

IN THE TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T. No. 380 of 1986

IN THE MATTER OF an application
by the Australian Mines and
Metals Association for
interpretation of the
Restaurant Keepers Award

re industrial catering

PRESIDENT

HOBART, 10 June 1986

TRANSCRIPT OF PROCEEDINGS

PRESIDENT: I will take appearances thank you.

MR TAYLOR: Thank you, Mr President. My name is **TAYLOR, T.J.** I appear for Australian Mines and Metals Association.

PRESIDENT: Thank you, Mr Taylor.

MR ABEY: If it pleases the Commission, I appear for the Tasmanian Chamber of Industries, **ABEY, T.J.**

PRESIDENT: Thank you, Mr Abey.

MR BUTLER: If it pleases the Commission, **M.G. BUTLER** appearing for the F.L.A.I.E.U., Tasmanian Branch.

PRESIDENT: Thank you, Mr Butler.

MR O'BRIEN: If the Commission pleases, I appear for the Federated Miscellaneous Workers' Union, Mr President. **O'BRIEN, K.**

PRESIDENT: Thank you, Mr O'Brien. Yes, Mr Taylor.

MR TAYLOR: Thank you, Mr President. This is an application for interpretation of the Restaurant Keepers Award. It is made in accordance with section 43 of the Industrial Relations Act and I don't believe that I need to tell you, sir, what the Act does say. However, for the record I refer to subsection (1) of section 43 and read that part:

"At any time while an award is in force, the President may, on the application of an organization with members subject to the award -

(a) declare, retrospectively or prospectively, how the award should be interpreted; and

(b) where that declaration so requires, by order, vary any provision of the award for the purpose of remedying any defect in it or of giving full effect to it."

MR TAYLOR:

Now, sir, in this matter, if in your opinion the award needs to be varied to remedy any defect, we would invite you to do so.

We do not believe that there is any need to but, as the events unfold, we say that you may come to the opinion that the award is defective, then you should use this opportunity to do so.

Sir, this matter comes before you because the Federated Miscellaneous Workers' Union claims, or asserts, that the company, AFCO Industrial Services Group Pty. Ltd., is incorrect in observing the Restaurant Keepers Award in paying its employees employed at Renison Limited, (or employed at the Renison Limited single men's quarters) in Zeehan.

For convenience I will refer to the company as AFCO and I so invite others to do so in the knowledge that we are in fact referring to the company AFCO Industrial Services Group Pty. Ltd.

AFCO is a company registered in Sydney and it and/or its other companies of the group provide similar services to those being referred to in this matter throughout Australia.

As background, I would inform you that the single men's quarters are owned by Renison Limited, a mining company working a tin mine at Renison some 20 kilometres' drive from the town of Zeehan.

The single men's quarters are located in the town of Zeehan and it accommodates approximately 50 to 60 employees of Renison Limited.

AFCO is contracted to Renison to provide meals and cribs to the residents of the quarters and to service the rooms, do laundry services, service the ablution blocks, laundries, corridors and recreation areas and to generally

HG/CW - 10.06.86

TAYLOR

MR TAYLOR:

administer and control, or maintain, an acceptable level of order and discipline in the dining and accommodation areas.

This is a fairly general line or common aspect of industrial catering in camps or single men's quarters in the mining industry at least.

The employees of AFCO at the Renison Single Men's Quarters number 7. Four of those 7 employees are involved in kitchen duties as chef manager and manageress, relief cook and kitchen-maid.

These 4 employees, as I understand it, are not in contention as I understand the situation from Mr O'Brien. That is, I understand that he doesn't claim coverage of these employees and he concedes that they are covered by the Restaurant Keepers Award.

The other employees are part-time employees working approximately 3 to 3.1/2 hours per day and are employed under the general classification of kitchen-maid, housemaid, cleaner, as appears in Section III, Industrial Catering, classification (e) of the Restaurant Keepers Award.

I am instructed that their duties are, within individual rooms, (that is the bedrooms of the tenants) to make beds daily, to change linen weekly, to clean mirrors and windows as necessary, to dust sills and blinds and to sweep and mop the floors and approximately 57 percent of their time would be involved in the maintenance of the rooms, if I could put it that way.

In the ablutions, the laundries, corridors, recreation areas - they clean, sweep, mop, dust, replace consumables, empty bins and ashtrays.

In the dining area they clean, sweep, mop, dust et cetera and in the

MR TAYLOR:

kitchen, very occasionally I would emphasize that on occasions they help out, as it were, in assisting with the preparation of vegetables.

There are other miscellaneous associated duties and these would be in the likes of the stock room, further in stocking the Coke machine or the drink vending machine, counting the money from the machine, assisting in the stock room and to pick up papers and other discarded cans and rubbish around the grounds (I think we called it `emu bobbing` in the Army, sir).

So, sir, from the above it is easy to establish that the duties of those 3 people, or those 3 ladies are embraced by the classification category of kitchen-maid, housemaid, cleaner.

One might ask, in their deliberations on this matter - if these ladies are not covered by the Restaurant Keepers Award, what award would cover them? And obviously I would answer `none` sir, but I think it is fair that I analyse possible awards and substantiate my reasons in that regard.

There are possibly 3 potential awards, that is besides the Restaurant Keepers Award, and I would list those as the Insurance Award, the Cleaners Award and the Miscellaneous Workers Award. I intend to deal with those in order as I have mentioned them.

The Insurance Award could only have application if the duties were deemed to be those of cleaners as referred to in the Industrial Relations Act 1984 in Schedule 2, the `Application of Awards`.

To give that meaning we would need to go back to section 40 of the Act, and indeed section 40 (a) and (b), I should say - I should say sections 40 (1) and (2) rather than (a) and (b), sir.

HG/CW - 10.06.86

TAYLOR

MR TAYLOR:

Section 40, sub-paragraph (1), reads:

"Subject to this section, regulations under this Act made for the purposes of this section may extend the operation of an award or any provisions of an award to any work not otherwise subject to the award, and any such regulations may provide for the extension of that operation for a period specified in the regulations."

And then subsection (2):

"Regulations made for the purposes of this section have no effect in relation to any work that, apart from the operation of those regulations, is subject to some other award."

I think at that point we can discard consideration of the Insurance Award as there now exists the Miscellaneous Workers Award and of course we argue that the Restaurant Keepers Award is the appropriate award and that provides for cleaners, amongst other categories, but I will come back to that later on.

The next award that I listed is the Cleaners Award. The Cleaners Award is:

"Established in respect of the trade of cleaning buildings including cleaning of floor coverings, furniture, fixtures fittings and equipment within a building."

To clarify that we need to again go to the Industrial Relations Act, section 33, which deals with the making of awards. Section 33 (1) reads:

"The Commission may make an award in respect of -

HG/CW - 10.06.86

TAYLOR

MR TAYLOR:

(a) all or any private employees employed in an industry;" (and I stipulate industry and I will come back to that) "or

(b) classes of employees employed in an occupation engaged in by private employers and declared by the President under subsection (2) to be an occupation in respect of which the Commission has jurisdiction under this Act."

Now, 'industry', sir, (referring to subsection 3 (1) (a) (sic) of course is defined (and I think I should take you to that) ... 'industry' means:

"... any industry, trade, business, undertaking, profession, calling, function, process, or work performed, carried on or engaged in by a private employer;"

I think it is fairly important to emphasize the private employer aspect of it. In other words, the award under section 33 (1) (a) is made in respect of an industry of the employer as distinct from the industry of an employee.

So, sir, I submit that the Cleaners Award is made in respect of contract cleaners, and I suppose I am taking some licence in saying it is made in respect of contract cleaners but, after all, what other industry would exist for cleaners as an industry per se? That is, it is there - it is applicable to employees of employers engaged in the industry of cleaning and I think generally my colleagues in industry refer to the Cleaners Award as having its application to contract cleaners and I think that sums it up, sir.

Now, AFCO is contracted to Renison to do certain things in the orderly

MR TAYLOR:

conduct of managing the single men's quarters at Zeehan. Certainly within the range of things to be done is cleaning. Cleaning of the nature described in the Cleaners Award is done but, sir, that is not the principal or the sole aspect of the contract that exists between the companies, AFCO and Renison.

AFCO is contractually required to:

"... Provide meals of a described standard and, at certain times of the day, to maintain adequate stocks of good quality foodstuffs and consumables, to store and provide these in an hygienic manner, to service rooms at prescribed frequencies, having regard to the fact that the shift workers are accommodated in the quarters, to account for linen being despatched and received from the laundry, to clean and provision common areas and to administer the quarters - that is to control standards of service to the residents - to maintain acceptable levels of order and discipline in dining and accommodation areas, to maintain a daily register of residents, maintain requirements, damage and other incidentals."

