

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T Nos 5345 and 5347 of 1995

IN THE MATTER OF an application by the
Health Services Union of Australia,
Tasmania No. 1 Branch to vary the Nursing
Homes Award and the Hospitals Award

re \$8 arbitrated safety net adjustment to
wage rates

COMMISSONER GOZZI

HOBART, 25 January 1995

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER GOZZI: Could I have appearances please.

MR T. KLEYN: Appearing for the Health Services Union of Australia, Tasmania No. 1 Branch, TOM KLEYN.

COMMISSIONER GOZZI: Thank you, Mr Kleyn.

MR M. WATSON: If the commission pleases, MARK WATSON. I appear on behalf of the Tasmanian Chamber of Commerce and Industry.

COMMISSIONER GOZZI: Thank you, Mr Watson. Before I ask you to make submissions, you'll be aware of - from the communication from my associate, that it is my intention to canvass with you your views about whether or not this matter should, indeed, be heard by a full bench. Now the reason I'm suggesting that that may be the case is that quite apart from looking at the actual implementation of the \$8.00 safety net adjustment - I'm not sure whether it's going to be a contested matter or not, there are other issues in terms of that process. Some of those issues relate to the question of the continuation or otherwise of the sorts of clauses in the wages part of the award - not in this award, but in awards generally going to the issue of absorption. And also the question of the end format which would apply across all awards of this commission.

It seemed important, I think, to get a uniform approach to these type of adjustments, and that's been exercising my mind in respect to these applications which, to my knowledge, are the first applications in the commission dealing with this subject matter. And having regard that no doubt a whole range of applications are going to become before the commission as variously constituted, it could be worthwhile to get the matter sorted out in one or two awards first up so that the process then is simplified for everybody else that might follow subsequently.

Mr Kleyn?

MR KLEYN: Yes, Mr Commissioner, before I make any comments on that, could I just advise you that up until 1.30 this afternoon I was not even aware that this hearing was on because of a breakdown in communications between our Launceston office, our Hobart office and also the commission. Apparently we were advised about a fortnight ago that the commission would no longer be forwarding notices to both the Hobart and Launceston offices. And our administrative staff in Launceston were not aware of that at this point in time and therefore I was not aware that this hearing was on. And at the time that I was notified I was at Willow Court, Royal Derwent visiting members, so as a consequence I'm not really prepared for this.

COMMISSIONER GOZZI: I thought you looked rather -

MR KLEYN: Casual.

COMMISSIONER GOZZI: Yes.

MR KLEYN: Yes.

MR WATSON: I didn't notice any difference, Tom.

MR KLEYN: Oh, thank you very much. I usually wear a suit to the commission. So I'm not in a position to make any substantive submission on the actual applications.

With respect to the comments that you've made, it's my view that they are - I don't have or the HSUA doesn't have an objection to referring it to the full bench, and I understand what you're saying that it would create, I suppose, a precedent for other

awards to follow. I do think that the application is a fairly straightforward one in that it does follow the wage fixing principles as set out by this commission in December. And I think, if I look at the form of all of the layout of the application it does follow, in effect, the form of orders as set out in the commission's decision of the 20th December 1994.

So while the HSUA doesn't have an objection to referring it to the full bench, and I have no difficulties in arguing the merits of the case before a full bench. I'm just not absolutely clear, other than the precedent-setting value of it, as to why you would want to refer it to a full bench. But I'm quite prepared to discuss that further.

COMMISSIONER GOZZI: All right, thanks, Mr Kleyn.

MR KLEYN: Thank you.

COMMISSIONER GOZZI: Yes, I wasn't aware that we were only sending out notices to the HSUA in Launceston, is it?

MR KLEYN: Yes, that's our head office. And in fact the secretary and assistant secretary were just discussing that this morning organising to put in place arrangements so that certainly I would be notified of these hearings in enough time to at least get dressed.

COMMISSIONER GOZZI: All right, thanks, Mr Kleyn. Mr Watson?

MR WATSON: Thanks, commissioner. First of all to address that point that you raised earlier. There's no objection to the applications from our side, so just to clear that point up initially.

We haven't seen - or to my knowledge, there aren't any draft orders at this stage, that I've seen anyway. I don't know whether -

COMMISSIONER GOZZI: I think Mr Kleyn is referring to the principle contained in the principles.

