

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T. Nos 4807, 4808 and
4809 of 1993

IN THE MATTER OF applications by
the Australian Liquor, Hospitality
and Miscellaneous Workers Union to
vary the Aerated Waters Award, the
Hotels, Resorts, Hospitality and
Motels Award, The Restaurant
Keepers Award and the Licensed
Clubs Award respectively

re increase wage rates by \$8

COMMISSIONER GOZZI

HOBART, 25 January 1994

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER IMLACH: Same appearances as before?

MR O'BRIEN: Yes, Mr Commissioner.

COMMISSIONER IMLACH: Mr O'Brien, if you proceed.

MR O'BRIEN: Yes. Thank you. You've saved me at least from reciting the organisation's title.

In relation to this - these applications as in the previous matter, these are applications to vary the award by increasing wage rates by \$8 in accordance with the decision of this commission of 24th December and also the decision of the Australian Industrial Relations Commission.

Each of these awards has been the subject of variation to implement a new award, and career structure and minimum rate adjustments in each case I'm instructed have been completed.

The award reflects a reasonably standard format in terms certainly in relation to adult rates of base wage per week supplementary payment per week and total wage per week, and in the Restaurant Keepers Award in the Hotels, Resorts, Hospitality and Motels Award and also, as I understand in the Licensed Clubs Award.

The awards are what one can only describe as minimum rates awards and in the ordinary course of events, as I understand, the decisions of this and the Federal Commission that these awards would attract the \$8 safety net increase that has been approved.

In relation to the intended effect of the award I can say that in these areas the - in a great many cases the award rate is the rate observed and so there would be an increase of \$8 consequent upon the variation of the award by adding \$8 as a supplementary payment to the award. That is not to say the award is anything but a minimum rates award and over-awards are observed in various areas in - in these industries for different occupations.

In relation to - so I guess what I'm saying to you, Mr Commissioner, is that the award has been varied, effect has been given to a career structure, there is a structure there reflecting a true minimum rates award structure and the variation needed would, as I understand the commission's view on this matter, would be to add a separate column 'B' to the supplementary payment clause and include within it - in that - the amount of \$8, unless - unless things have changed since I was here last.

In relation to enterprise bargaining, I can say that the organisation has been involved in enterprise bargaining in a great variety of areas. Employers, the subject of these

awards, have not been, I must say, knocking down the doors of the union to become involved, and indeed because of the great many establishments involved, I guess it's not surprising that whilst enterprise bargaining is being pursued in - those in a number of areas in the industries covered by the awards, there hasn't been a great deal of penetration of enterprise bargaining at this date, and that's not to say that the organisation has been resistant to the concept, but rather it's a phenomenal task having regard to the - the number of enterprises covered by the awards in question. And as I said, the employers in the industry are not frankly knocking down the employee organisations to become involved in that process.

In relation to the operative date of any increase, we would be asking that the awards be varied with an effect of operation of the first pay period commencing on or after today's date. We would be in a position to supply a standard draft order within 24 hours to that effect, which would be to add to the supplementary payment column in each case, a separate column 'B' including the amount \$8, so - and I don't think in any of these cases the employer could be in any way confused about the intent or the effect of any order in - in relation to these matters.

They would be of a fairly standard variation type the commission has followed in other matters. And I do apologise for not having the draft orders available but as I indicated earlier from the time that I became aware that the hearings were on, it was not possible for me to arrange for draft orders, and I will endeavour to make those arrangements immediately following this hearing.

So in short, we would ask that the awards be varied. We ask that the operative date be the first pay period commencing on or after today's date.

COMMISSIONER IMLACH: Yes, thanks, Mr O'Brien. Just before you sit down, this matter of junior, how they are to be specified in the award - the junior rates - the - just for your information if you're not aware, the chamber made the point in a previous matter that if adult rates were to be subdivided, shall we say, into minimum rates, supplementary payment \$8 and the weekly wage rate, the same rationale ought consistently be applied to the junior provisions and that matter was reviewed by the commission - it was decided that that was a fair argument, the consistency ought to apply and that it did commence to be implemented but some problem has arisen in that in how it's to be provided for.

