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TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T. No. 141 of 1985

**IN THE MATTER OF AN APPLICATION
BY THE AUSTRALIAN WORKERS' UNION
(TASMANIAN BRANCH) to vary THE
BUTTER AND CHEESEMAKERS
AWARD**

**RE: INTRODUCTION OF A 38 HOUR
WEEK**

ORDER BY CONSENT:

PART II – CONDITIONS

AMENDMENT NO. 2 OF 1985

**AMEND THE BUTTER AND CHEESEMAKERS AWARD by deleting PART II –
CONDITIONS, and inserting in lieu thereof the following:**

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BUTTER AND CHEESEMAKERS AWARD

Established in respect of the industry of a manufacturer of -

- (a) butter;
- (b) cheese;
- (c) casein; or
- (d) powdered milk

Operative Date:- From 1 July, 1985.

NOTE: This Award incorporates and supersedes No. 1 of 1981, No. 2 of 1981, No. 1 of 1982, No 2 of 1982, No. 1 of 1984, No. 2 of 1984, No .3 of 1984, No. 4 of 1984 and No. 1 of 1985.

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PART II - CONDITIONS

SECTION I - EMPLOYEES OTHER THAN CLERKS

1. HOURS OF WORK

- (a) Subject to Clause 2, (Implementation of 38 Hour Week), Clause 3, (Procedures for In-Plant Discussions) and Clause 1(c) (Shift Workers) and, subject to the exceptions hereinafter provided, the ordinary hours of work from 1 July 1]85, shall be an average of 38 per week to be worked on one of the following bases:
 - (i) 38 hours within a work cycle not exceeding seven (7) consecutive days; or
 - (ii) 76 hours within a work cycle not exceeding fourteen (14) consecutive days; or
 - (iii) 114 hours within a work cycle not exceeding twenty-one (21) consecutive days; or
 - (iv) 152 hours within a work cycle not exceeding twenty-eight (28) consecutive days; or

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(v) 152 hours within a work cycle exceeding twenty-eight (28) consecutive days in establishments where the method of banking of rostered days off have been agreed to.

(b) Day Workers

(i) The ordinary hours of work prescribed herein shall not exceed eight (8) hours on any day and may be worked on any day or all of the days of the week, Monday to Friday.

(ii) The ordinary hours of work for day workers prescribed herein shall be worked continuously, except for meal breaks, at the discretion of the employer, between 6.30 a.m. and 5.30 p.m.

(c) Shift Workers

Further to Clause 1(a) hereof:

(i) For the purpose of this sub-clause:-

"Afternoon Shift", means any shift finishing after 6.00 p.m. and at or before midnight.

"Continuous Shift", means work carried on with consecutive shifts of employees throughout the twenty four hours of each of at least six consecutive days without interruption, except during break-downs or meal breaks, or due to unavoidable causes beyond the control of the employer.

"Night Shift", means any shift finishing subsequent to midnight and at or before 8.00 a.m.

"Shift Roster", is a roster of which the employee concerned has had at least forty eight hours notice or such lesser time as mutually agreed between employer and employee.

(ii) The ordinary hours of work of shift workers shall be an average of 38, worked on five shifts of equal hours, or six shifts of equal hours per week which includes a meal break of twenty minutes in the employer's time, subject to the provisions of this clause.

(iii) If an employee is not given twenty four hours notice of a change of shift, subject to sub-clause (c)(i) (Shift Roster), the employee shall be paid at overtime rates for that shift.

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2. IMPLEMENTATION OF 38 HOUR WEEK

- (a) From 1 July 1985, ordinary hours of work shall be 38, or an average of 38 per week as provided in Clause 1, (Hours of Work).
- (b) Except as provided in sub-clauses (e) and (f) hereof, the method of implementation of the 38 hour week may be one of the following:
 - (i) by employees working less than 8 ordinary hours each day; or
 - (ii) by employees working less than 8 ordinary hours on one or more days each week; or
 - (iii) by fixing one day in which all employees will be off during a particular work cycle; or
 - (iv) by rostering employees off on various days of the week during a particular work cycle so that each employee has one day off during that cycle; or
 - (v) by accruing an entitlement to rostered days off up to a maximum of 7 days or, as otherwise mutually agreed and thereby averaging 38 hours over a period not exceeding 12 months.
- (c) In each plant, an assessment should be made as to which method of implementation best suits the business and the proposal shall be discussed with the employees concerned, the objective being to reach agreement on the method of implementation prior to 1 July 1985. Subsequently, such method may be altered by mutual agreement.
- (d) In the absence of agreement at plant level, the procedure for resolving grievances shall be applied in accordance with Clause 22, (Disputes Settling Procedure.) This procedure shall be applied without delay.
- (e) Circumstances may arise where different methods of implementation of a 38 hour week apply to various groups or sections of employees in the plant or establishment concerned.
- (f) Notice of Days Off
 - (i) Except as provided in sub-clause (g) hereof, in cases where by virtue of the arrangement of the employee's ordinary working hours, an employee in accordance with sub-clauses (b) (iii), (iv) and (v) hereof, is entitled to a day or days off during the employee's work cycle, then such days off may be taken as mutually agreed between the employee and the employer.
 - (ii) Where a system of working is adopted to allow one rostered day off in each four week cycle or the banking of rostered days off, an employee shall not be entitled to more than 12 such rostered days off in any twelve month period.

