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AUSCRIPT

TRANSCRIPT OF PROCEEDINGS

O/N 3249

TASMANIAN INDUSTRIAL COMMISSION

DEPUTY PRESIDENT P.C. SHELLEY

T No 12766 of 2006

T No 12767 of 2006

GENERAL CONDITIONS OF EMPLOYMENT AWARD

COMMUNITY AND HEALTH SERVICES (PUBLIC SECTOR) AWARD

**Application pursuant to the provisions of
section 23(2)(b) of the Industrial Relations Act 1984
by the Community and Public Sector Union (State Public
Services Federation Tasmania) Inc to vary the above
award re variation of allowances**

HOBART

9.30 AM, TUESDAY, 29 AUGUST 2006

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

PN1

MR M. JOHNSTON: I appear on behalf of the Community and Public Sector Union (State Public Services Federation Tasmania) Incorporated.

PN2

MR P. BAKER: I appear on behalf of the Minister administering the State Service Act.

PN3

THE DEPUTY PRESIDENT: Thank you. Can I ask if this matter is by consent?

PN4

MR BAKER: No, Deputy President. In fact, at an appropriate stage I will be asking that you dismiss the application.

PN5

THE DEPUTY PRESIDENT: Thank you. And do the parties agree that the matter should be joined?

PN6

MR BAKER: Yes, Deputy President.

PN7

THE DEPUTY PRESIDENT: Thank you.

PN8

MR JOHNSTON: Yes. And I do too.

PN9

THE DEPUTY PRESIDENT: Thank you. Well, notwithstanding what Mr Baker just said, what we will do is I will give each party the opportunity to put an outline on the record and then we will adjourn into conference to see if we can reach some agreement through the conciliation process. Begin with you, Mr Johnston.

PN10

MR JOHNSTON: Thank you, Deputy President. There has been a growing recognition over the last year or so that the meal rates for overnight stays and the accommodation rates are somewhat inadequate and haven't kept pace with the actual costs of accommodation and meals. Now, the current rates are many and varied over these two awards. There are different meal rates for different circumstances. For instance, when travelling outside the State or within the State on an overnight trip, the meal rates are different from if you are required to work overtime and gain a meal on the job, so to speak.

PN11

Now, the reasoning behind that is unclear to me. I have done a bit of a trawl through some of the history of the conditions of service instruments struck by the Public Service Bench - I believe it was called something like that - back in the '60s, and tried to follow the genesis of this - the evolution of this - these

two documents through. It appears that the base of these rates was set down sometime in the distant past and the actual rate was arrived at through some type of translation from pounds and shillings and the like to a decimal currency. Now, I don't know whether there was an exact science to that, having not been present at the time. I assume there was some logic to it, but - - -

PN12

THE DEPUTY PRESIDENT: You mean, not present at all on this earth?

PN13

MR JOHNSTON: No, not present at all. That is right. I wasn't even an idea, I don't think. Basically after that it has evolved somewhat and been varied from time to time. Now, in 1987, before a full bench of this Commission in matter T833 of 1987 - the bench consisted of the then Deputy President and Commissioners Gozzi and Watling. They - and I quote from their decision there - were of the opinion that:

PN14

The weighted average of eight cities CPI is the appropriate index for varying -

PN15

THE DEPUTY PRESIDENT: Sorry, what was that? The weighted average of - - -

PN16

MR JOHNSTON: The weighted average - - -

PN17

THE DEPUTY PRESIDENT: - - - three capital cities?

PN18

MR JOHNSTON: Eight. Eight capital cities.

PN19

THE DEPUTY PRESIDENT: Of eight capital cities.

PN20

MR JOHNSTON: All eight:

PN21

CPI is the appropriate index.

PN22

End quote - to set and maintain expense related allowances. In that decision they also said - and I guess this is important to us - that:

PN23

Prima facie, the whole clause appears to be in urgent need of reassessment.

PN24

And in that they were referring to travel allowances. I am not sure that that reassessment was ever undertaken. Importantly in that decision the bench said that:

PN25

The adequacy of the adjustments made in that manner may be tested from time to time by way of a full inquiry, to ensure that indexation has delivered the goods.

