

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T. No. 4829 of 1994

IN THE MATTER OF an application
by the State Public Services
Federation Tasmania to vary the
Port Arthur Authority Award

re Ghost Tour Guides

COMMISSIONER GOZZI

HOBART, 28 January 1994

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER GOZZI: Could I have appearances please.

MR C. SMYTH: Commissioner, appearing on behalf of the SPSF Tasmania, CHRIS SMYTH. If the commission pleases.

COMMISSIONER GOZZI: Thank you, Mr Smyth.

MR D. REED: Commissioner Gozzi, good morning. DAVID REED, General Manager of the Port Arthur Historic Site Management Authority, appearing for Port Arthur Historic Site.

COMMISSIONER GOZZI: Thank you, Mr Reed.

MR REED: Thank you.

COMMISSIONER GOZZI: Mr Smyth?

MR SMYTH: Mr Commissioner, good morning. Prior to beginning my submissions I would just like to extend the gratitude of our organisation for the commission listing this matter at such short notice.

COMMISSIONER GOZZI: Thank you.

MR SMYTH: Thank you, commissioner.

COMMISSIONER GOZZI: Only happy to oblige. I hope we can get through it fairly easily.

MR SMYTH: My instructions are to be brief, commissioner. So I'll try to be as brief as possible.

Commissioner, the SPSFT has lodged an application under section 24(2) of the Industrial Relations Act to vary the Port Arthur Authority Award. Prior to moving to the specifics of the variation I would like to provide a - again I stress the word 'brief' - background to the subject matter of the variation.

Commissioner, ghost tours are basically tours provided by interpretation officers or guides around the sites of Port Arthur, particularly in those areas where sightings of ghosts have occurred or, for those skeptics like myself, believe to have occurred.

COMMISSIONER GOZZI: Well there you go.

MR SMYTH: It is usual for no more than 30 people to participate in any one tour and the tours since their inception have proven to be extremely popular with the public.

Commissioner, the fundamental thrust behind the application to vary the award is threefold. Firstly, when the award was first drafted there weren't ghost tours being conducted by the

site, so there has arisen a need to facilitate provisions to accommodate the new arrangement. Secondly, there is a need to ensure that in the allocation of work for the tours, the ghost tour guides, that is, that fairness and equity be provided for all. The proposed variation we submit, commissioner, will allow for the equal distribution of work for guides and the salary rates which will incorporate a loading will provide the flexibility that work done at any time is rewarded equally whichever day of the week it is conducted upon. And the third and final reason, commissioner, is that the variation, we again submit, will provide some certainty with the use of a roster for work that would normally have been done on a casual type basis.

Commissioner, if I could now move just through the specifics of the clauses of the application and provide some background to them, and would encourage any questions or matters of clarification which you have to be done at this time.

Commissioner, the variation will be inserted as a new division, Division C of the award. The reason for that, commissioner, is that the work done as a ghost tour guide would stand alone in terms of other work that employees may conduct for the site at other times. The first clause of the new Division C - Ghost Tour Guides, will be clause 32(a) and that basically sets out that an employee employed as a ghost tour guide would be subject to the following provisions.

COMMISSIONER GOZZI: Mr Smyth, just before you go through the detail of the proposed variation, I'm not sure that we're not going to run into a problem with the wage fixing principles.

MR SMYTH: Commissioner -

COMMISSIONER GOZZI: Let me just tell you what I'm thinking and you might be able to - they're a very frustrating thing, these principles, on occasions, I can tell you. Are we dealing with a conditions matter? I suppose we are. And the problem is, if we are dealing with conditions, the conditions principle as it was has been deleted from the wage fixing principles, and it has now been encompassed in the special case provision with all the rigmarole that goes with that.

MR SMYTH: Yes, commissioner.

COMMISSIONER GOZZI: So if you look at clause - well not clause but page 5 of the wage fixing principles where it says - where it refers to special cases, the provision there is: except for the flow-on of test case provisions, any claim for increases in wages and salaries or changes in conditions in awards other than those allowed elsewhere in the principles, will be processed as a special case.

Now what that really means is the whole situation to be processed as a special case you've got to go through that process of referral.

MR SMYTH: A tortuous process.

