

IN THE TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T.2419 of 1990

**IN THE MATTER OF AN APPLICATION BY THE
NATIONAL UNION OF STOREWORKERS, PACKERS,
RUBBER AND ALLIED WORKERS, TASMANIAN
BRANCH, TO VARY THE WHOLESALE TRADES AWARD**

RE WAGE ADJUSTMENT CONSISTENT WITH THE
STRUCTURAL EFFICIENCY PRINCIPLE

AND

T.2515 of 1990

**IN THE MATTER OF AN APPLICATION BY THE
FEDERATED CLERKS UNION OF AUSTRALIA,
TASMANIAN BRANCH TO VARY THE WHOLESALE
TRADES AWARD**

RE: WAGE ADJUSTMENT FOR CLERICAL
EMPLOYEES CONSISTENT WITH THE STRUCTURAL
EFFICIENCY PRINCIPLE

AND

T.2604 of 1990

**IN THE MATTER OF AN APPLICATION BY THE
TRANSPORT WORKERS' UNION OF AUSTRALIA,
TASMANIAN BRANCH, TO VARY THE WHOLESALE
TRADES AWARD**

RE: WAGE ADJUSTMENT FOR CARTERS AND
DRIVERS IN ACCORDANCE WITH THE STRUCTURAL
EFFICIENCY PRINCIPLE

PRESIDENT F. D. WESTWOOD

19 JULY 1990

INTERIM DECISION

APPEARANCES:

For the National Union of Storeworkers, Packers, Rubber and Allied Workers, Tasmanian Branch	-	Mr. D. Strickland with Mr. P. Richardson
For the Federated Clerks Union of Australia, Tasmanian Branch	-	Mr. D. J. Fry with Mr. M. O'Sullivan
For the Transport Workers' Union of Australia, Tasmanian Branch	-	Mr. B. Hansch with Mr. G. Warn
For the United Sales Representatives' and Commercial Travellers Guild of Australia, and the Shop Distributive and Allied Employees Association, Tasmanian Branch	-	Mr. D. Rowbottom
For the Tasmanian Confederation of Industries, the Tasmanian Sawmillers Industrial Association, and the Metal Industries Association of Tasmania	-	Mr. M. Sertori

DATE AND PLACE OF HEARING:

20.6.90	Hobart
28.6.90	

1.

This matter commenced as a result of an application by the National Union of Storeworkers, Packers, Rubber and Allied Workers (NUW) to increase wage rates contained in the Wholesale Trades Award consistent with the second structural efficiency adjustment and the first minimum rates adjustment. Subsequently applications have been received from the Federated Clerks' Union of Australia, Tasmanian Branch (FCU) and from the Transport Workers' Union of Australia (TWU).

The first increase was awarded with effect from the first full pay period commencing on or after 23 November 1989.

At the hearing on 21 June 1990, Mr. Richardson for the NUW presented a number of exhibits, including -

- (a) a document⁽¹⁾ outlining the proposed award variations which purported to indicate agreement between all the employee and employer organisations and agreeing to a review of the award focussing on an industry-based objective.
- (b) documents setting out the classification structures for two broadly based, generic streams to be tested and inserted in the award at the satisfactory conclusion of a testing process being:

(1) Exhibit R.1

2.

- (i) Manufacturing and Packing Stream⁽²⁾
- (ii) Warehousing, Distribution and Administration Stream,⁽³⁾
and
- (c) a document which set out a proposed broadbanding arrangement
for certain warehouse and store workers⁽⁴⁾.

The document had the support of the United Sales Representatives and Commercial Travellers Guild of Australia, Tasmanian Branch, and the Tasmanian Confederation of Industries (TCI), but it was bitterly opposed by the FCU and TWU.

After lengthy off-record discussions it was agreed to adjourn to 28 June 1990 in the hope that some change in attitude to the concept proposed by the NUW and the TCI might be forthcoming from the parties.

At the hearing on 28 June, the FCU identified its continuing concern with the NUW proposal in the following manner: first, that the NUW should not make application for rates and relativities for an administrative stream and that the rates and relativities being sought were inappropriate. Mr. O'Sullivan said that if the NUW proposal were to be processed it would be prejudicial to claims to be made by his union in respect of structural efficiency generally in a number of State awards.

