

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 5073 of 1994

IN THE MATTER OF an application
by the Tasmanian Chamber of
Commerce and Industry Limited to
vary the Public Vehicles Award

re superannuation exemptions

COMMISSIONER WATLING

HOBART, 17 June 1994

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER WATLING: I'll take appearances please.

MR M. WATSON: If the commission pleases, MARK WATSON. I appear on behalf of the Tasmanian Chamber of Commerce and Industry.

COMMISSIONER WATLING: Good, thank you. Welcome in your new capacity.

MR WATSON: Thank you, commissioner.

COMMISSIONER WATLING: I think we'll see more of you over the years, I hope, in this new role. Anyway, welcome aboard. No other appearances? No, definitely not. Mr Watson, your application.

MR WATSON: Thank you, commissioner. Commissioner, this application is an application to vary the Public Vehicles Award regarding superannuation exemptions and the application has been lodged under section 32(1)(b) of the Industrial Relations Act. And I would just like to provide an exhibit if I can, please.

COMMISSIONER WATLING: Right. It's actually been lodged under section 24, hasn't it? But you're using section 32 as your main argument. You're seeking to vary the -

MR WATSON: I think the application said section 32. I think.

COMMISSIONER WATLING: Yes, but you're making the application under section 24, aren't you, to vary the award? But you're seeking to vary it along the lines of section 32.

MR WATSON: Yes, I'm sorry. Yes, that's correct.

COMMISSIONER WATLING: Yes.

MR WATSON: Commissioner, the exhibit booklet contains a number of documents in regard to the application.

COMMISSIONER WATLING: We'll mark this exhibit booklet then W.1. Good, thank you. And you can deal with them in any order.

MR WATSON: Yes, I would just like to take you through those. Exhibit 1 is the draft order, in fact, it was provided with the application itself. If I can just take you to clause 29(c) on page 64 of the award. You can see there clause 29(c) subclauses (1) and (2) are in fact obsolete now as applications are -

COMMISSIONER WATLING: Are you seeking to amend those as well because they are obsolete?

MR WATSON: Yes, that's right. So we intend - our application seeks to actually delete subclauses (1) and (2) and renumber (c)(3) as (c)(1).

COMMISSIONER WATLING: Right. You're seeking to delete (2) as well, are you?

MR WATSON: Yes.

COMMISSIONER WATLING: So you don't want the Brethren in there?

MR WATSON: No, that -

COMMISSIONER WATLING: That's virtually an exemption.

MR WATSON: I'd say, commissioner, that if that was to be an exemption then it would be applied for as an exemption under the normal provisions.

COMMISSIONER WATLING: Right.

MR WATSON: So that's the first amendment. The second and third amendments are in fact to place into the award the names of the employers who are subject to the application. Under the headings of - or the separate exempted funds which actually appear in the award at the moment.

The second amendment is for the employer C.T. & M.J. Beaumont to appear under the heading 'Tasplan'. And the third amendment is for the employer T.R. & M.E. O'Reilly to appear under the heading 'AMP Superleader'.

COMMISSIONER WATLING: Good.

MR WATSON: The section 32(1B)(a) of the act states that the commission must not refuse to make or vary the award in relation to superannuation contributions if the superannuation fund: is a compliance superannuation fund.

Now section 32(1)(d) of the act states what is meant by a compliance superannuation fund and 32(1B)(a) states, and I quote - or 1(d):

For the purpose of subsection (1B) compliance superannuation fund means a fund -

And subsection (1)(a) says:

- that is in receipt of a current notice under the Occupational Superannuation Standards Act 1987 of the Commonwealth that the fund is satisfied the superannuation fund conditions in relation to the most recent completed year of income.

If I could just take you to exhibit 3 in the booklet, you will see there a letter from the Insurance and Superannuation Commission that actually confirms that Tasplan satisfies the requirements of the Occupational Superannuation Standards Act 1987. And again if I can take you to exhibit 5 at the back of the booklet, the very last page. Again you will see a letter there from the Insurance and Superannuation Commission which confirms that AMP Superleader Plan also complies with the requirements of the act, that is the Occupational and Superannuation Standards Act.

