

**TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984

T No. 3867 of 1992

**IN THE MATTER OF** an application by  
the Federated Miscellaneous  
Workers Union of Australia,  
Tasmanian Branch to vary the  
Miscellaneous Workers Award

re definitions, wage rates,  
allowances, arrangement

COMMISSIONER IMLACH

HOBART, 6 July 1992

**TRANSCRIPT OF PROCEEDINGS**

Unedited

COMMISSIONER IMLACH: I'll take appearances.

MR K. O'BRIEN: If the commission pleases, I appear on behalf of the applicant organisation.

COMMISSIONER IMLACH: Thanks, Mr O'Brien.

MR S. CLUES: If it pleases the commission, I appear on behalf of the Tasmanian Confederation of Industries, CLUES S.

COMMISSIONER IMLACH: Thanks, Mr Clues. Mr O'Brien?

MR O'BRIEN: Mr Commissioner, initially I would seek leave of the commission to amend it, the application. Firstly, on page 8, item J appearing near the bottom there, library attendant level 2, relativity 87.4%, (i), subparagraph (a), should read: Satisfactory completion of 4 weeks (152 hours) employment inclusive of training at library attendant level 1. Perhaps the emphasis should have been inclusive.

So it would read: Satisfactory completion of 4 weeks (152 hours) employment inclusive of training at library attendant level 1.

COMMISSIONER IMLACH: Right.

MR O'BRIEN: On page 10 there is a - I think in K, in the heading, there is a - a slash where there should be a decimal point. It should be 92.4%.

On page 12, (iii) tasks, duties and responsibilities, item H should be deleted. And therefore item I becomes H, J becomes I, K becomes J, and L becomes K.

Over the page, and we're adding an additional proposed amendment, and that is to - in No.6, in clause 18, I think it's hours of work, in subclause (g)(i) delete -

COMMISSIONER IMLACH: Just a minute. Just a minute, Mr O'Brien. No.6, where's that?

MR O'BRIEN: It really isn't there, we're adding this on the last page. So I'm adding this on -

COMMISSIONER IMLACH: Oh, I see.

MR O'BRIEN: - to the bottom of page 16, if I can put it in terms of the application -

COMMISSIONER IMLACH: Right, yes.

MR O'BRIEN: - here before you.

It would be point 6, and the heading would be 'clause 18 -



Hours of Work'. And the claim would be in subclause (g)(i), delete the word 'Sunday' and insert in its place the word 'Saturday'. And that is to correct a - an error that appears in the document which is incongruous with the intended meaning and existing provisions that apply to Sunday.

I think that I can say that the application meets with substantial agreement from both parties, but Mr Clues will speak to you in relation to his organisation's view; that's my understanding at this stage, save and except the question of operative date.

The application, if I can deal with the application in total, and particularly the annexure to the application, firstly to amend the arrangement clause is to delete and replace with the clause there appearing, at the first page and the page that's marked page 1. On page 2 of the application, the date of operation, I will return to, and we propose a clause there which is minus that date of operation.

The item 3 in the application is to amend clause 7 - Definitions to reflect existing definitions for part-time and casual employees. The definition of the union, which I might say will, I expect, change in the not too distant future in terms of the name appearing there. Show Day remains as the definition. And then appear the definitions for the new classification standard, including proposals for ongoing relativities based around the base trade level, for all the occupations, this being an occupational award, that appear within the scope.

I might say that in relation to the existing definitions and their transference into the form that appears in this document and in which we are seeking to be included in the award, it is our understanding that it is not intended to reduce or enlarge the - the scope of the award by virtue of this, but rather to introduce a classification and career structure into the award which has relevance in terms of the current wage fixing principles and the practice which has appeared in most other awards of establishing more general career structures for awards.

We're trying to fit that into the existing award, it being an occupational award. We include a structure which, as I say, neither reduces nor enlarges the coverage of the award, it's based upon the occupations as currently defined in the award, but has an enlarged and more appropriate career structure.

