

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 5073 of 1994

IN THE MATTER OF an application by
the Tasmanian Chamber of Commerce
and Industry Limited to vary the
Public Vehicles Award

re superannuation exemptions

COMMISSIONER WATLING

HOBART, 8 August 1994
continued from 17/6/94

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER WATLING: I'll take appearances.

MR M. WATSON: If the commission please, MARK WATSON; I appear on behalf of the Tasmanian Chamber of Commerce and Industry, and with me is STEVEN GATES.

COMMISSIONER WATLING: Good, thank you very much. Well we might put on the record that today is a very snowy day in Hobart and it may well be that some people from the other side couldn't get here. It's understandable. Even my associate is stuck down at Kingston.

Right, we'll see what Mr Watson has to say, thanks.

MR WATSON: Thanks, commissioner. This matter in fact was before you on the 27th June and after some discussion - or after lengthy discussions off the record we went back onto the record and requested an adjournment of the matter to go away effectively and seek some more information.

So that's what we've done and we come back to you to have the application heard again - or a resumption of the hearing. I'll go back over the submissions that I've put to you on the 27th June just for completeness' sake. So I'll just effectively go back to the commencement.

The application is an application to vary the Public Vehicles Award regarding superannuation exemptions under section 32(1)(b) of the Industrial Relations Act. The exhibit that was handed up at the previous hearing, commissioner - have you got that there in front of you?

COMMISSIONER WATLING: Yes - Mm - exhibit W.1.

MR WATSON: Yes - that's right. The exhibit - if you have a look inside the booklet, exhibit TCCI.1 is in fact the draft order for variation of the award. If I take you to clause 29(c) on page 64 of the Public Vehicles Award.

COMMISSIONER WATLING: Right, I know where you are.

MR WATSON: Beg your pardon?

COMMISSIONER WATLING: Yes, continue thanks.

MR WATSON: Okay. You can see there that amendment No.1 in fact seeks to delete subclauses 29(c)(i) and (ii) as these subclauses are in fact obsolete now as applications for changes to the superannuation clause are now lodged under the act.

The second and third amendments as per the draft order go to the names of the companies/employers to be inserted into the award under the headings of the exempted funds.

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The second amendment is for the employer C.T. & M.J. Beaumont to appear under the heading Tasplan. And the third amendment is for the employer T.R. & M.E. O'Reilly to - sorry - to appear under the heading AMP Superleader.

Now section 32(1B)(a) of the act states that the commission must not refuse to make or vary the award in relation to superannuation contributions if the superannuation fund is a complying superannuation fund.

Section 32(1D) of the act states what is meant by a complying superannuation fund and I quote:

For the purpose of subsection (1B), "complying superannuation fund" means a fund -

(a) that is in receipt of a current notice under the Occupational Superannuation Standards Act 1987 of the Commonwealth stating that the fund has satisfied the superannuation fund conditions in relation to the most recent completed year of income;

If I can take you to exhibit 3 in the exhibit booklet, you'll see there a letter from the Insurance and Superannuation Commission which is in fact confirmation that Tasplan in fact meets the requirements of the Insurance and Superannuation Commission and therefore complies with the provisions of the Act. And again, if I can take you to exhibit 5 at the very end of the exhibit booklet, again there is another letter from the Insurance and Superannuation Commission advising that AMP Superleader plan in fact meets the requirements of the Insurance and Superannuation Commission again.

Now section 32(1B)(b) if the act requires the commission to be satisfied that the superannuation fund meets the wishes of the employees. Now with regard to the employers C.T. & M.J. Beaumont, you will find at exhibit 3 of the booklet stat decs from all five employees, and that is, all five employees employed by C.T. & M.J. Beaumont under the Public Vehicles Award stating that by their own choosing they request to have the employer contributions paid to Tasplan.

And with regard to the employer T.R. & M.F. O'Reilly, you will see at exhibit 4 of the booklet again stat decs from all three employees employed by that company under the Public Vehicles Award authorising the employer to change superannuation contributions to AMP Superleader plan.

Now I think it was at this point, commissioner, at the last hearing that - that you in fact had some problems with the information contained in our exhibit booklet in support of our application relating to the change from the present

superannuation fund and also relating to the wishes of employees.

