

IN THE TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 1760 of 1989

IN THE MATTER OF an application  
by the Secretary for Labour for  
interpretation of the Licensed  
Clubs Award

re clause 24 - Industry  
Allowance

PRESIDENT

HOBART, 13 April 1989

TRANSCRIPT OF PROCEEDINGS

PRESIDENT: I will take appearances, thank you.

MR NEWTON: BRETT NEWTON, Mr President, representing the Secretary for Labour.

PRESIDENT: Thank you, Mr Newton.

MR SHERRY: Mr President, SHERRY N.J. representing the Federated Liquor and Allied Industries Employees' Union of Australia - Tasmanian Branch.

PRESIDENT: Thank you, Mr Sherry. Yes, Mr Newton?

MR NEWTON: Mr President, this application is sought for an interpretation of the Licensed Clubs Award as to whether an apprentice greenkeeper is entitled to an industry allowance pursuant to clause 24. If that interpretation is in the affirmative, is the allowance simply a weekly allowance, or is it pro rata to hours worked.

And the department seeks confirmation that as an all purpose allowance, the allowance is taken into consideration in the calculation of overtime payments and payments for Saturdays, Sundays and public holidays.

Sir, I don't seek ...

PRESIDENT: That is with respect to apprentices, or generally ... that is item 2 and 3?

MR NEWTON: With respect to generally, sir.

PRESIDENT: I see. So that the first question relates to apprentices.

MR NEWTON: Yes, sir.

PRESIDENT: Well then why would an affirmative answer in that regard be first necessary before one could interpret the award with respect to greenkeepers generally?

MR NEWTON: I suppose, sir, as it hinges on apprentices and it would affect the greenkeepers or the award generally,

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APPEARANCES - PRESIDENT - NEWTON

MR NEWTON:

it is ...

PRESIDENT:

Well, perhaps if you develop your application, it may become a little more clear later.

MR NEWTON:

Thank you, Mr President.

I don't, sir, seek to argue the merits of any particular construction of the award but rather to point out what is perceived by the department to be an anomaly which could give rise to different points of view.

PRESIDENT:

Mr Newton, I'm sure you've read much of what has by now been written regarding interpretations. You would recall that the Commission expects that a particular set of circumstances will be referred to so that the award can be interpreted in relation to that set of circumstances.

Are you able to point to a particular situation whereby say an apprentice is not being paid industry allowance or an apprentice is being paid industry allowance?

MR NEWTON:

Sir, we have not any particular specific instance that we can refer to in this matter. I perhaps go back to what I believe the chief industrial officer submitted in the interpretation under the Retail Trades Award in relation to a sales assistant, where I think he referred to two sets of circumstances where the department might seek an interpretation.

One where it might be of a specific nature of a complaint that we may have had that we had difficulty dealing with; and the other instance would be of a more general nature. And I suppose this particular application is of that more general nature.

PRESIDENT:

If you can point to a situation whereby some employers are

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PRESIDENT - NEWTON

PRESIDENT: interpreting the award one way and some employers are interpreting it another and you're having difficulty ...

Whilst one would have thought that any such application might be coming from Mr Sherry and not from you, I do understand the role of the DLI, the advisory role. And obviously if people ask you what they should pay, you should be in a position to tell them.

But what I am not anxious to do is simply sit on these matters and discover at some later stage that all I am really doing is settling an argument between two DLI inspectors.

I mean, for all I know, Mr Newton, all apprentices may be getting pro rata payment of industry allowance or all apprentices may not. We haven't heard from Mr Sherry. There haven't been any disputes notified in that regard, so presumably he is satisfied with whatever their situation is.

MR NEWTON: From our point of view, in (I think it was) 1983, when an award variation came out which inserted an actual rate of pay in the apprentices clause ...

PRESIDENT: Yes, I noticed that.

MR NEWTON: ... we came to the view then that if an employer enquired from us, we didn't believe that we would be able to say or we could insist that the industry allowance be paid.

