

IN THE TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T. No. 392 of 1986

IN THE MATTER OF an application
by the Shop Distributive and
Allied Employees' Association
for interpretation of the
Retail Trades Award

re Section Manager/Manageress
and/or Buyer/Orderer

PRESIDENT

HOBART, 4 June 1986

TRANSCRIPT OF PROCEEDINGS

(CONTINUATION)

PRESIDENT: Yes, Mr Edwards.

MR EDWARDS: Thank you, Mr President.

Mr Skinner, during evidence this morning, Mrs Geeves described herself as a buyer. Do you agree with that description of her duties?

MR SKINNER: No.

MR EDWARDS: Would you say why you don't agree with that description?

MR SKINNER: The buyer is the negotiator of the product; the establisher of the range, and Mrs Geeves orders.

MR EDWARDS: How would you interpret or define the term `buyer`, as it is commonly used within the retail industry?

MR SKINNER: A negotiator of products.

MR EDWARDS: During her evidence this morning, Mrs Geeves indicated that she has a discretion in which lines to order in respect of a particular product, and by that, she meant whether she buys say, for example, sliced leg ham from R.M.I., Conti or some other company. Do you believe she does have that discretion?

MR SKINNER: No. The range is struck relative to our ability to display it and the customer needs.

Now, there are some counters that are physically too small to keep the comprehensive range so deletions do take place. This should be done by the manager and the deli girl in collaboration. The buyer then should be told that the range is too big for the needs of that store.

MR EDWARDS: You say, or you said then that the range is struck. Struck by whom?

MR SKINNER: By the buyers. See, if we at an intermediate level or at another level start amending these ranges, we don't know what philosophies we are upsetting that the buyer may have in

MR SKINNER:

his mind when he is negotiating one firm against another, and what can seem logical to a person with an amount of information, isn't logical to the person with the full picture before him.

It's very much a structured situation and centralized.

I can't get the buyers to delete lines without putting up a good valid argument.

MR EDWARDS:

Does Mrs Geeves have any discretion or control over what is in the delicatessen? By that I mean, does she have discretionary control over what lines are kept in the delicatessen and what brands are used?

MR SKINNER:

No, she hasn't got the discretion, but she'd certainly be paid heed to if the person on the site is saying something's wrong, we'd be only too pleased to listen to the reasons why, but she hasn't got the discretion to dump.

MR EDWARDS:

So by that you mean that if unless instructed by someone higher up the corporate table to delete a particular line, Mrs Geeves would be compelled to continue to carry it, unless there was some ...

MR SKINNER:

Yes, to follow the letter of line absolutely that way, but reason would dictate that she would have a fair say to sway someone to her line of thinking because of her on-site knowledge.

MR EDWARDS:

But could not do it of her own volition?

MR SKINNER:

Shouldn't do it of her own volition.

MR EDWARDS:

Are there pre-determined stock levels in respect to each line in the delicatessen, for example, that a delicatessen will keep 'x' quantity of (to use the same example) R.M.I.'s sliced leg ham?

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MR SKINNER: The level of stock is determined by the rate of sales and that's very quickly established what an average rate of sales is.

That, as I explained earlier, as the history of sales unfolds in the book, the average should be put into the new book and that's your guideline for starting off ordering and if the weather's changed a little bit, your next order is corrected up or down and to the needs.

MR EDWARDS: So in essence, the stock levels over a short period of time would determine themselves?

MR SKINNER: Yes, absolutely.

MR EDWARDS: So Mrs Geeves would not determine them. They would in fact be self-determined.

MR SKINNER: Could you say that again please?

MR EDWARDS: So Mrs Geeves would not determine the stock levels herself by saying `I think next week we'll need three times as much leg ham as we had last week' ...

MR SKINNER: Oh yes she would.

MR EDWARDS: ... Unless there had been a splurge on that particular item.

MR SKINNER: Yes, she would know why she would want to justify a three-fold order.

MR EDWARDS: But she couldn't of her own volition simply increase the order just because she thinks that's appropriate?

MR SKINNER: Yes, she can.

MR EDWARDS: She can.

MR SKINNER: She can, but it should be in consultation with the manager if it's a dangerous situation occurring, but no, she would be absolutely wrong if she just historically ordered

MR SKINNER: 20 kilos and she ran out at 3 o'clock every day.

MR EDWARDS: Would you describe Mrs Geeves' function in relation to the stocking of the delicatessen as one of a mechanical replenishment of depleted stock?

MR SKINNER: That is basically all ordering functions.

MR EDWARDS: But that would be accurate in the case of Mrs Geeves?

MR SKINNER: Yes.

MR EDWARDS: Mrs Geeves indicated in her evidence that she is able to do special deals with representatives or their agents if a bonus can be achieved. Is that accurate?

MR SKINNER: We try to take away the pressures that would be exerted on staff by salesmen.

It's often at a disadvantage of an opposition firm that these representatives push their produce and still wanting to pass on a benefit to the company or the consumer, we allow the store manager to negotiate to some degree.

Mrs Geeves should, when a representative offers her a deal, she should tell the manager of the situation to evaluate whether he wants to be in it or not.

MR EDWARDS: But she would not have the discretion to accept such a deal of her own volition without referring to the manager?

MR SKINNER: No.

MR EDWARDS: Who determines the manning levels of a delicatessen in a particular supermarket?

MR SKINNER: We have an overall wage percentage. We have guidelines that the manning levels that are required in each

MR SKINNER: department to come up with a certain figure and it's now a historic fact that of a mix of an 8 percent wage percentage in this store, 14 percent would be approximately the amount of wage percentage in the deli, so it's all formulations that we have in head office.

We then do monitoring from the register reads and the cost per hour, et cetera, so we do all that in head office.

MR EDWARDS: So that's done from head office?

MR SKINNER: Yes.

MR EDWARDS: Who could authorize a departure from those manning levels?

MR SKINNER: The store manager within the mix. He could alter them, but the final figure we'd still be looking at.

MR EDWARDS: So Mrs Geeves cannot of her own volition, alter manning levels?

MR SKINNER: No. If she felt that service was bad, she would speak up to the manager and say 'I'm not coping with what you have given me' and he'd have to look at the situation.

MR EDWARDS: Could you describe to the Commission, the lines of seniority that exist in the Glenorchy supermarket where Mrs Geeves is currently employed?

Perhaps if we start from the manager and work in a downward direction.

MR SKINNER: Right. Glenorchy is our largest store in turnover and floor area. It's got a bigger mix of departments than the average store, so in that store, we have a manager. He's backed up with instead of an assistant manager, a co-manager, who is one of the lower level managers, but has a manager's rating.

We then have a perishable manager, who's in charge of bakery, deli, fish, dairy, frozen foods.

MR SKINNER: We then have fruit and vegetable manager, service supervisor.

MR EDWARDS: So interpreting that into the context of Mrs Geeves, she would in fact be approximately fourth in line in seniority?