PN26

To the best of my knowledge again, in the 20 years since then, that full inquiry has never been undertaken.

PN27

THE DEPUTY PRESIDENT: So do you think it might be more appropriate for this to be a full-bench matter?

PN28

MR JOHNSTON: I don't have an opinion on that.

PN29

THE DEPUTY PRESIDENT: Okay.

PN30

MR JOHNSTON: What I submit today is that the indexation of the expense-related allowances in these two awards has not been wholly successful and needs to be revisited. Whilst it has ensured that we seek and gain annual increases, for whatever reason, the allowances are now well behind what a worker can reasonably expect to incur when travelling or purchasing meals in the course of their employment. Now, to me there could be two reasons for this deficit - this deficiency. One, that the base was set too low for the allowances in the first place - and to warn, these are not mutually exclusive - that the methodology for adjustment from time to time is flawed.

PN31

Now, I think those two elements are both present in this potentially, and have contributed to the deficit we are now experiencing. We say this because it appears that as far back as the TIC records in the matter, the allowances were set in the Public Service Conditions of Service Principal Award Number 2. This award was sealed by G.F. Sorell, chairman of the Public Service Tribunal, on 18 November 1966. We also say that the adoption of the methodology put forward by that decision I referenced before, T833 in 1987, has contributed to the deficit as well, as it seeks reference to CPI elements that are not relevant to eating, travelling and accommodating oneself.

PN32

By way of example, I would submit that the ABS groups - as they refer to them - like clothing and footwear, housing, household contents and services, health, communication, education and financial and insurance services, have no relevance to the allowances at hand, and have likely contributed to the disparity we see in the allowances today. I would like to submit some documentation, with the leave of the Commission. First, I have better, clearer

copies of the actual details of the application, if Mr Baker - is the fax okay or - it is okay. I won't hand that up then. I will hand up, however, a document that outlines some of the positions that have been stated in the past by the parties to this.

PN33

THE DEPUTY PRESIDENT: So I might - - -

PN34

MR JOHNSTON: Further to that - and although it is a matter of record in the Commission, I would also hand up T833 of 1987 to save looking it up later.

PN35

THE DEPUTY PRESIDENT: Thank you. Well, I will mark this spreadsheet document A1.

EXHIBIT #A1 SPREADSHEET DOCUMENT OUTLINING SOME OF THE POSITIONS STATED IN THE PAST

PN36

MR JOHNSTON: Thank you.

PN37

THE DEPUTY PRESIDENT: And I thank you for providing a copy of the Commission's decision. I won't mark that.

PN38

MR JOHNSTON: Sure. Further to that, I also have the March quarter key figures. Currently the variations to these two awards are set by the - as I said - the eight capital cities weighted average. That came in at 3 per cent for the year from March last to this March.

PN39

THE DEPUTY PRESIDENT: I will mark that A2.

EXHIBIT #A2 MARCH QUARTER KEY FIGURES

PN40

MR JOHNSTON: Thank you. As can be seen in that document, this is where the groups of data are determined by the ABS, and they are given equal weighting, and we are using an averaged system where - in reality there is actually a group in there for food, which may be more appropriate to variation of the meal rates. So I guess what I would submit today is that, first of all we look at getting the allowances in line with reality, but then we also have some discussion around an appropriate mechanism for varying those rates into the future, because I don't think it is working at this stage. Further to that I would also hand up what is labelled here as a Tasmanian Accommodation Survey. This was conducted by the HSUA, Tas number 1 branch, in research of this

matter today. Basically that outlines the accommodation rates for most of the major hotels within Tasmania.

PN41

THE DEPUTY PRESIDENT: We will mark that A3.

**EXHIBIT #A3 TASMANIAN ACCOMMODATION SURVEY
CONDUCTED BY THE HSUA**

PN42

MR JOHNSTON: Thank you.

PN43

THE DEPUTY PRESIDENT: I just have a question in relation to that.

PN44

MR JOHNSTON: Certainly. Yes.

PN45

THE DEPUTY PRESIDENT: This survey; it is a Government rate?

