

HEARING COMMENCED 10.35am

PRESIDENT: Could I have appearances, please.

MR R.J. MILLER: MILLER R.J., from the Community and Public Health Sector Union (SPSFT), if the commission pleases.

5 PRESIDENT: Very good. Thank you, Mr Miller.

MR T. JACOBSON: If it please the commission, president, TIM JACOBSON, appearing on behalf of the Health Services Union of Australia, Tasmania No. 1 Branch.

PRESIDENT: Very good. Thanks, Mr Jacobson.

10 **MR T. PEARCE:** Mr President, PEARCE T., appearing for the minister administering the Tasmanian State Service Act in both matters.

PRESIDENT: Thank you, Mr Pearce. Mr Miller?

MR MILLER: Today is the -

15 PRESIDENT: The day after a miraculous Test victory at Bellerive.

MR MILLER: Indeed it is, sir, and that was most heartening to see. But on this day in 1910 Dr Frawley Crippin was hanged. He was the first person who was apprehended by the use of the Marconi radio system on board on a ship bound for the United States and I suppose
20 that the result of this hearing will also be broadcast around the world, possibly by the same means.

PRESIDENT: I don't know how we're going to organise that, Mr Miller, or whether the cost will be worth it but it's a nice objective to aspire to, I suppose.

25 MR MILLER: Indeed, sir. The kilometreage allowances in front of us, sir, are for the two awards as indicated and kilometreage allowances are from the March to September quarters of each year. The matters are as agreed with the minister, the last applications being 7367 of 1997 and 7377 of 1997 for the GCOE and the CHS public sector
30 awards respectively.

The applications mirror the mythology of claim - methodology, I beg your pardon.

PRESIDENT: You had me worried for a moment. Prophetic words.

35 MR MILLER: There is nothing mythological about the expenses, sir. The mythology of claim as required by the former and determined by the full bench decision T33 of 1985. I believe the commission has a

copy of the calculations to arrive at the percentage increases claimed and -

PRESIDENT: Before you go past that, it seems - and correct me if I'm wrong, that the application was amended by a fax you sent everybody
5 on 12 November. Did that go to all the parties?

MR MILLER: All parties now have that, sir.

PRESIDENT: Yes. Really, you're seeking to amend the claim?

MR MILLER: My original view was, sir, that the amended claim by fax was that to be taken as the document to be heard today -

10 PRESIDENT: I think you need to formally amend.

MR MILLER: If that is the case, sir, I would ask that the amended claim be the claim that is in front us for hearing.

PRESIDENT: Which is the one that was forwarded to all the parties on 12 November?

15 MR MILLER: All parties now have that document, yes, sir.

PRESIDENT: Yes. Before we go past that point, I'll just ask everybody whether they're happy with your revision of the claim. Mr Pearce?

MR PEARCE: No objection, Mr President.

PRESIDENT: No objection, Mr Jacobson?

20 MR JACOBSON: No.

MR MILLER: I do apologise, I was under a misapprehension.

PRESIDENT: Yes. Anyway, the application will be amended accordingly.

25 MR MILLER: Thank you, sir. That document then is the document to which I refer from here on in. Those calculations, sir, are for the Hobart Private Sub-Motoring Group Index and the formula as indicated in T33 of 1985 is applied.

30 The document and the claim satisfies the Wage Fixing Principles as adopted by this commission in that Clause 10 - Existing Allowances, Clause 17 - Economic Capacity to Pay, and I would request that the date of application be the date of decision, on the basis that the expenses for kilometreage have already been incurred from the September quarter and that persons are in a situation where they have already expended monies and that money should be applied to them
35 as from the date of decision to minimise any loss. If the commission pleases.

PRESIDENT: Yes, thanks, Mr Miller. Mr Jacobson?

MR JACOBSON: Mr President, simply from the HSUA's perspective, this is a consent application. We believe that it satisfies the provisions of the Act and the Wage Fixing Principles and seek that the application
5 be registered with the commission and that's essentially the extent of our submission.

PRESIDENT: Operative date?

MR JACOBSON: Well, I'd certainly concede to Mr Miller's presentation on this matter. I will be interested to hear what the
10 minister -

PRESIDENT: I suspect I've got another question to ask Mr Miller on that, but I think I understand what you've put, Mr Jacobson, so I'll ask Mr Miller. You say you're seeking the date of application as the operative date of any award variation to be made. The application date
15 is 8 November. It was varied on the 12th. Which one are you saying you want?

MR MILLER: Given the circumstances, sir, I would seek the 12th.