MR SKINNER: In deli?

MR EDWARDS: In the deli, yes.

MR SKINNER: Yes.

MR EDWARDS: If I were to describe the supervisory role exercised by Mrs Geeves as being akin to those of a leading hand in some other industry, would you agree with that description?

MR SKINNER: Yes. You'd be calling the assistant manager the foreman then, probably, in that context.

MR EDWARDS: But that would be a fairly apt sort of description?

MR SKINNER: Yes.

MR EDWARDS: Would you describe Mrs Geeves as being a section manageress in charge of a section?

MR SKINNER: No, I have never believed our delicatessens have that rank - in charge.

MR EDWARDS: Would you describe Mrs Geeves as an employee who buys or supervises the buying or selection of stock?

MR SKINNER: No.

MR EDWARDS: So you would describe her function in relation to stock as one of reordering, like you said before?

MR SKINNER: Yes, and that's one of several of her duties, of course. The other ones are the housekeeping of the section, the hour-by-hour controlling of customer needs, cleanliness, staff placement.

MR EDWARDS: Prior to the luncheon adjournment, the President asked you a couple of

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MR EDWARDS: questions related to an exhibit tabled this morning by Mr Targett.

Is that document used and enforced by Purity in respect of their supermarkets?

MR SKINNER: No. The general manager wouldn't even know it came down. I'm amazed it came down. I was trying to get it myself, as I explained.

MR EDWARDS: How would you describe its use in these proceedings? That is, does it describe accurately the range of functions expected of Mrs Geeves in her employment with Purity and I will perhaps give you a couple of examples and ask you to comment on them, if I could?

The first is drawn from page number 3. For example, it lists here that Mrs Geeves would be, under the heading `ACCOUNTABLE FOR`:

"Organising the manning and operations of the serviced deli..."

Would that be correct?

MR SKINNER: I would say, in consultation with the manager, yes.

MR EDWARDS: Right. It in fact goes on to say that.

MR SKINNER: Sorry?

MR EDWARDS: It does in fact go on to say that.

MR SKINNER: Right.

MR EDWARDS: On page 6 of that document, it says that Mrs Geeves is accountable for,

"Not exceeding planned manning levels without the approval of the Branch Manager."

Would it in fact be possible for Mrs Geeves to exceed planned manning?

MR SKINNER: That's what I was about to say. She couldn't unless she collared another staff member by asking another departmental person, the assistant manager, 'Can you get me some more staff?'

MR EDWARDS: So that particular reference in that document is completely superfluous in the current instance?

MR SKINNER: That's right, yes.

MR EDWARDS: At the bottom of page 6, it says that Mrs Geeves would be accountable for -

"Having all staff trained in fire and safety rules at all times."

I probably interpret that to mean all staff in the delicatessen.

MR SKINNER: No, that's not the case at all.

MR EDWARDS: It says that Mrs Geeves would be accountable for identifying the needs for training and if necessary retraining. Would that be an accurate description of her function?

MR SKINNER: That would be an inaccurate description, but it would be one that she would have some input on. She would tell the - I imagine - the deli supervisor that she has been provided with inadequate staff or incapable staff and they need training.

MR EDWARDS: How then would you describe that document as being able to assist this Commission in reaching a conclusion as to whether or not the duties performed by Mrs Geeves are those of a section manager or manageress by an order, or however else it may be explained in the award.

MR SKINNER: I think if we had embraced that and implemented those things, it would be very helpful to this hearing, but the fact is that I believe that would have been unopened in the store where it is, it is so irrelevant. Nothing has been discussed about it with me

MR SKINNER: about being contentious or contrary to what we are doing. I don't believe it has been opened.

MR EDWARDS: So you would describe it as of no value at all to the Commission?

MR SKINNER: Not at this stage, no.

MR EDWARDS: Should an employee require disciplining, does that task fall to Mrs Geeves or is she required in that circumstance to involve a superior member of the staff?

MR SKINNER: For anything above a minor misdemeanour that you would normally expect an adult to admonish a junior, that should be done through her reporting to the manager if he hasn't been aware of the wrongdoing himself.

MR EDWARDS: He is the man that you indicated earlier was in charge of a variety of different sections, one of which was the delicatessen.

MR SKINNER: Yes. Very much all kindred things; kindred-type departments.

MR EDWARDS: Would you describe Mrs Geeves as second in charge to the Perishable Manager then, at Glenorchy?

MR SKINNER: Yes, in that section.

MR EDWARDS: In that section.

MR SKINNER: And he has 3 or 4 other seconds in charge.

MR EDWARDS: I have no further questions at this stage, Mr President.

PRESIDENT: Yes. Thank you. Mr Targett...

MR TARGETT: Thank you, Mr President.

PRESIDENT: ... You want to have another go, do you?

MR BLACKBURN: Yes, Mr President, if that is allowable and I think I have got to do it whilst Mr Skinner is in the box.

PRESIDENT: These are additional questions that you've omitted to ask him?

MR BLACKBURN: Omitted to ask him, yes.

PRESIDENT: Very well.

MR BLACKBURN: Mr President, I am referring to the manual which was tabled by Mr Targett ...

PRESIDENT: And which was introduced into these proceedings by you ... reference to it - wasn't it?

MR BLACKBURN: Whilst Mr Skinner was in the dock, yes, sir.

PRESIDENT: Didn't you refer to it in your opening address in explaining the

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PRESIDENT: function of the Purity chain?

MR BLACKBURN: No, sir.

PRESIDENT: Didn't you refer to it as a
`voluminous document` that was too
big to bring in?

MR BLACKBURN: No, that was Mr Targett who made that
reference.

PRESIDENT: I beg your pardon. Thank you.

MR BLACKBURN: If I might carry on ... I have had
the opportunity to have a quick read
of this over lunch and in my opinion
it is nothing more than a training
manual.

I refer to page 306 on to back this
up and I rather feel the opposition
have jumped on a point here ...

MR TARGETT: Mr President, I ...

PRESIDENT: Yes, you are supposed to be examining
a witness, not making a statement
from the bar table, Mr Blackburn ...

MR BLACKBURN: Okay, well I will ask Mr Skinner is
this manual a training manual from
the Woolworths organization and is it
designed to do that, not to be a
manual of operation?

PRESIDENT: Yes, that was the question, Mr
Skinner.

MR SKINNER: I remember Woolworths having a book
called `The Serviced Delicatessen
Stockkeeper's Handbook` - that is
what I have requested. At a glance I
would say that is the book but I am a
little bit tossed at the bottom where
it says it is from the training
department, or whatever, so I think
probably it is a little bit different
to the normal handbook. I would say
it is a training manual rather than
actually what is there because it is
also talking about supervisors'
responsibilities in one section and
stockkeepers' responsibilities in
another.

PRESIDENT: In other words you don't see it as a document that includes, among other things, a job description of an individual?

MR SKINNER: Not in our operation. No.

PRESIDENT: Yes. Now, Mr Targett.

