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**AUSCRIPT**

## TRANSCRIPT OF PROCEEDINGS

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O/N 77743

### TASMANIAN INDUSTRIAL COMMISSION

#### DEPUTY PRESIDENT P.C. SHELLEY

**T No 13077 of 2008**

**T No 13078 of 2008**

**T No 13082 of 2008**

**T No 13083 of 2008**

### **GENERAL CONDITIONS OF EMPLOYMENT AWARD COMMUNITY AND HEALTH SERVICES (PUBLIC SECTOR) AWARD**

**Applications pursuant to the provisions of section 23(2)(b) of the Industrial Relations Act 1984 lodged by the Minister administering the State Service Act 2000, the Community and Public Sector Union (State Public Services Federation Tasmania) Inc and the Health Services Union of Australia, Tasmania No. 1 Branch to vary the above awards re principle 13 of wage fixing principles and review of the award in accordance with the wage fixing principles of the Tasmanian Industrial Commission**

#### **HOBART**

**10.30 AM, FRIDAY, 28 MARCH 2008**

**Continued from 28.2.08**

**This transcript was prepared from tapes recorded  
by the Tasmanian Industrial Commission**

THE DEPUTY PRESIDENT: Thank you. Any changes in appearances? Have you appeared before in this matter?

MR WISHART: No, I don't think we were.

5

THE DEPUTY PRESIDENT: No. So you will need to record an appearance.

MR D. WISHART: Right. I'm new to all this. Don Wishart from the Australian Education Union.

10

THE DEPUTY PRESIDENT: Thank you. Okay. Is it Mr Baker that's going to go first?

MR BAKER: Thank you, Deputy President. Well, since we were last before the commission, there's been – further documents have been discussed and circulated, and there has been a further meeting between the parties in relation to where we're at as far as today is concerned. I'm hopeful that we can proceed in an orderly fashion this morning and by consent. I'd divide my submission into two components. Firstly is the matter of the reformatting of the award. A document has been prepared by my office in January of this year and has been the subject of some slight variation – actually, it's been the subject of some major variation, but only insofar as new clauses that have been added to the document concerned.

The document that was prepared in January of this year was a reformatted version of the general conditions of employment award and there were no changes made to that document at all. It was simply a reformatted award. So it continued to – and still does, the document I intend to hand to you today continues to make references to Acts that no longer exist, to clauses that have no application, and a few other things that need a tidy up.

30

The document I intend to hand the commission today contains three major amendments. One is it contains the parental leave provisions which were adopted by this commission. It contains the new personal leave provisions which were adopted by the commission. And the third clause was of course, Deputy President, when we were last before you, was the amendment to the supported wage clause which provides for incremental advancement of persons employed under that clause.

35

So the document that I hand to you today contains nothing new other than those three clauses that have been recently amended by this commission. Deputy President, I think it's important that we actually have a document that is in the reformatted style that enables the parties to actually move forward as is in our current format. If we intend to meet the 30 June deadline we need to have a document that is concise and current and one that allows us to make reference to other clauses in a proper and effective manner. So without further ado, I'd hand to you a draft which subject – and I make this point strongly, that subject to any variations forthcoming from my colleagues from the unions or indeed yourself, I would suggest that this document form the basis of the reformatted award.

45

THE DEPUTY PRESIDENT: Okay. Well, we'll give this a number, and I think it's the first of the – we'll make it MASSA1.

5 **EXHIBIT #MASSA1 REFORMATTED VERSION OF DOCUMENT  
PREPARED IN JANUARY**

10 THE DEPUTY PRESIDENT: I note what you're saying about there being no changes to the document that was produced in January, save and excepting for those three matters.

MR BAKER: Yes.

15 THE DEPUTY PRESIDENT: Nonetheless, have the unions been given a copy of this before today? Mr Jacobson is nodding.

MR WISHART: Yes, well, I got one - - -

20 MR BAKER: Yes, yes, the unions have a copy of it.

THE DEPUTY PRESIDENT: Thank you.

25 MR BAKER: So what I'm saying – and again I put on the record that the document is subject to any sort of finalisation, and I've actually provided – even though I haven't provided it to the unions today, they do have an electronic version of this which is colour highlighted so it actually shows you where the changes were made, the new clauses, and of course the back of the document it also provides a table as to where – what was the old clause and what is the new part or clause number.

30 Now, I would further indicate to you, Deputy President, that it is my view that – well, I express the view that the document of course is subject to a final check by both the unions on the one hand and of yourself, Deputy President, that we've got all the clause numbering and all the other bits and pieces correct.

35 THE DEPUTY PRESIDENT: Yes. Now, the one that you've handed up to me has got three colours. It's got green and blue and red. So can you indicate to me what the - - -

40 MR BAKER: The green is the new clauses.

THE DEPUTY PRESIDENT: Yes.

45 MR BAKER: The blue – sorry, the red is the new numbering and the blue goes to those bits and pieces which we simply changed the clause number. So you'll see that the date, for example, we've put in a new date, but the blue just goes to highlighting that we've changed the reference number in the document.

