**TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984

T. Nos 4593, 4596, 4597 and 4598 of 1993

**IN THE MATTER OF** applications by the Australian Liquor, Hospitality and Miscellaneous Workers Union, Tasmanian Branch for interpretation of the Cleaning and Property Services Award

re Clause 9 - Annual Leave; Clause 10 - Call Back; Clause 21(b) - Ordinary Hours of Employment; Clause 21(d) - Minimum Start

PRESIDENT

HOBART, 13 October 1993

TRANSCRIPT OF PROCEEDINGS

Unedited

PRESIDENT: Appearances please?

**MR K. O'BRIEN:** If the commission pleases, I appear on behalf of the Australian Liquor, Hospitality and Miscellaneous Workers Union.

PRESIDENT: Thank you, Mr O'Brien.

**MR M.C. SERTORI:** If the commission pleases, SERTORI, M.C., appearing on behalf of the Tasmanian Chamber of Commerce and Industry in each of the - is it four matters - in each matter, Mr President.

PRESIDENT: Yes, thank you, Mr Sertori. Mr O'Brien?

MR O'BRIEN: Mr President, these are all applications pursuant to section 43 of the act seeking interpretations of the Cleaning and Property Services Award.

The first of them, 93 - I think that's the -

PRESIDENT: Yes.

MR O'BRIEN: - the first of them, relates to a problem which was, sir, referred under a section 29 application to Mr Commissioner Imlach. The commissioner felt that he didn't have jurisdiction to deal with them in a dispute resolution setting and accordingly the matter - that particular is before you for interpretation, and it relates to the question of accumulation of annual leave whilst on workers' compensation - absent from work on workers' compensation - is probably a better way of putting it.

The other three interpretations pertain to another circumstance, and namely the engagement of an employee purportedly on a part-time basis by another employer - not the employer in the annual leave circumstance - with a non specified number of hours each day and each week and the confusion that arises out of the application of various aspects of the award to that circumstance and dispute - a dispute which arises between my organisation and that particular employer, namely Berkley Challenge Cleaning Company over the correct payments which should apply to various circumstances in the employees work.

Now I understand Mr Sertori has some difficulty in proceeding today and indicated to me on the telephone this morning that he had recently received the applications. Mr Abey handled the matter when it was before Mr Commissioner Imlach. Mr Sertori -

PRESIDENT: This is in relation to all four matters?

MR O'BRIEN: Yes. Mr Sertori indicated that he had a

meeting of his industry organisation on Friday, at wished to discuss these matters and take instruction as he felt that it might be the case that the view taken by one of the employers was not shared by others.

What I would propose to do given that, with the consent of the commission, is to outline in particular the annual leave matter and then seek a date early in November for the further processing of this matter on the basis that if we can agree on interpretation then we will come back and ask in unison for particular orders to be made. If not, well we would obviously argue it at that time.

Given the way that we proceeded before Mr Commissioner Imlach, I thought it might be convenient if I were to tender a bundle of documents that we used in those proceedings which have been slightly amended and added to since that time. You'll see the first document has got two references because it's been used in two sets of proceedings to date.

PRESIDENT: I see, so that this isn't a direction to me as to what it should be -

MR O'BRIEN: You can call it what you like, Mr President.

PRESIDENT: Well we'll call it what it's called on the top of my document which is ALHMWU.1.

MR O'BRIEN: Okay.

PRESIDENT: Thank you.

MR O'BRIEN: Mr President, this bundle of documents details the chain of events which led to the matter coming firstly before Mr Commissioner Imlach and now before you.

The first is a letter from an employer, Croucher Pty Ltd, to a member of my organisation advising that as she was not in a position to return to work imminently the employer was terminating her employment contract and specifying the date of termination and saying any extra payments would be made at this time.

And the second item in the letter in the exhibit is a letter from Michelle O'Byrne of my organisation to Mr Croucher asking for a detailed outline of the calculations on payments. I'd say that there had been a - an application to oppose the termination which had been rejected by Mr Commissioner Imlach.

