

IN THE TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T. No. 265 and 266 of 1985

IN THE MATTER OF applications by the
Tasmanian Public Service Association
and the Tasmanian Trades and Labor
Council to vary salaries and
allowances in nominated public and
private sector Awards in accordance
with the National Wage Case decision
of 4 November 1985

FULL BENCH

PRESIDENT
DEPUTY PRESIDENT
COMMISSIONER WATLING

HOBART, 26 November 1985

TRANSCRIPT OF PROCEEDINGS

(RESUMPTION)

PRESIDENT:

Are there any alterations to the appearances previously announced?

MR LENNON:

Yes, Mr President. **LENNON, P.** I appear for a number of organizations today, as well as for the Trades and Labor Council: the Marine and Harbour Trust Employees' Association; Actors Equity of Australia; Federated Liquor and Allied Industries Employees' Union of Australia; Amalgamated Metal Workers' Union; Federated Clerks' Union; A.D.S.T.E.; Amalgamated Society of Carpenters and Joiners; Federated Furnishing Trades Society; Ambulance Employees' Association; The Bakery Employees and Salesmen's Federation; Federated Millers and Mill Employees' Association; A.M.I.E.U.; A.S.E.; Allied Engineering and Ironworkers' Association, Tasmanian Branch; Australian Theatrical and Amusement Employees Association; Federated Ironworkers' Association; United Sales Representatives and Commercial Travellers' Guild of Australia; Australian Hairdressers, Wigmakers and Hairworkers Employees' Federation; Electrical Trades Union; Shop Distributive and Allied Employees' Association; Timber Workers' Union; Association of Tasmanian Further Education Staff; The Hospital Employees' Federation of Australia, No. 1 Branch; The Hospital Employees' Federation of Australia, No. 2 Branch; Plumbers and Gasfitters' Union; Federated Rubber and Allied Workers' Union; Federated Storemen and Packers' Union of Australia; Tasmanian Technical Colleges Staff Society; Police Association of Tasmania; Professional Musicians Union of Australia, Tasmanian Branch; Operative Painters and Decorators' Union; Printing and Kindred Industries' Union; United Firefighters Union; Tasmanian Catholic Education Employees Association.

MR EVANS:

EVANS, A. I now also appear for the

JS/CW - 26.11.85

APPEARANCES

MR EVANS: Heads of Tasmanian Government Departments Association.

MR LYNCH: LYNCH, J.T. I appear on behalf of The Federated Engine Drivers and Firemen's Association of Australia.

MR CURRIE: CURRIE, N.A. I appear on behalf of the Building Workers Industrial Union.

MR CORDWELL: CORDWELL, M. I appear on behalf of The Operative Plasterers and Plaster Workers Federation, Tasmanian Branch.

MR COVE: COVE, MARTIN, appearing on behalf of the Tasmanian Institute of Superintendents of Education.

PRESIDENT: I think you have appeared previously, Mr Cove?

MR COVE: Yes, Mr President.

MR BUTLER: BUTLER, E.J., appearing on behalf of the Australian Workers Union.

MRS McCAMBRIDGE: McCAMBRIDGE, L., on behalf of the Royal Australian Nursing Federation, Tasmanian Branch.

MS CROTTY: CROTTY, GAIL, for the Tasmanian Teachers Federation, and the Tasmanian Institute of School Supervisors.

MR SENATOR: SENATOR, GORDON, for the Tasmanian Medical Practitioners Society.

MR DOWD: DOWD, M.J., on behalf of the Amalgamated Society of Carpenters and Joiners, and the Federated Furnishing Trades Society.

MR HARRIS: HARRIS, G.K., representing the Tasmanian Prison Officers Association.

PRESIDENT: I think you have previously appeared Mr Harris?

MR HARRIS: Yes.

JS/CW - 26.11.85

APPEARANCES

MR TARGETT: **TARGETT, P.E.**, on behalf of the Shop Distributive and Allied Employees' Association.

MR SHIRLEY: **SHIRLEY, C.B.**, on behalf of the Tasmanian Catholic Education Employees Association.

MS SMYTHE: **SMYTHE, E.**, on behalf of the Australian Theatrical and Amusement Employees Association.