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(g) Substitute Days

The day or days scheduled to be the day or days off in accordance with sub-clauses (b) (iii), (iv) and (v) hereof may be worked as an ordinary working day or days without penalty when substituted by another day or days by agreement between the employer and the employee concerned or, where a number of employees are concerned, by agreement between the employer and the majority of the employees.

3. PROCEDURES FOR IN-PLANT DISCUSSIONS

- (a) Procedures shall be established for In-Plant discussions, the objective being to agree on the method of implementing a 38 hour week in accordance with Clause 1 of this award and entailing an objective review of current practices to establish where improvements can be made and implemented.
- (b) The procedures should allow for In-Plant discussions to continue even though all matters may not be resolved by 1 July 1985.
- (c) The procedures should make suggestions as to the recording of understandings reached and the methods of communicating agreements and understandings to all employees.
- (d) The procedures should allow for the monitoring of agreements and understandings reached in-Plant.
- (e) In cases where agreement cannot be reached in the first instance or where problems arise after initial agreements or understandings have been achieved in-Plant, a formal monitoring procedure shall apply. The basic steps in this procedure shall be in accordance with Clause 22, (Disputes Settling Procedure) of this award.
- (f) There shall be on-going regular reviews of work practices to establish where improvements can be made and implemented.

4. MEAL INTERVAL AND ALLOWANCE

- (a) A meal interval of not less than thirty minutes shall be allowed not later than five hours after commencing work.
- (b) An employee who is -required to work overtime for one and a half hours or more without being notified the previous day shall either be supplied with a meal by the employer or be paid a meal allowance of

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5. SHIFT ALLOWANCE

- (a) Employees engaged on shift work (as defined) shall be paid fifteen per cent in addition to the rates of pay prescribed for ordinary hours worked from Monday to Friday, inclusive.
- (b) For time worked on Saturday or Sunday the rates of pay shall be in accordance with Clauses 10 (Saturday Work) and 11 (Sunday and Holiday Work) hereof.
- (c) This additional allowance shall not be taken into consideration in the computation of penalty rates prescribed for work performed on any of the holidays prescribed in Clause 12.

6. SPECIAL RATES

Confined Spaces –

Employees working in a compartment, space or place, the dimensions of which necessitate an employee working in a stooped or otherwise cramped position or without proper ventilation, shall be paid an additional 78¢ per hour.

Provided that a person working in such circumstances for at least half an hour shall qualify for one hour's payment.

7. CASUAL EMPLOYEES

Casual employees, i.e., employees who are employed for any period not exceeding five days at any one time and whose employment is of a casual nature, shall be paid twenty per cent in addition to the rates herein prescribed.

8. INTERMITTENT WORK

Any employee (other than a casual employee) who is ready, available and willing to work, employed for less than the number of hours fixed for an ordinary week's work between midnight Sunday and midnight Saturday shall, for each hour worked up to one-half of the number of hours fixed for an ordinary week's work, be paid at the ordinary wage rate with an addition of thirty three per cent and for each hour worked beyond the one-half aforesaid, the rate of wage payable shall be at the ordinary wage rate up to but not exceeding the ordinary wage rate for an ordinary week's work.

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9. OVERTIME

- (a) Subject to the provisions of Clauses 1 and 2 hereof, for all time of duty outside the regular hours or before the time fixed for commencing or after the time fixed for finishing work, payment shall be at the rate of time and one half for the first two hours and double time thereafter. The division for overtime to remain one fortieth of the weekly rate for the period of twelve months from the date of implementation of the 38 hour working week in this award.
- (b) In computing overtime, each day's work shall stand alone.
- (c) An employee after the completion of overtime work performed after his usual ceasing time shall be entitled to be absent until he has had ten consecutive hours off duty, without deduction of pay for ordinary time of duty occurring during such absence.

If on the instructions of his employer any employee resumes work without having had such ten hours off duty he shall be paid at double rates until he is relieved from duty to take such rest period and he shall then be entitled to be absent until he has had ten consecutive hours off duty without deduction of pay for ordinary time of duty occurring during such absence.

10. SATURDAY WORK

- (a) For all time of duty on Saturday payment shall be made at the rate of time and a half for the first two hours and double time thereafter.
- (b) The provisions of sub-clause (a) of this clause do not apply to shift workers for all time of duty on Saturdays during the months of September, October, November, December and January where payment shall be made at the rate of time and one half for the first three hours and double time thereafter.

11. SUNDAY AND HOLIDAY WORK

- (a) For all time of duty on Sundays, payment shall be made at the rate of double the ordinary rate, provided that any employee who is employed on a Sunday for less than the number of hours fixed for an ordinary day's work shall, in addition to wage rates that he is entitled to for working on a Sunday, be paid at the rate of ordinary time for such additional number of hours as will ensure an ordinary day's working time.
- (b) All work done on any of the holidays specified in Clause 12 of this Section shall be paid at the rate hereunder prescribed:

Day Workers - Double time and a half

Shift Workers - Double time.

