

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 3768 of 1992

IN THE MATTER OF an application by
the Federated Clerks Union of
Australia, Tasmanian Branch to
vary the Bootmakers Award

re new classification structure
and first minimum rates adjustment

COMMISSIONER GOZZI

HOBART, 11 June 1992

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER GOZZI: We'll deal with the Bootmakers Award first. Could I have appearances in that matter please?

MRS H.J. DOWD: If the commission pleases, I appear on behalf of the Federated Clerks Union of Australia, Tasmanian Branch; DOWD, H.J.

COMMISSIONER GOZZI: Thank you, Mrs Dowd.

MR S. CLUES: If it pleases the commission, I appear on behalf of the Tasmanian Confederation of Industries; CLUES, S.

COMMISSIONER GOZZI: Thank you, Mr Clues.

MR CLUES: Just on that preliminary point, Mr Commissioner, the parties have had some discussions pertaining to the two matters that are before you today -

COMMISSIONER GOZZI: Right.

MR CLUES: - and they are very similar in nature to such an extent that it may be possible to deal with them in a joint fashion if that was possible.

COMMISSIONER GOZZI: I've dealt with Bootmakers and Textiles jointly beforehand, and the whole thing becomes a confused heap and I prefer -

MR CLUES: On that point, Mr Commissioner, there'll be explanation given to you today as to why the parties aren't able to present you with draft orders, and therefore I would suggest to you that you wouldn't be faced with a mess for we will only be putting to you verbal submissions with draft orders to be forwarded as soon as possible.

COMMISSIONER GOZZI: Because you have first-hand experience, Mr Clues of what happened last time that two things were joined.

MR CLUES: That's correct.

COMMISSIONER GOZZI: Different representation on the other side, but it took some sorting out, and of course with respect to superannuation as well, I think, as far as clerks are concerned, that was the Textile Award. But this was worse still for Mrs Dowd. What I'm talking about referred to a variation for a - put forward by the textile union.

MR CLUES: The matters before you today are a lot more simple in nature than those that were before you in the last proceedings -

COMMISSIONER GOZZI: Mm.

MR CLUES: - but I mean if the commission wishes to deal with them separately then than can be done.

COMMISSIONER GOZZI: Well I'm quite happy to take ditto as a submission in respect to the other matter if they're similar, but I prefer -

MR CLUES: Ditto it will be then, Mr -

COMMISSIONER GOZZI: - them - prefer to deal with the Bootmakers first and then we'll take it from there.

MR CLUES: Well I've been given the task today of presenting to the commission submissions on behalf of the parties and Mrs Dowd will be making some very brief submissions pertaining to the position of the clerks.

COMMISSIONER GOZZI: Alright, okay. Thank you, Mr Clues.

MR CLUES: Mr Commissioner, the parties have engaged in considerable negotiations to finalise the introduction of a new classification structure into this award and also the implementation of a first minimum rate adjustment. Those - the parties are pleased to report a consent position has been reached. Unfortunately due to the extended negotiations and the theft of some computer hardware from the Federated Clerks Union offices, for which the TCI wasn't responsible, and the absence of secretarial staff at the TCI, due to illness, we're not able to present the commission with finalised draft orders for your consideration.

COMMISSIONER GOZZI: Right.

MR CLUES: Given the latter, we would ask for the commission's patience in this matter and request to proceed these matters today on the basis of providing the commission with a submission on the agreement that has been reached and forward draft orders to the commission within the next few days.

To facilitate the latter, the parties would - have agreed that an operative date should be the date the commission is in receipt of agreed draft orders.

Having provided the commission with a brief opening submission, it would be my intention now to address the issues in substance.

COMMISSIONER GOZZI: Thank you, Mr Clues.

MR CLUES: The first minimum rate adjustment is the issue upon which I will now deal. The parties have agreed to implement the first of four minimum rate adjustments. Further, the parties have agreed to an implementation schedule

of all four minimum rate adjustments. To that extent, I will hand up an exhibit for the Bootmakers Award that outlines that implementation schedule.

COMMISSIONER GOZZI: Alright, we'll mark that exhibit TCI.1. Right.