There are two sets of definitions, and if I can put it this way, the definitions for Division A are for all occupations except the occupation of library attendant which currently appears in the award. And the definitions for the purposes of Division B are for library attendant only. And that is consistent with the amendments which were agreed to occur to

the award late last year, which created a Division B for library attendants.

In relation to the career structure and the relativities themselves, the relativities begin at 87.4% of the tradesman's rate for the base classifications. And those are those which are based upon those which now exist in the award without any proposed career structure or development of those classifications. And there are two levels within that.

Firstly, what has been defined as group A, the occupations are lift attendant, tea attendant, cleaner, groundsman or yard and vehicle cleaner or domestic. And group B, the occupations of general attendant, utility officer and/or caretaker janitor.

Now, in relation to those it is agreed, as I understand it, that the group A occupations commence at a relativity level of 87.4%. But in the case of group B, the employees remain at that level for a 4-week period and then progress to the employee level 2, 92.4% level. Whereas employees in the group A, that is the lift attendants et cetera, are to progress beyond the 87.4% level required to undertake to give significantly higher levels of skill or responsibility to progress.

The acceptance in this structure is that those group B occupations are accepted to be of occupations which are at a higher level of skill and responsibility. Indeed, the award reflects that now, but is reflecting it more appropriately in terms of the sorts of standards which are being implemented in other awards and, indeed, are being implemented in similar areas in other jurisdictions.

For example, in the South Australian Industrial Commission an award specifically relating to cleaners and caretakers picks up precisely these sorts of relativities. So we have had regard to what has been occurring in other jurisdictions. And indeed, the South Australian matter was a subject partially arbitrated by the industrial commission in that case.

Then the employee level 3 is set out there for - and the expectation is that any of the employees can progress to the third level, but in each case the progression is only obtained as is set out on page 6 by establishing capability of effectively performing the tasks, duties and responsibilities of an employee level 3 through assessment or appropriate certification.

And so there is set out on page 7 some of the additional levels and skill and responsibility which will be required for the attraction of that level. And as I say, that is the Division A employees in this award, if I can put it that way.



Then in Division B, a four-level structure has been proposed to be implemented for the library attendant classification. And they proceed from an entry or trainee level to a - that's a 78% relativity, and that's the library attendant level 1 classification. And the situation is that the library attendant with up to 4 weeks' experience would fall within this level.

Level 2 is the basic library attendant classification, setting a basic relativity of 87.4%. And in that level, having undergone basic skills, the employee is then required to perform duties as included within the list as set out on page 9. And they are, as it says there, the indicative tasks, duties and responsibilities that the employee may perform. And they are fairly clearly set out there.

In relation to item F, basic arithmetical calculations with accuracy, that is an expectation that there will be a basic level of mathematics capability by the person. And that is the contrast with - on page 11, item K, it appears around the middle of the page - arithmetic skills at a more advanced level.

And I guess there's some scope for debate as to what is the basic and what is a more advanced level in the terms of those words. And that would have to be understood in terms of the base - basic arithmetic skills that are required to perform the duty.

For example, a basic ability to total up the amount a customer was paying for various items at level 2 and something more advanced than that at the next level.

And then you would see that on page 10, that the employee progresses to the third level on establishing that they perform or they are capable of effectively performing through assessment or appropriate certification to tasks required of the function.

And then set out as - under the 92.4% level 3 level is a general duty statement, a list of tasks, duties and responsibilities which are based upon building on the skills and responsibilities at level 2. And the employee in this case has a number of additional levels of skill which can be assessed with regard to the statement for the level 2 employee, as being a higher level of skill and/or responsibility, bearing in mind that these are indicative tasks.

And that in the ordinary course of events it's not a list of duties all of which would need to be performed to establish

promotion, but as an indicative level of tasks and duties against which the employee's skills and responsibilities will be assessed in determining whether they ought to be classified as a library attendant level 3.

