

**TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984

T. No. 4799 of 1994

**IN THE MATTER OF** an application  
by the Australian Liquor,  
Hospitality and Miscellaneous  
Workers Union to vary the Laundry  
and Dry Cleaning Award

re increase wage rates by \$8 per  
week

COMMISSIONER GOZZI

HOBART, 17 January 1994

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER GOZZI: Could I have appearances please.

**MR K. O'BRIEN:** If the commission pleases, I appear on behalf of the Australian Liquor, Hospitality and Miscellaneous Workers Union.

COMMISSIONER GOZZI: Thank you Mr O'Brien.

**MR T.J. ABEY:** If the commission pleases, I appear for the TCCI, ABEY T.J.

COMMISSIONER GOZZI: Thank you Mr Abey. Mr O'Brien.

MR O'BRIEN: Mr Commissioner, in this matter, as you would be well aware, the award in question has been the subject of the implementation of a new career structure, the full implementation of all minimum rate adjustments. The application is for the implementation of the \$8 safety net increase which has been approved by the Australian Industrial Relations Commission, and on the 24th of December by the Tasmanian Industrial Commission.

Mr Commissioner, we believe that this is an area where it is appropriate that the award be varied to give effect to that safety net increase. The laundry and drycleaning industry is not a large industry within this state but is substantially covered by this award. In relation to the situation, the award by and large - the award rate is the rate which is paid to people within this industry. There is not a great deal of opportunity because of the competitive nature of the industry to bargain for higher rates, particularly the laundry side of the industry, they being the providers of service to the hospitality industry and the health industry in particular, or substantially, as well as other industry sectors.

Mr Commissioner, we would be seeking for the award to be varied by giving effect to an \$8 increase from the first pay period commencing on or after today's date. We understand that there is a proposed form of order for matters such as this which incorporates the \$8 in a column - separate column - as a supplementary payment from other supplementary payments. I understand Mr Abey may wish to put some submission about form of order in that regard to you. I am given to understand that in this matter the application is not opposed by the TCCI.

COMMISSIONER GOZZI: All right. Yes. All right, thanks Mr O'Brien. Mr Abey.

MR ABEY: Commissioner, I must have been a little sleepy. Are we dealing with only the laundry award?

COMMISSIONER GOZZI: Yes, yes. I thought we would put them on separately.

MR ABEY: Thank you. Thank you commissioner. In principle we consent to this application but would like to make a number of points which have already been made in other proceedings before Commissioner Imlach this morning.

The first is that we believe the commissioner should require the parties to provide draft orders ahead of any hearing and provide that to the respondent for organisations in order that they may be checked and there may be clarity as to what the applicant actually seeks, and furthermore we submit that the commission should make it known that if such draft orders are not provided then that could well impact on any ultimate operative date.

Secondly, if there is any question about an issue which requires a reserved decision then we say the principles of no retrospectivity should apply and the operative date should not be earlier than the first pay period to commence on or after the date of any decision.

Thirdly, I have been made aware that the commission has suggested - adopted - whatever, a format which involves putting an additional column identifying the \$8. That would be in addition to the base rate for supplementary payment where it exists, and then there would be a third column adding in the \$8.

We would be strongly opposed to this on the grounds that the awards out there in the market place are already sufficiently confusing to often create errors, and to introduce an additional column is simply going to exacerbate an already existing problem and, to my mind - to our mind, it adds nothing to the process and certainly detracts from the clarity of the award.

So, in our submission, we say that where there is an existing supplementary payment the \$8 should simply be added to that and where there is an absence of supplementary payments then a new column be introduced identifying the \$8.

COMMISSIONER GOZZI: Just one supplementary payments column?

MR ABEY: One supplementary payments column. I would also put the submission that almost universally that is the practice being adopted by the Australian Commission in relation to their orders.

COMMISSIONER GOZZI: Well, yes, that's true, they have adopted the one column but they've covered the increases in separate paragraphs to the increase and I guess it is six of one and half a dozen of the other.



I am reminded, Mr Abey, in the State Wage Case you had some concern about the distortion of relativities and I think it goes back to where the manner in which the rates were shown in awards, and some awards since 1989, and I think you commended me on my foresight about showing the supplementary payments and so on, differently in my award areas. And one of the motivations in showing the \$8 separately in our discussions about how we might approach this is simply to identify the \$8 as a separate amount of increase, the supplementary payments column - the existing supplementary payments column - as such provides for the minimum rates adjustment process which in a great many awards hasn't yet been completed.