PRESIDENT: You are looking at clause 2 which says 'percentage of [in this case] \$343.80'.

MR NEWTON: In the award 4 of '88, yes, sir, it's clause 2 in that particular award.

PRESIDENT: Yes, I thought you might be referring to that, yes. Perhaps we will continue then.

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PRESIDENT - NEWTON



MR NEWTON:

Thank you, sir. As I've said, as I've alluded to, this forms part of the background to the application. In 1985, one of our inspectors sought clarification as to whether the allowance applied to apprentices. That was following the award No.2 of 1985 which, as I say, inserted a monetary amount as well.

Following on from that, again as I have said, the department took the view that we did not feel we were able to insist that an employer pay the industry allowance.

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PRESIDENT - NEWTON

MR NEWTON:

This Commission was advised by letter of the department's concern in March 1986. If I may read from that. It's dated 25 March 1986, addressed to the Registrar:

"re Licensed Clubs Award,  
Industry Allowance for  
Apprentices

I've been asked to provide advice as to whether an apprentice greenkeeper is entitled to an industry allowance pursuant to clause 7, Part I of the Licensed Clubs Award.

There can be no doubt that an apprentice greenkeeper incurs the same disabilities as a qualified greenkeeper and therefore should be entitled to an industry allowance.

However, as the award presently stands, I do not believe that I can insist on payment should an employer disagree.

The problem lies in clause 3 - Apprentices, setting out weekly amounts to be paid to apprentices without reference to clause 7 - Industry Allowance and clause 7 in turn there is no reference to apprentices.

It would be appreciated if you could bring this problem to the attention of President Koerbin. I've also advised the FLAIEU of this problem.

Sgd J. Evans for G. Urquhart,  
Secretary for Labour."

May I tender this, Mr President?

PRESIDENT:

Well you may, Mr Newton, thank you. We'll mark it as an exhibit and that will be Exhibit A.

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PRESIDENT - NEWTON

PRESIDENT: I would doubt that there was any response to that, or was there?

MR NEWTON: No, sir.

PRESIDENT: And you'd know why?

This Commission would not accept letters of that kind. We're an industrial tribunal, not an employer.

If somebody isn't satisfied with a wage rate then they make an application. It's not open to the DLI to write to this Commission and tell it what it should do and what it should not do.

I doubt very much that you would write to the President of the Australian Commission and tell them that there's some perceived deficiency in their award, would you?

MR NEWTON: I wouldn't think we'd have an opportunity to do that, sir.

Following on from that letter, the matter was discussed between the chief industrial officer and Mr Sherry, I understand, and according to file notes an appropriate solution appeared to be, perhaps to amend the award.

However, the matter lay dormant until November last year when the department applied for this interpretation.

Perhaps, sir, if I could trace the history of the award. Industry allowance was first introduced in Part 1 No. 3 of 1978, which operated from 6 November 1978.

It provided for employees in classifications VI Head Greenkeeper-in-charge, VII Greenkeeper working alone and VIII other Greenkeepers to be paid an all-purposes industry allowance of \$8.10 per week.

Paragraph (b) provided, if I may

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PRESIDENT - NEWTON

MR NEWTON:

quote that:

"The payment of the allowance prescribed shall be in recognition of compensation for the disabilities generally existing where work associated with golf links, bowling greens, tennis courts, and the Royal gardens, lawns and greens in connection therewith".

It seems that that provision is still in the current award.

PRESIDENT:

Did it go on to say that the allowance will be paid for all purposes?

MR NEWTON:

Yes, at that time.

PRESIDENT:

Yes.

MR NEWTON:

Award No. 2 of 1979 in Part 1, inserted apprentice rates for apprentice greenkeepers and the new clause 3 provided for apprentices to be paid a set percentage of a prescribed monetary amount.

PRESIDENT:

It did have a prescribed monetary amount then?

MR NEWTON:

Yes.

PRESIDENT:

What date was that? '79?

