



TASMANIA

Tasmanian Industrial Commission

Industrial Relations Act 1984

T Nos **9543, 9544, 9545 and
9546 of 2001**

IN THE MATTER OF an application by
The Community and Public Sector
Union (State Public Services Federation
Tasmania) to vary the Community and
Health Services (Public Sector) Award,
General Conditions of Employment
Award, Police Departmental Employees
Award and Sea Fisheries Award

PRESIDENT LEARY

HOBART, 22 June 2001

TRANSCRIPT OF PROCEEDINGS

Unedited

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

HEARING COMMENCED 9.03am

PRESIDENT: We'll deal with these concurrently, so could I take appearances, please.

5 **MR R.J. MILLER:** Good morning, president. MILLER R.J. for the Community and Public Sector Union (SPSFT).

PRESIDENT: Thank you.

MR T. JACOBSON: If it please the commission, TIM JACOBSON appearing for the Health Services Union of Australia, Tasmania No. 1 Branch.

10 PRESIDENT: Thank you.

MR T. PEARCE: President, PEARCE T, appearing for the Minister administering the State Service Act 2000.

15 PRESIDENT: Okay. Thank you. Perhaps if we deal with the Community and Health Services (Public Sector) Award first. That's the only one you're interested in, I understand.

MR MILLER: No, both.

PRESIDENT: Both are you?

MR MILLER: Yes.

PRESIDENT: The general conditions as well?

20 MR MILLER: Yes.

PRESIDENT: All right, we'll deal with those one after the other. Mr Miller?

25 MR MILLER: It's appropriate today we meet because yesterday was the birth date of Nicholas Machiavelli who produced the book 'The Prince' which is the standard text on political machinations.

Today the matters before you are all dealt with under the same process and formula but if you wish I will deal with those two that you mentioned first.

30 PRESIDENT: I don't think there's any disagreement is there between the parties as to the process?

MR MILLER: No, president.

PRESIDENT: Have the figures been checked and agreed?

MR MILLER: They have been.

35 PRESIDENT: All right. Unless you want to tell me a story. I thought maybe you were thinking because yesterday was the shortest day that today was appropriate because you're going to talk to me for a long time, but unless it's absolutely necessary.

MR MILLER: I will try and be brief.

PRESIDENT: Okay.

40 MR MILLER: If we may if we can deal with all those four matters as a conjoined matter.

PRESIDENT: Yes.

45 MR MILLER: The applications relate to expense-related allowances contained in various awards as indicated before us. The threshold issue is that I have handed up to your clerk an amended application or amended statement of expense-related allowances for the General Conditions of Service Award. There were some minor alterations in the clause numbers.

PRESIDENT: All right.

50 MR MILLER: But they, I believe, are agreed between all parties.

PRESIDENT: Mm.

MR MILLER: The applications mirror the mythology. I keep saying that; it's not mythology because there is nothing mythical about it, it's the methodology.

55 PRESIDENT: Well, that's arguable, I suppose.

60 MR MILLER: As required by the formula contained in the full bench decision T833 of 1987. The commission has a copy of the method of calculation to arrive at the percentage ..[inaudible].. as claimed, together with a document from the ABS which indicates the changes to the indices as in the various quartiles.

This method and formula determines the appropriate percentage increases by subtracting the previous March quarter CPI of the weighted average of the eight capital cities and for the current quarter establishing the increase of 5.99 per cent.

65 The Wage Fixing Principles of 2000 are satisfied, I believe, by the application, that is, that there are existing expense-related allowances and the economic capacity to pay.

70 The only issue is that the application lodged was approximately six weeks ago and I believe it appropriate that any decision that you may make should be as from the date of decision rather than any other time to ensure that those people who have claims on these allowances

75 should be able to have as little hiatus between the changes to the quartile and the application of the claimed increase of 5.99 per cent to ensure that they are not as little out of pocket as possibly could be expected.

80 The previous impediment to the application of the date of decision which has to a large extent been the previous decision is, I believe, spurious now in that with the advent of all agencies - I can't say all agencies - I beg your pardon - but the vast majority of agencies being - having these matters undertaken by electronic means - by computer - enables agencies to pick up any decision, apply that to the various software programs and ensure that any retrospectivity or application from date of decision is done with the minimum of fuss and bother. It is not a manual situation any longer.

