

**TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984

T. No. 4636 of 1993

**IN THE MATTER OF** an application  
by the Australian Municipal,  
Administrative, Clerical and  
Services Union to vary the Estate  
Agents Award

re car and telephone allowance

COMMISSIONER GOZZI

HOBART, 22 February 1994  
continued from 15/12/93

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER GOZZI: Is there any change in appearances?

MR . . . .: No.

COMMISSIONER GOZZI: I don't think so. Well, Mr Clegg, would you like to proceed?

MR CLEGG: Thanks, Mr Commissioner. We've had another lot of talks with the employer, sir. It doesn't seem to be - we don't seem to be getting anywhere, so what I was hoping to suggest this morning - I must admit I've been out of action for the last 6 or 8 weeks.

COMMISSIONER GOZZI: Well I've heard that, Mr Clegg. You look remarkably well for the experience.

MR CLEGG: Yes.

COMMISSIONER GOZZI: A little bit lighter perhaps, but it probably doesn't do any harm.

MR CLEGG: Yes. I wouldn't recommend it though.

COMMISSIONER GOZZI: Oh, I'm pleased you came through it.

MR CLEGG: Thanks. But what I was going to suggest this morning, we would seek your assistance in maybe chairing a conference between the parties to see if that would help and failing that, we'd be looking to set a date - program of dates for - so we can organise witnesses to come in and carry out inspections if necessary.

COMMISSIONER GOZZI: Mr Clegg, I must admit, I thought all that was going to take place from the date of the last hearing and today's date, and I thought the day we were going to go into full blown submissions and so on and I sort of thought it was going to take the day, if you like.

MR CLEGG: Well, it would have done, sir, but as I said I've been out of action and I haven't been able to -

COMMISSIONER GOZZI: Right.

MR CLEGG: - organise my side of things, so I apologise for that.

COMMISSIONER GOZZI: Right. Oh well, that's alright.

MR CLEGG: But I was hoping that we - maybe we could have a conference with you, sir, as - see if we can get things progressed that way, and if not, well we'll set dates so I can bring - organise my witnesses to come in and give their - give their evidence. And the other thing is too, sir, that a lot of people are feeling a bit pressured about - about this.

There's been subtle hints made to them about their appearances and that, so they are feeling rather vulnerable in coming along to, but they are prepared to come along.

COMMISSIONER GOZZI: Well nobody should feel vulnerable or pressured about coming to a proceeding to give evidence.

MR CLEGG: I've told them that but they are feeling a little vulnerable.

COMMISSIONER GOZZI: Alright, thanks, Mr -

MR CLEGG: And the other thing is, sir, the - I understand the institute are conducting a survey and they were going to make those results available to us, and we - I haven't seen the results of that survey yet.

COMMISSIONER GOZZI: Yes, fine.

MR CLEGG: Thank you, sir.

COMMISSIONER GOZZI: Thanks, Mr Clegg. Mr Clues?

MR CLUES: I'm at a little bit of a loss for words, Mr Commissioner. We had -

COMMISSIONER GOZZI: That's a bit unusual.

MR CLUES: It is unusual, and it won't take me long to re-find my step, believe me. When we were last before the commission, the union indicated that there'd been a number of discussions between the parties and it was evident that an amicable result wasn't going to come to fruition.

For the employer's part, we're totally opposed to the claim and have no intention of agreeing to one cent of the claim by consent. We'd made that clear to Mr Clegg and he informed the commission when we were last before yourself that the matter would have to go to arbitration and we concurred with that and we made every endeavour to come before this commission today to present a fully arbitrated case, and had every intention of doing so, and in fact personally I've been pulling no stops over the last week or two to get that case prepared for today, many hours of preparation alike, and I can't express in words the fact that Mr Clegg was under some illusion that we would come before this commission today for another report-back or some sort of conciliatory discussion and then proceed to arbitration at a later date.

That certainly wasn't my understanding and it's certainly not any point in going down that avenue unless Mr Clegg has intention of withdrawing his application then there is nothing further to discuss. The parties have done everything they can in

order to conciliate and there's nothing more to discuss. The matter has to be determined by the commission. I appreciate that Mr Clegg has been the subject of some illness of late and I wouldn't wish that upon anybody, however the fact of the matter is that Mr Clegg is not the only individual in the union movement, nor the only individual in his union. The case has been on foot for a considerable point of time. Mrs Dowd has been party to a number of those discussions or all of those discussions and could have quite well prepared the case in, you know, Mr Clegg's absence and run it today or prepared it and had Mr Clegg run it for that matter.

