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TRANSCRIPT OF PROCEEDINGS

O/N 1136

TASMANIAN INDUSTRIAL COMMISSION

DEPUTY PRESIDENT P.C. SHELLEY

T No 11651 of 2004

LICENSED CLUBS AWARD

**Application pursuant to the provisions of
section 23(2)(b) of the Industrial Relations Act 1984
by the Liquor, Hospitality and Miscellaneous Union,
Tasmanian Branch to vary the above award re clause 22 -
hours subclause (c) minimum break between shifts**

HOBART

9.30 AM, THURSDAY, 9 SEPTEMBER 2004

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

PN1

MR P. TULLGREN: I appear for the Liquor, Hospitality and Miscellaneous Union.

PN2

MR P. MAZENGARB: I am representing the Tasmanian Chamber of Commerce and Industry Limited.

PN3

THE DEPUTY PRESIDENT: Thank you. Now, I understand that this is a consent matter.

PN4

MR TULLGREN: It is, your Honour.

PN5

THE DEPUTY PRESIDENT: Thank you, Mr Tullgren.

PN6

MR TULLGREN: Thank you, your Honour. The application seeks to vary clause 22(c) of the Licensed Clubs Award to insert, effectively, a penalty provision where an employee does not receive the relevant 10 or eight-hour break as prescribed elsewhere in the clause. The current clause is unusual in that it says, or it provides that:

PN7

An employee must have a minimum 10 or eight-hour break, depending upon their shift.

PN8

But it then, inexplicably, doesn't provide for what occurs if in fact that break is not provided.

PN9

THE DEPUTY PRESIDENT: Well, presumably it is an offence and it is a breach of the award.

PN10

MR TULLGREN: Well, it is, but as your Honour would be aware most awards do actually prescribe that if you don't get the break, then you get paid at overtime rates, however described, until you get the break. Now, what this seeks to do is simply to insert that fairly standard provision. I have had a discussion with my friend about this. It is by consent. Your Honour, what I would seek to undertake to do is to provide to your associate later today an amended draft order. When the order was first done it was envisaged - it makes reference to August. What I would seek to do is to make some corrections to the dates and complete the details and provide that to my friend and your Honour's associate this afternoon.

PN11

THE DEPUTY PRESIDENT: So it would be the first full pay period on or after today?

PN12

MR TULLGREN: Yes, your Honour, that is correct; and the text of the amendment for the variation sought will not change. It is just simply the dates and some "tizzification" of the order, and we would submit, your Honour, that varying the award is not contrary to the public interest or any of the other statutory provisions.

PN13

THE DEPUTY PRESIDENT: So presumably that will be emailed to my associate, or faxed, or what?

PN14

MR TULLGREN: It would be faxed, your Honour. Email may be slightly a bridge too far for me, but the fax machine is not a bridge too far.

PN15

THE DEPUTY PRESIDENT: Yes, thank you. Mr Mazengarb?

PN16

MR MAZENGARB: Yes, thank you, Deputy President. I can confirm what my colleague, Mr Tullgren, has indicated. We have considered this application and from our perspective there appears to be an omission and purely only that. We agree also that a number of awards of this Commission, and for that matter the Federal Commission, do carry industrial standards that indicate that if the appropriate break is not provided, then it is stipulated what the penalty will be.

PN17

I should indicate also that as far as I am aware this application hasn't come before you today as a consequence of any intended action by certainly any members of the TCCI. Certainly I am unaware from my perspective anyone somehow trying to abuse the fact that this clause has not got this particular penalty in it, but certainly it is a cleaning up and a tidying up exercise which we don't oppose.

PN18

With regard to the operative date sought of the first full pay period on or after today's date, again we agree with that, and we concur again with the comments made by the applicant that it doesn't appear to be contrary to any of the statutory requirements that the Commission is required to be aware of. If the Commission pleases.

PN19

THE DEPUTY PRESIDENT: Thank you. Well, I indicate to the parties that the award will be varied in the manner sought, with an operative date of the first full pay period on or after today's date. The matter is adjourned.

ADJOURNED INDEFINITELY

[9.42am]