

**AUSCRIPT AUSTRALASIA PTY LTD**  
ABN 72 110 028 825

Suite 25, Trafalgar Centre 108 Collins St HOBART Tas 7000  
Tel:(03) 6224-8284 Fax:(03) 6224-8293



## **TRANSCRIPT OF PROCEEDINGS**

---

O/N 1352

### **TASMANIAN INDUSTRIAL COMMISSION**

**COMMISSIONER T.J. ABEY**

**T No 11185 of 2003**

#### **RESTAURANT KEEPERS AWARD**

**Application pursuant to the provisions of  
section 23(2)(b) of the Industrial Relations  
Act 1984 by the Australian Liquor, Hospitality  
and Miscellaneous Workers Union - Tasmanian  
Branch to vary the above award to vary  
clause 7 - definitions**

**HOBART**

**11.45 AM, FRIDAY, 12 NOVEMBER 2004**

**Continued from 18.12.03**

**This transcript was prepared from tapes recorded  
by the Tasmanian Industrial Commission**

PN124

THE COMMISSIONER: Mr Tullgren, do I look to you?

PN125

MR TULLGREN: Yes, thank you, Commissioner. Commissioner on 24 September the union wrote to the Commission attaching an amended draft order which it was indicated had been agreed by the parties and that the union sought that the matter be re-listed to ask the Commission to vary the award in terms of the order, but also it was indicated in the letter the union wished to place on record certain matters that had been set out in correspondence to the employer.

PN126

And that was done because when - as a result of previous correspondence and discussion, a number of changes had been made to the draft order and subsequently on 9 September, the union wrote to the Tasmanian Chamber of Commerce and Industry indicating that the union was prepared to agree to certain wording changes that had been suggested by the employer but set out the reservations or - they are not reservations, that is the wrong term - perhaps a caveat in relation to those matters.

PN127

And for the record I would seek to simply read that part of the letter which dealt with those matters on the basis that this does set out formally our position in relation to the matters and it is predicated on situations that may never occur but on the basis of abundant caution if they were, we have sought to do this to restrict any argument that might occur in the future as a result of a dispute. But relevantly the letters says:

PN128

*(1) That the discussions between the parties have been based around the expectation that a trainee tour guide, level 1A, would in normal circumstances spend no more than three months at this level. The union reserves the right to seek to vary any award provision to reflect this if the union is satisfied employees are being hindered in progression and or are not receiving training. (2) Agreement to delete the words sought to be deleted in the definition of trainee tour guide, level 1B, is given. However, the union reserves the right to seek to vary any award provision if the union is satisfied employees are being hindered in progression. (3) The change sought to the definition of tour guide, level 2, is agreed with the union reserving the right to seek to vary any award provision if the union is satisfied that an employee with previous experience is not having that experience recognised either in part or in full in relation to gaining the Certificate II in Tourism (Operations). (4) Agreement to add the words sought to the definition of tour guide, level 3, is made on the understanding that the union reserves the right to seek to vary any award provision if it is satisfied that the provision is not being applied correctly or the level and type of training alters.*

PN129

And that is the end of the quote, and they are all relevantly with their concerns. Turning briefly now to the draft order, Commissioner. The draft order seeks to vary the definitions clause to insert a series of definitions for the various classifications and then it seeks to vary clause 8, Wage Rates, by inserting a separate wage table in relation to the tour guides, and that has been done because as the discussions about this matter evolved, the parties took the view - or came to the view that instead of simply amending the existing definitions in the award to include a provision effectively to deem that it included a tour guide, it was more appropriate because of the uniqueness of this group of employees to actually insert a complete set of definitions and then to insert a separate wage table which dealt with the rates of pay.

PN130

Now, the wage table also deals with the relativities and they are from 82 per cent to 100 per cent, and those relativities are based not only on those contained in the Tour Guides Award which is an award of the Queensland Industrial Commission, to which I have referred to you previously in these proceedings, but also there was some adjustment at the bottom to - by agreement. So we say that as the Commission had made a preliminary finding that the tour guides were in effect because of their employment - that it could be covered by the restaurant keepers' award or that was the appropriate award, the award sought to be varied.

PN131

It has placed the definitions and classifications and that they are clearly properly established minimum rates based on the relevant percentages which are taken from the Restaurant Keepers' Award, so there is no importing into the award another set of percentage relativities. It is using those relativities in relation to the tour guides. So, Commissioner, subject to anything that my friend might seek to put, we would seek that the award be varied in the terms of the draft order.

