

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, 15 December 1993

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER GOZZI: Could I have appearances, please?

MR R. CLEGG: If the commission pleases, I appear for the Australian Municipal, Administrative, Clerical Services Union, CLEGG, R., and along with **MRS DOWD**.

COMMISSIONER GOZZI: Thank you, Mr Clegg.

MR S. CLUES: If it pleases the commission, I appear on behalf of the Tasmanian Chamber of Commerce and Industry, CLUES, S. Appearing with me is **EDWARDS, A.**

COMMISSIONER GOZZI: Thank you, Mr Clues. Mr Clegg?

MR CLEGG: Thanks, Mr Commissioner. First off I'd like to report that we have had two lots of discussions with the industry in relation to this matter. The industry has put out a survey of both employers and employees to determine whether, you know, what their views are in relation to this matter. The - some of our members have reported back to me in relation to this survey and they're feeling that they are - or there has been intimidation by their employers in the fact that if they fill it out - words to the effect that if they fill it out the wrong way you're jobs will be on the line.

Now I've mentioned this to Mr Clues and Mr Edwards - and I appreciate their good offices - and they're going to undertake - provided I can get these people who have confided in me - members who have confided in me -

COMMISSIONER GOZZI: Yes.

MR CLEGG: - to get their permission for Mr Edwards to approach their employer and tell them to back off. And that's - and I appreciate that offer too and in the manner in which it was made and I'll be going back to our members and having a talk to them and seeing if they're prepared to let me put forward employer's names so Mr Edwards can go and have a talk to them.

COMMISSIONER GOZZI: It's always a bit sensitive, of course,
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MR CLEGG: Yes, I realise that and that's -

COMMISSIONER GOZZI: - and it shouldn't happen and perhaps an alternative might be a general commentary or notice to all the industry saying that this matter was raised in the commission and the commission has taken a very dim view of it and if anything comes forward to the commission's attention then we'll deal with it at that - in an appropriate manner.

MR CLEGG: I'm quite happy to talk to Mr Edwards on that basis if they've happy with that.

COMMISSIONER GOZZI: Maybe that's what you ought to do, yes.

MR CLEGG: It would appear though, sir, that the matter will be one that will be needed to be arbitrated I would imagine, and we've had discussions with the TCCI and the institute and the last week in February we'd be ready to start presenting arguments in relation to this matter, if that timetable fitted in with yours.

COMMISSIONER GOZZI: Yes, that should be fine.

MR CLEGG: And that's where we're at at the moment, sir.

COMMISSIONER GOZZI: All right. Thank you, Mr Clegg. Mr Clues?

MR CLUES: Mr Commissioner, the REIT and the TCCI have genuine concerns about the claim by AMACSU for the creation of the two additional allowances in the Estate Agents Award. The quantum of the claim is considerable and will substantially increase the fixed costs of employing labour.

I don't intend to address the merits of the claim in any great detail this morning, but suffice to say we believe that the work that has been done to date by the parties has resulted in an equitable award. The award now provides for an equitable wage and has reaffirmed the issues of annual leave, sick leave and superannuation.

Further, the award recognises the significance of the commission system in the real estate industry as being the primary source of remuneration and the minimum standards of the award are to provide a safety net.

The REIT and the TCCI do not consider the current claims in the same vein as those which have been previously brought before the commission. Having created an equitable base, we see these claims - if successful - as tipping the fine balance that has been created. The increase in the fixed labour costs will only serve to erode the commission system.

Each employer is going to have to find funds to cover proposed increases which are no less than \$225.00 minimum per week for car and \$10.00 per week for telephone. Such amounts will be have to found in relation to each salesperson and we would submit that that is significant.

In order to understand the potential ramifications of this claim, the REIT and the TCCI have issued a survey, as has been indicated by my colleague, to all REIT members and to those they employ. The survey is to be completed by all agents and, further, by employees if they so desire. There is no compulsion that people have to fill the document out, and the

reason that we did that was to ensure that intimidation did not occur and that people had a choice as to whether or not they filled them out.

COMMISSIONER GOZZI: With some of these surveys - I was involved with a survey in the community services area where the TCCI and the ASU did a joint - prepared a joint survey document which I endorsed - in fact notated on the bottom, and I thought the response to that was very good indeed.

MR CLUES: Well we've very pleased with the response that we've had to our survey, in fact, it's been overwhelming.

COMMISSIONER GOZZI: Right.

