

**TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984

T No. 3753 of 1992

**IN THE MATTER OF** an application by  
the Transport Workers' Union of  
Australia, Tasmanian Branch to  
vary the Carriers Award

re expense and work related  
allowances

COMMISSIONER IMLACH

HOBART, 22 April 1992

**TRANSCRIPT OF PROCEEDINGS**

Unedited

COMMISSIONER IMLACH: I'll take appearances.

MR B. HANSCH: If the commission please, HANSCH B.J. appearing for the Transport Workers' Union of Australia.

COMMISSIONER IMLACH: Thanks, Mr Hansch.

MR S. CLUES: If it please the commission, I appear on behalf of the Tasmanian Confederation of Industries, CLUES S.

COMMISSIONER IMLACH: Thanks, Mr Clues. Mr Hansch?

MR HANSCH: Thank you, Mr Commissioner. Mr Commissioner, the matter which is before you today is to increase award expense and work-related allowances. Mr Commissioner, in order to give you a better understanding of what this application is really about and - because the amounts to be increased are in the vicinity of 30%, I would like to tender a series of exhibits. What I have also done in relation to this, Mr Commissioner, are some 11 exhibits, but instead of handing them up one at a time I've merely put them one behind the other. They are numbered 1 to 11. I've taken the liberty to do that, sir, with your approval of course.

COMMISSIONER IMLACH: Yes, that's endorsed, Mr Hansch. Just before we go any further, have you had discussions with the confederation about all these things, Mr Hansch?

MR HANSCH: Yes, sir, I have in fact had a meeting with Mr Clues on Thursday, I think it was, of last week, sir. And spoke to him again this morning in relation to it.

COMMISSIONER IMLACH: And what's the end result?

MR HANSCH: I believe we have agreement, sir.

COMMISSIONER IMLACH: Oh, right. Well -

MR HANSCH: I say that with a question mark, sir -

COMMISSIONER IMLACH: Yes.

MR HANSCH: - but perhaps Mr Clues will respond to that in his submission.

COMMISSIONER IMLACH: Right. Proceed.

MR HANSCH: First of all, Mr Commissioner, as I previously said, there is - in the documents you have there is 11 exhibits, 1 to 11, and first of all if I could refer to No.11, sir.

COMMISSIONER IMLACH: Right.

MR HANSCH: Which is, in fact, a draft to vary the award, and in particular, sir, I would take you to the third page, the last page, and you will see, sir, that there are four allowances; namely, the first aid allowance, meal moneys, allowances for late payment of wages and travelling allowance. Mr Commissioner, two of those allowances, namely the meal moneys and the travelling allowances, are allowances which are varied in accordance - expense-related allowances, and therefore they are varied from time to time in accordance with CPI - the relevant CPI factors as published by the Bureau of Statistics.

COMMISSIONER IMLACH: Just - I'm sorry, I've lost it, Mr Hansch, what - I'm right now.

MR HANSCH: Somebody must have two pages, Mr Commissioner.

COMMISSIONER IMLACH: As long as it's not you.

MR HANSCH: Mr Commissioner, the first Exhibit H.1 is an extract from the Transport Workers Award 1983. That, sir, is Print F2076 and that award became operative on the 28th of February 1983. It should, sir, be read in conjunction with H.2, which is extracts from the Carriers Award, Part 2 - Conditions, No.1 of 1982. Now, sir, the four allowances which I referred to earlier, you will note if you look at H.1 on the third page, sir - fourth page, sorry, of that document, on the third paragraph, sir, of that page, (c) - subclause (c), there is an amount in there which is - it's highlighted - an amount of \$6. And that, sir, is the provision for the late payment of wages.

If we go further down and under subclause (e) you will see an amount of \$8.

COMMISSIONER IMLACH: Yes, just a minute. Now, just a minute, I'm getting confused. You said on page 58, was it?

MR HANSCH: It's page 53 actually, it is, sir.

COMMISSIONER IMLACH: Oh, I see. Right. Page 53.

MR HANSCH: yes.

COMMISSIONER IMLACH: Right. That's the first one we're talking about.

MR HANSCH: Yes, sir. And there is amounts of \$6, that's in subclause (c), and \$8 -

COMMISSIONER IMLACH: Yes.

MR HANSCH: - in subclause (e).



COMMISSIONER IMLACH: Late payment of wages.