I am sorry, sir, I am repeating myself slightly but I think it is important that it be understood what the contract embraces.

It goes on:

"... to control pests, to do certain things with regard to garbage collection, to clean litter around the quarters ..."

et cetera.

So, sir, I submit that it is not

HG/CW - 10.06.86

TAYLOR

MR TAYLOR:

purely and simply a cleaning contract, it is a contract typical of an industrial caterer as known in the industry. It fits the definition of industrial caterer as contained in the Restaurant Keepers Award, Section III, 'Industrial Catering', at clause 3 (c), and I would read that to you, sir.

"'Industrial Caterer' shall mean an employer carrying on the business of catering and/or providing accommodation for an unlimited number of persons involved in Industrial Undertakings on location where catering is provided for on the basis of a minimum of 2 main meals per day."

Sir, for those reasons, I submit firstly, the employer is contracted to do more than clean, much more, and secondly, the Restaurant Keepers Award refers by way of definition to the type of contract that exists between the two companies.

If one analyses the functions of an industrial caterer in the Restaurant Keepers Award, it is logical that there are cleaning functions to be carried out.

Wherever catering is carried out, wherever persons are accommodated, there will be cleaning to be carried out and in keeping with many other industry awards of this Commission, cleaners are designated, if not precisely as cleaners, as some other classification, such as useful, utility worker, labourer, et cetera.

The fact that the employer is contracted to another to provide a service and that service includes duties that can be isolated out as cleaning, albeit as kitchen-maids or housemaids (domestics alike) that does not make the employer a contract cleaner.

One must look beyond just a small

HG/WL - 10.06.86

TAYLOR

MR TAYLOR:

part of the job - the overall job, that is of catering and/or providing accommodation.

We would submit, sir, that the Cleaners Award is not binding on the company and I now move, sir, to the Miscellaneous Workers Award.

The Miscellaneous Workers Award is relatively new. It was operative from 12 April 1986. It is, in the terms of section 33 of the Act, an occupation-based award, as distinct from an industry award, as indeed are the Cleaners and Restaurant Keepers Awards.

Sir, an examination of the scope clause, that's clause 2 of the award, shows that, and I read:

"Subject to the exceptions and modifications prescribed elsewhere this award shall apply to the work performed by private employees classified as follows ..."

And it goes on then to list a number of classifications including that of cleaner.

The award does not define the word 'cleaner' so one must go to the common meaning and that of one who removes dirt or stains.

On that basis alone, one would have to conclude that the duties of the persons employed by AFCO go well beyond that. That is, whilst they carry out duties that include cleaning, they also have duties of kitchen-maid and housemaid to perform.

If one ventures past the scope clause to the exemption and modifications clause, clause 5, then therein again lies a debarring provision and I refer you to sub-clause (a) of clause 5.

"This award shall not apply

HG/WL - 10.06.86

TAYLOR

MR TAYLOR:

to a private employee who is engaged within an industry where an award or registered Industrial Agreement applies containing a classification of employee embracing the same or similar work as envisaged by the scope and definitions set out in this award."

I might mention that I do not claim that sub-clause 5 (b) applies in this matter, sir. The employer, AFCO, is not in the mining industry as defined. It is contracted to a company of that particular standing, sir.

So, going back to sub-clause (a), sir, the provision of course swings on whether or not the Restaurant Keepers Award applies and whether or not the scope clause of the Miscellaneous Workers Award can be said to apply to the duties of the persons employed by AFCO.

MR TAYLOR:

I, of course, say not and I say not because firstly, the Restaurant Keepers Award does apply and I will come to that shortly, sir, and secondly I say, the duties of the persons involved go beyond the cleaning duties.

The persons employed are employed in accordance with the classification listed in the Restaurant Keepers Award, that of kitchen-maid, housemaid, cleaner.

Now, sir, I leave the Miscellaneous Workers Award at that point, sir, and then turn to the Restaurant Keepers Award.

The Restaurant Keepers Award is made in respect of the industries of (and I quote):

- "(a) Restaurant Keeper;
- (b) Keeper of a boarding house accommodating 4 or more boarders;
- (c) Keeper of a Hostel;
- (d) Caterer;
- (e) Keeper of an Unlicensed Residential Club; and
- (f) Supplier of cooked or prepared food which is not to be consumed on the supplier's premises so long as the supplier is not within the jurisdiction of the Retail Trade Industrial Board."

Now, sir, I think the key word is 'caterer' in there and we'll certainly seek to deal with that shortly, but within the award itself, there are specific provisions for industrial catering and in this regard, I direct your attention in a general sense to Section III of Part I of the award and Section III of Part II of the award.

Now, research has shown that industrial catering was inserted into the award in 1971 and I would tender

HG/WL - 10.06.86

TAYLOR

MR TAYLOR: an exhibit on that, if I may, sir.

PRESIDENT: That will be Exhibit T.1.

MR TAYLOR: Sir, Exhibit T.1 is a determination of the Restaurant Keepers Board dated 22 April 1971 and I direct your attention to page 3 of the exhibit where it will be seen, commencing about a third of the way down the page under variation number 3, by inserting after Part II, the following new part, `Part III: Industrial Catering`.

Within that new Part III, it is appropriate to note, sir, firstly, that the classification table at (d), the classification then was `Kitchenman/Kitchenmaid Housemaid`. `Cleaner` was not then mentioned. That was inserted later in 1975, in fact, and I will come to that shortly, sir.

Whilst staying with the exhibit, I would ask you to note on page 4 the `Definitions`, clause 3, and in particular clause 3(c) and I would read that:

"`Industrial Caterer` shall mean an employer carrying on the business of catering and/or providing accommodation for an unlimited number of persons involved in Industrial Undertakings on location where catering is provided for on the basis of a minimum of two main meal times per day."

Now, of course, that is the same wording as now appears in clause 3 of Section III, `Industrial Catering` of Part II of the award.

It also fits the description of AFCCO, sir.

The term `cleaner` was added in August 1975 and as proof of that, I

MR TAYLOR: would tender another two documents, sir.

PRESIDENT: In what order should I take these, Mr Taylor?

MR TAYLOR: If you take the record of decisions first and then the determination itself, sir.

PRESIDENT: That will be Exhibit T.2 and the other document will be Exhibit T.3.

MR TAYLOR: Thank you, sir.

Firstly, Exhibit T.2 is the `Record of Decisions of the Restaurant Keepers Wages Board Made at a Meeting Held in Hobart on Thursday, 21st. August 1975, Convened for the Purpose of a General Review`.

Exhibit T.3 is the `Determination of the Restaurant Keepers` Wages Board` operative from 21 August 1975.

If I refer to the record of decisions. On the second page, sir, approximately a third of the way down, it will be noted that it is recorded:

"The Board agreed to insert the word `cleaner` in addition to existing classification (e), Clause 2(a), Part III."

And then it requires us to turn to page 22 of Exhibit T.3, and it will be noted there a classification (e), `Kitchenman/Kitchenmaid, Housemaid, Cleaner`. That is the actual section of the determination that was varied to add the word `cleaner` and of course that particular classification structure is within Part III `Industrial Catering`.

So, sir, `Industrial Catering` has been part of the Restaurant Keepers Award since April 1971

MR TAYLOR:

and 'cleaner' has been contained within the classification of 'Kitchenman/Kitchenmaid, Housemaid' since August 1975.

Mr President, I would now like to talk to the application for a moment and in particular the details of provision of award and the specific facts giving rise to the application.

It will be seen from the information provided with the application that the Miscellaneous Workers' Union has asserted that the Restaurant Keepers Award is not the appropriate award to determine the rates and conditions of employment of the employees in question, particularly the kitchenmaid, housemaid, cleaner-type of employee.

The nub of that situation is that another union, the Federated Liquor and Allied Employees' Union, has rights in respect of the Restaurant Keepers Award in clause 21, at page 14 and the rates for cleaners under the Miscellaneous Workers Award are higher than those covered by the classification said to be applicable to the AFCO establishment.

So that if it is held that the Restaurant Keepers Award, Section III, 'Industrial Catering', cannot be properly interpreted to apply to establishments such as AFCO then another award, probably the Miscellaneous Workers Award applies in part, that is to the part that the cleaning duties apply in the occupation or the duties carried out by the employees at the AFCO camp.

I now refer you to your decision, sir, of 20 February 1985 in T.30 1985, in which you set down some preliminary observations regarding the manner in which questions of interpretation should be addressed and deal with some of those in relation to the matters before you today, sir.