The third letter sets out calculation - and I apologise for the quality of the photocopy. The third paragraph is - of that letter starts:

> Accident happened May 1991, say nine months

accumulation for holiday pay equals three weeks pay due.
First 91 days after the accident takes us to August 1991.

For the year 1990/91, four weeks holiday pay due.

And then for each year follow, one weeks holiday pay due.

Therefore six weeks holiday pay due -

- and the rates of pay are relevant to the particular point that we seek an interpretation upon.

What the employer had done was to say that in each of the years, after the first 91 days there was no further accumulation.

The next letter in the exhibit is a letter from Michelle O'Byrne to Mr Croucher and it refers in the fourth paragraph to the annual leave clause. It says:

Your letter appears to imply that Mrs Breen was not entitled to accrue annual leave whilst on workers compensation in accordance with the Annual Leave Clause - Section 9 subsection b(ii) -

- this is the Cleaning and Property Services Award obviously.

As you will note this clause directs you to the Sick Leave clause 29 a (i). This in fact disallows workers compensation for consideration. A copy of both clauses is attached.

I would like to point out further that section 84 of the workers compensation act states that an employee on workers compensation is entitled to accrued annual leave for the period in which compensation is being paid.

A copy of this clause is attached for your reference.

Your early attention to this matter would be appreciated.

And there you will find a copy of the relevant part of clause 9 of the Cleaning and Property Services Award as it was then and is now. A copy of page 44 of the Cleaning and Property Services Award which is the relevant part of the sick leave clause as it was then and is now. The following page is a copy of section 84 of the Workers Compensation Act. It's not been amended to my knowledge, and you could in perusing that note that the entitlement to annual leave is not interrupted

by compensation according to the Workers Compensation Act.

PRESIDENT: Yes, I'm trying to absorb section 84. Yes.

MR O'BRIEN: Then in the exhibit there is a copy of a letter under the signature of Tim Abey to my organisation regarding Mrs Breen's annual leave and it said from the second paragraph:

> We do not accept your contention that the `accidents' referred to in the annual leave clause are limited to accidents arising out of the sick leave clause.
>
> Whilst I would concede that the Award clause is somewhat ambiguous, it must be read in the context of the decision which gave -

- should be `rise' instead of `read' I'm told -

> - to it.
>
> I enclose, for your information, a copy of a common rule decision (C.R. No 5 of 1979), dated 13 November 1979. In this case, the Tasmanian Trades and Labour Council sought a minimum standard of 91 days for the calculation of continuous service. You will note that the claim extended to the Cleaners Award as it then was.
>
> On page 3 (item 5) there is a reference to injuries at work. Hence, it was clearly contemplated by the T.T.L.C. that claim related to all injuries, including workers compensation injuries. Nowhere in the decision is there any attempt to distinguish between workers compensation and other (i.e. sick leave) injuries.

I think after T.T.L.C. there should be two `that's. It's probably one of those cases where the spellchecker identified the fact that there were two `that's and the second was deleted. I've done that myself.

> I agree that -

PRESIDENT: They are helpful sometimes.

MR O'BRIEN: They are. I agree, but you have got to be careful that you are paying attention when you are raising through and checking a document.

PRESIDENT: Yes; particularly when you use a word that is a word and it is not the right one.

MR O'BRIEN: Quote:

> I agree that section 84 of the Workers' Compensation Act does indicate that annual leave accrued under a contract of service is to be allowed within 3 months of a return to work. The Act does not, however, determine the rate at which annual leave accrues. That is prescribed by the Award and, in this case, annual leave only accrues for the first 91 days of the absence.
>
> I trust this clarifies the matter.

And then included in the exhibit is the enclosure to Mr Abey's letter which is a copy of the common rule award, and the passage Mr Abey referred to was on page 3, point 5, of that decision, which perhaps we will come back to you on later.

I have also included there, for completeness, a copy of the provision in the Cleaners Award, as it was, No. 2 of 1979, which is the provision which is contemporaneous with the decision of the Industrial Board. No, that is the wrong title, it is the Chairman of the Industrial Board.