MR TARGETT: Thank you, Mr President. Firstly, I will address the subject of the manual if I may - it seems to be a popular subject today.

If a manual, such as the one that you have been shown, was given to people holding the position of the Serviced Delicatessen Stockkeeper and these people were told to use the manual as a guide to their duties and responsibilities, would your company expect the employees to operate under that manual and in accordance with it, performing the duties and accepting the responsibilities?

MR SKINNER: Yes, it depends what level it has come from with that directive.

MR TARGETT: From their superiors.

MR SKINNER: Yes, I would expect them to do that.

MR TARGETT: Mr Skinner, Mr Kent Prior is the delicatessen supervisor for all stores - is that correct?

MR SKINNER: Yes.

MR TARGETT: Mr Doug Berry - what position does he hold?

MR SKINNER: He is the buying manager of the perishable department.

MR TARGETT: If I may, that position then is superior to Mr Prior's - is that correct?

MR SKINNER: Yes.

MR TARGETT: Mr Skinner, approximately during last year 2 meetings were held at Purity head office - 2 one-day meetings. They were run by Mr Prior and Mr

MR TARGETT:

Berry. In attendance at those meetings were managers of stores that have delicatessens in them. Also in attendance were people called the ... who are now called Serviced Delicatessen Stockkeepers.

At the meeting videos were shown describing duties and the manuals, part of which has been shown to you, were given to the stockkeepers; they were told to put them in each of the delicatessens; they were taken through the document by the people that ran the course and they were told that they were to be followed.

Now, isn't it therefore reasonable to suggest, seeing as how Mr Prior and Mr Berry who are both superiors, told Mrs Geeves and others that that was the case - isn't it reasonable to suggest that the stockkeepers would in fact perform the duties in that manual?

MR SKINNER:

I would expect them to follow that instruction without question, yes. It has come from the right source. I would expect there to be a lot of questions come from them implementing what is in that book because we don't have the machinery to handle it; it would bring all types of conflict and I am surprised that I haven't been brought into the inevitable conflict, had it been followed.

MR TARGETT:

They perhaps may have done an excellent job of running through the manual with them on the day, Mr Skinner.

But I reiterate the point that the meetings were held and the people were instructed in the use of that manual by going through it, section by section, by those two people whom you agree are superiors, so I would suggest to you that in fact Mrs Geeves and others are, or have been, instructed to use that manual and are, in your own words, would be expected to follow the duties that are in that manual.

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MR TARGETT: Now, on that basis would the duties performed by Mrs Geeves not be those laid down in the manual as a Serviced Delicatessen Stockkeeper?

MR SKINNER: That is how it would appear but I would ask you to tell me what paragraphs then would be contentious with what we are talking about that puts a heavier weight of management into that department as a consequence.

MR TARGETT: I think I am quite happy - Mr Edwards has already alluded to a couple of those areas in his questioning - but I am quite happy to draw your attention to a couple of those for your comments.

In the job description section of the document, looking at page 1 of the document, `JOB DESCRIPTION` of a `Serviced Delicatessen Stockkeeper`:

"REPORTS TO: Branch Manager

LIAISES WITH:
Group Manager Meat
Other Section Managers
Branch Trainer

STAFF DIRECTLY SUPERVISED:
Serviced Delicatessen
Preparation Assistant
Serviced Delicatessen
Assistant"

I do accept the fact that internal terminology within your company may mean that the people aren't specifically called that title, but we have already canvassed that area, but it does say staff directly supervised by people in that position.

MR SKINNER: In conjunction with the manager.

MR TARGETT: Well I would assume that anyone that has a supervisory role and has a superior as well would always be operating in conjunction with their superior, irrespective of what their position was within the company. For

MR TARGETT: example, yourself, and I do notice from the chart that has been supplied by Mr Blackburn that your position as Retail Manager is fairly high up the corporate tree, so to speak. You would operate in conjunction with your superior and in conjunction with other people, in co-operation with those people.

MR SKINNER: Yes, but subordinate to some and the delicatessen stockkeeper would still be subordinate to the manager.

MR TARGETT: Exactly. The point I am making is that anyone who is in a position who has a superior would always be operating in co-operation and conjunction with their superior.

MR SKINNER: Yes.

MR TARGETT: So by making the statement that as an example I think in reply to a question that Mr Edwards asked on, say, manning levels as an issue, you said that Mrs Geeves would be expected to do things in conjunction with the manager.

Now, what I am saying is that that would apply at any level within the corporate structure.

MR SKINNER: Yes, but the autonomy that you would expect an orderer/buyer to have isn't extended to the delicatessen stockkeeper - the control over the staff ...

MR TARGETT: But it is not just the area of buyer/orderer that we are talking about here today. There are two areas within the definition of the award and that is a person in charge and if I can quote the section to you (I think I have got it here):

"Section manager and/or buyer/orderer or section manageress or buyer/orderer means an employee in charge of a section or an employee who buys or supervises ..."

MR TARGETT:

There are two very distinct areas within the definition and you can run down both tracks but the point still remains that irrespective of what particular task (and you have, in response to questions on a number of occasions, said that the person would operate in conjunction with the branch manager or store manager) that would be the case anywhere in any particular position. So that isn't necessarily an uncommon set of circumstances.

MR EDWARDS:

Mr President, are we going to listen to Mr Targett make a diatribe in a second submission or is he going to ask the witness some questions?

I have sat here reasonably patiently and listened to him; he has been most absorbing but, nevertheless, I think it has to come to an end some time.

PRESIDENT:

I wondered how long it would be.

Yes, I agree with you, Mr Edwards. That was a very long question, Mr Targett.

MR EDWARDS:

Well, it wasn't a question at all, sir.

MR TARGETT:

I think I did say, 'Do you think' Mr Edwards, for a response.

Mr Skinner, on another subject (just to keep Mr Edwards happy), I believe you said that to determine how much stock is to be ordered figures are kept to determine usage to enable someone to make a decision. Is that correct?

MR SKINNER:

Yes.

MR TARGETT:

Who keeps those figures?

MR SKINNER:

The delicatessen stockkeeper does the physical part of entering that book.

MR TARGETT:

So, on that basis the delicatessen stockkeeper, by their own actions,

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MR TARGETT: keep figures to determine what stock levels are to be purchased?

MR SKINNER: They enter the order they have placed. Before placing the next order they count the stock and they will order a shortfall to bridge the needs.

MR TARGETT: If the delicatessen was out of stock of a particular line, say, for example, sausages (I hope that is a good example) and there were three or four suppliers of sausages, which I understand there are, who would decide which supplier to purchase the sausages from?

MR SKINNER: We should have both lines of sausages. We should have both manufacturers' sausages.

MR TARGETT: So if there are three suppliers of sausages you are saying that at one time all three different types would be in stock?

MR SKINNER: Correct.

MR TARGETT: They were the only questions, Mr President.

