

HEARING RECOMMENCED 11.04am

PRESIDENT: No changes in appearances? No? Mr Paterson?

MR PATERSON: If the commission pleases, I think at our last appearance here I undertook shortly thereafter to forward an amended copy to Mr Cameron, which I did. I believe it would have been no later than two days after the hearing. Mr Cameron undertook to get back on or before 12 May. I received a response from Mr Cameron on 18 May identifying several matters that he believed were issues for the employers. Some of those I have essentially agreed with, particularly in relation to the trainee definitions in clauses in the light of a project that the TCCI has going, that would be set aside for the time being.

However, the other matters where Mr Cameron indicated that there were issues, I don't and can't accept, particularly at this late stage, the issues as being so fundamental as to incline the union to change its position.

The matters that he identified were the rates of pay for general telephone sales being too high, existing employees receiving substantial pay increases as the award relates to work outside the proposed span of hours and weekend penalties and suggest -

PRESIDENT: So that's just in outside span of hours and weekends?

MR PATERSON: On my understanding it is - I inferred that it was two matters; the rate of pay for general telephone sales were too high and that the penalty rates effectively for out of ordinary hours work and weekend work were of a concern to at least one major employer.

In relation to the definition, Mr Cameron raised an issue to the effect that the general coverage of administrative and clerical services in (i) of the scope clause suggesting that they be removed.

PRESIDENT: Sorry, that's in definitions or scope?

MR PATERSON: In the scope clause, I believe, under scope clause 2 subclause (b) - it currently reads: *administrative, clerical, marketing and promotion services* - suggesting that the words 'administrative' and 'clerical' be removed.

My response to Mr Cameron on the same day was to the effect that the union contends that the rate of telesales are appropriate, particularly given -

PRESIDENT: So they are the three issues, are they?

MR PATERSON: The three issues that I responded to him on were the rates for telesales, the span of hours issues and the scope issue.

PRESIDENT: Yes.

MR PATERSON: In relation to the rate for telesales, I suggested that they were appropriate given the general provision in Grade 1 to the effect that this grade is - if I go to the Grade 1 definition in the classifications: This classification shall be the minimum classification for employees engaged as telemarketers, telesales or telephone service employees or call centre employees, and also drawing his attention to a comparison that I draw between Grade 2(a) in this award at \$443.80 per week, and Grade 2 of the Retail Trades Award which is \$444.10, noting also that the lower grade in the Retail Trades Award is the adult entry rate in that award.

In relation to substantial pay increases, I put to Mr Cameron and I'd submit to the commission, that this is inevitable - pay increases are inevitable when awards are made in award-free areas.

PRESIDENT: Yes, well without going to detail on your submissions on - what might be your submissions on the three issues that appear to be in contention, was there anything else that was of concern?

MR PATERSON: No, they seem to be the three issues and if you like I was just responding - just giving an indication rather than making the submission.

PRESIDENT: Yes, and so there is consent on the remainder of the award?

MR PATERSON: Well, to the extent that at the last hearing the proposition was put to the Chamber of Commerce and Industry that on or before 12 May they indicate to the union what issues there was consent on and what issues were not agreed. The only communication I have had is on these four matters where there is not agreement. I've had no further indication from Mr Cameron on any other respect of it. I'm left to assume that the matters he has identified are the only matters that we're not agreed on as that was the basis on which we proceeded subsequent to the last hearing. But I presume Mr Cameron will have to answer for himself on that one.

PRESIDENT: So what was your impression of the way we were going to proceed today?

MR PATERSON: I was made aware that Mr Cameron intended to have other representatives from industry here. I haven't prepared any formal submissions, nor have I considered what evidence we may need to lead in respect to these matters that are not agreed. I'd be more than happy to hear a response on the record from Mr Cameron and then to adjourn into conference as to identify the way we progress from here.

PRESIDENT: All right.

MR PATERSON: If the commission pleases.

PRESIDENT: Yes, thanks, Mr Paterson. Mr Cameron?

