

IN THE TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 2495 of 1990

IN THE MATTER OF an application by
the Federated Miscellaneous Workers
Union of Australia, Tasmanian Branch
for interpretation of the
Miscellaneous Workers Award

re General Attendant classification
- employees at Dockside Fitness

T No. 2686 of 1990

IN THE MATTER OF an application by
the Federated Miscellaneous Workers
Union of Australia, Tasmanian Branch
for interpretation of the
Hairdressers Award

re application of award re Dockside
Fitness Centre

PRESIDENT

Hobart, 4 September 1990

TRANSCRIPT OF PROCEEDINGS

Unedited

PRESIDENT: Appearances, please?

MR K. O'BRIEN: If the Commission pleases, I appear with MS SHELLEY on behalf of the Federated Miscellaneous Workers' Union in these matters.

PRESIDENT: Yes. Thank you.

MR W.J. FITZGERALD: If it pleases, Mr President, I appear on behalf of the Tasmanian Confederation of Industries, FITZGERALD, W.J.

PRESIDENT: Yes. Thank you very much, Mr Fitzgerald. Mr O'Brien?

MR O'BRIEN: Mr President, these matters are applications for interpretation pursuant to section 43 of the Act. Because of the nature of the awards and the fact that the award known as the Miscellaneous Workers Award applies only where there is no other award application, it is clear to us that it is appropriate to deal with the application relating to the Hairdressers Award as first priority, because if that award does apply then, clearly, the argument about the Miscellaneous Workers' Award applying is irrelevant. It's not possible for it to apply in those circumstances.

It is only if the Commission finds that the Hairdressers Award does not apply to the work in question that consideration of the Miscellaneous Workers Award for general attendant classification would arise.

I would propose to run both applications together on that understanding, if the Commission accepts that, that is that we would seek to run an argument firstly that the Hairdressers Award applies, but in the alternative failing that, that the general attendant classification of the Miscellaneous Workers Award applies to the work, or certain work performed at the establishment known as Dockside Fitness Centre.

I would propose in outlining the case to call two witnesses who until recently have been employees at that establishment to give evidence as to the work performed at the centre and the operations of the centre known as Dockside Fitness Centre, following that I would present submissions going to the substance of our argument.

In essence, our argument is that Dockside Fitness Centre is a health and fitness centre which may also be understood to be a 'health and physical culture studio' within the meaning of the scope of the Hairdressers Award, and I will be producing certain dictionary definitions and other material to show that that is the case.

I will, through the witnesses, be seeking to, as I said, give an outline of the duties that they performed in their particular role, and also the general nature of the services delivered at the establishment known as Dockside Fitness Centre which I think as we all know it's on the waterfront, I think in Hunter Street, opposite the Sheraton Hotel. And if the Commission is happy with that course of action, I would propose to call, firstly as a witness, Mr Mark Risdon ...

PRESIDENT: Before we do, Mr O'Brien, what ... could you tell me what steps have been taken to date to try and have the Hairdressers Award applied to this establishment? Have there been any formal steps taken?

MR O'BRIEN: Any formal steps? I'm not sure what you mean by 'formal steps'.

PRESIDENT: Well, I mean, has the employer been informed that it is the union's opinion that the Hairdressers Award should apply?

MR O'BRIEN: Yes. We have been in long-term discussions about the health and fitness and health and sports area generally. Indeed, initially when we made an application to this Commission seeking award coverage we took the view that this type of centre was not probably covered by any award. The question of coverage with the Hairdressers Award was raised with us by another person who I won't name at this stage.

We pursued an application in the other matter. Nevertheless, in relation to the legal situation it's been our view for some time that the Hairdressers Award did have application to at least centres such as Dockside Fitness. We have both verbally and in writing communicated with the employer about the application of the award. The employer does not agree, as I understand it, that either of the awards apply.

PRESIDENT: Has the Department of Labour and Industry been approached in this matter?

MR O'BRIEN: No. We don't see that they have a role in accordance with the Act in determining the application of awards.

PRESIDENT: I would have thought they had a fairly substantial role in that.

MR O'BRIEN: The section 43 is the section in the Act which empowers the Commission to do that, and ...

PRESIDENT: To interpret the meaning of an award, yes, but for the purposes of applying the award and, indeed, prosecuting a matter, that would rest, I would have thought, with the Department of Labour and Industry.

MR O'BRIEN: Applying an award and prosecuting a matter, not solely, no. They do have certain powers under the Act, but individuals also have powers under the Act in terms of seeking ... or they have the right, should I say, arising from the Act to seek to enforce awards, and that does happen. The department has its statutory rights and obligations in part dealt with by this Act. That does not give the department sole carriage of any matters ...

PRESIDENT: No.

MR O'BRIEN: ... and, indeed, I do recall being involved in proceedings where the then President Mr Koerbin was at pains to draw the department's attention to the fact that it was this Commission which interpreted awards, not the Secretary for Labour, and further, resulting as I understand it, from some of those concerns the Act was amended to allow the Secretary to apply to the Commission to have an award interpreted to deal with that sort of a problem.

PRESIDENT: Yes. I don't disagree with that general position. It just seemed to me that the matter might have been capable of short ... short cut. But if this is the way you wish to proceed ...

MR O'BRIEN: I think that that is the ... the preferable option because if, for example, the Secretary for Labour came up with a view which ... it would obviously not meet with the views of one or other of the parties and their recourse would probably be to bring the matter back here in any case.

We have tested the matter out, sought to discuss the matter and resolve it by discussion. It appears to us that that ... those steps have been exhausted. There is no likelihood of an agreement being reached on the matters, for whatever reasons. And the only course available to us is to have the matter determined.

PRESIDENT: Yes. The reason I asked the question is because I'm having trouble with ... with the nature of the disputation because, just on the face of it, the Hairdressers Award applies the proprietors in the health and physical culture studio and it deals with ... and it provides in the body of the award for wage rates for all others who are defined as people who ... or persons who are engaged in health and fitness centres.

MR O'BRIEN: Yes.

PRESIDENT: Is this a health and fitness centre?

MR O'BRIEN: It describes itself as a fitness centre. That, I guess, is going to be the argument.

PRESIDENT: I mean what is a health and fitness centre if it's not, say, Dockside Fitness?

MR O'BRIEN: Well, I guess you're putting our argument, in a sense, in this matter.

PRESIDENT: The point is, I'm wondering why we're here.

MR O'BRIEN: Yes. Yes. Well, we're here because the employer apparently doesn't see it that way.

PRESIDENT: No. No.

MR O'BRIEN: And ...

PRESIDENT: I just wondered how far that had been taken.

MR O'BRIEN: Well, we've taken it through discussion as far as we believe that we can. We have sought to have certain matters agreed. We've left the employer, in this case, to consider its position and come back to us. We have waited. The employer has not come back. We've set further deadlines. We've not heard further.