There is a further complication that we may receive argument that the remaining supplementary payments as far as minimum rates adjustments are concerned may indeed be sought to be adjusted over a greater period that that's permissible, and we felt, and I must say I agree with this, that from a clarity point of view it does clearly show employers, particularly, the amount of over award that may be absorbed against the supplementary payment.

I personally don't think a great deal swings on it and hangs on it having two supplementary payment columns. The real problem that I see is a need to identify clearly the hundred per cent rate to show the amount that may be absorbed against over awards and the weekly wage rate. I don't see that that can be confusing to employers, quite honestly.

MR ABEY: Well, I assure you it is.

COMMISSIONER GOZZI: But why?

MR ABEY: Well I guess it's - to some extent it's reduced if you do in fact show a weekly wage rate, but there are some awards where it simply shows a base rate plus a supplementary payment and no weekly rate. Now, if there is a weekly rate shown then that removes from the confusion.

COMMISSIONER GOZZI: Look, I don't - just to interpose there - I don't see any reason why an award - any award - that's got a weekly amount, that's paid, shouldn't have the weekly have the weekly wage rate column in it.

MR ABEY: No. Well, we are on all fours there. I would make the observation that if you went out into the employer land, at large, something in excess of 90 per cent of employers would not know what a supplementary payment was, would not know what the MRA process was, and couldn't understand why this \$8 should be distinguished in a separate column. And I just think it simply adds to the confusion.

Now, not an enormous swings on it -

COMMISSIONER GOZZI: No.

MR ABEY: - I'm just making the observation that we as a service organisation constantly get enquiries asking us to explain what are supplementary payments -

COMMISSIONER GOZZI: Yes.

MR ABEY: - etc etc. And this is just going to add to it. But it's not a life or death matter.

COMMISSIONER GOZZI: No.

MR ABEY: I mean, we will deal with our own membership circulation in our own way.

COMMISSIONER GOZZI: Yes.

MR ABEY: But we just make that observation and perhaps it -

COMMISSIONER GOZZI: Look, it just identifies - I would have really thought - look, I appreciate what you're saying, but I would have really thought that showing \$8 in a column separate to the minimum rates adjustment has a great deal going for it because it clearly shows, arising out of the December '93 State Wage Case and \$8 wage increases paid, the wording to the wages clause makes that clear and, also - look, I understand about employers not knowing but the fact is those amounts are absorbable - now whether employers absorb them or not that's up to them.

MR ABEY: But the reality of life, Mr Commissioner, is that if the decision said that the increase was not absorbable there is really nothing that anyone could do about it if an employer chose to absorb it against over award payments because -

COMMISSIONER GOZZI: Yes, that's true.

MR ABEY: - that's - the law says you shall pay those rates and if this was a different national wage, instead there was a two and a half per cent wage increase and an employer chose to absorb it then he is not breaking any law -

COMMISSIONER GOZZI: No, that's true. The only difference here is that the increase is predicated on an acceptance of absorption by the trade union movement.

MR ABEY: That's true.

COMMISSIONER GOZZI: And therefore the sort of general arguments that you might have about absorption don't arise in this case. I know that there will be employers who will not absorb it; on the other hand there may be those who will, and if they do absorb it against over awards then there can't be



an argument about it because the increase is predicated on that.

In this particular award area, I agree with Mr O'Brien, I doubt that there would be any over awards and therefore it probably doesn't make any difference where you put it.

MR ABEY: Does it follow that you're going to have four columns for junior rates as well?

COMMISSIONER GOZZI: Well -

MR ABEY: I suspect not and, if so, why not, and I think the answer is because it would create an enormous amount of confusion, but the principle remains the same and you're going to get percentages of \$8 etc, etc.

COMMISSIONER GOZZI: Well I don't see why you wouldn't put the proportionate rate for juniors in a separate column. I mean, it's a supplementary payment and that's it.

MR ABEY: Well, I -

COMMISSIONER GOZZI: I mean, I don't think really the juniors - it arises to the same extent because a junior rate is invariably linked to a classification rate and you've got the whole thing set out there in the classification rate as to what the make of the junior rate is.

MR ABEY: Okay. Look, I'm not going to go to the wire on this point. I make the observation that TCCI, on something of this nature, I think there would have been some advantage in calling a conference involving the major parties to try and sort this out rather than in this sort of forum. We remain of the view that one column is better than two purely from the sake of ease of understanding, and I'll leave it at that. If that's not to be accepted then so be it.