COMMISSIONER GOZZI: Mm. And I suspect that's what we're dealing with. Now I don't intend to hold up what seems to me a eminently sensible variation. So what we'll do - and I just want to alert you and Mr Reed to it. What we'll do is we'll go on with the hearing and I'll seek to overcome the technicality of this particular limitation in the principles here. Administratively, if I can't, I might have to get you back. But I was hopeful perhaps you might be able to say: Well look, no, it's not a conditions matter, and then we wouldn't have to worry about it.

MR SMYTH: I could say that, commissioner, but in all honesty I think we are dealing with a conditions matter.

COMMISSIONER GOZZI: Yes. And if you're like me, looking at these wage fixing principles, it just struck me because we always had a conditions principle in the overall set of principles. It's now no longer there and unfortunately that's the way it's worded. But as I say, I'll try and deal with that administratively, if I can.

MR SMYTH: Commissioner, if you could deal with it administratively I think it would suit both parties to this particular matter.

COMMISSIONER GOZZI: I'm just simply raising it a) to alert you to the fact that I think that's what it is, a special case and, secondly, as far as the future is concerned you might want to look at that circumstance within the organisation itself. It won't worry Mr Reed that much but from an organisational point of view you might have other applications in the system where the issues are not as clear cut as they are here where the procedural requirements of this particular principle have to be adhered to at the outset.

As I say, I don't want to make an impediment here because from looking at it and from what you've already said, it seems to be a desirable thing to do.

MR SMYTH: Commissioner, I appreciate those words and I will duly -

COMMISSIONER GOZZI: You might have a look at it anyway.

MR SMYTH: Yes, I certainly shall, commissioner.

COMMISSIONER GOZZI: Clause No. 32(a).

MR SMYTH: Yes, commissioner, basically sets out the terms will be in accordance with the following prescribed conditions. Clause 32(b), commissioner, basically separates the work of a ghost tour guide from work that that employee may perform for the site, that is it basically stands alone in terms of accrual purposes.

There are a number of reasons for that, commissioner, but fundamentally it basically allows the individuals to have some certainty in terms of when their work at the site finishes at one particular situation they're now worked separately and employed separately whilst this other work is conducted.

Commissioner, clause 32(c) basically indicates that work will be performed between the hours of 6.00 p.m. and 12.00 p.m. The minimum work will be for 3 hours, as will be the minimum payment. This will occur for scheduled rostered work and also for unusual special events as they arise, commissioner, such as the retreat that was held on the weekend. There is provision there for work to begin later. Some of the ghost tour guides actually - the ghost tours occurred after 12 o'clock that particular night. So there is a clause there for flexibility when special events or unusual circumstances do arise.

Commissioner, clause 32(d)(i) basically outlines that there will be a 28 day roster drawn up with employees being rostered around for 5 nights per week. It was considered that no more than 5 nights per week be utilised for individuals, fundamentally because not only do they become tired and jaded but also they're like President Clinton, their voices tend to become a little bit hoarse if they work any more than 5 days per week, or 5 nights per week.

COMMISSIONER GOZZI: It's only 15 hours. I'm sure they can stand up to a bit more than 3 hours a night for 5 nights a week.

MR SMYTH: Commissioner, from the information that I was provided by some of the guides it is in fact quite demanding even for those 3 hours per night.

COMMISSIONER GOZZI: All right. Have to get them into a training regime.

MR REED: Harrowing, I might add, Mr Commissioner, not just tiring.

COMMISSIONER GOZZI: Well harrowing I can understand but I don't know about he said he was a sceptic.

MR SMYTH: Certainly in that camp, commissioner, there's no doubt about that.

Commissioner, clause 32(d)(ii) basically states that there will be two rosters drawn up, one for the summer and one for the winter and it indicates where those rosters run to and from and add that the employees will be required to express interest in employment for each particular roster.

COMMISSIONER GOZZI: How do they do that, by writing or just verbally or -

MR SMYTH: I think the site is able to accommodate both writing and verbal requests for ghost tours, commissioner.

COMMISSIONER GOZZI: Okay.

MR SMYTH: clause 32(3)(d) and I'd like to point out a typographical error on that particular clause. It occurs on the second last line of the particular clause and the word is - or should be 'clause' as opposed to the word that I currently have in my - whatever that word actually is, commissioner.

COMMISSIONER GOZZI: Yes. Right. Okay.

