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**AUSCRIPT**

## TRANSCRIPT OF PROCEEDINGS

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O/N 66480

### **TASMANIAN INDUSTRIAL COMMISSION**

### **DEPUTY PRESIDENT P.C. SHELLEY**

**T No 13029 of 2007**

### **GENERAL CONDITIONS OF EMPLOYMENT AWARD**

**Application pursuant to the provisions of  
section 23(2)(b) of the Industrial Relations Act 1984  
by the Community and Public Sector Union (State Public  
Services Federation Tasmania) Inc to vary the above  
award re district allowances**

**HOBART**

**10.00 AM, MONDAY, 22 OCTOBER 2007**

**This transcript was prepared from tapes recorded  
by the Tasmanian Industrial Commission**

**HEARING COMMENCED**

**[10.00 am]**

PN1

THE DEPUTY PRESIDENT: Thank you. I'll take appearances, please.

PN2

MS C.SERRA: I am representing the Community Public Sector Union and also representing the Health and Community Services Union.

PN3

THE DEPUTY PRESIDENT: Okay. Now, do you have a letter of authority for that?

PN4

MS SERRA: Yes, I do.

PN5

THE DEPUTY PRESIDENT: Thank you.

PN6

MS SERRA: Now, I have not included the Community and Health Services - - -

PN7

THE DEPUTY PRESIDENT: Okay. I'll just take the other side's appearance first.

PN8

MR K. GREY: Thank you, Madam Deputy President. If the Commission pleases, representative of the Minister, administering the State Service Act. Thank you.

PN9

THE DEPUTY PRESIDENT: Thank you. Okay, now we will hear from you, Ms Serra.

PN10

MS SERRA: Sorry. Now, we haven't not included the CASA Award, the Community and Health Services Award in our original application but the two clauses are exactly the same and flow on from each other and if it would be okay with you and with Kerryl Grey to include it in this hearing, we do have an authority from HACSU, from the Health and Services Union to include it today but it was a very last minute thing, so I apologise.

PN11

THE DEPUTY PRESIDENT: Okay. Is that referred to in this letter or is it a separate document, the authority to make the application in relation to the CASA Award?

PN12

MS SERRA: We don't have that in that document.

PN13

THE DEPUTY PRESIDENT: You are a party to that award as well?

PN14

MS SERRA: Yes, we are.

PN15

THE DEPUTY PRESIDENT: Okay. So what you are telling me is there is no objection on the part of HACSU to - - -

PN16

MS SERRA: No, and I do have that on a letter signed from the secretary.

PN17

THE DEPUTY PRESIDENT: Yes, thank you.

PN18

MS SERRA: I'm so sorry, it's just disappeared. It's here - - -

PN19

THE DEPUTY PRESIDENT: That's all right. You can provide it to my associate after the hearing.

PN20

MS SERRA: Thank you.

PN21

THE DEPUTY PRESIDENT: So what you are seeking is that your application be amended so that it - the application for variations of awards.

PN22

MS SERRA: Yes.

PN23

THE DEPUTY PRESIDENT: And in the first paragraph it's a variation required of the General Conditions of Employment Award and of the CASA Award. Okay, you will also need to prepare a draft order to that effect with the proper clause numbers and so on to also be provided to my associate subsequent to the hearing. Mr Grey, do you have any objections to the application being amended in that manner?

PN24

MR GREY: No, Madam Deputy President. Because there seems to be an oversight in why we are here now and another oversight, I am conscious of the need to not further get entangled and at sometimes the process carries with it its own accountability, but these amounts are the same in both awards, so it would be best for all concerned if it was amended.

PN25

THE DEPUTY PRESIDENT: Okay. That's fine. The application to amend the application is granted.

PN26

MS SERRA: Thank you.

PN27

THE DEPUTY PRESIDENT: So you may continue.

PN28

MS SERRA: Yes, thank you. We would like to vary clause 24(b)(1) in the General Conditions of Employment Award and clause 11(b) in the Community and Health Services Award. Both clauses refer to the district allowances and we believe that general rising prices and the cost of living in remote areas warrant such an increase. The last district allowance was two years ago. I have included appendices for yourself and for Kerryl Grey which show the ABS.

