

**TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984

T.4486 of 1993

**IN THE MATTER OF** an application by  
the Meat and Allied Trades  
Federation of Australia to vary  
the Abattoirs Award

re hours for clerks

COMMISSIONER GOZZI

HOBART, 5 August 1993

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER GOZZI: Could I have appearances please?

**MR M. FLYNN:** FLYNN, MICHAEL DENIS for the Meat and Allied Trades Federation of Australia, Tasmanian Division.

COMMISSIONER GOZZI: Thank you, Mr Flynn.

**MR T. EDWARDS:** If it please the commission, EDWARDS, T.J. I appear for the Tasmanian Chamber of Commerce and Industry.

COMMISSIONER GOZZI: Thank you, Mr Edwards.

**MR J. SWALLOW:** SWALLOW, J.E., AMIEU.

COMMISSIONER GOZZI: Thank you, Mr Swallow. Mr Flynn?

MR FLYNN: Thank you, commissioner. This matter arises from a previous claim that we had before the commission which I believe was virtually heard at that stage and as instructed in the commissioner's decision, I've made reapplication, shall we say, to clarify the claim as it may have been considered by the commission to be vague in the first instance. I make note, commissioner, that the FCU haven't attended today and I believe that the indications - had been advised by the commission the hearing was on.

COMMISSIONER GOZZI: Let me see. Yes, they have.

MR FLYNN: Commissioner, I don't know whether you want me to address the claim again and we go through -

COMMISSIONER GOZZI: If you wouldn't mind. Yes, if you'd like to address the application.

MR FLYNN: Okay, commissioner. Well this matter goes back to the time of the 38-hour week when the Abattoirs Award was varied at that stage as a result of an application from the union secretary, John Swallow, to vary the award, and at the last hearing which was T.4421 of 1993, Mr Edwards came forward with further information following research of the transcript at that time which gave support to the position I maintained, that it was not the intention of the AMIEU at that stage to include clerks in the claim and that was recognised by all parties.

You may recall, commissioner, that Mr Edwards put forward that a number premises were made by the employers based on the fact that clerks would not be involved, and I believe there was a document drafted by Mr Carnie from Blue Ribbon at the time that alludes to that and specially excluded the clerks from that claim.

Also, commissioner, there are a number of inferences in transcript and perhaps if I can just - give me a couple of

seconds so that I can find the one that comes back to Mr Swallow, and I'm talking here, commissioner, this is the transcript of T.4421 of 29 June 1993 on page 58 and I quote Mr Swallow:

- and given the - given the - that the clerks were attempting to - to sort out a clerical award, I believe that that had come into ours and of course that would bring them the 38-hour week, but I don't know how far that is down the track - whether it's happened or going to happen or what, but the simple explanation to it is of course that the clerks got a bonus at that point in time that was - that it wasn't intended.

COMMISSIONER GOZZI: What page number was that again, Mr Flynn?

MR FLYNN: That was on page 58 and 59 of T.4421, 29th of June, commissioner.

COMMISSIONER GOZZI: Yes.

MR FLYNN: Now, commissioner, apart from going back and quoting Mr Edwards again, which I'm sure I can do, where he quoted from transcripts from 'T' Nos - 619 rings a bell and another transcript that - what was the second one you ....?

MR EDWARDS: 619.

MR FLYNN: I think it was mainly 619 -

MR EDWARDS: Oh, and 1063.

MR FLYNN: - and 1063 and also another one on 1263 being the matter of the Transport Workers' Union in respect of the 4 per cent second tier. Now, they all vary - or they're all included, commissioner, from pages 51 of transcript through to about page 56 of T.4421.

COMMISSIONER GOZZI: Right. What do they say?

MR FLYNN: In those instances, commissioner, Mr Edwards is quoting certain sections. I believe at that stage you confirm that the hearing that was being quoted was the 26th of April 1988 and I take you to page 52 of the transcript and I quote Mr Edwards:

The submission I made is that that shouldn't take place and that would further delay matters that had already been ongoing for some considerable time as you yourself have already recorded this morning. And I indicated that - firstly, perhaps by way of history, commissioner, you will recall that once

the 38-hour week and 4% second-tier matters for the Abattoirs Award were joined together and hived away from the meat trades matter, your instruction to the parties was that individual works should seek to negotiate their own outcomes on those two particular subject matters.