MR NEWTON:

That was No. 2 of '79. I have a copy of that, sir.

PRESIDENT:

That's all right. It's just that ... I breathe easier. I thought we had inserted the monetary amount in the award.

MR NEWTON:

No, sir.

PRESIDENT:

We must have inherited it.

MR NEWTON:

In fact, the amount was slightly above the head greenkeeper's rate, for some reason.

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PRESIDENT - NEWTON



MR NEWTON: No. 1 of 1983, in Part 1, varied clause 3 to provide:

"The minimum rate of wages to be paid to apprentice greenkeepers shall be one .... percentages of the total wage payable to classification VI Qualified Greenkeeper".

At that time the total wage payable to a qualified greenkeeper was made up of three components. It was the basic wage of \$93.60, a margin of \$151.20 and an industry allowance of \$10. So calculating the first year apprentice rate at 42%, that gave a figure of \$107.

PRESIDENT: And was that included in the award under the amount per week?

MR NEWTON: No, at that point in time it simply referred to the percentages of the classification.

PRESIDENT: I see.

MR NEWTON: It did not refer to any monetary amounts.

Then we go to No. 2 of 1985, which contained the same wording. However, it inserted the monetary amount:

"Minimum rate of wage to be paid to an apprentice greenkeeper shall be the undermentioned percentages of the total wage payable to classification VI Qualified Greenkeeper, first year to fourth year percentages then an amount per week or as specified".

PRESIDENT: And was the amount per week specified, a percentage of the all-up rate, basic wage, margin, industry allowance, or a percentage of the basic wage and margin for the greenkeeper, or was it then just a total wage for a greenkeeper?

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PRESIDENT - NEWTON

MR NEWTON:

Well, it appears to have been based on a percentage of the basic wage and margin. If I can follow that through. At the time it was basic wage of \$104.20, a margin of \$182.90, an industry allowance of \$12.70, which in the case of a first year apprentice on 42%, would give a rate of \$125.90 compared to putting a rate into the award of \$120.60.

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NEWTON

PRESIDENT: Yes.

MR NEWTON: So if I'm right in my construction of that, the apprentice rates appear to have gone the full circle from 1979, when it appears no industry allowance applied, to 1982 when it did to this award I've just referred to when they simply set out a rate.

As I say, the department feels that that perhaps wasn't intended, or perhaps we're constructing the award incorrectly, but that has given rise to the particular problem.

So at the moment the industry allowance is quite specific in that it applies to certain lists of classifications. The wording does not refer to apprentices, however it does stipulate that it's in recognition of and a compensation for certain disabilities which one would think would be endured by apprentices as well as greenkeepers.

PRESIDENT: They go to school for only 1 year of their apprenticeship?

MR NEWTON: No.

PRESIDENT: I don't mean the whole of the job.

MR NEWTON: I'm not aware of the time that they attend school, sir.

PRESIDENT: Well I'm just thinking of the time that they might be physically exposed or not exposed by comparison with the tradesmen. I don't know that anything turns on it. It's going to merit anyway.

MR NEWTON: So perhaps with respect there are several alternatives; that the award is quite clear it doesn't recognise apprentices who are entitled to compensation for disabilities referred to in the clause; or as the clause is to cater for disabilities which are recognised, that apprentices should receive an amount of money as compensation based on the

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PRESIDENT - NEWTON

MR NEWTON: percentage which their wage rate bears to the trades rate; or on the other hand if it's accepted that they work in an area where the disability occurs, they should received compensation to the same extent as the tradespersons. But these are only suggestions, Mr President.

To summarise, the department sought the Commission's assistance in clarifying this problem which has come to our notice and the opportunity to do so is appreciated.

PRESIDENT: Yes, well that's your right, Mr Newton, where there is a genuine ambiguity. Now that goes to item 1 of the application, I presume.

Item 2 really doesn't depend upon an affirmative answer to item 1 does it? Because I think you said earlier in response to a question from me, that the department is anxious to find out whether or not the industry allowance per se is, as I understand it, a flat weekly allowance or is it payable for every hour worked.

