

IN THE TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

**T.1921, T.1924, T.1966
and T.1967 of 1989**

**IN THE MATTER OF APPLICATIONS BY
THE FEDERATED CLERKS' UNION OF
AUSTRALIA, TASMANIAN BRANCH; THE
NATIONAL UNION OF STOREWORKERS,
PACKERS, RUBBER AND ALLIED
WORKERS, TASMANIAN BRANCH; THE
UNITED SALES REPRESENTATIVES AND
COMMERCIAL TRAVELLERS' GUILD OF
AUSTRALIA, TASMANIAN BRANCH; AND
THE SHOP DISTRIBUTIVE AND ALLIED
EMPLOYEES' ASSOCIATION, TASMANIAN
BRANCH RESPECTIVELY, TO VARY THE
WHOLESALE TRADES AWARD and Correction Order**

RE: 3% SUPERANNUATION

PRESIDENT

12 JULY 1989

REASONS FOR DECISION

APPEARANCES:

- For the Federated Clerks' Union of Australia
Tasmanian Branch - Mr. D. J. Fry
- For the National Union of Storeworkers, Packers,
Rubber and Allied Workers, Tasmanian Branch - Mr. D. Strickland
- For the Transport Workers' Union of
Australia, Tasmanian Branch - Mr. G. Warn, and
Mr. B. Hansch
- For the United Sales Representatives and
Commercial Travellers' Guild of Australia
and the Shop Distributive and Allied
Employees' Association - Mr. P. A. Fenton
- For the Tasmanian Confederation of Industries - Mr. T. J. Edwards

DATE AND PLACE OF HEARING

19.6.89

Hobart

Each of these applications relates to claims for inclusion in the Wholesale Trades Award of a superannuation provision. In many respects they seek a broadly similar arrangement to that included in the Retail Trades Award¹ save that in this case the following major departures apply:

1. The funds into which contributions are to be made are the LUCRF and TASPLAN.
2. There are to be no contributions payable on account of Transport classifications for the time being.
3. The procedure relating to casuals has been altered and is now based upon an average of 38 hours per "fund billing month".
4. In order to be eligible an employee is required to have had at least 3 months service with an employer. This is to be contrasted with 6 months in the Retail Trades Award.
5. Members of the fellowship known as the Brethren, provided they hold a certificate issued by the Registrar giving them exemption from union membership on conscientious grounds, may themselves nominate an approved superannuation fund into which an employer shall make contributions.

¹ T.1503, T.1505, T.1511 and T.1512 of 1988

A draft order, identified as Exhibit A, was tendered and discussed both on and off record.

In the main discussion centred around transport classifications and why they were to be excluded for the time being. Shortly stated, the reasons for this are two fold. Firstly, the matter of the rate of contribution payable on account of transport classifications is likely to be the subject of a Full Bench hearing, and secondly, the Transport Workers Union is, in any case, in the process of serving roping-in logs on many employers of TWU members in Tasmania. The purpose of this is to extend the operation of a Federal superannuation award presently binding upon large numbers of employers in the transport industry.

In this matter as in others that have been coming before the Commission, the TWU has not been an applicant for superannuation.

All the parties who appeared agreed to the draft order. The TWU did not object to it on the understanding that, as already mentioned, transport classifications would remain unaltered.

The Commission indicated at the conclusion of proceedings that prima facie it could see nothing wrong with the document, having regard to the fact that it had at that stage had the advantage of on and off-record discussions about most of the matters to be included.

However, since that time, due to circumstances beyond the Commission's control, it has not been possible to bring down a formal decision and order giving effect to what was agreed.

In the event, this delay has, I believe, rendered unreasonable the time constraints originally proposed for lodgment of applications for exemptions. Nevertheless, the possibility of a delay occurring was raised during proceedings. In that regard Mr. Edwards took the pragmatic view that should that be the case it would be a matter for the Commission to determine in the light of those circumstances whether any extension of time might be necessary.

In my opinion such an extension should be granted. I therefore decide that applications for exemption should now be lodged with the Registrar no later than 7 August 1989, in lieu of 7 July as originally intended.

Finally, by way of clarification, and based upon the Commission's experience in the Retail Trades Award², where the proposed exemption provision states: "an employer may choose to forego consideration of his application by the unions and have the matter determined in the first instance by the Commission", that reference

should be read down to mean that in the event an employer chooses to invoke this option, he will not thereby be relieved of the need to have his case considered by the unions concerned. It would be an incorrect interpretation of this provision for an employer to mistakenly believe that in lieu of an application being granted by a union or unions party to this award, an employer may opt for the decision to be exempted or not to be taken by the Commission. Such is not the intention.

In each case where the Commission is required to intervene and settle a dispute regarding a non-agreed request for an exemption the Commission's task will be to review the decision by the union(s) refusing the exemption. Should the Commission be of the opinion that the decision taken was unreasonable or, in the circumstances, in need of review, it may recommend or order that reconsideration occur. The Commission will not of itself grant or refuse an exemption. Subject only to the Commission concluding that approval of an exemption was capriciously or unreasonably withheld, the decision to exclude an employer remains the prerogative of the union or unions concerned.

As agreed the award variation shall take effect from 14 July 1989.