And a perusal of that will show that the provision in the Cleaners Award then was different to that which exists now, but I don't think different in any meaningful way because the clause number altered, but I think it's still a reference to the sick leave clause, which is what the clause now currently says.

If you look back within the exhibit to the copy of the sick leave clause. It's a reference to Clause 29 - Sick Leave. Back in 1979 it was a reference to clause 9 which I understand to have been the sick leave clause.

So in many respects in respect to the substance of that part of the sick leave clause there has not been any significant change since 1979.

PRESIDENT: Yes, you are saying the only amendment is a consequential amendment relating to the reference -

MR O'BRIEN: And nominating that it is indeed the sick leave clause.

PRESIDENT: Yes. Well, it won't be difficult to check what clause 9 was in 1979.

MR O'BRIEN: I should have brought that file with me.

Then the next item is a letter to Mr Abey from my organisation which refers to a passage in the common rule decision, and then goes on to differentiate the clause in that decision from

a clause in the Cleaning and Property Services Award, and to say on page 2 of the letter:

> The clause in the Cleaning and Property Services Award apart from being worded completely different to that of the Common Rule Award to which you refer, is also far superior.
>
> I refer once again to Clause 29 Sick Leave in the Cleaning and Property Services Award which disallows workers compensation as an illness or injury which is limited to 91 days duration.
>
> The Common Rule Award page 3 item 5 reiterates that "employees who are injured at work should not be penalised by having the time off which occurs as a result made the subject of a debit against their period of continuous service."
>
> It would appear from this information that continuous service is not deemed to be broken by periods which are covered by workers compensation, and thus Section 84 of the Workers' Compensation Act which allows annual leave to accrue and to be allowed within three months of a return to work applies. Mrs Breen is then entitled to accrue annual leave for the period in which she is receiving workers compensation.

And the last is a letter from Mr Abey agreeing to disagree.

So that's the nature of the disagreement, and basically an outline of the case which we would put, which is essentially that the award as it stands limits the period of continuous service to a period which is not deemed to be broken by any period, in our submission, of workers' compensation but is broken by absences of more - an absence of 91 days or more - resulting from accidents or illnesses which are covered by medical certificates in accordance with the sick leave clause.

In other words accidents or illnesses which are sick leave, and pursuant to the sick leave clause they cannot be covered by that clause if they are workers' compensation and, therefore, if a person is on workers' compensation then they are not covered by the sick leave clause. The period of absence, be it 92 or 192 days, is not a period which breaks continuous service for the purpose of the annual leave clause.

That is, in essence, our case. In essence -

PRESIDENT: You are saying that where a period - or for any workers' compensation absence - the Act applies not the award?

MR O'BRIEN: Effectively. Well, the award applies in terms - if you put it in Mr Abey's terms - as to the quantity of annual leave; the Act applies and is not undermined in any way by the award, as to the accumulation of leave whilst on workers' compensation.

So that really is the substance of the case on that matter, and I thought I would put that because I put it in Matter 4463 of '93 which was a matter before Mr Commissioner Imlach, to assist Mr Sertori further with the matter, and yourself.

I thought it would be productive to give what is essentially an outline of our argument on that matter today.

PRESIDENT: Yes.

MR O'BRIEN: In relation to the other matters I am in your hands, Mr President.

I think Mr Sertori understands the points we make, or seek to make, in these particular applications.

Perhaps if I go through them - not necessarily in the order they are numbered - but in the order that I think is the most convenient.

The circumstance that members of ours have found themselves as being engaged not on a full-time basis but being engaged and paid as if they are a part-time employee, bearing in mind that under the Cleaning and Property Services Award a part-time employee receives a specific hourly rate for any ordinary hours worked Monday to Friday worked at any time.

And so the employees concerned have been engaged and paid as if they are part-timers; have been paid this specific hourly rate, $12.03 which is the current rate per hour, and they have found themselves in the situation where the number of hours have been varied; they have not been observed at the same job's times of the day, nor have the number of hours been the same on particular days of the week week by week.

