

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T. No. 4429 of 1993

IN THE MATTER OF an application by
the Tasmanian Confederation of
Industries to vary the Independent
Schools (Non-Teaching) Staff Award

re structure of award

COMMISSIONER IMLACH

HOBART, 17 June 1993

TRANSCRIPT OF PROCEEDINGS

Unedited

MR TARGETT: In addition to the document TCCI.1 that has already - is already before you, there is a further document which I've already taken the liberty of giving a copy to your associate which is headed Independent Schools (Non-Teaching) Staff Award Wage Increase Program. I'd like to have that lodged as an exhibit as well, if I may.

COMMISSIONER IMLACH: TCCI.2.

MR TARGETT: Thank you. I'd like to commence addressing these issues by firstly advising the commission of a couple of minor changes which need to be made to TCCI.1 which have been discovered as errors since putting it all together with the assistance of the union representatives here today.

Firstly, the document TCCI.1 contains maternity leave - obviously that should read parental leave. It was an oversight on our part, so we would request that the maternity leave provision be considered to be the commission's standard parental leave provision.

In addition, in the - on page 1 of the document in the arrangements section, the heading Board and Loading should be Board and Lodging on page 1.

And the next area of alteration I would seek to make is in clause 8 - Wage Rates - and it is at this stage I would like to start referring to TCCI.2 as well. Because of time - the times - delays that have taken place in this matter coming to any sort of conclusion, there have been substantial delays, in our view, of implementing minimum rates adjustments which had previously been agreed between the parties very early on in the process.

What I would request of the commission is that the wage rates contained within TCCI.1 be altered to the amounts contained in TCCI.2 under the heading Fourth MRA. And in making the alteration to that level it would also mean that there would be no further wage increases available to the classifications in this award under any of the principles that are currently in existence before this commission.

That contains 2.5%, it contains all minimum rates adjustments. The only other area that anyone would, in my view, be able to make any move on the wage rates would be in conjunction with the enterprise bargaining principle, and obviously that would be via agreement outside the award document anyway.

I would put that with those wage rates in the award that concludes the structural efficiency process and award restructuring process in accordance with the wage fixing principles.

The document TCCI.1 - we have included in this document the

Grade 5 administrative employee definition which had been omitted previously in the award which quite rightly the Federated Clerks Union sought to have put into the award, so we have addressed that concern - that legitimate concern of the union within TCCI.1.

COMMISSIONER IMLACH: Yes, if I could interrupt -

MR TARGETT: Yes.

COMMISSIONER IMLACH: - Mr Targett, those grades - are they currently in the award or were they going to be put in?

MR TARGETT: For administrative employees?

COMMISSIONER IMLACH: No, for the whole lot. Do you know what I'm getting at?

MR TARGETT: If I do, I'm - you've just created a concern in my mind which -

MRS DOWD: No.2 of 1992.

MR TARGETT: Yes, they were, Mr Commissioner.

COMMISSIONER IMLACH: Oh well.

MR TARGETT: In the consolidated award No.2 of 1992.

COMMISSIONER IMLACH: Right, well, thank you.

MR TARGETT: They were in the award. So we have included that additional definition to satisfy the concerns of the union. We've made alterations in the award to the question of the definition of casual employee which, as you quite rightly pointed out earlier, Mr Commissioner, has been a matter of some concern in the past and has been the subject of significant debate before this commission in other proceedings.

We have between the parties reached an agreed position as to what the definition of a casual employee should be, and that is, casual employee means a person who is employed on a casual basis shall include any person employed for a period not exceeding 5 days at any one time, but shall not include an employee as defined in subclause (d) hereof.

That relates also to the definition of - similar concerns relate to part-timers as I understand it, and I'll address that question in a moment. I do apologise to the commission - I'm desperately trying to find my copy of the existing award in my file which I'm having trouble doing. I'll borrow

Well there you go, I should have had it earlier. The actual

definition of casuals is the same as is contained in the current award; it was the question of casuals that was of concern was the difference between the casual loading that applied to various classes of employee and we have reached an agreement on that matter. I'll get to that shortly. Perhaps I'll go straight to the definition of part-time employees.

The existing definition for part-time employee contained within this award is: part-time employee means a person engaged to work on a regular basis for less hours per day or week than those described for full-time employees. There has been agreement reached between the parties as to a new definition for part-time employees and as is contained in TCCI.1. That definition is: part-time employees means a person engaged to work on a regular basis for less than 52 weeks per year and/or less hours per day or week than those prescribed for full-time employees. That definition more appropriately, in our view, addresses the specific nature of the school working environment and the nature of the employment structures revolving around terms, school terms, et cetera, within this particular industry.