PN132

The Commission is aware from previous conferences and undertakings by the employer that the date of effect would be 1 March 2004, and that is reflected in the draft order. And I might just say in passing that if the Commission is minded to vary the award in the terms sought, it will probably - it would prevent this application qualifying for long service leave and I suspect on the basis of the time that it has moved along and anything that would avoid it qualifying for long service leave we would recommend would be a salutary exercise for the Commission. If the Commission please.

PN133

THE COMMISSIONER: Yes, thank you, Mr Tullgren. Presumably, that will necessitate - because that pre-dates the - your safety net adjustment so presumably we would do that with a two-column approach?

PN134

MR TULLGREN: It is my recollection when I drafted the order that it actually reflects - it would reflect the current rates of pay in the award

including the last safety net adjustment. However, because as I recall the last safety net adjustment occurred from on or after 1 August - - -

PN135

THE COMMISSIONER: August.

PN136

MR TULLGREN: And this application was drafted some time in September, so I think I took into account the safety net adjustment. I can't recall that my friend raised any - - -

PN137

THE COMMISSIONER: Perhaps Mr Mazengarb may be able to enlighten us on that or maybe we will have to go and check that out, but I mean, it is no great difficulty to have two columns.

PN138

MR TULLGREN: No, I think I did it on the basis - the order was drafted on the basis to reflect, I think, what was in the award at the time, so there was consistent playing out, but again I have no difficulty with condensing the number of columns if that is agreed between the parties.

PN139

THE COMMISSIONER: Well, it wouldn't be condensing it, it would be expanding it because we would put another separate column for 1 August - sorry, 1 March, and a separate one for 1 August, that is what I am saying.

PN140

MR TULLGREN: I see, I am - sorry, I am not sure we had actually thought about or considered that alternative.

PN141

THE COMMISSIONER: Retrospective to 1 March, I think you would have to deal with that.

PN142

MR TULLGREN: Yes, I think, yes, yes, that is a point I think we overlooked in the flurry to - of agreement.

PN143

THE COMMISSIONER: I mean, it is certainly not insurmountable.

PN144

MR TULLGREN: No.

PN145

THE COMMISSIONER: It is just, as I say, putting in two operative date columns. Mr Mazengarb?

PN146

MR MAZENGARB: Thank you, Commissioner. Firstly, before I address the comments made by my colleague, Mr Tullgren, I just thank the Commission and Mr Tullgren - more particularly Julie for changing the time to meet my personal requirements or expectations this morning, I do appreciate all the

parties in that. As indicated by Mr Tullgren this has been a somewhat torturous path to actually get here today. I don't think we are going to have any problems with this last matter that you have brought up.

PN147

But, Commissioner, we have been dealing with this since its inception, which was about July last year, so it has been ongoing and I am pleased to say that we have reached a position of understanding which I think will be of benefit to the employees with regard to a better career path, it will be of benefit to the employer with regard to the level of training that the employees will be able to achieve and, I suppose, thirdly and as importantly, there will be a better service provided to those people that visit or have the joy of visiting the Cadbury factory.

PN148

So I do support the submissions as put by Mr Tullgren, they are reflective of the position that we have reached. With regard to his comments that if there were difficulties with regard to the implementation and the continuation of the proposals as outlined in the draft order, we would just simply request that if there are difficulties being brought to the attention of the union that prior to seeking to amend the award as they have indicated they have the right to do - and I don't deny that - that there be discussions with the employer with a view to firstly attempting to resolve those problems.

PN149

And certainly from the employer's perspective, the instructions I have is that they would certainly have a look at any problems or issues that the employees either directly or through their union bring to the attention of the employer. With regard to the operative date, yes, we do agree and we concur with the comments made by Mr Tullgren that it is operative from 1 March 2004 as we gave a commitment to this Commission in the previous hearing.

PN150

Looking at the draft order, it is correct in that the order does reflect the safety net adjustment that was brought down by the Commission in July of this year with an operative date of the first full pay period on or after 1 August 2004. I think it was the intention to the parties to say that in effect that the safety net adjustment of 1 August 2003 would be reflected with effect from 1 March 2004 and that obviously those rates would then be increased by the \$19, as I said, effective from 1 August 2004. Certainly from our perspective with a view to reflecting that position of understanding, we would be more than happy to have two columns which in effect would show a wage rate from 1 March 2004 to the first full pay period on or after 1 August 2004. If the Commission pleases.

PN151

THE COMMISSIONER: Yes, thank you, Mr Mazengarb. Having heard the parties I am satisfied that the application is consistent with the wage fixing principles and the public interest requirements of the Act and the application will be granted and the award will be varied as requested operative from 1 March 2004 subject only to some fine tuning as to the application of the clause 1, Safety Net Adjustment, and on that basis the Commission stands adjourned.

**ADJOURNED INDEFINITELY**

**[11.58am]**