There - again is a difference in point 4 on page 11 which clearly indicates that progression from level 3 to level 4 is a promotional rather than a duties-based graduation because level 4 as you read it is clearly a library supervisor and elsewhere in the document you'll see that the employee level 4 does not attract a leading hand rate and substantially although there is an expression of additional skills, the supervisory function is - is compensated for in this level there are additional levels of skill and responsibility which attach in the general statement appearing on pages 11 and 12 as to the competence of the employee, and on page 12 the tasks and duties subject to the change that I outlined build upon those which appear at the similar point in level 3, and there is progression to 100% of the base trades level there.

So there is a structure, which as I say, I understand is - has been agreed between the parties and the commission will recall that this matter was last before the commission late last year at which point the parties went away to arrive at this process and there have been a number of discussions. This document has been available in some form for quite some time now and the parties have been aware of the general implications and the task of getting the matter here has rather been the fine tuning of the document.

In terms of the other aspects of the application on page 13, there is a process proposed for the implementation of the structure which involves a supplementary payment of minimum rate adjustment approach. And you'll see an initial implementation proposal for the - the supplementary payments with a - a phase-in proposed in four instalments commencing - the first commencing date would be that date of operation of this variation and in accordance with the principles there would be applications for the subsequent three minimum rate adjustments which, as I understand the principles, allow it to be processed at intervals of no less than 6 months.

The - it's clearly set out there that where junior rates apply to particular classifications, the - the percentage specified in the award that applies is - is the total rate which is the base rate and supplementary payment rate, so that the - the new structure is intended to be passed on to the junior employees.

The provision appears on page 15, supplementary payment, indicating as is required that there is a commitment that the supplementary payment is fully absorbable into existing over-award payments.



As a consequence of the new structure it is agreed that some of the existing allowances need no longer continue and this is an approach which is consistent with the approach taken by the parties in relation to the Cleaning and Property Services Award where a similar structure was implemented and where a similar approach was taken in relation to the allowances in the award. And what is proposed there is to delete the existing clause and to insert in its place a clause which deletes allowances such as toilet cleaning allowance, window cleaning allowance and I think there's one other. But to retain the leading hand allowance, excess fares allowance, first aid allowance and meal allowance and to reflect those at the appropriate levels having regard to the existing award amounts and to standards which have otherwise been adopted by this commission.

In relation to the leading hand allowance, I did say earlier that as is specified there, the leading hand allowance is not paid to the top levels of either division because both of those levels, that is, level 3 of Division A and level 4 of Division B, reflect a supervisory component in the structure.

In relation to the additional provision which we seek altered, and that is the hours of work clause, there is a - an error in the document in that - in the subclause that is the subject of the application - reference to the provision of a penalty for Saturday work. The provision is intended to run from midnight Friday to midnight Saturday, but apparently has been transcribed at some point or other to say that it applies from midnight Friday to midnight Sunday. In addition of course, there is a provision which applies from midnight Saturday to midnight Sunday and it is clearly an error of transcription at some point or other and rather than seeking to find out where it occurred, I think the best thing that we can do is to correct it consistent with the intention of the parties as expressed when the matter was last before the commission.

That, Mr Commissioner, brings me to the question of operative date. Our position is that the organisations - employer and employee - have for some time had proposals to vary the classification structure before them. I can say that my organisation has consulted with its membership in the area over a period of time to seek that this matter be processed having regard to their view on the matter and I would expect that the Confederation of Industry has likewise had consultation with its members to make them aware of what is proposed to take place subject to the approval of the commission.

And as I say, these documents have been around for quite some time. Our position, Mr Commissioner, is that the award ought to be varied and having regard to the way that pay weeks tend to run in this industry, our proposal is the award be varied



to take effect from the first pay period commencing on or after 5th July 1992, and that is yesterday's date which would in fact in most cases require the implementation in terms of actual payment a fortnight from today, because most - or many employers in the industry pay fortnightly.