MR CLUES: The schedule is subject to errors and omissions, indicates that there will be four minimum rates adjustments. Each level has - has had the appropriate minimum rate adjustment calculated to take it up to its ultimate relativity. The proposed dates for each MRA has been agreed that it will occur in four instalments of 9 months' interval between each instalment, and each instalment will be subject to application.

COMMISSIONER GOZZI: Right.

MR CLUES: Further, each minimum rate adjustment in accordance with the principles will be fully absorbable against over-award payments. Mr Commissioner, it will be tendered in our draft orders a supplementary payments column which will identify that amount appearing in the column headed 'First Minimum Rate Adjustment', and that will obviously be the total wages column also.

COMMISSIONER GOZZI: Yes, right.

MR CLUES: In relation to the classification structure, the parties have agreed to implement a new clerical structure into the award. The structure is near identical to that that has been inserted into the Clerical Administrative Award, the only difference being that level 7 will not be implemented into the award at this stage. The TCI does not believe the industry requires a structure that extends to this grade, however the FCU have indicated to the TCI that they wish to reserve their rights to insert such a classification at a later date if they believe it is so required.

COMMISSIONER GOZZI: Yes, well obviously if they feel it's required it's just a matter of making application at that time.

MR CLUES: The structure that will be inserted into the award is skill-based. It identifies the relevant level of skill for each of the grades that are contained within the structure. Existing employees will be translated solely according to skill as opposed to years of service. However, those employees who were engaged prior to the introduction of this new structure will automatically go to a level B that will exist for first and second 12 months' experience. That has been an agreement that has been reached.

COMMISSIONER GOZZI: So the existing will go to level B

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MR CLUES: Yes.

COMMISSIONER GOZZI: - which is what?

MR CLUES: Well, within the structure, for the first three grades -

COMMISSIONER GOZZI: Yes.

MR CLUES: - of the new structure, there will be a level 1A, level 1B, level 2A, level 2B -

COMMISSIONER GOZZI: Yes.

MR CLUES: - and likewise level 3A and 3B, the only difference being that the difference between a level A and a level B will be whether that individual has 12 months' experience or not.

MRS DOWD: at that grade.

MR CLUES: And it has been - at that grade. And it has been agreed between the parties where you have existing employees, that they will automatically go to that higher level.

COMMISSIONER GOZZI: Oh, I see, right, they will be deemed to have had 12 months' experience -

MR CLUES: That is correct.

MRS DOWD: At that grade.

COMMISSIONER GOZZI: Yes.

MR CLUES: Whilst new employees who are engaged after this will be graded according to their skill, so therefore, if they have in fact had 12 months' experience at that skill level then they will go to, say, level 3B, if they have not, then they will stay at level 3A until such time as their 12 months' experience has occurred.

COMMISSIONER GOZZI: Yes, well existing employees - when you talk about translation, I assume they'll be translated in accordance with the skills that they have?

MR CLUES: That is correct.

COMMISSIONER GOZZI: And they'll automatically go on to the 'B' level?

MR CLUES: That is correct.

COMMISSIONER GOZZI: Yes.

MR CLUES: If it is identified that that person does have in fact the skills of a level 3 individual, then they will automatically go to level 3B.

COMMISSIONER GOZZI: Yes, right. And new employees you're going to grade according to the skill that they have?

MR CLUES: That's correct.

COMMISSIONER GOZZI: And experience, I assume?

MR CLUES: That is correct. The new structure is based on the skills that they have and also the levels 1, 2 and 3. There will be a experience requirement of 12 months there.

There will be a translation schedule which we would seek to have as an appendix to the award which would clearly identify how people are to translate into the new structure. We believe this will make the award more reader friendly and allow people out in the field to accurately translate to avoid any under payment or wages claims which may arise in the future.

COMMISSIONER GOZZI: Right - you haven't got that at the moment?

MR CLUES: We have one which we could tender to the commission from the C and A Award, however it may require some minor modifications.

COMMISSIONER GOZZI: Oh well, if it's not relevant to this - you intend to bring that forward with the draft order do you?

MR CLUES: Yes.

COMMISSIONER GOZZI: Yes, okay.

MR CLUES: I believed it would be a lot less complicated, Mr Commissioner, if we can provide you with a draft that can be read as a single entity -

COMMISSIONER GOZZI: Yes, that's fine.

