



TASMANIA

Tasmanian Industrial Commission

Industrial Relations Act 1984

T No. 6903 of 1997

IN THE MATTER OF an application by
the Tasmanian Chamber of Commerce
and Industry Limited to vary the
Cleaning & Property Services Award

Re: Clause 30 - Superannuation

DEPUTY PRESIDENT JOHNSON

HOBART, 24 April 1997

TRANSCRIPT OF PROCEEDINGS

Unedited

(WOULD PARTIES PLEASE READ THIS TRANSCRIPT CAREFULLY)
(ANY QUERIES SHOULD BE DIRECTED TO THE COMMISSION WITHIN 14 DAYS)

DEPUTY PRESIDENT: I'll take the appearances please for the TCCI.

5 **MS THOMAS:** Jenny Thomas for the Tasmanian Chamber of Commerce and Industry, unfortunately my organisation is having a particularly bad day, and I would like to apologise for a late appearance today, both to you and to Mr O'Byrne. On this occasion I wasn't aware that the hearing was on at all, so if it pleases.

DEPUTY PRESIDENT: Thank you Ms Thomas, Mr O'Byrne?

10 **MR O'BYRNE:** If the commission pleases I appear on behalf of the Australian Liquor, Hospitality and Miscellaneous Workers Union, Tasmanian Branch, and I also have to offer some apologies on behalf of our organisation - not personally - I wasn't aware that this was raised, but having that being said I'm sure that we can expedite the matter, if the commission pleases.

15 **DEPUTY PRESIDENT:** You should be thankful you're not having the day that Ms Thomas is having. I sympathise with you Ms Thomas, would you proceed please?

20 **MS THOMAS:** Yes, this is an application to include a new subclause 38 in the Cleaning and Property Services Award, which will allow the company, Cleanco, to contribute into a superannuation fund other than the fund specified in the award, that is the Australian Retirement Fund. Cleanco wish to make their superannuation contributions on behalf of their employees into the National Mutual Simple Super Fund.

25 In deciding whether or not, Mr Deputy President, you will approve this particular application the commission needs to have regard to section 32(1B) of the *Industrial Relations Act*. This section of the Act states:

30 *In making or varying an award in relation to payment of contributions to a superannuation fund, the Commission must not refuse to make or vary that award if the superannuation fund -*

(a) is a complying superannuation fund; and

(b) is one which the Commission is satisfied meets the wishes of employees.

35 In terms of the first point there, that the fund is a complying superannuation fund, in quickly going through the documentation I have available I do not appear to have a copy of the standard compliance notice from the Insurance and superannuation Commission in relation to this fund. I recently processed a matter involving this fund, perhaps two weeks ago, before this commission,

and I will undertake to fax that compliance notice to you on my return to the office. But I would submit that this fund is a complying superannuation fund.

5 The second point is that you must be satisfied that the fund is one which meets the wishes of employees. I have a package of documents here, Mr Deputy President, that should satisfy you that the fund is indeed one which meets the wishes of employees.

MR O'BYRNE: Is it also possible if I may have a copy of those documents as well?

10 MS THOMAS: Yes, in my haste to travel up to the commission I only took one copy, as I thought the union wouldn't appear, typically union organisations don't appear but -

DEPUTY PRESIDENT: I'll ask Mrs Gillie to copy these for you immediately after the hearing Mr O'Byrne.

15 MR O'BYRNE: Thank you, Mr Deputy President.

MS THOMAS: The first two pages are statutory declarations completed by Wayne Robert Hall, the proprietor and partner of Cleanco. The first statutory declaration declares - or sets out - all employees working at Cleanco covered by the Cleaning and Property Services Award. On a quick count there are 14 employees identified there.

The second statutory declaration completed by Wayne Hall declares as follows:

25 *I do hereby solemnly and sincerely declare that all employees of Cleanco employed under the Cleaning and Property Services Award were provided with the following documentation, before being asked to nominate the superannuation fund into which they wanted their contributions to be made.*

30 *Simple Super Summary, ARF Summary and Simple Super Product Booklet.*

35 I have the originals of these documents here. The National Mutual information comprises three pages, the ARF Summary is again four pages, and the Simple Super Booklet. I only have one copy of those. That information, typically, sets out the fees and charges associated with each fund, rollover provisions and death and disability provisions.