PRESIDENT: Yes. Any re-examination? You are excused, thank you, Mr Skinner, you may retire or you may remain if you wish.

MR BLACKBURN: Mr President, I would first like to come back to the manual which, as Mr Targett said, is popular today.

I would still maintain that it is a training manual and is not an operating manual and to back that up I would refer you to page 306 which was the first page of Exhibit T.4.

PRESIDENT: The first page of T.4, is it?

MR BLACKBURN: Yes and it is headed `TRAINING SCHEDULE - SERVICED DELICATESSEN STOCKKEEPER`. It goes: `KEY: *Video +Discussion/On-Job Training`. And then it has got the three headings:

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MR BLACKBURN:

`PROCEDURE`, `BRANCH TRAINER`,
`SERVICED DELICATESSEN STOCKKEEPER`.

The `PROCEDURE`, as I read it, is what the subject is. The `BRANCH TRAINER` is an instruction by whom the training shall be given and the `SERVICED DELICATESSEN STOCKKEEPER` says to whom that training is given.

This is an in-house training thing to back up a video display which I believe took place back in last July I think was the time it was said, and in no way could that be interpreted as an operating manual. I believe that is a training procedure and that the whole book was designed around training operations.

PRESIDENT:

Yes.

MR BLACKBURN:

The point I am trying to make is that I don't believe this document is an operating manual whatsoever.

PRESIDENT:

Yes, thank you. That was, I take it, put by way of explanation.

I am not sure where we are at this stage. You had called your witness. Now, I was expecting you to put your case or haven't you yet put your case, Mr Targett?

MR TARGETT:

Well, I thought Mr Blackburn was putting his submission on the subject.

PRESIDENT:

Well I thought he was too.

MR BLACKBURN:

Yes, well, that is part of my submission. I thought that point had to be made.

The whole question of this interpretation, I believe (I can't read that far away), gets back to the interpretation within the definitions of Part II, clause 25 of the award.

I think we all agree this is a very complex clause with a lot of `and/or's` in it which can lead to some confusion. But before we get

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MR BLACKBURN:

down to it I think two other definitions have possibly got to be addressed and firstly is: What is a buyer? And secondly: What constitutes a manager?

May I suggest that a buyer is somebody who procures goods at a negotiated price. He is not a reorderer. There are two distinct functions there.

A manager, in my mind, is somebody who manages a business, a department, or whatever with the sole control over the operation of that business down to the bottom-line profitability and has full control in managing the people within that business or department.

To get back to the award in itself, I believe there are only two points of contention here: One, the section manager and by the definition in the award this means an employee in charge of a section.

In this particular case I think we proved today that Mrs Geeves is not in charge of that section. At the Howrah store she had two people plus the deli supervisor above her, being the deli supervisor, the assistant store manager and the store manager.

MR BLACKBURN:

In her current situation at Glenorchy, which has come to light from Mr Edwards' questioning of Mr Skinner, that there is a third person in that tier of management reporting. The store manager, I believe it has been established, is the only one responsible for the bottom line operation of that store. It also has been established that Mrs Geeves, whilst she has disciplinary control over the staff, she does not control the staff levels, and she has no control over the profit level of that department. She cannot reduce prices, and she does not negotiate purchase prices.

She in fact is what we believe has been rightly classed as a senior sales assistant, forgetting what the title she is called by Woolworths.

The other point that comes into it is the definition of a buyer/orderer. And a buyer/orderer:

"... means an employee in charge of a section or an employee who buys or supervises the buying or selection of stock ..."

I think it has been clearly pointed out that Mrs Geeves does not select the stock, in the meaning of the definition. She does not negotiate the price and she does not determine the product range.

It has been pointed out that these are all top level management tasks. We agree that she does however have the duty to reorder certain stock items, which is the normal practice.

I might further add that I believe that the definition has a big cross, full stop, whatever you like to say, after the word 'stock' where there is a comma, 'and who is responsible'. And the words after that do not really come into it.

I believe there are two definitions,

MR BLACKBURN: section manager and/or buyer/orderer.

PRESIDENT: Well do you say that a section manager needs to be something more than an employee in charge of a section?

MR BLACKBURN: Yes, I believe that a section manager has got to be somebody who has got total responsibility for managing that section, down to the control of labour and for the bottom line accountability.

PRESIDENT: Well you couldn't read that into the definition could you, because it concludes by saying that:

"... notwithstanding that he or she may be under the orders of a supervisor ..."

MR BLACKBURN: Yes, I accept that, but I still believe that where the definition really comes to an end is at `stock` - `selection of stock`.

PRESIDENT: You're saying that it ought to be read as a person or `an employee in charge of a section, or an employee who buys or supervises the buying or selection of stock`. Full stop.

MR BLACKBURN: Full stop.

PRESIDENT: Now clearly it doesn't say that though does it, because it goes on and says, `and` something else.

MR BLACKBURN: Yes, but I think the `and` is the key word there.

PRESIDENT: That is a conjunction there, isn't it? - `and`, it doesn't talk about something else, it joins the two together. It requires something else to be done.

MR BLACKBURN: Yes, but I still believe that that is an addition to the two key functions we have got to ask the questions about. One, the section manager, and/or buyer/orderer. I believe there are two and the `and` is an addition to that.

PRESIDENT: So you can't just be a section manager. You have to be a section manager and buyer or a section manager and orderer. Is that what you are saying?

MR BLACKBURN: No, I believe that you can be a section manager, (1), or you could be a buyer/orderer, (2), or as Mr Targett said this morning I think, he threw in the third preference - you could be both. You could be the section manager and buyer/orderer, all in the one person. So I believe there are three possibilities.

PRESIDENT: Yes. Would we not then need to go back to Part I of the award, in clause 2, where it appears to clarify it a little by saying:

"Section Manager/manageress and/or buyer/orderer. (as defined)."

Does that make it any clearer?

MR BLACKBURN: I still believe that `and/or` leaves it open to be one or the other.

PRESIDENT: Yes. Do you think it could be a section manager? Full stop.

MR BLACKBURN: Yes. It could be a section manager or you could be...

PRESIDENT: A section manager and/or buyer, or section manager and buyer/orderer?

MR BLACKBURN: You could be the whole lot in one, or you could be either one by it standing separately. You could be a section manager or you could be a buyer/orderer.

PRESIDENT: But could you be an orderer?

MR BLACKBURN: An orderer is something which is quite normal practice throughout the store. Nearly every sales assistant is an orderer to some degree. When they take stock at the end of the day that is starting the ordering process.

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PRESIDENT - BLACKBURN

PRESIDENT: Well then why do you think the award maker has seen fit to include the noun `orderer` in the definition if it is just a routine function?

You have told us, and you have led evidence, as to suggest that buying is something further up the ladder, but ordering is within the scope of any sales person; reordering if you like.

MR BLACKBURN: Reordering, yes. And particularly within the scope of a senior sales assistant, which I would expect to be one of the duties of a senior sales assistant.

