

**TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984

T.4431 of 1993

**IN THE MATTER OF** an application by  
the Tasmanian Teachers Federation  
to vary the Teaching Service  
(Teaching Staff) Award

re district allowances

DEPUTY PRESIDENT

HOBART, 29 July 1993  
continued from 6/7/93

TRANSCRIPT OF PROCEEDINGS

Unedited

DEPUTY PRESIDENT ROBINSON: Thank you. Mr Pearce?

MR PEARCE: If I may take the floor initially, Mr Deputy President, and just recap that on 6th July when the matter was last before you, in my anxiety to resume my seat, I omitted to address the commission in relation to the specific subject matter of the application, and should you of course not be disposed to the basic thrust of our argument, which was that you exercise discretion pursuant to section 21 and refrain from further hearing of the matter, then the absence of not having addressed you on the application we may perhaps be somewhat vulnerable lest our silence be seen to be taken as consent, particularly with regard to the issue of the date of operation. If I could just address that.

DEPUTY PRESIDENT ROBINSON: Yes. I just took it that you raised a threshold question and that we would deal with that one way or another and that in the event that if I continued the hearing then you've still got the opportunity to complete the rest of your submission. I don't mind which way you go.

MR PEARCE: Well, as I'm on my feet -

DEPUTY PRESIDENT ROBINSON: Yes.

MR PEARCE: - perhaps if I could just address that now.

Mr Deputy President, we concur with the TTF as to the quantum by which they seek to increase district allowances and the methodology which has been used to achieve that end result. We however depart from the TTF on the matter of operative date.

The application was lodged on 17th June, the hearing was convened on 1st July. The matter of the adjournment was not a matter raised by - by the minister, rather, it appears to have been prompted by the commission for the purpose of the government getting further instructions in relation to another matter, not the subject of this application, and to enable the TTF the opportunity to further study the transcript.

Therefore, if the commission is to determine the merit of the application, our position on operative date is the first full pay period commencing on or after the date of decision.

Would you like me at this juncture, Mr Deputy President, to address you in relation to one of the aspects of the adjournment, and that was, for the government to seek further instructions in relation to a particular matter that you raised?

DEPUTY PRESIDENT ROBINSON: Yes, it would be -

MR PEARCE: Turning to that issue, Mr Deputy President, in

relation to the issue that has exercised the mind of the commission - that being the position of the government relative to the United Fire Fighters Union federal log and how that may impact on the further consideration of their special case as to decision - the position of the minister is that it is - the government is prepared to address the issue but only in the event that the commission or the United Fire Fighters Union were minded to bring those proceedings back on in formal session.

This relates to our view that each federal log and each subsequent application before this commission, the government's position relative to those two aspects can only be addressed relative to the circumstances extant at the time. If it please the commission.

DEPUTY PRESIDENT ROBINSON: Well whether it pleases the commission or not, thank you, Mr Pearce.

MR PEARCE: Thanks, Mr Deputy President.

MR LANE: Mr Deputy President, could I make a change of appearance - or make an appearance?

DEPUTY PRESIDENT ROBINSON: You may make - seek to have your appearance registered on this day, whatever the anniversary is.

MR PHILP: My daughter's birthday.

DEPUTY PRESIDENT ROBINSON: Your daughter's birthday?

MR PHILP: Yes, yes.

DEPUTY PRESIDENT ROBINSON: Well that's one of the most significant dates you've ever mentioned in this place.

MR PHILP: Yes, it is.

**MR C LANE:** Thank you, Mr Deputy President. I'd like to then to have my appearance registered - CHRIS LANE on behalf of the Tasmanian Teachers Federation, appearing with MR GREG PHILP on this occasion.

DEPUTY PRESIDENT ROBINSON: You've been here before I think, Mr Lane?

MR LANE: I certainly have, but not in this matter.

DEPUTY PRESIDENT ROBINSON: No. Well, you would have obtained a transcript no doubt and be aware of what was put to me in previous proceedings?

MR LANE: Yes.

DEPUTY PRESIDENT ROBINSON: Essentially it was an application from the end of the table that I should dismiss this matter on certain grounds.

MR LANE: Yes, Mr Deputy President, I have become aware of the -

DEPUTY PRESIDENT ROBINSON: Well we'll refrain from further hearing.