That's all I'll say in relation to that issue, and I'll leave the commission to determine what action it will take. In relation to the survey, the survey has been compiled long ago and it was finished when we last came before you. It was - I indicated that it was only a matter of tabulating the results. There were a few outstanding, but they've come in and we've tabulated the results and we were going to make those known to the commission today.

In relation to Mr Clegg's concerns about the intimidation and along with the commission's recommendation, we applied a notice to all members of REIT indicating that the matter had been raised with the commission, that we didn't wish that to be occurring if it was occurring because it would destroy the credibility of our survey and the survey is the crux of our case.

In relation to witnesses, as I said, you know, we were last before this commission on 15th December, now it's 22nd February, if we were going to organise witnesses then I wouldn't have thought it would be a difficult task for Mr Clegg to have done so prior to today's date. In relation to making the - making known the results of the survey, the only time we gave any indication to Mr Clegg that we would make known the results of the survey was during a meeting where we indicated to him that if he gave an undertaking that if the results of the survey were that there was not support for the claim and he would accept that and withdraw his application then we would make known the results of the survey, but we certainly had no intention of just divulging our evidence prior to the hearing and making, you know, our whole case open and exposed for Mr Clegg to go and do whatever he wished with.

We were quite prepared to make known the results of this survey if we believed that they were going to play a constructive role in conciliating the matter. But Mr Clegg indicated that regardless of the results of this survey he was going to pursue the claim and therefore we saw no benefit in presenting those results to him and we certainly have no intention of doing so at this point in time.

If the commission pleases.

COMMISSIONER GOZZI: In broad terms, what does the result of the survey show?

MR CLUES: Total opposition to the claim by employers, and a vast majority of opposition to the claim by employees.

COMMISSIONER GOZZI: Why would employees object to it? On what, prima facie, appears to be - if they got it - would be something that most people would enjoy having.

MR CLUES: Yes. There is essentially two grounds. One is that everything that is being claimed by the union is available through the taxation system, and therefore there is no loss to them. Both the car and telephone allowance are deductible through taxation to the extent that they apply to the business of the individual. They are not work related, so there is no benefit there for them, and the nett effect will be a reduction in commission earnings for them.

COMMISSIONER GOZZI: Sorry? What was that last bit?

MR CLUES: And the second is there will be - the nett effect will be a reduction in commission earnings - in that employers faced with a fixed cost will have to reduce the variable cost in their business, and that is commission earnings.

And they are the two primary concerns of both employers and employees.

COMMISSIONER GOZZI: Right. Alright, thanks, Mr Clegg - Mr Clues. Mr Clegg, would you like to respond to some of that?

MR CLEGG: Well, again I apologise to the commission because of my illness that I wasn't able to advise our witnesses.

I know in the past when Mr Clues hasn't been available to run things we have never objected to him not being able to be here. We have gone along with any adjournments or anything that he has sought, and I think that is just a frivolous matter that he has raised, that Mrs Dowd could have run the case or prepared a case.

Mrs Dowd has got a lot more things on her plate than just the real estate industry.

In relation to the survey, the survey itself I find it rather interesting that the survey itself was sent to employers and that the REIT as I understand it represents both employers and employees in the industry - or tries to - and one of our members actually wrote to the REIT wanting to know why he wasn't actually sent the survey himself - why it was sent to his employer and then the employer was to pass it on to him for his comment.

So, what I find amazing is that the institute only sent the survey to the employer to pass on to the employee, when actual members of the institute are salepeople themselves and they weren't sent the survey individually, rather than through their employer.

I'll just say that about the survey.

But in speaking to our members, of course we've canvassed the fact that there will be a reduction in commission, and they accept that fact, that there would be a reduction in the commission scales.

But the - and their basis is that the employer says that we pay you 40% commission and that should be enough to sustain your car and telephone, and what-have-you, when in actual fact if they don't sell anything they don't get that 40%. So 40% of nothing is nothing.

