

**TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984

T No. 3617 of 1991

**IN THE MATTER OF** an application by  
the Health Services Union of  
Australia, Tasmania No.1 Branch to  
vary the Nursing Homes Award

re increase wage rates and  
allowances by 2.5%

COMMISSIONER WATLING

HOBART, 17 November 1992  
Continued from 9/11/92

**TRANSCRIPT OF PROCEEDINGS**

Unedited

COMMISSIONER WATLING: I will take appearances in that matter, please.

MR R. WARWICK: If the commission pleases, RICHARD WARWICK, for the Health Services Union of Australia, Tasmania No. 1 Branch.

COMMISSIONER WATLING: Good.

MR P.E. TARGETT: Thank you, Mr Commissioner, TARGETT, P.E., I appear on behalf of the Tasmanian Confederation of Industries.

COMMISSIONER WATLING: Good, thank you. Right, who wishes to lead off in this matter?

MR TARGETT: Well, I am quite comfortable in doing so, I have an exhibit which -

COMMISSIONER WATLING: Right. Well, the applicant agrees, I take it?

MR WARWICK: Certainly.

COMMISSIONER WATLING: Right. Mr Targett?

MR TARGETT: The document which I have just submitted -

MR WARWICK: Are you asking for the ....

MR TARGETT: The document I have just submitted as an exhibit -

COMMISSIONER WATLING: Right. Well, we will mark this exhibit T.1.

MR TARGETT: Exhibit T.1., Mr Commissioner, represents the variations required to Clause 8 - Wage rates, to reflect the 2.5 per cent wage increase applicable to the classifications contained within the broadbanded award and in doing so I would seek quickly to address the second structural efficiency principle of 13 August '91 and look at items (a) to (g) to ensure that we advise the commission employers believe that this - the union have met all the tests required.

In item (a) there has been an extensive examination of the award whereby all of the clauses within that award have been addressed. A substantial number of variations were made by consent and a number were asked - put to arbitration by the commission. There were two matters outstanding for arbitration which have been requested to be referred to a full bench and those matters have been asked for arbitration and consent through T Nos. 3926 and 3987 of 1987.

They addressed the issues contained within item (a) of the structural efficiency principle, in detail, including contract of employment, arrangement of hours, and so on. Item (b) within the principles requires a genuine commitment to the insertion of facilitative provisions, there are an extensive range of facilitative provisions in the Nursing Homes Award now which have all been put in by consent. I believe the genuine commitment of the parties has already been well demonstrated.

The item (c) requiring the consultative mechanism is contained within the provisions of the Nursing Homes Award and once again I would suggest strongly that item (c) has been fully satisfied by the inclusion of the provisions in that award. Item (d), the enterprise flexibility arrangements are also contained within a separate provision within the Nursing Homes Award and there is no dispute between the parties over that particular issues, so I would put to the commission that item (d) has been satisfied.

Item (e), the requirement for an award provision directing an employee to carry out such duties, et cetera, is contained within the contract of employment clause by agreement into the Nursing Homes Award, which has been put once again in 3926 and 3987 of 1992. Subclause (f) goes to the question of implementation substantially of the structural efficiency principle. As the result of the conclusion of matter 3926 and 3987 of 1992, save the two matters to be referred to the full bench, we put to the commission that the structural efficiency principle has been fully satisfied.

And as those two matters have been referred to a full bench, we believe that it is now beyond the ability of the parties to do any more till such time as the full bench is able to convene and finalise, so we do not believe that that, in fact, is an impediment to the 2.5 per cent applying.

Item (g) goes to the question of minimum rates adjustments process. In fact, being a paid rates award the minimum rates adjustment principle does not directly apply, although there is going to be a wage rates adjustment process which commences on 1 January and the timetable is well established for that by agreement between the parties. So, on that basis, Mr Commissioner, we would put that from the employer's perspective the 2.5 per cent can apply from the date of decision into the Nursing Homes Award having fully satisfied the requirements of the wage fixing principles structural efficiency principle items (a) to (g). If it pleases the commission.

COMMISSIONER WATLING: Any submission on the operative date?

MR TARGETT: I did mention, Mr Commissioner, the date of decision.



COMMISSIONER WATLING: Right.

MR TARGETT: We would see that, hopefully, being a similar date to the matters 3926 and 3987 of 1992.

COMMISSIONER WATLING: Thank you. Mr Warwick?

MR WARWICK: Thank you, Mr Commissioner. We make application for the payment of the 2.5 per cent to the broadbanded wage rates which will be established. We believe we have satisfied the requirements of the structural efficiency principle as contained in the commission's State Wage Case decision of 13 August 1992. On the basis of Mr Targett's comments I do not believe it appropriate for me to take you through (a) to (g) again.

In respect to operative date, Mr Commissioner, we would request today's date. The matter has been - the 2.5 per cent payment has been available for quite some time and has been widely dispersed throughout the community and the nursing home - our nursing home members we believe would appreciate the earliest .... possible date in respect of payment - of the authorisation of the decision in respect of the 2.5 per cent claim. If the commission pleases.

COMMISSIONER WATLING: Good. No further submissions from the parties? There being no further submissions, I reserve my decision in this matter and hand down a decision in due course. Thank you very much for your participation. The matter is now closed.

HEARING ADJOURNED