HG/JR - 10.06.86

TAYLOR

MR TAYLOR:

The first of those observations, and I read:

"Construction or interpretation of award provisions can only be made by considering their meaning in relation to specific facts.

It is futile to attempt such an exercise in any other way."

The `specific facts`, sir, are before you in that I have set out the duties of the ladies in question. They perform duties as I have placed before you earlier, sir. I don't believe that I need to repeat them, suffice to say that they go beyond simple cleaning. They go to kitchen and dining room duties to domestic-type duties of servicing bedrooms and common-rooms as well as some cleaning functions; cleaning functions (I would add, sir) that in essence are the functions of a housemaid in any general sense.

I go then to your second principle in those observations:

"It must be understood that in presenting an argument in support of or in opposition to a disputed construction relating to an award provision it is not permissible to seek determination of the matter on merit; that is, on the basis of what one party or the Commission believes the provision in question should mean."

Now, sir, we are not here before you seeking which of the two competing awards should take precedent, but rather to determine whether or not the Restaurant Keepers Award is applicable to the work and circumstances that lie before you, or vice versa - whether the work and circumstances of the employer,

HG/JR - 10.06.86

TAYLOR

MR TAYLOR:

AFCO, are appropriately covered by the term `industrial catering`.

If that be the case, then other aspects fall into place.

The third and fourth of those principles, sir - I will take them together and read them. The third one is:

"Provided the words used are, in the general context of the award and its application to those covered by its terms, capable of being construed in an intelligible way, there can be no justification for attempting to read into those words a meaning different from that suggested by ordinary English usage."

Moving to the fourth one:

"An award must be interpreted according to the words actually used. Even if it appears that the exact words used do not achieve what was intended, the words used can only have attributed to them their true meaning."

With regard to those, sir, it is my understanding that Mr O'Brien contends that industrial catering as we know it, as it is defined within that section of the award, is not a logical extension of `caterer`, as appears in the scope clause of the Restaurant Keepers Award.

I would submit, sir, that everything is quite clear and logical. There is no need or justification to read meaning into the words used. The intent is clear.

If one starts with the word `caterer` as used in the scope clause, the word is used to describe the industry of employer. It is capable of meaning many classes of caterers as indeed it should be for an award covering the

MR TAYLOR:

hospitality industry.

It is clear that the intention of the scope clause is to provide award coverage for employers who feed and/or accommodate or house others.

It is relevant to look to dictionary definitions of `caterer` and I have extracted a couple and I would put those in as an exhibit.

PRESIDENT:

Exhibit T.4.

MR TAYLOR:

Sir, these I have had extracted from the World Book Dictionary, Chicago 1981 and the Oxford English Dictionary, 1970 Oxford Press. Taking the first one from the World Book Dictionary, it is intended to mean, or it is written within that dictionary as meaning:

"1. A person who provides food and supplies and sometimes service, for parties, weddings and other social functions.

2. Figurative, a person who caters in any way to the requirements of others."

I think within the first aspect of that, sir, there is a very important word and that is `social` - `weddings and other social functions`. I think there is a tendency to think of a caterer in a very narrow sense of one who provides for wedding functions, like is mentioned within the definition, but it does say `other social functions`. And `social` within that dictionary is defined as:

" - concerned with human beings in their relations to each other, living conditions, living together in organised communities."

Sir, what better fits the single men's quarters situation than at Zeehan?

HG/JS - 10.06.86

PRESIDENT - TAYLOR

MR TAYLOR:

If one goes down to the Oxford English Dictionary it describes it as:

- "1. One who caters and surveys provisions for a household, club, etc, one who supplies the viands at an entertainment, fete, etc.
2. One who caters in any way for the requirements of others."

Now I put it to you, sir, that the requirements of others, the requirements of the residents of the single men's quarters, go beyond that of just taking on board food. They are accommodated there, they live in rooms, they socialize together in common areas, they use the quarters there to deal with their personal needs and all of this is serviced by the company, AFCO, and the employees of the company of AFCO.

And on that basis, sir, I say that the word, 'caterer', as it appears within the scope clause, is certainly beyond that of baking cakes, if I can put it as simply as that.

It's 'one who caters in any way for the requirements of others'. If one looks at the situation at Zeehan, AFCO is contracted by Renison Limited to provide for certain social requirements of those allocated accommodation within the single men's quarters, to provide food, meals, living conditions, in an organized community.

PRESIDENT:

Excuse me. Is that the chief and principal purpose of AFCO? Is that their chief and principal purpose?

MR TAYLOR:

Of AFCO?

PRESIDENT:

Yes.

MR TAYLOR:

At the single men's quarters at Renison, yes, or at Zeehan, yes.

HG/JS - 10.06.86

PRESIDENT - TAYLOR

PRESIDENT:

What else do they do?

MR TAYLOR:

Well, sir, the company, on an Australian-wide basis, is very much a service-type company. If you will just excuse me for a moment. In a `glossy` that it provides to potential clients, as it were sir, it sets out a number of things that it observes that companies such as Renison may like guidance or service upon. And it says here,

"For instance, you are probably looking for (that's the client) a healthy, happy workforce, value for your money, variety in both catering and recreational services, immediate solutions to localized problems, skilled and courteous staff, good communications, solid back-up. In a nutshell, just good plain old-fashioned service. Our rapid expansion in this highly competitive industry has been based on our ability to tailor the following services to your needs: Site selection, camp design, layouts supply and illustration, full turnkey operations, competitive catering services, camp management and administration (and that's what is going on at Renison), wet and dry canteens, laundry services, site security, recreation facilities, township services, grounds maintenance and landscaping, garbage services, victualling and ships chandlery, site accommodation, in-flight catering service, swimming pool maintenance, general cleaning. AFCO will help you with all or part of your on-site servicing needs."

Now I think that, in a nutshell, puts it there. Now AFCO is saying that its services are available on a very

HG/JS - 10.06.86

PRESIDENT - TAYLOR

MR TAYLOR:

broad range of things, and I will say it, including general cleaning.

But quite clearly, it enters into contracts with many clients, being one, the contract that exists at Renison is not a general cleaning contract; it is one that comes back a little further up, 'camp management and administration'. And that in a nutshell is what the situation is at Renison, sir.

PRESIDENT:

Yes, I am sorry, Mr Taylor, I interrupted you while you were in full flight.

MR TAYLOR:

No, that's all right.

As I was saying, sir, and I think this supports just what we have been touching on, but as I was saying there, AFCO is providing to the residents that live in the single men's quarters at Zeehan, the food, meals, living conditions in an organized community.

AFCO is required to provide food, supplies, towels, linen, and other personal consumables - rooms and facilities in an organized social community or large household, if you like.

The parties to the award have seen fit to provide in a special sense for a particular type of caterer in our society, i.e. the industrial caterer. The caterer who provides for the needs of those who, because of industrialized needs, provide accommodation and meals in camps or single men's quarters.

MR TAYLOR:

There is no need that the scope clause of the Restaurant Keepers Award stipulate industrial caterer or any other caterer. It is sufficient that it just use the term `caterer` and then there can be many different sections within the award for as many forms of caterers as one might like or one might think of - if it's considered that each should be distinguished for the purpose of providing different rates of pay or conditions of employment.

If I just might take a moment, sir.

Well sir, if I referred you to the Restaurant Keepers Award, the Part I - Wage Rates, and in Section III that we're now fairly familiar with, is `Industrial Catering`. If one goes back to Section II that is made in respect of :

- "(a) Keeper of Boarding House accommodating 4 or more boarders;
- (b) Restaurant Keeper;
- (c) Keeper of a Hostel;
- (d) Caterer;
- (e) Keeper of an unlicensed Residential Club; and
- (f) Take Away Food Establishments."

I think that, sir, demonstrates the point that I'm making; that by using the word `caterer` in the scope clause, it provides the facilities within the award itself to provide for, then in turn, many various forms of caterer. And indeed, it's been done in part there, in the sense that in Section II there is provision for caterer.

In Section III there is provision there for a specialized type of caterer, i.e. the industrial caterer.

GM/CD - 10.06.86

TAYLOR

MR TAYLOR:

I submit, sir, that the term `industrial caterer` as defined within the award is appropriate for inclusion in the award and indeed, historically, it has been accepted as fitting within the award and appropriate to the structure of the companies that have hitherto been regarded as covered by Section III of the Restaurant Keepers Award.

In a logical sense it's more than appropriate that employees of a company, particularly one the size of those found in establishments in the industrial catering industry, it is appropriate that all of the employees be covered by one instrument, and in particular all of the regular duties of employees be covered by the one instrument.

