



TASMANIA

Tasmanian Industrial Commission

Industrial Relations Act 1984

T No. 8737 of 1999

IN THE MATTER OF an application by the Tasmanian Trades and Labor Council to vary relevant public and private sector awards of the Tasmanian Industrial Commission in respect of the minimum rate payable and the rate payable during a trial period under the Supported Wage System clause to at least \$51 per week

FULL BENCH:
PRESIDENT WESTWOOD
COMMISSIONER WATLING
COMMISSIONER IMLACH

HOBART, 19 January 2000

TRANSCRIPT OF PROCEEDINGS

Unedited

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

HEARING COMMENCED 10.32am

PRESIDENT: Could we have appearances, please?

MR P. BAKER: Mr President and members of the bench, I appear on behalf of the Tasmanian Trades and Labor Council, **P. BAKER.**

5 PRESIDENT: Yes, thanks, Mr Baker.

MR C. STRINGER: If the commission pleases, **STRINGER C.** and I appear for the Health Services Union of Australia, Tasmania No. 1 Branch.

PRESIDENT: Thanks, Mr Stringer.

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

PRESIDENT: Very good, Mr Flanagan.

MR J. O'NEILL: If it pleases the commission, **O'NEILL J.**, appearing for the Tasmanian Chamber of Commerce and Industry Limited. Also
15 appearing for the National Meat Association of Australia (Tasmanian Division); the Metal Industries Association Tasmania; The Hop Producers' Association of Tasmania; the Tasmanian Automobile Chamber of Commerce and Australian Cement Holdings Pty Ltd.

PRESIDENT: Very good, thanks, Mr O'Neill. Well, Mr Baker, your
20 application?

MR BAKER: Thank you, sir. I might indicate to the commission that there have been some discussions between the parties - that is, the principal employer organisation and the Trades and Labor Council -
25 and to that end I can report to the commission, subject to any comments by Mr O'Neill, that in fact the application will be by consent.

In support of the application that is before us today, I would recall the original decision emanating on this matter, that is T5985 of 1995, in respect of the figure, which is at paragraph (c) of the supported wage clause - that is, the model clause - and it talks there on page 2 of that
30 decision:

In order to make an adequate assessment of the employee's capacity, a trial period of 12 weeks which in some cases could be extended by up to 4 weeks, was available which would attract a minimum payment of \$45 per week.

35 And then it goes on to talk about the relationship between the employer and the employee.

5 The \$45 of course, members of the bench, is actually the rate payable which is determined having regard to the Federal Department of Family and Community Services income test-free area for earnings for a person receiving a disability support pension. I am advised that that amount has risen from some \$90 per fortnight to \$102 per fortnight and hence the basis of the application for \$51 per week. And I would tender to the commission an exhibit - and I apologise for the quality of the print but I think it is -

10 PRESIDENT: Well, we'll mark it TTLCL1 anyway, Mr Baker. I'm not altogether clear on what the document is that it is from.

MR BAKER: It's an extract from a Centrelink publication on 'A guide to Commonwealth Government payments' and on the right-hand side of the document it is headed 'Income test', 'Income and assets tests' and then -

15 PRESIDENT: Sorry to interrupt you, can you tell me what the bits and pieces underneath the heading 'Commonwealth Government payments' might be?

MR BAKER: No, I can't because I didn't actually source the original document.

20 PRESIDENT: Yes. I suspect that's where it's -

COMMISSIONER WATLING: Is there any way of getting a better copy than that?

MR BAKER: I'm sure there is by contacting Centrelink.

25 PRESIDENT: It could be a Commonwealth Government payment for anything, couldn't it?

MR BAKER: Yes, it could be, but I can undertake to the commission to supply them with an original. I think that's probably the easiest way out of it.

PRESIDENT: Yes, I think it might be better.

30 MR BAKER: But it does indicate there that the rate of payment is calculated under both income and asset and it goes on to talk about - you will see the figure down there of \$102 per fortnight, which is the basis of the application which is before us today.

