

DEPUTY PRESIDENT: I'll take appearances, please.

**MR R. MILLER:** My name is MILLER R.J. Appearing on behalf of the CPSU (SPSFT), sir.

DEPUTY PRESIDENT: Thanks, Mr Miller.

5 **MR R. HUNT:** ROD HUNT, appearing on behalf of the Australian Education Union, in Matter T.6189 of 1996 only. If the commission pleases.

DEPUTY PRESIDENT: Right. Thanks, Mr Hunt.

10 **MR M. WATSON:** May it please the commission, MARK WATSON. I appear on behalf of the Port Arthur Historic Site Management Authority in relation to Matter T.6195 of 1996 only.

DEPUTY PRESIDENT: Well - sorry -

**MS A. WATT:** If the commission pleases, ANITA WATT, appearing with KATHLEEN FEARNLEY-SANDER on behalf of the Minister for Public Sector Administration.

DEPUTY PRESIDENT: Right. Thank you.

15 Do we join these things? Have five separate hearings, or what?

MR MILLER: If it pleases you, Mr Deputy President, I think that that would be the most appropriate way to proceed.

DEPUTY PRESIDENT: Which?

20 MR MILLER: To join - sorry, I beg your pardon - to join all those matters as a contiguous item.

DEPUTY PRESIDENT: Any objection to all matters being joined and we proceed that way? Very well, all matters will be joined in the one hearing. Who would like to go first?

25 MR MILLER: It is probably appropriately, sir. I was going to make an objection on behalf of the CPSU to Mr Watson's appearance because he gave me a heart attack about 2 minutes before the hearing commenced, but in lieu of the cordial relationship I withdraw that.

DEPUTY PRESIDENT: Well, he is sitting at the other end of the table and you have moved to that end of the table. It is a bit unusual.

30 MR WATSON: He was here first.

MR MILLER: I'll commence, if I may, sir?

DEPUTY PRESIDENT: Yes, away you go.

35 MR MILLER: It's appropriate that the application be heard today. I think today is the anniversary of the abolition of transportation to Australia and those issues which come before us are significant in the terms that we have an award rate struck for the working persons of these islands.

DEPUTY PRESIDENT: Yes, but don't speak disparagingly of my early relatives.

MR MILLER: Indeed not, sir, I would hesitate to do so. As a matter of threshold, I -

DEPUTY PRESIDENT: Are you speaking now to T.6195 are you?

MR MILLER: All of those items, sir, with the exception of the GCOE and the Port Arthur Authority Award.

5 I made an error in application, I believe, in that the wording of my application was  
incorrect at the title of the various awards, but I noted from the - when you clerk read  
the awards out they were mentioned correctly, sir. I do apologise for my oversight. It  
was on disc and I picked the disc up and ran them through. That matter has now  
10 been completed and finalised and it will not occur again, all being well. So I apologise  
for that.

DEPUTY PRESIDENT: Shall we take it as read that the applications are amended to  
correctly describe the awards which are now current and were called?

MR MILLER: Yes.

DEPUTY PRESIDENT: The applications are so amended.

15 MR MILLER: Thank you.

The last application before the bench was on T.5695 of '95 which was for the General  
Conditions of Service Award which has now been retitled the General Conditions of  
Employment Award, and the matter will flow in the same process as was heard  
previously.

20 These are expense-related allowances. They do not include the kilometrage rates  
which will come before you at a later stage.

These applications mirror the mythology of claims as previously, and the formula is  
determined by the full bench in other matters.

25 I have a collection of exhibits which I will hand up to the bench. They are numbered.  
You may wish to change the numbering process.

DEPUTY PRESIDENT: Well, you have numbered this first one CPSU.1 and I will  
leave it at that, Mr Miller.

