

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 3512 of 1991

IN THE MATTER OF an application
by the Health Services Union of
Australia, Tasmania No. 1 Branch
to vary the Hospitals Award

re deletion of Divisions B, C and
D

COMMISSIONER WATLING

HOBART, 9 March 1992
continued from 12/2/92

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER WATLING: I'll take appearances please.

MR R. WARWICK: If the commission pleases, RICHARD WARWICK, for the Health Services Union of Australia, Tasmania No.1 Branch.

COMMISSIONER WATLING: Good, thank you.

MR P.E. TARGETT: TARGETT P.E., I appear on behalf of the Tasmanian Confederation of Industries.

COMMISSIONER WATLING: Good, thank you.

On the last occasion we were together we adjourned to enable the parties to further consider their position in relation to the deletion of Blood Bank Services from the Hospitals Award. Today is a continuation of that matter. Who wants to bat off?

MR WARWICK: I think Mr Targett's looking to me with the view that it's my turn.

Sir, for our part, we have met with our members at blood bank and the people employed at blood bank -

COMMISSIONER WATLING: Since the last occasion?

MR WARWICK: Since the last occasion that the commission sat. Our members have, in fact, been provided with copies of the transcript from the proceedings on that day, and they have given grave or serious consideration to that transcript and all the matters contained therein. And it is the view of the membership that we should, as an organisation, consider the Medical Diagnostic Services Award as an appropriate award for coverage.

Obviously we would need to see exactly what the Confederation of Industries will be proposing to us in relation to that award before the membership can make a decision as to the appropriateness of that award. And if the circumstances were such where the members, and indeed the union, viewed that award as no appropriate then we would seek to negotiate an industrial agreement between ourselves and the employer.

In respect to the Medical Diagnostic Services Award we do have a claim which we've laid on the Confederation of Industries in relation to that award; that is in respect of the contents of that award. I should say that in many respects it's somewhat easier for us to make a claim in relation to that award than it is for Mr Targett and the Confederation of Industries to respond. Our claim has been fairly straightforward, and it's one which grew out of the proceedings in relation to the Medical Practitioners (Private Sector) Award.

And obviously the structural efficiency program in relation to

that award is linked to the making of the Medical Diagnostic Services Award as well. So, for our part, sir, the only submission I can put to you at this time is that we need to see what the TCI is proposing by way of a counter offer. And on that basis we would ask that application T.3512 not be moved to its final conclusion at this time, but upon - rather, we would ask that T.3512 be concluded at the time that the Medical Diagnostic Services Award is made.

COMMISSIONER WATLING: So, is it your submission then that the Blood Bank Services be removed from this award.

MR WARWICK: At the time that the Medical Diagnostic Services Award is made, sir, yes.

COMMISSIONER WATLING: So, there's no argument about them being removed, the argument's about the operative date.

MR WARWICK: That's correct, sir. I mean, the members have considered the transcripts from the last proceedings, and I can't say that they're entirely happy about it, but they recognise that the Hospitals Award was intended to be a stand alone award. And it's clearly the view of the commissioner that that's appropriate, and that's evident from the transcript. And hence, their decision is that they will go through a process of examining: (a) the contents - the proposed contents of the Medical Diagnostic Services Award; and (b), and industrial agreement.

COMMISSIONER WATLING: So, out of this hearing today, you're happy if I write a decision that says that division is removed from the award and I'll consider the operative date at a later stage.

MR WARWICK: I can't honestly say that I'm entirely unhappy about it because the principal view of the membership is that they would rather be under the Hospitals Award, but obviously they recognise that that's not going to happen. So, I would prefer that in your decision, sir, you use some other word than 'happy'.

COMMISSIONER WATLING: So, I'm just -

MR WARWICK: I think I accept that -

COMMISSIONER WATLING: I'm just trying to hone in on -

MR WARWICK: Yes.

COMMISSIONER WATLING: - the submissions today. The case is - the application is in relation to the deletion of a division.

