

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T. Nos 2323 of 1990 and
4287 of 1993

IN THE MATTER OF an application
by the Tasmanian Public Service
Association to vary the General
Conditions of Service Award

re workplace representatives and
payment of wages

DEPUTY PRESIDENT ROBINSON

HOBART, 22 October 1993
continued from 10/8/93

TRANSCRIPT OF PROCEEDINGS

Unedited

DEPUTY PRESIDENT ROBINSON: Thank you. I have received an apology from Mr Holden. I think he indicated on the last day of hearing that he would be on leave. I think we reached the stage where the government responded to the claim in some detail and I think it's now the role of the TPSA to exercise its final right of reply, Mrs Strugnell.

MRS STRUGNELL: Thank you, Mr Deputy President. I certainly hope you enjoyed your holiday also.

DEPUTY PRESIDENT ROBINSON: Indeed I did.

MR LANE: Very good. Two weeks was all too short even though I was away from my working environment and -

MRS STRUGNELL: Having a good rest no doubt.

DEPUTY PRESIDENT ROBINSON: - singing the usual phrases.

MRS STRUGNELL: Mr Deputy President, I've been through the transcript of these proceedings a number of times and certain adjectives keep springing to mind to describe the government's submission. Apart from tedious, adjectives such as lazy, contradictory and bureaucratic. And before I progress further with explaining what I - what I see is behind those I would like to ask the commission one question, and that is, whether or not you've received advice which you asked for at the last hearing regarding your request for costs relating to other awards which contain a payment of wages provision?

DEPUTY PRESIDENT ROBINSON: I don't believe I have. I - we did put Mr McCabe on notice that if he could obtain information as to what costs had actually been incurred -

MRS STRUGNELL: Yes.

DEPUTY PRESIDENT ROBINSON: - in relation to late payment of wages where there is already some provision in other awards. I don't know if - if you were able - conscious of that, Mr McCabe, and if so -

MR McCABE: Yes, I was aware of that - that discussion that took place and -

DEPUTY PRESIDENT ROBINSON: Yes.

MR McCABE: - but we do not wish to put anything to the commission on that - that particular point.

DEPUTY PRESIDENT ROBINSON: But the commission had asked for that information.

MR McCABE: I wasn't aware that it was a formal request but -

DEPUTY PRESIDENT ROBINSON: What did you think it was?

MR McCABE: I thought it was a question to me and the commission suggested that if we wished, it would probably be in our best interests if we did provide that information, but -

DEPUTY PRESIDENT ROBINSON: Mm.

MR McCABE: - as I say, we're not in a position to provide that information - if the commission pleases.

DEPUTY PRESIDENT ROBINSON: Thanks, Mr McCabe.

MRS STRUGNELL: Well I wonder, sir, if we are surprised that such information hasn't been tabled as requested by this commission. The government's submission is lazy in that respect, I submit, being that -

MR McCABE: Excuse me, Mr Deputy President, I do take objection to those sorts of inferences being made from the other end of the table. It's certainly the - the government's choice as to what and how it puts its submissions and I don't think it be - behoves the - the other end of the table to be describing the government's submissions as lazy. I mean that's for the commission to decide in the ultimate - if the commission thinks our submissions were insufficient or lazy then no doubt the commission will say. It's not up to the other end of the table to make those sorts of remarks.

DEPUTY PRESIDENT ROBINSON: Well, I must acknowledge that the submissions were comprehensive and I think I alluded to that fact in the opening. I would hope that we could observe all of the protocols, Mrs Strugnell, and - and proper decorum in this place on this day when so many other people seem to have chosen to take a flex day and we haven't.

MRS STRUGNELL: Yes, Mr Deputy President. Being, sir, that the government's submission was based primarily on a hypothetical cost implication of the application that we have before this commission, and it would seem that being that the information that you requested has not yet been tabled with the commission that there is obviously not very much research been undertaken to substantiate the government's submission.

We also saw as part of Mr McCabe's submission that the full facts available with regard to the contractual arrangements between Treasury and the Reserve Bank in respect of the possible transferring of onus of responsibility for ensuring payment of employees from one party to another were not fully known.

Not to be aware of contractual arrangements and to presume

that safeguards are part of a contract is not good enough. Bureaucratic attitudes are very evident, Mr Deputy President, when an employer can virtually say that once they've handed on the money to another institution it's no longer the employer's problem. Worse than that, sir, but the employer actually loses control of the process.

At a crucial point in Mr McCabe's submission relating to control and responsibility of a process to pay, we're subjected to one of many - one of many astounding statements contained in the submission and I'd like to quote one that I find quite amazing, and I quote:

DEPUTY PRESIDENT ROBINSON: Are you going to take us to transcript? That's a question, not a directive.