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12. HOLIDAYS WITH PAY

- (a) All employees (other than casuals) shall be allowed the following days as paid holidays: - New Year's Day, Australia Day, Hobart Regatta Day (south of Oatlands), Labour Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Show Day (as defined), the first Monday in November (where Hobart Regatta Day is not observed), Christmas Day and Boxing Day.
- (b) Payment for the holidays mentioned in sub-clause (a), which are taken and not worked, shall be at the normal rate of pay which would have applied to the employee concerned when, if it were not for such holiday, he had been at work.
- (c) Payment to an employee for work performed on holidays mentioned in sub-clause (a) shall be at the rates prescribed elsewhere in this award.
- (d) Notwithstanding the provisions of sub-clause (a), if the day on which a public holiday is observed falls on the rostered day off of a shift worker, such employee shall be paid his ordinary rate for the time he would have worked if the holiday were not his day off. For the purpose of this sub-clause, ordinary rate shall be that prescribed by Clause 2 (Margins), Section I, Part I, for the occupation in which the employee is ordinarily engaged.
- (e) In the event of a public holiday occurring on a Saturday or Sunday, the following provisions shall apply:
 - (i) in the case of day workers, another day shall be allowed in lieu;
 - (ii) in the case of shift workers, the provisions of sub-clauses (c) and (d) hereof shall apply.

Provided that when such holiday occurs on a shift worker's rostered day off he shall, by agreement between the employer and employee, be given, following the date on which such holiday occurred:

- (i) one extra day's pay; or
 - (ii) equal time off in lieu thereof; or
 - (iii) one paid day shall be added to his annual leave.
- (f) Where consequent upon any visit to Australia by Her Majesty the Queen, or any other member of the Royal Family, a Public Holiday is proclaimed by the Governor in Council and gazetted by the Tasmanian Government under State Act throughout the State or part thereof, and under the Tasmanian industrial Commission, such a day shall, within the definite locality, be deemed to be a holiday for the purposes of this award.

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(g) 'Show Day' means not more than one local Show Day observed on an employee's ordinary working day, other than a Saturday or a Sunday, in the city, town or district in which the employee is employed; or such other day which, in the absence of such a local Show Day is agreed on by the employee and the employer, therefore making a total of 11 paid public holidays per year.

(h) Rostered Days Off Falling on a Public Holiday

From 1 July 1985, in the case of an employee whose ordinary hours of work are arranged in accordance with sub-clauses (b)(iii) or (b)(iv) or (c) or (e) of Clause 2, the day or days to be taken off shall not coincide with a public holiday fixed in accordance with this Clause. Provided that in the event that a public holiday is prescribed after an employee has been given notice of his day or days off in accordance with sub-clause (f) of Clause 2 of this award, and the public holiday falls on the day or days the employee is to take off, the employer shall allow the employee to take the day off on the day immediately before or immediately after the public holiday, or some other week day as mutually agreed.

13. ANNUAL LEAVE

(a) Period of Leave

(i) Day Workers

A period of twenty-eight (28) consecutive days leave shall be allowed annually to an employee after 12 months continuous service (less the period of annual leave).

(ii) Shift Workers

In addition to the leave prescribed in paragraph (i) of this sub-clause, shift workers, that is employees who are rostered to work regularly on Sundays and Holidays, shall be allowed seven (7) consecutive days leave including non-working days.

Where an employee with twelve months continuous service is engaged for part of the twelve monthly period as a shift worker, he shall be entitled to have the period of annual leave prescribed in paragraph (i) increased by one half of a day for each month he is continuously engaged.

(b) Time of Taking Leave

Annual leave shall be given at a time fixed by the employer within a period not exceeding six months from the date when the right to annual leave accrued, provided that not less than four weeks notice shall be given to the employee that his annual leave is to be taken.

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(c) Payment in Lieu Prohibited

Except as provided in sub-clause (d) hereof, payment shall not be made "or accepted in lieu of annual leave.

(d) Proportionate Leave on Termination of Service

If after the first 12 months service and then after the first one months service in any twelve monthly period an employee lawfully leaves his employment or, his employment is terminated by the employer, except for neglect of duty or misconduct, the employee shall be paid 12 2/3 hours for each completed month of continuous service.

(e) Annual Leave Exclusive of Public Holidays

Should any of the holidays mentioned in Clause 12 fall during an employee's annual leave, there shall be added to that leave one additional day or days for each such holiday so falling.

Where a holiday falls as aforesaid and the employee fails without reasonable cause, proof whereof shall be upon him, to attend for work at his ordinary starting time on the working day immediately following the last day of the period of his annual leave, he shall not be entitled to be paid for any such holiday.

(f) Payment for Period of Leave

(i) Each employee before going on leave shall be paid the amount of wages he would have received had he not been on leave during the relevant period or periods, plus a loading equal to seventeen and one half per cent of the amount paid in respect of annual leave.

(ii) In respect of shift workers, an employee who would have worked on shift work had he not been on leave, will receive a loading equal to seventeen and one half per cent of the amount paid in respect of annual leave.

Provided that where a shift worker would have received a shift loading for the relevant period had he not been on leave, and such loading would have entitled him to a greater amount than the loading of seventeen and one half per cent, then the employee shall be paid in accordance with his projected roster in lieu of the seventeen and one half per cent loading.

Provided further that if the shift loadings are a lesser amount than the loading of seventeen and one half per cent, then the seventeen and one half per cent loading shall be paid.

(iii) The loading prescribed in this sub-clause shall not apply to proportionate leave on termination of service.

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(g) Broken Leave

Annual leave shall be taken in a continuous period provided that where the employee and employer agree, leave may be taken in two or more periods.

(h) Disputes

Any dispute as to the rights of an employee to or with respect to annual leave, shall be dealt with by the President of the Tasmanian Industrial Commission whose decision shall be final.

