

IN THE TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T. No. 30 of 1985

IN THE MATTER OF THE GENERAL  
CONDITIONS OF SERVICE PRINCIPAL AWARD

RE INTERPRETATION OF PRINCIPAL AWARD.

HOBART, 13 FEBRUARY, 1985.

PRESIDENT

TRANSCRIPT OF PROCEEDINGS

PRESIDENT:                   Appearances thank you.

MR SIMMONDS:                 If the Commission pleases  
J. Simmonds for the Hospital  
Employees' Federation of  
Australia Tasmanian Branch No. 2  
and also Tasmanian Branch No. 1.

PRESIDENT:                   Thank you Mr Simmonds.

MR MARTIN:                   Mr P. Martin for the Mental  
Health Services Commission, Sir  
and appearing with me  
Mr J. Woodworth.

PRESIDENT:                   Thank you Mr Martin.

MR JARMAN:                   If the Commission pleases I  
seek leave to intervene in this  
matter on behalf of the  
Tasmanian Government, Jarman M.

PRESIDENT:                   Yes, Mr Jarman. Thank you.  
I think you are a statutory  
intervenor. However, Mr Jarman  
I would be considerably assisted  
if you could inform the parties  
and the Commission under what  
particular part of the Act you  
are intervening - whether it is  
public interests or any other  
matter.

MR JARMAN:                   Yes, Mr President. Under section  
27 of the Act a Minister may on  
behalf of the Crown intervene in  
the public interest and we see  
this matter as lying in that  
particular area.

PRESIDENT:                   Thank you Mr Jarman.

                               Yes Mr Simmonds.

MR SIMMONDS:                 If the Commission pleases Mr  
President this application has  
been taken over by the Industrial  
Commission from the Public  
Service Board. It has in fact  
been outstanding since the 4 July  
1984. I am pleased that the  
Commission has been able to deal  
with such matters with such speed

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APPEARANCES

1.

MR SIMMONDS:

compared to the Public Service Board.

Sir, it deals specifically with clause (iv) sub-clause (d) of the General Conditions of Service Award and deals with a difference of the interpretation that currently exists surrounding that clause between the Hospital Employees' Federation (Tasmanian Branch No.2) and the Mental Health Services Commission and relates to the position of Social Trainers.

That clause states that an officer holding a current St John Ambulance First Aid Certificate or a certificate deemed by the controlling authority to be equivalent thereto who is nominated and required by the controlling authority to perform first aid duty shall be paid an allowance and the allowance rates are set out. I think it is currently \$338 - yes \$338 per annum.

If I could just table two exhibits. I would like entered first the correspondence dated 5 June as the first one.

PRESIDENT:

That will be Exhibit S1.

The second document which bears the Mental Health Services Commission letterhead will be Exhibit S2.

MR SIMMONDS:

Sir, S1 is a copy of correspondence that was written on the letterhead of the Hospital Employees' Federation Tasmanian Branch No. 2 to, as it says, the Secretary, Mental Health Services Commission, and I think explains the facts as we see them.

Social Trainers employed at Rocherlea and Elonera Centres are required as part of their training to obtain a St Johns Ambulance First Aid Certificate and are required by the

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SIMMONDS - SUB

2.

MR SIMMONDS:

Commission to perform first aid duty as is necessary."

That fact is, I think, not disputed in the correspondence of 15 June where it is stated:

"The Commission recognises that Social Trainers are required, as part of their training, to obtain a St. Johns Ambulance First Aid Certificate."

It is implicit in the next sentence:

"However, in view of the fact that Social Trainers are required, as a part of their normal duties, to look after the health and physical wellbeing of clients while in their care, the Commission does not believe the provisions of "Clause 4D" contained in the General Conditions of Service Principal Award apply to these direct-care staff."

I would make the same references as I did in the proceedings this morning on the question of interpretation - I will not take you to the references again - I just ask that they be taken note of. Basically I would summarise it all by saying that the award should be taken for what it says - if there is any ambiguity then one goes further to the sources if they are available. It is as simple as that.

For our purposes I would submit that the only ambiguity that arises is in the wording of the clause and the ambiguity is very minor in my view over the question of 'nominated'.

There is no doubt, I would submit, from the purposes of the Exhibits S 1 and S2 that the employees

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SIMMONDS - SUB

3.

MR SIMMONDS:

hold a St Johns Ambulance First Aid Certificate and they are required to perform first aid duty. I think that is admitted in the Exhibit S2.

