

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T. Nos 4727 and 4728 of 1993

IN THE MATTER OF applications by
the Australasian Meat Industry
Employees Union to vary the Meat
Trades Award and the Abattoirs
Award

re call back, Saturday work,
standing by, transport of
employees, and travelling time

COMMISSIONER GOZZI

HOBART, 25 January 1994

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER GOZZI: Can I have appearances in those matters, please.

MR J. SWALLOW: SWALLOW J.E., AMIEU.

COMMISSIONER GOZZI: Thank you, Mr Swallow.

MR T. EDWARDS: If it please the commission, EDWARDS T.J. I appear for the Tasmanian Chamber of Commerce and Industry.

COMMISSIONER GOZZI: Thank you, Mr Edwards.

Is there any objection to these matters being joined for the purpose of hearing? They seem to address the same subject matter in the Meat Trades and Abattoirs Award respectively.

MR EDWARDS: I've no objection, commissioner.

COMMISSIONER GOZZI: Mr Swallow?

MR SWALLOW: No objection.

COMMISSIONER GOZZI: Alright, so for hearing purposes these applications are joined. Mr Swallow?

MR SWALLOW: Mr Commissioner, Mr Edwards and I had a 5-minute discussion a moment ago and it just seems as though we could get pretty close to agreement on the call backs, the Saturday work, and -

COMMISSIONER GOZZI: That sounds good.

MR SWALLOW: - so I would ask that that matter be adjourned, and that will only leave the kilometre rate.

COMMISSIONER GOZZI: The travelling time part of it?

MR SWALLOW: Yes.

COMMISSIONER GOZZI: Right. Okay.

MR SWALLOW: Yes, just the kilometre.

COMMISSIONER GOZZI: Okay. So, at this stage the call back Saturday. What about the standing by, transport of employees and travelling time?

MR SWALLOW: That's -

COMMISSIONER GOZZI: All tied up with travelling?

MR SWALLOW: All tied up with -

COMMISSIONER GOZZI: So call back and Saturday work to be

adjourned. Is that the idea?

MR EDWARDS: No. Commissioner, if I might just try and clarify it, if I could. Call back, Saturday work, standing by and transport of employees, we have agreed that those four matters be adjourned.

COMMISSIONER GOZZI: Oh, I see. Yes.

MR EDWARDS: With the only matter remaining being that of travelling time.

COMMISSIONER GOZZI: Okay.

MR EDWARDS: With Mr Swallow's permission, commissioner, I would like to just add briefly to what he said on that, just to make it absolutely clear.

One of the reasons that we have sought to have the matter adjourned is firstly to have discussions between the parties because I am fairly confident we can resolve that one between us.

The other point is that in the meantime we would ask the commission to undertake the role it must undertake in accordance with the wage fixing principles under the heading of Special Cases, and I take the commission in that regard to page 5 of the Principles of Wage Fixing, which of course indicate that changes to conditions of employment, which is what this is, must be referred to the president to decide whether any such case should be dealt with by a full bench.

We are not suggesting it ought to be dealt with by a full bench, commissioner. In fact, the converse is true. We'd be more than happy for the commission as currently constituted to deal with the matter.

But the special cases principle doesn't allow a discretion in that regard. It must be referred to the president.

If the commission as currently constituted to perhaps undertake that function during the course of the adjourned period that would overcome any impediment when the parties are ready to return to the commission.

COMMISSIONER GOZZI: Mr Edwards, yes, I understand what you are saying about that.

MR EDWARDS: Page 5 of the annexure.

COMMISSIONER GOZZI: Yes, I saw it there on page 5. I am looking for -

MR EDWARDS: Of the annexure, commissioner.

COMMISSIONER GOZZI: Yes, I have got it there. I am just looking for another -

MR EDWARDS: There is no conditions of employment principle any more, commissioner, if that's what you are looking for.

COMMISSIONER GOZZI: No, that's right.

MR EDWARDS: I had the same search this morning.

COMMISSIONER GOZZI: Yes, it went by the way, didn't it?

MR EDWARDS: Yes.

COMMISSIONER GOZZI: I don't know why we do these things.

MR EDWARDS: It beats me sometimes.

COMMISSIONER GOZZI: Yes, look, that's quite clear there on page 5.

MR EDWARDS: So all I am suggesting, commissioner, and I think Mr Swallow is agreeing, that if we ask you, sir, to refer this matter to the president to allow him to decide whether the matter should be dealt with by a full bench.

