

## **TASMANIAN INDUSTRIAL COMMISSION**

### Industrial Relations Act 1984

s.23 application for award or variation of an award

**National Union of Workers, Tasmanian Branch**  
(T3788 of 1992)

### **WHOLESALE TRADES AWARD**

**PRESIDENT F. D. WESTWOOD**

**13 JULY 1992**

Award variation - insertion of integrated classification structure

### **INTERIM DECISION**

The National Union of Workers, Tasmanian Branch (NUW) informed the Commission that this application was designed to complete the restructuring of the Wholesale Trades Award by inserting an integrated classification structure covering all employees presently covered by the award. The proposal had the consent, in principle, of the Federated Clerks Union, the Shop Distributive and Allied Employees Association, and the Tasmanian Confederation of Industries. However, the Transport Workers Union (TWU) indicated it was strongly opposed to an integrated structure and challenged the capacity of the NUW to make applications on behalf of driver classifications.

After a short private conference, during which time it became clear there was no prospect of a meeting of the minds in the matter, it was proposed that the NUW should substantiate its claim to be able to represent driving classifications.

The NUW tendered a copy of the Rules of the National Union of Workers certified on 1 June 1992 as true and correct by a Deputy Industrial Registrar of the Australian Industrial Relations Commission. These Rules have been submitted and accepted by the Registrar of this Commission as the registered rules of the National Union of Workers, Tasmanian Branch.

The Commission was referred to Rules 4 and 5 which described the industries in or in connection with which the union is registered and the activities which make persons eligible to become a member of the union. The NUW claimed that Rule 5 - Conditions of Eligibility, at subrules (B) (a); (B) (b)(vi); (B)(c); (C); and (G) clearly allowed the union to enrol as members employees who were engaged in driving positions in the areas of activity covered by, but not limited to, the Scope clause of the Wholesale Trades Award.

The NUW provided as authorities for its arguments a number of cases determined in the Federal Commission which established the criteria for dealing with interpretation of constitutional coverage of unions. The State Secretary of the NUW, Mr. D. Strickland, gave evidence as to the extent of his union's membership in establishments covered by the Wholesale Trades Award and the driving activities of his members in some workplaces covered by the award.

The Transport Workers Union questioned the application of the Wholesale Trades Award in two areas mentioned by Mr. Strickland and claimed the employers concerned were bound by the Federal Transport Workers Mixed Industries Award. The TWU claimed that the NUW did not have the constitutional right to enrol and represent employees engaged in driving classifications. However no attempt was made to support that claim.

Rule 5 - Conditions of Eligibility - provides, at subrule (B)(a) that:

*"(B) The Union shall consist of an unlimited number of employees engaged in, or assisting -*

*(a) The reception, handling, storage, preparation, bottling, packing and delivery of goods and merchandise, and processes and activities incidental or ancillary to such reception, handling, storage, preparation, bottling, packing and delivery including the pulping, testing and/or processing of eggs."*

Subrule (B) (b) (vi) states:

*"(b) All persons engaged in the process, trade, business or production activity of -*

*(vi) The manufacture of toilet preparations, food preservatives and vermin insect and fungi destroyers."*

Subrule (B) (c) states:

*"(c) All persons engaged in or in connection with the business of a wholesale and/or manufacturing chemist."*

Subrule (C) states:

"(C) The Union shall also consist of all persons engaged in or in connection with the manufacture or repair of rubber goods of every description in the Commonwealth or goods comprising rubber components or constituents; in the manufacture of substitutes for rubber or any kinds of linos; in the insulating of cables or similar articles or the impregnating insulating or spreading all classes of fabric (including leathercloth) with rubber or substitutes therefor; in the manufacture of duperite bakerlite xylonite celluloid or similar compositions or substitutes therefor."

Subrule (G) (i) and (ii) state:

"(G) (i) The union shall consist of persons who are bona-fide employees, wholly or partly engaged in any capacity in the manufacture or preparing for sale of (a) candles, (b) soap, soap powders and extracts, soda, (c) starch, (d) blue (washing), boot blacking, boot polish, boot paste, boot stains, black lead, charcoal, coal dust, cloudy ammonia, dubbo, ebonite shine, furniture polish, glycerine, greases, harness dressing, harness compounds, ink, knife polish, kindlers, linoleum and oilcloth polish, metal polish, moulders; blacking, oils, phenyle, plumbago preparations, stove polish, vaseline, (e) condiments and cereal foods, and all other articles, goods and preparations usually or commonly known as Grocers; sundries including arrowroot, baking powder, barley, bicarbonate of soda, bird seed, borax, brose meal, carraway seeds, cassia, castor sugar, chicory, chichorine, chillies, chocolate, cinnamon, citric acid, citron peel, cloves, cocoa, coffee, coffee essence, coriander seed, cornflour, cornina, cream of tartar, cummin seed, curry powder, custard powder, copras oils, condensed milk, dessicated coconut, digestive meal, epsom salts, fennel, fenugreek, flavouring essences, graham flour, groats, ginger, haricot beans, hommell, hemp seed, icing sugar, jellies, lemon peel, lentils, linseed, linseed meal, macaroni, mace, magnesia, meal wheat, malt preparations, maize meal, millet seeds, mustard, nutmegs, oatmeal, oats, orange peel, peas, pepper, pimento, patent foods, rape seed, rice, sago, sago flour, self-raising flour, spices, semolina, sulphur, tapioca, tartaric acid, vermicelli, (f) matches and matchboxes, (g) glucose and all products of maize and all other similar or allied preparations, goods and articles to any of the abovementioned preparations, goods or articles.

- (ii) *Other than in the Northern Territory and the State of Queensland, all persons engaged in any capacity in or in connection with the Grain Milling Industry."*

Having heard the parties and carefully examined the registered Rules of the NUW, I am satisfied that the NUW has, by virtue of those rules, the right to represent persons engaged in driving classifications in the industries and activities mentioned.

The eligibility rules set out the activities in which persons or employees must be engaged and those activities are substantially, if not totally, consistent with Rule 4 - Description of Industry. The contents of Rule 4 appear to be capable of covering all the wholesaling activities referred to in the Scope clause of the Wholesale Trades Award.

In the circumstances I find that there is no impediment to the NUW making an application which seeks to include driving classifications in the integrated classification structure in the Wholesale Trades Award. The process commenced at the hearing on 9 July 1992 can now move beyond the threshold problem and the merit of the application can be debated in



APPEARANCES:

Mr. P. Richardson with Mr. D. Strickland for the National Union of Workers, Tasmanian Branch

Mrs. H. Dowd for the Federated Clerks Union of Australia, Tasmanian Branch

Mr. P. Noonan for the Shop Distributive and Allied Employees Association, Tasmanian Branch

Mr. B. Hansch for the Transport Workers Union of Australia, Tasmanian Branch

Mr. M. Sertori for the Australian Mines and Metals Association (Incorporated), the Tasmanian Sawmillers Industrial Association and the Tasmanian Confederation of Industries

DATE AND PLACE OF HEARING:

1992  
Hobart  
July 9