MR HANSCH: Yes, sir.

COMMISSIONER IMLACH: Thanks, Mr Hansch.

MR HANSCH: Sir, if I take you to the next page, which is in fact page 58, or page 5 of the exhibit, page 58 of the award, you will see under the heading 'Meal Allowance' subclause (c)(i) there is an amount of \$3.75. And if we go down to (c)(iii) you will see also see the amount of \$3.75 again there. And as for meal moneys, if I take you to the next page of your exhibit, sir, which is page 73 from the award, you will see 27 - Travelling Allowance, subclause (a), there is an amount of \$12.50.

If I take you to the next page of the exhibit, sir, which is page 78, the next page 6 of your copy, right down the bottom of the page, first aid allowance, there is an amount of \$4.40. Sir, if we then go to H.2 and you will in fact see, under the second page of that exhibit, payment of wages. Under the heading of 'Payment of Wages' you will see the amount, sir, of \$6, which is the same as in the federal award.

If we go over the page, subclause (e), sir, once again you will see the amount of \$8. If we go to the next page of the exhibit, sir, you will see the amounts of \$3.75 - that's under meal allowance, subclause (c). And once again, further down, \$3.75 again. If we go to the next page of that exhibit, sir, under the heading 'Travelling Allowance', which is clause 19: (a) you will see the amount of \$12.50. The last page, sir, of the exhibit, under - right down the bottom, clause 30 - First Aid Allowance, we see the amount of \$4.40. All those amounts, sir, are identical to what they were in the federal award at that point of time.

The Carriers Award, sir, became operative in August 1982. In fact, at that point of time it was a mirror of the Transport Workers Award 1983. You may even note, sir, that the clause numbers were the same until such time as the Tasmanian Industrial Commission, bearing in mind the Carriers Award was under the old system, the Industrial Boards systems, and I think it was in 1985 this commission renumbered the clauses in the award. But they were identical at that point of time.

Mr Commissioner, if I could take you to the next exhibit, which I've number H.3, and we come to the meal - it is in relation, sir, to Carriers Award, meal allowances, which is clause 29. It used to be clause 13 in the award, sir, that is the number that is in brackets. And you will see that from No.1 of 1982, when that allowance was \$3.75, and it gives the operative dates. We go right through and we trace the increases right up until No.3 of 1989, there is the amount of \$5.50.

Now, those amounts, sir, are taken from the awards as they stand. If we go a little bit further down that page of the exhibit, sir, you will see under the heading 'The Transport Workers Award 1983', which is clause 21 of that award, you will see in Print F2076, which is - I said that earlier, sir, it's in relation to H.1, you will see that there - once again it was \$3.75, I said. If we go down to the bottom, four down, sir, Print J9016, the amount is \$7.60. The operative date, the 8th of August 1991.

Now, what's happened there, Mr Commissioner, is that from time to time the federal award, as is the same as the state award, has been varied to include expense-related allowances. And that has in fact been done in accordance with CPI figures for food and takeaways, as per CPI statistics. Of course - perhaps, sir, at this point of time I should go to H.4 which is an identical, but it is an extract showing the rates from time to time in relation to travelling allowance, and once again, sir, that goes from 1982 where the amount is \$12.50. It's under the Carriers Award, the top part, sir, to No. 3 of 1988 where the amount is \$16.05 and it still reflects that amount, sir, of \$16.05. That became operative on the 1st November 1988.

If we go down a bit further, sir, under the heading, 'Transport Workers Award 1983, Clause 27' you will see in February 1983 the amount was \$12.50. If we come down to the last Print J9016 it's \$19.50, sir. That became operative once again on the 8th of August 1991. So there is a difference, sir, of \$3.45 in relation to those amounts.

Now if we go to H.5, sir, and bearing in mind both matters I have referred to, the meal money and the travelling allowance, I've already said are expense-related allowance because they are taken, as I have said, from CPI increases.

Now that is merely a table, sir, H.5, of all the increases as from March 1983, the quarterly increases, right through until the December Quarter 1991.

The left-hand column, sir, under the heading, 'Take Away Foods', and you will see, sir, for example the first one, March '83 was a 2.8% increase. It increased the amount from \$3.75.

Now I give three figures there, sir, and in the first column you have I have accumulated percentage increases; in the second column, sir, I have rounded them off to the nearest 5 cents; and in the third column I have rounded them off to 10 cents to just do a comparison all the way through to see what the amounts should have been before applying the next percentage increase.