But the general principle, as far as I'm concerned ought to proceed, but as I've advised Mr Clues, that that matter is still under review so I can't say emphatically how it will be done. So I suggest that whoever is drafting those orders, Mr

O'Brien ought to contact my associate when they get to that area because it may need some consultation on all sides to get it settled.

MR O'BRIEN: Yes. I could say that having a look at these awards although the supplementary payment appears in the adult rates, it doesn't appear in the junior rates, and for example in the Restaurant Keepers Award on page 17 of No.1 of '93 consolidation, which is the one I have in front of me, it's got for example, let's say apprentices, percentage of the Grade 5 trade waiter, an amount of \$417.20 is specified and then percentages are specified below that in a column and to the right is a column which says amount per week and it simply gives a weekly rate and I don't suppose that's uncommon.

COMMISSIONER IMLACH: No, I'd say it's virtually universal, Mr O'Brien, but the point having been made that if absorbability is going to be applied to the adults it ought to apply to the juniors consistently. The whole matter is being reviewed and to go one step further the point that you're making is that if that's applied for juniors up till now it's a bit unfair, put simply, to go backwards and give the employer the opportunity to cut back for matters that have gone past. Maybe for the future, yes, but not for the past in relation to juniors. That's the point that is under review.

MR O'BRIEN: So what's suggested is that in fact for the - the example I've given there would be two additional columns after the amount per week, you would then add a - the percentage - relevant percentage of \$8.00 and then give a total weekly rate?

COMMISSIONER IMLACH: That sounds like it, yes. I'm not saying that's how it's going to be, Mr O'Brien, it's the state of federal flux at the moment, but that's what's being discussed and I thought you might like to know all about it, as Mr Clues already does.

Now, Mr Clues?

MR CLUES: Mr Commissioner, the TCI - or TCCI - would submit this matter should be adjourned pending the finalisation of the structural efficiency exercise in the three hospitality awards which the commission is currently presiding over. Unless the union is prepared to reaffirm its intention to honour commitments given during that structural efficiency exercise today.

In order to justify our stance in relation to the seeking of an adjournment, it's necessary for me to provide you with a brief history for your benefit, if the commission pleases.

The Hotels, the Licensed Clubs and the Restaurant Keepers

Awards were all the subject of significant review during the structural efficiency negotiations conducted during 1990 and 1991 arising from the October '89 State Wage Case decision.

All three awards had issues outstanding from those negotiations. For the union's part it was the review of shift loadings pertaining to work after 7.00 and before midnight and after midnight, and for our part it was the further reduction in penalty rates. These two issues were set aside in the federal jurisdiction in anticipation of arbitration. Given the nexus between the Federal Hotels, Resorts, Hospitality Industry Award and the three respective state awards, it was recognised by the parties that the outcome of the federal decision would be a persuasive test case and therefore to duplicate the argument in the state commission at that point in time would have been an exhaustive and potentially fruitless exercise as any outcome of the federal jurisdiction would have formed a basis for a subsequent application.

As I said, this brief history of what has previously been agreed is necessary and in support of that history I'd like to tender an exhibit for the benefit of the commission.

COMMISSIONER IMLACH: We'll call that exhibit TCCI.1.

MR CLUES: The exhibit that I tender is transcript of proceedings that occurred in matters T.2839 and 2840 of 1990 and it was an application by the then Federated Liquor and Allied Trade Industries Employees Union of Australia, Tasmanian branch to vary the Restaurant Keepers Award and the Licensed Clubs Award.