And then item 3 I suppose extends that to say if the answer to that is yes, is it also subject to penalty or premium addition. Is that really what you're saying?

MR NEWTON: Yes, sir, that's correct. In relation to those two points, I would simply submit that the last sentence of clause 24 in the current award ...

PRESIDENT: Seems to answer your question doesn't it?

MR NEWTON: ... it seems to answer the question, yes.

PRESIDENT: Yes. I wondered why the question was asked.

MR NEWTON: All purposes ... means all purposes, as I would think.

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PRESIDENT - NEWTON



PRESIDENT: Yes. One looks, if one were to turn over and have a look at the tool allowance provision, for example, you'll see that the award maker had something else in mind there. One would have thought that if he had something else in mind for industry allowance he would have inserted a similar provision. Would you agree?

MR NEWTON: Yes, yes I agree with that, sir.

PRESIDENT: And yet coincidentally - and I suppose really off the record - it's been argued and perhaps persuasively that the carpenter working overtime, for example, is using his tools for a longer period and therefore there could be accelerated wear and tear on them, but that's off the record.

MR NEWTON: Yes.

PRESIDENT: Yes. Mr Newton, what view does the department express on items 2 and 3 when asked to advise employers or employees?

MR NEWTON: The department takes what I suppose you'd call the macro view in that 'all purposes' means for everything.

PRESIDENT: And have you had any problems with employers in that regard disagreeing with you?

MR NEWTON: Not in relation to that, that I'm aware of, sir.

PRESIDENT: So you've really thrown it in for completeness?

MR NEWTON: That's correct.

PRESIDENT: Yes. Mr Newton, would you seek a retrospective or a prospective interpretation?

MR NEWTON: In relation to this, I would think in view of the fact that we do not at this stage have any pending litigation in the matter, I would seek a prospective interpretation.

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PRESIDENT - NEWTON

PRESIDENT: Yes, thank you, Mr Newton.

MR NEWTON: Thank you, sir.

PRESIDENT: Mr Sherry, have you got any views or problems with this?

MR SHERRY: Yes, thank you, Mr President.

MR SHERRY:

This matter, as you pointed out and as the application points out, goes to two fundamental issues. One is whether the industry allowance is paid in ... probably in one of three ways, to apprentices. I will just put that issue aside for the moment and I'll come back to it because I think that is the issue that is to be dealt with today.

The second matter that is being raised is whether the industry allowance generally is for all purposes payable to all greenkeepers. On that issue I believe there has never been any disagreement. The award is very clear. Certainly the industry has held the view that it is for all purposes, that the award is very clear in that regard.

The wage sheet that both the union and the licensed clubs employers publish as advice to our respective members includes the industry allowance for all purposes as part of the base rate for greenkeepers. As I understand, there has never been an argument on that matter, and never been a questioning of that to our organisation.

The only problem that may occur - and I did raise it with the department verbally - was that when the department printed its wage sheet, it didn't include the industry allowance within the basic wage for greenkeepers. It stated it separately at the bottom of the wage sheet. It did state it was for all purposes.

My only comment to the department in regard to that was that it seemed to me appropriate that it should be included in the basic wage and then the hourly rates that follow on from that within their sheet. I don't know whether that is being done. It is obviously their prerogative to accept or reject what advice they may. I haven't seen a copy of the

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MR SHERRY:

department's wage sheets in respect to this award for some years.

Turning to the issue of whether an apprentice receives the industry allowance, it seems to me there are three possible ... there are three options.

One is that the apprentice does not receive the industry allowance at all. The second option is whether the apprentice receives a part of the industry allowance, because an apprentice's wage rates are a percentage of a qualified greenkeeper's total wage. Or thirdly, whether the apprentice receives the total amount, which is currently \$13.50.