MR LANE: Yes. I have become aware of the contents of Mr Pearce's submission, and in fact that is the reason for my presence this morning, but I do wish to make some comments as to Mr Pearce's submission on the previous occasion when you were hearing this matter.

DEPUTY PRESIDENT ROBINSON: Yes.

MR LANE: In doing that, Mr Deputy President, I'd like to begin my submission by thanking you for the adjournment which you granted just over 3 weeks ago, as it has allowed us to do a fair bit of home work on the issues raised by Mr Pearce during his submission.

Obviously, Mr Deputy President, it is the opinion of the Tasmanian Teachers Federation that Mr Pearce's submission on behalf of the government, particularly his contention that because of a federal log served by the Australian Teachers Union, you should continue to hear this matter; we believe that that is incorrect and basically flawed and I'll be providing very good reasons for such an opinion which will hopefully convince you and enable you to continue to hear the original matter which, as we've just been reminded, relates to the adjustment of district allowances.

In tackling this task, Mr Deputy President, I intend to break my submission into two main components: the first section will deal mainly with the submission made by Mr Pearce, and this will be followed by looking again at the relevance of the decision by Justice Sheldon which Mr Pearce cited as an authoritative precedent.

And finally, Mr Deputy President, and I suppose this will probably form a third element of my submission, I want to comment on the future of teacher unionism in this state, and I wish to do that, Mr Deputy President, so that you and others involved in industrial relations in this state are under no illusions as to our intentions and aims in the medium to long term for the industrial coverage of teachers in Tasmania.

Mr Deputy President, Mr Pearce began his submission by referring to section 21 of the IR Act and I'll have a look at that a little later in my submission.

However, on page 4 of transcript, Mr Deputy President, at the beginning of the second paragraph - and I hope I did bring my transcript - yes, on page 4, Mr Deputy President, at the beginning of the second paragraph, Mr Pearce stated: The Australian Teachers Union of which the Tasmanian Teachers Federation is the state branch.

Now I want to reiterate something that Mr Philp attempted to make sure that was understood on the previous day of hearing, that that statement, Mr Deputy President, by Mr Pearce, is simply not correct, and as a consequence of it being incorrect, I believe most of Mr Pearce's submission then is questionable.

I don't deny - and I don't think anyone else would that there are many similarities between the Tasmanian Teachers Federation and the Australian Teachers Union (Tasmanian Branch). However, they are separate and different entities, and the actions of one is not necessarily the actions of the other. But the bottom line at the end of the day is, that the Tasmanian Teachers Federation is not the Australian Teachers Union's state branch. The Australian Teachers Union state branch contains members who belong to the Tasmanian Teachers Federation, but it also has members who belong to the Tasmanian TAFE Staff Society, which the Teachers Federation does not.

Consequently its membership is different. It has a different council. It has a different executive. Now I don't deny that some members of the TTF executive are members of the ATU state executive. However it must be understood that some members of the ATU state executive are members of the TAFE Staff Society executive.

There are similarities between the organisations. However, there is a difference between being similar and being the same. Legally we are separate entities. Consequently, Mr Deputy President, Mr Pearce's assertion that the TTF and the ATU state branch are one and the same thing lacks credibility and in fact is simply not true.

The Australian Teachers Union has served a federal log of claims. This they did following a unanimous decision of the Australian Teachers Union federal conference in January of this year, and the log does cover teachers in all states and territories, including Tasmania.

Now as, is quite evident, and Mr Pearce alluded to it, the - the federal conference delegates representing the Australian Teachers Union (Tasmanian Branch), must have supported the move, otherwise the decision would have not have been unanimous.

However, it must be realised and remembered that these people were representing the Australian Teachers Union (Tasmanian Branch) and not the Tasmanian Teachers Federation.

Mr Pearce then presumes certain motives to the Tasmanian Teachers Federation in seeking altered district allowances. I think he gives us credit for believing that it would be best to have as high an allowance as possible for the great day, whenever that may occur, that Tasmanian teachers gain a federal award on the first award principle we'd be so much better off.

