

**TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984

T. No. 2652 of 1990  
and T.3995 of 1992

**IN THE MATTER OF** applications by  
the Tasmanian Salaried Medical  
Practitioners Society and the  
Minister administering the  
Tasmanian State Service Act 1984  
to vary the Medical Practitioners  
(Public Sector) Award

re Structural Efficiency; Shift  
Work, performance criteria,  
procedures for temporary and  
permanent transfers of Medical  
Practitioners in the TSS, meal  
breaks; time off in lieu,  
overtime, clinical audits and peer  
review, spread of hours and  
working pattern

COMMISSIONER WATLING

HOBART, 17 November 1993  
continued from 3/8/93

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER WATLING: I'll take appearances please.

**MR J. HOUSE:** If the commission pleases, JOHN HOUSE, appearing with **DOCTOR GORDON SENATOR** for the Tasmanian Salaried Medical Practitioners Society.

COMMISSIONER WATLING: Good. Thank you.

**MR M. STEVENS:** If it please the commission, MICHAEL STEVENS, appearing with **JANE COX** and **KATE PAMMENTER** for the Minister administering the Tasmanian State Service Act.

COMMISSIONER WATLING: Thank you. I understand today we're dealing with the question of the datum point and before we get into that, I should ask has there been any prehearing discussions on this point and why can't we reach agreement on the datum point?

MR HOUSE: Well yesterday, Mr Stevens spoke to me and he advised me that within the government industrial process that the dates that I'm proposing are not acceptable to the government.

COMMISSIONER WATLING: Well what about the government's 40 per cent? You're just going - start giving 40 per cent to everyone, are you, and then we don't have to worry about the datum point - we'll give equal opportunity for everyone to go for 40 per cent?

MR HOUSE: Well that would be an equitable and -

COMMISSIONER WATLING: A step in the right direction, you reckon?

MR HOUSE: - speedy resolution, commissioner, to the problem.

COMMISSIONER WATLING: Righto. Well what's the hitch about the datum point? Surely it should be obvious what the datum point is. Mr Stevens?

MR STEVENS: I take it that question is directed at me, Mr Commissioner?

COMMISSIONER WATLING: Yes.

MR STEVENS: Well -

COMMISSIONER WATLING: And if - I'm prepared to go into conference about it if you want, but I just think it's an absolute waste of time spending time here arguing about the datum point when we should be quite clear where we're starting from.

MR STEVENS: Well, obviously, we'd be enlightened to receive

the commission's opinion on this. Our view is that it should be dealt with in regard to the principles. The principles quite clearly say:

The time from which work value changes in an award should be measured is, unless extraordinary circumstances can be demonstrated in special case -

COMMISSIONER WATLING: Well stop there. Isn't that it, extraordinary circumstances?

MR STEVENS: Well we haven't heard anything as yet that would -

COMMISSIONER WATLING: But the matter's been referred to me via a special case arrangement. That's the reason we're here.

MR STEVENS: Well I guess, Mr Commissioner, what we're saying is that we would hear what those extraordinary circumstances can be demonstrated in special case proceedings.

COMMISSIONER WATLING: Well I mightn't want to hear it because the matter's been referred to me and it's been accepted by Anomalies Conference as being a special case.

MR STEVENS: Well it still says that unless extraordinary circumstances can be demonstrated - I mean, I haven't -

COMMISSIONER WATLING: Yes, but the -

MR STEVENS: Are you saying that just because it's been to an - through an Anomalies Conference -

COMMISSIONER WATLING: This matter has been determined before we even start. It's only - you're trying to say to me that anything that happened in the past is overridden by that.

MR STEVENS: Well I'm - what I'm saying to you, Mr Commissioner, is that it should be dealt with under that principle, and if you are satisfied that extraordinary circumstances are demonstrated and if you're satisfied that they're demonstrated simply by the fact that it went through a special case in 1990 -

COMMISSIONER WATLING: The only reason I've got it is that it's been referred to me as a special case.

