

**TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984

T No. 7198 of 1997

**IN THE MATTER OF** an application by The Australian Workers' Union, Tasmania Branch to vary nominated awards to increase the meal allowance provision where appearing in the awards by the appropriate amount as prescribed in ABS Consumer Price Index reference 6401.0 meal out take away foods

**FULL BENCH**

PRESIDENT  
DEPUTY PRESIDENT JOHNSON  
COMMISSIONER WATLING

HOBART, 24 September 1997

**TRANSCRIPT OF PROCEEDINGS**

Unedited

PRESIDENT: Could I have appearances please.

**MR G. COOPER:** If the commission pleases, I appear on behalf of the Australian Workers Union, Tasmania Branch; COOPER, G., and I appear in matter 7198 of '97.

PRESIDENT: Yes, all right. Thank you.

5 **MR I. PATERSON:** If the commission pleases, IAN PATERSON, appearing for the Australian Municipal, Administrative, Clerical and Services Union in respect of our application in this matter.

PRESIDENT: Very good. Thank you, Mr Paterson.

10 **MR P. GRIFFIN:** Mr President and members of the bench, I appear on behalf of the Shop Distributive and Allied Employees Association, Tasmanian Branch, GRIFFIN, P., and I appear in matters 7246, 47 and 48.

PRESIDENT: Yes, thanks, Mr Griffin.

15 **MR C. BROWN:** If the commission pleases, C. BROWN, appearing for the Health Services Union, Tasmania No.1 Branch. I appear in relation to matter T.7214 in respect of the Disability Services Providers Award and the Medical Practitioners Award.

PRESIDENT: Very good. Thank you, Mr Brown.

20 **MR M. WATSON:** May it please the commission, MARK WATSON; I appear on behalf of the Tasmanian Chamber of Commerce and Industry and with me is **NICK BEHRINS**, and I appear in all matters.

PRESIDENT: Yes, thank you, Mr Watson. Well, is there any batting order? I take it we join the - these matters together.

MR COOPER: Yes, it would be appropriate, Mr President, to do that, yes.

MR WATSON: Yes -

25 PRESIDENT: No objection?

MR WATSON: - Mr President. Yes.

PRESIDENT: Yes, all right, thank you. Mr Cooper.

30 MR COOPER: Mr President, if I may with respect to this application, it is one that has now become somewhat of a regular pattern in terms of applications for this various meal allowance. The one thing that my union was unable to do as part of this application, and that was to provide the commission with a schedule, and normally that is done as part of the application. I have been absent from the office so - for the past 10 days working in the north of the state and the schedule has still not been typed in the manner that is sufficient for me to provide as an exhibit. In  
35 order to address that issue though, I have provided the associates with a copy of a handwritten document and if the commission wishes, I will read from that document to advise the commission of, in particular, which clauses in each award that we've sought to vary, we are seeking to have amended. And I am in a position to -

PRESIDENT: Have you discussed this with the other side, Mr Cooper?

MR COOPER: Mr President, in terms of that, the other side have been provided with a copy. I did speak to Mr Gates who preceded Mr Watson as the person who was to run this case and advised him of that as well. I did provide him with a schedule, but on checking the schedule last week before I left for the north of the state, I noticed there are a number of errors that did occur in it and as they are as a result of restructuring in several awards and also as a result of some work the commission has done in deleting some clauses which meant that some of the clause references were inaccurate; they were out by one in some cases where a clause had been deleted. So those modifications have been made and an amended copy has been provided to the TCCI this morning and also to each of the associates that are present here. But it is a handwritten amended copy and it's not appropriate, I don't think, to submit as an exhibit. And there was no-one in the office this morning to type it for me.

PRESIDENT: Mm.

MR COOPER: But I can provide the commission with that advice as to what clauses are being varied.

PRESIDENT: Yes. Mr Watson.

MR WATSON: Look, I have no particular objection, Mr President. Perhaps if Mr Cooper could undertake to provide a typed copy ASAP after the hearing.

