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TRANSCRIPT OF PROCEEDINGS

O/N 8990

TASMANIAN INDUSTRIAL COMMISSION

PRESIDENT P.L. LEARY

DEPUTY PRESIDENT R. WATLING

COMMISSIONER T.J. ABEY

T No 10410 of 2002

PRIVATE SECTOR AWARDS

**Application under section 23(2)(b) of the
Industrial Relations Act 1984 by the
Australian Liquor, Hospitality and Miscellaneous
Workers Union - Tasmanian Branch to vary re
superannuation**

HOBART

2.15 PM, MONDAY, 25 NOVEMBER 2002

HEARING COMMENCED

[2.20pm]

PN1

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

PN2

MR M. WATSON: I appear on behalf of the Tasmanian Chamber of Commerce and Industry.

PN3

THE PRESIDENT: Thank you. This matter has been - or this application has been referred to a Full Bench pursuant to section 35(1)(e) of the Act. Mr Tullgren - - -

PN4

MR TULLGREN: Yes?

PN5

THE PRESIDENT: You are the applicant in this I believe?

PN6

MR TULLGREN: Yes, your Honour. Your Honour, my friend and I have had a bit of a caucus before we have commenced and with the indulgence of the bench we would ask that perhaps the matter go off record just for a couple of minutes to provide some background and explanation. That sound is usually a signal for there is something wrong or it is a bit ominous. I can assure the bench that is not the case in this situation but just simply it might be helpful if the bench was prepared to indulge the parties over that for a couple of minutes? Your Honour is looking particularly worried and I am trying to reassure your Honour, the Deputy President and Commissioner Abey - - -

PN7

THE PRESIDENT: The reason being that I did that at 9 o'clock this morning in another matter and I am going to live to regret it.

PN8

MR TULLGREN: That is fine.

PN9

THE PRESIDENT: It has created World War IV, I think.

PN10

MR TULLGREN: I would lose sleep if I thought I was party to anything that might prolong that but there is nothing wrong, your Honour, in relation to this.

PN11

THE PRESIDENT: No objection. No, that is fine. Off the record, tell us what you have done.

OFF THE RECORD

[2.22pm]

RESUMED

[2.40pm]

PN12

THE PRESIDENT: I think we took appearances, didn't we? Okay, thank you. We have had a brief discussion in conference and we will now proceed on the formal record. Thank you, Mr Tullgren?

PN13

MR TULLGREN: Thank you, your Honour. Briefly, the application seeks to vary some 15 awards to which the LHMU has an interest and the purpose of the variation is simply to update the superannuation clause. All of the awards either make reference only to the 3 per cent or to a monetary figure which equates to 3 per cent or a percentage of the 3 per cent depending on the status of the employee. The application would simply seek to in effect replace 3 per cent with 9 per cent in the awards and adjust some of the monetary figures. We seek that the application apply from - the variation apply from today's date. It is clearly a variation that can be made by the Commission. It is no more than keeping the award up to date and relevant.

PN14

If, as a result of the process, there are employers that may wish to seek exemptions then that would be something the parties would need to consider in the development of the orders and it may be something that will come back to this Commission - - -

PN15

THE PRESIDENT: Yes.

PN16

MR TULLGREN: - - - that would have to be dealt with. The union is in the process of talking to members and some employers where it may well be that their superannuation is paid into a fund other than that described in a particular award to determine the basis upon which that was done and whether there was any consultation and that would be a matter for effective consideration by the union. We say that there is no adverse public interest ground. In fact, it is in the public interest to vary the awards to maintain their relevance. It clearly puts beyond doubt that employers are required under these awards to make the full 9 per cent payments.

PN17

So members of the bench, save for any questions you might have or issues, it would be my respectful submission that the awards should be varied generally in the terms as set out in attachment A to the application and bearing in mind there are a couple of typos that I have discovered but that the parties could settle some orders which would be operative from today's date, provide those to the Commission to be processed as how the Commission determines, with respect.

PN18

THE PRESIDENT: There are 13 awards, is that - can I just confirm that with you?

PN19

MR TULLGREN: 13 or 15, I am not - in relation to - - -

PN20

THE PRESIDENT: Is there only one application?

PN21

MR TULLGREN: There are 15 awards, yes, they are listed in one application. You might say that two of the awards, the Aerated and the Shipping Award, the application seeks to insert an agreed clause in relation to superannuation but that that would be - the purpose of that would be an agreed clause which reflects 9 per cent but also be operative from today's date. So there are 15 awards in total to be dealt with, 13 of which have got an existing superannuation clause to vary, two of them that don't.