PN46

MR JOHNSTON: It is.

PN47

THE DEPUTY PRESIDENT: It is not the rack rate?

PN48

MR JOHNSTON: No, it is not.

PN49

THE DEPUTY PRESIDENT: Okay. Thank you.

PN50

MR JOHNSTON: Did you mark that, madam?

PN51

THE DEPUTY PRESIDENT: A3.

PN52

MR JOHNSTON: Sure. Sorry.

PN53

THE DEPUTY PRESIDENT: I don't know whether I did or not. I wrote A3 on it.

PN54

MR JOHNSTON: Okay. We are half-way there at least. Again - I am sorry, Marguerite, I have more - this is a synopsis of the accommodation rates for intrastate and interstate with comparisons to other jurisdictions, including in there, perhaps importantly, the ATO reasonable rates for the financial year that we now find ourselves in.

PN55

THE DEPUTY PRESIDENT: Okay. We will mark that A4.

**EXHIBIT #A4 SYNOPSIS OF ACCOMMODATION RATES FOR
INTRA AND INTERSTATE**

PN56

THE DEPUTY PRESIDENT: Now, can you just clarify what is meant by the ATO - presumably Australian Tax Office - reasonable rates.

PN57

MR JOHNSTON: It is indeed. That is a document put out by them by way of directive, for every single financial year. Basically it outlines - I think for FBT purposes, rather than anything else - the reasonable rates that should be paid to employees, and the tax implications of those rates. Now, not being a tax specialist myself, I couldn't go into it any further without just theorising. But they do provide us with an indication of what the Taxation Office considers to be perhaps a par figure.

PN58

THE DEPUTY PRESIDENT: Which is actually, if you look at Launceston, \$96 is actually less - - -

PN59

MR JOHNSTON: It is, yes.

PN60

THE DEPUTY PRESIDENT: - - - than anything that it is on - no, Sandor's on the Park by one dollar - but most of the major hotels in Launceston are more than the ATO reasonable rate.

PN61

MR JOHNSTON: Absolutely. Now, look there is - - -

PN62

THE DEPUTY PRESIDENT: I just observe.

PN63

MR JOHNSTON: Yes. And there are a few anomalies like that, and it has provided us with some trouble and some things to consider during the research for this application. In a lot of cases the ATO rates are quite reasonable, in terms of reflecting reality. There are times when I think they do err somewhat, and Launceston is a particularly good example of that. I would be very surprised if you could come up with decent accommodation at \$96 from the survey that the HSUA undertook. Last one is - I don't know whether this is a matter on record in the Commission or whether it sits somewhat separately. This is the report of the second committee review inquiry into the allowances and benefits provided to Tasmanian members of parliament.

PN64

THE DEPUTY PRESIDENT: Thank you. We will mark that A5.

**EXHIBIT #A5 REPORT OF THE SECOND COMMITTEE REVIEW
INQUIRY INTO THE ALLOWANCES AND BENEFITS PROVIDED
TO TASMANIAN MEMBERS OF PARLIAMENT**

PN65

MR JOHNSTON: I would just draw attention to one section of this in particular, and that is under paragraph 17 on page 5. And it reads there:

PN66

In this context -

PN67

Sorry, I will start from before that:

PN68

The terms of reference required that there is an automatic transparent mechanism to annually adjust each allowance and benefit. This means that each allowance is to be adjusted automatically and without individual review. In this context it is critically important to get the base right. The automatic adjustments of something that is improperly based in the first place only serves to perpetuate an injustice, anomaly or error. With this in mind, the Committee is of the view that the straightforward restoration of purchasing power, ie indexation, without regard to the adequacy or otherwise of previously determined allowance, lacks sufficient rigour.

PN69

I read that basically to illustrate the fact that apparently the committee review there was of the same opinion as we are, that there are two contributing factors to the setting of these allowances; one being the base and one being the adjustment. And they have said there, quite clearly, that if the base is flawed, or the adjustment is flawed, then you will come out with some anomaly or injustice, as they referred to it. That is all in the way of exhibits.