MR WARWICK: That is correct.

COMMISSIONER WATLING: And I anticipate writing some decision in relation to this.

MR WARWICK: I see.

COMMISSIONER WATLING: So, it's your submission that they be deleted.

MR WARWICK: That's the application, sir, and we intend to proceed with it. So our submission is that the application should proceed to its conclusion.

COMMISSIONER WATLING: And that's to delete the -

MR WARWICK: That's correct.

COMMISSIONER WATLING: That section.

MR WARWICK: That's correct. We would also say, sir, that we would ask the commission not only to leave the question of operative date open, but also to leave the question of what ultimate award or agreement coverage applies open. In other words -

COMMISSIONER WATLING: Well -

MR WARWICK: - sir, we're not asking you to determine where the employees of Blood Bank -

COMMISSIONER WATLING: Well, I wouldn't be doing that anyway, because I haven't got an application to do that.

MR WARWICK: I see.

COMMISSIONER WATLING: The application before me is really in relation to the deletion of the Blood Bank Services division.

MR WARWICK: Indeed, sir.

COMMISSIONER WATLING: So, my decision will be centred around that question only.

MR WARWICK: Indeed, I understand.

COMMISSIONER WATLING: Right. Mr Targett?

MR TARGETT: Thank you, Mr Commissioner. Before proceeding on the question of the application, I'd like to make some corrections to submissions I made to you at the last hearing date. I did, at the time of making those submissions, say, to the best of my knowledge based on the information I had to hand, and I like to correct that information. The two different areas which I wish to correct go to the number of

employees employed by the Blood Bank Services of the Red Cross Society and also the actual structure of Red Cross Society in relation to the Blood Bank.

In relation to the numbers, the accurate numbers that are employed by the Blood Transfusion Services in this state are: scientific officers of various grades, six; hospital technicians, five; senior technical assistants, two; technical assistant, one; clerks, full-time equivalents, would be 4.5; office assistants -

COMMISSIONER WATLING: What does full-time equivalent mean?

MR TARGETT: There are some part-time employees which the total number of hours equate to 4.5 full-time employees.

COMMISSIONER WATLING: Right.

MR TARGETT: Office assistants, full-time equivalent, 1.2; administrative management, there are three; and librarian, one. On that basis, Mr Commissioner, an examination of that and comparison to the current Division B of the Hospital Award shows that the number of people employed by the Blood Bank Services covered by the Hospitals Award is: one technical assistant and 1.2 full-time equivalent office assistants.

COMMISSIONER WATLING: So that's 2.2 -

MR TARGETT: Correct.

COMMISSIONER WATLING: - people -

MR TARGETT: There are -

COMMISSIONER WATLING: - covered by the award.

MR TARGETT: - the clerical people obviously would be covered under the Clerical and Administrative Officers (Private Sector) Award, and the rest of the people - oh, I would add to that also, administrative management may very well come under that Clerical and Admin. Award as well. And the rest of the people are award free.

COMMISSIONER WATLING: What's administrative management? Are they the managers themselves?

MR TARGETT: It is, for example, the person that's in charge of all of the computer work that's done by the Blood Bank Services. There are couple and a person is just about to start or starts today, I think from memory, which would be a quasi personnel officer or personnel manager-type person. It's that type of management person. They may very well also come under the Clerical Award - Clerical and Admin. (Private Sector) Award.

The rest of the people, in our submission, would be award free.

COMMISSIONER WATLING: So, we're looking - out of a total -

MR TARGETT: 24.

COMMISSIONER WATLING: - of 20 - how many?

MR TARGETT: 24 full-time equivalents.

COMMISSIONER WATLING: We're looking at 2.2 people being covered by that division within the award.

MR TARGETT: That is correct. The second part of the correction which I'd like to make goes to the actual structure of the Red Cross Society in relation to the Blood Transfusion Services. In looking at the transcript and getting further advice from Red Cross it appears that I may have incorrectly indicated the structure.