We've lodged applications. We've had no direct contact, other than contact arising out of other meetings. In other words, the issue has not been raised in meetings directly called for that purpose, but it's been raised by us at meetings that have been called for other purposes. We, I guess, are of the view that the matter is reasonably clear cut, but if the employer decides to resist it then ...

PRESIDENT: Yes, I understand.

MR O'BRIEN: ... this seems to be the course that's the most appropriate.

PRESIDENT: Could I hear from Mr Fitzgerald as to that proposition?

MR O'BRIEN: Yes.

MR FITZGERALD: Thank you, Mr President. I rise on two matters, and I will just comment on the general circumstances of this matter coming before these matters, and I have some submissions in respect to how the matters can be proceeded with jointly.

But this area has been a difficult area and I just give ... for the purposes of giving some brief history. I understand the proposition you put in respect to the hairdressers, and without prejudice to our case, it certainly turns around the question of what is a health and physical culture studio. But the proposition of having that sort of establishment subject to an award such as the hairdresser, in my view, is absurd. But that will need to be argued further.

But Dockside, who is now a member of the TCI, has ... hasn't always been a member of the TCI and in only recent times has it sought to become so. It did what it thought was a reasonable ... or took a reasonable course, that was to make enquiries at the Department of Labour and Industries, as it then was, to ascertain which award coverage.

Now, the answer was clearly indicated to Dockside that they are award free. That advice was given to Dockside after, firstly, establishing whether in fact an industrial agreement which applied to the predecessor of Dockside, that was in fact Lifestyle, could now apply to Dockside. And it was indicated that as it's a corporate ... a new corporate body, effectively starting anew, that that previous industrial agreement which applied to Lifestyle, and I also understand now to ... it also applied to a defunct organisation called Vigour, and I understand it also applies to Cazaly's, which is an existing organisation, whether it could in fact apply to the new organisation called Dockside.

Now, they acted in good faith by taking that advice from the Department of Labour and Industry, and indicated they were in an award-free situation. Now, I simply ask, what more can an employer do in those circumstances? We have a very difficult situation which has been raised. Mr O'Brien's applications is an either-or approach. Now, if Mr O'Brien is not sure, how can employers out there be sure? So I raise those preliminary points.

The other thing which is concerning is that, as Mr O'Brien indicated, we have been involved in a ... in discussions and in proceedings before this Commission, before Commissioner Gozzi, with a specific industry award dealing with health and fitness centres. Up till recently the Australian Theatrical Employees Association has also been involved, but they've recently dropped out, and the negotiations we've had has been solely with the FMWU.

Now, whilst we're proceeding with that, we also get the approach taken by the Miscellaneous Workers Union that either of these two awards - they haven't specified which one at this stage, although that's become clearer this morning, that it seems the Hairdressers Award is the primary one that they're pursuing, and I'll make comment on that later - either of those two awards could apply. Now, it's only been

recently, and in fact in respect to one particular employee, it's after the event, it's after the ... in fact the employee has chosen to resign from the organisation, that the Miscellaneous Workers Union have applied the Hairdressers Award. Up until then there's been no contact.

Now, from an equity point of view, they've recently become aware, because of the discussions we've been having in respect to the industry award as a whole, that the Hairdressers Award may have some application. So they latch onto that course and take action against those ... that particular employer whilst at the same time they're happy to negotiate something in terms of a Specific Industry Award.

Now in terms of the merits of that application I have some real problems, but apart from that, Mr President, I have some real concerns about responding at this time to an application which I didn't know which it was, was it an application in respect of the Miscellaneous Workers Award or was it an application in respect to the Hairdressers Award? It's only today Mr O'Brien has indicated that he's still adopting the either/or approach that's now the Hairdressers Award. Well, Mr President, I ...

PRESIDENT: I think he was saying the Hairdressers Award is the primary submission with an alternative of miscellaneous workers.

MR FITZGERALD: Well I understand that and ... well it's only today that he's revealed that. Up until now I always believed that I was responding to an application in respect to the Miscellaneous Workers Award. Now I understand, and Mr O'Brien did in fact provide me with a copy, I understand that the original application signed by Ms Shelley in fact - and that's matter T.2495 - was lodged in ... first, and that related to the Miscellaneous Workers Award.

Since that date we have had a subsequent application - application No. T.2686 - which ... well, sorry, prior to that, Mr President, Mr O'Brien has sought to amend the application by a letter dated 15 August addressed to you with a copy to me seeking to amend it by adding the following clause, and I just quote:

In the alternative, the Commission has asked to find that the provisions of the Hairdressers Award apply to the work of an employee as described in employee in premises conducted at a gymnasium, health and fitness establishment and/or fitness centre.

Now I now believe ... I now understand that that's subject to a separate application and those applications have been joined simply because ...

PRESIDENT: You haven't got the second application?

MR FITZGERALD: Well that's ... that's ... I haven't seen an application, Commissioner. I understand there's been given a number, but a lot of paper work from the Commission goes through our ... our office and I haven't sighted the application. I just assume that the T.2686 is in the terms of the amendment which is being sought by Mr O'Brien, but I haven't sighted that.

PRESIDENT: Yes.

MR FITZGERALD: But in any event the application ...

PRESIDENT: 2686 according to the records was faxed to you on 30 August in the afternoon.

MR FITZGERALD: Look that ... that could be well ... I can't argue that we didn't receive that, but I can only say, Mr President, I haven't got a copy, but I don't rely greatly that I haven't got a copy. I assume that it's nothing more than ... than in the terms of the letter dated 15 August. But nevertheless, the applications have been joined and up until now, we always believed that we were responding to an application in respect of the Miscellaneous Workers Award, but now it's ... a subsequent application has been made, the two applications have been joined and I have some real difficulties in terms of whether that's possible under the Act.

The practical consideration of having two awards subject to the one application in my view for an application for an interpretation is it does fail there. In other matters of course the Commission is free to join matters but in this matter the section 43 does deal and if I could quote:

At any time while an award is in force the President may on the application of the secretary or an organisation with members subject to the award ...

And it goes on ... follows on, that to ... that the Commission has power to declare et cetera.

Now what I emphasise there in respect to section 43(i), it talks about an award, it doesn't talk about awards. So given the nature of section 43(i) it can only apply in respect to one particular award. Now Mr O'Brien has sought to have a joint application. The either/or approach which ...

PRESIDENT: I don't think ...

MR FITZGERALD: ... in terms of responding to ...

PRESIDENT: ... I don't think that means one can only hear one award at a time or one application. It would be possible to interpret in respect of one award at a time. I think that's ...

MR FITZGERALD: Yes.

PRESIDENT: ... I think that is probably more of what it means. I haven't looked at it ...

MR FITZGERALD: Well, I simply make it, Mr President, in terms of the circumstances of these applications. It's only been recently that the HairdressersAward has been mentioned as an afterthought if I can put it that way, and now ...