PN70

Look, to me the union's submission here offers realistic allowances that more accurately reflect the cost of accommodation and meals in Tasmania and abroad. There are perhaps a couple of points I should raise regarding the specifics of the changes we are making - or proposing to make, rather. There are some administrative advantages to what we are proposing today for the Government. First of all, the standardisation of the breakfast, lunch and tea allowances across the two awards, but also across the relevant clauses in the two awards - where I have already pointed out that there are significant disparities there.

PN71

THE DEPUTY PRESIDENT: So that is whether you are away or whether you are working overtime or whatever?

PN72

MR JOHNSTON: Yes. I mean, see my reasoning on that - and I think - I don't know whether my logic is flawed or not. I hope it is not. But when you go in to purchase a meal, they don't ask whether you are on overtime or whether you are travelling for work. It doesn't determine what menu you get handed and what you get charged for your meal. If there are - if you need to buy a meal, you need to buy a meal. There are no discount rates for people working overtime. If there are, I haven't found them. I can't see - - -

PN73

THE DEPUTY PRESIDENT: But when people work overtime, do they actually go out for a meal, or do they just claim the allowance?

PN74

MR JOHNSTON: I don't know.

PN75

THE DEPUTY PRESIDENT: You don't know.

PN76

MR JOHNSTON: No.

PN77

THE DEPUTY PRESIDENT: You have done no research into that.

PN78

MR JOHNSTON: Not exactly - I mean, I could survey 5000 of our members and a bunch of other people, but - - -

PN79

THE DEPUTY PRESIDENT: And there must have been some reason for it having been differently set in the first place. You don't - - -

PN80

MR JOHNSTON: Yes. But it is lost on me. I don't know it, and I can't see a logical reason for it.

PN81

THE DEPUTY PRESIDENT: Well, one assumes there was a reason for it.

PN82

MR JOHNSTON: Yes. Yes. I guess what I bring forward is that administratively, perhaps a single rate across the spectrum may be easier, but also logically, I think whatever the reasoning for that decision was in the first place perhaps needs to be revisited now, or at least determined, and I couldn't determine it. I have looked into it.

PN83

THE DEPUTY PRESIDENT: And I can certainly see the rationale for making sure there is no differentiation between the awards.

PN84

MR JOHNSTON: Yes. I mean, part of the project here for me was to standardise some rates across CAHSA and the DCI. The fact that the

accommodation rates and some of the meal rates were different is somewhat of an anathema, I guess. It is a very strange thing. Now, another point to draw your attention to would be the separation of Melbourne in both awards, under our submission, to provide for a different rate of overnight accommodation there. That is light of the fact that Melbourne is quite an expensive centre like Sydney, and sits somewhat separate in our opinion. And I think the ATO reasonable rates there bear that out as well. And we have proposed a change from the same rate - from the same rate as every other capital city to its own rate of \$150 per night. Now, this is still behind Sydney but it is, in our proposal, somewhat more than the other centres, which have been based on Adelaide, by the way, which is a pretty average city. No offence to Adelaide.

PN85

MR BAKER: None taken, I would hope.

PN86

THE DEPUTY PRESIDENT: Just in A1 - - -

PN87

MR JOHNSTON: Yes.

PN88

THE DEPUTY PRESIDENT: You have actually set out the Government without prejudice offer. I would just like to ask Mr Baker does he have any objection to that being included in that document if it is genuinely without prejudice?

PN89

MR BAKER: Well, I was going to ask actually what it meant. Is that the offer to us or what?

PN90

MR JOHNSTON: No.

PN91

MR BAKER: Well, it is not our offer; is it?

PN92

MR JOHNSTON: It was a working group set up some time in the past - maybe at the beginning of this year - where unions and the government engaged in some discussion around this, and there was a recognition.

PN93

THE DEPUTY PRESIDENT: Okay. So there was some discussion with the Government in relation to those figures?

PN94

MR JOHNSTON: Yes.

PN95

THE DEPUTY PRESIDENT: But it is without prejudice? It means nothing?

