We have not been taken specifically to the evidence that was before the Full Bench of the AIRC with respect to the need for a minimum period of engagement for part-time workers in this industry. Evidence of difficulty with the existing Award provision was also not provided. We are concerned that the provision of a minimum period of daily engagement may be overly prescriptive and may inhibit the use of part-time workers. We are also conscious of that part of the decision of the Full Bench of this Commission in the *Casual Loading* case which encouraged parties to examine facilitative provisions to assist in the reduction in use of casual employment. We do not consider that this objective is met by the proposed inclusion of daily minimum periods of engagement. Accordingly, we refuse that part of the application. We have however decided to extend to part-time workers the right to be informed of their terms and conditions of employment in terms of the decision of the AIRC but as modified by the aforegoing comments.

Exemption

The LGA indicated in their response that local government would be seeking an exemption from any amendments that might be ordered. As this matter was not argued before us, we are not disposed to consider this matter.

Operative Date

Given the amendments to casual and part-time provisions flowing from this decision we believe that it would be appropriate to provide a reasonable period of time before the amendments operate. This will allow the amendments to be drafted, enable both employees and employers to be educated about the amendments and allow adequate time for the amendments to be issued. Accordingly, the operative date shall be 5 August 2002.

Transitional provisions for those casual employees who have already been engaged for six months by 5 August 2002 will need to be discussed between the parties. We do not see that those casual employees who have already served the qualifying period should be disadvantaged. Transitional provisions, similar to those approved by the Full Bench of the AIRC, are envisaged.

The applicant is directed to confer with the respondents to prepare draft amendments, including the pro-forma letter, arising from this decision. Such amendments are to be lodged in the Registry by 10 June 2002. The Full Bench reserves the right to settle the terms of or make any changes to the draft amendments as may be necessary.

Order accordingly.

G.K. FISHER, Commissioner.
D.K. BROWN, Commissioner.
J.M. THOMPSON, Commissioner.

Appearances –

Mr S. Pawlowski of the Queensland Chamber of Commerce and Industry Limited, Organisation of Employers.
Mr C. Pollard and Ms V. Lincoln for the Printing Industry Association of Australia and the Queensland Country Press Association.
Mr T. Shipstone and Ms J. Valentine for the Crown.
Mr R. Beer for the Local Government Association of Queensland.
Mr R. McPherson and Mr D. Pratt for the Australian Industry Group.
Mr M. Proctor for the Australian Sugar Milling Association, Queensland, Union of Employers.
Mr T. Kowalski for the Motor Trades Association of Queensland, Union of Employers.
Mr E. Moorhead and Mr B. Burton for the Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland.
Ms K. Inglis for the Electrical Trades Union of Australia, Queensland Branch.

Released: 14 May 2002

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 130 review of awards

Review of Awards (No. B1733 of 1999)

COMMISSIONER EDWARDS
COMMISSIONER BECHLY
COMMISSIONER SWAN

10 May 2002

Review of Awards – Part-time employment provisions – Submissions – Full Bench Decision – Not intent of Award Review process to enhance Award Provisions – Where existing clause clearly indicates the circumstances for overtime to be paid to part-time employees these provisions should continue to apply – Where no specific provisions award provisions with respect to overtime should be applicable.

DECISION

The Full Bench refers to the decision of 19 September 2001 wherein reference was made to part-time employment provisions as follows:–

> "Section 126 (h)(ii) requires the Commission to ensure that wherever possible, an award contains provisions enabling the employment of regular part-time employees.
>
> Agreement has been reached between the parties upon a range of issues including the setting of maximum and minimum hours of work for part-time employees.
>
> A number of propositions have been posed by some parties with regard to what should be incorporated within a model clause.
>
> We view some propositions put forward by the QCU as being too prescriptive for appropriate implementation into common rule awards by way of a model clause.
>
> We highlight those consequences of a possible model clause, which we believe would cater for the concerns of each party, and effect appropriate Award Review.
>
> - We state that a clear distinction should be made between casual, part-time and full-time employees.

- We acknowledge that part-time provisions and requirements differ from industry to industry (Note: the *Sugar Industry Award – State* where a majority Full Bench of the Commission determined that part-time provisions be excluded from the Award. That decision was upheld on appeal to the Industrial Court).

- Taking into account the flexibility we believe should exist in the workplace, we accept that an agreement made between the employer/employee regarding part-time provisions must clearly indicate the hours to be worked within the period agreed upon. As to circumstances where those hours are occasionally extended during the engagement, we believe that the provisions of the Award with respect to overtime should be applicable.

- We believe that in accordance with standard Award provisions, those hours may be varied with appropriate notice being provided.

- We do not see it as helpful to have within a model clause a requirement on the part of an employer to provide part-time employees with specific predetermined days of engagement particularly as many Awards provide for rostering of days upon which work is performed. However, there may be circumstances where such a prescription is appropriate in the business concerned.

- We are not prepared to include in a model clause the minimum or maximum hours that employees must work during any particular engagement. That is for the parties to determine on an award by award basis.".

As a result of a Dispute Notification, a hearing of the Full Bench was held on 15 April 2002 to clarify the situation in relation to part-time employment provisions. The parties agreed to the proposal that Commissioner Edwards hear the submissions and that Commissioners Bechly and Swan would read the transcript and if necessary the Full Bench would sit to clarify any questions, which may arise.

Commissioners Bechly and Swan have read the transcript.

The Commission has given consideration to all of the submissions of the parties and we refer to the decision of 19 September 2001 which acknowledges:–

(a) That part-time provisions and requirements differ from industry to industry;

(b) We do not see it as helpful to have within a model clause a requirement on the part of an employer to provide part-time employees with specific predetermined days of engagement particularly as many awards provide for rostering of days upon which work is performed. However, there may be circumstances where such a prescription is appropriate in the business concerned; and

(c) We are not prepared to include in a model clause the minimum or maximum hours that employees must work during any particular engagement. That is for the parties to determine on an award by award basis.

It is not the intent of the award review process under s. 130, nor of decisions made by the Commission as constituted, to establish outcomes that result in the enhancement of existing award provisions. There are other avenues available to parties to amend awards where a party believes that changes under the review process have resulted in an enhancement of existing award provisions.

Consequently, where an existing clause clearly indicates the circumstances in which overtime is to be paid to part-time employees, these provisions should continue to apply. However, where there are no such specific provisions, including situations where the Award is silent or in cases of new awards, we would expect that the provisions of the Award with respect to overtime should be applicable.

We order accordingly.

K.L. EDWARDS, Commissioner.

R.E. BECHLY, Commissioner.

D.A. SWAN, Commissioner.

Appearances:–
Mr J. Barrett for the Queensland Council of Unions.
Ms T. Lane for The Australian Workers' Union of Employees, Queensland.
Mr L. Gillespie for the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees.
Mr. M. Healy and Ms G. McCaul for the Queensland Nurses' Union of Employees.
Dr S. Winocur for the Crown.
Ms C. Doyle for the Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers.
Mr R. McPherson for Australian Industry Group, Industrial Organisation of Employers (Queensland)Mr G. Coonan for the Department of Industrial Relations and Education Queensland.
Ms S. McAuliffe for the Retailers' Association of Queensland Limited, Union of Employers.
Mr G. Trost for Queensland Cane Growers' Association Union of Employers.
Mr K. Law for The Restaurant and Caterers Employers Association of Queensland Industrial Organisation of Employers.

Released: 10 May 2002