

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 4146 of 1992
T No. 2225 of 1989
T No. 2311 of 1990

IN THE MATTER OF an application by
the Australian Social Welfare
Union to vary the Community
Services Award

re making of a new award

COMMISSIONER GOZZI

HOBART, 10 March 1994
continued from 14/12/93

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER GOZZI: Any changes in appearances this morning? Mr Paterson or Mr Fitzgerald, who would like to go first?

MR PATERSON: If the commission pleases, we're here today to add a significant number of other provisions to the award. They are as I previously circulated at the conference. If any of the parties here require further copies, I do have some copies with me -

COMMISSIONER GOZZI: That's the documentation dated the 3rd of March, I think.

MR PATERSON: And just to make sure -

COMMISSIONER GOZZI: - starting off with Structural Efficiency and Enterprise Flexibility.

MR PATERSON: That's included amongst them. The -

MR FITZGERALD: Have you got a copy there, Ian, just to -

MR PATERSON: - going alphabetically -

COMMISSIONER GOZZI: Oh, well, I've got them - yes -

MR PATERSON: - going alphabetically the matters are -

COMMISSIONER GOZZI: - to go in by consent; meal break and meal allowance rest - those ones.

MR PATERSON: Well, sir, to quickly go through them with a brief explanation to them.

COMMISSIONER GOZZI: Okay.

MR PATERSON: Meal break and meal allowance has a hand correction on it, I believe, to change the meal allowance to: An employee who works 5 hours or more ordinary time -

COMMISSIONER GOZZI: Yes.

MR PATERSON: We agreed very quickly on the provisions for a meal break and commission will note that by mutual agreement alternative arrangements may apply. The intent there was primarily to allow for work in train to continue, but the principle and the underlying safety net, if you like, is that an employee is not required to work more than 5 hours continuously without a break.

COMMISSIONER GOZZI: Yes.

MR PATERSON: The meal allowance was agreed at a rate of \$10.00 and it took some negotiation to arrive at the appropriate point of incidence of the allowance and in the

final result we agreed that somebody who works for 5 hours or more in ordinary time would be entitled to a meal allowance. That then caters for people working over night shift who are required to work extra hours beyond their normal finishing time and similarly people who are required to work through what would otherwise be a dinner time. The matter of -

COMMISSIONER GOZZI: Just - can you run that by me again? How does the allowance get paid?

MR PATERSON: The allowance will be paid to anybody who works more than 5 hours in ordinary time and subsequently works a further 1.1/2 hours, so their ordinary finishing time would be perhaps 5.30 and they subsequently work 1/1.2 hours overtime. The standard in a number of awards varies of course between that which is identifiable from awards such as WAVA where it provides merely for an employee required to work more than 1.1/2 hours overtime is entitled to an allowance as opposed to Retail Trades Award which provides for a number of hours to be worked, so in the Retail Trades Award I think it's 6 hours to be worked, and then working beyond that entitles them to tea money. The - but one of the -

COMMISSIONER GOZZI: But if they work more than 5 hours -

MR PATERSON: In ordinary - of their ordinary time -

COMMISSIONER GOZZI: Yes, they get either a meal or a meal allowance -

MR PATERSON: And subsequently work 1.1/2 hours overtime on top of their normal 5. Someone who works - an employee who works 5 hours or more ordinary time and is required to work more than 1.1/2 hours after his or her ordinary finishing time.

COMMISSIONER GOZZI: Right. And when does the further meal provision come in? Is the 4 hours after the 5 hours or 4 hours after the 1.1/2 hours overtime? If you're going to pay \$10.00, presumably, 6.1/2 hours, and another \$10.00 4 hours later, then is it 4 hours after 10.1/2 hours or after 9 hours?

MR PATERSON: I suspect we didn't address that question.

COMMISSIONER GOZZI: Yes.

MR PATERSON: The further 4 hours, as a provision, came from - no, well it still would have created the same problem in earlier forms.

COMMISSIONER GOZZI: We'll just go off the record for a moment.

OFF THE RECORD

COMMISSIONER GOZZI: Mr Paterson?

MR PATERSON: To turn to where we left off, if the commission please, we do seem to have some difficulty - a lack of clarity about meal allowance. We are, however, agreed on the first sentence of the meal allowance which reads:

An employee who works 5 hours or more ordinary time and is required to work more than one and a half hours after his/her ordinary finishing time, shall be provided with a suitable meal or be paid an allowance.

The parties consent to making that provision but the second part of meal allowance, point (b), reserving that for further discussion. So the sentence beginning: Where such overtime work - and ending on the last line of that paragraph - place of residence for such a meal - is effectively on leave reserved.

COMMISSIONER GOZZI: Right. Well I've deleted it and you can then come back at the appropriate time on that. Okay. And the rate of allowance is agreed at \$10.00. What's the rationale for that?

MR PATERSON: The position that the union had put in earlier documentation was in effect the public service rate of pay which differentiated between breakfast, lunch and dinner meals and the -

COMMISSIONER GOZZI: What's dinner in the public service?

MR PATERSON: Pardon?

COMMISSIONER GOZZI: Yes. I'm sorry, go on.

