

IN THE TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T.749 of 1987

IN THE MATTER OF AN
APPLICATION BY THE FEDERATED
MISCELLANEOUS WORKERS UNION
OF AUSTRALIA, TASMANIAN
BRANCH TO VARY THE SHIPPING
AWARD

RE: 38 HOUR WEEK

DEPUTY PRESIDENT

HOBART, 10 March 1989

REASONS FOR DECISION

APPEARANCES:

For the Federated Miscellaneous
Workers Union of Australia,
Tasmanian Branch

- Mr L Brown

For the Tasmanian Confederation
of Industries

- Mr W J Fitzgerald
Mr K Brotherson
Mr P Korn and
Mr D Bond

DATE AND PLACE OF HEARING:

06 May	1987	Hobart
22 February	1988	Hobart
25 February	1988	Hobart
14 April	1988	Hobart
31 August	1988	Hobart
07 September	1988	Hobart
15 September	1988	Hobart
28 February	1989	Hobart

On the 19 September 1988, the Commission as presently constituted issued a decision granting a 38 hour week in the Shipping Award, for reasons which were set out at the time. The award variation was made effective from 1 November 1988.

Hearings in relation to that matter were extended over a considerable time span, having commenced on 6 May 1987.

It was recognised that, due to the nature of that sector of the shipping industry covered by the award, special difficulties of implementation were faced.

The requirement of the Wage Fixation Principles that:-

"the Commission should satisfy itself that as much as possible of the required cost offsets is achieved by changes in work practices"

proved to be difficult enough to satisfy, but in the case of the Bruny Island Ferry Service additional logistical and industrial relations problems presented a dilemma of unusual proportions.

To their credit all parties, including the Federated Miscellaneous Workers' Union of Australia, Tasmanian Branch, (FMWU) and the ferry crews, fully recognised the special difficulties which exist. And this is one of the reasons why

successive adjournments of hearings were granted, and private discussions were necessary to try and find a satisfactory solution.

Seven hearing days in all, over a period of more than 14 months had been devoted to this single issue when I indicated on transcript of 15 September 1988 that I was satisfied by the cost offset items put forward and would be granting the claim for a 38 hour week in the Shipping Award.

However I pointed out that the order to be issued would contain a range of options as to how the 38 hour week could be worked. There would also be a special provision included whereby some other method of implementation could be utilised. This may be found at page 39, -

"Now, I point out that because of the difficulties associated with the Bruny ferry operation, that the proposed variations which I've just endorsed allows under new clause (I think it's 15) that where none of the ways of working the 38-hour week appear to be viable then it is possible for further alternatives to be implemented.

Now, I take comfort from that and I hope that the Transport Department will take comfort from that and utilise that part of the new clause to have further discussions with the Miscellaneous Workers Union as to how best to implement the 38-hour week in that operation.

In the event that negotiations don't produce a solution, then recourse can always be made back to the Commission."

Further reference was made to the Bruny Island Ferry situation at page 3 of my decision of 19 September 1988, as follows:-

"There are however problems to be overcome in relation to the way in which the proposed reduction in ordinary hours are to be applied in the Bruny Island Ferry operation and I have given this aspect proper weight in deciding the issues as a whole. I am not satisfied that even given extra time of the order sought to come to grips with those problems they will necessarily be more easily solved further down the track.

In my view the nettle needs to be grasped and hard facts faced by both management and labour together.

Some comfort should be provided by the fact that the proposals put forward in relation to implementation of reduced hours set out a number of stated options, but more particularly give maximum flexibility in the following terms:-

"Circumstances may arise where different methods of implementation of a 38 hour week may apply to various groups or sections of employees in the plant or establishment concerned. OR, by agreement a plant or establishment may adopt a method not identified in subclause (b) above".

Simply put, the problems associated with the implementation of the 38 hour week are brought about by the fact that this is a single ferry operation requiring a minimum of a four man crew (i.e. Master, Engineer and two deck-hands). Presently there are only two crews of four to cover a seven day per week, 365 days per year operation.

The ferry must also operate over an extensive span of hours each day to meet the needs of travellers.

The award already recognises the special circumstances and makes separate provisions in the Hours Clause, and in particular, 15(c) provides as follows:-

"(c) Employees - Bruny Ferry

The ordinary hours of employment for employees engaged on the Bruny Ferry shall not exceed an average of seventy six per fortnight to be worked within a spread of twelve hours per day or shift between 6.00am on Monday and midnight of the following Sunday.