If an employee is engaged as a part-timer the award requires under clause 21(b) that the employer specify as part of the contract of employment what those employees constant number of hours shall be.

It says:

> An employee's constant number of hours per week shall be as determined between the employer -

Sorry this is page 22 of the print I have. It might not be. It is clause 21(b).

PRESIDENT: I think you might find the clause numbers have been altered, actually, with the consolidation 4 of '92.

MR O'BRIEN: Oh, right. Well, I haven't -

PRESIDENT: Which was gazetted on 10 February '93.

MR O'BRIEN: Well I will have to amend the application, if that is the case.

PRESIDENT: Yes, I picked that up, but I just wanted to hear first of all what the specific application was that you are addressing. But it would appear, and you can take this on board and do whatever you will, that 4597 the ordinary hours of employment interpretation should refer to clause 22(b).

MR O'BRIEN: And 4598 to 22(d).

PRESIDENT: Yes. And I am happy to accept -

MR O'BRIEN: Well, I will now apply to amend the applications accordingly.

PRESIDENT: Yes. Yes. I have got no objection to that, and I am sure Mr Sertori doesn't have any, and wouldn't say so if he did.

MR SERTORI: No, I don't, sir.

PRESIDENT: No. Good. Thank you very much.

MR O'BRIEN: So it is 22(b).

PRESIDENT: Yes.

MR O'BRIEN: The clause goes on. It says:

> An employee's constant number of hours per week shall be as determined between the employer and employee pursuant to the contract of service.

And a contract of service is one which is entered into at the beginning of the period of employment, I would have thought.

And then it says:

> Once the hours have been established they shall not be varied by either party otherwise than:
>
> (1) the giving of at least one week's notice; or
>
> (2) by mutual consent.

And it then goes on to talk about the number of periods in which the hours may be worked, and I will come to those later.

Firstly, we think that if an employee is engaged as a part-timer the award requires the employer to specify those constant hours at the time that the employee is engaged and, in our view, if the employee is engaged as a part-timer the provisions are mandatory, and to fail to do that is not to observe the award and, therefore, to breach the award.

Now I did mention to Mr Sertori that there was an alternative position which we would put in argument on this, and that was that the employee could not - if the constant number of hours were not specified - be deemed to be a part-timer, notwithstanding other practices in the employment that followed, and that the employee would be deemed to be a casual employee in the absence of the specification of those constant number of hours.

Now that is an alternative position which I foreshadow to you now, Mr President, and which I foreshadow to Mr Sertori in relation to the interpretation.

Now if the second position - that is the position that the employee is a casual follows - then point (b) of the application is no longer relevant.

However, if the commission were of the view that the employee could still be a part-timer, then it is our view that the only way the employee's constant number of hours can be ascertained is to look at the least number of hours worked during the contract.

And I guess we are putting these questions because they pertain to what should be paid. They also pertain to when and if overtime comes into effect in relation to this contract of employment.

And, yes it is an area with its complexities.

Now -

PRESIDENT: You're simply outlining for the purpose of helping me and Mr Sertori for his meeting on Friday.

MR O'BRIEN: Yes. Yes, it does take some thinking about, I think, this particular area, Mr President.

PRESIDENT: Could I go back to paragraph (a) of your application for a brief moment.

I'd like to be addressed on whether or not in an interpretation I can declare that such and such a course of action is a breach, and I wonder if it might be better for

that particular paragraph to be reworded in a way which will avoid me having to make that sort of finding, which may produce some difficulties down the track.

I would have thought -

MR O'BRIEN: I understand where you are headed, I think, and what it probably needs to say is something like the employer is required to do this to observe the award.

PRESIDENT: Yes. I'd just scribbled some words and I haven't considered them carefully, but they might give a lead.

That (a) might read something like, `that at the engagement of a part-time employee without the specification of the constant number of hours per week' - sorry - `that the engagement of a part-time employee without the specification of the constant number of hours per week to be worked shall form part of the contract of service'.