The question really arises as to what is meant by 'nominated' and in the circumstances set out in the letter from Mr Balcombe, I believe that that is an admission that they are nominated to perform first aid duty in that they "are required, as a part of their normal duties ..." they then go on with some other words.

It is quite clear that from that "required, as a part of their normal duties, to look after the health and physical wellbeing of the clients ..." - now whilst that is not an admission, I guess, in the formal sense, that they are required to render first aid, the fact is and it is certainly my submission, that they are required to render first aid should such first aid be necessary. That that amounts to the employer nominating them in accordance with the provisions of clause 4D of the General Conditions of Service Award.

I cannot really add much more to that. I cannot give you a piece of paper that shows that they have each been nominated in the formal sense but there is, as the letter admits, the requirement that they obtain a St Johns First Aid Certificate. All the employees referred to currently have that certificate - in fact they would not have been classed as Social Trainers if they had not because it forms part of their training and they are required to keep that certificate up to date.

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SIMMONDS - SUB

MR SIMMONDS: Whilst it may go to the merits of the question I would simply point out in passing that the question of the holding of a first aid certificate has not, in my submission, ever formed any part of the judgment of the rate of wages that the employees have had set for them. That really does go to the merit question and not the interpretation question.

PRESIDENT: Yes. I suppose I must be very careful that I too do not fall into the same trap and I ask you if management have occasion to use trained nursing staff at any of the centres affected by the award.

MR SIMMONDS: It is not my understanding that they use trained nursing staff as trained nurses. There may be some people who hold nursing qualifications who are also Social Trainers. My understanding is that the trained nurses are employed in the respite unit where there are no Social Trainers employed.

PRESIDENT: I see. Thank you.

MR SIMMONDS: If the Commission pleases.

PRESIDENT: Thank you Mr Simmonds.

Mr Martin.

MR MARTIN: If the Commission pleases, Sir.

As far as the Commission is concerned, it was never the intention of the parties that this particular provision be applied in an across the board fashion to direct care staff or any other staff for that matter.

As you are aware, this provision was introduced into the award in relation to matters P.127 and P.131 of 1980 in respect

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SIMMONDS - PRESIDENT - MARTIN

MR MARTIN:

to the Public Service Conditions of Service (Miscellaneous Conditions of Service) Principal Award and P.128 and P.130 of 1980 in respect to the Public Service (Conditions of Service) Principal Award.

I refer you in particular to pages 93 to 96 of the transcript when Mr Philp, who was representing all the employee organisations party to these awards, explained the intent of the claim to Acting Commission James, I think it was. I would also refer you to pages 116 and 117 of the transcript for the Commission's response in this regard, as conveyed a Mr E. Drozd.

We believe that it is clear from transcript that the unions at the time were seeking a provision which would enable controlling authorities to pay nominated officers, who hold an appropriate first aid certificate, an allowance for acting as a First Aid Attendant in a particular work area or building which was not covered by fully trained staff, that is medical or direct care staff.

I will admit that they also wanted it to apply to field officers but that is as far as their claim went.

This was certainly the impression gained by Commission officers at meetings held with the unions in this regard prior to the matter proceeding before the Board and as subsequently conveyed to the Board by Mr Drozd at the hearing.

Further, it would appear from the Board's decision, reference pages 11 to 12 of this decision, which was approved and adopted

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MARTIN - SUB

MR MARTIN:

by the Board on 11 February 1982, but nothing additional was considered or ruled upon, that I am aware of or that the Commission is aware of.

The Commission is therefore of the opinion that the Federation's claim clearly falls outside the intent of the current provision.

If I could just read from transcript in this regard, quoting Mr Philp, on pages 95 and 96, he says:

"In discussions that the unions and the controlling authorities had it was felt that the allowance should only apply to those appointed to perform first aid duties by their controlling authority.

The association accepted that principle but in doing so we also suggested that the allowance should apply to all field officers who have the required qualifications.

We have suggested that this should be the case because of the nature of the job. They are likely to come across a lot more accidents in situations where nobody else is present and I believe that this sort of concept was accepted at the meetings.

We would envisage that perhaps this is a matter for further negotiations but perhaps in a departmental situation such as this there would be one trained officer on each floor of the building which would have the first aid certificate and who would therefore get paid the allowance. We were thinking around the numbers 1 to 20 perhaps for each office but

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MARTIN - SUB

7.



MR MARTIN:

with the proviso that field officers should be encouraged to have the certificate and should therefore receive the allowance."