How ridiculous the situation would be if the cleaning duties of these employees be paid according to different rates and conditions of employment to those of the housemaid and kitchen-maid duties of the employees, for whenever they were doing cleaning work of a nature not specifically that of a housemaid or a kitchen-maid.

Sir, I'm not familiar as to why the cleaner part of the classification was added, nor am I familiar as to why the classification is listed as `Kitchenman/Kitchenmaid, Housemaid, Cleaner` in one singular classification (if you like), but I'm prepared to make some observations.

Firstly, having regard to the duties of those employees of AFCO, very little of their work, if anything, falls outside of the terms of kitchen-maid/housemaid. Perhaps the emu-bobbing work outside of the buildings would be all that would not, strictly speaking, fit into the duties of kitchen-maid or housemaid.

Indeed having regard to the industry and the classification `kitchen-maid/housemaid`, one would wonder why

GM/CD - 10.06.86

TAYLOR

MR TAYLOR:

it was necessary to add the the word `cleaner`. Perhaps it was for a point of clarification.

Secondly sir, I point to the manner in which the classification is listed in the award. As I said earlier, it is listed as `Kitchenman/Kitchenmaid, Housemaid, Cleaner` all as a singular-type classification rather than as individual classifications down the page, albeit with the same rate.

The inference I draw from that, sir, is that any employee so classified can cover this range of duties and not, in effect, be acting out of grade. The duties are synonymous and complementary to one another, particularly in the industry of industrial catering, as defined within the Restaurant Keepers Award.

In conclusion, sir, I would submit that firstly, the term `caterer` is sufficiently broad enough to embrace industrial catering as defined within the definition of Part III of the award.

Secondly, industrial catering has been contained in the Restaurant Keepers Award since 1971. It is my understanding that since then anybody with any experience of the industry has regarded the Restaurant Keepers Award as the award to cover all employees of industrial caterers in Tasmania not covered by Federal awards.

Thirdly, I would contend that the Restaurant Keepers Award is an industry award under the Industrial Relations Act, and as such it should take precedence over an occupational award, as provided by section 33 (b) of the Act. In any event the only such award, the Miscellaneous Workers Award, has an exception clause ... or an exemption clause, I should say, sir; that prescribes that that award (the Miscellaneous Workers Award) has no effect within an industry where an

MR TAYLOR:

award containing a classification of same or similar work exists.

The Restaurant Keepers Award has such classifications, particularly in Section III, 'Industrial Catering'.

Fourthly, I'd say it is logical and convenient that an industry award contain a classification of cleaner. Cleaning must be a necessary function of providing for meals and accommodating people, albeit that much of the work might be covered by another name, such as a kitchen-maid or a housemaid.

There is nothing uncomfortable about having a classification of cleaner in the award, or in the section covering industrial catering.

Fifthly, I would submit that the company AFCO is an industrial caterer, providing the services as described by the definition 'industrial caterer', as contained in Section III of the Restaurant Keepers Award. As such, its employees are covered by the Restaurant Keepers Award.

Finally sir, I therefore submit that there can only be one conclusion to this matter and that is that the findings on this application must be that the Restaurant Keepers Award is applicable to AFCO and its employees in the business that it provides to its client, Renison, at the Zeehan Single Men's Quarters.

If the Commission please.

PRESIDENT:

Thank you.

Mr Taylor, as this almost smacks of a demarcation issue (although of course I have to hear from Mr Butler and Mr O'Brien yet) I wonder if you have been able to get any assistance from the Department of Labour and Industry? Surely they ought to know what award applies. It's their task to police these awards.

GM/CD - 10.06.86

PRESIDENT - TAYLOR

MR TAYLOR: Sir, I have spoken to an officer from the Department of Labour and Industry. And whilst I haven't sought to get anything in the written sense, and indeed it was quite some time ago now and I'm struggling to think of the gentleman's name, but if I recall correctly he was one of the senior industrial officers of the department. And he expressed unconditionally that the work in question would be work covered by the Restaurant Keepers Award.

And he offered to make that advice available to my opposite number, but as I understand it, Mr O'Brien wasn't prepared to take that up.

PRESIDENT: Yes. Thank you. I think the Industrial Relations Act contains a provision for application of two awards to an individual. It might be in Part VIII. I agree that would be somewhat messy, but I raise that with you in case I'm compelled to come to the conclusion that two awards could in fact apply.

MR TAYLOR: I think you are correct in saying that there is a provision within the Industrial Relations Act about ...

MR ABEY: 53.

MR TAYLOR: ... the application of two awards. My colleague, Mr Abey, is saying section 53.

PRESIDENT: 53, is it?

MR TAYLOR: Yes.

PRESIDENT: Yes, that's right. Thank you, Mr Abey.

That of course is a statutory provision.

MR TAYLOR: Yes. Now sir, I think it's important that I ... Well I point out that I believe I've addressed the situation, but I think it's very important that I go back to that, seeing that you've raised it.

PRESIDENT:

Yes, well excuse me. If I could answer my own question, I think the employee concerned in those circumstances is entitled to have conferred on him the greatest benefits, but it doesn't apply to wages.

"... he shall, in respect of all matters (other than wages rates or piecework rates)..."

So that doesn't help us, does it?

MR TAYLOR:

Well that's true, but then again that, sir, if he performs two or more classes of work. Now it's very strong, in my contention, sir, that these persons are not performing really more than one class of work.

They are performing work that falls within the classification of kitchen-maid, housemaid, cleaner. And the cleaner's classification or the cleaner's rate within that is ... or I'll put it another way, sir. The Restaurant Keepers Award provides for the classification of cleaner.

Now if the Restaurant Keepers Award did not exist, well then ... and it didn't have ... or if it existed and it didn't have within it classifications that could be deemed to correspond with that of the cleaner in the Miscellaneous Workers Award, well then, yes, the Miscellaneous Workers Award would have application to that part of the work which fitted the accepted definition of cleaner.

But surely because an award exists, albeit that that award has no application by the exemptions clause which is in it, but surely if two awards exist and one quotes a higher rate than another, surely it's wrong that one must always go to the higher award.

Although, of course I've led myself astray there, sir. You've pointed out that the Act of course says 'except for wage rates'.

GM/CD - 10.06.86

PRESIDENT - TAYLOR

MR TAYLOR:

But I think to make the point, sir, the ... In a nutshell, I submit that the Restaurant Keepers Award has a scope for a caterer. The term `industrial catering` is not foreign to that word `caterer` that is there within the industrial catering section of the award. There is provision there to cover the duties that these people perform. And in that course of events I would say that it must be determined by this Commission that the Restaurant Keepers Award has application to the work that is being done there.

PRESIDENT:

Yes.

Let's turn the question round a little, if we might, in order to get to the bottom of this difficulty. And let me ask you this question: If since 1971, or thereabouts, there has been included in the industrial catering section of the Restaurant Keepers Award a classification of cleaner, then what type of cleaning work would that cleaner be expected to do?

MR TAYLOR:

One's mind would have to run a little wild there, but I suppose if we had a very large establishment, and you had a number of employees that wholly and solely did housemaids' work in the narrowest sense, maintaining the rooms of the residence, and you had a person that did nothing more than, well, wash floors, wash and sweep floors, say, in corridor areas and, well, maybe a dining room or something like that, I suppose his duties could be ... well that person's duties could be defined as that of a cleaner as distinct from a housemaid's duties.

PRESIDENT:

But nonetheless covered within the purview of the industrial catering section of the award.

MR TAYLOR:

Yes, most certainly, yes.

I think it's in that sense, sir, one can't or one shouldn't look at ... in

GM/CD - 10.06.86

PRESIDENT - TAYLOR

MR TAYLOR:

determining the application of an award one doesn't look to what the duties are of the individual, particularly in regard to awards that are made under the Tasmanian Industrial Relations Act.

It's quite different to the Federal Act, where in essence the employees or the industry is taken from the role of the employee as distinct from the role of the employer.

Under the Tasmanian system, particularly with regard to awards that are made in accordance with section 33 (a), they are made in respect of an industry and it's the industry of the employer. Now if an employee of that employer is engaged on purely, simply cleaning duties, he is still working within the industry of the employer. And the industry of the employer determines the award under which he pays him.

And if AFCO is determined as being within the industry of industrial catering as provided by the Restaurant Keepers Award, well then the employee is covered by that award. Certainly there is no parameter to take his position in a singular sense and say that he's covered by an occupation or can be covered by an occupational award, particularly when the occupational award has an exemption provision in it that says that where another award applies it has no bearing.

PRESIDENT:

Then you would submit, I gather, that section 33 (3) has in fact been complied with in the instant case?