It is a submission of the parties, I think jointly, that it shouldn't be the matter of a full bench proceedings. That it is relatively straightforward, and not going to be an enormous cost matter but there will be costs involved. And that's why it is under the special cases principle.

COMMISSIONER GOZZI: Mm.

MR EDWARDS: So we'd ask if you could do that during the intervening period so that when we do come back there is no hold up to proceeding.

If the commission pleases.

COMMISSIONER GOZZI: Yes, that's fine, Mr Edwards. In fact, if that was one of the reasons for adjournment I could adjourn now and get that referral fairly promptly - I would imagine.

MR EDWARDS: It is but one of the reasons, commissioner. As I have indicated, we're fairly confident that this matter can be disposed of by consent. There have already been a number of discussions and the instructions that I have from the two major participants that are going to be affected by the changes that they are pretty well on all fours with most parts of the application. So we should be fairly safe in reaching an agreement, I trust.

COMMISSIONER GOZZI: Thank you. Mr Swallow, are you in agreement with all of that?

MR SWALLOW: Yes, Mr Commissioner.

COMMISSIONER GOZZI: Alright. Well, we'll just go off the record for a moment then.

OFF THE RECORD

COMMISSIONER GOZZI: In respect of the two awards in question the issue of call back, Saturday work, standing by, transport of employees is adjourned until the 29th of March.

In the interim I understand the parties are going to discuss the matter, possibly to resolve it. If you can resolve it and it in effect requires a consent variation, let me know and we can slip that particular part of the hearing in early one morning, just to give effect to it in the award. If it is a consent matter, otherwise it will be on on 29th March, and I'll refer the matter in the meantime to the president for him to consider whether or not it should go to a full bench.

Alright. That then leaves the issue of travelling time. Mr Swallow?

MR SWALLOW: Mr Commissioner, this is one of these things that somehow or another hasn't been updated. When it was put into the award it was the state standard to apply originally. It has never been adjusted when the state standard moved.

COMMISSIONER GOZZI: Whereabouts in the award is it?

MR SWALLOW: In the Meat Trades it comes up in 'incidental expenses'.

COMMISSIONER GOZZI: Meat Trades.

MR SWALLOW: On page 35.

COMMISSIONER GOZZI: Page 40 -

MR SWALLOW: Clause 28.

COMMISSIONER GOZZI: Right.

MR SWALLOW: 'Incidental Expenses'. It comes up on the second paragraph.

COMMISSIONER GOZZI: It's now clause 29.

MR SWALLOW: I am sorry. Second para, 19 cents, and then it comes up again in 'Travelling Time', clause 53 in the Meat Trades. Oh, 54, then, it must be.

COMMISSIONER GOZZI: Yes; 54. Right. And in the other one? In the Abattoirs. It will be clause 41. Sorry, sorry, it's clause 26 on page 55.

MR SWALLOW: The first thing I looked at was 'certificate'. I'll have to get the latest award.

MR EDWARDS: If I could perhaps assist? There is no rate prescribed in clause 26, 'Incidental Expenses'.

COMMISSIONER GOZZI: No.

MR EDWARDS: I think we need to go to the overtime clause, subclause (i).

COMMISSIONER GOZZI: Whereabouts is that, Mr Edwards?

MR EDWARDS: 35 - clause 35, subclause (i).

COMMISSIONER GOZZI: Thank you. Right - 19 cents per kilometre.

So, Mr Swallow, you were saying it hasn't been updated. I think that's where we go to.

MR SWALLOW: No, it hasn't been updated, and as time goes on - and in the last month before Christmas there must have been changes in work times because I got as many calls in December as what I've had I reckon in 20 years, and they were all going off crook about the 19 cents.

So the application is to apply the state standard that was originally intended.

COMMISSIONER GOZZI: Is there such a thing now as a private industry standard?

MR SWALLOW: Well there was when that was put in.

COMMISSIONER GOZZI: Yes. Do you know what it is?

MR SWALLOW: The records will show that that is in fact the state standard.

COMMISSIONER GOZZI: At that time.

MR SWALLOW: At that time.

COMMISSIONER GOZZI: Do you know what it now is?

MR SWALLOW: I think it is somewhere around about 55 cents. It could be as much as 58.

COMMISSIONER GOZZI: I'm not sure where I find the state standard, quite honestly.

MR SWALLOW: The public service.

COMMISSIONER GOZZI: The public service? So you think it equated to the public sector, did you? The public sector arrangements were changed in 1986-87 where, in fact, the rates were tied to - they were reviewed, increased, and subsequent adjustments to the rate on the transport component of the consumer index, which is now done on application I think once every 12 months or so.

