

IN THE TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 2316 of 1990

IN THE MATTER OF an application by
the Association of Draughting,
Supervisory and Technical
Employees, Tasmanian Branch to
vary the Surveyors (Private
Industry) Award

re Initiation of a program to
restructure the award

COMMISSIONER GOZZI

Hobart, 3 December 1990
Continued from 19/10/90

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER GOZZI: There being no changes in appearances, who would like to go first? Mr Abey?

MR ABEY: Thank you, Mr Commissioner. I am pleased to report that, I think and I hope, that proceedings will be somewhat more amicable today than they may have been on the last occasion.

COMMISSIONER GOZZI: Well, that depends what ...

MR ABEY: Well, I am only speaking from this side of the bar table. I can't speak for the other side. Since the last occasion, we have had a further meeting and I am able to report that we have reached an accommodation which, in our view, would justify a second stage structural efficiency adjustment. If I may table a document.

COMMISSIONER GOZZI: I think that is TCI.1, isn't it, Mr Abey?

MR ABEY: I think it is.

COMMISSIONER GOZZI: Yes, TCI.1.

MR ABEY: If I may take you through the document. The first one deals with the question of the classification structure and, as reported to you on a previous occasion, the parties are agreed to establish a working party for ongoing negotiations on the classification structure. That working party would also examine aspects relating to training and further development and the vexed question of the minimum rates adjustment.

On the contract of employment, the first item deals with employees performing or agreeing to undertake a wider range of tasks and duties provided they are competent and trained to carry out such duties. The second part of the contract of employment builds in a suspension clause. You will note that the suspension clause has all the necessary protections, in that the union must be advised in advance if he is available, and that there is a right of review by this Commission if it is deemed to be harsh and unjust.

In relation to sick leave it was agreed that during the first 3 months sick leave will accrue on the basis of 6.1/3 hours for each completed month. It is a relatively common clause in awards of this Commission.

Over the page, we have agreed to introduce a new clause relating to disputes and grievance procedure. It is self-explanatory. We are proposing to introduce a new clause titled 'Enterprise Flexibility'. I believe the Commission would be aware of or familiar with the wording of this particular clause. It is in fact identical to that which has been negotiated, if I can use that term, in another place.

COMMISSIONER GOZZI: How do you see the enterprise flexibility agreement actually working in practice, the way it is there?

MR ABEY: Well, you know, I don't have to indicate it is not our preferred option, and our preferred option is as we were before.

COMMISSIONER GOZZI: Yes.

MR ABEY: But having said that, if that is the best we can do, then we are prepared to live with it as an interim measure. But I would foreshadow that I have already taken steps to seek a legislative change ... we have already taken steps to seek a legislative change to recognise the emergence of enterprise agreements and to seek a facilitative arrangement within the Act to accommodate this emerging trend.

If I can read the green at all, I am convinced that in the wage fixation systems in the foreseeable future, enterprise agreements are going to form a very important part of it, and I believe it is important that all awards have provisions to reflect not just the now, but what will be the case in the foreseeable future.

Now, I don't seek to pretend that this award is anything other than very flexible as it stands, and I have said before that I believe it was ahead of its time when it was created. So I suppose I wouldn't envisage that the Commission will be swamped with enterprise flexibility agreements pursuant to this clause, although we have instanced examples - I think when we were before you last - where the sort of thing that might be used is where a graduate surveyor has to go and do special projects to become licensed, which involves doing projects for the surveyor's board whilst still in the employ of an employer. Perhaps those sort of situations could be covered by enterprise agreements.

COMMISSIONER GOZZI: Mr Abey, I must say I'm on all fours with your comments about enterprise agreements probably forming a much greater part of wage negotiation than industrial regulation in industry than it has in the past, if indeed that is going to be the case. And as I say, I think it will be.

It might be worthwhile for the TCI, and you're probably doing this anyway, to consider what approach it ought adopt in respect of these matters on the next occasion that the State Wage Bench meets, whenever that will be. But I would certainly see a need for some pronouncements to be made in the State Wage Case, whoever that Bench ... or however that Bench is going to be constituted, because I think legislative changes will probably still take some time to run. I mean, that's only an opinion, it could be a lot quicker than I anticipate. But given the range of initiatives that people are proposing to vary the Act and amend it et cetera, you know, it could take another 12 months. Hopefully not, but ...

