

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 2586 of 1990
T No. 3779 of 1992

IN THE MATTER OF applications by
the Ambulance Employees'
Association of Tasmania to vary
the Tasmanian Ambulance Service
Award

re structural efficiency principle
and deletion of definitions and
salary rates for non-functional
classifications

COMMISSIONER GOZZI

HOBART, 30 March 1993
continued from 29/10/92

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER GOZZI: Are there any changes in appearances in that particular matter?

MR NIELSEN: Yes, Mr Commissioner, and you're good at testing my memory a little, but - forgive me - sorry, I'm little bit confused with - not today that isn't - I thought you were referring back to the previous 10 months.

COMMISSIONER GOZZI: Well yes, I am actually.

MR NIELSEN: Oh, well in that regard, there certainly is, Mr Commissioner. The - Mr Doddridge is now the president of our association and he replaces the then Mr Richardson who was the president at the time and Mr Templar now is our vice president and they are the - but in regards to today, I do seek an apology for Mr Templar and **MR DODDRIDGE** and myself are the - and the changes is Mr Doddridge from -

COMMISSIONER GOZZI: Yes, yes, on the last occasion you appeared with Mr Watson, Mr Chaplin and Mr Richardson.

MR NIELSEN: Yes, Mr Commissioner.

COMMISSIONER GOZZI: Yes, thank you. Miss Cox.

MISS COX: I think from memory, Mr Commissioner, I had Mrs Burgess and Mr Byrne.

COMMISSIONER GOZZI: Yes, you did.

MISS COX: Obviously neither of those are here today.

COMMISSIONER GOZZI: Yes, thank you. As the parties are aware, the decision in that particular matter that's just been called on was an interim decision, and obviously that decision and parts of that decision went to appeal and the appeal has been dealt with.

I had an interest in raising with the parties a number of issues, fundamentally the application was supported by a number of exhibits between the parts, N.1, N.2 and N.3. I think that's correct Mr Nielsen?

MR NIELSEN: Yes, Mr Commissioner.

COMMISSIONER GOZZI: Yes. Those exhibits really should be incorporated in the - in the application and it's my intention to do that.

There are a whole lot of issues unfinished as a consequence of my decision. Is anybody going to make any - prepared to make any comment as to what's happening with some of the proposals and suggestions and the leave reserved matters?

MISS COX: Mr Commissioner, I understood from your associate that you were calling the matter on to see where we were at with the leave reserve matters.

COMMISSIONER GOZZI: Yes.

MISS COX: That's correct. Certainly some of the - I'd like to comment on some of them.

COMMISSIONER GOZZI: Well before we do that - before you comment on that, I just want to check the exhibits that I've got. Exhibits N.1, N.2 and I believe N.3 - they're the three - they're a lot more exhibits than that but they are the -

MISS COX: They're the main -

COMMISSIONER GOZZI: - they are the principal exhibits. So Mr Nielsen and Miss Cox, do you have any problem with including those with the application?

MR NIELSEN: No, Mr Commissioner. They were the fundamental exhibits as you realised. From memory, N.1 was the document that we would - we presented very early - in very early days before the full bench actually to -

COMMISSIONER GOZZI: Yes.

MR NIELSEN: - it was a progress report of those matters that had been agreed to in principle and those matters that were to be arbitrated. I think N.2 was an extension of that to be quite frank of the agreed matters and then I think - although I think we did fall down on one or two matters and some were withdrawn and I think ultimately N.3 was the matters to be arbitrated before this commission.

COMMISSIONER GOZZI: Yes, that's correct.

MR NIELSEN: As you are aware, sir, back - if I may comment whilst on my feet - back some years ago and forgive me when I say some years ago, because quite frankly we have travelled a few years together - you did suggest in a very difficult time - and gosh, I take you around about to 1987, I think it was where we were having some very heavy disputes of a - of a committee being established - and I think we've called for the want of a name - consultative committee - and I suppose since late last year we've been having monthly meetings of a consultative committee made up of with the senior management and the principal officers, and whilst the appeal was on those - those issues weren't dealt with, but since the full bench has handed down its decision we have established - which has already been reported to you on the stand-down or rest and recline - we have established working parties and also working parties on the ambulance technician of which you've given a further order on, and that's again in its infancy and we're

trying to work down that track in regards to a finalisation of that position which is a very sensitive and fairly delicate matter as you realise within our ranks.

COMMISSIONER GOZZI: I understand fully.