He goes on to say after a question from the Acting Commissioner about the numbers - he says:

"Yes, that is what I had in mind. That is, one person for twenty employees."

He goes on to say a bit later on:

"As long as the association sees it there would be one person in an accessible area such as a floor of the building, that is trained. I would think that would be satisfactory."

Our Mr Drozd, on page 116, says this - half-way down that particular page he started off by saying something which I gather they could not understand and it said "... ." and there is a little mark put in there - but he did clarify it fortunately, later on - so I will read that into the transcript at the bottom of the page.

"We certainly have not got any views on that"

that is the numbers:

"only that in our area it should only be paid if it is deemed essential by the controlling authority for an officer to possess such a certificate in the performance of his or her duties and"

I believe this is the pertinent point:

"when medical or no nursing services are not readily available."

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MARTIN - SUB

MR MARTIN:

What he is trying to say there is that if you have got medical or other trained staff or nursing staff - I would also put in Social Trainers there - that the certificate should not be payable in those locations.

Now Sir, in your decision, or your recommendations, which were subsequently adopted by the Board, you said this:

"The claim is for an officer holding a current St Johns certificate or certificate deemed by the controlling authority to be equivalent thereto to be paid a first aid allowance of \$237 per annum.

A good deal has been said and written about first aid allowances since the Board was first invited to determine compensation of this kind. It would serve no useful purpose to hear repeat of what has been said and I believe understood in the past. Suffice it to say that on the merits of this claim it would not be unreasonable to provide in this award for an employee holding a current St Johns certificate or the equivalent and who is required by his controlling authority or department to act in the capacity of qualified first aid attendant to be compensated by way of allowance. A number of awards including teaching, printing staff, prison officers, et cetera contain the type of provision I have in mind.

In making this recommendation it should be made abundantly clear that in order to qualify for an allowance the basic prerequisites must be:-

1. that the employee holds a current St Johns or equivalent First Aid Certificate.

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MARTIN - SUB

MR MARTIN:

2. The person is required and therefore nominated by his controlling authority or department to assume the position of first aid attendant.
3. Mere acquisition of a first aid certificate would not ipso facto render any person eligible for payment unless there was demonstratable need for that person to hold that qualification. In any case no other person had been appointed as first aid attendant."

Therefore, I am not sure whether I am going to get into merit here and I am still not sure on the merit side of some of these arguments but I will proceed at my own risk.

In other words, as far as the Commission is concerned, whilst the Commission recognises that Social Trainers are required as part of their training to obtain a St Johns Ambulance First Aid Certificate, in view of the fact that these staff are required as part of their normal duties to look after the health and physical wellbeing of clients while in their care and reference to their duty statements - duties numbers three and six -I have copies of duty statements there is you require them Sir.

PRESIDENT:

I think they were tendered this morning were they not, in another matter?

MR MARTIN:

Yes, Sir. A matter which we would not like to talk about much at the moment.

PRESIDENT:

Does not Mr Simmonds want to talk about it?

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MARTIN - SUB - PRESIDENT

MR MARTIN:

He will be.

The Commission does not believe the provisions of clause 4D first aid certificate allowance contained in the General Conditions of Service Principal Award should apply to these direct care staff.

Another way of looking at it is to say something like this. In other words, while it is accepted that such training forms a component of the overall training and skills required of Social Trainers, we are conscious of the fact that the Board has already taken considerations of this nature into account when determining the rates that currently apply to Social Trainers.

A reference to evidence adduced at the original principal award hearing bears this out. Particularly in respect of the in-service course which has always had a first aid component. It is component number 42 of a 72 component course. I can provide the parties with that particular evidence if it is so required Sir.

Also, as far as the Commission is concerned but I am not too sure how relevant this comment is, that it is not absolutely essential for them to hold a St Johns Ambulance First Aid Certificate. In fact, we have been able to organise our own specific first aid course. We have probably deemed such a course more appropriate because we can concentrate on first aid matters of specific interest to clients at Rocherlea and Elonera.

It should also be pointed out that no other category of direct care staff (registered nurses, et cetera) receive this allowance, even though all receive first aid training in one form or another.

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MARTIN - SUB

11.

MR MARTIN: Similarly with respect to medical staff - that is medical practitioners, specialists, et cetera. Our Commission is therefore concerned about any precedent or possible flow-on that may occur if this claim is granted.

In summary, the Commission strongly opposes the Federation's claim in this regard. That is all I have to say, Sir.

PRESIDENT: Yes, Mr Martin, thank you.

