

PRESIDENT: Could I have appearances, please.

MR R. MILLER: If the commission pleases, RODERICK MILLER, appearing on behalf of the CPSU(SPFT).

PRESIDENT: Very good. Thanks, Mr Miller.

5 **MR W.J. FITZGERALD:** If it pleases, I appear on behalf of Retirement Benefits Fund Board, which is a member of the Tasmanian Chamber of Commerce and Industry, FITZGERALD W.J.

PRESIDENT: Thank you, Mr Fitzgerald. Well, Mr Miller, tell me about your application, please?

10 MR MILLER: Indeed, sir. Thank you. Before I move onto that it should be noted that this is a very propitious day. Today in 1650-odd, one Abel Tasman sighted and named Van Dieman's Land and I just trust it was as beautiful a day as it is today, sir.

15 PRESIDENT: Yes. Very good. It takes us back a few years, doesn't it, in more ways than one.

MR MILLER: Indeed. Before I go further onwards, sir, I would ask to amend the claim slightly and I do apologise if I haven't informed my colleague on my left of that. The claim indicates under Clause 6 - Award Interest, subclause (b), add (iii) The Retirement Benefit Fund Board.

On further investigation, sir, which will become clear later on during the proceedings, I believe that should be amended to read, The President of the RBF - that is the Retirement Benefit Fund Board.

PRESIDENT: Yes, I see. So insert after (iii) 'the President of'?

25 MR MILLER: Yes, sir - of the Retirement Benefit Fund Board. I have spoken to the human resource director in the department of that intent but I must admit, and I do apologise to all parties, that I had omitted to indicate that to my colleague, Mr Fitzgerald.

30 PRESIDENT: Yes, all right. Before we go any further, I'll ask the other side what their response to that request to amend is. Yes, Mr Fitzgerald?

35 MR FITZGERALD: Thanks, Mr President. There's probably no apologies necessary but I think it probably does necessitate us just to go into conference for a moment. I need to take some instructions on it. I don't expect there will be a problem but if we could just go off the record for a moment, discuss it informally and I'd expect that we can resolve it.

PRESIDENT: Yes. All right. Thank you.

OFF RECORD

ON RECORD

PRESIDENT: Yes, Mr Miller?

5 MR MILLER: On second thoughts, sir, I withdraw my amendment to clause 6(iii)(b) and leave it as is.

PRESIDENT: Yes. Very good. We'll leave it at that.

10 MR MILLER: The body of the claim, sir, is that the RBF - the government introduced new legislation in 1993 which was the *Retirement Benefit Act 1993*, No. 103 of 1993. In essence, sir, that legislation wound up in various Acts, repealed others and gave new entitlements to persons accessing the Act as contributors. That's a whole raft of legislation.

15 Schedule 5 of the Act concerned itself with the terms and conditions of employment of officers of the trust only and it also indicated that it was subject to the awards of the *Industrial Relations Act 1984* and that is mentioned in schedule 5 at clause 7.

20 In essence, the effect of the Act was to remove it from the clutches of DOTAF, which is known as the Department of Treasury and Finance, who employing its staff as the employer at that time as state servants under the *State Service Act 1984* and in accordance with state service awards.

25 Statutory Rule No. 83 of 1994, clause 9(2) gives the agency employing powers separate from the *State Service Act* and subject to schedule 2 of Statutory Rule 83 of 1994, those are at the behest of the agency. More senior staff with inside the board of the Retirement Benefit Fund Board also have contracts which are performance based, purportedly, but we have no official knowledge of the content of those so called contracts of employment.

30 Since the introduction of the Statutory Rule 83 of 1994, the use of what is known as, Clause 9 - Employees has significantly proliferated and existing staff, that is, existing staff who are state service employees have been enticed to move to Regulation 9 - Contracts and at the present time, to the best of my knowledge, all new positions that are being created and advertised are being advertised as Regulation 9
35 Contracts.

40 Those officers, I believe, are subject to the awards of the *Industrial Relations Act 1984*. Statutory rules were later made from the introduction of the Act, that's the 1993 Act, and there's a whole raft of those, 82 of 1994, 83 of 1994, 84 of 1994, 94 of 1994, 102, 103, 178, 179 of 1994.

PRESIDENT: Were they all regulations affecting employment?

MR MILLER: They were all regulations affecting the Act, sir. Not necessarily all to do with the employment status of people contained inside it.

5 PRESIDENT: Were any of them to do with employment?

MR MILLER: Some were and had an effect upon the employment of those persons in as much as that, for instance, one issue was that - as we've just recently discussed off record, the regulations created Schedule 9, which created a process whereby people could be employed. Others put into the *State Service Act* the President of the Board as being the principal officer of the board. Others created the *RBF Act*. For instance, the introduction of stat rule 89 of 1994 created the Retirement Benefit Fund Board. Statutory rule 99 of 1994 inserted the RBF and the President of the RBF in the *State Service Act* itself under schedule 1, I think it is. So, it is now shown that the agency is indeed a state service agency with a head of agency known as the president.