MR O'BRIEN: That keeps being said, but frankly that's not true and frankly I'm prepared to call evidence and produce written evidence which shows that the member, Dockside Fitness, received a letter, plus verbal approaches in May ...

MR FITZGERALD: Right, well ...

MR O'BRIEN: ... outlining that the Hairdressers Award was a primary ... primary claim.

MR FITZGERALD: Well, Mr ...

MR O'BRIEN: Plus on Friday of last week when we had discussions I told you exactly how we were proposing to proceed today.

MR FITZGERALD: Well I have some objection to it, Mr O'Brien, so that's why I'm raising it before the Commission.

MR O'BRIEN: Well you just said that you hadn't heard before today so I'm just correcting that ...

MR FITZGERALD: Well ...

MR O'BRIEN: ... that you did hear from me directly last Friday as to how we proposed to proceed today.

PRESIDENT: Do you have more ...

MR FITZGERALD: Well ...

PRESIDENT: ... Mr Fitzgerald?

MR FITZGERALD: ... Mr President, I won't deny it, I'm just say it for the record that a letter was received from Mr O'Brien. I haven't got that ... in fact I should have that there, but the initial approach was certainly the Miscellaneous Workers Award and then the Hairdressers Award

was established. Now ... at a later point ... now that's happened again in terms of this application. Now whether Mr O'Brien advised me or not I still take some objection to that course. I'm not seeking in any way to deny that I ... Mr O'Brien didn't advise me ...

PRESIDENT: Are you in a position if the matters were separated to deal with the question of the application of the Hairdressers Award first?

MR FITZGERALD: I'm not, Mr President, because it was my view in ... despite what Mr O'Brien advised me or not, it was my view that we were responding to the Miscellaneous Workers application and ...

PRESIDENT: We did make the point though of ensuring that notice was given as quickly as possible of the revised application which was on Thursday ... or of the new application.

MR FITZGERALD: Yes, I regret that I didn't receive that. I certainly wouldn't deny that it came into the office - it probably did, but I haven't got that application.

PRESIDENT: So what are you ... what are you ... what's your submission then?

MR FITZGERALD: Well the two ... there's either two courses - that we adjourn now, now that we know that the ... and the application relates solely to the Hairdressers Award, or, that the Miscellaneous Workers' Union put their case in respect of the Hairdressers Award and we respond to that particular application. That matter then be determined ...

PRESIDENT: Today?

MR FITZGERALD: No, I'm not able to respond as I indicated today to that case being put, but I'm happy to respond at the earliest opportunity. And because it involves matters of substance and intended prosecution proceedings by the Commission ... by the FMWU, Mr President, I believe that it's only fair and reasonable that the employers should have sufficient opportunity now knowing that that's the primary application, if I can put it that way, to have some reasonable opportunity to possibly call evidence ... to refute any evidence being put which I intend ... which I believe is intended to be put today, and to make further submissions.

But whilst we've been in this unknown state, and I concede that Mr O'Brien did speak to me on Friday, but I still object to this course, the either/or approach is not acceptable in our view. And indicates, in my view, the uncertainty of which award applies. And ...

PRESIDENT: That's hardly the union's fault though, is it?

MR FITZGERALD: Well, maybe not, but I ... I ... in painting the general picture with the ... up until only recent time the Miscellaneous Workers Union have not in any way attempted to enforce the Hairdressers Award. And from the merit point of view I have some severe reservations about the equity of the ... of the FMWU application. But nevertheless, I have some severe difficulties about the joint process of this matter.

PRESIDENT: When would you be in a position to respond in relation to hairdressers?

MR FITZGERALD: It depends on my commitments, Mr President. Unfortunately this week and next week are ... are well and truly committed, and the following week I'm on one week's leave, so it would be shortly thereafter. But if Mr O'Brien wants to put his case in respect to the Hairdressers Award, that would make it easier for me to ... or it gives me more opportunity to be able to respond in a shorter duration.

PRESIDENT: Well, if that were to be so, when ... when would you be ready to respond?

MR FITZGERALD: In terms of commitments, Mr President ...

PRESIDENT: I would like to get ... I mean, it's been adjourned or the date's been changed once already.

MR FITZGERALD: Right.

PRESIDENT: I think it may have been at your request?

MR FITZGERALD: Yes, it was. Yes. It was, I think, jointly. Those matters were all ... was tied up with another matter which Mr Edwards, I think, I understand, was handling. So I would be free the week commencing 24 September. I would prefer that it be in the latter part of the week.

PRESIDENT: Yes. Thank you, Mr Fitzgerald. Mr O'Brien?

MR O'BRIEN: Well, we're quite happy to proceed with our case today. I think it ... I don't see how Mr Fitzgerald is prejudiced in the circumstances, if we do proceed with our case and if a date is set aside for him to respond. I don't see why he should be prejudiced in us putting both arguments, and certainly that would advantage him in terms of running the matter, and would better utilise the time available to the Commission.

We don't have a problem with ... with that course of action, if Mr Fitzgerald needs time to prepare his case in this matter. I do stress that this has been a matter which has been known to the employer, that is, that the Hairdressers

Award was a consideration, as far back as May, in writing as well as ... as a result of verbal discussions.

Mr Fitzgerald himself referred to the proposal to amend the other application, which predates the second application. So the Hairdressers Award was mentioned then. We also have the application and verbal advice of our intent last Friday. So I really have to reject the concept that there's ... they're surprised in any way in these proceedings today.

Having said that, we are quite prepared to present our case today. We are ready and willing to do that. Because of the way that the awards work, the questions that Mr Fitzgerald raises about, you know, the ... the equity of the matters arises, perhaps, in other context but not in terms of section 43. Section 43 is about what the awards mean for a determination, and it is always a matter which the Commission is at pains to ... the type of matter which the Commission is at pains to exclude merit concepts. It is simply a question of which award applies.

Now, as I said, we're ready, willing and available to go. I would propose to call two witnesses who, as I said, until recently have been employed at the establishment, to give evidence as to what they did and what the centre did. And that's all.

Now, I know Mr Fitzgerald has been to the centre for inspections and has consulted with his client, so I don't believe he's ... he's prejudiced if that evidence is called, and certainly we can then present a case on ... on the question of the meaning of the words in the awards.

In the alternative, that is, our primary position is that the Hairdressers Award applies. Alternatively, if that doesn't apply - and only if that doesn't apply - does the other question arise. And I don't see how us presenting a submission on that in any way prejudices Mr Fitzgerald in the circumstances. And if the Commission is happy with that, I'd just ... I began earlier, I propose now to call Mr Mark Risdon to the stand.

PRESIDENT: Yes. Well I'm ... I'm prepared to proceed on that basis. What was the name of the ...

MR O'BRIEN: Mark Risdon.