14. SICK LEAVE

- (a) An employee, other than one engaged as a casual, who is absent from work on account of personal illness or on account of injury by accident, shall be entitled to leave of absence without deduction of pay, subject to the following conditions and limitations:
- (i) he shall not be entitled to such leave of absence for any period in respect of which he is entitled to workers' compensation;
 - (ii) he shall, within twenty four hours of the commencement of such absence, inform the employer of his inability to attend for work, and as far as may be practicable, state the nature of the illness or injury and the estimated duration of the absence;
 - (iii) he shall prove to the satisfaction of -the employer (or in the event of a dispute, the President of the Tasmanian Industrial Commission), that he was unable on account of such illness or injury to attend for work on the day or days for which the sick leave is claimed;
 - (iv) he shall not be entitled in any year (whether in the employment of one employer or of more) to sick leave credit in excess of two weeks of ordinary working time;
 - (v) for the purpose of administering paragraph (iv) of this sub-clause, an employer may within one month of this award coming into operation or within two weeks of the employee entering his employment, require an employee to make a sworn declaration or other written statement as to what paid leave of absence he has had from any employer during the then current year, and upon such statement the employer shall be entitled to rely and act.
- (b) Sick leave shall accumulate from year to year so that any balance of the period specified in sub-clause (a) (iv) of this Clause which has in any year not been allowed to an employee by an employer as paid sick leave, shall be credited to the employee and, subject to the conditions hereinbefore prescribed, shall be allowed by that employer in a subsequent year without diminution of the sick leave prescribed in respect of that year.

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- (c) An employer shall not be required to make any payment in respect of accumulated sick leave credits to an employee who is discharged or leaves his employment, or for any time an employee is absent from work without producing satisfactory evidence of personal illness.
- (d) Sickness on Day Off

From 1 July 1985, where an employee is sick or injured on the week day he is to take off in accordance with sub-clause (b)(iii), (iv) and (v) of Clause 2 of this award, he shall not be entitled to sick pay nor will his sick pay entitlements be reduced as a result of his sickness or injury on that day.

15. COMPASSIONATE LEAVE

An employee shall on the death of a wife, husband father, mother, child, step-child, brother, sister, mother-in-law, father-in-law, step mother, step-father, grandfather, grandmother, be entitled, upon application being made to and approved by the employer, to leave up to and including the day of the funeral of such relative and such leave will be without deduction of pay not exceeding the number of ordinary days, provided that no payment shall be made in respect of an employee's rostered day off.

Proof of such death, in the form of a death notice or other written evidence, shall be furnished by the employee to the satisfaction of the employer provided furthermore that this Clause shall have no operation while the period of entitlement to leave under it coincides with any other period of entitlement to leave.

For the purpose of this Clause the words 'wife' and 'husband' shall not include a wife or husband from whom the employee is separated, but shall include a person who lives with the employee as a de facto wife or husband.

16. MEAL INTERVAL

- (a) A meal break of not less than thirty minutes shall be granted between the hours of 11.30 a.m. and 1.30 p.m.
- (b) An employee shall not be required to work for more than five hours without a meal break.

17. CONTINUITY OF WORK

With the exception of a meal break as prescribed in Clause 16 (Meal Interval) hereof, the hours of work on each day shall be continuous unless by mutual consent the employer and employee agreed to a variation of this provision.

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18. REST INTERVAL

Employees shall be allowed a rest interval of ten minutes during the first and second half of the day or shift at the discretion of the employer, at a time that will not interfere with production.

19. MILD FUNCTIONS

An employee engaged on any day or shift on duties carrying a higher rate than his ordinary classification, shall be paid the higher rate for such day or shift.

The provisions of this Clause shall not apply where an employee is engaged for a period of less than sixty minutes in the aggregate on relief duties during meal breaks, rest periods or absences from duty which have been arranged on behalf of another employee, in which case the employee directed to perform relief duties by his employer or the employer's representative, shall be paid the higher rate for the time so worked.

20. PAYMENT OF WAGES

(a) Prior to 1 July 1985.

Prior to 1 July 1985, when ordinary hours are 40 per week, the method of paying wages in force as at 6 April 1985, shall be continued.

(b) From 1 July 1985

From 1 July 1985, wages shall be paid as follows:

(i) Employee who actually works 38 ordinary hours each week.

In the case of an employee whose ordinary hours of work are arranged in accordance with Clause 2(b)(i) or (ii) of this award so that he works 38 ordinary hours each week, wages shall be paid fortnightly according to the actual ordinary hours worked each fortnight.

(ii) Employee who works an average of 38 ordinary hours each week.

Subject to sub-clauses (c) and (d) hereof, in the case of an employee whose ordinary hours of work are arranged in accordance with Clause 2(b)(iii), (iv) and (v) of this award so that he works an average of 38 ordinary hours each week during a particular work cycle, wages shall be paid fortnightly according to a weekly average of ordinary hours worked even though more or less than 38 ordinary hours may be worked in any particular week of the work cycle.

Special Note-: Explanation of Averaging System

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As provided in this sub-clause an employee whose ordinary hours may be more or less than 38 in any particular week of work cycle, is to be paid his wages on the basis of an average of 38 ordinary hours so as to avoid fluctuating wage payments each week. An explanation of the averaging system of paying wages is set out below:

- (i) Clause 2 - Implementation of the 38 Hour Week provides in sub-clauses (b) (iii) and (iv) that in implementing a 38 hour week the ordinary hours of an employee may be arranged, so that he is entitled to a day off, on a fixed or rostered day basis, during each work cycle. It is in these circumstances that the averaging system would apply.
- (ii) If the 38 hour week is to be implemented so as to give an employee a day off in each work cycle, this would be achieved if, during a work cycle of 28 consecutive days (that is, over four consecutive weeks) the employee's ordinary hours were arranged on the basis that the three of the four weeks he worked 40 ordinary hours each week and in the fourth week he worked 32 ordinary hours.