Sorry - `that at the engagement a part-time employee without the specification of the constant number of hours per week to be worked' - I am lost, I'm lost.

But I mean they are the sorts of words that I think the interpretation should be asked to consider, not whether or not there is a breach.

MR O'BRIEN: Mm. I think I appreciate the point that you are making, and thank you for your assistance.

MR SERTORI: If I may interrupt?

PRESIDENT: Yes, Mr Sertori.

MR SERTORI: It assists the commission. It was traditional with your predecessor that we interpret an example to avoid this sort of dilemma. In the absence of that I would have -

PRESIDENT: Yes, and that is the case, too.

MR SERTORI: We will struggle with the application in the absence of a specific example, but I would have thought that the words would be along the lines that, `the engagement of an employee without specification as to the constant number of hours per week shall determine that employee is not a part-time employee', or shall determine something else, would be the context of which that application ought to be put.

PRESIDENT: Well, I think we are all coming at it from the same direction and it just needs some more appropriate words to help us though.

And I take Mr Sertori's point that it is very difficult to interpret a hypothetical situation -

MR O'BRIEN: Yes.

PRESIDENT: - although this is more I suppose a directive in terms of the way the award should be administered.

MR O'BRIEN: Yes, it's - if we put up a circumstance we would still be answering the same questions and what I'm trying to do is to put it - give an example of the circumstance and to put it in that context. Perhaps passing from that and saying that, yes we will look at the wording and I understand what the commission is suggesting. I think Mr Sertori probably understands where we are coming from as a result of the explanation of the - at least our view of what the award means - it may assist him in his contemplation of the matter. Point (c) arises -

PRESIDENT: Just before you move to point (c), that would require a consequential amendment to (b) if we - if you reword (a).

MR O'BRIEN: Yes.

PRESIDENT: Yes, sorry about that.

MR O'BRIEN: We could just take out - we could change that to read: that in such a case the constant - well, perhaps we'll see how it's worded. Point (c) arises from a view that we have that those constant number of hours, once established, are the ordinary hours for the employee and for the employer then to purport to seek agreement for the employee to work additional hours and then say, `Ah, but you consented to work the hours, therefore you gave your mutual consent to alter those constant number of hours', as distinct from asking the employees to work additional hours which, in our view, are overtime - are not the ordinary hours - part of the constant number of hours, the employer using the devise of saying, `You agreed to work the extra hours, therefore you gave mutual consent pursuant to this particular clause to change the constant number of hours, therefore it is not overtime'. Now that is where we are coming from in relation to point (c). The next question is 98 I think -

PRESIDENT: Could we just dwell on point (c) for a second?

MR O'BRIEN: Yes.

PRESIDENT: That isn't the only way, is it, that the hours can be changed?

MR O'BRIEN: No, by giving a week's notice.

PRESIDENT: Yes. So this isn't to say that -

MR O'BRIEN: Well I shall deal with that under call back.

PRESIDENT: All right. Okay.

MR O'BRIEN: But in this case, the mutual consent aspect arises because it's a daily requirement almost to work an additional number of hours rather than the case where the employer says, `Well I give you 7 day's notice that next week I want you to work these hours', which the employer quite clearly could do, but where the employer comes along and - on a one-off basis - says, `Ah, well you work - will you stay back and work from 8.00 till 10.00 as well as your normal 6.00 to 8.00 shift tonight?', and the employee says, `Yes', we are suggesting that that isn't the sort of arrangement that's contemplated by the award as it stands. It's rather an arrangement to change your regularly rostered shifts and not a devise to avoid the payment of overtime.

PRESIDENT: What distinguishes that work from overtime?

MR O'BRIEN: Well we say that the one of the things that distinguishes it is that it is something which is regularly rostered work. It's a change to the regular roster. If someone has a particular set of hours and the employer wants the employee to change on short notice to take into account an ongoing change, we think that that's what the award contemplated.

PRESIDENT: Yes.

