



Tasmanian Industrial Commission

Industrial Relations Act 1984

T No. 9130 of 2000

IN THE MATTER OF an application by
the Australian Municipal,
Administrative, Clerical and Services
Union to vary the Clerical and
Administrative Employees [Private
Sector] Award

Re: Principle 16 - Award Review Process
of the Commission's Wage Fixing
Principles

COMMISSIONER SHELLEY

HOBART, 31 August 2000

TRANSCRIPT OF PROCEEDINGS

Unedited

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

HEARING COMMENCED 2.18pm

COMMISSIONER: I'll take appearances, please.

5 **MR I. PATERSON:** If the commission pleases, IAN PATERSON, appearing for the Australian Municipal, Administrative, Clerical and Services Union.

COMMISSIONER: Thank you.

MR A. CAMERON: Thank you, commissioner. ANDREW CAMERON from the Tasmanian Chamber of Commerce and Industry.

10 COMMISSIONER: Thank you. Is it still principle 16? It's now principle 12. That's correct, isn't it.

MR PATERSON: I don't think the application actually made reference to the specific principle. The application, I believe I'm correct in saying, it said, the variation is to give effect to the award review principle.

15 COMMISSIONER: You're absolutely correct. Thank you. I understand that you'd like the opportunity to have some further discussions off the record. Is that the case?

20 MR CAMERON: Thanks, commissioner. We've been through the document. There's a couple of minor changes. Being a review of the award, it's mostly been cut and pasted, everything. There's no change to wage rates or hours or anything substantial. There are a couple of minor points that we wish to discuss with the union that we can probably resolve this afternoon and clear the matter up.

COMMISSIONER: How much time do you anticipate needing?

25 MR CAMERON: I understand you've got another hearing at four o'clock. Is that correct?

COMMISSIONER: We do have something at 4.00, yes.

MR CAMERON: I think we would be well and truly finished before then. It wouldn't interfere with that subsequent hearing. We could notify you, through your associate, when we've finished.

30 COMMISSIONER: The hearing is adjourned. Thank you.

HEARING ADJOURNED 2.20pm

HEARING RESUMED 3.03pm

COMMISSIONER: You're on your feet, so is it you?

35 MR CAMERON: I'm on my feet and I wasn't quick enough sitting down. Commissioner, the parties are pleased to report that we've come

to an agreement in relation to the review of the award currently before you, that a few minor alterations have been made between the parties today. My understanding is that Mr Paterson will reprint draft orders, submit a copy to me with a covering letter for joint execution and then be filed with the commission for approval and that should take place some time next week.

The only sticking point that we could see is that there is currently an application before the commission, lodged by the Tasmanian Chamber of Commerce and Industry, relating to the removal of redundant clauses that refer to trainees in many of the awards of the commission. The draft that we've agreed upon today still retains that traineeship clause. The timing therefore of the order being issued by the commission for this redrafted award and that application may have some compounding effect.

The intentions are though that if the order by the commission in relation to the TCCI's application to remove traineeship provisions and the Clerical and Admin Award is one in which that application relates and would remove this same clause, then my understanding and I think Mr Paterson's understanding is that if that does flow through, then that clause will be removed from this particular award as redrafted. It probably would be the timing that if that order comes through and removes it from the existing award, then your order issues in relation to the redrafted award could be argued that the traineeship clause is still in there and that's not what we want to achieve at the end of the day.

COMMISSIONER: That full bench sits next week. We don't know how long it will be before - why not just remove the clause from this.

MR CAMERON: I suppose Mr Paterson's view would be that the full bench may say, no, we're not removing those clauses.

COMMISSIONER: During the award review process, we have removed other redundant traineeship clauses and I think that's one of the elements of the award review.

MR PATERSON: My view has been that the generic traineeship clause has relevance beyond the National Training Wage Award, that there are trainees who won't be covered by a national training award and, essentially certificate IV trainees. In the clerical and administrative area is one in which there are those certificate IV national training package qualifications and trainees may be put on at that level. So it's an issue of the status of trainee. People who enter training agreements are trainees but are not covered by the National Training Award, so those provisions don't apply to them.

My position in putting this here today is that we're putting this subject to whatever the outcome of those other proceedings are, that if we leave it in the intent is that the order that flows from this decision would be

would be affected by the decision that comes from that other matter. If the timing is such that this order comes first, then so be it. If the decision from the other matter is made before the order for this is issued, I think is the point. I'd ask, in this context that you proceed to do whatever you need to do to give effect to this order. However, if a decision is made in that other matter prior to the order and the decision being handed down, it will be sensible to effect that in terms of the order that comes out.