PRESIDENT: I'm totally confused.

MR MILLER: I've succeeded then.

20 PRESIDENT: Yes. Are you telling me the RBF Board is now an agency for the purpose of the *State Service Act*?

MR MILLER: Yes, sir. If you'll bear with me, as I indicated to you, stat rule 99 of 1994 put into the *State Service Act* the Retirement Benefit Fund Board as a state authority in column 1 and in column 2 of part 2 of schedule 1, indicated that the president of the RBF was the head of agency. As a for instance, the RBF - the Retirement Benefit Fund Board was established by statutory rule 98 of 1994 and which the Superannuation Office was amalgamated with RBF. That was 102 of 1994. So those were just mechanical things which occurred to put the new board into place, the Retirement Benefit Fund Board, amalgamated the State Superannuation Office and also had effect upon other issues inside the state's superannuation fund, the scheme.

Not all things that occurred through those lists that I gave you had any major effect upon employment matters.

35 PRESIDENT: However, the Act does something about the employment status of the individuals?

MR MILLER: In some instances, yes, sir.

PRESIDENT: Can you take me to the precise parts of the Act that deal with that? I take it you haven't got copies?

MR MILLER: Unfortunately not, sir. For instance, Statutory Rule 83 of 1994 indicates at section 9 - these are the persons known as regulation 9 employees -

PRESIDENT: But that's only some of them, isn't it?

5 MR MILLER: Indeed it is.

PRESIDENT: What's the general provision in respect of employment? Are they excluded from the *State Service Act*?

MR MILLER: I was just about to come to that, sir. Indeed, some of them are.

10 PRESIDENT: I'm sorry I've interrupted you.

MR MILLER: That's all right. The very next two lines are:

During the whole of this time and present there are employees who were originally engaged as state servants and they remain so, as state servants.

15 PRESIDENT: Yes.

MR MILLER: However, Statutory Rule 103 of 1994, one of those which I touched upon earlier on, in schedule 1 removed the access of staff to a whole raft of *State Service Act 1984* provisions. Those issues went to things such as appeal rights, redeployment registers and issues such as that. There's approximately 20 issues that those persons no longer have access to.

PRESIDENT: Mm. Previously the Admin and Clerical Employees Award applied to these people, prior to the Act of 1993?

MR MILLER: To the best of my knowledge, yes.

25 PRESIDENT: What was it in 1993 that stopped the employees from being covered by the Admin and Clerical Employees Award?

MR MILLER: I don't really think there was anything that stopped them from being covered, except for the fact that some persons had moved from the *State Service Act* mode of employment and took on a Regulation 9 contract of employment and basically forewent their state service employment status. Others were employed outside the state service, i.e. new employees and they were employed under Regulation 9.

35 PRESIDENT: So, are you telling me that those people automatically weren't covered by the award?

MR MILLER: That's correct, sir.

PRESIDENT: Tell me why? Why weren't they covered by the award?

MR MILLER: Because at that time, those persons weren't party - or the RBF as an employer, wasn't party to the award, to the A & C Award.

5 PRESIDENT: So, really, the critical change is that the employment power shifted from the minister to the authority?

MR MILLER: That's my understanding, yes, sir. There's a very similar situation to the Tasmanian Development and Resources body.

PRESIDENT: Yes. So, that's the crux of it, isn't it?

10 MR MILLER: Yes.

PRESIDENT: And that's all we need worry about, isn't it?

MR MILLER: That's all I'm worrying about, sir.

PRESIDENT: Yes. Whether people signed contracts or not - entered into contracts, is their option.

15 MR MILLER: Indeed, sir. We would have, obviously, some interest in those types of contracts.

PRESIDENT: I can understand that but from the commission's point of view, if people want to be employed on a contract that is superior to the award, that's their choice. Sorry, I've interrupted you again too
20 much.

MR MILLER: That's quite all right. I was going to say, to quote a person who used to work at the Department of Community and Health Services, the old Department of Health, as it was then, in front of your predecessor - I'm sorry if my confusion confuses you, but I daren't say
25 that because Mazengarb will be down my neck for the next two years.

PRESIDENT: Yes. Can I ask you to interrupt your submissions at that point. I would just like to hear from the other side, whether there's any objection in-principle to what you're proposing by way of your application?

30 MR MILLER: If I may, the matter is a consent matter between the parties.

PRESIDENT: Is it?

MR MILLER: Yes, sir. I'm sorry, I should have mentioned that.

PRESIDENT: I'll let Mr Fitzgerald tell me about that.

35 MR MILLER: Very well, sir.

MR FITZGERALD: Mr President, I think it just might be wise to go into conference, just briefly, so Mr Fletcher can also explain some other information. If I could do that.

5 PRESIDENT: All right. You've no objection to going into conference, Mr Miller?

MR MILLER: No.