This clause, in our submission, is a matter of - definition, in our submission, is a matter of consent between the parties and we would put to the commission that it creates a better arrangement for employment within this particular industry than that which is contained within the existing definition. As the commission is aware, this particular definition has been the subject of debate on occasions in other proceedings and also appeal proceedings and we submit that by obtaining consent between the parties on this particular issue does satisfy a long-standing problem that has been in existence.

The next specific area I would seek to address is the wage rates clause and as I've already put to the commission, we are seeking to alter the wage rates from that which are currently contained within the award to those wages I have stipulated from Exhibit TCCI.2 which includes up to and including that which we have previously referred to as the fourth minimum rate adjustment.

As I've already mentioned we seek to include all of those adjustments into the award because the period of time that has elapsed since the original rates have been put into the award would, in our submission, virtually accommodate all of the increases at six monthly intervals in the intervening period and we do not wish or seek to disadvantage the employees to any further degree than has occurred in the past. As the commission is aware, the rates in the award at this stage are operative from 20th of September 1991. We are some way down the track and we believe that as it is a matter of consent between the parties, the inclusion of all of those adjustments does not in any way offend the principles. In fact, the principles allow specifically for that to take place and we

would ask that the commission incorporate into the award that level of wage.

The next specific area which I would seek to mention or raise with the commission is clause 13 - casual employees. As the commission is aware, contained in the award at this point in time is a casual loading of thirty three and a third per cent for all employees who are casual employees.

This matter, once again, has been the subject of substantial debate - substantial argument before the commission as currently constituted as well as an appeal bench and we wish to advise the commission that agreement has been reached between the parties as to a new casual employee clause which essentially provides for two levels of casual loading for employees working under this award and the - in essence, services employees, as they are known in this award, would continue to receive the thirty three and a third per cent. Employees in the administrative stream and the classroom curriculum employees would receive a twenty per cent casual loading in accordance with that which has historically been attributable to them, subject to the arguments that have arisen in the past.

This once again is a matter of consent between the parties and a matter of consent, we would ask that the commission accept this particular clause as a mechanism for overcoming the disputes and the arguments that have continually existed around this particular point for a long period of time, and agree to insert that clause into the award in the form which is contained within TCCI.1.

The next specific area I would seek to address is clause 25 - part-time employees. Once again, as the commission is aware, the existing provision contained within the award provides that part-time employees receive a loading of ten per cent. Once again, as you are aware, this matter has been the subject of substantial controversy over a long period of time and has been one of the central issues causing a significant and ongoing matters before this commission and the appeal bench.

I'm pleased to say that agreement has been reached between the parties as to a new provision to be inserted into the award by consent, and that is contained in TCCI.1, and that provision essentially provides that services employees will continue to receive a ten per cent loading when they are part-time employees, and administration employees and classroom curriculum employees, when they are working in a part-time capacity, will not receive such loading.

It is a differential between the employees on similar lines to that which I put forward under the casual clause and as I said earlier, as this is a matter of consent, in an attempt to finalise all outstanding matters that exist around this

particular award, we would ask that the commission incorporate that part-time clause contained in TCCI.1 into the award as a matter of consent so that we can put all of those issues behind us and get on with operating the schools in accordance with an award which is, in fact, finalised.

There are a number of - there are some minor alterations I believe, from memory, in relation to this award, but the document TCCI.2 - and that would be subject to any obvious errors or omissions - is a matter of consent between my organisation and the employers that I represent and both unions that are parties to this award, and as a matter of consent, with the amendments that I have put to the commission this morning, we would ask that this document in its entirety, be - replace the existing award in its entirety and become the award with an operative date being the first full pay period on or after today's date, that is, the 17th of June 1993.

And subject to any questions you may have of me, Mr Commissioner, I don't propose to go into any other details at this point in time.

COMMISSIONER IMLACH: Yes, thanks, Mr Targett. Clause 27 - Preference. As I understand it, that's been outlawed, shall we say, by the act as it now stands.

MR TARGETT: My understanding, that is certainly that the legislation that has now been put in place by the government does prohibit that sort of arrangement. I have not sought to remove the clause in any way because I was unaware as to the approach that was being adopted by the commission in relation to the preference clause. I'm happy to be guided by the commission in relation to that particular point.