For the benefit of the commission, I take you to the first page of that document which is page 11 and I take you to the third paragraph from the bottom of that - that print that begins with the sentence 'Penalty rates', and it reads: Penalty rates - this is Nick - Senator - the now Senator Nick Sherry speaking - then an advocate of the ALH & U, and it reads:

Penalty rates was a contentious issue and is an outstanding issue in the negotiations we've had with the employers, and I'll come to that at the end and when I detail outstanding issues. But suffice to say, Mr Deputy President, frankly if there'd been an arbitrated case on the elimination of penalties on penalties, I probably - probably we would have some ... we have been struggling to ... to prevent the elimination of penalties on penalties because I'm not aware of many awards where that is the case and frankly it's resulted because of poor wording in the award, and it's existed for many, many years.

But in respect to the other provisions of 100% coming down to 75% as per the hotels, we've consistently argued with the employers and in the Federal Commission and in this State Commission that we should be closely following the national standards.

If the union is arguing that principle, and if you accept that, then we have a problem being consistent on the issue of penalty rates. If we're not consistent on the issue of penalty rates, I believe in fact we're being inconsistent.

So -

MR:

MR CLUES: - that's a very profound statement.

MR:

MR CLUES: That's alright. You'll probably find some more of those.

So it's on the basis of consistency that we are accepting these changes, and I shall make some further comment on penalty rates in outstanding issues.

On page 28 Mr Sherry then picks up on what outstanding issues exist in relation to negotiations arising from structural efficiency exercise.

In this instance I'd like to take the commission to halfway down the page to the paragraph that commences, 'The union had a view':

The union had a view that that those provisions should be rationalised and updated. We couldn't reach agreement with Mr Clues on the matter, so we put the matter aside.

Likewise, the broken shift allowance. We believe there should be a broken shift allowance in the award.

Likewise, we couldn't reach agreement, so we put that matter aside.

And the TCI made a claim in respect to a further adjustment of penalty rates other than has been outlined here today, and we couldn't reach agreement on that.

What we've agreed to - and Mr Clues can detail this - but from our point of view we indicate on the record that there is a current case before the Federal Commission which is being seen as a test case in the Federal Hotels Hospitality Resorts Award on the issue of penalty rates and shift provisions, and we would indicate in respect to penalty rates, shift provisions, and the broken shift allowance, the union will seek to include that nationally arbitrated decision in the State Restaurant -

- Keepers -

- Award and the reason we do that, Mr Deputy President, is, to be perfectly frank, we recognise that a nationally arbitrated case will carry considerable weight in this area and we believe that's the appropriate way to resolve the outstanding issues that exist between us and the employers on those issues.

DEPUTY PRESIDENT: Will those issues before a single commissioner or a full bench?

MR SHERRY: At the present time they are before a single commissioner, but I certainly anticipate they will end up before a Full Bench - the way things have been going. There have been some fairly extensive negotiations - I don't know when it will be arbitrated. It will certainly be arbitrated because there has been no agreement reached, and certainly not likely to be any agreement reached and we would obviously come back to you if ... hopefully with an agreed document, and if we need to have some matters determined by you, clearly that would end up - that would be up to you based on that federal decision.

But as I ...

And then the Deputy President interrupts and says:

DEPUTY PRESIDENT: But you'll cop that federal decision sight unseen?

MR SHERRY: I will cop ... our union will cop the federal decision sight unseen. We are realists, Mr Deputy President. I suspect that the TCI will chop that decision up anyway. I certainly don't think that they'd not present it if given that they were reserving that as an outstanding issue and I mean, I frankly don't believe there is any changes

nationally and our position is not accepted, or the Federal Commission arbitrates something that ... and there as been some sort of adjustment to penalty rates. I frankly think that our changes -

- our chances - or it should be our chances - it says our changes -

- of opposing that in the state commission would be very remote.

DEPUTY PRESIDENT: I was going to say are you suggesting that we're not an island.

MR SHERRY: I think we're an island in some things but not in others. I would like, and also I've already drawn your attention, we have been consistently arguing a national position and ... and again, I think you could draw our attention to that in any ... and I'm sure Mr Clues would draw our attention to the fact that we've adopted a national position and we would be inconsistent if we adopted a different position on this matter. So ...

