

TASMANIAN INDUSTRIAL COMMISSION
Industrial Relations Act 1984

T No. 6531 of 1996

IN THE MATTER OF an application by the
Transport Workers' Union of Australia,
Tasmanian Branch for interpretation of the
Wholesale Trades Award

re Clause 9 - Annual Leave, subclause (f)
Payment for Period of Leave

PRESIDENT

HOBART, 31 October 1996

TRANSCRIPT OF PROCEEDINGS

Unedited

PRESIDENT: Appearances please.

MR J W GILL: If the Commission pleases, my name is GILL, Jack William and I appear on behalf of the Transport Workers' Union of Australia, Tasmania Branch.

PRESIDENT: Very good. Thank you Mr Gill.

5 **MR S J GATES:** If the Commission pleases, GATES, S.J. from the Tasmanian Chamber of Commerce and Industry.

PRESIDENT: Thank you Mr Gates. Mr Gill, your application.

MR GILL: Thank you Mr President, yes, it is, and this matter arose out of a dispute between one of our members and their employer in Launceston. I have been asked to
10 represent the union in this case and I have been given the instructions, the running order, the sequence of events the way things happened, but unfortunately the employee concerned couldn't come today; had he been able to come well then it would have been a lot easier to ask the person directly. But I did speak to the person by
15 phone this morning and got a complete background to the whole scenario, and I've got some notes made so I will refer to my notes and I will tell you the way things happened.

PRESIDENT: Okay.

MR GILL: Now this chap was a stores person at the company concerned, Independent Wholesalers, commencing employment on the 25th of February 1986. He
20 worked in that capacity, or in a variety of capacities, but mainly stores right up to the 10th of the ninth 1996 - that's a period of 10 years and seven months with his anniversary date being the 25th of the second on every year for his annual leave accrual.

So when his services were terminated he had an accrual of this year of six and a half
25 months annual leave. That is the 25th of the second to the 10th of the ninth this year when he was terminated.

The reason that this dispute has come into the Industrial Commission is because at the time of termination the union, on this person's behalf as a member of our union, requested that the company pay proportionate leave loading on the period of
30 outstanding leave from the year before that was paid on termination, and the company this, and it would be beneficial, I think, to hand that up so you can read it. It fills the background in for you.

The first piece of correspondence is a letter from the Transport Workers' Union dated the 11th of September to the company, Mr David Lennon, from the company.

35 PRESIDENT: Yes. We will make that exhibit TWU.1.

MR GILL: That letter establishes the actual claim that the union is putting on behalf of our member, and you will see by the letter we did telephone the company prior to the letter being sent, and I will just give you a minute to read it.

PRESIDENT: Yes.

40 MR GILL: The company responded by returning our correspondence answering the letter with a letter that they sent out dated the 12th of September - 13th - no, something is wrong here, I've got something out of sequence.

PRESIDENT: that seems all right. The one I've got here is the 11th.

MR GILL: The eleventh, yes, I'm sorry, I'm referring to the wrong letter.

PRESIDENT: Okay, so I will mark this exhibit TWU.2.

MR GILL: So, in a nutshell, they refused our claim, and the reason the company said they would refuse it is they said it is not applicable under the Wholesale Trades Award, which is the award of the employer in this instance, and the Transport Workers' Union is a respondent to that award and have quite a few members working for Statewide Independent Wholesalers.

Now the person handling the dispute from the Transport Workers' Union then contacted the, what we know in the old language as the DLI - it has now changed its name to -

PRESIDENT: Could you just stop there for a moment for me, Mr Gill, and if I could ask a question or two about the documents.

MR GILL: Yes.

PRESIDENT: Am I right in understanding that it is only the annual leave loading portion that is in dispute?

MR GILL: It has come down to an argument about the leave loading being paid for last year's annual leave rather than this year's leave on termination. Originally the claim extended a lot further than that.

PRESIDENT: Because the way your claim reads you are seeking long service leave and annual leave loading.

MR GILL: Yes, the long service leave was subsequently paid so that -

PRESIDENT: Yes, and the leave loading would appear to be only for a portion of a year.

MR GILL: Yes, the leave loading - my information, originally the union was claiming leaving loading and pro rata on all the annual leave up to the time of termination, but then after reconsidering and reading clause 9 of the Wholesale Trades Award annual leave clause, one again they thought well perhaps it wouldn't be proportionate leave on termination or pro rata proportion on termination because - would you like me to hand up a copy of clause 9 out of that award?

PRESIDENT: I've got a clause. No.

MR GILL: Subclause (d) specifies proportionate leave on termination of service and it was deemed that as near as could be calculated that had been paid correctly, the proportionate leave on termination. In other words for any annual accrued in the leave that you are terminated that means that you get paid under this formula, and that person was apparently paid under that formula, but in dispute is the annual leave accrued from last year that wasn't taken last year.

PRESIDENT: The annual leave entitlement or the loading on the annual leave?

MR GILL: No, sorry, the loading on the annual leave wasn't taken last year and I am just leading into that now to explain how that all came about.

PRESIDENT: Okay. So the claim was only for the annual - what did the \$93.70 represent, in your claim of the 11th of September? Was that just the leave loading on -

MR GILL: In my information -

PRESIDENT: - on the proportionate leave for the six months - six and a half months?

MR GILL: Yes. No, it was the component, the balance of the money payment
5 specified for last year. Now what happened last year, when the person went on annual
leave last year things were going along all right between the two parties; there was no
dispute. The person went on annual leave but the company wouldn't let the person
take the full entitlement of annual leave in the year that it was due because the
10 company said that they were needed on this new work they had and they couldn't take
the balance of their annual leave, this bloke, even though the award says in fact they
have got to give the balance within six months of being due. The company ignored that
and said to the bloke 'Look, you can't have your annual leave, you stay at work' but
legally they did give him - they gave him three weeks out of the four weeks that was
15 due. So they gave him 75 per cent of a dollar figure specified in clause 9 - the dollar
figure is \$257.40, which appears in subclause (f) Payment for period of leave.

And what we're saying is that when that person went on annual leave the company
should have paid that person as per subclause (f). They should have paid the person
\$257.40 regardless of how long the annual leave was going to be, providing they didn't
- on two lots of annual leave - taken in two lots - they weren't going to pay him twice.
20 They had to pay him the once but they should have paid him \$257.40 and said 'Okay,
there's your annual leave loading for this year. When you get your next lot of holidays,
which is untaken, you don't get any more annual leave loading because we are only
paying you that once.' And they didn't do that, they just paid him three quarters of
that amount and the balance owing, to my information - I have got to say my
25 information as I wasn't involved - was \$93.70. We can check that quite easy - I was
thinking \$93.70 in fact is 25 per cent of that amount.