PN29

THE DEPUTY PRESIDENT: Shouldn't this happen on an annual basis rather than - - -

PN30

MS SERRA: It should have been.

PN31

THE DEPUTY PRESIDENT: - - - two yearly.

PN32

MS SERRA: Yes, it should have been. It just - it was an oversight on somebody's part and - - -

PN33

THE DEPUTY PRESIDENT: So it's now flagged on your - somebody's diary?

PN34

MS SERRA: Yes. I think it's on my diary now.

PN35

THE DEPUTY PRESIDENT: Okay.

PN36

MS SERRA: It's on page 8, the actual indexes that we have used.

PN37

THE DEPUTY PRESIDENT: Well, we will mark that A1.

#### **EXHIBIT #A1 FORMULA**

PN38

MS SERRA: And I've also included the original - I don't know whether you'd want this one, but it is the original formula for working out district allowances.

PN39

THE DEPUTY PRESIDENT: Yes, please.

PN40

MS SERRA: And also a copy of the last increase in district allowances.

PN41

THE DEPUTY PRESIDENT: Okay. Well, we will mark the decision of the Full Bench which relates to the formula as A2.

### **EXHIBIT #A2 FULL BENCH DECISION RELATING TO FORMULA**

PN42

THE DEPUTY PRESIDENT: And we will mark the last award variation as A3.

### **EXHIBIT #A3 LAST AWARD VARIATION**

PN43

MS SERRA: If you would like me to give examples of cost of living in remote areas, such as Flinders Island, I am - I have some statistics if you would like that.

PN44

THE DEPUTY PRESIDENT: Yes. Yes, thank you.

PN45

MS SERRA: Examples in Flinders Island are - bread is between \$4 and 4.50 per loaf, milk is \$2.50 per litre, petrol - - -

PN46

THE DEPUTY PRESIDENT: Mm.

PN47

MS SERRA: Sorry?

PN48

THE DEPUTY PRESIDENT: I'm sorry, I just said, that's expensive.

PN49

MS SERRA: Yes, yes. Petrol is also between \$1.53 and \$1.63 a litre. Power tariff, there is only one, so they don't have any deals and it is 21.8 cents per unit, compared with Hobart at 14 cents and freight is also approximately \$93 per cubic metre. I'd also like to tell you how we calculated the formula if you would like.

PN50

THE DEPUTY PRESIDENT: Yes, thank you.

PN51

MS SERRA: The formula we used as in T833 of 1987, which is A1. The calculation was based on eight capital cities weighted indexed and used

indexed points from March to March to arrive at an average and then converted to a percentage to be added to the last allowance amount as per the original application. So we arrived with a formula that we used in A2, we arrived at a formula that came to 5.49 per cent increase over the two years from 2005, which was the last increase, to March 2007.

PN52

THE DEPUTY PRESIDENT: Thank you. Is that it?

PN53

MS SERRA: That's it for me, thank you.

PN54

THE DEPUTY PRESIDENT: Yes. Thank you. Mr Grey?

PN55

MR GREY: Thank you, Madam Deputy President. The decision T12766 and T12767 of 2006 did vary the other expense related allowances and the - with the exception of the district allowances, so it is easy to see that in 2005 they were last varied; they weren't last year and this does bring them back into line. The Minister supports this application as it is consistent with the way - with the formula established by the Full Bench of T833 of 1987, it's consistent with the wage fixing principles and the public interest provisions of the Act.

PN56

THE DEPUTY PRESIDENT: Okay. Now, operative date, did you address me on the operative date?

PN57

MS SERRA: No, I didn't, in my original application.

PN58

THE DEPUTY PRESIDENT: Would you like to tell me what operative date you are seeking?

PN59

MS SERRA: I would preferably like back pay for a year but I understand that will probably not happen, so - - -

PN60

THE DEPUTY PRESIDENT: Well, you can make a submission to that effect.

PN61

MS SERRA: I would like to submit that it be backdated for one year.