DEPUTY PRESIDENT: I'll acknowledge that the industries that you cover are pretty wide.

MR SHERRY: Yes.

In respect of the club situation it's the same position except in respect to the shift provision, Mr Deputy President, wherein the clubs ... the shift provision doesn't require updating. It is clear, it is ... not needed any changes at all, so the position that I enunciate in respect to the clubs applies in respect to the penalty rates issued - weekend penalties and those things.

Mr Commissioner, that federal decision has been handed down to which Mr Sherry referred and it was handed down by Commissioner Gay of the Australian Industrial Relations Commission after some 3 years of debate before the commission and when the application was originally lodged, and I tender a copy of that decision for the benefit of the commission.

COMMISSIONER IMLACH: TCCI.2.

MR O'BRIEN: Is the statement with it?

MR CLUES: Sorry?

MR O'BRIEN: Oh, just - sorry, there is a statement that was issued concurrent with the decision which I think ought to be

tendered. I don't have a copy. I have the statement but I - sorry, it's the statement of 6th August - no - got to get get it right. No it's the statement of the same date as the decision. It's a two page document.

COMMISSIONER IMLACH: Perhaps you might let my associate now, Mr O'Brien. Thank you.

MR CLUES: I'd also appreciate a copy of that statement.

COMMISSIONER IMLACH: That's a good idea, Mr Clues. No intention at all of excluding you from that.

MR CLUES: Thank you. Mr Commissioner, by way of a brief summary of that decision provided for, essentially that decision provided for enterprise agreements to be negotiated directly between the employer and the employee through consultative committees with the union being granted the opportunity to oppose any agreement upon an application to the commission for registration of the agreement. Also, the commission refused to adjust penalty rates on public holidays but the commission did amend penalty rates for Saturday by way of a 25% reduction for both permanent and casual employees and a further 25% reduction for Sunday work by casual employees. The decision also provided for a savings clause for permanent employees by freezing the existing rate until it equated to the new reduced rate through wage movements, a similar concept to that adopted to that by this commission in the Retail Trades Award.

Mr Commissioner, I realise the TCCI application is not before the commission as currently constituted, however we submit that in light of the outstanding structural efficiency matter and the ironclad undertaking given by the union in relation to the outcome of that federal decision, we believe that it would be inherently wrong to progress this matter for the \$8 wage increase without knowing whether or not the union is going to honour its undertaking.

The justification for the adjournment can be put in dollar terms, Mr Commissioner. Prior to the commencement of the structural efficiency review arising from the November '89 decision, a qualified cook was paid \$325.10.

Following that, we've paid several significant wage increases without finalising the structural efficiency exercise.

The reason that exercise hasn't been finalised was due to the fact that both parties gave undertakings that they would await the federal test case and would accept the outcome of that decision.

Today we have paid wage increases taking our basic cook from 325.10 to 417.20, and if the commission were to grant this

application for a wage increase it would round the figure up to 425.20. A very neat \$100.10 increase for your basic tradesperson.

Those increases have arisen out of two structural efficiency payments, the full minimum rate adjustment process, and the 2.1/2% wage increase, all of which have been paid by the employer on the basis that the negotiations would be ultimately resolved pending that federal decision.

Despite the federal decision coming down in May of last year the union have made yet another application before the commission today, but on this occasion the TCI is not prepared to grant its consent to that application.

The TCCI will only grant its consent to the \$8.00 if the union reaffirm its commitments to accepting the federal decision pertaining to the increase in shift loadings and the reduction in penalty rates into the three State hospitality awards; namely the Hotels, the Licensed Clubs and the Restaurant Keepers Awards.

The union stated to this commission that they would accept that federal decision, and I quote, 'Our union will cop the federal decision sight unseen'.