Provided that for all work done in excess of 8 hours per day (up to 12 hours per day) the rates of pay shall be one and one quarter times the ordinary rate."

Employees feel strongly that, given the basis upon which they already work, the granting of a 38 hour week should result in rostered days off, and cannot agree with the employer's suggestion that they have their finishing time each day reduced by 30 minutes, together with an extension of the lunch hour break. This is particularly so since the existing roster only enables a two day break, preceded by a late finish and followed by an early start.

Because nothing different had occurred since the award had been varied as from 1 November 1988, and the parties could not agree concerning an appropriate method of catering for the changed circumstance, the matter was brought back to this Commission for resolution.

The Federated Miscellaneous Workers Union produced a detailed proposal as to how employees could be rostered off at set dates throughout the year. The proposal only covers RDO's being taken over a period of 9 months of the year, thus not intruding into the busy tourist season.

The employer concerned argued that the proposal is impracticable; stressing in particular that they are short staffed so far as suitably qualified Masters and Engineers are concerned. Whilst there are two regular Masters and one deck hand/relieving Master, there are only two Engineers. This means that there is already a difficulty covering absences. And to have to cover RDO's would exacerbate an already difficult situation.

The F.M.W.U. acknowledge the staff shortage and agree to crew fill-ins to cover absences of persons through sickness or other reason. However, it is up to management to either train or recruit sufficient staff to properly meet the needs of the service.

Efforts made by Transport Tasmania thus far to recruit have not been successful.

I find it to be an unwelcome task as a member of an industrial tribunal to be placed in the position of having to decide how staff should be rostered for both work and leisure.

Having decided a minimum award framework which offered a range of options (including an open ended option) should have been as far as I have needed to go.

However the history of this matter speaks for itself, and as reluctant as I am to intrude further into what really is a management matter, circumstances give me little choice other than to arbitrate upon the disputed issue before me.

Before deciding just how the reduced ordinary hours of work provision of the Shipping Award should be worked in present circumstances, I would like to make a number of observations and comments:-

1. Whatever work system is utilised it must allow for the continued provision of a fundamental service to and from Bruny Island.
2. To the maximum extent possible the service should be cost efficient.

3. Special provisions contained in the Shipping Award in relation to the Bruny Island Ferry have been "tailored" to that operation and any substantial changes contemplated could give rise to a total review of those special award provisions.

4. Parties to an award have a duty to observe its provisions.

I point out that the award presently provides in Clause 16 that:-

"16. IMPLEMENTATION OF 38-HOUR WEEK

- (a) From 1 November 1988 ordinary hours of work shall be an average of 38 per week as provided in Clause 15 - Hours.

- (b) Except as provided for in subclause (d), (e) and (f) hereof, the method of implementation of the 38-hour week may be one of the following:
 - (i) by employees working less than 8 ordinary hours each day; or
 - (ii) by employees working less than 8 ordinary hours on one or more days each week; or
 - (iii) by fixing one day in which all employees will be off during a particular work cycle, or
 - (iv) by rostering employees off on various days of the week during a particular work cycle so that each employee has one day off during that cycle.

- (c) On each site, an assessment should be made as to which method of implementation best suits the business and the proposal shall be discussed with the employees concerned, the objective being to reach agreement on the method of implementation.
- (d) In the absence of agreement at site-level, the method of implementation provided in subclause (b)(iv) of this clause shall be the method of implementation on that site.
- (e) Subject to the provisions of subclause (d) of Clause 15 - Hours, the employer and the majority of employees in the plant or section or sections concerned may agree that the ordinary working hours are to exceed 8 on any day, thus enabling a week day to be taken off more frequently than would otherwise apply.
- (f) Circumstances may arise where different methods of implementation of a 38-hour week may apply to various groups or sections of employees in the plant or establishment concerned. OR, by agreement a plant or establishment may adopt a method not identified in subclause (b) above."

my underlining

Given that award provision and allowing for the fact that there are recognised difficulties in the F.M.W.U. RDO proposal which will occur until manning levels are corrected by management, I am nevertheless sufficiently encouraged by the assurances given by the F.M.W.U. and its members that contingency provisions consented to are sufficient to allow this proposal to be implemented at least for a trial period.

The duration of such trial will obviously depend upon its success or otherwise.

It should be self evident that if either party can highlight areas of concern after a reasonable period, then it may be necessary to once more review the situation.

Rather than stipulate a definite period for the trial, I shall simply reserve the right of either party to have this matter further listed upon request.

