where the disputed words in the Agreement suffer from no ambiguity or uncertainty, and their ordinary meaning is clear and unambiguous.

[88] Sections 739 and 595 of the Act are discrete and specific provisions which are able to be utilised in resolving a broad range of matters, providing those matters are directly referable to the Agreement's DSP. There is nothing in the Act, or the authorities relevant to the interpretation of enterprise agreements, that prescribe or limit outcomes from an arbitration of matters, which may have monetary consequences. Of course, as the Union properly conceded, the Commission cannot make orders requiring payment arising from such consequences. Indeed, most interpretive cases, of the many hundreds the Commission deals with annually under s 739 of the Act, are predicated on a beneficial purpose which is said to flow from a correct interpretation of a specific provision/s in an agreement. Two recent decisions (one involving Qantas) serve to demonstrate this observation. They each involved a reclassification of positions under an Agreement through the Agreement's DSP and s 739 of the Act; see: *Transport Workers' Union of Australia v Qantas Airways Limited and QCatering Limited* [2017] FWC 3437 and *Wesley Stannus and others v CPA Group t/a Corporate Protection Australia Group Pty Ltd* [2017] FWC 5275. It seems to me, it would be exceptional, if the s 739 interpretive exercise, including an application under s 217 of the Act, was intended to have a non-beneficial purpose.

[89] Thirdly, I would add that there is some force to the Union's submission that the decision of the Full Federal Court in *Toyota* is not apposite to the present case, as the Union seeks no change or variation to the 2015 Agreement; it is merely seeking a correct interpretation of the classification of Commissionaires, under the Agreement's DSP and the relevant legislative provisions.

[90] While I consider Mr *Rauf's* submissions as to the effect of the No Extra Claims provision to be a valiant one, it cannot be accepted.

Relevant principles

[91] As mentioned in paragraph [5] above, subsequent to the Commission reserving its decision in this matter, the Full Bench of the Commission in *Berri* modified the principles of enterprise agreement interpretation which had hitherto been applied on the basis of the principles set out in *Golden Cockerel*.

[92] The '*Berri* Principles' are as follows:

> 1. The construction of an enterprise agreement, like that of a statute or contract, begins with a consideration of the ordinary meaning of the relevant words. The resolution of a disputed construction of an agreement will turn on the language of the agreement having regard to its context and purpose. Context might appear from:
>
> (i) the text of the agreement viewed as a whole;
>
> (ii) the disputed provision's place and arrangement in the agreement;
>
> (iii) the legislative context under which the agreement was made and in which it operates.
>
> 2. The task of interpreting an agreement does not involve rewriting the agreement to achieve what might be regarded as a fair or just outcome. The task is always one of interpreting the agreement produced by parties.
>
> 3. The common intention of the parties is sought to be identified objectively, that is by reference to that which a reasonable person would understand by the language the parties have used to express their agreement, without regard to the subjective intentions or expectations of the parties.
>
> 4. The fact that the instrument being construed is an enterprise agreement made pursuant to Part 2-4 of the FW Act is itself an important contextual consideration. It may be inferred that such agreements are intended to establish binding obligations.
>
> 5. The FW Act does not speak in terms of the 'parties' to enterprise agreements made pursuant to Part 2-4 agreements, rather it refers to the persons and organisations who are 'covered by' such agreements. Relevantly s.172(2)(a) provides that an employer may make an enterprise agreement 'with the employees who are employed at the time the agreement is made and who will be covered by the agreement'. Section 182(1) provides that an agreement is 'made' if the employees to be covered by the agreement 'have been asked to approve the agreement and a majority of those employees who cast a valid vote approve the agreement'. This is so because an enterprise agreement is 'made' when a majority of the employees asked to approve the agreement cast a valid vote to approve the agreement.
>
> 6. Enterprise agreements are not instruments to which the *Acts Interpretation Act 1901* (Cth) applies, however the modes of textual analysis developed in the general law may assist in the interpretation of enterprise agreements. An overly technical

approach to interpretation should be avoided and consequently some general principles of statutory construction may have less force in the context of construing an enterprise agreement.

7. In construing an enterprise agreement it is first necessary to determine whether an agreement has a plain meaning or it is ambiguous or susceptible of more than one meaning.