The actual legal structure of the organisation is that there is the Australian Red Cross Society, and that is the only legal entity. The Tasmanian Red Cross, the Blood Transfusion Services, Tasmanian Division, they are merely internal separations. In fact the only legal entity is the Australian Red Cross Society with its - which is based in Melbourne. The rest are merely internal separations of no legal stature.

COMMISSIONER WATLING: Right. So the employer is the Australian Red Cross Society.

MR TARGETT: That is correct, yes. That's merely to ensure that I've corrected the anomaly - the incorrect information I may have given at the last hearing date.

COMMISSIONER WATLING: Right.

MR TARGETT: As to the application as currently before you, since the last hearing date I've had extensive consultations with the executive director of the Blood Transfusion Service on the question of remaining in or without of the Hospitals Division for the Blood Transfusion Services. It is acknowledged by the Blood Transfusion Services that Division B will be removed, as far as they are concerned, from the Hospitals Award. So as to this application there is no objection by the employer to the removal of the now Division B from the Hospitals Award.

On the question of where the people go, they are currently examining four options: A new award just for Blood Transfusion Services; or a new award for the entire Red Cross contained within the state; or the Medical Diagnostic Services Award; or

a registered agreement. They are currently doing some costings based on the full bench decision from the public service as well to see whether - or what impact the decision of that full bench will have upon the operations of the Blood Transfusion Services specifically, to see whether that will or will not impact on the decision as to which particular area they go into. But that is a separate question.

COMMISSIONER WATLING: I just make one comment. The actual establishment of an industry award for 24 people within a division of the employers' operation may be somewhat difficult.

MR TARGETT: I don't deny that it may be difficult, I merely make the point that they are the options that are being examined at this point in time.

COMMISSIONER WATLING: I only raise that because the Act also requires to establish awards in respect of the industry of the employer.

MR TARGETT: I understand that.

COMMISSIONER WATLING: If the employer is the Australian Red Cross Society then making an award within a division may be, as I say, somewhat difficult.

MR TARGETT: I understand that. So, to the question of this particular application, we do not oppose the deletion of this division from the Hospitals Award. On the question of operative date of that deletion, quite frankly I'm not overly fussed as to the operative date considering there are only 2.2 people covered by this particular award. I don't think it's of any great significance.

If the commission determines that it should wait until the outcome of the further negotiations to determine where they actually - all of the people actually go, that won't worry me one way or another, quite frankly. Or if it's done immediately, once again of no real consequence, because of the 2.2 people covered within this particular award, if this division is deleted, 1.2 of those people would automatically be covered under the Clerical and Administrative Officers (Private Sector) Award.

And the last person, one person I guess, would be technically award free, but that person is solidly entrenched in employment with a salary package - wages arrangement, and conditions arrangement, in accord with everybody else, so they wouldn't be adversely affected anyway. So I don't know that any great weight rests on it.

COMMISSIONER WATLING: Have you any program for where you head after this? Are there any dates, times? What's happening with the other award, do we know?

MR TARGETT: Which, the Medical Diagnostic Services?

COMMISSIONER WATLING: Yes.

MR TARGETT: At this point in time, we, the employers have put together a new classification structure for the Medical Diagnostic Services Award, that's currently with the employers being costed, because of the new salary levels that apply to it, to determine the impact on the operation. As soon as that costing has been done, providing it's - works out okay for the operation, that will then be put to the unions.

I would envisage within a couple of weeks we'd probably be putting our proposal. If there's an adverse cost impact we may be making some alterations to the structure, but that's a matter of determining after the costing has been done. But -

COMMISSIONER WATLING: And do we then get into the argument about minimum rates award and paid rates award?

MR TARGETT: That's right. Our proposal to the union will have what we believe should or should not be the case, on that particular question within that particular application.

COMMISSIONER WATLING: Right. Right, Mr Warwick, you've heard a submission that shows that 2.2 people would be covered if it continues, and if we were to delete it immediately one at best would only be covered. What's your position now, having heard Mr Targett's submission that the operative could be immediately?

