

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Re: variation of the Queensland Parliamentary Service Award – State 2015*
[2019] QIRC 183

PARTIES: **Neil John Laurie**
(Applicant)

v

Together Queensland, Industrial Union of Employees
(First Respondent)

&

United Voice, Industrial Union of Employees
(Second Respondent)

&

The Services Union, Industrial Union of Employees
(Third Respondent)

CASE NO: MA/2019/6

PROCEEDING: Application

DELIVERED ON: 28 November 2019

HEARING DATE: 27 November 2019

MEMBER: O'CONNOR VP

HEARD AT: Brisbane

ORDER: **1. Application granted. Full Orders as per final page of decision.**

CATCHWORDS: INDUSTRIAL LAW – VARIATION OF A MODERN AWARD – application to vary a modern award

LEGISLATION: *Industrial Relations Act 2016 (Qld)* s 141, s 147

APPEARANCES: Mr P Morris for the Applicant.

Mr M Thomas for Together Queensland,
Industrial Union of Employees

Reasons for Decision

- [1] Mr Neil Laurie, the Clerk of Parliament, has filed an application pursuant to s 147 of the *Industrial Relations Act 2016* to vary the *Queensland Parliamentary Service Award – State 2015* ("the Award"). The Award applies to officers and employees who are employed by the Clerk of Parliament on behalf of the Legislative Assembly of Queensland.
- [2] The application seeks to vary clause 18 of the Award which relates to "Overtime" by precluding employees above a A05 pay point 4 from being entitled to remuneration for overtime. The variation is described in the affidavit of Mr Neil Laurie sworn 7 November 2019 as follows:
1. By deleting clause 18.1 (Overtime – general) and inserting the following in lieu thereof:
18.1 Overtime – general
 - (a) An employee appointed to or relieving in a position which attracts a salary level above that prescribed for an employee in classification level A05, paypoint 4 is not entitled to remuneration for overtime.
 - (b) Nothing in clause 18.1(a) is to be taken to prevent the Clerk from exercising their discretion to make overtime payments to an employee who would otherwise be exempted from being entitled to remuneration for overtime.
 - (c) An employee receiving a salary level above that prescribed in clause 18.1(a) shall be entitled to time off in lieu, equivalent to the amount of additional time worked, on a time for time basis.
 - (d) Employees shall work reasonable overtime whenever necessary in the opinion of the Clerk, but 24 hours' notice shall be given, where practicable, to an employee required to work overtime.
 - (e) Overtime is to be calculated to the nearest quarter of an hour.

Note: Where a directive about hours and overtime covers an employee, the provisions of the directive apply to the employee to the extent it provides a more generous entitlement.

- [3] The variation also inserts into existing clause 18.2 and 18.3: "*Except as provided in clause 18.1*".

Consideration

- [4] At the hearing of this matter Mr P Morris for the Applicant informed me that the application was made with the consent of all parties. In that regard Mr Morris produced to the Commission two emails: the first from Mr J Marks an Industrial Officer of United Voice and the second an email from Mr N Henderson the Secretary of the Services Union. The emails made it clear that both unions consented to the application. Mr M Thomas of Together Union attended the hearing and confirmed that Together Union also consented to the application.
- [5] Section 147 of the IR Act provides that the Commission may make or vary a modern on its own initiative or by application to provide for "fair and just employment conditions". There is also a general requirement that in order for the Commission to exercise its power under Chapter 3 it must ensure that a modern award provides for fair and just wages and employment conditions that are at least as favourable as the Queensland Employment Standards.
- [6] I am satisfied that the variation would not cause the Award to cease providing "fair and just employment conditions" or cause the conditions to fall below what is provided for by the Queensland Employment Standards. In that regard I note that the proposed variation is relatively minor only affecting employees above a A05 pay point 4 with the variation bringing the Award into line with similar awards such as the *Queensland Public Service Officers and Others Employees Award – State 2015*. I also have regard to the consent of all the union parties and in particular the submissions of Mr Thomas of Together Union who told the Commission that:

"our view is that this [the variation] is maintaining the positions that was in place prior to the modern award and it was just an oversight in terms of putting the cap in [the cap on overtime entitlement] it was put in all the other modern awards but was somehow missed in this one so it is not reducing conditions it's keeping in line with the intent of the modern award of not changing conditions from the pre-modern awards."

- [7] I grant the application and make the necessary orders to vary the Award.

Order

Pursuant to s 147 of the IR Act the *Queensland Parliamentary Service Award – State 2015* is varied as follows:

1. By deleting clause 18.1 and inserting in lieu thereof the following:

- a) An employee appointed to or relieving in a position which attracts a salary level above that prescribed for an employee in classification level A05, paypoint 4 is not entitled to remuneration for overtime.
- b) Nothing in clause 18.1(a) is to be taken to prevent the Clerk from exercising their discretion to make overtime payments to an employee who would otherwise be exempted from being entitled to remuneration for overtime.
- c) An employee receiving a salary level above that prescribed in clause 18.1(a) shall be entitled to time off in lieu, equivalent to the amount of additional time worked, on a time for time basis.
- d) Employees shall work reasonable overtime whenever necessary in the opinion of the Clerk, but 24 hours' notice shall be given, where practicable, to an employee required to work overtime.
- e) Overtime is to be calculated to the nearest quarter of an hour.

Note: Where a directive about hours and overtime covers an employee, the provisions of the directive apply to the employee to the extent it provides a more generous entitlement.

2. By inserting above the body of clause 18.2 and 18.3 the following:

"Except as provided in clause 18.1"

3. The variations to the Award operate on and from 27 November 2019.