PRESIDENT: Well \$93.70 is, what, around about 40% or something?

MR GILL: Forty per cent. So it's obviously the \$93.70 is some other amount that I
don't know what was in the claim. Unfortunately, the person who put the claim
30 together is no longer with the organisation and can't be contacted. The person who
took over handling it said that they thought that that was what it was but obviously
it's not, so I'm sort of stumped a bit there.

PRESIDENT: In any event the - I mean, what is it that you're saying about the
application of the award? What should have been entitled, according to you, in terms
35 of the award?

MR GILL: Well Mr President, what I am saying is that last year when this person
went on annual leave, for the first period of their annual leave, should have been paid
a sum of \$257.40, or whatever appeared in the award at that time, and wasn't paid
that money. Or, alternatively, could have been paid, for example, the person taking
40 three weeks of the four week annual leave entitlement, should have been paid three
quarters of it, which my information tells me they were paid three quarters of it
because they took three weeks annual leave so the company said well here is three
quarters of this money - didn't pay the other 25 per cent of the money on termination
and the entitlement was due last year. It is not an entitlement -

45 PRESIDENT: I see.

MR GILL: - on this year so therefore -

PRESIDENT: Well is this an interpretation or breach of award?

MR GILL: Well I think it might be a bit of both actually, because it may be the company didn't read the annual leave clause completely and therefore breached the award by not giving the balance of the annual leave within a six month period to the employee. It may have been inadvertent it may have been on purpose - I can't answer that, but it certainly was a denial of the award entitlement to the employee. And that has happened - can't be changed, but I'm asking now that on termination that the balance of that \$257.40 from last year be paid to this person because it should have been paid last year and wasn't. That is really what the dispute has come down to.

PRESIDENT: That's what it is all about?

MR GILL: That's what it is all about, yes. And the company, through their organisation, are saying no because there is no entitlement on termination to pay pro rata of the leave loading. But I agree with that but it is pro rata for the year.

PRESIDENT: But it is not pro rata, this is an entitlement from the previous year.

MR GILL: That's what I am saying. It is an entitlement from the previous year, it is not pro rata on the accrual from this year or in the year of termination.

This matter was taken to the what used to be known but I still know as the DLI and I still can't remember the new name - they've changed it a couple of times - the Department of Resources -

PRESIDENT: I think the members have the - officers have the same problem

MR GILL: I have a lot of difficulty in remembering the names of departments - in Launceston, by one of our organisers in Launceston, but unfortunately the clause 9 specifies any disputes surrounding annual leave are to be referred to the Secretary for Labour, but of course that's a bit difficult nowadays, so we referred it to the DLI in Launceston and they gave an opinion based on it and an award interpretation that you done yourself last year in '95 in Blue Ribbon Meat, which was T No. 5736. But our argument is in fact that that has got nothing to do with this matter - that is a different award that was interpreted and the circumstances are different. In those circumstances the employees were summarily dismissed for some reason, and in this circumstance the employee was dismissed because - had a dispute over the enterprise agreement. The employee didn't want to change their hours of work. The employer wanted them to change their hours of work -

PRESIDENT: I see.

MR GILL: - there was a lot of negotiation backwards and forwards. The employee said, 'Well, look I've got a letter here from you people saying that my hours of work are going to be this and I have planned my life around this' and the employer said 'But we want to change that.' And the employee said, 'But I don't want to work the new hours' so the employer said 'Well, okay, you are finished. Down the road you go.' So they sacked the employee and the employee said 'I don't want to work here any more. I am sick of the way you're carrying on. I've had too much of it.' So they didn't take up an application of unfair dismissal but came to the union and said 'Well it is unfair that I didn't get all my pro rata from last year' - I mean annual leave.

PRESIDENT: All right. Well, look, can you just leave it there for a moment. I would like to hear what Mr Gates has got to say on that preliminary point, just to see if we can sort out what - whether we are talking about the same issues. Mr Gates.

MR GATES: Well I suppose the problem I have is, are we talking about the breach of the award, or are we doing an interpretation of the award. It seems that both can't run concurrently.

PRESIDENT: No, I agree with you and I want to hear from you as to whether - what you think it is; whether you think the circumstances which are - which have resulted in this application being lodged are as Mr Gill puts them.

5 MR GATES: Well the facts are, as I understand it, that the applicant, when he ceased - well the relevant employee, when he ceased, had an amount of about three weeks' annual leave accrued to him. Now two of those weeks related to an accrual in his current year of service, and one of those weeks related to an accrual in the previous year of service. So in the previous year of service he'd taken three weeks out of the entitlement of four. And in the most current year there were two weeks which
10 he'd accrued.

When he took annual leave in - well when he took annual leave, he only took three weeks in the preceding year and he was paid three weeks' loading, so he still had one week's leave accrued and week's loading still accrued on that leave.

15 He never took that leave. When he ceased with the company he was simply paid three weeks' annual leave and no annual leave loading. So -

PRESIDENT: And -

MR GATES: - the facts are essentially agreed as to -

PRESIDENT: Yes - and - yes, all right, so you're saying that - that the - and it seems that it's loading on the fourth week of the -

20 MR GATES: Which is -

PRESIDENT: - previous year's annual leave which is in contention.

MR GATES: Mm. But it seems that Mr Gill is claiming breach of the award.

PRESIDENT: No, he wasn't. No he wasn't. I put that in his mouth. I was asking whether or not it was a breach -

25 MR GATES: Mm.

PRESIDENT: - rather than whether or not we should be proceeding with the interpretation. Now if you're going - if you're now saying that you don't think it's a breach, that in fact what was done was in accordance with the award -

MR GATES: Yes - then it's an interpretation.

30 PRESIDENT: - then we'll go ahead with the interpretation.

MR GATES: Yes, I'm happy with that course.

PRESIDENT: All right, okay. Good.

35 MR GILL: Thank you, Mr President. The - well the only remaining documentation that I haven't handed up is the actual pay slip when this chap was terminated and it might be beneficial so you can see that - a hard copy that in fact it wasn't paid - what we're claiming. And attached to that is the - the long service leave on the other page that he was paid, and that's now -

PRESIDENT: Okay. Well we'll mark your exhibit TWU.3.

MR GILL: And the last bit of documentation is a letter from the company dated 20th September addressed to the Transport Workers' Union where the company says that clause 9 - well they're self-explanatory - I won't try and explain that - I'll hand it up.

PRESIDENT: We'll mark this document exhibit TWU.4.

5 MR GILL: But it really establishes in fact what the company paid the person on termination and the fact that the company refused to acknowledge that they owed any further payment.

PRESIDENT: Now this is a - this letter of the 20th September is further to exhibit TWU.2 - is that right?

10 MR GILL: Yes - further to a letter dated the 13th which was -

PRESIDENT: Oh, well I haven't got the 13th.