30 MR MILLER: Thank you, sir. The CPSU.1 document is the Australian Bureau of  
Statistics, Catalogue No. 6401.0. It is the Consumer Price Index for the March Quarter  
1996, and you will see under the 'Summary of Findings' that the movement is 3.7%  
for the quarter ending March 1996. The Exhibit 2 is the - I am sorry - Exhibit 2 is  
ABS Table 1 and shows the figures for the average weighted - sorry - the weighted  
average of eight capital cities.

35 Item 3 - CPSU.3, so numbered - is the expense-related allowances claim which is a  
mirror of Decision T.833 of '87, and there is an example there using the formula for a  
previous quarter.

DEPUTY PRESIDENT: That was a full bench, wasn't it?

MR MILLER: Yes, sir.

Exhibit 4 (i) is the frontish piece of the wage fixing principles 1994 and CPSU.4(ii) page 8 is Clause 9 which indicates the requirements for existing allowances, to which I will make note later of later on.

5 The application shows the increases sought through applying this formula to the existing rates of the various award allowances, and I believe, sir, that the matter is a consent matter and that is the figures given to you under existing and proposed, in full agreement of all parties.

10 The existing allowances clause, the application is in accord with those principles, as espoused, and in particular I take you to page 4 again - sorry, Exhibit 4 on 4(ii) in Clause 9(1)(i) existing, and I read:

*Existing allowances which constitute a reimbursement of expenses incurred may be adjusted from time to time, where appropriate, to reflect the relevant changes in the level of such expenses.*

15 The application, sir, does not offend the public interest test of section 36 of the IRA Act and, in particular section 36(2). State sector budgets are framed anticipating inflation and having resources of treasury and finance to ensure that such forecasting is done accurately.

Granting the claim will not break the state - 40% might break the state, but certainly I don't think this application will.

20 DEPUTY PRESIDENT: Did it?

MR MILLER: It may, sir, it may. In due course we shall find out.

25 I request that the Industrial Commission grants the claim as from the date of claim, which is 1 May, and again a most appropriate date of claim, and I believe that the bench has the ability under section 37(5)(a) or (b) of the Industrial Relations Act so to do.

I presume that my colleagues at the far end of the table will accord with that, but I won't be surprised if they don't.

DEPUTY PRESIDENT: Have your colleagues at the end of the table and behind you had the opportunity to check the draft orders and the figures?

30 MR MILLER: Yes, sir, they have both been faxed and I thank Ms Fearnley-Saunders for pointing out a couple of errors in that which have been adjusted in accordance with that and, as far as I am aware, the matter is now in full consent.

DEPUTY PRESIDENT: I see.

MR MILLER: If the commission pleases.

35 DEPUTY PRESIDENT: Very well. Any other speakers? Mr Hunt?

MR HUNT: Mr Deputy President, the Australian Education Union supports the application made by the CPSU (SPSFT) and we congratulate them for the alacrity with which the application was submitted on this occasion.

If the commission pleases.

40 DEPUTY PRESIDENT: Thank you. Anyone else for the application? Mr Watson?

MR WATSON: Mr Deputy President, I would like to make some comments particularly about the operative date of the application.

DEPUTY PRESIDENT: I thought you would.

5 MR WATSON: But I just would ask the question as to whether or not the minister intends to make any submissions.

MS WATT: Mr Deputy President, the minister for public sector administration supports this application to vary the expense-related allowances contained in the General Conditions of Employment, Sea Fisheries, Inland Fisheries and the Police Departmental Employees Award.

10 The proposed variations follow the methodology established by this commission in T. No.833 of 1987. They are consistent with the requirements of the wage fixing principles and public interest requirements of the Industrial Relations Act.

We request that the operative date be that of the date of decision.

DEPUTY PRESIDENT: Right. Thank you.

15 MR WATSON: Mr Deputy President, our position is one of consent to the application in terms of the new rates proposed. That is, as far as the Port Arthur Authority Award is concerned, \$7.25 for clause 22(a) and \$8 and \$14.10 respectively for clause 22(b).