MR FITZGERALD: It is a consent matter, as Mr Miller has said but I think we just need the background to, if you like, justify the consent application.

10 PRESIDENT: It sounds as though I'm making it too difficult.

MR FITZGERALD: Not necessarily. I think -

PRESIDENT: Anyway, we'll go into conference.

INTO CONFERENCE

ON RECORD

15 PRESIDENT: Thanks.

MR MILLER: Thank you, sir, for that conference. As I previously indicated, there is legislation at 103 of 1994 schedule 1 which removed access of the staff to a whole raft of *State Service Act* provisions.

20 The present position now is, that the parties are working towards the establishment of a new work based award which will come before this commission - I hate to use the expression - in the fullness of time, but we are working as hard as we possibly can, given the restriction on resources that both parties have to bring that to fruition.

25 There is an agreement which is also being worked out to pick up some of the issues and conditions of employment and different ways of working, as an interim measure before that new agreement could be struck. The concern is, quite clearly, there should be a salary safety net award for all CPSU members who are engaged at RBF and it is our belief that all CPSU members should have access to the appropriate awards.
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We are seeking a position today that without equivocation commits the parties to the award to which RBF staff are presently being paid 'in accordance with' as the safety net provisions of the National Wage Case and as adopted by this commission in the past.

35 I refer to the *Industrial Relations Act* section 62(4) the controlling authority. There's a cross reference there to the *Industrial Relations Act* interpretation and to the *State Service Act* schedule 1, Part 2, stat reg

99 of 1994 at which the minister administering the state service and (d) any other state employee being a principal officer et cetera.

5 I don't believe that this application does any damage whatsoever to the legislation contained in the IR Act at the appropriate areas but it is needed, that to rope in the RFB as being an amalgam of staff employed in various categories and different fashions, but purportedly using the A & C award.

10 As I may have mentioned, sir, the RBF conforms to the interpretation of a state authority of the *Industrial Relations Act* and the regulation 9 employees also conform to the interpretation of a state employee of the IR Act.

I believe the claim satisfies clause 36 of the public interest and I believe that the operative date of the award - of the variation, should commence from the date of your decision.

15 I apologise for not having mentioned at the outset that this was a consent matter. It shouldn't have slipped my mind. It did. I apologise to all parties. I have no further submissions at this point, sir. If the commission pleases.

20 PRESIDENT: Yes, thanks, Mr Miller. I wish you had mentioned it was consent. I wouldn't have asked so many questions. Thanks, Mr Fitzgerald?

MR FITZGERALD: It means that you probably don't need to ask many questions of me, if that's the case then, Mr President.

PRESIDENT: We will see.

25 MR FITZGERALD: I don't think I'd dwell too much on this application. The background to it, somewhat complex, I think has been explained by Mr Miller and I think we've had also the benefit of off record discussions with Mr Fletcher's contribution, which has certainly assisted the situation.

30 Clearly, what has occurred is that there have been ongoing reference by means of a letter of appointment or contract provision to the Administrative and Clerical Award. What is occurring, by means of this application, is a formalisation of that situation. It applies in respect to
35 - I understand, on my instructions, there are some 87 employees of the board. 45 approximately, are state servants under the *State Service Act* and 42 are in fact employed under the *Retirement Benefits Act*. It's those employees who are directly affected by this application and their conditions are maintained and, if you like, preserved in the same way as Mr Miller indicated, by the safety net of the Administrative and
40 Clerical Award.

5 It is a consent application, as Mr Miller indicated. I, like Mr Miller, don't believe that it in any way offends section 36 of the public interest criteria of the Act. It, in fact, in my submission, is very much consistent with the public interest to maintain formal nexus with that award.

PRESIDENT: There's no impact on the economic circumstances of the state or no effect on employment in any way?

10 MR FITZGERALD: Effectively, it's a continuation of the status quo but formalisation of such. It doesn't offend in any way the Wage Fixing Principles of the commission in my submission. The variation date which Mr Miller has put to you, is the date of ratification which we hope to be today and we would consent to that as well.

I really have no further submissions to make, other than to support the application before you.

15 PRESIDENT: Yes. Mr Miller did say, date of decision. You're saying, date of approval by me. Are you happy with today's date? I wouldn't have thought there was a difficulty?

MR FITZGERALD: That's fine. No, it's just simply a formalisation. There shouldn't be any problems.

20 PRESIDENT: Yes. That being the case, if it doesn't worry you, Mr Miller, I'm prepared to indicate to the parties that the application to amend in the form contained in the application is approved and that the date of effect will be from today's date. Now, is there any impact on pay requirements or anything of that nature?

25 MR FITZGERALD: It's probably for me to answer that. I understand not, sir.

30 PRESIDENT: So today's date would be quite appropriate in all the circumstances. Thank you very much for your submissions. As indicated to you, the award will be varied as sought with effect from today's date.

The matter is concluded.

HEARING CONCLUDED