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TRANSCRIPT OF PROCEEDINGS

O/N 9893

TASMANIAN INDUSTRIAL COMMISSION

PRESIDENT P. LEARY

DEPUTY PRESIDENT R. WATLING

COMMISSIONER T. ABEY

T No 11032 of 2003

AERATED WATERS AWARD; AUTOMOTIVE INDUSTRIES AWARD; INDEPENDENT SCHOOLS (NON TEACHING STAFF) AWARD; CLEANING AND PROPERTY SERVICES AWARD; FIBREGLASS AND PLASTICS AWARD; HAIRDRESSING, HEALTH AND BEAUTY INDUSTRY AWARD; HOTELS, RESORTS, HOSPITALITY AND MOTELS AWARD; ICE CREAM MAKERS AWARD; LAUNDRY AND DRY CLEANING AWARD; LICENSED CLUBS AWARD; RESTAURANT KEEPERS AWARD; SECURITY INDUSTRY AWARD; SHIPPING AWARD; VETERINARY SERVICES AWARD; MISCELLANEOUS WORKERS AWARD; CHILD CARE AND CHILDREN'S SERVICES AWARD; LEATHER, CANVAS AND SHEET PLASTIC FABRICATION AWARD; HEALTH AND FITNESS CENTRES AWARD; WHOLESALE PLANT BAKERIES AWARD, NATIONAL TRAINING WAGE (TASMANIAN PRIVATE SECTOR) AWARD; BAKING INDUSTRY AWARD

Application pursuant to the provisions of section 23 of the Industrial Relations Act 1984 by the Australian Liquor, Hospitality and Miscellaneous Workers Union, Tasmania Branch to vary the above award re reasonable hours clause

HOBART

9.30 AM, WEDNESDAY, 5 NOVEMBER 2003

HEARING COMMENCED

[9.30am]

PN1

MR P. TULLGREN: I appear for the applicant, the Australian Liquor, Hospitality and Miscellaneous Workers Union, Tasmania Branch.

PN2

MR T. KLEYN: I appear for the Health Services Union of Australia, Tasmania Number 1 Branch and I am appearing in respect of the National Training Wage, Private Sector Award only.

PN3

MS J. THOMAS: I appear on behalf of the Tasmanian Chamber of Commerce and Industry Limited.

PN4

THE PRESIDENT: Thank you. Mr Tullgren?

PN5

MR TULLGREN: Yes, thank you, your Honour. Members of the Commission, the application seeks to vary the awards set out in attachment A to include the reasonable overtime provision that the Commission, in fact the same Full Bench differently constituted determined could in fact - determined to be a model clause set for insertion in awards upon application. Our application seeks as it says to insert the exact terms of the clause in the awards.

PN6

What we would be seeking this morning is Commission indication whether they are prepared to approve the application. If the Commission is what I have discussed with my friend, Ms Thomas, is that we will seek to settle the draft orders, the exact wording of the orders early next week and provide those to the Commission soon after. And on that basis if the Commission was minded to grant the application we would seek an operative date of Friday, this Friday week simply to allow the orders to be settled and dealt with.

PN7

THE PRESIDENT: I take it that the application is to insert into each of the awards in attachment A, clause 27, the wording in clause 27 of our decision of July?

PN8

MR TULLGREN: Yes, that is correct. The only variant to that may be where an award provides that by agreement a person can take time in lieu of overtime. Now, I have not looked at all the awards that are subject, but my recollection is that there is at least one that does that. The intention of settling the orders is to - would be there that was necessary to - - -

PN9

THE PRESIDENT: To sort that out.

PN10

MR TULLGREN: - - - insert some savings provision effectively in this clause so that it didn't override that election capacity if it exists. But it is not the intention to insert the election capacity into awards that do not have it, only those that currently do. In relation - one of the awards that we seek to vary is the National Training Wage Award. I have had discussions with my friends about this. The union's position in making the application is that while the award, the National Training Wage Award does actually refer to conditions being contained in the relevant award, the National Training Wage Award also has some provisions in relation to overtime.

PN11

For instance it has a provision that effectively says that a trainee can't be required to do shiftwork or work overtime alone. The position that we adopt is, and this is based to some extent on advice we have gained by talking to trainees and also some further anecdotal material which I am the first to admit is not the safest foundation to moving to vary awards, but from time to time there are clear pressures on trainees to work overtime and overtime which could be construed as unreasonable.