MR GILL: Strangely enough I haven't either. Oh yes I have, sorry. For some reason or other it's still - oh, I haven't handed it up - sorry about that. I've got these out of sequence. There's the letter of the 13th that that one refers to.

15 PRESIDENT: Well we'll mark it TWU.5. So will you give me time and I'll just have a -

MR GILL: Yes.

PRESIDENT: - browse through these. We'll go off the record for a second.

OFF THE RECORD

20 MR GILL: Mr President, the letter that's been handed - the 13th September - really identifies the claim and sets it out fairly straight forward - the unresolved matters between us. Now, as our argument being the fact that last year when this person went on annual leave, either they should have been paid the full sum of money specified in clause 9 of \$257.40 or they should have been paid a percentage of it which equated to the percentage of annual leave they were taking and in fact the company would have
25 owed the remaining annual leave and the remaining dollar figure from the percentage for the leave loading and that would carry over to any year because the award specifies, in fact quite clearly, that before going on annual leave the company pays a person this money.

30 Now I could argue that in fact the company should have paid \$257.40 even if the person only took one day annual leave for the whole of the year, but I wouldn't argue that in fact if that happened then they would have to pay the same amount of money on the second period of annual leave, because it would be my understanding the intention was to only pay that money once in any period of 12 months and only pay it on the four weeks and not double dip - not double dip on the money. And I'm not
35 arguing that.

But either way, the company, in my argument, I'm saying, the company owed the person the balance of that money in that year and that would have carried over as a liability to this year. Now the company has ignored that fact. We pointed it out to them quite clearly in our correspondence dated the 13th September, we pointed it out to
40 them. They've ignored it. They went off and got advice and their advice was, you don't owe the money, don't pay it. So the matter has had to come before the Industrial Commission for interpretation because their advice is based on the fact that the award is saying that on termination you don't have to pay pro rata and we're not saying that we want pro rata on termination of this year's annual leave accrual. We're saying we
45 want the balance that's left over of that sum of money from last year. And I guess I -

PRESIDENT: I guess it is looking more and more like an application for breach.

MR GILL: No, well it's an interpretation of whether or not the money was owed last year or doesn't get paid this year. That's why we have put his interpretation because we're interpreting the award differently to what the company and the TCCI's
5 interpreting and that's why we've asked for somebody else, yourself like, to interpret the award for us and tell us in your opinion what should have occurred last year with that money and that logically what flows from that is, if it should have been paid last year, well then they owe the money. We're not saying the company breached -

PRESIDENT: So you're saying that all of the loading should be paid in the year in
10 which it is earned.

MR GILL: Which it is when the leave is due.

PRESIDENT: In which the annual leave is earned or accrued.

MR GILL: Yes. The award doesn't make any provision to say what if you don't get the full lot of loading, what happens next year - it doesn't say that. So logically you'd say
15 that the money has either got to all be paid in the year that it's due or the liability is still there on the remaining sum of money. The liability won't go away on termination. You can't terminate somebody and say, oh by the way, I no longer owe you.

PRESIDENT: But it's going to get down to a matter of fact, isn't it? Just off the top, it seems to me at this stage to revolve around whether or not the employee had sought
20 to take full leave and had been denied.

MR GILL: Mr President, yes, but - and I agree, I've got argument in saying -

PRESIDENT: Because the award says it shall - that the annual leave shall be given at a time fixed by the employer within a period not exceeding six months from the date on which it accrued.

MR GILL: And that's the - that's the breach component, if - because I say, this could
25 be a breach of the award.

PRESIDENT: Now if the employee sought it and was knocked back and then the leave loading withheld -

MR GILL: Well that's exactly what happened.

PRESIDENT: - then might - that might be more a breach than interpretation.
30

MR GILL: Yes, and the circumstances leading up to it may be breach

PRESIDENT: Mind you, an interpretation might help sought it out.

MR GILL: Yes. An interpretation would - if your interpretation says, look, that bloke is not owed the money, then all we're left with is the breach of the award is not giving
35 the person any leave last year when it was - within six months when it was due. And -

PRESIDENT: So - all right, to help make an interpretation, can you give me details of when the application was made for the leave and when it was refused?

MR GILL: Yes. The application was made Easter last year. The person was told he wasn't allowed to take any leave over Easter.

PRESIDENT: And that was for the period to the 25th February, '95?
40

MR GILL: In fact that was - there was an accrual from the previous year of annual leave that hadn't been paid and -

PRESIDENT: So at the 20 - at Easter - the Easter after the 25th February, 80 - '95 -

MR GILL: Ninety five - yes.

5 PRESIDENT: - he sought his full leave?

MR GILL: He sought to take leave at Easter time and was told he couldn't. He was told that things were getting busy and annual leave was going to be a problem and he took from that - because the relationship at that time started to deteriorate badly. He then was no longer game enough to push the issue because -

10 PRESIDENT: Well - so he was denied. Has he got that -

MR GILL: He didn't get it in writing - he was told verbally.

PRESIDENT: - he's got no - no evidence of it?

MR GILL: No, well he could - if want to present evidence then I'll have to get him in and put him in on oath.

15 PRESIDENT: Yes. Okay. Well look, this is - we'll deal with it as a hypothetical.

MR GILL: Yes. I went over this point with him on - by phone this morning because I needed to establish that in my own mind, had he in fact asked or had he required that - not to take the leave himself. And he said, no definitely he didn't - that wasn't the case at all. He said he wanted the leave. The company said, no look, you can't take the
20 leave, sorry mate, we've got some new stores, which means they've picked up some new customers. Now you've got a - this person had a high accuracy rate in packing stores - the highest in the company. So therefore he was put on packing orders for the new stores. They wanted to keep the customers happy. They didn't want to lose these new customers by making mistakes in their orders.

25 And when we're talking new stores, we're talking shops - orders for supermarkets and shops of wholesale food. So they're quite large orders. And he was put on at work and told that he had to be on that work and because they were new stores there was no - don't bother asking for annual leave because you're not getting it.

PRESIDENT: So when did he take leave in '95?

30 MR GILL: He took - he told me that and I wish I had written it down. He took a period of annual leave early in the year - but I didn't write it down. And some of that was accrual from last year and some of it -

PRESIDENT: Earlier this year, do you mean?

MR GILL: No, that was last year - early in '95. He took a period - I think he might
35 have said it was before Easter.

PRESIDENT: Well I mean, if he applied for it at Easter, I think Easter was April wasn't it, last year?

MR GILL: It would have been April, yes. It would have been a period over - I've got to guess here a bit - earlier in the year - maybe over the Christmas which was some left
40 from - he had some leave left from last year and he had his new accrual come out in

February and he asked for leave and he took some leave but it was a couple of weeks. Now I didn't write the details down and unfortunately I should have done.