And they would rather have - our members in discussing this - would rather than that money in their pocket each week, with a reduced commission scale. The allowance will be taxed, so that they will still be able to have a tax - to look at their taxation every year - and that is not a problem to them.

So I find that rather amazing claiming that they have said that.

But, be that as it may, sir, that's all I want to say on this matter.

And, seeing that we are not going to go down the path of a conference with you chairing it to see if we can get the parties closer together, you know, I would be seeking the commission to set some dates for progress so I can organise our witnesses to come along, because they will be giving up their time to come into the commission and give evidence.

COMMISSIONER GOZZI: To what extent, Mr Clegg, is your claim for car and telephone allowance predicated upon what happens elsewhere in other States?

MR CLEGG: Well, other States do get it. It is an allowance paid in all other States where there is an award - Victoria, New South Wales and South Australia - and it has been in there ever since the awards have been in place.

Victoria now are finding it rather difficult since the award system has been abolished over there and there is individual contracts, but they still are paid a car allowance in most companies.

New South Wales, I understand they have the opportunity - the option - of either having a fully maintained company car or a car allowance.

And the allowances we are claiming are based on the RACT's costs on a car in a business in a real estate industry.

It's not costs that we have, you know, just plucked out of the air. These are actual costs that the RACT have provided us with.

COMMISSIONER GOZZI: How do they get those costs?

MR CLEGG: They use a number of criteria. They use a cents per kilometre; they have a standing cost of depreciation; fringe benefits tax; fringe benefits tax parking; loan interest; registration; insurance; membership, and then there is the running costs of fuel, service and tyres.

And the total average cents per kilometre based on a 6 cylinder car over 15,000 kilometres for 12 months, is 93.25 cents per kilometre.

COMMISSIONER GOZZI: Is that a flat rate?

MR CLEGG: Yes. Yes. I don't know whether they do one on 30,000 kilometres, and that comes out at 50.85 cents per kilometre.

COMMISSIONER GOZZI: Why would they include fringe benefits tax?

MR CLEGG: I don't know. You'd have to ask other people. I'd have to check that out with them. But if -

COMMISSIONER GOZZI: Now what sort of discount do they provide for a person having -

MR CLEGG: That is a discount of rate. It's not -

COMMISSIONER GOZZI: That's residue rate?

MR CLEGG: Yes, that's a residue rate. You know, it may be based on, say, 80% usage for work. I'm not quite sure, but that's the cost to run that car for a person in real estate.

For a 4 cylinder car they have a lower rate. But, again, they use the same criteria to measure.

COMMISSIONER GOZZI: And that rate is based on the industry usage in Tasmania?

MR CLEGG: Yes.

COMMISSIONER GOZZI: Is it theoretical or is it - how do they conclude that?

MR CLEGG: Well, I am quite happy to bring somebody from the RACT in to explain that further, sir.

COMMISSIONER GOZZI: Right. Okay.

MR CLEGG: But, that's what - and we have only claimed \$225.00 a week for a car allowance.

COMMISSIONER GOZZI: \$225.00 a week?

MR CLEGG: A week, yes. These costs work out at \$268.98 a week over 15,000 kilometres, and on 35,000 kilometres it is \$293.36 a week. And then for a 4 cylinder car, 15,000 kilometres it is \$235.84, and for 35,000 kilometres it is \$260.42.

That's at 6 June - based on June '93 costs.

COMMISSIONER GOZZI: So to get the kilometres that that comprehends, what's 93 into 268? So a bit under 250 kilometres a week, I suppose?

MR CLEGG: Yes. And that would be about the running mileage or kilometreage of most salespeople in the state.

You have got, say, LJ Hooker on the eastern shore, their radius goes from Bellerive down as far as South Arm and out as far as Richmond and they work in that area there.

And you take another company, say like Macquarie Real Estate, they haven't got any boundaries at all. They go all over southern Tasmania.

You go into, say, Roberts at New Norfolk, they would cover a fair area in the New Norfolk area.

In the city, Hooker's in the city office, they confine their running area to New Town, Fern Tree, North, South and West Hobart and Battery Point.

Sandy Bay would go down as far as Taroona. The Kingston offices would work the Kingston/Channel areas.

