

IN THE TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T. No. 1842 of 1989

IN THE MATTER OF an application
by the Secretary for Labour for
an interpretation of the
Security and Watching Services
Award

re clause 14 - Ordinary Hours

PRESIDENT

ULVERSTONE, 12 April 1989

TRANSCRIPT OF PROCEEDINGS

PRESIDENT: I'll take appearances, thank you, gentlemen.

MR JOHNSTON: Thank you, Mr President. My name is C.H. JOHNSTON, Senior Industrial Officer with the Department of Labour and Industry at Burnie. I appear for the applicant in this matter.

PRESIDENT: Thank you, Mr Johnston.

MR BROWN: Mr President, for the Federated Miscellaneous Workers Union of Australia, L. BROWN.

PRESIDENT: Thank you, Mr Brown.

MR EDWARDS: If it please the Commission, EDWARDS, T.J. I appear for the Tasmanian Confederation of Industries.

PRESIDENT: Thank you, Mr Edwards.

Gentlemen, before I ask you to outline your application, Mr Johnston, in view of the fact that we are in different premises, if it's more comfortable to address sitting down, we'll waive the normal protocols. It's entirely up to you.

MR JOHNSTON: Thank you.

PRESIDENT: Yes, Mr Johnston?

MR JOHNSTON: Yes, thank you, Mr President. I will avail myself of your offer.

This is an application, as has been said for an interpretation of the Security and Watching Services Award No. 2 of 1988 (Consolidated), namely clause 14 - Hours of Work, the meaning of it in relation to casual employees for work done on Saturdays, Sundays and public holidays.

The need for an interpretation arose after an employee of a security and watching service firm approached the department's Devonport office on 21 October 1988.

This employee was employed as a

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casual mobile patrolman, performing night patrol duties.

He worked in accordance with the following roster: Mondays, 8.00 p.m. to 4.00 a.m.; Tuesdays, Wednesdays and Thursdays were off duty; Friday 8.00 p.m. to 4.00 a.m.; the same on Saturday and the same on Sunday. He had the Monday off, Tuesday he worked from 8.00 p.m. to 4.00 p.m.; Wednesday and Thursday the same, he was off on Friday; Saturday and Sunday he worked a day patrol from 11.00 a.m. to 2.00 p.m.

For work performed on Mondays to Fridays inclusive he was paid an hourly rate of 1/38th of the appropriate weekly rate, plus 20% casual loading, plus 30% permanent night shift loading.

For work performed on Saturdays, Sundays and public holidays, he was paid an hourly rate of 1/38th of the appropriate weekly rate at the appropriate penalty rate. That is to say, the 20% casual loading was dropped at these times, as of course was the 30% night shift loading.

The employee considered that the 20% loading should be paid for work performed at weekends and public holidays.

The employers were seen by a departmental officer and stated they based their exclusion of the 20% casual loading from payments for Saturdays, Sundays and public holidays on three different premises.

a) Two penalties should not apply and to add the weekend allowance or penalty rate on the casual loading would be applying a penalty on to a penalty.

b) They believe that the ordinary time refers to Monday to Friday only.

c) They believed that their deletion of the 20% casual loading would bring

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the local rates more in line with Victorian rates. They claimed the local rates are 22% above the Victorian rates without the 20% loading.

I would suggest, sir, that c) is hardly relevant to this matter ... or it may be pertinent to the employees.

PRESIDENT:

I think I can give you an answer on that now.

MR JOHNSTON:

Yes. It may be pertinent to the employees but I don't think it's relevant to this.

The employer indicated that if the department was to officially rule that the 20% loading was payable, they would adjust the wages and pay any arrears to employees. They request that such a ruling, if any, be written.

The matter was referred to me for consideration in the role of officer-in-charge of the north western district of the industrial inspectorate.

On turning to the award, that is the Security and Watching Services Award, I found the provisions unclear. The employee was certainly correctly classified as a casual employee as defined in clause 7 of the award.

Clause 10 provides that:

"A casual employee for working ordinary time shall be paid 1/38th of the rate prescribed in clause 8 - Wage Rates plus 20%. Such additional amount to be payment in lieu of annual leave, sick leave and public holidays."

Clause 14 of the award, Hours of Work, provides:

"(a) The ordinary hours of

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work shall be an average of 38 per week to be worked in accordance with one of the methods set out in subclause (b)".

I don't think subclause (b) is relevant to this application, sir.

Clause 14 does not confine ordinary hours of work performed on Mondays to Fridays. It is therefore not inconceivable that ordinary hours may also be worked on a Saturday, Sunday or a public holiday.

Clause 19 - Overtime provides time rates to be paid for overtime worked on Saturday ... Monday to Friday and Saturday in subclauses (a) and (b).

Clause 26 - Saturday, Sunday and Holiday Work provides at subclause (a), the time rate to be paid for all ordinary time worked on a Saturday, (b) all time worked on a Sunday and (c) all types of duty on a public holiday.

Therefore, if it is not clear just what the ordinary time is in the award ... I do have an opinion. Do you wish me to espouse that opinion, sir?

PRESIDENT: I'm afraid we're only concerned with what the words mean, Mr Johnston.

MR JOHNSTON: Yes, sir.

PRESIDENT: Yes.

MR JOHNSTON: Yes. Thank you, sir.

PRESIDENT: We can't go to merit, you see.

MR JOHNSTON: I see.

That was my submission, sir.

PRESIDENT: Where do you find the 20% and the 30%?

MR JOHNSTON: 30% is in the shift clause, clause 27, sir.

MR EDWARDS: That applies to Monday to Friday ...

MR JOHNSTON: Yes. It applies ... yes, clause 27.

PRESIDENT: Oh, yes.

MR JOHNSTON: "For working shift on Monday to Friday (excluding public holidays) an employee shall be paid an allowance in addition to the rate prescribed in Clause 8 - Wage Rates as follows: ..."

And the one we're concerned with there is, '(iv) permanent night shift - 30%'.

PRESIDENT: And why do you say he was clearly a casual? The days that you've ...

MR JOHNSTON: The days that he worked, sir, ... the definition of a casual at ...

PRESIDENT: Yes.

MR JOHNSTON: ... clause 7:

"Means that a person who is employed on a casual basis and shall include any person employed for a period not exceeding 5 days at any one time."

MR JOHNSTON: Well the roster worked by the employee suggested that he worked no more than 3 days, I think it was, at any one time and he was paid casual and he was employed as a casual by the employer.

PRESIDENT: Well I thought a casual was somebody who was just picked up on a casual basis to work a few days and then dropped off and picked up again.