85 Basically most agencies are on the Remus system which is common throughout the state service and my informal discussions with persons in the TDM division - technical management division - indicate to me that if there is any form of retrospectivity that it is not a matter of any great concern. Most agencies requirements upon staff are for those persons to make application on a claim basis of a daily occurrence. If a person is for instance is using a car or is having meals, et cetera, that those are claimed on a daily basis and it is simply a matter of going back through the program, putting a particular date in which picks up all the claims as from a particular date and applying any application for increases in allowances to that and, to use a colloquial expression, punching the right buttons and it spits it out at you.

PRESIDENT: Right. So if it was decided today that the applications be approved, the technology could pick up almost immediately -

MR MILLER: Indeed.

100 PRESIDENT: - from what you're saying.

MR MILLER: Indeed.

PRESIDENT: I'm pleased to hear that because I don't understand the technology. It's totally beyond my comprehension.

105 MR MILLER: As I say, I can't give you proof positive of that fact but certainly my research informally within the agencies and with the technical management division indicates that it can be done and it is not a significant matter that would impede any appropriate application as from, shall we say, today's date.

PRESIDENT: Good.

110 MR MILLER: I really have nothing further to add, president. Should there be any questions of me, I'm more than willing to answer them to the best of my ability.

PRESIDENT: At this stage, no questions.

MR MILLER: If the commission pleases.

115 PRESIDENT: Thank you. Mr Jacobson?

MR JACOBSON: Nothing further to add, president, but we concur with the submissions made by my colleague.

PRESIDENT: In respect to the two awards to which you are a party.

120 MR JACOBSON: Yes, that's right - and believe that the application is consistent with the principles set down by the commission and section 36 of the Act.

PRESIDENT: Thank you. Mr Pearce?

125 MR PEARCE: President, these applications by the Community and Public Sector Union to vary expense-related allowance components of the four subject awards, the principles of the commission recognise this facet of employment in the form of principle 7.1.1 which provides that existing allowances which constitute a reimbursement of expenses may be adjusted from time to time where appropriate to reflect the relevant change in the level of such expenses.

130 The employer has had the opportunity to review the draft orders and also the amendment tendered this morning and concurs with the amended figures and the revised clause numbers.

PRESIDENT: The amendments were only to the clause numbers were they?

135 MR PEARCE: That's correct, president, yes.

PRESIDENT: Yes.

140 MR PEARCE: As indicated, the applications are consistent with the principles of the commission and in our submission do no violence to the public interest considerations to which the commission in the making of awards or the approval of industrial agreements is statutorily bound to have regard.

145 In respect to section 36(2)(a) there is no private sector industry to be affected by the agreement. As to section 36(2)(b), it is submitted there will be no deleterious effects on employment levels as a result of the agreement coming into effect.

On the issue of operative date, it has been in the past and is on this occasion the position of the employer that the date of effect should be the first pay period to commence on or after the date of decision.

150 The prima facie position on the date of operation is provided for in the Act at section 37(4) which provides that subject to this section the provisions of an award have effect on and from the date on which the award is made or on such later date or dates as the commission determines and as is or are respectively specified in the award.

155 Notwithstanding the submissions of Mr Miller - and I note that he did qualify his submissions by saying that he understood most agencies - may I inform the commission that the largest agency in the state service - the Department of Health Services - has innumerable difficulties in relation to operative dates which are from the date of decision and to the extent that *from the first pay period on or after* has been a matter of fact in relation to the adjustment of these awards for time almost immemorial, should there be an alteration to that practice - and on the last occasion the matter was before the commission it did occur - but that was in the absence of a representative of the employer - then I suggest that it may beheld the applicants to bring evidence to the effect that it is simply - as Mr Miller says - a punch the hole exercise, in respect of all agencies.

170 Now I know that the Department of Health Services - and this is not of course evidence, it's merely a submission from the bar table - but I do understand the Department of Health Services, as I say, does have innumerable difficulties both from a technical operational resource-wise in relation to a date of decision which may be from today's date.