THE DEPUTY PRESIDENT: Okay.

MR WISHART: Could I just ask a question there? The district allowance is coloured green, that's not actually a new clause, though, is it?

5

MR BAKER: No, it shouldn't be - - -

MR WISHART: It went out and came back in and it's got coloured green along the way?

10

MR BAKER: Yes. I'm sorry, yes. I think there might be an oversight on our part that it was, in fact, varied. So it indicates that it was varied in – October/November of last year?

15

MR WISHART: Yes.

MR BAKER: Yes. December of last year, I beg your pardon.

20

MR WISHART: The clause itself has always been there and it's just been – the allowance rates have been changed.

THE DEPUTY PRESIDENT: So it's only parental leave that's green?

25

MR BAKER: Yes. The only new clause is parental, personal, and the amendment to clause C, I think it is, in the supported wage document.

MR WISHART: And the reference changes to sick leave now being personal leave.

30

MR BAKER: Personal leave, yes.

THE DEPUTY PRESIDENT: So where is personal leave?

MR WISHART: That's a very good question.

35

THE DEPUTY PRESIDENT: Or bereavement leave - - -

MR BAKER: Deputy President, I've got so many of these documents, perhaps I've handed up the wrong one this morning.

40

THE DEPUTY PRESIDENT: Yes. It's not in there as far as I can see.

MR BAKER: I shall attend to that and forward to the commission a new copy with the personal leave provisions. I do apologise for the oversight.

45

MR WISHART: Deputy President, the second version that we were sent has got it.

MR BAKER: Has got it?

MR WISHART: At the back it has - personal leave is clause 3. The last section, leave and holidays with pay is - one, holidays, two, parental leave, three, personal leave, and four, bereavement leave.

5 MR LYNCH: It's not in the index, though, either.

THE DEPUTY PRESIDENT: Okay. Well, they definitely should be in there because there's an order to that effect.

10 MR BAKER: I shall attend to that.

THE DEPUTY PRESIDENT: Okay, so you will provide a new copy?

MR BAKER: I'll organise that for the parties today.

15

MR WISHART: Do you want to hand up this one and replace - - -

20

MR BAKER: I'll send the whole - I'll email you out a new copy. I'll pause there. I'll do this in two parts if you like, Deputy President, so if we get this bit out of the way first.

25

MR WISHART: Deputy President, certainly we support the document, perhaps not the document that has been put forward, but the document that has been referred to here today, as a good first step forward. This gives us the General Conditions of Employment Award in a proper format for the first time, and it brings forward those matters into that document that we have been dealing with over recent months, so that we don't take one step forward and one step backwards. And it puts us in a position where we can then look at other matters that really should be included within this award and begin the process of having them added to the award as well. So I'd endorse the full document with those three - the change to the supported wage, the personal leave, the bereavement leave and the changed references to personal leave formally.

30

35

THE DEPUTY PRESIDENT: So that in effect brings it up to date, doesn't it, because those are matters that have already been subject to orders of the Commission. I mean, some of it, the parental leave clause of course goes back a long way, but the supported wage and bereavement and personal leave were recent.

40

MR WISHART: That's correct.

THE DEPUTY PRESIDENT: Okay, yes, thank you. Did you want to add anything, Mr Jacobson?

45

MR JACOBSON: No, Deputy President, only also to support the submissions that have been made.

THE DEPUTY PRESIDENT: Mr Wishart?

MR WISHART: The same.

THE DEPUTY PRESIDENT: Okay. Back to you, Mr Baker.

5 MR BAKER: The second issue goes to what I would term the finalisation of the  
leave provisions, which I indicated that I would try to have a look at between the last  
occasion when we were before the Commission and today. And there are three  
provisions which we believe ought to be included in that clause, and that goes to  
recreation leave or annual leave, jury service and defence force leave. I did circulate  
10 to the unions a document that I was proposing that would form the basis of  
consideration for today's hearing.

THE DEPUTY PRESIDENT: Okay, and you also provided the Commission with a  
15 copy?

MR BAKER: Yes, I've provided to you, Deputy President, a copy of that as well. I  
should point out at this stage that the reference to the defence force leave I will not  
be proceeding with this morning because I discovered late yesterday afternoon that in  
fact the clause that we were proposing is no longer relevant. It had been overtaken  
20 by a variation to the State Service Act, which we had overlooked, and indeed all of  
us had overlooked. So I won't be proceeding with that today.

In relation to the jury service provision, that is before the Commission this morning.  
That is a direct take out of MD2. In fact it's word perfect. Now, I haven't actually  
25 discussed jury service with my colleagues in the light of that, but I put that on the  
public record that it is actually a direct extract from ministerial direction number 2,  
and at an appropriate point in time we would seek to have that included into the  
award.

30 Insofar as recreation leave is concerned, I think this is - of the clauses, the remaining  
clauses, I think this is the most important one. The current leave entitlement for  
employees is found in ministerial direction number 2, at 2.1, recreation leave. The  
current clause was written many, many years ago and is not reflective of current  
State Service practice, nor does it represent leave entitlements as we understand them  
35 today.

