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TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

TA41 of 1988

**IN THE MATTER OF AN APPLICATION
REFERRED FROM THE ANOMALIES
CONFERENCE**

AND

T1222 of 1988

**IN THE MATTER OF AN APPLICATION BY
THE HOSPITAL EMPLOYEES FEDERATION
OF AUSTRALIA TASMANIA NO. 1 BRANCH
TO VARY THE DENTISTS AWARD**

RE: WAGE RATES AND DEFINITIONS

ORDER -

**No. 3 of 1988
(Consolidated)**

AMEND THE **DENTISTS AWARD** BY DELETING ALL CLAUSES CONTAINED THEREIN AND
INSERTING IN LIEU THEREOF THE FOLLOWING:

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1. TITLE

This award shall be known as the "Dentists Award".

2. SCOPE

This award is established in respect of:

- (a) Dentists
- (b) Dental Mechanics

registered under Part III of the Dentists Act 1919.

3. ARRANGEMENT

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4. DATE OF OPERATION

This award shall come into operation from the first full pay period commencing on or after 26 October 1988.

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It is a term of this award (arising from the decision of the Tasmanian Industrial Commission in the State Wage Case of 5 September 1988) that the union(s) undertake(s), until 1 July 1989, not pursue any claims, award or overaward, except where consistent with the State Wage Case Principles.

5. SUPERSESSION AND SAVINGS

This award incorporates and supersedes No. 2 of 1988 (Consolidated).

Provided that no right, obligation or liability incurred or accrued under any of the abovementioned provisions shall be affected by the replacement or supersession.

6. PARTIES AND PERSONS BOUND

Unless otherwise specified, this award shall have application to and be binding upon:

- (a) all employers (whether members of a Registered Organisation or not) who are engaged in the industry specified in Clause 2 - Scope;
- (b) all employees (whether members of a Registered Organisation or not) for whom classifications appear in this award and who are engaged in the industry specified in Clause 2 - Scope;
- (c) the Hospital Employees' Federation of Australia, Tasmania No. 1 Branch and the officers of that organisation and their members employed in the industry specified in Clause 2 - Scope;
- (d) the Tasmanian Confederation of Industries; and;
- (e) the Tasmanian Trades and Labor Council.

7. DEFINITIONS

- (a) **Adult** - an employee of 20 years of age or over.
- (b) **Apprentice** - Any person who is being trained as a Dental Technician or a Registered Dental Mechanic by a qualified Journeyman or Dentist under articles of apprenticeship.
- (c) The **Association** - means The Dental Assistants' Association of Australia (Tasmanian Branch).
- (d) **Casual employee** - means any person who is employed on a casual basis and except as to probationary employees mentioned in subclause (a), Clause 22 (Terms of Employment) hereof, includes any person who is employed- for a period not exceeding 5 days at any one time.

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- (e) **Dental Mechanic** - Any person registered under Section 37 of the Dentists' Act who makes any article to be fitted to the human mouth.
- (f) **Dental Technician** - Any person other than a Registered Dental Mechanic who makes any article to be fitted to the human mouth and who has served an apprenticeship under the provisions of subclause (c) hereof.
- (g) **Experience** - means experience in a dental surgery whether in the employ of one employer or of several. For the purposes of this subclause an employee who is dismissed or leaves his or her employment shall be entitled to a reference stating the period of his or her experience.
- (h) A **Part-Time Employee** is one who regularly works for less than 38 hours per week.
- (i) **Show Day** means not more than one local show day observed on an employee's ordinary working day, other than a Saturday or a Sunday, in the city, town or district in which the employee is employed; or such other day which, in the absence of such a local show day, is agreed on by the employee and the employer, therefore making a total of 11 paid public holidays per year.

8. WAGE RATES

1. WAGES

The minimum rates of wages that may be paid by employers to adult employees per week of 38 hours shall be as follows:

DIVISION A - REGISTERED DENTAL MECHANICS AND DENTAL TECHNICIANS

	Amount Per Week \$
(a) Registered Dental Mechanic -	
1st year of service	440.90
2nd year of service	445.50
3rd year of service	450.00
4th year of service	454.50
5th year of service and thereafter	459.10
(b) Dental Technician -	
1st year of service	387.30
2nd year of service	391.80
3rd year of service	396.30
4th year of service	400.90
5th year of service and thereafter	405.40

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(c) Apprentices

The minimum rates of wages that may be paid to apprentices shall be the undermentioned percentages of the wage rate of a dental technician as prescribed in classification (b) of this Division:

	%
First year	45
Second year	55
Third year	65
Fourth year	85

Adjustments are to be made to the nearest ten cents.