PRESIDENT: Yes. I'm sure we'll get to that. All right. Yes -

COMMISSIONER WATLING: We're not actually talking about the awards to be varied, we are actually talking about the precise clause number aren't we?

MR COOPER: That's correct, Commissioner Watling, yes. The awards - the awards that are to be varied are provided in the application, but what I did for simplification and ease for the associates last time was provide specific clause references; for instance, Automotive Industry Award in the last application contained seven clauses, well now it contains two and I haven't had a chance to amend that application. For instance, 22(1) - Overtime, and clause 40 - Vehicle Sales Conditions for Employees. They are the two clauses precisely in terms of the vehicle award. The application itself is sufficient, I do believe to cater for that. It's just that in providing the precise detail, I don't have a typed copy.

PRESIDENT: Yes. Well look, the commission needs that precise information. We don't want to put everybody in the position where they don't actually know what - what clauses in the award are going to be varied.

MR COOPER: Well, Mr President, I have, as I said, provided it to the associates. I will just briefly go through that then for the purposes of these hearings.

PRESIDENT: Yes.

MR COOPER: In terms of the Automotive Industries Award, we are seeking to vary clause 22(i) - Overtime, and clause 40 - Vehicle Salespersons Conditions for Employee.

PRESIDENT: Yes.

MR COOPER: In terms of the Bootmakers Award, it is clause 24(a) - Meal Money  
In terms of Butter and Cheesemakers Award, it is clause 21(b) - Meal Interval and Allowance.

- Goliath Cement Enterprise Award is clause 22(k) - Overtime.
- Clay and Mud Products Award is clause 22 - Meal Allowance.
- Concrete Products Award is clause 25(c) - Meal Intervals and Allowances.
- Dairy Processing Award is clause 19(f) - Overtime.
- 5 Electrolytic Zinc Award is clause 20(n) and 20(o) - under Overtime.
- Fish, Aquaculture and Marine Products is clause 19(a) - Meal Allowance.
- Farming and Fruitgrowing Award is clause 9(b) - Allowances.
- Horticulturists Award is clause 22 - Meal Interval and Allowances - 22(b) that is.
- Metal Engineering Industry Award is 22(g) - Overtime.
- 10 Monumental Masons Award is clause 15(a) - Meal Allowance.
- Optical Industries Award is clause 37(a) - Tea Money.
- Pasminco (Rosebery) Mining Award is clause 22(i) - Overtime.
- Plant Nurseries Award is clause 9(b) - Allowances.
- Produce is clause 23 - Meal Allowance.
- 15 Public Vehicles is clause 22(c) - Overtime for Division A.
- And clause 40(b) - Overtime for Division B.
- Quarrymens Award is clause 26(d) - Overtime.
- Roadmakers if clause 23 - Meal Allowance.
- Rubber Trades is clause 18 - Meal Allowance.
- 20 Shellfish Industry Award is clause 18 - Meal Allowance.
- Timber Merchants Award is clause 26(c)(i) - Overtime, Saturday, Sunday and Holiday Payments.
- Wireworking Award is clause 23(g) - Overtime.
- And the Meat Processing Award is clause 9 - Allowances.
- 25 PRESIDENT: Did you refer to Goliath?
- MR COOPER: Yes, I did, it was in - it was out of alphabetical order, Mr President; yes, that was 22(k).
- PRESIDENT: There was another; was Horticulturists?
- MR COOPER: Yes, I referred to that one. That was clause 22(b).
- 30 PRESIDENT: And Metals.

MR COOPER: And the Metal Engineering is clause - was 21 last time, it's 22(g) this time.

PRESIDENT: Yes, all right. Thank you.

MR COOPER: Well thanks for that indulgence, Mr President and members of the  
5 bench. The first thing I'd like to do as part of these proceedings is provide the  
commission with a document - an extract from the current Wage Fixing Principles of  
the state commission.