PRESIDENT: Well it's pretty - yes, it's pretty relevant I would think.

MR GILL: Yes. And I'm sorry I've got to be so vague. I only had one conversation with
5 him by phone and unfortunately he was a bit rushed when I did it. But I think the more relevant fact is -

PRESIDENT: So just tell me around the date - around about the month of the year that he took - last took leave, that you think.

MR GILL: I can't remember what he said now. I'm confusing what else he said. So it
10 wouldn't be accurate what I said - it wouldn't be accurate. I know he did say he took some leave last year because I asked him the question. I did ask him when but didn't write it down. And I said 'Why didn't you take the balance?' And I said 'Why didn't you take your full entitlement?' And he said, 'Because they told me I couldn't get it.'
15 And I said 'Why couldn't you get it?' 'Because they said, well this new stores work came on. I have to go on a new stores work. The boss come and said to me, look you're going on this work, don't worry about applying for annual leave you're not going to get any. This is important. This is more important than your holidays. You stay here and do the work', which he did.

PRESIDENT: Okay. When did he next apply for leave?

MR GILL: Well, he was then told that not to bother applying any more for annual
20 leave at Christmas. Oh, sorry, it just come back to me. He did - in '95 - which would have been '94-95 year - the Christmas period - he took his annual leave then. So he took the balance of the accrual from '94 - in Christmas of '94 which led over to '95 and he took a part of his '95 entitlement which fell due in February, so he must have
25 over that period - he must have taken leave over that period.

PRESIDENT: So he'd had - he'd had some leave in - at Christmas '94 and then -

MR GILL: That's correct - yes.

PRESIDENT: - and then he at Easter '95 he sought -

MR GILL: He sought -

PRESIDENT: - the leave due at 25th February '95.
30

MR GILL: Yes, the balance - or part of the balance. I'm -

PRESIDENT: So really that's - really what he did in December '94 is probably not relevant.

MR GILL: Well he was - the point there is, that in December '94 he was in fact out of
35 his six months time frame for '94s entitlement. So this had been going on for a few years that the entitlements weren't -

PRESIDENT: Yes, all right, okay.

MR GILL: - weren't fitting in exactly with the award. Sort of people didn't read the
40 words in the award and say, well look you've got to get it within six months. They sort of - they did it when the company was quiet. They'd say, look, if we're going to be quiet in the next couple of months, take your annual leave. Take a couple of weeks or take a week, or whatever, and the employees went along and cooperated.

PRESIDENT: So at the 25 February 1995 do you know what his leave entitlement was?

MR GILL: Not exactly, but it would have been a full entitlement from his 12 month anniversary date plus whatever accrual -

5 PRESIDENT: So what he took in December '94 was in respect of the year ending February '94?

MR GILL: Yes, part of it was, because I asked him that question. I said -

PRESIDENT: And part of it wasn't?

10 MR GILL: Well, he said, 'I had an accrual from '94 but then I had an accrual for '95 due, so I took a bit of both. I finished up my accrual from '94 and I took part of my '95.' And apparently it has been going on for quite a few years there with all the employees. This is the way it has been done.

PRESIDENT: Yes, but really it is important for us to know what his full entitlement was as at 25 February '95.

15 MR GILL: I think the point - the main point is - that I've established that for the '95 year he didn't get the full accrual of annual leave. He didn't take the full accrual by February of '96. There was a week left over.

PRESIDENT: And that's - okay - well, is that agreed? Mr Gates, is it agreed that there was a week's leave due - left over from -

20 MR GATES: Left over from the 28th of February, or the 25th of February?

MR GILL: Mr Gates agreed to that just a while ago, in fact.

PRESIDENT: Yes.

MR GILL: That week left over from '95 hadn't been taken.

PRESIDENT: Yes, but is that leave due at the 25 February '95?

25 MR GATES: I don't have any instructions on that.

MR GILL: Yes, his anniversary date, so -

PRESIDENT: But it is the 1 week left over from that - from that date?

MR GILL: Yes.

PRESIDENT: Mr Gates?

30 MR GILL: Yes, that is the date it was due and, strictly speaking, it should have been taken within 6 months from that date. That is strictly speaking.

PRESIDENT: Yes. Okay. All right. Just a moment, Mr Gates wants to add something.

35 MR GATES: My problem is that he may have commenced on the 27 February, 10 years ago, but there is nothing to say that his anniversary date for the purposes of accrual didn't extend, or didn't go past, on account of provisions under subclause 9 where you start looking at calculation of continuous service, and there might have been absences, there might have been extended periods when he was away, which

would then have extended his anniversary date, and I don't know. That is not something that I was instructed by the company. All I know is, there is one week which pertains to a full year's entitlement which he hasn't been paid leave loading on. That is all I know, and I am happy to interpret that solely.

5 MR GILL: It will be my argument, Mr President, that there has been no argument presented for any moving of the accrual date in the company's correspondence or instructions to Mr Gates in regards to the argument, so that is not the issue. The issue is whether or not the annual leave loading on the week over from last year is due and payable - at any time - it should have been paid last year. What I am saying it
10 wasn't paid last year, and it wasn't paid last year, well when is it going to be paid? It wasn't paid on termination because they are saying on termination they are using the clause 9 that says they don't pay proportionate leave on termination what they do under this formula. They have forgotten about the week leave loading from the week last year. That has been put aside and forgotten about.

15 But my point is that -

PRESIDENT: Well, fundamentally what they are saying, and I don't want to pre-empt Mr Gates, what they are saying is this person isn't on annual leave, he is terminated, and clause (f) says he shall be paid this amount before going on annual leave, and if he is not going on annual leave, then he is not entitled to it.

20 MR GILL: And my argument is that before going on annual leave last year he should have been paid the money but he wasn't.

PRESIDENT: Well, that's why I say it is a breach. I mean, you agreed about what the words mean. You are arguing now about whether or not it was done at the appropriate time, which is really a matter of breach.

25 MR GILL: Yes, well I can understand what you are saying, but the reason that we want an interpretation is because we are getting a different interpretation from different people.

Now, if it is to be that an interpretation is not going to be beneficial, well I guess we are going to have to cease arguing here and put another application in for breach of
30 the award to get the matter settled; but I was hoping that we would be able to get it settled, given that -

PRESIDENT: Yes, but you are saying, Mr Gill, as I understand it, that you don't care what (f) says, he should have been paid this leave loading last year, aren't you?

MR GILL: Yes - which is a breach of the award - and that creates a dilemma for you.

35 PRESIDENT: And Mr Gates' people are relying on the fact that (f) should apply in this circumstance in relation to a payment being made on termination.