And what I in fact did, sir, has been custom within this award. The meal monies have been kept to amounts of the nearest 5 cents.

So right at the bottom of the page and under highlighted you will see the amount of \$7.35, sir. That is for the last increase to the December Quarter 1991.

And, likewise, sir, if we go under the heading, 'Accommodation', that is travelling allowance is where the figures have come from accommodation which varies the travelling allowance, and once again you will see right at the top .4% accumulated brought the \$12.50 to \$12.55. The next column rounded off to the nearest 5 cents became \$12.55, rounded off to the nearest 10 cents it became \$12.50. So, once again, sir, we go right to the bottom of the page where I have the amount highlighted \$20.50, and of course that was for the December Quarter 1991.

If I can just take you back, sir, to H.11 which is our draft and we have a look at those amounts. Item 3, sir, of my draft if clause 29 - Meal Times:

In subclause (c) delete the amount \$5.50 appearing twice and insert \$7.35 in lieu thereof.

That, sir, is in conjunction with H.5 under the takeaway foods.

COMMISSIONER IMLACH: Where do I find this? I'm lost again.

MR HANSCH: It's the third page, sir, of - third page of H.11.

COMMISSIONER IMLACH: Yes.

MR HANSCH: And it's item 3, sir, -

COMMISSIONER IMLACH: Clause 29.

MR HANSCH: Now that is the amount in accordance with that table, sir, and likewise, Mr Commissioner, if we go to item 5, clause 41 - Travelling Allowance, it's page 3 of H.11, you will see - it reads:

In subclause (a) delete the amount \$16.05 and insert \$20.50 in lieu thereof.

Once again, sir, that is in conjunction with H.5 amount right at the bottom on the far right hand side.

Mr Commissioner, if we come to H.6, and H.6, sir, is in relation to first aid allowance. In the Carriers Award it is currently clause 19. It use to be clause 30 of the old award, and you will see, of course, right at the top of the page, No.1 of 1982, the amount was \$4.40. That was the 1st of August 1982 when the award was first made. And if we come down further under No.5 of 1991, you will see the amount of \$5.00 which is the amount that is currently in the award, operative date, 10th of September 1991.

Further down the page, sir, under the heading 'Transport Workers Award, 1983 - clause 39' which is the same clause in relation to first aid allowance you will see 'Print F2076', the amount is \$4.40, the operative date being the 28th of February 1983. The last column there, sir, under the heading 'J9016' or print number the amount is now \$5.80, operative date 8th of August 1991.

If we go further down the page in that exhibit, sir, you will see I've applied the percentage wage increases since 1982 to that \$4.40 and in fact the last amount in it was in November 1991, 2.3 per cent increase reflects the amount of \$5.90. I must also add, Mr Commissioner, we never applied the 4 per cent - the July '88 second tier increases. I don't know why we didn't. I've read some interesting decisions where they have in fact been applied, sir, but we did not include that 4 per cent as there was some misunderstandings where it applied to allowances or not.

COMMISSIONER IMLACH: And those percentages in clause 19 there that you've quoted, Mr Hansch, 4.3, 4.1 and so on down the page, they are reflected in Exhibit H.5, are they?

MR HANSCH: No, sir. H.5 was a document in relation to expense-related allowances, and in fact they came from the Australian Bureau of Statistics CPI figures.

COMMISSIONER IMLACH: I see, yes.

MR HANSCH: These two allowances are work-related allowances and they are in fact increased from time to time in accordance with, well, state wage increases or as in the case with the federal they've been increased by national wage increases.

COMMISSIONER IMLACH: Are they consecutive?

MR HANSCH: Yes, sir.

COMMISSIONER IMLACH: Right. So there's nothing missing there, they are the increases -

MR HANSCH: Yes, sir. Actually I've got a - I don't want to take you all over the place, sir, but H.8 does in fact show

the dates of the wage increases from 1983, which are applicable.

COMMISSIONER IMLACH: Right.

MR HANSCH: So that's where they've been taken from, sir -

COMMISSIONER IMLACH: Good.

MR HANSCH: - in accordance with the decision.

MR CLUES: 2.3 should always be 2.5 there though, shouldn't it? November 1991.

