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TRANSCRIPT OF PROCEEDINGS

O/N 107600

TASMANIAN INDUSTRIAL COMMISSION

DEPUTY PRESIDENT P.C. SHELLEY

T No 13428 of 2009

T No 13429 of 2009

T No 13430 of 2009

NURSES (TASMANIAN PUBLIC SECTOR) AWARD 2005

Applications pursuant to section 23(2)(b) of the Industrial Relations Act 1984 lodged by the Minister administering the State Service Act 2000 to vary the above award re Deletion of Part VII – Provision of Accommodation and Meals; Sick Leave and Carer's Leave

HOBART

10.30 AM, WEDNESDAY, 27 MAY 2009

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THE DEPUTY PRESIDENT: Thank you. Now, we've called these all on together – but they're not being joined, as I understand it – but we'll just go through each of them in turn. Now, I'll take appearances.

5 MR P. BAKER: Deputy President, I appear on behalf of the applicant, P. Baker, and with me this morning, MR R. CLEGG.

THE DEPUTY PRESIDENT: Thank you.

10 MS C. SAINT: Deputy President, Caroline Saint. I appear on behalf of the Australian Nursing Federation.

MR T. JACOBSON: Deputy President, Tim Jacobson, appearing on behalf of the Health Services Union of Australia, Tasmanian Number 1 Branch.

15 THE DEPUTY PRESIDENT: Thank you. Okay, Mr Baker, I'll leave it up to you as to the order in which they should be dealt with.

MR BAKER: Well, perhaps if we start with the one at the highest end, T13430, to
20 commence with, Deputy President.

THE DEPUTY PRESIDENT: Okay. Now, that's the one that the provisions are in the wrong place.

25 MR BAKER: Well, yes. What I would propose with that application, Deputy President, is that that matter be stood aside until a decision is handed down by yourself in matters T12671 and 12733.

30 THE DEPUTY PRESIDENT: In relation to the public holidays and annual leave?

MR BAKER: In relation to the public holidays, leave, overtime, etcetera. Because I think if, as a result of your decision, there needs to be some alteration made to the award, then I think it would be appropriate that that whole issue about time off in lieu and overtime would be dealt with concurrently.

35 THE DEPUTY PRESIDENT: Okay, so you're proposing that that one be adjourned sine die?

40 MR BAKER: Yes, Deputy President.

THE DEPUTY PRESIDENT: Okay. I'll just hear from the other parties as to that. Ms Saint?

45 MS SAINT: Thank you, Deputy President. We don't have a concern about that. I'm a little surprised because I thought that was the one that we were probably most in agreement on, so I would have thought that could have proceeded regardless of the decision that we're awaiting, but I don't see any problem with that in the meantime.

THE DEPUTY PRESIDENT: Mr Jacobson?

MR JACOBSON: We concur with the submissions.

5 THE DEPUTY PRESIDENT: Okay, well in that case we will adjourn T13430 sine die, and a notice will be sent out to that effect. Next one, Mr Baker?

MR BAKER: In the next – in respect of both of 29 and 28, we would ask that there be – well, perhaps if I just explain 28 first. T13428 - - -

10 THE DEPUTY PRESIDENT: That's the accommodation and meals?

MR BAKER: That's the one that goes in relation to accommodation. I would actually seek to amend the application, and I will do this in writing, to – if you like – delete, or what I'm seeking to do in that application, and amend it to examine the provision of board and lodging as they are contained under Part VII, which is the provision of employer accommodation and meals.

I've had the opportunity to go back and have a look at how this clause has been developed over the years and, as you are aware, Deputy President, this award has gone from the State jurisdiction into the Federal jurisdiction and back again, and there have been a number of provisions that have been either inserted or amended over the years in the award. It would appear, on face value, that board and lodging, whilst it has remained as is, there appears to have been a loss of wording, if I could use that expression, and in addition to that, the rates have remain staggered, as far as I can tell, since approximately 1993. It is our submission that - - -

THE DEPUTY PRESIDENT: Yes, I doubt you could get a full breakfast for \$4.50 these days.

30 MR BAKER: I'm not sure what the rate is that's charged. I understand that when the rates were amended, way back in 1991 – they increased them to \$4.30 – there was a near riot at the Royal Hobart Hospital, but I'm not sure what the situation is today. So what I would like is the opportunity to have some discussions with the unions in relation to the application of both the provisions and the amounts as prescribed by the award.

