



TASMANIA

Tasmanian Industrial Commission

Industrial Relations Act 1984

T No. **9381 of 2001**

IN THE MATTER OF an application by
the Tasmanian Chamber of Commerce
and Industry Limited to vary the
Nursing Homes Award

Re: by varying Clause 24 - Hours re
10-hour shifts

COMMISSIONER SHELLEY

HOBART, 3 May 2001

TRANSCRIPT OF PROCEEDINGS

Unedited

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

HEARING COMMENCED 9.52am

COMMISSIONER: I'll take appearances please.

5 **MR M. WATSON:** May it please the commission, MARK WATSON. I appear on behalf of the Tasmanian Chamber of Commerce and Industry.

COMMISSIONER: Thank you, Mr Watson.

10 **MR C. BROWN:** If the commission pleases, C. BROWN appearing on behalf of the Health Services Union of Australia, Tasmania No.1 Branch, and with me I have **MR T. KLEYN.** Commissioner, I take the opportunity to apologise for being late. I would like to blame daylight saving but that one is wearing a bit thin, so my apologies.

COMMISSIONER: Thank you, Mr Brown. Yes, Mr Watson?

MR WATSON: Thanks, commissioner. First of all before we start, I'd like to seek leave to amend the application if I can please.

15 COMMISSIONER: Certainly.

MR WATSON: And I'll provide a new draft order.

COMMISSIONER: Yes, leave is granted. You don't object to that, Mr Brown?

MR BROWN: No objections.

20 MR WATSON: If I can just briefly take you through what the change is from the original draft order that was provided with the application. In the original draft order we had a second paragraph in each of the subclauses which read: *Provided that if the working arrangements under this subclause meet the rostered employee definitions in this*
25 *award, all provisions of clause 37 - Roster apply.*

I've had discussions with the union prior to today's hearing and we have agreed that there's no need to have that paragraph in both of the subclauses because one of these subparagraphs will go into the day work hours and the other one will go into the rostered employee hours
30 clause, so therefore it will speak for itself anyway.

So with that amendment, commissioner, I'd like to proceed.

COMMISSIONER: Certainly.

35 MR WATSON: The reason for the application is that as I've said in the application, there has been a section 55 agreement in place since 1997 which has covered the nursing home industry and I'd like to table the commission's approval of that agreement, please.

COMMISSIONER: **EXHIBIT A.1.**

MR WATSON: Now this matter, commissioner, was matter T6924 of 1997 where the agreement was approved by then Deputy President Johnson.

5 If you go to the third page of his decision in the middle of the page you'll see there under the heading, 10 Hour Shifts, and it states: *Mr Watson explained that subject to certain conditions the agreement provides employers with flexibility and efficiency by permitting them by agreement the employees concerned to extend to 10 the maximum*
10 *ordinary hours that may be worked in any day.*

And then if you go to page 7 of the actual agreement itself which is attached to the decision, on page 7 you'll see there 10.3 the clause 10 Hour Shifts.

15 Now what we've done with this application is actually transpose the provisions of the industrial agreement to the proposed award clause save and except for any amendments that need to be made to make sure that it did actually fit in with the award terminology.

Commissioner, there are a number of instances in the nursing home industry where 10-hour shifts and 10-hour days are actually being
20 worked and have been for some time and the reason for this application is that effective from 18 January of this year the union have actually retired from that industrial agreement - that's the one that I've tabled before you - the previous agreement - and therefore to make sure that these 10-hour shifts and days are still legal in
25 accordance with normal practice and award provisions, we've actually lodged the application to provide continuity.

It's not something that all of a sudden is going to be 10-hour shifts bobbing up everywhere, it's just to make sure that there is continuity in those people that are doing those shifts and employers that want
30 them to continue can in fact still do that in this provision.

There has been dialogue between ourselves and the union and obviously you'll hear from them, but I understand there aren't any difficulties with the application.

35 One matter that I just want to raise, in the award as it is at the moment, there is a provision to extend the hours of work for night shift employees who work past midnight to 10 by agreement. Now it's a slightly different clause because it does pick a majority provision where if the majority of employees agree then hours can be extended to 10, whereas this application is more an individual type arrangement.