5 Maybe we adjourn the matter sine die and if that's what happens -
10 you've still got to issue your order though, don't you. This matter has
 got to be closed in order for an order to be issued.

15 COMMISSIONER: The worst thing that could happen is that we, at some stage down the track, entertain another application to further amend this award. For example, if one of the positions put to the full bench is that there not be traineeship provisions in any award other than the National Training Wage Award, then presumably the TCCI or whoever would then make an application to vary this award yet again.

20 MR PATERSON: I think the only effect really can be, ultimately, that there might be two orders issued in close succession, this one which consolidates the award and one shortly thereafter which deletes one of the just consolidated provisions.

25 MR CAMERON: It may be appropriate then because there's no substantive changes to this besides the requirements under the principles to review the award, there's not going to be any other major changes going to flow through to the workplace immediately. A couple of minor changes have been made that are probably neither here nor there. If it was adjourned at this stage until that decision came through from the full bench, at that stage we wouldn't have to convene before you again, we could just amend the draft order. That would be submitted as a consent matter.

30 I'm saying that on that basis there is not going to be substantive changes that are going to effect the workplace as such. It's just for restructuring of the award. It may be appropriate to adjourn at this stage until that full bench decision is handed down. It would save that confusion.

35 COMMISSIONER: So, adjourn the matter and if necessary, amend the document?

40 MR CAMERON: Yes. What we would do is, depending upon the full bench decision, submit draft orders that would comply with that full bench decision without having to make another application to vary something because of the timing of the certification.

MR PATERSON: My concern in that is, the full bench could - if the matter next week is not a consent matter, then it could be months

away from an order emanating from that application. If it is a consent matter, then there'll be no issue.

5 MR CAMERON: If however the full bench does decide to remove these clauses from the C&A Award it could be arguable, why not remove it now. If it doesn't - if it's retained in its current form what does it do.

10 MR PATERSON: There are things that are not particularly big but there is the new parental leave provision and I think it's important to get this one signed off on. Maybe I could suggest that we actually schedule a - although you won't have a decision from that other matter next Thursday. My position would be that we proceed to process this as we first indicated and that we just pay some mind to the effect of whatever the decision that comes from that other matter is and if there's some way of reducing the confusion in terms of issuing two 15 sequential orders, then we can look at that almost administratively.

20 COMMISSIONER: I think we should proceed with the matter before us and I'll keep my eye on what's happening with the full bench matter in relation to traineeships. It will take some time for my associate to closely check the reformatted award that's before us, so the timing may work out well. If we need to do something then, we will be in touch with the parties, if that's an acceptable course.

25 MR CAMERON: With next week's hearing, if there's something obvious that's going to arise, Mr Paterson and I can discuss and say, we can now move this way or another way or just let things keep rolling along but I'm sure there'll be some indication early on in the hearing next week as to what the position is because there may well be - I know they're being heard collectively but it may be the situation where the parties respondent to a particular award say, yes, we agree even though the unions are opposing their awards. It will be an interesting 30 situation.

COMMISSIONER: Anything is possible.

35 MR CAMERON: I think the other aspect is that, as I understand it, the TCCI and the TTLC are currently looking at a draft clause to insert into all awards to cover trainees. I think in other awards Mr Paterson and I are dealing with, we've come to the agreement that once that's approved we'll put that consensus clause into the award that we've got carriage of.

40 COMMISSIONER: We will proceed with addressing the application that is before us and I think where we were up to, was a comment that there were no substantial changes. Are you going to proceed, Mr Paterson?

MR PATERSON: If I may, commissioner. I have a copy here with the annotated changes which really are, by and large, corrections and

rather than provide you with a copy that has those corrections on it, I will undertake to forward to Mr Cameron in tomorrow's mail a hard copy of a draft order that gives effect to the changes we have discussed.

- 5 As Mr Cameron indicated, they are essentially - there are a couple of omissions, a couple of clarifications and a number of typing or transcription type mistakes. Otherwise, we are in effect agreed save and except for the effect of that future decision in another matter. I would be forwarding a hard copy and a disc copy to Mr Cameron
- 10 asking him to countersign the letter that will then be forwarded to you confirming that the draft order is an agreed document.