Now the next 13 or 14 pages, 14 statutory declarations completed by each employee of Cleanco. This is somewhat of an unusual approach, typically we present the commission with an employee acceptance

form, but on this occasion the employees have in fact completed an individual statutory declaration signed in the presence of a Justice of the Peace. Each of those statutory declarations states:

5 *I am presently employed by Cleanco under the Cleaning and Property Services Award. It is my wish that superannuation contributions made by Cleanco on behalf of myself, be directed to the National Mutual Simple Super Fund in lieu of ARF, the fund presently nominated in clause 30 as applying to Cleanco. My decision is based on a process of informed consent involving*
10 *meetings conducted by representatives from National Mutual and the award nominated industry fund, ARF. I further declare that my decision is made without duress.*

So each of the 14 employees has completed one of those statutory declarations. So my submission, Mr Deputy President, those
15 documents should satisfy you that the proposed fund, National Mutual Simple Super Fund, is in fact a fund which does meet the wishes of employees.

Now the final document which is - I think the last page you should have before you - is a copy of a letter I forwarded to Pauline Shelley of
20 the Australian Liquor, Hospitality and Miscellaneous Workers Union, advising her of my intention to make this application, and seeking her response to that. At this stage I haven't received a reply to that letter so I assume that the ALHMWU doesn't have a problem with the application as before you today.

25 Unless you have any questions Mr Deputy President, I'd ask that the award be varied in the terms sought, subject to my providing you with that compliance information, operative from the first full pay period to commence on or after today's date.

30 I might just say also that the award doesn't offend the public interest requirements of the Act, and is in accordance with the Wage Fixing Principles. If it please the commission.

DEPUTY PRESIDENT: Thank you Ms Thomas. Mr O'Byrne do you want to -

35 MR O'BYRNE: Yes, I will put a few comments on the record, Mr Deputy President. I will take the last few minutes coming up to speed on this issue, it's the first that I personally have seen the documents mentioned by Ms Thomas. I note the letter to the Divisional Branch President of the ALHMWU, Pauline Shelley. It is the only evidence of negotiation between the parties, so I will say that on that basis, to the
40 extent of the letter, the negotiations have taken place to a point.

The only concern - obviously the Act is fairly clear in making applications to vary the superannuation clause of the Cleaning and Property Services Award - it outlines the requirements, it outlines what has to be done, I believe in all but one of those cases this has actually been done.

The concern that we do have - and I'm not questioning the bona fides of Ms Thomas, National Mutual or Cleanco - we as an organisation, to satisfy ourselves and the membership, not only at Cleanco, but across the industry, must be satisfied that it is a complying fund. So in respect of that issue, I know Ms Thomas gave the undertaking to fax to you the compliance statement from the appropriate fund to you, we'd also request that same situation happen to us, that we get a copy of that. So on that basis, on the provision of the compliance statement, we do not oppose the application from the Tasmanian Chamber of Commerce and Industry in this regard.

DEPUTY PRESIDENT: Mr O'Byrne, I don't want you to feel that you're being taken advantage of because of your lack of personal notice of this matter - whether your principal officers have or have not replied to Ms Thomas' letter is a matter, of course, for them. Nonetheless, I think in the circumstances, if upon returning to your office you should find that there is some unexpected difficulty with this matter, then I would invite you to ring Ms Thomas immediately and inform her.

Otherwise, on the basis of the TCCI satisfying the condition of giving me a copy of the appropriate certificate of compliance, then sending a copy to you, it will be my intention to approve this application since it fulfils the requirements of the Act and the Wage Fixing Principles and contains nothing that, so far as I can see, is contrary to the public interest.

I take that precaution, not to invite you to necessarily invent some opposition, but I don't want you to think that this commission would be inclined to take advantage of the circumstances in which you find yourself, if there should be some real problem.

Those comments aside, the application is granted Ms Thomas, subject to satisfaction of the one condition which is outstanding. Upon receipt of the copy of the certificate of compliance it is my intention to vary the award in the manner sought by the application. The operative date of that variation will be the first pay period to commence on or after today's date.

That concludes, subject to the condition, the hearing of matter T6903 of 1997.

HEARING CONCLUDED