

HEARING RECOMMENCED 9.30am

PRESIDENT: No changes in appearances.

MR FITZGERALD: Well, I think on the last occasion I did appear with Mr Fletcher. So, if that were the case, Mr President, I just appear
5 alone.

PRESIDENT: I know Mr Fletcher was here but I think you simply appeared by yourself.

MR FITZGERALD: That might have been the case. Thank you.

PRESIDENT: Well, what's to report, Mr Miller?

10 MR MILLER: To report, sir. Thank you. Nearly 400 years ago now, the Irish patriot, some would call him, Shane O'Neal the Earl of Tyrone was assassinated and it was from that genesis, sir, that the so-called troubles and the war of independence, shall we say, between the northern part of Ireland and Eire has been continuing and hopefully in
15 this century, in 1998 some 400 years later, that matter may be somewhat concluded.

It reminds me, sir, to some degree of a link with matters to do with RBF. They are somewhat also drawn out. But hopefully, today, those things may come to the beginning of the end, shall we say.

20 PRESIDENT: I'm pleased you're feeling so confident.

MR MILLER: Always live in hope, sir. Always live in hope. Since our last appearance, there has been various conversations, undertakings, discussions and crossing of correspondence between the parties, sir, and there has now been a formalised exchange of documentation
25 between the CPSU and the RBF and indeed the TIC and there has been an agreement by exchange of documentation between the parties to which end we are now able to come before you to indicate a consent matter.

30 As late as yesterday, sir, I spoke to Mr Gary Fletcher, the head of agency of the Retirement Benefit Fund and I believe it is important that this be placed on transcript, that a staff committee, which is made up of personnel of the agency, wrote to Mr Fletcher on the 7th May '98 seeking some points of clarification and giving an indication that should this matter of the GCOE be agreed to by the agency, then
35 we could move forward.

Mr Fletcher has given, as yet, a verbal indication that he is in agreement with the process. So, that the SRC have yet - that is the Staff Consultative Committee, has yet to receive formal documentation from Mr Fletcher on that but, as I say, I spoke to him as late as
40 yesterday and he assured me verbally that that agreement was there

and in due course documentation to the staff committee will be forthcoming.

PRESIDENT: What is the agreement on?

MR MILLER: I'll go to that in a moment, sir, if I may.

5 PRESIDENT: Yes. All right.

MR MILLER: And it's on that understanding that we can progress and I'll read into transcript, sir, and gives dates of some various documents that passed between the parties. On 1st April 1998 a letter from the Community and Public Sector Union to Mr Garry Fletcher, indicates that we forwarded to the agency a 'without prejudice' proposal regarding the application of the GCOE to the Retirement Benefit Fund Board and there were some points in that which have been the subject of discussion.

15 That 'without prejudice' document was forwarded on to the staff committee and that letter forwarding that forward to the staff committee was dated from the RBF the 29th April 1998. Again, on the 29th April 1998, Mr Fletcher wrote to Mr Tony Fitz, who is the chairperson of the Staff Representative Committee, indicating that given certain agreement, then the matter can be progressed.

20 On the 7th May 1998 the chairperson of the Staff Representative Committee, Mr Tony Fitz, wrote to Garry Fletcher and said in part, that there is a timetable which we will attempt to meet and that following a positive formal response, and I quote now:

25 *Based on a positive formal response from this meeting and given the stated intent on behalf of the committee to proceed quickly there should be no reason why progress within an agreed timetable cannot be achieved. Should we be able to have your confirmation that the existing GCOE Award application can be progressed as a consent matter, then it will remove many concerns existing in the minds of the staff and committee.*

30 From that, sir, we are able, I believe, to move forward. It should be remembered by all parties that there are four classes of employees at the Retirement Benefit Fund Board and we've been through those before on transcript and unless you wish to do so, I don't see any point in reiterating that.

PRESIDENT: No, if they are there, no point in repeating it.

MR MILLER: But just to say, sir, that it is the intention of the CPSU with the coverage in the A & C Award and in the GCOE Award, that all persons however employed should have those conditions as a safety net award as it were. The original claim was varied and to refresh

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people's minds, if I just run through the revised document - I beg your pardon, not a document - just run through the application as it now stands.

5 Clause 3 - Scope, we have the words - add to the following words after the words, *Tasmanian Development Act 1983* where appearing and add, and the *Retirement Benefits Act 1993*.

10 PRESIDENT: Now, just let's get this very clear. There was an exhibit tendered at the hearing on the 18th March, I believe, or was it the 1st April and there was an addendum at some stage or another. I think that might have been about that time. So, there was probably an addendum onto the 18th March hearing and then a further exhibit 1, probably at the April hearing, the transcript of which I don't have.

MR MILLER: I believe your memory serves you well, sir.