PRESIDENT: Then why do you suppose the noun `orderer` has been juxtaposed with `buyer`?

MR BLACKBURN: I would think it possibly goes back to the time this award was framed. As I mentioned this morning, in departmental stores it is a different type of operation to what it is in a food market. A buyer in a departmental store actually physically goes, and in many cases goes to the mainland, or even these days to Hong Kong to buy shoes and things like that. He buys and then he orders.

But in the case here, to point to Mrs Geeves' case, I don't see her as a buyer, but I do see her as having the function of a reorderer.

PRESIDENT: Then is the award somehow deficient, Mr Blackburn, in that as far as I understand the situation it applies across the whole retail trade spectrum. It would apply to small stores as well as large stores. And we only have those two senior-type classifications in it. There are other classifications of course, but...

MR BLACKBURN: Yes, but...

PRESIDENT: You see (if I can interrupt you) Mrs Geeves, I have been told, is

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PRESIDENT - BLACKBURN

PRESIDENT: classified as a senior sales assistant, as defined, and as I apprehend my function today, I have to carefully consider what has been put to me and decide whether or not, on the evidence, she fits the definition of senior sales assistant or she fits the definition of section manager or manageress and/or buyer, or orderer. I don't seem to have any other alternative.

MR BLACKBURN: I agree with that.

PRESIDENT: I mean she is classified obviously as a senior sales assistant. Now if she clearly doesn't fit that definition then what is she?

MR BLACKBURN: I believe she is a senior sales assistant. She is not a manager and she is not a buyer.

PRESIDENT: Well then at some time during your submission can you assist me by addressing yourself to that definition? I don't want to interrupt you any more than I have already. If you have got something else to say say it, but I would appreciate you addressing me on the definition of senior sales assistant and tell me why you think Mrs Geeves' duties more properly fit or fall within that definition than within the contested definition.

MR BLACKBURN: I will just find the definition of a senior sales assistant.

I believe, as we have pointed out, that as a senior sales assistant she is second in charge of a department controlled by a department manager.

Well I think we have established that there are three levels of management above Mrs Geeves in the deli operations - particularly the one with the deli supervisor, whose sole role is to control the operation of the 8 delis within the Purity chain.

Immediately above her in the next line above that is the assistant

MR BLACKBURN:

store manager who is responsible. But the total responsibility for the whole thing, whether it be profit or labour, rests with the store manager, whilst at the same time the line comes down to purchasing which is done by a top level manager who is isolated from the store and sits at head office.

And therefore I believe that she is correctly classified as a senior sales assistant. And if I can come back again, I don't believe she is a manager, which is a term we have got to address ourselves to. I also don't believe that she is a buyer. I concede that she is a reorderer.

And you make mention of the award, and I think we possibly all agree in this room today that clause 25 (2) is a very complex clause, and maybe somewhere down the track it does need redrafting.

I don't think that is the problem before us today. I think we have got to take the definitions as they exist in the award at the moment.

PRESIDENT:

Yes, well, yes I can understand that. Do I take it from that submission that you see no difference between a department and a section then?

MR BLACKBURN:

This is a section of a very large store.

PRESIDENT:

You see a senior sales assistant makes no reference to section. It says:

"`Senior sales assistant` means the adult sales assistant who is second in charge of a department ..."

Now `section manager and/or buyer/orderer` or `section manageress and/or buyer/orderer` makes reference to a person or employee in charge of a section.

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PRESIDENT - BLACKBURN

PRESIDENT: Now I would have thought that a section was something smaller than a department.

MR BLACKBURN: I would agree on that, sir.

PRESIDENT: But are you telling me that the assistant manager is also in charge of a section? You have told me that in the context of a senior sales assistant definition, the manager if you like, the store manager, and underneath him the assistant store manager are in charge of the department.

MR BLACKBURN: You could possibly classify the whole store as a department.

PRESIDENT: Yes, if it was part of a large complex, I would imagine. But you could have a whole host of small sections, couldn't you?

MR BLACKBURN: Yes, well in this particular store, and rest assured that I can refer back to the chart, there is a variety section, a deli section, a fruit and veg., grocery, and fridges. But I would think that within some of those sections there are minor sections such as the milk section.

I am not up with the definitions, but we could ask for clarification.

PRESIDENT: I can understand that submission. You are addressing me in the context of Purity. This award doesn't make any reference to Purity. It applies equally to the smallest store in the city I would imagine, and one would have to apply one's mind to exactly the same sort of factual situation if we had a problem with respect to a store employing, shall we say, 10 persons. The same definitions apply.

MR BLACKBURN: Yes.

PRESIDENT: And that is my dilemma. I guess it is yours too. I mean, I can well understand what you are putting to

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PRESIDENT - BLACKBURN

PRESIDENT:

me, in the context of a very large complex such as Purity. I'm sure management might feel a sense of outrage that this claim might be made but that is not to the point.

MR BLACKBURN: Well, I'm afraid I have been looking at it out of the eyes that it was we were dealing with the Purity case in particular.

PRESIDENT: Yes, yes.

MR BLACKBURN: That's the way I thought.

PRESIDENT: But I can't differentiate. I can't say, 'Well, so far as Purity are concerned the award doesn't mean that, but so far as some other store is concerned it means this.' I can't possibly do that.

MR BLACKBURN: I think we've got to be careful of that, because I do know that other major stores of similar size to Purity run on a different organizational basis to what Purity do. So I think we've got to be very careful making across-the-board decisions on this.

PRESIDENT: Yes. It seems to me that if the award is deficient some approach ought to be made to clarify the true intention, so that we don't get situations like this bobbing up.

MR BLACKBURN: But I thought that may be one of the options before you, sir.

PRESIDENT: Well, not as part of these proceedings.

I have laid down some guidelines that suggest that matters of this kind would be better not brought here, but should proceed by way of applications to vary the award so that one can entertain argument on merit and make a decision on the basis of the submissions put.

Today I'm concerned only with what the words mean in terms of ordinary English usage, not whether it doesn't fit comfortably with Purity's overall management strategy or some other much smaller firm. It will be decided within those parameters, I'm

PRESIDENT: afraid.

MR BLACKBURN: Well, that's the way I would see it coming.

PRESIDENT: Yes. I hope I haven't frightened you off, Mr ...

MR BLACKBURN: No, no. No, I think I've said basically what I wanted to say and I think we've elaborated. But just to round off, I still think we come back to the definitions, and I see it can be either section manager or buyer/orderer or it could be both. But I still contend that Mrs Geeves is not a section manager, because of the reasons I've stated, and I don't believe she is a buyer. But I concede that she is a reorderer.

PRESIDENT: Yes, thank you Mr Blackburn.

 Now, Mr Edwards. Will you be long?

MR EDWARDS: What do you term long, sir? Do you want to interpret that before we go ahead? I wouldn't be more than half an hour, I wouldn't think, sir.

PRESIDENT: It's all right, Mr Edwards.