So there would in that case be in most cases a period of 2 weeks for familiarisation, and as I say, that given the history of this matter, is certainly not an unreasonable position. I can also say that in relation to the practice in many of these matters has been to vary from the date of hearing. And I seek to digress from that point by 1 day, that is, to make it operative on a Sunday to give effect to this act, all full pay periods that commenced on or after yesterday which will have the effect of implementing the structure at the pay which occurs following the completion of pay periods which commenced on or after yesterday, which, in most cases, will mean that it won't actually be paid for something in excess of 14 days. So, it probably gives a period of 16 days to actually do the final steps in implementing this given that this document has been around for many, many - many, many weeks and the parties have had ample opportunity to consult with their constituents to make them aware of what needs to be done so that they've had plenty of time to think about how it should be implemented.

It is a fairly clear-cut document and we would suggest there should be no difficulty in implementing on that time scale.

There were a couple of points that I wanted to put on the record as items of concern arising from previous variations. One was that it's been suggested to us that in some areas the provision in the award currently allowing for the working of overtime or penalty time at - as - instead of being paid the monetary penalty provided in the award, which currently is allowed by mutual consent, is in some cases being implemented rather as if that is at the discretion of the employer and also that in some cases we have been informed, although the substance of the matter hasn't been put before us, that time off has been granted at single time and not at the penalty equivalent.

I put that on the record now because there was a review factor built into this document. We are considering our position in relation to such a review, but it would be fair to the commission and to the confederation that we do place that on the record at this stage so that consideration can be given to it and we will consider our position in relation to any application on that matter. That, I think, is appropriate to be raised because it was part of the award restructuring process that was consummated by the previous order you made in this matter - in relation to this award, Mr Commissioner, and I think in fairness we ought to, at this opportunity, advise you of those concerns so that Mr Clues' organisation takes



steps to make their own enquiries on the matter as well. If the commission pleases.

COMMISSIONER IMLACH: Yes, thanks, Mr O'Brien. A couple of points: the minimum rate adjustment process - if you go to page 13 of the application -

MR O'BRIEN: Yes.

COMMISSIONER IMLACH: - I presume that, if you haven't explained it to me any further than this, that if we take level 1, there's an amount of \$6.70 - are you saying to me that the minimum rate process will continue with two or three others at \$6.70?

MR O'BRIEN: Three others - and I'm sorry, I did have a schedule on it - I didn't include it with the application and for some reason I looked at in the office, but there is a schedule which I'll undertake to supply to the commission which sets out the proposal in instalments. I think Mr Clues has a copy with him here he may be able to supply you with today.

COMMISSIONER IMLACH: But it does reflect what I just said.

MR O'BRIEN: I think it does, but there may be a 10 cent movement one way or the other, the effect being that we would implement the percentage relativities to the amount, \$417.20 at the moment, subject to any change in that 100% tradesmen's figure overtime.

COMMISSIONER IMLACH: And that - in relation to Division B, that's the one I was thinking of -

MR O'BRIEN: Yes.

COMMISSIONER IMLACH: - the level 4 will be the 100% - the 417.20?

MR O'BRIEN: That's right.

COMMISSIONER IMLACH: Yes, right. Now I see there that people will move from one to the other level on assessment or appropriate certification - does it say anywhere who's going to do that?

MR O'BRIEN: No, it doesn't and I think that is going to be a task of the - of us to - to monitor and to have input into this process. In some cases certification relates at this stage more to the Division A than Division B employees as far as I'm aware because there is, for example, in level 3 of Division A, reference to the holding of a trades certificate.

COMMISSIONER IMLACH: Yes. Right. And does all this extensive classification exercise, shall we say, is that all original or does it - some of it come from other jurisdictions as you referred to?

MR O'BRIEN: No, it's not all original; parts - parts of the - the process have regard to - and I don't say that they take the words from - but have regard to in particular the exercise that appeared - that took place in the - for the Cleaners and Caretakers Award in South Australia.