8. Regard may be had to evidence of surrounding circumstances to assist in determining whether an ambiguity exists.

9. If the agreement has a plain meaning, evidence of the surrounding circumstances will not be admitted to contradict the plain language of the agreement.

10. If the language of the agreement is ambiguous or susceptible of more than one meaning then evidence of the surrounding circumstance will be admissible to aide the interpretation of the agreement.

11. The admissibility of evidence of the surrounding circumstances is limited to evidence tending to establish objective background facts which were known to both parties which inform and the subject matter of the agreement. Evidence of such objective facts is to be distinguished from evidence of the subjective intentions of the parties, such as statements and actions of the parties which are reflective of their actual intentions and expectations.

12. Evidence of objective background facts will include:

> (i) evidence of prior negotiations to the extent that the negotiations tend to establish objective background facts known to all parties and the subject matter of the agreement;
>
> (ii) notorious facts of which knowledge is to be presumed; and
>
> (iii) evidence of matters in common contemplation and constituting a common assumption.

13. The diversity of interests involved in the negotiation and making of enterprise agreements (see point 4 above) warrants the adoption of a cautious approach to the admission and reliance upon the evidence of prior negotiations and the positions advanced during the negotiation process. Evidence as to what the employees covered by the agreement were told (either during the course of the negotiations or pursuant to s.180(5) of the FW Act) may be of more assistance than evidence of the bargaining positions taken by the employer or a bargaining representative during the negotiation of the agreement.

14. Admissible extrinsic material may be used to aid the interpretation of a provision in an enterprise agreement with a disputed meaning, but it cannot be used to disregard or rewrite the provision in order to give effect to an externally derived conception of what the parties' intention or purpose was.

> 15. In the industrial context it has been accepted that, in some circumstances, subsequent conduct may be relevant to the interpretation of an industrial instrument. But such post-agreement conduct must be such as to show that there has been a meeting of minds, a consensus. Post-agreement conduct which amounts to little more than the absence of a complaint or common inadvertence is insufficient to establish a common understanding.

[93] There is no doubt the '*Berri* Principles' have as their foundation the long line of historic authority as to the approach to be applied by the Courts, Commissions and Tribunals when called upon to interpret the words in an industrial instrument. Prior to the preponderance of agreements and enterprise agreements, this was usually applied to Awards. Recent iterations of the legislative framework, necessitated a refinement of these principles; but some of the basic fundamentals remain. I refer to some of these cases to make good this proposition.

[94] I harken back to some of the early well-known cases which dealt with the construction of Awards. In *City of Wanneroo*, *French* J said at 53:

> '53 The construction of an award, like that of a statute, begins with a consideration of the ordinary meaning of its words. As with the task of statutory construction regard must be paid to the context and purpose of the provision or expression being construed. Context may appear from the text of the instrument taken as a whole, its arrangement and the place in it of the provision under construction. It is not confined to the words of the relevant Act or instrument surrounding the expression to be construed. It may extend to '... the entire document of which it is a part or to other documents with which there is an association'. It may also include '... ideas that gave rise to an expression in a document from which it has been taken' – *Short v FW Hercus Pty Ltd* [1993] FCA 51; (1993) 40 FCR 511 at 518 (Burchett J); *Australian Municipal, Clerical and Services Union v Treasurer of the Commonwealth of Australia* (1998) 80 IR 345 (Marshall J).'

Then at paragraph 57, His Honour observed:

> '57 It is of course necessary, in the construction of an award, to remember, as a contextual consideration, that it is an award under consideration. Its words must not be interpreted in a vacuum divorced from industrial realities – *City of Wanneroo v Holmes* [1989] FCA 369; (1989) 30 IR 362 at 378-379 and cases there cited. There is a long tradition of generous construction over a strictly literal approach where industrial awards are concerned – see eg *Geo A Bond and Co Ltd (in liq) v McKenzie* [1929] AR 499 at 503-4 (Street J). It may be that this means no more than that courts and tribunals will not make too much of infelicitous expression in the drafting of an award nor be astute to discern absurdity or illogicality or apparent inconsistencies. But while fractured and illogical prose may be met by a generous and liberal approach to construction, I repeat what I said in *City of Wanneroo v Holmes* (at 380):

> 'Awards, whether made by consent or otherwise, should make sense according to the basic conventions of the English language. They bind the parties on pain of pecuniary penalties.''