PRESIDENT: All right. So, it's the exhibit 1 we're referring to?

15 MR MILLER: I believe it is.

PRESIDENT: Just go through it again.

MR MILLER: Yes. My attempt was just to have it clear in the minds of people, that which we are talking about.

PRESIDENT: Yes.

20 MR MILLER: So, I've been through Clause 3 - Scope. Clause 6 - Award Interest and Parties Bound, is to delete subclause (b)(iii) and insert as follows:

(iii) *The Retirement Benefits Fund Board in relation to all employees covered by this award.*

25 (iv) *All employees covered by this award.*

30 To Clause 7 - Definitions, and this is where the major change occurred, sir, from the original application. If you recall, we had different definitions in and on an indication from the agency, those definitions have been changed and now read - Definitions. To the definition of controlling authority and after the words *Tasmanian Development Authority* delete the full stop and add, and in the case of an employee employed under the *Retirement Benefits Act 1993* the Retirement Benefits Fund Board.

35 To the definition of employee. After the words *Tasmanian Development Act 1983*, delete the full stop and add or the *Retirement Benefits Act 1993*.

PRESIDENT: Yes.

MR MILLER: I don't believe, sir, that this application offends any public interest. It conforms to all existing wage fixation and industrial relations principles. I believe that the operative date should be from the date of original application and at that point, sir, I believe the matter -

PRESIDENT: Can you indicate to me, because of the retrospective nature of that claim, what the special circumstances are that warrant retrospectivity?

MR MILLER: The claim was made in its entirety in the original instance, sir. It's only because of delays that -

PRESIDENT: What sort of impact is it going to have?

MR MILLER: I don't believe it would have any significant impact in terms of application either by way of allowances or any other issue but it just indicates, because of the delay that has occurred, that is the intention of the parties or has been the intention of the parties to have this application to the GCOE in its entirety from the very beginning. As I say, I don't believe it does any disturbance to any existing matters and just shows to both the commission, the employees, the unions and the employees' representatives that the intention was there and in good faith those issues should be applied as from that date.

PRESIDENT: Yes. Do you know whether there is consent to that?

MR MILLER: I don't, sir. That's just my concern with dates of application. I believe they should be from date of application. I maintain that and I see no good reason why the date of operation should not be from the date of application.

PRESIDENT: All right.

MR MILLER: If the commission pleases.

PRESIDENT: Yes. Thanks, Mr Miller. Yes, Mr Fitzgerald?

MR FITZGERALD: Thanks, Mr President. I'll be very brief in response. Just in terms of the last aspect which Mr Miller addressed - this aspect of operative date. I haven't any particular instructions on that and there hasn't been any discussion but given that, if you like, the *status quo* has remained during these discussions, it would be my safe bet that it in fact have application from a prospective date. I don't believe any one would be prejudiced by that.

As you've indicated, there needs to be - and the commission is able to approve retrospectivity but on the proof of showing some special circumstance and I don't -

PRESIDENT: Or if there's consent.

MR FITZGERALD: Or if there is consent, and I'm not able to indicate consent to that operative date aspect without instructions on it and I don't believe any employee would be prejudiced by a prospective date. So, it would be our submission, Mr President, that the consent application and it's certainly a consent application, I can indicate that, should operate from the date of approval by the commission.

Unless Mr Miller can indicate some prejudice as a consequence of that which we are obviously prepared to take instructions but I don't think we really want to delay it any longer. This matter has, as indicated by Mr Miller his analogy with the situation in Ireland, been continuing for some time and we would like to also have it resolved, that certainly would be my position, without specific instructions, that it should operate from a prospective date.

The only concern I have I suppose and it is a consent matter, I can indicate that and that has taken a while, as Mr Miller indicated. There was some discussion and crossing of correspondence and phone calls et cetera. I think it would be wise to actually have the order settled and I'm not sure if I've seen that - an actual form of order, so the parties can actually put it to you as a consent position.

I just pulled out my exhibit 1, which was somewhat different to what Mr Miller read into transcript and it would be convenient to have that, I think, if the commission could approve it subject to the settling of the order by the parties. Again, I'm not attempting in any way to - and I just feel a little bit vulnerable given those circumstances where there has been some discussion also between Mr Fletcher and, I think, Mr Vines direct, so I think it would be wise if we could have the order settled and if I could have an opportunity at least to provide that to Mr Fletcher.

In ever other respect -

PRESIDENT: So, when you say you want the order settled, are you suggesting that Mr Miller should prepare it and send it to you?

MR FITZGERALD: I'd suggest so, yes. I think, given the circumstances, and again it's -

PRESIDENT: That might also include the operative date and you could look at that then.