COMMISSIONER IMLACH: Right.

MR O'BRIEN: But we also had to have regard to the fact that there is - there are different provisions in this act; this is one of the few occupational awards and that there are two divisions within the award for different classifications.

In relation to Division B, I'd say - I'd have to say that it is original.

COMMISSIONER IMLACH: Yes. Now one other point, Mr O'Brien: if you go to page 3 -

MR O'BRIEN: Yes.

COMMISSIONER IMLACH: - and the subclause (f) - Employee Grade 1, then if you go to page 5, you've got Employee level 2 - so I presume one is supposed to be the other - which -

MR O'BRIEN: I think it should be a level 1 and not a Grade 1.

COMMISSIONER IMLACH: Right.

MR O'BRIEN: Thank you for that correction.

COMMISSIONER IMLACH: You're seeking to amend that are you, Mr O'Brien?

MR O'BRIEN: I would seek to amend that if that's acceptable, Mr Commissioner.

COMMISSIONER IMLACH: We have to be careful, don't we?

MR O'BRIEN: I think in this case you're on solid ground without an amendment to make this order, but because the subject matter is clearly before you.

COMMISSIONER IMLACH: Right, now, I haven't anything else.

MR O'BRIEN: Thank you.



COMMISSIONER IMLACH: Thanks, Mr O'Brien. Well first of all, Mr Clues, what do you say to all those amendments that Mr O'Brien has sought?

MR CLUES: The amendments have been raised at the eleventh hour. TCI, due to the late notification of this matter being listed, Mr Sertori was unable to attend this morning and as a result I've been requested to appear on his behalf. The amendments appear to be satisfactory. I've had some brief discussions with him. I would like to indicate at this point in time though that if there are any errors or omissions or the amendments being sought do fly in the face of all that has previously been understood or agreed, that Mr Sertori would bring that to the commission's attention upon those being brought to his.

In relation to the actual work that has been done between the parties, it seems that it has been done in a very conciliatory manner and the work is genuine, that the classification structures reflect what is required by the industry. There was mention made by Mr O'Brien that the whole process is still under review and that the beginning of the MRA process is not the conclusion of the structural efficiency review. That whilst the union may also have concerns so do the employer organisations and in relation to claims in relation to the way time off in lieu of overtime provisions are utilised, and if there is some substance to those then no doubt they will be discussed and hopefully an amicable agreement reached.

For the employer's part there is still matters pursuant to changes that were derived from the December decision and also in relation to the loadings that applied to shift work and casuals and part-time work et cetera, that they are still under review, as far as we're concerned and the agenda is not as yet closed although the application before you does go a long way towards bringing this exercise to a conclusion.

I understand that this is the implementation of the first minimum rate adjustment. As such the amounts identified in the supplementary payments column are fully absorbable against over award payments and that has been recognised within the context of the award. In relation to the operative date the TCI has a number of concerns that proposition being put forward by the union. It's unfortunate that the parties haven't been able to previously discuss this matter. However the application in itself has been lodged without prior consultation with the TCI as to the exact date that it was to be lodged and it is for this reason that we would seek a prospective date. The prospective date being sought would be the first full pay period on or after 1 August 1992. The union may argue, for its part, that the employers have had this document for a considerable period of time. For our part we would contend the latter is true, that the union has in fact also had it for a considerable period of time. In fact



the document was first sent to the FMWU back in December of 1991. There was a meeting on 1 May to finalise the order and the finalised redraft was sent to Mr O'Brien of the FMWU on 25 May 1992.

Six weeks later the application is actually before the commission so one could argue that it hasn't exactly been a high priority to have this matter listed and to have the wages effective, as there has been a considerable delay of which we could only assume is due to the fact that it is not as high a priority as other areas.

In this regard we consider the wage increases to be of paramount issue to our members. They are not inconsequential. In fact the wage increases vary from between \$5.20 up to a rather large \$18.40 which in itself is higher than some state wage increases that have been passed down over the years.