MR PEARCE: I merely wish to announce a changed appearance, Mr President. I now appear for the Minister for Industrial Relations, under section 27 of the Act in place of Mr Jarman.
PEARCE, A.

PRESIDENT: Ladies and gentlemen, the Commission, constituted as previously, has reconvened today for the sole purpose of taking commitments regarding no extra claims.

 It will be recalled that this intention was made clear on pages 14 and 15 of our 19 November decision on matters T.265 and T.266 of 1985.

 Yes, Mr Lennon?

MR LENNON: Thank you, Mr President. The trade unions have met, and have determined to give a commitment to this Commission in line with its request on pages 14 and 15.

 We have agreed to give the commitment in the following terms:

 "The Trades and Labor Council reaffirms the commitments given in 1983 on the basis upon which those commitments were given and to accept the extension of those commitments for the requested six months.

 We indicate that the undertakings that we have just given must be seen in conjunction with the commitment given by unions

MR LENNON:

through the A.C.T.U. to the A.C.T.U. Federal Government Agreement on wages, taxation, superannuation and other related matters."

I have a letter from all of those organizations (that I indicated I appear on behalf of) indicating what I have just read out.

PRESIDENT:

Mr Lennon, you said that you are prepared to give a commitment for a period of six months. You made no reference to the remaining part of the 'no extra claims' commitment required by this Commission as set out in Attachment 'A', namely, "or until the Principles are varied or replaced".

MR LENNON:

That is correct, Mr President. The commitment that we have given is exactly the same as the commitment that has been given in the Australian Commission by the Federal unions, of which most of the unions in this State are branches. The commitment which we have given is the commitment that has been given and accepted by the Australian Commission.

That is our position with respect to the giving of the commitment.

As has been indicated in the Australian Commission, the commitment has been given for six months. We are prepared to give the commitment for six months.

PRESIDENT:

This is not the commitment that we have asked of you?

MR LENNON:

We are prepared to give the commitment that I have indicated to you, Mr President - which is for six months.

DEPUTY PRESIDENT:

Mr Lennon, can you perceive a situation where the Principles might be further clarified, one way or another, before the expiration of six months?

JS/CW - 26.11.85

PRESIDENT - DEPUTY PRESIDENT - LENNON

DEPUTY PRESIDENT:

In other words, would the commitment to the extent that it has been given, in your view, not lead to a situation where we would have a further hiatus? Would you see to it that we don't end up with a hiatus period by approximately April of next year?

MR LENNON:

No, Mr Deputy President, I certainly do not believe that there was a demonstrated problem prior to the last national wage case, with respect to unions considering themselves not bound by the Wage Fixation Principles. We indicated in that case that we hadn't used the opportunity of the hiatus period to mount a significant number of claims in the community.

The commitment that we have given puts us in exactly the same position as the unions in the Australian Commission. We are prepared to give a commitment for six months, in line with the commitment that was requested in the national hearing and accepted in the national hearing.

Without foreshadowing too far in advance what this Commission may or may not do with respect to the Principles, the Principles that we have in place, in this Commission, are largely the same as those Principles in place in the Australian Commission. I would not expect any great change to the Principles in this Commission before a change was made, if at all, in the Australian Commission.

Certainly the union movement would not take the opportunity to put at risk the centralized wage fixation system during any small hiatus period that may arise out of the commitment that we are prepared to give.

DEPUTY PRESIDENT:

Would you then see that there is a possibility that there might be some period of time, beyond the six

DEPUTY PRESIDENT:

months, when, technically, the commitment would have expired?

It must be fairly obvious that the Commission is required to try to cover a situation where there is no doubt as to whether or not the Principles will continue.

Would you see, in the present programme of things, that the next four months (a very difficult period of the year) would be sufficient time for the next review of the Principles to be completed and decided?

MR LENNON:

Certainly that is the aim of the trade union movement. These matters are not totally in our hands. I certainly don't believe that the way in which we have given the commitment detracts from the fact that we did not seek to use that small hiatus period between the giving of this commitment, and when our previous commitment expired, to mount claims inconsistent with the Principles, throughout industry in this State. No one can demonstrate that. If they can, they should have done so at the national wage case. The commitment that we are prepared to give is exactly the same as the commitment that has been given by the Federal branches of most of the unions which I represent today.

