

IN THE TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

S.23 application for award or variations of award

Tasmanian Public Service Association
(T.2324 of 1990)

and

The Minister Administering the Tasmanian State Service Act

General Conditions of Service Award

COMMISSIONER R K GOZZI

HOBART 4 December 1990

Camping Outlay Allowance

REASONS FOR DECISION

In this matter the Tasmanian Public Service Association (the Association) sought the variation of Clause 8.I. - Camp Allowance of the General Conditions of Service Award by including a new subclause 8.I.1.1 in the following terms:

"1.1 Camping Outlay Allowance

Where an employee is entitled to be paid a camping allowance in accordance with Clause 8.I.1, the employee should be entitled to be reimbursed the cost of victuals purchased by the employee for consumption on that camping trip to an upper limit of \$30.00 per day.

Such allowance in excess of the rate set down in this subclause may be paid if on the determination of the controlling authority concerned, special circumstances exist which justify the excess."

Association's Case

Mr Miller appearing for the Association said he was seeking the Camping Outlay Allowance because employees incurred extra food provisioning costs when undertaking camping. To offset those costs Mr Miller submitted that the proposed allowance would facilitate the reimbursement, to a maximum of \$30 a day, extra expenses associated with the purchase of food consumed by employees on camping duties.

Mr Miller was emphatic that the existing Camp Allowance does not provide for reimbursement of any additional food costs incurred by employees.

I was informed by the Association that employees required to camp take with them all of the necessary equipment and provisions for the duration of their stay. Mr Miller submitted that:

"Those persons we're talking about are taking with them all the materials required for their sojourn in the bush. That is food, bedding, tents, clothing, all the necessities that they deem that they need...plus whatever tools...required to carry out their functions.

This would entail, in a lot of instances, carrying their gear over rough terrain, through wet conditions and in some cases, in very adverse weather conditions.

And it is those very factors, those very factors of the adverse conditions, rough terrain, humping their own gear, that the present camping allowance is...being paid."

Underlining mine

Transcript p.11

Having regard to those submissions it was evident from Exhibit TPSA 3, an extract from the Government Gazette dated 1 December 1970, that Camp Allowance was framed in such a way as to separately specify special allowance available to employees subject to approval by the controlling authority.

Exhibit TPSA 3 is reproduced hereunder to demonstrate that the disabilities referred to by Mr Miller were identified separately in subclause (2).

"C. Camp Allowances

(1) Where the duties of an officer require his attendance in any locality where boarding facilities are not available, and tents or other means of accommodation are provided, and he is absent from his normal place of residence, he shall be paid a camp allowance in accordance with the following rates, viz:-

	<i>Rates Per Day</i>
	<i>\$</i>
<i>(a) Where a cook is provided</i>	<i>1.75</i>
<i>(b) Where a cook is not provided</i>	<i>2.10</i>

(2) Where special conditions actually obtain, an officer, in addition to the abovementioned camping allowance, may, on the recommendation of the permanent head of his department, and with the approval of the controlling authority concerned, be paid one or more of the following special allowances, viz:-

- (a) *For work performed under circumstances requiring an officer to carry his tent and equipment on his back, and/or sleep on the ground, and move constantly from place to place, an allowance at a rate not exceeding fifty cents per day;*
- (b) *For work performed under unusually severe climatic conditions, an allowance at a rate not exceeding thirty cents per day;*
- (c) *For work performed over exceptionally rough terrain, an allowance at a rate not exceeding thirty cents per day."*

Exhibit TPSA 3

In May 1974 the special allowances referred to in 2(a) (b) and (c) above, were subsumed into the camp allowance categories of "where a cook is provided" and "where a cook is not provided".

That is the disabilities previously identified separately ceased to be so specified.

Exhibit TPSA 4 makes it clear that the allowance applicable post May 1974, i.e. the "cook provided" and "where cook is not provided" allowances were inclusive of all "special conditions".

The wording included in the award from May 1974 to date stipulates that Camp Allowance:

"...to be inclusive of all special conditions such as the carrying of tents, equipment, travelling over rough terrain and for work performed in severe climatic conditions."

Exhibit TPSA 4

Mr Miller also brought to the attention of the Commission the Sea Victualling Allowance, an allowance for food provisioning contained in the Sea Fisheries Award.