MR PATERSON: Those public service rates are the ones that the union believes are adopted generally where people seek a reference point for such matters and the employer's view as that for simplicity of operation, that a single rate - and it was proposed a single rate of \$10.00 which I believe is slightly less than the highest State Public Service meal allowance was agreed to.

COMMISSIONER GOZZI: All right. Thank you.

MR PATERSON: The rest time provision was essentially agreed to a long time ago but again similar to the meal break provision, there was a need - a recognised need to have some provision that would allow the work in progress to continue

and that is the intent of putting that the 'by mutual agreement' clause in there.

COMMISSIONER GOZZI: I'd have to say I'm not overly enamoured with that provision. I mean rest time provisions - and I think without exception - have been deleted in awards of this commission as far back as the 4 per cent second tier. Certainly structural efficiency provisions of awards has taken the afternoon and morning tea breaks out and I guess that's what I'm attributing to the meaning of rest time. I regard that as a significant backward step.

MR PATERSON: Oh, I'll refer to Mr Fitzgerald to come back on that.

COMMISSIONER GOZZI: Well I'm just simply saying that, you know, in revising awards for the 4 per cent second tier, for the structural efficiency agendas and so on, and the processes involved in the minimum rates adjustments and so on, the rest time would be one of the first things to go, but you know, these matters are up by consent and I feel a bit awkward saying to you that I've got a difficulty with it. I would have thought though that the parties, in looking at the award and the provisions, would have also realised that those type of provisions have been long gone.

MR PATERSON: I expect the difference is, in one sense, attributable to coming from an award free area where there hasn't been a practice whereas in other industries or under other awards, tea breaks may have been institutionalised to the extent that they were a break on work in progress and counter productive.

COMMISSIONER GOZZI: Yes. Look, the more enlightened approach to these type of matters, quite honestly, as if people want a cup of coffee and if they're in a position to go and get one, they go and get on and carry on doing what they're doing. I mean, I don't think anybody would say you shouldn't have a cup of coffee or do what, you know, as probably most people that work in that sort of environment do. I mean, I know that Mr Hunter feeds me coffee and without it now I think pretty well shot, but you know, the reality is that the regulation in respect to that has been taken out of awards and I can't think of one award in my area - and I probably can be proven wrong - where it's been retained, but again, it's a matter for you. I prefer for you to perhaps have a further talk on that.

MR FITZGERALD: Perhaps could we just go off the record just for one moment on that?

COMMISSIONER GOZZI: Yes.

OFF THE RECORD

COMMISSIONER GOZZI: Mr Paterson, there seems to be that there is fairly strong consent on this matter having regard to the nature of the industry. I have some reservations about it, but I accept the fact that it's been put forward by consent and I'll look at it in the context of the decision and order that will issue following these proceedings.

MR PATERSON: The second - the next provision, structural efficiency and enterprise flexibility, really embraces two fairly standard provisions, one to some extent dated, being points, I believe, (a) to (d) which come from earlier structural efficiency clauses in awards, however, the parties believe that those things apply equally to the implementation of the new award and are worth restating as principles, particularly in terms of the award classifications, and the cooperation in the transition to the new classification structure.

The points (d) to (f) are essentially the fairly standard provisions that have gone into state awards, however varied. To clarify what type of agreements are being talked about, there seems to me to be contradictions in some other state awards which provide for things called enterprise agreements and were provided for prior to the act changing. The intent here, in point (e) and (f) is to provide for agreements that give expression to the provisions of the award particularly where there by mutual agreement options, and in many cases, particularly when we get down to dealing with the hours and related matters, sleepovers, shift provisions, et cetera, there will be a need I believe for some of those agreements in some work places to be very carefully and rigorously documented.

The provisions of (e) to (f) I believe are essentially standard and as we're not talking about agreements that go beyond the content of the award, there's no provision for the referral of those matters to the commission as they will be within the parameters and the frame work of the award.

COMMISSIONER GOZZI: Yes. Look, I understand the thrust of what you're saying here. I suppose the point or concern that I've got about it, particularly (e), is that - and I'll ask you the question - could it be said that that provision is contrary to the provisions of the Industrial Relations Act 1984 in that the act provides a choice to employers and employees in respect of how they want to be covered, ie, industrial award, industrial section 55 agreement, or indeed enterprise agreement and it could be said that the clause in (e) - the provisions in (e) limit the area of choice and if that was the case it would be contrary to the provisions of the act. And of course

I'm precluded to make an award provision which is contrary to an act.

MR PATERSON: the discussions that we had probably some six or 8 weeks ago and earlier than that, late last year, address the issue of what sort of agreements we were talking about here and whether they were section 55 or enterprise agreements or other agreements and my understanding of the consent position that we reached was that this provision was - would be - the intent of this provision would be to relate just to the implementation of the provisions of the award without any limitation on other options and without getting into a debate between the consenting parties on whether it was useful and necessary or appropriate for those other - other courses to be mentioned within this clause.

If it's - if it needs clarifying then I guess we're happy to look at that but I don't believe that that would limit options. It really is providing a framework for the implementation of the award, in effect.