Was this person working in accordance with some sort of roster?

MR JOHNSTON: Yes, he was working in accordance with the roster that I outlined earlier.

Yes, it was a roster over a period of a fortnight, commencing on the Monday. He worked the Monday. He had the Tuesday, Wednesday and Thursday off of that week. He then worked the Friday, Saturday and the Sunday.

PRESIDENT: Yes. And Monday off.

MR JOHNSTON: Had the Monday off and then worked the Tuesday, Wednesday, Thursday, Friday off and then worked again on the Saturday and Sunday, commencing again, of course, on the next Monday where he worked ...

PRESIDENT: Well that's an ongoing arrangement, is it?

MR JOHNSTON: It's an ongoing arrangements, but ...

PRESIDENT: Well how could you have a casual who's ...?

MR JOHNSTON: Well his engagement did not exceed 5 hours at any one time ... sorry, 5 days at any one time.

PRESIDENT: Well when is he dismissed then? At the end of ... say, he works on Monday and he's dismissed. Then he has Tuesday, Wednesday, Thursday off. There's a new engagement for Friday, Saturday, Sunday, then he's

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PRESIDENT: dismissed again.

MR JOHNSTON: That is the way that I see it, sir, yes.

PRESIDENT: I think Commissioner Watling had something to say about this, didn't he, recently about casuals and the terms of their engagement?

MR EDWARDS: It was appealed.

PRESIDENT: That's the way DLI interprets the definition of casual, do they?

MR JOHNSTON: Well actually, sir, we've made no interpretation. The employer has engaged and has said that he's casual.

PRESIDENT: Yes. But he could be there, employed on that basis for a year.

MR JOHNSTON: Yes.

PRESIDENT: And he's still a casual?

MR JOHNSTON: According to the employer, yes.

PRESIDENT: No provision for part-time?

MR EDWARDS: If I could, Mr President, perhaps I could clarify the ...

PRESIDENT: Yes.

MR EDWARDS: ... position with part-timers in this award.

It is not permissible to employ people in the occupation we're dealing with now as a part-time employee.

The part-time employment clause, which is clause 20 of the award, indicates that part-time control room operators and guards may be employed. There is no provision in in the award for the engagement of part-time mobile patrolmen.

Therefore, you've got two available

MR EDWARDS: options for employment. Full-time; clearly the employee in this case was not full-time; or casual. In this case, he's offered casual engagements on 2 weekly basis with no guarantee of a further 2 weeks work being offered.

And I would submit, and I will when I have my opportunity, that that is clearly a casual employee within the definition of the award.

MR JOHNSTON: I would agree with that, sir.

PRESIDENT: Yes. We seem to have different definitions for casuals in different awards.

MR EDWARDS: Correct.

MR JOHNSTON: Certainly.

PRESIDENT: Well now, very well that aside, we then find somewhere in the award that there's provision for a 20% loading. Is there?

MR JOHNSTON: Clause 10, sir, on page 6.

PRESIDENT: Casual employment, plus 20%, yes.

But then as every ... we don't have a definition of day work then? Or do we?

MR JOHNSTON: No, sir.

MR EDWARDS: We don't, sir. What we do have is definition of early morning shift and definition of night shift and definition of permanent night shift. I guess one's left with the conclusion that if it doesn't fall within the category of one of those three ...

PRESIDENT: It's day.

MR EDWARDS: ... it must be the alternative, which is day work.

PRESIDENT: So this person was ... because he commenced duty at 8.00 p.m., didn't he, and worked through to 4.00 a.m.

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PRESIDENT - EDWARDS - JOHNSTON

PRESIDENT: You've got an early morning shift, haven't you? So he'd be on afternoon shift, would he?

MR EDWARDS: I would have thought night shift, sir, most of the time ...

MR JOHNSTON: Yes.

MR EDWARDS: ... finishing after midnight ...

PRESIDENT: Finishing after midnight, yes.

MR EDWARDS:

PRESIDENT: Yes.

So he was working ... he was a casual working permanent night shift, was he?

MR EDWARDS: No, sir. No, I would contest that because there are two engagements within his fortnightly engagement that fall within day work: 11.00 a.m. and 2.00 p.m. shifts.

PRESIDENT: Well how did he get the 30%?

MR EDWARDS: He didn't on those days.

MR JOHNSTON: He only got the ... as I understand it, sir, he received the 30% permanent night shift when he was on night shift duty. But not, of course, on the days that he worked the day shift which, of course, were Saturdays and Sundays and the 30% loading was not applicable on Saturdays and Sundays at any rate.

MR EDWARDS: I can 15%.

? *Doesn't can be be casual and permanent at all the time*

PRESIDENT: So weekdays when he worked night shift as a casual he was paid the 30% for a permanent ...

MR JOHNSTON: Yes.

PRESIDENT: ... night shift.

MR JOHNSTON: Yes.

PRESIDENT: And you say that's strictly in accordance with the award.

MR JOHNSTON: I don't think so, sir. I think possibly he could have been paid the 15%. I don't think it was on ... whether he fitted in the definition of permanent night shift.

PRESIDENT: Well permanent night shift in that context I imagine merely means a shift that doesn't rotate. He's on night shift every week. Every shift he works is night shift.

MR JOHNSTON: Yes, well the definition, 'means a night shift which does not alternate with another shift [which it didn't] so as to give the employee at least one third of his/her working time off night shift'.

PRESIDENT: Yes. So unless he was doing that, working night shift all the time.

MR JOHNSTON: I haven't done my sums to see whether he had his third off.

MR EDWARDS:

PRESIDENT: Well now the argument then is for working night shift on a Saturday, Sunday and public holiday he claims he ought to have been paid the 20% loading ...

MR JOHNSTON: The 20% casual loading, sir, yes.

PRESIDENT: ... plus the 30%.

MR JOHNSTON: No, the 30% is clearly excluded from Saturday, Sunday and public holidays.

PRESIDENT: Yes. Well then plus the Saturday,

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PRESIDENT: Sunday and public holiday penalty as prescribed.

MR JOHNSTON: Yes.

PRESIDENT: For overtime or for ordinary work?

MR JOHNSTON: I would suggest it would be ordinary work; it would not be overtime.

PRESIDENT: Unless it was overtime.

MR JOHNSTON: Yes, unless it was overtime. Of course, it does raise the question if overtime was worked does the 20% apply to overtime work as well.

PRESIDENT: So you could have a casual engaged to work Saturday and Sunday and those hours be regarded as ordinary hours.

MR JOHNSTON: Yes.

PRESIDENT: But if he worked something other than the normal shift hours that would be overtime, I presume.

