

**TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984

T No. 3789 of 1992

**IN THE MATTER OF** an application by the National Union of Workers, Tasmanian Branch to vary the Rubber Trades Award

re scope, supersession and savings, definitions, wage rates, allowances, annual leave, working hours, structural efficiency principle

T No. 3815 of 1992

**IN THE MATTER OF** an application by the Federated Clerks Union of Australia, Tasmanian Branch to vary the Rubber Trades Award

re implement new structure for clerical classifications, first minimum rates adjustment

T No. 3836 of 1992

**IN THE MATTER OF** an application by the National Union of Workers, Tasmanian Branch to vary the Rubber Trades Award

re increase wage rates and allowances by 2.5%

COMMISSIONER WATLING

HOBART, 15 April 1994  
continued from 12/4/94

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER WATLING: I'll take appearances please.

**MR D. STRICKLAND:** If the commission pleases, I appear on behalf of the National Union of Workers - STRICKLAND, D.

COMMISSIONER WATLING: Thank you.

**MRS H. DOWD:** If the commission pleases, I appear on behalf of the Australian Municipal Administrative Clerical and Services Union - DOWD, H.J.

**MR S. CLUES:** If it please the commission, I appear on behalf of the Tasmanian Chamber of Commerce and Industry - CLUES, S.

COMMISSIONER WATLING: Thanks, Mr Clues.

I understand, Mr Strickland, that you've made a request to reopen this matter because a couple of - a number - well a number of issues were left out of the hearing that we had a couple of days ago in relation to the restructuring of this award, and I understand that you want to pick up those matters that were inadvertently left out of exhibit TCCI.1.

**MR STRICKLAND:** Yes, Mr Commissioner, that's correct, and we would seek to replace exhibit TCCI.1 with a new document that reflects all the changes to - required as a result of a further review of the parties to bring the award completely up to modernisation.

COMMISSIONER WATLING: Right. So there are some things, I noticed - can I just say that this document that's on my desk - is this the document that you're talking about.

**MR STRICKLAND:** That's correct, yes.

COMMISSIONER WATLING: Right, well we might mark this exhibit S.2 - thank you. Now I notice in the document that it probably contains a couple of alterations to subject matters that aren't part of your application so do you want to amend your application to include all the subject matters that are raised in clause 3 - Arrangement?

**MR STRICKLAND:** Yes, Mr Commissioner.

COMMISSIONER WATLING: And that means that all those matters then would be before the commission as part of your application.

**MR STRICKLAND:** That's correct.

COMMISSIONER WATLING: Is there any objection to the application being amended to cover all the subject matters listed in that document.

MRS DOWD: No objection, Mr Commissioner.

MR CLUES: No objections, Mr Commissioner.

COMMISSIONER WATLING: Right. Well leave is granted to amend your application to cover all those subject matters. Are there any things in the exhibit that you specifically want to take me to?

MR STRICKLAND: Yes, there are a number of matters and if we could first of all turn to the scope clause of the award and the changes in S.2 by the deletion of the proviso contained within the award to clarify this award's industry coverage as opposed to the Automotive Industries Award and that will assist us in other matters before the commission as well.

COMMISSIONER WATLING: So what you're saying is this award then would be established in respect of the industry as listed in (a), (b) and (c), but it wouldn't be covering the sale of spare parts - that would be purely - and if tyres formed part of someone's operation in the process of selling spare parts, this award wouldn't include them - the Automotive Industries Award would.

MR STRICKLAND: Yes, if it was purely spare parts sales then the Automotive Industry Award would apply. In terms of tyre outlets, tyre fitters - then this would be the industry award.

COMMISSIONER WATLING: Yes, so where their business is really mainly selling of tyres, storing and distributing tyres and - and vulcanising and retreading, et cetera, and fitting, where their business operation was in the main that type of business, then they'd be covered by this award.

MR STRICKLAND: Yes. One - there is a change that's been further agreed that's not reflected in S.2 and that's on page 15 of the document - clause 12 - Compassionate Leave - and if we could amend that by adding 'grandchild'.