MR TAYLOR:

Yes. It's been ... Yes, it has. It has in the sense that ...

PRESIDENT:

Then what's left for me to do?

MR TAYLOR:

I beg yours, sir?

PRESIDENT:

Then what is left for me to do?

GM/CD - 10.06.86

PRESIDENT - TAYLOR

MR TAYLOR: Well, to determine for the parties, I suppose, that the term `caterer` as provided in the Restaurant Keepers Award is broad enough to permit the inclusion of industrial caterer into it.

PRESIDENT: Well, it says that.

MR TAYLOR: Yes. Well, I believe it does. My colleague doesn't of course.

Section 33(3) deals with the two classes of awards that can be made.

PRESIDENT: Yes. I think the latter part refers to occupational awards.

MR TAYLOR: Yes. It is an `either or` situation. It is not a `both` situation.

PRESIDENT: Yes, well it would need to complement section 33(1)(b).

MR TAYLOR: Yes. And I think, sir, with respect, the Restaurant Keepers Award does that and the Miscellaneous Workers Award does that. But the Restaurant Keepers Award is in respect of an industry. It is an industry award.

The Miscellaneous Workers Award is an occupation award, albeit that when I can find it somewhere amongst all this, sir, it does stipulate the industry of the employee that it covers but that is because it is an occupational award.

As usual, I've got all my papers into a mess.

The scope clause of that award makes it very clear that it is the work of the private employees classified as, and I think that is all that is called upon by the Act to do.

PRESIDENT: Thank you, Mr Taylor.

MR TAYLOR: Nothing further? Thank you.

PRESIDENT: Mr Abey?

GM/JR - 10.06.86

PRESIDENT - TAYLOR

MR ABEY:

Thank you, Mr President. I will be very brief and indeed I simply rise to support unequivocally the most adequate submissions which have been made by Mr Taylor in respect to this application.

In essence this application turns on the question of whether or not the term `caterer` can be construed as being wide enough to embrace the sub-category, in my submission, of industrial caterer. And for the opposition of the Miscellaneous Workers' Union to succeed, then in our submission the term `caterer` would have to be constrained as meaning something pertaining to the provision of food.

On any reasonable construction of the word `caterer`, that construction cannot be placed on it. Mr Taylor has tabled Exhibit T.4, going to definitions - dictionary definitions of `caterer` - and at a number of points a departure from the provision of food can be clearly identified.

Indeed the Oxford English Dictionary goes on to say in 2: `One who caters in any way for the requirements of others.'

I would like to table one further dictionary definition, which is taken from the Shorter Oxford English Dictionary.

PRESIDENT:

That will be Exhibit A.1.

MR ABEY:

If I can take you to the middle column to the definition of the word `Cater`, third occurring, it says:

"To act as caterer ... To provide (requisites, things desired, etc.) for ..."

It does not even mention the word `food`. In essence it is saying to provide for, to cater for. And of course, one goes further down - towards the bottom of the page - it defines `Caterer` as,

GM/JR - 10.06.86

PRESIDENT - ABEY

MR ABEY:

"One who caters."

There is no logical reason why we should put the constraint on the term 'caterer' in the scope of this award as meaning someone who provides food. That construction is simply not available and it follows from that, that there can be various sub-branches of catering of which industrial catering is one that is well known and again, on the facts, the company, AFCO, fits very plainly and comfortably within the very clear and concise definition which is contained in Section III of that award relating to industrial catering.

As such, our submission is that you, sir, must conclude that the Restaurant Keepers is the appropriate award to cover this type of industrial endeavour. If the Commission pleases.

PRESIDENT:

Thank you, Mr Abey.

Are you going to go next, Mr Butler?

MR BUTLER:

Yes, sir, if I may. Perhaps if I could indicate at the outset that the Liquor Trades Union was quite surprised that there has been any questioning over the coverage of the Restaurant Keepers Award in the area of industrial catering.

As everyone in the industry, you would be aware, it has been the Liquor Trades Union that has serviced this particular award and at the moment the overwhelming majority of employees employed under this award belong to the Liquor Trades Union and in particular in the industrial catering area.

However, before I address myself to the question of what constitutes a caterer, I would like to, if I may, just take everyone on a brief history of the Restaurant Keepers Award and try and explain why the industrial catering section was placed in the award in the first place.

GM/JR - 10.06.86

ABEY - BUTLER

MR BUTLER:

Up until 1951 the Restaurant Keepers Award was included as part of the Hotel Keepers Award and in 1951 the hotel keepers were removed from this particular award.

At that time, the scope of what became known as the new Restaurant Keepers Award was split into four parts - (a) the scope covered restaurant keepers; (b) keeper of a boarding house accommodating four or more boarders; (c) keeper of a hostel and (d) a caterer.

If we continue on to 1959, (e) was added to the scope of the award - keeper of an unlicensed residential club.

Up until this time there was one section of the award and this with classifications and pay rates and conditions common to all employees covered by the award.

However, in 1969 the award was split into two sections. Unfortunately, I have been unable to find anywhere a copy of the award as it stood in 1969 showing the two sections. The problem in doing research in awards under this jurisdiction is that files and papers aren't always available.

But if I can just point out that in 1969 the award was split into two sections - Section I was licensed restaurants and Section II covered the rest.

If I can just add further, in the year 1970, the scope of the award was further extended to cover certain take-away food establishments.

As was pointed out by Mr Taylor and shown in the exhibit which he tabled, the industrial catering section of the award was created as advised in the Tasmanian Government Gazette on May 31 1971 and even though it is perhaps going over old ground, I can table an exhibit showing the Government Gazette containing this

GM/JR - 10.06.86

BUTLER

MR BUTLER:

information.

PRESIDENT:

It will be Exhibit B.1.

MR BUTLER:

Sir, the exhibit is self-explanatory. It is an issue of the Tasmanian Government Gazette, issued on 31 May 1971, which shows for the first time in the award 'Part III - Industrial Catering'.

Sir, in my research or attempted research into the history of this award, I had attempted to understand and discover why the industrial catering section was established in the award.

I have to point out from the outset that some of the evidence I am going to give is hearsay and I will be making certain assumptions. If however, for any reason or another this particular hearing happened to be adjourned till some stage in the future, I would then be in a position to present some of the evidence on the history of this award and that particular evidence would be given by George Burgess, who is an organizer for the union, who was an organizer at the time.

However, I have no intention of coming along here today to ask for an adjournment, the problem being that it was unable for him to attend today.

The evidence I plan to give - I do agree from the outset that it is partially hearsay.

Sir, at that time - just before that new section was created in the award - the Liquor Trades Union became involved in the industrial catering area. Previous to that, the union had had no involvement and because of the involvement in this area, the union was dealing with a different type of catering.

We were placed in a position where we either had to apply to change Section

MR BUTLER:

II of the award and expand the definition of catering in that section or apply for a further Section III of the award, which would be more appropriate for this form of catering.

Perhaps if I can table a further exhibit. Just excuse me for a moment. Sir, if I can table a copy of the Restaurant Keepers Award, which was issued by the Department of Labour and Industry in 1963. This is the oldest known copy of the award that has come into the possession of the union.

PRESIDENT:

This will be Exhibit B.2.

MR BUTLER:

Sir, I have only copied two pages of this award - the cover page and the important section of the award, dealing with clause 24, 'Definitions'.

At that time and up until 1971, the only definition in the award offered for a caterer was the restrictive definition of a catering contractor:

"(c)... means an employer who under an arrangement with his clients contracts to cater for private functions held at or away from the contractor's premises."

And to this day, that definition is appropriate for Section II of the award. So the union had the problem of either expanding that particular definition, or catering (excuse the pun) for a different form of catering by creating a completely new section.

It is our contention that the catering referred to in Section II of the award today is one form of catering as is the form of catering referred to in Section III of the award, in the same way that there are three different sections in the award that refer to different types of restaurants.

GM/JR - 10.06.86

BUTLER

MR BUTLER:

In Section I of the award we refer to licensed restaurants; in Section II of the award they refer to unlicensed restaurants and in Section IV of the award, we refer to restaurants in a retail store.

So it is our strong contention that the catering - the industrial catering section of Section III - is simply an outgrowth of the scope of catering covered by the award in the same way that the definition of catering contained in Section II is an outgrowth of the scope of the award.

Sir, the other issues I would like to refer to in the sense of explaining the history, or attempting to explain the history relates to the desire on the part of employers in the industry to gain representation on the board. I can present no evidence at all for making this statement, only that I have been advised that at the time that these catering establishments were going to be covered by the award, the employers expressed a desire to gain representation on the then board in order to look after their interests.