PN96

MR JOHNSTON: Yes. Absolutely right. It was provided there by way of illustration only as to the fact that there is a general recognition of the inadequacy of these allowances. I guess the other main point of difference we may have here is - and the main point of change - are some of the words under the training courses conference allowance in GCLE 31, the travelling allowance in GCLE 32.8.1, the training courses conferences allowance in CAHSA 11G and the travelling allowance in CAHSA 11H(a)(i) where there is a payment for incidental expenses that is afforded to people who are travelling on conference work where their meals and accommodation are provided for them.

PN97

Now, again this is a bit of a non sequitur to me where a worker can go to a conference or a training course and, for all intents and purposes, have their accommodation and meals paid for, just like if you were going for work in any other aspect, yet they are afforded an incidentals payment here. Yet, if they were just travelling under normal work circumstances, say for a meeting or something, then they would get an allowance for accommodation and an allowance for meals, but there is no facility under the award to cover those incidental costs which occur when you are away. Now, incidental - just for clarity - in our opinion, cover such things as a provision of a newspaper, some phone calls perhaps, internet usage if you need to pay for that, and other such incidental expenses.

PN98

I guess, when away from work - from your normal office - you don't have access to your normal coffee facilities, for instance. And although coffee is a small matter, it is \$3 plus per coffee. Perhaps if you had a couple of coffees to keep you going through a long day of work, some where else those costs can add up for you as well. Now, I guess what we are proposing here is that all those four clauses are broadened somewhat in recognition of the fact that incidental expenses are incidental expenses. It doesn't matter why you are travelling. It is to do with covering the costs of those things for our members. Look, I think they are the primary changes that we are advocating for in this, and I will leave it at that.

PN99

THE DEPUTY PRESIDENT: Okay. Thank you. Mr Baker?

PN100

MR BAKER: Thank you, Commissioner. As Mr Johnston has correctly pointed out, the basis for the current methodology used in determining the adjustment for travelling allowances within the State Service generally is matter T833 of '87. And in fact that decision continues to have wide-ranging implications because, not only does it set the mark in the general conditions of employment award and also the CAHSA Award, but it does also apply to other awards - public sector awards, of this Commission. And off the top of my head, they apply to such places as police, fire and teachers for example - and also nursing staff. So there is - it does have an impact in other awards.

PN101

THE DEPUTY PRESIDENT: So are those rates the same in police, fire and teachers awards, as they are in the CAHSA Award?

PN102

MR BAKER: Yes, they are.

PN103

THE DEPUTY PRESIDENT: And the GCLEs?

PN104

MR BAKER: Yes. They follow suit.

PN105

THE DEPUTY PRESIDENT: So there would be a flow on to - - -

PN106

MR BAKER: Except - - -

PN107

THE DEPUTY PRESIDENT: - - - a number of other awards?

PN108

MR BAKER: There is a flow on to other awards, yes. So once this award is varied, the other awards simply line up and they move from - that is - - -

PN109

THE DEPUTY PRESIDENT: I will ask you the same question, Mr Baker. Do you think it should be a full-bench matter?

PN110

MR BAKER: I would like to consider that matter. I have tossed over in the mind the last evening, but I haven't really fully addressed that, because I think there are some other issues that we need to deal with before we get to that position. I was going to say that there is also a matter T33 of '87 which goes to kilometreage allowances, which was dealt with pretty much at the same time. And that, in the police award, that actually moved the police award in front of the GCLE award on this occasion, but the methodology used to vary the police award is the same as it would be in this matter.

PN111

Now, as I have indicated, Mr Johnston is quite correct in the way in which the methodology has been used previously to adjust this award as far as meal allowances and travelling allowances generally are concerned, and that in fact has occurred on an annual basis since 1987, and it was varied last year in matter T12083 of '05, and in a decision I think, as this Commission is currently constituted. Commissioner, there is - and it would not be true for me to say that there hasn't been some concern expressed both by the CPSU and others, including the Minster, concerning the level of remuneration in respect of a certain of the allowances. The difficulty we have - - -

PN112

THE DEPUTY PRESIDENT: Concern that it might be too low - - -

PN113

MR BAKER: Yes, Deputy President, yes.