MR O'BRIEN: It didn't contemplate an arrangement which is particular to a certain day and in all likelihood is not an ongoing arrangement at all but ceases at the end of that day because if it was an arrangement made by mutual consent, does that mean it was - that the employer can - offering the hours say, `Ah, yes, do you consent to work the hours?', employee thinking, `Well, yes, I'll work extra hours because I get paid overtime for it', the employer then says, `Well, you consented, therefore you've altered your constant number of hours'. Now does that mean that unless the employer gives 7 day's notice that it won't be the constant number of hours next week, that the employee has to work it again the following week? I mean, it becomes very complex and I can see there are some other solutions other than interpretation to some of these problems, but -

PRESIDENT: Yes. If they are hypothetical then -

MR O'BRIEN: Yes. Well they're not -

PRESIDENT: All right.

MR O'BRIEN: - they're real.

PRESIDENT: It may be possible to seek to amend the award to achieve the same results.

MR O'BRIEN: The - so the order in which I would deal with them is to deal with the - number 98 next which would be relating to clause 22(d) - minimum start.

I must say that in looking at this I had to go back to the transcript of proceeding before Mr Commissioner Imlach when the current provisions of the award were inserted and I had a close look at what Mr Sertori said and I had a close look at what I said and I also noted that the employer involved in this dispute appeared with Mr Sertori which makes it even more difficult for me to understand why there is a dispute.

What I said then and I will exhibit it when the matter is proceeded with, if required, is that we made some changes to the award which effectively did away a broken shift allowance, but maintained excess fares and travelling allowance on the basis that people who now might be engaged on one job but not on two could have both engagements, both jobs without at any time specifying that that weakened the minimum engagement period for each of those jobs. Neither did Mr Sertori or MacLaine who appeared with him make any reference to the award opening up the possibility of requiring people to attend for two parts for two periods of work on the same day, either of which was less than the 2-hour minimum engagement.

Now what we will argue here has reference back to clause 22(b) which says, after the - I did say I'd come back to this point - after the words `mutual consent':

> In no circumstances shall an employee be required to work a shift in more than 2 periods.
>
> The ordinary hours of work for a part-time or casual employee shall not exceed 8 on any day and may be worked in one or two periods.

In clause 22(d), it says:

> A part-time or casual employee shall be engaged for a minimum period of two hours for each separate engagement -

It is our view that the common thread of period refers to each part of a broken shift, that is, that the first period and the second period of a broken shift must be 2 hours and that is the point which we would be making - or seeking to make. In other words, the employee could not work 2 hours, one in the first half and one in the second half of the day where the

employer purported that to be a broken shift the break between those two periods being greater than a normal meal period.

And the last matter, 96, we need to make consequential changes to (a) and (c), changing clause 21 to clause 22 obviously and also it's -

PRESIDENT: Yes, (a), (b), and (c).

MR O'BRIEN: (a), (b), and (c). I'm sorry, yes. I formally ask that they - the application be amended accordingly.

PRESIDENT: Yes. And Mr Sertori doesn't object to those -

MR SERTORI: No, sir.

PRESIDENT: Application is granted.

MR O'BRIEN: And we have a problem of interpretation which arises because an employer says to an employee, `Come back after you've normally finished and work this other period at work', that is, the employee has worked before noon at sometime - early morning let us say - for 2, 3 hours which might be their constant number of hours. The employer then requests the employee to return perhaps to cover the absence of another employee for that particular day; perhaps for a special job, and the employee agrees.

PRESIDENT: Is this request made whilst the employee is still at work?

MR O'BRIEN: Yes, usually whilst the employee is at work, but it could be after. But let us say, for the purpose, that it is while the employee - it after the employee has started the engagement for the day.

Now it is our view that that second engagement would be a call back and that the provisions of the - of clause 10 - Call back - would apply to that work unless that second period was firstly agreed to be the employees constant number of hours per week in accordance with clause 21(b). In other words, that was the original contract of employment or it had been varied properly having regard to the other points we make about - about alteration to the - to the constant hours under clause 22, or, that the second period was a - a specific variation to the constant number of hours and the agreement was reached prior to the day on which the second period of work was performed.