MR NIELSEN: And what I say - and it still is - but the decisions have been made and we've been one that's ultimately thing - but there are other matters that I understand the minister's advocate, it was mentioned to me which is to report to you because there were issues we're also aware of the full bench - what I think with great respect I think was - was in '89 was on a public service standards were - or conditions, should I say, were being processed and there have been meetings this year, and whilst I get the copies of the transcript I - excuse me - I'll have to seek my colleague's assistance.

COMMISSIONER GOZZI: Okay.

MR NIELSEN: That - that - well I'm not quite sure, sir, as a member of that bench you're in a far better position that I am to - as I understand the hearings have concluded - if my memory - if my comments - and we're waiting on a decision from the full bench as -

COMMISSIONER GOZZI: Yes, there was a further hearing I think last week, or the - I think it was last week or the week before -

MR NIELSEN: Yes.

COMMISSIONER GOZZI: - and as a consequence of that the full bench has to issue a decision which it's going to do in due course just to determine what course should be taken with respect to the matters you're referring to.

MR NIELSEN: Yes, well that - yes.

COMMISSIONER GOZZI: Just before go, Mr Nielsen, just before Miss Cox starts, then I'll amend the application to reflect exhibits N.1, N.2 and N.3 in accordance with your - with the documents that were tendered up to me at that time.

MR NIELSEN: Yes - you're confusing me a little bit when you're saying you're amending - oh, you're amending the application - oh -

COMMISSIONER GOZZI: Yes, 20th May 1991, was the document signed by you as exhibit N.1, N.2 and N.3.

MR NIELSEN: Yes, well they were always our original documents - our original exhibits on 16th January, if I understand correctly.

COMMISSIONER GOZZI: Right. Yes, that was a letter addressed to you, Mr Nielsen, I'll just show it to you if you haven't got it there.

MR NIELSEN: Yes, that's - that's definitely N.1, Mr Commissioner.

COMMISSIONER GOZZI: Yes, and I'll shown you N.2 and N.3 as well.

MR NIELSEN: That was one signed also by Stephen Haines.

COMMISSIONER GOZZI: Yes, that's right. They were the catalyst for the application.

MR NIELSEN: Oh there was a - oh, oh yes, my colleague is - you were suggesting to me the ones to delete - to delete -

MISS COX: Excuse me, Mr Commissioner, remember the last hearing we had to amend or vary the applications -

MR NIELSEN: Oh yes.

MISS COX: - because there were some matters before you that weren't in the original.

COMMISSIONER GOZZI: Yes, that's in another application - that's in 3779. This just includes these exhibits in the original application for the -

MR NIELSEN: Yes - that's quite factual, yes.

COMMISSIONER GOZZI: Yes, thank you, Mr Nielsen. So I'm going to amend it as of - as of that date to comply with that formality because there is still matters outstanding as well anyway which need to be addressed by these leave reserve matters. Miss Cox?

MISS COX: Thank you, Mr Commissioner.

COMMISSIONER GOZZI: You've got no problem with that.

MISS COX: No, no, Mr Commissioner. If I could just make a comment on where we as far as the matters on the leave reserve list are at this point. The part-time definition, higher duties allowance, callback and Keyboard and Office Assistants Award, in your decision you stated that you're not prepared to vary the existing clauses ahead of what the full bench may determine in matter T.2399 and I guess we'll wait to see what that full bench decision says in relation to those matters.

COMMISSIONER GOZZI: Yes, I -

MISS COX: And if not, well we may come back with either agreed or unagreed positions on those.

COMMISSIONER GOZZI: Well, what I want to point out to you with respect to that is that depending on the full bench decision and I agree with you as far as that goes, I intend to call the application back on, because it's only an interim decision because a lot of my leave reserved comments went to the fact that it ought to be incorporated with the public sector full bench. Now if that's not to be the case it then follows that the matters are then again before me and I'll call them on as I did this morning and obviously give you notice of that so that you can make submissions if that becomes necessary.

MISS COX: I think from memory - and Mr Nielsen can correct me if I'm wrong - was some of those leave reserved matters were agreed between the parties but you deferred ruling on them pending the outcome of the full bench decision.

COMMISSIONER GOZZI: Yes, that's quite so. And notwithstanding that they're agreed, I didn't make a ruling on them -

MISS COX: No.

COMMISSIONER GOZZI: - I just deferred them and no doubt if it comes to that a ruling will have to be made on them - yes.

MISS COX: Communications officers - a working party has been established to look at the requirements for such a course, however it's certainly the government's view that it's the prerogative of the director and not this commission to determine the qualifications deemed relevant for the - for that category of staff.

COMMISSIONER GOZZI: Which one are you talking about now?