PRESIDENT: We'll call Mark Risdon, please.

MARK RISDON, sworn:

PRESIDENT: Mr O'Brien?

MR O'BRIEN: Mr Risdon, were ... I don't think this is in dispute, were you, up until recently, employed at Dockside Fitness Centre?

MR RISDON: Yes, I was.

MR O'BRIEN: When did you ... roughly when did you commence employment there?

MR RISDON: November '88, I think it was.

MR O'BRIEN: Was that about the time that the centre commenced operation?

MR RISDON: It was about 6 months after it commenced operation.

MR O'BRIEN: Have you previously worked in establishments like that establishment?

MR RISDON: Yes. I'd been working for a chain of very similar centres in London for 3 years before ... before I came to Australia, which was roughly one year prior to my starting work at Dockside.

MR O'BRIEN: In terms of your duties at Dockside, can you tell us actually what you did as an employee at Dockside Fitness Centre?

MR RISDON: Well, my responsibilities included opening and closing of the centre, general reception duties, which covered: cash handling, telephone work, selling memberships, general assistance of the members and, indeed, non-members using the centre. Instruction and supervision in the gymnasium and a varied ... varied cleaning and maintenance duties of the various equipment and facilities in the centre.

MR O'BRIEN: Now, in terms of the centre itself, you walked through a hallway into the ... sort of a ... a reception area?

MR RISDON: Yes.

MR O'BRIEN: And there is a desk there. Now where would you work in relation to that desk normally?

MR RISDON: Well, the area behind the reception desk is ... is fairly large. It encompasses the actual reception desk itself, which is the area from which locker keys are dispensed and where the cash register is. It varies from that area to the desk at which memberships are sold and enquiries about memberships are dealt with. There is also a stand of sportswear behind the reception area, and the selling of the

sportswear was part of the reception duties. Drinks were dispensed from behind reception as well.

MR O'BRIEN: Could you tell us ... so you worked behind that reception area. You worked in other parts of the establishment?

MR RISDON: Yes.

MR O'BRIEN: What other parts of the establishment?

MR RISDON: The duties that were assigned to me were the instruction in the gymnasium and also cleaning and maintenance of the spas and the swimming pool. All other duties, including working in the gym, were carried out, if you like, in between manning the reception desk, depending who else is around really.

MR O'BRIEN: What, in your experience, did the centre provide to the users of ... to it's users?

MR RISDON: Well, it was a facility for the improvement of personal health, fitness and well-being in a leisure environment. So the pursuit of health and fitness could be conducted as a purely businesslike, serious endeavour or purely for recreational, pleasure purposes, or anything in between.

MR O'BRIEN: And what facilities are available to users of the centre?

MR RISDON: Excuse me. Weight training and hydraulic resistance training, aerobic classes, swimming pool, saunas, spa pools, solarium beds - probably that's it.

MR O'BRIEN: And in terms of people who use the facilities, to your knowledge, what ... what would be their aims, as they've ... they have stated them to you in your duties as ... in reception?

MR RISDON: Well, as I say, it ... it varied from those who were there purely as a ... as a leisure pursuit through to, for instance, members of the Tasmanian Institute of Sport who were there to train seriously for their particular sport. The majority of members would just be people who would come in, I would say, probably two-three times a week just to achieve a, I suppose what would be considered, a normal, healthy level of fitness.

MR O'BRIEN: Did people ever use the centre for things such as weight loss?

MR RISDON: Yes, that would be one of the aims under the bracket of fitness, I would say.

MR O'BRIEN: And if people came in, were they assessed as to their level of fitness?

MR RISDON: If that was appropriate to what they wished to achieve. Yes.

MR O'BRIEN: And what's ...

MR RISDON: It was one of the ... one of the services which could be ... which they could choose to ... to have. As I say, if it was appropriate to their individual aims.

MR O'BRIEN: What's involved in a fitness assessment?

MR RISDON: Well, a fitness assessment is a measurement of an individual's ... of certain aspects of an individual's physical condition. The assessment ... the assessment that we would do at Dockside was a measurement of their cardiovascular efficiency by means of a short test on a stationary exercise bike where the heart rate is monitored. The measurement of an individual's weight, body fat level, by means of a pinch analysis - a skin felt test. Measurements with a tape measure of various parts of the body. Flexibility tests. Strength tests. Anything along those lines can be done, depending on what direction an individual was interested in having results.

MR O'BRIEN: You said you worked in establishments in the UK in ... that were similar.

MR RISDON: That's right.

MR O'BRIEN: How did those establishments ... establishments style themselves in terms of presenting themselves to the public? What do they call themselves?

MR RISDON: It was a chain called The Fitness Workshops, who described themselves in their advertising and promotional details as one of the leading chains of health and fitness centres. They boasted similar facilities to Dockside: gymnasiums, aerobics studios, saunas, spas, again aiming at a wide cross-section of interests.

MR O'BRIEN: And it's the same sort of business, is that what you're saying?

MR RISDON: Yes. A broad-based fitness centre appealing to the general public and specialised interests. Accessibility to all being the aim.

MR O'BRIEN: Yes. I've got no further questions.

PRESIDENT: Mr Fitzgerald?

MR FITZGERALD: Thank you, Mr President.

Mr Risdon, are you qualified in any way in the health and fitness arena?

MR RISDON: A number of years ago in England I took the British Amateur Weight-lifters Instructors Course, which is a course actually aim more towards a knowledge of the mechanics and science of Olympic weight-lifting.

MR FITZGERALD: You're not qualified in any fitness assessment or any other area similar to that?

MR RISDON: Well, as I said a moment ago, a fitness assessment is a thing that has to be precisely qualified.

MR FITZGERALD: Right.

MR RISDON: The ... that particular course covered weight training instruction as a specific, rather than physical fitness as a general. So the short answer to that would probably be, no.

MR FITZGERALD: Okay. Do you know whether others who worked in that centre were formally qualified?

MR RISDON: I'm not sure of the individuals background, but to my I'm not actually aware of a qualification that is in existence which actually does cover fitness assessments.

MR FITZGERALD: No, right. When ... when you took on the job at Dockside in November '88, was ... how ... how was it ... was the position advertised or how did you come to accept the position?

MR RISDON: No, I'd actually contacted the centre almost immediately before it changed hands. This was while I was on the mainland and I had a desire to come to Tasmania. And by looking up centres in the yellow pages of the telephone book. I just had a policy of just writing to places that looked suitable. And I received a reply saying that the centre was going to change hands, but that I should keep in touch because my resume looked attractive and they thought that the new owners could well be interested. This is what I did and this is how I wound up with the job when I moved down here.

MR FITZGERALD: When the position was offered was there any formal exchange of letters to formalise the position, or was it just a shake of the hand?

MR RISDON: A shake of the hand, basically.