MR GILL: The interpretation we are seeking is, is there an entitlement carried over from any balance of that leave loading from a previous year. There is that stand-alone entitlement or does that tie in with (d) - subclause (d) - and I say it doesn't tie in with
40 subclause (d) -that's the only time it stands alone.

That's the interpretation which will handle the breach - I am not arguing that the company has breached the award and, therefore, should be slapped across the wrist and have a carry on about it, but because of the interpretation factor if we can get an interpretation that will handle the breach, because we are quite satisfied to say to the
45 company, well we would like you to do this, we would like you to follow the award in

future, or get an enterprise bargaining agreement together that accommodates your needs.

5 PRESIDENT: Well, quite honestly, I want to see a full record of the individual's leave entitlements and payments, because I, frankly, can't make a finding on the information I have got at the minute.

MR GILL: Yes, and are you then, Mr President, inclined to ask the company to provide it or is it inclined to the union?

PRESIDENT: Well, I will adjourn and you can - you can't get it - you haven't got it?

10 MR GILL: No, the company is based in Launceston. I can ask our Launceston office to acquire it from the company or -

PRESIDENT: Yes. What about you, Mr Gates, can you get it?

MR GATES: I wouldn't foresee any problem in getting it, Mr President.

PRESIDENT: No, I wouldn't either. How soon could it be achieved? Could it be done today? Probably not.

15 MR GATES: I honestly can't speak for the company, Mr President. I know I have got time constraints today and I am aware that you have got time constraints today. My preferred position would be that if it is going to proceed on the basis of breach that this matter be adjourned; that a fresh application be lodged and be called at the earliest.

20 PRESIDENT: Well, do you understand the problem that I feel I have got in coming to any sort of reasonable conclusion about what this person's entitlements are when I really don't have the facts? Do you follow that?

25 MR GILL: I can understand, yes, and I don't blame you for being cautious in the least, because I haven't got the facts totally before me and it makes me a bit wary - and I hope I am right when I say this - because when you rely on other people to pass information to you, then it is very difficult to establish.

Had I been involved, originally had been, like, in Hobart, and I was handling it I would have had the facts. The first thing I would have done is establish it. But it wasn't done that way. There are lot of reasons why things are not done the way they should be.

30 PRESIDENT: Yes, well I would just feel more comfortable if I had the facts in front of me and then I can apply that to the award.

35 MR GILL: You have really gone two issues: one being that we haven't got the annual leave details to establish in fact whether it is right what this bloke is saying, that there was a week left over from last year or whether the annual leave date is blown out because of any other facts. We don't know that at this point in time. And the other fact is whether it is a breach of the award or an interpretation, which creates a dilemma that the application could be flawed if it is deemed to be a breach of the award.

40 But, what I am saying in support of the fact that it is an interpretation is that if we can establish that that week was owed from last year, then I am asking for an interpretation on whether or not the accrual for that week should be an entitlement that was owed to the employee, because the award doesn't make it very clear, it doesn't interpret it for us.

So I am asking that the president - the commission - interpret it and tell us if that is the case. Once we establish that we will be able to have the other fact.

PRESIDENT: Yes. Let's go off the record for a moment.

OFF THE RECORD

5 PRESIDENT: Yes, well, Mr Gates, if you could address the in principle issues involved in the submissions made by Mr Gill, then we will consider whether or not we need to go to further - seek further information.

MR GATES: Well, basically we say that when the annual leave clause is read as a whole the interpretation of it or the intent of it becomes quite clear, and that is that if
10 you look at subclause (a) which is the period of leave that someone is entitled to, 152 hours after 12 months' service. Okay?

Then when you read that in conjunction with subclause (d) there is a provision that if an employee leaves in any qualifying 12 monthly period - with a few exemptions - they get paid per completed month of service, and there is a formula for that.

15 Now that is an expression not just for a 12 month period, for a qualifying period, that is an expression to any 12 month period which can be from, say, you know, 7 months in a year through to 5 years and 7 months. So it can apply to that, and, in that regard, it just expresses as a monthly payment or a monthly accrual.

If you read that in association with subclause (e) it prohibits a payment being made or
20 accepted in lieu of annual leave. Now that is obviously an expression to annual leave being taken.

If you then look at that in respect to (f) which is the payment for the period of leave it quite clearly says that before you go on leave you get two things: you get your wages and you get an amount of loading. Okay?

25 If you then read that in the light of subclause (i) which is broken leave it is saying that leave under subclause (a) which is your 152 hours need not be taken in one period but it can be taken in any combination that you want.

So, for example, you could take 1 day, you could take 1 day then 2 then 3 and 4 days until your entitlement expires.

30 Now we say that when you read subclause (f) which is the payment for the period of leave that you read in association with (i) and that is that the period of leave can be broken up.

35 So that because the periods of leave can be broken up if you took a day you then break up the amount of 257.40, and the 257.40 attaches to an amount each time you take your period of leave.

If that was not the case and it was found that the words, 'before going on annual leave' mean any time you go on annual leave, then it has to be the case that each time you go on annual leave you get \$257.40.

40 So the intent of the drafter in that by inserting subclause (i) is that when you have broken periods of leave you get a broken amount of leave loading attaching to the period of leave, and if that is the basis which is pursued and adopted, then on termination of service it's quite clear that they only receive 12.67 hours per completed months of service, and that leave loading clearly doesn't attach on termination because the words, 'before going on leave' are quite clear - that you must physically

take your period of leave, and that is supported by subclause (e) which says you can't pay in lieu of taking leave. So it is entirely consistent with that.

5 And the practice of apportioning either a 17.1/2% loading or \$257.40 that usually expresses the minimum wage is a common practice, and it has been a practice of the commission.

10 So the issue is not whether you apportion a leave loading for the period of the leave, the issue is whether he was entitled to be paid leave loading on termination, and the answer to that is 'No', and the answer to that is quite clearly espoused by subclause (f) - that you must go on annual leave before you are entitled to it; and that is in essence it.

PRESIDENT: What do you say - and this is getting off the track but it is what has been causing me concern and why I want to see the factual details - what do you say about (h)?

MR GATES: (h) being you must take it within 6 months?

15 PRESIDENT: Mm.

MR GATES: I have looked at that, and I don't have a firm position on it. I have read some cases in relation to it. There is a question in my mind on which I am not of an opinion, as to whether if leave is not taken within a 6 months period whether one of two things happens; whether your right to take that annual leave and the payment for it and the leave loading for it is expired, which I don't believe to be the case because it is an unworkable situation. It is more likely to be the case that your right to the leave is still there but it is just a breach of the award. I mean, if that were the case that it expired after six months then you don't have to be too much of a genius to know that some employees may well abuse that privilege because it will save them money. So in a practical sense that provision was there to aid the parties and direct the parties as to when leave is to be taken, but I wouldn't see that it extinguishes the right that having said that I fully reserve my position to argue later that it does extinguish the right. It is one I'm not of a firm opinion on -

PRESIDENT: Yes, it can -

30 MR GATES: - but having thought the issues through.

PRESIDENT: - it confuses the issue because it seems to me that this particular case falls under (h) rather than under (f) or (d).