MR SMYTH: Commissioner, this basically allows for employees to be requested to work at short notice when again unusual or unforeseen circumstances arise. The payments will be in accordance with the clause outlined in 32(e)(1) and those salary rates, commissioner, in 32(e)(1) are in fact inclusive of sick leave, recreation leave and public holidays. It's been worked out between the parties that is appropriate remuneration for the particular ghost tour guides.

COMMISSIONER GOZZI: Where do those rates come from? Are they tied to anything at all, or - ?

MR SMYTH: They're tied basically, commissioner, I suppose to the current rate and also there's the inclusion of the 1.5 per cent wages agreement as recently struck between the Port Arthur and also provision of a loading to accommodate sick leave, recreation, public holidays as well as bearing in mind the financial constraints of the site.

COMMISSIONER GOZZI: Okay. So we've got the loading - so can you tell me what the base rate is - the base classification rate that they come from?

MR REED: May I help, commissioner?

COMMISSIONER GOZZI: Yes, Mr Reed.

MR REED: It is based, commissioner, on an information officer's pay -

COMMISSIONER GOZZI: Right.

MR REED: - depending on how many years of service they have done, at an overtime rate.

COMMISSIONER GOZZI: Okay. So -

MR REED: And that's an interesting point, if I may elaborate just briefly, because we are paying, currently, ghost tour guides on an overtime rate, when in fact they don't work any standard time during the day.

COMMISSIONER GOZZI:

MR REED: If I could just borrow the award conditions, I will -

COMMISSIONER GOZZI: So we've got Information Officer Class 1 -

MR REED: Yes, sir, and that would relate to Ghost Tours Class 1.

COMMISSIONER GOZZI: Right.

MR REED: Now if we were to divide the first year of service for an information officer, sir, of \$19,904 by the standard hours worked which I think is 1,972 -

COMMISSIONER GOZZI: The annual hours, 36 -

MR REED: The annual hours -

COMMISSIONER GOZZI: - what do they work normally, 36.3/4 or something or 36.1/2?

MR REED: Yes, sir, I think it's - it's nineteen hundred - I think it's one thousand nine hundred and sixty, but I could be a little in error there. And then if -

COMMISSIONER GOZZI: Multiply by 50 - hang on, I'll just look it up, the page - because I think it's important that we get the hourly rate down so that we know what the components is for - you know, if you want to adjust it later on, that we've got it. So the hours are 38 per week, so if you take 38 by 48 weeks I assume -

MR REED: 48, yes, sir.

COMMISSIONER GOZZI: - yes, 48 - 1,824? Or did you the - ?

MR REED: No, we must have done it over 52, sir.

COMMISSIONER GOZZI: Okay. So, 38 by 52 - yes, that's 1,976.

MR REED: 1,976, yes.

COMMISSIONER GOZZI: Yes.

MR REED: Okay.

COMMISSIONER GOZZI: So you divide that by 1,976 which is 52 weeks by 38 hours and that result would be, what, 19 - well - and then you add on the outcome - loading - 20 per cent loading for accruals foregone - entitlements foregone?

MR REED: For the - a casual attitude?

COMMISSIONER GOZZI: Yes.

MR REED: Yes, sir, that's 25 per cent.

COMMISSIONER GOZZI: So have you got a calculator, Mr Hunter?

MR REED: I haven't brought one, which is handy.

COMMISSIONER GOZZI: All right. So anyway -

MR REED: There is a 25 per cent loading.

COMMISSIONER GOZZI: - plus 25 per cent loading -

MR REED: - and then there is a loading to include the overtime component.

COMMISSIONER GOZZI: - plus - and what would that be?

MR REED: I would have to look up here, sir, under overtime which is - I'm sure it's 24.

COMMISSIONER GOZZI: Well it's time and a half -

MR REED: Time and a half, sir.

COMMISSIONER GOZZI: Yes. So, it's another 50 per cent, is it -

MR REED: Yes, sir.

COMMISSIONER GOZZI: - for overtime?

MR REED: Yes, it's at time and a half on the basic rate which is on that 1,976 rate -

COMMISSIONER GOZZI: Yes, on -

MR REED: - hours - and then we have added the appropriate - then we have taken some allowance for the public holiday

numbers in the year which I believe are 13 and that has also had an effect or an impact on the rate.

COMMISSIONER GOZZI: What would that be?

MR REED: It's 13 multiplied by - it's double time and a half on Saturday - on public holidays -

COMMISSIONER GOZZI: Yes.

