

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 4146 of 1992
T No. 2225 of 1989
T No. 2311 of 1990

IN THE MATTER OF an application by
the Australian Social Welfare
Union to vary the Community
Services Award

re making of a new award

COMMISSIONER GOZZI

HOBART, 11 May 1994
continued from 10/5/94

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER GOZZI: The only change in appearance appears to be Mr Kleyrn not being with us this afternoon.

MR PATERSON: And he apologises for not being present. He is, I believe, engaged in a meeting of the department.

COMMISSIONER GOZZI: Yes. Thank you, Mr Paterson. Would you like to continue?

MR PATERSON: If the commission pleases, as a result of discussions yesterday both here before you and in conference the document as presented yesterday has been superseded by a subsequent document which I wish to table as representing the consent position that we seek to have incorporated in the award.

COMMISSIONER GOZZI: Thank you. We'll mark that ASU.4.

MR PATERSON: Given that we went through extensively the contents of the previous documents yesterday, I propose to just attend to the variations between the previous position and this position, and I will proceed to do that, unless you wish to take some time?

COMMISSIONER GOZZI: No, that's fine. Thank you.

MR PATERSON: One thing that did come to my attention in getting this retyped was in fact that what we're proposing is terms of employment and then three additional clauses to the award.

I have numbered those X,Y and Z - 'X' being 'Hours, Shift Work, Overtime; 'Y' being On-Call and Recall; and 'Z' being Sleepover.

So where, for instance, in the amendment to '24. Terms of Employment' refers to overtime I have put 'Clause X, subclause (c) Overtime', and similarly on the last page where within the sleepover clause there was a reference to 'overtime and limitations on shift work' I have put 'Clause X, subclause (b), with the intent that when they are numbered by the registry in the process of preparing this Order that they insert the appropriate number from the clause 'Hours, Shift Work, Overtime'.

COMMISSIONER GOZZI: That will be Mr Hunter.

MR PATERSON: I am sure he will do a more than competent job.

COMMISSIONER GOZZI: The point being, the registrar doesn't draft orders or prepare orders for that.

MR PATERSON: Well, registrars - out in the name of.

COMMISSIONER GOZZI: Yes. The Associate has that honour.

MR PATERSON: The particular variations that we have attended to here are a very minor one of changing the - making consistent the reference to time off in lieu. It has been consistently, I hope, wherever it occurs been written as time-off in lieu. I looked up just for point of reference the Skill Share Award and that's how it's used there.

The shift clauses were the first substantive change, which is '(b) Shift Work (iv)'. The proposed clause now provides for between 4 and 14 hours in a shift, and the limitations are given expression on the basis of an average of a maximum of 38 hours a week or 152 in any 28 days.

The implication as to the number of shifts more than 8 hours that can be worked in a week or 28 days is left to be drawn by a mathematical exercise.

The parties recognise that there may well be from one or both sides a need to attend further to the award conditions that set the framework for rosters and shifts, and we believe that these will be matters that we will need to attend to within the framework of what we already have in the award for the monitoring of the implementation of the award.

There are certain matters that I can identify that we have not dealt with.

For instance, the provisions that I believe are needed in terms of appropriate notice to changes in shifts.

There may well be other matters as this award as it's proposed here takes effect that come to our attention.

So the clear intention is to monitor the implementation of this and to work cooperatively to address in a contemporary way any issues that arise related to shift work.

A handwritten change that is on that same page in point (c) Overtime is to repair an anomaly.

Our agreement, to give effect to double time, overtime after 10.00 pm was written as 'Monday to Friday' which would have left the anomaly of double time Monday to Friday and Sunday but not Saturday for those hours.

So the agreement of the parties is that in any event work after 10.00 pm Monday to Saturday is double time.

Further, the clause over the page provides for double time on Sundays.

A further minor amendment in this clause is to remove the word 'organisation' from the last paragraph of the overtime provisions.

Turning to 'On Call and Recall' the proposal for recall to take account of the way in which reasonable travelling time is compensated or remunerated is presented there as agreed in our conference discussions.

Further, going back a step, provisions (a)(ii) now only refer to weekend and removes the words 'off roster' that were previously there.

Turning to 'Sleepover': the amendments to the sleepover clause as were previously presented are - one has slipped my attention.

In (a)(i) I omitted to delete the word 'healthy' from (i) -

COMMISSIONER GOZZI: I just saw it there.

MR PATERSON: So if the parties can amend that on the copies they have before them; (a)(i) should start, 'Suitable accommodation'. I apologise for that.

And the major amendments to this clause are in (b)(ii) and (iii) as presented there.

Point (b)(ii) is to clarify what is envisaged in a sleepover is that a sleepover period in effect will be no more than 8 hours and it would be embedded, if you like, in a night shift of at least 12 hours, and the remaining 4 hours of that 12-hour period would be paid at night shift rates of pay, and that shall be in addition to the allowance below.