MR JOHNSTON: That would be overtime, yes. Although the employer is suggesting that Saturday, Sunday and public holidays are not part of the ordinary hours and therefore the 20% shouldn't apply.

What the employer is saying is that if they employed a casual on only Saturday, Sunday and public holidays they would need to only pay him the appropriate penalty rate applying for Saturday and Sunday, but excluding the 20%. So he would get ... for the weekly rate at the appropriate penalty rate applying for the Saturday, Sunday or public holiday work.

PRESIDENT: Yes. It's clear though, isn't it, that the clause 19 says, 'For all overtime work by shift workers on a Saturday, payment shall be at the rate of double time for the first 11 hours and treble time thereafter'? Then you have Saturday, Sunday and holiday work. Presumably that refers

PRESIDENT: to rostered duty on those ... and they would be regarded, I imagine, as ordinary hours, ordinary rostered hours unless the normal time allotted for the shift was exceeded in which case you would go back to the penalty payment.

MR JOHNSTON: Yes.

PRESIDENT: Is there any argument about that?

MR JOHNSTON: That was my opinion but I don't think Mr Edwards agrees, sir.

MR EDWARDS: I've got a slight difference with the observation you just made, Mr President, but I'll deal with it when my turn comes.

PRESIDENT: Yes. Well as long as I understand what it is I'm supposed to interpret.

MR EDWARDS: All I'm contending in respect of Sunday and public holidays in respect of the statement you just made, is that the provision spelt out the Sunday and public holiday work in clause 26 be it overtime or be it ordinary time.

PRESIDENT: Well Saturday says all ordinary time.

MR EDWARDS: Saturday is different. The reason it is different is because in the overtime clause provision is made for the payment of ... for overtime worked on a Saturday both for day workers and for shift workers. And subclause (a) deals with day workers working overtime on a Saturday and subclause (b) deals with shift workers working overtime on a Saturday, whereas that can be contrasted with the Sunday and public holiday provisions bound in clause 26.

There is no other provision in the award for the dealing with overtime on those days. Therefore on the terminology in the award where it says '... for all time of duty ...' on either a Sunday or a public holiday there can be no question

MR EDWARDS: that be it overtime or be it ordinary time they are the rates that apply.

PRESIDENT: Well because they're set out in both clauses.

MR EDWARDS: Yes. And in fact that is the only clause in the award dealing with Sunday and public holiday rates of payment in the award, whereas Saturday can be contrasted with that.

That's not to say that I'm striking at the heart of Mr Johnston's assertions of how ordinary time should be interpreted. I just make the observation in light of the comment you just made, sir, that overtime is different to what is in clause 26. It is for Saturday but not for Sunday and public holidays.

PRESIDENT: As it happens I think I would have to agree with you because the rate is the same. It is double time for the first 11 hours and treble time thereafter.

MR EDWARDS: I have no argument with that, sir.

MR BROWN: It's the reason that it's not mentioned in the overtime clause.

MR EDWARDS: Correct.

PRESIDENT: Yes. We agree on that then, do we?

MR JOHNSTON: Yes, sir.

MR EDWARDS: Consensus.

PRESIDENT: What about public holidays?

MR BROWN: It's a similar situation.

PRESIDENT: It's double time and a half for the first 11 and treble time thereafter.

MR EDWARDS: And I would suggest that that stands alone as the rate of payment for work on a public holiday be it ordinary time or be it overtime. That is the rate of payment.

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MR EDWARDS: Yes.

PRESIDENT: So it's really only Saturday, isn't it?

MR EDWARDS: Not exactly. I mean the question still arises, I think, and the issue in question is what is the position for 20% loading for work performed on Saturday, Sunday and public holidays for ordinary time.

PRESIDENT: Yes, but the rate I think they are separate questions.

MR EDWARDS: Yes, certainly the way to calculate it is clear from that clause.

PRESIDENT: Yes.

PRESIDENT: Yes, well ... and would you be seeking for a retrospective or a prospective interpretation?

MR JOHNSTON: I would ask for a retrospective interpretation, sir.

PRESIDENT: Well now, are we going to hear from you, Mr Brown?

MR BROWN: Mr President, our view is substantially what we've heard. However, just to put it on the record, clause 10 - Casual Employment, effectively prescribes the ordinary time rate of pay for casuals. An example - for working ordinary time is plus 20%. And then it goes on to say why it's 20% in lieu of annual leave et cetera.

Clause 14 - Hours, limits the number of ordinary hours per day or per week.

Clause 19 we see as not relevant to the interpretation. It is relevant when ...

MR EDWARDS: You were reading my notes.

MR BROWN: Ignore that man ... 8 hours worked or 38 ordinary hours of work in any one week.

Clause 20 - Part-time, effectively prescribes the ordinary time rate for the part-time employees.

And then it goes on to effectively differentiate between casual and part-time re pro rata leave et cetera.

Clause 24 - Public Holidays, prescribes a regimen for full and part-time employees for observance of paid public holidays. It does not prescribe payment for work on a public holiday.

Clause 26 - Saturday, Sunday and Holiday Work, prescribes rates for

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MR BROWN:

ordinary time on a Saturday, and for that we must refer to the casual clause which is as we've said the ordinary rate of pay divisible by 38 plus 20%, and the Saturday rate multiplied by 1.5.

Sunday, as we've already established, includes the rate of pay for the Sunday and overtime on a Sunday which is double time, therefore no reference to the ordinary time. But this is so that overtime is not excluded from that Sunday clause as we've accepted, and similarly for public holidays, where the rate, as we see it, is divisible by 38 plus 20% and multiplied by 2.5.

Clause 27 - Shift Allowance, refers to the shift allowance being paid in addition to the rates in clause 8, and clause 8 is for weekly ... or are weekly rates.

For casual and part-time employees, the hourly ordinary rate is determined with reference to either clause 10 or clause 20, as the case may be.

The percentages are therefore applied to the hourly rates as prescribed by the appropriate clause and not the weekly rate.

To read this clause any other way, as we see it, would be to say that the loading for working shift work is determined by applying the appropriate percentage to the weekly rate, irrespective of the hours worked.

As to the employer's contention as outlined in the application, we say the question of merit is irrelevant to these proceedings; (b) the award permits the working of ordinary time on the 7 days of the week; (c) the question of comparison between the rates of pay is irrelevant. And

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BROWN

MR BROWN: therefore the answers to the questions as we see it is (1) for casuals is the appropriate weekly rate of pay divided by 38 to get the hourly rate plus 20% in lieu of the other conditions as spelled out in clause 10, and that the rate for full or part-time employees is the weekly rate divisible by 38.