MR FITZGERALD: And what did you see that you were engaged at as at that time? Was it ...?

MR RISDON: I was engaged as a weight training instructor, but as we mutually acknowledged during the, in fact, two interviews that I had, in a centre of this kind there is a certain ... inevitably a certain amount of fringe activities involving reception and sales, and even cleaning and maintenance if such jobs occur in the course of the day when there is no specialised cleaning staff available.

MR FITZGERALD: Well, let me say, in a question ... in answering to Mr O'Brien, I think you ... and I hope I accurately copied them down, you said you were responsible for opening and closing, and you said reception work, telephone work, selling membership, and then way down the list instruction and supervision, and I assume that's gym instruction.

MR RISDON: That's right, yes.

MR FITZGERALD: Is that the way you saw your duties, in terms of ... did you list them in priority there, or not?

MR RISDON: No, that wasn't the way I saw it, but that was the way it worked out in terms of the amount of time that in practice was allocated to the job.

MR FITZGERALD: So, the instructor ... that what you were originally engaged for, which you have acknowledged already as a gym instructor, or a gym ... I am not sure that was the term, in fact became a small part of your job. Is that what you are saying?

MR RISDON: Well, yes, I suppose that is accurate. The time spent in actually formally working out gym programs for people was actually relatively minimal, certainly to, for instance, reception work. But it's a little hard to quantify the amount of time that is spent giving general advice and assistance to people on the gym programs that they are already working to.

MR FITZGERALD: So, what would you see as the major function you had while you were engaged at Dockside?

MR RISDON: I saw my major function as being a weight training instructor.

MR FITZGERALD: Right. So, these other duties which you mentioned, opening and closing, reception, telephone, selling membership, etc., are they peripheral duties, in your view, ancillary duties, maybe that's a better term?

MR RISDON: It depends if you are talking about time spent on each activity, or the importance attached to each activity.

MR FITZGERALD: Well, take from the time spent for a start. How it was spent.

MR RISDON: For the time spent, the reception work and other activities were ahead of the weight instructions.

MR FITZGERALD: In terms of the importance of the position, how would you assess it there?

MR RISDON: Well, I assessed the gym instruction as being more important, but the inevitable conclusion was that the directors of Dockside considered the other duties to be more important.

MR FITZGERALD: How did you ascertain that that was their view?

MR RISDON: Simply because of the amount of time I was obliged to stay on the reception desk because there was no covering staff for me to be in the gym assisting people there.

MR FITZGERALD: Were you always responsible for opening and closing the centre?

MR RISDON: Not always. There was a number of staff in a similar situation. I couldn't be there all the time the centre was open.

MR FITZGERALD: So, you weren't given the sole responsibility of opening and closing?

MR RISDON: No, nobody had sole responsibility, but on the days when I was working I would be either opening or closing or both.

MR FITZGERALD: But there would be some days where you wouldn't be responsible for either opening or closing. Would that be the case?

MR RISDON: If it was a day when I wasn't working, certainly.

MR FITZGERALD: No, that's not the answer I was seeking. I think we'd naturally assume it was a day when you were working.

MR RISDON: There would have been very few days when I wasn't either opening or closing. There would have been some. Extra hours that I was doing to cover if somebody was away, for instance, but on my timetabled days I was either opening or closing or both.

MR FITZGERALD: In terms of your duties, were you responsible for ringing - for want of a better term - ringing off the cash register at the end of the day?

MR RISDON: Yes, I was.

MR FITZGERALD: Right. How ... what would occur then in terms of the monies and the banking of the monies, etc? Did you have any responsibilities there?

MR RISDON: Not the banking, no. The money would be ... the daily figures would be balanced and the money would be parcelled up for one of the directors to collect and then to bank.

MR FITZGERALD: And it would be usual practice for a director, in fact, to be on the premises at that time to collect the monies?

MR RISDON: No, they would come in later.

MR FITZGERALD: At closing time, I'm suggesting.

MR RISDON: Oh, they would usually come in just before closing time, sometimes afterwards, depending on their commitments.

MR FITZGERALD: So, in terms of ringing off the cash register they would be there sometime shortly prior to closing to collect those monies?

MR RISDON: Yes. That would be ... it wasn't uncommon for which ever director was collecting the money to telephone to check just what time it would be ready, so that they didn't have to come down and hang about. So, it would all be packaged up, placed in a bag, and then placed in one of the inner offices, from which the director would then collect it.

MR FITZGERALD: Could it be that director who, in fact, picked up those monies could also be responsible for locking the premises?

MR RISDON: No.

MR FITZGERALD: Even though the director was on site at that time you would still have that responsibility to shut?

MR RISDON: That's right, yes. They literally would be in and out just to collect the bag and be gone within the space of a minute sometimes.

MR FITZGERALD: What were the usual working times you practised at Dockside?

MR RISDON: Well, the usual shifts I was timetabled for. It would be either to start at ... this is on a week day, to start at either 1 or 2 o'clock and then to lock up at 9

o'clock. There were occasions when I had a daytime shift, either 9 to 5 ... I did a few early morning shifts, 6.00 in the morning to midday, or the weekend shifts, of course. For a long period of time I worked Sundays, which involves opening the centre for 9 o'clock and closing at 12.

MR FITZGERALD: Would there be many days when you were in fact both responsible for both opening and locking the premises?

MR RISDON: Yes.

MR FITZGERALD: When would they occur, normally?

MR RISDON: Weekends usually.

MR FITZGERALD: So, the normal Monday to Friday situation you wouldn't be normally responsible for both opening and locking?

MR RISDON: No. That would be a very long day.

MR FITZGERALD: Right. The cleaning and maintenance, what role did you perform there? You mentioned you had some cleaning and maintenance functions.

MR RISDON: It was originally my responsibility to clean the spa pools, that was my sole responsibility. It wasn't my sole responsibility, but nobody else had that responsibility, so it was up to me to clean the spa pools. I had that changed as a result of not wanting to actually having to get into the pools because of the skin condition I had, and that was when I took over the pool maintenance - vacuuming, checking chemical balances, but that's something other staff did as well, filling of the vat with chlorine, and generally keeping an eye on the cleaning and maintenance there.

MR FITZGERALD: Was anyone else engaged, particularly a junior, to perform tasks of cleaning and particularly wiping down gym equipment et cetera?

MR RISDON: Recently there had been a junior who was there not with any specific tasks but he was there for a few ... a few hours in the evening to assist with that sort of task, so in the case of these jobs of mine if ... Martin was his name, if Martin was there and there was some cleaning in the spas or pool or whatever that was my responsibility that had to be done I was able then to delegate that to him. But the majority of the cleaning of those areas had to be carried actually external to the opening hours of the centres - such tasks as vacuuming the swimming pool, for instance, necessitated the closing of the area, so rather than have it unavailable for the use of the members that would usually be done on a Sunday afternoon after closing the centre.