In addition to that allowance employees can avail of a Sea Going Allowance. That allowance, submitted Mr Miller, is commonly termed the hardlying allowance and is a disability allowance to compensate for going to sea and being away overnight and sleeping on board a particular vessel.

I was also referred to the Police Award which contains a "Camp Allowances" provision for purposes of payment of a camp allowance where employees are required to camp or, if required to proceed to sea, for sea victualling.

Mr Miller submitted that camping allowance in the Police Award does not contain a component for food costs because the award contains a provision for the payment of meal money when camping is undertaken.

In respect of the award comparisons made by Mr Miller, these were of interest but can have no authoritative influence given the dicta of the current Wage Fixing Principles.

The considerations going to the Wage Fixing principles germane to the Association's application relate to the Allowances Principle and specifically that part dealing with New Allowances. Comparative wage or conditions justice considerations are proscribed.

However of relevance to the overall thrust of the submissions made by Mr Miller were the food lists provided in Exhibit TPSA 11. These lists (List No. 1 and List No. 2) were said to be indicative of the type of foodstuffs taken on camping trips and costs incurred.

Food List No. 1 was intended to demonstrate the cost of food for an employee making his own way to an initial camp site from which he or she moves to other camp locations. The route taken may be circuitous and finish at the first camp location or alternatively at some other subsequent pick-up point.

Food List No. 2 related to those employees driven or taken to a particular camp site by helicopter. The camp site in those circumstances remained the base location from which daily trips are made into the field.

The Association predicted their claim for a camping outlay allowance on a camping trip taking 10 days on average. Using the costs for Food Lists No. 1 and No. 2 an average daily cost was produced.

The examples provided by the Association in Exhibit TPSA 11 were as follows:

Food List No. 1

10 Day Spread	
Total Cost of Food	<u>\$172.08</u>
	9

Divided by 9
i.e. 9 breakfasts, lunches and dinners
Daily Allowance \$19.90

Food List No. 2

10 Day Spread	
Total Cost of Food	<u>\$181.11</u>
	9

Daily Allowance \$20.12

In support of the information contained in Exhibit TPSA 11 (Food Lists No. 1 and 2) the Association deduced evidence from two witnesses.

Without canvassing the full extent of the evidence presented, the nub of it was that the employees concerned said that when provisioning for a camping trip, their expenditure on food was higher than when they did not camp.

Whilst I accept totally the veracity of that evidence it must be balanced against the outcome of cross examination where Mr Pearce, appearing for the Minister Administering the Tasmanian State Service Act, 1984 (the Minister) established that the employees concerned were not able to give any estimate of what their costs were when not camping.

Mr Pearce said:

"It follows, and you have indicated, that, reasonably speaking, it would cost you \$15.00 to \$18.00 for the cost of food whilst you were camping, and yet, do I take you correctly to say that you can't give the Commission or myself any indication whatsoever as to what it costs you to feed yourself whilst you are in a home situation on a weekly basis."

Witness: That is correct."

Transcript p.63

Mr Pearce also established in cross examination that in respect of many items in the food lists, there would be a residue of food stuffs, materials and other commodities which would be capable of use on subsequent camping trips or in the home.

Items that could fall into this category included washing up liquid, scourers, toothpaste, soap, insect repellent, matches, tea and or coffee.

Evidence was also given on behalf of the Association by Mr Gill, a Nutrition Officer with the Department of Health who stated that in a field situation a person's food requirements would be between one and a half to twice the amount required to that of a person in a sedentary position.

Mr Gill acknowledged that the information he was providing to the Commission was very broad. He used as a datum point armed forces rations which are set at three times the level of a sedentary adult.

In respect of that evidence Mr Pearce validly submitted that those involved in camping would not in many cases carry out sedentary work when not camping.

Minister's Case

Mr Pearce commenced his submissions by acknowledging that the New Allowances Principle was relevant in this case. He emphasised that this Principle permitted the awarding of a new allowance "where appropriate". He said:

"It is our position that the TPSA have failed to discharge what we submit to be an onus, and heavy onus at that, of reversing the traditional position of employee provisioning to that of employer provisioning as it is sought.