PRESIDENT: Mr Brown, so that I follow you, if you're going to determine the weekly rate or the hourly rate, say, for a casual working night shift, you would take the weekly rate, have regard for the days upon which the employee would work in order to determine the penalties it would attach.

For example, if it included a Saturday or a Sunday, there would be 50% extra for Saturday and double time for Sunday, then would you add 15% for the night shift - if he was working night shift?

MR BROWN: On a weekend?

PRESIDENT: Yes.

MR BROWN: No.

PRESIDENT: Well Monday to Friday.

MR BROWN: Monday to Friday?

PRESIDENT: Yes, yes. So he can be ...

MR BROWN: It's either 15 or 30%.

PRESIDENT: Yes, right. So Monday to Friday he could attract 15% - we'll forget the 30% for the moment - plus the Saturday, Sunday or holiday penalties as set out in clause 26, add it all up and divide by 38 and multiply the result by 20%?

MR BROWN: Well I don't know what that equation would be, but what I would say is that the rate is established prior to that calculation as the weekly rate by 38 plus 20% and that becomes the rate for all purposes.

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PRESIDENT: Okay, if that becomes the rate for all-purposes, to that rate you would then add your 50% penalty, say, for Saturday and your 15% penalties for night shift, Monday to Friday.

MR BROWN: Yes.

PRESIDENT: So you could be getting 15% on your 20% or 50% on your 20% component for Saturdays or 100% on your 20%.

MR BROWN: If working in penalty hours, yes.

PRESIDENT: Well for ordinary rostered time.

MR BROWN: Yes.

PRESIDENT: Yes. So long as I understand what you're putting.

And what does the DLI say to that?

MR EDWARDS: I was just telling him. They're quite placid about that.

MR JOHNSTON: I'm inclined to agree with it, sir, that it is an all-purpose loading of 20%. But that's only my own personal opinion. It's not necessarily the department's opinion.

PRESIDENT: Well are you representing Mr Johnston or the department this morning?

MR JOHNSTON: Yes, I am representing the Secretary for Labour, sir.

PRESIDENT: And have you any idea what he thinks?

MR JOHNSTON: Well I believe, sir, he would think the same as I do, that the 20% loading for casuals is an all-purpose loading.

PRESIDENT: Yes. What does the ...?

MR JOHNSTON: As a matter of fact, that was argued

PRESIDENT: Yes. Thank you.

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PRESIDENT: Mr Brown? I didn't ask if you believed the award should be interpreted retrospectively or prospectively or from today's date.

MR BROWN: I understand that our organisation put a view in relation to the bakers.

PRESIDENT: Yes. I think your representative wished that he had three legs. He had a foot in each camp. Yes.

So if I take that same submission, I ...?

MR BROWN: Yes, thank you.

PRESIDENT: What do you say, Mr Edwards?

MR EDWARDS: What can you say after that.

Mr President, I have consulted reasonably extensively with the employer involved in the actual case which is before the Commission by way of interpretation, and the employer, following discussions with myself, is prepared to admit that he has made some errors in the calculation of the rate for casuals working ordinary time on Saturdays, Sundays and public holidays.

Confusion in his mind arose out of a misinterpretation, if you like, of the award, both by himself, by corporate solicitors and also, unfortunately, by the Department of Labour and Industry who provided some advice to him some time ago.

Certainly, I believe it wasn't Mr Johnston, but some other person within the department did make comment to the employer that the rate of calculation should be done in 'X' way which, on balance, appears to me to not fully conform with the words used in the award.

MR JOHNSTON: I certainly deny it was me that

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MR EDWARDS:

It certainly was not Mr Johnston. I can say that quite clearly.

Mr President, what I believe is clear in the award is that a casual employee for working ordinary time on Monday to Friday is - by clause 10, I think it is - stated to be one thirty-eighth of the rate prescribed in clause 8 - Wage Rates, plus a loading of 20% which is specifically in lieu of annual leave, sick leave and public holidays. I think that much is beyond contest.

Clause 19 of the award, which is referred to reasonably extensively in correspondence and inspectorate reports I've received from the Department of Labour and Industry which form part of the papers sent to the Commission as part of this interpretation, I believe is not relevant to these proceedings.

But I do observe - for the sake of the Department of Labour and Industry - that I disagree with their observation on page 2 relating to subclause (a) of clause 19, where they indicate that subclause (a) of clause 19 appears to set the rate of payment for ordinary time worked on a Saturday.

I think that is to misconstrue the award, and I think is a report compiled by Mr Johnston.

That is not the case. Clause 19 very obviously is dealing with the question of overtime or work outside of ordinary hours, if I can just interpret it further.

And I think it would be mischievous to suggest that it could, in any way, be dealing with ordinary time worked on a Saturday.

MR JOHNSTON:

If I may interrupt there, sir. I would admit that I have made a mistake in ...

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PRESIDENT: 26 sets it. 26 covers the ordinary time.

MR JOHNSTON: Yes, I was meaning 26, and I can see, by looking at it, I've become confused and got the two confused when I was dictating this letter or this report.

PRESIDENT: Yes. Well, of course, you could become more confused ... I'm sorry, I've interrupted you now, Mr Edwards.

If you read subclause (d) of clause 26, it says:

"In computing overtime payments prescribed in subclauses (b) and (c) hereof ..."

So, clearly, it does intend that (b) and (c) shall be read ... as construed as overtime in certain circumstances.

MR JOHNSTON: Yes.

MR EDWARDS: Indeed, and I had intended to cover that point ...

PRESIDENT: Well I'm sure you will.

MR EDWARDS: ... on my way through, Mr President.

MR JOHNSTON: I'm sorry if I interrupted, Mr Edwards ...

MR EDWARDS: No, you didn't.

MR JOHNSTON: ... but I did want to make it clear that what I conveyed in there was not intended. I had intended to refer to clause 26.

MR EDWARDS: I take Mr Johnston's comments and I go no further in respect to that observation I was making.

Suffice to say that, in my view, any reasonable interpretation of the award would mean that payments made under clause 19 to a casual employee

MR EDWARDS:

would exclude the 20% payable under clause 10, because overtime clearly is not ordinary time.

And clause 10 very clearly says the ordinary time of a casual is calculated as one thirty-eighth, plus 20%. Now that is restricted to ordinary time specifically by clause 10.

To that extent I disagree with Mr Brown and, indeed, also with Mr Johnston's agreement with Mr Brown that the 20% is an all-purpose payment, because to make a sweeping statement like that is to ignore the realities of ... for example, clause 19 of the award, where I don't think any reasonable construction could lead anyone to believe that the 20% should be paid during periods of overtime because it is restricted in its application to ordinary time by clause 10.