Now the reason we put that in is because - for the very - for the very circumstances that we outlined, that if the employer believes that they can avoid call back provision by saying, well we've just changed your constant number of hours, you agreed to work it therefore we have mutual consent - that

that is not and never was the intention of this award or we would never have had a call back provision in the award - or perhaps we would but it would have been much more limited in its wording than it is.

And the third point obviously is that the employer has given 7 days notice of the employee's change of the constant number of hours. So really what we're - what we're saying is that the - there needs to be an interpretation which - which in effect precludes the .... of using clause 22 to override clause 10 in the award.

So those are the points that we will be seeking to make.

PRESIDENT: Very good.

MR O'BRIEN: I don't object to a short adjournment; I understand that - I'm not sure of Mr Sertori's availability but I understand the commission might be available on the 3rd or 4th of November. Mr Sertori is nodding.

PRESIDENT: Well, that's news to me but I'm - I'm sure something of that order can be worked out if the parties are happy about that. But first, perhaps Mr O'Brien I should hear from Mr Sertori on the points you've made.

MR SERTORI: If the commission pleases, I'll confirm that I am seeking an adjournment of today's proceedings for those matters 497 - 496, 497, 498; there has been no pre hearing discussion between Mr O'Brien and myself other than the - this morning. It does go to matters that involved a fairly substantive review of the award and I understand it could well be the case that the employer that may have given rise to this application is behind - who was in fact the employer involved with me at the time that that review took place. Perhaps no coincidence that he's no longer affiliated with the organisation - it might be why difficulty has arisen.

I have a meeting programmed of the cleaning contractors group on Friday at which these applications will be considered and I'm curious to establish 1 - practice, and 2(c) - construction, to proceed with these applications. I have certain views I've expressed to Mr O'Brien privately and that will result in certain recommendations being put forward and I - it could well be that there other solutions to this application on some of these matters that through negotiation between Mr O'Brien and myself we may be able to resolve. If that's not the case I'd seek to come back and place argument or otherwise on the date we can agree upon.

The first of those matters has an ongoing nature to it between Mr Abey and Mr O'Brien; that has not been put to the industry - it's arisen in respect of one employer, and given the industry's meeting on Friday it was my preferred position to

be - allow them input and provide instruction which is the tradition in this - this award area and it's on that basis I seek the adjournment and if I could indicate to the commission that the tentative date that Mr O'Brien's alluded to, the week commencing November 1st is suitable and hopefully November 4th is imminently suitable.

If the commission pleases.

PRESIDENT: Yes, thanks, Mr Sertori. Did you want to pursue anything else at this point, Mr O'Brien?

MR O'BRIEN: Not at this point in time, Mr President.

PRESIDENT: Well November 4th does appear to be available and if that suits the parties we'll program that - that date.

MR SERTORI: And if I could just make one other request that the onus is on the applicant to sort the application out. I appreciate the dilemma of application 4597 -

PRESIDENT: Yes.

MR SERTORI: - I'd appreciate that if Mr O'Brien could resolve that wording and provide it to me quickly it would be very useful if I had by Friday.

PRESIDENT: Yes, yes, that's a very good point - a fair point, I think.

Mr O'Brien, you could organise to do that?

MR O'BRIEN: I can organise to put another set of words -

PRESIDENT: And provide the commission with a - with a copy?

MR O'BRIEN: Yes, I'll do that. I guess I'd always retain my option to vary those if we're going to hearing and -

PRESIDENT: Yes.

MR O'BRIEN: - find a better form of words, but I'll give you something that better suits - I think Mr Sertori in fairness understands where I'm coming from, it's only the point - the form of words that the application needed ....

PRESIDENT: Yes, yes, well if you could liaise for the purpose of providing Mr Sertori with something that he can take to his members that would be useful. Thank you for that undertaking and we'll adjourn these matters until November 4th at 10.30.

HEARING ADJOURNED