

**TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984

T No. 4277 of 1993

**IN THE MATTER OF** an application by  
the Minister administering the  
Tasmanian State Service Act  
pursuant to section 23 of the Act  
for hearing to vary the Tasmanian  
Ambulance Service Award

re deletion of Clause 23 - Shift  
Work, subclause (f) Stand Down

COMMISSIONER GOZZI

HOBART, 30 March 1993

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER GOZZI: Could I have appearances please.

**MR P.L. NIELSEN:** Mr Commissioner, if the commission pleases, my name is NIELSEN P.L. and I appear with the president, **MR DODDRIDGE R.**, and I apologise for my vice president, Mr P. Templar, on behalf of the Ambulance Employees' Association of Tasmania.

COMMISSIONER GOZZI: Thank you, Mr Nielsen.

**MISS J. COX:** If the commission pleases, JANE COX, representing the Minister for Public Sector Management.

COMMISSIONER GOZZI: Thank you, Miss Cox. Miss Cox, it's the minister's application, would you like to go first?

MISS COX: Thank you, Mr Commissioner. Mr Commissioner, you'll recall that in your interim decision of 11 November last year in relation to matters T.2586 of 1990 and T.3779 of 1992, you determined that clause 23(f) of the Ambulance Services Award, that is the stand down provision, should be deleted from the award with effect from 1 March 1993. That decision was subsequently upheld by a full bench in matter T.4111 of 1992. The application before you today, matter T.4277, seeks the deletion of that provision.

In line with your recommendation in your interim decision, the Tasmanian Ambulance Service and the Ambulance Employees' Association have had meaningful discussions since your decision was handed down and I wish to advise this commission that the parties are now in the final stages of agreeing on a rest and recline policy. There is still one or two points to be sorted out but we believe these are quite achievable.

However, Mr Commissioner, both parties are of a firm view that such a policy should not be included in the award as an award provision. To do so would require any future changes that may be sought by either party on the matter of rest and recline to be subject to an application to this commission. Circumstances in the ambulance industry are continually changing due to many factors and we do not believe that it's appropriate for a policy that may be subject to such changing circumstances to be included in the award. However we recognise that if problems do arise in the future from the policy that we would still have access to this commission. If the commission pleases.

COMMISSIONER GOZZI: Miss Cox, I thought it's an award matter so why wouldn't it go into the award, for the reasons you've nominated?

MISS COX: Well we're seeking the deletion of an award provision. What we want to do is come up with a policy and certainly from the government's point of view we don't see

that a policy should be an award matter.

COMMISSIONER GOZZI: Well the basis of the deletion was that an application would be made to vary the award, wouldn't it? Let me just have a look -

MISS COX: It's on page 19.

COMMISSIONER GOZZI: Page 19?

MISS COX: Yes.

MR NIELSEN: 18 and 19.

MISS COX: The last bit of it on page 19 says: In the circumstances I intend for the existing arrangements to finish, that is subclause 23(f) to be deleted subject to application from the award as from 1 March. In the interim I recommend that the parties develop a rest and recline policy suitable for inclusion in the award. Additionally, I would urge the association to participate in selecting appropriate recliner chairs.

COMMISSIONER GOZZI: Yes, so it wasn't my decision for inclusion in the award.

MISS COX: Well that's as we read it. We don't believe that policy should be an award matter because they are such -

COMMISSIONER GOZZI: Well it's either going to be a rest and recline policy - I mean, what's it going to specify?

MISS COX: When they can and can't recline.

COMMISSIONER GOZZI: Well why shouldn't that be in the award?

MISS COX: We don't believe it is appropriate to be an award matter because it is subject to change.

COMMISSIONER GOZZI: But isn't it an award condition?

MISS COX: Stand down was, which is quite different.

COMMISSIONER GOZZI: Well rest and recline, isn't that a condition of employment?

MISS COX: We don't see it as a condition of employment.

COMMISSIONER GOZZI: Well if it's not a condition of employment, what is it?

MISS COX: It's a policy matter for the director.

COMMISSIONER GOZZI: But surely, if you have rest and recline

that ambulance officers are going to observe, that's a condition of employment, surely. I mean, what do you mean a policy? How do you regulate rest and recline by way of a policy?

MISS COX: Well it's an agreement between the two parties as to what will constitute the policy on rest and recline. I guess it's the same as a policy that's developed by an agency on flex time. That's not an award matter but it's still a policy and it still relates to how people are employed.

COMMISSIONER GOZZI: Look, my impression was when you asked for the deletion that it would be replaced with an award provision. Now you say that's not the case?

MISS COX: We always said that we wanted to develop a rest and recline policy.