MR ABEY: Well, hopefully not. But reviews of legislation invariably take a lot longer than is anticipated. And I take your point, that certainly it would be an issue that would ... we would propose to address in the next National Wage Case, whenever that might be.

COMMISSIONER GOZZI: Yes. I think you know ...

MR ABEY: I think in hindsight it perhaps should have happened last time, but we didn't anticipate that this would come the hot potato that it has.

COMMISSIONER GOZZI: Anyway this current format is the subject of ... or has been included in some other awards, or one other award at least anyway.

MR ABEY: Yes. I think it has, yes.

Item 6; we've taken on board what Mr Baker has had to say about difficulties in recruiting membership. And whilst it goes against the grain to ... somewhat to introduce preference clauses, on this occasion we are prepared to do so. We have had a good relationship with the ADSTE since this award has been created and we're anxious to see that continue. And I would hope that the hiccup that we had on the last occasion we were before you is the exception rather than the rule, and that is why we're prepared to introduce a preference clause in the manner which we have in item 6.

COMMISSIONER GOZZI: Of course you're aware, as Mr Baker is, that preference has been the subject of quite some discussion in the Commission. A matter has been before Commission Imlach and I think he's referred it to the President with a view of him forming a full bench on it. And the other aspect with it is that some legislative amendments are also contemplated in respect of that section in the Act.

The way the preference clause currently reads is, of course, in my opinion, outside the scope of the Act. In fact ultra vires the Act, insofar as it requires a person to remain a financial member - I mean, in the context of the Act - and

there is no compulsion. And I'm not sure that you can compel someone to remain a financial member anyway, if that person decides to resign in accordance with the rules of the organisation.

MR ABEY: Well, I don't think you ...

COMMISSIONER GOZZI: I haven't seen the ADSTE rules, but most rules that I've seen provide a mechanism for resignation.

MR ABEY: Well, I think you're right, Mr Commissioner. The clause we're proposing requires someone to give an undertaking in writing to become and remain. It's an undertaking. I don't suppose anyone could say that you shall forever thereafter honour that undertaking. If there is some better wording, perhaps to become a member. But that's up to Mr Baker. I'm relaxed with that wording, it appears in a number of awards. And I think I ...

COMMISSIONER GOZZI: Yes. Look, I've put it in some awards, that very sort of wording, by consent. And it's been brought to my attention, not that I wasn't aware of it beforehand, that that wording poses some difficulty as far as the Act is concerned. And given that there are amendments to the Act foreshadowed and that the matter could go to a full bench, I'd be quite happy, subject to Mr Baker's agreement, to hold that matter over until such time as those discussions and the amendments, whatever they may be, are made.

MR ABEY: Well, that's up to Mr Baker.

COMMISSIONER GOZZI: Yes, I'll take that up with Mr Baker in a moment.

MR ABEY: Having said that, Mr Commissioner, we are of the view that the proposals are sufficient, given the nature of this award, to justify a second SEP payment. There is an agreed operative date of 1 January 1991. And I have ...

COMMISSIONER GOZZI: The first pay period?

MR ABEY: The first pay period, yes.

COMMISSIONER GOZZI: Yes.

MR ABEY: To commence on or after. I have done the calculations in a rough sort of manner, which I will hand up ...

COMMISSIONER GOZZI: Exhibit TCI.2.

MR ABEY: ... which I think is still subject to checking by ADSTE. If the Commission pleases.

COMMISSIONER GOZZI: Thank you, Mr Abey. Now, Mr Baker.

MR BAKER: Well, sir, turning to the next question first, insofar as the preference is concerned and I'm well aware that the enquiry that Commissioner Imlach has in fact been conducting, I'm also aware, as you rightly indicate, the matter has been referred to the Full Bench for consideration, but ...

COMMISSIONER GOZZI: Well it's then referred to the President, not to the full bench yet.

MR BAKER: I'm sorry, yes.

COMMISSIONER GOZZI: Yes.