MR CLUES: We've had considerable number of responses from employees and they've certainly had no qualms about expressing their views, both in the positive and the negative towards the claim. It certainly has been balanced. It is of great concern that Mr Clegg comes before us and says that there have been people who have been intimidated. I guess in the reality of the world maybe, you know, that that is what will occur occasionally. The fact that it is half a dozen gives us some comfort although it's cold comfort. We will take on board the comments of the commission in relation to the issuing of a general notice to our members and we'll -

COMMISSIONER GOZZI: Yes, I don't think you need a sledge hammer really to - for this. I mean, sometimes comments are misinterpreted, but I've got no doubts that, you know, things still are very tight and the last thing you want is to be hit by a claim for whatever it is here and sort of smile about it, so - but these things are a matter of - you know, these claims and applications happen and we have to deal with them as best we can -

MR CLUES: Yes. Well our intention -

COMMISSIONER GOZZI: - and that's the reality of it.

MR CLUES: - our intention of the survey was simply not to just come up and rant and rave and say no, but rather to be informed and be able to give the commission an understanding of the industry.

It's a costly exercise to undertake to do a survey. There's design, issue, tabulation of results, however it is indicative of the concerns that we have in relation to the particular claim.

The parties still have some discussions to be had in relation to the union's position and its commitment to the claim, although it has been indicated by Mr Clegg this morning that he believes this probably will end up in arbitration. If the

commission pleases, I have nothing further comment.

COMMISSIONER GOZZI: Yes. All right. Thanks, Mr Clues. Mr Clegg, anything further you want to add at this stage?

MR CLEGG: No, I can't add any more, Mr Commissioner. I do believe that under the wage fixation principles that we will be able to pursue this claim as a legitimate claim, and I think -

COMMISSIONER GOZZI: Oh, yes, I don't see that the claim would be precluded from being considered in accordance with the wage fixing principles.

MR CLEGG: The other thing - I'm not quite sure, but there may have been a typographical error in relation to the quantum of the telephone allowance so it should only be \$10.00, but I think there's \$40.00 - may have been -

COMMISSIONER GOZZI: I was wondering about that. That's not a bad deal if you can get it.

MR CLEGG: Yes. So if I could seek the permission of the commission -

COMMISSIONER GOZZI: It's a lot of phone calls.

MR CLEGG: - then to alter that from \$40.00 per week to \$10.00 per week, if the commission pleases.

COMMISSIONER GOZZI: I wasn't feeling in a particularly playful mood. I had to go to a function in Launceston last night and returned first thing this morning for a dismissal at a quarter to nine which, luckily, was resolved, but I thought - I was going to ask you whether or not, you know, this is an ambit system or not.

MR CLEGG: No, sir. Although we -

COMMISSIONER GOZZI: But the \$225.00 per week -

MR CLEGG: That's based on RACT figures.

COMMISSIONER GOZZI: Yes, the RACT. Okay.

MR CLEGG: Yes, and what is paid in other states.

COMMISSIONER GOZZI: Right. And the 35 cents, is that the RACT figure as well?

MR CLEGG: Yes.

COMMISSIONER GOZZI: Yes. Right.

MR CLEGG: And what's paid in other states also.

COMMISSIONER GOZZI: Yes. Just on that, what is the situation in other states?

MR CLEGG: New South Wales, Victoria and South Australia are all paid car allowances. There's no separate for a 6 cylinder or for a 4 cylinder car. Victoria, I think it's aroundabout \$170.00 a week. New South Wales is \$231.00 per week, although they do have a different system in New South Wales; if you don't use your car on a full-time basis, they do paid a standing allowance \$184.00 plus a mileage or a kilometrage component. South Australia pay aroundabout the same as Victoria for the use of their car. The telephone allowance is only applicable in New South Wales, but other states are looking at the telephone allowance given the fact that the mobile phones play a big part in the business of selling real estate and a lot of people are using mobile phones and they are a - every phone call coming out of a mobile phone is an STD call - charged at STD rates, so they are quite expensive to run.

COMMISSIONER GOZZI: Yes, I know, they are. And even if you don't get the person you call, there's still a charge.

MR CLEGG: That's right. That's -

COMMISSIONER GOZZI: Mr Clues - yes, thank you, Mr Clegg.

MR CLEGG: Thanks, Mr Commissioner.

COMMISSIONER GOZZI: Mr Clues, what's the situation with mobile phones in the industry? I mean, there'd be a fair prevalence of mobile phones, I would have thought - or not? Mr Edwards?

MR EDWARDS: Yes, it's becoming increasingly more evident, whether they carry them or in the car. It's certainly providing a lot of efficiencies.

COMMISSIONER GOZZI: Yes. Right. Very good. All right. Well we'll just go off the record for a moment.

OFF THE RECORD

COMMISSIONER GOZZI: These proceedings are adjourned till 10.30 on 22nd February 1994. Thank you.

HEARING ADJOURNED