



TASMANIA

*Tasmanian Industrial Commission*

Industrial Relations Act 1984

T No. 7740 of 1998

**IN THE MATTER OF** an application by  
the Automotive, Food, Metals,  
Engineering, Printing and Kindred  
Industries Union to vary the Fish,  
Aquaculture and Marine Products  
Award

Re: Clause 17 - Holidays with Pay

**FULL BENCH:**  
PRESIDENT WESTWOOD  
DEPUTY PRESIDENT JOHNSON  
COMMISSIONER LEARY

HOBART, 5 February 1999  
Continued from 10 December 1998

**TRANSCRIPT OF PROCEEDINGS**

Unedited

(WOULD PARTIES PLEASE READ THIS TRANSCRIPT CAREFULLY)  
(ANY QUERIES SHOULD BE DIRECTED TO THE COMMISSION WITHIN 14 DAYS)

**HEARING RECOMMENCED 10.40am**

PRESIDENT: Are there any changes in appearances?

**MR R. FLANAGAN:** Yes. If it pleases the commission, FLANAGAN, R., for the Australian Workers' Union, Tasmania Branch.

5 PRESIDENT: Yes. Thanks, Mr Flanagan. Mr Baker?

MR BAKER: Sir, before we commence, I must offer my apologies to the bench. Unfortunately, I got somewhat waylaid but nevertheless, we are here.

10 Perhaps before I actually commence my comments today, when this matter was last before the commission, it was adjourned on the basis that Mr O'Neill would seek some advice from his employer members, so perhaps it may be appropriate if Mr O'Neill reported what that situation is and then I can respond accordingly.

PRESIDENT: All right, if that's what Mr O'Neill wants to do.

15 MR O'NEILL: Yes, I'm happy to do that, sir.

PRESIDENT: Okay, thanks, Mr O'Neill?

20 MR O'NEILL: As Mr Baker indicated, out of our last hearing, that I was to consult with the industry, that has occurred. Of the limited responses we received, indicated that where the public holiday fell on the Saturday, which in fact it did last year for Anzac Day, that the penalties were paid and in the cases where employees didn't work, the responses indicated that had they worked, that the public holiday penalties would have been paid.

25 Therefore, in the absence of any other offsets or the intentions of the parties at the time that award was drafted, we can see no reason why the ward should not be varied to reflect that circumstance.

PRESIDENT: Yes, I see. So, the effect of the proposed amendment which is before us, is that the Anzac Day holiday, whether it falls on a Saturday or a Sunday, will be a paid public holiday?

30 MR O'NEILL: And paid accordingly.

PRESIDENT: Yes.

COMMISSIONER LEARY: Just treat it as any other public holiday, in other words.

MR O'NEILL: Yes, correct.

35 MR BAKER: I have an exhibit which I would tender, which would in fact show exactly what is proposed.

PRESIDENT: **EXHIBIT AMWU.1.**

MR BAKER: I think, sir, - and I just turn you to the transcript when this matter was last before us, at page 3 of the transcript, at paragraph 10, in respect of a comment which I made, you yourself, sir, responded by saying:

*Yes. So really if you excluded the words where it falls on a Monday to Friday inclusive and retain paragraph (c), that's all you need to do, isn't it, to achieve your objective?*

Sir, that's really the thrust of the exhibit and the variation which we've put before you this morning. All we've done is in fact clarified the situation to make it perfectly clear that in fact when Anzac Day falls on a Saturday or a Sunday, it is in fact observed as a public holiday on the Saturday or the Sunday on which it falls due.

COMMISSIONER LEARY: Do we have to make a subsequent variation to subclause (c)?

MR BAKER: Not that I'm aware of.

COMMISSIONER LEARY: Where it excludes Anzac Day?

MR BAKER: No. My reading of paragraph (c) is that, all the above mentioned public holidays in paragraph (a) are in fact able to be observed on the following Monday of the week, if they fall on a weekend. That provision excludes Anzac Day. So, it says: *Where any of the aforementioned holidays, excluding Anzac Day, fall on a Saturday, Sunday.*

COMMISSIONER LEARY: That's because it's celebrated on the actual day?

MR BAKER: Yes. It's actually celebrated on the day on which it falls.

COMMISSIONER LEARY: Yes. That makes sense.

MR BAKER: That, Mr President and members of the bench, is our suggested alteration to the clause which in fact provides clarification. In our view, it is now clear, that in fact the public holiday is observed for the Saturday or the Sunday and we would submit to you that such a proposition is consistent with the Wage Fixing Principles as it does no more or no less than simply clarifies a provision in an award. It doesn't add, nor does it subtract from the award provisions at all.

Subject to any comments or questions from yourself, I would ask the commission to vary the award in the terms proposed.

PRESIDENT: Yes. I accept what you say, to a certain extent, Mr Baker, but I'm not really certain it does nothing to the clause. It

certainly does provide that Anzac Day can be observed on a Saturday and Sunday, which is something that wasn't there before, notwithstanding the custom and practice in the industry might have been different.

5 MR BAKER: I would argue, as I think I indicated on the last occasion before you, if this matter was brought before the commission pursuant to a section 43 application, we would argue most strongly that in fact by reading the clause, that in fact the Anzac Day public holiday is in fact observed on a Saturday or a Sunday.

10 PRESIDENT: I'm sure you would argue it that way under section 43. I don't know whether the person hearing the matter would agree with you, however. Whether that does any damage to your application or not, I'm not prepared to say outright at this stage, but I suspect it doesn't. I just make the point though, that it is a change to the clause.

15 MR BAKER: It's a change to the award but I would contend and if you were to seek from me a submission in relation to the structure of the clause, I'm quite willing and indeed able to provide you with what I believe is the way in which the clause was meant to be read.

PRESIDENT: All right. Thanks, Mr Baker.

20 MR FLANAGAN: The AWU supports and endorses the submission of Mr Baker this morning and we also indicate to the commission that a similar application will be forthcoming by the AWU in relation to the Shellfish Industry Award which has a similar anomaly to that which exists in this award. If it pleases the commission.

25 PRESIDENT: Yes. Just while you're discussing that, what action have you taken with notifying the employers of that proposed application?

MR FLANAGAN: We have notified the employer of that this morning, Mr President, and we'll be attempting to deal with that expeditiously.

30 PRESIDENT: Yes, all right. Thanks, Mr Flanagan. Yes, Mr O'Neill?

MR O'NEILL: Just on the last point made by Mr Flanagan in respect to the Shellfish Industry Award, I in fact raised that at the last hearing, when I said I'd checked the state awards and there was only the Shellfish Industry Award that was inconsistent with those other  
35 awards, so I've certainly been aware of that. When I consulted the industry, I didn't consult the industry in respect to that award but I'm quite confident that there will be similar responses.

I'll allow Mr Flanagan to pursue that matter.

PRESIDENT: Yes. So, you consent to the draft order?

MR O'NEILL: Yes, I do.

PRESIDENT: All right. Thank you. The Deputy President has just raised the question of operative date.

MR BAKER: The first pay period on or after today.

5 PRESIDENT: Are you agreed with that, Mr O'Neill?

MR O'NEILL: Yes, sir. Thank you.

PRESIDENT: Very good. Thank you for that. I don't think there's any difference of opinion on the bench. The award will be varied in the manner put forward by the parties and varied by consent.

10 Thanks very much for your attendance.

**HEARING CONCLUDED 11.00am**