Now section 32(1B)(b) of the Industrial Relations Act requires the commission to be satisfied that the superannuation fund in fact meets the wishes of employees. Now with regard to the employer C.T. & M.J. Beaumont, you will find at exhibit 3 of the booklet -

COMMISSIONER WATLING: Two, isn't it?

MR WATSON: Sorry, exhibit 2. I'm sorry. Statutory declarations from all five employees stating that by their own choosing they request to have the employer contributions paid to Tasplan. So there's five stat. decs there from all employees.

And again with regard to the employer T.R. & M.E. O'Reilly, at exhibit 4 of the booklet, you find stat. decs there from the three employees also authorising the employer to change superannuation contributions to AMP Superleader Plan.

Now, commissioner, I have spoken to both employers and they have ensured me that -

COMMISSIONER WATLING: These are photocopies of declarations.

MR WATSON: Yes, I do have the originals with me. Yes, they are photocopies.

COMMISSIONER WATLING: Should we have the originals when it comes to this type of thing?

MR WATSON: Well I do have the originals here -

COMMISSIONER WATLING: They're making the - it might be an issue we might explore off the record in a moment, but I just - prima facie why wouldn't the commission have the originals.

MR WATSON: Yes. Well I don't think there's a problem with that, commissioner, and we'll discuss off the record - that's fine.

Now I have spoken to both employers and they have assured me that the employees are well aware of the differences between the former and the new schemes and have also assured me that they've made their own decisions regarding the changes of their own volition. So, commissioner, we believe that the application complies with the requirements of the act - Industrial Relations Act, is in accordance with the wage fixing principles and in fact does not offend the public interest and on that basis we request that you approve the application with effect from today. i

COMMISSIONER WATLING: Well, just a couple of questions. In terms of C.T. and M.J. Beaumont, what fund were the employees in and for how long were they in that fund?

MR WATSON: The fund, commissioner, could have been the fund as prescribed in the award - I'm sure it was the Transport Workers Superannuation Fund, but -

COMMISSIONER WATLING: Yes. Do we know?

MR WATSON: - I would have to check that. I wouldn't like to say that categorically because I'm not sure, but I presume that was the one, but I can check that and let you know.

COMMISSIONER WATLING: Because I - you know, I have dealt with some of these in the past and when I've asked similar questions I find that they're paying into the fund which they're now seeking exemption for, for some period of time.

MR WATSON: Yes.

COMMISSIONER WATLING: So I'd like to know what fund - in relation to both employers, have they come from -

MR WATSON: Yes.

COMMISSIONER WATLING: - and you might give me some indication how long they've been in those funds as well.

MR WATSON: Yes. Certainly.

COMMISSIONER WATLING: Now the other thing, who - or have - first up, have they had clearly explained to them the benefits of the fund that they're in and the benefits of the fund that they're going to?

MR WATSON: Yes. Commissioner, as I said, I have spoken to both employers and they have assured me that they have - that the ins and outs and the advantages and disadvantages have

been explained and the decision was left to the employees.
Now, -

COMMISSIONER WATLING: Now who explained those?

MR WATSON: Well the employers themselves. Now, I don't have any written evidence of that, but I guess all I can do is make statements from where I'm standing, but -

COMMISSIONER WATLING: Yes. Righto. Now, - so, it's your submission that they know -

MR WATSON: Yes.

COMMISSIONER WATLING: - what they're leaving and what they're going to and the charges associated with and they've done it off their own free will.

MR WATSON: Yes. Yes.

COMMISSIONER WATLING: Now the only thing is, I'm not opposed to making any variations to the award, but I'd like to know from the employees that they've had it clearly explained to them the benefits of the funds that they're leaving and the benefits of the fund that they're going to so that they can make and have made some reasoned judgment and they've made the decision on the basis that they know what they're leaving and what they're going to.

MR WATSON: Yes. Yes.

COMMISSIONER WATLING: Now their declaration doesn't include that -

MR WATSON: Yes.

COMMISSIONER WATLING: - and when I say 'that' I'm referring to that type of information because I'm not to know, from the declaration, that - and I know this is probably not the case, I'm not to know from the declaration whether the employer's said: well, look, I want you in this fund and just sign here -

MR WATSON: Yes. Yes.