Ms Huxtable, the now State Secretary, was sitting by the then Nick Sherry at the time that undertaking was given in negotiations and when it was put on the record before the deputy president.

In summation, Mr Commissioner, if the union are prepared to reaffirm their commitment to their long-standing undertaking to vary the three hospitality awards in accordance with that federal decision, upon application being listed by the TCCI then we will not oppose that \$8.00 wage increase.

If, on the other hand, the union have the intention of walking away from that original agreement, then the TCCI has no desire to consent to the payment of any more wage increases that have been awarded, in our opinion, under false pretences.

Accordingly we would urge this commission to adjourn these proceedings until the outcome of the TCCI's application in relation to that federal decision is heard and determined by the commission.

If the commission pleases.

COMMISSIONER IMLACH: Yes; thanks, Mr Clues. Mr O'Brien?

MR O'BRIEN: Mr Commissioner -

COMMISSIONER IMLACH: Just a minute, I have got a question. Mr Clues, in the federal decision at page 24 the full bench said, 'Our decision is reached on the basis that in general awards have been restructured consistent with the requirements of the August 1989 and subsequent National Wage Case decisions, although these processes may not yet been completed. However, it is not intended that a minimum rates award that has not yet been restructured should be precluded from any safety net adjustment.' How do you think that fits in with what you are putting to me today?

MR CLUES: I'd suggest that we are putting a different scenario to you, Mr Commissioner. That is talking about an award such as the Road Makers Award where the parties haven't gone down and made a fundamental review of those requirements under the '89 decision.

There is no new classification structure, there wasn't a fundamental review of conditions of employment. Those type of instances.

The instance that I am putting to you is one that is really one of merit.

The fact of the matter is the union that is seeking the application for a wage increase here today is, of my understanding of discussions with Ms Huxtable yesterday, not prepared to honour structural efficiency commitments given.

Now, I would suggest that that is a very grave situation that we find ourselves in today. An ironclad guarantee was given that they would cop the federal decision sight unseen.

It's on transcript. It is not a matter of Mr Clues' recollections. It was a direct question from the deputy president of this commission in relation to how those outstanding issues were going to be resolved, and why he should award the structural efficiency increase.

At that point in time if the union hadn't given that undertaking the commissioner may well have determined that there hadn't been a fundamental review of the award; that there were still too many outstanding issues to be resolved in order to justify the payment of that structural efficiency increase.

However, on the basis of those undertakings given on the record by the union and the employer that they were soon to be resolved through a decision of the federal commission, which they would copy, the commission believed that a fundamental review had occurred of the award; and hence, he was prepared to grant that increase at that point in time - as had he done with every other application that has come before the commission for minimum rates adjustments, and the 2.1/2%.

Mr Commissioner, I believe that we are faced with the situation where undertakings have been given, that the employer has awarded wage increases in good faith in the belief that those undertakings would be honoured, and we now face a situation today where the union has every intention of walking away from those undertakings, yet they still have the hide to come before this commission and ask for another wage increase.

Now the TCCI is not prepared to stand by and say that's okay, you can walk away from that decision, because the reality is that the union, just as the TCCI, should have copped that decision.

If the TCCI is faced with a decision in the reverse where the federal decision hadn't gone in our favour, then we would have had to cop that. And all that we are asking is that the union do likewise.

Now I would say that the wage increases that have been to date - paid to date - have been awarded under false pretences and the commission has been misled on the record by the union if it has any intention of walking away from those undertakings.

So I would suggest that is a fundamentally different situation that we are faced with than that which was envisaged in the comments of the wage fixation principles.

If the commission pleases.

COMMISSIONER IMLACH: Thanks, Mr Clues. Mr O'Brien?

MR O'BRIEN: Mr Commissioner, I guess you could give a little more weight to Mr Clues' submissions if circumstances were a little bit different, but Mr Clues has tendered a decision to you of the Federal Commission dated the 6th of May 1993. He has tendered transcript from - what's the date of hearing, the 1st March 1991 - the date is the 25 January 1993 (sic) and Mr Clues refers to some applications that he lodged, and they are dated with his signature - and I said '93 then, I should have said '94 - they are dated 20 January 1994. It is 5 days after the lodgment of those applications.