COMMISSIONER GOZZI: Mr Abey, I - look, I can assure you that a lot of discussion went into it and we all probably foreshadowed that in the event that we pursued this course that there may be different points of view, and no doubt you could ask any number of people who are respondent to the award - parties to the award - and they would come up with a different configuration. We just felt, seeing as that they are awards of the commission, that by showing the \$8 separately it clearly identifies that amount of increase arising out of the Wage Case and, further down the track, it allows everybody to revisit that situation without any confusion, without having to draw an \$8 increase out of the over awards or whatever.

MR ABEY: And if this decision was repeated in 12 months' time we would have a fifth column?

COMMISSIONER GOZZI: May well do.

MR ABEY: Yes, well that really makes, I think -

COMMISSIONER GOZZI: May well do.

MR ABEY: - emphasises my point.

COMMISSIONER GOZZI: Yes. I mean, I don't know where we're heading with these type of adjustments, but I don't know, it might go into column B.

MR ABEY: Well that would be confusing, wouldn't it?

COMMISSIONER GOZZI: Well, no -

MR ABEY: Because then you would have to -

COMMISSIONER GOZZI: - no more -

MR ABEY: - then you would have to say that a proportion of column B is absorbable.

COMMISSIONER GOZZI: No, it's all absorbable. The total amount. I mean, currently - currently - the whole lot. In this particular award the \$8 plus minimum rates adjustment is absorbable against our awards. And if you added another \$4 to the \$8 later on, well then that just adds to the amount.

MR ABEY: We're not going to get anywhere on this. I think if you see the point that if we had a subsequent decision that you would add - you would simply add it to column B then that defeats your argument, with respect, but -

COMMISSIONER GOZZI: Well it doesn't. What it does do is maintain the minimum rates adjustment as discrete.

MR ABEY: But what's so magic about that? Why wouldn't you maintain this decision -

COMMISSIONER GOZZI: Because the minimum rate -

MR ABEY: - and the next one as discrete?

COMMISSIONER GOZZI: Because the minimum rates adjustment process was used to establish a relativity to the hundred per cent rate at \$407. There was the \$356 plus the minimum rates adjustment to 407, which has subsequently been adjusted by various mechanisms, and that establishes when you go right back to it the hundred per cent rate which is currently \$365.20.

MR ABEY: Well - and those relativities have just been destroyed by this decision, of course.

COMMISSIONER GOZZI: Well the end relativities have. That's -

MR ABEY: And by using the number 407 you can see that that was the figure that everyone was operated - as a hundred per cent.

COMMISSIONER GOZZI: Yes, yes, but the point is that we are not that far down the track that that base relativity of a hundred per cent can't be identified in the award. And I agree with you, one of the features of recent national state wage cases have been with the 2.5 per cent and the \$10 to distort the end point relativity.

It's not to say that we need to lose sight of the relativities as they were by having them set out in the base rate column, and that's what we've done; that's the course we've opted for. I mean, there could be an argument, goodness knows, at some point further down the track to re-establish the relativities at the weekly wage rate end of the column - end of the wages clause.

MR ABEY: Well, I mean, that's -

COMMISSIONER GOZZI: All your worst nightmares have come true, Mr Abey.

MR ABEY: That's exactly right and I'd have to say that in the last four years I have never heard anyone, either in the commission or on either side of the fence, acknowledge the hundred per cent level at being anything other than 407 or 417.20. I have never heard of \$365, or whatever the figure is.

COMMISSIONER GOZZI: Well even the federal decision does that.

MR ABEY: Does what?

COMMISSIONER GOZZI: Establishes 365.20.

MR ABEY: Well the acceptance of the parties has always been that the hundred per cent figure is 417.20.

You had a major argument in the State Public Service about whether it should be \$456 or something, or 417.20. It was never a question of 368.

COMMISSIONER GOZZI: Well, you know, if you read the - and look at the latest federal decision, what they have done is put the 365.20 plus \$60 supplementary to give you 417, plus \$8, goes to 425.



MR ABEY: Mm.

COMMISSIONER GOZZI: And that's what they've done. But the underpinning absorbed to identify the absorbable amount you go back to 365.20 - that gives you your absorbable amounts in your minimum rates adjustment column and your \$8 supplementary payments column. And it's that amount of money - that's why the 365.20 is important, because it's that amount of money that takes you up now to 425. Those two columns, the minimum rates adjustment plus the \$8, is the amount absorbable -

MR ABEY: Oh, there's no argument about that.

