

CITATION: *Queensland Council of Unions AND Department of Justice and Attorney-General and Others (B/2010/34) and The Australian Workers' Union of Employees, Queensland AND Department of Justice and Attorney-General and Others (B/2010/38) - Decision*
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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - s. 287 - application for declaration of a general ruling

Queensland Council of Unions AND Department of Justice and Attorney-General and Others (B/2010/34)

and

**The Australian Workers' Union of Employees, Queensland AND
Department of Justice and Attorney-General and Others (B/2010/38)**

DEPUTY PRESIDENT SWAN
COMMISSIONER FISHER
COMMISSIONER THOMPSON

2 December 2010

OVERTIME MEAL ALLOWANCE

DECISION

- [1] Applications B/2010/34 and B/2010/38 (as amended) are made by the Queensland Council of Unions (QCU) and The Australian Workers' Union of Employees, Queensland (AWU) respectively. With consent of all parties, these applications were joined.
- [2] In accordance with s. 287 of the *Industrial Relations Act 1999* (the Act), the Queensland Industrial Relations Commission (Commission) has given notice of our intention to conduct this hearing. All parties have been given the opportunity to make submissions.
- [3] Both applications seek a General Ruling for the Overtime Meal Allowance to all Awards pursuant to s. 287 of the Act.
- [4] The decision sought is as follows:

"The minimum amount prescribed in awards which make provision for the payment of an amount of \$9.60 as an overtime meal allowance to employees required to work overtime be amended by the deletion in the Award of such an amount and by the insertion in lieu into the Award the amount of \$12.07."
- [5] The parties requested that the application be heard "on the papers".
- [6] The Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees (SDA) advised the Commission that whilst not able to attend the proceedings, they requested to have their support for the application recorded.

Applicants' Submissions

- [7] The overtime meal allowance contained in various awards of the Queensland Industrial Relations Commission (Commission) was last varied by the Commission in *QCU AND QCCI and Others, and AWU AND QCCI and Others*¹.
- [8] The allowance was increased from \$7.50 to \$9.60. The operative date for that increase was 1 July 2004.
- [9] In that decision, the statistics considered by the Commission included the Consumer Price Increase Index (CPI) for all groups from March 1996 to December 2003; the CPI for food from March/June 1995 to December 2003; the CPI for meals out and takeaway food from March 1996 to December 2003 and the Index of Regional Price - Retail Prices in Regional Centres 1999 to 2001.

¹ *Queensland Council of Unions AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (No. B584 of 2004) and The Australian Workers' Union of Employees, Queensland AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (No. B682 of 2004) [2004] 176 QGIG 407*

- [10] The parties submitted that the quantum of the overtime meal allowance was determined by taking into account the sum of:
- "the percentage increase in the price of food in Brisbane since the last increases to the overtime meal allowances was awarded; and
 - The greater prices for food, alcohol and tobacco goods for regional centres in Queensland, divided by two, as approximately 50 per cent of Queensland's population resides in regional areas."
- [11] The applicants provided statistics from similar indexes from March 2004 to June 2010.
- [12] In summary, these statistics demonstrate that there has been an increase of 23.51 percent in the price of food in the Brisbane area since March 2004.
- [13] Statistics obtained from the Queensland Government's Office of Economic and Statistical Research in its Index of Retail Prices in Regional Centres (May 2006) shows that there was an average of 3.05 percent higher prices for food, alcohol or tobacco goods in regional centres in Queensland. Given that 50 percent of Queensland's population resides in regional areas, there was an average differential of 1.53 percent.
- [14] Since the Decision of the Commission in 2004, there has been an average increase in food prices in Queensland of 24.04 percent.
- [15] Similar submissions were made by the Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees (LHMU) in support of the applications.

Interested Parties

Queensland Government

- [16] The Queensland Government stated that the meal allowance would affect 24 awards covering Queensland Government employees. They then stated that "as the majority of these employees are public service employees they are subject to Ministerial Directive Overtime Meal Allowances and will not be affected by this increase".
- [17] The Queensland Government said that they had accepted the method of calculation adopted by the applicants and as such did not oppose the Application.
- [18] 1 January 2011 was cited as the most appropriate operative date for the increase. This would permit affected agencies to make the necessary adjustments to employees' wages.

Local Government Association of Queensland (Incorporated) (LGA)

- [19] The LGA did not oppose the data filed by the applicants as it related to Australian Bureau of Statistics and the Office of Economic and Statistical Research. However, the LGA stated that for "consistency of the formula" recognised by the Commission in Matter Nos. B/2004/584 and B/2004/682 "the food group should be considered in isolation and not as a grouped index with alcohol and tobacco as alcohol and tobacco should not be considered in relation to any application to vary meal allowances within the Awards".
- [20] Applying the formula it believed the most appropriate, the LGA believed that the increase to the meal allowance would result in an amount of \$12.11.
- [21] The LGA sought an operative date of 1 January 2011. That date would enable Local Governments in Queensland to have an adequate lead-in time in which to ensure that the appropriate allowances were paid to employees.

Wage Fixing Principles

- [22] The Applications fall within the current wage fixing principles (specifically principle 6(a), which states that the "existing allowances that constitute a reimbursement of expenses incurred may be adjusted from time to time, where appropriate, to reflect relevant changes in the level of such expenses".

Consideration of submissions

- [23] Having considered all submissions, it is our view that the increase sought in the allowance requires adjustment to adequately compensate employees for meal expenses incurred in connection with a period of overtime.

- [24] We acknowledge the submission made by the LGA where a reconsideration of the formula relied upon to determine the average increase in food prices since 2004 is requested. At this point in time, the Full Bench does not intend to disturb what has been accepted as the appropriate manner by which the increase sought has been made from time to time.
- [25] We have also considered the most appropriate operative date for any increase to the meal allowance. The time frame set for the hearing and determination of these applications has been of short compass.
- [26] In our view, it would be more manageable and appropriate for any increase granted by the Commission to be awarded in January 2011. It would be difficult at this time of the year for employers to ensure that appropriate payments were made to employees with short notice. The most appropriate date for any increase should be 1 January 2011.

Decision

- [27] The Full Bench has accepted the submissions made by the applicants and those in support of the Application.
- [28] It is determined that the increase in the overtime meal allowance in all awards for employees be \$12.07 rounded to \$12.10. This payment is to be effective as from 1 January 2011.
- [29] The Registry of the Commission will make the necessary amendments to awards which are required to give effect to this Decision.
- [30] The Commission orders accordingly.

D.A. SWAN, Deputy President.

G.K. FISHER, Commissioner.

J.M. THOMPSON, Commissioner.

Hearing Details:

2010 17 November
 22 November (*QCU and AWU Written Submissions*)
 25 November (*LGA and JAG Written Submissions*)
 29 November (*QCU and AWU Written Submissions in reply*)

Released: 2 December 2010

Appearances:

Ms K. Anderson for Queensland Council of Unions.
 Mr C. Donati for The Australian Workers' Union of Employees, Queensland.
 Ms A. Kent for Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees.
 Ms L. Dickson and Mr N. Gillespie for Department of Justice and Attorney-General.
 Mr K. Ryalls for Local Government Association of Queensland (Incorporated).