MR FITZGERALD: Right. When you were engaged in Dockside ... at Dockside, was the question of rates of pay and conditions discussed?

MR RISDON: Yes.

MR O'BRIEN: Well I object to the relevance for the point of view of an interpretation - it may go to other matters, but I don't know what relevance it has to the question of interpreting what the Hairdressers Award means.

MR FITZGERALD: I believe in terms of tabling a picture of this application, Mr President, this ... this is a matter which should be raised. It's up to the Commission to determine whether in fact it's ... once it's heard ... in fact the answer hasn't been given so we don't know at this stage.

PRESIDENT: It is really more a merit matter isn't it?

MR FITZGERALD: In terms of merit, I understand the rules ... and it was only those rules lodged by the former President ... I've been in many matters before this Commission where merit matters have been raised. They're not specifically excluded certainly by the Act. You're not necessarily bound to exclude them, Mr President, so I don't see anything which would prevent that in any way, Mr President.

MR O'BRIEN: Well I just raise this point: true you've got control over the proceedings, Mr President, if interpretations are going to go down to all of the detail of ... of what the arrangements were between a particular employer and employee, and we're really going to obscure the purpose of the section which is for a determination of what ... how a provision in an award should be interpreted.

Now what this witness might or might not have been offered at the time of engagement ... I guess it has some potential relevance if ... if the suggestion is that he was offered this award, but if he wasn't, what does it mean?

PRESIDENT: I agree with you, Mr O'Brien. It may be well be irrelevant, it may well prove something. I'm not concerned particularly by the question. Yes. Mr Fitzgerald.

MR FITZGERALD: Well, I'll re-put that question then. I understand I'm able to put that ...

PRESIDENT: Yes.

MR FITZGERALD: ... question again, yes. Yes, how were the wages and conditions arrived at - the terms and wages and conditions arrived at? Was that by mutual negotiation or ...

MR RISDON: No, it wasn't. No, it was just what they happened to give me. I didn't ... I didn't enquire after the conditions, because at the time I had no idea how long I would be staying in Tasmania, and frankly it seemed such a convenient vacancy for there to be so long as they were paying a living wage then I was at the time happy with that.

MR FITZGERALD: So your position with Dockside was a temporary position? Was it ... you said ... you mentioned you worked in the UK. Were you working under a work permit here?

MR RISDON: No, I'm an Australian citizen.

MR FITZGERALD: Right. Well I think we need to ... can ... to establish the total picture, Mr President.

MR O'BRIEN: Well I don't think the picture of whether the witness is working under a work permit goes to the question of the application of award, surely.

MR FITZGERALD: It has relevance in terms of the surrounding circumstances, Mr President. There's no question about that.

When ... were you ever during the course of your employment aware of the Hairdressers Award, for instance?

MR RISDON: Yes, I had heard mention of it.

MR FITZGERALD: At what part ... at what time in the course of employment? At the early stages or in the middle stage or in the latter stages?

MR RISDON: My timing is ... I'm going from memory here, but after I'd been there approximately 6 months, and it was becoming ... obviously becoming less of a short term proposition ... than I suspected it possibly could have been to start with, I just out of curiosity telephoned I think it was the Department of Labour and Industry and asked if there was an award rate that covered it and they said, 'Yes, it's the Hairdressers Award'. At the time I was interested just for my own curiosity as much I

MR FITZGERALD: So at what stage of your employment was it that you raised the ...

MR RISDON: As I remember, I'd been there about 6 months.

MR FITZGERALD: Did you relay that information to your employer?

MR RISDON: Yes, it did ... that did come up. Not at the time, but it was round about the time when the serious ... or discussions about the conditions of pay began between myself and my ...

MR FITZGERALD: Is it true that that was towards the end of your employment there?

MR RISDON: I can tell you exactly when that was. It was about the end of October, beginning of November of last year.

MR FITZGERALD: And when did you resign?

MR RISDON: I was sacked at the end of May.

MR FITZGERALD: I have no further questions thanks, Mr President.

PRESIDENT: Mr O'Brien.

MR O'BRIEN: Well, to get the picture if we want to ... if we want to get the picture I only have one question to ask and is it true that you were sacked the day after the union made a wage claim on your behalf?

MR RISDON: Yes, that's true.

MR O'BRIEN: Thank you.

MR FITZGERALD: Couldn't resist that one, Kerry.

MR O'BRIEN: Well you opened it up.

PRESIDENT: It sort of ... sort of led into it nicely.

MR FITZGERALD: I'd expect that, Kerry.

PRESIDENT: I think most of the things I need to know have been put fairly clearly. There are no further questions. You may stand down, Mr Risdon, thank you very much.

MR RISDON: Thank you.

MR O'BRIEN: I'd now call Mr Jeff Thorn.

PRESIDENT: Mr?

MR O'BRIEN: Jeffrey Thorn.

PRESIDENT: Yes.

JEFFREY THORN, sworn:

PRESIDENT: Mr O'Brien.

MR O'BRIEN: Mr Thorn, I think you'd better give your full name and address for the purpose of the record. I'm not sure that the last witness had done so, but if you give your full name and address please.

MR THORN: Right. Jeffrey Derek Thorn - that's Jeffrey with a J., No.3 Gourlay Street - G-O-U-R-L-A-Y, Blackman's Bay and post code 7052.

MR O'BRIEN: Mr Thorn, up until recently, you've been an employee of Dockside Fitness Centre?

MR THORN: Yes, that's correct.

MR O'BRIEN: When did you commence your employment with them approximately?

MR THORN: It was either 7 or 8 December 1987 when they originally started.

MR O'BRIEN: Right. And you commenced employment with this business at or about the time it commenced its operation?

MR THORN: Yes, that's right.

MR O'BRIEN: Or opened its doors for business, might be a better way of putting it.

MR THORN: Yes, I was there right from the very start. Yes. I was actually employed with Lifestyle before that, and after they had gone into liquidation I got in contact with the directors and they asked me if I would like to stay on with ... or come to work for them with the new centre, to which I did.

MR O'BRIEN: As an employee of Dockside Fitness Centre - we'll forget about the previous employer - as an employee of Dockside Fitness Centre can you tell us what your duties were?

MR THORN: Right. They were fairly varied. Basically I was employed as a gym instructor which is to assist and instruct members on the use of weight training equipment, and training equipment. That is also doing fitness assessments, and basic gym programs, and to assist in the techniques on the various equipment to make sure everyone was exercising safely and correctly. That was done week days only.

I was also used for sales, that is touring prospective members around the centre, involved in selling of memberships, also selling of sportswear that we sell, also drinks - just orange juices we have on the counter - also general maintenance and cleaning of all equipment - that is all the weight training equipment and the hydraulic equipment - also all the computer equipment training, and also I have been ... I had ...

