IN THE TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T.2268 of 1989

IN THE MATTER OF AN APPLICATION BY THE SECRETARY FOR LABOUR FOR **INTERPRETATION OF CLAUSE 23(e) OF THE BAKERS AWARD**

RE: PAYMENT FOR PERIOD OF LEAVE

ACTING PRESIDENT

HOBART, 6 March 1990

REASONS FOR DECISION

APPEARANCES:

For the Secretary for Labour	-	Mr J. Evans
For the Federated Miscellaneous Workers Union of Australia, Tasmanian Branch	-	Mr K. O'Brien
For the Bakery Employees' and Salesmen's Federation of Australia - Tasmanian Branch	-	Mr P. Nielsen
For the Tasmanian Confederation of Industries	-	Mr T. Edwards with
	-	Mr S. Clues

DATE AND PLACE OF HEARING:

27 February 1990 Hobart

This matter concerns an application by the Secretary for an interpretation of the Bakers Award pursuant to Section 43 of the Industrial Relations Act 1984.

More particularly the applicant seeks an interpretation of Clause 23(e) - "Payment for Period of Leave".

The words concerned are expressed in the award thus:

> "All employees, before going on annual leave, shall be paid the amount of wages they would have received in respect of the ordinary time they would have worked had they not been on leave during the relevant period."

The same issue was before President Koerbin (as he then was) in matter T.1837 of 1989. His interpretation issued on 4 May 1989, was found not to amount to a declaration under Section 43(4) of the Act by an Appeal Bench in its decision* of 26 July 1989.

During the subsequent period the Secretary has been unable to enforce the interpretation given by the former President, and as a consequence he has lodged the present application.

However, a threshold issue was raised by the Federated Miscellaneous Workers Union of Australia, Tasmanian Branch (FMWU). Mr O'Brien, for that organisation referred to particular words used by the former President in his interpretation of 4 May 1989, which had not formed part of the submission put to the Full Bench in that matter but which he feels should have.

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* T.1985 of 1987

It was felt that if matter T.1985 was relisted and such alleged "new material" was put to the same Full Bench it may well be sufficiently persuasive to cause the Bench to reconsider its earlier findings that no declaration had been made and therefore there could be no appeal.

The FMWU position was supported in its request for a reference back to the Full Bench by the Bakery Employees' and Salesmen's Federation of Australia - Tasmanian Branch and the Tasmanian Confederation of Industries.

The agent of the Secretary raised no objection to the course of action suggested.

Before deciding this threshold question I have conferred with the two other members of the Bench which dealt with appeal matter T.1985 of 1989.

However, taking those views into consideration I have decided not to grant the request for relisting that matter which has already been decided, for the following reasons:

1. The decision issued by the Full Bench went directly to the question of jurisdiction to further hear the appeal, and it made a finding of fact that the President had not made a declaration.

2. Only where a declaration is made can an appeal lie.

3. Even if there was to be room for further argument based upon actual words used by the former President, the fact is no declaration was lodged in the office of the Registrar and filed by the Registrar, pursuant to the requirements of 43(5) of the Act.

4. Upon publishing its reasons for decision the Full Bench became *functus officio* and has declared, and can no longer change its final mind.

Certain parties both supported the application to refer this matter back to a Full Bench and at the same time urged a quick resolution to the problem of not having an enforceable decision. However, it should have been obvious that whatever course followed the interruption to the present hearing further delay in reaching a final position would be inevitable.

And the Commission's present heavy case load with limited resources means that restoration of this matter to the hearing list will be far from immediate.

The earliest this matter can be reprogrammed for hearing will be the 3 May 1990. However, this or whatever later date best suits all principal parties will be advised by separate notice.

THE STAMP OF THE TASMANIAN INDUSTRIAL COMMISSION

A. Robinson
ACTING PRESIDENT