MR STEVENS: Yes.

COMMISSIONER WATLING: That's the - I don't get it any other way.

MR STEVENS: Well -

COMMISSIONER WATLING: That's how it came here.

MR STEVENS: Yes. I understand that, Mr Commissioner, but there are case precedents of matters that have also been referred to other tribunals as a special case where the datum point in fact has been from the second tier.

COMMISSIONER WATLING: Well what's the difference then with the teachers?

MR STEVENS: Mr Commissioner, all I'm saying is that under the work value principle it says that extraordinary circumstances must be demonstrated. Now, in your view, if that - if your view is that extraordinary circumstances are a matter going through the special case procedure -

COMMISSIONER WATLING: Well if - no, the -

MR STEVENS: - well so be it, but -

COMMISSIONER WATLING: - the question will be whether the finding of an Anomalies Conference under the principles as at - at that time and finding that it was a special case on submissions that were put forward even talking about the datum point of 1981 - right - whether those submissions on referral to me can be considered special, even under your criteria.

MR STEVENS: Well -

COMMISSIONER WATLING: These were done under - this was done under a different set of guidelines, wasn't it?

MR STEVENS: Yes, I'm aware of that.

COMMISSIONER WATLING: And then the guidelines changed.

MR STEVENS: Yes.

COMMISSIONER WATLING: Right. Now the matter that I've got to consider would be whether or not the referral from an Anomalies Conference to me constitute a special circumstance.

MR STEVENS: Yes.

COMMISSIONER WATLING: I have to say to you that, in my view, I think it is.

MR STEVENS: well if that's the case, then the datum point would be from the date of the last work value increase which I have also discussed with Mr House, and the parties do not have a disagreement on when those were, but I think I'm still entitled to put to you that there has to be extraordinary circumstances can be demonstrated. If you, as the commissioner, think that that is the case, well so be it.

COMMISSIONER WATLING: Well the only thing is that this matter was referred to me at a time when the wage fixing principles required something -

MR STEVENS: Yes.

COMMISSIONER WATLING: Right. - and I was given a charter and my charter was to hear this matter as a special case.

MR STEVENS: Yes.

COMMISSIONER WATLING: Now, that task was awarded to me prior to any new principles, right, so the thing had been handed over. Now, if you're saying that because these principles came in, that I'm not allowed to go back and operate from my charter, then I'd be interested to hear that argument.

MR STEVENS: Well my argument is simply, Mr Commissioner, that we deal with it under the principles which say that unless extraordinary circumstances can be demonstrated in special case proceedings, that they shall be from the second structural efficiency -

COMMISSIONER WATLING: So are you saying that I should hear the Anomalies Conference thing again?

MR STEVENS: Well as I understand what you're saying, you're satisfied that the extraordinary circumstances are .... -

COMMISSIONER WATLING: Well I'm a bit concerned. We have a process - we established a process of which the government was party to -

MR STEVENS: Yes.

COMMISSIONER WATLING: - right - and which the government supported -

MR STEVENS: Yes.

COMMISSIONER WATLING: - right - and that we have - and then was a finding of a special case and then I have to now go and hear it again to see whether it's special.

MR STEVENS: Well all I'm saying, Mr Commissioner, is we're entitled to deal with this matter under the current principles and if you're of the opinion that the matter has been through a special case under a different set of principles -

COMMISSIONER WATLING: It's not - it's not an opinion -

MR STEVENS: - and that satisfies that -

COMMISSIONER WATLING: - it's fact isn't it?

MR STEVENS: Well it's fact, but it's an opinion as to whether or not you consider that to be extraordinary circumstances which are demonstrated.

COMMISSIONER WATLING: Well that -

MR STEVENS: If that's the case -

COMMISSIONER WATLING: Well wouldn't I be rehearing the special conference matter - the anomalies conference matter?

MR STEVENS: Well, from what I gather you're saying, Mr Commissioner, you're satisfied that that constitutes extraordinary circumstances.

