

IN THE TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T.2068 of 1989

**IN THE MATTER OF AN APPLICATION
BY THE UNITED SALES
REPRESENTATIVES AND COMMERCIAL
TRAVELLERS' GUILD TO VARY THE
WHOLESALE TRADES AWARD**

**RE: DIVISION B - 4% SECOND TIER
ADJUSTMENT AND 38-HOUR WEEK**

PRESIDENT

2 AUGUST 1989

REASONS FOR DECISION

APPEARANCES:

For the United Sales Representatives' and
Commercial Travellers' Guild of Australia - Mr. P. Fenton

For the Tasmanian Confederation of Industries - Mr. G. J. Smith

DATE AND PLACE OF HEARING:

26.7.89 George Town

On 19 July 1989 the United Sales Representatives' and Commercial Travellers' Guild of Australia filed with the Commission an application to vary the Wholesale Trades Award. The applicant sought implementation of the 4% second tier State Wage Case adjustment, and insertion of a provision to reduce the normal working hours from 40 to 38 per week. Both matters related to Division B only (Commercial Travellers).

The application came before the Commission at George Town on 26 July 1989. Mr. Fenton, in outlining award history, explained that in amending the award in 1984 to include provision for a 38-hour week, the section relating to commercial travellers had not been included in the variation. In August 1988, the award had been further amended to include the second tier State Wage Case adjustment. However employees in Division B had not received the 4% adjustment either. The present application sought to rectify both situations.

Mr. Smith submitted that when the 38-hour week had been introduced for Division A (Other than Commercial Travellers) in August 1984, some of the offsets had in fact flowed into Division B by virtue of the General Conditions clause of the award. He agreed that Division B had not then been amended to reflect the reduced working week. He also acknowledged that a similar omission occurred in September 1988 when second tier increases were included for Division A only.

Mr. Smith listed a number of offsets for Division A. that had been put in place in relation to both the 38-hour week and second tier adjustments. They included:

- . Extension to spread of hours
- . Maintaining 40 as the divisor for overtime for a period of 12 months;
- . Increasing the ordinary hours that may be worked on any day without overtime being paid
- . Loading for casual employees being reduced from 25% to 20%
- . Provisions being inserted to ensure loadings payable for casual work and part-time work were not to be paid in addition to overtime penalties
- . Variation to the Hours of Work clause providing for employees being ready to work at commencing time
- . Variation to meal hours and tea money provisions
- . Variation to rest period provisions

In addition, second tier increase offsets included:

- . Payment of wages by electronic funds transfer
- . Provision for payment of wages fortnightly (where agreement is reached between an employer and his or her employees)
- . Variations to the sick leave clause (bringing provisions into line with the same offsets that were arbitrated in in the Retail Trades Award)
- . Provisions included to provide time off in lieu of overtime
- . Travelling Time clause - provision specifying transport after overtime was deleted
- . Annual leave clause was varied to provide for annual leave to be taken in any period
- . General agreement to introduce shift work in Division A.

There was no disagreement between the parties that by virtue of the General Conditions clause a number of those offsets had automatically flowed through into Division B. But notwithstanding that fact, the employees had not received the benefits of the 38-hour week or the 4% adjustment.

Mr. Smith agreed with the Guild that the situation should now be rectified. This could be effected by the award being varied accordingly and the remaining offsets extended to Division B. In this regard a draft order was tendered (Exhibit A) with an operative date of the first pay period commencing on or after 16 August 1989.

DECISION:

In view of the fact that both the matter of the 38-hour week and the 4% second tier adjustment come before the Commission by way of consent having regard for the unfortunate history associated with Division B, an order will now issue in accordance with Exhibit A. As agreed the variation will come into effect from the first pay period to commence on or after 16 August 1989.

SUPERANNUATION - DIVISION B.

During proceedings it also appeared from perusal of the award that the recently included superannuation provision had application only in respect of Division A. Both parties agreed that it had been the intention at the time the variation was processed that this provision should also apply to persons provided for in Division B. The operative date of that variation was from 14 July 1989.

Therefore, unless persuaded to the contrary following a further hearing requested by the parties, it is my intention to issue a correction order within a week. The proposed order will have the effect of extending occupational superannuation to employees covered by Division B of the award on and from the above operative date. In the event any employer of commercial travellers wishes to apply for an exemption but is out of time, the Commission will consider each application on its merits.