MR SWALLOW: Yes.

COMMISSIONER GOZZI: Yes. And I must say I in fact was the author of that particular full bench decision, but I can't off the top of my head remember what the amount currently is. I think it is probably getting up to around about 40-50 cents.

Now, that's an existing allowance, is it, Mr Swallow?

MR SWALLOW: The kilometre rate?

COMMISSIONER GOZZI: Yes.

MR SWALLOW: Yes.

COMMISSIONER GOZZI: So the wage fixing principle is the existing allowances principle. So you really are asking that it be adjusted by, what? To equate to the public sector standard?

MR SWALLOW: Yes.

COMMISSIONER GOZZI: Alright. When was the last variation made, do you know?

MR SWALLOW: I wouldn't have a clue, to be truthful.

COMMISSIONER GOZZI: Alright. Anything else?

MR SWALLOW: No, thank you.

COMMISSIONER GOZZI: Mr Edwards, what's your view about this claim?

MR EDWARDS: Commissioner, my position on this claim is that it will be properly processed in accordance with the wage fixing principles if one were to apply the allowances principle, particularly 1(b) thereof under the heading of, 'Existing Allowances' which indicates:

Existing allowances which relate to work or conditions which have not -

- sorry, I am reading the wrong one. It is 1(a). I apologise.

Existing allowances which constitute a reimbursement of expenses incurred may be adjusted from time to time, where appropriate, to reflect the relevant changes in the level of such expenses.

And, commissioner, you have in broad terms already referred to the way in which expense-related allowances in this commission are adjusted, and that is the consumer price index increase for the transport component of the CPI from the date on which the allowance was last reviewed.

I have had insufficient time to determine the last date on which this was reviewed, and I apologise for that, for being unprepared.

It would seem to me -

COMMISSIONER GOZZI: I don't know either, I must say.

MR EDWARDS: It's seems to me that this matter should be researched properly otherwise the principles won't be met. By that I mean we need to ascertain when the matter was last reviewed and ascertain the level of increase in the consumer price index from that date to this.

And if that were to be the exercise conducted, then I am in a position to offer my consent to the variation sought, on that basis.

I'm not prepared to slavishly put forward a consent to following a rate determined in the public sector which may or may not take into account issues which are relevant to the public sector and not the private sector, or vice versa.

I know for example, commissioner, and you probably do far better than I, that that rate is split into a number of different components which are required to use, etc.

COMMISSIONER GOZZI: Yes, and also vehicle size, and so on.

MR EDWARDS: Yes, commissioner.

Therefore to talk simply about a state standard rate is no longer appropriate.

I agree with Mr Swallow's submission to the extent that there was back in the days of the old Industrial Board and the Wages Board before it a rate that was deemed to be the state standard rate and it was usually drawn from the old ironmongers wages board originally, which subsequently became the Retail Trades Award.

However, that too has fallen into disrepair in the context of a kilometreage rate, as have I might add 99% of the awards of this commission.

It is just something that has never been updated by the union movement.

I can signify for the commission for what it is worth, which is very little I suspect, that the going rate in general terms in private industry at the moment is in the vicinity of 35 cents per kilometre.

I gauge that, commissioner, on the discussions I have with my members from time to time by phone, and that is the rate which is a going rate in broad terms, and it is what we generally advise our members to apply, notwithstanding that the award is in some cases 9 cents and in this case 19.

Could I, commissioner, suggest that this matter could conclude I suspect by you indicating that the matter could be increased in the manner I have suggested in accordance with the principle, and the parties undertake that research and provide it back to the commission.

I would be able to do that in fairly short order and supply it to both Mr Swallow and yourself.

COMMISSIONER GOZZI: Yes. That sounds good.

MR EDWARDS: I would like to dispose of it, if we can, because I am going on leave for 4 weeks and I don't want to come back. In fact I won't be coming back.

COMMISSIONER GOZZI: Alright. Mr Edwards, you are proposing I think that you look at the rate when it last went to 19 cents and then do a accumulative adjustment based on the CPI transport component part of it to update it.

MR EDWARDS: That's correct, yes.

COMMISSIONER GOZZI: Alright. If that's acceptable to Mr Swallow what you suggest, that would be fine.

Mr Swallow, do you have a problem with that? What Mr Edwards has outlined is in accordance with how these expense rate allowances are generally updated in the commission. The only reason I ask you whether it is alright with you is because you really were asking for something a big different. You were asking for the public sector rate, and I think it is fair to say that in the context of the history of the kilometreage rate that when that test case was undertaken in the public sector there was a divergence between the public sector and the private sector as to what applied.