20 We oppose any retrospectivity in relation to the new allowances on the basis that the Industrial Relations Act would provide the commission with the ability to provide for retrospectivity in special circumstances. There were no submissions put up in relation to any special circumstances in relation to this application, and we would simply say that that being the criteria then the commission has got nothing before it to even consider retrospectivity. So we would oppose that.

25 This particular issue of retrospectivity came up on the last occasion that all these award were varied. That was before the president in Matter T.5859 of 1995. The same argument was put up in relation to retrospectivity and the position was adopted by the president that there were no special circumstances and, therefore, he didn't award retrospectivity.

30 Now, on that basis, we would say that we would consent to the application from the first full pay period on or after today's date, but we would certainly oppose any retrospectivity.

If the commission pleases.

DEPUTY PRESIDENT: Thank you. Anybody else? Mr Miller?

35 MR MILLER: I don't wish to detain you any longer than necessary, sir, but the actual reason, from my memory, because I was actually doing the case last time, was to ask for retrospectivity was in actual fact because there had been an oversight with the lodging of the application of some considerable period of time, and that was the reason why retrospectivity was requested.

DEPUTY PRESIDENT ROBINSON: Is that something special or unusual

40 MR MILLER: It is unusual, sir, yes. As you will see before you the application - Mr Hunt made mention of the fact - that the application has been lodged this time in his speedy fashion, I think, as I said, last time round, the matter was overlooked and that,

I believed, was a special case and as Mr Watling - Watson, I beg your pardon - delusions of grandeur - pointed out the issue was in fact disregarded by the commissioner at that stage, but not quite for the reasons that Mr Watson has propounded. If the commission pleases.

5 DEPUTY PRESIDENT ROBINSON: Thank you.

MR HUNT: Mr Deputy President, if I could rise again. I would put it to you that you shouldn't accept the submission of the Port Arthur Authority in relation to anything other than the Port Arthur Authority for the date of - the operative. The Port Arthur Authority have asked for the first full pay period on or after the day of decision. We  
10 would ask that if you are not convinced by the CPSU's submission for the date of application, that it be today's date, and that the rates be adjusted - and I'm talking here in relation to T.6189 of 1996 - that it be the day of hearing and I presume, given past practice, that that would also be the day of decision, and from what I heard coming from behind me, that was also the position put by the Minister for Public  
15 Administration as well. If the commission pleases.

DEPUTY PRESIDENT ROBINSON: I'm sorry, I'm unclear. You're saying the position was date of hearing as against today's date?

MR HUNT: No, I'm saying that the position is that - that we are putting to you is that it should be - the operative date should be today's date, the day of hearing, not as the  
20 Port Arthur Authority have put to you, the first full pay period on or after today's date. That is of course their right to put that submission, but only in respect of the Port Authority Award not any other award, and so I would say - as it is only my entitlement to put a submission in respect of the General Conditions of Employment award, I would say to you that if you are not convinced by the submission made by the CPSU, I  
25 would urge you to make the operative date the day of decision which, as I also said, has traditionally been the day of hearing in these matters. If the commission pleases.

DEPUTY PRESIDENT ROBINSON: Thank you. If there is nothing more, I'll indicate that I am prepared to grant the applications to vary the awards in the terms detailed in the draft orders submitted. I do so on the basis of an earlier full bench decision  
30 which gave guidance for the future as to how such allowances should be adjusted. I rely also upon the provisions of the wage fixing principles as they are current as they apply to cost related allowances and I believe the applications are justified on the - as being consistent with public interest, and I take into consideration all the - also the degree of consent as to the granting of applications already.

35 On the question of operative dates, I think each occasion is separate and regardless of whatever might have happened in relation to other applications, the circumstances have got to be taken into consideration but read in, of course, in conjunction with what the act says in relation to the granting of retrospectivity.

I don't believe there is anything extraordinary or special about the present  
40 applications. They have been lodged and programmed and dealt with reasonably quickly and therefore the operative date of all applications will be the first full pay period commencing on after today. I think to make it other than a pay period would cause unnecessary complications with the compilation of pays. Thank you.

**HEARING CONCLUDED**