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TRANSCRIPT OF PROCEEDINGS

O/N 9939

TASMANIAN INDUSTRIAL COMMISSION

DEPUTY PRESIDENT R.J. WATLING

T No T11156 of 2003

CHILD CARE AND CHILDREN'S SERVICES AWARD

Application pursuant to the provisions of section 23(2)(b) of the Industrial Relations Act 1984 by the Australian Liquor, Hospitality and Miscellaneous Workers Union - Tasmanian Branch to vary the above award re Part III, clause 4, insertion of definition "Eligible Employee".

HOBART

10.00 AM, WEDNESDAY, 26 NOVEMBER 2003

PN1

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

PN2

MS J. THOMAS: I appear for the Tasmanian Chamber of Commerce and Industry Limited.

PN3

THE DEPUTY PRESIDENT: Thank you. Let the record show that the Commission has received a letter from the Association of Independent Schools of Tasmania noting that they will not be appearing at today's hearing but they have also made some comment in relation to the minimum contribution to be paid - or minimum earnings to be paid before superannuation is paid - sorry, I will get it right in a minute. I note the correspondence has also been forwarded to Mr Tullgren and to Ms Thomas and any submissions that are going to be made this morning I think it would be appropriate to take that correspondence on board. Mr Tullgren, your application?

PN4

MR TULLGREN: Thank you, your Honour. Your Honour, the application simply seeks to insert back into the Child Care and Children's Services Award the definition of eligible employee for the purposes of superannuation. Now, the award contained this definition up until 1996 or 1997. When the award was re-formatted for reasons that are shrouded in the mists of time this definition was actually omitted from the superannuation clause where nothing else from the old superannuation clause was omitted and it is clear, we submit, that when you look at the text of the clause, which is clause 4 in part III of the award, that sub-clause (a) under the headings Contributions refers to the rate of contribution for eligible employees "(as defined)".

PN5

So clearly there was an intention there and it reinforces the view that there was and it simply was omitted. We submit that as a correction that the principle that is referred to as the slip rule applies and that is that it simply did disappear, not by deliberate decision but by inadvertence and that it is appropriate for the Commission to reinsert the definition. I have had a reason to read the correspondence from the Association of Independent Schools of Tasmania and we have some discussions with Mr Shorter, author of the correspondence. While noting his client's position - and we say that because of we are applying the slip rule that his concerns are not ones that can be taken into account in relation to this application. But having said that we don't say that that is the end of the matter.

PN6

As a result of discussion between the parties and the Commission prior to the formal commencement of this morning's application, a number of issues in relation to the superannuation clause have been raised and they include matters such as minimum contribution rates and the actual applicability or otherwise of

the dollar amount that appears in the award. My understanding of the position is that there is a general acceptance that these matters need to be looked at and on that basis the union undertakes to provide a position to the Tasmanian Chamber of Commerce and Industry as expeditiously as possible dealing with some of the matters that have been addressed in the conference before the hearings commenced.

PN7

That position that the union will provide may assist Mr Shorter's clients - then again it may not, I don't know, but it would be then possible to look at having some discussion about these matters. So, your Honour, we say that the insertion of the provision, the definition that we seek, is appropriate in view of the slip rule; that it seeks to do no more than to restore to the award a provision which is there; we will address some other issues independently and that in addressing those it may well deal with some concerns that the Association of Independent Schools has. But having said that, clearly if the Association believes that it is disadvantaged or it is unhappy with any of the proceedings or their results then it can seek to make application to vary the award if it so feels it is necessary.

PN8

However, we would be confident - no, we would be hopeful - I don't elevate it to confident, we would be hopeful that it would be possible to discuss the matter through with Mr Shorter's clients and deal with their concerns as well as any others that have arisen. So, your Honour, we would submit that there is nothing that would prevent the Commission varying the award and that the position of the Association of Independent Schools is not one that is appropriate to apply in the case of this application but can be dealt with independently. If your Honour pleases.

PN9

THE DEPUTY PRESIDENT: Have you got a view on the operative date?

PN10

MR TULLGREN: The operative date would be, I think, from today. We submit that because it is a variation in relation to who is eligible it is not affected by the issue of pay periods so we would say that it would be operative from today's date.

PN11

THE DEPUTY PRESIDENT: Ms Thomas, have you a view?

PN12

MS THOMAS: Yes, thank you. The TCCI consents to this application. As Mr Tullgren outlined, it is rectifying an omission that was made in the restructuring of the award and that the definition of eligible employee was omitted and certainly I don't think that was the intention of the parties and certainly the omission of that definition has created a great deal of confusion in the industry in terms of what our member feedback has been, so we have no objection to the award being varied to reinsert that definition as operative from today's date. We do note the contents of the letter from the Association of Independent Schools of Tasmania.

PN13

Essentially those concerns - Mr Shorter's concerns from the Association relates to the relationship between the preamble to the clause and then the requirement to make contributions on behalf of eligible employees on the basis of 9 per cent of ordinary time earnings. It is the relationship between that preamble and the requirements in terms of contributions that Mr Shorter has identified as having the potential to create confusion - and I must say I am now confused. It is ideal that the award be clear and that all parties using the award are absolutely clear as to what their obligations are and what their entitlements and rights are under this clause.

PN14

So we certainly welcome the opportunity of further discussing the clause with the union and with the Association of Independent Schools to hopefully arrive at a provision that all the parties can agree to. So we have no objection to the application that is before you today on that basis.

PN15

THE DEPUTY PRESIDENT: Good, thank you. Well, given the degree of consent and seeing that we are reinserting a provision that was omitted during the restructuring of this award, I can indicate I will hand down a written decision in due course that will - in favour of the application and be operative from today's date. That now concludes this matter, thank you.

ADJOURNED INDEFINITELY

[10.10am]