PN22

DEPUTY PRESIDENT WATLING: You might just list the 14 - the 15.

PN23

THE PRESIDENT: I can only get to 13, including those two.

PN24

MR TULLGREN: I do apologise, I have - - -

PN25

THE PRESIDENT: No, you kept saying 15, that is why I counted them because I - - -

PN26

MR TULLGREN: Yes - no, the reason was I counted the number of squares in my application and it is 15 but in fact in relation to two of those awards there are double clauses.

PN27

THE PRESIDENT: I hope you don't count your money the same way.

PN28

MR TULLGREN: I must say, I put again on the record I said this to your predecessor, President Westwood, one day during proceedings that I was in the great position of studying ancient history instead of mathematics in senior high school so my excuse is always that I know more about and Caesar's conquest of Gaul than about simple maths and that is reflected - - -

PN29

THE PRESIDENT: We could confirm that for you.

PN30

MR TULLGREN: Yes, and that is reflected in that simple counting error. There are 13 awards - - -

PN31

THE PRESIDENT: Thank you.

PN32

MR TULLGREN: Two of which do not have clauses.

PN33

THE PRESIDENT: Thank you, I am happy now. Mr Watson, you confirm there are 13 awards?

PN34

MR WATSON: That is my count, Deputy President.

PN35

THE PRESIDENT: Good.

PN36

MR WATSON: As far as we are concerned in relation to this matter, we advise of consent to the application and obviously subject to the orders being produced by the parties noting, of course, that the issue of exemptions will need to be dealt with in some of those orders and Mr Tullgren and myself will be having some further discussions in relation to those matters. The application doesn't offend the public interest in our opinion, nor the Commission's wage-fixing principles, and we understand that the orders are going to have an operative date of first full pay period on or after today subject to those other issues that we have already discussed. If it pleases.

PN37

THE PRESIDENT: Thank you. Did you want to ask any questions?

PN38

DEPUTY PRESIDENT WATLING: No.

PN39

THE PRESIDENT: No.

PN40

COMMISSIONER ABEY: I don't want to be pedantic. Mr Tullgren said operative from today and Mr Watson said the first full pay period. Have we got an agreed position on that?

PN41

MR TULLGREN: It is the same. I was just short-ending and for -because Commissions - usually from the first pay period on or after today.

PN42

THE PRESIDENT: Yes, you agree to that. All right, look, what we will do in respect to this because there are a couple of things that need to be addressed. The Aerated Awards - Aerated Waters Award and the Shipping Award you need to provide us with an agreed clause and the others may be subject to some applications for exemption or agreed exemptions. So prima facie the awards as found in attachment A of which there are 13 will be varied as sought to reflect a 9 per cent superannuation payment. The parties are directed to prepare some draft orders to reflect the application and subject to receiving those orders the

exemptions, if there are any that need to be addressed, can be addressed in that period. If we give you 21 days, is that reasonable time to look at the issues that have to be looked at?

PN43

MR WATSON: Yes, I think so, President. Just to comment, I just had a thought about having been through some superannuation exemptions in the past the documentation requirements are fairly extensive - - -

PN44

THE PRESIDENT: Are they?

PN45

MR WATSON: - - - so I guess it is just a point of clarification. If we come to the Commission with an agreed position and it is simply in the order is that all you require or do we need to have signed statements from all employees, etcetera, etcetera, about their views about the - - -

PN46

THE PRESIDENT: That is a requirement under the Act, is it, to - - -

PN47

MR WATSON: It is.

PN48

THE PRESIDENT: Yes? Well, perhaps if you agree that there are some exemptions as far as the order is concerned that can go through without that - well, we will need that at some stage or other to form part of the record which will protect all of the parties - - -

PN49

MR WATSON: Right.

PN50

THE PRESIDENT: - - - if there is any query in the future. If we give you 21 days to provide the orders and within that period you should be able to then identify any problems that may arise and hopefully they can be resolved between you. If not, if you advise us accordingly and we can then deal with them in whichever form is necessary but prima facie the awards will be varied to reflect the 9 per cent effective from the first pay period on or after today and the proposed agreed clauses to the two awards that I referred to will also be reflected in that order. Unless there is anything else we need to address we will adjourn the proceedings and await your orders. This matter is adjourned, thank you.

ADJOURNED INDEFINITELY

[2.47pm]