In such a case the averaging system may apply and the weekly wage rates for ordinary hours of work applicable to the employee shall be the average weekly wage rates set out for the employee's classification in Part I, Clause 2, of this award and shall be paid each week even though more or less than 38 hours are worked in that week. In effect, under the averaging system, the employee accrues a 'credit' each day he works actual ordinary hours in excess of the daily average of which would otherwise be 7 hours 36 minutes. This 'credit' is carried forward so that in the week of the cycle that he works on only four days, his actual pay would be for an average of 38 ordinary hours even though, that week, he works only a total of 32 ordinary hours. Consequently, for each day an employee works 8 ordinary hours he accrues a 'credit' of 24 minutes (0.4 hours). The maximum 'credit' the employee may accrue under this system is 0.4 hours on 19 days; that is, a total of 7 hours 36 minutes.

- (iii) In implementing a 38 hour week an employee may accrue his rostered days off to a maximum of 7 days in accordance with Clause 2 (b) (v). In such cases the averaging system as detailed in (ii) herein applies and the employee accrues a credit which is carried forward for a period of up to 12 months.
- (iv) As provided in sub-clause (c) of this Clause, an employee will not accrue a credit for each day he is absent from duty other than on annual leave, public holiday, paid sick leave, or compassionate leave. When an employee is absent from duty because of annual leave, public holidays, paid sick leave, or compassionate leave, his entitlement is determined in accordance with the appropriate award provision dealing with such entitlements.

(c) Absences from Duty

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- (i) An employee whose ordinary hours are arranged in accordance with Clause 2 (b) (iii), (iv) and (v) of this award and who is paid wages in accordance with sub-clause (b) hereof and is absent from duty (other than on annual leave, public holidays, paid sick leave, compassionate leave and workers' compensation) shall, for each day he is so absent, lose average pay for that day calculated by dividing his average weekly wage rate by 5. An employee who is so absent from duty for part of a day shall lose average pay for each hour or part thereof he is absent at an hourly rate calculated by dividing his average pay rate by 8.
- (ii) Provided further, when such an employee is absent from duty for a whole day without pay he will not accrue a 'credit' because he would not have worked ordinary hours that day in excess of 7 hours 36 minutes for which he would otherwise have been paid. Consequently, during the week of the work cycle he is to work less than 38 ordinary hours he will not be entitled to average pay for that week. In that week, the average pay will be reduced by the amount of the 'credit' he does not accrue for each whole day during the work cycle he is absent.

The amount by which an employee's average weekly pay will be reduced when he is absent from duty (other than on annual leave, public holidays, paid sick leave, compassionate leave or workers' compensation), is to be calculated as follows:

$$\text{Total of credits not accrued during cycle} \times \frac{\text{average weekly pay}}{38}$$

Examples:

(An employee's ordinary hours are arranged so that he works 8 ordinary hours on five days of each week for 3 weeks and 8 ordinary hours on four days of the fourth week).

- 1 Employee takes one day off with authorisation in first week of cycle.

<u>Week of Cycle</u>	<u>Payment</u>
1st week	= average weekly pay <u>less</u> one day's pay (i.e. less 1/5th)
2nd and 3rd weeks	= average weekly pay each week
4th week	= average weekly pay <u>less</u> credit not accrued on day of absence

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$$= \frac{\text{average weekly pay} - 0.4 \text{ hours} \times \text{average weekly pay}}{38}$$

2. Employee takes each of the 4 days off without authorisation in the 4th week.

<u>Week of Cycle</u>	<u>Payment</u>
1st, 2nd and 3rd weeks	= average weekly pay each week
4th week	= average weekly pay for the four days absent <u>less</u> total of credits not accrued that week.
	= $\frac{1}{5}$ average weekly pay less 4 x 0.4 hours x $\frac{\text{average weekly pay}}{38}$
	= $\frac{1}{5}$ average weekly pay <u>less</u> 1.6 hours x $\frac{\text{average weekly pay}}{38}$

(d) Alternative Methods of Payment

- (i) Provided that in the case of an employee who prior to 1 July 1985, was working less than 40 hours each week and who was paid by a method different from that provided for in sub-clauses (b) and (c) hereof, such method may be continued.
 - (ii) Provided further that, where the employer and the majority of employees concerned agree on an alternative method of paying wages, to that provided in sub-clauses (b) and (c) hereof, may be introduced.
- (e) Where the services of an employee are dispensed with his or her wages shall be paid on the day of dismissal or forwarded by post on the day following; provided that in the case of an employee whose ordinary hours are arranged in accordance with Clause 2 (b) (iii), (iv) and (v) of this award and is paid average pay and who has not taken the day or days off due to him during the work cycle in which his employment is terminated, the wages due to -the employee shall include the total of credits accrued during the work cycle as detailed in the Special Note following Clause 20 (b) (iii) of this award; provided further that where the employee has taken a day or days off during the work cycle in which his employment is

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terminated, the wages due to that employee shall be reduced by the total of credits which have not accrued during the cycle.