Proviso

Provided that an apprentice dental technician who completes his apprenticeship over a 4-year term shall then be paid at the rate prescribed in classification (b) of Division A.

(d) Extra Rates

(i) A dental mechanic who is responsible for the supervision of 3 or more employees shall be paid \$9.30 per week in addition to his weekly wage.

DIVISION B - DENTAL MECHANIC'S ASSISTANTS AND ATTENDANTS

(a) Employees in this classification with less than 9 months' previous experience, shall be paid per week the undermentioned percentages of the amount of \$274.50.

	%
1. Without previous experience	80
2. With 3 months' and less than 6 months' previous experience	87
3. With 6 months' and less than 9 months' previous experience	94

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- (b) Employees in this classification, after 9 months previous experience and at the age of 20 shall be paid per week the undermentioned rate of wage:

	Amount Per Week \$
After 9 months' previous experience	274.50
After one year's additional experience	279.00
After two year's additional experience	283.60
After three year's additional experience	288.10
After four year's additional experience	292.60

- (c) Juniors

The minimum rates of wages that may be paid to junior assistants shall be as follows:

	Percentage of appropriate Adult Wage prescribed in Division B %
Under 17 years of age	50
17 to 18 years of age	62.5
18 to 19 years of age	75
19 to 20 years of age	87.5
20 to 21 years of age	100

DIVISION C – DENTAL ASSISTANTS

The minimum rates of wages that may be paid by employers to adult Dental Assistants (i.e. employees over 20 years of age) shall be the undermentioned rates per week:

	Amount Per 38 Hour Week \$
(a) An employee who <u>does not hold</u> a certificate of proficiency issued by the Dental Assistants' Association of Australia -	
1st year's adult experience	299.40
2nd years' adult experience	304.10
3rd years' adult experience	307.90
4th years' adult experience	316.60
5th years' adult experience and thereafter	324.40

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- (b) An employee who is a current member of the Dental Assistants' Association of Australia (Tasmanian Branch) and holds a certificate of proficiency issued by the Dental Assistants' Association of Australia -

1st year's adult experience	316.70
2nd years' adult experience	327.50
3rd years' adult experience	334.60
4th years' adult experience	343.70
5th years' adult experience	351.90

- (c) Juniors

The minimum rates of wages that may be paid by employers to junior Dental Assistants shall be the undermentioned percentages of the 1st year adult experience contained in paragraph (a) of this Division.

	%	Amount Per 38 Hour Week \$
Under 17 years of age	50	149.70
17 to 18 years of age	62.5	187.10
18 to 19 years of age	75	224.60
19 to 20 years of age	87.5	262.00

Provided that at 20 years of age an employee shall be classified under (a) or (b) of this Division, whichever is appropriate.

2. MINIMUM WAGE

- (a) Notwithstanding the provisions of subclause 1 hereof, no adult employee shall be paid less than the rate of \$221.10 per week.
- (b) Provided that payments for overtime, holiday and weekend penalties prescribed in this award shall not be taken into account in the calculation of such minimum weekly rate of wage.

Where a minimum rate of pay as aforesaid is applicable to an employee for work in ordinary hours the same rate shall be applicable to the calculation of overtime and all other penalty rates, payments during sick leave and annual leave, and for all other purposes of this award.

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3. TOOL ALLOWANCE

All employees engaged in classifications that are proclaimed as trades under the Industrial and Commercial Training Act 1985 shall either be supplied with all tools by the employer or be paid a tool allowance of not less than \$8.10 per week.

Provided that such allowance shall not be subject to adjustment when computing payments for shift penalty rates, for weekend or holiday work, for overtime or for any other purpose.

9. ANNUAL LEAVE

(a) Period of Leave

A period of 28 consecutive days' leave shall be allowed annually to an employee after 12 months' continuous service (less the period of annual leave).

(b) Annual Leave exclusive of Public Holidays

If any of the holidays prescribed by Clause 13 (Holidays with Pay) fall within an employee's period of annual leave, and is observed on a day which in the case of that employee would have been an ordinary working day there shall be added to that leave one day for each such holiday so occurring.