Now, the view of the union is - and I would submit should be the view adopted by you - is the second of the options that I have stated. That is that the apprentice receives a part of the industry allowance. Now, I should stress, that is not necessarily the way the union would like to see it, but I believe that that is the logical conclusion that would be drawn from the current wording of the award.

Before I go to why I believe that is the case based on the current wording of the award, just some background on the matter.

I did some research to see when the industry allowance was inserted in the award. Regrettably from our point of view, documentation prior to the Industrial Commission currently coming into existence, i.e. when the industrial boards operated, the amount of documentation on these issues is fairly minimal. However ... and it also occurred at a time prior to me becoming secretary of our organisation. So I had no first-hand knowledge.

I have a copy of the decision of the

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MR SHERRY:

Tasmanian Industrial Board's Licensed Clubs Industrial Board A.29 of 1979 dated 7 November 1979. I apologise for not having copies of it. I only managed to find a copy this morning. Perhaps if I read from that. The appearances were: Les Evans, Duffy Bennett from the employers; E.J. Butler (that's John Butler, I assume) from the AWU, and Denis Shelverton, for the employees. The eighth page of the decision says:

"... a secondary question which I raised concerning whether or not the board intended that clause 6 - Industry Allowance should apply to apprentices. Despite an undertaking that proper consideration will be given to this question by both parties and made the subject of a further hearing before this authority, I find I cannot delay the handing down of the threshold question any longer and stand the disability allowance matter over for another time."

Deputy Chairman Robinson then inserted in the award the industry allowance at that time.

According to our records, which we have searched fairly exhaustively, I can't find any record of the issue of the application of the industry allowance to apprentices being considered by either the industrial boards or by the Industrial Commission since that time.

PRESIDENT:

As a matter of practice, Mr Sherry, say - I don't know if you are familiar with the building industry ... or Mr Newton - I would imagine that apprentices, an apprentice carpenter, for example, in the building industry, would receive pro rata payment of the industry allowance, would he not?

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PRESIDENT - SHERRY

MR SHERRY:

As a matter of practice, yes, because they do ... they are subject to the same disabilities as a tradesperson. The logic of a disability allowance is that it is paid in recognition of certain hardships. Whatever they may be varies from industry to industry. In this industry, greenkeeping is part of the clubs industry.

Apprentices, there is no doubt - except, as you have rightly pointed out, for the period when they are in the colleges - are subject to the same disability as all other greenkeepers, whether those greenkeepers are qualified tradespersons or unqualified greenkeepers, of which there is a considerable mixture in this industry.

For your information, the period of time an apprentice would spend at the colleges away from a club, it would vary. But the block release, as I understand, each year is approximately 10 to 12 weeks depending on rostering requirements.

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MR SHERRY: So it would be a total of approximately, I suppose, 6 or 7 months that an employee or an apprentice is not at the club. But in respect to this matter, that in terms of the way the award reads at the present time, I'd argue that's not really the issue.

PRESIDENT: It might justify the pro rata as distinct ... total payment of the amount.

MR SHERRY: Yes.

It may well in fact coincide with the way in fact we believe the allowance should be paid at the present time. But I'd stress, we're certainly not here to run a case in respect to whether apprentices should receive it, shouldn't receive it, what proportion they may or may not receive. It seems to us the issue is on the reading of the current award what, if anything, are apprentices paid.

And to that issue I will now turn. Firstly, the clause 24 - Industry Allowance in subclause (a) it makes it clear:

"Employees engaged in classifications 6, 7, 8 and 9 of subclause (i), clause 8 hereof, shall be paid an industry allowance of \$13.50 per week".

Subclause (b) outlines why and the third paragraph says that the payment is for all purposes of the award.

If we turn back to clause 8 which is the classification clause and we refer to classifications 6, 7, 8 and 9 it is very clear that's the qualified greenkeepers, greenkeepers alone and other greenkeepers - 6, 7, 8 and 9.

And I, as I've mentioned, believe it is very clear that the industry

MR SHERRY:

allowance is added to that amount per week. A base wage is achieved and hourly rates are derived from that.