- (f) Not more than 3 days' pay of each employee shall be kept in hand by the employer.
- (g) Payment of wages is to be made on the day before a holiday if a holiday falls on the pay day. Provided that such payment may not include overtime earned on the last day preceding a holiday. These payments may be made on the subsequent pay day.
- (h) Where an employer and employee agree, the employee may be paid his or her wages by cheque or by direct payment into the employee's bank account without the requirement for the employer to provide encashment facilities.
- (i) Wages shall be paid fortnightly.
- (j) Except as provided in Clause 9 (a), hourly rates shall be calculated by dividing the appropriate weekly rate by 38.

21. TERMINATION OF SERVICE

Employment shall be terminated by one week's notice or, in the case of a casual employee by one hour's notice or; by the payment or forfeiture of one week's wages or, in the case of a casual, one hour's wages, as the case may be, but shall not effect the right of an employer to dismiss an employee without notice for misconduct or neglect of duty, in which case wages shall be payable up to the time of dismissal only.

22. DISPUTES SETTLING PROCEDURE

Subject to the provisions of the Industrial Relations Act, 1984 any dispute or claim arising out of or relating to this award shall be dealt with in the following manner:

- (a) The matter shall first be discussed between the employee and his or her immediate supervisor.
- (b) If not settled the matter shall be discussed between the employee's delegate and the employer's supervisor and Branch Management.
- (c) If not settled the matter shall be referred to the State Secretary of the Union for discussion between the appropriate Union representatives and Senior Management of the Company.
- (d) If the matter is not settled it shall be submitted to the Tasmanian Industrial Commission for determination.

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- (e) While the above procedure is being followed every attempt will be made to avoid industrial action being taken.

23. FOOTWEAR

Employees shall be paid a footwear allowance of 88¢ per week.

Provided that protective footwear shall be supplied by the employer to clerks and other employees who in the course of their duties are required to traverse floors coated with cream, acid, neutralisers, etc.

Alternatively, suitable protective footwear shall be provided by the employer as required up to a maximum of 3 pairs per year.

24. PROTECTIVE CLOTHING

An employee required to work in rain shall be provided with a waterproof coat and suitable head covering so as to protect him from getting wet. Provided that where such clothing is not supplied, the employee shall be paid an allowance of 55¢ per day in lieu thereof, whatever amount of work has been performed by him thereon.

25. WORKING GARMENTS

When an employee is required by his employer to wear a washable outer garment, such garment shall be provided by the employer.

26. CHANGE ROOM AND ABLUTION FACILITIES

The employer shall provide a suitable place where employees may take their mid-day meal and/or change their clothes, and proper washing facilities. Such room and washing facilities to be to the satisfaction of the Secretary for Labour.

27. RIGHT OF ENTRY OF UNION OFFICIALS

For the purpose of interviewing employees on legitimate union business, a duly accredited union representative shall have the right to enter the employer's premises during the mid-day meal break on the following conditions:

- (i) that he provides his authority to the gatekeeper or such other person as may be appointed by the employer;
- (ii) that he interviews employees only at places where they are taking their meals;

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- (ii) that not more than one representative of each of not more than three unions be on the premises at any one time;
- (iv) that no one representative visit the premises more than once in each week;
- (v) that if any employer alleges that a representative is unduly interfering with his work or is creating dissatisfaction amongst his employees or is offensive in his methods or is committing a breach of any of the previous conditions, such employer may refuse the right of entry, but the representative shall have the right to bring such refusal before the Secretary for Labour.

Provided that where certain employees are working under a system of shift work which precludes a representative from interviewing them during the mid-day meal break the representative shall have the right to enter the employer's premises for the purpose of interviewing such employees at such times and under such conditions as to notice as may be mutually arranged by the representative and the employer, or failing agreement, at such times and under such conditions as the Secretary for Labour may decide.

28. DEFINITIONS

'Maker's capacity' shall mean the capacity attributed to the vehicle by the seller or maker thereof except in cases where on any day the maximum weight of any load exceeds such capacity by one-third or more thereof, in which cases such maximum load shall, for the purposes of assessing the wages to be paid for that day, be deemed to be the maker's capacity.

'Shift worker' shall mean an employee who is rostered to work continuous periods on shifts outside of the hours prescribed in sub-clause (a), Clause 2 hereof or whose hours of work alternate from one shift to another.

'Leading hand' means any adult employee appointed as a leading hand by an employer who while working under direction of the management gives instructions to or is responsible for the work of other employees.

29. MATERNITY LEAVE

- (a) Eligibility for Maternity Leave

An employee who becomes pregnant shall, upon production to her employer of a certificate from a duly qualified medical practitioner stating the presumed date of her confinement, be entitled to maternity leave provided that she has had not less than twelve months continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

For the purposes of this clause:

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- (i) 'An employee' shall include a part-time employee but shall not include an employee engaged upon casual or seasonal work.
 - (ii) 'Maternity leave' shall mean unpaid maternity leave.
- (b) Period of Leave and Commencement of Leave
- (i) Subject to sub-clauses (c) and (f) hereof, the period of maternity leave shall be for an unbroken period of from six to fifty two weeks and shall include a period of six weeks compulsory leave to be taken immediately following confinement.
 - (ii) An employee shall, not less than ten weeks prior to the presumed date of confinement, give notice in writing to her employer stating the presumed date of confinement.
 - (iii) An employee shall give not less than 4 weeks' notice in writing to her employer of the date upon which she proposes to commence maternity leave stating the period of leave to be taken.
 - (iv) An employer by not less than 14 days' notice in writing to the employee may require her to commence maternity leave at any time within six weeks immediately prior to her presumed date of confinement.
 - (v) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with paragraph (iii) hereof, if such failure is occasioned by the confinement occurring earlier than the presumed date.