40 We don't believe that there are any nursing homes that are actually utilising that particular provision at present and therefore that's why we've applied to delete it, but I'd guess I'd reserve the position that if

one effectively does bob up somewhere and we do have some difficulties we may need to come back to the commission, but I don't believe that will be the case.

5 Commissioner, we would say to you that the application doesn't offend the commission's Wage Fixing Principles nor the public interest and we seek an operative date for the application of 18 January this year because as I've said, that was the date the union retired from the previous industrial agreement and that provides continuity. If it pleases.

10 COMMISSIONER: Thank you, Mr Watson. Mr Brown?

MR BROWN: Thank you, commissioner. Just briefly as Mr Watson has indicated this is really a flow-on from an agreement that existed since 1997. The fact that it's by agreement has really meant that there are no problems that we've anticipated in the industry. No-one's raised
15 any issues with us. We know that there are 10-hour shifts in existence but it seems to be that they're operating quite beneficially to the advantage of both the employer and the employee, so we have no problem. We're therefore consenting to this award variation on that basis.

20 If I could just make a couple of points: one is that our understanding - and this has been clarified by Mr Watson in discussions - is that this 10-hour shift provision applies for rostered shifts only, not for an employee that may be working, say, an 8-hour shift and the employer wants to extend them by another two hours for that particular day. We
25 don't believe that this provision actually provides for that. That it is only where shifts are rostered in advance for a 10-hour period.

I also make the comment, I mean it's quite clear that this is by agreement in writing between the employer and the employee. The issue of new employees - I just want to mention very briefly - and obviously it can be a condition of employment. It couldn't be any other
30 way that an employer could advertise positions and that those positions be advertised as 10-hour shifts and we don't have any problem with that obviously although once the employee is employed, then the rest of the provisions outlined would apply and that would include, in our view, that should the circumstances change for the
35 employer they would be able to provide 14 days' notice and withdraw from 10-hour shifts and go back to an 8-hour shift provision.

We don't think that if an employee gained employment on the basis of 10-hour shifts that they would very readily change that, but it may
40 well be that there are circumstances either in their personal lives or family arrangements down the track that may necessitate them having to make that decision.

Can I just comment on the proviso which is suggested to be deleted, and that is, the subclause (c) of clause 24. We don't believe that that's

5 been applied anywhere in the industry at the moment and we don't really believe that it's that much of a useful clause anyway and to a large extent we believe that employers would utilise this clause rather than that clause, so we don't have any objections to it being deleted on that understanding that it's not been applied in the industry and therefore no-one will currently be disadvantaged by that.

10 The HSUA submits that the application before you does not offend the Wage Fixing Principles as established by the commission and that the commission is free to make the decision in the public interest and we support the operational date because as Mr Watson indicated it's simply or has continuity of flow-on from the provisions that have been applied under the agreement that we withdrew from. If the commission please.

15 COMMISSIONER: Thank you, Mr Brown. Mr Watson, do you have any comments on the 'reservations' that Mr Brown has mentioned? You're not obliged to, but if you want to comment on them.

20 MR WATSON: Thanks, commissioner. First of all we did discuss these matters when we met on Tuesday about this application and I concur that it's simply not appropriate and we would say an employer is not able to do it under this provision to say to someone who is rostered for an 8-hour shift, okay, it's now 10 and we're only going to pay you ordinary time. So I don't have a problem with that.

25 In terms of the new employee arrangements, I think what Mr Brown outlined to you is effectively a factual situation as per this clause. I mean obviously if someone accepted employment on the basis of 10-hour shifts, then two weeks later said no, I can't do it, then I imagine there is some problem somewhere and we'd have to deal with that as a separate issue. But in terms of being able to offer these 10-hour shifts as part of employment, it's open to the employer to do that and we hope that commonsense would prevail.

30 COMMISSIONER: Thank you. Having heard the parties, I'm satisfied that the agreement is consistent with the Wage Fixing Principles and does not do any offence to the public interest and as such the agreement will be approved effective from the agreed operative date of 18 January 2001.

I think that dispenses with that matter so the commission will stand adjourned on that.

If we go off the record for a moment.

OFF RECORD 10.02am

40 **NO FURTHER PROCEEDINGS RECORDED**