



Tasmanian Industrial Commission
Industrial Relations Act 1984

T Nos. **9305 & 9306 of 2000**

IN THE MATTER OF applications by
The Community and Public Sector
Union (State Public Services Federation
Tasmania) to vary the Community and
Health Services (Public Sector) Award
and the General Conditions of
Employment Award, respectively

Re: Kilometrage Allowance

DEPUTY PRESIDENT WATLING

HOBART, 24 January 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 10.45am

DEPUTY PRESIDENT: I'll take appearances, please, in those matters.

MR R.J. MILLER: MILLER R.J., appearing on behalf of the Community & Public Sector Union (SPSFT), if the commission pleases.

5 DEPUTY PRESIDENT: In both matters?

MR MILLER: In both matters, sir.

MR C. LANE: If the commission pleases, my name is CHRIS LANE and I appear on behalf of the Australian Education Union, Tasmanian Branch in matter T9306 of 2000.

10 **MR T. JACOBSON:** TIM JACOBSON, appearing on behalf of the Health Services Union of Australia, Tasmania No. 1 Branch in relation to both matters.

DEPUTY PRESIDENT: Thank you. Let the record show there's no appearance entered for or on behalf of the employer in this matter, however, I have received a call from the employer's representative who is, as I understand it - or the staff of the employer's representative, who I understand is at another meeting at this stage and there's no available staff to be present at this hearing. Unless I hear submissions to the contrary, it's not my intention to proceed without the other side on such an important issue and therefore I would be adjourning these proceedings, however, I'm happy to hear any submissions from the parties.

MR MILLER: Sir, the matter has been verbally discussed with Mr Willingham of the government's office and to my certain knowledge, the matters are agreed upon and I see no reason why the inability of government to make staff available on such a matter, with all due acknowledgment of the -

DEPUTY PRESIDENT: It might be the holidays, which I'm sure you'd support people taking annual leave.

30 MR MILLER: I know that they're not on leave, sir. Mr Willingham is at work and I'm sure that he is able to make staff available to attend this issue. I am also concerned, sir, regarding the operative date which will possibly, if this hearing is adjourned, is going to extend the operative date out to another time which will be to the detriment of those persons who are entitled to receive the justified claim that we make on their behalf.

DEPUTY PRESIDENT: My understanding is that I think Mr Willingham is happy for us to proceed in his absence. The question will be, whether I am.

MR MILLER: I am sure you would be, sir.

DEPUTY PRESIDENT: I might have a different view. You haven't convinced me yet.

5 MR MILLER: In an attempt to convince you, sir, then I would submit to you that the applications have been before this commission for some considerable period of time. The issues contained therein are agreed by all parties.

DEPUTY PRESIDENT: How do we know that? The other side isn't here to tell us that.

10 MR MILLER: I have already put on transcript, sir, that to my certain knowledge, because I have spoken to Mr Willingham on this very matter and sought and obtained verbally his concurrence with both the process and the formula as it's applied to the CPI figures and the outcomes thereof. I would think that to ensure continuity of process
15 that a small adjournment to allow the commission or you or your staff to contact Mr Willingham to reiterate or to underline and underscore my contention that Mr Willingham's office is in full -

DEPUTY PRESIDENT: It's not up to us to take submissions over the phone, Mr Miller. That's not our role.

20 MR MILLER: It was just a suggestion, sir, to convince you.

DEPUTY PRESIDENT: Well, I wouldn't be doing that. The only way that I would entertain something different is if there's something in writing from the employer and I'd be happy to adjourn until this afternoon to enable you people to get something in writing from the
25 employer. I'd have to say, it's your telling me that the employer agrees. I really am in a position where I have to hear it from the employer or I have to have something from the employer to say that the employer agrees.

MR MILLER: I would say, sir, that the employer not being here
30 shows that he is fully conversant with the issues and has no problem what so ever in the application made before you. If the commission pleases.

MR LANE: If the commission pleases, I don't know whether this may be of some benefit to you but this application is exactly the same as an
35 application that was put by the Australian Education Union to the federal commission to vary the kilometreage allowances at the end of the year 2000 and it was consented to at that stage by the employer and the changes have been made to our particular award.