COMMISSIONER GOZZI: Yes, sure. So (3) roman numeral (iii) is the one that causes me a little concern in that it could be deemed to be restrictive on union members. Now there is no preclusion from union members ending - entering - into an enterprise agreement under section 61 of the act, whereby the union is not the bargaining agent and this provision here makes it mandatory that union members - that the union be informed and the employees might see - the employees who are union members - might say, well look, we don't want the union involved.

MR FITZGERALD: It's only advice though, isn't it? It's simply that.

COMMISSIONER GOZZI: Well they might say that we don't want the union informed or advised.

MR FITZGERALD: But that could follow though - I mean, that could be a consequence but is it - is it in fact limiting if it's just simply an obligation to give advice?

COMMISSIONER GOZZI: Well there is no obligation inherent in the legislation.

I mean if union members want to enter into an agreement with - with an employer and they want to use Joe Blow down the road as their bargaining agent, they can do it.

MR FITZGERALD: But the advice -

COMMISSIONER GOZZI: And they - they might specifically say to you, well look, we don't want our union involved in this at all.

MR FITZGERALD: Yes. The point I make, commissioner, is that - that could in fact be a consequence - that the advice be given and the employees in fact choose to - to negotiate on their own behalf. This clause I don't think makes it mandatory that once advice is given that the union then is the negotiating party.

COMMISSIONER GOZZI: Well what it does do, is if the union members said, look we don't want to be involved with the union, then you are bound to advise the union of that fact and of course that would then set in - in train processes to change peoples minds and the whole issue of duress and non duress in accordance with the legislation then arises. I mean I'm just highlighting the provision and perhaps drawing some fairly long bows in respect of practical scenarios, but nevertheless I believe that they are real. I mean fundamentally - fundamentally - I have no objection to that provision but what I am saying is that you don't seem to have considered the implications having regard to the provisions of the legislation the way it now is.

MR PATERSON: In general terms I don't have a problem either with the union only acting on the active request of union members, and I believe from a union point of view that there is a lot of strength in the enterprise or workplace developments because we will only be acting where we want it and we've got enough work to do without acting where we're not wanted.

If - to satisfy your concerns in respect to conflict with the act and the long bow you've drawn, which I believe in our case has not been - there's no evidence to suggest that that's ever happened in our union mainly because of the workload that is driven by employee member demand, but if the clarification - if clarify (e)(iii) to the point of deleting the words 'in the case of' and putting 'at the request of', if that clarifies that I'm more than happy to do that - to agree to that.

COMMISSIONER GOZZI: I think that I would be happier with that.

MR FITZGERALD: Mm.

MR PATERSON: And like I say, I don't - as a - as a union official I don't have a problem with only acting where I'm asked to be involved and wanted to be involved. So if the employers consent and if it means the concerns that you have, Mr Commissioner, I propose that (e)(iii) read: at the request of union members.

COMMISSIONER GOZZI: Yes, I think that's a good suggestion. Mr Fitzgerald, are you happy with that?

MR FITZGERALD: I think it's a sensible suggestion too, and would concede to the amendment.

MR PATERSON: I think we've in effect done similar - provided for similar clauses in respect to the grievance and discipline matter and the consultation and change in any event.

MR FITZGERALD: Yes.

COMMISSIONER GOZZI: Yes, okay. Good.

MR PATERSON: And I suppose the importance of this - I mean if we end up with an award which embraces the flexibility that the industry wants and that alternative means of regulating employment conditions and wages, et cetera, are not necessary or desired by those in the industry then this clause in fact probably becomes quite vital in terms of workplace negotiations within the flexible framework that the award will provide.

COMMISSIONER GOZZI: Right.

MR PATERSON: Moving to superannuation, the - the issue here that caused some delay to the consent on this provision in definitions, paragraph (a)(iv) and agreement was finally reached that the eligible employee will any - effectively any permanent employee engaged under the award or a casual employee who is eligible under the Superannuation Guarantee Act.

My reading of superannuation clauses as they exist in other awards meant that that provision was effectively there; in some awards it - in some - in fact probably most superannuation clauses can be read that an eligible is any employee engaged under the award, however clearly the casual nature of some work may make a bit of a mockery of that. We've agreed on this provision which is in line with revised superannuation clauses in some awards.

COMMISSIONER GOZZI: Look, I've got no fundamental problem with casuals and so on, but I think the user of this award wouldn't have a clue what the eligibility is and I think the award should contain what it is - what the eligibility for a casual is because if you don't do it, what you've got there really causes a problem. I mean I wouldn't have a clue, because the awards in respect of casuals vary in the context of qualifying time and earnings. So there's an earning threshold and there is an hour's threshold in - in most awards where casuals are looked at.

MR PATERSON: Well what's proposed here is that a casual would only be eligible under the provisions of the Superannuation Guarantee Act which -

COMMISSIONER GOZZI: Yes, what is that provision?

MR PATERSON: - which gives an earnings threshold of \$450.

COMMISSIONER GOZZI: A what?

MR PATERSON: An earnings threshold of \$450 per month. Now employers would be required and ought to know the provisions of the Superannuation Guarantee Act. Similarly in point (c) the contribution in terms of a percentage amount is not specified.

COMMISSIONER GOZZI: Yes, well that's no good either.

MR PATERSON: Well the -

MR FITZGERALD: It's going to change.