MR EDWARDS: If that fits into the scheme of things.

 Let me firstly say, sir, that ... and lead off with a disagreement between myself and something you said recently to Mr Blackburn, sir. You indicated that it was your job today to decide whether Mrs Geeves was a senior sales assistant or whether she is a section manager, buyer/orderer (if one may express that particular term, and I will deal with that in a moment).

 I disagree with that, sir. I see your job today as being the one you've been charged with by Mr Targett, and that is to determine

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PRESIDENT - BLACKBURN - EDWARDS

MR EDWARDS: whether on the evidence before you Mrs Geeves is a section manager, a buyer/orderer, a section manager and/or buyer/orderer, a section manager or buyer/orderer, or any one of those combinations of all of those. But I don't believe it is your function today, to determine whether or not the classification currently attributed to Mrs Geeves is correct in terms of defining the award.

You merely have to decide whether or not the claim put forward by Mr Targett in his request for an interpretation is correct.

It might be a semantic difference ...

PRESIDENT: On the contrary, Mr Edwards, that seems to be the whole nub of the argument, isn't it? That on the one hand the employer (her employer) claims that she is a senior sales assistant and Mr Targett says she's not.

Aren't they the issues?

MR EDWARDS: Well, I think the facts must establish then, sir, whether or not she is, as Mr Targett claims, a section manager and/or buyer/orderer, or one of those terms, not whether she is correctly classified as a sales assistant.

Sure you can determine that she is not correctly classified as that and she should be a section manager, but I don't think that you can decide that she is not correctly classified and should be a sales assistant.

PRESIDENT: But it has been put to me today, that she is correctly classified as a senior sales assistant.

MR EDWARDS: Well, I believe that to be the case, sir, but I don't believe that's what's in issue. I think what is in issue is whether Mr Targett's contention is correct in the way he is interpreting the words in the award. And that is, the duties

MR EDWARDS: performed by Mrs Geeves make her a section manager and/or buyer/orderer.

PRESIDENT: And am I supposed to say, `Well, no she's not that.` full stop?

MR EDWARDS: I think that's sufficient, sir. Yes, sir, I do.

PRESIDENT: And what is she then?

MR EDWARDS: Well that, sir, is something for the company to determine. And if Mr Targett doesn't agree with that, then he comes back here.

But if you determine she's not a section manager, that is the end of this interpretation, as I understand it.

PRESIDENT: Well you're entitled to your view, Mr Edwards.

MR EDWARDS: Thank you, sir.

Mr President, it's my submission that Mrs Geeves does not comply with the appropriate award definition of a section manager and/or buyer/orderer or section manageress or buyer/orderer, in that in our view, she is neither a section manageress, nor is she a buyer/orderer, as defined in clause 25, Part II of the Retail Trades Award.

One of our few areas of agreement with Mr Targett, is that we too advocate that the definition in clause 25 must clearly be subdivided into two very different and very distinct parts, so as to analyse its application to the work in question.

The first such distinct category should, we submit, read as follows :

"Section manager and/or buyer/orderer, or section manageress or buyer/orderer, means an employee in charge of a section ..."

Finito.

MR EDWARDS:

That is, we believe, a definition within itself. And we further argue that the second distinct part of the definition, like Mr Targett, should read :

"Section manager and/or buyer/orderer or section manageress or buyer/orderer means an employee who buys or supervises the buying or selection of stock, and who is responsible for the keeping of stock of the section and who is actually employed in that section and in direct contact with the customers, notwithstanding that he or she may be under the orders of a supervisor who does not devote the whole of his or her time to the management of the section."

End of that second aspect of the definition.

Those two separate and distinct definitions are at once joined and separated by a peculiar phenomenon of the English language, which is a disjunctive conjunction and in this case the word `or`, and cannot be read as being in any way interrelated.

I wish to deal initially with the first of those components of the definition, that which I would categorize as dealing with the in-charge portion of the definition.

The circumstances of the case in question are that, whilst Mrs Geeves does undertake a supervisory role in respect to the delicatessen, that role, in our view, falls short of being in charge of a section of the store, as is required by the definition in clause 25, Part II of the award.

It is our belief that a person in charge of a section has far more

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wide-ranging powers of control and greater responsibility than merely the supervision of personnel.

And what we're debating here, sir, I guess, is the meaning of the words 'in charge'.

Total control, or being in charge of a section would require a degree of accountability not expected of Mrs Geeves in her employment with Purity, and would include an accountability for bottom line performance, budgetary considerations, pricing, selection of type of product as well as negotiating with suppliers as to buying price.

These are not functions expected of Mrs Geeves, in fact as explained in sworn evidence by Mr Skinner, they are functions carried out by her superiors at a far higher level of the management tree than that enjoyed by Mrs Geeves.

We say the function of supervision that is exercised by Mrs Geeves, is akin to that of a senior sales assistant, that is a second-in-charge function under the control of a superior.

Mrs Geeves' functions are exercised under the control - in the case of Glenorchy where she is currently employed, - she's under the control of the perishable manager, who I would in turn classify as the section manager of that particular section and she is also supervised beyond that point, by the co-manager and the manager and so on, right up the pecking order to the general manager and cannot, in our opinion, be viewed as being in charge of a section.

Rather, her duties are a limited, supervisory role akin to the functions of a leading hand or similar category of employee, which we believe in this award is what is

MR EDWARDS:

known as a senior sales assistant, although I don't believe that fits in very comfortably with the definition of a senior sales assistant. I use that merely because it is at a higher level than a sales assistant and at a lower level than someone in charge of a section, because we believe clearly the responsibility of Mrs Geeves falls short of the accepted meaning of 'in charge'.

In our view, it would be an abject misconstruction of the award term to conclude that a limited supervisory role, as exercised by Mrs Geeves, equates to being in charge of a section, as clearly, being in charge carries far greater and more onerous responsibilities than those of merely supervising certain personnel.

I don't want to deal with that section of the definitions in any greater detail than that at this stage, Mr President. I'd like to deal with the second, of what I would term, distinct segment of the definition in clause 25; that dealing with the buying/ordering aspect.

We contend that to be classified in accordance with this segment of the definition an employee's job function must satisfy all of those functions described after the word 'or' in the second line of the definition and we say that because of the repeated use of the word 'and'. And I stress 'and' throughout the remainder of the text.

Thus to satisfy this aspect, Mrs Geeves is required to be an employee,

"... who buys or supervises the buying or selection of stock and who is responsible for the keeping of stock of the section and who is actually employed in that section and in direct contact with the customers,

MR EDWARDS:

notwithstanding that he or she may be under the orders of the supervisor who does not devote the whole of his or her time to the management of the section."

In our submission there are four separate and distinct tests to be applied to ascertain whether or not this definition applies, and failure of any one of those tests would mean that the employee could not meet the criteria required to be classified (as I'll use the term) as a buyer/orderer in accordance with this definition.