Now I must reject that motivation which is presumed by Mr Pearce. The fact is, Mr Deputy President, the TTF was merely attempting to gain for its members an adjustment of the allowances in line with the consumer price index in conformity with the wage fixing principles and as is already provided for in the General Conditions of Service Award.

Mr Deputy President, on page 7, in the second paragraph of page 7, Mr Pearce began by stating - or not began - he said during that paragraph though, which is a very short one: This organisation - and he was referring to the TTF - cannot have it both ways.

Now as has already been made abundantly clear, Mr Deputy President, such an assertion has no basis in fact. The TTF is a state registered employee organisation; we have not walked away from this jurisdiction and it is the TTF - not the ATU (Tasmanian Branch) - which the current - which has the current claim before you in this commission.

Now Mr Pearce also alluded in his - in his submission, and after some questioning from you, Mr Deputy President, that whilst he would oppose us having the right to submit award variations, or claims for award variations, he would expect us to still be subject to the dispute mechanisms and procedures of this commission.

Now if anybody is trying to have it both ways, Mr Deputy President, I suggest to you that it is in fact the government. They want to be able to bring us here to keep us in line, but they don't want us to have the rights that other organisations would have subject to the jurisdiction of this commission, to put before you award variations which may in fact end up improving the conditions and/or wages of our members.

Now that is a classic case of wanting it both ways and we reject that. If we are subject to the dispute procedures and mechanisms of this jurisdiction, as I believe we should be, then we should also have the rights that go with that which is to enable us to bring matters of concern to our membership before this commission.

Now during his submission, Mr Pearce cited as an authority the Motor Transport Female Salaried Officers Salaries Award in the New South Wales Industrial Commission per Justice Sheldon, April 19, 1974 - and I gather you did give it an exhibit number which I must admit I haven't taken note of, Mr Deputy President.

DEPUTY PRESIDENT ROBINSON: There's a P.1 and a P.2.

MR LANE: Yes, I - I - I don't - I won't be actually referring to it -

MR PEARCE: T.1, if I might, Mr Deputy President.

DEPUTY PRESIDENT ROBINSON: P.1?

MR PEARCE: T.1 - 'T'.

MR LANE: Thank you, thank you.

MR PEARCE: 'T' as in -

MR PHILP: Tony.

MR LANE: As in cup of tea.

MR PEARCE: 'T' as in Tony or Tas.

DEPUTY PRESIDENT ROBINSON: 'P' as in Pearce.

MR PEARCE: I'll accept it but the transcript reads T.1.

DEPUTY PRESIDENT ROBINSON: Well I've marked it P.1 - and P.1 it shall be and I so rule.

MR LANE: 'P' as in Pearce then, Mr Deputy President.

We submit, Mr Deputy President, that the decision by Justice Sheldon is certainly no way legally binding and as a precedent is not even particularly authoritative.

To support our contention, Mr Deputy President, we ask that you consider the following facts: firstly, the decision was made by a single judge, not even a full bench, and it was within the jurisdiction of another state. It is - it is, given the context of changes in federal/state relations, especially in the area of industrial relations, a very old authority.

Certainly I have been unable to locate, as obviously has Mr Pearce, another more recent authority from Tasmania or other state jurisdictions directly on this point which would support Mr Pearce.

Now the discretion he's asked you to - to apply in this case is usually exercised, Mr Deputy President, by the federal commission as it considers the appropriateness of exercising jurisdiction given a history of industrial regulation at the state level. So it's a very unusual step for a state to take - to use discretion of this type in cases involving federal awards and federal logs of claim. It's usually the other way around.

Having mentioned the lack of a more recent and/or more relevant, jurisdictionally anyway, authority to cite in support of Mr Pearce's position, I am pleased to report there is in fact a case not supportive of Mr Pearce, which I believe is equally worthy of consideration if not more so.

Now I refer specifically to the Crown - and I will be giving you an exhibit, Mr Deputy President - to the Crown Employees Home Care Service of New South Wales, Home Aids and Handy Persons (State) Award in the Industrial Commission New South Wales - now please excuse me and correct me if I'm wrong on the pronunciation - I think it is Justice Bauer - B-A-U-E-R - but -

DEPUTY PRESIDENT ROBINSON: I think so.