MR CLUES: - as opposed to having a composition of exhibit.

COMMISSIONER GOZZI: Okay.

MR CLUES: Further, the parties have agreed to a number of award flexibility changes to be instituted at - with these proceedings.

COMMISSIONER GOZZI: Mm.

MR CLUES: The first is the deletion of the additional payments allowances which have appeared in the wages schedule traditionally. Those additional payments have in the past recognised skill levels for stenographers and use of computers, et cetera. It has been recognised now in the classification structure that those skills are contained within those levels, and it will not be difficult for an employer to recognise those skills within the structure, so therefore it will be double dipping if we were to have additional payments which merely recognises what is contained within the definitions of the classification structure.

COMMISSIONER GOZZI: So virtually you're absorbing the allowances in the new classification structure?

MR CLUES: That's correct - through the minimum rate adjustment process, those skills will be reimbursed.

COMMISSIONER GOZZI: Mm. Just looking at the wages clause -

MR CLUES: Yes.

COMMISSIONER GOZZI: - what sort of allowances particularly would you be looking - are you talking about?

MR CLUES: Well it is the additional payments provision there.

COMMISSIONER GOZZI: Well, I've got clause 8 - Wage Rates.

MR CLUES: It is subclause (vii) -

COMMISSIONER GOZZI: Of what?

MR CLUES: - of Division D - Clerks, which identifies the various years of service, allowances varying from \$1.00 to \$2.80.

COMMISSIONER GOZZI: Just me have a look. The last consolidation of Bootmakers was 5 of '91.

MR CLUES: Well it's page 11, Mr Commissioner.

COMMISSIONER GOZZI: Division D - Clerks - page 10 - I've got. Well that's interesting. I mean I can't find. On page 6 to - page 7 to 14 doesn't appear to be there.

MR CLUES: Well if it would benefit the commissioner, I could tender the gazetted - our gazetted copy which identifies -

COMMISSIONER GOZZI: What's the last consolidation you've got?

MR CLUES: No.5, Mr Commissioner.

COMMISSIONER GOZZI: And you've got pages 7 to 14 there, because I certainly haven't.

MR CLUES: I have, yes. It may be the same individuals that stole the computer hardware, Mr Commissioner.

COMMISSIONER GOZZI: Yes, that's interesting isn't it?

ASSOCIATE: Do you want another one?

COMMISSIONER GOZZI: No, there's another one here.

ASSOCIATE: Right.

COMMISSIONER GOZZI: there's another one here. So page 11. Clause 6 - subclause (vi).

MR CLUES: In our document it is subclause (vii) that pertains to additional payments.

COMMISSIONER GOZZI: What's going on here? This if 5 of - no, hang on - I'm sorry, I'm looking at the wrong award. I haven't got another 5 of 1991. It was the Broadcasting and Television I was looking at - subclause (vi). Alright, so it's subclause (vii) - an additional payments clause - so that's going to be deleted is it?

MR CLUES: That is correct.

COMMISSIONER GOZZI: Yes, okay. Thank you.

MR CLUES: The parties have also agreed to insert within the hours clause, the ability to work up to 10 ordinary hours in any given day. This will provide flexibility for the operations of the employer in that on those days where it may be particularly busy, they work an individual up to 10 hours during that day without accruing overtime, provided of course they don't exceed the overriding 38 hours in that particular week.

COMMISSIONER GOZZI: Yes.

MR CLUES: So one would imagine there would be a short day given later in that week.

COMMISSIONER GOZZI: Right.

MR CLUES: The only other -

COMMISSIONER GOZZI: So you say practically you could work three by 10 and one by eight?

MR CLUES: That is correct.

COMMISSIONER GOZZI: Yes. Okay. And if you work further than that time it would be overtime?

MR CLUES: That is correct. Once you exceed 38 hours in any - in any award then there would be overtime accruing.

COMMISSIONER GOZZI: Fine.

MR CLUES: The only other amendment I'd like to draw to the commission's attention pertains to a unique type of provision that has been inserted into the C and A Award also, which is the annualised salary concept, whereby the employer and the employee agree on an annualised salary which is designed to compensate for the expected overtime. There are a number of conditions which will be identified when we hand up the draft order which make that provision fairly safe and water tight.