COMMISSIONER GOZZI: Yes, that really causes a problem but before you get to contributions, just let's get back to - just working through it; definition (a)(i) and (ii) are no problem. The name of the union needs to be altered to reflect the current situation - so union means -

MR PATERSON:

COMMISSIONER GOZZI: AMACSU - yes.

MR FITZGERALD: Sorry, I -

COMMISSIONER GOZZI: In (a)(iii).

MR FITZGERALD: Oh, right.

COMMISSIONER GOZZI: Australian -

MR PATERSON: - Municipal Administrative -

COMMISSIONER GOZZI: Clerical, administrative -

MR PATERSON: - Clerical Services Union.

MR FITZGERALD: What's the name of the union this week?
What's the name this week?

MR PATERSON: It hasn't changed.

COMMISSIONER GOZZI: - Services Union, Tasmanian Branch.

MR PATERSON: It also would mean the Health Services Union of Australia.

COMMISSIONER GOZZI: Okay, then - but isn't it Australian Municipal Administrative Clerical Services Union, Tasmanian branch. Fantastic isn't it?

MR PATERSON: Yes - Australian Municipal Administrative Clerical Services branch.

MR FITZGERALD: That may change before the order is actually issued.

MR PATERSON: Unlikely.

COMMISSIONER GOZZI: Now roman numeral (iv) - (a)(iv) is okay except that permanent employee, casual employee, temporary employee are normally defined in the award and I'm not sure that you would want to - I'm not sure whether the definition in the Superannuation Guarantee for these particular people is the same as the definitions that you would ordinarily have in an award. Now I think you need to look at that, Mr Fitzgerald.

MR FITZGERALD: I just whether you could just go off record again just to explain - sorry if I -

COMMISSIONER GOZZI: Yes, sure.

OFF THE RECORD

COMMISSIONER GOZZI: Alright, with respect to superannuation, we'll set that aside and the parties will further consider it and the commission will also have another look at it and come back to you on it.

MR PATERSON: The remaining matters that we have are three: terms of employment, travelling and motor vehicle expenses, and union delegates.

Terms of employment -

COMMISSIONER GOZZI: Well can I just say in terms of appointment (a)(i) - term of employment is normally in accordance with the wage rates. Are they going to be fortnightly wage rates or are they going to be weekly wage rates?

MR PATERSON: Weekly wage rates have been proposed but a fortnightly term of appointment was agreed as probably as the most common practice and I think the - the issue really on the ground in terms of wage rates is that more people work by the hour rates than anything else. But the agreed position was by the fortnight in terms of the term of appointment.

COMMISSIONER GOZZI: Right.

MR PATERSON: Most of the matters there are fairly self-explanatory and are derived from standards within other Tasmanian awards -

COMMISSIONER GOZZI: Yes.

MR PATERSON: - certainly in terms of (a) terms of appointment and (b) termination. Casual employees is, in part, a unique provision, I expect, but the broadest definition of a casual was adopted rather than try and reach agreements on the extent to which casuals should be limited, either by hours or by duration of employment and partly at a suggestion made by yourself as to something we might look at, Mr Commissioner. Casual is defined as somebody who performs specific duties for a specific period and certainly on the ground in terms of employment practice, casuals knowing exactly what they're required to perform and for how long, what period would be a major improvement.

In (c), Roman (ii) there's a small typo: Where the period of engagement is - of a casual is tied to a specific project and that continues or is renewed after the initial term the employer shall offer the employee permanent employment or a further fixed term contract. I believe that that's necessary and provides some continuity and mitigates against excessive casualisation. I don't believe that there should be any problem and that position has been agreed to.

Moving quickly through the rest; the loading option to employ - the loadings - the loading provision provides that casual be receiving 20 per cent loading in lieu of annual leave, holidays with pay and sick leave; it provides for a minimum of 2 hours engagement. Part-time employees being defined as a permanent employee engaged to work less than 38 hours. (d) Roman (ii) provides that by mutual agreement a loading in lieu of entitlements may apply and -

COMMISSIONER GOZZI: But what - part-time doesn't get a loading.

MR PATERSON: Not as such - not just for being part-time.

COMMISSIONER GOZZI: I mean, a part-timer gets pro rata to a full-time employee in the context of entitlements.

MR PATERSON: That's correct.

COMMISSIONER GOZZI: Yes.

MR PATERSON: However, may elect - by mutual agreement may opt for a loading in lieu of those entitlements at a certain number of hours -

COMMISSIONER GOZZI: Well I really don't believe that -

MR PATERSON: - it's in fact, in the employee's and the employer's benefit to pay a loading rather than pro rata benefit. I've been through this exercise with St Vincent de Paul where they engage people just on weekends and the loading was a net cash benefit to the employee and the fact that the employer didn't have to engage a substitute person for the 4 weeks that that person would have been absent from their regular shift made it a dual advantage to both parties. I believe there is a threshold - the number of hours per week at which it's in both parties interests to offer a loading in lieu of proportionate entitlements. The -

COMMISSIONER GOZZI: Yes, I - I mean, -

MR PATERSON: The alternative -

COMMISSIONER GOZZI: - part-time employee really means regular employment for less than full-time hours and to all intents and purposes the employee is regarded as a permanent full-time employee and there have been cases run on putting into the award - into awards that type of provision where they are totally on foot on a full pro rata basis to full-time employees. I'm not happy about, you know, having a mix of casual and part-time provisions like that.

