

**TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984

T No. 4636 of 1993

**IN THE MATTER OF** an application by  
the Australian Municipal,  
Administrative, Clerical and  
Services Union to vary the Estate  
Agents Award

re car and telephone allowance

COMMISSIONER GOZZI

HOBART, 1 June 1994  
continued from 28/4/94

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER GOZZI: Any changes in appearances this morning?

MR CLEGG: No, sir, from our side.

COMMISSIONER GOZZI: Alright, thank you, Mr Clegg.

MR CLUES: No, Mr Commissioner.

COMMISSIONER GOZZI: Thank you, Mr Clues. I think we're in the home stretch aren't we -

MR CLEGG: Yes.

COMMISSIONER GOZZI: - with you to finish your submissions - right of reply - Mr Clegg?

MR CLEGG: That's right, Mr Commissioner.

COMMISSIONER GOZZI: Yes. Perhaps you'd like to commence then.

MR CLEGG: Okay, thanks, sir. Sir, Mr Clues - or the employers claim that our claim had a number of flaws and the first one was that the - the application for scholarship holders, sir - well we say that the claim was amended at the previous hearing, so that's not a flaw.

The second one was it has no regard if an employee is already supplied with a car, sir. Well our - our answer to that is that if we would not be - if we - we would not be here pursuing the claim if that was the case. If our members or sales consultants were supplied with a fully maintained company vehicle, sir, we'd be quite happy to vary the wording in the clause to such an extent to say that a sales consultant provided with a fully maintained company vehicle would not be entitled to a car allowance.

The third so-called flaw is that there's no reference for any accountability such as log books and odometer readings. Well, sir, the sales consultants today use vehicle log books - they have to, to be able to make a legitimate taxation claim and so they - and they still have to odometer readings so there'd be no change; there is accountability.

No regards for the kilometres travelled, sir. We've made the claim in the - in this matter so as to save having to calculate a payment each week for the kilometres travelled. We've used the RACT figures and it was - just made a flat payment, so it's - it's the simple way to go.

And the fifth so-called flaw that it has no regard for vehicles age or fluctuation of petrol prices. Well, sir, there's a requirement in the industry that sales consultants have a reasonably late model car so the cars are reasonably

late model and as for the fluctuation in petrol prices, well my - my experience is that they generally go up in most - most instances and when petrol prices do reduce it's generally as a result of a price war and they only last for a matter of days.

COMMISSIONER GOZZI: Where is it stated that it is a requirement. I can see it would be desirable to have a late model car. Where is -

MR CLEGG: Well there's not many sales consultants around driving bombs - put it that way, sir. Most of -

COMMISSIONER GOZZI: Well that's a bit different to saying it's a requirement.

MR CLEGG: Oh, well, it's not a requirement but the car - most - the majority of the cars used are late model cars.

The so-called sixth flaw, sir, about the claim - we stand by the figure we used supplied to us by the RACT. I've rechecked with the RACT and they've confirmed the figure again using their criteria. One of the reasons Mr Clues was saying that these cars are private cars - well the RACT classes them as business cars and that's why they've given us the figures based business cars. And one example of that is that the insurance rates are different for a - for these cars because a section of the insurance contract will provide the sales consultants with a car if they're unfortunate to have an accident and their car is not available for further use.

Sir, Mr Clues, in an endeavour to discredit that article by Mr Billings which we .... as ASU.5 - The Dynamics of the - The Dynamics of the Nineties - produced a survey conducted by The Professionals. Sir, I'd suggest to you - and that survey was TCCI.13 - Salespersons Earnings Survey for the Financial Year 92/93, conducted by The Professionals real estate group. Sir, I - I would suggest to you that this survey shows that the majority of employees are in the low earning brackets - up to the 20,000 mark - between 20 -

COMMISSIONER GOZZI: Well hang on - just - let me just find that - TCCI.13 was it?

MR CLEGG: Yes.

COMMISSIONER GOZZI: Right.

MR CLEGG: And -

COMMISSIONER GOZZI: I've got it here somewhere - yes, here it is.

MR CLEGG: TCCI.13.

COMMISSIONER GOZZI: Yes. TCI.11.

