

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

s.29 application for hearing of industrial dispute

Graeme Anderson

(T13457 of 2009)

and

Minister administering the State Service Act 2000

(Department of Primary Industries, Parks, Water and Environment)

COMMISSIONER T J ABEY

HOBART, 27 August 2009

Industrial dispute – translation from *Technical Employees Award to Tasmanian State Service Award* - no disadvantage clause - application dismissed

REASONS FOR DECISION

[1] On 9 June 2009, Graeme Anderson (the applicant) applied to the President, pursuant to Section 29(1) of the *Industrial Relations Act 1984*, for a hearing before a Commissioner in respect of an industrial dispute with the Minister administering the State Service Act 2000 (Department of Primary Industries, Parks, Water and Environment) arising out of his translation from the *Technical Employees Award* to the *Tasmanian State Service Award*.

[2] This matter was listed for a hearing on 6 August 2009. Ms K Jackson, of The Community and Public Sector Union (State Public Services Federation Tasmania) Inc., appeared for and with Mr Anderson. Mr P Whitty, with Mr D Bracken, appeared for the Minister.

[3] Mr Anderson has been employed with the State Government since 1974, initially as a junior technical officer. He subsequently completed technical qualifications and progressed through then existing classification levels.

[4] In 1996 the *Four Stream Classification Structure* was implemented. As a consequence Mr Anderson was translated to Level 3: year 1, in the range 2/3-1, under the *Technical Employees Award*.¹

[5] The *Explanatory Notes* found in the *Guidelines for Technical Translation* read as follows:²

“Explanatory Notes

Translation is to the next highest salary point within the stream.

For example an existing Class IV, Grade 1 [line 11] translates to a new Level 2, 1st year [line 15].

¹ Exhibit A2

² Exhibit R2

In the case of employees translated from the existing Class IX Grade 2 (line 23) and Class XII Grade 2 (line 30) to the bottom of the new Level 3 and Level 4 respectively, there will be no progression to the top of the new Level unless the employee's position description satisfies the requirements of the classification standards for the new level."

[6] Mr Anderson fell into the *line 23* category. This meant that Mr Anderson's pre-translation salary determined that he translated to Level 3 year 1. However as his duties and responsibilities fell within the Level 2 descriptors (and this did not appear to be in dispute) Mr Anderson was precluded from advancing beyond year 1 in Level 3.

[7] Mr Anderson has remained on Level 3 year 1 since that time. He has been paid all salary increases applicable to this level (e.g. State Service Wage Agreement movements) but has not progressed through the (annual) incremental scale.

[8] The translation arrangements under the *Tasmanian State Service Award* are set out in various appendices to the award. Initially this involved a "*point to point*" translation based on salary with effect from 27 November 2008. A *Review Process* followed with translation to the new structure taking effect from 5 March 2009. This process also provided for an external review by the State Service Commissioner or the Tasmanian Industrial Commission, depending on the circumstances.

[9] The translation schedule as is applicable to Mr Anderson is shown in Appendix 1³ to this decision. Critical to this issue is that Mr Anderson's pre translation salary of \$47675 appears at the top of Band 3 and the bottom of Band 4.

[10] The decision of the Agency was to translate Mr Anderson to Band 3 R4 on the point-to-point translation, with progression to R5 as of 5 March 2009, at a salary of \$51634. Mr Anderson would remain at this level without further incremental adjustments, although he would of course enjoy general salary adjustments in accordance with the *Tasmanian State Service Union Agreement 2008*. This would take the salary to \$56418 as at 1 March 2011.

[11] Mr Whitty submitted that prior to translation, Mr Anderson's duties and responsibilities fitted within the descriptors for a Technical Officer L2. Mr Anderson was paid at the bottom of Technical Officer L3, by reason of the 1996 translation rules, not because he fell within the descriptors applicable to Technical Officer L3.