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EDWARDS

PRESIDENT: Well then, would you concede that it would be payable for ordinary rostered hours on a Saturday or a Sunday?

MR EDWARDS: If I could defer commenting on that, Mr President, until I get to that section of the award.

PRESIDENT: Right.

MR EDWARDS: I'll just follow through seriatim, I won't get lost and then I won't forget to say anything.

I do now move to clause 26, which I believe, on any reasonable construction in subclause (a) deals with ordinary time of duty on a Saturday and I don't think it is possible to construe it in any other way, in which case I observe that the employer in the report that's been provided by the Department of Labour and Industry is incorrect in his application of the award by saying that ordinary hours are restricted to Monday to Friday.

Clearly, that is not the case. Ordinary hours can be worked on any day of the week, Monday to Sunday inclusive. To that extent, the employer admits that he has made a mistake.

Saturday ordinary time is said to be paid at the rate of time and a half. Now, the position the employer adopted to this point in time on those words is that subclause (a) of clause 26 should stand alone as the total statement of what should be paid to a casual employee, or indeed any other employee for ordinary time worked on a Saturday.

I believe and the employer now agrees that on any reasonable construction of the words in clause 26(a), that is not an available construction because a casual would receive a 20% loading for working on a Saturday providing that Saturday work was at ordinary

MR EDWARDS:

time.

To that extent, the employer again admits that he has misconstrued the award along with those other people I mentioned earlier in my opening comment.

So, it is our submission that the 20% loading would continue to be paid during periods of ordinary time on a Saturday by a casual.

The method of calculation is a different question, in our submission. We believe, with appropriate method of applying the 20% loading is that it can only be applied to the rate of pay expressed in clause 8 - Wage Rates. That is clear from the reading of clause 10.

PRESIDENT:

I've anticipated you have written down base rate, multiplied by time and a half plus 20% of the base rate. Is that right?

MR EDWARDS:

Yes, Mr President. I thank you for saving my breath.

PRESIDENT:

Well, I've heard you say it so many times, except in one particular case that I'll not remind you of.

MR EDWARDS:

I'd prefer you didn't. I might be accused of being eclectic again, or some such.

Mr President, we believe that the method of calculating rate and a half, and I observe in saying this, that nowhere in the award ...

...

MR EDWARDS:

Mr President, I was at the point of indicating that nowhere in clause 26, or indeed anywhere else in the award, can I find a method to devise the computing of time and a half. It does not anywhere indicate time and a half of what. It doesn't say time and a half of an employee's ordinary

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PRESIDENT - EDWARDS

MR EDWARDS:

rate of wage, nor does it say time and a half of an employee's wage rate, which again refers back to the Baker's interpretation to which Mr Brown referred earlier, along with yourself, sir.

It doesn't say time and a half of the rate prescribed in clause 8 - Wage Rates and I really believe that standing alone it is almost incapable of interpretation as such. It's certainly time and a half of something.

In our submission it should be read as being time and a half of the rate prescribed in clause 8. As you indicated before, sir, you've heard me many times on the same subject matter. I don't intend to bore everyone with going through it again.

To summarise our submission in respect to the rate of calculation for a casual working ordinary time on a Saturday, it is as you indicated before, sir, that each penalty should be computed separately on the rate prescribed in clause 8 because we don't believe in fact that the 20% loading should be subject to premium or penalty addition.

It would be our submission that the matter that is in compensation for, don't accelerate simply because you work your ordinary time on a Saturday instead of on a Monday or a Tuesday or a Wednesday. You don't get double sick leave or 15 days sick leave instead of 10 etc.

Now, I know that's merit argument but it also can perhaps sneak into these proceedings under the doctrine, 'generous construction' which I advance to use, sir, as part of the Shipbuilders' interpretation, successfully I will add, in a matter almost identical to this, where in that particular instance the words that needed interpretation were double time.

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EDWARDS

MR EDWARDS:

The award indicated the employees should be paid at the rate of double time for overtime, I think it may have been. You, sir, in your interpretation of that matter - I will admit on slightly different words - indicated that they should be computed on the base rates in the award.

I tend to believe that that is the intent of the award, although it's not clear that that is the case but I would equally argue, nor is it clear that anything else is the case. It doesn't say time and a half of the employee's ordinary rate of wage, which could be construed as including a 20% loading.

I think those same observations would remain static in respect of Sunday and public holiday payments. I would observe for the record, that in my view, subclause (b) of clause 26 is dealing with not only overtime work on a Sunday but is also dealing with ordinary time work on a Sunday and expresses a rate of payment, regardless of whether it is overtime or ordinary time, and to that extent I am on all fours with basically what Mr Brown and Mr Johnston have said, that that is a time at which the 20% loading should remain payable providing it is part of the employee's ordinary time in a week.

PRESIDENT:

I don't know if Mr Brown added the proviso, but he may have.

MR EDWARDS:

I'm sure Mr Brown hasn't indicated, or I didn't hear him indicate that 20% should be payable during periods of overtime. If he did, I contest that and I do on the basis of the words contained in clause 10, which says, that 20% loading is only payable during an employee's ordinary time and has no application to any other period of time, I will add.

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PRESIDENT - EDWARDS

MR EDWARDS: I think those observations I've just made hold firm for public holidays as well.

PRESIDENT: Well it does say for working ordinary time.

MR EDWARDS: Yes, indeed. In clause 10 it does.

In my submission therefore, it must be restricted in its application to work in ordinary time, if the work on a Sunday or indeed a Saturday or a public holiday or indeed any other day were overtime, it would be my submission that the 20% loading is not used in computation of a payment to an employee working other than ordinary time.

You rightly point out, sir, in subclause (d) of clause 26 that it refers to computing overtime payments prescribed in subclauses (b) and (c) of that clause, that the divisor is 40 turning to 38 later.

I believe that is an appropriate provision but it doesn't, in our view, limit it to overtime because I believe subclauses (b) and (c) refer to both ordinary time and overtime, but I don't think there's any difference between any of us on that point.

In respect of clause 27 - Shift Allowances, I note with interest and I guess I should also say with approval, that the rate is calculated on clause 8 rates, not on wages rates. If I can read subclause (a):

"For working shift work on any day Monday to Friday, excluding public holidays, an employee shall be paid an allowance in addition to the rate prescribed in clause 8 - Wage Rates".

It does not say in addition to an employee's ordinary rate of pay. It does not say in addition to the rates

MR EDWARDS:

prescribed for a casual in clause 10
- Casual Employees.

