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TRANSCRIPT OF PROCEEDINGS

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O/N 2581

**TASMANIAN INDUSTRIAL COMMISSION**

**COMMISSIONER T.J ABEY**

**T No 12508 of 2006**

**POLICE AWARD**

**Application pursuant to the provisions of  
section 23(2)(b) of the Industrial Relations Act 1984  
by the Police Association of Tasmania to vary  
the above award re clause 15 - Overtime**

**HOBART**

**9.30 AM, THURSDAY, 16 FEBRUARY 2006**

**This transcript was prepared from tapes recorded  
by the Tasmanian Industrial Commission**

**HEARING COMMENCED**

**[9.30am]**

PN1

MR M. KADZIOLKA: I appear for the Police Association.

PN2

MR T. MARTIN: I appear for the Commissioner of Police.

PN3

THE COMMISSIONER: Thank you. Yes, Mr Kadziolka?

PN4

MR KADZIOLKA: Thank you, Commissioner. Thank you for your efforts in relation to this matter. I would like to state that at the outset. This application arose from a dispute notification by the association regarding a breach by the controlling authority of the call-back provision, and also relating to - a breach of the call-back provision of the Police Award relating to the minimum payment for a recall and also our concerns regarding the subsequent disregard of the dispute settling procedure. The dispute T12218 was heard by you on 8 September with recommendations being issued including that the dispute resolution procedure be immediately invoked, that the parties enter into immediate consultations on all issues relating to the matters in dispute and that the parties approach these discussions with an open mind and with an acknowledgment that some form of award variation may be appropriate.

PN5

I just go through that as background to the application, Commissioner. The parties entered discussions on this basis, and it is fair to say that the Commission's observation that the recall payment in some circumstances may be:

PN6

*...a disproportionate remedy for the degree of inconvenience and dislocation involved*

PN7

certainly focused our minds to achieving an outcome. This was especially pertinent, coupled with your comments in the September proceedings regarding your powers under section 31(3) that you later invoked on 20 December. I will now go to the detail of the claim, Commissioner. The - which you undoubtedly have; undoubtedly have the application in front of you. And these are only brief submissions, sir.

PN8

THE COMMISSIONER: Yes, certainly.

PN9

MR KADZIOLKA: As you would appreciate, this is an agreed, fully agreed matter. The provisions of 15.3 are deleted and replaced as follows; 15.3.1:

PN10

*A member other than a member not eligible for overtime prescribed in subclause 15.1.8 re-called to work overtime after finishing work -*

PN11

and these following words are deleted -

PN12

*whether notified before or after leaving work -*

PN13

those words are deleted -

PN14

*shall be paid for all time worked with a minimum of four hours at the overtime rate -*

PN15

and the following words are added -

PN16

*unless notified as in 15.3.3 -*

PN17

which is of course the fundamental issue surrounding the change. 15.3.2 that currently exists is the same. That remains unchanged. 15.3.3, the existing subclause is deleted by agreement. It currently provides the controlling authority with the ability to require other work to be undertaken that was not associated to the cause of the recall. That is no longer the case and as a result members are only required to attend to the cause for the return to work. Now, that deleted subclause is replaced with the following:

PN18

*Where a member, other than a member not eligible for overtime described in subclause 15.1.8 is recalled to work overtime, (a) that commences prior to and is continuous with the normal commencement of a rostered shift -*

PN19

and I just make this comment here; in other words that means that the recall commences before the member's rostered shift and continues through to the commencement of the shift ordinary hours, and so (a) is as I have read, and that needs to be read in conjunction with (b) - the word "and" is there - I emphasise "and" -

PN20

*the member has been notified of the call-back either before or within two hours of finishing work, the member shall be paid for the hours worked at the overtime rate.*

PN21

I also explain that that replaces the current provision. So it is being paid for the hours worked, as opposed to the minimum of four hours, which is the current standard. But (a) and (b) need to be obviously read in conjunction with

each other. Where "finishing work" is referred to in (b), Commissioner, it means:

PN22

*...work that is either ordinary hours or overtime that is continuous with ordinary hours of the preceding shift, the shift before.*

PN23

It cannot be construed to mean, if you are actually recalled, at the end or near the end of that recall, if you are told - meaning a recall standing in isolation, you then can't be told during that recall, "Oh, by the way you're starting early." It is to do with ordinary hours or the shift work that - sorry, ordinary hours or overtime work that immediately follows ordinary hours.