THE DEPUTY PRESIDENT: Okay. So your initial proposition was just to delete it altogether?

40 MR BAKER: Well, yes. Yes, Deputy President. But the advice I was provided with was somewhat inaccurate and I have since discovered that we, in fact, do use the provisions as contained both in - - -

45 THE DEPUTY PRESIDENT: So they're not obsolete?

MR BAKER: - - - and outside of the award. So one might argue that the provision of board and lodging at State hospitals, for example, by nurses, is perhaps a thing of the past, but we certainly provide lodging in what may be termed “isolated” areas. So it would be my submission, Deputy President, that this matter be adjourned to a date to be fixed to allow the parties to have discussions as to the application of the provision, and also the amounts as prescribed.

THE DEPUTY PRESIDENT: You’re also seeking to amend it.

MR BAKER: And to amend it.

THE DEPUTY PRESIDENT: So the award variation that you’re seeking is to examine the provisions. That doesn’t really make sense.

MR BAKER: Well, we need to have a look at them. However, I might - - -

THE DEPUTY PRESIDENT: You could leave the application as is and how you then deal with it is up to the parties.

MR BAKER: I accept that.

THE DEPUTY PRESIDENT: Okay. Mr Jacobson?

MR JACOBSON: Deputy President, thank you. Look, we would consent to - - -

THE DEPUTY PRESIDENT: Simply adjourning it sine die?

MR JACOBSON: Yes, seeing the matter be adjourned sine die. I don’t want to put too fine a point on it, but it would be preferable to come back – or have a position – a consent position prior to the matter being re-listed again. We accept Mr Baker’s view that, in fact, the provision is being applied. I think its being more widely applied than even he’s aware of at this point, and I do understand that, for instance, at the Launceston General Hospital, the provision is – the provision of board and lodging is still provided. So – but I think in terms of discovery, then that process that Mr Baker wants to go through in terms of reviewing the rates I think that’s more than acceptable to us.

THE DEPUTY PRESIDENT: Okay. Well, that’s what we will do. The notice will be issued to that effect. Now, T13429 – this is the one that I thought might be contentious.

MR BAKER: Yes, it is. I had a discussion with Ms Saint in relation to it and it is contentious, and I’m not too sure if we can actually find some common ground between us. The issue has arisen due to the fact that, as you are aware, there is ongoing pressure that is placed upon nursing staff and nursing rosters within our public hospitals system, and one of the things which is starting to become a little annoying is the fact that the current award provision allows a nurse 24 hours to

advise the hospital whether or not they're ill and whether or not they're coming to work.

5 What we seek to do, in this application, is to prescribe a period of notice by the employee to the employer of two hours, rather than 24 hours, to bring it into line with the general provision that applies in the Health and Human Services Award, so there is a consistency of approach, and that nurses who may forget to ring their employer in such circumstances are given this reminder that they need to do so within two hours of commencement of the shift, which I would submit is not
10 unreasonable.

Now, I also accept that if the matter needs to be arbitrated, then an appropriate time should be set down for it, at which time we would provide the necessary documentation to demonstrate that the current provision is not an effective – in all
15 circumstances – is not an effective method of conducting one's business.

THE DEPUTY PRESIDENT: So what happens if they don't notify within the two hours, or the 24 hours?

20 MR BAKER: Well, they have 24 hours at the present time.

THE DEPUTY PRESIDENT: Yes, and if they don't, what happens?

MR CLEGG: Nothing that I'm aware of.
25

MR BAKER: Nothing, as I'm aware. But I'll need to confirm that, Deputy President.

THE DEPUTY PRESIDENT: I mean, I suppose it could be a disciplinary matter.
30

MR CLEGG: It could be, but - - -

THE DEPUTY PRESIDENT: But there's no penalty for example not getting paid your sick leave or any such - - -
35

MR BAKER: No. And I haven't considered that.

MR CLEGG: There's no penalty, I don't think.

40 THE DEPUTY PRESIDENT: Okay. Ms Saint.

MS SAINT: Certainly, Deputy President. We are not actually convinced that there's any need to change this provision. We've not been notified of any problems with the provision. I have made some inquiries, and I've been told that for the most
45 part, people ring up prior to the shift and, where possible, they give considerable notice.