COMMISSIONER GOZZI: Yes. How does that work as far as its physical application is concerned? I mean, I understand the concept of a committed overtime component being put in with the base rate to give an annualised amount. Now, is the - is it the intention to maintain a record of hours or is there going to be some sort of balancing, or is it simply left on the basis that this seems fair and reasonable and therefore that's the all-inclusive salary? I mean, some committed overtime allowances do work that way. An assessment is made as what the amount of committed overtime allowance is, it's rolled into an annualised salary and that's it. No record, no nothing is kept. I'm just wondering what - how it's intended to apply here.

MRS DOWD: Yes.

MR CLUES: What is intended is that the parties come up with a remuneration package that would otherwise compensate for all of the award conditions, including overtime. And they - the employer is to notify the union each 12 months as to what agreements have been reached, and if the employee wishes to consult with the union as to ensure that it does in fact compensate for the overtime, and that is available. Now -

COMMISSIONER GOZZI: So, there'll be a salary package concept, will there?

MR CLUES: That's correct.

COMMISSIONER GOZZI: I'm sort of finding it difficult to comprehend what a salary package for clerks would contain in an area such as this. I mean, I can understand they have overtime.

MR CLUES: Yes. I imagine overtime - overtime would be the main component.

COMMISSIONER GOZZI: Yes.

MR CLUES: If it is - if you've had a clerk with you for, say, the last 12 months and that person has been regularly required to do 2 or 3 hours' overtime during that period, it would merely be a matter of taking those 2 or 3 hours at the appropriate rate and multiplying by 52.

COMMISSIONER GOZZI: Yes.

MR CLUES: And adding that to what the award wage is under the award.

COMMISSIONER GOZZI: I mean, there are benefits in this, of course, as far as superannuation is concerned. That's one of the principal benefits. And also, of course, the advantage of paying on the annualised amount the annual leave component. I'm just wondering whether you're clear exactly how it's going to work. Now, if I can summarise what you're saying to me, there will be a capacity for an employer to negotiate with an employee an annualised salary package, including recompensation for overtime - weekend penalties, perhaps?

MR CLUES: Yes, if that is - if that is a part of their regular engagement, that they work on weekends -

COMMISSIONER GOZZI: Yes.

MR CLUES: - then their salary package will have to compensate for that.

COMMISSIONER GOZZI: And it'll all be rolled into this one amount and paid by - in 52 or 26 pays or whatever.

MR CLUES: That is correct.

COMMISSIONER GOZZI: And is it the - apart from that process being notified to the - to the union, is it the intention for time and wages records to be kept, which reflect -

MR CLUES: Records would still have to be kept under the Act.

COMMISSIONER GOZZI: Well, yes, which reflect actual time worked or not?

MR CLUES: Yes. I believe that the parties will still have to keep a record -

COMMISSIONER GOZZI: Yes.

MR CLUES: - otherwise it would be very difficult to ascertain whether or not they are receiving fair recompense for the overtime that they are doing.

COMMISSIONER GOZZI: If you're going to keep records, does that mean at the end of the 12-month period they'll be an adjustment retrospectively or will the allowance - the commuted part be adjusted for the next preceding 12 months?

MR CLUES: I believe that they are - it would be up to the parties to determine how the annual salary would be amended. If it was grossly inadequate, given the overtime, then I would assume that it would be amended.

COMMISSIONER GOZZI: Yes.

MR CLUES: And - otherwise there would be underpayment of wages claim. By the same token, if the salary package has been overstated, then I would imagine it would be amended for the following year.

COMMISSIONER GOZZI: Well, I'm wondering about that, because you know one you're living on an amount of money how do you wind it back? I can see that you can wind it up without too many hassles, I'm not sure how you wind it back if you don't fulfil the expectations of the overtime that have occurred during the year.

Now, I've got to be honest with you, Mr Clues, one of the reasons I'm asking you all these questions is because in another area - and Mr Long is involved in this - it's the bone of some fairly strong contention between the parties. The employer wants to go to annualised salaries and the employees - last I've heard anyway - are resisting it because they see some problems with it. Personally, I don't see much of a problem with it, providing the parties themselves understand how it is to work.