PRESIDENT: All right. We'll hear from Mr Pearce. Thanks, Mr Miller.

MR PEARCE: Thank you, Mr President. Mr President, in advance of
20 the lodgement of the application, the applicant organisation provided the employer with drafts of the proposed changes to kilometreage rates in the awards subject to these hearings. At that time the CPSU was informed that the employer would consent to an increase in the rates and at that juncture concurred with the rates contained in the draft
25 variation.

Subsequently, between lodgement and today's hearing it of course transpired that the rates for the occasional user category were incorrect and we concur that the amended rates, as submitted by Mr Miller today, are in fact the correct rates. It follows that the
30 methodology applied to determining the increased rates is that which was established in T33 of 1985.

Mr President, Principle 10.1 - Allowances, sub principle 10.1.1 is the correct principle to be applied in assessing the claims against the commission's existing principles.

35 In our submission, there are no circumstances attaching to the claim which would warrant a finding of the commission to the effect that the public interest was anything other than satisfied.

In conclusion, our position on operative date, is that increases should apply from the first full pay period commencing on or after today's
40 date.

In our submission, the applicant falls far short of establishing a persuasive case that there is special circumstances warranting retrospectivity. There is nothing unremarkable about the application. There is nothing unremarkable about the manner in which this
5 commission has processed the claim and having regard to previous observations of the commission in similar matters, we believe that there is no warrant for intervention of this commission in regards to retrospectivity. If it please the commission.

PRESIDENT: Yes, thanks, Mr Pearce. Mr Miller, do you want to
10 respond to that?

MR MILLER: Very briefly, sir. I rise to give an indication to the bench and to Mr Pearce, that in saying that this matter was an agreed matter, that was the mythology of claim and the outcome thereto, not in the effect that Mr Pearce and I have officially different views on the
15 date of application for the claim, sir. I would wish to remove any indication that I was attempting to be in any way, shape or form, deceitful about the indication that the matter was agreed. I apologise to Mr Pearce if that was taken in that respect.

PRESIDENT: I didn't note that. No, there was no concern about that,
20 Mr Pearce?

MR PEARCE: No, not in the least.

MR MILLER: There is one threshold issue, sir, that may be unusual but I wish to raise it for the record. Many years ago, more than I care to remember, I must admit, I first made an appearance at the bench at
25 the old Public Service Board Commission before Commissioner Koerbin of latter day fame, old Halcyon days. I well recall, sir, that on occasion being led down a somewhat primrose path by Mr Koerbin and then experiencing his - to use his words, his *coup de grace*, somewhat daunting, I must admit.

30 However, there was a saving grace in all of that, from at times, his almost malicious entertainment of young industrial staff, but to the tyro, such as I was or am, there was always one saving grace and that was, no matter how bad you felt or how you felt you had been dealt with, when you sought assistance from his clerk, Mrs Geer, one never
35 failed to receive anything but unfailing courtesy, assistance and the few words of encouragement to enable you to carry on that you weren't completely wrong, although that of course was always within the bounds of proprietary for her leader.

PRESIDENT: I hate to interrupt you, Mr Miller, and I understand the
40 point you're making and I concur with many of them, but is this a valedictory? Are you leaving?

MR MILLER: No, sir, but I believe Mrs Geer may be. This may be the last time that I appear before you and have the pleasure of Mrs Geer.

PRESIDENT: I think we ought to dispel some of those rumours. I don't know that there's anybody leaving immediately and I'm sure you'll be contacted when that occasion is on the way.

MR MILLER: I've been under a misapprehension. I do apologise, sir.

5 PRESIDENT: It was very sweet of you though, Mr Miller.

MR MILLER: I apologise to Mrs Geer as well, for maybe any embarrassment I may have caused. My apologies.

10 PRESIDENT: Very good. Can I return to the issue of operative date. Mr Pearce has indicated that the date of decision, or the first full pay period on or after the date of decision is the minister's preferred position and he's given reasons why. Have you any argument to put contrary to that?

MR MILLER: The argument, sir, is that those persons have expended that money and should be -

15 PRESIDENT: Which is what you put to begin with.

MR MILLER: Originally, sir, yes.

MR PEARCE: And which is what they put on every occasion but the commission consistently refrains from awarding it.

20 PRESIDENT: Yes, and I think we won't let that record go unsullied. We won't sully that record, I should say. Thank you for those submissions, the two awards will be varied in the manner sought. The operative date will be the first full pay period to commence on or after today's date and the hearing is concluded. Thank you.

HEARING CONCLUDED 10.50am