[95] *Madgwick* J in *Kucks v CSR Limited* opined that a narrow pedantic approach to interpretation should be avoided, a search of the evident purpose is permissible and meanings which avoid inconvenience or injustice may reasonably be strained for, but:

> "... [T]he task remains one of interpreting a document produced by another or others. A court is not free to give effect to some anteriorly derived notion of what would be fair or just, regardless of what has been written into the award. Deciding what an existing award means is a process quite different from deciding, as an arbitral body does, what might fairly be put into an award. So, for example, ordinary or well-understood words are in general to be accorded their ordinary or usual meaning."

[96] As the legislative focus shifted towards agreement making, the same principles were recognised to apply to the interpretation of enterprise agreements. In *Amcor Limited v Construction, Forestry, Mining and Energy Union* (2005) 222 CLR 241 ('*Amcor*'), the High Court *Gummow, Hayne and Heydon* JJ:

> "Clause 55.1.1 must be read in context. It is necessary, therefore, to have regard not only to the text of cl 55.1.1, but also to a number of other matters: first, the other provisions made by cl 55; secondly, the text and operation of the Agreement both as a whole and by reference to other particular provisions made by it; and, thirdly, the legislative background against which the Agreement was made and in which it was to operate."

[97] In *Amcor*, His Honour *Kirby* J said:

> "However, certified agreements such as this commonly lack the precise drafting of legislation. As appears from a scrutiny of the provisions of the Agreement, it bears the common hallmarks of colloquial language and a measure of imprecision. Doubtless this is a result of the background of the drafters, the circumstances and possibly the urging of the preparation, the process of negotiation and the omission to hammer out every detail - including possibly because such an endeavour would endanger the accord necessary to consensus and certification by the Commission.
> . . .
> The nature of the document, the manner of its expression, the context in which it operated and the industrial purpose it served combine to suggest that the construction to be given to cl 55.1.1 should not be a strict one but one that contributes to a sensible industrial outcome such as should be attributed to the parties who negotiated and executed the Agreement. Approaching the interpretation of the clause in that way accords with the proper way, adopted by this Court, of interpreting industrial

instruments and especially certified agreements. I agree with the following passage in the reasons of Madgwick J in *Kucks v CSR Ltd*, where his Honour observed:

> 'It is trite that narrow or pedantic approaches to the interpretation of an award are misplaced. The search is for the meaning intended by the framer(s) of the document, bearing in mind that such framer(s) were likely of a practical bent of mind: they may well have been more concerned with expressing an intention *in ways likely to have been understood in the context of the relevant industry and industrial relations environment than with legal niceties or jargon*. Thus, for example, it is justifiable to read the award to give effect to its evident purposes, having regard to such context, despite mere inconsistencies or infelicities of expression which might tend to some other reading. *And meanings which avoid inconvenience or injustice may reasonably be strained for*. For reasons such as these, expressions which have been held in the case of other instruments to have been used to mean particular things may sensibly and properly be held to mean something else in the document at hand.' [references omitted]"

[98] Again in *Amcor*, His Honour *Callinan* J said there was substance in the observations of *Madgwick* J in *Kucks.* His Honour then said:

> "An industrial agreement has a number of purposes, to settle disputes, to anticipate and make provision for the resolution of future disputes, to ensure fair and just treatment of both employer and employees, and generally to promote harmony in the workplace. It is with the third of these that cl 55 of the Agreement is particularly concerned. It is important to keep in mind therefore the desirability of a construction, if it is reasonably available, that will operate fairly towards both parties."