(c) Transfer to a Safe Job.

Where in the opinion of a duly qualified medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a duly qualified medical practitioner. Such leave shall be treated as maternity leave for the purposes of sub-clauses (g), (h), (i) and (j) hereof.

(d) Variation of Period of Maternity Leave

- (i) Provided the addition does not extend the maternity leave beyond fifty two weeks, the period may be lengthened once only, save with the agreement of the employer, by the employee giving not less than fourteen days' notice in writing stating the period by which the leave is to be lengthened.

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- (ii) The period of leave may, with the consent of the employer, be shortened by the employee giving not less than fourteen days' notice in writing stating the period by which the leave is to be shortened.
- (e) Cancellation of Maternity Leave
 - (i) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.
 - (ii) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer which shall not exceed four weeks from the date of notice in writing by the employee to the employer that she desires to resume work.
- (f) Special Maternity Leave and Sick Leave
 - (i) Where the pregnancy of an employee not then on maternity leave terminates after 23 weeks, other than by the birth of a living child then
 - (a) she shall be entitled to such period of unpaid leave (to be known as 'special maternity leave') as a duly qualified medical practitioner certifies as necessary before her return to work, or
 - (b) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a duly qualified medical practitioner certifies as necessary before her return to work.
 - (ii) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as 'special maternity leave') as a duly qualified medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed fifty two weeks.
 - (iii) For the purposes of sub-clauses (g), (h) and (i) hereof, maternity leave shall include special maternity leave.
 - (iv) An employee returning to work after the completion of a period of leave taken pursuant to this sub-clause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to sub-clause (c), to the position she held immediately before such transfer.

Where such position no longer exists but there are other positions available, for which the employee is qualified and the duties of which she is capable of

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performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(g) Maternity Leave and Other Leave Entitlements.

Provided the aggregate of leave including leave taken pursuant to sub-clauses (c) and (f) hereof does not exceed fifty two weeks:

- (i) an employee may, in lieu of or in conjunction with maternity leave, take any annual leave or any part thereof to which she is then entitled;
- (ii) paid sick leave or other paid authorised award absences (excluding annual leave), shall not be available to an employee during her absence on maternity leave.

(h) Effect of Maternity Leave on Employment.

Notwithstanding any award or other provision to the contrary, absence on maternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of an award.

(i) Termination of Employment.

- (i) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this award.
- (ii) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(j) Return to Work After Maternity Leave.

- (i) An employee shall confirm her intention of returning to her work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.
- (ii) An employee, upon expiration of the notice required by paragraph (i) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to sub-clause (c) to the position which she held immediately before such transfer. Where such position no longer exists but there are other positions available for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

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(k) Replacement Employees.

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.
- (ii) Before an employer engages a replacement employee under this sub-clause, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Provided that nothing in this sub-clause shall be construed as requiring an employer to engage a replacement employee.
- (v) A replacement employee shall not be entitled to any of the rights conferred by this clause except where her employment continues beyond the twelve months' qualifying period.

SECTION II CLERKS

1. HOURS

The maximum number of ordinary working hours each week in respect of which the rates of wages hereinbefore determined shall be paid shall be forty, to be worked in five days of eight hours each, between the hours of 6.30 a.m. and 5.30 p.m., Monday to Friday inclusive.

2. CASUAL EMPLOYEES

Casual employees, i.e., employees who are employed for any period not exceeding five days at any one time, and whose employment is of a casual nature, shall be paid twenty per cent in addition to the rates herein prescribed.

3. OVERTIME

- (a) For all time of duty outside the regular hours or before the time fixed for the commencing or, after the time fixed for finishing work, payment shall be made at the rate of time and a half for the first two hours and double time thereafter.
- (b) In computing overtime, each day's work shall stand alone.

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- (c) An employee after the completion of overtime work performed after his usual ceasing time shall be entitled to be absent until he has had ten consecutive hours off duty, without deduction of pay for ordinary time of duty occurring during such absence.

If on the instructions of his employer any employee resumes work without having had such ten hours off duty he shall be paid at double rates until he is relieved from duty to take such rest period and he shall then be entitled to be absent until he has had ten consecutive hours off duty without deduction of pay for ordinary time of duty occurring during such absence.

4. SATURDAY WORK

For all time of duty on Saturday payment shall be made at the rate of time and one half for the first two hours and double time thereafter.

5. SUNDAY AND HOLIDAY WORK

- (a) For all time of duty on a Sunday, payment shall be made at the rate of double the ordinary rate.
- (b) All work done on any of the holidays specified in Clause 6 of this Section shall be paid at the rate of double time and one half.

6. HOLIDAYS WITH PAY

- (a) All employees (other than casuals) shall be allowed the following days as paid holidays:- New Year's Day, Australia Day, Hobart Regatta Day (south of Oatlands), Labour Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Show Day (as defined), the first Monday in November (where Hobart Regatta Day is not observed), Christmas Day and Boxing Day.
- (b) Payment for the holidays mentioned in sub-clause (a) which are taken and not worked, shall be at the normal rate of pay which would have applied to the employee concerned, when, if it were not for such holiday, he had been at work.
- (c) Payment to an employee for work performed on holidays mentioned in sub-clause (a) shall be at the rates prescribed elsewhere in this award.
- (d) Where consequent upon any visit to Australia by Her Majesty the Queen, or any other member of the Royal Family, a Public Holiday is proclaimed by the Governor in Council and gazetted by the Tasmanian Government under a State Act throughout the State or part thereof and under the Tasmanian Industrial Commission, such a day shall, within the definite locality, be deemed to be a holiday for the purposes of this Award.