The amount, as I've said, is not insignificant. It comes at a time in which we've just seen the conclusion of the financial year or we're just entering into the new financial year. We've got new obligations that are being forced upon employers by the government, including superannuation guarantee levy, an increase in the training levy to 1-1/2 per cent and just the normal run of the mill costs that employers are now burdened with in a time of what has been known as a recession and continues to be so.

The unions may argue that we've had a wage holiday because we've been aware of the document. I can tell you that it is no holiday out there and that employers, whilst may be grateful of some relief, we would argue it has not been due to some consideration by the union's part but rather merely the consequence of this matter not taking as high a priority as maybe some other issues.

So therefore we are asking the commission for some consideration in relation to the economic impact, as is required under section 36 of the act. This application, whilst we're not opposing it, we are looking for some relief. We want time for our members to be able to budget for this increase in the new year and for that reason we would ask for an operative date of 1 August. If it pleases the commission.

COMMISSIONER IMLACH: Yes, thanks, Mr Clues. Mr O'Brien?

MR O'BRIEN: Mr Commissioner, I guess it's the case that damned if you do and damned if you don't in this business. I reject this assertion that there was no consultation about timing of the application. Mr Sertori advised us to lodge the application some time ago. The fact that we weren't prepared to do so is indicative more that we wanted to be sure of what we were applying for and to conduct our consultative processes properly. And as I say, we're damned because we don't apply



for it, you know, precisely as it was suggested. If we'd done so there would have been an application 2 months ago but we wouldn't have completed the consultative processes and we would have applied before the final draft, which forms the substance of the application, was before us and we might have wasted the commission's time in relation to the finalisation of the matter.

I think it must be clear that - and we accept the qualified acceptance of the amendment document, errors and omission excepted, as put by Mr Clues because I understand his position. Filling in for someone he wouldn't want to put his hand up for something that he's not absolutely sure of. But the reality is that the substance of the document is - the amendment is in the form of the application which was worked out between the parties and worked out quite some time ago. And so if Mr Clues' organisation has not taken its steps to advise their members about the consequences and to budget for this in terms of it being an imminent obligation, then that's Mr Clues' obligation - problem or his organisation's problem, not the commission's.

The fact is that the norm in these sorts of proceedings is that the operative date be the date upon which the parties have agreed to an order. And that's the effect in this matter. What we're seeking is a 1 day earlier operative date so that it actually has effect for this financial - commencing this financial year and what better effect in terms of budgeting than that.

Now, Mr Clues talked about increases and he chose the highest ones which would apply to the very small minority of the people employed under the award. He didn't say that there is a lowered rate, that is, that the level 1 rate for Division B is lower than the current starting rate, and he neglected to talk about that implication in talking about the cost implications, so taking all of that into account, and the other obligation which are - in relation to the increases, whatever they are in relation to other areas - going to have minimal impact because we're talking about, for most people, increases of between \$5.00 and about \$10.00 and I'd say the average would be closer to \$5.00 than \$10.00, but one way or the other we're talking about - in some cases all these additional obligations, loading those increases of between \$5.00 and \$10.00 by about 2.1/2 cents - sorry, about 1.1/2 cents - per cent which is about 1.1/2 cents in the dollar which is between 7.1/2 and 15 cents.

As I say, if one is to accept Mr Clues' argument then the position for organisations seeking a variation of the award is that we're damned if we do and damned if we don't. If we don't rush the application up then we've got no justification for seeking an early operative date - sorry - and if we do rush it up then there's an even stronger case for a delayed

operative date and that's what Mr Clues would like you to find because it would suit his ongoing arguments, but I don't think it's a just position. If the commission pleases.

COMMISSIONER IMLACH: Thanks, Mr O'Brien. Thank you, gentlemen, I'll reserve my decision and issue it as soon as I can.

HEARING CONCLUDED