MR CLEGG: It wasn't in the book, sir, it was a separate one, yes.

COMMISSIONER GOZZI: Thirteen - yes - okay, here we go - coming up - TCI.13 - now what are you saying about that?

MR CLEGG: Well, sir, what I'm saying is that the survey shows that the majority of the employees are in the lower income brackets. In 92/93 there were eight people earning up to - up to \$20,000.

COMMISSIONER GOZZI: Up to \$20,000 -

MR CLEGG: Yes.

COMMISSIONER GOZZI: - 92/93 there were eight.

MR CLEGG: There were eight.

COMMISSIONER GOZZI: Yes.

MR CLEGG: And 20 to 25 - four; 25 to 30 - four. So - and if we use the figure that Mr Clues wants us to use - well has suggested be the more appropriate if there is one granted of \$147.98 a week to run a car. If you multiply that 48 weeks - by 48 weeks - that gives you a total of \$7099 per annum to run a car and even if you look at the people on, say, 30,000 a year, that total would be - would leave just over \$23,000 before tax which is not a lot of money to feed and clothe and educate children on, sir.

COMMISSIONER GOZZI: What allowance - when you say that, do you make -

MR CLEGG: The 147.98 is the figure that Mr Clues has used from the RACT in his booklet.

COMMISSIONER GOZZI: Yes, I've -

MR CLEGG: And I've multiplied that by 48 and it gives you a total -

COMMISSIONER GOZZI: That's the cost -

MR CLEGG: Yes.

COMMISSIONER GOZZI: - factor - by 48 weeks -

MR CLEGG: Yes, and that gives you \$7,099 per annum.

COMMISSIONER GOZZI: Seven thousand and ninety nine per annum.

MR CLEGG: Yes. Now, sir - and that - if you take that from the \$30,000 of an average - say they earn \$30,000 -

COMMISSIONER GOZZI: That's off the twenty nine thousand eight hundred and -

MR CLEGG: Yes.

COMMISSIONER GOZZI: Right.

MR CLEGG: So that only gives you - leaves you about \$23,000 to feed, clothe and -

COMMISSIONER GOZZI: Okay.

MR CLEGG: - children.

COMMISSIONER GOZZI: My question to you is, what allowance have you made for that \$7,099 per annum being a tax deduction?

MR CLEGG: I'll come to that later, sir.

COMMISSIONER GOZZI: Okay.

MR CLEGG: What we say about that, if I can sort of tell you now, sir, is that they would have to wait until 12 months to even get that so they've put the money up front. If you started, say, on July 1 and you worked for 12 months, you'd be 15 months nearly before you would get your tax relief back from that.

Sir, and if I, even I - if I were .... and used the average earnings that they show in this document of 24,000 or 21,000 there's, you know, it's even less.

Sir, Mr Billings also wanted to distance himself from his article by claiming the figures that he used in that article were historical but I would suggest to you that Tasmanian sales have remained static or the same or fallen slightly and that the prices that he's used have not varied greatly because I think the industry acknowledges here in Tasmania that we do not have dramatic price fluctuations or sales fluctuations and therefore I would suggest to you, sir, that the figures that he's used in his article are reasonably accurate. He also says he has not used a Tasmanian statistic - that he has used Australian-wide statistics and has included states that do not pay retainers as well as - do not pay retainers and, sir, if we go to the article in - in that - it's ASU.5 - Table B - when you look at the Tasmanian figures, he's used the commission percentage of 2.7 which is correct, I would suggest to you, sir. The medium prices - well they haven't - they've increased.

COMMISSIONER GOZZI: Well medium price is now over \$100,000, isn't it?

MR CLEGG: Yes. But -

COMMISSIONER GOZZI: And a hundred -

MR CLEGG: - well that would just mean that the - the number of sales to get to where - to the 40,000 would decrease.

COMMISSIONER GOZZI: What are you saying, Mr Clegg, the 40 - the salesperson percentage ....

MR CLEGG: Is - oh, well, it's still on the 40% - people are still on the 40% and the split would be higher than the nine fifty.

COMMISSIONER GOZZI: Right.

MR CLEGG: And all it would do is - there'd be less transactions needed to get that \$40,000 income that he's saying there.