Mr Edwards then goes on:

The first to come before the commission was in respect of Longford Abattoir - the second -

- I'm removing the emphasises in between. I'm just quoting Mr Edwards, commissioner.

- the second to come before the commission was in respect of the Gilbertson's group of companies which were the ones partly owned by .... as I understand it at the time - Hawkridge, I'm sorry, not Gilbertson's.

And the - the next one to come before the commission was in respect of Blue Ribbon which the commission determined should be used generally - if I can use that loose terminology - in respect of other works, and most particularly Cooee and Devonport abattoirs were - were debated at some stage during the transcript on that particular day. As to whether or not that was appropriate or otherwise.

At the time this application was made, the Hawkridge and Longford matters had been to the commission and been 'endorsed' by the commission and the Blue Ribbon one was to be presented that day. And I said, on page 84, if I can return now to the transcript: My understanding was that the 4% and 38-hour week flowing from those agreements applied to all employees at those works with the possible exception of clerical employees, and therefore I was of the understanding that transport worker classifications had been dealt with along with all others. That's the first observation in the transcript that I could find in respect of clerical employees at all, and that is that it was my understanding that they had not been incorporated in the agreements presented to the commission at that time.

On page 85 of the transcript at the second paragraph, I go on and make the following observation. Sorry, before I do, I'll go back to 84 and just complete so everything is in context, I

think, commissioner. You asked the question: That's at Longford, to which I responded: Longford and the Hawkridge plants.

Those matters that were before you the last we were before the commission and they are Camdale, Devonport - Camdale, Devonport and Launceston plants as well as the Longford matter.

And I go on and say: I've also had a brief discussion with Mr Kearney this afternoon from the Blue Ribbon Group who indicates to me that the agreement that they have reached which will be tabled a little later this afternoon is in respect of all their employees with the exception, I believe of clerical employees, and therefore that too would take into account transport worker classifications employed by the company within the terms of the Abattoirs Award.

So again it was the intention of the parties at that stage to exclude clerical employees from those claims.

There's no further reference to clerical matters until page 89 of that transcript, commissioner, and I'd like to - to quote Mr Swallow, about three quarters of the way down that page, where Mr Swallow says: My only problem is, like Mr Edwards, all those agreements to date have been in respect, as far as I've been aware, for all employees other than clerical, which is the applicant making it quite clear that the agreements reached to that point, which are the Hawkridge ones, the Longford one, and I guess also the Blue Ribbon one which was put up that same day, specifically were designed to exclude clerical employees.

That - those extracts from transcript, commissioner, in my submission are supported by the exhibit, E.11, which is the one you ultimately used, sir, as the vehicle to vary the award, if you recall, that's the Blue Ribbon offset -

There are further quotes in here, commissioner. Necessary to go any further at this stage?

COMMISSIONER GOZZI: It's up to you if you want to go further.

MR FLYNN: Keep reading ....?

MR EDWARDS: Yes.

MR FLYNN: Right. I'll go back:

- if you recall, that's the Blue Ribbon offset - where you will note, sir, that in the front page of that, there's a summary of the cost of the claim under various headings, and they're the various category of employee employed at - by Blue Ribbon. The headings were: slaughtermen, boners, maintenance, freezer, follow-on labour - boning room, follow-on labour - slaughter floor, wholesale, by-products. And I make the observation that it specifically excluded employees, and there were no cost offsets - if I can use the term that was in vogue in those days - negotiated in respect of clerical employees. Nor indeed was the annual wages bill of the company calculated including clerical employees wages - that too was excluded.

So it's very clearly the intent of all of the parties, that is, the applicant, Mr Swallow, and the respondents through TCI and MATFA on behalf of various companies to exclude clerical employees from T.619 which is the 38-hour week matter. And we believe that is what was put to the commission as agreements by various plants in accordance with the direction you instructed people to pursue at that time, commissioner. And that the variation that subsequently occurred to the award for which I will have to take some responsibility, was in error. And I say I have to take some responsibility, sir, because you may further recall that you directed Mr Swallow, myself and your then associate, Mr Andrews, to meet and draw up the orders.