PRESIDENT: Could it - before you go too much further though, Mr Cooper, I do  
hope you'll be able provide the detail in - in future applications -

MR COOPER: Yes, Mr President.  
10

PRESIDENT: - and be able to hand it up at the time.

MR COOPER: Well, as I said, Mr President, I've been away for 10 days. It was left  
there to do -

PRESIDENT: Yes.

MR COOPER: - but when I came out this morning it wasn't done and I can't  
15 access the computer.

PRESIDENT: All right. We'll let you off on this occasion.

MR COOPER: Mr President. Now, Mr President, this is an extract from T.6941 of  
1997. It's an application by the TTLIC. Obviously there were a number of other  
20 applications that went with that and this is clause 10 - Allowances. The reason it's  
provided for is that under the current Wage Fixing Principles, allowance - Principle  
10.1.1 quite clearly allows for the application that we're seeking today to proceed,  
and that is, 10.1.1 says:

*Existing allowances which constitute a reimbursement of expenses incurred  
25 may be adjusted from time to time where appropriate to reflect the relevant  
changes in the level of such expenses.*

PRESIDENT: Yes.

MR COOPER: So I rely on that principle. The second exhibit -

PRESIDENT: Do you tender that as an exhibit?

MR COOPER: Yes, Mr President.  
30

PRESIDENT: Yes, exhibit - mark it exhibit C.1.

MR COOPER: Mr President, in terms of the second exhibit, it is an exhibit that is  
a compilation of several pieces of information and they relate to the Consumer Price  
Index.

PRESIDENT: Exhibit C.2.  
35

MR COOPER: Mr President, on the first page - and members of the bench - on the  
first page of that exhibit there is a heading 'Meals Out and Takeaway Foods' which  
appears about a bit over halfway down the page. And the number next to that in the  
June quarter of 1996 where appearing is 117.9 and then across from that is 119.8,

which is the May quarter, but the figure we need for the purposes of these proceedings is the June quarter '97 which 120.4. And that is the appropriate category that is relied upon by the union in this application. It is the one that used in the previous two applications before this bench.

5 So what it shows in that document on the first page is that June quarter 1996 was 117.9 and the June quarter 1997 is 120.4.

Now relying on those figures, you'll see that that is spelt out on the next page of that exhibit where it quite clearly spells out that the index being used is 100 and the June quarter was 117.9 and the - for '96, and the June quarter for '97 is 120.4.

10 The next page of that exhibit details a formula, the same formula the union has used on every application, and that is, you take the latest quarter and minus the previous quarter, multiply that by 100 over one and divide it by the previous quarter, and the example is spelled out there on that page using that formula and using the figures for June '97 and June '96. When you carry that over to the last  
15 page of the exhibit, you'll see that that 2.12 per cent movement results in a figure of 20.038 cents which is 20 cents and when added to the current meal allowance that is contained in awards and has been as a result of previous decisions of this commission, results in an increase of 20 cents and a review of the meal allowance in the manner sought by the union will result in a new allowance being paid of \$9.65.

20 Now that's fairly straightforward, Mr President. That was provided to the TCCI some weeks ago and a new copy has been provided this morning as well.

In terms of the last exhibit, we would like to submit to the bench in support of our application. It is some previous decisions of this commission as a full bench.

PRESIDENT: Yes, we'll mark this exhibit C.3.

25 MR COOPER: Thank you, Mr President. In terms of these exhibits, I do provide them as a reference because on each occasion that we've been before the bench the first decision has been quoted by the bench so I provide it again for reference. The first one is a decision that was made in T.5763 of 1995 which was an application by the Australian Workers Union to vary meal allowances from an ad hoc number of  
30 amounts to a constant amount, and this decision is important in that contained at page 2 of that decision is an extract from a previous decision by the then deputy president, Mr Robinson, which stated that: Existing allowances which constitute a reimbursement of expenses incurred may be adjusted from time to time where appropriate to reflect the relevant changes in the levels of such expenses.