MR WARWICK: Sorry, what's my submission in relation what, sir?

COMMISSIONER WATLING: Well, Mr Targett's submission seemed to indicate that because only 2.2 persons were covered by the award, and 1.2 of those would fall within another award of the commission, they wouldn't be award free. If I was to delete -

MR WARWICK: I understood all that, sir, but I thought at the end of your comments you said that Mr -

COMMISSIONER WATLING: Well, I haven't finished.

MR WARWICK: I was talking about the first time around.

COMMISSIONER WATLING: Oh.

MR WARWICK: But I thought at the end of that you said that Mr Targett - he seemed to indicate that it should happen immediately.

COMMISSIONER WATLING: Well, Mr Targett indicated that it was - he was beastly careless.

MR WARWICK: Yes. Indeed.

COMMISSIONER WATLING: And, in fact if that's the case, then I'm half inclined to remove them now.

MR WARWICK: I appreciate your comments, sir. Mr Targett did say that he was beastly careless. We are, for our part, beastly careful.

COMMISSIONER WATLING: Well, what would be the validity of holding up the restructuring of this award for one person?

MR WARWICK: I don't believe that it will hold the award - hold up the restructuring of the award.

COMMISSIONER WATLING: Well, this is part of the program. We're -

MR WARWICK: Yes, I realise that, sir, and we're not in the business of endeavouring to hold up the program. It is a big program and there's a lot of work involved in it. I would say that it is my understanding that the people who are employed are all employed subject to the conditions contained in the division; that is, even where the award doesn't apply to them by virtue of the fact that the classifications are not in the award, nevertheless by agreement the employer and the employees do observe the -

COMMISSIONER WATLING: What's stopping them from doing it in the future, if they're not required to observe it now? What effect would it have?

MR WARWICK: Well, there's nothing stopping them other than that there's a document there that everybody can read. And it's useful for -

COMMISSIONER WATLING: Well, they can still read it, can't they?

MR WARWICK: Well, they can still read it, but it's not an award of the commission, is it? And those sorts of things are very -

COMMISSIONER WATLING: Well, it will be - hang on -

MR WARWICK: - very easy for people -

COMMISSIONER WATLING: It would be an award of the -

MR WARWICK: - to become confused about.

COMMISSIONER WATLING: It would be an award of the commission. They're not under it now, they use it and they use other awards of the commission to which they are party to.

MR WARWICK: Yes.

COMMISSIONER WATLING: What would change?

MR WARWICK: Well, practically, probably very little, except that the perception of the people involved may well change. The people who work there are not experts in industrial relations and, indeed, I've provided copies of the transcript to people at Blood Bank, as I've indicated to you, and there have been many - a great many misunderstandings about what's contained in the transcript.

Now, I'm simply concerned, for my part, what the people there might take that to mean when the award is deleted.

COMMISSIONER WATLING: Well, if there's only 2.2 covered by it.

MR WARWICK: Oh, I appreciate the point that it's an inappropriate award, it doesn't covered the people it should. And we want to correct that, because obviously from our point of view it's a very difficult situation in terms of -

COMMISSIONER WATLING: I'm not denying that.

MR WARWICK: The presence of other unions in the area and other related matters. And even that in itself may have some implications in relation to perhaps how other organisations might view a coverage in the area. I mean, I think people generally accept that we're the union that covers Blood Bank and we have - we have an award that's in place. And it's not generally understood that it's not the appropriate award that it should be, but if there's a decision emanating from the commission that that award is abolished, who knows what people might think.

COMMISSIONER WATLING: Well, I'm just trying to get to the bottom of this, and it's more related to the operative date. That we keep this going, we keep them in the award and discuss some operative date at some later stage for, at best, one person. The rest are not covered by it now.