MR LANE: - if you will accept that as being kosher at this stage - on 8th May 1986, and it was reported in the AILR on 12th August 1986 No.287, and I have in fact copies of that extract from the Australian Industrial Law Review if I may present it, Mr Deputy President.

DEPUTY PRESIDENT ROBINSON: TTF.2.

MR LANE: Thank you, Mr Deputy President.

Now I wish to refer mainly to the last paragraph in the background, and then of course move on to the decision. I'm quite sure the rest of it won't take people very long to peruse and take in.

In this particular case, Mr Deputy President, as we can see in the last paragraph of the Background:

The FMWU argued that the PSA application should be adjourned pending the outcome of the award proceedings in the Federal Commission. Alternatively, they argued any award should be interim. The position of both unions in the Federal Commission proceedings would be materially affected by the outcome of the State Award application.

Now in his decision, Justice Bauer:



- his Honour rejected the submission of the FMWU that precedent could be drawn from in Re Motor Transport (Female Salaried Officers - Salaries) Award in which Sheldon J. referred to the Commission's practice to refrain from hearing matters also before the Federal Commission.

Bauer J. held:

There are clearly cases where the balance of convenience would call for the New South Wales Industrial Commission to refrain from hearing matters being dealt with by the Australian Commission. Whether the rationale for that deference is based on comity or on acknowledgement that, at times, other competent tribunals are in a better position to determine competing rights, does not matter. But good reasons must be shown over and above the fact that a Federal award, if made, would have pre-eminence over a State award, by reason of sec. 109.

There of course he's referring to the constitution, Mr Deputy President.

The decision of Justice Sheldon applies to the particular set of circumstances then confronting the commission and is distinguishable for the reasons set out herein.

Further:

It seems to me that, when parties are competing to use the existence of an award of this Commission in other tribunals which may be influenced by the existence of that award and no other good reason is established this Commission should proceed to make or declare to make that award adhering as closely as practicable to its usual principles and procedures.

Basically, Mr Deputy President, we believe it comes down to an exercise of statutory discretion, not to hear a matter. And that is what section 21 of the Australian - of the Industrial Relations Act allows.

However, as is evident from The Crown Employees (Home Care Service) of New South Wales case, the exercise of such discretion is dependent on the facts of each case. One such decision, i.e., Justice Sheldon's for instance, will not find those making other decisions. And simply because a federal log has been served which may in part deal with similar

issues, is not reason enough of itself to justify the exercise of such discretion.

Now finally, Mr Deputy President, as far as the case cited by Mr Pearce is concerned, I'd like to make the following observation: that case, and in fact the case which I have cited for consideration which you've provided the number TTF.2, can be distinguished from this matter - the matter of the - the district allowances case - on the - on the following facts.

In the present case before you, there is no hint of a union demarcation issue at all. We do not have a situation where one union is seeking to obtain an advantage over another by seeking to gain coverage in the federal arena. And in this case, we are not concerned with a new award being sought in the state jurisdiction while a federal dispute exists.

There is little real ground for comparison because of a long-established coverage of teachers by the TTF which is, whilst not the branch of the ATU, is affiliated with it and of course the long-established codification of state awards and our involvement in those.

To a great extent, Mr Deputy President, Justice Sheldon also relied on section 109 of the Constitution and the inconsistency which would result from having awards covering the same subjects in two industrial jurisdictions.

There is no federal award in relation to Tasmania so there can be no inconsistency with the federal and state law. In addition, there is not likely to be a federal award for Tasmanian teachers in the near future. Consequently, it would not be a futile act for this commission to deal with the district allowance claim or any other award variation that was proposed.

Mr Deputy President, whilst a federal log of claims has been served upon the employer, there is no guarantee that federal award coverage will be achieved. And even if it is achieved it is unlikely to be available for some time. If, Mr Deputy President, you are persuaded by the government's proposition, Tasmanian teachers would be denied access to an industrial forum for the regulation of terms and conditions perhaps for quite a considerable period of time.

I remind you, Mr Deputy President, not that I really think you need reminding, that just before section 21 of the act, low and behold, surprise, comes section 20. These things are sent to shock us. Now section 20, we believe, is of relevance to this particular case and to you when you make your decision in this matter, Mr Deputy President. That section, of course, Mr Deputy President, requires that you, in exercising a jurisdiction of this commission, shall act according to equity

and good conscience in the merit of the case, et cetera - I won't read the whole lot of it. You shall do such things as appear to it to be right and proper for effecting conciliation between parties, to preventing and settling industrial disputes, et cetera. You are not bound by the rules of evidence and you shall have regard to the public interest.