35 The bench then highlights what the AWU did in that application and went on to add its own - its own interpretation of what was placed before it by the union, and that is outlined in page 4 of that decision under the heading 'Decision' where the bench relied on some of the comments of the deputy chairman in his 1981 decision, and I don't need to read them, they are there. But I am referring specifically to those -  
40 those parts of the decision that are contained in italics, and further, and I then go on to the comments of the full bench where, at the second dot point which is the last dot point on the page, the full bench said at that proceeding: It is desirable that allowances such as this are reviewed and adjusted where appropriate on a regular basis.

45 Then over the page the last dot point on that page the full bench cited that: We consider that a consistent method for reviewing the allowance is to be preferred, but having said that we consider that a general review of the base amount might well be necessary into the future.

Now that decision resulted in the union being granted an allowance increase from the various amounts up to an amount of 9.25 which was using the relevant CPI indices of meals out takeaway.

5 The next part of that exhibit is another full bench decision in T.6582 of '96, 6597 of '96, and that was issued on the 4<sup>th</sup> February, '97. And again, in that - in that decision at page 3 the bench refers to 5763 of '95, and again quotes: It is desirable that allowances such as this are reviewed and adjusted where appropriate on a regular basis. And further, we consider that a consistent method for reviewing the allowance is to be preferred.

10 And over the page at page 4, the bench accepted the submissions made by both unions at that time which was ourselves and the clerical union and granted a wage increase based on the figures that were provided.

Mr President and members of the bench, what we're doing here today is no different to what we have done on two previous occasions. We are using the appropriate category of CPI adjustment, that is, Meals Out Takeaway Foods category. We are seeking to flow on to the current meal allowance of \$9.45, an increase in the vicinity of 20 cents which is consistent with the formula that we've used on each other occasion and is reflecting a 2.12 per cent movement on the current allowance.

20 Now Mr President and members of the bench, we would submit that that is in the public interest for that to happen and you do have to have regard for that in matters such as this. It is appropriate that the tea money that is provided for in various awards should be moved on a regular basis and we're again before you at a 12 monthly interval seeking that, and on the basis of those submissions we would say that the application should be granted in the manner sought by the union and those clauses that were identified by the union and those clauses that were identified in my opening submission should be varied to reflect that 20 cent movement.

We say, Mr President and members of the bench, in terms of an operative date, given that it is a full bench matter, we consider an operative date appropriate as the first full pay period on or after the 1<sup>st</sup> October 1997 which is next week.

30 We believe that would be sufficient for the parties to be organised in terms of granting that increase given that there has been sufficient notice on the table for some time about this application and it is one that occurs on a regular basis. We don't think that should provide any problems to employers given that they will have a week's notice as a result of this hearing if the union is successful in its application.

Mr President and members of the bench, those are my submissions.

PRESIDENT: Yes, thank you, Mr Cooper. The regularity is not all that regular, is it? I mean it started off in October '95 and then there was a February '97 adjustment.

40 MR COOPER: Yes, that's correct, Mr President, but the union actually made the application in September of that - of that year - last year's application. There was a delay in terms of the conclusion of proceedings and the actual issuing of the decision by the bench.

PRESIDENT: Yes.

45 MR COOPER: The union was actually before the commission, I think in September.

PRESIDENT: In November.

MR COOPER: In September or November that Mr Gates at that time sought to use the September figures which obviously was rejected by the full bench. So what we're doing this time is we're bringing it back into line. The June figures are out and we're making the application on an annual basis consistent with those figures being available.

PRESIDENT: Yes.

MR COOPER: Thank you, Mr President.

PRESIDENT: Very good. Thank you. Mr Paterson.