MISS COX: Communications. On the leave reserved list it had -

MR NIELSEN: Page 25.

MISS COX: Communications officers - rates of pay - communications course and qualifications deemed relevant.

COMMISSIONER GOZZI: Yes.

MISS COX: Now as I just indicated that working party has been established to develop the course for communications officers. Certainly rates of pay would come back to this commission to

be work-valued at the appropriate time, but it's with regard to qualifications, it's our view that the director of ambulance services under the Ambulance Service Act 1982 has the power to determine what qualifications are deemed relevant for such category of staff.

COMMISSIONER GOZZI: Well you asked for a variation of the - of the existing structure.

MISS COX: That's correct.

COMMISSIONER GOZZI: And I think simply what that does is to say, well look, you need to support it somehow.

MISS COX: I mean what we're saying is that when the course has been established particularly as training and to go we'd come back to have them work valued at the appropriate time.

COMMISSIONER GOZZI: When will that be?

MISS COX: Well as I said, a working party has only just been established. A lot of these matters weren't subject to discussion pending the outcome of the full bench appeals but as Mr Nielsen has indicated we are -

COMMISSIONER GOZZI: But that wasn't subject to appeal.

MISS COX: We didn't discuss many of these at all till that was over.

MR NIELSEN: If I may comment, Mr Commissioner, during that period things were a little bit delicate and we didn't seem to desire to touch on - well I suppose for the want of a - we endeavoured to maintain a fair amount of industrial stability and I think to pursue those matters at that point of time may have inflamed things a bit or unsettled that stability.

COMMISSIONER GOZZI: Fair enough. Miss Cox.

MISS COX: With regard to living away from home, staff amenities and travelling allowance I wish to advise you that the parties are continuing their discussions on these matters, and certainly when we are in a position of either agreement or disagreement we will be back before you to have them ratified or arbitrated, depending on what our final positions are.

With regard to ambulance technician Mr Nielsen has already indicated that a working party has been established to look - between senior management and representatives from the Ambulance Employees' Association - to work out the manner in which this classification is going to be introduced into the ambulance industry.

With respect to quota and entry requirements the government is of the view that the commission doesn't have jurisdiction in these matters.

We believe that it is a fundamental right of the employer to determine how and by whom the operations within an agency will be carried out.

And, as I indicated before, under clause 6(g) of the Ambulance Service Act it says, inter alia, 'It is the function of the Director to determine the qualifications required to be held -'

COMMISSIONER GOZZI: Look, I have got no misunderstanding about that section. It just never ceases to amaze me that we've gone through a difficult proceeding that these matters were put before me by the parties, they are leave reserved, and if it is your submission when the matters come on that I shouldn't deal with them, that's fine. But they arise out of joint submissions by yourself and Mr Nielsen. That's why they are on there.

MISS COX: With respect, Mr Commissioner, in our submissions we never asked the commission to determine the number of ambulance technicians, or the quota that would be in place.

COMMISSIONER GOZZI: Miss Cox, you put up a proposal, or referred to a proposal, which in fact was a letter - if I recall correctly - to the Ambulance Association dealing with the issue of quotas. I think -

MISS COX: I think the question arose from you. You asked what sort of number you thought we had, and I think from memory I indicated about 30%. But that was never part of our submission.

COMMISSIONER GOZZI: Well, whether it was part of your submission, it is part of the decision.

MISS COX: What I am saying is, we didn't ask the commission to rule on the quotas. We never envisaged that they had the jurisdiction to do so.

COMMISSIONER GOZZI: Well, let's put it this way: I would not want to have an argument with you at the moment in a report-back situation, but I'm quite clear where you said - and in fact I quote you on page 24 of the decision:

... the actual number would always be less than half the number of on road staff.

We've estimated the number would probably be closer to 30 per cent -

MISS COX: That was in response to -

COMMISSIONER GOZZI: Quote:

I was also made aware that prior to the discussions breaking down between the Association and the Minister the Tasmanian Ambulance Service had agreed to:

(i) The entry requirements for Ambulance Technician level to be the same as for Student Ambulance Officers; and

(ii) The training for an Ambulance Technician Officer to be articulated with, and accredited to, the Student Ambulance Officer course.

Miss Cox submitted that these proposals were put by the Association in the first instance and were agreed by the Tasmanian Ambulance Service. A further proposal put by the Association to guarantee Ambulance Technicians the right to transfer to a Student Ambulance Officer position on request was rejected by the Ambulance Service.