MRS STRUGNELL: I prefer to quote it, sir, if I could. Is that alright?

DEPUTY PRESIDENT ROBINSON: Certainly, certainly. I mean it's your right of reply.

MRS STRUGNELL: Thank you.

I quote: There must be a point where the employer can no longer be in control of the processes which determine when an employee's pay will be in an employee's nominated account and available for use. End of quote.

What sort of c'est la vie attitude is that, Mr Deputy President? An employee who accepts and condones such a process would have some problems in identifying and separating the difference between control and responsibility. Contradictory within the submission is reflected in the very essence of the argument presented. Surely to argue that the TPSA clause would cost too much must say something for the inadequacies of the current system.

Argument in relation to Mr McCabe's statement that the government alternative proposal has been developed to respond to, and I quote: The need to put in place certain checks and balances and safeguards and to ensure that various pay systems which exist to pay state employees work efficiently. End of quote.

Again, an amazing statement. Reaction management, I would say, Mr Deputy President. Didn't the checks and the balances and the safeguards matter until this application was before the commission? They should have mattered and a responsible employer would have ensured that every priority was being given to the fulfilling of what is essentially a contractual arrangement between the employer and the employee, and that is, the payment for work already provided.

The administrative instruction presented as exhibit Government.9, is ironically dated 29/7/1993, a date already part way through these proceedings. Reaction management again, Mr Deputy President. This instruction contains in part no more than the basic operating instructions but also in part refers to Treasury instructions which lay down the requirements for salary abstract information and overpayment procedures.

The disturbing thing about Treasury instructions and administrative instructions and any other type of instructions, Mr Deputy President, is that they can be changed at any time and quite often without notification to any of the parties effected.

What may look satisfactory today could be quite unsatisfactory tomorrow and this sort of arrangement is not appropriate to stand alone for ensuring and recognising the protection of the fundamental rights and entitlements of employees.

As for exhibit 11 - Government.11, Mr Deputy President, the TPSA has many problems with the nebulous clause which does little than put words on paper. It's a lip service clause which serves no purpose.

Mr McCabe stated in his - in his submission that - and I quote again: What unions are attempting to do now - my words after agreement to EFT (electronic funds transfer) - is to ameliorate the possibility of any disadvantage to the members in the electronic transfer process so that the employer is responsible for ensuring that the employees pay day - pay - is in their bank or financial institution account on the dot of pay day. End quote.

What a statement again. Someone has to represent employees to ensure that they are not disadvantaged. The employer is obviously not impressed with having that responsibility, so of course that is what we're about and to seek that protection again against genuine disadvantage by virtue of award protection.

The government's argument is confused, Mr Deputy President. On one hand they argue to support a process which in their very words reaches a point of being out of their control and on the other hand they put forward hypothetical argument regarding cost implications based on things going wrong. Their submission fails to recognise in any way the substantial leeway contained in our clause which allows for negotiation of circumstances which are identified as being outside the control of the employer.

The TPSA's submission, Mr Deputy President, is intended to provide the fundamental entitlement of regularity and correctness of payment by means of cost incentive.

It provides for flexibility to negotiate alternative arrangements where necessary. It is a clause not arising from greed but from the need for fairness and equity.

I'd like to just reiterate quickly if I may; that the responsibility for correct and timely payment of employees must lie with the employer and not be abdicated by some fuzzy, complicated, contractual arrangement which devolves a process of pay information transfer.

The employer must accept that responsibility and see that it is absolute priority when assessing systems and when instituting new procedures to deal with paying employees. It is not acceptable to introduce a reaction management procedure which appears to be addressing an issue such as this but which is inadequate because of the vulnerability of the base documents.

I ask you, sir, to consider our application in that it sustains itself in its logic and its simplicity and that our submission is based on providing fairness and equity for all employees in relation to protecting the basic principles of payment of correct wages at the correct time as it constitutes the most fundamental element of any contract of service.

Our application is one borne of concern for present day conditions and requirements and one worded suitably to provide flexibility for both the employee and the employer, but one intended to provide that incentive to the employer to maintain as a priority its obligations to employers - to employees, I beg your pardon.

That really, sir, is the - is the essence of what our application is all about and I don't intend to continue on for an hour longer than I need to, to say what I can say in five minutes. Thank you, sir.

DEPUTY PRESIDENT ROBINSON: Thank you very much. I shall reserve my decision and hand it down in writing as soon as I can.

HEARING CONCLUDED