MR PATERSON: Well -

MR FITZGERALD: It's common.

MR PATERSON: - I don't believe it is a mix. I mean, it's -

COMMISSIONER GOZZI: Oh, God.

MR PATERSON: - an option of a loading in lieu of pro rata entitlements and Roman (d)(iii) provides explicitly that the pro rata benefits do apply.

COMMISSIONER GOZZI: What - pardon? Where's that?

MR PATERSON: Roman (d)(iii) provides explicitly that the provisions of the awards apply to part-time employees on a pro rata basis.

COMMISSIONER GOZZI: So, what, they get both?

MR PATERSON: No, no, no, no, - well may be - I mean, in those terms, may be the order of those two could be reversed,

but the other - the alternative arrangement that I have seen in awards - and without the copies of them here to make reference to them - is that the option for taking a loading in lieu of leave is at a certain number of - less than a certain quantum of hours and often 16 or 20 hours and -

COMMISSIONER GOZZI: Look, the 20 hours distinction - I would be surprised if you could find too many. I mean the 20-hour distinction for part-timers is really a dead issue.

MR PATERSON: I think - the issue in terms of practice on the ground, however, is the one that I mentioned at Bethlehem House, that there is a win win situation where the loading is a benefit to both the employer and the employee.

COMMISSIONER GOZZI: Yes. But about the accrual of long service leave; what about the payment of occupational superannuation? I mean, you could have a part-time employee - I mean, I know part-time employees that work 4 hours a day, 5 days a week, at 20 hours a week and they accrue their annual leave, their long service leave, they are subject to occupational superannuation. When they retire, finally after 30 years or whatever in the work force, they get their entitlements to superannuation and so on. I mean, -

MR PATERSON: They remain unaffected. The only -

COMMISSIONER GOZZI: What.

MR PATERSON: - accumulating benefit that is affected by this is sick leave and the 20 per cent loading is only in lieu of annual leave, holidays with pay and sick leave. The long service leave entitlement remains unaffected as does the super entitlement and primarily they're the subject of other acts and can't be reduced - at the very least can't be reduced.

COMMISSIONER GOZZI: So, are you saying here that the 20 per cent doesn't mitigate against the obligation to provide occupational superannuation and provide for long service leave accrual.

MR PATERSON: That's correct. All that it is in lieu of is annual leave, sick leave and holidays with pay.

In terms of where the benefit lies the only - I mean the issues really turn around on whether someone works on days that are normally public holidays or not, and whether they're likely to get sick. The exercise I think that I went through does show that there is a point at which it's of benefit to both employer and employee.

MR FITZGERALD: It is only a facilitative provision, commissioner, that's the only point I make. The principal

provision is that there be pro rata benefits, but in the event of agreement - mutual agreement - the loading can be taken in lieu of those benefits and it's not a common provision in awards but it's becoming, in my view, more so.

COMMISSIONER GOZZI: Yes, I didn't appreciate that the - that the other benefits would accrue.

MR PATERSON: And may - or maybe to clarify also, it may be worth reversing the order of roman (ii) and (iii) to put what is now roman (iii) up to roman (ii) being: the provisions of the award shall apply to part time employees on a pro rata basis - make that roman (ii); and the clause we've just been discussing make that roman (iii).

COMMISSIONER GOZZI: Well why couldn't you then - why couldn't you make roman numeral (ii) then as a proviso to - to say that, okay, roman numeral (iii) stays as it is, roman numeral (ii) gets deleted and you add to roman numeral (iii): provided that by mutual agreement an employee may be paid an additional 20% loading in lieu of annual leave, sick leave and holiday - holidays - with pay.

MR PATERSON: Yes - it does the same thing.

MR FITZGERALD: Sorry, can you just - I wasn't sure about that.

MR PATERSON: Effectively that the change would - well the first part of roman (ii) - all it says is the same hourly rate as a full time employee.

COMMISSIONER GOZZI: We'll just go off the record for a minute.

OFF THE RECORD

COMMISSIONER GOZZI: We'll delete roman numeral (d)(ii) and add on to roman numeral (iii) which will be renumbered roman numeral (ii), the proviso in the following terms: provided that by mutual agreement an employee made be paid in addition a 20% loading in lieu of annual leave, sick leave and holidays with pay.

Any problems with that anyone? Thank you. And then the next one, Mr Paterson?

MR PATERSON: The final provision of this clause - higher duties - provides that higher duties are - entitlement to higher duties arises for each day so worked and I believe -

COMMISSIONER GOZZI: Normally there's a bit of a qualifying period isn't there?

MR PATERSON: Well there are very many - I mean there are many alternative ways of - of - of doing this, because the formula that has been agreed so long as we're talking about - and I suppose to clarify it, it is a day's work. To try and get any more specific about what that meant created more problems than it solved.

COMMISSIONER GOZZI: Yes, okay.