[12] Mr Whitty contended that Technical Officer L2 comfortably fell within the descriptors for the new Band 3. Mr Whitty submitted:⁴

"It's not as if Graeme's work value is close to band 4 where we could redesign the job, but even if it was close, we don't actually need anyone at that level. What the agency is about is getting employees paid at the right level, and we believe that we've done that. To move Graeme to band 4 compounds the problem that four-stream implementation caused. Band 4 would give Graeme access to an additional appropriate amount of \$11,000 per annum as at March 2011. We are saying that we haven't taken anything from Graeme, he has had the advantage of an extra salary point for approximately 13 years. He is in the correct classification band for his duties, and he still gets access to state service salary adjustments."

³ Exhibit A4

⁴ Transcript p. 11

[13] Ms Jackson submitted that at the point of translation, Mr Anderson ceased to be treated as a technical officer, and was translated as though his pre-translation classification had been Administrative and Clerical Officer, L4, year 5.

[14] Ms Jackson said that it was entirely coincidental that the salary point of \$47675 appeared in both B3 and B4 of the new structure. Ms Jackson submitted:⁵

"Had that salary for administrative and clerical level 4, year 5, been even \$10 lower per year, the department would have had no option but to treat Mr Anderson exactly as any other technical officer at level 3, year 1, and translate him to the first increment of band 4 and allow him to progress therein."

[15] If Ms Jackson's contention was accepted, Mr Anderson would, as at 5 March 2009, be paid a salary of \$53246 and progress to \$60777 during the life of the agreement. In theory at least there would be further potential for advancement into R2 of Band 4, with a maximum salary of \$67288.

[16] Ms Jackson submitted that Mr Anderson has been disadvantaged by this translation as he has not been treated in a manner consistent with anyone else classified at the same level. This, Ms Jackson contended, amounted to a demotion, and is unfair and unjust.

[17] As an alternative Ms Jackson submitted that Mr Anderson should *"at the very least remain on the first progression point in band 4."*

Findings

[18] In terms of duties and responsibilities, there does not appear to be any serious disagreement with the following position. Prior to translation, Mr Anderson properly fell within the descriptors of a Technical Officer L2, and post translation, the descriptors applicable to Band 3.

[19] I am unable to conclude whether the appearance of salary point \$47675 in both B3 and B4 was a coincidence or not. Only the parties to the agreement can answer that and the Commission is bound by what appears in the award and schedules to the award.

[20] Had Mr Anderson been classified as a Technical Officer L3, year 1, without any additional consideration, he would certainly translate to B4 and progress through the range.

[21] There is however a key additional factor to be taken into account. Mr Anderson was placed in the classification range 2/3-1 by virtue of the 1996 translation. To my mind the position can be summarised as follows:

[22] Mr Anderson performed the work applicable to a Technical Officer L2 but was paid as an L3-1 as a consequence of an earlier salary/translation circumstance which was specifically provided for in the 1996 translation.

[23] This in my view is a quite different circumstance to that of a Technical Officer performing the work of an L3, who happens to be at year 1 of that level, notwithstanding that at this point of time, they are both paid the same salary.

⁵ Transcript p. 8

[24] There is no contention that the work performed by Mr Anderson is incorrectly placed in the descriptors applicable to new Band 3.

[25] Clause 2 of Part X1 of the award reads:

"2. NO DISADVANTAGE

It is a term of this Award that no employee is to be disadvantaged by the implementation of the new classification structure and any associated review process including salary levels that employees were expected to progress to under the previous employment arrangements. This guarantee will be subject to normal satisfactory performance as required in the previous arrangements to access salary progression points."

[26] How then does this clause relate to Mr Anderson's position?

[27] Mr Anderson had been at the maximum of his allowable progression range for some 13 years. Whilst this might seem a long period of time, both the new award and those which have been superseded are based on classification structures which provide for progression within a band or level, up to a maximum point. Progression beyond that point is based on promotion or change in duties. The duration an individual has at the top of the allowable progression range is not a relevant consideration.

[28] The above clause specifically refers to "*salary levels that employees were expected to progress to under the previous employment arrangements*".

[29] In Mr Anderson's case he had reached the top of allowable progression range applicable to him. The translation to the new award provided for one additional progression point which would not have applied under the previous award arrangements. It cannot therefore be said that Mr Anderson is disadvantaged in terms of a previous salary horizon being in some way curtailed.