MR HANSCH: Yes, that's correct, sir. That November 1991 should have been 2.5.

COMMISSIONER IMLACH: Shall I make it 2.5?

MR HANSCH: Yes, sir, you should make it 2.5, that's been a typing error in one document, I've merely transferred it across onto the next one. It is 2.5. And the figure was done at 2.5 not 2.3, sir. The calculation was made at 2.5. Sir, if I take you to the next exhibit, which is H.7, and bearing in mind, sir, this is a provision under the Carriers Award, clause 32 - Payment of Wages, which has provisions under subclause (d) and (f) for penalties for late payment of wages.

It is identical, sir, in the federal award. And once again, if we come back to - under the heading 'Carriers Award No.1 of 1982' you will see the amounts of \$6 and \$8, operative date 1st of August 1982. Further down the page, sir, No.3 of 1991, you will see the amounts of \$6.95 and \$9.20, operative date 14th of August 1991. If you go to the - under the heading 'Transport Workers Award 1983', clause 14, subclauses (c) and (e), you will see once again Print F2076. It's the first amount appearing, sir, \$6 and \$8, operative date 28 of the 2nd '83.

The last amount there, sir, is \$8.10; it is - should be highlighted in your copy, sir, and \$10.40. Operative date - 8/8/1991.

What I've merely did, sir, is the same as what I did in relation to the - to the first aid allowance; I've added the percentage increases right from - back from 1982 - or October was the first 4.3%, sir, and - because it varied the amounts all the way through. And right at the bottom of the page, November '91, which once again, sir, that should be 2.5 not 2.3, you'll see the amounts of \$8.10 and \$10.40. They are in fact the amounts, sir, that is - is reflected in the award at this point of time. It would be reflected in the Carriers Award.



I must say, Mr Commissioner, well that is identical to what is in the federal award. I mean the amounts are the same.

So if I can go back, sir, to H.11, page 3, sir, of that exhibit, item 2, sir, clause 19 - First Aid Allowance reads:

Delete the amount of \$5.00 and insert in lieu thereof \$5.90.

Item 4, sir, is clause 32 - Payment of Wages.

In subclause (d) delete the amount \$6.95 and insert \$8.10 in lieu thereof.

In subclause (f) delete the amount of \$9.20 and insert \$10.40 in lieu thereof.

And they are the - right up to date, sir, and they're identical to what is contained in the federal award at this point of time, and I believe I've shown the commission in the way of the exhibit, sir. I mean they've been checked a dozen times, but I'm sure hopefully Mr Clues has checked them and came out with the same answer. He hasn't advised me if he hasn't anyway, so I assume it's correct. They are the amounts, sir, that should go into the award in relation to those four allowances - two work-related and two expense-related allowances.

Mr Commissioner, exhibit H.8 is - well it's merely a copy, sir, where I've put down the increases - state wage increases - as they apply from time to time to work-related allowances, but not expense-related allowances.

Now, Mr Commissioner, H.9 - exhibit H.9 - is an extract from the Carriers Award - Wage Rates No.2 of 1985. Sir, if I can take you to the second page of that exhibit, and I perhaps, sir, at this point of time - these are payment - sorry, they're wage rates clauses, sir, additional amounts - that's where they're taken from and it was section 1 of that award. And perhaps, sir, if I - just to give you an example, if we take the first amount appearing which is in relation to leading hands in charge of not less than three and not more than 10 employees, you will see at that point of time it was \$15.60 per week. I've merely applied the appropriate percentage increases, sir, as you can see right across. In fact I come out at \$17.90 per week and it is in fact reflected in the award under that - where I have the current marked at \$17.90.

If we go to the next, under A, more than 10 and not more than 20 employees, there was an amount of \$23.30. Once again I've applied the applicable wage increases and I come out at \$26.60, sir. But it's currently reflected in the award at \$27.20, so obviously there has been errors and they must have

been my errors, sir, because I'm the one that generally - it depends when it happened - it was prior to 1985 or say it was in mine, sir, but I think it may have happened after 1985.

And so on, sir, we go right through all the allowances and I've taken the allowance at 1985, which was in the award at that point of time and I came - come out with all appropriate rates as to what they worked to. It's interesting, sir, if I can go down to E, you will note that it was eight - the allowance in 1985 - and it's an employee who is a recognised furniture carter engaged in the removing and/or delivering furniture, as defined. The amount was \$8.60. If we go right across to the last column, sir, under where I've got 'current' marked at the top you'll see it now shows in the award at \$9.40. It should in fact be \$9.90.