The unions are in a position where they are bound by the national policy of their unions. The trade union movement has met, discussed and agreed to recommit themselves to the Principles in the terms that I have announced.

I do not believe that that will create problems for this Commission, at the end of the six-month period, if indeed there is a hiatus period between the expiration of our commitment and what might follow after that. I think we have demonstrated our good faith towards

JS/CW - 26.11.85

DEPUTY PRESIDENT - LENNON

MR LENNON:

a centralized wage fixation system in the past two years.

If someone could have demonstrated to this Commission, at the national wage case, that that wasn't correct, then that was the time to do so.

I don't believe that the commitment that we are prepared to give today will create any problems for the Commission during next year.

PRESIDENT:

Mr Lennon, do I take it from what you have said to the Deputy President that there is no fundamental disagreement with the thrust of the message that we have attempted to convey in Attachment 'A', namely that the commitment is for a period of six months, or until the Federal Principles are varied, or replaced?

We are all aware that that is, in effect, phase 2 of the exercise now standing part-heard before the Federal Commission. That is what we are concerned about. We wanted to cover that situation.

The Deputy President has made it abundantly clear that we do not want a hiatus period. Nobody has suggested that any constituent members of the T.T.L.C. have broken the rules. You would be aware of the submissions that fell from the Government representatives during this case. It necessitated the Bench adjourning to consider what had been put to us regarding the application or otherwise of the Principles. We are attempting to guard against a recurrence of that.

MR LENNON:

Our position is quite simply this: We are prepared to give a commitment to this Commission in return for the increase in wages and salaries as determined by the Commission. We are not prepared to give a commitment beyond that, because we don't know what lies beyond the next six months.

JS/CW - 26.11.85

PRESIDENT - LENNON

MR LENNON:

This Commission may decide not to give the national wage case, if there is a case (as I imagine there will be in April next year).

That being the case, the union movement says that it can't give a commitment if the central issue of the Principles, that is that wages and salaries will be moved every six months by the C.P.I., is not put in place.

We are prepared to give a commitment, at this stage, in line with the national commitment for six months. I don't believe, having said that, that it should necessarily follow that the union movement will use the opportunity, if a small hiatus period occurs, to mount claims inconsistent with the Principles, throughout industry in this State. That certainly can't be demonstrated.

We did not perceive the problems that the State Government perceived with respect to the small hiatus period. We do not agree with the statements that they made. Certainly there was no demonstration that the union movement had attempted to circumvent the Principles in that small hiatus period.

We cannot give a commitment in any terms other than those I have given.

PRESIDENT:

From what date would the six-month commitment run, Mr Lennon?

MR LENNON:

From the date of operation of your decision, I would imagine.

PRESIDENT:

From the date of operation?

MR LENNON:

Of your decision. Yes.

PRESIDENT:

Mr Evans?

MR EVANS:

Thank you, Mr President. I would echo the views expressed by my

JS/CW - 26.11.85

PRESIDENT - LENNON - EVANS

MR EVANS:

colleague, Mr Lennon.

I appreciate the desire of the Commission to short-circuit some things to put forward a proposal for a commitment which could expedite the final determination of these matters. I think it is incumbent upon me, on behalf of the organizations I represent, to indicate that a commitment by a union not to pursue any extra claims, either award or over-award, and to abide by a set of principles, is a commitment which is not given lightly.

There is no certainty in the matter that is now before the national wage Bench. Nor is there any certainty as to what would happen in this Commission. I felt that it was difficult to come forward with a commitment in the terms proposed, because I would be loath to give a commitment which, at the outset, I could not be totally satisfied that we could keep.

That is not to suggest that we are about to break our commitments. We are quite happy. Indeed, we will give a commitment in the terms outlined by Mr Lennon. These terms bind us to at least the period of operation of this decision. In the event that there is some variation of the Principles, then that is a matter which I would imagine will be argued before this Commission. It will be determined by this Commission. At that stage, we will have to evaluate our undertakings, and our commitments to see if we will continue with them.

It may well be, for example, that this Commission decides not to vary the Principles, even though there might be a variation on a national basis.