So I would submit firmly to the Commission that in computing a shift allowance payment to an employee under clause 27, a casual employee, one would apply 15% to a rate determined by dividing the weekly rate by 38 and one would do a similar calculation to compute the 20%. One would divide the weekly rate by 38 and calculate 20%, but the two do not compound one upon the other. They are two separate calculations and are both added to the calculation of 1/38th of the weekly rate prescribed in clause 8.

PRESIDENT:

But an employee working, say, night shift Monday to Friday, a casual, could receive both the 20% and 15%?

MR EDWARDS:

Yes, indeed. It would be my submission that in fact they do. The employer does in fact pay precisely in that way. If I can refer to Mr Johnston's report, which is reasonably comprehensive.

He indicates on page 3, immediately under the roster ... I'm referring to the report. The top of it's headed, 'Folio 7', date 17 November '88.

If I could refer you to page 3. Mr Johnston has indicated there that work performed Mondays to Fridays, the employer pays 1/38th plus 20% plus 30%. I'm advised by the employer, in fact both calculations are done separately, although that wouldn't necessarily be clear from the reading of Mr Johnston's report.

My view is that to apply the two separately would be to correctly apply the award, that both must be calculated on the rate prescribed in clause 8. That much is clear from both clauses 10 and 27(a), in my submission.

In the circumstances of the employee

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PRESIDENT - EDWARDS

MR EDWARDS:

in question, I believe the loading to appropriately be 30%. There was some question you posed to Mr Johnston before, Mr President. A very quick tally of the employee's roster over the 2-week period shown on page 3, shows that on two out of nine starts he worked day work. That, in our submission, would not entitle the employer to pay 15% rather than 30, because the employee clearly has not had at least one third of working time on other than night shift.

If I refer the Commission to clause 7 - Definitions subclause (j), which defines permanent night shift:

"Means a night shift which does not alternate with another shift so as to give the employee at least one third of his/her working time off night shift".

In this case, the employee does not have one third of their working time with the employer on other than night shift and subsequently I think the 30% loading would probably be correct, although it is a matter I will take up with the employer and I think he should be trying to do his rostering to avoid that penalty if possible, by providing greater rotation. That's a merit matter.

I think, Mr President, I have addressed all of those issues that arise from the award that I wish to touch on.

The DLI, and specifically Mr Johnston in his report, reports on the employer contentions of his reasons for not paying the 20% loading for ordinary time worked on Saturdays, Sundays and public holidays and the three areas the employer sought to rely on, that you should not apply a penalty to a penalty, well, no reasonable, fair-minded, thinking

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EDWARDS

MR EDWARDS: person could disagree with that as a philosophy. Its pertinence to interpretative proceedings is questionable, in my view, because it does impinge into an area of merit, except to the extent where one's able to argue under the doctrine 'generous construction'.

PRESIDENT: Very generous, Mr Edwards.

MR EDWARDS: Very generous, Mr Commissioner.

In (b) on page 3, the employer has said that they believe ordinary time refers to Monday to Friday only. I have already said, the employer admits to being in error in that respect and subclause (c), they deal with a little bit of famous CWJ in reverse, which again I believe is a merit argument and should form no part of these proceedings, although is relevant obviously to the employer.

PRESIDENT: Well, what's left then?

MR EDWARDS: Little.

PRESIDENT: Yes. I mean, is the dispute resolved?

MR EDWARDS: That will remain to be seen in a matter of some few minutes, I suspect, Mr President, when I hear from Mr Johnston and from Mr Brown or indeed, ultimately, from yourself, whether my contentions on the way of ...

PRESIDENT: The 20%?

MR EDWARDS: ...applying the various penalties in the award is accurate and that is, that they should each be calculated separately rather than compounding on ...

PRESIDENT: On the base rate?

MR EDWARDS: Indeed. That's, to me, the only area where there is any scope for any real difference, but I'm sure we'll hear from the other parties in a moment.

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PRESIDENT - EDWARDS

PRESIDENT: But ...

MR EDWARDS: Mr Johnston ... sorry.

PRESIDENT: Yes, go on.

But just to clear it up before you go any further.

The employer concerned, no doubt, after consultation with you, would realise that he was obliged to pay something for the weekend.

MR EDWARDS: Indeed. Yes.

PRESIDENT: Yes. That's all right then.

MR EDWARDS: I will add, sir, that the employer has only become aware of that as recently as yesterday morning, which is the first opportunity I've had to talk to him on the subject.

But after talking with him and taking him to various facets of the award and explaining the meaning of various words within the award, the employer agrees with my interpretation - which is really the only valid one there is.

Mr President, Mr Johnston poses two questions in his report. The first is, 'What is ordinary time for a casual employee?' Although I presume my view of ordinary time is work on any day, Monday to Sunday inclusive, but does not exceed an average of 38 hours on the basis set out in subclause (b) of clause 19. Not 19, I'm sorry, clause 14.

And I guess his real question there was, 'Does Saturday, Sunday and public holiday work form part of ordinary time, or can it?'. The answer simply, from our perspective, is 'Yes, it can'.

The second question is: 'Is the 20% loading for casual employees and all-purpose loading?' My view on that

MR EDWARDS:

very clearly is: no, it is not an all-purpose loading. It applies only to work during ordinary time and should not be subject to premium and penalty addition.

It is a flat add-on to the rate computed by dividing the weekly rate by 38. That much is clear from clause 10. I don't think there can be any serious contest.

On the question of retrospectivity versus prospectivity. I could go into a long dissertation, as I often do on the question of retrospectivity, but I think it would bore the Commission. My view is that there is no warrant for the retrospective interpretation of the award.

If I take the Commission to another document from the Department of Labour and Industry, and if I could just search for a moment, I'll find it.

MR JOHNSTON:

Folio 3.

MR EDWARDS:

Folio 3, is it?

MR JOHNSTON:

Is that what you're looking for?

MR EDWARDS:

Yes. If I could take the Commission to the document from the Department of Labour and Industry, Industrial Inspectorate, dated 27 October, which again, formed part of the papers forwarded as part of this interpretation.

It's from ...

PRESIDENT:

On 27 October?

MR EDWARDS:

27 October '88.

It's a single page.

PRESIDENT:

Yes.

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PRESIDENT - EDWARDS - JOHNSTON

MR EDWARDS:

If I take the Commission to the last paragraph:

"Could this question please be determined and provided officially to the employer, who has agreed to back pay any monies that such a ruling would make payable."

Now I've seen in writing from the Commission before on interpretative matters, that if the employer is offering to make retrospective adjustment it would not make a retrospective interpretation. To do so would I guess, to some extent, be meaningless.