And it seemed to me in these other discussions that nobody had thought their way through to how it was actually going to be adjusted if, indeed, it was intended to be adjusted. I could see that you could adjust it upwards; if somebody worked more overtime than you actually commuted into the annualised salary. I could see you could do that. But if somebody worked less than the committed overtime allowance, I'm not quite sure that -

MR CLUES: Well -

COMMISSIONER GOZZI: - it would be quite as easy to wind somebody's salary back by, say, a 1,000 or \$2,000 a year in the event no overtime was worked at all.

MR CLUES: I can understand the commission's concerns. The provision that would be submitted to the commission will have a provision that says that the parties may terminate the agreement on the giving of 4 weeks' notice. Now, if at the end of that period it is drawn to the employer's attention that it is not advantageous to continue paying that - paying a salary for which no overtime has been worked during the previous year, then upon giving 4 weeks' notice they revert back to the award conditions.

So, therefore if during that following year it is perceived an annual salary wouldn't work for both parties to their mutual satisfaction, then either party may retire from that agreement

COMMISSIONER GOZZI: Yes.

MR CLUES: - with the giving of 4 weeks' notice and the award provisions would be enacted. Which would mean that if a person starts to work overtime again then they'll be paid the penalty rates that apply.

COMMISSIONER GOZZI: Yes. I mean, I see the advantage as simply for the employer. It's an administrative advantage -

MR CLUES: Yes.

COMMISSIONER GOZZI: - not to have to calculate the penalties and the overtime continually.

MR CLUES: Yes.

COMMISSIONER GOZZI: And for the employee the advantages are that the rate then becomes the all-purpose rate for other entitlements to be derived from; such as, superannuation. That's a good example, because your 3% award calculation is on that rate. But I do see that it would have to be monitored, I would imagine, unless you just go laissez faire and say, look, we think this is reasonable. I'm satisfied with what I'm getting as an annualised salary. The employee is happy, the employer is happy and away you go without maintaining your records.

MR CLUES: Well, if the parties are - I believe if the parties are able to reach agreement on an amount that satisfies both of them and at the end of the year either party is not satisfied with that, then they have the opportunity either to renegotiate the agreement, and that may involve an increase or a decrease, and again there would have to be agreement as to whether that was acceptable or not, but in the absence of agreement, then you've always got the safety net of the award.

COMMISSIONER GOZZI: Yes. Let me say in one other award that I put annualised salaries in, one other award that I can recall anyway, is the Surveyors Private Industry Award.

MR CLUES: Yes.

COMMISSIONER GOZZI: And it's working very well there, and it's been in that award now for about - oh, it must be 2 years or more - maybe even 3 years - and there's not been a problem with that provision.

MR CLUES: We adopted the same provision as that you inserted into that award, into the Metals Award with the same view that people working at that skill level are more than competent enough to arrange a salary which is to their satisfaction.

COMMISSIONER GOZZI: All right. So, that's going to be put in by way of a clause, is it?

MR CLUES: Yes. It will be - it will a clause unto itself.

COMMISSIONER GOZZI: Right.

MR CLUES: And it will be called 'Annualised Salary Agreements'.

COMMISSIONER GOZZI: Right.

MR CLUES: Subject to any further questions that the commission may have, I would just indicate on behalf of the parties that we will undertake to get those draft orders to you as soon as possible.

COMMISSIONER GOZZI: Yes.

MR CLUES: And we would not seek an operative date until such time as those are before you.

COMMISSIONER GOZZI: Well, I intend to write this matter off today and indicating that the order will issue in due course. I would be quite prepared to put an operative date- a prospective date in the decision.

MR CLUES: We - we would be happy if the operative date - in writing your decision, the operative date that you put would be the day that you receive the agreed draft orders. It would allow the parties to then be able to issue them to their members and in the knowledge that there wouldn't be any retrospectivity through the delay of draft orders.

COMMISSIONER GOZZI: Well maybe I'll just leave it open. It might be simpler to leave it open.

MR CLUES: Thank you.

COMMISSIONER GOZZI: Thank you, Mr Clues. Mrs Dowd?

MRS DOWD: Mr Commissioner, apologies also from the Federated Clerks Union in not having draft orders. As Mr Clues indicated, all our computer equipment was stolen a couple of weeks ago and hasn't been replaced as yet.

