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## **TRANSCRIPT OF PROCEEDINGS**

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O/N 1842

### **TASMANIAN INDUSTRIAL COMMISSION**

#### **DEPUTY PRESIDENT P.C. SHELLEY**

**T No 12082 of 2005**

**T No 12083 of 2005**

#### **GENERAL CONDITIONS OF EMPLOYMENT AWARD, COMMUNITY AND HEALTH SERVICES (PUBLIC SECTOR) AWARD, SEA FISHERIES AWARD AND POLICE DEPARTMENT EMPLOYEES**

**Application pursuant to the provisions of  
section 23(2)(b) of the Industrial Relations Act 1984  
by the Community and Public Sector Union (State Public  
Services Federation Tasmania) Inc to vary the above awards  
re vehicular expenses and expense related allowances**

**HOBART**

**9.30 AM, WEDNESDAY, 8 JUNE 2005**

**This transcript was prepared from tapes recorded  
by the Tasmanian Industrial Commission**

**HEARING COMMENCED**

**[9.30am]**

PN1

MR R. MILLER: I appear on behalf of the Community and Public Sector (State Public Service Federation Tasmania) Incorporated.

PN2

MR P. AIKEN: I represent the Health Services Union of Australia, Tasmania No. 1 Branch.

PN3

MR P. BAKER: I appear on behalf of the Minister Administering the State Services Act.

PN4

THE DEPUTY PRESIDENT: Thank you. Now, I am satisfied that notice was served on a number of other organisations who aren't here today, so I will take their absence and lack of communication as being consent to the application. Now, who am I hearing from first? Mr Miller?

PN5

MR MILLER: If the Commission pleases.

PN6

THE DEPUTY PRESIDENT: It is just that you are seated furthest on the left and it works nicely to the right.

PN7

MR MILLER: I am seated furthest on the right, madam, not that that should be taken as any indication of my political leniency, of course.

PN8

THE DEPUTY PRESIDENT: My left.

PN9

MR MILLER: Your left indeed. Seeing as that Mr Baker is now joining us at the bench in a rather unusual capacity, I thought that a certain quote may be applicable, that:

PN10

*How does a man benefit if he gains the whole world and loses his soul in the process, for is anything worth more than his soul? - Mark 8:36-37.*

PN11

And it was also this week in history, ma'am, that an American feminist in 1872, Ms Susan Anthony, was fined for trying to vote in a Local Government election in America, of course. She refused to pay; a forerunner of equal opportunity and - where is the name of it - emancipation franchise - electoral franchise, I suppose. Not that that relates to anything today, but I just thought it was a little appropriate entre into what we are doing today.

PN12

General Conditions of Services Award and Community Health Services in these two matters, ma'am, are as per the normal process which this Commission and the various unions and employee goes through. There are no threshold issues that I am aware of. These applications, both of them - or all of them - mirror the methodology that has been laid down by this Commission under T833 of 1987 and T33 of 1985, being the expense related allowances formula, and the vehicular expense related allowances as well.

PN13

THE DEPUTY PRESIDENT: Why is it a myth?

PN14

MR MILLER: I beg your pardon.

PN15

THE DEPUTY PRESIDENT: Did you say, "Of the myth laid down by," - - -

PN16

MR MILLER: No. No, the methodology.

PN17

THE DEPUTY PRESIDENT: Mythology or methodology, which?

PN18

MR MILLER: Not mythology by any means. It is a method.

PN19

THE DEPUTY PRESIDENT: Thank you, methodology.

PN20

MR MILLER: Some people may seem to think that is all a myth, but I assure you it is not. The Commission has a copy of all the calculations that have arrived at - or that have been used to arrive at the percentage increase claim, I believe. These determine the appropriate percentage increases by subtracting the previous quarterly CPI and from the weighted average of the eight capital cities indices, the documents as in front of you and the claims are an agreed matter between all parties.

PN21

They have been calculated and checked with Mr Baker and my colleague on my left, Mr Aiken. The claim does not impinge upon the wage fixing - the recent wage fixing principles. It satisfies all those principles adopted by the TIC. There is no indication that there is any incapacity to pay, and as such I would commend the application to you with a date of application from the date of decision. I have no further issues to put in front of you, unless you have any questions.

PN22

THE DEPUTY PRESIDENT: Yes, I do. How do you arrive at the within Tasmania figure as compared to the outside Tasmania figure?

PN23

MR MILLER: For which claim, ma'am?

PN24

THE DEPUTY PRESIDENT: For the expense related allowances. For example, the overnight. You have got a rate for Sydney, a rate for Tasmania, another rate for outside Sydney. You refer to the methodology. I just would like you to refresh my memory as to how the Tasmanian figure is arrived at. I mean, just as an observation - - -

PN25

MR MILLER: That is all right, ma'am.

PN26

THE DEPUTY PRESIDENT: It is not a finding, by any means. It is certainly obiter, but I would note that the figure for Tasmania actually bears no relation at all, as far as I can tell, to the actual cost of accommodation in Tasmania.