[99] In *Codelfa Construction Pty Ltd v State Rail Authority of NSW* (1982) 149 CLR 337 ('*Codelfa*') *Mason* J, as he then was, (and with whom *Stephen*, *Aickin* and *Wilson* JJ agreed) said:

> "The true rule is that evidence of surrounding circumstances is admissible to assist in the interpretation of the contract if the language is ambiguous or susceptible of more than one meaning. But it is not admissible to contradict the language of the contract when it has a plain meaning. Generally speaking facts existing when the contract was made will not be receivable as part of the surrounding circumstances as an aid to construction, unless they were known to both parties, although, as we have seen, if the facts are notorious knowledge of them will be presumed.
>
> It is here that a difficulty arises with respect to the evidence of prior negotiations. Obviously the prior negotiations will tend to establish objective background facts which were known to both parties and the subject matter of the contract. To the extent to which they have this tendency they are admissible. But in so far as they consist of statements and actions of the parties which are reflective of their actual intentions and expectations they are not receivable. The point is that such statements and actions reveal the terms of the contract which the parties intended or hoped to make. They are

> superseded by, and merged in, the contract itself. The object of the parol evidence rule is to exclude them, the prior oral agreement of the parties being inadmissible in aid of construction, though admissible in an action for rectification.
>
> Consequently when the issue is which of two or more possible meanings is to be given to a contractual provision we look, not to the actual intentions, aspirations or expectations of the parties before or at the time of the contract, except in so far as they are expressed in the contract, but to the objective framework of facts within which the contract came into existence, and to the parties' presumed intention in this setting. We do not take into account the actual intentions of the parties and for the very good reason that an investigation of those matters would not only be time consuming but it would also be unrewarding as it would tend to give too much weight to these factors at the expense of the actual language of the written contract."

[100] The nature of the present task was emphasised by the Full Bench in *DP World Brisbane Pty Ltd v The Maritime Union of Australia* [2013] FWCFB 8557 in the following terms:

> '[31] Importantly, the task of interpreting an enterprise agreement does *not* involve re-writing a provision in order to give effect to the Commission's view of what would be fair and just, without regard to the terms of the agreement. As Madgwick J observed in *Kucks v CSR Limited*:
>
> > 'But the task remains one of interpreting a document produced by another or others. A court is not free to give effect to some anteriorly derived notion of what would be fair or just, regardless of what has been written into the award. Deciding what an existing award means is a process quite different from deciding, as an arbitral body does, what might fairly be put into an award. So, for example, ordinary or well-understood words are in general to be accorded their ordinary or usual meaning.'

[101] All of the above observations are concordant with the approach taken in *Golden Cockerel* and *Berri*. In short, the Commission's task is to ascertain the objective intention of the contested words, based upon the language and terms of the 2015 Agreement, when read as a whole, having regard to its context and purpose.

[102] At the risk of oversimplifying the eloquent submissions of both parties, it seems to me that the gravamen of this case, is really to answer one question - what is the ordinary meaning of the term 'passenger handling'? Regrettably the Agreement is silent as to its definition, but I do not think that the ordinary meaning of the words is open to any serious challenge, as I shall now explain.

[103] There can be no doubt that the noun 'passenger' in the present context, means the customers of Qantas' domestic airline services. The controversy arises as to the meaning of the 'handling' of these passengers. Guidance can be found from the Macquarie Dictionary's definition:

> 'Handling: to touch or feel with the hand, use the hands on, as in picking up; to manage in use with the hands, to manipulate; to deal or treat in a particular way; to manage, direct or control.'

[104] In my considered opinion, the expression 'passenger handling' in the 2015 Agreement's context sits in splendid clarity, unvestured by any doubt or uncertainty. In the words of the medieval expression, the term 'passenger handling' is '*as plain as a pikestaff*'. Certainly, Mr Hardy was in no doubt when he said 'passenger handling' is 'customer service'. Moreover, Mr Hardy's evidence was that the ASU were worried that 'passenger handling' might mean 'customer service' – hence the assurances given to the ASU. Thus, the two synonymous expressions are fundamental to Qantas' high expectation of exemplary 'customer service' and must be viewed in this context and the context of the Agreement overall. That said, I consider that a heavy cloud of unreality shrouds Qantas' submissions in this case.

[105] Of course, the Airline Officers classification (customer service) in the ASU Agreement could have included an exclusionary rider, such as 'it does not include work involved with transporting elderly infirmed or immobile passengers etc.' It does not. In fact, it does the opposite, as properly conceded by Mr Hardy. Importantly, exactly the same work is performed at the International Terminal by ASU Airline Officers Level 2. This is obvious from the typical duties at a Level 2 which states:

> "**Typical duties within Airports at Level 2 are limited to:**
>
> - Reconcile passenger lists with ticket coupons; and/or,
> - At SIT, Meet and greet customers and assist with wheelchairs, unaccompanied minors and customers with special needs on dedicated roster."