MR CAMERON: Thank you, Mr President. Mr President, we did indicate at the last time we were before you in conference in discussions with Mr Paterson that we would approach our membership in relation to the draft award. We did circulate copies of the draft award to those of our members that we thought would be affected by this. The response that we sent back to Mr Paterson raised issues that were raised by our members in their responses, in particular, the rates of pay, and I suppose what would flow from that would be the classifications and the appropriate rates of pay and the other matters Mr Paterson referred to.

The last time we were together there were other concerns that we expressed to him, in particular, the superannuation provisions of the award that we would seek to address and subsequent to our response to Mr Paterson, there have been other matters raised that are of probably minor relevance in the overall context of the award, but in terms of the award itself, that if we're going to create the award, then we may as well get it right to start with, rather than coming back with subsequent amendments.

PRESIDENT: Well, we've been going at it for long enough, we ought to be able to get it right.

MR CAMERON: Well, that's correct, and I suppose it's one of those matters of when you look at something what you see, and when someone else looks at it they see something completely different. That has happened subsequently. I suppose on my readings through it I see certain things that I'm looking for, other people have now picked up other things that are probably only of a cosmetic nature but are matters that at the end of the day may be consented to by the union or it may need arbitration by the commission.

We have with us today three parties represented from the employers' point of view that have raised issues with the TCCI as to concerns they have on the draft award. They are present here today. We have other employers in other parts of the state who have expressed concern as well. We have correspondence from another company who are not members of the TCCI but contacted us by fax this morning on becoming aware this matter was before the commission to express their concerns.

In that regard we would appreciate going into conference to discuss fully how the matter may proceed today. If these witnesses are required then obviously we would ask them to stay, but if it's not going to get to that stage we could perhaps excuse the witnesses and they can be informed at a later time if it goes to full hearing and arbitration on particular clauses.

PRESIDENT: You were anticipating bringing witnesses?

MR CAMERON: Well, we would if there - the concerns that we've expressed to Mr Paterson that have arisen from our mail out to members relate to the wage rates and the hours of work in particular. We have brought employer witnesses who are willing to indicate to the commission how the industry would be affected by the making of this award while it currently exists in the market place, in particular, in relation to telesales and telemarketing and call centres which are three of the main areas covered by the scope of the award.

The other concerns that we have are, would relate to the scope of the award and what effect the scope will have and which businesses in the community will be affected by the award.

PRESIDENT: These were all known a long time ago, Mr Cameron - six or eight months ago.

MR CAMERON: Yes, they are matters that we have brought to the attention of the union and we would also suggest that at the end of the day if the matter is going to be arbitrated then they would need to be looked at in detail.

PRESIDENT: Yes. My recollection of our hearing on the last occasion was that there was every chance of consent on all but a couple of matters and it might be necessary to hear submissions on a couple of important matters which weren't identified, I might admit.

MR CAMERON: Pardon?

PRESIDENT: They weren't identified -

MR CAMERON: No.

PRESIDENT: - the matters which might have been in contention.

MR CAMERON: And as I indicated at the time, that we would have to send the draft award out to our members for their input as to how it's going to affect them.

PRESIDENT: Yes, I mean you've had -

MR CAMERON: And these are the things that have come back.

PRESIDENT: - the draft award for how long?

MR CAMERON: We've had various drafts but not to a stage where we've had agreement - that the TCCI and the union have got to a stage where we've said, well these are the things that need to be looked at. I don't think at any stage we've necessarily consented to everything -

PRESIDENT: That's quite true, that was never said.

MR CAMERON: - and indicated in the facsimile or the e-mail to Mr Paterson following our mail out to our members the areas of concern do revolve around the wage rates and the hours of work and how they will impact upon business.

5 PRESIDENT: Yes. Look, the main concern I have about this is that it's been allowed to get to this stage before you've contacted your members and I think that's just - it's very, very nearly bordering on a stalling tactic.