PN27

MR MILLER: To the best of my recall, we go back to October 1987, under T833 of 1987 at a Full Bench hearing of the Deputy President, Messrs Gozzi and Watling at the time, the CPSU in a Court with the Number 1 Branch HEF, Mr Linnell, Stevens with McKabe etcetera came to a formula for the increase in expense related allowances. How indeed that particular rate was set for Tasmania, I am unsure. I would have to do research to find out what my colleagues did 20-odd years ago.

PN28

THE DEPUTY PRESIDENT: Okay. And ever since then, the formula has been applied, starting from that base rate.

PN29

MR MILLER: It has.

PN30

THE DEPUTY PRESIDENT: So it has not actually being tested against current rates in any way? You are just - - -

PN31

MR MILLER: I would suggest that is the case, ma'am. Certainly since the Commonwealth Games - was it the Commonwealth Games or the Olympic Games in Sydney recently - reasonably recently. There was a significant increase in accommodation rates, and it would appear to me - and I haven't got anything in front of me to significantly prove my contention - but having done these things for a considerable period of time, it seems to me that from that point in time, accommodation rose fairly significantly, not only in Sydney but also throughout the rest of the nation. Post the games, those prices did not fall back again to their previous levels, and since then there has been, to my certain knowledge - I have had many personnel from a Statewide basis continuously indicate that the current levels within the award are insufficient for their needs, especially within Tasmania.

PN32

THE DEPUTY PRESIDENT: I mean, what you do is you take the weighted average of the eight capital cities - - -

PN33

MR MILLER: Yes.

PN34

THE DEPUTY PRESIDENT: - - - and that is how it moves, but if it started from a base that was fixed back in 1987, the differential between Sydney and Hobart, for example, may have been completely different to the differential between Hobart and Sydney now, but you have continued from the same base.

PN35

MR MILLER: I don't disagree with you. I don't disagree with you, and as I was about to say, that matter is a matter of contention with this organisation and I believe other unions who are party to this award, and from the best of my recall and knowledge, certainly the CPSU and I believe Mr Brown of HEF are attempting to negotiate with Government as part and parcel of the Public Sector Wages Agreement that was recently - well, in the last two or three years - passed, to review the database or the base level of expense related allowances. Because it is recognised, I believe, that there has been a considerable change in expenses which haven't been reflected in the award.

PN36

THE DEPUTY PRESIDENT: And I would say the relativities are wrong, maybe.

PN37

MR MILLER: I can't tell you what level those discussions are at at the present time, but I am aware that there have been some discussion with Government through the union movement in an attempt to put the award expense-related allowances on a more equitable footing. Certainly there has also been a directive from the previous State Service Commissioner that there are three means now by which a person can claim expense-related allowances: the first being standard award entitlement; the second being that a person can - and you will have to excuse me, I can't indicate that my comments are 100 per cent accurate, but they are pretty damn close, I think.

PN38

THE DEPUTY PRESIDENT: You can claim reasonable actuals if the award rate isn't going to cover it.

PN39

MR MILLER: You can claim reasonable actuals of 5 per cent over the award rate without the necessity to provide receipts, and if that is not possible or is inadequate, then a head of agency can pay on actual receipts. That is if you are in a situation where you cannot provide your - well, purchase accommodation at the rates shown within the award or 5 per cent plus, then you can present receipts of expenditure to your head of agency, who would then ensure that that is correct; that those are payable, and you would be paid on that.

PN40

THE DEPUTY PRESIDENT: Which obviously carries quite a large administrative cost compared to simply claiming an allowance that would be - that should be realistic.

PN41

MR MILLER: Ma'am, in these days and ages, I don't think that the administrative costs would be anything like that they would be years ago when it was personally done.

PN42

THE DEPUTY PRESIDENT: It would be simpler to have an allowance, though, than a trail of receipts provision.

PN43

MR MILLER: Look, I quite agree. I quite agree, but however, that is the situation as I know it at this point in time. I am aware that Mr Brown of the HEF and my colleague or my - - -

PN44

MR AIKEN: HSUA.

PN45

MR MILLER: Sorry?

PN46

MR MILLER: HSUA, I beg your pardon. Sorry - has in the recent past been attempting to have negotiations with Government, and Mr Aiken may be more aware of the outcome of that - the process of that that - than I am.

PN47

THE DEPUTY PRESIDENT: When is the next State Service Wage Agreement?

PN48

MR MILLER: I think it is 2006. That is when it falls over - or comes out of - I think it might be December 2006, I don't think it is, though. And if you give me one moment, I might be able to give you that information.

PN49

THE DEPUTY PRESIDENT: No, that is all right. If the reference to actuals isn't included in the next State Service Agreement then we are back to what is in the award, so it is relevant, what is in the award.

PN50

MR MILLER: I missed that, ma'am. I am sorry.