In those circumstances we contend that with regard to the principle it would not be appropriate to award the new allowance."

Transcript p.125

Considerable background material relevant to camping allowance was provided by Mr Pearce.

In that context Exhibit P2 (Standing Instruction No. 10) referred to an interpretation made by the Public Service Tribunal in October 1963.

In that particular Standing Instruction, apart from reference to the interpretation, the following statement was made:

"Camp allowance is compensation for the *"disabilities and discomforts and the additional work and expense involved in living under relatively primitive conditions in somewhat rough and improvised accommodation."*

Underlining mine

Transcript p.130

Mr Pearce submitted that it is reasonable to assume that the above words in italics and which I have underlined, are a direct lift from the 1963 interpretation of the Public Service Tribunal.

The significance of the submission by Mr Pearce was of course to demonstrate to the Commission that camping allowance does contain an amount, albeit unspecified, for "expenses involved" in camping.

Mr Pearce further developed this aspect by indicating that when the camping allowance was consolidated in May 1974 the introductory words in the consolidated allowance were not altered.

Because of this, submitted Mr Pearce, the meaning as per the 1963 interpretation should be attributed to those words. As indicated previously, that interpretation supported the notion that the allowance included a component for expenses. Mr Pearce said that the Minister should be able to continue to rely on that interpretation.

There are two issues that arise here. The first is that this matter is now before me on the basis of merit argument and submissions.

The second issue is that the background material provided by Mr Pearce, whilst supporting the thrust of the position of the Minister, does not enable a definitive amount to be isolated which may be attributable to food costs.

Obviously I am concerned to satisfy myself that any prospect of double counting is avoided.

In endeavouring to further analyse the issues comments made in transcript by Commissioner L A Koerbin, as he then was, in Public Service Board proceedings¹. appear to leave no room for doubt that food costs are not comprehended in camping allowance. He said:

"I reject out of hand the suggestion that food costs play any part whatsoever in the camp allowance".

*Transcript p.27
A359 and A364 of 1975*

However Mr Pearce saw it differently. He requested that I consider some later comments made by Commissioner Koerbin and in particular where the Commissioner said:

"Well, had you been submitting that because movements in the Consumer Price Index - the purchasing price of that disability allowance, if I could put it that way, has obviously diminished, then I think it would be a valid argument."

*Transcript p.27
A359 and A364 of 1975*

Mr Pearce submitted that the Commissioner's words should be taken to mean that the value of camping allowance had diminished against relative movements in the Consumer Price Index and accordingly its purchasing power had lessened.

Notwithstanding, Mr Pearce said that camping allowance had been regularly adjusted (Exhibit P9) to keep abreast of economic movements and as such its

1. Exhibit TPSA 7 - Applications A359 and A364 of 1975

value had remained relative. Accordingly he submitted that there was no justification for any adjustment of the Camping Allowance provisions.

Mr Pearce also directed the Commission to a number of decisions which he considered to support his submissions that the allowance already takes into account, inter alia, food purchasing costs.

In a matter related to the Railways, Traffic Permanent Way and Signalling Wages Staff Award 1952 Conciliation Commissioner Curtin said:

"I think I should add however that I am satisfied that the camping allowance has been fixed in the past with full recognition of such factors as camping disabilities; regard to prescriptions of other awards; decrease of purchasing value of the allowance, food wastage, replacement of utensils; the period an employee is camped which in my opinion is a fact (dependent however on the differing conditions affecting the home budgeting involved) and such other contributions made by the employer as mentioned by Mr Farnsworth."

Underlining mine

79 CAR at p.451

Having regard to the thrust of the comments in the above decision Mr Pearce contended that this supported the Minister's case that food expenses form a part of camping allowance.

A further plank in the submissions of Mr Pearce was that "employees provide for self and family needs through wages or salaries which have an inbuilt needs component".².

In analysing that part of the submissions made on behalf of the Minister, reference to comments made in matter CP 76 of 1970 by Mr K West, who was Chairman of the then Public Service Tribunal are relevant. He said:

"There is an allowance which is put there for special purposes and the greatest of those purposes is the disability of living in a camp and the disability of living in a camp is occasioned by the fact that you have got to do these chores to which you refer. If you didn't have to do those chores why should you get an allowance at all because the question of your food was already taken care of in the wage which is provided for your work which has a cost of living component which you can't get twice."