COMMISSIONER GOZZI: Well if you need less transactions and the level of transactions remains the same, don't you get a higher income?

MR CLEGG: To get to the 40,000 that he's used here - right - he's used a - the number of transactions per year for an income of 40,000 - right?

COMMISSIONER GOZZI: Right. Where does the 40,000 - oh, yes - okay, I see that, yes.

MR CLEGG: Right - he would need to have 84 sales.

COMMISSIONER GOZZI: Right.

MR CLEGG: What it would mean is that the sales would be less than the 84 sales to - to get that \$40,000.

COMMISSIONER GOZZI: Right.

MR CLEGG: So these figures, you know, these figures are - aren't too - too out of date - that's what I'm saying to you, sir.

COMMISSIONER GOZZI: Well may - maybe significantly out of date if the medium price now is \$104,000.

MR CLEGG: Well all it's done, sir - he's saying that this average would be a lot higher because he's used other states which don't pay retainers. But when you look at this, this is just based on percentages - commission sales - right?

COMMISSIONER GOZZI: Yes.

MR CLEGG: It's got nothing to do with retainers. And if you go to - he says in his -

COMMISSIONER GOZZI: Well why hasn't it got anything to do with retainers.

MR CLEGG: Well it hasn't, because -

COMMISSIONER GOZZI: Well why not - why not?

MR CLEGG: Well you're on a percentage - the medium price is - well, say if it's 100,000 now -

COMMISSIONER GOZZI: Right.

MR CLEGG: - it would - the 40% sales split is still the same.

COMMISSIONER GOZZI: Right.

MR CLEGG: You would get a higher dollar amount - right -

COMMISSIONER GOZZI: Right.

MR CLEGG: - rather than nine fifty, and you would have to have less transactions to get that 40,000 -

COMMISSIONER GOZZI: Yes.

MR CLEGG: - so there's nothing - nothing there talking about retainers. It's all based on commission sales.

COMMISSIONER GOZZI: Yes, but doesn't that follow then that if you - the number of transactions stayed the same - in other words, if you're performing at the -

MR CLEGG: Well you could -

COMMISSIONER GOZZI: - same level -

MR CLEGG: - you could earn more money.

COMMISSIONER GOZZI: - you could earn more money.

MR CLEGG: Yes.

COMMISSIONER GOZZI: Yes. Okay.

MR CLEGG: But he's just saying - he's showing there how many transactions that would require under the current commission setups now to - to earn \$40,000 - there's no mention of

retainers - and he says the statistic is an Australia-wide not a Tasmanian statistic. Well the Tasmanian statistics that he's used there, you know, in relation to the 40% split - the 2.7% commission - the medium prices of houses may have risen - well that's not - so the dollar split will be higher - so they are Tasmanian figures that he has used, they're not just Australia-wide.

And, you know - and he says here, and therefore does not take into account states that do not pay retainers - commission only - which drags the averages down enormously. But there's no mention in there of retainers. It's all based on sales - the salesman's ability to earn commissions.

COMMISSIONER GOZZI: I meant to ask previously, the productivity index -

MR CLEGG: Tasmania is the hundred percent.

COMMISSIONER GOZZI: - what's that mean?

MR CLEGG: Well Tasmania is the most productive of the salespeople. They have to work as hard to get - they have to work as - harder than most other states to get to that \$40,000.

COMMISSIONER GOZZI: See because the rate is 3.4.

MR CLEGG: Yes.

COMMISSIONER GOZZI: - give them the hundred percent.

MR CLEGG: Yes.

COMMISSIONER GOZZI: Yes, fair enough. Right.

MR CLEGG: And then, sir, he says to you that - in his third comment, it takes into account all people whether - who enter the industry irrespective of the length of time that they stay in a job. If it were possible to obtain the average of people who stayed in the -

COMMISSIONER GOZZI: Where does this -

MR CLEGG: This is in his - this is in TCCI.14 - right? This is David Billings trying to distance himself from his article.

COMMISSIONER GOZZI: Yes, so TCC -

MR CLEGG: He takes into account all people who enter the industry irrespective of the length of time they stay in the job.