Now that, to us, is exceptionally important because we do not believe that you can abide by section 20 and agree with and act in accordance with the government's submissions because it would not be in the public interest. It would not be in the public interest of this state to have teachers unable to access an industrial tribunal for the purposes of award variations or to have disputes heard and settled, whether that dispute application comes from the employer or the employee organisation.

At the beginning of my submission, Mr Deputy President, I stated that I'll provide you with some information regarding the future of teacher unionism in this state. Now earlier I went to great pains to demonstrate that the Australian Teachers Union state branch and the TTF are two separate, different and independent organisations, similar but certainly not the same.

Within the next few months it is envisaged that that situation will radically alter. It is anticipated, by no means an absolute certainty, that the three teacher unions will amalgamate into the Australian Teachers Union, Tasmania Branch with the subsequent disappearance of the TAFE Staff Society, the Secondary Colleges Staff Association and the Tasmanian Teachers Federation. It is hoped that the Australian Teachers Union state branch would then become the state registered employee organisation for all government employed education workers, including teachers.

As far as the medium to long term future is concerned, the Australian Teachers Union, Tasmanian Branch has a view that a federal award is a desired, if not inevitable, thing. It is a view the branch has had for many years, in fact, since its inception in the early '80s. They have this belief because they see that a teacher is a teacher, is a teacher regardless of where in Australia he or she lives or works. They have this belief because education is increasingly taking a national focus with issues raised and dealt with at a national level, and because state governments can and do threaten to override or overrule decisions of this commission. It is felt and believed that the needs and aspirations of the members will be better served if their terms, conditions and salaries are dealt with along with their colleagues in the federal jurisdiction.

Now, Mr Deputy President, as you well know, nothing is certain in this world. There is no certainty, nor is there an

inevitability about teachers gaining a federal award and even the most optimistic do not envisage it occurring quickly or in the short term. Consequently, we request that you decline the government's request to exercise your discretion under section 21 to discontinue to hear this matter. Given the probable contested nature of the proceedings in the federal arena and also given the constitutional and political uncertainties, to do otherwise, Mr Deputy President, may well lead to teachers being denied access to an independent industrial forum or tribunal for quite a considerable time. And I reiterate that such would not be in the public interest. If it pleases the commission.

DEPUTY PRESIDENT ROBINSON: Thank you. Since our hearing on 6 July I have noticed that there have been public pronouncements and, indeed, the public pronouncement that I am looking at immediately was on 6 July. So it only escaped my attention -

MR LANE: You didn't read the paper early enough, Mr Deputy President.

DEPUTY PRESIDENT ROBINSON: - when it was printed. But I have noticed a public pronouncement in the 'Examiner' newspaper dated Tuesday 6 July 1993, which is headed 'Teachers consider possibility' and that is explained by the text of what follows which I quote: Teachers have refused to rule out the possibility of striking an enterprise agreement with the state government. The Employment, Industrial Relations and Training Minister, Mr Beswick, has confirmed that the government is eager to negotiate enterprise agreements with all sectors of the public service, including teachers.

Now if that report has any substance and is accurate and in any way correct, and there have been other quotes in other papers which have supported the possibility of the state government offering to have an industrial agreement, I suppose, you would call it, for state servants to get ultimately a 5 per cent wage increase in various stages, but as, according to the reports, that the likes of teachers and others who have had special cases either heard or -

MR LANE: Or pending.

DEPUTY PRESIDENT ROBINSON: - pending, would be excluded from the first 1.5 per cent. Now, presumably, if that sort of objective is followed through, then this commission may well have before it some application or another which would include the teachers, notwithstanding what was told to me by the government representative on 6 July that this commission shouldn't touch matters dealing with teachers from here on in because of the serving of federal logs.

Now I think that needs some further clarification.