(c) Payment in Lieu Prohibited

Except as provided in subclause (g) hereof, payment shall not be made or accepted in lieu of annual leave.

(d) Time of taking leave

Annual leave shall be given at a time fixed by the employer within a period not exceeding 6 months from the date when the right to annual leave accrued and after not less than 2 weeks' notice to the employee.

(e) Payment for period of leave

All employees, before going on annual leave, shall be paid the amount of wages they would have received in respect of the ordinary time they would have worked had they not been on leave during the relevant period. In addition thereto, all employees, other than casual employees, shall be paid an amount equivalent to the minimum wage as prescribed in subclause 2 (Minimum Wage), Clause 8 (Wage Rates).

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(f) Leave allowed before due date

An employer may allow annual leave to an employee before the right thereto has accrued due, but where it is taken in such a case a further period of annual leave shall not commence to accrue until after expiration of the 12 months in respect of which annual leave has been taken before it accrued.

Where leave has been granted to an employee pursuant to this subclause before the right thereto has accrued due and the employee subsequently leaves or is discharged from the service of the employer before completing the 12 months' continuous service in respect of which the leave was granted, the employer may, for each completed month of the qualifying period of 12 months not served by the employee, deduct from whatever remuneration is payable upon the termination of the employment one-twelfth of the amount of wage paid on account of the annual leave which amount shall not include any sums paid for any of the holidays prescribed by Clause 13 (Holidays with Pay) hereof.

(g) Proportionate leave on termination of service

If after one completed month of service in any qualifying 12 monthly period an employee lawfully leaves his employment, or his employment is terminated by the employer through no fault of the employee the employee shall be paid at his ordinary rate of wage as follows:

thirteen and one third hours for each completed month of continuous service. The service being in respect of leave which has not been granted.

10. CASUAL EMPLOYEES (as defined)

- (a) The minimum rates of wages which shall be paid to casual employees shall be calculated on a daily or hourly basis according to the rates prescribed in subclauses 1 (Wages) and 3 (Juniors), Clause 8 with the addition of 20%.
- (b) A casual employee shall be paid as for a minimum of 4 hours' work.

11. COMPASSIONATE LEAVE

An employee shall on the death of a wife, husband, father, mother, child, stepchild, brother, sister, mother-in-law, father-in-law, stepmother, stepfather, grandfather, grandmother, be entitled upon application being made to, and approved by the employer, to leave up to and including the day of the funeral of such relative and such leave will be without deduction of pay not exceeding the number of ordinary hours worked by the employee in 3 ordinary days, provided that no payment shall be made in respect of an employee's rostered days off.

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Proof of such death, in the form of a death notice or other written evidence, shall be furnished by the employee to the satisfaction of the employer, provided furthermore that this clause shall have no operation while the period of entitlement to leave under it coincides with any other period of entitlement to leave.

For the purpose of this clause the words 'wife' and 'husband' shall not include a wife or husband from whom the employee is separated, but shall include a person who lives with the employee as a de facto wife or husband.

12. GENERAL CONDITIONS

- (a) Clean towels shall be provided daily and the employer shall furnish and supply all destructible tools used by the employees; Provided that by mutual consent the employee shall provide his own tools in which case the employer shall pay the employee a tool allowance to be agreed upon or the employer shall replace the tools used by an employee.
- (b) Suitable accommodation or lockers for employees' clothing and personal effects shall be provided by the employer.
- (c) An employer shall provide appropriate protective appliances where the work is of a dusty or hazardous nature.
- (d) Sufficient and serviceable uniforms shall be provided free of cost to all employees required to wear uniforms, or if employees provide their own uniforms they shall be paid an allowance of \$4.00 per week. Uniforms shall be laundered as and when necessary at the expense of the employer, or if employees launder their own uniforms they shall be paid an allowance of \$3.00 per week paid to the employee.
- (e) The employer shall make provision for adequate light for employees to perform their work.
- (f) An employee who, at the date of this award, is in receipt of a higher rate of pay or of better conditions than those respectively provided herein shall not have his rate of pay reduced or the conditions of employment altered to his prejudice merely as a consequence of this award.
- (g) Any dispute arising from the provisions of this clause shall be referred to the Tasmanian Industrial Commission for determination.