COMMISSIONER GOZZI: .... possible to obtain the average of people who have stayed in - in for longer than 1 year, I would expect the average to increase considerably.

MR CLEGG: Well, sir, if you go to -

COMMISSIONER GOZZI: Well you're getting ahead of me - just - I haven't got a TCCI.14.

MR CLEGG: Well, sir, it's that facsimile - transfer facsimile of David Billings, and on the back is -

COMMISSIONER GOZZI: Ah, right. I'll just see if I can find it. Now what's that facsimile say?

MR CLEGG: It says it takes into account all people who enter the industry irrespective of the length of time they've stayed in the job. If it were possible to obtain the average of people who have stayed in the job - who have stayed for a - longer than one year, I would expect the average to increase considerably.

COMMISSIONER GOZZI: Right.

MR CLEGG: Well, sir, if you go to The Professionals survey, the - which is TCCI.13 -

COMMISSIONER GOZZI: Yes.

MR CLEGG: - and you look at the average earnings in 91/92, the average earnings less top 20% - right - in 91/92 it was \$24,046 dollars, in 92/93 it's \$21,820. So, you know, by their own survey Mr Billings is saying - trying to say one thing but their surveys are showing another. He's trying to say that that \$19,000 per year would be a lot greater if he - and there's the evidence to say that it would not be by their own - by their own survey.

COMMISSIONER GOZZI: Mr Clegg, I'm sorry, I just can't quite understand what you're saying to me here. Can you just -

MR CLEGG: Well Mr Billings is saying that -

COMMISSIONER GOZZI: Well go back to TCCI.14.

MR CLEGG: Right.

COMMISSIONER GOZZI: Okay.

MR CLEGG: Mr Billings is saying that the average - average earnings for these people would increase considerably if he was able to get hold of the - for those people who would have been in the - in the job one year or longer - right?

COMMISSIONER GOZZI: Right.

MR CLEGG: Now this survey - and so - and he's saying that that \$19,000 that he's used in his Dynamics of the Nineties -

COMMISSIONER GOZZI: Where does the \$19,000 come from?

MR CLEGG: Well the average income of salespersons in the USA and Australia is \$19,000 per year.

COMMISSIONER GOZZI: That comes from ASU.5?

MR CLEGG: Yes - the productivity one.

COMMISSIONER GOZZI: Right. Just let's - just pace this slowly on that - I want to follow you through on this. ASU.5 -

MR CLEGG: Yes.

COMMISSIONER GOZZI: - it talks about \$19,000 -

MR CLEGG: Yes.

COMMISSIONER GOZZI: - in that -

MR CLEGG: Dynamics of the Nineties.

COMMISSIONER GOZZI: Yes, okay. Where's the 19,000 figure?

MR CLEGG: Productivity. The average income per salesperson in the USA and Australia is \$19,000 per year.

COMMISSIONER GOZZI: Right, I've got that.

MR CLEGG: Right. Now he's trying to say that in this transcript of the facsimile -

COMMISSIONER GOZZI: Yes.

MR CLEGG: - he's saying in item 3 -

COMMISSIONER GOZZI: Right.

MR CLEGG: - that that figure would be increased considerably -

COMMISSIONER GOZZI: Yes.

MR CLEGG: - if he had the figures of people who stayed in the industry longer than one year.

COMMISSIONER GOZZI: Right.

MR CLEGG: Right.

COMMISSIONER GOZZI: Now this survey done by The Professionals - TCCI.13?

MR CLEGG: - Thirteen - right -

COMMISSIONER GOZZI: Yes.

MR CLEGG: - says at the top: Tasmania - employed one year or more -

COMMISSIONER GOZZI: Yes.

MR CLEGG: - right - and you come down the bottom - average earnings -

COMMISSIONER GOZZI: Yes.

MR CLEGG: - 91/92 - was 30,734 -

COMMISSIONER GOZZI: Yes.

MR CLEGG: - 92/93 is 29,879.

COMMISSIONER GOZZI: Right.

MR CLEGG: So it's decreased.

COMMISSIONER GOZZI: Yes, but it's increased from the 19,000 in his article.

MR CLEGG: Well - well by \$5,000 -

COMMISSIONER GOZZI: Well, no.