COMMISSIONER WATLING: - and just sign this stat dec and all the stat decs are worded the same so, you know, you'd have to - and they're - to me it looks like they've even all typed on the same typewriter and they're also the same words, you'd have to wonder whether the employees have actually signed the stat dec or whether it's been typed up for them and they've actually signed it.

MR WATSON: Oh, no, I think there is a - there's a great amount of genuineness in regard to the stat decs -

COMMISSIONER WATLING: Oh, well -

MR WATSON: - and I've been assured so by the employers. I guess it was just, I suppose, a matter of convenience that they may have all been typed at the same time and, you know -

COMMISSIONER WATLING: Yes. But you can see - I'm really required to take notes of what the employees want.

MR WATSON: Yes.

COMMISSIONER WATLING: You're telling me what the employers' suppose to have told them.

MR WATSON: Yes. Do you think it might be appropriate if we go off the record now?

COMMISSIONER WATLING: Yes. We might have a chat about it off the record.

OFF THE RECORD

COMMISSIONER WATLING: Good. Mr Watson?

MR WATSON: Thank you, commissioner.

COMMISSIONER WATLING: Maybe if I can just lead in by saying that the record should show that we've had off-the-record discussions on some of the issues surrounding the standard of - that needs to be adopted to assist me in satisfying that the application meets the wishes of employees when seeking exemption to award superannuation provisions.

Now, we have listed a number of things and I understand that you've written some of those comments down, Mr Watson.

MR WATSON: Yes, that's correct, commissioner, and TCCI appreciates the fact that we've been able to discuss off the record the requirements that would satisfy yourself in relation to these applications. Nevertheless, we do have a concern that in relation to these applications there needs to be some consistency regarding standard and whilst we believe that whilst we are in a position to set a high standard in relation to these applications and we understand what would satisfy yourself, there's no guarantee that that will or will not satisfy other members, and therefore, on that basis, we believe that there needs to be some consistency and would request that the matter be referred to a full bench for determination.

COMMISSIONER WATLING: Right. Well, can I say to you I've heard your submission. Certainly, section 24(4) of the act does enable applications to be referred. Section (a) says that it can be referred if the application directly affects another award - well I'd have to say to you that I don't think this directly affects another award and it also says it can be referred if the application is of such importance that it's in the public interest that it be dealt with by a full bench. I don't consider that this has considerable public interest, sort of, arguments attached and therefore I think it's quite capable of being dealt with by a commissioner sitting alone.

It must be remembered that the act says that I've got to satisfy myself that it meets the wishes of employees. I'd have to say to you that I have no employees present today and it would be very hard for me to directly ascertain their wishes, apart from getting them all in.

Now your application seeks to get the commission to make a decision based on some documentation that has been tendered. I have some questions in relation to that documentation and if I can't get to see the people directly, I think the second best thing is for some of the questions that have been raised to be answered.

MR WATSON: Yes.

COMMISSIONER WATLING: I'd have to say that, prima facie, I would support the application, however, I still have to be satisfied that it meets the needs of the employees -

MR WATSON: Yes.

COMMISSIONER WATLING: - and I want to be also satisfied that the employees have made their decision based on the knowledge that they've had the benefits of the fund that they are leaving and the fund that they are going to clearly explained to them, and they've made this decision based on that understanding, and I don't think it's appropriate - certainly it's not appropriate in all circumstances for the employer, who is the applicant in this matter, to give his or her version of the benefits of the fund that they are leaving and the fund that they are going to, and maybe someone from those respective funds should give them a view, but I want to say to you that I don't consider that it's appropriate to refer this matter to a full bench and therefore your application in respect of this matter is denied.

MR WATSON: Commissioner, - okay. Well in relation to the - you're talking about the application to go a full bench?

COMMISSIONER WATLING: Yes.

MR WATSON: Yes. In relation to the application to vary the award, on that basis I'd like to seek an adjournment and have the matter relisted - well, I guess at our request and at your convenience.

COMMISSIONER WATLING: Righto. Well we'll allow you that adjournment. This matter is now adjourned sine die. Thank you.

HEARING ADJOURNED SINE DIE