35 PRESIDENT: I hesitate to interrupt you, but really it could be anything, couldn't it - \$102 per what - it doesn't say. The words are missing in the box under 'Income test'. There's a lot of words missing there that you just can't read.

MR BAKER: Well, that's true. As I have indicated, I will undertake to actually provide to you the original.

PRESIDENT: Yes. I suspect what you are putting is correct, it's just not evident.

MR BAKER: Yes, you need a clear copy.

5 PRESIDENT: All right. But you will get the original documents to us?

MR BAKER: I will provide you with the original document from Centrelink. And in support of the position I am putting to you I can also advise that a full bench of the Australian Industrial Relations Commission, consisting of Vice President McIntyre, Commissioner Blair and Senior Deputy President Williams, approved applications to vary the Supported Wage System test case standard to \$50 a week in matter C23466 of 1997, in print P7350. Now I would have made a copy of that available to the bench but, unfortunately, the decision is actually contained within the transcript of those proceedings and to obtain it would have been somewhat onerous as we would have had to purchase the transcript, but that's where it is.

COMMISSIONER WATLING: Does that mean we have to purchase it?

MR BAKER: Well, either that or accept the submission on face value.

COMMISSIONER WATLING: Right, well it was \$50 for starters, was it? What was the operative date of that?

MR BAKER: The operative date was January 1998.

PRESIDENT: And they explained the rationale for that decision - that increase in the transcript decision you're telling us about.

MR BAKER: Yes.

25 PRESIDENT: So you're not asking us to accept \$50 as a flow on or are you saying you want to move to \$51?

MR BAKER: What I am putting to the bench is that the social welfare, because we have actually, if you like, missed for whatever reason, missed increasing it from \$45 to \$50 some time ago, it has in fact now increased to \$51 and consistent with the movements both in the Centrelink payments and the minimum rates as under the Supported Wage System have moved federally, our application is that it should be shown as \$51 per week consistent with the income test assessment criteria as laid down by Centrelink.

35 COMMISSIONER WATLING: And when was that operative from, the Centrelink income test?

MR BAKER: I am advised that that was the amount that was payable for the period of 20 September 1999 to 31 December 1999.

PRESIDENT: What does that mean after that date, after the December date?

MR BAKER: Well, when this application was lodged that was the relevant period.

5 PRESIDENT: It has been increased since?

MR BAKER: I am unaware that it's been increased.

PRESIDENT: So we've got an illegible document from Centrelink, a nonexistent transcript decision of the AIRC which we are to rely on, Mr Baker.

10 MR BAKER: Well, principally I would rely on two things: one is the original submissions that were put to the bench in matter 5985, which was the original calculation -

PRESIDENT: Yes.

15 MR BAKER: - for the assessment of the figure and the rates payable, as I indicated, was determined having regard to the Federal Department of Family and Community Services income test-free area for earnings for a pension for persons in receipt of a disability support pension which I am advised is \$102 per fortnight.

20 PRESIDENT: Let's move on from there for a moment then. We accept that's the extent of the supporting submission for the increase. Do you intend to address us on Wage Fixing Principles and do you have a list of the awards you wish to be varied?

MR BAKER: I do have a list of the awards, yes.

25 PRESIDENT: To save everybody time, do you need a bit more time to research that?

MR BAKER: No, I have it here in front of me. I was just making sure it was the complete list.

PRESIDENT: Is that a complete list of all commission awards?

MR BAKER: Yes, well it was at the time prepared.

30 PRESIDENT: Or just all awards?

MR BAKER: There are some 83 private sector and some 40 public sector awards.

PRESIDENT: Is that those that were varied for supported wage?

MR BAKER: Yes.

PRESIDENT: Okay.

MR BAKER: So I have a list of those. I must admit I assumed it was part of the application.

5 PRESIDENT: No, I don't believe so. The application cites relevant awards and that was one of the questions that the bench had in mind to ask, just what were considered to be the relevant awards.