Also, I have been advised that the creation of the new section was felt more appropriate in that the same number of classifications as was currently contained in the then Section II would not be required for Section III.

The whole purpose of Section III was to try and come to terms with reality and adjust to that form of catering instead of trying to slot industrial catering into Section II of the award, either as a hostel or boarding house, which of course would have been the other options at the time.

Sir, perhaps if I can also say that the term "caterer" can result in quite a few different types of catering and not all caterers who are

GM/JR - 10.06.86

BUTLER

MR BUTLER:

covered by the Restaurant Keepers Award are covered by the award in the sense that they are covered expressly as caterers.

In case I am talking double-dutch, perhaps I should explain exactly what I mean.

In department stores in Hobart in particular, there has been over the years cafeterias that have been operated directly by the companies that have owned these department stores.

In the last few years there has been an increasing tendency for the department stores to ask caterers - catering contractors - to operate their cafeterias. And to give an example of that, we have Hayes Catering - the Hayes Catering Group - who operate catering contracts in Fitzgeralds, just to give one example.

So for anyone to try and suggest that catering simply means that a caterer caters for private parties et cetera, is an extremely restrictive definition of what is exactly happening and what catering contractors do. And I would probably go as far as to say that if catering contractors within Tasmania, if they had to rely wholly and solely on catering for private parties, if we accept that strict definition of the term, then they would probably go out of business.

Catering in the hospitality industry these days generally relates to operation of cafeterias and the like.

PRESIDENT:

Who caters for the Government cafeterias?

MR BUTLER:

Are you talking about the Commonwealth or State, or both?

PRESIDENT:

State.

MR BUTLER:

State - that is a catering contract that is operated by Nationwide Foods.

GM/JR - 10.06.86

PRESIDENT - BUTLER

MR BUTLER: Perhaps on that topic, sir, the Commonwealth Government cafeteria in Collins Street is also operated by a catering contractor, which is called Commonwealth Catering and Accommodation Services. It is an independent government authority.

PRESIDENT: Are they covered by this award, or do they have a Federal award?

MR BUTLER: No, they have their own Federal award, which covers their sites. They also have coverage over to cafeteria at the Antarctic Base as well and at the C.S.I.R.O. building.

So, sir, as I was saying, the term `catering` if it was to mean simply a caterer or a person who caters for private parties et cetera, then we would probably have hardly any of them in business because that definition would not cover the overwhelming majority of caterers that operate inside the State of Tasmania.

MR BUTLER:

Sir, perhaps if I can just add some further comments on the issue of industrial catering specifically, particularly as regards the added area of accommodation. And it's important I think for everyone to understand that industrial catering establishments are generally found in isolated areas, and in the majority of cases they are generally operated by a mine, which is the case in Tasmania.

And this catering service is offered by the contractors on behalf of the company, because the companies in this area fully understand that they would not be able to keep or recruit staff unless they offered a full food service and an accommodation service as well. Because usually in the towns where the mines are located - and for example, like if Zeehan and Rosebery as examples - virtually all the accommodation in these towns is owned by the company. There is a general shortage of accommodation and there is a general shortage of accommodation full stop. So there would be no point a company offering simply a food service if the accommodation was not also offered, and vice versa.

And that is why the definition in Section III of the award refers - and if I can just refer to the definition in the award, it refers to ... in clause 3, Section III, under 'Industrial Caterer', it :

"... shall mean an employer carrying on the business of catering and/or providing accommodation for an unlimited number of persons involved in Industrial Undertakings on location where catering is provided for on the basis of a minimum of two main meal times per day."

That covers the situation where one company may have the contract to

MR BUTLER:

provide the meal service and another company may have the contract to provide the accommodation, because the clause says, 'and/or providing accommodation'.

And I just felt that ought to be explained, because as I was saying, catering in the context of industrial catering which means catering generally in isolated areas - you really can't have one without the other. You can, but it would cause a great difficulty.

It had not been my intention today to canvass the classifications issues to any great extent, because it was the understanding that this application either stood or fell on the issue of what constituted a caterer. However, as it's been raised with Mr Taylor, I should offer a comment on the inclusion in the award in 1975 of an expansion of the kitchen-hand/housemaid classification, to change that classification to kitchen-hand/housemaid and cleaner.

I endeavoured again to check why 'cleaner' was added in to that particular classification and again I have to apologize, I'm simply going to use hearsay here, but I have been advised that there had been some question as to who would clean the dining-room. Generally at these sites you have the quarters and you'll have the mine mess, and in the mess you will have a kitchen and a dining-room. It was quite clear that the kitchen-hand would undertake the cleaning in the kitchen and the housemaids would take care of the quarters, but there was some question as to who would clean the dining-room, because cleaning in the dining-room area is not strictly the job of a housemaid or a kitchen-hand, in our view.

And so, as the people who are kitchen-hand /housemaid /cleaners generally, due to the size of these establishments, can potentially have

MR BUTLER:

to work in each of the three areas, it was felt appropriate to add in 'cleaner' in line with that classification.

If there was a separate classification of cleaner ... and I would very much doubt if a person spending their time wholly and solely on cleaning duties existed in this area, then that would not solve the problem. So if you had a classification of kitchen-hand, housemaid and cleaner then that tidies up any potential demarcation between one job and another, which tends to happen from time to time, particularly in our industry.

PRESIDENT:

It was put to me by Mr Taylor that these part-time employees spent about 57% of their time on duties inside the establishment, but they do spend some time outside. Is it your submission that the classification or the occupation or industry of caterer would be wide enough to embrace employees working outside the alignment of a building in which catering, such as preparation of food or provision of sleeping accommodation, is carried on?

MR BUTLER:

Well sir, as I understand it, the industrial catering industry is an industry where the contractors provide a food service and accommodation service, as opposed to ... and if I understand you correctly, I mean, if a small amount of cleaning is carried on outside the building, as I understand it, which you are referring to, then I would say that that is part of the food service and the accommodation service as provided by the caterer.

PRESIDENT:

You'd consider it to be incidental to the chief and principal purpose?

MR BUTLER:

Yes. Yes, because if the surrounds ... the surrounds of the building, I would say, would form part of the accommodation. I mean, if the surrounds of the building, for

GM/CD - 10.06.86

PRESIDENT - BUTLER

MR BUTLER:

example, were in a poor state then the contractor could very well be held to be breaching his contract to provide adequate food service and accommodation.

I can't see ... well I have great difficulty in hiving off small segments of the work that is done by industrial caterers, because it is a whole that is important from our point of view.

PRESIDENT:

But it wouldn't extend to, say, cleaning the clients' administrative offices?

MR BUTLER:

Well that's a good case in point and perhaps I can give you an example of that. There is a catering contracting company known as Logistic Services. Logistic Services have the catering contract at Rosebery for the E.Z. Company, and they also have a separate cleaning contract and they clean the offices at the mine.

The Liquor Trades Union has made no attempt to interfere in what is obviously a cleaning area, completely separate from the catering side of things.

Yes sir, I am unsure as to how quickly events could potentially overtake us. I mean, obviously the Liquor Trades Union is extremely concerned about having doubt cast upon an area that we have traditionally covered. If the award is found to be defective the union would ask if it is at all possible to be allowed to make further submissions as to what should happen in the future. And also, at the same time, we may very well argue that if the industrial catering section of the award is redundant, then the section of the award that would apply would be Section II.

We would then be forced into a position where we would have to argue that these establishments constitute a hostel or some form of

GM/CD - 10.06.86

PRESIDENT - BUTLER

MR BUTLER: boarding house.

Thank you very much.

PRESIDENT: Thank you, Mr Butler.

Mr O'Brien?

MR O'BRIEN: Thank you, Mr President.

The concerns of my organization go to not the generality of the award area but a view that we've taken following a need to represent members of our organization at the establishment at which AFCO has contracted to perform certain work for Renison at Rosebery.

And our position, simply put, is that the award has been made by an Industrial Board which was established in respect of a certain number of groups of trades. One of those was the trade of caterer.

We take the view that that trade, the trade of caterer, was never intended to extend to the provision of cleaning or other accommodation services, but rather to the provision of food and drink. And we take that view based upon what we believe is the generally understood meaning of the word 'caterer'. And indeed, we are able to draw some support from recent decisions which relate generally to this area of (well I won't call it conflict, but) disagreement between my organization and Mr Butler's organization, and with the employers as represented by the Mines and Metals Association.

What we say is that the 'trade caterer' is limited to the trade of the personal employer who provides food and supplies, for example, as the word 'caterer' is defined in Mr Taylor's exhibit in 1. under the World Book Dictionary or 1. under the Oxford English Dictionary. I think it's T.4.