MR LANE: Well can I just confirm, Mr Deputy President, that in fact negotiations are occurring between the public sector unions and the government with the aim of reaching an agreement on wage outcomes over a specified period of time in the future, that basically it is intended at this stage that the teachers, whilst the government hopes not part of stage 1, are certainly to be included in stage 2. It does involve a wage increase. It will involve agreement, and as far as we are concerned, it will require coming to this commission to either have an agreement registered or a consent award variation made. And therefore we do see ourselves as very much a part of that process, although we're arguing about the specifics of stage 1 at the moment. But I'm quite sure Mr Pearce can help you with further information on that, Mr Deputy President.

DEPUTY PRESIDENT ROBINSON: Have you any instructions on that, Mr Pearce?

MR PEARCE: Thank you, Mr Deputy President. I have no instruction in relation to the matter going to negotiations involving the wider public sector pay issue. I'm not involved in that and I have not come here today with instructions on that particular issue.

DEPUTY PRESIDENT ROBINSON: But you can see that if I accede to your request, that I give a ruling that I should not deal with the mammoth matter of adjusting district allowances on the argument put forward, that it could put the commission in an awkward situation if it was then prepared to accept an application from anyone to deal with teachers on the questions of salary increases.

MR PEARCE: The mere observation of the commission, Mr Deputy President, in these matters does not of itself prevent the organisation from continuing to make application and continuing to rely upon the statutory powers available in this commission to do certain things. It would be the attitude of the employer, having regard to all of the circumstances regarding that particular application, which would motivate it to adopt a particular position.

We are saying in relation to the district allowance matter that this commission should refrain from further hearing it. That matter is capable of being disposed of in the federal commission, and let's not take Mr Lane as saying that a federal award would be a long time in the making because, as Mr Lane would well know and as you, yourself, Mr Deputy President, would know. that once a dispute is found in the federal commission it is capable of being dealt with in respect of any particular matter in respect to which the dispute has been found.

So, for example, if the Teachers Federation were concerned about the district allowances aspect, they could bring forward the district allowances aspect from the particular log upon which the dispute is being founded and run that as a separate issue. They do not have to wait for the full making of an award to determine that particular matter. It may well be that into the future there may be some form of agreement arising between the government and the TTF in relation to negotiations which are currently taking place. But that is a future issue. We are dealing here at the moment with the reality of the situation, the reality is that there are federal logs of claims which went before Senior Deputy President Riordan last Monday upon which a dispute finding has not yet been found, but nonetheless the clear intention is still for the TTF - or sorry, for the ATU to pursue the making of a federal award.

Clearly, and whilst Mr Lane has gone to some pains to point out the distinction between the ATU, the TTF and the relative state branches, nonetheless any member of the TTF, subject to this application, would be .... of membership of the ATU, would benefit from the making of a federal award. So it's really semantics to talk about the distinction between the ATU state branch and the TTF. The TTF and its membership would be bound by any federal award to be made and therefore would benefit from district allowances, would benefit from this application.

DEPUTY PRESIDENT ROBINSON: Yes, I understand what you're saying. But can you understand what I am saying, that if I was to accept in totality all that you've put to me and ruled that I should dismiss or refrain from hearing an application to vary the Teaching Service (Teaching Staff) Award on the basis of the fact that there is a federal log being served, then what I'm asking you is, how could the commission from that point forward turn round and deal with another application dealing with any other subject matter, having given that ruling?

MR PEARCE: As I tried to indicate from the outset, there would be nothing to prevent, until the federal award is made, from the TTF seeking to continue to utilise this authority, the determination of -

DEPUTY PRESIDENT ROBINSON: That's what it's trying to do now.

MR PEARCE: Sorry?

DEPUTY PRESIDENT ROBINSON: That's what it's trying to do now.

MR PEARCE: Clearly. We are saying that in regard to the particular circumstances it's seeking a remunerative benefit, that perhaps they ought to pursue that elsewhere.

DEPUTY PRESIDENT ROBINSON: But the government itself might be making applications, as I understand it.

MR PEARCE: There is nothing to prevent the TTF from continuing to make applications in this commission. Our position is that we will have regard to the circumstances and the nature of the application and form a particular view in relation to it.

DEPUTY PRESIDENT ROBINSON: But can you make fish of one and fowl of the other? Is there any difference between an award improvement on district allowance and an award improvement on wage rates?