Now after -

PRESIDENT: Can I - just for the sake of the record, I didn't have any trouble with your exhibit book.

MR WATSON: No, but -

COMMISSIONER WATLING: I did have trouble understanding whether or not the employees had made a free choice based on understanding of the fund that they were leaving and the fund they were going to -

MR WATSON: Yes.

COMMISSIONER WATLING: - and the benefits or otherwise of both.

MR WATSON: Yes, yes. Now following that - the last hearing, we followed up the issue with the two companies concerned and in fact sent off a questionnaire type document which went to the issues that you had queries about.

Now I've got the replies from both companies here. Would you prefer to have the original tabled as an exhibit? I must say that they're not actually in the form of a formal stat dec but they are documents that have - that have a number of questions answered and they have been signed off by employees and the employer.

COMMISSIONER WATLING: Yes. I suppose it might be worthy of having it attached to the official file, because these files stay around a while and if people want to check it at any given stage whether there's any dispute over it, one might have a look at it through the file. So I think yes, I'd prefer the original.

MR WATSON: And - and would you prefer to have original stat decs as well?

COMMISSIONER WATLING: I would have preferred to.

MR WATSON: Yes, well I've got those here if you want, for the sake of completeness, for the file.

COMMISSIONER WATLING: Yes, I think all originals really should come to the commission.

MR WATSON: Yes, okay.

COMMISSIONER WATLING: It's just interesting to note that if you're doing any more you might get the people to put their name and address on the stat decs - fundamental.

MR WATSON: Well just while we're on that point -

COMMISSIONER WATLING: So - because just that there's one here, names him, says that he's - just puts of Latrobe in Tasmania. Could be anywhere.

MR WATSON: Just whilst we're on that point, commissioner, in relating to the future, it's probably best if we make a comment about that now, we - we do have what we would probably call a standard that the Chamber is - we'll be using from now on in relation to superannuation exemptions, which I understand has been the subject of discussion between yourself and Mr Gates, so effectively that standard will be used for us in processing any superannuation exemptions through any award changes to the commission in the future.

Commissioner, they're - what I've just handed up is the

COMMISSIONER WATLING: Have you got - have you got a copy of these other stat decs?

MR WATSON: Yes, yes.

COMMISSIONER WATLING: Right.

MR WATSON: What you've got there is the original stat decs which will match the copies contained in the exhibit booklet and also what you have is the originals of the questionnaire that we sent off to the two companies following the last hearing.

Now if I can just take you to the questionnaires that we sent off to the two companies; first of all if we can go to the one T.R. & M.F. O'Reilly - the first question was which fund is currently in receipt of the employers superannuation contributions and the answer from T.R. & M.F. O'Reilly is AMP Superleader plan. So in fact what has happened in relation to this particular company is that they have in fact commenced contributions to the new fund that they seek exemption for under the award. Now that's - that's something that certainly hasn't been encouraged by us, but in fact it is the situation at present and they've in fact been doing that since the 22nd July '93.

The next question is -

COMMISSIONER WATLING: Have you - have you discussed what might happen if someone looks at breach of award in the area?

MR WATSON: Yes, commissioner, I've discussed all the ins and outs of it with both companies so they're well aware of the risk that they may have taken through what's happened however

COMMISSIONER WATLING: It could still be current - the risk.

MR WATSON: The next question was who initiated the proposed change to the new fund and you'll see there that Mr O'Reilly has said there that as we were unhappy with the service from National Mutual we were given incorrect advice concerning contribution levels by National Mutual.

Now in fact he has said there that the company initiated the change but as I will - I'll go on to say that in fact the employees were given a free choice as to the change in companies.

The next question was: is there any financial incentive for you as the employer with the proposed change of funds? And the answer: our employees are only casual bus drivers working during the school year - 40 weeks. With Superleader we have to pay what were obliged to pay with National Mutual; and we had to pay for 52 weeks.

So it may be said that there - there may be a financial incentive for the employer there in that they're not paying for the 12 weeks.

The next question was: have the employees had the benefits of the current superannuation fund and the new superannuation fund explained to them by the funds themselves including any costs or disadvantages associated with the changeover? The answer: yes.