I don't have any formal instructions on what the organisation's position will be in relation to those applications when they are listed.

I thank Mr Clues for the information that he has put before the commission. I understand that there are concerns about the federal decision, and I ask that you include the statement of Commissioner Gay because Commissioner Gay's statement says, amongst other things, that he finds there is a prima facie case for the review of the federal award to include shift

loadings in the ordinary understood sense of the word in the federal award.

Now, that's all part and parcel of the bundle of issues that Mr Sherry, as I understand it, was referring to in 1991, and so if we are all going to accept sight unseen the outcome of those proceedings, it's possible that the submission will be, well they haven't quite concluded yet because there is currently an application about those shift premium matters.

Now the TCCI has hardly indicated that it has been anxious to implement the federal decision, given that it is almost 8 months since the decision issued.

If we want more than 5 days to consider the application in the context of what's going on, I suggest that that is not unreasonable, and to come to this commission and to say, well, you know, the matter hasn't been listed, the union has expressed some concern to us about following the decision at this stage, and simply putting our hand up to - putting its hand up to our draft order - therefore, you should withhold the \$8.00, obviously the union will have to look very carefully and seriously at the matters that Mr Clues refers to because this organisation is one which has prided itself on proceeding with honour in negotiations.

But it isn't as clear a picture as Mr Clues seeks to portray.

I can also indicate that since the implementation of the federal decision, which is a complex one insofar as its operation by employers, at least one major employer in this State has chosen not to follow the lesser provisions because of their complexity, and perhaps for other reasons of fairness as it sees it.

But, nevertheless, the other application will stand or fall on its own merits, and in my submission the question of the organisation's stance when that application does come before the commission is a matter which ought to be addressed then and not now.

And I stress, Mr Clues' application of 20 January 1994, almost 8 months after the original case, is not an application which would convince the commission that somehow delaying this \$8.00 increase is of importance when the TCCI has been prepared to wait 8 months for what it considers it had an ironclad guarantee to achieve for its members.

So, in short, we would oppose the adjournment and ask that the orders be made, and upon the listing of the other applications we will have to give a response which takes into account matters which Mr Clues has put before the commission today and those matters which we believe need to be considered.

But I think it is - I would hate to think that this is an opportunistic chance taken by the TCCI to prevent the consideration of all matters on the applications by holding the gun at our head in relation to the safety net increase for the people employed in this industry.

COMMISSIONER IMLACH: Yes, Mr O'Brien and Mr Clues, we'll number this statement the ALHMWU.1 - just to acknowledge its source - and could you lead me to where the commissioner made reference to the shift premiums as you mentioned?

MR O'BRIEN: On page 2 in the fourth paragraph:

As to week day work performed after 7.00 pm and before 7.00 am the \$1.03 allowance currently provided as to work during this period is to be substantially increased for work performed from midnight and before 7.00 am.

The claim to eliminate the allowance from 7.00 pm to midnight is rejected.

Further, the Commission finds that in a prima facie sense an arguable case exists for a review of week day work in this industry as to the existence of shift work such as may require an examination of the appropriateness of shift premium.

COMMISSIONER IMLACH: Yes. Thanks, Mr O'Brien. Do you want to make a comment on that, Mr Clues - on this document we are talking about, aren't we?

MR CLUES: Yes.

COMMISSIONER IMLACH: Only.

MR CLUES: Point taken, Mr Commissioner.

In relation to Mr O'Brien's comments that somehow this matter hasn't been resolved, I would suggest that that is a fairly liberal interpretation of the statement.

The reality is that this case took some 3 years before the commission in order for it to be resolved, given evidence from every state, extensive surveys being conducted by AHA.