MR PATERSON: Whilst other awards may have different qualifying periods, it was agreed that a day is a countable quantum of work and could be agreed to be rewarded by higher duties on that basis.

COMMISSIONER GOZZI: Alright.

MR PATERSON: Travelling and motor vehicle expenses - I meant to bring but don't have the public service rates - the Tasmanian Public Service rates but having proposed several alternatives, this formula of compensation or recompense for an employee using his or her own motor vehicle was agreed to. The rates identified there are the rates that the Australian Taxation Office allows as an eligible deduction for use of private motor vehicles in your work - in a person's work. The employer position in part was that, it was a standard that was identifiable and carried no burden of choosing one or other preference in terms of state, commonwealth, public service or other. Subject to further discussion, I expect, the way in which these would be varied would need to be looked at. As to whether they are varied in line with the Australian movement in the Australian Taxation Office rates or whether they are varied in accordance with the commission's formula for varying rates.

Whilst they may be at odds to a limited extent with some of the state or commonwealth public service standards, it's around the - the middle range of engine size they're quite comparable, and the differences, I believe, are at the top and bottom end and are not terribly significant. In most instances most funded services operating under funded programs such as the Support Accommodation and Assistance Program vehicles are normally provided - the other consideration in acceptance and agreement to these rates is, that where an employee is going to be on extended travelling around the state, the option of hiring a car is more frequently than not a far cheaper option than reimbursing the individual. And it's certainly my experience both on my members account and on my own account that in excess of a day's travelling and excess of a few hundred kilometres, or a hundred kilometres, it's in the organisation's interest to hire a vehicle rather than to

reimburse travelling expenses particular given that the standard of hire vehicles can be more reasonably known.

COMMISSIONER GOZZI: Yes, well look, I've got a couple of queries with this clause - some of them just technical things - like are we still dealing with cc's or litres these days? Is that the current language that we - that the taxation office use?

MR PATERSON: I believe so. I don't have written advice from the tax office but I believe that the way that this is written is in fact the taxation office - the advice I got from the taxation office. I thought engine capacity was in litres these days.

MR FITZGERALD: It amounts to the same thing, sir.

COMMISSIONER GOZZI: Does it?

MR FITZGERALD: One - 1500 cc's is 1.5 litres.

COMMISSIONER GOZZI: I don't know the technical - I don't know the technical - pardon?

MR FITZGERALD: Fifteen hundred cc's is 1.5 litres, I think.

MR PATERSON: Yes, a thousand cc's in a litre.

COMMISSIONER GOZZI: Well -

MR FITZGERALD: It's just a bit hard to express 800 cc's as .8 of a litre.

COMMISSIONER GOZZI: Well I think you'll find that the language is metric.

MR FITZGERALD: This is metric.

COMMISSIONER GOZZI: Litres - capacity - rather. So you can have a look at that.

MR PATERSON: Well I believe that this is the taxation office advice. I mean I suppose the other difference is that you - you get in - if you put it in litres you end up writing more 'more's' than 'less's' - that 801 to 1000 becomes more than .8 litres up to 1 litre and 1000 to - 15 - and 1001, using the cc's, gives you a convenient number -

COMMISSIONER GOZZI: Yes, I thought - I thought the award language -

MR PATERSON: - and I believe this is -

COMMISSIONER GOZZI: - generally was litres.

MR PATERSON: Again, the only award I have on me as a reference point is the Skillshare Award which is the Commonwealth Public Service standard, and it's expressed in cc's.

COMMISSIONER GOZZI: Mm. Now the rate is per kilometre?

MR PATERSON: The rate is per kilometre.

COMMISSIONER GOZZI: So put that in. Rate per km.

MR PATERSON: Mm.

COMMISSIONER GOZZI: And is it 45.7 cents?

MR PATERSON: Cents - yes - cents per kilometre.

COMMISSIONER GOZZI: So we'll just put cents per kilometre.

MR PATERSON: Yes.

COMMISSIONER GOZZI: Okay. Now -

MR FITZGERALD: No, you don't need to do that do you? If it's rate per kilometre at the top, it's just 45.7 cents then, isn't it?

MR PATERSON: It doesn't matter which way you do it - the rate - I mean I suppose a rate strictly speaking is an amount per kilometre, so to put cents per kilometre makes it clear. The other way -

COMMISSIONER GOZZI: In - how do you want put it?

MR PATERSON: Well I'm not fussed. I mean it can be per kilometre with cents after each number or cents per kilometre as part of the column.

COMMISSIONER GOZZI: Now in (d) is that intended to be as I'm reading it, that travelling between home and work and back again will be paid for in those circumstances?

MR PATERSON: Where applicable -

COMMISSIONER GOZZI: And I mean does that mean to travel to work - to start work in the ordinary hours and finish at the end of the day that you pay in those circumstances you've describe there? Well where else is the person going to be travelling from if it doesn't mean that?

MR FITZGERALD: It's only at times or in places where public transport is not reasonably available.

COMMISSIONER GOZZI: Yes, that's right, so why is that last sentence there?

MR FITZGERALD: It's probably superfluous.

COMMISSIONER GOZZI: You see, where any employee is required to work at times and/or in places where public transport is not reasonably available the employer shall authorise the employee to use his or her own vehicle or reimburse the cost of taxi fares.