As a recent affiliate of the A.C.T.U., we are very mindful of our duties and obligation to that body. When it, in its wisdom, considers

JS/CW - 26.11.85

EVANS - SUB

MR EVANS:

the type of commitment which its constituents should give on a national basis, and that the commitment should also flow through into the States, then, as I said, as a recent affiliate, we would not be willing to flout a decision of the A.C.T.U.

The terms that were proposed by Mr Lennon, and which I will echo, were terms which were proposed by the A.C.T.U. to its affiliates after some deep consideration.

It may be that we could have been more fortuitous with regard to time, so that we could have had that before the Commission when we were actually arguing the case for the increase. The Commission could have taken account of it then, but unfortunately we did not have it. We are now in a position, today, where we are quite happy to put forward a commitment. We think it would be appropriate for the Commission to accept it.

I would echo the comments of Mr Lennon; I would doubt very much that there will be a hiatus period. If there is, then I think it would be treated in exactly the same way as was the suggested (I put it no higher than that) hiatus that existed some weeks ago.

We are very mindful of the need to have stability in wage fixation, not only in Australia as a whole, but particularly in this State. We have played our part and we would not lightly destroy that stability.

I do not see it as a major problem. I would expect, albeit there will be the intervention of the Christmas/New Year break, that we will see a set of varied Principles or, alternatively, a reaffirmation of the existing Principles, before us by February or March of next year.

JS/CW - 26.11.85

EVANS - SUB

PRESIDENT:

Mr Lynch?

MR LYNCH:

We would like to put on transcript that we reaffirm the commitments given in 1983, and the basis on which those commitments were given, and that we accept the extension of those commitments for the requested 6 months.

I would also like to add that those undertakings are not given lightly. They are given by this union in conjunction with the commitments given by the A.C.T.U. to the A.C.T.U./Federal Government agreement on wages, taxation, superannuation and other related matters.

PRESIDENT:

Thank you, Mr Lynch.

Yes, Mr Hansch?

MR HANSCH:

Mr President, the Transport Workers' Union reaffirms the commitments given in 1983, on the basis on which those commitments were given. We accept an extension of those commitments for the requested 6 months.

The undertakings given by the union must be seen in conjunction with the commitments given by the unions through the A.C.T.U. to the A.C.T.U./Federal Government agreement on wages, taxation, superannuation and other related matters.

PRESIDENT:

Thank you, Mr Hansch.

Yes, Mr Harris?

MR HARRIS:

Thank you, Mr President. **HARRIS, G.,**
Tasmanian Prison Officers
Association.

I have been instructed by the Executive of the Association, that the Tasmanian Prison Officers Association reaffirms the commitment given in 1983, that it will not

JS/CD - 26.11.85

PRESIDENT - LYNCH - HANSCH - HARRIS

MR HARRIS:

pursue any extra claims, award or over-award, except where consistent with the Wage Fixation Principles of the Tasmanian Industrial Commission. We accept the continuation of the commitment for a period of 6 months, or until the Principles are varied or replaced.

PRESIDENT:

Thank you, Mr Harris.

Yes, Mrs McCambridge?

MRS McCAMBRIDGE:

Mr President, the Royal Australian Nursing Federation, Tasmanian Branch, reaffirms the commitment given in 1983, on the basis upon which that commitment was given. It accepts the extension of that commitment for the requested 6 months.

The undertakings given by the R.A.N.F., Tasmanian Branch, must be seen in conjunction with the commitments given by the unions through the A.C.T.U. to the A.C.T.U./Federal Government agreement on wages, taxation, superannuation and other related matters.

PRESIDENT:

Thank you, Mrs McCambridge.

Yes, Mr Currie?

MR CURRIE:

Thank you, Mr President. The B.W.I.U. reaffirms the commitments given in 1983, on the basis upon which those commitments were given. It accepts the extension of those commitments for the requested 6 months.

The undertakings given by the B.W.I.U. must be seen in conjunction with the commitments given by the unions through the A.C.T.U. to the A.C.T.U./Federal Government agreement on wages, taxation, superannuation and other related matters.

PRESIDENT:

Thank you, Mr Currie.

Ms Crotty?