MR CLEGG: - and then it drops back to - if you go -

COMMISSIONER GOZZI: No, well he's saying it was 19,000 per annum -

MR CLEGG: Yes.

COMMISSIONER GOZZI: - and he's saying -

MR CLEGG: But - but -

COMMISSIONER GOZZI: - it would be increased if he had people in the industry more than one year. Well - it's certainly increased from \$19,000 hasn't it?

MR CLEGG: - it has increased, I concede that -

COMMISSIONER GOZZI: By about \$10,000.

MR CLEGG: - but it has decreased from one year to another.

COMMISSIONER GOZZI: Oh, yes - yes, I take that point - 91/92  
- it was higher than 92/93.

MR CLEGG: Three - yes.

COMMISSIONER GOZZI: Okay.

MR CLEGG: Sir, Mr Clues then relied very heavily on the survey and the comments contained therein to object to this allowance. Sir, as I said previously the survey is flawed because of the way it was distributed and that was that it was given to the employers - sent to the employers who were asked to make their comments and then pass it on to their employees for their comments - to make their comments, and, sir, I think you'll find some of them have answered in accordance with their employer's comments particularly in relation to loss of jobs.

And, sir, some of them here for example are, if a car allowance claim were approved it would have to be on a debit/credit system, if not, several employees would be immediately made redundant. This office could not afford to pay a car allowance and commission depending on allowance would have to be significantly reduced and staffing levels would have to be looked at.

COMMISSIONER GOZZI: This is employees against claim is it?

MR CLEGG: Yes.

COMMISSIONER GOZZI: 10.2?

MR CLEGG: Yes, sir - yes. Sorry - yes - 8.4.

COMMISSIONER GOZZI: 8.4. Whereabouts at 8.4? Just remember I have to sift through all this material later on.

MR CLEGG: It's 8.4 - employees against the claim.

COMMISSIONER GOZZI: 8.4. 8.3 - now whereabouts are you going in 8.4?

MR CLEGG: Oh, I'm just - I'm just picking out some -

COMMISSIONER GOZZI: Some comments.

MR CLEGG: - comments that have been made, sir.

COMMISSIONER GOZZI: Right. Mm.

MR CLEGG: And that's if the car allowance claim was approved it would have to be on a debit/credit system, if not, several employees would immediately be made redundant.

This office could not afford to pay a car allowance and commissions depending on allowance. It would have to be significantly reduced and staffing levels would have to be looked at.

Should the car allowance become payable, this agency would be forced to reconsider the level of commission payable or reduce staff levels.

The claim is a further incursion on one remaining free enterprise industry. It's implementation will lead to a revision of all our - of all staff earnings and hence staff reductions where necessary.

COMMISSIONER GOZZI: Whereabouts is that?

MR CLEGG: That's on the next page, sir.

COMMISSIONER GOZZI: Oh yes, I can see that. I've got it.

MR CLEGG: The same page, sir, a percentage commission paid would have to be modified. Also closer monitoring of performance of salespeople. And so on, sir.

COMMISSIONER GOZZI: What are you saying about those comments?

MR CLEGG: Well, I'm saying that the employers filled it out - their - their answers out before giving it to the employees and what I'm saying to you, that the - I - I believe that the survey was flawed because of the way it was distributed and that the employers were asked to put their comments on, show them to the employees and then the employees were asked to comment - put their comments. And I'm saying that when they've seen these, they'd answer to protect themselves because there's threats there that their jobs could be in jeopardy if this - the employer's saying that their jobs will be in jeopardy if this car allowance was introduced.

Then also Mr Clues said that there were very good and cogent reasons given by the employers in their - this approval of this - or opposition to this car allowance. Well, you know, some of the good and cogent reasons are: I am strongly against it as it will dramatically increase our costs thereby reducing the percentage commission paid to staff. They will be unhappy with the reduction in the loss of earnings. I think we should instruct Stuart Clues to tell Clegg in no uncertain terms where to go. Totally against it. It appears to me Clegg is nibbling away at us and unless Stuart Clues can put a stop to this nonsense then these ridiculous demands will go on

indefinitely. Then somebody says that he's not prepared to pay one. And then in - there's a couple more, sir. You go over here - where does it end - pens, pencils, shoes, stockings for women - the list could go on. So that - this is in 10.4 - that one. It says - and then another one is: I'm very strongly against it. If it were an industry where the average sale was \$160,000 and upwards as against \$65,000 then the income would be far greater and there is a possibility that then this could be considered. Stuart Clues should tell Clegg to go jump hopefully in a deep river where he would not surface. Very good and cogent reasons, sir.