MR PEARCE: We're not talking about award improvements on wage rates at this point in time, Mr Deputy President.

DEPUTY PRESIDENT ROBINSON: But I am.

MR PEARCE: You are based upon some reference to the 'Examiner' and some reference to discussions. Those discussions have not come to fruition and perhaps if they do it may -

DEPUTY PRESIDENT ROBINSON: But I'm asking the question, is it - I mean, one doesn't want to operate in a vacuum here and get round with closed eyes and closed ears as to what might be imminent in the immediate future. And I'm asking the question really, is it true or can it be denied that the government is in the process of negotiating wage increases with public servants generally, including teachers, and it would be seeking to have them ratified in this commission?

MR PEARCE: I can't speak with any surety on either of those matters, Mr Deputy President.

DEPUTY PRESIDENT ROBINSON: Well Mr Lane has said it's so. He's been involved.

MR PEARCE: Yes, well Mr Lane, if he had been involved would know that I have not.

DEPUTY PRESIDENT ROBINSON: But, you see, it could create a stupid situation for the commission if it was deciding on a matter of fundamental principle and then breaking its own ruling on another application.

MR PEARCE: That ruling being arrived at following submissions. Our submissions may well change into the future. We're asking the commission to determine in relation to the specific matter currently before it, not to form a view as to what may be the position into the future. The commission is being asked to form a view on the basis of an application and a response.

DEPUTY PRESIDENT ROBINSON: Yes, but the principle is that which you've put forward and quoted from Sheldon J's decision, and that wasn't a matter dealing with district allowances, I don't think. And there's nothing peculiar about district allowances which set them apart from, say, wage rates.

Yes, all right, Mr Pearce, I appreciate your effort in trying to answer my question when you don't have instructions.

MR PEARCE: Thank you, Mr Deputy President.

DEPUTY PRESIDENT ROBINSON: Is there anything further?

MR PHILP: I think it only leaves for me to respond to Mr Pearce's submissions on merit, and he's indicated that he sees no problems with the increases that have been sought. But he does oppose us on operative date, and I would ask that you reject his submission in relation to operative date.

I suppose essentially the main reason why I ask you to reject that is that the claim was lodged - I think we're seeking the claim to be operative from effectively the date of lodgment, the first full pay period - I think it was lodged on - I hope it was lodged on -

DEPUTY PRESIDENT ROBINSON: I can tell you pretty smartly.

MR PHILP: - the 16th.

MR PEARCE: Registered on the 17th.

DEPUTY PRESIDENT ROBINSON: It was -

MR PHILP: I'm sure it was lodged - I'm sure I made sure it was lodged on the 16th.

MR PEARCE: It was dated the 16th.

DEPUTY PRESIDENT ROBINSON: It was received on the 17th.

MR PHILP: It was faxed -

DEPUTY PRESIDENT ROBINSON: And it's dated the 16th.

MR PHILP: It was faxed at 5.15 on the 16th, so we would ask that it operate from that first full pay period. I think the



other reason is that there has been a - it is a - the application is simply a flow-on of an earlier decision made in the commission which had an operative date of the 16th, the first full pay period on or after 16 June and therefore, for the sake of consistency, for ease, we would ask that the operative date be granted. Thank you, sir.

DEPUTY PRESIDENT ROBINSON: Fine. To do that I would have to be convinced that there are special circumstances. I think the act says that the commission may grant retrospectivity but only if satisfied if there are special circumstances, or words to that effect.

MR PHILP: I suppose in that regard the special circumstances are that the delay - the adjournment which I think was, in effect, sought by all parties was not, in my view at least, related to the subject matter of the .... It was a different issue that the adjournment was sought for; it wasn't in relation to the district allowance issue. And, we believe, in those special - in those circumstances, that those special circumstances the claim should be dated from the date sought.

DEPUTY PRESIDENT ROBINSON: Fine. Mr Pearce?

MR PEARCE: Could I just take issue with one comment. The government did not seek an adjournment in relation to those proceedings relative to the subject matter currently before you, Mr Deputy President.

DEPUTY PRESIDENT ROBINSON: Thanks, Mr Pearce. I shall reserve decision and hand it down after certain other matters that I've to complete, because people keep on ringing me up. Thank you.

HEARING CONCLUDED