13. HOLIDAYS WITH PAY

- (a) All employees (other than casuals) shall be allowed the following days as paid holidays:-

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New Year's Day, Australia Day, Hobart Regatta Day (south of Oatlands), Labour Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Show Day (as defined), the first Monday in November (where Hobart Regatta Day is not observed), Christmas Day and Boxing Day.

- (b) Payment for the holidays mentioned in subclause (a) which are taken and not worked, shall be at the normal rate of pay which would have applied to the employee concerned, when, if it were not for such holiday, he had been at work.
- (c) Payment to an employee for work performed on holidays mentioned in subclause (a) shall be at the rates prescribed elsewhere in this award.

14. HOURS OF WORK

The ordinary hours of employment shall not exceed 38 hours per week, to be worked as follows:

- (a) Hobart - Between the hours of 8.30am and 6.30pm, Monday to Friday, inclusive.
- (b) Elsewhere - Between the hours of 8.30am and 6.00pm, Monday to Friday inclusive, and 8.30am to 12 noon on Saturday.

15. MATERNITY LEAVE

- (a) Eligibility for Maternity Leave

An employee who becomes pregnant, shall upon production to her employer of a certificate from a duly qualified medical practitioner stating the presumed date of her confinement, be entitled to maternity leave provided that she has had not less than 12 months' continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

For the purposes of this clause:

- (i) An employee shall include a part-time employee but shall not include an employee engaged upon casual or seasonal work.
 - (ii) Maternity leave shall mean unpaid maternity leave.
- (b) Period of leave and commencement of leave
 - (i) Subject to subclauses (c) and (f) hereof, the period of maternity leave shall be for an unbroken period of from 6 to 52 weeks and shall include a period of 6 weeks compulsory leave to be taken immediately following confinement.

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- (ii) An employee shall, not less than 10 weeks prior to the presumed date of confinement, give notice in writing to her employer stating the presumed date of confinement.
- (iii) An employee shall give not less than 4 weeks' notice in writing to her employer of the date upon which she proposes to commence maternity leave stating the period of leave to be taken.
- (iv) An employer by not less than 14 days' notice in writing to the employee may require her to commence maternity leave at any time within 6 weeks immediately prior to her presumed date of confinement.
- (v) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with paragraph (iii) hereof, if such failure is occasioned by the confinement occurring earlier than the presumed date.

(c) Transfer to a safe job

Where in the opinion of a duly qualified medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a duly qualified medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (g), (h), (i) and (j) hereof.

(d) Variation of period of maternity leave

- (i) Provided the addition does not extend the maternity leave beyond 52 weeks, the period may be lengthened once only, save with the agreement of the employer, but the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened.
- (ii) The period of leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

(e) Cancellation of maternity leave

- (i) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.

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- (ii) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer which shall not exceed 4 weeks from the date of notice in writing by the employee to the employer that she desires to resume work.
- (f) Special maternity leave and sick leave
- (i) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then
 - (a) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, or
 - (b) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a duly qualified medical practitioner certifies as necessary before her return to work.
 - (ii) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed 52 weeks.
 - (iii) For the purposes of subclauses (g), (h) and (i) hereof, maternity leave shall include special maternity leave.
 - (iv) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (c), to the position she held immediately before such transfer.

Where such position no longer exists but there are other positions available, for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.
- (g) Maternity leave and other entitlements
- Provided the aggregate of leave including leave taken pursuant to subclauses (c) and (f) hereof does not exceed 52 weeks:
- (i) An employee may, in lieu of or in conjunction with maternity leave, take any annual leave or any part thereof to which she is then entitled.

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(ii) Paid sick leave or other paid authorised award absences (excluding annual leave), shall not be available to an employee during her absence on maternity leave.

(h) Effect of maternity leave on employment

Notwithstanding any award or other provision to the contrary, absence on maternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of an award.

(i) Termination of employment

(i) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this award.

(ii) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(j) Return to work after maternity leave

(i) An employee shall confirm her intention of returning to her work by notice in writing to the employer given not less than 4 weeks prior to the expiration of her period of maternity leave.

(ii) An employee, upon expiration of the notice required by paragraph (i) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (c) to the position which she held immediately before such transfer. Where such position no longer exists but there are other positions available for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(k) Replacement employees

(i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.

(ii) Before an employer engages a replacement employee under this subclause, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

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- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.
- (v) A replacement employee shall not be entitled to any of the rights conferred by this clause except where her employment continues beyond the 12 months' qualifying period.