JS/CD - 26.11.85

PRESIDENT - HARRIS - McCAMBRIDGE -
CURRIE

MS CROTTY:

Thank you Mr President.

On behalf of the Tasmanian Teachers' Federation and the Institute of School Supervisors we concur with the arguments put to this Bench by Mr Lennon and Mr Evans. We also accept the commitment outlined by the A.C.T.U. Wages Committee. Since we are one of the largest affiliates of the A.C.T.U., we can do nothing else.

I would like to read into transcript the commitment of the T.T.F. and the Institute of School Supervisors. We reaffirm the commitment given in 1983 on the basis upon which that commitment was given. We accept the extension of that commitment for the requested 6 months.

The undertakings given by the T.T.F. and the Institute of School Supervisors must be seen in conjunction with the commitments given by the unions through the A.C.T.U., in the A.C.T.U./Federal Government agreement on wages, taxation, superannuation and other related matters.

PRESIDENT:

Thank you.

Mr Cordwell?

MR CORDWELL:

Mr President, **CORDWELL, M.**

The Plasterers' Union reaffirms the commitment given in 1983, on the basis upon which that commitment was given. It accepts the extension of that commitment for the requested 6 months.

The undertakings given by this union are to be seen in conjunction with the commitments given by the unions through the A.C.T.U. to the A.C.T.U./Federal Government agreement on wages, taxation, superannuation and other related matters.

PRESIDENT:

Thank you, Mr Cordwell.

JS/CD - 26.11.85

PRESIDENT - CROTTY - CORDWELL

PRESIDENT:

Dr Senator?

DR SENATOR:

Mr President, the Australian Medical Practitioners' Society undertakes that for a period of 6 months it will not pursue any extra claims, award or over-award, except where consistent with the Principles adopted by the Commission.

This undertaking is consistent with previous submissions of the Society, that the decisions of the Tasmanian Industrial Commission, when considering flow-ons from national wage case decisions of the Australian Conciliation and Arbitration Commission, should be consistent with the decisions of the National Wage Bench.

PRESIDENT:

Thank you Dr Senator.

Mr Butler?

MR BUTLER:

The A.W.U. Federal Executive, as of last week, carried the following resolution: The A.W.U. reaffirms the commitments given in 1983, on the basis upon which the commitments were given. It accepts the extension of the commitments for the requested 6 months.

The undertakings given by the A.W.U. must be seen in conjunction with the commitments given by the unions through the A.C.T.U. to the A.C.T.U./Federal Government agreement on wages, taxation, superannuation and other related matters.

PRESIDENT:

Thank you, Mr Butler.

Yes, Mr Cove?

MR COVE:

M. COVE. The Institute of Superintendents of Education reaffirms the commitment given in 1983 that it will not pursue any extra claims, award or over-award, except where consistent with the Principles of Wage Fixation of the Tasmanian Industrial Commission. It

JS/CD - 26.11.85

PRESIDENT - SENATOR - BUTLER - COVE

MR COVE:

accepts the continuation of the commitment for a period of 6 months or until the Principles are varied or replaced. The undertakings given by this union must be seen in conjunction with the commitment given by the unions through the A.C.T.U. to the A.C.T.U./Federal Government agreement on wages, taxation, superannuation and other related matters.

PRESIDENT:

Thank you, Mr Cove.

Mr Lennon?

MR LENNON:

Mr President, do you wish me to read into transcript all of the documents that I have, or simply to hand in the documents?

PRESIDENT:

You should hand in the documents. Will that indicate the identity of the awards in which those for whom you appear have a registered interest?

MR LENNON:

Yes.

PRESIDENT:

You have pre-empted me, Mr Lennon.

We will require that form of documentation from all those who have spoken thus far, and from all those who are yet to speak.

Yes, Mr Evans?

MR EVANS:

If the Commission pleases, I have 59 documents which are an undertaking by the Tasmanian Public Service Association in respect of the awards to which we are party.

PRESIDENT:

Thank you.

One which simply listed the awards would have been sufficient, Mr Evans.

Thank you, Mr O'Brien?