PN51

THE DEPUTY PRESIDENT: I said if the next State Service Agreement, for whatever reason, doesn't include the provisions about payment of actuals, then people must fall back on the award. So it is important that the award remain relevant.

PN52

MR MILLER: That may well be so. Hopefully between that period and 31 December 2006 - I would be very hopeful that the parties can come to an outcome which would satisfy your concerns.

PN53

THE DEPUTY PRESIDENT: Well, wouldn't it be more appropriate to be part of the State wage case, to make this a more relevant amount?

PN54

MR MILLER: Ma'am, I am just a mere functionary.

PN55

THE DEPUTY PRESIDENT: Well, certain statements have now been put on the record.

PN56

MR MILLER: I will ensure that my leader has those in front of him, and he will no doubt take note and move accordingly.

PN57

THE DEPUTY PRESIDENT: Yes, thank you. Continue.

PN58

MR MILLER: I don't think I have anything more to add. Perhaps it is better that I sit down and shut up now. If the Commission pleases.

PN59

THE DEPUTY PRESIDENT: Thank you. Mr Aiken?

PN60

MR AIKEN: Thank you, Deputy President. Look, I can't really shed any light on the questions that you have put forward. I can confirm there are discussions under way between Government and the unions in relation to the allowances, and I think there is a general recognition on both sides that the allowances have to be relevant. I support the application of variation - or my organisation does - because we still need to move the award while those discussions are taking place, and I will take on board some of your comments about the State wage case. Like I said, I can't add - shed any light - - -

PN61

THE DEPUTY PRESIDENT: Yes. I mean, if we are going to revisit the basis on which the allowances are calculated, I would suggest that it would need to be part of the State wage case.

PN62

MR AIKEN: Look, I have got to say, I haven't been informed - - -

PN63

THE DEPUTY PRESIDENT: Well, it would need to be before a Full Bench.

PN64

MR AIKEN: Yes.

PN65

THE DEPUTY PRESIDENT: But obviously it does cause me some concern that it is supposed to be an expense-related allowance, and empirically at least it would seem that the allowance does not cover the expenses.

PN66

MR AIKEN: As I said, I think there is general recognition by all sides that that would be the case. As I said, I will take back those - the comments.

PN67

THE DEPUTY PRESIDENT: I am talking about the overnights in particular.

PN68

MR AIKEN: Yes.

PN69

THE DEPUTY PRESIDENT: Yes.

PN70

MR AIKEN: Yes, I sort of thought that might be the case.

PN71

THE DEPUTY PRESIDENT: Yes.

PN72

MR AIKEN: All right. As I said, my organisation would like to support the award variation - or indicate a support.

PN73

THE DEPUTY PRESIDENT: So that is all of the variations, expense-related, vehicular - - -

PN74

MR AIKEN: The matters within both applications.

PN75

THE DEPUTY PRESIDENT: Yes, thank you.

PN76

MR AIKEN: Thank you, Deputy President.

PN77

THE DEPUTY PRESIDENT: Thank you. Mr Baker?

PN78

MR BAKER: Thank you, Deputy President.

PN79

THE DEPUTY PRESIDENT: Mr Baker, the man without a soul - and that has been alleged.

PN80

MR BAKER: Yes, apparently. Yes, I am not too sure how I should respond to the drivel that Mr Miller has brought to the Commission. I have noticed over the years that invariably he commences his submissions with some form

of diatribe just to cover up the inadequacies that the CPSU have, and again have continued to demonstrate that this morning in relation to matters presented to the Commission.

PN81

The application is supported by the Minister, and should the allowances as discussed between yourself and Mr Miller not be adequate, then Mr Miller's organisation has an avenue in which to address that. I would suggest that perhaps his organisation, if they are concerned about the fact that their members are missing out, should try and do something about it. Thank you.

PN82

THE DEPUTY PRESIDENT: You have the opportunity to respond, Mr Miller.

PN83

MR MILLER: Yes. Thank you, ma'am. Unfortunately, Mr Baker, with his normal sense of humour, makes broad, wide, sweeping statements without any proof or evidence behind them, but that is what we have come to expect from Government sides these days. And of course as I have already indicated on transcript, we are attempting and we have recognised the union movement. That is, have recognised the inadequacy of the allowances. As you have indicated, everybody in this room, as well as Mr Baker, is well aware that we are trying to do something about those in a spirit of some co-operation.

PN84

And it is very interesting to note your opening comments, of course, that of all the unions put down here as parties to this award and invited to attend and make comment, only two do so, including I believe his own previous - yes, his own previous union. However, I have nothing further to add to that, ma'am, and as I say - as Mr Baker indicated, all parties commend the application to you. If the Commission please.

PN85

THE DEPUTY PRESIDENT: Thank you. Well, I indicate to the parties that the awards will be varied in the manner sought and a written decision and orders will be issued in due course. The matter is adjourned. Thank you.

**ADJOURNED INDEFINITELY**

**[10.00am]**