COMMISSIONER WATLING: Well I'm not prepared to rehear an anomalies conference matter.

MR STEVENS: Well, I understand that. But I mean what I'm putting to you is the matter should be dealt with under Principle 6 - the work value changes. I don't think that's a particularly -

COMMISSIONER WATLING: We're arguing about the datum point and -

MR STEVENS: Yes.

COMMISSIONER WATLING: - and that issue was discussed and there was a referral to me at the time. Now I'm not - I'm not debating the issue that we've got to look at things at work value.

MR STEVENS: Mm.

COMMISSIONER WATLING: We're certainly - I'd be the first to say that we do.

MR STEVENS: Yes.

COMMISSIONER WATLING: But we're really talking this morning about, aren't we, the datum point?

MR STEVENS: Yes, the date from which we start measuring those.

COMMISSIONER WATLING: Right.

MR STEVENS: And the question is, as to whether or not it's the second structural efficiency - when that was awarded - or whether it was from when the last work value increases awarded to the particular people involved -

COMMISSIONER WATLING: Yes.

MR STEVENS: - they're two separate dates.

COMMISSIONER WATLING: Right, now where it talks about the special circumstances, there's already been a decision made that it be referred as a special case. That decision has been made. And that happened well before these.

MR STEVENS: Yes -

COMMISSIONER WATLING: Right?

MR STEVENS: - I accept that.

COMMISSIONER WATLING: Now the question is whether I accept that decision, that it is a special case -

MR STEVENS: Yes.

COMMISSIONER WATLING: - or, whether I go back and rehear it to see whether - now it was referred to me and I'm reluctant to go back and rehear it.

MR STEVENS: I understand, Mr Commissioner.

COMMISSIONER WATLING: You know, did the minister take the same line in the teachers matter?

MR STEVENS: That the - it should be from the second structural efficiency?

COMMISSIONER WATLING: Did the minister -

MR STEVENS: I think the minister took that line; I don't think the minister argued that the matter should be reheard through the special case. I think the same things were - were heard and, as I understand, the full bench adjudged that the special case proceedings was such as to justify the datum point from some time in 1981 - I'm not quite sure of the date. But I - I guess my submission is that it just be dealt with under the work value changes - the Principle 6 work value changes.

If you're saying to me that you're satisfied that extraordinary circumstances can be demonstrated via the special case -

COMMISSIONER WATLING: Well I'm very concerned - I'm very concerned that you should come along here and ask me to rehear a special case application, because the question of the datum point was raised during the course of the special case -

MR STEVENS: And what was the decision of that? I mean I'm not privy to the - the transcript of that.

COMMISSIONER WATLING: Well no, well you're - the minister's representative was.

MR STEVENS: Yes. No I understand that.

COMMISSIONER WATLING: You're representing the minister.

MR STEVENS: Well if it's -

COMMISSIONER WATLING: The minister had a representative there.

MR STEVENS: Yes, yes.

COMMISSIONER WATLING: And the anomalies conference matters were -

MR STEVENS: Agreed matters.

COMMISSIONER WATLING: Yes - and private to the parties. So you'd be very familiar with the proceedings and probably Mr House would be very familiar with the proceedings.

MR STEVENS: Was the datum point dealt with in those proceedings.

COMMISSIONER WATLING: Maybe we might go off the record.

OFF THE RECORD.

COMMISSIONER WATLING: Mr House?

MR HOUSE: Thank you, Mr Commissioner. We now propose to move into the phase of the society's special case which focuses on work value changes in accordance with Principle 6 of the commission's Wage Fixing Principles.

Principle 6 places a heavy onus on us to demonstrate that changes in medical practice constitute significant net additions to work requirements in terms of such factors as complexity of decision making, knowledge and skills utilised and responsibilities borne.

The principle confines any increases in rates to be applied only to those who are affected by significant net additions to work value, so in these terms our case needs to be comprehensive also.