And at the bottom of the page: We, the undersigned state this is accurate - Kevin O'Reilly, Cynthia Dunlop and Judith Jackson who are the three employees involved. And again signed off: T.R. & M.F. O'Reilly.

So that, commissioner, is the follow-up to the questions that you ask in relation to that particular company. So - so we put that to you in support of our application.

If I could now take you to the second questionnaire which is the one for C.T. Beaumont. Again the first question that we asked: which fund is currently in receipt of the employers superannuation contributions? And the answer: Tasplan Nexus which is provided for under the award. He's put a note there saying: all employees are casual and do not work more than 12 hours per week - maximum payment \$6.80 per week.

The next question: how long have the employees had their contributions paid into the fund above? The answer 15 July 1992.

The next question: is this since the commencement of employment with you? The answer: yes - all contributions have been paid to the fund as required. Permission to request Tasplan Nexus limited for full payment of contributions. He's put that there I guess on the basis that if there needs to be any - any confirmation that that is fact the case. He's given permission for those records to be inspected.

The next question: who initiated the proposed change to the new fund? Answer: A past employee who had superannuation and requested to remain in Tasplan. I initiated the investigation and by my on my selection of the alternative fund as an open option. Remember arbitration allowed for an alternative complying fund.

The next question: is there any financial incentive for you as the employer with the proposed change of funds? Answer: absolutely no. I only have personal superannuation with Mercantile Mutual.

The next question: have the employees had the benefits of the current superannuation fund and the new superannuation fund explained to them by the funds themselves including any costs or disadvantages associated with the changeover? Answer: yes.

And down the bottom there the questionnaire has been signed off by Anne Spinks, Hale, Sheehan, Donahue and there is one employee, commissioner, Vertigan who has been out of the state since - since the last hearing and he's not contactible so therefore we were unable to get that particular employee to sign this questionnaire.

Again it has been signed off by C.T. Beaumont as the employer.

COMMISSIONER WATLING: You noticed the little comment on the bottom, did you, 'Explain to him that I never asked for the declaration at all'.

MR WATSON: No, what I did -

COMMISSIONER WATLING: I've never asked for a stat. dec'.

MR WATSON: No. What I did, commissioner, was I explained to him that there are certain requirements under the Act and those requirements are effectively that the commission must be satisfied that the change meets the wishes of employees and, therefore, there are other questions that need to be answered.

COMMISSIONER WATLING: Yes, but it starts off by saying, 'The individual employees after previously making a declaration affidavit asked of the Commissioner'. I didn't ask that at all.

MR WATSON: No, well I can say to you now on the record, commissioner, that I haven't said to Mr Beaumont that you actually required a stat. dec., but obviously you did require answers to these other questions which we've got the answers to.

COMMISSIONER WATLING: Yes, that's right, yes.

MR WATSON: Now, so effectively, commissioner, those - from the previous hearing we went away and got the answers to those questions that you required answers to.

We believe that the application complies with the requirements of the Act in accordance with the wage fixing principles.

It does not offend the public interest, and on that basis we request that you approve the application with effect from today's date.

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If the commission pleases.

COMMISSIONER WATLING: No further submissions? No further submissions.

Well, I can indicate to you that I will hand down a written decision in due course.

I would have to say to you that it will be in favour of the application, but I just want to make it perfectly clear that this is not the usual standard that I want.

And, in fact, if one was really to examine those answers in great depth, they are certainly found wanting, I think, and in fact in some cases some of the questions haven't even been answered.

But, in view of the nature of the application and that which has expired previously, and also that you have foreshadowed that you will be undertaking a different procedure, then - I'm somewhat reluctant, but I am prepared to let this one go through.

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And, on that basis, I will hand down a written decision in due course listing the funds as required, and it will be operative from the first full pay period.

Did you say you wanted the first full pay period, because I think if you do if it is halfway between a pay period it is going to create problems for the employer, isn't it?

MR WATSON: Yes, that's probably correct, commissioner. I think, yes, it would have to be the first full pay period on or after the date of your decision.

COMMISSIONER WATLING: Otherwise you would have all the calculations of days.

MR WATSON: Yes, sure. A good point. Thank you. :

COMMISSIONER WATLING: Rather than a complete

Right. That's all I have to say at this stage. The matter is now closed.

HEARING CONCLUDED