MR PATERSON: If the commission pleases, before I say a few remarks to support Mr Cooper's submissions, I'd just like to draw your attention to the statement of particulars contained with my union's application. I just draw your attention to two errors in that statement of particulars. Neither the - well the Meat Trades Award is mentioned there and of course that award, I believe, has been rescinded and replaced by other awards and it is not mentioned in the application per se, so I'd seek to delete the Meat Trades Award from the statement of particulars that accompany the application. And similarly the Goliath Cement Enterprise Award which Mr Cooper has addressed is also not included in the list of awards that we were seeking to vary in our application. That's an error -

PRESIDENT: Are you sure?

MR PATERSON: I beg your pardon? The Goliath Cement Enterprise Award in the statement of particulars?

PRESIDENT: It is there though.

MR PATERSON: It is in the statement of particulars but it's not in the list of awards on the previous page -

PRESIDENT: Oh, I follow, I'm sorry.

MR PATERSON: - that we actually sought to vary in our application.

PRESIDENT: Oh, I'm sorry.

MR PATERSON: And as it is covered by Mr Cooper's application it need not be in ours in any event. And that's - that's a mistake that comes from copying and not comprehensively amending the previously applications.

PRESIDENT: It certainly does. So are you saying -

MR PATERSON: Both the Goliath Cement Enterprise Award and the Meat Trades Award are to be deleted from the statement of particulars in our application -

PRESIDENT: Okay.

MR PATERSON: - and the application as appropriate as necessary amended to reflect that.

PRESIDENT: Yes, well we'll just - we'll delete those two lines -

MR PATERSON: From -

PRESIDENT: - from the statement of particulars, and that squares it up, doesn't it?

MR PATERSON: That's correct.

PRESIDENT: I doubt if there's any objection to your request to amend. No.

5 MR PATERSON: And again, just if I may, to - the previous application we had to come back a second time to vary the Estate Agents Award and the Totalisator Agency Award to pick up clauses that we missed -

PRESIDENT: Yes.

MR PATERSON: - in the first round. They are included in this application.

10 PRESIDENT: Good.

MR PATERSON: Beyond that I would just say that we're seeking in line with the submissions of Mr Cooper to have the allowances in those awards and clauses as identified increased to the \$9.65 that his evidence and submissions supported. I would only reiterate that the union - my union believes that the method now is  
15 firmly established, it remains appropriate consistent with the Wage Fixing Principles and the public interest and previous decisions of full benches of this commission. In respect of the operative date, I would note that the applications were in fact made on the - or our application was made on the 1<sup>st</sup> September, and given that the principle and the approach to varying allowances is now firmly established, albeit that the  
20 dates of hearings, orders and applications may vary, I believe that the employers could reasonably have been expected to be prepared for the outcome that we have sought from today's hearing.

The other common sense thing of course is the 1<sup>st</sup> October is the beginning of a new quarter which may make some convenience attached to the date.

25 If the commission pleases, we'd seek the awards to be varied in accordance with our application.

PRESIDENT: Yes, all right. Thank you, Mr Paterson. Mr Griffin.

MR GRIFFIN: Thank you, Mr President and members of the bench. This application - or the applications made by the SDA is under section 23 of the act and  
30 - with the intent to vary clause 38 - Tea Money, of the Retail Trades Award, clause 29 - Tea Money, of the Photographic Industries Award, and clause 21 - Meal Allowances of the Restaurant Keepers Award. It is the intention of the association to delete the existing amounts in these awards and insert an amount of \$9.65.

Draft schedules, Mr President, should have, and did accompany, those - or draft  
35 schedules of the increases did accompany the applications to the commission.

PRESIDENT: Yes.

MR GRIFFIN: The Wage Fixing Principles handed down on the 4<sup>th</sup> July 1997, demonstrate that in clause 10.1.1 the - Existing Allowances, may be adjusted from time to time where relevant changes do occur. And due to the movement with the  
40 Consumer Price Index of the Australian Bureau of Statistics, June '96-97, has increased by 2.1 per cent.

The association, Mr President, considers this matter is not against the public interest and that the circumstances and principles of previous decisions that

increased meal monies should not be departed from in this particular matter as well.