Mr Jarman do you wish to say something in the public interest?

MR JARMAN: Yes, thank you Sir.

Mr President we believe that the provision which is currently contained in the General Conditions of Service Principal Award does not afford the applicant any comfort at all in that we say that the clause was not designed for wholesale application of the first aid allowance to persons who may during the course of their employment have cause to undertake a course in first aid.

We would say that the clause as constructed and as applied by departments in the public sector, has taken up a situation whereby one or two people in an area covering a number of people may, at the discretion of the controlling authority, be paid a first aid allowance providing of course that they have the appropriate qualification.

Now in this particular instance we are certainly concerned that if too liberal a translation is put on this particular clause then it would have disastrous effects throughout the public sector. To take the ridiculous

MR JARMAN:

if you like, you could have the situation whereby a person had undertaken a first aid course in their own time and then approached their employer and said, "Well I am a qualified first aid attendant and I demand the allowance that should be given to me under the award."

Now that is the sort of situation that we could get into if we have wholesale application of this particular allowance.

Mr Simmonds has indicated, as has Mr Martin, that the first aid course is an integral part of a training course for Social Trainers. There are other occupational groups in the public sector which undertake similar courses, as part of their training course or in the pursuit of their final qualifications in their particular occupations, and they do not receive any compensation for the first aid qualification. For example I could instance police and ambulance drivers. They are two groups which in fact have as part of their training to undertake a first aid course. They are not compensated for that, it is part of their training requirement. I do not see any difference between the two, quite frankly, between police, ambulance drivers or social trainers. Their occupations may vary but the principle remains the same. They are required to undertake a course as part of their training because they may, at some time, during the course of their occupation be involved in situations where first aid is required, or knowledge of it is required.

Perhaps Sir if I could just indicate the types of interpretation that

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JARMAN - SUB

MR JARMAN:

have been placed on it by people responsible to this award, controlling authorities, parties to the award - and I talk in particular about the Public Service Board - if I may I would like to read into transcript some correspondence which was sent to the Manager of Supply and Tender Department on the 19 September 1984.

"I refer to your memorandum of 6 September 1984 concerning how many officers should receive payment of the abovementioned allowance.

Clause 4D of the General Conditions of Service Principal Award of this Board prescribes the criteria for payment of the allowance. In practice a department requests authority from the Public Service Board that a particular first aid certificated officer be nominated and required to perform all first aid duties therein.

Information as to how many officers and over what area such nominee will be required to cover is furnished.

Upon these particulars the Board as controlling authority nominates and requires the department's nominee to exclusively perform first aid duty therein in accordance with clause D of the General Conditions of Service Principal Award."

The way the interpretations have been placed upon this particular clause in the past have been along the line that a particular person or persons in an area will receive that allowance where they are working in conjunction with a number of personnel. I think it is quite plain from the clause in the award that persons have to be nominated. It is not, as Mr Simmonds would

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JARMAN - SUB

MR JARMAN:

put it, if I understand his application correctly, a whole-sale application to people because they happen to have a first aid certificate. It is done by application to the controlling authority or to the head of the department and a request is made for certain persons in an area, or in a workplace, if you like, to be paid that allowance.

At the commencement of this submission, Mr President, we indicated that this particular clause does not allow any relief for Mr Simmonds, with respect to his application and our position remains the same - therefore we submit that the application is not correct.

PRESIDENT:

Yes. Mr Jarman, you would not quarrel with me I take it if I was to suggest to you that the Social Trainers Award makes deliberate cross reference to the General Conditions of Service Award as a sweeping pick-up of all those conditions that are not contained or specifically referred to in the Social Trainers Award?

MR JARMAN:

No Sir, I certainly would not quarrel with you at all. If the application before us today was couched in the terms that there are some Social Trainers who may be entitled to a first aid allowance, where they work in conjunction with a number of other Social Trainers, then perhaps there may be a different interpretation to place on such as application.

However, I believe we would still be in opposition because the main thrust of my argument is that Social Trainers, as a part of their occupation, are required to have this particular qualification.

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JARMAN - SUB



MR JARMAN: We say it is inherent in their occupation that they be so qualified.

PRESIDENT: Well then in the event I was able to read into the clause under discussion that construction should the Commission vary the award to put it beyond doubt so that other people can read that?

MR JARMAN: Certainly, Mr President, as the clause currently stands, as I have already indicated, I could not agree to the interpretation placed on it by Mr Simmonds, however, if clarification is required I would suggest that that surely would be the subject of an application.