If we come down to F, sir, which is an employee who is a recognised livestock carter - carting livestock as defined, you will see the amount was identical - \$8.60 - go right across to the last column, sir, under the current amount, it's now reflected at \$9.60. Now we had two amounts that were the same - \$8.60 to start with - and now in the award it shows \$9.40 and \$9.60, but of course the correct is \$9.90.

And likewise, Mr Commissioner, I've gone through all the allowances. There has been a couple of the allowances, sir, that have been coupled together. I mean they were amounts that were the same. I just can't recall what they are at the moment, but I'll pick that up when I come back to the draft, I think.

So what that exhibit merely shows, Mr Commissioner, where all the allowances from 1985 have been in fact adjusted in accordance with the relevant award increases.

Sir, if I can take you to H.10. H.10 is merely an extract from the Transport Workers Award, 1983, which was Print No. G2292, and the operative date of that, sir, was in fact on the last page of that exhibit, 4th November 1985.

If I take you to the second page of that exhibit, sir, we will come to what I've already addressed, - Table of Further Additional Amounts - right down the bottom of the page: Leading hands in charge of: Not less than three and not more than ten employees, and more than ten and not more than twenty - we'll see once again the amounts of \$15.60 and \$23.30 are identical to what was in the exhibit H.9, sir. And in fact all those allowances, if you check both those exhibits, one against the other, you will see all the allowances are identical all the way through - or were identical at that point of time. Because they are no longer the same, sir, because something's gone wrong somewhere down the track.



So what we've sought to do, sir, as I said at the beginning of my submission, is to I guess reflect the correct rates in the award as should have been had the proper increases been applied from time to time, irrespective of whether they be expense-related allowances taken from CPI figures or work-related allowances taken from State Wage increases.

To take you to, once again, sir, H.11, which is the draft, and of course they are the amounts, sir, which we would be seeking to - this application seeks to vary the award by.

Also, Mr Commissioner, and I'm looking at the first page of that exhibit, H.11, you will note, sir, that we have in fact once again under the leading hands in charge of more than 10 and not more than 20 employees, we have in fact reduced the amount, from - I think it was \$27.30 or something which is currently reflected in the award at this point of time, to \$26.60, because that is the correct rate. And the others - all the others have in fact been increased, sir, some of them by 50 cents. They vary - some only by a few cents.

The other thing I would like to point out, Mr Commissioner, allowance A - does an employee who is required to drive a motor vehicle in excess of 16.8 metres in length; 2) drive a motor vehicle with a truck-loading crane - mounted crane; 3) to drive a motor vehicle in excess of 3.5 metres in width or transport a load in excess of that width shall receive an additional \$1.76 per day.

It was reflected in three different - the rates were the same, sir, but in three different clauses in the award. Sorry - not three different clauses, three different numbers under the award. We've merely grouped them together to save repeating ourself on the same amount all the time.

There are possibly one or two more, sir, that we can do at a later date. An example would be: I referred to them earlier - I think one was a livestock carter and one engaged in transporting furniture. If we have the same allowances, sir, we could possibly do that at a later date.

Mr Commissioner, I believe the application which is before you today is consistent with the principles, and of course the existing principles, sir, do say that both work-related and expense-related allowances may be adjusted from time to time in accordance with appropriate increases. And I think as I've demonstrated, sir, from my exhibits, it's really been a catch-up exercise; there's nothing under the principles to say that you can't catch up. I would suggest, sir, that it would be an advantage to the employers - in the past they've gained the advantage where some allowances have not been varied as they should have been, therefore if there has been any gain, it's definitely come from the employer and not the employees. We



are merely seeking at this point of time to rectify the errors that for whatever reasons have occurred in the past.

I would also - also refer the commissioner to a decision which I believe he is aware of, and it's in relation to T.2258 of 1989. That was in the matter of an application by the Tasmanian Public Service Association to vary the Tasmanian Gaming Commission Staff Award re allowances. And that decision, sir, was dated the 13th March 1990. As I said, it was an application by the Tasmanian Public Service Association. It was before Commissioner Imlach on 19th January 1990. It was some 12-page decision, sir, and on page 2 of that - page 2 of that decision, the commissioner had this to say:

The association sought specifically that the allowances be increased by an amount of 7% made up of the 4% not applied at the time of the second 4% second-tier increase in the award in March 1988, plus 3% not applied after the State Wage decision in September 1988.