COMMISSIONER GOZZI: Are you saying that when you made submissions to this commission as constituted now, in those proceedings you referred to, that the intent wasn't for it to be included in the award?

MISS COX: That's correct, commissioner.

COMMISSIONER GOZZI: Well I'd probably like to adjourn and have a look at the transcript because my feeling was that the condition of employment would be reflected in the award and if any subsequent changes were going to be made it would be subject to application.

MISS COX: Well it was certainly never our intention that it be an award matter because it is a policy.

COMMISSIONER GOZZI: Well I'm having a problem about this term of policy applying to what probably will be a fundamental condition of employment for people that are going to come off ambulance duty or whatever other duty they're on and then go into rest and recline. I mean, how can that be subject to a policy? A policy may be directional as opposed to something that is precise. I mean, is that what you're saying, that the rest and recline policy is going to be a policy with parameters which may or may not apply given particular circumstances?

MISS COX: It's a policy that will determine when people can and can't make use of rest and recline. We don't want it to be prescriptive by saying that it occurs between midnight and 7 o'clock or can't occur between midnight and 3 o'clock.

COMMISSIONER GOZZI: Mm. It just seems to me, Miss Cox, quite candidly, that once again the commission is being put in a position by the minister where the intent of something is not being followed through. You've got your way with respect

to the application to delete rest and recline but, quite clearly, with respect to what I said in my decision I'm being told now that that recommendation is not going to be observed, that you want to do something else.

MISS COX: That's not so, Mr Commissioner.

COMMISSIONER GOZZI: Well that's clearly what it says on page 19. I requested, in fact, recommended that the parties develop a rest and recline policy suitable for inclusion in the award.

MISS COX: Well I guess if we wanted it to remain in the award we would have sought variation to 23(f), not deletion of it.

COMMISSIONER GOZZI: Yes, thank you, Miss Cox.

MISS COX: Thanks, Mr Commissioner.

MR NIELSEN: Well, Mr Commissioner, you know our position from woe to go in regards to we oppose this particular issue and even sought the ability to take it to the full bench and they've made their decision accordingly. And in response to your pages 18 and 19 of your decision in regards to the minister's advocate, we've already processed along the line of establishing a working party. I must say it's only an infancy working party at the moment. It has not been put before our executive or before our general members and therefore it's no final position of what the rest and recline policy is to be.

COMMISSIONER GOZZI: Well I certainly -

MR NIELSEN: You've been fairly patient with us, Mr Commissioner, to be frank with you, and you've given us a certain amount of liberty but, like, this has been a very .... matter within our association and there are some thoughts that disturb me, to be quite frank, as to how this matter - with no disrespect to your decision or to the full bench - as to how this matter come to where it is because from my own experience, and with great respect to you, sir, before you on other matters, this was a matter at a regional level which you said in that second paragraph of page 19, where you found it unacceptable for the restocking of ambulance officers. We were always of the understanding, sir, that the matter ought to have been processed at local regional level between the parties, then ultimately unsuccessful processed further up to senior management level between the principal officers and the senior management and then, with great respect, sir, if not finalised to ultimately file a section 29.

We've been confronted with what is fact now, Mr Commissioner, that when you have a problem with a clause of the award you delete it. Is it to say in the future, sir, that when we have

a problem with a clause in the award - and I can assure you we do have some problems - then do we proceed to delete it?

COMMISSIONER GOZZI: Mr Nielsen, the decision has been made that the stand down provision ought to go.

MR NIELSEN: We're not challenging that fact of life, sir. As much as we dislike it, that's a fact.

COMMISSIONER GOZZI: Well I can understand you might dislike it, but that's life.

MR NIELSEN: Yes.

COMMISSIONER GOZZI: The point I'm concerned about is that the intention was that the stand down clause would go and be replaced with a rest and recline because it was not my intention that people on duty be on duty for 'X' number of hours and be continuously on duty, that there would be a capacity to have rest and recline. Now I'm being asked to buy a pig in a poke, to delete the clause with nothing put before me to take its place.

MR NIELSEN: Well nothing is of substance to put before you as I know the position between the parties. It's only very early days in what we believe to be the - and I suppose, in fairness to what the minister's advocate is trying to say, that that may or may not need to stand a certain amount of testing of time before it becomes an acceptable operational.

But, Mr Commissioner, we basically accept what the minister's advocate has been saying. But in the ultimate we have an open mind on these matters.

COMMISSIONER GOZZI: Yes, very well. Thank you, Mr Nielsen. Anything further, Miss Cox?

MISS COX: No, Mr Commissioner, thank you.

COMMISSIONER GOZZI: Well I reserve my decision on the matter.

HEARING CONCLUDED