The first of those tests is whether Mrs Geeves buys or supervises the buying or selection of stock. We say that clearly this test is not met in the circumstances that have brought about this interpretation. We contend that Mrs Geeves does no more than reorder stock that has become depleted, which is no more than a simple mechanical task that almost any employee could handle.

In so reordering, the only criteria that Mrs Geeves is required to consider, is what amount should be ordered to replenish the depleted item; a simple mathematical equation.

The term `buyer/orderer`, we contend, should be given its meaning in accordance with the usage of that term in the retail industry. And in support of using that approach, I'd like to quote to you, sir, from C.C.H. Labour Law Reporter, volume 2, paragraph 30.295 (that is paragraph 30 at 295).

Under the heading of `Custom and Usage` it reads :

"It is rare for an award to prescribe exhaustively the rules of conduct to be followed in the industry or occupation to which it

MR EDWARDS:

relates, consequently it is permissible for a tribunal interpreting an award to ascertain and take into account custom and usage in the relevant industry, to help in discerning the meaning of the award."

And a little further down the page, at 2 - at a quote out of the matter Minister v. Day, 1919, 18 A.R. at 19. No. 2 says :

"Seeing however, that an award is made in reference to a particular trade or industry and as between the parties, employers or employees in that industry, there is the fullest scope for the interpretation of the whole award in the light of the known technical meaning attached to the language of the award in the particular trade or industry."

MR EDWARDS:

That then, sir, I would suggest establishes the ground rules in interpretations for importing into a word the term, as it is currently understood or as it is generally understood in the industry in which the award applies. It is my intention and endeavour to do that.

And we say that it does contrast with the basic, fairly rudimentary tasks performed by Mrs Geeves, in the reordering component of her duties.

The task of a buyer, as that term is understood and applied in the retail industry, is a person who seeks out lines of merchandise, negotiates on price with the supplier, is responsible for the range and quantity of produce to be offered for sale, is responsible for ascertaining a retail price for merchandise, is responsible for determining special items to be offered at a reduced price, and is responsible for the supply of tickets.

These then are the duties of a buyer, as that term is used in the retail industry. And I further suggest that some literal application to that word would come up with a similar result.

The flow chart of the management structure at Purity, as explained by Mr Skinner in sworn evidence, shows that the buyers are people at a corporate level, directly responsible to the company buying manager.

And it is these persons who do those tasks which could be assigned to a buyer classification, as that term is understood in this industry.

And I guess in a way, sir, it is a little bit of a re-run of the doctrine of 'generous construction' that I have put up to you on a previous occasion.

In a supermarket environment, a buyer is a highly specialized and it is a critical component of the company

MR EDWARDS:

operations, and consequently those duties are assigned to persons with a high level of expertise and accountability within the corporate structure of the company.

In our view, it is in this light that the term `buyer/orderer` should be viewed in ascertaining the correct interpretation of the definition which is the subject of this interpretation.

We further would submit, and I guess it is by way of an answer to a question you have floated twice this morning, sir; we further submit that it is not a proper construction of that term to merely take one part of it in isolation, and thus argue that this test is satisfied.

The term, `buyer/orderer` must be read as being a complete description, and in that I believe Mr Targett agrees with me.

And it is insufficient to argue merely that the orderer component can be satisfied.

This perhaps could be the case, if the term was expressed as `buyer and/or orderer`, as then obviously only one of those terms would need to be satisfied.

This, we submit, is in direct contrast to the term under consideration which cannot be so subdivided.

Therefore we say to aspire to this classification Mrs Geeves must be both a buyer and an orderer. And thus she cannot claim to be one or the other.

The facts are quite obvious; that whilst Mrs Geeves is required to do some routine reordering from established suppliers, and only in respect to established lines and brands, she is not required to be a buyer, as that term must be read in

MR EDWARDS:

respect of the retail industry.

We conclude from those facts that Mrs Geeves fails the first test required to satisfy this aspect of the definition, and thus she fails all of the tests that must be met; because as I said at the beginning, if she fails one she fails them all, because they are, as you rightly pointed out, conjoined by the word `and`, and must all be read jointly.

Nevertheless, I will just deal with them briefly, if I may; those other tests.

The second test, or facet, is:

"... an employee who is responsible for the keeping of stock of the section."

We believe that Mrs Geeves probably does meet this criteria because of the reordering functions with which we have already dealt in relation to the first test.

And arguably she does comply with that part of the definition.

The final two tests, that is being actually employed in the section and in direct contact with the customers, we concede that they are almost certainly met. We have no argument with the fact that Mrs Geeves meets those criteria; although to a certain extent we agree with Mr Blackburn that for the purposes of this interpretation, the final part of this definition is basically irrelevant in determining whether by job function Mrs Geeves satisfies the criteria of this definition.

We do however make the important observation that the final aspect of the definition in the award, that is that matter saying:

"... notwithstanding that he or she may be under the orders of a supervisor who

MR EDWARDS:

does not devote the whole of his or her time to the management of the section."

We make the important observation that this final aspect is dealing with whether or not a person is a buyer/orderer. It does not relate back to any portion of the definition appearing before the word `or`.

I don't believe it could grammatically be read as applying to anything appearing before the word `or`.

In support of that, I simply repeat my earlier submission that the word `or` appearing in the second line of the definition after the word `section` is a disjunctive conjunction; which whilst it joins the two aspects of the definition, at the same time completely separates them.

Therefore any verbiage appearing after the word `or` must in our submission only apply to the second aspect of the definition - that part that I have, for convenience sake, called the buyer/orderer component of the definition.

Mrs Geeves' position is, we believe, contrasted largely with the position of the section manager in the fruit and vegetable section, who does have an in-charge function, which goes to the question of accountability.

He does have the right to buy some lines; he does have the right to alter retail prices; and he does negotiate with sellers on wholesale prices.

He also has a direct involvement in deciding the range of products that will be offered, and consequently has a degree of accountability to the store manager for bottom line profitability.

And we would say that he more aptly

MR EDWARDS:

fits the in-charge category of the first part of the definition.

And because he is, in our view, appropriately classified as being in charge, he is paid the rate of a section manager and/or buyer/orderer.

As Mrs Geeves does not meet either of those criteria, we submit she would not be appropriately classified as a Section manager and/or buyer/orderer or a section manageress or a buyer/orderer.

It is interesting to note, sir, (as an aside) that it appears from the definition that you cannot be a section manageress and/or buyer/orderer.

You can be a section manager and/or buyer/orderer, but not a manageress; an interesting aside, no more. Probably a little bit sexist and I think it shows the age of the definition with which we are trying to deal today, sir.

And I think, as Mr Blackburn said, it is somewhat dated and probably in need of some revision.

Mr President, in conclusion, we submit that it has been proven beyond any reasonable doubt by sworn evidence, as to the exact nature of Mrs Geeves' employment, and by submissions going to the question of the proper interpretation of the definition in question, that Purity Supermarkets are applying the award in the correct manner, and that the interpretation sought by the union is not reasonably open, given the words actually used in the provision in question and the duties performed by Mrs Geeves.