We have merely gone two or three more, sir, increases, or whether it be one - it may have only been two increases perhaps that led to the change in - to vary the allowances. I'm not suggesting every one of those allowances I've referred to earlier or movement, sir, had - were out - obviously it was right at some time.

MR CLUES: What was the 'T' number, Barry?

MR HANSCH: T.2258 of 1989. That, as I've said, sir, was - was a lengthy decision - 12-page decision - and the commissioner in that case found that the application by the Public Service Association to vary the Tasmanian Gaming Commission Staff Award was in fact in accordance with the principles, and I believe the matter is before you today, sir, is somewhat - somewhat identical to what that organisation sought to do at that point of time, which you addressed in your decision.

Mr Commissioner, subject to any questions that the commission may have -

COMMISSIONER IMLACH: There's only one which I think you've already answered, Mr Hansch; I notice in your calculations in H.9, as we're all aware your calculations have revealed different allowances to what are currently in the award.

MR HANSCH: Yes, sir.

COMMISSIONER IMLACH: That's the federal we're talking about are we?

MR HANSCH: No, sir, no sir, we're talking - where I say 'current', it is the award, sir, 1991. Sorry, I don't just have it with me, sir. They are - they're the existing amounts that is in the award at this point of time -

COMMISSIONER IMLACH: Oh, I see.

MR HANSCH: - that are reflected in the award.

COMMISSIONER IMLACH: So can I just recap that you're seeking significant or, shall we say, significant increases in those expense-related ones at the end of the draft, whereas these in the main body of the draft, you're really adjusting them correctly?

MR HANSCH: Yes.

COMMISSIONER IMLACH: Is that fair comment?

MR HANSCH: That is correct, sir, yes, that is correct, sir. I believe they're all adjusted correct, sir. I mean - but as the commissioner has said, I mean in fact, sir, the - I don't know whether I should be saying this or not, but somebody will soon work it out - in page 3, sir, of that draft, H.11, under the first aid allowance, I mean it's increased by 18%. The meal moneys is increased by 33.6%; the amounts for the payment of wages are 16.5 and 13.5 and the travelling allowance is 27.7 - are the actual percentage increases, sir.

COMMISSIONER IMLACH: Yes, well - yes, I wasn't up with you there in the first part, but I see now what you're aiming to do and it comes back to the question then, that where in that final current column of exhibit H.9, some of that - currently some of that is to your advantage and some is not, but what you're seeking to do is realign them based on the correct mathematics - is that correct?

MR HANSCH: That is correct, sir. That's what the application is about and as I did say earlier, I mean in 1985 the - the amounts - this table of additional amounts - I mean it refer in the first two pages of this exhibit, H.11, the rates were correct. And I think it was in exhibit - yes, sir, it was in exhibit H.9 and the other one was H.10 where we will see that the amounts were identical in 1985 at that point of time. It's got out of kilter somewhere between 1985 and now.

In relation to the - to the other amounts in items 4 to - sorry - 2 to 5 - I had to go right back to 1982, sir, to find out - and I still am not too sure where it went wrong there.

COMMISSIONER IMLACH: But it did.

MR HANSCH: But it did.



COMMISSIONER IMLACH: Yes. That's all, Mr Hansch, thank you.

MR HANSCH: Thank you, sir. Now, Mr Clues?

MR CLUES: Mr Commissioner, the TWU have made application today to increase expense and work-related allowances. The existing principle is to provide for increases in both expense and work-related allowances. In relation to expense-related allowances, application can be made to adjust them from time to time to reflect changes in changes to such expenses, and generally that is done the CPI index.

Likewise, application can be made to increase work-related allowances to be adjusted in accordance with State Wage increases except where flat money amounts have been nominated as a State Wage increase as was the case in the 4% - I think it was back in '88, which Mr Hansch has alluded to.

So there can be no - or there can be little argument raised from the TCI on the grounds that the principles pertaining to these particular applications. The increases - the exercise that Mr Hansch has done in reviewing the expense-related allowances has been very thorough and reliance has been on the CPI movements.