[106] If location is the only difference, then it is one without any distinction and makes no sense. Mr Hardy's evidence which sought to distinguish 'passenger handling' roles under the Agreement and 'customer service' roles under the ASU Agreement, is irreconcilable with the

fact that 'passenger handling' is not mentioned at all in the ASU Agreement; yet ASU employees perform that exact role elsewhere (the International Terminal).

[107] With respect to Mr Hardy, I consider his evidence, that a Commissionaire '*might just pick up a passenger, say hello and drop them at the gate*', significantly downplays the interaction that actually occurs between the passenger and the Commissionaire. Moreover, it is inconsistent with QGC's and Qantas' own high 'customer service' expectations of all its employees. It is inconceivable that a Commissionaire would have no ongoing verbal communication with passengers requiring assistance. Indeed, it is evident from Mr Hardy's statement that the training requires and expects such communication:

> 'Commissionaires are expected to complete short online courses in matters including privacy awareness, disability awareness, dangerous goods awareness and customer specific needs. Commissionaires also complete specific training for machinery and equipment, including disabled passenger lifts, the gantry (a type of ramp) and people movers. Manual handling awareness courses are also completed.'

I simply cannot accept that Commissionaires' discourses with passengers, which QGS acknowledge have 'specific needs' which require individualised approaches and special training, would be limited to mere salutations. Further, I find that where Mr Hardy states, on the one hand, that Commissionaires undertake training for 'customer specific needs', and on the other hand, that their training does not focus on 'customer centric matters', to be utterly contradictory.

[108] One limb of emphasis in the respondent's case was that the person who receives a passenger request for assistance and conveys the request to the Commissionaire, is the 'customer service' person or check in desk employee. I would say, 'so what?'. The critical person involved in dealing with the passenger is the person who carries out the tasks in resolving the passenger's needs – not the recipients or conveyors of the request. It would be akin to suggest an emergency call to Sydney Water, in respect to a broken water main, was more crucial than the plumber who fixes the problem.

[109] QGS also seemed to suggest that just because Commissionaires are required to look neat and presentable when seen by the public, they are no different to ramp and luggage employees in secure airside areas who can be seen by passengers on landside (through the

baggage carousel hole). In my opinion, this is a completely different and much lower level of customer interaction to Commissionaires, who deal directly and personally with passengers.

[110] In addition, I would apprehend that if one asked the assisted passengers themselves, or any fair minded person, who might observe the Commissionaires performing their duties, whether they were operating machinery, or involved in 'customer service', their answer would be overwhelmingly the latter.

[111] In my view, QGS evidence and submissions very much understated the importance of the enhanced, specialist (people's) skills expected of Commissionaires. The fact that employees usually come from the ranks of ramp and baggage handling employees and are required to be trained on the specific people's skills necessary, underscores the Commissionaires 'customer service' role. Contrary to QGS's submissions, the fact the Commissionaires undergo online training courses in 'customer service' is a relevant factor going to the clear meaning of 'passenger handling'.

[112] The undisputed evidence disclosed that Commissionaires may occasionally be required to actually touch and physically handle a passenger, by guiding them by the arm, securing them into a wheelchair or helping them into a cart or trolley. No one who is involved in 'customer service' by asking and answering questions from behind a desk or issuing boarding passes, would be likely ever to touch the passenger. When viewed in this light, it might well be said that the Commissionaires are, in reality, more involved in 'customer service', being 'passenger handling', than anyone else, including those who Mr *Hardy* contended are the primary deliverers of such service under the ASU Agreement. I note again Mr Hardy's evidence that '*Passenger handling is customer service*'.