PRESIDENT: Yes.

GM/CD - 10.06.86

PRESIDENT - BUTLER - O'BRIEN

MR O'BRIEN:

That is the real and ordinarily understood meaning of the word 'catering'. And to the extent that the Restaurant Keepers Award has been made or varied to reflect award wages and conditions applicable to a trade going beyond that meaning, then the award is void - and it's been void ab initio; and that the secondary question, of whether there's other awards which may or may not cover the area, comes into play.

Dealing with the first point, I seek to tender copies of a decision of the Western Australian Industrial Relations Commission. I apologize that it's not a clean copy. I haven't been able to get my hands on a clean copy. It's got that marking of words and highlighting.

To the extent possible I ask ... I would ask that you accept the tender on the basis that I've been unable to get a clean copy to date.

PRESIDENT:

Exhibit O.1.

MR O'BRIEN:

It's a very recent decision - February 1986. The subject matter in dispute in those proceedings was the constitutional capacity of the Liquor Trades Union in Western Australia to cover certain work which related to the cleaning of accommodation and related aspects of what might generally be termed an industrial catering contract. And indeed, a great deal of the decision goes to constitutional capacity.

On page 5 of the decision there is reference to the scope of the Industrial Catering Workers Award of Western Australia, which very clearly is quite different from the enabling provisions under which the current award was set up, what I would term, the effective scope clause for the Restaurant Keepers Award.

GM/CD - 10.06.86

O'BRIEN

MR O'BRIEN:

There, there is a much broader empowering provision in relation to the operation of an award in what Mr Taylor and others have referred to as the industrial catering industry.

I take you to page 7, because that's the passage in the decision that I believe goes directly to the point which needs to be addressed in these proceedings.

And I'll read from the words 'Mr Fry's counter argument':

"Mr Fry's counter argument is that the 'industry of catering in all its sectors' is generally well understood to include cleaning and accommodation services. He suggested that the Oxford Dictionary definition of caterer is :-

'One who caters in any way for the requirements of others.'

and that does not limit catering to the provision of food and drink as might be commonly thought.

I cannot agree with Mr Fry's broad definition of 'catering'. The Shorter Oxford English Dictionary (Oxford University Press, 1975) in Volume 1 at p.297 defines :-

cater

1. To act as caterer for.
2. To provide (requisites, things desired etc.) for.

caterer -

One who caters; specifically one who purveys provisions for a household, club, etc., one who supplies the viands at an entertainment, public dinner, etc.

MR O'BRIEN:

That definition seems to me to support the general, public belief that the catering industry is the industry of supplying food and drink."

That really is a passage that I would seek to adopt for the purpose of my submission.

The industry of caterer, trade of a caterer goes to those areas and not to some unlimited concept of a caterer being a person who provides in any way for the requirements of others as is suggested in relation to Exhibit B.4.

Let's take the example of someone who provides any sort of service by contract. If one accepts the reading of the word, or the understanding of the catering industry to go so widely that it can cover the attending to the requirements of others in any way, shape or form, then it's possible that the Restaurant Keepers Award has been established in relation to all of the service industries; be they in relation to the cleaning of cars, for example, maintaining of vehicles, the painting of accommodation blocks on a contract basis.

It really is a Pandora's Box which Mr Taylor suggests the Commission open, in accepting that catering means provision of services in any way, shape or form, attending to the requirements of others. And that is what the provision of services are.

It's an untenable suggestion insofar as the interpretation of the intended scope of this award. And going back in history, and we've been assisted by Mr Butler's tender (I think it's B.1) of a copy dating back to 1963, of the Restaurant Keepers Award, or part thereof.

PRESIDENT:

That would be B.2.

MR O'BRIEN:

B.2, is it? I'm sorry.

On the second of the two pages, the definition of a catering contractor goes more to the type of work, the trade in relation to which the Industrial Board was given its charter. And to the extent that the Industrial Board has exceeded that charter, it's determination was and therefore is void, because if the Industrial Board purported to give effect to an award which it had no power to do, then the enabling provisions of the Industrial Relations Act of 1984 could not possibly have carried that illegality through into force.

The award remains, has an inoperative provision in relation to catering services other than those which can be seen to fall within the generally understood meaning of the operations of the catering industry, and I think it is pertinent that we understand that this so-called industrial catering industry has been the subject of a great deal of litigation at State and Federal levels and remains so.

We have put the view to the employer in these proceedings that we did not believe that certain employees employed at Renison were adequately provided for by award and that disagreement has existed for some time. And the matter is now at the initiation of the employer before the Commission for determination as to whether the employer's view that the Restaurant Keepers Award applied, is a correct one.

It's our view that if the Commission adopts what is the generally understood meaning of the catering trade or catering industry, then it must rule that to the extent that the Restaurant Keepers Award purports to

MR O'BRIEN:

deal with the provision of a servicing of rooms or the employees who service rooms by contract through a contractor, that the award is not operative.

Just to be of some further assistance on this point, going on in the decision of Mr Commissioner Negus, and understanding that we are dealing with a different award with a different scope clause, and the Commissioner was dealing with constitutional capacity and not award coverage, at the bottom of page 8, the Commissioner says:

"If the mining company, in its wisdom, awards a separate contract to a different contractor, as has been done we understand in Paraburdoo and Tom Price, and that new contractor is dealing only with cleaning services then the matter becomes complicated.

The workers are now covered by the scope clause of the same award but in my view the constitution of the L.T.U. cannot encompass them. The employer is clearly not a catering contractor. Mr Fry would say that the workers are involved in the accommodation industry because they are cleaning rooms which are similar to those in hotels and motels and thus they are covered by Clause 4(a) of his union's constitution.

At this point the tests outlined in Parker's case (6 W.A.I.G. p.377), in the High Court by Barwick C.J. (51 A.L.J.R. at p.266) and by Sir John Latham (r. v Central Reference Board 77 C.L.R.

MR O'BRIEN:

123), become relevant. Bearing in mind that the rooms and furniture are provided by the mining company specifically for employees of that company then it seems to me that the principles adopted by the learned judges above lead to the conclusion that these workers and their employer are jointly engaged in the cleaning industry. If that be the case then I am bound to make the declaration which the Applicant in this matter seeks."

And so, if we are able to say that for the sake of putting an argument that AFCO No.1 had a contract for providing food and drink and AFCO No.2 had a contract for the servicing of the single men's quarters at Renison, by the logic of Mr Commissioner Negus' decision, the personnel employed by AFCO 2 would not only not be covered by the Restaurant Keepers Award, but would not be in the catering industry, but employed in the cleaning industry.

If they are employed in the cleaning industry, the question of whether the Cleaners Award applies might arise.

I say that in any case, if it's held that the employees are award free, then clearly they are covered by the Miscellaneous Workers Award, as the classifications of cleaner and also of domestic exist in that award, which could give rise to appropriate coverage.

I believe that the question of the determination of this matter is significant for all parties concerned and I don't seek to extraordinarily disadvantage the Liquor Trades Union in this matter.

I think it's an area where there is a degree of fluidity and I believe if the Commission is prepared to adopt this approach that it is the best,

GM/WL - 10.06.86

O'BRIEN

MR O'BRIEN:

that the simple question of whether the Restaurant Keepers Award applies or not, might first be determined. If the matter is determined in the way that Mr Taylor wishes, the matter ends at that point. And if not, then the matter may be reconvened for further argument to test the secondary aspect as to what appropriate remedy, if any, needs to be taken, or whether the matter can proceed in this context or in another context.

That's the suggestion I make and they're the simple submissions that we would put on this matter.

PRESIDENT:

Yes, thank you, Mr O'Brien. Just one question of you before you resume your seat.

Schedule 2 to the Industrial Relations Act to be found on page 74 of that Act, says in item 2:

"An award under Division 1 of Part III of the Industrial Relations Act 1975 that is in force immediately before the proclaimed day shall, on that day, be deemed to have been made by the Commission and, on and after that day, continue to have effect as an award under this Act."

Well, now, my understanding of that is that rightly or wrongly, this Commission must be considered to have made all of these private industry awards in accordance with this Act. And if it has made those awards in accordance with this Act, we must also assume that rightly or wrongly, the Commission has stated in the award, the industry - in this case, the industry - to which the award applies. Would you care to address me on that?

MR O'BRIEN:

Well, I think, and I don't have that provision in front of me, but the words "in force" are the key words.

GM/WL - 10.06.86

PRESIDENT - O'BRIEN

MR O'BRIEN:

If the award was in force, then the other parts of that provision follow on.