40 If us producing those changes granted by the federal commission would assist in this matter, I'd be more than happy to endeavour to get a copy of those but I can assure you that at that stage it was a consent

variation and the variation has been made and the date of application is from the beginning of this particular year and therefore I would submit that that demonstrates quite clearly the support of the employer to this application.

5 DEPUTY PRESIDENT: Certainly, in that matter.

MR JACOBSON: Mr Deputy President, if it's any further - to add a further point to it. Certainly, in terms of the availability of the employer, there may well be some legitimate reasons for that having occurred. The issue however is with regard to the operative date of this particular matter and we have had, on numerous occasions previously, some concerns with regard to the operative date and the employer has pursued a particular line and we've pursued an opposing line and the employer's line has prevailed.

15 However, in terms of resolving the matter in the short term, I don't know whether it would be of any value to in fact take our submissions today in relation to this matter and with the view of potentially having an operative date of today once the submissions have been received by the minister.

DEPUTY PRESIDENT: I think the easiest thing for me is - and I don't think you've convinced me to change my mind, is that we adjourn until 2.15. You try and get some written indication from the other side. That can be tendered during the hearing and if they're not here at 2.15 and you've got some indication, some letter, saying that they support the applications, then we'll proceed and then there'll be something formally before me indicating that the employer agrees with these two applications. I want to make sure that I hear from the employer in this matter. I'm sure we all know, deep down, there's some contentious issues floating around in relation to some of these matters and I don't want to go into them here but I want to make sure that there's agreement.

30 MR MILLER: By your leave, sir, would the commission accept e-mail correspondence from the employer?

DEPUTY PRESIDENT: I would accept, so long as it was something coming in in writing that could be placed on the file and something formal, not an e-mail.

MR MILLER: Not an e-mail?

DEPUTY PRESIDENT: No. I want to know that it comes from the employer's representative.

MR MILLER: A signed fax or facsimile will suffice?

DEPUTY PRESIDENT: A fax will be acceptable, followed up by the original, yes. We might just go off the record and talk about the process.

OFF RECORD 10.53am

5 **ON RECORD 11.00am**

DEPUTY PRESIDENT: Let the record show, we've had some discussions as to how we're going to proceed and it's agreed that we adjourn until 2.15. Thank you.

HEARING ADJOURNED 11.01am

10 **HEARING RECOMMENCED 2.20pm**

DEPUTY PRESIDENT: This is a resumption of this matter. Let the record show that there's been no alteration to appearances from representatives of employees in this matter and there's still no appearance for or on behalf of the employer however I have received a fax from the Director of Industrial Relations pointing out that he's pleased to advise that the minister does not oppose the commission's approval of the award variation applications. So, I'm going to accept that as a written submission from the minister. Mr Miller, you might like to present your submissions in relation to this matter?

20 MR MILLER: If the commission pleases and in opening, sir, I would indicate that today in 1788 La Perouse arrived off Australia's Botany Bay but was somewhat behind the English fleet, as is today with Mr Willingham being behind us arriving here.

The claim before you, sir, is -

25 DEPUTY PRESIDENT: You're not taking him back to his roots, are you?

MR MILLER: No, I'm not taking him back, sir. Actually, I visited his roots only a couple of months ago and went past his birth place and met his family and that was quite a revelation, quite a revelation.

30 DEPUTY PRESIDENT: Thank you.

MR MILLER: The applications we have before us are the standard applications for changes to the allowances for kilometrage. They are in accordance with the calculation document that I believe you have, together with the documentation that I also believe you have regarding extract from the ABS statistics.

Everything follows along well used lines. I don't believe, sir, that the - we've already heard from you on transcript, that the government believes this to be a consent matter.

As I said, the mythology as required by the formula of T33 of 1985 determined by the full bench, is the standard application claim and determines the appropriate percentage increase. I believe, sir, that the claim satisfies the principles adopted by this commission in the public interest. It also satisfies economic capacity claims, that there is no indication that government are unable to meet these additional costs and I request that any decision upon the matter to grant the claims be granted as from the date of hearing. If the commission pleases.