COMMISSIONER WATLING: Right, thank you.

MR STRICKLAND: The other - the - the - the main of the change in the document is to - to remove obsolete clauses in relation to implementation of the 38-hour week to make the award neuter general. In terms of superannuation - Occupational Superannuation - clause 21 - the document in - on page 23 - eligible employee - is still - are not consistent with the act. We were unable to -

COMMISSIONER WATLING: Yes. We did - I must say I did look for a set of words - I thought other awards of the commission might have been varied but at this stage I haven't been able to find the awards. I don't know whether the parties could assist me; I'd like to be consistent with the words that are

used.

MR STRICKLAND: We were unable as well to - to find that, that's why this document still reflects the - the old terminology and it's inconsistent with the Superannuation Act.

COMMISSIONER WATLING: Yes.

MR STRICKLAND: So I mean as -

COMMISSIONER WATLING: Well I'm happy to -

MR STRICKLAND: - we would prefer to see -

COMMISSIONER WATLING: - vary the award to make it consistent with that but I think that the parties might want to give me a set of words.

MR STRICKLAND: Well may be if we could take on board to - to forward to the commission -

COMMISSIONER WATLING: Yes.

MR STRICKLAND: - a replacement -

COMMISSIONER WATLING: For the eligibility.

MR STRICKLAND: - set of words for the eligibility of employees in terms of superannuation at our earliest convenience.

COMMISSIONER WATLING: Yes, if not sooner.

MR STRICKLAND: Yes, well we could probably do a little bit of work in regards to that and try and come up with an award that does have -

COMMISSIONER WATLING: Yes.

MR STRICKLAND: - that terminology in it.

COMMISSIONER WATLING: Our earliest convenience is the one just outside this door here.

MR STRICKLAND: Okay. And apart from - on page 48 of the document also in - in terms of -

MRS DOWD: It's clause 30 sick leave.

MR STRICKLAND: Mm?

MRS DOWD: Clause 30 - sick leave - a deletion of the obsolete provision there, just tidying up again from the change from 38 to 40 hours.

COMMISSIONER WATLING: Right.

MR STRICKLAND: So if we - we can forward to the commission replacement words for eligible employee, then I think this award would be purely up to speed in accordance with the restructured principle and it's just a matter of then the completion of the other three MRA's over a period of time. If the commission pleases.

COMMISSIONER WATLING: Right, now if all parties - you've distributed your exhibit S.1 to all parties?

MR STRICKLAND: Yes, Mr Commissioner.

COMMISSIONER WATLING: They have got a copy?

MR STRICKLAND: Yes, they all have a copy.

COMMISSIONER WATLING: And they've been through it. Now I know the other day when we were together, I did say to you that I'd give you an operative date from the 12th - is there any submission on that or should it now be the 15th - seeing that we've resumed - or are the parties happy to go along with the 15th?

MR STRICKLAND: Well from our point of view, the first full pay period on or after today's date - on or after the date of when we was last before the commission, it would be, in our submission, basically the same.

COMMISSIONER WATLING: Right. We'll just hear from the other parties. Mrs Dowd, you've seen the exhibit and you've been through it in terms of award restructuring and award modernisation, et cetera, and given I heard submissions the other day on the bulk of it that these are additional things - are you happy with the further alterations sought?

MRS DOWD: Yes, I am, Mr Commissioner. There was one that Mr Strickland didn't refer to which was a major change and that was the right of entry of union officials. We have now put it so that it's actually consistent with the act and the regulations.

COMMISSIONER WATLING: Good. Right.

MRS DOWD: There was another one in relation to the tyre servicemen in call outs. We have actually changed that to be the retail - the retail tyre worker level 2, and we have actually stipulated what his duties are when he's on a call out in relation to fitting pneumatic and/or solid tyres.

COMMISSIONER WATLING: Right.

MRS DOWD: They're the major changes that Mr Strickland omitted to mention. If the commission pleases.