The private sector has gone on on the basis of CPI based adjustments, as has now the public sector, but the essential difference was that in '86 or '87, or thereabouts, there was a comprehensive review of the public sector kilometreage rates and that brought about an initial increase in the rate because of the circumstances applying, vehicle usage, authorised user and all those sort of circumstances, and once that base was adjusted to reflect those different categories of usage the rate was then subsequently, and has continued to be adjusted by the consumer price index in the manner outlined by Mr Edwards.

And to the best of my knowledge that type of formula has been used to adjust expense related allowances for kilometreage allowance in the private sector.

So, if you are in agreement with that approach, then what you would need to do, you and Mr Edwards, and Mr Edwards I think has undertaken to do it, is to go back to the date of the last movement in the kilometreage allowance and then apply the 12 month CPI movement on an accumulative basis up to the last CPI information, which will produce an amount of money, and I don't know what that would be.

But that would be acceptable to me, and would be in accordance with the principles.

If you want to do it differently you would have to mount a case and review the whole thing, and that would be, well, a comprehensive exercise.

So the ball is in your court, Mr Swallow.

MR SWALLOW: As I said earlier, how things have changed. The records will disclose that this was an agreed matter and it be the state standard.

Now, nothing has changed as far as I know. The only thing that has changed is the mechanism to determine the amount, but there still is a state standard about.

Now if the records of this jurisdiction disclose that that was an agreed matter that the state standard apply, surely to goodness that's within the wage fixing principles.

COMMISSIONER GOZZI: Well, you know, I mean if you want to run that case, then you will have to give me the information to do that.

MR SWALLOW: Yes.

COMMISSIONER GOZZI: I am not aware of the background of this particular award clause, and maybe what you have got to do if you are not attracted to what Mr Edwards has outlined then you have got to sit down and talk that through with him, and if you want to run the argument to me you'll have to go to full argument.

It seems to me at the moment -

MR SWALLOW: Wouldn't it just be necessary for me to go through the records, produce the document that says it is an agreement matter, and that ought to be the finish of it, oughtn't it?

COMMISSIONER GOZZI: Well, you know, I certainly would think that that should have some weight in your discussions. I mean, I am not in a position to be able to say to you that I will endorse it necessarily. It depends on what the other side would say, and I would consider it obviously if that was the arrangement. I'd expect you and Mr Edwards to have some discussion about it.

All I am saying at this point is that what Mr Edwards has outlined and what I have reiterated to you is the way that kilometreage allowances have moved.

MR SWALLOW: Yes.

COMMISSIONER GOZZI: And the other thing I'm saying, quite deliberately saying, when the public sector was reviewed by a full bench in '87 - I think it was '87 - it was done on the basis of the public sector only.

MR SWALLOW: Yes, but what I am saying is -

COMMISSIONER GOZZI: And the arrangements in the public sector changed substantially at that time in the context of size of vehicle and, you know, the usage of the vehicle.

Now the private sector awards generally, and I don't know of any exceptions off the top of my head, don't follow and haven't for a long time that format.

So I don't know when that agreement was made, but obviously if you think it is still in force, then you should talk to Mr Edwards about it.

MR SWALLOW: It would be 20 years. Back in Max Nicholson's time. Anyway, could we leave it -

At this stage there is an offer there to increase it by the CPI from the date of its last movement, and I think, you know, that ought to be -

MR SWALLOW: Well we can see what that comes up with, can't we? It could well be that that's the amount.

COMMISSIONER GOZZI: Well, it could be. In fact, it is a bit of a, you know, a pig in a poke situation, because it is all accumulative. It's a bit like compound interest.

MR SWALLOW: In the meantime I will just see if I can dig up those records.

COMMISSIONER GOZZI: Look, I am happy to adjourn this matter as well if that's what you want to do.

MR EDWARDS: That would be my submission, commissioner, that we should perhaps do our own research and, if necessary, relist it.

MR SWALLOW: We'll do that. I'd ask that the matter be adjourned.

COMMISSIONER GOZZI: Yes, and if in the meantime you reach an agreement, then I would be happy to receive the documentation and deal with it.

MR SWALLOW: Right.

COMMISSIONER GOZZI: Alright, we'll adjourn this matter to the 29th of March as well.

Now, I just reiterate, in adjourning to the 29th of March these issues should be fairly straightforward and if you can agree on them let me know and then I will list them at mutual convenience and we can get rid of them as far as the award is concerned.

HEARING ADJOURNED