Unfortunately, nurses don't like to be sick, and they'll often put off calling in until pretty much the last minute, so they might call in half an hour before the shift starts, which I can see might cause a bit of a problem, but they're thinking that they might be able to turn up to the shift, but I have no evidence of people ringing in 18 hours after the shift they were supposed to attend and saying they're sick. It just doesn't happen, as far as I can see, and Mr Baker, despite my requests, hasn't provided me with any evidence to suggest that that does occur.

10 THE DEPUTY PRESIDENT: So you're saying if we went so far as having arbitration, it's all sound and fury signifying nothing.

MS SAINT: I'm quite prepared to have a discussion about the clause, but I don't think there's any need to change that 24 to two, is what I'm saying.

15 THE DEPUTY PRESIDENT: Mr Jacobson?

MR JACOBSON: We would simply concur with the submissions that the ANF has made with respect to this matter. We certainly do not have any concerns raised with our organisation, nor obviously any of our nurse members with regard to the application of this provision. And I would agree that in pretty well all circumstances, the notification is as is usually – usual for most employees in that they do it within a reasonable time prior to the shift, but we're happy to have some discussions with the Minister in relation to this particular provision.

25 THE DEPUTY PRESIDENT: Mr Baker, what do you have to say to the unions' submissions that they're not aware of any such problems as you describe existing?

MR BAKER: Well, if there was no issue, I wouldn't have raised it with Ms Saint in the first place. I'm not suggesting that it's a regular occurrence, and that – and I take Ms Saint's point that the average person notifies the department on time and provides the necessary advice to the agency. There are, however, other occasions where that is not the case, where people have been noted to ring in half-way through a shift, for example, and have indicated that, "I'm ill, I won't be in today." Well, all we're saying is there needs to be a little more rigour applied. Now, we're happy to provide examples of that to both the ANF and to HSU, and I'm hopeful that we can reach a resolution on the matter.

THE DEPUTY PRESIDENT: Well, it seems as though the parties do need to discuss this in order to ascertain whether, in fact, there is a problem that requires resolution, or not. And, if so, whether they can agree on how that should be addressed or not addressed, and then failing that agreement, if it is a problem, whether or not you should proceed to arbitration. So perhaps what we could do now is actually make a time for such discussions to take place.

45 MS SAINT: Might I just make a comment on that? It would appear to me that it's certainly within the scope of this clause for the employer to put out a notice to their employees saying that they should give sufficient notice and whatever they deem that

sufficient notice to be. We wouldn't have any problem with that, in fact, I have mentioned that to Mr Baker in the past, just reminding them of their obligations because of staffing, etcetera etcetera. But as far as varying the clause goes, that's not necessarily necessary to provide the business efficiency that Mr Baker seems to believe is required by the variation so sought.

THE DEPUTY PRESIDENT: Well, especially as – it's a requirement and I suppose technically it's a breach of award if it – if the notification is not given, but I just don't really see what could follow from that. If that were to happen, it seems as though there might well be other ways in which this problem, if it exists, can be addressed, such as policy education and the like, and there will be times when it's not possible to do it within two hours.

MS SAINT: Correct.

THE DEPUTY PRESIDENT: There are many times when people wait until the last minute because they think, you know, they might be able to come in a bit late if the migraine clears up or whatever, but they can't get to a phone because they're too incapacitated, all sorts of circumstances, where two hours is not achievable. So, I mean, it's in – the applicant has made the application, if they want to proceed to have it heard then, of course, it is their right, but I would suggest that it may not be the best way of addressing such a problem, but that's up to the parties. So do you want to – I simply recommend that such a meeting take place within two weeks of today's date.

MR BAKER: And I'll take further instructions on the matter, Deputy President.

THE DEPUTY PRESIDENT: Thank you. So we'll issue a recommendation and also that a meeting take place within two weeks, and that evidence is brought to that meeting to indicate the extent of the problem, and a report back to the Commission. And we'll set a date three weeks hence. Okay. 17 June, not on that day. 18 June at 10.30 am. Is that acceptable? Any problems with that?

MR BAKER: Yes, Deputy President, that's fine.

THE DEPUTY PRESIDENT: That's fine with you.

MS SAINT: I'm not sure that I'll personally be able to attend, but somebody will come in my stead.

THE DEPUTY PRESIDENT: Okay. Well, we'll adjourn that one until 10.30 am on 18 June 2009. Thank you.

T Nos 13428 and 13430 of 2009 ADJOURNED INDEFINITELY

T No 13429 of 2009 ADJOURNED UNTIL 18 JUNE 2009

[11.00 am]