COMMISSIONER GOZZI: I note you didn't take the advice.

MR CLEGG: Oh no, I haven't, sir.

COMMISSIONER GOZZI: Gratuitous as it may be.

MR CLEGG: Very helpful advice, sir, I don't know.

COMMISSIONER GOZZI: Helpful. Well I wouldn't own up to that, Mr Clegg. You might get an offer.

MR CLEGG: Unhelpful advice. Next thing they'll be having cement boots for me, sir.

MR CLUES: That's been suggested.

MR CLEGG: Well that's been suggested, too. Finally, sir, Mr Clues and the employers, sir, have said that these people can claim their car and telephone expenses as a tax deduction. Well as I said before they would have to wait in excess of 12 months to be able to get that claim back.

Sir, if you took Mr Clues' view that these things could be taken as - claimed as a tax deduction to its logical conclusion, then every wage and allowance or claim that comes before this commission would be opposed on the basis that it could affect their taxation deductions and therefore should not be granted. And I think that's just a ludicrous proposition.

Sir, we just say that in conclusion the cars and telephones are vital tools of the sales consultants trade and they should be paid an allowance the same as any other person who supplies their own tools like tradesman who supply tools are paid a tool allowance and the car and telephone allowance are no different to that. And the - the fact that Mr Clues claims that the car allowances in other states are going to be phased out or they're going to be looked to be reduced or taken out of the awards, well from my understanding, sir, that in New

South Wales that's not going to happen. I've checked with the salespersons association up there and the same in Victoria and South Australia - they'll still be maintaining the car allowances. That's all I -

COMMISSIONER GOZZI: Mr Clegg, thank you for that. Just - you might remind, Mr Clues, as well - I can't remember - did you address the wage fixing principles, Mr Clegg?

MR CLEGG: I didn't address them at the time, but I have checked, sir, and these are within the wage fixation principles.

COMMISSIONER GOZZI: Well -

MR CLEGG: I haven't got them here with me but I did have them. I have - I have checked and well I'm quite happy to go back and - and I can - I can -

COMMISSIONER GOZZI: Well -

MR CLEGG: - if you like, write to you and showing you where - where it's that, if that would be alright with Mr Clues. I'm quite happy to do that.

COMMISSIONER GOZZI: Mr Clues, did you address the wage fixing principles?

MR CLUES: I didn't address them but as a part of my research I examined them and I couldn't see any impediments under the wage fixing principles that would assist me otherwise I would have used them. But we've run our case on merit.

COMMISSIONER GOZZI: Well obviously I have to have regard to the wage fixing principles.

MR CLUES: Yes.

COMMISSIONER GOZZI: And did you look under the allowances principle, did you?

MR CLUES: Yes, I did - for expense related allowances and new allowances and work related allowances. I did examine that particular area.

COMMISSIONER GOZZI: Alright. Does anybody want to address - well, just before we get off that - yes - okay - so you both agree that's under the allowances - new allowances principle. Does anybody want to address section 36 of the Industrial Relations Act?

MR CLUES: Well I believe I had done that in terms of the interest of the industry and therefore -

COMMISSIONER GOZZI: Right -

MR CLUES: - the public - I - I did make some submissions that will be revealed on transcript going to the desire of the parties within the industry and hence their interest and therefore the public interest.

COMMISSIONER GOZZI: Alright, thank you, Mr Clues.

MR CLEGG: I - honestly I think I addressed that too, sir.

COMMISSIONER GOZZI: Yes, fine, okay. Well in the circumstances I will be reserving my decision in this matter. I want to see all the transcript and go through all the materials and a decision will be handed down in due course. Thank you for your submissions.

HEARING CONCLUDED