PRESIDENT: If you cannot agree to Mr Simmonds' interpretation how can we agree with your interpretation, which I understood to mean that if an officer holds a current St Johns certificate and is nominated - and therefore to be nominated he must obviously be required to, by the controlling authority, to perform first aid duty. He would ordinarily attract the allowance prescribed unless it was part and parcel of his training to hold a current first aid certificate and carry out these duties.

I do not see those words in the clause.

MR JARMAN: No, they are certainly not in the clause, excepting of course and Mr Simmonds has already alluded to it, the key word in that clause is 'nominated'.

PRESIDENT: Yes.

MR JARMAN: Now the way I understand it, these people are not nominated to undertake first aid duties as would be the case with the person employed elsewhere in

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JARMAN - SUB

MR JARMAN: the public service, say in a department or on a floor within a building housing a department. They are required in the performance of their training to, in fact, undertake a first aid course. There is no nomination there - it is part of the training requirement.

PRESIDENT: Yes. Well would you say that the use of the word 'nominated' would be the same as use of the word 'declared'? Could you use the word 'declared' instead of 'nominated'? Declared by the controlling authority to be a person required to perform this duty.

MR JARMAN: I suppose you could have that. I would like to see it in the entire context before I would be happy to make a decision on that particular matter.

PRESIDENT: It seems that I am required, under this Act, to make a declaration as distinct from a decision, I suppose, as to the correct construction to be attached to whatever it is I am asked to interpret.

A declaration, as I understand it, is a statement of what is.

MR JARMAN: I understand your position, Sir, but I think that I have to reinforce what I have previously said, in that this particular clause and the way it is written, cannot apply to the situation which Mr Simmonds alludes to. It may be that the clause has to be varied - the award has to be varied and the clause amended to reflect what could be the case.

PRESIDENT: Is it your submission then that the clause is ambiguous?

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JARMAN - SUB

MR JARMAN: I would certainly say, with respect to Mr Simmonds' application, that it could be construed that way.

PRESIDENT: Or, in fact, are you venturing into that difficult area of merit that is proscribed in these proceedings?

MR JARMAN: Well certainly, Sir, there is always the danger of crossing the fine line and in my previous statement to the effect that I said that the award may have to be varied, certainly that could be the case but I would see that being upon application by either party and that the intervenor would make his decision known at that particular time when it came before the Commission.

PRESIDENT: So you did not mean that as part of these proceedings that I should vary the words?

MR JARMAN: No Sir.

PRESIDENT: I thought that you were saying that I should.

MR JARMAN: No.

PRESIDENT: Thank you Mr Jarman.

Well now Mr Simmonds.

MR SIMMONDS: If the Commission pleases I take some comfort from one of the comments that fell from Mr Martin. He read from the decision - I make the point first that I do not consider that there is much ambiguity and I find it very difficult to even understand the Mental Health Services Commission, where on the one hand they are saying yes they require these people to have a first aid certificate and on the other hand they say yes they require them to perform first aid duties but they are somehow saying, I suspect though

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JARMAN - PRESIDENT - SIMMONDS - REPLY

MR SIMMONDS:

it is not that clear, that they are not nominated to perform the first aid duty. Either they are not nominated or they are not required. There is no doubt that they have the certificate and I frankly think that from the benefit of S2 there is no doubt that they are required to perform first aid duty as part of their normal functions.

That really ought to be enough from the point of view of the award clause.

I do note from the decision of the Public Service Board - the report was dated 4 August 1983 on page 12 - the words were in there "that the person is required" and therefore nominated by his controlling authority or department to assume the position of first aid attendant.

Now it is clear there, at least from the decision, to the extent that there is ambiguity and I do not think there is, but to the extent that ambiguity has been argued about this question of nomination and requirement that from the point of view of those who decided to put the clause in the award - that is the Public Service Board - the nomination of an employee to the first aid attendant position flowed from a requirement that they perform first aid duties - not the other way round - so that that escape clause is not there on interpretation I would submit, from the point of view of that decision.

That the requirement by the controlling authority that the person perform first aid duties is sufficient provided the person holds a current certificate for them to attract the allowance.

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SIMMONDS - REPLY

19.

MR SIMMONDS:

Admittedly, and I slipped over that, it is the question of an appointment to a position of first aid - sorry, I will just read those words again so that we are all clear about them.

Page 12 of the decision:

"That the person is required and therefore" and I emphasised the word therefore - "nominated by his controlling authority or department to assume the position of first aid attendant."