COMMISSIONER IMLACH: Yes, well I raise it now so you know before the event that as far as my reading of the act is that we're not permitted to include it in awards. That being the case I propose to cut it out.

MR TARGETT: As the commission pleases.

COMMISSIONER IMLACH: How the parties operate on the ground, of course, is another thing altogether.

MR TARGETT: As the commission pleases.

COMMISSIONER IMLACH: Also, Mr Targett, the right of entry clause, that has not been - as far as I know, right of entry has not been prohibited, but certainly the requirements have been changed and I just indicate now, without going to the details unless you wish to, that that part of the award will be endorsed, speaking about that only, insofar as it's not against the - contrary to the act.

MR TARGETT: Yes, as the commission pleases.

COMMISSIONER IMLACH: Anything else?

MR TARGETT: I don't have anything further at this stage, Mr Commissioner.

COMMISSIONER IMLACH: Right. Now with regard to right of entry, I'm not, myself, exactly sure of what the prescriptions are there so I'm open to any corrections or suggestions. But as to preference, my understanding is, it's proscribed so I just won't allow it.

MR TARGETT: On the question of the right of entry clause, Mr Commissioner, by way of submission which I have not, but any discussions with the other parties on this particular question, I am aware of that which you refer in relation to right of entry and I have addressed that matter in at least one other award as a result of the legislation and, I believe, a full bench decision of this commission and the right of entry clause which was, in fact, inserted into the Nursing Homes Award of this commission, I believe, is a clause which complies with the act and previous decisions of the full bench. But I stress, I have not had any discussions with the other parties over that particular provision.

COMMISSIONER IMLACH: Yes, well maybe the parties could discuss that matter after today's hearing and if you wish to submit such a clause, I'll make my own enquiries and if I concur with that, well I'm not against putting it in. But I'm just raising it now because I am aware that it is a problem to us all.

MR TARGETT: Yes.

COMMISSIONER IMLACH: Yes. And one other item my good associate has pointed out to me, that the - as I understand it, in the superannuation clause in the appendix the reference to the Australian Liquor, Hospitality & Miscellaneous Workers Union, Tasmania Branch has been put in, as always was there in a different name, and the Federated Clerks has been added, fair enough. What about the Australian Nursing Federation?

MR TARGETT: Well I certainly wouldn't be seeking to have them incorporated into the superannuation clause. My view is - and it is my view which I cannot impose - is, in fact, the Australian Nursing Federation should be removed from the award altogether because they have no classifications or coverage, as far as I'm concerned. But I can't do that. But I wasn't aware that they were actually in the superannuation clause. I'm open to correction there. If they weren't I would certainly not be seeking to have them incorporated into the superannuation clause as I don't believe it's appropriate.

COMMISSIONER IMLACH: No. Well they're not there at the moment. It's just that, as you know, they were around on previous occasions, but they're certainly not in the award at the moment, I agree with that.

MR TARGETT: I would not seek to have them incorporated into the superannuation clause, Mr Commissioner.

COMMISSIONER IMLACH: All right, thanks, Mr Targett. Now, Mr O'Brien, you've heard all that.

MR O'BRIEN: Yes, Mr Commissioner. In relation to the generality of the submission, we support the proposal to make the award or vary the award in the manner outlined and the simple procedure proposed is to replace the existing award with a new award which, in fact, only makes a reasonably limited number of variations.

In relation to those matters - perhaps I should first say that we've seen this document and we think it's the same document as the one we've seen before, but we would accept the fine detail of the document on an errors and omissions excepted basis, that is we'll have a look at it and if there's any small matters that we need to draw to Mr Targett's attention and subsequently your attention, we would do following today's hearing.

That being the case, I propose to deal with a number of the matters addressed by Mr Targett. Firstly, we have agreed to the new definition of a part-time employee on the basis that it permits arrangements in relation to certain employees that have existed for some time in relation to a very flexible type of working arrangement while at the same time not intending, as far as we see it, to interrupt the arrangements for employees who haven't had that sort of great flexibility. The provision will obviously be given time to operate and we're hopeful that that provision will work out in the way that we intend. Our consent is nevertheless given to the provision proposed in the exhibit.

In relation to the wage rates and operative date provision, clause 8, we're in agreement with, and fairly obviously in agreement with the proposal by Mr Targett. We believe that this matter can be concluded without recourse to further proceedings to implement a wages structure which would now have been fully implemented, I think, had other things not intervened.