MR O'BRIEN: Sorry, the computer equipment, can you tell ... the equipment doesn't mean a computer terminal with a screen, does it?

MR THORN: Oh, right, sorry. Yes, that's computerised bikes and walking machine and a rowing machine. Now there are times where both the bike and the walking machine break down, and I was used to correct those, or fix those. Also ...

PRESIDENT: That happened frequently, did it?

MR THORN: It happened twice with the bikes, and I think two or three times with the running machine.

MR O'BRIEN: That's the computerised stuff you are talking about?

MR THORN: The computerised stuff, yes. With the other equipment it's done basically replacing worn cables and worn parts and just general maintenance and cleaning. Also cleaning of the mirrors throughout the centre. Any general cleaning, including change rooms, and when we close down at night we also clean all of the electronic equipment. Also I was used for ...

PRESIDENT: Would you like to go back over that again for me? The electronic equipment.

MR O'BRIEN: Cleaning of the electronic equipment, is that the point that you want?

PRESIDENT: Yes.

MR THORN: Yes, every night when the centre is closed the person who locks up has the job of wiping down all the equipment because it gets really sweaty and dusty, so we wipe that down every night when we close. So, that was everyone's job who would close on that particular night or day. Also I checked chemical levels in the spas ,in the pool, adding chemicals where needed, and just general cleanliness, and vacuuming of both spas and pools. I think that's all. Basically just anything that was required of me.

MR O'BRIEN: When you walk into the centre there is a corridor through which you walk, and you come to an area where there is a reception desk.

MR THORN: That's right.

MR O'BRIEN: Did you ever work behind that reception desk?

MR THORN: Yes, I spent quite a lot of time there actually. That's where we greet the members when they come into the

centre, hand out locker keys, assist them in any way that is necessary. Answering phones to give details on membership, so just answering general questions, and just giving directions to any members or casual visitors. Also handling the till, so when we take in casual visitors we quickly tour them around the centre, and, you know, assist them in whatever way they might need.

MR O'BRIEN: You have given us a long list of duties. How much of your time would have been spent in that reception area? Of your working time, how much of your time?

MR THORN: It's quite difficult to say. As far as the gym instruction that we do is done on a booking basis, so if there is no bookings on a particular day then I may be asked to watch reception while other people can go about doing various other duties. Definitely any time working on weekends, which I did quite a lot of weekend work, the whole time was spent on reception. Also in the evenings, the last hour or two at night would be spent solely on reception because I would be there by myself, and early in the morning when I began at 6 o'clock in the morning until 9.00 would be solely spent on the desk, and also during the day, you know, you'd probably put in quite a bit of time.

MR O'BRIEN: Is that during the week, or weekends?

MR THORN: That's during the week. On weekends, because there is only one person usually on each shift on weekends, the whole time is spent on the desk. So, it's very difficult to gauge approximately what fraction of time that you spent behind the desk, but it is basically whenever needed. But it is quite a lot. It would be half the time.

MR O'BRIEN: Okay. Did you ever ... were you ever responsible for the opening or closing of the centre?

MR THORN: Yes, I had my own set of keys. My hours and those at which I worked varied throughout the nearly 3 years that I was there, so I was quite often closing up 2 or 3 nights a week, opening once or twice a week, and on weekends opening and closing.

PRESIDENT: How often opening during the week?

MR THORN: Sorry?

PRESIDENT: How often during the week might you have opened?

MR THORN: Because I had my shifts changed quite a lot, over the time that I have been there I have worked quite a number of different shifts. My latest shift when I was working there just recently before I finished I was closing up Monday and Tuesday evenings, and opening up Friday mornings, and also

opening and closing every second Sunday, and every second Saturday I would either take a morning shift which meant I would open the centre, or afternoon shift which meant I would close, so it was quite regularly, yes, three or four times a week.

MR O'BRIEN: In terms of the services and facilities offered by the centre itself, could you tell the Commission what you understand the centre offered as a service to the members of the public who used it.

MR THORN: Right. The centre does offer a wide variety of facilities available for the general public to use for a number ... you know, a variety of things. Basically it's for people to come and to work out, whether that may be for leisure or for health and well-being, but generally it's for health and well-being, and for people to improve their levels of fitness.

We have people ranging from just general people who want to get fit - mothers, parents, or ... and ranging through to athletes who might want to come to improve their athletic performances. Because of the wide range of facilities we offer we generally cater for elderly people to come in and do gentler exercises such as water aerobics, and also for relaxation, for people to come in and have a spa and a sauna. So it's ... generally it does cover a wide variety of ... variety of facilities and people.

MR O'BRIEN: You said something about fitness assessments, can you tell ... did you perform fitness assessments?

MR THORN: Yes. Yes.

MR O'BRIEN: What's involved in doing a fitness assessment?

MR THORN: Right. What it is, it's generally where you take a member who has joined up and has actually purchased a membership where they want a fitness assessment, it is a gauge of their actual level of fitness. In that we take their blood pressure, we take their weight, their height. We take their measurements with a tape measure around their body. We also measure their body fat percentage. And then we give them a cardiovascular fitness test, which gives you the ... their ... what's known as their maximum oxygen uptake, which is generally the heart-lung fitness. We also have a couple of strength tests which we perform for the shoulders and also grip strength. Flexibility tests and a muscular endurance test.

MR O'BRIEN: Do you have any qualifications which would enable you to give that test?

MR THORN: Well, I've completed the AFAC - that's the Australian Fitness Accreditation Course. I completed that in 1987. Since then I've attended regular workshops. I did a sports strength conditioning workshop, I think at the beginning of the year. And I've also got in contact ... I've been working for TUFLA through Fay Wilson ...

MR O'BRIEN: What's that?

MR THORN: That is the Tasmanian United Fitness Leaders Association. And actually down here we don't have ... there's only one guy who is probably qualified in resistance training and that's Rick Cazaly. And I arranged, through Fay, to do some practical sessions with him, and then to be assessed, and I paid them money for that. And I'm still waiting for Fay to get back to me about that.

MR O'BRIEN: Right.

MR THORN: So ...

MR O'BRIEN: But you do have that qualification?

MR THORN: Yes. That's right.

MR O'BRIEN: Where was that gained?

MR THORN: That was through the university. What it is it's an Australia-wide course which is recognised throughout the whole of Australia. And it's a sort of level 1 course that all aerobic instructors and fitness leaders have to do. It's commonly known as the Fitness Leaders Certificate.

PRESIDENT: This is the one ... what was it called, A ...

MR THORN: AFAC, yes.

MR O'BRIEN: A-F-A-C.

PRESIDENT: A-F-A ...

MR THORN: Yes. A-F-A-C, yes.

PRESIDENT: A-F-A-C. And what ...

MR THORN: That's ...

PRESIDENT: Spell it out for me again?

MR THORN: The fitness ... the Australian Fitness Accreditation Counsellor Course.