JS/CD - 26.11.85

PRESIDENT - COVE - LENNON - EVANS

MR O'BRIEN:

If the Commission pleases, K. O'BRIEN, from the Federated Miscellaneous Workers' Union. I apologize for not appearing earlier in this matter.

The Federated Miscellaneous Workers' Union reaffirms the commitment given in 1983, on the basis upon which that commitment was given. It accepts the extension of that commitment for the requested 6 months.

The undertakings given by this union must be seen in conjunction with the commitments given by the unions through the A.C.T.U. to the A.C.T.U./Federal Government agreement on wages, taxation, superannuation and other related matters.

I note that there is a requirement to lodge a written form of that commitment in relation to the awards in which my organization has an interest. My organization will do so.

PRESIDENT:

We wanted each organization giving a commitment, to identify the awards in relation to which it has a registered interest. Will we be receiving such a document, Mr O'Brien?

MR O'BRIEN:

Yes.

PRESIDENT:

Yes, thank you.

If there is any doubt in the mind of any employee organization regarding an award, or the awards, in relation to which they have a registered interest, the Registrar will be only too pleased to supply a list of those awards.

Have we heard from everyone?

...

Yes, Mr Abey?

MR ABEY:

Mr President, when you asked 'from everyone', did you mean only from the employees' side or from everybody?

JS/CD - 26.11.85

PRESIDENT - O'BRIEN - ABEY

PRESIDENT:

If it were left to me I would expect all employers and organizations to give a commitment. It seems to me that no one is exempt. I thought that that was made clear in our decision. The Federal decision, however, did not seem to pick up that point clearly.

I think that we would be very pleased to hear from you, Mr Abey.

MR ABEY:

Thank you, Mr President.

You did make it very clear in your decision that you believed that there should be a commitment, not only from the employee organizations, but also from the employers.

You rightly address the point that that is not a requirement under the Federal Commission. Whether or not it should be so is another question. Without recourse to any of my colleagues, I am sure that the employers generally would be happy to give a commitment not to do anything outside the Wage Fixation Guidelines. This would be provided that they could be assured that the other side of the fence would not attempt to kick them to death, from time to time, by the implementation of industrial action.

Leaving that aside; I think that it speaks for itself.

...

On the question of the term of the commitment; I think that the Commission has quite clearly attempted to overcome the hiatus situation which has developed.

I understand the submissions of the unions on this question. I know what the Commission intended, but from the T.C.I.'s point of view, we do not believe that a great deal turns on that issue. We are happy to accept a situation where the commitment is given for the 6 months, in line with

MR ABEY:

the Federal decision.

I would make the observation that the commitment given to no extra claims is in accordance with the Principles. It is not a commitment to the Accord between the A.C.T.U. and the Federal Government, to which neither this Commission, nor the employers, are party.

I note that virtually all of the commitments given today (I will not say that they were "qualified" because they were given in clear terms) had a rider making reference to the latest version of the Accord.

I would like, in particular, to place on record that we do not see the latest agreement (Accord Mark II) and the Principles as necessarily being synonymous. This is particularly where they relate to the question of superannuation, and certain other matters.

The other point that I would like to make clear beyond any question, is that the appearances in Mr Lennon's submission were in fact appearances on behalf of individual unions. He said that the T.T.L.C. is prepared to recommit itself, notwithstanding that he had entered a large number of appearances.

I have no difficulty at all with Mr Lennon appearing on behalf of individual unions. However, in our submission, we suggest that the Commission should reject outright the supposition that the T.T.L.C. can give a commitment on behalf of the other unions.

I am talking about the T.T.L.C. as an organization. To do so is not in any way to denigrate the role of the T.T.L.C. It has a very important role.

MR ABEY: Quite clearly, the commitments given to this Commission and to the Federal Commission were on behalf of individual unions, and not councils. I do not believe that there should be any suggestion of a departure on this occasion.

PRESIDENT: I took it that Mr Lennon was appearing as agent for those organizations.

MR ABEY: As long as that is clear; but he did use the phrase "the T.T.L.C. reaffirms" et cetera et cetera.

PRESIDENT: Yes. Was it a slip of the tongue Mr Lennon?

MR LENNON: Yes, Mr President. I did offer to read out all of those letters to you.

PRESIDENT: The letters have been tendered by each of the unions.

