



Friday, 25 October 2024

## Weekly Employment Law A Weekly Bulletin listing Decisions of Superior Courts of Australia covering Employment Law

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### Executive Summary (One Minute Read)

**Transport Workers' Union of Australia v Qantas Airways Limited (Compensation Claim) (FCA)** - Court considered appropriate compensation for Qantas's decision to outsource baggage handling, which had been found to constitute adverse action under the Fair Work Act 2009 (Cth)

## HABEAS CANEM

### Habeus Halloween



## Summaries With Link (Five Minute Read)

### **Transport Workers' Union of Australia v Qantas Airways Limited (Compensation Claim) [2024] FCA 1216**

Federal Court of Australia

Lee J

Industrial law - in 2020, during the covid pandemic, Qantas decided to outsource its ground handling operations work at ten Australian airports - the Court found that the outsourcing decision was adverse action in contravention of s340(1)(b) of the *Fair Work Act 2009* (Cth), which provides that a person must not take adverse action to prevent the exercise of a workplace right - the relevant workplace right was the ability for the employees to organise and engage in protected industrial action and participate in bargaining in 2021 - the Court dismissed the Union's claim for general reinstatement under s545 - appeals by both Qantas and the Union were dismissed, and Qantas was granted special leave to appeal to the High Court but that appeal was dismissed - the matter returned to the primary judge to decide compensation under s545(1) and s525(2)(b) regarding three test case individuals - held: despite the Court's entreaties, the Union had refused to deal with the issue of compensation using the procedural flexibility and statutory estoppels available as a class action under Part IVA of the *Federal Court of Australia Act 1976* (Cth), and had insisting on ploughing on with the more cumbersome and unwieldy so-called "representative type" of procedure provided for in the *Fair Work Act* - the Court had found that, while outsourcing "best facilitated the pressing commercial aims of Qantas", this did not mean the decision-maker was not subjectively conscious of other considerations - for compensation to be awarded under s545, the Court must be satisfied that there was the appropriate causal connexion between the contravention and the loss claimed - the common law approach to damages provides a useful guide in assisting the just exercise of the statutory discretion, but is not prescriptive - the appropriate counterfactual if the infringing conduct had not occurred was that Qantas would have outsourced its baggage handling lawfully 12 months after each of the test case individuals ceased employment - the Union had established causation of a lost opportunity of some value, which was to be confined in time - the Court answered several questions about the compensation payable - some compensation for non-economic loss suffered should be awarded, which ranged from \$30,000 to \$100,000 across the three test cases - the compensation awarded to each test case individual should be a gross amount - proceeding relisted to hear any residual argument in relation to the final calculation of compensation.

[Transport Workers' Union of Australia](#)

[From Benchmark Wednesday, 23 October 2024]

# Benchmark

## INTERNATIONAL LAW

### Executive Summary and (One Minute Read)

**In the Matter of McAleenon (UKSC)** - Supreme Court held that an individual had the right to compel judicial review of a government decision relating to landfill contamination even though a private right of action against the alleged polluter may have been available

### Summaries With Link (Five Minute Read)

**In the Matter of McAleenon [2024] UKSC 31**

Supreme Court of the United Kingdom

Lord Lloyd-Jones, Lord Briggs, Lord Sales, Lord Stephens, & Lady Simler

Noeleen McAleenon resided near a landfill that was operated by a private firm. Ms McAleenon maintained that the Lisburn and Castlereagh Council had regulatory authority concerning nuisances like the landfill. She sought judicial review of how the Council had dealt with complaints about the landfill. The government argued that she could not seek judicial review of the Council's actions because she had available to her a private right of action against the alleged polluter. The Court of Appeal sustained this objection and held that there were suitable alternative remedies available to Ms McAleenon and that judicial review was not available to her. The Supreme Court reversed and found that the existence of a private claim in nuisance against the alleged polluter did not constitute a suitable alternative remedy to judicial review of the Council's conduct. The Court stated that the fact that different proceedings could have been brought against another party did not mean that there existed a suitable alternative so as to preclude judicial review. The Court further stated that it is not the courts' role to say that a claimant should have sued someone other than the branch of government whose actions were being questioned.

[In the Matter of McAleenon](#)

## Poem for Friday

### Life

By Charlotte Brontë (1816-1855)

LIFE, believe, is not a dream  
So dark as sages say;  
Oft a little morning rain  
Foretells a pleasant day.  
Sometimes there are clouds of gloom,  
But these are transient all;  
If the shower will make the roses bloom,  
O why lament its fall ?

Rapidly, merrily,  
Life's sunny hours flit by,  
Gratefully, cheerily,  
Enjoy them as they fly !

What though Death at times steps in  
And calls our Best away ?  
What though sorrow seems to win,  
O'er hope, a heavy sway ?  
Yet hope again elastic springs,  
Unconquered, though she fell;  
Still buoyant are her golden wings,  
Still strong to bear us well.  
Manfully, fearlessly,  
The day of trial bear,  
For gloriously, victoriously,  
Can courage quell despair !

**Charlotte Brontë** was born on 21 April 1816, in West Yorkshire, UK. She was an English poet and novelist. She was the eldest of the three Brontë sisters. Her siblings were Emily Brontë, Anne Brontë, Branwell Brontë, Elizabeth Brontë, and Maria Brontë. She had a year of formal education at Clergy Daughters' School at Cowan Bridge. Thereafter she and her siblings learned at home, from each other and their parents, and aunt Elizabeth Branwell who lived with the family. She is famous for her novel *Jane Eyre*, which she first published under the pseudonym Currer Bell in 1847. She was married to Arthur Bell Nicholls from 1854 to 1855, for the last 9 months of her life. Nicholls had been the curate

to Charlotte's father, Patrick Brontë, an Anglican clergyman. Charlotte Brontë died on 31 March 1855 in Haworth, England.

Reading by **Patricia Conolly**. With seven decades experience as a professional actress in three continents, Patricia Conolly has credits from most of the western world's leading theatrical centres. She has worked extensively in her native Australia, in London's West End, at The Royal Shakespeare Company, on Broadway, off Broadway, and widely in the USA and Canada. Her professional life includes noted productions with some of the greatest names in English speaking theatre, a partial list would include: Sir Peter Hall, Peter Brook, Sir Laurence Olivier, Dame Maggie Smith, Rex Harrison, Dame Judi Dench, Tennessee Williams, Lauren Bacall, Rosemary Harris, Tony Randall, Marthe Keller, Wal Cherry, Alan Seymour, and Michael Blakemore.

She has played some 16 Shakespearean leading roles, including both Merry Wives, both Viola and Olivia, Regan (with Sir Peter Ustinov as Lear), and The Fool (with Hal Holbrook as Lear), a partial list of other classical work includes: various works of Moliere, Sheridan, Congreve, Farquar, Ibsen, and Shaw, as well as roles such as, Jocasta in Oedipus, The Princess of France in Love's Labour's Lost, and Yelena in Uncle Vanya (directed by Sir Tyrone Guthrie), not to mention three Blanche du Bois and one Stella in A Streetcar Named Desire.

Patricia has also made a significant contribution as a guest speaker, teacher and director, she has taught at The Julliard School of the Arts, Boston University, Florida Atlantic University, The North Carolina School of the Arts, University of Southern California, University of San Diego, and been a guest speaker at NIDA, and the Delaware MFA program.

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