COMMISSIONER: The draft order looks at all the elements of - the new principle 12 have been considered?

- 15 MR PATERSON: Given that we haven't addressed that matter before, I had overlooked the need to address that question to you. The award largely addresses all the matters that are in that principle in terms of formatting in a plain English version, consistent with the decision of the conferences under the president, the consistent award formatting.

- 20 There were in fact some - even through a number of drafts, some effectively wording considerations in the award that were discriminatory. There were a number of places where a single gender was imported and that has been corrected and I believe and hope that all of those have now been picked up.

- 25 There were a couple of errors in the previous award. As such, there was inconsistency between the time at which ordinary hours ended for a casual compared to part-time and full-time staff. One was 6 o'clock, one was 6.30. Some of those are clear historical errors, that no one has ever identified or addressed in the past, have been picked up. The word 'hours', was left out from after '152' in the annual leave. The parties in
- 30 this particular matter have agreed to go back to expressing it as four weeks and clarifying that that be for a full-time employee so it's not left open for anyone to argue 152 hours regardless of how many hours a week they worked. The obsolete and inaccurate provisions such as job skills and career start have been removed. The parties and persons
- 35 clause is consistent with the format that emerged from the conference with the president.

All other facilitative and flexibility clauses continue to operate. In terms of the requirement of the newly numbered as principle 12, it is our submissions that this does in fact meet those.

- 40 The other major change that I should address which I believe is a very useful change in terms of drafting, is that the classification structure has been reformatted without the numbering and I don't believe it makes it any harder to find. A lot of the words in the previous classification structure I always found to be fairly archaic. Some of

those have been removed. I believe that it reads much more simply. Things such as the provisions, the way in which the requirement to exercise technical skills as a whole is worded, I believe there is a much more plain English and simpler wording.

- 5 For the overwhelming part, that classification structure is that which
was developed and included into the Aerated Waters Award and in fact
had its genesis with an earlier process within the Business Services
Award and it's my understanding that the parties have now effectively
endorsed it at least as the model for all awards with seven level clerical
10 and administrative classification structure.

In terms of the operative date, Mr Cameron and I haven't discussed that. I'll have some discussions with him at the conclusion of these proceedings, or now if you consider that to be appropriate. In any event, we would include it in the draft.

- 15 COMMISSIONER: The process that I've adopted to date with these
award reviews, is that the operative date is the first full pay period on
or after the issuing of the order and that's because sometimes it takes
quite some time to draw through the document and totally check it.

- 20 MR PATERSON: I can indicate that that position is acceptable to the
union.

MR CAMERON: That position would be acceptable to the TCCI.

MR PATERSON: Thank you, commissioner. I don't know that we need
to make any further submissions in terms of the requirements of the
Act. If you do require them, please indicate as such.

- 25 COMMISSIONER: I think that's sufficient. Mr Cameron, have you got
anything to add?

- 30 MR CAMERON: Not really, commissioner. Only concurring with what
Mr Paterson has put to you in relation to principle 12 relating to award
review process. In a number of ways, the award has been copied, cut
and pasted. Whether that results in more plain English, I'm not sure
but I think generally it's pretty understood. As indicated, the wording
in the classifications has probably made it a bit simpler to agree and
the discriminatory provisions, if any did exist, have been removed as
far as we see. How the use of just a single gender word in a clause is
35 discriminatory, I'm not sure.

- 40 As I understand it, it is consistent with the award formatting put out
by the president in the conferences that we've held and generally the
removal obsolete or inaccurate award provisions have been complied
with. As such the only thing I would add is, in relation to this
traineeship, I will have to perhaps talk further with members of our
office to ascertain what's going on in that particular instance. There
may be something that I make to Mr Paterson in terms of the timing of

these provisions. In particular, just to let the person putting the case
for the TCCI before the full bench to notify the full bench that this
award is currently at this stage and may well be before you for the
order being issued, that the full bench is aware of the potential
problem in terms of their own orders, when they issue, relating to this
award.

5 Other than that, we will receive the documents from Mr Paterson and
forward them to you.

10 COMMISSIONER: I indicate that the award will be varied in the
manner set out in the draft order, as amended and that the operative
date will be as discussed and that's the first full pay period on or after
the date of the order. In case we need to come back, I will adjourn the
matter sine die.

HEARING ADJOURNED SINE DIE 3.22pm