In the threshold issue to be addressed is the time period over which work value changes may be assessed, and as Mr Stevens has alluded to, subsection - sorry - subclause (c) of Principle 6 states: The time from which work value changes in an award should be measured is: Unless extraordinary circumstances can be demonstrated in special case proceedings, the date of operation of the second structural efficiency adjustment allowable under the 30 October '89 State Wage Case decision. And I end the quote there.

The transcript shows that T.2652 of 1990 first became before the commission on 2nd October 1990 when the society sought the second 3% adjustment under the structural efficiency principle as an interim application pending the processing of a special case.

Prior to that, an anomalies conference, which dealt amongst other things with TA.66 of 1990 before the president on 13 July 1990, agreed that the society had established sufficient grounds to pursue a special case.

Against this background of nearly 4 years of negotiations trying to restructure and modernise the Medical Practitioners (Public Sector) Award, we would submit that in pursuing its work value case, the society is entitled to present evidence on changes since the last time work value was considered by a tribunal.

Now in anticipation of the government's position, I had prepared some comments about extraordinary circumstances, including the point that we agree that you've rightly raised. Without wanting to traverse or repeat the proceedings in the special case, I would like to make some comments about what we would see additional extraordinary circumstances - and they will be brief.

There were protracted and fruitless negotiations which go back to early '80 - 1989. The fact that in all jurisdictions other than in Tasmania, significant work value changes affecting salaried medical practitioners had been recognised over the 1980s period.

Some of those decisions were handed down prior to 1989 and others incorporated in the 6% structural efficiency principle increase as an additional amount in the award restructuring process having regard to, inter alia, work value change.

We would submit it would be inequitable to deny salaried medical practitioners in this state the opportunity to present a case over broadly the same period that has been allowed to their colleagues in other states.

We would further argue that there is no prospect of flow-on pressures or double counting arising from the commission

recognising the existence of extraordinary circumstances in this special case.

Turning now, sir, to the - the dates that we believe are appropriate; except in the case of medical administrators the society submits that the last adjustment in salaries for classifications covered by the award under the work value principle was 27 November 1981. From that date public service Commissioner Koerbin recommended an across the board 6.5% adjustment to all salaries in accordance with the board's then short term wage indexation guidelines subject to due allowance being made for a January 1980 post indexation stabilising review adjustment of \$416 per annum.

COMMISSIONER WATLING: Commonly known as 'SWIG'.

MR HOUSE: Thank you. We recommended that - sorry - Commissioner Koerbin recommended that all work related allowances would be similarly adjusted. These increases arising from matter P.194 of 1981 were ratified by the Public Service Board in the form of the Medical Practitioners Principal Award No.7, gazetted on 29th July 1982.

On 9th October 1984, Mr James, who I think was acting public service commissioner, issued a detailed report on a range of issues relating to a new medical practitioners principal award. The operative date recommended by Mr James for the award changes was 1 August 1984.

Relevant to these proceedings was a claim, matter P.232 of 1983 by the society for increased rates of pay for deputy medical superintendents and medical superintendents on account of increased work value. The claimed increases were of the order of 5.85%. In the event, Mr James found that significant change had been demonstrated in accordance with the work value principle which was No.4 at that time, but was unable to agree with the quantum being claimed.

He recommended a 3% increase for superintendents Grade 1 to 3, and for deputy superintendents Grade 3. There were no positions or positions occupied at the deputy superintendent Grade 1 and 2 levels and no work value evidence was presented to enable Mr James to form a view on those levels.

Mr James' recommendations were accepted by the Public Service Board and made effective by amendment No.2 to the Medical Practitioners Principal Award No.8 gazetted on 31 January 1985.

Our records indicate that the first Medical Practitioners Public Sector Award was gazetted on 30 April 1986 with effect from 4 November 1985. While there have been a number of important variations to that award since then, we would submit

none of these has been due to work value consideration - or not overtly so.

Accordingly, we propose that the appropriate period for examining work value change should be from November 1981 except in the case of medical administrators where the starting time should be August 1984. If the commission pleases.