I support the submissions of Miss Cox on that particular point. I am attracted however to the proposals outlined in (i) and (ii) above -

- which I have referred to, and that is (1) being entry requirements being the same, and (2) that the training be articulated. So, I said I am attracted to those proposals -

- and I recommend that the parties hold further discussions on them with a view to incorporating appropriate provisions in the award. In the event the matter cannot be settled by negotiation, Leave Reserves is granted on those issues.

Now I see that totally consistent with what happened in the proceedings.

If at some point in time you want to take a jurisdictional argument with me on that you are of course free to do that, and I will deal with it at that time.

But I am disappointed, in the context of the proceedings, the spirit and intent of this decision, that you stand here today in a report-back situation and make a submission of that nature.

MISS COX: All I am saying, Mr Commissioner, is that the quota - that is the number of ambulance technicians in the system -

was never part of our formal submission. It was in response to a question from the bench as to how many people would be employed as ambulance technicians. That was in response to that.

COMMISSIONER GOZZI: Well, look, without going back to pages 255 and 256, which you are able to do as easily as I am, I say in that context I had regard for the submissions of Miss Cox.

Now, whether it is in response to a question or not, they are still your submissions in respect to a query from the bench.

In any event, I think I have clarified my thinking and my position on it, and if the matter is not able to be resolved by the parties, as I have indicated there, because I recommended that further discussions take place, if it can't be resolved I said that leave is reserved on that particular matter and all those issues, and if at that time the submission is that I shouldn't deal with it, well I will deal with it at that point in time.

MISS COX: Thank you, Mr Commissioner.

COMMISSIONER GOZZI: Mr Nielsen?

MR NIELSEN: Well, Mr Commissioner, it is early days with respect to the - we've got back to negotiations - we set again if I understand correctly as far as the consultative committee is on the 6th of April, and the other matters with the working party they are starting to get into gear; and the ambulance technician, to be very frank with you again, is a matter that has been fought, argued and debated.

It is still a delicate issue amongst the workforce and we are trying to hopefully to come to a common understanding between management and ourselves as to what the requirements of entry and the quota is.

And in regard to - perhaps if a reflect on rest and recline - there has been we believe a moving towards some accommodation in that position.

And we would hope that that attitude may prevail in regards to the ambulance technician position now that it is quite clearly an established classification, and to be quite frank with you, Mr Commissioner, in regard to the other matters.

As you are only too well aware we live in a fairly volatile industry and there are other matters that may or may not be before you as time develops away from these proceedings.

COMMISSIONER GOZZI: As I'm trying to indicate, I am totally aware of the sensitivity of some of these issues. Putting the ambulance technician classification in and agreeing to it

wasn't taken lightly and I thought I tried to make it clear in the decision that if there was going to be a problem with it that leave is reserved because I had regard for some of the proposals which were canvassed in the proceedings. Now whilst I rejected the notion of quotas - I think I say that in the decision - I nevertheless supported the proposals outlined in the paragraphs to which I have referred to.

And I said - I quoted those paragraphs and I'll quote them again:

I was also made aware that prior to the discussions breaking down between the Association and the Minister, the TAS had agreed to:

(i) the entry requirements for Ambulance Technician level to be the same as for Student Ambulance Officers.

So the ambulance service had agreed to that. And, secondly:

(ii) that training for an Ambulance Technician Officer be articulated with, and accredited to, the Student Ambulance Officer course.

Now I've endorsed that. I said I'm attracted to what the TAS had agreed to.

MISS COX: Mr Commissioner, with great respect, we haven't backed away from that. That is still our position.

COMMISSIONER GOZZI: Yes, and simply in the context of the proceedings I said if there is ultimately going to be a problem with those particular matters and, indeed, the number of ambulance technicians, that those matters are on leave reserved. And in the context of the proceedings, as I've indicated, I'm extremely disappointed to hear the jurisdictional argument that is being put to me having regard to the entirety of the proceedings.

And just to make it perfectly clear, in the event that the parties can't reach agreement on any of those leave reserved matters, it's my intention to call the matter back on at the request of any of the parties and I will deal with the jurisdictional argument as and when they arise.

My intention this morning was simply to ascertain what progress was being made with respect to those issues.

MR NIELSEN: Well, Mr Commissioner, I only want to comment to say that it's been an accomplishment to get the parties - or I

suppose to be fair - get the association back on track to start - have discussions. That hasn't been an easy matter, to be frank, Mr Commissioner, but that has been established and we hope to progress positively accordingly.

COMMISSIONER GOZZI: Well at least that sounds positive. All right, thank you, Mr Nielsen. I'll adjourn both matters, T.2586 of 1990 and T.3779 of 1992, sine die. Thank you.

HEARING ADJOURNED SINE DIE