PN12

We took the view that to, in fact, reinforce and in some ways to put beyond doubt in relation to trainees that if the National Training Wage contained the same provision, and on the face of it there is no reason why it shouldn't. Then a person looking at the National Training Wage Award would see that there is a reasonable overtime provision and that would be reinforced in relation to us in the Award. I mean it might be able to be argued that is overheating the pudding considering that a significant number of our trainees are covered by the Licensed Clubs, Restaurant Keepers and Restaurant Keepers Awards and they will have this provision in it.

PN13

Clearly we think and we submit to the Commission that there is an argument because the award makes some reference to overtime which is effectively a limitation in relation to working overtime that it is logical to actually insert, if you like, a further limitation into the award which just simply reinforces it. I think that to be quite honest it is being put in on the basis that because the National Training Wage Award and the other awards are somewhat schizophrenic in that there is a National Training Wage Award which deals with some matters and then calls up awards, that it is for abundant caution and reinforcement.

PN14

So save in relation to that award which stands a bit differently to the others, that is the reason for thinking there but in all the others it would be simply to insert the clause, save with any amendment that is required. And as I say my friend Ms Thomas and I have agreed on a procedure to do that. So - - -

PN15

THE PRESIDENT: Can I just - sorry. Deputy President Watling advises that the Hairdressing, Health and Beauty Award has already been varied separately.

PN16

MR TULLGREN: We would seek then that that part of the application not proceed with, but for the others. So save for any questions that the Commission has or any response to anything that is put, our respectful submission will be to seek the Commission approve the variation of the awards and that it be operative from Friday. The operative date be a week Friday - - -

PN17

THE PRESIDENT: 14 November.

PN18

MR TULLGREN: - - - and that we would undertake to have the draft orders to the Commission, the settled draft orders to reflect the decision. If the Commission pleases.

PN19

COMMISSIONER ABEY: Are you saying on the day, or the first full pay period?

PN20

MR TULLGREN: I was winging it a bit, your Honour, because I am not actually certain whether it is in a full pay period for some people or not. I would submit that Friday week would be acceptable because it is not a pay adjustment, it is effectively a conditions adjustment and occurring - if it occurred midway during the pay period it doesn't affect the operation of the business adversely, it simply says from that time. So that is why we have selected a date as opposed to from a pay period.

PN21

THE PRESIDENT: All right, thank you. Mr Kleyn?

PN22

MR KLEYN: If the Commission pleases. I have nothing to add other than to say we are supportive of the application and for the National Training Wage Award and we concur with the submissions made by Mr Tullgren. Thank you.

PN23

THE PRESIDENT: Fine, thank you. Ms Thomas?

PN24

MS THOMAS: Yes, we give our consent to the variation of the nominated awards to include the reasonable hours provision as approved by the Full Bench in this year's State Wage Case decision. As outlined by Mr Tullgren we have agreed to meet early next week to finalise the draft orders. We don't anticipate any problems with that process and agree to the operative date sought. If it pleases.

PN25

THE PRESIDENT: Being the day of, not the first full pay period.

PN26

MS THOMAS: The day of 14 November.

PN27

THE PRESIDENT: All right, thank you. You agree also with the submission in respect of the National Training Wage Award?

PN28

MS THOMAS: Yes, we feel that in some respects it is not necessary given that the relevant awards will have the provisions contained, but the National Training Wage does have provisions relating to overtime and shiftwork.

PN29

THE PRESIDENT: That is right.

PN30

MS THOMAS: So at the end of the day it is neither here or there I don't think.

PN31

THE PRESIDENT: Maybe it is just abundant caution. All right. Can I just inform the parties that notices were put in the local newspapers advising of today's proceedings, we have had absolutely no response, but thank you for turning up. Accordingly, we approve the applications subject to receiving the draft orders hopefully next week sometime. Provided there are no difficulties with those draft orders and I don't suspect there will be, the operative of the variations to the awards referred to in attachment A other than the Hairdressing, Health and Beauty Industry Award. The operative date will be 14 November 2003. We would rely on the parties to provide the draft orders as soon as possible so that we can issue orders effecting the variations. Thank you, this matter is adjourned.

ADJOURNED INDEFINITELY

[9.40am]