What I'm saying is that the award in respect of the industrial catering section had no force; was void ab initio and therefore couldn't be picked up by the enabling provisions because it would be, to an extent, illegal.

PRESIDENT:

That's the reason I referred you to that because in view of the fact that that says that all of these awards were deemed to have been made by the Commission, then I'm suggesting to you that perhaps that meant that earlier proceedings under the terms of the Industrial Relations Act have no effect.

That is, we should not be concerned with why these Industrial Boards were set up. We can only be concerned with the fact that there are awards in force deemed to be made by this Commission, within the jurisdiction of the Commission.

Now, if there's a defect, then the remedy is a fairly simple one. One makes an application to remedy that defect.

MR O'BRIEN:

Yes, I suppose that's true also and I think we are in the difficulty in this matter of interpretation where we are not saying, 'How do you understand these words of a part of the award?'

We are saying, 'Is the award, in effect, in existence in relation to this particular area?'

If we take the view that you're putting to me, that the award as it exists is deemed to have been made by this Commission, then what we are saying to the Commission is that in doing so, it would have acted beyond or would have created a provision which was beyond the effective scope clause which it made in the award,

GM/WL - 10.06.86

PRESIDENT - O'BRIEN

MR O'BRIEN: and had therefore made a provision which is, to a certain extent, inoperative.

PRESIDENT: In making an industry award, wouldn't it be (and including classifications), wouldn't the only limitation be that which flows from the constitution of the employee organizations who are cited or referred to?

MR O'BRIEN: Well, in making the industry award, the limitation would be the industry as represented in the award, in the document, and the capacity of the applicant to make the application in the context of the requirements of the Act, yes.

PRESIDENT: Well, for example, if we were making an award covering the cleaning industry, it's unlikely that you would include a classification of a ship's master ...

MR O'BRIEN: True.

PRESIDENT: ... because clearly those unions concerned with the cleaning industry would have no constitutional capacity to cover ships' masters. That's what I'm trying to suggest to you.

Therefore, if this Commission were to make an award covering the industry of an employer and include in that award, classifications, it would have to have regard, surely, to the constitution of the employee organizations who had a registered interest in that award.

MR O'BRIEN: Yes, I would agree with that.

PRESIDENT: Now, we seem to be straying away from the general purpose of interpretations. I wonder if this is the right forum to sort this problem out.

MR O'BRIEN: Well, I don't believe, unless Mr Taylor's initial view is correct, that it is necessarily correct for all of the proceedings, but it may be

MR O'BRIEN:

correct for part of them.

PRESIDENT:

Yes, thank you. Mr Taylor?

MR TAYLOR:

Mr Commissioner, I've only got a couple of things that I would want to address.

First of all, more as an observation, I noted that you referred to that 57 percent that I referred to in my submission, so I just want to make it clear in your own mind, sir, that that 57 percent was time spent in the bedrooms of the residents at the single men's quarters and not to within the outer walls of the establishment there, as it were, leaving you with the inference that some 43 percent of their duties were outside of the buildings. That's not the case.

Indeed, that emu-bobbing work that I referred to is only but a very, very small part. It goes to form 20 minutes of work that one of the employees there performs.

It's not something that's done every day. It's 20 minutes a day that's allocated to either picking up that trash, as it's put before me; cleaning up the rubbish room where the rubbish is stored; doing work in the laundry and the storage area; that small matter of sweeping and mopping; sweeping the stock-room; filling the beverage machine as I referred to; stocking shelves and then doing certain work associated with the preparation of vegetables and that sort of thing. So it forms but a minor part of the duties of one person.

PRESIDENT:

So it's certainly incidental to ...

MR TAYLOR:

Yes, it's very much incidental to, but I wanted to make the point that these people - that very same person - spends two hours a day doing bedrooms, along with two other people doing two hours a day.

GM/WL - 10.06.86

PRESIDENT - TAYLOR

MR TAYLOR:

I just wanted to make sure that you weren't under the inference that 43 percent of the time was spent outside the quarters, sir, and that's certainly not the case.

PRESIDENT:

Yes, thank you for clearing that up, Mr Taylor. It's quite obvious that I was under a misapprehension.

MR TAYLOR:

Now, the decision that Mr O'Brien has tendered: It's not one that I have a really full comprehension of, sir, but in essence, the way I perceive this is that if there was a further development, (if I can put it that way) in the industrial catering area in these very large camps that exist in Western Australia, where indeed the contract that exists at Renison that we've described to you, were split amongst a number of contractors, or indeed, was given to a particular contractor, but on separate contracts, such that in one contract there was the provision of meals and the food services, as it were, and in another contract, there is the contract for cleaning - and if I take you to page 8 of the decision, I think this becomes a little clearer. And I go back to the top, not right to the top of the page, not to that extract from Sir John Moore's decision, but just below that:

"In my view, all of the participants in these events, since 1974 or thereabouts have shared the opinion expressed by Sir John as to what work the industrial catering industry performs. Commissioner Johnson in erecting the scope clause of the Industrial Catering Award (supra) must surely have been of the same mind. Had all things remained equal the F.M.W.U. may not have bothered to contest the coverage question. The mining companies injected a factor of uncertainty into the area when they began to

MR TAYLOR:

separate their service contracts and to award them to different catering and/or cleaning contractors."

And I think that's a very important part of this decision, sir.

"If, for the sake of argument, Poon Bros. are providing all of the services for Hamersley Iron at Tom Price i.e. catering, managing and cleaning the accommodation and cleaning the offices and worksite facilities then it is not difficult for any adjudicator to say that the L.T.U. has coverage of Poon Bros. workers. Poon Bros. is a catering company and the catering involves ... not only the supply of food but it also involves general cleaning ...". The scope clause of the Industrial Catering Award covers all the workers and the constitution of the L.T.U. also covers them."

And those two paragraphs put a completely different picture to that which Mr O'Brien was painting to you, I believe, sir.

Indeed, if you go over to page 9 and particularly page 10, Mr Commissioner Negus then set about giving some guidance to the parties as to how he would view the situation at various camps. And it is quite clear when you read through those, it was based on, "What was the contract for? Was it for cleaning? Was it for providing food services?", and so on. And if you look at the top of page 10:

"Tom Price Cleaning Service is solely a cleaning contractor and as such the

MR TAYLOR:

employees are covered by the
F.M.W.U. ..."

I don't think I could argue with that
at all, sir.

If you come down to 'Hearson
Village':

"A.F.C.O. is a company
providing accommodation and
meals to all comers and in my
view all of its employees can
be covered by the L.T.U.
constitution."

PRESIDENT:

That's the same company?

MR TAYLOR:

That's the same company, sir.

"DAMPIER

The manager of Berkeley
Cleaning Co. assures the
Commission that there are
three separate contracts with
Hamersley Iron for catering,
cleaning and servicing the
accommodation. If an
inspection of the contracts
proves his claim to be
accurate then in my view the
L.T.U. constitution would
allow it to cover only the
catering workers."

MR TAYLOR:

Now I think we have also got to be bearing in mind that this is a decision which is based on the rules of organizations, and we don't have the rules of organizations before us, sir; we have an award before us.

And strange as it may seem, the facts of the situation are that the awards are made here in respect of an industry and I think I might differ with you a little here, sir, but the awards are not based on the rules of the organizations.

The rules of the organizations here have a bearing in registering an interest in an award, but it doesn't give them sole rights to that award. It doesn't give them sole rights to make claims in respect of that award.

And indeed, I would venture to suggest that Mr O'Brien's organization may well have grounds to make an application - provided they have got a registered interest in - to vary the Restaurant Keepers Award if it related to the work of cleaners.

There is nothing in that award that says that that award is binding on named employers and named unions.

One union, the Liquor and Allied Trades Union, has a privileged position according to that award in respect of right of entry. And that is as high as I would put it, sir.

Now I think the point is that this decision, this Exhibit O.1, is based on the rules of organizations as distinct from the industry of the employer.

And quite clearly, before you today, is the matter of the Restaurant Keepers Award which is made in respect of those stated industries, or trades, of the industry of the employer.

And the industry of the employer (in

MR TAYLOR:

this case AFCO) is in essence defined by the contract that it has with its client, Renison, to provide all of those services.

And I submit, sir, quite clearly, that it was within everybody's mind when that Restaurant Keepers Award was made, or as it was varied in time, was to provide for precisely that industry - that industry of industrial catering.

And that industry of industrial catering has within it in a small facet, that of cleaning. And it is quite appropriate that that lie within that award, sir. I think I will leave it at that.

PRESIDENT:

Yes, thank you, Mr Taylor. I shall reserve my decision.

HEARING CONCLUDED