MR WARWICK: Well, I don't see that it provides any great prejudice to the structural efficiency process, if the matter doesn't take place -

COMMISSIONER WATLING: Well, all I say is that, we've been trying to sort out this award for some time. Right?

MR WARWICK: And I have to say to you, sir, I think we're making some progress.

COMMISSIONER WATLING: Which the deadline was March last year. Now, I'm just trying to wind this off. Right? And therefore I want to know what is the valid reason, from your point, that I should keep this going for one person at best.

MR WARWICK: Well, I think I've put them, sir. I've put the reasons.

COMMISSIONER WATLING: Well, is that a reason?

MR WARWICK: I've put a range of reasons.

COMMISSIONER WATLING: But - but let -

MR WARWICK: I mean, the people there - the people there perceive themselves to -

COMMISSIONER WATLING: You've told me some things which I've pulled you up on, about being - whether they were correct or not.

MR WARWICK: Oh, I think that the point that - other people are going to read this decision, other organisations are going to read it, and I think that that's a relevant point. And it is - there is a perception of award coverage, however inaccurate it might be.

COMMISSIONER WATLING: Oh well, we're not in the business of making decisions based on that, surely.

MR WARWICK: Well, it's important to us.

COMMISSIONER WATLING: Well, it might be and it might be important to the employer, but I've got to make decisions on whether or not this should be taken out. We've got submissions saying that it should be. We've got submissions from your side saying that the operative date of the decision should be left. We've got a view from the employer saying: Well, it doesn't really matter because only 2.2, at best, are covered by it. And then, even if I were to make it operative one person would be award free and others would be picked up by the Clerical and Admin. Award,

MR WARWICK: Well, I heard you make all those comments, and I've heard Mr Targett's comments. The only point I can put to you is there is a perception of award coverage there. And we would prefer -

COMMISSIONER WATLING: So, I should rule -

MR WARWICK: We would prefer -

COMMISSIONER WATLING: I should rule on a perception.

MR WARWICK: We would prefer that a new restructured award coverage be put in place before this division is deleted. I don't see that it's a great thing to ask of the commission. I mean, our bona fides are on the table -

COMMISSIONER WATLING: Well -

MR WARWICK: - in terms of -

COMMISSIONER WATLING: Well -

MR WARWICK: - Division B -

COMMISSIONER WATLING: Well, I'm not -

MR WARWICK: - and Division C - D. I mean, we've done the work.

COMMISSIONER WATLING: Well, I have to say that in relation to the program, I don't know what the program is. So this could go on for another 2 or 3 years. So I haven't been satisfied in relation to the ongoing program.

MR WARWICK: Well -

COMMISSIONER WATLING: I'm not to know.

MR WARWICK: Well, again, sir, you can only go on your perceptions in relation to that, and I would have thought that - I mean, you have made some fairly strident criticisms in the past of the lack of progress -

COMMISSIONER WATLING: Well, I do in relation to the restructuring of this award, because it's a year over the deadline that was given to me now.

MR WARWICK: But I'd have to say to you that it's not unreasonable for me to say that there has been progress made in a number of areas in the last 6 months. And we intend to continue to make that progress. I mean, surely, sir, you can appreciate that the fact that those people aren't covered by an appropriate award - that only 2.2 of them aren't covered by an appropriate award is a particularly strong impetus to us to do something about it, because after all we do have exclusive coverage in there and we don't want to lose it, so we've got to do something about it. And that's a principal imperative from our point of view.

COMMISSIONER WATLING: Yes, I agree. But -

MR WARWICK: And we will.

COMMISSIONER WATLING: But the position was no different a few years ago either, was it?

MR WARWICK: Well, I'm not sure that people understood the position a few years ago. I certainly didn't until I took over the case, but I understand it now.

COMMISSIONER WATLING: Right. Any further submissions?

MR WARWICK: No, sir.

COMMISSIONER WATLING: Right. Well, I'll hand down a written decision in due course on this matter. That being the case, I now declare this matter closed. Thank you.

HEARING CONCLUDED