COMMISSIONER GOZZI: Any leads?

MRS DOWD: Not as yet, Mr Commissioner, unfortunately.

COMMISSIONER GOZZI: Was it significant, was it, or -

MRS DOWD: It was, yes.

COMMISSIONER GOZZI: Oh, gee.

MRS DOWD: We're still having a few fights with the insurance company as well over the issue, but hopefully we will have a computer system installed within the next week or so.

COMMISSIONER GOZZI: Mm.

MRS DOWD: Mr Clues has quite adequately described our discussions and negotiations and also the consent matters that he put before you this morning. The implementation schedule, as he indicated, is subject to any errors or omissions. And the Federated Clerks Union, as Mr Clues indicated, reserves the right to implement a grade 7 if we deem that it is necessary in the future.

We also reserve our right in relation to the relativities for grades 4, 5 and 6, depending on the outcome of the Victorian decision which we believe should be handed down shortly.

The award flexibility changes, as indicated by Mr Clues, have been agreed matters in relation to the deletion of additional payments, in clause 8, subclause (vii). The hours of work relating to the ability to work up to 10 hours per day, that is by agreement between the employer and the employee. Mr Clues didn't indicate that, but that will actually be included in the subclause; that it is by agreement between the employer and the employee.

And the annualised salary agreement clause that will be implemented, it does actually say in that that the agreement shall be kept as part of the records as required by employers under Part 7, section 75 of the Industrial Relations Act 1975

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COMMISSIONER GOZZI: The Act, yes.

MRS DOWD: It is also to be worked out on an - the conditions in an agreed period not exceeding 4 weeks. So when the package is actually worked out, if there's overtime within a period of 4 weeks that's what the package will actually be worked out on, not in any excess period of 4 weeks.

COMMISSIONER GOZZI: I see. So, you are going to look at it in four weekly periods?

MRS DOWD: Well, it would - it will be based on an annualised agreement -

COMMISSIONER GOZZI: Right.

MR CLUES: - but it will be worked out on a 4-week period for -

COMMISSIONER GOZZI: For a period -

MRS DOWD: - on any specified 4-week period for the wages package.

COMMISSIONER GOZZI: Right. So that that will allow an adjustment to be made at the end of every 4-week period.

MRS DOWD: Yes, it will. It will.

COMMISSIONER GOZZI: Which would give a - could give a variable -

MRS DOWD: Yes, either up or down.

COMMISSIONER GOZZI: - outcome. Yes. I see, fine.

MRS DOWD: And we did agree with the TCI that the operative date for the first MRA would be from the date that you actually receive the draft orders.

COMMISSIONER GOZZI: Right.

MRS DOWD: But if you are so inclined to actually give a perspective date or a retrospective date we are not adverse to that at all.

COMMISSIONER GOZZI: Well, I wouldn't put it on the -

MRS DOWD: But I will leave that up to you, Mr Commissioner, because we did actually agree that it would be the date you actually received the draft orders.

COMMISSIONER GOZZI: Yes.

MRS DOWD: And we have agreed that they will be - the MRAs will be at nine monthly intervals.

COMMISSIONER GOZZI: Yes, fine. Thank you, Mrs Dowd.

MRS DOWD: If the commission pleases.

COMMISSIONER GOZZI: That - the operative date contemplates the issue of a further decision as opposed to just issuing the order, because the order gives effect to the decision.

MRS DOWD: Yes.

COMMISSIONER GOZZI: And by leaving the operative date open on the basis that it will operate from the date of receipt of orders - Oh, I suppose - I suppose technically that's okay. All right. Where does the Bootmakers Award currently apply? I mean, how many places does it apply? It wouldn't be - it wouldn't have great application, would it?

MRS DOWD: No, it doesn't.

COMMISSIONER GOZZI: No. Primarily?

MR CLUES: I believe Blundstone's use it for their clerks.

COMMISSIONER GOZZI: Primarily, Blundstone's. All right. Right, thank you, Mr Clues and Mrs Dowd. Those variations as requested will be endorsed, with the operative date as you've requested. And a decision will issue in due course.

Now, just move on to the Textile Award, do I have appearances in that matter please?

HEARING CONCLUDED