So they have a fair degree of mileage to cover in their running of their motor vehicles. So it is a - and the thing is that, you know, you don't go to a place once, drive to a place once and sell a property and then get your commission and pay for your car costs, you more than likely run - you could go anything up to 10 or 11 times to a property showing it to different people.



And, at the end of the day you still might not sell it, but you have had to bear those running costs of your car for, you know, running up and down to inspect a property.

And the same if you go out to list a property. You're bearing the running costs of listing that property, and then you might not get that listing. Some other agent may get that listing and you miss out. So you have spent your time and money running your car to the property.

COMMISSIONER GOZZI: Alright. What sort of reduction in commission rate do your members say that they would contemplate?

MR CLEGG: Well, that's something that would have to be negotiated between the parties. They haven't given a set figure, but -

COMMISSIONER GOZZI: I can imagine the high achievers in the industry sort of saying. 'Bailey's to that'.

MR CLEGG: Well, how many high achievers in the industry are there? Well, that's something that - well, maybe that's something we also need to - we'll be asking further on - is that some of the employers produced their wages records to the commission to show exactly how much these high achievers earn, how much the ordinary salesman earns, and how much the lower salesman earns within the companies.

And, bear in mind, the last survey - which we haven't seen the final results - but there was - based on discussions we did have with the employers - there was something like a 38% turnover in the first year of real estate people coming into the industry.

COMMISSIONER GOZZI: Isn't that going to slow down now, given the sort of programs that are contemplated as the award restructuring?

MR CLEGG: That hasn't slowed it down at all, so there are still people being appointed willy-nilly. Hooker's in the city office have gone from using only four, and they are up to six I think in their residential team now.

Now in the past, really it's only an office that's big enough to hold three to make reasonable money, and now they have got double that, so, you know, some people are missing out.

COMMISSIONER GOZZI: Alright, thanks, Mr Clegg, we'll leave it there.

Mr Clues, what I am in fact doing is trying to get some of the rationale behind the claim. Is there anything further you want to put on record at this stage? No? Alright.

Mr Clegg, I've in the past taken a fairly strong attitude with respect to adjournments. In this case, however, given your hospitalisation and so on I intend to grant the adjournment.

I know what Mr Clues was driving at about adjournments because I - or I think I do. I'm very reluctant to change hearing dates because the program of hearings and commitments I've got I'm into April, well into April, and if I start juggling around one hearing that means it has got effects on other people and other commitments, and so on.

So, if I can avoid it, I really don't do it. But, in your circumstance -

MR CLEGG: I appreciate that, sir.

COMMISSIONER GOZZI: - you're certainly I think deserving of an adjournment.

I had planned, as I said, the whole of the day to the particular matter.

MR CLUES: Hadn't we all?

COMMISSIONER GOZZI: Yes. Well, the best probably way if there is no scope for any discussion on the claim, well the preparation won't go astray, Mr Clues. You can put it in the bank.

And, it seems to me from what's been said in your comments thus far, that really it would be a waste of time to sit down and find any common ground.

I mean, if you want me to I am certainly prepared to do it.

MR CLEGG: Well, we haven't canvassed the idea of phasing it in. We have just said that, you know - that hasn't even been canvassed - but we would look at a phasing in period.

COMMISSIONER GOZZI: Well you can do that in any discussions that you might want to have with Mr Clues on it.

MR CLEGG: Yes.

COMMISSIONER GOZZI: Obviously from my point of view I'll need to have as much information as possible in support of the claim and as much information as possible as to why the claim shouldn't be granted.

I'm not sure what you mean about inspections. I mean, I am not sure what you can inspect, quite honestly.

MR CLEGG: No, I understand that, but if - there may be a reason that we can give you an idea of what an office is like just to see how they run around to give you a better feel for it, and it may give Mr Clues a better feel for it, too.

COMMISSIONER GOZZI: Well, look, it is your case. If you want me to do certain things, well then obviously you'll put them to me and I will consider it at the time.

MR CLEGG: Yes.

COMMISSIONER GOZZI: Okay, we'll go off the record for a moment.

OFF THE RECORD

COMMISSIONER GOZZI: Alright, well in the light of all the circumstances, these proceedings are adjourned to 10.30 on 19th of April. Thank you.

HEARING ADJOURNED