16. OVERTIME

- (a) All time of duty before the usual time of commencing work or after the usual time of ceasing work or outside the ordinary hours shall be paid for at the rate of time and a half for the first 2 hours and double time thereafter.
- (b) Where an employee is called upon to work more than 3 hours after the usual finishing time \$5.30 for a meal shall be paid in addition to the overtime rates.
- (c) An employee who is recalled to work overtime (that is, outside the hours the employee usually works) after a period of one hour from the time fixed for ceasing work, whether or not he has been notified before ceasing work, shall receive a minimum payment as for 2 hours worked.
- (d) In computing overtime, each day's work shall stand alone.

17. PART-TIME EMPLOYEES

All part-time employees shall be entitled to the same wages, allowances and conditions provided for full-time employees under this award, but, at the appropriate proportional rate of pay.

The hourly rate for part-time employees shall be calculated by dividing the appropriate weekly rate by 38.

A part-time employee shall be paid a minimum of 4 hours for work performed on any given day.

18. PAYMENT OF WAGES

Wages shall be paid during working hours and not later than Thursday in each week; Provided that by mutual consent wages may be paid fortnightly.

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19. SATURDAY WORK

For all work during ordinary hours on Saturday, payment shall be made at the rate of time and one-quarter.

20. SICK LEAVE

- (a) An employee, other than one engaged as a casual, who is absent from work on account of personal illness or on account of injury by accident shall be entitled to leave of absence without deduction of pay, subject to the following conditions and limitations:
- (i) he shall not be entitled to such leave of absence for any period in respect of which he is entitled to workers' compensation;
 - (ii) he shall, within 48 hours of the commencement of such absence, inform the employer of his inability to attend for work, and as far as may be practicable, state the nature of the illness or injury and the estimated duration of the absence;
 - (iii) he shall prove to the satisfaction of the employer (or in the event of a dispute, the Tasmanian Industrial Commission), that he was unable on account of such illness or injury to attend for work on the day or days for which the sick leave is claimed;
 - (iv) he shall not be entitled in any year (whether in the employment of one employer or of more) to sick leave credit in excess of 2 weeks of ordinary working time.
 - (v) For the purpose of administering paragraph (iv) of this subclause, an employer may within one month of this award coming into operation or within 2 weeks of the employee entering his employment require an employee to make a sworn declaration or other written statement as to what paid leave of absence he has had from any employer during the then current year, and upon such statement the employer shall be entitled to rely and act.
- (b) Sick leave shall accumulate from year to year so that any balance of the period specified in subclause (a) (iv) of this Clause which has in any year not been allowed to an employee by an employer as paid sick leave shall be credited to the employee and, subject to the conditions hereinbefore prescribed shall be allowed by that employer in a subsequent year without diminution of the sick leave prescribed in respect of that year;
- (c) An employer shall not be required to make any payment in respect of accumulated sick leave credits to an employee who is discharged or leaves his employment, or for any time an employee is absent from work without producing satisfactory evidence of personal illness.

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21. SUNDAY AND HOLIDAY WORK

An employee required to work on any of the holidays mentioned in Clause 13 (Holidays with Pay) hereof shall be paid at the rate of double time and one half.

An employee required to work on a Sunday shall be paid at the rate of double time.

22. TERMS OF EMPLOYMENT

- (a) All employees except casual employees (as defined) shall be engaged by the week, provided that the first week of employment with any employer may be regarded as a probationary period and shall be paid for at the weekly rate computed on a daily basis. After having served one probationary period an employee shall not be required to serve another probationary period with the same employer.
- (b) Excepting as to casual employees (as defined) and employees serving one probationary period mentioned in subclause (a) hereof, employment shall be terminated by one week's notice in writing on either side or by payment or forfeiture of one week's wages as the case may be; Provided that this shall not affect the right of an employer to dismiss an employee without notice for neglect of duty or misconduct in which case wages shall be paid up to the time of dismissal only.
- (c) In the case of casual employees (as defined) the employer shall provide them with a written advice stating the date(s) and starting and finishing times for each period of employment. Employment shall be terminated (other than in the terms of the written advice mentioned herein) by one hour's notice in writing on either side or by the payment or forfeiture of one hour's wages as the case may be; Provided that this shall not affect the right of the employer to dismiss an employee without notice for neglect of duty or misconduct in which case wages shall be paid up to the time of dismissal only.

R. J. Watling
COMMISSIONER

19 October 1988