

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T Nos 4837, 4838 and
4839 of 1994

IN THE MATTER OF applications by
the Tasmanian Chamber of Commerce
and Industry Limited to vary the
Licensed Clubs Award; the Hotels,
Resorts, Hospitality and Motels
Award; and the Restaurant Keepers
Award

re shift loadings and penalty
rates

COMMISSIONER IMLACH

HOBART, 23 May 1994

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER IMLACH: I'll take appearances.

MR S. CLUES: Mr Commissioner, I appear on behalf of the Tasmanian Chamber of Commerce and Industry - CLUES, S.

COMMISSIONER IMLACH: Thanks, Mr Clues.

MR D. CROSSIN: CROSSIN - I appear on behalf of the Registered Clubs Association.

COMMISSIONER IMLACH: Thanks, Mr Crossin.

MS H. HUDSON: HUDSON, HELEN, Mr Commissioner, representing Australian Liquor, Hospitality and Miscellaneous Workers Union.

COMMISSIONER IMLACH: Thanks, Ms Hudson.

MS C. HUXTABLE: CHRISTINE HUXTABLE for the LHMU. Thank you.

COMMISSIONER IMLACH: Thanks, Ms Huxtable. Well, Mr Clues?

MR CLUES: Mr Commissioner, the applications before you today essentially seek to vary the three hospitality awards, namely the Hotels, Resorts, Hospitality and Motels Award, Licensed Clubs Award and the Restaurant Keepers Award.

The applications seek to reduce penalty rates applying on Saturdays and Sundays and into increase shift premiums consistently for variations in the federal award known as the the Hotels, Resorts and Hospitality Industry Award 1992.

It was my intention to come before this commission today and have the award varied either by arbitration or by conciliation, however following some discussions with the union we are prepared to concede to request that they will be making that the application be adjourned. However before conceding that, I would like to make some points in relation to why the application is before the commission and why we're agreeing to an adjournment. I'll do so by way of overview - by way of overview - as opposed to going into a lot of detail.

Essentially the primary justifications for the variation is that there's always been argued that the state hospitality industry awards have a direct nexus with the federal Hotels Award. The union have relied upon this nexus for nearly every award variation that I've been associated with. By way of example it's as a result of this nexus that the three awards of this jurisdiction have a very common career path; the wage relativities are identical and all of those you will find have a direct nexus with the federal Hotels Award, and this nexus has been recognised by the commission in the past in its decisions and in its justification for variations that have been sought by the union.

Given the federal award has now been varied to reduce penalty rates that we consider and was considered by the Australian Industrial Relations Commission to have a punitive effect on weekend trading, we see no reason why the nexus between the awards should not be followed through on this occasion. In fact at this point in time persons operating under the state system are currently at a competitive disadvantage to those who operate under the federal system.

The second body of argument that needs to be considered goes to undertakings given by the union during the structural efficiency exercise. During that process the TCI sought to reduce penalty rates on the weekend and the union wanted to increase shift premiums. Both parties agreed to put the issue of premiums and the reduction penalties to one side and await the outcome of the federal decision of the Australian Industrial Relations Commission which had those issues before it.

The union, on the record, gave an undertaking to accept that federal decision sight unseen and those variations that came out of that decision to have them applied to the state system. It was as a result of that undertaking that the union have gained several wage increases without actually completing the structural efficiency exercise and those include the second structural efficiency increase, four minimum rate adjustments and the 2.1/2% and the recent \$8 state wage increase.

Mr Commissioner, the Australian Industrial Relations Commission has handed down its decision and it went in the employers favour. Now I didn't expect the union to actually put in the application to see the reduction in penalty rates, but what I do expect is that undertaking to be honoured and to continue the observance of the nexus between the federal award that has to date served them so well.

Having provided the commission with a background as to why I believe the application is so important to the TCI and those whom we represent, I must indicate the TCI has agreed at the union's request to have these proceedings adjourned. Our agreement was not easily secured. The union in conjunction with the ACTU approached the TCCI and sought a meeting to discuss our application and without going into specific details the union believe that they can develop an alternative strategy for our consideration which will deliver equal if not better results. The TCI is prepared to explore any alternative options. However, if it - if it transpires that the alternate proposal does not satisfy our members and they direct us to pursue the application that we have before the commission today, then that is exactly what we shall do.

We would be very disappointed if the offer that has been made by the union represents just a delaying exercise in these

proceedings, and we will take that offer that they've made on face value provided that it is also taken that they take on board my comments here today, that our members are currently being disadvantaged and that we will not allow this position to continue indefinitely based on a wish and a promise for a better deal from the union.

Having made that point, I indicate that if the union still wish to proceed to have this matter adjourned today then we will concede to that request. If the commission pleases.

COMMISSIONER IMLACH: Thanks, Mr Clues. Mr Crossin?

MR CROSSIN: Yes, Mr Commissioner, well our - my association agrees with my fellow delegate here. In regards we - we feel that in the last two or 3 years it's been all taken, given regards to unions, we have not over the last 2 years or almost 3 years now, objected to any increase that's been made by the union and as in the transcript of the proceedings of March '91, the union agreed that - that we should follow national standards and they said, to quote them, they would cop - they'd cop the federal decision sight unseen.

Well that decision has been made, Mr Commissioner, and we believe that the union should uphold the agreement which they made back in 1991. Thank you very much.

COMMISSIONER IMLACH: Thanks, Mr Crossin. Ms Huxtable?

MS HUXTABLE: Thank you, Mr Commissioner. Yes, I can confirm that the union's position is that we are seeking an adjournment to these proceedings and I understand we have TCI's agreement for that. In fact we had a meeting on Thursday of last week and - and I understood that the agreement - that we - after some I suppose quite lengthy negotiations, I thought we had agreed to actually postpone this morning's hearing, so I'm certainly - hope that our negotiations in the future are a little bit clearer. I didn't think there was any need to appear here this morning, but obviously that's a misunderstanding and I apologise for the delay in the proceedings, but that was my understanding that - that the - this morning's hearing would be postponed as the hearing date on the 11th was postponed.

However, we're here now and - but I do apologise for the delay. Yes - I think that's all I have to say at this stage.

COMMISSIONER IMLACH: Thanks, Ms Huxtable. Ms Hudson? You're with Ms Huxtable are you?

MS HUDSON: Yes.

COMMISSIONER IMLACH: Right. Alright, well as the parties are agreed there will be an adjournment or to seek an

adjournment far be it for me to interfere with that, but I look forward to a return in reasonably quick time so that this matter is settled. My knowledge to date, without prejudice to the submissions, is that it is overdue for attention one way or the other. So I'll hear from the parties I hope within the near future as to the next hearing proposed date. Alright?

This matter is adjourned.

HEARING ADJOURNED