MR PATERSON: The -

COMMISSIONER GOZZI: At times or in places - now that means outside the normal working requirements, but then you say this subclause shall include where applicable the employees travelling to his and home and place of work.

MR PATERSON: If I can comment, commissioner, this again was in part a consequence of and rearranging clauses and this clause originally was headed public risk and perhaps the answer to your question is to delete (d). My understanding was that this subclause, or this clause (d) was in effect meant to be in the circumstances outlined in (c). And perhaps just removing the (d) would answer the question that it was to do with where somebody is called on to work duty at night or outside normal hours on a non working day and bearing in mind that there are circumstances where that could be placing an employee at risk if they had to rely on public transport or taxis and if they're not going to be reimbursed for taxis, then there may be - it was - it was in part a risk issue and maybe the clarification is just to leave out (d).

The last - leave out (d) - so this clause would only have an (a), (b) and a (c), and (c) -

MR FITZGERALD: Oh, sorry.

MR PATERSON: and (c) would have two paragraphs in it, and from my recollection -

MR FITZGERALD: Oh, you just combine the clauses.

MR PATERSON: - my recollection of the intent was that that provision was to apply in the circumstances prevailing in point (c).

All right. So why don't we then just make it a proviso again: Provided that where an employee is required to work at times or in places where public transport is not reasonably available the employer shall authorise the employee to use his/her own vehicle or reimburse the cost of taxi fares. Because you've got travel between his/her home and place of work in the previous clause.

MR FITZGERALD: Yes, that's okay.

MR PATERSON: I suppose the only clarification that would be necessary and maybe - and probably necessary anyway is that to travel between home and place of work needs to be clearly - clear that it applies in fact to all of those circumstances and not just using your own vehicle. It may in fact be better to leave it where it is in the final paragraph and delete it from the second paragraph for clarification.

COMMISSIONER GOZZI: Well I thought your intention was that where an employee - as you've got there in (c) - is called on duty at night or other than normal hours or on a working day they reimburse their fares or if they use their own vehicle, they receive a travelling allowance.

MR PATERSON: Yes.

COMMISSIONER GOZZI: Right? The exception to that is that where the employees are required to work at times - it's night or other than normal hours - where public transport is not reasonably available, -

MR PATERSON: They're entitled to use their own vehicle - authorised to use their own vehicle or reimburse the cost of taxi fares.

COMMISSIONER GOZZI: I mean, why do you need that in there. Isn't it all comprehended in (c)?

MR PATERSON: Well it's not comprehended in (c) as the use of the cost of taxi fares. I suppose it is if fares includes all fares.

MR FITZGERALD: Actually I think we should take - probably have a look at it. I just wonder whether (c) makes sense.

COMMISSIONER GOZZI: I mean it's not uncommon in those circumstances in (c) at night or outside normal hours that those sort of things happen or taxi fares are reimbursed.

MR FITZGERALD: Could I just suggest we look at the whole thing again. My view is that (c) is a bit unclear and it did result in an amalgamation of discussions I suppose, but it could be that if you read (c) where it talks about called on duty at night, there's that separate aspect to it, and then the other separate aspect to it, or if using his or her to travel between home - his or her home and place of work. Now, on the face of it it could be that the travelling allowance applies just simply travelling between home and work and I

don't think that's the intent of the provision. In my view it would be best to, like other matters this morning, put it aside for the moment, commissioner. I'm not sure how it leaves the rest of the clause.

COMMISSIONER GOZZI: Right. Mr Paterson, what do you think about that? Do you agree with that?

MR PATERSON: Well I don't see that it's any more difficult to clarify here and now than some of the other matters that we have clarified. I thought the - I was under the understanding that the intent we agreed on was where an employee was called on duty at night or other than normal hours or a non working day, then fares are reimbursed -

MR FITZGERALD: It doesn't say that though.

MR PATERSON: Well I'm talking as to the intent and I believe that if we can quickly clarify the intent and if we agree on the intent then the clarification should not take long. Where an employee is called on duty at night or hours other than normal hours or on a non working day, then they shall be reimbursed fares, if using their own vehicle, receive a travelling allowance where public transport is not available reimburse the cost of taxi fares, this clause shall include where applicable, travelling between home and work - and I think that can be very quickly worded to clarify by in fact appropriate punctuation. Where an employee is called on duty at night or other than his/her normal hours or on any non working day - comma -

COMMISSIONER GOZZI: We're off the record, aren't we?

MONITOR: No.

COMMISSIONER GOZZI: We're on record.

MONITOR: Yes.

COMMISSIONER GOZZI: Okay.

MR PATERSON: - he/she shall be entitled - shall - comma after non - colon - semicolon after 'non working day', he/she shall be entitled to fares if using own vehicle to travel to - using own vehicle, receive a travelling allowance -

COMMISSIONER GOZZI: I give you full marks for working at it very hard.

MR PATERSON: - where public transport is not reasonably available, reimburse taxi fares.

