

**APPENDIX B**

## QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999 - s.130 - review of awards*

Award Review (No. 1733 of 1999)

COMMISSIONER K.L. EDWARDS  
 COMMISSIONER R.E. BECHLY  
 COMMISSIONER D.A. SWAN

To be distributed amongst the Parties  
 This decision is to be incorporated in the transcript of proceedings

**MATTERS FOLLOWING THE STATE WAGE CASE B882 OF 1999 AND B888 OF 1999 IN RELATION TO  
 PRINCIPLE 12-AWARD REVIEW (CASE B1733 OF 1999)**

November 7 2001

This decision follows the decision issued by the Full Bench on 19 September 2001.

The matters to be determined in this decision relate to the following:

Time and Wages Clause  
 Right of Entry Clause  
 Superannuation (application of section 405)  
 Transmission of Business  
 Long Service Leave  
 Termination, Change and Redundancy Provisions  
 Teachers' Award - State

In accordance with the practice developed in the decision of 19 September 2001, in order to facilitate the clients' requests to have these matters determined at each stage of the case progresses and within a relatively constrained time period) we determine as follows:

Preamble to determination

We appreciate the fact that difficulties may arise from time to time for both employers and employees in terms of accurate Award interpretation when relevant legal components affecting the Award are not contained within the Award, but in other Legislation.

However, as a matter of general application in determining the abovementioned issues, we hold the view that to replicate within Awards, *in toto*, Legislative provisions contained within the *Industrial Relations Act 1999* (the Act) which have a direct relevance upon an Award would be a cumbersome approach to modernising Awards of this Commission.

We note that much of the debate between the parties has been reduced to an acceptance that there should be model clauses developed around the issues in question, but, from the employers' perspective, in instances where an Award is silent on the point, it should remain so. The other areas of difference appear to relate to the semantics involved around best expressing the matter in question.

We do accept, generally that it would be helpful for reference to be made, to varying degrees, to all matters directly affecting the appropriate interpretation of an Award. We do not accept the submissions that seek to leave Awards silent upon issues which are directly related to the legal operation of such an Award.

Having made that determination, we now look to the most appropriate manner in which to incorporate clauses into all Awards that adequately portray the legal rights and obligations applicable to employers and employees.

As a matter of general application, with all of the model clauses, reference should also be made in the preamble for the need to refer to the appropriate clause in the Act in order to fully appreciate all legal requirements.

We also state that it is not for this Full Bench to attempt to alter the determinations made by previous Full Benches of this Commission with regard to General Ruling outcomes.

It should be noted that the documents submitted to the Commission by all parties accurately reflect the level of debate between the parties. Those points need not be reiterated in this decision. As earlier stated, the parties have successfully reduced the issues in contention down to discrete issues which have been determined as follows:

#### Time and Wages Clause

We accept QCU and the Government's submissions, with some modification, regarding the inclusion of the proposed Clause within all Awards. Reference should be made to points 1.2 and 1.3 of the employers' submissions (*Tripartite Committee Submission -Areas of Agreement and Disagreement*) in order to ensure that employers understand their obligations under the Legislation.

#### Right of Entry Clause

We accept that it is appropriate to contain a clause relating to Right of Entry within all Awards. We accept QCU's draft clause on this point. We are satisfied that the proposed clause accurately reflects the intent of the Act.

#### Superannuation Clause

A model clause has been agreed to between the parties with the exception of one sub-clause:

*"If the employee is a member of a union with coverage under this award, the employee is entitled to be represented by that union in discussions with the employer about the fund. Note the consent of the union is not required to any agreement between the employer and the employee".*

We accept the fact that employees who seek assistance with regard to Superannuation matters may do so in the manner sought through the Dispute Settlement Procedures. Sub clause (6) adequately caters for this concern.

#### Transmission of Business Clause

We have formed the view that an appropriate clause for the transmission of business would be one which simply refers the enquirer back to the provisions of the Act. We hold this view as we accept submissions that the area in question is often subject to legal dispute and interpretation and we feel somewhat constrained in attempting to summarise such provisions within Awards of general application.

#### Long Service Leave

We accept the QCU and Government's position on this matter. The current provisions contained within Awards should remain in force and there should be added reference to the relevant provisions contained within the Act.

We accept the Government's submissions that "recent amendments to the provisions are complex and would virtually need to be repeated in entirety to be comprehensive".

We see no need to advance any specific component of the provisions (eg. "cashing out" of Long Service Leave) within the Award. Employers and employees are aware of Long Service Leave provisions generally and, when the preamble to the clause is perused, one is automatically referred back to the appropriate provisions of rulings and/or Legislation. We see this as sufficient in the circumstances.

#### TCR Changes

TCR provisions are lengthy, but not necessarily complex. It is understandable that any attempt to summarise these provisions is extremely difficult.

Employer organisations generally highlighted instances whereby the general clause contained within the TCR provisions were not always applicable. Also, since the TCR provisions were the subject of a Statement of Policy rather than a General Ruling, then it would be inappropriate for the provisions of it to be inserted into all Awards as a model clause and beyond the scope of Sections 126-128 of the Act.

After considering these factors, we are prepared to accept the model clause as put forward by the QCU.

**Teachers' Award - State**

The issue between the parties is the manner in which directives of the Minister made in accordance with the Public Service Act are reflected in the award.

We agree with the approach taken by the Department of Industrial Relations.

The Directives referred to set certain entitlements of those covered by the awards. It may be of some assistance in the capacity of those covered by the award to better understand the contents of Directives to have a summary in simple form included in the award rather than a bald reference to the Directive itself.

Any such inclusion should refer back to the Directive as the source of entitlement.

K.L. EDWARDS, Commissioner

R.E. BECHLY, Commissioner

D.A. SWAN, Commissioner