The de facto position is that these people are required to assume the position of first aid attendant vis a vis their clients.

The Commission has admitted that in what I submitted as Exhibit S2 and so I think the matter is as open and shut as that.

There are some more things to reply to. There is the statement that fell from Mr Martin that no other direct care staff receive allowances.

One should always be careful about those statements. There is always someone who might know a bit more.

Clause 9M of the Hospital Employees' (Public Hospitals) Principal Award clearly provides for a first aid certificate allowance for people who are direct care staff. I do not make anything of that other than as a reply to Mr Martin's comment, which was incorrect.

Mr Jarman, in what I think developed into uncharacteristic hyperbole, somehow saw disastrous effects arising as a result of this application. Well, the State

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SIMMONDS - REPLY

20.

MR SIMMONDS:

of Tasmania is on the rocks because this application is before you - well, perhaps it is not quite that bad - but he did say:

"In this particular instance if too liberal an interpretation was made" -

I am quoting from my notes so it may not be precise when we go to the transcript, but he did say:

"it would have disastrous effects."

Well, of course, we are not arguing for a too liberal interpretation, we are arguing for the proper interpretation of the award. We are certainly not arguing that someone who undertook a first aid course in their own time could then go along to their employer and demand payment of this allowance. That is most certainly not our case.

I do not mind our case being characterised in glamorous ways but I do not think I ever said that. What I did say was that these people are required by the employer to undertake the course and to possess the certificate and they are required to provide first aid attendant services to the clients as and when necessary.

The issue of whether other occupational groups also carry out the first aid course and do not receive any compensation is really a little bit beside the point. The examples given, police and ambulance drivers, are not covered by the general conditions of service award. Why they do not get it is none of my business but the award does not apply to them - this particular clause does not apply to them.

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SIMMONDS - REPLY

MR SIMMONDS:

I do note, in passing, that other groups of people do, for example prison officers. I am not quite sure of the situation in respect to police but he did not see any difference between the two or three, as the case would be, that is the two police and ambulance drivers on one hand and social trainers on the other.

The essential difference is that the General Conditions of Service Award which has this prescription in it binds the Mental Health Services Commission and binds them specifically in respect to Social Trainers because of the clause in the Social Trainers Award.

I do not think we have to go into the merit to see why it does not apply to police and to ambulance drivers and why it ought to apply to social trainers. The answer is that simple - that the award applies to social trainers and it does not apply to police and ambulance officers.

With respect to the types of interpretation placed upon that clause by controlling authorities I only have to say, so what, that really is a circular argument. In the long run, or in the short run now, it is for this Commission and for you in particular to interpret the awards and interpret them in accordance with the standard principles - and the standard principles we have discussed, is what the ordinary meaning of the words should be and if there is any ambiguity you go elsewhere.

I want to make the point that you cannot or ought not in constructing words - or making an interpretation of their words and allowing for that generous

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SIMMONDS - REPLY

MR SIMMONDS:

construction, be able to go too far. It is not a licence to ignore the actual words themselves.

In the case of the Australian Workers' Union versus Abbey 1938, which is in 40 CAR at 494 it is made clear that, "to give the words of an award a meaning they will not properly bear will only mislead and confuse those required to work under it.

It is not part of the tribunal's duty to read an award in such a way as to achieve its assumed purpose or intention, if the words of the award will not reasonably bear that assumed meaning." I simply point out that that authority would, I believe, prevent you from following the sort of interpretation that Mr Jarman was placing on it. I do not think there is anything in there - as indeed the comments that you made to him would suggest - that allow you to interpret the award in such a manner that is so generous to the employers that that was not meant to apply to Social Trainers because it was part of their course of training, because those words do not appear in that clause.

We did finally get the submission from Mr Jarman who really had started out with the proposal that there was nothing in his submission that afforded the applicant any comfort, that the clause itself was not designed for wholesale application, we did get the grudging admission in response to a question from you that the clause was ambiguous and in respect to the specific application that is before you it could be construed in that way.

I guess, in his general submission, Mr Jarman was canvassing areas

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SIMMONDS - REPLY



MR SIMMONDS:

of merit and what ought to be rather than what is. He talked about the danger of crossing that fine line between merit and meaning. I would suggest that his danger was that he could never get back on the other side of the fine line - he crossed it so much.

If the Commission pleases.

PRESIDENT:

Thank you Mr Simmonds.

Gentlemen, my decision is reserved in this matter.

DECISION RESERVED