The TCI's checked the calculation and it appears they do reflect movements in CPI and obviously if the commission also checks them and there is errors and omissions then we'll obviously accept those. Likewise, the adjustments nominated for work-related allowances also appear correct they are based on the State Wage Case.

The exhibit clearly identifies the relevant State Wage increases in the Carriers Award as to when those increases became effective. So the logic behind the application does not leave a lot of room for argument and in relation to this particular application, the TCI shall not be opposing the application that's before you. However there is some comment that is needed in relation to the actual applications themselves.

And the problem that the TCI has with these particular applications is that it results in some significant increases in these allowances - increases that could have otherwise been phased in over a past decade for which the calculations are drawn.

It's going to be of little comfort to the employers that these increases are justified both in terms of the principles and the exhibits that have been tendered today that pertain to the CPI and also the State Wage increases, nor will it be of much comfort to the employers that the unions are seeking retrospectivity.



The TCI does not believe that it's appropriate for the union to request for adjustments to be made on CPI increases that are recalculated over the past decade, nor in relation to past State Wage increases.

Having said that, it's really a matter of which battles you pick as opposed to your wars and on this particular one the TCI does not believe it's going to be of benefit in the big picture to be opposing these particular applications. The actual award pertains to a minority of individuals in the community as most of them are covered by the federal award and the federal award has equivalent allowances in that to those being sought by the TWU. Not that that itself justifies the increase.

The position that we put in this application may not be that of a - future applications that may become before the commission for subsequent increases in allowances. If a similar application were to occur, for example, in the Retail Trades Award, there would probably be quite vehement opposition due to the impact that that particular application would have on the employer, whether it is justified or not in terms of CPI and the principles.

So, Mr Commissioner, like a similar application that has come before you in relation to this particular award, the TCI won't be opposing the application that's currently before you.

COMMISSIONER IMLACH: Yes, thanks, Mr Clues. Have you got anything to say about all that, Mr Hansch?

MR HANSCH: Well I think I covered it earlier, sir. I mean I do recognise that mainly in the two expense-related allowances and two of the work-related allowances, namely the provisions for late payment of wages - and I will start there, sir. Perhaps if the employer does as he should do, he'll never have to pay even if it was \$130 if we'd increased it by, because the only way the employee gains that increase or gets that amount - that penalty is, the employer does not pay the correct rates to start with. So it wouldn't matter if it was 130% it is nothing at all to the employer if he abides by the award in the first place. But recognising, sir, that those four increased by in the vicinity of 20 to 30%, look at it this way, sir, it's money the employers had in the bank and hasn't had to pay in the past so he's gained the advantage of it.

I must also say, sir, that the same question was raised in the federal commission - same - the employers raised the issue when it was done at a federal level to in fact increase some of the allowances - not all of those allowances I've mentioned today - and that was only in 1991, sir, they went back 1988, and in fact the increases that's reflected to meal allowances,

travelling allowance and the first aid allowance, sir, was in the vicinity of 18 to 20%. The employers on that occasion also basically suggested the same - that it placed burdens on the employers, as Mr Clues has said in his submission today.

But basically - I've got the transcript there, sir, what the commissioner had to say about it at that time, I think he mainly addressed the situation as I've said. Well nobody is asking for retrospectivity - it's money the employers have saved and we're merely seeking to get, you know, what they're entitled to.

COMMISSIONER IMLACH: Yes, did you mention operative date, Mr Hansch?

MR HANSCH: I didn't mention operative date, Mr Commissioner, but I believe - I have some sympathy for the employers - the first pay period commencing on or after the 1st June.

COMMISSIONER IMLACH: Yes. Do you agree with that, Mr Clues?

MR HANSCH: June 1992, Mr Commissioner.

COMMISSIONER IMLACH: Yes, do you agree with that, Mr Clues?

MR CLUES: Yes, Mr Commissioner.

COMMISSIONER IMLACH: Yes, good. I - we'll just go off the record for a minute, Coral.

OFF THE RECORD

COMMISSIONER IMLACH: Thanks. Alright, well the - I confirm now the application will be granted, especially on the basis of the agreement between the parties, but not only, but especially, also that the amendments will operate from the first full pay period to commence on or after 1st June, 1992.

I repeat - or I say that I'm pleased to see that the parties have reached agreement on this application although I do note the comments by the confederation, which I think are well made.

This matter is closed.

HEARING CONCLUDED