PN114

THE DEPUTY PRESIDENT: --- in certain of the allowances - accommodation, I would take it to be?

PN115

MR BAKER: Well, I make the broad comment, Deputy President.

PN116

THE DEPUTY PRESIDENT: I mean, we all travel. We all know the reality.

PN117

MR BAKER: We all travel, Deputy President. You are quite correct.

PN118

THE DEPUTY PRESIDENT: Yes. Although the State Service Wage Agreement did actually make it available to people to claim for actuals - - -

PN119

MR BAKER: That is what I was coming to.

PN120

THE DEPUTY PRESIDENT: --- when they couldn't in fact get accommodation for the GCLE rate.

PN121

MR BAKER: Yes. That is right. And certainly agencies have in fact undertaken that, and have entered into arrangements with certain hotels in relation to provision of accommodation.

PN122

THE DEPUTY PRESIDENT: So has there been a big take-up rate of claiming for actuals; do you know?

PN123

MR BAKER: I have no idea. No idea, Deputy President. Now, the matter - and indeed, way back in 1987, as Mr Johnston has pointed out, there was some concern even expressed then that perhaps the base was not sound. Now, it has remained in that state ever since. Now, when the last - the Public Sector Union Wages Agreement of '04 was signed off as number 2 of '04, there was in fact specific reference made in that document to travelling allowances at clause 26.

PN124

THE DEPUTY PRESIDENT: Sorry. What year was that?

PN125

MR BAKER: That is the '04 agreement. Do you need another copy?

PN126

THE DEPUTY PRESIDENT: The last one, yes.

PN127

MR BAKER: And I will hand up a copy of that to the Commission.

PN128

THE DEPUTY PRESIDENT: Thank you. We will mark that R1. Thank you.

EXHIBIT #PUBLIC SECTOR UNION WAGES AGREEMENT 2004

PN129

MR BAKER: Now, at clause 26 of that document, on page 9, it talks of travelling allowances:

PN130

The parties will jointly review current meal and accommodation rates, and if agreement can be reached, that all or some of the rates should be adjusted. Applications to vary relevant awards will be made accordingly.

PN131

And then at paragraph 2:

PN132

Employees are entitled to request reimbursement of actual expenses in circumstances where the prescribed allowances are likely to be less than the expenditure incurred.

PN133

So yes, Commissioner - Deputy President - that was the relevant clause. Now, I can report that there have been a series of discussions that have occurred between the parties, namely the CPSU and HSUA on the one hand, and the minister on the other, in respect of coming to some agreed position insofar as the rates have been concerned. No agreement, Commissioner, has been reached, and indeed we were under the impression that this matter had been put to one side until we get into the nitty-gritty of the State Services Wages Agreement '07. However, the matter is before the Commission today - - -

PN134

THE DEPUTY PRESIDENT: Yes, and clause 26 certainly reads as though it should happen within the life of the current agreement.

PN135

MR BAKER: That is right.

PN136

THE DEPUTY PRESIDENT: Yes.

PN137

MR BAKER: Yes well, as I said, we can't reach agreement. At clause 24 of the agreement on page 13, the document says:

PN138

The unions party to this agreement undertake that, for the life of this agreement, they will not make any additional claims relating to any matter included in this agreement.

PN139

And then it goes on to talk about the famous clause 35, which has been the subject of some extensive debate in the Commission. But we say that clause 34 prohibits a claim being made in the nature that it has been presented to the Commission today by Mr Johnston.

PN140

THE DEPUTY PRESIDENT: Is that on the basis that it is not by agreement?

PN141

MR BAKER: That it is not by agreement. Because Mr Johnston seeks to have the matter arbitrated by this Commission, and in our view, that breaches the no extra claims commitment of the agreement. There is of course, Commissioner - Deputy President - a definitive decision in relation to matters that are part of an agreement, or matters additional to an agreement, which is the famous decision in Electrolux.

PN142

THE DEPUTY PRESIDENT: I would have to say, Mr Baker, without this - this comment is obiter - but on the face of it I think you are probably right in relation to arbitration, but I don't think there is anything to prevent the Commission from being involved in trying to assist the parties to reach agreement, so that an application could be made under although it should happen within the life of the current agreement.