Further, point (iii) clarifies that the whole period of sleepover, or the 8-hour period of the sleepover shall be night shift hours; the other hours already having been defined as night shift hours.

And that's for the purpose of, or in respect to, the calculation of overtime entitlements and any limitations on shift work which now would primarily relate to breaks between shifts.

I think that what we have done here has at times been a tortuous process. I hope that it does go a long way to dealing with the issues that we have been working around for some considerable time, and we commend it to the commission.

COMMISSIONER GOZZI: Thank you, Mr Paterson. Very good. Mr Fitzgerald?

MR FITZGERALD: Thanks, commissioner. I will be brief in response. I think Mr Paterson has taken you through the provisions.

We can indicate our consent to the provisions as presented in Exhibit ASU.4.

I don't believe I need to make any particular comment, but I agree with Mr Paterson that it has taken some time and been a bit difficult, but it is yet another stage in this award-making process. I suppose it is the third phase and we really seem to have one phase, apart from minor reserved matters, if I can cast them as that, to proceed to make the award in totality.

So, in terms of the commission endorsing the position we would seek to incorporate submissions which we have put before the commission on the last two occasions when matters have been put before the commission at the end of last year and early this year, particularly in terms of these provisions complying with the wage fixing principles and the public interest provisions of the Act.

Now, in terms - one thing which we have missed, and I think Mr Paterson will confirm - is the operative date which we would see as the 1st of July 1994 for these provisions -

COMMISSIONER GOZZI: The 1st of July.

MR FITZGERALD: And we'd seek that that be - subject to Mr Paterson's confirmation of that - we'd seek that that be the operative date for these provisions.

It allows both our organisation and the Community Services Employer Organisation of Tasmania to advise members, and I suppose it is probably - of conditions matters - it is the most significant so far, and in that respect it is important that there be sufficient time to allow the organisations to be aware of the provisions which do exist.

In any event, I think there is now a greater awareness in that the employers have been involved in the consultation process throughout the State advising employers of award obligations which exist so far and are soon to be included - including this provision - provisions - to be inserted into the award.

So we would indicate our consent to the document ASU.4 as amended. Those slight handwritten amendments we would endorse. And seek the commission's endorsement of the document.

If it pleases.

COMMISSIONER GOZZI: Thank you, Mr Fitzgerald. Is that the first full pay period to commence on or after?

MR FITZGERALD: I think we would have to make it that, particularly in respect to the monetary allowances it would be necessary to be stated as the first full pay period.

COMMISSIONER GOZZI: Thank you. Mr Paterson?

MR PATERSON: On that, given that most if not, or certainly most of these matters, do have a more significant financial impact than the others we have dealt with to date, and also given that a number of them will impact on the way the organisations structure their work, and there is in effect an obligation to consult about the change imposed by it.

I guess the reality is, whatever the date, so long as it's fixed and not far away, that organisations will move in whatever way they have got the capacity to get in line with it, the 1st of July makes sense, given the financial obligations and the fact that it is, in effect, a new budgetary period for most organisations.

So we do agree to that date.

COMMISSIONER GOZZI: Thank you, Mr Paterson. The award-making processes have been under way now for a considerable period of time, and just going back on my history file while you were talking, the title, scope, arrangement, date of operation were confirmed by a decision operative from 22 January 1992.

So some 24 months later, or thereabouts, 25 months, the award has grown from - this is my speech next Wednesday - the award has grown from four clauses, 26 in March and probably about 31 with the inclusion of these latest ones - which I intend to endorse - to May 1994.

So I think it really does reflect a significant commitment in getting this exercise up and running.

I guess the most important phase is yet to come, it depends on your point of view, and that's the rates of pay and classification structure and the relativities; and I'll look forward to completing that exercise because once that exercise is finished I'll be -

MR FITZGERALD: Rid of it.

COMMISSIONER GOZZI: - giving that to somebody else.

MR PATERSON: You won't be on your own.

COMMISSIONER GOZZI: But, in the context of what's happened so far, I agree with the description that both of you have

attributed to it. It has been a long process, but I think worthwhile.

It's my intention to endorse the variations contemplated in ASU.4, and the operative date will be from the beginning of the first full pay period to commence on or after 1 July 1994, and a decision and order will issue in due course.

Thank you. We'll go off the record for a moment.

OFF THE RECORD

COMMISSIONER GOZZI: Alright, these proceedings are now adjourned to the 28th of June for resumption on the classification structure and wage rates, and in the meantime if you need my assistance at all you can let me know, and I wish you the best of luck about that - particularly you, Mr Kleyne - and we will adjourn these proceedings until that date. Thank you.

HEARING ADJOURNED