PN24

THE COMMISSIONER: Yes.

PN25

MR KADZIOLKA: Now, I would just like to briefly discuss what notification is. Notification means contact person to person; not a message on a message bank or speaking to a spouse or an email. In our view - and I think it would be the commonly-accepted term of notification - it is a reciprocal communication by both parties. It needs to be obviously given and received. The next section is 15.3.4:

PN26

*Time spent in travelling to and from work in connection with a recall, with the exception of subclause 15.3.3, shall be regarded as time worked.*

PN27

So that is the exception now, whereas that didn't previously exist. So effectively, normal recalls still qualify for travelling time to be counted. There is no change there.

PN28

THE COMMISSIONER: Yes.

PN29

MR KADZIOLKA: And where it continues to normal hours and the member was notified within the prescribed period, then the travelling time is not counted. There is a new clause 15.3.5. Now, it states:

PN30

*The provisions of 15.2 apply in all circumstances in relation to the call-back clauses.*

PN31

Now, 15.2 is the rest period after overtime provision. We have put this in to ensure that it is clear that these amendments do not alter or extinguish the rights under that provision.

PN32

THE COMMISSIONER: Yes.

PN33

MR KADZIOLKA: So, Commissioner, in summary I would like to emphasise that apart from where a member is notified prior to leaving work or within two hours of leaving work of a recall and that recall is continuous with the commencement of ordinary hours of the next shift, the current situation - what exists now continues to apply regarding the minimum payment of four hours at overtime rates.

PN34

As the Commission ordered this application to be made and in its agreed terms I expect that I really don't need to address the public interest and other considerations of the Commission and I just - I would just state that obviously they are - obviously we comply with those for the application.

PN35

THE COMMISSIONER: Thank you, Mr Kadziolka.

PN36

MR KADZIOLKA: Thank you, Commissioner.

PN37

MR MARTIN: Commissioner, Mr Kadziolka has accurately summed up the situation that we have got before us. What I would like to say is just a short couple of comments. One, that the new clause, as inserted, certainly more accurately reflects the operational requirements of Tasmania Police, and you may recall that at the initial hearing that was one of the initial concerns that we had, the operational requirements of the Tasmanian Police and how we serve the community and how we respond to these sorts of things. So the new clause certainly reflects that, particularly where the prior notification has been given to the member that we require the member to attend before the normal commencement time.

PN38

The conditions on recall that Mr Kadziolka mentioned are acceptable to us. We feel that that accurately reflects the conditions surrounding recall. That is where the member has been disturbed outside of that two-hour cessation and what recall was really intended to be. So those terms are - the notification also, person to person, we have had discussions on that and we concur with that. We hope that by putting it on the transcript that that will also alleviate some of the issues if they do arise down the track, so that is the reason for that and we are in consent on that.

PN39

Finally, we would like to thank the Commission and particularly yourself for the assistance given in resolving this dispute application by the Police Association.

PN40

THE COMMISSIONER: Yes, thank you, Mr Martin. Operative date? Today?

PN41

MR KADZIOLKA: My preference would be from date of decision. If it is today, that is fine. The reason is that there should be - I don't think people's entitlement should be - if a decision comes out later, I don't think people's entitlements should be changed retrospectively.

PN42

THE COMMISSIONER: That is fair comment. It may or may not come out today, and so it will be from date of decision, but that will be, at the latest, early next week.

PN43

MR KADZIOLKA: Right. That is acceptable, thank you, sir.

PN44

THE COMMISSIONER: Thank you. Yes. Well, having heard the parties, I am satisfied that the application to vary the award is in order and consistent with the wage fixing principles and the public interest requirements of the Act. The application will be granted, operative from the date of decision, which is likely to be early next week. The parties have recorded certain understandings on the transcript and they will remain part of the file, and should the need occur may be an aid in addressing any future indecision or misunderstandings as to how this new clause is to be applied.

PN45

I congratulate the parties on reaching a consent position on what at one stage looked to be a fairly difficult issue, and on that basis the Commission stands adjourned. Thank you.

**ADJOURNED INDEFINITELY**

**[9.40am]**