We therefore request that you declare, in accordance with section 43 (1) (a) of the Act, that the award should be interpreted in the manner we have outlined today in our

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EDWARDS

MR EDWARDS:

submissions.

We oppose vehemently any suggestion that a retrospective order be made, because of the unfair and unrecoverable expense it would impose firstly, not only on this employer but on any other employers, but also because of the very real questions that were raised this morning during the giving of evidence by Mrs Geeves.

She indicates that in her position now at Glenorchy, she believes herself to be a section manageress in charge of 5 or more employees, and thus within classification 3 (i).

However we drew out during cross-examination that whilst at Howrah she was in fact, for most of that period of time, only in charge of 2 employees. I used the word 'in charge' rather inadvisedly there. She supervised 2 employees; a completely different picture than what applies at the current time.

And I believe it would be most unfair for you, sir, to make any order of a retrospective nature indicating that on today's facts Mrs Geeves is a section manageress and/or buyer/orderer or a section manageress/buyer/orderer in charge of 5 or more people, because that simply has not been the historical facts of this case.

And I believe a prospective interpretation would be the fairest and most simplistic manner of dealing with this particular issue. If it please the Commission.

PRESIDENT:

Yes, thank you. Mr Edwards, in part of your final submission I think you suggested that the Commission ought to, among other things, find that the award is being correctly applied; I think words to that effect. You would remember saying that?

MR EDWARDS:

Something very similar to that, sir, yes.

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PRESIDENT - EDWARDS

PRESIDENT:

Yes, then if I am to make that finding, surely I have to have regard to the fact that she has been classified as a senior sales assistant. How else can I say that it has been correctly applied?

MR EDWARDS:

Yes, your point is taken, sir, and perhaps I have made somewhat of an error there, and I might have put my foot in my own mouth.

I don't believe that that is what's sought of you today by the applicant in these proceedings.

The applicant in the proceedings has sought a declaration from you, presumably in accordance with section 43 (1) (a) of the Act, that Mrs Geeves, because of the duties she performs, complies with the definition of section manageress or buyer/orderer.

And I believe that is the issue that is before you. I believe we have proved conclusively that you could not reasonably hold that view, once the award is viewed in its proper perspective.

And I don't believe it is necessarily a case here today where you must make any finding as to whether or not a senior sales assistant classification is appropriate.

You were told this morning, just as an aside, that in fact Mrs Geeves receives an over-award payment. It could well be that the company have recognized that something a little more than a senior sales assistant is appropriate. Maybe they don't recognize that. I don't think it is open to you and I to interpret what was in the company's minds when they made that over-award payment.

But it could be that they are saying that the definitions in the award - and I think Mr Skinner said it in answer to a question from yourself,

MR EDWARDS:

sir - that the definitions in the award don't precisely apply to Mrs Geeves' situation at all.

And that is neither the section manageress/buyer/orderer definition, nor the senior sales assistant definition. So it could well be that in fact the correct position for Mrs Geeves is somewhere in the middle.

But I think what is being asked of you, sir, (regardless of the somewhat foolhardy question that I just put to you) is whether or not Mrs Geeves in accordance with the correct construction of the definition in the award is a section manager and/or buyer/orderer or section manageress or buyer/orderer. I believe that is the crux of the issue before us.

PRESIDENT:

Then I take it you would dispute with me that the first guideline (for the want of a better word) that the Commission laid down in the General Conditions of Service Award, or I think what was commonly...

MR EDWARDS:

T. No. 30, sir?

PRESIDENT:

Yes, would not apply in this instance? That is that:

"Construction or interpretation of award provisions can only be made by considering their meaning in relation to specific facts. It is futile to attempt such an exercise in any other way."

MR EDWARDS:

On the contrary, sir, I believe that is precisely what I have asked you to do today. I have asked you to view the precise facts of the situation of Mrs Geeves' job functions, and I have asked you to match them up with the definition of section manager and/or buyer/orderer or section manageress or buyer/orderer.

And I believe that is the specific facts of this case. It is also an

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MR EDWARDS:

interpretation of an award, and I believe it completely applies in accordance with the first rule of interpretation, contained in T.No. 30 of 1985. I believe that is precisely what I have asked you to do.

PRESIDENT:

Yes, all right.

PRESIDENT:

Thank you. Mr Targett?

MR TARGETT:

Thank you, Mr President. Just briefly, if I may. Two points, Mr Blackburn did place weight on the Exhibit T. (or attempted to take the weight off) Exhibit T.2, T.3 and T.4 by suggesting that that document is in fact not a statement of duties of the individual concerned but a training manual for use of all employees.

I would draw the Commission's attention to the fourth page of Exhibit T.2, half-way down that page where in very bold print it says:

"A WORD OF WARNING: THIS
MANUAL IS NOT A PRIMARY
TRAINING AID."

So I would suggest that in fact the suggestion put forward by Mr Blackburn that this document is a training aid is far from being the case.

It was also suggested that this document is not in use in the stores. As I did mention, the fact is that approximately June or July last year there was a very substantial meeting held at the head office of Purity stores where this manual was implemented, to the people concerned, including Mrs Geeves, and at that meeting the superiors (I did name them previously) advised the serviced delicatessen stockkeepers that this manual is to be used by those departments and by the people concerned and the duties that are in that document as such are the duties of the serviced delicatessen stockkeepers.

Mr Blackburn did concede, and I think Mr Skinner also, that the terminology, 'Serviced Delicatessen Stockkeeper' although being new terminology within Purity stores in Tasmania, is the correct one, although in a lot of cases they do call them other things internally.

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TARGETT

MR TARGETT:

So I would reiterate the point that the duties being performed by Mrs Geeves are in fact in accordance with the definition in the award; that part of the application that we put forward.

The other point that Mr Blackburn was making, and I believe Mr Edwards was also running the same line, was that the terminology used in the definition, 'in charge of' and 'buyer or buys' are the key areas. I don't necessarily disagree with that but I do put forward the proposition that the suggestions being put forward by Mr Blackburn and Mr Edwards are actually importing meanings into those words which are not there.

T. No. 30 of 1985 where the Commission did lay down some points for interpretation to be borne in mind by both the applicants and those opposing such an interpretation - the third point in that document:

"Provided the words used are, in the general context of the award and its application to those covered by its terms, capable of being construed in an intelligible way, there can be no justification for attempting to read into those words a meaning different from that suggested by the ordinary English usage."

And that is what I suggest Mr Blackburn and Mr Edwards are attempting to do.

I believe we have put forward specific facts in this matter which illustrate that Mrs Geeves is in fact performing the duties mentioned in our application and we would request that the Commission find that way in their interpretation.

PRESIDENT:

Thank you, Mr Targett. I will reserve my decision.

HEARING CONCLUDED

GM/CW - 04.06.86

PRESIDENT - TARGETT