The only greenkeepers that are not paid under 6, 7, 8 and 9 ... there are, in fact, two categories. There is the apprentice and there is the Head Greenkeeper/Curator/Superintendent. And, in fact, the award then makes a reference in respect to both the Head Greenkeeper/Curator/Superintendent and the apprentice back to classifications 6, 7, 8 and 9.

Now in the case of the apprentice the clause reads:

"The minimum rate of wages to be paid to the apprentice greenkeeper shall be the undermentioned percentage of the total wage payable to the classification 6 - Qualified Greenkeeper".

My emphasis is on the words 'total wage payable'. Now we had believed and would submit that total wage payable up until No. 2 of 1985 included the basic wage, the margin and the greenkeeper's allowance, the industry allowance. And then a proportion varying from year to year - first year, second year, third year and fourth year - of that total wage was the appropriate payment for an apprentice.

I think it was a result of the application or the decision in respect to the abolition of the basic wage and their merger. I think when that occurred, or I believe when that occurred, the issue has come to a head because it then led to the question of should the total wage payable in respect to this award and apprentices be the basic wage and the margin full stop, or should it include the industry allowance.

And certainly our submission is, on a logical reading of the award, that

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MR SHERRY:

is the way in which it should be done. It should include the industry allowance.

And I draw your attention to the other area where greenkeepers' rates are based on 6, 7, 8 and 9. That's the Head Greenkeeper/Curator/Superintendent in charge. And that states:

"... shall receive the below listed percentage in addition to the amount prescribed for a qualified greenkeeper. Such additional percentage shall be for all purposes. An employee shall include an apprentice or apprentices."

Again as I understand it, and I would submit, that the Head Greenkeeper/Curator/Superintendent in charge receives those percentages on top of Qualified Greenkeeper's rate and the industry allowance. So the industry allowance forms part of their total wage.

I'd certainly indicate to you I don't ... I think it's probably less clear in the case of the Head Greenkeeper/Curator/Superintendent than it is in respect to the apprentice.

That is our view and we believe that that is the interpretation that you should give to the award in respect to apprentices.

When Mr Evans contacted us about this matter that is the view I stated to him verbally. To be perfectly frank we don't, or we didn't pursue a separate application because the reality is that we're faced with a good many questions like this every day of the week and unfortunately all awards contain some particular problems.

Frankly, this award is probably simpler and more easily read than a couple of others I am involved with.

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SHERRY

MR SHERRY:

And we see the appropriate ... if there is a problem we see the appropriate way to resolve that is to fix this issue along with a number of other matters that I can think of in respect of clubs, and in respect to other areas as part of the award restructuring process. And, in fact, this matter will be dealt with there because the entire classification structure is currently being reviewed.

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SHERRY

MR SHERRY: Not just in the Licensed Clubs Award, but in the Restaurants Award, the Hotels Award, right across the total ... and in fact those discussions have to date been very considerable and very detailed.

I don't have any further comments on the matter.

PRESIDENT: Yes, thank you. Mr Sherry, then do I take it from your last comment that you're inviting the Commission to refrain from interpreting the award?

MR SHERRY: No, I believe it is necessary now that the issue is being raised that there should be an interpretation certainly along the lines that I have suggested and because we do need to advise our members about the issue and it's certainly ... since the matter's been raised with me by the department, I believe there is some doubt, and we certainly would want to advise apprentices what is the correct situation. At the moment I certainly believe it is open to interpretation.

PRESIDENT: Yes. And should the interpretation be prospective or retrospective, Mr Sherry?

MR SHERRY: Prospective, Mr President.

PRESIDENT: Prospective. Yes, thank you, Mr Sherry.

MR SHERRY: Thank you.

PRESIDENT: Mr Newton, do you wish to say anything in response?

MR NEWTON: No thank you, sir.

PRESIDENT: That being the case, gentlemen, I will reserve my decision and that concludes this hearing.

HEARING CONCLUDED