DEPUTY PRESIDENT: For the sake of the record, you might just read into transcript the movement, the Consumer Price Index figure that you're looking at and also the increase in that particular -

MR MILLER: The revised group index for Hobart private motoring is as at September 2000. The indices is 132.2. The application of the formula gives an indicative rate of 57.48 and that is applied to the various categories of required user and occasional user category to give the figures which are in the application, sir.

DEPUTY PRESIDENT: Thank you. Is there any reason why it should be from the date of the hearing as opposed from the first full pay period on or after?

MR MILLER: There has been, sir, some indications that from my colleagues on my left who are not here today, unfortunately, that this has been a matter of practice and custom in the past and I agree to some extent, yes, it has been a matter of custom and practice when pays were done manually or semi-automatically. However, for some considerable period of time the CPSU and in conjunction with other unions, have been suggesting to the commission, to the bench, that that is now an outmoded means of payment. With computerisation, certainly, it is only a matter of adjusting the correct button, as it were, punching the information in and the calculations are done.

The information that comes out of this commission to agencies is speedy. The amount of retrospectivity I would suggest, sir, is minimal and would create no additional hardship or concern with agencies in this day and age with the modern technology to make these minor adjustments in a speedy and resolute fashion.

DEPUTY PRESIDENT: Have you any agreement with the employer on an operative date?

MR MILLER: No, sir, I have not, not with the employer.

DEPUTY PRESIDENT: Right. Was it discussed?

MR MILLER: It has been discussed in this very place, sir, on several occasions.

DEPUTY PRESIDENT: No, in relation to these applications - don't confuse me. I can easily get confused. In relation to these two applications, has there been any discussion with the employer in respect of the operative date?

5 MR MILLER: With these documentations, sir, no, there has not.

DEPUTY PRESIDENT: Right. And it's your submission that it be from today's date?

MR MILLER: As it has been in the last four to five submissions, sir.

DEPUTY PRESIDENT: Thank you. Mr Lane?

10 MR LANE: If the commission pleases, on behalf of the Australian Education Union, I'd like to endorse the submission made by my colleague from the CPSU. We believe that as an expense-related allowance the statistics produced by the ABS clearly demonstrate that expenditure for the cost of a motor vehicle running has increased and
15 the proposal put to you or the claim put to you simply requests that the allowances be put up in line with the increased expenses.

We also support the submission as far as compliance with the Wage Fixing Principles adopted by this commission and also in line with the commission's need to be satisfied that it's in the public interest, we
20 would submit that given the sentiments expressed in the relevant section of the Act, that this application if approved does no damage what so ever to the public interest and in fact will ensure that all employees within the State Service are treated equitably when it comes to the use of their motor vehicle as quite a number of them have
25 already had increases approved in another place and that has been in vogue since the first full pay period in January of this year. If the commission pleases.

DEPUTY PRESIDENT: I noticed you mentioned, the first full pay period in January?

30 MR LANE: Can I just say, Mr Deputy President, that this matter was raised in the hearing in the federal commission and it was in fact the union that proposed the delay because of administrative difficulties that are created when one group of employees is getting the increase and the others aren't and as a gesture of goodwill and I think, to the
35 surprise of the other party, the Education Union did request that there be a delay until the first full pay period in January to bring the two occurrences more closely together, if not together, and therefore, we probably fall three to four weeks of getting the allowances in doing that.

40 DEPUTY PRESIDENT: Thank you. Mr Jacobson, have you any further submissions to add?

MR JACOBSON: Not too much further to say, deputy president. I concur with the submissions made by my colleague and certainly am of the view that this meets the requirement of the commission both with respect to the Wage Fixing Principles and section 36 of the Act.

5 DEPUTY PRESIDENT: Thank you.

I can indicate, I will hand down a written decision in due course and it will be in favour of the application. As I haven't heard any submission to the contrary in relation to the operative date, I'll be making the operative date from today's date.

10 That concludes these matters. Thank you.

HEARING CONCLUDED 2.30pm