

IN THE TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T.2334 of 1990

**IN THE MATTER OF AN APPLICATION BY THE
TRANSPORT WORKERS' UNION OF AUSTRALIA,
TASMANIAN BRANCH, FOR A HEARING PURSUANT
TO SECTION 33(1)(b) OF THE ACT**

**RE MAKING OF A DECLARATION IN RELATION TO
THE MAKING OF A NEW AWARD - TRANSPORT
WORKERS GENERAL AWARD**

PRESIDENT F. D. WESTWOOD

5 JUNE 1990

REASONS FOR DECISION

APPEARANCES:

For the Transport Workers' Union of Australia, Tasmanian Branch	- Mr. B. Hansch
For the Australian Timber Workers' Union	- Mr. R. Smith
For the Bakery Employees & Salesmen's Federation of Australia (Tasmanian Branch)	- Mr. P. Nielsen
For the Federated Clerks Union of Australia, Tasmanian Branch	- Mr. D. J. Fry

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- For the Tasmanian Confederation of
Industries, the Meat and Allied Trades
Federation of Australia, Tasmanian
Division, and the Master Builders'
Association of Tasmania - Mr. T. J. Abey
with
Mr. S. Clues
- For the Australian Road Transport
Industrial Organization,
Tasmanian Division - Mr. J. G. Blackburn
and the Retail Traders Association
of Tasmania
- For the T.F.G.A. Industrial Association - Mr. K. Rice

DATE AND PLACE OF HEARING:

11.5.90 Hobart

As a result of an application by the Transport Workers' Union, Tasmanian Branch, for a Transport Workers General Award, this hearing was conducted to provide the appropriate consultation required in accordance with Section 33(2) to enable the President to decide whether or not the occupation of driving should be declared to be one in respect of which the Commission may make an award.

Mr. Hansch provided substantial detail in support of his claim for an occupational award for driving classifications. His submission is summarised in the following manner:-

1. Ninety percent of employers covered by industry awards of this Commission which have provisions for drivers do not have vehicles and do not employ drivers; therefore driving classifications are not required in their awards.
2. Driving is an occupation in which the majority of employees are engaged until retirement; therefore, in accordance with the structural efficiency principle, every effort should be made to provide career opportunities for drivers within their "occupation".
3. The TWU is a party to 32 private sector awards containing provisions dealing with driving classifications; eighteen of which would not be necessary if the application was successful.

4. There is a need to develop common rates of pay and conditions for driving classifications in the awards under consideration.
5. There is no opposition from other unions, apart from the Timber Workers' Union.
6. The union has no desire to delay structural efficiency negotiations.
7. The union is surprised that the employers are opposed to the proposal since there are advantages in the package for them, such as an increase in the spread of hours, split annual leave, time off in lieu of overtime, and part-time employment provisions.

Mr. Fry supported the TWU. Mr. Nielsen sought leave to withdraw as his union's concerns had been satisfied during Mr. Hansch's submission. Mr. Smith stressed his union's opposition to the application so far as it affected the Timber Merchants Award.

The employer groups' opposition to the proposal which had been foreshadowed on so many occasions during structural efficiency report back hearings was confirmed by Mr. Abey. He also challenged the accuracy of the proposed Scope Clause in the union's application which he contended referred to the industry of the employers rather than to the occupation of

the employees. Mr. Hansch acknowledge this defect and amended the proposal accordingly during the course of the hearing.

Mr. Abey submitted that the making of an occupational award would be contrary to the Wage Fixing Principles which he claimed make it clear that we should be tending towards industry awards. He also claimed that the only organisation likely to benefit from the proposed award would be the Transport Workers' Union itself. He indicated his organisation's intention to continue to oppose the making of an occupational award if a declaration was made, and that his organisation would press for the matter to be referred to a Full Bench. Mr. Abey was supported by Mr. Blackburn on behalf of the Retail Traders' Association, and Mr. Rice on behalf of the T.F.G.A. Industrial Association. Mr. Blackburn was not in a position to indicate the attitude of the Australian Road Transport Industrial Organization (Tasmanian Branch) at that stage.

Mr. Abey espoused the view that a declaration in accordance with Section 33(2) was simply an indication that the Commission had jurisdiction to make an occupational award. I do not agree with this view entirely, as Section 33 gives jurisdiction to the Commission to make awards in respect of private sector employment, whether they be industry or occupational awards. However, a declaration by the President is a prerequisite if the award is to be occupational by nature, and it falls to the President,

following appropriate consultation, to determine whether there is a need, amongst other things, for an occupational award rather than whether jurisdiction exists.⁽¹⁾

It therefore seems to me that it is not so much a question of whether the Commission is capable of making an occupational award, but rather whether or not, in addition, the President is of the view that it is desirable and necessary that the Commission should proceed to consider the making of an occupational award.

I do however agree with Mr. Abey that there is a preference towards the concept of industry awards as opposed to occupation or craft awards in the current wage fixing principles.

A major objective of the current principles is the encouragement of greater productivity and efficiency in industry. To this end this Commission, with the support of the major parties, has adopted, with minor alterations, the principles of the Australian Commission which took pains in its August 1988 decision to point out that "to sustain real improvement in productivity and efficiency we must take steps to ensure that work classifications and functions and the basic work patterns and arrangements in an industry meet the competitive requirements of that industry."⁽²⁾

(1) T.105 of 1985 - page 3, decision 14.10.85

(2) Print H4000

This approach was confirmed in August 1989 by the Australian Commission, when it stated that one of the two main issues before it was how the approach endorsed in the Structural Efficiency Principle "for ensuring stable relationships between awards and their relevance to industry is best translated into practice."⁽³⁾

Following the hearing I formed the opinion that the making of an extensive and significant occupational award in respect of drivers in the very broad manner envisaged in the application would be contrary to the wage fixing principles. I became concerned also that employer opposition would delay unnecessarily the structural efficiency negotiations in the eighteen awards under consideration, which would impact on the industries and employers concerned, and on all the employees involved.

As a result, I indicated to the parties during subsequent discussions that I was not prepared to make a declaration in the manner sought by the applicant, but I was prepared to consider making a declaration which would enable award coverage to be established for those employees not covered by industry awards who, at present, obtain their rates and conditions from the Carriers Award⁽⁴⁾ by virtue of the provision of Section 40 of the Act.

(3) Print H9100

(4) P055

Since the parties have indicated that, in the circumstances, my proposal is an acceptable alternative, I have decided that I will declare, by notice in the Gazette, that the Commission has jurisdiction to make an award in respect of the occupations listed below, which are not covered by other awards of this Commission:

- (a) driver, driver's assistant, and loader employed in connection with a motor vehicle used for the transport of goods or materials;
- (b) driver of a mobile crane;
- (c) driver of a fork lift truck.