[113] In QGS's submission, it was said '*The physical handling of passengers conducted by Commissionaires therefore does not fall within the definitions of 'passenger handling'*". This is a ludicrous submission. Having found no ambiguity in the term 'passenger handling', having regard to the context and purpose of the 2015 Agreement, and there can be no doubt, in my judgement, that the role of Commissionaires is primarily concerned with performing 'passenger handling', that would seemingly be the end of the matter as far as the interpretive exercise is concerned. However, assuming there to be some ambiguity or uncertainty, and

'surrounding circumstances' may be called into account, I have found the case pressed by QGS to be very weak and unpersuasive. A few observations can be made in this regard.

[114] What does one make of the side letters between the ASU and QGS? On first blush, it is curious that the 2009 Agreement included the term 'Passenger Handling' in the GC2 and GC3 classifications, but then the term disappears from the GC2 classification in both the 2013 and 2015 Agreements; conveniently suiting the argument that the Commissionaires, paid at GC2, are not involved in 'passenger handling'. Mr *Hardy* explained that the term was removed because of the implications for the BOOT by referencing 'passenger handling' at the GC2 level and in light of QGS's understandings with the ASU. That may well be the case. Mr Hardy appeared to suggest QGS did not want to jeopardise its long standing agreement with the ASU that QGS employees would not perform 'passenger handling' roles performed by employees under the ASU Agreement. I accept Mr Hardy's evidence in that respect. However, it must be said that the true effect of the arrangements is that the ASU has coverage for, (and the members under), the ASU Agreement. To concede that the work of Commissionaires is the same as that performed by the ASU (which, in fact, it is at the International Terminal) might imperil that agreement and risk disputation with the ASU. With respect, that is not the test of the appropriate classification coverage of the work performed by the Commissionaires. QGS must live with the consequences of the words it had agreed to in the 2013 and 2015 Agreements. It cannot escape the consequences of a correct interpretation of those words, even if the consequences have adverse implications for arrangements it has with another Union.

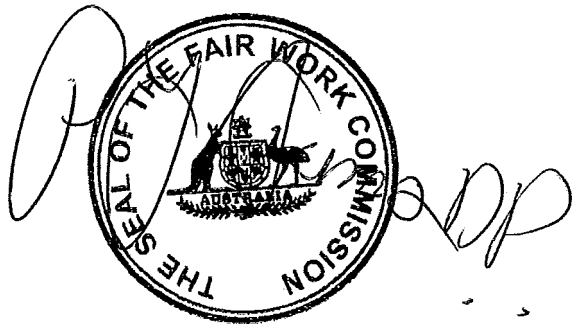
[115] In addition, QGS's reliance on the fact that the TWU did not press for a different classification to GC2 in the 2013 and 2015 negotiations, is not the point either. The intentions of the parties (being 'surrounding circumstances') does not displace the ordinary meaning of words, where there is no ambiguity or uncertainty, as is the case here; see: the authorities referred to above.

[116] In any event, there appears to be at least some commonality with the duties performed by Commissionaires with those set out in the Level 2 descriptors under the ASU Agreement; see: para [108] above.

[117] Ironically, this descriptor would tend to support the interpretation of 'passenger handling' as contended by the TWU and the unreality of the distinction pressed by QGS between the work of Commissionaires and like employees under the ASU Agreement, involved in 'customer service' roles.

[118] Finally, QGS made much of the fact that there had been no complaint by the TWU or the employees at the time, or subsequent to the making of the Agreements (until 2016) about the classification structure and this was an indicia of common understanding. Consistent with Principle 15 of the *Berri* Principles, the absence of a complaint 'is insufficient to establish a common understanding'; see also: *Community and Public Sector Union v Telstra Corp Ltd* (2005) 139 IR 141 and *Australian Municipal, Administrative, Clerical & Services Union v Treasurer (Cth)* (1998) 82 FCR 175.

[119] For the reasons I have earlier set out, I conclude that the contested term in the 2015 Agreement is not ambiguous, uncertain or capable of more than one meaning. It is therefore impermissible to call in aid of interpretation, 'surrounding circumstances', to give the words a different meaning to their plain, ordinary meaning. It follows that I determine that the role of Commissionaires, employed by QGS, should be classified as GC3 Year 2 under the 2015 Agreement. Accordingly, this dispute is resolved and the proceedings concluded.



DEPUTY PRESIDENT

Appearances:

Ms L de Plater for the applicant
Mr B Rauf of Counsel for the respondent

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