

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T. No. 4284 of 1993

IN THE MATTER OF an application
by the Australian Liquor
Hospitality and Miscellaneous
Workers Union to vary the Security
Industry Award

re security officer - level 4 and
firearms

COMMISSIONER GOZZI

HOBART, 31 March 1994
continued from 19/8/93

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER GOZZI: I note there is no change in appearance this morning. It is also my understanding that the request to reopen this part of the proceedings is agreed to between the parties, and the purpose is for Mr Abey to make a short submission on the additional material that is already on the record, and for you, Mr O'Brien, to respond. Mr Abey?

MR ABEY: Thank you, commissioner.

It goes without saying that our primary submission is as we have put, that the responsibility for obtaining a licence falls to the employee in that that licence stays with the employee throughout his or her working life in the security industry.

However, I think it is useful that the commission may be aware of an alternative proposal which we have, in fact, put to the unions that we do not have agreement on it.

If I can table a document?

COMMISSIONER GOZZI: Now you are testing me, Mr Abey. Exhibit No. - here we go - A.3. Exhibit A.3.

MR ABEY: Thank you. If I can just read out the alternative proposal. It says:

That in certain circumstances whereby a security officer is required to carry a firearm, such employee shall be paid an allowance calculated on the basis of \$5.00 per week of 38 hours.

Where the requirement extends to a greater or lesser number of hours per week the amount shall be paid on a pro rata basis.

PROVIDED THAT this allowance shall not be payable in circumstances whereby the employer has paid the cost of the licence fee and training course on behalf of the holder of the licence.

Now if I can draw a parallel, Mr Commissioner. This is akin to a tool allowance.

That is, the tools of a tradesman are provided by the tradesman and the employer pays an allowance to compensate that tradesman - tradesperson - for owning and maintaining that kit of tools.

Now in the case of a security officer, we say that the kit of tools is in fact the licence to carry a fireman, and so they are directly parallel.

There is no particular magic in the \$5.00, but I would point out that the cost of obtaining a licence on its face is \$150 for the fee plus \$150 for the training course. A total of 300.

On the basis of \$5.00 a week that would nearly be cut out inside 12 months. Slightly over 12 months to cut out the \$300.00. So we think the figure is certainly realistic.

I don't think it requires any further explanation. It should not be seen as a weakening of our primary position. It is simply an alternative.

If the commission is so minded. If the commission pleases.

COMMISSIONER GOZZI: Yes; thank you, Mr Abey. Mr O'Brien?

MR O'BRIEN: Mr Commissioner, we see that the position ought to be that which we submitted in the initial hearing of this matter, and that is that the employer should pay the cost of the licence and training.

We, for the purpose of addressing Mr Abey's alternative submission, would make the following comments:

Firstly, to limit a payment to circumstances whereby a security officer is required to carry a firearm will leave, in our view, room for doubt as to whether the carrying of a firearm is a requirement or not, and the enforcement of the provision, unlike a requirement to use tools, which is Mr Abey's simile for a tradesman, is something which may well be quite difficult to prove.

Take, for example, a mobile patrolman who is in danger and the employer simply says, 'Well, it is up to you whether you want to carry a firearm, we don't require it'. The practice has been that those people have carried firearms.

But, under this provision, an employer might say, 'Well, I didn't require you to carry a firearm, therefore I am not required to pay you the \$5.00 licence allowance per week'.

So that would be the first weakness we would see in the proposed provision.

Secondly, of course an employer whose employees were engaged upon work where the employer required them to carry a licence, would pay for the licence and the allowance in slightly over 12 months.

And, so any employer had an ongoing employment relationship with any group of employees would be better off paying the licence costs themselves.

The only value in this alternative proposal is if the employment is short term, and that of course means that it will be the employee who bears the burden substantially of the cost of the licence, because on the one hand if the employer was going to engage someone to regularly use a gun licence, that means that they were going to regularly carry a gun, it would be more costly under this proposal to pay the allowance.

So I would submit that the proviso, the second paragraph in document A.3, would be the matter which was picked up by those employers. Those employers who were going to engage in some short-term activity where they would actually save money by only paying \$5.00 a week would not pay the allowance and it would be those employees who in fact would pay the price of this provision because they would not be reimbursed the cost if they would use the licence but they would never get the opportunity to use it again unless they were employed in the industry, and what would happen then?

Does that mean that the next employer looking at them and saying, 'Well, you have already got the licence, so I can't pay for your licence, so I am going to have to pay you \$5.00 a week for every week I use it. It is going to be cheaper for me in the long run to hire somebody else and pay for their licence.'

Now I don't want to be too negative about this sort of proposal. I can see difficulties with it. I also would question the pro rata concept because it doesn't matter whether a person is part-time, casual or full time, the cost of the licence is the same.

And what Mr Abey is suggesting is that the employer is only getting a proportionate value for the licence, but in fact the cost to the employee doesn't diminish because that employee works 10 hours as compared to 38 a week, or 1 week as compared to 52 of the year. The cost is still the same.

Now our proposition is that in fact it is the employer who has the control over the requirement. That's the principle which Mr Abey in fact built into his alternative proposal.

It is the employer in the circumstances who makes that choice and it is the employer who should pay the cost.

Now we would say that if there is to be an allowance factor that that will be to the detriment of any person who is required in the short term to acquire a licence and use it. In the long term an employer would, under this proposal, be much better to pay for the cost of the allowance, because the employer in all of those cases is in the position to choose. We believe that the appropriate method of determining this matter is to determine that the employer pays the cost and then the employer makes the decision about the use of the

licence, which has regards to what the employer intends to do with it.

And, if the commission pleases, that would be our response.

COMMISSIONER GOZZI: Yes, thank you, Mr O'Brien. Mr Abey, any further comment?

MR ABEY: I don't know that I have got the right of response. We can go on indefinitely. I thought we were agreed that I would put it up and Mr O'Brien would respond.

COMMISSIONER GOZZI: Well, it is not your application.

MR ABEY: It's not my application.

COMMISSIONER GOZZI: Yes. Alright. No, that's fine.

Thank you very much, gentlemen, I will give you a decision shortly. Thank you.

HEARING CONCLUDED