MR WATSON: Yes, I know he was. But the point that I'm making is that whilst we consent to the applications it's based on the fact that we haven't seen draft orders yet and we'd also want to have a look at those before we advise of consent to an award variation as such.

COMMISSIONER GOZZI: Oh, I see, yes.

MR WATSON: In relation to the issue about the matter being referred to a full bench, just on having a brief read through the principles after we were advised - you know, given the notice of your intention to raise the matter about the matter going to a full bench - I'm not sure that - I mean, it seems to me from the principles that the matter is reasonably straightforward in that this award is receiving the first \$8.00 safety net. And the form of orders principle allows for the \$8.00 safety net to be incorporated into a separate column. I'm not sure that - I mean - well let's say the matter does get referred to a full bench, what the full bench is going to determine other than what's in the principles, I don't -

COMMISSIONER GOZZI: I think one of the key issues that might be concerning members of the commission generally goes to not so much the application of the safety net, I mean, as you say that's pretty straightforward. But how we should vary the award in respect to the wages clause where we currently refer to absorption of the \$8.00 increase, which was awarded in December '93, and how we should treat that. Because you might recall in the state wage case the issue of absorption was discussed

and it seemed to us at that time that there wasn't quite a clear consensus as to what in fact should happen. I mean, I think the TCCI maintained the view that an employer could absorb against over awards, notwithstanding that probably traditionally that hasn't happened.

In the December '93 state wage case the green light to absorb was categorically stated by virtue of the verbiage in the wages clause, and I think we as a commission felt that it was an opportune time right at the outset to get some view about that sort of format, see what the parties felt about it, and that we would then determine, in inverted commas, because the issues are fairly straightforward, a standard format which would then apply across the whole of the award system without having to run through the arguments on every occasion. And so that's really, if you like, one of the principle issues.

MR WATSON: In relation to these award which are paid rates awards, I guess the only other comment we'd make is to whether or not absorption is an issue, on the basis that we - I mean, they should maintain their integrity -

COMMISSIONER GOZZI: Mm, they should.

MR WATSON: - in a perfect world. So I guess that's the other comment that we make, that whether or not the issue of absorption in a paid rates award is an issue. Making those points, commissioner, we don't have any strong objection to the matter not being referred to a - sorry, being referred to a full bench. So I guess that's our position.

COMMISSIONER GOZZI: Yes, thanks, Mr Watson. Anything further, Mr Kleyn?

MR KLEYN: Well just one point, Mr Commissioner. I suppose the only - while again I don't have an objection to it being referred to a full bench, I suppose the minor concern I have is the possibility of further delays or the difficulty of getting a full bench together to hear the matter. Because the increases are, in effect, from the date of decision, so that's my only minor concern. But I share the views held by - expressed by Mr Watson with regard to the paid rates awards, but I'm quite prepared to argue the case in front of the full bench, if that's the decision that's made. If the commission please.

MR WATSON: Commissioner, just on that issue of operative date, I think that our position most strongly would be that if the matter is referred to a full bench, then we would be arguing quite strongly that there be no retrospectivity. I guess that would have to be a matter to be dealt with at the time. But just so as we put on notice what our position would be.

COMMISSIONER GOZZI: All right. Look, I appreciate that. What I intend to do for just a couple of moments is to - ask you know these awards have just been - or not just, but only recently been transferred to me - or assigned to me and what I intend to do for a moment is just to adjourn this matter for just a short period and I'll be back in a moment.

SHORT ADJOURNMENT

COMMISSIONER GOZZI: Well, I think, having regard to what we've discussed, and sort of looking at the question of operative date which does concern me because in my case I wouldn't be available for a full bench now till after I come back from leave - I leave at the end of this week for a couple of weeks - so that will take it into February and having regard to the fact that it is a paid rates award and taking your point on board that the issue of absorption, per se, really shouldn't apply, and just looking at the verbiage of the award too that there's no reference - similar reference isn't

contained in that award to what's contained in the minimum rates awards, I think what I will do is proceed with the application today and issue the order in due course. We can have a look at the form of the order and the practical effect to the order, but at least it gets rid of the hearing and I can give you an operative date - resolve the operative date situation as well. So, Mr Kleyn, would you like to continue?