With that, president, we commend the applications for approval and respectfully request that they be referred to the acting registrar for registration purposes. If it please the commission.

175 PRESIDENT: You've checked the figures have you?

MR PEARCE: Yes, we have, president.

180 PRESIDENT: With my battery-operated hand held calculator, I've checked some of them and I found some differences. Other than that I don't have a problem but what I propose to do is just go back and double check them because I don't trust my own calculations.

MR PEARCE: If I might apprehend that you may have found some slight differences in the district allowances?

PRESIDENT: Yes.

185 MR PEARCE: Yes. What we've done is historically there are two district allowances; one for married couples and one for singles. Historically, the single rate has always been half.

PRESIDENT: So that's what it is.

MR PEARCE: And what we've done is we've sought to bring that situation back.

190 PRESIDENT: All right, that makes a lot of sense. But just looking at it, it didn't sort of jump out at me.

MR PEARCE: Yes, and I'd -

195 PRESIDENT: In that case, I mean I was quite sure that you would have checked the figure, so had they been a problem you would have picked them up. But they are the only ones that I couldn't calculate so that answers that. It's very easy.

200 MR MILLER: If I may, I do apologise, president, that was my oversight and Mr Pearce and I had discussed that matter and had brought them in mind because of the various calculations and I apologise -

PRESIDENT: It makes a lot of sense.

MR MILLER: - I didn't bring it to your attention. My apologies to my colleagues and yourself.

205 PRESIDENT: That's all right. I still have my L plates up as far as lot of these are concerned, so you've got to make some allowances for that.

Did you want to respond to anything Mr Pearce has said about the operative date?

210 MR JACOBSON: Well, I'd like to. Given that I'm involved with the Department of Health and Human Services and Mr Pearce indicated that that would be the agency that would have the most difficulty flowing on an operative date of the date of today's hearing, I've got to say I find it somewhat surprising that in fact that position could be put forward by the minister given that some 18 months ago the
215 Department of Health and Human Services spent an inordinate amount of money purchasing a new payroll system for the Department of Health and Human Services; that is a computer based - a system - a software system - that a significant amount of public expenditure was spent on that system. For that system I would submit not to cope with
220 a fairly minor adjustment to figures like this may well raise significant questions perhaps not in this arena but elsewhere and I believe that their system would cope.

PRESIDENT: Traditionally it has been from the first pay period. I mean I don't what happened on the last occasion.

225 MR JACOBSON: Yes, no, it has. Yes, it has.

PRESIDENT: And I don't really see why that should change. I take it that nobody turned up from the government department last time and these slipped through.

230 MR JACOBSON: Similarly, there hasn't been an argument - a significant argument - put forward as to why in fact it should.

PRESIDENT: Yes. I mean traditionally variations are usually - and I sort of qualify that - from the first pay period and looking back through the past orders other than the last one, they have all been from the first full pay period and I don't know what happened last time or how it got through.

MR MILLER: I can assist you there.

PRESIDENT: You can tell me can you?

MR MILLER: It was by marvellous and magical advocacy.

PRESIDENT: I was going to suspect that.

240 MR MILLER: Absolutely compelling.

PRESIDENT: And in the absence of any opposition one would suspect.

MR MILLER: That is only the best way of compelling argument, president.

245 PRESIDENT: Well, if you're lucky you shouldn't lose, should you, on those sorts of occasions.

MR MILLER: Like Collingwood playing St Kilda.

PRESIDENT: But I don't think there is much opposition to it being the first pay period, not necessarily for the reasons submitted by Mr Pearce, but it has been traditional and I think the last occasion it was an aberration and maybe had a slight benefit to the applicant.

255 All right, having heard the parties I am satisfied that the four awards being the Police Departmental Employees Award, the Sea Fisheries Award, the Community and Health Services (Public Sector) Award and the General Conditions of Employment Award can all be varied in accord with the draft orders that have been tendered subject to the change in the clause numbers in the general conditions of award.

The variations will take effect from the first pay period on or after today and the order will issue in due course.

260 **HEARING CONCLUDED 9.20am**