

IN THE TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T.749 of 1987

**IN THE MATTER OF AN
APPLICATION BY THE FEDERATED
MISCELLANEOUS WORKERS UNION
OF AUSTRALIA, TASMANIAN
BRANCH TO VARY THE SHIPPING
AWARD**

RE: 38 HOUR WEEK

DEPUTY PRESIDENT A ROBINSON

HOBART, 19 September 1988

REASONS FOR DECISION

APPEARANCES:

For the Federated Miscellaneous
Workers Union of Australia,
Tasmanian Branch

- Mr L Brown

For the Tasmanian Confederation
of Industries

- Mr W J Fitzgerald
Mr K Brotherson
Mr P Korn and
Mr D Bond

DATE AND PLACE OF HEARING:

06 May	1987	Hobart
22 February	1988	Hobart
25 February	1988	Hobart
14 April	1988	Hobart
31 August	1988	Hobart
07 September	1988	Hobart
15 September	1988	Hobart

This matter concerns an application by the Federated Miscellaneous Workers Union of Australia (Tasmanian Branch) (FMWU) for an amendment to the Shipping Award to permit the introduction of a 38 hour week.

The first hearing was held on 6 May 1987 and it was not until after seven (7) hearings in all that the parties were able to present to the Commission a proposal which could arguably be considered acceptable in terms of the requirements of the Wage Fixation Principles.

Those requirements are stated in the Principles as follows:-

STANDARD HOURS

- (a) In dealing with claims for a reduction in standard hours to 38 per week, the cost impact of the shorter week should be minimised. Accordingly, the Commission should satisfy itself that as much as possible of the required cost offset is achieved by changes in work practices.
- (b) Claims for reduction in standard weekly hours below 38, even with full cost offsets, will not be allowed.
- (c) Changes in work practices designed to minimise the cost of introducing shorter hours will not be a consideration for claims under any other principles."

The negotiated cost offsets contained in an agreed exhibit fell under a number of headings:-

1. Sick leave.
2. A new "Needs of the Industry" clause.
3. Casual rates (retention of the divisor of 40 for 12 months).
4. Mixed functions (increased to 4 hour minimum).
5. Recall to work (removal of multiple minimum payments).
6. Flexible methods of working hours.

Whilst the bulk of employers as represented were satisfied that the cost offsets would as much as possible offset the reduction in standard hours to 38, Transport Tasmania pleaded a special case in relation to the operation of the Bruny Island Ferry.

The proposal put to the Commission was that Division A (iv) of the award be exempted from the proposed variations, at least until 1 January 1989.

I am satisfied that the general proposals put forward constitute genuine cost offsets and in this regard meet the requirements of the Wage Fixation Principles.

I also accept the arguments advanced that the Bruny Island Ferry is already a very efficient operation in terms of the work carried out by the very dedicated crews concerned. The fact that this important public transportation link is unprofitable overall in no way reflects upon the individual employees in my view.

There are however problems to be overcome in relation to the way in which the proposed reduction in ordinary hours are to be applied in the Bruny Island Ferry operation and I have given this aspect proper weight in deciding the issues as a whole. I am not satisfied that even given extra time of the order sought to come to grips with those problems they will necessarily be more easily solved further down the track.

In my view the nettle needs to be grasped and hard facts faced by both management and labour together.

Some comfort should be provided by the fact that the proposals put forward in relation to implementation of reduced hours set out a number of stated options, but more particularly give maximum flexibility in the following terms:-

"Circumstances may arise where different methods of implementation of a 38 hour week may apply to various groups or sections of employees in the plant or establishment concerned. OR, by agreement a plant or establishment may adopt a method not identified in sub-clause (b) above."

To my mind there is therefore more than ample scope for the parties to sensibly negotiate and minimise any perceived difficulties concerning this question.

In all of these circumstances I am satisfied that the application meets the requirements of the Wage Fixation Principles and public interest considerations and the claim is therefore granted.

OPERATIVE DATE:

Whilst the parties had reached agreement to vary the award in such a way as to enable the introduction of a 38 hour week as from 1 October 1988 (apart from the Bruny Island Ferry) there is no obligation upon the Commission to necessarily endorse such date.

On page 25 of the State Wage Case Decision of 5 September the following is to be found after dealing with the question of the 3% and \$10.00 claim then before the Full Bench:-

"(e) In arbitrating any residual matters the Commission may take into account the date of operation under the second tier, improvements in superannuation and reduction in hours."

Taking that part of the decision into consideration, together with the other factors peculiar to this case I believe it is desirable in the interests of equity for all sectors of the award to have the same date of variation.

I also decide that the variations granted shall apply on and from 1 November 1988.

Order:-

The parties are requested to submit a draft Order to the Commission for ratification at an early date.