COMMISSIONER WATLING: Right, well August '84 for medical administrators.

MR HOUSE: And November 1980 -

COMMISSIONER WATLING: Well isn't that December - isn't that the 1st December? When was the - the hearing - when was the operative date of the previous decision - the November 27?

MR HOUSE: I'm not sure - it would have been the first pay day on or after -

MR STEVENS: Yes, the first full pay period on or after 27th November.

MR HOUSE: Yes. Well in exactly the terms of the -

COMMISSIONER WATLING: So what, we'd go from the 1st December?

MR HOUSE: - the Medical Practitioners Principal Award No.7 as to -

COMMISSIONER WATLING: Right. So are you suggesting then it's the first full pay period on or after 27/11/81 that we start this from?

MR HOUSE: Yes, sir.

COMMISSIONER WATLING: Right. Right. Mr Stevens?

MR STEVENS: Thank you, Mr Commissioner. Our submission simply put, is that the matter should be dealt with in accordance with the current wage fixing principles in specifically Principle 6 subsection (c), the time from which work value changes in awards should be measured unless extraordinary circumstances can be demonstrated in special case proceedings. The date of the operation of the second structural efficiency adjustments allowable under 30th October 1989 State Wage Case decision. I am aware of other matters involving this commission, however constituted, who have formed the opinion that extraordinary circumstances existed that would justify the special case going to a datum point from the last -

COMMISSIONER WATLING: And it says: unless extraordinary circumstances can be demonstrated in special case proceedings.

MR STEVENS: Yes.

COMMISSIONER WATLING: Right. Not extraordinary circumstances - it's extraordinary circumstances demonstrated in special case proceedings.

MR STEVENS: Yes. Did I misquote that, did I?

COMMISSIONER WATLING: Well you -

MR STEVENS: That's certainly - that's certainly what I meant to -

COMMISSIONER WATLING: That - that - a couple of times we've debated it you've left that bit off and that's - that's a fairly significant point, because the question has been that there has been special case proceedings. The question is whether extraordinary circumstances can be demonstrated -

MR STEVENS: In those proceedings.

COMMISSIONER WATLING: - in those proceedings. The question is, the president has found that they have.

MR STEVENS: Yes, well I was going to make the point that it has been found and therefore we would not seek to discriminate against the people covered by this particular matter. I would concur with the society's view that the previous datum points or the previous time that work value increases were awarded was in fact the 27th - or the first full pay period on or after 27th November 1981 for all but medical administrators. That was matter P.194 of 1981. And for medical administrators, the first full pay period on or after 1st August 1984 and that was matter P.232 and P.242 of 1983.

The only other matter I'd place on record now, which I am compelled to do, is the society's statements that they - protracted and fruitless negotiations have drawn this matter out to such an extent that they have been tardy in getting off the - off the starting line. I would reject that the total and complete fault and blame for that can be laid at the feet of the government. I think all parties should share in that, and I just want it placed on the record because that has been a common theme in some areas and we certainly would not want to see in any way, shape or form that we would tacitly agree with that.

So, Mr Commissioner, if it please the commission.

COMMISSIONER WATLING: Right. Well I can indicate to the parties that my view in this matter is that there has been a -

a finding from an anomalies conference. The finding which was referred to me by the president of this commission was that he's formed the opinion that an arguable case exists and the principle you quote quite clearly states unless extraordinary circumstances can be demonstrated in special case proceedings then a certain date should apply.

My view is, that they must have been established in special case proceedings because the president has found an arguable case finding and - and it has been referred to me. So therefore I accept that, and I rule that we can go back beyond that date and I'm prepared to accept the dates suggested by the parties and in due course that view will be converted to writing.

I think I'd have to say that there are very few that go - very few cases that go this way now and the principles have been changed in relation to the anomalies conference. But it's interesting that it talks about that it has to be demonstrated in special case proceedings and those special case proceedings did take place in November and there was a finding and I'm going to stick with that finding.

So that concludes that issue.

HEARING ADJOURNED