COMMISSIONER GOZZI: Look, I'm going to - I think you need to look at it. I mean, I've lost the syntax of it too quite honestly, so I'll put (a) and (b) in - well -

MR FITZGERALD: It doesn't make much sense if you do

COMMISSIONER GOZZI: Yes. Look, I'll hold it over. You might be able to talk about it this morning as we're only scheduled to 10 o'clock this morning, weren't we, or 10.30. So - but you can use it and if you can sort it out in there in a moment, well then we can put it in.

MR PATERSON: Right. The final matter is very straightforward, providing for union delegates being allowed reasonable time during working hours.

COMMISSIONER GOZZI: Very good. All right. Just then, recapping, meal break and meal allowances, we've deleted the last sentence of (b) and the rest of the clause will go in.

Rest time, I think your arguments about the nature of the industry, I'll look at that; structural efficiency, I think we've resolved; superannuation is set to one side; terms of employment, just some minor change there to part-timer provisions; travelling has been held over; and union delegates is ready to go in.

MR PATERSON: The question that we haven't addressed is an operative date for these matters. I believe there is no reason why it shouldn't be the earliest reasonable, practical date.

COMMISSIONER GOZZI: All right, Mr Paterson. Fine. Thank you. Mr Fitzgerald?

MR FITZGERALD: Well just briefly, in support of the matters which have been put as amended and summarised by the commission, we would support those matters being inserted into the award as the next step in the step by step process.

I would seek to adopt the submissions I made on the last occasion before the commission in the early matters going to the award at the end of last year in support of those provisions being inserted.

In terms of operative date, I hear what Mr Paterson has to say. I think in terms of advising our members, if there is - if it is possible to - for the commission to indicate one way or another whether it is - well maybe it's not given some - one of those provisions is somewhat subject to discussion by the - or consideration by the commission, we would seek a date where we could advise members of the provisions going in from a date of decision, I'd suggest, from the first pay period

occurring on or after the of decision would be the most appropriate date in our view. If it pleases.

COMMISSIONER GOZZI: Yes. Thank you, Mr Fitzgerald. Anything further, Mr Paterson?

MR PATERSON: I'm not entirely sure of your constraints on time. I do feel that there is a need to set some time frame proceedings from here, that there is a risk that the major outstanding items which are in effect the hours and rates of pay and allowances, et cetera, that go to make up the hours of pay run the risk of drifting into - certainly away from the intent I had late last year which was timing around budget cycles and, you know, the position of - mid to late last year of one - or March as a deadline. I'd seek your guidance on appropriate ways to set timetables and time frames for the balance of the matters.

COMMISSIONER GOZZI: Well, look, what we will do is go into conference for - I've got some time after this hearing, and we'll address those issues. In meantime, in the context of the matters put forward this morning, they are endorsed with a reservation over rest time - I'll consider that. I take on board what you're saying and I'm obviously very cognizant that you put these matters up by consent. A decision in respect of these particular matters will come out in the next day or so. It won't take long and the operative date will be - to give you advance notice - the first full pay period on or after the date of decision. So you can expect to get the decision probably tomorrow or - well it's Friday tomorrow, no later than Monday and then the first pay period as I said on or after that date. So, we'll adjourn into conference. Thank you.

INTO CONFERENCE

COMMISSIONER GOZZI: Right. Mr Paterson, would you like to put on record the situation with respect to travelling allowance.

MR PATERSON: The final paragraph, if the commission pleases, to be added to the travelling - travel allowance clause is (c), and it would read:

Where an employee is called on duty at night or other than his/her normal hours or on any non working day, he/she shall be entitled to, in respect of travel between his/her home and place of work:

reimbursement for fares including taxi fares where public transport is not reasonably available; or

travelling allowance in respect of use of his/her own vehicle.

And that is what I believe the agreed position now is.

COMMISSIONER GOZZI: Yes. Yes. Thank you, Mr Paterson. Mr Fitzgerald?

MR FITZGERALD: I would just simply that, that it's an agreed position, commissioner, and we'd seek its inclusion along with other provisions which have been put to the commission this morning.

COMMISSIONER GOZZI: Thank you, Mr Fitzgerald. Well the award will be varied to reflect that provision. Proceedings are now adjourned to the 10th of May at 10.30 and the 11th of May has also been set aside.

Just to put on record, the situation is that between now and then, the employers are going to further consider their position in respect of hours of work and structure. The objective is still to have those matters and other outstanding issues finalised by consent between the parties.

To enable that process to occur - to enable it - to give it a chance to be able to be finalised by conciliation, there is broad agreement that employers are going to try and establish a conference so that they can fully ascertain the respective views of all of those employers in the industry. An invitation has been extended by the commission and Mr Paterson that they would be willing to be involved in that conference. In addition, a suggestion has been put up by Mr Paterson that perhaps a state wide conference be conducted where the issues could be discussed.

Now from my point of view whatever occurs I'd like to make it clear that on the 10th of May, if the matter can't be finalised by consent, then it would be my intention to commence arbitration on the issues outstanding.

I just reiterate on the record that in the event there is a need for conferences between now and the 10th, to facilitate consent on some of these issues, then it will be up to the parties to contact the commission and we can accommodate - I can accommodate that request at fairly short notice and it normally would be as previously, early morning or late afternoon.

So on that basis, these proceedings are adjourned to the 10th of May.

HEARING ADJOURNED

10.03.94

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