MR KLEYN: Yes. Well, Mr Commissioner, as I said earlier, I'm probably at slightly a disadvantage in not having an opportunity to - or to prepare thoroughly for this matter, but I think, as I said earlier, it is a fairly straightforward matter. Unfortunately, I don't have photocopies - I didn't bring photocopies of the application which includes the draft orders, so -

COMMISSIONER GOZZI: So, we're dealing with the Nursing Homes -

MR KLEYN: The Nursing Homes. Is that -

COMMISSIONER GOZZI: Yes. Yes.

MR KLEYN: - what 'T' number was that? Is that 5345?

COMMISSIONER GOZZI: That's it.

MR KLEYN: Right. Okay. But I suppose, briefly, the application is consistent with the state wage case principles as set down by a full bench of this commission on the 20th of December 1994 in that we seek for the Nursing Homes Award an \$8.00 arbitrated safety net adjustment consistent with the - if I can find the appropriate clause - clause 7 of the wage fixing principles and I'll just read from that:

First Arbitrated Safety Net Adjustment

As from the 20th of December 1994, awards may, on application, be varied to provide the first \$8 per week arbitrated safety net adjustment provided for in these principles.

And further it says that:

Where an award has been varied to include the \$8.00 per week arbitrated safety net adjustment pursuant to the State Wage Case Decision of 24 December 1993, the award shall not receive the first arbitrated safety net adjustment provided for in these principles.

These - this particular award, the Nursing Homes Award, did not receive the first arbitrated safety net adjustment because as you would be aware that decision of - I think it was the state wage decision of February, as I understand it - no, it was the 24 December 1993 I'm sorry - precluded the \$8.00 arbitrated safety net adjustment to paid rates awards. It was only minimum rates awards that were entitled to receive that.

COMMISSIONER GOZZI: Yes, that's right.

MR KLEYN: So, the Nursing Homes Award, being a paid rates award, did not receive that, so in that effect, for those first two clauses, this award qualifies for that adjustment.

And the third paragraph:

- the Commission will raise with the parties the continued implementation of the award restructuring programme and measures taken or proposed to facilitate and/or encourage enterprise bargaining.

And while I would say there hasn't been a great deal of progress made with respect to enterprise bargaining in this particular award, there certainly is an intention on our part to pursue enterprise bargaining, but I suppose, in particular with the Nursing Homes Award and the funding arrangements for nursing homes from the Commonwealth Government does make enterprise bargaining a somewhat difficult process but certainly there is capacity - and I understand from sources from the Commonwealth Department of Human Services and Health, that appropriate adjustments will be made to the funding arrangements for nursing homes to allow enterprise bargaining to at least be commenced, so certainly as soon as that occurs and soon as there is an environment within the nursing homes industry to allow for enterprise bargaining we certainly will be pursuing that.

And if I can just - as an aside I suppose - while it's not really relevant to this matter, we have already sort of started some researching to the needs of workers with family responsibilities in the Nursing Homes Award, so we're starting to already conduct some research and involve ourselves in some issues which may become a part of an enterprise bargaining at a later date as soon as that is feasible.

So - and with respect to the actual application and the orders as I have drawn them up, the - I am seeking to amend the clause 8, the wage rates and insert - well basically an arbitrated safety net adjustment of \$8.00 per week which I have included as a separate column in the wage rates clause, so we have a - the format is a wage relativity that is a percentage, the base rate, the safety net adjustment, and then the total weekly wage, but as you indicated earlier, Mr Commissioner, we can - the actual form orders and how the orders are presented we can have further discussions about that.

I certainly think - I mean, I don't want to go any further really other than to say that the application is consistent with the arbitrated safety net adjustments clause of the state wage fixing principles, and I believe that the application is consistent with those principles and therefore I believe that the wage increase should be granted, and I would seek an operative date of the date of this decision. Thank you. If the commission pleases.

COMMISSIONER GOZZI: All right. Yes. Thank you, Mr Kleyn. Mr Watson?

MR WATSON: Thanks, commissioner. As I said earlier we advise of our consent to the applications - subject of course to receiving a copy of the draft order in relation to the \$8.00 safety net increase, we would advise of our consent as from the first full pay period on or after your decision. If the commission pleases.

COMMISSIONER GOZZI: All right. Thank you. Well in the circumstances - there's nothing further you want to add?

MR KLEYN: No, thanks, Mr Commissioner.

COMMISSIONER GOZZI: Yes. Thanks, Mr Kleyn. Well in the circumstances, the award will be varied in the manner requested. Now I just want to go off the record for a moment.

