



Tasmanian Industrial Commission

Industrial Relations Act 1984

T No. **9034 of 2001**

IN THE MATTER OF an application by
the Tasmanian Chamber of Commerce
and Industry Limited to vary the Metal
and Engineering Industry Award

Re: Clause 9 - Annual Leave and
subclause (g) - Payment for Period of
Annual Leave

COMMISSIONER IMLACH

HOBART, 21 May 2001

TRANSCRIPT OF PROCEEDINGS

Unedited

(WOULD PARTIES PLEASE READ THIS TRANSCRIPT CAREFULLY)
(ANY QUERIES SHOULD BE DIRECTED TO THE COMMISSION WITHIN 14 DAYS)

HEARING COMMENCED 10.30am

COMMISSIONER: I'll take appearances.

5 **MR M. WATSON:** May it please the commission, MARK WATSON. I appear on behalf of the Tasmanian Chamber of Commerce and Industry.

COMMISSIONER: Thanks, Mr Watson.

MR P. BAKER: Sir, I appear on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, P. BAKER.

10 COMMISSIONER: Thanks, Mr Baker. Yes, Mr Watson?

15 MR WATSON: Thank you, commissioner. This submission that I'm about to put to you this morning, commissioner, is on the basis that - this will be confirmed by Mr Baker, as I understand it, that we have consent with this matter, so therefore I put the submission to you on that basis.

20 The application seeks to clarify clearly the method of payment of annual leave loading for both day workers and shift workers under this award. The award at clause 9(g), which is the subclause of annual leave, talking about payment, currently contains words which, in our opinion, are ambiguous and could be read either way, and the application seeks to remove that ambiguity.

25 Specifically, the application makes it clear that day workers receive 17.5 per cent leave loading and shift workers receive 17.5 per cent leave loading or their projected shift roster payments, in other words their shift penalties, whichever is the greater, but not both.

We believe, commissioner, that the principle of leave loading for day workers and shift workers, as detailed in our application is consistent with the long established principles in relation to this matter and as determined in the *Metal Trades* case of 1972.

30 Commissioner, we believe that this application is definitely in accordance with the public interest because it does in fact clarify and remove ambiguity which currently exists in the award now.

35 In terms of the operative date, we would ask for an operative date of today, however if there are any problems or disputes in relation to the application of this clause in a retrospective sense then obviously we would reserve our right to come back to the commission to pursue retrospectivity if that needs to happen. If it pleases.

COMMISSIONER: Thanks, Mr Watson. Mr Baker?

5 MR BAKER: Sir, this has been the subject of some discussion between ourselves and Mr Edwards of the TCCI and also was before a conference of President Leary a couple of months ago. I would offer no submission other than to support the position as put forward by Mr Watson, but I must say that we would object and object most strongly if there was any hint that at some stage in the future that there is an opening there for retrospectivity of the operative date because our view is that, as detailed in correspondence to Mr Edwards, is a perception of an anomaly rather than one actually existing.

10 COMMISSIONER: Yes, thanks, Mr Baker.

I also can't see any need for retrospectivity but if there's some strange anomaly that you want to put of course, Mr Watson, feel free to do it. I just make that point.

15 Having had some experience with this sort of provision elsewhere, probably with Mr Watson in the old days, I am aware of what the prescription is and I agree with it as it is proposed. I haven't even seen what the confusion was about but I don't want to because what's before me is reasonable.

20 I'll indicate now that this application will be approved, operative from today.

Thank you, gentlemen.

HEARING CONCLUDED 10.35am