PN62

THE DEPUTY PRESIDENT: Okay. Now, we will look at the Act in relation to award variations and retrospectivity. Okay, now if we refer to section 37, subsection (5):

PN63

*The Commission may in an award give retrospective effect to the whole or any part of the award if and to the extent that the parties to the award so agree -*

PN64

and I don't know the Minister's view on this yet -

PN65

*if in the opinion of the Commission there are special circumstances that make it fair and right to do so.*

PN66

So what you would need to do is to present a submission to the Commission arguing why there are special circumstances that would require the Commission to decide taking into account, you know, fairness actually in the merits of the case and the like, whether or not the award should be made retrospectively.

PN67

MS SERRA: Would you like me to do that now?

PN68

THE DEPUTY PRESIDENT: Yes.

PN69

MS SERRA: I don't believe, Madam Deputy President, that the people in the remote areas should suffer these price increases because of an oversight from the unions involved that should have amended that one year ago and it is these people that have been suffering these extreme price increases and this cost of living that would warrant the amount to be back paid from when it should have been done.

PN70

THE DEPUTY PRESIDENT: Okay, thank you. Mr Grey, if I can hear from you as to operative date.

PN71

MR GREY: Madam Deputy President, this is somewhat of a surprise. I did have - anticipate something like this and discussed this earlier as to what - with the union, sorry, and discussed why this had not been done before and I was informed that there was no real answer and we think that there are no special circumstances. The formula has been very clear for 20 years; it's incredibly easy to follow. Some one missed out last year. I don't know what the basis of discussions were last year, however, in 2006 a transcript did say, and I did discuss this again with Mr Johnston, Mat Johnston, this morning. To quote from T12766 or 12767 of 2006, it says:

PN72

*Mr Johnston gave oral submissions in support of a claim following off the record discussion between the parties. The applications were varied to include a 2.98 per cent increase applying the formula established by the Full Bench of T833 of 1987. The matters were set*

*down for further discussion between the parties who will report back to the Commission.*

PN73

I inquired as to what the nature of those discussions were. I was informed it was much more related to travel allowance and kilometrage rates and the various ongoing discussions about call back and availability and had arranged matters which had been discussed between the public sector unions and the Minister. However, without being party to it I would have thought that if the formula had been - if the formula was adhered to this situation wouldn't have arisen and I don't believe therefore that gives rise to special circumstances. I think it is unfortunate but without subject to further discussions I can't see the Minister supporting an application for twelve months of retrospectivity.

PN74

THE DEPUTY PRESIDENT: Would it be significant? How many employees does it affect?

PN75

MR GREY: I have no idea, I am sorry. I am happy to take further instructions on it.

PN76

THE DEPUTY PRESIDENT: Yes, yes. I mean it's long established that the rates move annually according to a formula.

PN77

MR GREY: Absolutely.

PN78

THE DEPUTY PRESIDENT: So in that respect it could be said that the employees have an entitlement. The Commission's unable to vary awards of its own motion and must await applications from the parties and in this case neither party has made applications and it's open to either party to do it, although it's unlikely that an employer would make an application that would result in an increased amount being paid to employees. And it may well be an exceptional circumstance and it may well be that in fairness to the employees they should actually receive that adjustment retrospectively for the year that they missed out.

PN79

MR GREY: It may well be, Madam Deputy President, but I'm not party to any of the discussions - - -

PN80

THE DEPUTY PRESIDENT: Yes.

PN81

MR GREY: - - - that occurred. I have no idea why it was not included, other than by accident.

PN82

THE DEPUTY PRESIDENT: Yes. Now, what I propose to do and you, Ms Serra, do have right of reply to what Mr Grey has just said, but what I would propose to do is to adjourn the matter to allow the parties to have further discussions on the question of retrospectivity and within fourteen days for the applicant to inform the Commission of whether or not there is a consent position in relation to operative dates. And if there's not consent then I will write a decision based on what has already been said, but it is, of course, the Act quite clearly says that need can be retrospectivity where the parties agree and if it's an entitlement and there's been an oversight, it may well be that there can be some sort of an agreement reached.

PN83

MR GREY: It may well be. It may well be that it was agreed to not be done for reasons that are now not apparent at all. I just don't know that.

PN84

THE DEPUTY PRESIDENT: Okay. So I will give you fourteen days in which to inform me whether or not you have got a consent position on operative date. If there's not then I'll write the decision. The matter is adjourned.

PN85

MR GREY: Thank you.

**ADJOURNED INDEFINITELY**

**[10.30 am]**

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