MR FITZGERALD: Well, that could be. Obviously, I'm not sure whether Mr Miller has anything to say following my submission in respect to operative date. It's something which we didn't discuss but I don't think it's any -

PRESIDENT: I don't see any problem in it being retrospective but I have a statutory requirement to consider if it is not by consent what the special circumstances are that warrant it.

MR FITZGERALD: Well, I - obviously, it's within your hands that aspect and that's probably the only aspect you'd need to rule on unless Mr Miller would change his view on it but I don't think there are any special circumstances. Delays which have occurred have not necessarily occurred - they've occurred as a natural consequence of the discussions and the concerns of the RBF, I suppose, moving in a particular direction where it is competing in the free market and to tie itself to public sector conditions was obviously a concern and I don't think there's any delays. Certainly, I can understand the retrospective application if there are delays initiated by the employer but I think those delays have occurred as a natural consequence of the discussions et cetera. Mr Miller may want to address that aspect.

MR MILLER: If I may, sir. It is my belief that date of operation should be from application and it wasn't an attempt to ambush my colleague at the end of the bar table by any means. It's just an issue that I believe quite firmly in. However, given the circumstances in this particular instance, I would withdraw that application and, by consent, go for the operative date as from the date of your decision, to save any concerns that Mr Fitzgerald may have and I certainly do apologise to him for that. I didn't -

MR FITZGERALD: There was no ambush seen by any means. The apology is unnecessary. I didn't see it as that way at all. I think that's a practical way forward and I thank Mr Miller for his flexibility there, but I think it would be wise just to, if I can - firstly, I can indicate there is consent to the application. There was concern by the RBF to expedite current enterprise discussions and to tie those down to a particular time period and Mr Miller has indicated that that is not possible and I can understand that, but it's RBF's position that the agreement is contingent upon those enterprise discussions being finalised as a matter of urgency and certainly, it's RBF's view that that should occur very quickly.

In terms of the other submissions Mr Miller made, I certainly would agree, in terms of public interest considerations provided by section 36 and the commission's own wage fixing principles. There's nothing offensive about this application and we would consent to that in that regard. The only rider and it is very much a procedural rider, I would just like to see the final order - draft order, which we could then provide to Mr Fletcher and then the parties could just make contact with the commission to finally have the matter approved. If Mr Miller is happy with that approach and the commission is happy with that approach, but otherwise, sir, we certainly consent to the application.

PRESIDENT: Yes. Thank you for that, Mr Fitzgerald. Anything further?

MR MILLER: The draft order, sir, I'm not sure what is meant by the draft order?

PRESIDENT: Yes. I guess, all you would need to provide to the other side would be a combination of your application as amended by exhibit 1.

5 MR MILLER: Well, sir, it just so happens that as I was reading into transcript, to refresh people's minds, I had taken the liberty of - not the liberty, but had taken the opportunity to amalgamate for my own purposes, to read into transcript the various variations to come to what I've called an amalgamated variation and I have one of those in front of me, sir, and at the end of these proceedings -

10 PRESIDENT: Do you have any copies?

MR MILLER: I believe that is the case, sir, I can hand those up.

PRESIDENT: Yes. Hand one up, hand one to the other side and Mr Fitzgerald could take it away and -

15 MR FITZGERALD: Well, that would be appreciated. I don't expect any problem with that at all. I suppose I was just being ultra cautious.

MR MILLER: I haven't headed this up or anything, sir, and I've -

PRESIDENT: We'll just mark it **EXHIBIT 2**.

20 MR MILLER: As you'll see, in the top right-hand corner, it still has the photocopy mark of 1 with a circle around it, being the original exhibit. That may well need to be changed.

PRESIDENT: It will be. We'll mark it Exhibit 2 and we'll date it the 2nd June and I'll await to hear from you then, Mr Fitzgerald.

25 MR FITZGERALD: Well, I'll undertake to immediately fax this to Mr Fletcher and ask his instructions and I then would make contact with the commission to hopefully approve it.

PRESIDENT: For the record, I would hope that you could agree that the operative date be today - the first full pay period on or after today.

MR FITZGERALD: Well, as I said, I haven't got any instructions on that but I can't see any problems with that at all.

30 PRESIDENT: If you can consent to that, that would make it simpler. Is that satisfactory, from your point of view, Mr Miller?

MR MILLER: Yes, sir.

MR FITZGERALD: I can certainly consent to that.

35 PRESIDENT: Very good. All right. Well, thank you very much for finally solving one of the most difficult matters to come before the commission and could have lasted for 400 years, I'm sure. No, I jest. I

do appreciate the fact that the parties have been able to get together and resolve it. It is a fairly simply matter and the conclusion that has been reached by the board is, I think, the appropriate one.

Very good. Thank you very much for your contributions.

5 **HEARING CONCLUDED 10.55am**