For example, it provides for annual leave to be taken in one hit, with the exception of  
the annual close down. That is not the practice of the State Service. In addition, it  
does not provide, for example, for payment for the period of recreational leave.  
40 There is no requirement on the employer to actually provide the annual leave, other  
than it's there. So there's no time as to when.

The issue of course, about personal leave during annual leave, we're seeking to  
ensure that the clause is consistent with the taking of personal leave as opposed to  
45 sick leave during annual leave. There is a reference in the State Service Act to  
recreational leave in advance of the accrual. We want to put that into the award.  
There is the issue of the closure of the State Services offices, etcetera. Now, I've  
prepared a new draft in respect of this.

Now, again, because of Easter and shortage of time, it has been - we've been sort of rather pressed to actually get the document done. So what I would propose this morning, subject to comments from my colleagues in the unions and yourself, Deputy President, is propose that the award be amended to reflect both recreational  
5 leave and jury service, subject to the parties coming back to you following - having conferred and coming back to you and indicating to you off the record, or on the record, that the clause is acceptable, because as has been pointed out this morning prior to the commencement of this hearing, there are other documents in which there are bits and pieces of leave expressed.

10 We need to make sure that we've captured them all in one clause, and that's very important because I don't - we want to make sure that we've got a document that encapsulates annual leave as it applies across the service, and we want to make sure that we haven't either left something out, ignored something, or at cross purposes to  
15 some other provision that's buried, tucked away, either in another agreement or an MD somewhere or another. So subject to any comments from yourself, Deputy President, I would conclude my submission there.

THE DEPUTY PRESIDENT: Okay. So what you're seeking today is really that  
20 there be a new consolidated award that includes all of the provisions today, subject to any amendments as a result of the unions having more time to consider it. And in terms of the application, would you want that still to be kept open because of the jury and the defence service leave?

25 MR BAKER: Yes, yes, I'd like - - -

THE DEPUTY PRESIDENT: So another interim decision?

MR BAKER: I'd like another interim decision, Deputy President, because what I  
30 would like to see is that these files be kept open until such time as we have concluded this process. So we're not actually making a fresh application to bring it back before you all the time.

THE DEPUTY PRESIDENT: Yes, thank you. Mr Lynch?  
35

MR LYNCH: Madam, Deputy President, I have a great deal of sympathy and a great deal of support for what the minister is proposing here. But I do have some concerns that things need to be very transparent, in that employment continues on  
40 this afternoon and next week and, you know, the week after that. And there are a lot of bush lawyers out there who may pick up a document like this and read into that something that isn't clear because it's not connected to something that it used to be connected to.

There's a lot of documents out there. There are ministerial determinations, there's  
45 ministerial directions, there's commissioner's directions, there are regulations, and then there are internal departmental policy documents, some of which I think you could argue, are actually containing industrial matters as a result of settlements of disputes and things like that. It's a very complex environment.

I would be concerned for this document. I haven't had a good look at it yet. I mean, just when you go the first line of it, it talks about the entitlement for recreation leave. But if you go to the GCOE award you won't find reference to hours of work. So the first question someone would ask is, you know, why is it 147 hours of annual leave,  
5 how does that relate to hours of work, but the hours of work clauses are not there, and you know, I'm not knocking the process. This is a good way for us to move forward, but I think we do need to be cautious.

10 I'm wondering if we shouldn't put this, table this today, but not actually have it form part of the GCOE until we can come back to you and say that, you know, we're all in agreement, that we now have a clause that will continue to reflect the custom and practice and the way annual leave or recreation leave has been managed in the state sector in the past.

15 THE DEPUTY PRESIDENT: Okay. So you're saying that you agree that there should be a new consolidation as a result of today's proceedings, that the file remain open, there be further discussion in relation to the outstanding leave matters and we set down another date.

20 MR LYNCH: I think that would be very good, and we'll try to commit to bring to you at that stage everything that we know is outstanding that the parties would argue are industrial matters that should really be in this award and not in all these other places.

25 THE DEPUTY PRESIDENT: Okay.

MR WISHART: I would support that submission.

30 THE DEPUTY PRESIDENT: Mr Jacobson supports that?

MR JACOBSON: Yes, I support that submission.

35 THE DEPUTY PRESIDENT: Okay. So we're in agreement as to the reformatting to include the matters, the more recent matters and the parental leave, and we set down another date for quite soon. Mr Baker, that's probably as far as we can go today. If you're not in agreement to insert - - -

40 MR BAKER: Yes, look, yes, well, I'll just clarify. I had no, it wasn't my intention to actually include recreational leave as at today. Either or, I mean it doesn't matter. I mean, I suppose I was trying, I mean I agree with Mr Lynch's comments, that just simply taking a clause and writing it in isolation, that's the easy part. The difficult part is making sure you've picked up all the bits and pieces.

45 THE DEPUTY PRESIDENT: Yes. Well, it's probably better to get it agreed before it goes in. I'm a bit uncomfortable with putting things in subject to, you know, yes, something might happen.

MR BAKER: Either way I'm comfortable, yes.



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