MR ABEY: I accept that. There have not been any copies sent to this end of the table. However, that is the only point that I wish to make in regard to that particular matter.

PRESIDENT: Yes.

MR ABEY: Mr President and members of the Bench, we would like to make a submission in respect of the Quarrymens Award. Mr Butler for the A.W.U. has today reaffirmed the commitment of his organization to the Wage Fixation Principles.

The A.W.U. served a claim on a firm known as the David Mitchell Estate, which runs a limestone quarry in the Mole Creek area. That claim was served in recent times - I do not have the precise date. It sought the introduction of a service pay of after 1 year \$10.00, after 2 years \$15.00, after 3 years \$20.00.

I think that it goes without saying that a claim of that nature, notwithstanding that it is an over-award claim, is clearly outside the

MR ABEY:

Principles.

The company concerned responded to the A.W.U. on 13 November, in the following terms :

"We wish to advise that your request is refused because contrary to your organization's, Darryl Brown's, comment this week, we believe the claim is outside of the principles of your previous commitment.

Furthermore, unless the claim is withdrawn immediately we would feel obliged to lodge an application to withhold the current 3.8% decision from the Quarrymens Award."

I have spoken with Mr Butler this morning. It would appear that the claim has not been withdrawn. There has not been any industrial action associated with it - certainly not to my knowledge. Nonetheless, it is a claim made on a basis which is clearly outside the Wage Fixation Principles. It goes against the commitment which is being given here today.

As a consequence, unless the claim is withdrawn, it would be our submission that the 3.8% should be withheld from the Quarrymens Award.

The final point that I would like to make is in relation to the Aerated Waters Award.

The Aerated Waters Award was in fact excised from your original decision. Can you perhaps give me some guidance on how that award will be dealt with? Is it to be dealt with by the Full Bench, or by a Commissioner, or what?

PRESIDENT:

It will be dealt with by Mr Commissioner Watling sitting alone.

JS/CD - 26.11.85

PRESIDENT - ABEY - SUB

MR ABEY: Thank you. If the Commission
pleases.

PRESIDENT: Mr Butler, can you help us with the
matter raised by Mr Abey?

MR BUTLER: A claim had been put to the company
some time ago. The claim has been
lodged, but no action has been
taken. I have been in Sydney for
about one week; to my knowledge no
action has happened to this stage.

The problem arises when people go
from that employer to another State,
or are on loan to another employer in
another State, and find that they
have service pay in other States.

That is how the problem arises within
this State.

I do not know whether or not this
comes under the Principles. I have
not looked at them properly in that
sense. However, there is a problem
in the quarry industry in Victoria,
and in New South Wales, with dealing
with the service payment.

When a person is transferred to
another State, that person discovers
that "an over-award payment" does
exist. When they return to Tasmania
they are not in receipt of that
payment. That is part of the
problem.

PRESIDENT: Yes. Our difficulty is that anything
that is outside the Principles, is
outside the Principles. We did not
make the rules.

MR BUTLER: I understand, Mr President.

Sometimes I think that the people who
make the rules are not very wise
either.

JS/CD - 26.11.85

PRESIDENT - BUTLER

MR BUTLER: That is my own view.

PRESIDENT: Perhaps those who break them are even less so.

MR BUTLER: The A.W.U. has not broken the rules. It has served a claim. The claim will be left there, until we talk to the employers concerned.

I hope that that satisfies you. I hope that that overcomes the problem.

MR ABEY: It does not, regrettably.

The Principles are very clear; you cannot pursue claims whether they be award, or over-award.

Clearly the claim has not been withdrawn, and as such our application stands.

PRESIDENT: How many other organizations are party to the Quarrymens Award?

MR ABEY: I do not know.

PRESIDENT: The Federated Clerks' Union? The F.E.D.F.A.?

MR FRY: It is one of the awards to which we are not respondent.

PRESIDENT: I see.

MR LENNON: I think that it is important to understand something in the context of what Mr Butler has said. I thought that he indicated that although the claim had been lodged, they were not actually pursuing the claim at this time.