[30] I am unable to conclude that Mr Anderson was in any way *disadvantaged* by the process and translation decision of the Agency.

[31] The alternative remedy advanced by Ms Jackson is not, on my reading of the award, available as, unlike the 1996 exercise, there is no provision to hold an individual at a particular level within a progression range.

[32] In all the circumstances I conclude that the translation process and decision taken by the Agency was both open and appropriate and I decline to issue an order in the manner sought by the applicant.

[33] The application is dismissed. I so order.

Appearances:

Ms K Jackson, of The Community and Public Sector Union (State Public Services Federation Tasmania) Inc., for and with Mr G Anderson.

Mr P Whitty, with Mr D Bracken, for the Minister administering the State Service Act 2000 (Department of Primary Industries, Parks, Water and Environment).

Date and Place of Hearing:

2009

August 6

Hobart

APPENDIX 1

| Band Structure | Classification Level | | | Salary 1/12/07 | Point-to-Point | Annual & Structural Adjustment Increase 1/12/08 (3.5% + 0.5%) | Structural Adjustment Increase 1/03/09 | Annual Increase 1/12/09 | Annual Increase 1/12/10 | Structural Adjustment Increase 1/03/11 | |
|----------------|------------------------------|-----------|-------------|----------------|----------------|---|--|-------------------------|-------------------------|--|---------|
| | A&C | Technical | Operational | | | | | | | | |
| | | | | | | 4.0% | 1.5% | 3.5% | 3.5% | 2.0% | |
| BAND 3 | B3-R1-A | A&C 4-1 | (Tech 2-4)* | \$44019 | \$44019 | ~ | ~ | ~ | ~ | ~ | |
| | B3-R1-1 | A&C 4-2 | | \$44938 | \$44938 | \$46736 | \$47437 | \$49097 | \$50815 | \$51832 | |
| | B3-R1-2 | A&C 4-3 | (Tech 2-5)* | Op 8 | \$45854 | \$45854 | \$47688 | \$48403 | \$50098 | \$51851 | \$52888 |
| | B3-R1-3 | A&C 4-4 | | | \$46771 | \$46771 | \$48642 | \$49371 | \$51099 | \$52888 | \$53946 |
| | B3-R1-4 | A&C 4-5 | | | \$47675 | \$47675 | \$49582 | \$50326 | \$52087 | \$53910 | \$54988 |
| | B3-R1-5 | | | | | | | \$51634 | \$53441 | \$55312 | \$56418 |
| Promotion | | | | | | | | | | | |
| BAND 4 | B4-R1-A | | Tech 3-1 | \$47675 | \$47675 | ~ | ~ | ~ | ~ | ~ | |
| | B4-R1-B | A&C 5-1 | Tech 3-2 | Op 9 | \$49523 | \$49523 | \$51504 | \$52276 | \$54106 | ~ | ~ |
| | B4-R1-1 | A&C 5-2 | | | \$50441 | \$50441 | \$52459 | \$53246 | \$55109 | \$57038 | \$58179 |
| | B4-R1-2 | A&C 5-3 | Tech 3-3 | | \$51358 | \$51358 | \$53412 | \$54214 | \$56111 | \$58075 | \$59236 |
| | B4-R1-3 | | | | | | | \$55623 | \$57570 | \$59585 | \$60777 |
| | Advancement Assessment Point | | | | | | | | | | |
| | B4-R2-A | A&C 6-1 | (Tech 4-1)* | | \$53188 | \$53188 | \$55316 | \$56145 | \$58110 | ~ | ~ |
| | B4-R2-1 | A&C 6-2 | | | \$54106 | \$54106 | \$56270 | \$57114 | \$59113 | \$61182 | \$62406 |
| | B4-R2-2 | A&C 6-3 | (Tech 4-2)* | Op 10 | \$55020 | \$55020 | \$57221 | \$58079 | \$60112 | \$62216 | \$63460 |
| | B4-R2-3 | | | | | | | \$59589 | \$61675 | \$63833 | \$65110 |
| B4-R2-4 | | | | | | | \$61582 | \$63737 | \$65968 | \$67288 | |

Translation Review: Graeme Anderson (Tech 3.1)