MR GATES: As I say, I haven't researched it and without research I would be loath to give a final position. There is a question that -

35 PRESIDENT: Because we're not really talking about proportionate leave.

MR GATES: Yes, but if you - I mean, another argument would be - and I am not certain whether Mr Gill is going to take it - is that if leave is not taken within six months then you have to make a payment of leave loading when the six month time frame falls due. I would find absolutely nothing to support that assertion in the award nor in subclause (h). Subclause (h), in my mind, is not even directed to it. It is directed to inserting a facilitating mechanism to guide the taking of leave. I would see it as being no more than that.

PRESIDENT: Well I imagine it was originally put there to make sure that people were able to take their leave within six months, but the wording is, as usual, deficient.

MR GATES: Oh yes, I agree.

PRESIDENT: So what do you say then about the expression in proportionate leave subclause which talks about the qualifying period? You're saying that the qualifying period can be any period of 12 months.

5 MR GATES: Without doubt.

PRESIDENT: You don't - you're not - sorry - you, I presume, have considered whether or not the qualifying period is based on the 12 months and anniversary of appointment.

10 MR GATES: Right, I see what you're getting at. I would say that to apply that in a practical commonsense approach that it would be a qualifying period is or must be referred to in relation to the calculation of continuous service and that your qualifying period date may vary throughout the life of the contract of employment.

15 PRESIDENT: Well it could be disturbed but if there was no break in service the qualifying period would be the 12 months, on the 12 months of anniversary of appointment.

MR GATES: Yes.

20 PRESIDENT: Right. So if that were to be so and say, hypothetically, we have got a - no - say that the person whose leave is being considered at the moment had had no break in service the anniversary, the 12 month qualifying period, would be to the 25th of February in each year, 12 months -

MR GATES: So it would appear, yes.

PRESIDENT: And having qualified at the 12th February, '95, the reference to a month's continuous service in any qualifying period would be for each month after the 25th February, '96.

25 MR GATES: No, not necessarily. I see that as - for example, any qualifying period is - well if someone had been there for five years and seven months, I would see the previous five years as each being a qualifying period.

PRESIDENT: Yes.

30 MR GATES: And you could then accumulate that based on each completed month of service which would give you 12.67 hours which brings 152 hours each year, and then you apply it in the last year, again being a qualifying year of service - or a qualifying 12 month period based on completed months of service. So it would be a multiplication of seven.

35 PRESIDENT: Yes. But then having regard to your submission about taking the clause as a whole, if you take the instruction that's contained in subclause (h) -

MR GATES: Mm.

PRESIDENT: - that leave is supposed to be granted within the 12 - within the six months -

MR GATES: Mm.

40 PRESIDENT: - wouldn't you then come to the conclusion - or couldn't you then come to the conclusion that each 12 months is to stand alone and that once that

period has expired and the entitlement is there, then that stands alone, and it's only the additional months of -

MR GATES: I don't accept that based on the wording of 'any qualifying period'. It is not - if it was a reference - if, after one month's service in the current qualifying - in
5 the current qualifying 12 monthly period or in the qualifying - you know - the current, then I would accept it as being the current year. I don't have a problem with that. But a reference to any qualifying twelve monthly period is more than one and can mean several. If there was just the one and they'd been there for nine months, I don't have a problem. But if they've been there for more than two years, I say it picks up both those
10 years.

PRESIDENT: Mm.

MR GATES: I mean the question would arise if, you know, why was the word 'any' put in there if it was confined to the current year?

PRESIDENT: Yes, but then you're - want to ask the other question why does the
15 clause tell the employer to grant the leave? So that really, there shouldn't be any leave left over after six months.

MR GATES: Well, that's there as a -

PRESIDENT: You've got your - read the clause as a whole.

MR GATES: Well that is there as a facilitative mechanism for employers and
20 employees.

PRESIDENT: Better just giving the instruction, isn't it? I mean you did say it could well be breach.

MR GATES: But bear in mind, I reserve -

PRESIDENT: Yes, I know.

MR GATES: - no final position on that clause.
25

PRESIDENT: I mean I think you're right, even though you reserved your decision - I think you're right. It could well be breach.

MR GATES: I mean if you're prepared to say that after six months the employee loses all entitlements in previous year, then well and good.

PRESIDENT: Well, I mean that's the other side of your argument.
30

MR GATES: Yes.

PRESIDENT: I don't know that I would agree with that at this point given - given (d) - and you have to read it as a whole.

MR GATES: But I think one of the other elements in this case is if it's taken on as a
35 dispute, there's going to be a real question as to whether the termination is through fault of the employee.

PRESIDENT: Are you - okay - what's your position on that at the moment? Are you - is that - has that contested?

MR GATES: Well my understanding is that that the employee -

PRESIDENT: That puts a different complexion on it again.

MR GATES: That's right. My understanding is that the employee was dismissed because he wouldn't accept an alteration in hours and certainly Mr Gill said that much. My instructions on it aren't there but I pick up what he said. Now if that is the
5 case, fault is less than misconduct, fault is less than poor performance, and that would in my opinion clearly amount to fault in which case he's been overpaid and may well -

PRESIDENT: I'm sorry - I thought you said fault is less than misconduct.

MR GATES: It is.

10 PRESIDENT: It certainly is, so what -

MR GATES: The expression - the expression through no fault of the employee is less than -

PRESIDENT: Where is that?

MR GATES: In subclause (d).

15 PRESIDENT: Yes, I follow -

MR GATES: I mean the -

PRESIDENT: - what you're -

MR GATES: - reason I say that, is there is a clear - well there are clear authorities that say that fault through no fault of the employee is less than misconduct.

20 PRESIDENT: No doubt.

MR GATES: So if there's any fault attaching to employee for the reason for termination, then one would have to say the determination would ordinarily be through fault of the employee in some capacity, then there is no entitlement to it.

25 PRESIDENT: And that - but that hasn't been put anywhere else in the material. As I understand it the employer is simply relying on the words in clause (f).

MR GATES: But the ball park is changing.

PRESIDENT: Subclause (f). Sorry?

30 MR GATES: The ball park is changing and those goal posts are shifting and, you know, if it's going to go to a dispute, then fair enough, it may well be something which we argue, but I haven't spoken to the company in that regard. All I know is, Mr Edwards gave this case to me just after I finished with another case on Tuesday and I just haven't had time to get - all I have is very brief instructions as to what the essential elements of the case are about.