The employer maintains the assurance he gave the Department of Labour and Industry that there will be some retrospective adjustments necessary. They are already now necessary, on our own admission, of the correct interpretation of the award.

And once we have confirmation from the Commission of the exact way of calculation of penalty rates under the award, if that's necessary, then those retrospective adjustments will be made.

For those reasons, I would urge the Commission not to interpret the award retrospectively.

I don't intend to deal with any great depth with the important submission of Mr O'Brien to these proceedings arising out of the Bakers Award which don't form part of transcript.

Nevertheless, I am well aware of them. I was in attendance on the day in question, and to some extent I find them to be meaningful.

But I also agree with you, sir, that it was not only 50 cents each way, I was all for the 50 cents in the pot

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EDWARDS

MR EDWARDS:

as well.

So we would urge the Commission to interpret the award prospectively if that remains necessary. Once we've heard from Mr Brown and Mr Johnston it may, in fact, be not necessary.

PRESIDENT:

Thank you, Mr Edwards.

MR EDWARDS:

I remain eternally hopeful.

PRESIDENT:

Hope springs eternal.

Well Mr Johnston and Mr Brown, we'll give you another go at it if you wish.

MR JOHNSTON:

Yes.

PRESIDENT:

Is it necessary to interpret the award?

MR BROWN:

Yes.

MR JOHNSTON:

Yes, I believe so, sir.

I have no argument with the proposition that Mr Edwards has put up as to the ... on the strict interpretation of award and the calculation of the 20% loading and the night shift loading.

I think it's quite feasible, and on the strict interpretation of award, it's quite possible to divide the weekly wage rate in clause 8 by 38, add the 20% for the casual, and then for the night shift allowance, do exactly the same thing.

But there is going to be a small monetary difference, I can see. Not a great deal of difference. But I believe on the wording of the award that that is possibly the correct way to do it. I know, sir, it's the way it has always been and I think ...

MR EDWARDS:

It's not the DLI's interpretation.

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PRESIDENT - EDWARDS - JOHNSTON -
BROWN

MR JOHNSTON: Well, no, I think I can safely say that the DLI in dealing with payments to casual employees - not necessarily in this award, but in other awards - have applied the 20% and then used that 20% for an all-purpose. Depending on the award, of course.

PRESIDENT: Yes.

MR JOHNSTON: One that springs to mind, of course, is the Retail Trades Award which does make specific mention in the casual employees of the overtime and penalty rates that apply to casuals.

PRESIDENT: Well I should be familiar with that, but I'm not.

MR JOHNSTON: I can't direct you, sir, to the particular clause, but it brings to mind these things. After 25 years with the department, they sort of remain there in the mind.

PRESIDENT: Yes, it depends on the ... well I certainly remember finding that way in the hospitals interpretation, I believe, but I've forgotten.

MR JOHNSTON: Yes, I did mention that, I think, in my report ...

MR EDWARDS: Yes, you did.

MR JOHNSTON: ... on an interpretation that you made.

PRESIDENT: Yes.

MR JOHNSTON: As to the retrospectivity. Certainly the employee that has been mentioned is not the only employee concerned. This employer does have other employees on ... similar, and if there's underpayments, well, the department - depending on your interpretation, sir, - would be looking for payment of arrears to other employees.

PRESIDENT: That's the importance of a retrospective or a prospective ...

MR JOHNSTON: That is the importance of the retrospective ... I'm not doubting that the employer will not stick to his undertaking to make the retrospective payment. But if there is no retrospectivity, there is no enforcement of that.

PRESIDENT: I happen to have the Retail Trades Award in front of me.

MR JOHNSTON: You may catch me out then, sir.

PRESIDENT: Well actually I think it refers to transport workers, but it says:

"A casual employee for working ordinary time shall be paid per hour 1/40th of the weekly rates prescribed for the work which she or he performs.

In addition, a casual employee shall receive 20% of the ordinary hourly rate in respect of each hour for which he or she is paid ..."

MR JOHNSTON: Yes.

PRESIDENT: "... such additional amount to be payment in lieu of annual leave."

You're relying on the '... for each hour ...'.

MR JOHNSTON: Yes, for each hour.

PRESIDENT: Yes.

MR JOHNSTON: And I believe perhaps in the ... I'm taxing my memory now, but perhaps in the overtime clause that it says that it shall apply to casual employees.

PRESIDENT: Yes.

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PRESIDENT - JOHNSTON

MR JOHNSTON: I believe. I may be wrong.

PRESIDENT: Well that is an indication though how you can get different interpretations in different awards.

MR JOHNSTON: Certainly.

PRESIDENT: And as a consequence of course, different expectations by different people.

MR JOHNSTON: Yes, it may be thought that perhaps this application was a frivolous one, but our ...

PRESIDENT: No, it wasn't frivolous.

MR JOHNSTON: But the department's task is not an easy one with the different provisions applying in different awards.

PRESIDENT: And I'm inclined to agree ... inclined to think that Mr Brown doesn't agree with Mr Edwards.

MR BROWN: Yes, Mr President ... I can only emphasise what I've already put forward, that the method of calculating the casual rate has taken a base rate, and the base rate in clause 8 is for weekly employees. And that stands alone.

Clause 10 says that we will determine the casual rate by division of 38 into the weekly rate, plus 20%. That then becomes the ordinary rate for a casual as does the ordinary rate for a part-timer in the appropriate clause becoming 1/38th of the rate.

Now Mr Edwards referred to clause 27 - The Shift Allowance, and whilst it's not a view we put in that it does seem to us that if he is saying that the shift allowance applies to the wage rates as it was expressed in clause 8, then he is on very dangerous ground, because there is no ... the percentages that are expressed refer to the wage rate in ...

PRESIDENT: Not in ...

MR BROWN: ... clause 8.

PRESIDENT: Well you see the wage rate in clause 8 is the weekly rate.

MR BROWN: Is the weekly rate.

PRESIDENT: Yes.

MR BROWN: And that's what it refers to now. It's 15% of that rate. If Mr Edwards is saying that the 15% does not apply to the part-time or the casual employee but to the full-time employee, then ...

PRESIDENT: No, he's not saying that. What's he's saying ...

MR BROWN: No, I'm saying this is what this says if his argument holds good, that the rate of ... the hourly weekly rate is to be the rate in calculating the shift penalty and not the rate as expressed for a casual.

Now, that's what I understand Mr Edwards is putting.