PN143

MR BAKER: That is right.

PN144

THE DEPUTY PRESIDENT: Yes.

PN145

MR BAKER: Yes. Well, as I said, we can't reach agreement. Now, at clause 34 of the agreement on page 13 the document says:

PN146

The unions party to this agreement undertake that, for the life of this agreement, they will not make any additional claims relating to any matter included in this agreement.

PN147

And then it goes on to talk about the famous clause 35 which has been the subject of some extensive debate in the Commission. But we say that clause 34 prohibits a claim being made in the nature that it has been presented to the Commission today by Mr Johnston.

PN148

THE DEPUTY PRESIDENT: Is that on the basis that it is not by agreement?

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PN150

THE DEPUTY PRESIDENT: I would have to say, Mr Baker, without this - this comment is obiter - but on the face of it I think you are probably right in relation to arbitration, but I don't think there is anything to prevent the Commission from being involved in trying to assist the parties to reach agreement so that an application could be made under the provisions of clause 26 of the State Service Wage Agreement.

PN151

MR BAKER: Not at all. Not at all. But I mean, our position is that - as I have previously indicated - we were under the impression that this matter, because we were unable to reach agreement on the matter, that it would be, if you like, stood over to be part of the '07 negotiations, which in fact have already commenced.

PN152

THE DEPUTY PRESIDENT: Hypothetically, if the government were to agree to a full-bench properly looking at the basis for adjustments, because it is nearly a decade since T833 - - -

PN153

MR BAKER: I think it is more like two decades, Deputy President.

PN154

THE DEPUTY PRESIDENT: 1980. Two decades, yes. Would the government raise the no extra claims as a bar to that happening. I mean, it seems to me that that would be a reasonable approach, that it probably - I mean, as I say, we all travel, we know the realities, especially in relation to accommodation. So it may be an appropriate time for the base to be reviewed by a full-bench. Would the government raise the no extra claims as a bar to that happening if I were to decide, pursuant to section 24, to refer the matter to a full bench.

PN155

MR BAKER: I would have to take that position on notice and seek some advice. Off the top of my head, my view would be that we would deal with that matter as part of the settlement of the State Services Wage Agreement '07.

PN156

THE DEPUTY PRESIDENT: Have negotiations commenced for that?

PN157

MR BAKER: Preliminary discussions have already occurred.

PN158

THE DEPUTY PRESIDENT: Well, it is nearly September.

PN159

MR BAKER: I understand that. Mr Johnston may like to indicate - but I mean, they have set a rigorous timetable for concluding the matter. So - - -

PN160

THE DEPUTY PRESIDENT: If this is - I mean, there is not agreement at the moment, and if this becomes part of SSWA '07, that could place impediments in perhaps the parties, in terms of the broader State Service Wage Agreement, and maybe that could be circumvented by having a proper inquiry into the base by the full bench. So it is taken out of the SSWA negotiations.

PN161

MR BAKER: As I indicated, Deputy President, I would have to take some advice on that.

PN162

THE DEPUTY PRESIDENT: Yes.

PN163

MR BAKER: There is also of course the issue of the current wage fixing principles, as they relate to reimbursement of expenses.

PN164

THE DEPUTY PRESIDENT: What in particular are you referring to?

PN165

MR BAKER: Principle 8; existing allowances.

PN166

THE DEPUTY PRESIDENT: Principle 8. 8.1.1.

PN167

MR BAKER: 8.1.1, reimbursement.

PN168

THE DEPUTY PRESIDENT: So it could happen under the principles then? It can happen under the principles?

PN169

MR BAKER: Yes.

PN170

THE DEPUTY PRESIDENT:

PN171

May be adjusted from time to time where appropriate to reflect the relevant change in the level of such expenses.

PN172

MR BAKER: Yes.

PN173

THE DEPUTY PRESIDENT: So that would enable - even though it seems to be at odds with the no extra claims clause, the principles do allow existing allowances to be reviewed and adjusted.