COMMISSIONER WATLING: It just says: 'relevant public and private sector'.

10 MR BAKER: I suppose what it should have clearly said was all private and public sector awards.

COMMISSIONER WATLING: Well, is that right?

PRESIDENT: I don't think that's the case.

MR BAKER: Right. In that case then, as I said, there is a list. I do have a list.

15 PRESIDENT: Do you want to just check that and provide the commission with a list of the awards to be varied?

MR BAKER: I can do that today.

20 PRESIDENT: And before we hear from the other parties, did you intend to address us on Wage Fixing Principles that will apply to this particular application? I think, to give you a lead, I best suggest perhaps that it might fall under the category of a special case.

MR BAKER: Well, I would have suggested that's where it belongs too because it's an application to increase an award rate above the safety net.

25 PRESIDENT: Yes.

30 MR BAKER: And in doing so, I think it - as my earlier comments were directed towards the genesis of the basis of the rate, how it was derived and how it was to be moved into the future, I think clearly constitutes circumstances that are entirely separate to the norm as far as the wage fixing arrangements are concerned inasmuch that it is not an allowance which is either tied to a wage rate, nor is it an allowance which is tied to a CPI figure, nor is it an allowance or in fact a wage rate which is adjusted pursuant to safety net adjustment figures. It is by its very nature that it stands alone within the award structure or
35 it's within the structure of the award, but clearly the allowance would be encompassed by the special case provision of the Wage Fixing Principles.

PRESIDENT: Yes, all right. Anything further at this point?

MR BAKER: At this point, no, sir.

PRESIDENT: Thanks very much, Mr Baker. Mr Stringer?

MR STRINGER: Mr President and members of the bench, I just rise
5 to support the submission made by Mr Baker, if the commission
pleases.

PRESIDENT: Good, thanks.

MR FLANAGAN: Likewise the AWU supports the submissions of the
TLC in this matter, Mr President.

PRESIDENT: Yes, thanks, Mr Flanagan. Well, Mr O'Neill?

10 MR O'NEILL: Mr President and members of the bench, the TCCI do
not oppose the application. We have done our own research, however,
and we made contact with Centrelink and the Federal Department of
Family and Community Services income test-free area for earnings for
15 a person receiving disability pension has risen to \$102 per fortnight,
and that was for the period 20 September 1999 to 31 December 1999.
Therefore that amount is now \$51 per week and we concur with the
submissions as put by Mr Baker for the TTLC and do not oppose the
application.

20 It is consistent with the special case provisions of the Wage Fixing
Principles and does not offend the public interest. If it pleases.

PRESIDENT: Do you have a list of awards that you consider should
be varied?

MR O'NEILL: No, I don't, not with me. I just assumed that they
would be -

25 PRESIDENT: Yes. Will you liaise with Mr Baker on that point?

MR O'NEILL: Yes.

PRESIDENT: In terms of operative date, Mr Baker?

MR BAKER: The first pay period on or after 1 February.

PRESIDENT: 2000?

30 MR BAKER: 2000.

PRESIDENT: Yes.

MR O'NEILL: No objection with that.

PRESIDENT: Mr Baker, can you provide the bench with the original
copies of those Centrelink material?

MR BAKER: Yes, I will undertake to provide them to the bench - well as soon as I can get out of here.

PRESIDENT: As soon as you can?

MR BAKER: Yes. And a list of awards, I will have that -

5 PRESIDENT: Can you download that Industrial Relations Commission decision you are talking about.

MR BAKER: Hopefully, I can, but -

PRESIDENT: And give us at least the excerpt from in which you want us to rely on or which you rely on.

10 MR BAKER: I shall endeavour to do that.

PRESIDENT: We will have a look at that and if everything is consistent with what's been put and we're satisfied I suspect the relevant awards will be varied from the date requested, that is, the first full pay period to commence on or after 1 February 2000. We will
15 await on receiving that information from you, Mr Baker.

Thank you very much. The hearing is concluded.

HEARING CONCLUDED 10.49am