(2) Exhibit R.2
(3) Exhibit R.3
(4) Exhibit R.4

Second, the FCU claimed that the NUW application in seeking to vary rates for clerks was contrary to the scheme and spirit of the Industrial Relations Act, in that the NUW could not purport to represent clerks.

Mr. O'Sullivan proposed two solutions: The first being that Subdivision 2, Clerks, of Clause 8 (Wage Rates) be deleted from the award, with the Scope clause being varied to exclude employees engaged to perform any clerical or administrative work whatsoever. The second, that the classification structure which had been used in the Victorian Commercial Clerks Award and already had been tendered to this Commission, should be used for testing in this award instead of the structure presented by the NUW.

The FCU submitted that its members required a separate classification structure of six levels to replace, in time, subdivision 2 of the Wage Rates clause. Mr. O'Sullivan referred the Commission to his organisation's claim for a "Tasmanian Clerks Award", yet to be processed, which contains in some detail the skills and responsibilities required for clerical classifications. The FCU, in submitting this alternative proposal, was not resiling from its primary objective of achieving a "Tasmanian Clerks Award".

Mr. O'Sullivan contended that broadbanding of classifications was neither necessary nor appropriate in respect of clerical classifications.

The FCU detailed its specific concerns with the proposed award changes set out in Exhibit R.1.

For the TWU, Mr. Hansch expressed concern that driving work had been included in the Warehousing, Administration and Distribution stream, claiming there had never been any agreement to that effect and he also challenged a number of the award changes proposed in Exhibit R.1.

Before the Tasmanian Confederation of Industries (TCI) had presented its substantive submissions the parties took the opportunity of the luncheon adjournment to discuss the matter further, and to the credit of all concerned, a package was developed which was acceptable to all parties.

The position of consent reached is summarised as follows:

1. The document outlining the proposed award variations, tendered as Exhibit R.1, was altered to reflect the position of all the parties.

The revised document addresses the following issues:

- (a) operative date
- (b) a review of the Scope clause
- (c) corrections and revisions dealing with -
 - (i) the wage rate for a junior Process Packer
 - (ii) the Arrangement clause
 - (iii) adjustment provisions dealing with the reduction in hours to 38

5.

- (d) deletion of Dirty Work allowance
- (e) a new Rest Period clause
- (f) a new Shift Work clause
- (g) a revised exemption provision for superannuation purposes
- (h) a revision of general conditions applicable to commercial travellers in Division 3 of the Award
- (i) insertion of a clause for the Settlement of Disputes
- (j) insertion of a Structural Efficiency clause to cover -
 - (i) Award modernization
 - (ii) Workplace consultation
 - (iii) Enterprise agreements

2. The proposed Manufacturing and Packaging Stream, tendered as Exhibit R.2, was agreed for the purposes of testing by the parties.

It proposed five levels of Manufacturing Employee, being -

- Level 1 - relativity possibly 78%
- Level 2 - relativity possibly 82%
- Level 3 - relativity possibly 87.4%
- Level 4 - relativity possibly 92.4%
- Level 5 - relativity possibly 96.9%

It sets out the tasks, skills, levels of responsibility, and promotional criteria applicable at each level.

6.

3. The proposed Warehousing, Distribution and Administration Stream, tendered as Exhibit R.3, was altered by deleting reference to "Distribution and Administration". The remaining Warehousing Stream was agreed for the purposes of testing by the parties. The revised document describes the skills and duties and promotional criteria for the four proposed grades of the stream.

4. The proposed six-grade classification structure for clerks included in Exhibit O.1 was agreed, on a "without prejudice" basis, for the purposes of testing. The document sets out the classification structure for clerical employees, together with skills and responsibilities of the classifications, which are -
 - Grade 1 - Clerk/Clerical Assistant
 - 2 - Clerk
 - 3 - General Clerk
 - 4 - Senior Clerical Officer
 - 5 - Office Administrator
 - 6 - Senior Office Administrator

5. The broadbanding proposal set out in Exhibit R.7, which is subject to the understanding that any increases resulting therefrom would be fully absorbed against any existing overaward payments, was agreed.