In relation to the casual employees clause, we consent to the variation to the existing provision which, in effect, establishes a lower casual loading for administration and classroom curriculum employees than that which exists in the award now. We do so, I must say, not happily but nevertheless

having regard to everything that's gone on and we are in a position to consenting to this provision at this time.

I think the enterprise flexibility clause may well be new as well, although it's not new to the - it may be new to the award. I think it's a fairly standard clause. I don't propose to deal with it if it is. No?

MR TARGETT: It's a standard clause.

MR O'BRIEN: Yes.

MR TARGETT: It has been added, yes -

MR O'BRIEN: It has been added. Well I'll withdraw that submission then.

I support the proposal to replace the maternity leave clause in the document with the standard parental leave provision established by this commission. I take it that can be done administratively by the commission and doesn't require any further drafting by the parties.

In relation to clause 25 - Part-Time Employees, again we agree with the change which is proposed which effectively removes the part-time loading from administration and classroom curriculum employees. The situation is ideally we would have it otherwise but in the context of these proceedings we have agreed to the provision proposed at this time for part-time employees.

We note clause 32 of the document in relation to both the casual and the part-time employees. In relation to the preference of employment clause, we hear what the commission says. In relation to clause 29 - Right of Entry, frankly, we have not given specific attention to the wording of this clause and the changes to the act. Certainly, that may be something that needs to be considered subsequently if the commission feels the need to do anything in relation to the matter. It may be - although I guess we'd like the matter concluded, to deal with that by way of conference or further proceedings.

I think in relation to the superannuation clause, we would look at that on the basis of - certainly the Federated Clerks Union should be mentioned there. Whether the omission of the Australian Nursing Federation is one of those errors and omissions that we talked about earlier or whether that was the position previously, I think the practical situation is that they have a very, very limited interest in this award and if the commission needs to put their title in there for administrative purposes, so be it. But the reality is, as the commission will have observed, they don't demonstrate that they have any substantial interest in this award by virtue of

the fact that - I think I can recall them attending at one of the many proceedings that we've have on this award over the last 2-1/2 years or so. But I would see that as an administrative function for completeness and not in any way altering what the reality is in terms of the award reflecting, as it does now, the parties who really do play a part in its administration.

So subject to any questions the commission has, that's all I wish to put at this stage, if the commission pleases.

COMMISSIONER IMLACH: Yes, thanks, Mr O'Brien. That's all, thank you. Mrs Dowd?

MRS DOWD: Mr Commissioner, the Federated Clerks Union supports the application by the TCCI and the submission put by Mr Targett, also the submission put by Mr O'Brien. The only thing I'd like to say is that there has been agreement between the parties that 'grandchild' will be included in the compassionate leave clause and I suggest it be included after the word 'grandmother' on the third line. If the commission pleases.

COMMISSIONER IMLACH: Is that on the basis that it's an omission, Mrs Dowd?

MRS DOWD: It has only just been agreed between the parties, Mr Commissioner, at this hearing this morning. It wasn't an omission; it's actually an addition.

COMMISSIONER IMLACH: What, peculiar to this award?

MRS DOWD: It won't be peculiar to this particular award, Mr Commissioner. It has been included in several other awards.

COMMISSIONER IMLACH: We'll just go off the record for a minute, thanks.

OFF THE RECORD

COMMISSIONER IMLACH: Thanks, Mrs Dowd. Well, first of all, on the basis that the commission itself has only had this document from the commencement of proceedings, I confirm that subject to any errors or omissions or any serious items that may appear, it will be accepted as an agreed document, endorsed as an agreed document. But that caveat, if that's the correct word, could become quite significant once we've had a good look at it.

I note what Mr Targett said about it's the end of the structural efficiency process for this award, that all matters have now been completed. And I note that from the point of

view that I don't expect any further developments unless they're over and above those items. I indicate now that the commission will endorse the item concerning the minimum rates adjustments as evidence in that second exhibit, TCCI.2.

And, as I say, subject to those items that need to be further investigated, in particular, the right of entry clause - as I say, and there is no omissions, I'm inclined to endorse the agreement, but I won't do it now. I'll reserve my decision and if the matter of the right of entry clause, in particular, or any other item needs to be changed I'll advise the parties and, if necessary, we'll resume, otherwise I'll issue a decision. Anything else? Thank you.

HEARING CONCLUDED