OFF THE RECORD

COMMISSIONER GOZZI: All right. Having regard to what I said previously - just starting again - given that this is a consent matter and acknowledging, Mr Watson,

that your consent is subject to having a look at the draft orders, and also the fact that I would like HSUA and TCCI to consult on the format of the orders, and also having regard to the fact that the commission's going to look at the formal orders as well, that's going to take a little time and to allow for that, it's my intention to make the - to endorse the variation operative from the first full pay period to commence on or after the 6th of February 1995 and a decision and order will issue in due course.

All right. We can now move to the other award. Thank you.

MR KLEYN: If the commission pleases, this is T.5347?

COMMISSIONER GOZZI: Yes, 5347.

MR KLEYN: Right. The Hospitals Award. Well, -

COMMISSIONER GOZZI: Did you call that too, Andrew, did you? Yes. Yes. Okay. 5347.

MR KLEYN: Similar arguments are applicable to the Hospitals Award in that again it is a paid rates award which did not receive the first arbitrated safety net adjustment in December 1993 and as a result of that is it - I suppose it is appropriate that the Hospitals Award be granted the first arbitrated safety net. In effect, the clause that goes to the commission requesting information on the progress or otherwise of enterprise bargaining, there has been some significant progress made in negotiations on enterprise bargaining in the Hospitals Award, in fact, the two - the TCCI and the HSUA have set up a steering group with financial assistance from the Federal Department of Industrial Relations to conduct consultations and research and to employ a person - appropriately skilled person to conduct that research and just recently at a meeting at the TCCI - I think it was last week - that Paul Targett attended and myself, the person that conducted the research presented her report into the issues - the kinds of issues that were of concern to both employers and the employees with respect to enterprise bargaining.

So a steering group has been set up. A model enterprise agreement - framework agreement has been developed and at this point in time, that framework agreement is being considered by the employer and will be considered by employees and the union in the very near future.

TAPE MALFUNCTION

COMMISSIONER GOZZI: Mr Kleyn, you were talking about the framework of the agreement being considered by employers and unions.

MR KLEYN: Well employers and union. We're the only party to it at this stage.

COMMISSIONER GOZZI: And union, right.

MR KLEYN: So yes, that framework agreement was developed, as I said, with assistance from the Department of Industrial Relations. It is the intention to consider that and further down the track to look at enterprise agreements with each individual hospital. So that's a two-staged approach, if you like, looking at a framework agreement that would cover employees across the industry, and also looking at hospital specific issues as well as that.

So we have moved quite away down the path in terms of enterprise bargaining in this particular award and I think that certainly demonstrates the parties' willingness to pursue that particular path, and I believe that as a result that certainly this award is eligible to receive the first \$8.00 arbitrated safety net adjustment.

Again, with the form of orders will be considered - I take on board the views that you have expressed with respect to the Nursing Homes Award. I have drafted a set of orders for consideration by the TCCI and the commission, and again because this is an award that just recently - certainly the wage rates were recently restructured in a decision handed down by yourself - I can't remember the date any more. So the wage rates in this particular award are annual so the safety net adjustment is shown as an annual figure of \$416.00 per annum. But again that's something that can be considered by all the parties at a later date.

So I again, Mr Commissioner, submit that the Hospitals Award is appropriately granted the \$8.00 safety net adjustment and again I seek an operative date of - well I submit that the operative date would be the same as the operative date for the Nursing Homes Award to allow for the same processes to continue, that being the first full pay period on or after the 6th February 1995. Thank you, Mr Commissioner.

COMMISSIONER GOZZI: Thank you, Mr Kleyn. Mr Watson?

MR WATSON: Commissioner, our position in relation to this particular award is exactly the same as it was for the other award that you've heard submissions on today, that is that we advise of consent for the first \$8.00 safety net adjustment. And I agree with Mr Kleyn that we should look at the same time frame in terms of operative date, having regard to the issue of the orders and our consultation regarding that. If the commission pleases.

COMMISSIONER GOZZI: Yes, thank you. Mr Kleyn?

MR KLEYN: I have no more comments to make, Mr Commissioner.

COMMISSIONER GOZZI: Thank you. Well look, in the circumstances, and for the same reasons, the award will be varied in the manner requested from the first full pay period on or after the 6th February 1995, and a decision and order will issue in due course. Thank you, gentlemen.

HEARING CONCLUDED