7.

6. The adjustment of all other rates of pay, not affected by the proposed broadbanding was agreed, in accordance with the second structural efficiency increase available under the principles.

The NUW proposed that the two streams affecting its members should be subject to a period of testing in the field to allow the parties and the individual employers engaging labour under the award to comment on the appropriateness of the proposed structure and the proposed relativities fixed as a percentage to a tradesperson. The first stream would apply to employers involved in activities relating to the manufacture and packing of foodstuffs. The second stream which originally was to apply to employers involved in warehousing, distribution and administration, was now to be confined to warehousing. For the purposes of testing there would be five grades or classifications in the manufacturing and packing stream and four in the warehousing stream.

The relativities for grades I to IV had been taken from appropriate classifications in the Metal Industry Award of the Australian Industrial Relations Commission for semi-skilled and non-trade employees and range from 78% to 92.4% of a tradesperson's rate. The proposed relativity for fifth grade in the manufacturing and packing stream does not have any direct nexus, but it has been agreed, for testing purposes, to be 96.9% of a tradesperson.

The exhibits tendered by Mr. Richardson provided in substantial detail the classification structure and the levels of skill and responsibility required in each grade, together with the criteria necessary to obtain promotion. The testing or trialling period was suggested as being for three months commencing from the date of decision. Mr. Richardson expressed the view that the Commission should not be involved in the testing process but that the parties should discuss and agree the procedure which would be reported to the Commission.

The NUW submitted that the new package satisfied the structural efficiency principle.

Mr. O'Sullivan, for the FCU, confirmed that the consent arrangement largely adopted one of his union's two possible solutions, and submitted that the requirements of the structural efficiency principle had been satisfied. As to his alternative solution, which was to withdraw clerical workers from the award, he informed the Commission that his union intended to pursue the issue with the TCI on a proper basis and in a more considered way, and keep other organisations informed of progress.

The six-grade structure, with relativities ranging from 91.5% to 130% of the tradesperson's rate, was to be tested concurrently with the structures proposed in Attachments 2 and 3. Mr. O'Sullivan suggested that the testing could be done under the auspices and supervision of the

Commission. The revised document dealing with award changes was accepted and the FCU was confident that the requirements of the structural efficiency principle were satisfied.

Mr. Hansch, for the TWU, signalled his satisfaction with the revised agreement but foreshadowed his union's intention to make application to have transport worker classifications withdrawn from the award.

Mr. Sertori indicated that his organisation had consented to the agreed position with some reluctance and many reservations. However, he believed the agreement ensured that the structural efficiency principle was being implemented properly and that the parties were making a genuine attempt to achieve that outcome.⁽⁵⁾ However, his organisation intended to pursue an orderly review of the award under the structural efficiency principle and, if possible, to achieve an industry focus for the award. He felt that the testing process was an important feature in the process of determining the suitability of the graded structure submitted by the FCU as opposed to the integrated structure submitted originally as Exhibit R.3.

(5) Transcript, p.99

So far as the transport worker classifications were concerned, Mr. Sertori indicated that the TCI's objective was to take advantage of the concept of integration and that would be further examined during the testing process. He recommended that the parties be called together after the decision to ensure that they are agreed on an appropriate process.

Mr. Sertori confirmed his organisation's agreement with the broadbanding proposal and noted the union's commitment that any resulting increase would be fully absorbed into existing over-award payments.

FINDING

I am satisfied that the consent arrangements, detailed as items 1 to 6 above, constitute a valid and meaningful application of the Structural Efficiency Principle and I endorse the package, subject to the proposed clause dealing with enterprise agreements being amended to reflect the wording of a similar clause determined in respect of the Retail Trades Award⁽⁶⁾ in my Interim Decision of 29 June 1990.

Accordingly the award will be varied in the manner sought with effect from the first full pay period commencing on or after 19 July 1990.

and Correction Order and Order No. 3 of 1990

(6) T.2401 of 1990

11.

The parties are directed to prepare the appropriate order to vary the award and submit it to me for consideration within fourteen days, following which a hearing will be convened to ratify the testing process, its duration and date of commencement.