COMMISSIONER WATLING: Good, thank you. Mr Clues, have you any further submissions to put in relation to this exhibit?

MR CLUES: In relation to the reference made to the scope clause, the TCI would simply indicate that it has always been our understanding that the Rubber Trades Award applies to those instances identified in the scope clause, namely where peoples principal business is that of rubber trade dealing with the sale or storing or alike of rubber tyres and that they may be involved in the incidental sale of products, but that doesn't make them come under the Automotive Industries Award.

Likewise the Automotive Industries Award does not have application where - I'm sorry - the Rubber Trades Award doesn't have application where the principal business of the employer is that of selling spare parts and automotive accessories and they may as a part of that range have tyres, in which case the Automotive Industries Award would take preference, i.e., a service station that principally sells petrol and lubricants and alike, and they may have a rack of tyres out the front - that doesn't make them come under the Rubber Trades Award.

COMMISSIONER WATLING: Well I agree with that view.

MR CLUES: Thank you. It's one that I think the NUW and the TCI have no difficulty in accepting and it's unfortunate if there's been any confusion in relation to that issue and I believe the amendments suggested will ensure that there isn't any confusion in the future.

As to the remainder of the changes, they seem merely procedural and I have had the benefit of going through those in a meeting yesterday with the union and I've also had the ability to have a brief look at the document today and I believe it's in accordance with those discussions. As to the operative date, I would accept the operative date be the first full pay period on or after today's date. If the commission pleases.

COMMISSIONER WATLING: Right. And I take it that you'll be involved in getting back to me very quickly on that clause in relation to eligibility for superannuation.

MR CLUES: Yes, I think there needs to be - in a - in a general way I think there needs to be a review of all superannuation provisions within the state commission because

COMMISSIONER WATLING: Well I - I don't disagree with that all; in fact it's probably something that could be covered by the - a general application varying the eligibility clause in all awards, but of course that - we can't initiate that.

MR CLUES: Well it's not just the eligibility clause, Mr Commissioner. I mean an employer looking at that award may think he only has an obligation for 3% - it's now four and 5% from any employers under the Superannuation Guarantee Legislation.

COMMISSIONER WATLING: Well it is - it is from 1st July isn't it?

MR CLUES: That's correct.

COMMISSIONER WATLING: And we -

MR CLUES: And depending on your payroll it may have been earlier.

COMMISSIONER WATLING: Yes.

MR CLUES: So I'd suggest that -

COMMISSIONER WATLING: The matter has been discussed of course the last time it came before the Federal Commission and - as part of the review of the wage fixing principles and there was a major submission presented by employers that it should be removed from all awards, however the commission at that time decided not to - not to do that. However, that's not to say that in the future that the whole issue might not be discussed.

MR CLUES: Given the nature of the legislation that it - it is changing and I think it will be subject to further amendments, I believe that probably one of the simplest resolutions may be to refer to the act within the award so that employers are aware there is a superannuation obligation and that requires them then to make the relevant investigations as to whether it's three, four or 5% as to what eligibility criteria are and which fund is appropriate to use. I don't believe - I don't believe that given the introduction of that legislation that the award could hope to keep - keep up - keep up with the changes in the legislation and therefore a simple reference to that legislation would probably be the appropriate way to go. But that's just speculation at this point in time. It's something maybe the TCI can initiate in terms of putting in an application to cover all commonlaw awards.

COMMISSIONER WATLING: I've just been handed this clause that we've been talking about. It appears in the Optical Industry. We might just go off the record for a moment.

OFF THE RECORD

COMMISSIONER WATLING: Mr Clues, have you anything further to add?

MR CLUES: No, Mr Commissioner.

COMMISSIONER WATLING: Right. Any right of reply? Right. Well are we happy about the operative date from today then?

MR STRICKLAND: Yes, Mr Commissioner.

COMMISSIONER WATLING: Right. And I can indicate to you that there will be a very speedy decision and order rising out of this so you shouldn't have to wait for it for very long.

Thank you for your submissions and this matter is now closed.

HEARING CONCLUDED