The reality is that the commission has issued an order arising from his decision. That order now varies the Federal Hotels Award. Those reductions in penalty rates exist and are being paid by employers now in the industry in lieu of those which formerly existed; just as the employer is paying higher rates now for shift loadings between 7.00 am and midnight.

Mr Commissioner, I don't believe that there is any merit in the suggestion by Mr O'Brien that because the commissioner has said there may be applications for a further case to increase shift loadings that we can simply ignore the undertakings that have been given in relation to that matter which has been resolved. And the matter that has been resolved is that of penalty rates.

So, therefore, I would suggest that the TCCI is quite entitled, given the undertakings, to now come before the commission and expect those to be honoured.

Now, Mr O'Brien made some mention of the fact that the union has some concerns, but the reality is that no appeal has been lodged. The decision stands. The period for an appeal has expired.

Therefore the decision of the Federal Commission is now active and basically free of challenge, unless there is a subsequent application to vary the award, which will be done on its merits.

Now if the union wish to run a case in relation to shift loadings and increasing them, they are entitled to do so. But they are irrelevant in terms of the cases before this commission at this point in time - just as any subsequent application that may be made by employers to further reduce the penalty loadings that apply on weekends.

I would like to make other comments in relation to some of Mr O'Brien's submissions, but given the constraints placed on me by the commission I will just resume my seat.

COMMISSIONER IMLACH: I appreciate your cooperation in that regard, Mr Clues.

Now, Mr O'Brien, have you got anything more to say - on that?

MR O'BRIEN: In relation to the statement, the statement says what it says on its face, and it says that in relation to shift loadings that there is a prima facie case to vary them.

And I think I did say before, but if I didn't I apologise, that that matter is before the Federal Commission.

Now it seems to me that to be arguable that is part and parcel of the whole exercise that was under consideration when the matter was before this commission in 1991. But that's a matter to be addressed when that matter comes before the commission. And Mr Clues may or may not be successful with his view that it's irrelevant.

I would suggest that that's a matter to be considered then.

And, really, what Mr Clues is asking is that because he has put in an application 5 days ago, and because we haven't jumped to attention, saluted, and said we'll say yes, that you should withhold the \$8.00.

And, in my submission, in all of the circumstances that's not the appropriate response.

COMMISSIONER IMLACH: Thanks, Mr O'Brien. Now, Mr Clues -

MR O'BRIEN: Well, that was in response I think to Mr Clues's earlier submission.

COMMISSIONER IMLACH: That's correct, yes. What's going on, Mr Clues? You've had a good run.

MR CLUES: I believe that Mr O'Brien has taken advantage in terms of extending his views beyond those of the confines that I was limited to, and I would just like to address why the application has come before the commission at this point in time and not earlier, as has been used as some sort of argument by Mr O'Brien. If I may have the indulgence of the commission?

COMMISSIONER IMLACH: Well, I am indulging you, Mr Clues, but I will and that will be the end of it.

MR CLUES: Thank you very much.

In relation to the timing of our application the TCCI did make approaches to Ms Huxtable of the ALH&MWU back in the latter part of last year - not this year - and the union were not forthcoming in their position in relation to this.

When the application came before the commission for the \$8.00 it is true my knee jerk reaction was to indicate that we're not prepared to grant any more increases until this matter is resolved, and hence my application has now been placed before the commission.

But, the fact of the matter remains true that undertakings have been given, and we are not prepared to award any more wage increases until they are honoured.

If the commission pleases.

COMMISSIONER IMLACH: Thanks, Mr Clues.

Now, I will reserve my decision. What I am doing is reserving my decision in the first case as to an adjournment, and if I decide that there ought to be an adjournment that means the matter is being suspended and no order will issue, but if I reject the adjournment well then I will decide that the money is to be paid.

Adjournments should be decided forthwith in principle, and that's what I will be doing, bt I am going to think about it first.

This matter is closed.

HEARING CONCLUDED