PRESIDENT: Accreditation.

MR THORN: Yes.

PRESIDENT: Thank you.

MR O'BRIEN: Yes. I've got no further questions.

PRESIDENT: Yes. Mr Fitzgerald?

MR FITZGERALD: Thank you, Mr President.

Mr Thorn, you ... you no longer are employed by Dockside, is that correct?

MR THORN: No, that's correct.

MR FITZGERALD: Right. Did you resign of your own free will?

MR THORN: Yes, I did.

MR FITZGERALD: Right. Can you indicate why that ... you'd had some period of time with them and also with the former organisation?

MR THORN: Yes, that's correct. Well, after I'd been to see the union and discussed with them ... and then I ...

MR FITZGERALD: Discussed with them what, sorry?

MR THORN: About the ... the discrepancy about the pay.

MR FITZGERALD: When ... did you ever discuss that with ... with the management of the centre?

MR THORN: Well, yes, I discussed that with Susan Carter, who was the original manager. She ... well, she would have been known then as Susan Levy. Now when we started it was ... well, no actual pay was discussed. We started on and they just, you know, they paid us and I basically just took it. But I used to have discussions with Susan Levy and ...

MR FITZGERALD: Which ... sorry, was she ... who ...

MR THORN: She was the manager.

MR FITZGERALD: ... she's the ...

MR THORN: She's ...

MR FITZGERALD: ... was she the manager of ... of Dockside or ...

MR THORN: Of Dockside.

MR FITZGERALD: ... Lifestyle?

MR THORN: Dockside, yes.

MR FITZGERALD: Okay.

MR THORN: She was the original manager, yes. And she used to have, well, shall I say, confrontations with Bob Cheek about the pay discrepancy, but nothing was ever done about it.

MR FITZGERALD: Is it true that you were offered the assistant manager's position at one time?

MR THORN: Yes.

MR FITZGERALD: Right.

MR THORN: That's right.

MR FITZGERALD: Yes. You chose to ...

MR THORN: Yes. I also discussed that with Sue ... Sue Levy.

MR FITZGERALD: Right. And you chose not to take that position?

MR THORN: That's right. Yes.

MR FITZGERALD: Right. Any particular ... you were dissatisfied with pay?

MR THORN: No, no. I was young ... I was young then, fairly young, and my only training ... I'd only been, sort of, trained as ... as a gym instructor. I had no background at all as far as management went and I was basically afraid to take on that responsibility, at that stage anyway. And that's what ... what I told the directors. That I felt the responsibility would be too great for me.

MR FITZGERALD: When did the issue of pay come to the ... the forefront, particularly the involvement of the union, from your point of view?

MR THORN: Well, I was ... I was advised by someone I knew, not anyone from the centre, to find out what I ... what my entitlements were, because I had been there for so long and hadn't had any holidays and I was working all these weekends and evenings without getting penalty rates.

MR FITZGERALD: Where did you make those enquiries?

MR THORN: So I went to the Department of Labour and Industry.

MR FITZGERALD: Oh ...

MR THORN: And ...

MR FITZGERALD: and what did they indicate?

MR THORN: They ... they told me the first time I went that it came under the Hairdressers Award and that I was being underpaid. And ...

MR FITZGERALD: What ... when was that?

MR THORN: It's difficult to say, it would have been about 3 months ago, I would say - 3 or 4 months ago. And I went back again with Mark Risdon - we both went back - and to which we ... we actually talked to a different person and they gave us a totally different story. And ...

MR FITZGERALD: And what was that story?

MR THORN: They ... well, they said that there was no award for it.

MR FITZGERALD: Right.

MR THORN: And so in an effort to find ... to get to the bottom line to find out whether there was an award or not someone suggested we might contact the Miscellaneous Workers Union, to which we did. We rang up and made an appointment and came in to see Kerry.

MR FITZGERALD: Right. But prior to that you weren't aware the ... those initial enquiries, that the Hairdressers Award potentially had this application?

MR THORN: Yes. Well, I had been told by Susan Carter that we were under the Hairdressers Award.

MR FITZGERALD: Is it a surprise to you that the Hairdressers Award would apply to a centre like that?

MR THORN: Yes.

MR FITZGERALD: Or could apply.

MR THORN: Well, yes, it was, but having no experience with awards and whatever, you know, I really had ... you know, I felt , well, it's not really my forte.

MR FITZGERALD: Right. Okay. Nor is gym instruction mine.

No further questions. Thank you, Mr President.

MR O'BRIEN: No re-examination.

PRESIDENT: Could you tell me, Mr Thorn, what the nature of your discussions was with Susan Carter when she referred to the possibility that it could have been the Hairdressers Award that had application?

MR THORN: Right, this was when, you know, Lifestyle was first, sort of, going and we used to discuss about the fact that we weren't making a great deal of money. And, she told me that we should be getting paid more money and she basically just said that the award that we come under is the Hairdressers Award.

I really can't remember the discussions but I know myself and Jackie Browning, who's another employee down there, we - she was also an original employee when they first started - we were always having discussions with Sue saying that, you know, the pay wasn't great. And she was then going to Bob Cheek and having various confrontations with him trying to get us ... an attempt to get us more money.

PRESIDENT: I was particularly interested with reference to Hairdressers Award.

MR THORN: I really can't remember, sorry.

PRESIDENT: No, okay. No, I have no further questions. Thank you very much, Mr Thorn. You may step down.

MR THORN: Thank you.

MR FITZGERALD: Mr President, before Mr O'Brien rises. I wasn't, until this morning, aware that evidence would be given in respect to duties. I have some ... in terms of my instructions, some real problems and some differences, in terms ... particularly in terms of emphasis of duties. Mr Mark Stevens, who's been mentioned in evidence, unfortunately wasn't available this morning and also Mr Bob Cheek, who has also been mentioned, I sought to have available this morning too.

PRESIDENT: I've heard Mr Cheek's name. I didn't pick up Mr Stevens.

MR FITZGERALD: Yes, I think Mr Stevens was mentioned. Mr Stevens is, in fact, the manager of the centre. Mr Cheek is director. Both ... Mr Cheek is, in fact, unavailable because he works in a night-time newspaper role. Unfortunately, they're both unavailable and I believe that, in terms of this matter proceeding, after hearing the evidence, I will need to take instructions. And I believe that there'll be some need for counter-evidence.

And rather than allow ... rather than proceed to full submissions at this stage, I think it's more sensible, Mr

President, that the evidence be heard in totality and in that respect I will be seeking an adjournment to seek instructions on what has been put today and, if necessary, adduce further evidence.

PRESIDENT: We'll go off the record for a second if you wish.

OFF THE RECORD

PRESIDENT: Thank you for that discussion. We will adjourn until 11.00 a.m. on 1 October for the purpose of concluding the hearing on that day. This session is concluded.

HEARING ADJOURNED