PRESIDENT: Yes, I think he's saying if the base weekly rate for a casual was, say, \$300, then for working afternoon shift you would increase that by 15%. And we'll say that's just 15% added on. Then if you're a casual you would calculate 20% of \$300 and add that on as well. But the hourly rate, say, for overtime, where you get into a rostered shift on a Saturday, he's saying should be time and a half of the weekly rate. That's the rate that would normally be paid to a weekly worker, plus, after you've made that calculation, you add back the 20% of the weekly rate.

MR BROWN: Well that diminishes the final rate does it not, if you do it the other way.

PRESIDENT: Well if you could ... let's say it's

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PRESIDENT - BROWN

PRESIDENT: \$300. 20% of \$300 is, what, 60 is it? Right. So that would be your 20% loading if you could just take that figure, then 15% would be \$45. Now if some how or other we could work that out for 40 hours or 38 hours, the total addition for a casual would be \$105 on top of the weekly rate, not, say, \$300 plus \$60 and then divide 360 by 38 to get an hourly rate. That's what you're saying?

MR EDWARDS: What I'm saying - I'll just try and put it in perspective.

PRESIDENT: Yes.

MR EDWARDS: You take the full time weekly rate of \$318.80 in this instance. You divide that by 38 which gives an hourly rate of \$8.39.

PRESIDENT: Right.

MR EDWARDS: Now my contention is that you then, to compute ... to make that into a casual rate, you work out what 20% of \$8.39 is - which in this case is \$1.68. You then, if they're working night shift, work out what 30% of \$8.39 is - which in this case is \$2.52 - you add the three figures together giving \$12.59, and that is the rate payable to a casual employee working permanent night shift on Monday to Friday.

PRESIDENT: Yes, but if he worked any overtime ...

MR EDWARDS: If he worked any overtime \$1.68 component comes out for the purposes of calculating the ordinary rate.

PRESIDENT: Yes, and the 2.52.

MR EDWARDS: And indeed the 2.52 because the shift loading does not apply to overtime, only for ordinary time.

PRESIDENT: So you'd revert back to, well, double time ...

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PRESIDENT - EDWARDS

MR EDWARDS: 8.39 ... 16.72.
PRESIDENT: 16.72.
MR EDWARDS: 78.
PRESIDENT: 16.78.
MR EDWARDS: Would be his overtime rate.
PRESIDENT: Yes. That's what you're saying.
MR EDWARDS: Indeed.

MR EDWARDS:

That's opposed to doing it the way which I think Mr Brown is suggesting it ought to be, which I don't think is supported by the award.

He's saying you take the \$318.80, you divide it by 38, multiply the result by 1.2 which gives \$10.07, which you multiply by 1.3, which gives \$13.09, which compares with \$12.59. There's a difference. There's no doubt there's a difference.

I'm saying, on any proper construction of the award you cannot do anything other than I'm suggesting.

MR BROWN:

Well, that's where we differ. I mean, I believe the award is constructed that way. As I said, clause 10 stands alone. It's a method of calculating the ordinary rate for a casual employee and if we can go back to the shift allowance ...

MR EDWARDS:

It's not what it says.

MR BROWN:

Yes it does.

MR EDWARDS:

It says for working ordinary time, they shall be paid 'X'. It doesn't say what they're paid for working penalties.

MR BROWN:

But that's the ordinary rate that they'll be getting. If we go to the shift allowance we find that the shift allowances are expressed as a percentage of the rate as prescribed in clause 8 ...

MR EDWARDS:

Which is exactly the same wording as clause 10.

MR BROWN:

What you seem to be saying ... you can't have your cake and eat it too, as I see it. If you're saying that this 20% doesn't apply here, then are you saying that they get 15% of the rate prescribed in clause 8, irrespective of the hours they work.

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EDWARDS - BROWN

MR EDWARDS:

No.

MR BROWN:

That's what it says.

MR EDWARDS:

What I am saying and I perhaps should make it completely clear. I'm saying that for working on permanent night shift a casual employee receives 1/38th of the weekly rate prescribed in clause 8, plus an amount equivalent to 20% of that rate, plus an amount equivalent to 30% of that rate, which means he's still getting 30% night shift, he's still getting 20% casual loading but the two are not cumulative, one on top of the other.

They are both separate, distinct additions, both clearly on the words in the award, calculated solely on the rate prescribed in clause 8 - Wage Rates.

If I take you to clause 10, it says, '1/38th of the rate prescribed in clause 8 - Wage Rates, plus 20%'. If I take you to clause 27, it says:

"Shall be paid an allowance in addition to the rate prescribed in clause 8 - Wage Rates".

Both are referring to the base ordinary rate. That's where you do your calculation, on their base award rate, on no other. It doesn't say 15 or 30% in addition to the rate prescribed for a casual employee in clause 10.

If it did, your argument is valid. If it doesn't, which it does not, your argument's invalid and the only reasonable interpretation is that each time you go back to the base rate in clause 8.

MR BROWN:

Okay. What's 15% of one of the base rates in clause 8?

MR EDWARDS:

15% of one of the base rates?

MR BROWN:

Yes. Are you saying that the casual employee gets it and a part-time,

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EDWARDS - BROWN

MR BROWN: irrespective of the number of hours he works because that's what it says if your argument holds good.

We're not putting that. We're not suggesting that that's the case.

MR EDWARDS: That's good. I see what he's aiming at.

PRESIDENT: Yes. It seems, Mr Brown, that there is a genuine difference of opinion as to what is intended by the award and therefore the Commission will have no alternative but to endeavour to interpret the relevant clauses.

I wasn't anxious to do that. I was hoping this matter could be resolved because of the possible implications elsewhere.

MR BROWN: I think we tried.

PRESIDENT: I think I have no alternative but to do that and I think you've all had a fair go.

MR EDWARDS: I don't want any

PRESIDENT: I'll simply announce that that concludes this hearing and I will reserve my decision.

MR JOHNSTON: One point, if I may, Mr President. I believe that it is necessary to ask that if we want it, that in giving your interpretation that you make a declaration.

PRESIDENT: Yes, I was hoping you wouldn't say that.

Well, you have a week in which ... I think the Act says that you can apply within a week.

MR JOHNSTON: Yes.

PRESIDENT: Section 43.

MR JOHNSTON: Yes. I agree with that, sir.

PRESIDENT: So it might not be a bad idea to wait

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PRESIDENT - BROWN - EDWARDS - JOHNSTON

PRESIDENT:

until you get it.

MR JOHNSTON:

Yes, wait until we get the decision.

PRESIDENT:

Yes, thank you, gentlemen. That concludes the hearing.

Decision reserved.

HEARING CONCLUDED

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PRESIDENT - JOHNSTON

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