35 PRESIDENT: Well it seems as though to get to the bottom of this you and Mr Gill ought to talk together and get - give me an agreed statement of facts.

MR GATES: Oh yes, I agree. But I mean taking - taking that line of argument through further, if there is a finding on dispute that, yes, leave loading should have been paid, and there is also a finding that he was terminated through fault of the

employee, then the commission will need to determine what he was entitled to be paid at that point in time, and what he was paid and whether there is an underpayment.

Now clearly through fault, he's been overpaid an amount equivalent to three weeks.

5 PRESIDENT: Yes. Well I think you people need to sort out where you want to go with this and given the potential ramifications.

MR GILL: Well what I'd say, Mr President, if the TCCI was going to rely on their argument saying that the employee was at fault, then that relates only to the proportion of leave on termination. It doesn't relate at all to the accrued leave loading from the year before. That award is very - that clause is - (d) - is very clear.

10 MR GATES: Yes, but we accepted that. We said if Mr Gill is right in respect to the loading, and we don't say that he is, but if it's through fault, then he wasn't entitled to three weeks' pay. He may have been entitled to the loading, but he wasn't entitled to three weeks' accrual - that's what we're saying. But we don't accept that he's right.

15 MR GILL: And what I'm saying, if that's the case, then - and the company made the accrual, then the company made the accrual based on the way they interpreted the award. If it's - they've interpreted it wrong well then they've made the payment, they're not - they've never sought to recover the payment and it's only just come up now when they'd -

20 PRESIDENT: No, that's why I'm saying I think you ought to have with Mr Gates and sort it out.

MR GILL: But that would - that would create a lot of argument and some sort of precedent too, in relation to companies making mistakes. So we would have to then say, okay, well if you're going to go down that line, then we're going to put a breach of the award application in and say that the company should have paid that person even
25 on one day's annual leave, the full entitlement of the money and every single day thereafter we'll ask for the full entitlement of the money, because this clause doesn't stop us from asking that. It doesn't say you shall only pay that sum of money once. It implies that of course if you break the award - the annual leave up - then you break the payment up. But it only implies that. And we agree with that - that we don't want
30 to double dip and we don't seek to interpret the award that allows people to double dip but by the same token we don't seek to allow anyone else to interpret the award that denies a payment to a person that should have been paid last year and wasn't.

35 So what we're saying is that this payment should have been paid last year and wasn't paid last year, therefore the payment is still owed at this point in time and the person's termination -

PRESIDENT: Yes. What - what - okay. On that point, where do you - what part of the clause do you rely on to say that because they didn't receive leave last year they should have been paid for it?

40 MR GILL: Well, in subclause (f) - all employees before going on annual leave shall be paid the amount of money they would have received - continued on - and shall be paid the amount of \$257.40.

PRESIDENT: So you're saying - okay - so you're saying that \$257.40 should have been paid in respect of that three weeks - first three weeks of leave?

MR GILL: Yes. Yes, that's what the award clearly says.

45 PRESIDENT: Is that all you - that all you -

MR GILL: The award clearly says that, and what Steven Gates is arguing about, subclause (d), is a different - that's a different argument. That relates - subclause (d) relates to proportionate leave on termination and the - any qualifying period talks about to pay proportionate leave, not the pay leave that as due last year.

5 PRESIDENT: Yes.

MR GILL: So it's really clouding the issue somewhat because subclause (d) and subclause (f) are not related in that regard.

PRESIDENT: All right. Well that's getting a little clearer and a bit simpler.

MR GILL: Yes.

10 PRESIDENT: Thank you. Mr Gates, on that point, that the \$257.40 should be paid regardless in respect of once the leave is taken in any year? You have partially addressed that.

MR GATES: Are we putting submissions on it or are we -

PRESIDENT: Yes.

15 MR GATES: - further information and then coming back?

PRESIDENT: Well I'd like to hear your submission on that point.

MR GATES: Mm. Okay. The reference in subclause (f) to annual leave and the reference in subclause (f) to the payment of an amount of \$257.40 attaches to a completed or a fully completed period of leave - 152 hours. So if you take four weeks' leave, which is 152 under subclause (1) then you receive the amount of \$257.40. I have no difficulty with that. But that clause is not to be read in light of what subclause (i) says - broken leave - to be read as, that each time you go on annual leave, regardless of whether it's less than four weeks, you're entitled to received \$257.40 - which is the practical effect of it if you adopt what Mr Gill is saying.

25 Now clearly, that is not the intent. The intent is that if you go on annual leave and if it is for a broken period, then you will receive \$257.40 pro rata to the amount of leave which you were taking under subclause (a) because the 257.40 attaches to the four weeks. It does not attach to a broken period of leave. So it doesn't attach to a day's leave, nor anything else. And so in that regard if you take a period of less than four weeks then you're entitled to receive pro rata an amount of 257.40.

30 Now the essence that I say to that is that when you have taken the full four weeks' leave for that period, the amount that you must have received as a loading for the full four weeks equates to \$257.40. So that if you take a day for example, then you get a small amount. Two weeks later you take three weeks and then you get three weeks' worth of 257.40. You take another day for whatever reason, you get a bit more, then you get paid the balance of three days and you get paid the rest of it. That is in essence what we say.

PRESIDENT: Mm.

MR GATES: And I suppose that a de facto way of - I mean it has to be read as an implied breaking up of it and in awards there are implied breaking ups of many things, for example, allowances, expressed as a week. You get them expressed as an hourly rate and they attach pro rata per hour. Now this is exactly the same thing. And in that regard that when they go on annual leave they get paid the wages they would

have received for the relevant period, ie., a day, and in addition to that they get a chunk of a leave loading - of the \$257.40.

5 It would make a nonsense for an employee to take a day's leave to, for example, look after a child, and he has to take it as annual leave, because that's the first day out of 152 hours full entitlement, he then gets another \$257.40 cents on top of it, because it's the first time he took it. And then he plans to take annual leave with his wife - it's the school holidays or whatever - and receives absolutely no leave loading for it.

10 That is clearly inequitable and was never the intention of the drafters of it. So we simply say there is an implied - and we say a fairly specific - well, we say an expressed, but short of absolutely expressed, but no less than implied understanding in that clause when it's read as a whole that the 257.40 must be broken up relevant to the period of leave which is taken.

PRESIDENT: Yes, thanks for that.

15 MR GILL: And I'd say that if that's the case and that's accepted then there's also implied that any period of unpaid leave that the balance of that \$257.40 should be paid for that period and proportionate leave on termination doesn't come into it, because proportionate leave on termination relates to the period - the year that they're in at the time - not relating - it doesn't relate back to the annual leave over from a previous period, so I'm saying that, okay, the clause says you pay \$257.40, do you pay 20 it for one day's annual leave and pay it only once and say that's all you're going to get of your leave loading for the rest of the year, it doesn't matter how many other breaks you have, or do you pay it - if I take one day annual leave I get this divided by one day and the balance on every other day and if that's the case then we want the balance on the week from last year.