PN174

MR BAKER: Well, of course, one relates to the award, and the other of course relates to the agreement. Now, if we could - as I said, I will need to take some advice in relation to the matter. I mean, quite clearly there is a realisation that there are some difficulties with the certain components of those allowances.

PN175

THE DEPUTY PRESIDENT: Right. And I take it that - I think you indicated, Mr Johnston, the specific points where the parties were not in agreement, or did you?

PN176

MR JOHNSTON: I am not sure that I did.

PN177

THE DEPUTY PRESIDENT: Is anything agreed in the claim?

PN178

MR BAKER: Well, perhaps if we do that off the record, Deputy President.

PN179

THE DEPUTY PRESIDENT: Okay. Yes. Fine.

PN180

MR BAKER: There is just one matter I will just comment on prior to going off the record, and that is just for the clarification of the Commission. In exhibit A4, the accommodation rates, etcetera, that are spelt out there by the ATO reasonable rates, they are the actual rates that are applied to Commonwealth public servants, and they are produced in a booklet form by the ATO who then say to the community at large, 'these are reasonable rates'. And in fact you can find, they have actually - they are the basis of a survey which they undertake periodically to adjust those rates. And not only do they apply for Australia, but they actually do them world wide. So if you are an international traveller, you can wack in your claim, and you don't have to produce any receipts.

PN181

THE DEPUTY PRESIDENT: It makes you wonder how they reach \$96 for Launceston.

PN182

MR BAKER: I am sorry, I can't answer that question. I am just telling they do a survey. Perhaps they wander around and pick up the stand-by rate.

PN183

THE DEPUTY PRESIDENT: Okay. Now, do you want to respond on record to anything that I have said, or that Mr Baker has said, Mr Johnston?

PN184

MR JOHNSTON: I don't think so. I don't think so at this stage.

PN185

THE DEPUTY PRESIDENT: Okay. We will go off the record.

OFF THE RECORD

[10.15am]

RESUMED

[10.45am]

PN186

THE DEPUTY PRESIDENT: Thank you. Well, let the record show that there has been discussion between the Commission and the parties in which I am certain that things have been agreed, and a way forward has been agreed. Mr Johnston?

PN187

MR JOHNSTON: Thank you, Deputy President. At this stage we would like to vary our application to apply the three per cent standard, previously agreed adjustment.

PN188

THE DEPUTY PRESIDENT: That is for meals and accommodation.

PN189

MR JOHNSTON: To expense related allowances within the awards - - -

PN190

THE DEPUTY PRESIDENT: Yes.

PN191

MR JOHNSTON: - - - and commend that outcome to the Commission.

PN192

THE DEPUTY PRESIDENT: And you are going to provide the Commission with a new draft order?

PN193

MR JOHNSTON: I will indeed. I will provide a draft order early this afternoon.

PN194

THE DEPUTY PRESIDENT: And do you have any submissions to make on operative date?

PN195

MR JOHNSTON: We would seek an operative date from as of today's decision, if the decision is handed down today.

PN196

THE DEPUTY PRESIDENT: Right. So from date of decision?

PN197

MR JOHNSTON: Thank you.

PN198

THE DEPUTY PRESIDENT: And that does need to be first full pay period, does it, because it is a different concept? Okay. Mr Baker?

PN199

MR BAKER: Thank you, Deputy President. We would concur with the submission made by Mr Johnston. Our view is, as I have previously indicated, this has been the methodology that has been used for the last 19 years, and it is consistent with the wage fixing principles, as enunciated by the Commission in its decision of this year, and we would support the operative date, and indeed the application to be effective as from today's date.

PN200

THE DEPUTY PRESIDENT: Thank you very much. And I note, in respect of the application that is before the Commission, the awarding of the three per cent does not close the file, that the file would remain open whilst other outstanding issues are discussed between the parties, and that the parties will meet after 13 September, and that we will reconvene for a report back at 9.30 am on Friday, 22 September. And this matter is adjourned until then. Thank you.

ADJOURNED UNTIL FRIDAY, 22 SEPTEMBER 2006

[10.50am]

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