COMMISSIONER GOZZI: - and as an employer rep I would have thought that you would have been attracted to that type of award setout.

MR ABEY: There's no argument. It identifies the amount that's absorbable.

COMMISSIONER GOZZI: That's right.

MR ABEY: But I am saying the relativities are distorted.

COMMISSIONER GOZZI: No argument. Yes, I accept that they've been distorted.

MR ABEY: Right. Thank you. I think that concludes what I was going to say.

COMMISSIONER GOZZI: Yes, well, look, just the other point I wanted to raise with you, you're talking about draft orders - look, whilst we appreciate draft orders and I certainly recognise the value of them in terms of saving and so on, I don't think that we've ever gone to the stage of making a pronouncement that the parties should bring out a draft order and that the whole thing stayed until such time as they are checked by either an employer or employee organisation. I think ultimately the commissioner issuing the decision takes the point of asking the parties or requesting the parties to provide a draft order for its perusal; alternatively, it just issues an order. So what have you got in mind?

MR ABEY: Well I think you should. I think you should ask the parties to provide draft orders ahead of the hearing. I mean, it's just a - I think it's a matter of courtesy. It's not difficult to comply with. Most unions have got a maximum of half a dozen awards to deal with; it is not an onerous requirement. From our end we would undertake to deal with any draft orders submitted in a timely manner. I certainly don't

expect that they be - it wouldn't be reasonable that they could be used as a delaying tactic, but I just think as a matter of courtesy and efficiency it should be a requirement of the commission. If that's not your view, then so be it.

COMMISSIONER GOZZI: Well look, I find them very helpful. I certainly do and no doubt you do as well, and it certainly helps to minimise the conversation that we might have to have with Mr Murray, in particular, who looks at these things very closely and I really appreciate them. In this particular case though I wouldn't see it as dictating an adjournment or a delay of granting the \$8. I just make the point, yes, I appreciate getting them; they are helpful.

MR ABEY: Well presumably the commission would take a similar view if an appellant turned up without an appeal book one day.

COMMISSIONER GOZZI: Well personally, at the moment Mr Abey, I wouldn't mind if the appellants didn't turn up at all. I take your point. Mr O'Brien.

MR O'BRIEN: Mr Commissioner, in relation to the question of draft orders and operative dates, our position is that we see them as helpful. We've never had - been given to understand that they were a prerequisite and, indeed, if they became a requirement it might not assist dealing with matters without regard to legal form and technicality, which is a requirement of the act. We acknowledge that in matters such as this they can be helpful but given the time of the year, the fact that indeed I'm on annual leave at the moment although it isn't apparent from me being in front of you, but I haven't done a draft order and, in any case, it would not be in the correct form because I don't think .... have been made aware of the form the commission requires. We believe that it is appropriate that the operative date be the first pay period commencing on or after today's date, as would be the normal practice with other matters. If the commission is to make a pronouncement about the requirement to produce draft orders as requested, and we don't support that, but if it does, that ought to be a prospective requirement not a retrospective one. If the commission pleases.

In relation to the form of order, I have an open mind on the matter and I understand where the commission is coming from, but I wouldn't seek to put any binding submissions. At this stage we would be submitting to the form as required by the commission at this stage subject to any view the collective trade union movement has about the matter, and that can be addressed in conference at some stage if that is the wish of the commission, otherwise we would ask that the order be made. If the commission pleases.

COMMISSIONER GOZZI: Yes, all right, thanks Mr O'Brien. Mr Abey I do seriously take on board some of the concerns you

have raised. However, from where I sit at this point in time I don't see any point in delaying varying the award. I certainly appreciate, as I say, receiving draft orders and I know it's helpful as far as you're concerned as well, but I think you would concede that invariably if a decision comes down seeking a draft order, the decision on operative date has been determined and the order then comes along after that so, in that context, Mr O'Brien's right, it is a prospective action.

Look, in all the circumstances I'm going to vary the award in the manner requested operative from the first pay period on or after today's date. Let me tell you also that there are a lot of applications still to come in respect of award adjustments, and if you felt it necessary to ask the president for a conference, I think he is going to be back on deck tomorrow, then I certainly would understand that and probably suggest to you you embark upon that course of action, along with perhaps the trade union representatives. But, in the meantime, I intend to, as I say, adjust the award in the manner requested.

HEARING CONCLUDED