MR REED: - and, sir, we've - there is a component of - I'm sorry I don't have a calculator to work this out exactly.

COMMISSIONER GOZZI: Well, look -

MR REED: Would you like me to try and do it?

COMMISSIONER GOZZI: Yes, if you could because it would be useful for us all to know. I thought the casual loading would have included the public holidays - and they're actually working on public holidays, I assume.

MR REED: They work on public holidays, yes. Not being a pay clerk I can't actually remember is casuals 20 or 25 per cent

COMMISSIONER GOZZI: Well I thought it was 20 per cent.

MR REED: It might be 20. It's a while since I did the calculation for this particular thing.

COMMISSIONER GOZZI: Let me just have a look.

MR REED: This would be under salary definitions?

COMMISSIONER GOZZI: Yes, it's a 20% loading for casuals, and that comes from clause 13(b) - Contract of Employment of the award.

MR SMYTH: I've only got up to 16.

COMMISSIONER GOZZI: Well, maybe it should be 16, Mr Reed.

MR REED: I remember rounding it to the higher number rather than the lower in negotiations with this.

COMMISSIONER GOZZI: Well, just let me on the calculator for a tick.

MR REED: I have found roughly that the base rate prior to the 1.5% increase is \$10.07 per hour, and then we multiplied that by a casual component of 1.1/2 times which comes - well, sorry - we then add - if it is 10.07 per hour and we add 1.5% for the latest increase, sir, that becomes \$10.22.

All of these hours are rated as casual, which is 1.1/2 times, which comes up to \$15.33.

We then have 13 days during the year of public holidays when in fact they are getting 2.1/2 times the usual rate. So if you amortize that over the 52 weeks and 15 hours that becomes another 22 cents per hour, which covers everybody for any public holidays that they may - that amortizes that out over the year.

If you add that to the \$15.33 that comes to 15.55, nearly \$16.00. Then there is the - yes, I think that's about it.

COMMISSIONER GOZZI: Can I just have a quick go at the calculator?

We'll just go off the record for a tick.

OFF THE RECORD

COMMISSIONER GOZZI: Mr Reed?

MR REED: Commissioner, sir, may I - I really need a whiteboard. I have written this down. May I present it?

COMMISSIONER GOZZI: Yes, certainly.

MR REED: And I don't have a copy so it's a bit difficult to talk to it.

COMMISSIONER GOZZI: Well, do you want to get copies? We'll just do a quick copy. We'll mark it Exhibit R.1.

MR REED: Thank you.

COMMISSIONER GOZZI: So, it sorted itself out, did it?

MR REED: Yes, sir.

COMMISSIONER GOZZI: Well, perhaps before we get back to the rates we'll just leave that and, Mr Smyth, you can finish off.

MR SMYTH: Thank you, commissioner, thanks very much for that.

If we now move to clause 32(3)(ii), commissioner, basically that clause allows for automatic progression after 400 hours worked.

It also allows the authority some discretion to place current guides who have been working at the site for some particular time one of the levels within those five increment ranges.

Clause 32(3)(iii), commissioner, states that the rates will be adjusted by the same general amounts - or the same amounts - of any general wage increase applicable to the authority, and basically we are looking at the state service wage arrangements which has been signed between us, the SPSFT and the Authority.

32(f) basically indicates that matters not specified in Division C will be prescribed as elsewhere in the award, commissioner.

In summary, we believe the proposed variation will hopefully provide the flexibility, security and equity that we've previously addressed.

I've put to you that the variation is in accordance with the public interest, and I have taken on board the matter in relation to the wage fixing principles that you'll possibly overcome through the arrangement.

If the commission pleases.

COMMISSIONER GOZZI: Yes. Thank you, Mr Smyth. Mr Reed?

MR REED: Sir, would it be wise if I just made a couple of round comments - general comments - and then referred to this? Would that be alright, sir?

COMMISSIONER GOZZI: Yes, that's fine.

MR REED: Okay, well look, I just wanted to suggest, sir, that we have been discussing this agreement now for 2 months or so, and it does bring a greater degree of fairness and equity into our ghost tour rostering system.

We welcome the spirit under which these negotiations took place, and we do see this extra division in our award as appropriate recognition for the special circumstances surrounding these evening ghost tours, which are most successful.

It is just worth pointing out at this stage, sir, that the last financial year we took more than 31,000 people on ghost tours at Port Arthur, so it is a very growing part of our important economic base.