5 In this case, the relevant clauses of the Photographic Award, Restaurant Keepers Award and Retail Trades Award be increased in support with Mr Cooper's submission, and I submit that these variations, Mr President, commence from the 1<sup>st</sup> October 1997.

PRESIDENT: The full pay period thereafter? From the first full pay period?

MR GRIFFIN: From the first full pay period - yes - yes.

PRESIDENT: Yes.

10 MR GRIFFIN: That concludes my submission, Mr President, thank you.

PRESIDENT: Yes, thanks, Mr Griffin. No submission, Mr Brown?

MR BROWN: No submission.

PRESIDENT: No. Thank you very much. Mr Watson.

15 MR WATSON: Thank you, Mr President. Our position is that we don't oppose the applications that are before you today based on the principles established by the commission in matter T.5763 of '95, which is the decision that Mr Cooper has tabled before you today, and also as per the last amendment to the allowance through matters T.6582 and 6597 of 1997 - sorry - 1996.

20 The calculations have been checked based on the CPI weighted average as per Mr Cooper's exhibit and therefore the same form has been applied to this increase as was applied to the last one.

25 It's our position, Mr President and members of the bench that the next increase that may come of proceedings such as these should not in fact be available until at least 12 months after this particular increase. And we make that submission based on the fact that the bench has already observed that yearly - or yearly increases based on the previous CPI for the June to June quarters is appropriate and we believe that it is also appropriate that - that the bench make a statement that - that the next increase if applied for should be available no less than 12 months after any increase that may come out of these proceedings.

30 As far as the operative date is concerned we don't have a problem with Mr Cooper's suggestion that the first full pay period on or after the 1<sup>st</sup> October, but that would be on the proviso that your decision is in fact made before that date. So if your decision is not out by that time, our position as far as operative date would be the first full pay period on or after the date of your decision. If it please the commission.

35 PRESIDENT: Yes, all right. Thank you. And you're happy with the arrangements that Mr Cooper has indicated he'll undertake to provide a schedule of the awards and clauses -

MR WATSON: Yes.

PRESIDENT: - to be varied.

40 MR WATSON: Yes.

PRESIDENT: Yes. All right. Mr Cooper, what's the situation in relation to your - your schedule that you're going to provide?

MR COOPER: Mr President, in terms of that schedule, I can provide a handwritten copy. I have provided that already to the TCCI, and as I said to your associates, in terms of the computer that it's on, it is pass worded and the lady that works it isn't there and she's not back until the beginning of October - the 5<sup>th</sup> October.

PRESIDENT: Oh, well, your organisation is in some difficulty.

MR COOPER: Well, Mr President, I have provided the handwritten copy and I can produce more of those, it's just that I didn't think it was appropriate to submit as an exhibit a document that was amended in a handwritten form.

PRESIDENT: Oh, I see.

MR COOPER: So - but I have provided to the other parties and it does detail the clauses in the awards that we are seeking to vary and I have read them on transcript from that document.

PRESIDENT: Yes. Yes, all right. We'll go off the record for a moment.

#### **OFF THE RECORD**

PRESIDENT: Yes, all right, well you, Mr Cooper, will provide your typed schedule to the other side as soon as you can arrange that with your - your office and in the meantime we'll work from the handwritten information that's been provided.

MR COOPER: Thank you for that indulgence.

PRESIDENT: And Mr Watson will confirm with us immediately and I should think that would be some time this morning as to the veracity of the arrangements.

MR WATSON: Sometime today, Mr President.

PRESIDENT: All right, all right, we'll let you off a couple of hours.

MR COOPER: I thank you for that indulgence, Mr President, and I do apologise for that but it was - I didn't understand the person wasn't going to be there otherwise it would have been done.

PRESIDENT: Very good. The generality of your application is approved, we'll give some consideration to the submissions from Mr Watson in due course and hand down a written decision. Thank you.

#### **HEARING CONCLUDED**