10 MR CAMERON: Well, with respect, president, there have been documents between the parties that we have discussed. In dealing with our members we don't wish to raise confusion by sending them a new draft of the award every time it turns up because of changes that the major parties have envisaged.

PRESIDENT: Yes, all right.

15 MR CAMERON: We got to a stage where we had a draft that was in a form that the union was willing to submit.

PRESIDENT: I'm sure you would have had some idea as to what was being proposed. Anyway, let's try and cut through that.

20 MR PATERSON: If I may, on one thing, I mean apart from - well, let me go back a couple of short steps, this was effectively set to progress a lot further than it has at 9 December last year, and in effect it was the issue of clarifying and simplifying the clerical classifications that prevented this matter from - I don't want to be too pejorative in it - but took us off on a sidetrack which meant that we didn't address these things slightly earlier.

In terms of the scope clause, not only - I mean the award is made. The award is made in respect of title and scope and I don't see any particular issue that we haven't already addressed in those early proceedings in relation to how it's written.

30 PRESIDENT: I guess, Mr Paterson, I'm just causing the parties to get a little bit upset because I'm upset and it just concerns me that the thing has been allowed to drag on and then these issues are being raised virtually at the eleventh hour.

35 MR PATERSON: The only other comment that I was wanting to make is that throughout this whole process, we haven't taken the approach of we want to get it all right in one hit. We have said very clearly from the outset that this award would quite appropriately include classifications other than those that have been the subject of this discussion, so we've clearly envisaged this being more than a single-
40 staged process, notwithstanding the fact that we wish to make the award as a complete award as a result of the current application before the commission.

PRESIDENT: Yes, all right. Well, anyway, it's both parties' wish we go into conference.

5 MR CAMERON: Well, in that regard, commissioner, only that we do have witnesses present and if it's not going to be necessary for the witnesses to provide evidence today that we can allow them to leave and the parties either through conciliation or just discussions progress that.

PRESIDENT: Well, I don't know, it may be that we can proceed after we've been in conference for a short while, so I wouldn't -

10 MR CAMERON: Well, that would be indication that the conference may be able to show whether we need witnesses today or not.

PRESIDENT: Yes. Now, in terms of that, I don't think the witnesses should be present whilst we're in conference so I'll ask those who are not direct parties to leave the room and we'll adjourn into conference.

15 **INTO CONFERENCE 11.20am**

HEARING RESUMED 12.10pm

20 PRESIDENT: Well, we've had the benefit of discussions for nearly an hour to try and determine where we go with this matter and as a result of those discussions the following directions are issued to the parties, and that is, that the TCCI, through Mr Cameron, provide a list of the items in the draft award which are in dispute and why, and propose alternatives to those disputed clauses, and that is to be provided to the commission and to the applicant by 16 June this year. By that date also to provide a list of those witnesses which the employers wish to call. Again, that is to be provided to the applicant and to the commission.

30 Further, to provide witness statements of those witnesses to the applicant and to the commission by 30 June this year. The applicant is to provide to the commission and to the TCCI a list of witnesses that it wishes to bring, that is to be provided by 23 June this year, and subsequently by 30 June this year to provide to the commission and to the TCCI witness statements.

Obviously I won't be here to deal with the matter beyond 7 July so I will have to refer the matter to another member of the commission.

35 MR PATERSON: If I may?

PRESIDENT: Yes, Mr Paterson?

MR PATERSON: In terms of the response the union makes with lists of witnesses, I'd also be quite happy to the extent that any of the issues Mr Cameron identifies are cosmetic or trivial or

inconsequential, then any matters that are agreed or easily agreeable I'll do that concurrently with the list of witnesses by 23 June.

PRESIDENT: That's very good. Yes, thanks, that's something I'd overlooked. Thanks, Mr Paterson.

5 All right, nothing further at this stage?

MR CAMERON: No, thank you, commissioner.

PRESIDENT: All right, the matter is adjourned.

HEARING ADJOURNED SINE DIE 12.15pm