Which we did, and Mr Swallow, at this time was absolved from responsibility because he didn't make them easy. So it was Mr Andrews and myself who drew the orders and I'm quite prepared to stand here now, shamefaced and hang my head and say I did it wrong.

Commissioner, I don't see a lot of good reason for going on further with that transcript, T.4421, except to say that it is clearly the - it was clearly the intention of all parties at that time not to include clerks as part of the general 38-hour week claim for the abattoirs and meat trades - I believe were joined at the time - and, commissioner, if the clerks union or Mr Swallow on behalf of the clerks, require a 38-hour week in that area, then application possibly should be made by either of those organisations.

COMMISSIONER GOZZI: Thank you, Mr Flynn.

MR FLYNN: Thank you, commissioner.

COMMISSIONER GOZZI: Mr Edwards?

MR EDWARDS: Thank you, commissioner. I, on behalf of the TCCI, unequivocally support the submissions that have been made by Mr Flynn. I guess I'd be a little hard not to seeing Mr Flynn largely was quoting myself.

Last time this matter was before the commission, sir, you will recall - as Mr Flynn has now reminded us all - that I went to some trouble and length to go through the history of the 48-hour week - sorry, 48-hour week; that's another claim again - the 40-hour week and 38-hour week matter as it related to clerical employees.

The commission at that time, and indeed myself, had extensively researched past transcripts to try and find any reference at all to clerical employees and the impact that claim had upon them. Mr Flynn has now taken us back to those relevant sectors of transcript which clearly dictate that all parties had no intention of incorporating a 38-hour week into the award for clerical employees; that is, when I say 'all employees', it was TCI, MATFA and the AMIEU have clearly established on transcript that it was not their intention that clerks should share in the 38-hour week.

The commission will be aware that at that time, as indeed now, that there was a strict criteria established by the commission as to the way in which shorter hours of work ought to be negotiated between the parties and that was the strict cost minimisation criteria, and I don't take the commission to it in detail because I'm sure the commission is only too familiar with it. What it in essence required was that before the commission could certify any agreement to reduce standard hours of work below 40 to 38, they would require that the parties demonstrate that the cost of the grant of a 2-hour reduction in working hours has been minimised.

In respect of clerical employees, no such evidence has ever been presented to the commission, and the reason it has not is quite evident and that is that no-one intended that they should share in the 38-hour week. That cost minimisation criteria still exists in the principles, albeit in an abbreviated format.

It is therefore our submission that clerks should not enjoy a 38-hour week in the Abattoirs Award because no claim has ever been prosecuted to enable to do that. No offsets were ever negotiated and this is clearly a question of inadvertence in the drafting processes which has allowed for the award to show that there is, in a technical sense, perhaps a 38-hour week

for clerks in the Abattoirs Award. It was never anyone's intention. We never seek to profit by other's inadvertence and we would hope that the AMIEU will not seek to profit from our inadvertence particularly given that the drafting process was to be tripartite in nature and unfortunately was not able to be because Mr Swallow couldn't attend the drafting conference that you called, sir. Having said that, we would unequivocally support the application made by the Meat and Allied Trades Federation, sir.

COMMISSIONER GOZZI: Thank you, Mr Edwards. Mr Swallow?

MR SWALLOW: Mr Commissioner, just - first of all, I - the union is in opposition to the claim and the reason is simply this: the - I've been mentioned what I said in transcript again and that's - I'll just have to be more careful how I say things when they're on transcript because the employees seem to put half their cases on what I say and interpret what I say, so I - in future, I intend to be a bit more careful as to what I put on transcript. On most occasions it's in good faith not to be used and abused as is the case.

But, frankly, I gave a bit of thought to the employer's claim after the last meeting and up till today and I - I was not at the drafting conference and I was very firmly of the belief that the clerical area was going to have an award in place and the outcome of that award would be transferred into the Abattoirs and Meat Trades Awards. That's my belief and that's - hence my comments, and if the employers want something to repeat that the main reason why I believed that the 38-hour week was introduced in the clerical area into the award was mainly because of the fact that they had nothing to give - their 38-hour week, after all they eat their lunch during lunch time; they have their smoko at the desk; they have their cup of tea - they haven't got much more to give away, and frankly, I was of the belief that that was the case, but apparently that wasn't the case. And that's all I've got to say.