MR BAKER: One step in front of him ... that our position would be that we would like to see the clause inserted into the award. The association would not be opposed that the clause contains some form of appendix such as that the clause was subject to a ... that the clause may be subject to a decision - future decision - of the Commission insofar as it relates to preference, but I make the point ... I make that point, sir, because in our opinion it goes hand in hand with the contract of employment clause as proposed within clause 13. Now I don't believe ... well I mean this is why we had the argument on the last occasion ...

COMMISSIONER GOZZI: Fair enough.

MR BAKER: ... that we could not accept clause 13(d) being inserted without the new clause 6.

COMMISSIONER GOZZI: Well I think the two can stand alone. I mean I take the point that if any employer is going to be suspended by an employer, that that person would seek the ... some discussion with his or her union, in this case being ADSTE. I'm just concerned in respect of preference that the clause doesn't sit squarely with the provisions of the Act.

MR BAKER: Well the clause currently exists in a number of awards of this Commission. Now you made the point yourself that you have in fact inserted a clause or similar words like that on a prior occasion ...

COMMISSIONER GOZZI: Oh, about 5 ... about 4 or 5 years ago.

MR BAKER: I suppose we're in one of those situations whereby we would like to sort of see the whole thing up and running early in January. Now the odds are that Commissioner Imlach's reference to the President concern the issue of preference in those discussions that he's being having are not going to be finalised until sometime after these clauses are up and running.

COMMISSIONER GOZZI: Well you're also aware that the TTLC has got a view about this type of clause and the Act generally, and as recent ... you know ... this Friday I think, or Thursday, there's a meeting of interested parties and the Commission is not going to be involved there, but the Commission has obviously got a view and no doubt that's going to be one that matters on the agenda.

MR BAKER: Well as I said, I'm ... you know, I'm quite happy to sort of have some wordings ... words that would go in as an addendum to the clause that would be subject to review.

COMMISSIONER GOZZI: I mean I'm quite happy to put it in on the basis of giving you leave reserved to put it ... to have the preference and have just leave reserved to pick it up.

MR BAKER: I don't really think that means too much.

COMMISSIONER GOZZI: Well it does.

MR BAKER: Well I make ... well, as I said, sir, the hang-up with it was before that, you know, that new clause 13 - Contract of Employment, was going into the award as it was.

COMMISSIONER GOZZI: Right.

MR BAKER: Now I expressed my concerns about it at the time and Mr Abey and myself, you know, the agreement was that we would put the preference clause in which would be the safeguard I suppose to the clause. Now we'd have to sort of, you know, walk away and review our position insofar as the award itself is concerned. I mean we're very mindful of course, is that, you know, we want to get the 3% into peoples pockets and that's our other concern.

COMMISSIONER GOZZI: Yes, and I don't want to frustrate the exercise either, but I'm just indicating the way it currently is, I'm going to have a problem with it. Now there are other wordings around that you could perhaps look at or you could leave it to me as part of this determination or this decision to either propose the words that the Commission might not have any difficulties with or simply ... it's a discretion I have anyway put it on the reserve list. I just want to indicate up front what the situation is in respect of that particular clause.

MR BAKER: Can we go off the record for a moment?

COMMISSIONER GOZZI: Yes, sure.

OFF THE RECORD

COMMISSIONER GOZZI: Mr Baker?

MR BAKER: In respect to the other matter, sir, there have been some discussions between the parties concerning the new classification structure. Those discussions will be based upon the document which the association previously tendered to this Commission. That documentation has undergone some fine tuning. And I will be making available to the employers prior to Christmas, a revised document, insofar as relates to the new classification structure, which we hope to have before this Commission in March/April of next year, together with the new salary structure and also the minimum rates adjustments schedule, which may cause some heartache between the parties.

But other than that, sir, I would suggest that the parties have in fact negotiated the settlement in accordance with the structural efficiency principle, and would ask that the 3% be granted to employees under this award from the first pay period on or after 1 January.

COMMISSIONER GOZZI: Right, thank you, Mr Baker. Mr Abey, anything else?

MR ABEY: No.

COMMISSIONER GOZZI: All right. In the circumstances the variation will be made operative from the date requested. The decision and order will issue in due course. These proceedings are concluded. Thank you.

HEARING CONCLUDED