Underlining mine

Exhibit P3 at p.13

In an AWU camping allowance judgement Dethridge C J made the point that camping allowance:

"...should be deemed to be given chiefly to compensate workers for the roughness of conditions usually indicative to living in a camp and not as an addition to the basic wage which has to be made in order to enable the worker in camp to obtain sustenance."

Underlining mine

39 CAR p.866

Mr Pearce submitted that self provisioning was and continues to be an inherent factor in wages and salaries.

He referred to the Harvester judgement³. which he said was based on a needs assessment of a working man, wife and three children. Mr Pearce submitted:

"The basic wage remained as the cornerstone of wage fixation, a rate below which no employer could pay until the National Wage Case of 1966 - 118 CAR at 658 - in which the total wage was developed, and a new concept - the minimum wage - developed.

Its purpose, of course, was to provide protection to those whose needs are greatest, namely, those whose take-home pay would otherwise be below the standard assessed by the Commission.

It is our submission that any current wage or salary above the minimum wage has as its primary starting point the minimum wage.

The minimum wage is needs based, hence our position in proceedings to date that as the salary includes a needs component, as needs relate to food and clothing etc. as minimum basic requirements, that the employer to then further provide for the cost of provisioning is, in essence, double counting."

Transcript p.158/159

Decision

I have carefully examined and analysed the evidence, exhibits and submissions placed before the Commission.

Having regard to the substantial amount of historical information provided it is reasonable to conclude that camping allowance does contain a component for food expenses.

3. 2 CAR p.1

From the inception of Camping Allowance up to May 1974 when camping allowance was formatted differently through the inclusion of the special allowances in the rates for where a cook is provided and where a cook is not provided, it is open to conclude that an expense or an element for food was included in the cook and non cook rates. And further that this food component was maintained in the overall allowance.

It is realistic to reach the conclusion, that the disabilities associated with camping were comprehended in the "special allowances" pre May 1974 when they were subsumed.

Confusions do arise however when regard is had for the categoric statement made by the then Commissioner Koerbin in 1975 (Exhibit TPSA 7) where he said that food costs were not a part of camping allowance.

The subsequent qualifications provided by Mr Pearce, which I have canvassed previously in this decision I believe provide the correct focus for those remarks. Importantly the comments made by the Commissioner refer to a disability allowance and the purchasing capacity of that disability allowance.

This matter may be further analysed having regard to the submission which go to the inclusion of a needs component for provisioning being included in salaries and wages.

The submissions of Mr Pearce on that issue are wholly accepted by me.

That being the case the question really becomes one of reimbursement of demonstrable additional costs incurred when camping.

If that reasoning is pursued and taking into account my acceptance that the present camping allowance contains a component for food costs, and having regard to the needs component in wages and salaries, the conclusion I reach is that employees are compensated for food expenses when camping.

I concur with Mr Pearce that the evidence from witnesses in respect of additional provisioning costs was not compelling. Normal day to day costs for food when not camping were not able to be definitively provided. Mr Pearce said:

" It was not as if the question was not put. Clearly, any general approximation may have assisted if only to partially establish for an individual at least, what was the differential, if any, between normal food outlay, home or camping and the excess, if any, one to the other."

Transcript p.161

I concur with those comments.

For a reimbursement provision to be included in the award the Commission as constituted in these proceedings would need to have unequivocally demonstrated to it that the camping allowance together with the provisioning component in wages and salaries place the employees concerned at a disadvantage from a cost point of view. This was not able to be achieved by the Association in this matter on this occasion.

Finally I wish to indicate that the various allowances provided for camping should be rationalised in the course of structural efficiency negotiations.

It is high time this step was taken in order to clarify and if appropriate rationalise the various allowances which relate to camping and which are contained in the Police Award, Sea Fisheries Award and the General Conditions of Service Award.



R K Gozzi
COMMISSIONER

Appearances:

Mr R Miller for The Tasmanian Public Service Association.

Mr A Pearce with Mr S Godfrey (24/4/90) for the Minister Administering the Tasmanian State Service Act.

Date and Place of Hearing:

1990
Hobart
April 24, 27