COMMISSIONER GOZZI: All right. Thanks, Mr Swallow. Anything further, Mr Flynn? Right of reply.

MR EDWARDS: Perhaps if I might just go first, commissioner.

COMMISSIONER GOZZI: Mr Edwards.

MR EDWARDS: I do have just one minor matter in response to Mr Swallow's submission, and that is simply that the position Mr Swallow's just explained in respect of clerical employees in the meat industry on the question of offsets, as you would be familiar, sir, is no different than it was anywhere else; that it was a difficult area to isolate offsets, but it was managed by employers and unions in every other industry, but no endeavour was made to do it in this industry because no



claim existed which would force the parties to discuss those questions.

So really, there is nothing different in the work of a clerk in the meat industry, so far as has just been explained by Mr Swallow in respect of the isolation of offsets, than it would be in any other industry in this state, and particularly any other award that contains clerical classifications, and I'm sure I'm not putting anything before the commission that you haven't heard before in that respect, sir. If it please the commission.

COMMISSIONER GOZZI: Mr Edwards. Mr Flynn, anything further?

MR FLYNN: Well, commissioner, I'm rather surprised at the union's opposition to the claim because - again, I don't want to rely on transcript, but at the last hearing I believe it was - it was proven to be vague in minds. Mr Edwards found transcript from the T.619 and the others I mentioned earlier that gave evidence, I believe, that it was not the intention of any parties to include clerks in the 38-hour week claim. I'm - as I say, rather surprised at Mr Swallow's opposition. However, I guess he reserves the right to represent his members as best he can, and I also note that at least he is present today and the FCU - who apparently have no members in the area - aren't here, so I guess Mr Swallow is doing the best for those members.

However, that's not to say that justice shouldn't be done, commissioner, because in this case there was no intention at all - there was no offsets - there was no attempt to even find offsets in the clerical area and if an application was found or was presented to the commission now for 38-hour week in the clerical area, then I'm sure that the parties could at least investigate the possibilities of finding offsets appropriate to their claim. Thank you, commissioner.

COMMISSIONER GOZZI: Yes. Thank you, Mr Flynn. One of the reasons I asked for an application to be made in this matter was because the original application seeking a 38-hour week was comprehensive and did, in fact, include clerks and because of that, the last proceeding, I wasn't prepared to consider the issue further because quite clearly the application - as I say - the original application comprehended clerks as well as other categories of employees in the award.

Now having regard to what happened this morning, I intend to reserve my decision in this matter and will hand it down in due course.

OFF THE RECORD

COMMISSIONER GOZZI: Just before we do move onto the other matters that are listed for this morning, I just want to return to the 38-hour week matter for clerks and ask you to address the question of operative date which I meant to do before we broke. Mr Edwards?

MR EDWARDS: Thank you, commissioner. Mr - we've elected myself to speak on behalf of the employers or the applicants in this matter. We would seek that the variation have operative effect from the beginning of the first pay period to commence on or after the 3rd day of May 1988.

COMMISSIONER GOZZI: First pay period - ?

MR EDWARDS: To commence on or after -

COMMISSIONER GOZZI: Yes.

MR EDWARDS: Well if I could use the exact words that appeared in your decision, sir, in T.619 of 1986 and T.1063 of 1987 which was a decision giving rise to the award variation in question where you indicated, sir: the operative date for the award variations will be from the beginning of the first full pay period to commence on or after 3rd of May 1988.

Now I - that's not an exact quote because I've put the date in rather than the words you used which were 'the date of this decision'. We do that, sir, because we still believe and maintain that the award variation that is currently in the Abattoirs is a question of inadvertence and should be changed back from the same date in which the inadvertence occurred and we believe that is a special and extraordinary circumstance sufficient to satisfy the provision in the Industrial Relations Act which allow you, sir, to award retrospectivity. If it please the commission.

COMMISSIONER GOZZI: Thank you, Mr Edwards. Mr Swallow, anything further you wish to add?

MR SWALLOW: No, thank you.

COMMISSIONER GOZZI: No. Thank you. All right, as I said the decision in this matter is reserved. We'll go onto the next one.

HEARING CONCLUDED