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- (e) 'Show Day' means not more than one local Show Day observed on an employee's ordinary working day, other than a Saturday or a Sunday, in the city, town or district in which the employee is employed; or such other day which, in the absence of such a local Show Day, is agreed on by the employee and the employer, therefore making a total of 11 paid public holidays per year.

7. ANNUAL LEAVE

- (a) Period of Leave

Day Workers

A period of 28 consecutive days leave shall be allowed annually to an employee after 12 months' continuous service (less the period of annual leave).

- (b) Time of Taking Leave

Annual leave shall be given at a time fixed by the employer within a period not exceeding six months from the date when the right to annual leave accrued, provided that not less than four weeks notice shall be given to the employee that his annual leave is to be taken.

- (c) Payment in Lieu Prohibited

Except as provided in sub-clause (d) hereof, payment shall not be made or accepted in lieu of annual leave.

- (d) Proportionate Leave on Termination of Service

If after one month's service in any twelve monthly period an employee lawfully leaves his employment, or his employment is terminated by the employer, except for neglect of duty or misconduct, the employee shall be paid thirteen and one third hours for each completed month of continuous service.

- (e) Annual Leave Exclusive of Public Holidays

Should any of the holidays mentioned in Clause 6 fall during an employee's annual leave there shall be added to that leave one additional day or days for each such holiday so falling.

Where a holiday falls as aforesaid and the employee fails without reasonable cause, proof whereof shall be upon him, to attend for work at his ordinary starting time on the working day immediately following the last day of the period of his annual leave he shall not be entitled to be paid for any such holiday.

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- (f) Payment for Period of Leave
 - (i) Each employee before going on leave shall be paid the amount of wages he would have received had he not been on leave during the relevant period or periods plus a loading equal to seventeen and one half per cent of the amount paid in respect of annual leave.
 - (ii) The loading prescribed in this sub-clause shall not apply to proportionate leave on termination of service.

8. SICK LEAVE

- (a) An employee, other than one engaged as a casual, who is absent from work on account of personal illness or on account of injury by accident shall be entitled to leave of absence without deduction of pay, subject to the following conditions and limitations
 - (i) he shall not be entitled to such leave of absence for any period in respect of which he is entitled to workers' compensation;
 - (ii) he shall, within forty eight hours of the commencement of such absence, inform the employer of his inability to attend for work, and as far as may be practicable state the nature of the illness or injury and the estimated duration of the absence;
 - (iii) he shall prove to the satisfaction of the employer (or in the event of a dispute, the Secretary for Labour) that he was unable on account of such illness or injury to attend for work on the day or days for which the sick leave is claimed;
 - (iv) he shall not be entitled in any year (whether in the employment of one employer or of more) to sick leave credit in excess of two weeks of ordinary working time;
 - (v) For the purpose of administering paragraph (iv) of this sub-clause, an employer may within one month of this award coming into operation or, within two weeks of the employee entering his employment, require an employee to make a sworn declaration or other written statement as to what paid leave of absence he has had from any employer during the then current year, and upon such statement the employer shall be entitled to rely and act.
- (b) Sick leave shall accumulate from year to year so that any balance of the period specified in sub-clause (a) (iv) of this Clause which has in any year not been allowed to an employee by an employer as paid sick leave, shall be credited to the employee and, subject to the conditions hereinbefore prescribed, shall be allowed by that employer in a subsequent year without diminution of the sick leave prescribed in respect of that year;

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- (c) An employer shall not be required to make any payment in respect of accumulated sick leave credits to an employee who is discharged or leaves his employment, or for any time an employee is absent from work without producing satisfactory evidence of personal illness.

9. REST INTERVAL

Employees shall be allowed a rest interval of ten minutes during the first and second half of the day at the discretion of the employer.

10. MIXED FUNCTIONS

An employee engaged on a duty carrying a higher rate of pay than his ordinary classification shall be paid for such time worked in a period less than four hours at the higher rate of pay for the time so worked or where such time is worked for more than four hours in any one day, shall be paid for the time so worked.

11. PAYMENT OF WAGES

Payment of wages shall be made weekly or fortnightly not later than Friday in the given pay week and shall be made in the employer's time.

12. TERMINATION OF SERVICE

Employment shall be terminated by one week's notice or in the case of a casual, one hour's notice or, by the payment or forfeiture of one week's wages or, in the case of a casual, one hour's wages, as the case may be, but this shall not affect the right of an employer to dismiss an employee without notice for misconduct or neglect of duty in which case wages shall be payable up to the time of dismissal only.

13. ESTIMATING SERVICE

In estimating the number of years service of an employee, the total clerical experience in the service of every employer in the trades or groups of trades in respect of which awards of the Tasmanian Industrial Commission are established shall be taken into account.

14. DEFINITION

'Clerk' includes Book Keepers, Time Keepers, Cashiers, Typists and/or Stenographers, Calculating and/or Accounting Machine Operators.

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15. GENERAL CONDITIONS

The provisions of the following clauses of Section I, hereof shall also apply to employees in this Section:

- 15. Compassionate Leave
- 16. Meal interval
- 23. Footwear
- 26. Change Room and Ablution Facilities.
- 27. Right of Entry of Union Officials
- 29. Maternity Leave

Dated at Hobart this 1st day of August 1985.

R.J. Watling
COMMISSIONER