In that context I would have to indicate that I do not believe that his organization is acting outside the Principles. Although they have lodged the claim - which he indicated they had lodged some time ago - they are not actually pursuing it at this stage. Therefore it would not be

MR LENNON:

inconsistent with the Principles. I would suggest, as such, that the submissions of Mr Abey should be rejected.

PRESIDENT:

Are you suggesting then, Mr Lennon, that to lodge claims which, prima facie, appear to be outside the Principles, is in order, provided that you do not pursue them?

MR LENNON:

The commitment given by the unions was that we would not pursue claims. I understand, from what Mr Abey has said, that there is no indication of industrial action as such. The establishment and Mr Butler have indicated that the organization, although it had lodged a claim, was not pursuing it. He intended to have discussions with the company in an attempt to resolve the problem. I think, as such, that it is too early for this Commission to make a decision, not having heard all of the facts.

We have heard from Mr Butler that his organization is not pursuing the claim, and that the actions of the union are not inconsistent with the Principles.

PRESIDENT: Thank you. Mr Butler?

MR BUTLER: We have a similar problem in dealing with the Federal award. It is out of ambit. Do you mean to say that if we lodge a new Federal award to overcome the problem with the ambit, then we would be going against the Principles? It has already been out of ambit for the last 4 years.

The employers know that. We know it. The Commission knows it. They want to rectify the matter. Are we going to be caught with the Guidelines, because of that situation? We have a similar situation here.

PRESIDENT: This is only an ambit claim though?

MR BUTLER: Yes.

PRESIDENT: Does that help you, Mr Abey?

MR ABEY: As I have clearly understood it; Mr Butler acknowledged that this claim is an ambit claim?

PRESIDENT: That is what he said.

MR ABEY: Perhaps he would like to indicate the degree of ambit.

PRESIDENT: The entire claim, I would imagine.

MR ABEY: I don't want to create a situation. I understand his submission in relation to the ambit claim within the Federal Commission. Certainly, the Principles would be seen as nonsensical if they prevented that situation.

If this claim is a real one, and is to be pursued with vigour, then clearly our application would stand.

I am prepared to accept what Mr Butler has to say; that it is in fact an ambit claim. If he is saying that it exists, but it is not going to be pursued whilst the current

MR ABEY:

Principles are in place, then we would not pursue our application. I am not yet entirely clear on that point.

PRESIDENT:

He said that he is not pursuing it. He said that it is an ambit claim. He has given a commitment for 6 months. Am I correct in that understanding, Mr Butler?

MR BUTLER:

That is correct, Mr President.

MR ABEY:

On that basis I will withdraw.

PRESIDENT:

Thank you. Mr Fry, I am sorry to disappoint you, but you are party to that award.

MR TAYLOR:

Mr President, I rise to support the submissions of Mr Abey up to the point where he started to deal with the Quarrymens Award and the Aerated Waters Award.

I do not disagree with what he was saying, but they are matters particular to the Tasmanian Chamber of Industries. The Australian Mines and Metals Association certainly stands in support of those matters which Mr Abey referred to in his opening address.

PRESIDENT:

Thank you, Mr Taylor. We will adjourn briefly to consider the form of commitment given by the organizations this morning. We would ask you to remain. When we return we will indicate our acceptance, or otherwise, of what has been put.

...

We remind the parties that our decision of 19 November sought a recommitment to the Principles for a further period of 6 months, or until those Principles were varied or replaced.

However, we note that the unions appearing today have in the main only given their commitment for a further period of 6 months.

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PRESIDENT - BUTLER - ABEY - TAYLOR

PRESIDENT:

While this does not fully meet our requirements, we nonetheless understand the context in which those commitments have been given.

Nevertheless, we are confident that no organization would wish to see a hiatus period develop between now and the time when this Commission is required to review the current Principles.

For these reasons we are prepared to accept the form of commitment given. Subject to being satisfied, following a check of registry records, that each organization having a registered interest in an award of this Commission has given a commitment in relation to that award, orders giving effect to our decision will be issued by individual members in due course.

We would, however, make this observation. The A.C.T.U./Federal Government agreement on wages, taxation, superannuation and other related matters, is not and has not been an issue before this Commission. For the most part it relates to matters falling outside the jurisdiction of this Commission.

That concludes this matter.

HEARING CONCLUDED