COMMISSIONER GOZZI: Was that in '93, the 31,000?

MR REED: 31,000, sir, in '92-93 financial year.

COMMISSIONER GOZZI: Right.

MR REED: The -

COMMISSIONER GOZZI: Is that - sorry - is that 1 July to 30 June?

MR REED: Yes. Yes, sir.

COMMISSIONER GOZZI: Okay.

MR REED: We haven't really been able to adequately classify, remunerate, look after, whatever these ghost tour guides, and we are very pleased if we can now have a special clause in our award inserted - if that's possible, with your agreement, sir - to cover such allowances.

If I can now just relate to how we arranged the rates that we have placed in front of you?

I'm afraid in my earlier discussions I was wrong on one major factor.

Rostered day workers, which is under the condition under which we currently employ our ghost tours, do not have a casual allowance that is payable on overtime.

And, if I can return to the paper that I have just given you -

COMMISSIONER GOZZI: Yes. We'll mark it Exhibit R.1.

MR REED: Thank you, sir.

On Monday to Friday we are averaging 5 days at 3 hours work per evening, and our current rate that we pay the ghost tour guides, sir, is \$15.1094 cents.

That's based on the at the bottom of that page a rate of pay that we described earlier as \$19,904, divided by the number of hours worked in a year of 1976, which is \$10.07 per hour.

It has a loading of overtime between Monday and Friday in the evenings of 1.1/2 times. So that's where the rate of 15.1094 dollars per hour comes in.

On Saturdays and Sundays we would pay the same guide, if they were to work the 7 days, 3 hours each night, that's a total of 6 hours at double time, which is \$20.1458, and that equates to \$120.88 for those two days.

Then we have added in a public holiday allowance. There are 13 days in the year where instead of being paid the \$15.00 an hour they get paid the \$20.00 an hour because it is again double time at overtime rate, and that equates to \$196.00 extra if they were to work every single public holiday. If we divide that by 52 that becomes \$3.78 a week.

The total revenue, if someone was to work the full 7 days and include the public holiday allowance, that would end up at \$351.30. They have actually worked approximately 21 hours, which is \$16.73 an hour.

During the negotiations the authority agreed to round that up to \$17.00 per hour.

Then we have agreed to the state wage agreement of 1.1/2%. So the base rate for this agreement, should it be agreed to, is \$17.26.

The increments after that for the second and third year of service are based on the same increments in previous clauses in the award -

COMMISSIONER GOZZI: For the information officer?

MR REED: Of the information officer. And they are approximately 2.5% per annum, as per Information Officer Class II - Class I, sir - the difference between the first and second year as a percentage. We have used exactly the same increments, so that there is similarity in the award all the way through, which is -

COMMISSIONER GOZZI: Okay. So you have gone from 99.04. You have got five classes so does that go to senior information officer, does it?

MR REED: Yes, sir.

COMMISSIONER GOZZI: What, the first year, 21,951?

MR REED: The first four years in the extra division is listed there. The fifth year we have included not as a senior information officer but in this division, only because there are some people we feel that may start at a higher rate, in that we have the ability to commence some of the ghost tour officers at the third year of service after the introduction, if this clause is adopted, because of their length of service already.

COMMISSIONER GOZZI: Right.

MR REED: That means they do not have enough increments available to them to go up, so we added an extra one, sir.

COMMISSIONER GOZZI: Right. And that extra one, the 19.05, the class 5, the \$19.05 is that derived from \$21,951?

MR REED: Yes, sir.

COMMISSIONER GOZZI: That is. Okay. And that's really that's where \$22,520 is not used?

MR REED: No, sir.

COMMISSIONER GOZZI: Okay. Alright.

MR REED: Thank you.

COMMISSIONER GOZZI: Yes. Thank you, Mr Reed. That's useful.

MR REED: I'm sorry for the inability of providing that figures before.

COMMISSIONER GOZZI: That's fine. That explains it, and will be part of the record, so we have got the base in place for future reference. Mr Smyth?

MR SMYTH: I've got nothing further to add than to what Mr Reed has already put, commissioner, other than to thank him for his assistance in actually working out those calculations.

COMMISSIONER GOZZI: Alright. Well, look, that's fine.

In the circumstances, the award will be varied in the manner requested. A decision and an order will issue shortly, and that concludes these proceedings. Thank you.

HEARING CONCLUDED