25 Mr Gates has put that submission up - that he says that that's very strongly implied. Okay. We want the balance.

PRESIDENT: Yes. But what he's saying is, that the words in (f) say that it's only paid when the person goes on annual leave.

30 MR GILL: Yes, well, the person was denied the opportunity to go on annual leave, therefore it doesn't deny the entitlement because the company denied the person -

PRESIDENT: Well I mean that's the issue, isn't it?

MR GILL: Yes.

PRESIDENT: That is the issue.

35 MR GILL: I'm saying it doesn't deny the entitlement because this is very clear. Mr Gates has said in his submissions that it can be broken up. It's implied that you can break this period - this payment up into small components depending on the annual leave that you take. It doesn't say that there's any provision that you can avoid paying the money, and I could quite easily say that we want on any single day we want \$257.40 paid and argue that it should be paid, and I - but I wouldn't do that because 40 that's double dipping. But I'm asking that the company also look at their obligations and they didn't pay \$257.40 in leave loading last year for that person regardless of how many periods of annual leave he had because they didn't allow the person to take his full annual leave.

PRESIDENT: Yes. Yes.

MR GILL: So therefore they owe the money from last year. They don't - proportionate leave this year doesn't come into it.

PRESIDENT: Yes. That's where it puts - we get off straight interpretation and then get into other areas.

5 All right. Okay. Before we finish, we'll just go off the record for a second.

OFF THE RECORD

PRESIDENT: Yes, well are you content to rely on those submissions in respect of just subclause (f)?

10 MR GATES: No, I'm not and the reason I say that is that the issue of whether annual leave loading is apportionable is not a matter which I've fully researched and it's my understanding that the commissions throughout Australia and this commission have adopted as a practice that annual leave loading is apportionate and I believe there are case authorities for that and I'd like to have the opportunity to grab those authorities.

PRESIDENT: But that -

15 MR GATES: The issue which I have researched goes to the payment of annual leave loading for expressions of during the period of annual leave but not on that particular principle which is now being clarified as to what it is.

PRESIDENT: Mm.

20 MR GILL: And I would say, Mr President, that in fact it's been any amount of time to research this because our correspondence to the company made it very clear what our claim was a long time ago - not - it wasn't sort of this morning.

PRESIDENT: Yes, but it's got - it's got slightly off the original -

25 MR GILL: It's got - but that's because Mr Gates has brought the argument into it, not the - the union hasn't brought that argument into it. He's created the argument himself which creates a dilemma for himself. In my opinion -

30 MR GATES: But just to clarify - I'm sorry, Mr President, Mr Gill and I only spoke yesterday on it and Jack was too busy yesterday, I was too busy yesterday. We said that we would try and talk this morning. Jack had an early morning meeting on which prevented him from being able to contact me. I don't criticise Mr Gill at all for that, but simply, we've not -

PRESIDENT: Well I think he was criticising you, Mr Gates - the other way around.

MR GATES: My understanding was, that yesterday, Mr Gill said he didn't know what the case was about so - well anyway, such is life.

35 PRESIDENT: Well, okay. Well if you feel it important to put more complete submissions, then I think I'd be happier with that, too. Could you find an exchange with Mr Gill, the factual details relating to the leave involved for this employee and let me have copies - a copy -

MR GATES: Yes, certainly.

PRESIDENT: - of what you agreed on?

40 MR GATES: Not a problem.

PRESIDENT: And that being the case we'd better adjourn for a period and find out when we can get back together. How long do you need do you think - we'd best try and do it as - fairly quickly.

5 MR GATES: Well I've got a bad week this week and I've got a bad week next week. I've got -

PRESIDENT: You're not the only one.

10 MR GATES: Today I've got to finalise submissions for a matter before the court tomorrow which will take me all day. Monday I've got a hearing before the commission. Wednesday I've got another hearing, and Thursday, I've got another hearing of next week.

PRESIDENT: Yes well -

MR GATES: I'll request the information.

PRESIDENT: - how are things - that's next week isn't it?

MR GATES: Yes, we've got the interpretation on Thursday.

15 PRESIDENT: Yes. And you're - and so - yes - Friday is no good.

MR GATES: I mean I will have sent the correspondence off probably today or at the latest Monday to Statewide to get the information. I imagine I'll have it to me by Friday of next week. As soon as I get it I'll -

20 PRESIDENT: I would have - would have thought it's only a couple of days' job actually. Faxes are pretty good.

MR GATES: True.

PRESIDENT: How would you - how would you be next - is next Tuesday early morning too soon? Did you say Tuesday was a bad day?

MR GATES: No, Tuesday I am free, but I haven't prepared for -

25 MR GILL: What's the date on Tuesday?

MR GATES: The fifth.

PRESIDENT: The fifth.

MR GATES: I mean I'm still to present my case for the one on Monday. I haven't done anything for my case on Wednesday and anything for my case on Thursday.

30 PRESIDENT: Yes. Yes.

MR GATES: So I'll work all this weekend and I worked last weekend and - yes, so I'd rather not.

PRESIDENT: What about early in the Wednesday the 6th.

MR GATES: I've a meeting at 9:30 with Sister Majella and Sister Josephine.

35 PRESIDENT: What about on the afternoon of the 7th?

MR GATES: Well, the interpretation is at 10:30.

PRESIDENT: Yes unless do another. Well that hopefully will be more simple.

MR GATES: Well if there's time I'm happy to do it on Thursday afternoon.

PRESIDENT: Thursday the 7th? How's that for you, Jack?

5 MR GILL: Yes, that's good.

PRESIDENT: We'll try for the 7th?

MR GATES: That's fine.

PRESIDENT: And just give us - ourselves a bit of time - we'll say, what, is 2:30 okay?

10 MR GATES: Yes, that's fine by me.

MR GILL: Mr President, would it be possible for - to receive a transcript of the hearing to - if the TCCI's going to put up extensive submissions - and obviously they are because they've flagged that, then -

PRESIDENT: Transcript of today -

15 MR GILL: Today's hearing.

PRESIDENT: - do you need?

MR GATES: Yes, I'd appreciate some.

PRESIDENT: Gosh a lot of it needs to be edited out.

MONITOR: It's verbatim.

20 PRESIDENT: Yes, verbatim - you're right. What were your -

MONITOR: Can we go off record.

PRESIDENT: Yes.

OFF THE RECORD

25 PRESIDENT: Okay, all right, well transcript by Tuesday night and we'll reconvene at 2:30 on the 14th - sorry - it's not the 14th - the 7th. Okay we're adjourned till then.

HEARING ADJOURNED