



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

DEPUTY PRESIDENT LAKE

C2022/7104

s.739 - Application to deal with a dispute

**United Workers' Union
and
Spotless Facility Services Pty Ltd
(C2022/7104)**

Spotless Sunshine Coast University Hospital Security Enterprise Agreement 2019

Brisbane

10.00 AM, TUESDAY, 7 FEBRUARY 2023

Continued from 01/12/2022

PN1

THE ASSOCIATE: In the matter of United Workers' Union v Spotless Facility Services Pty Ltd, matter C2022/7104, the Fair Work Commission is now in session.

PN2

THE DEPUTY PRESIDENT: Thank you.

PN3

MR M DE ROOY: If it pleases, Deputy President, for the applicant, de Rooy, initial M, and I appear with Teakle, initial L.

PN4

THE DEPUTY PRESIDENT: Thank you very much, Mr de Rooy.

PN5

Yes?

PN6

MR J MORTLEY: If it please the Commission, Jack Mortley, appearing with my colleague Jarrett Goos.

PN7

THE DEPUTY PRESIDENT: Thank you very much.

PN8

I understand there's a number or at least one large preliminary matter, or jurisdictional matter, is that the case?

PN9

MR DE ROOY: Yes, your Honour.

PN10

THE DEPUTY PRESIDENT: Okay. Now, what I'll do is I'll hear from both of you on that point first, and once I've heard that we'll continue on, I'll hear both the merits as well as the jurisdictional argument. So then the decision that follows, if I find for the jurisdiction, then the merits won't require, of course. But if find that I do have jurisdiction to hear this then, of course, I'll provide my decision.

PN11

So as it's a jurisdictional objection I'll let the respondent go first, to just outline what the argument is that I don't have the capacity to hear this matter.

PN12

MR MORTLEY: Thank you, Deputy President. There are a number of jurisdictional issues in this case. The first issue relates to the coverage clause, sorry, the dispute resolution clause requirements. The dispute resolution clause found at 2.4.2 of the agreement and 2.4.3, which is found at page 125 of the court book.

PN13

Deputy President these clauses provide that an employee, who is party to a dispute, may appoint a representative for the purposes of the dispute resolution procedure and that, in the first instance:

PN14

The parties to the dispute will try to resolve the dispute at a workplace level by discussions between the employee or their representatives and the relevant supervisors and/or management.

PN15

So in their submissions the applicant seems to argue that this obligation has been discharged by way of email between Mr Simon Ong and myself.

PN16

It is the respondent's understanding that Mr Ong is the lead industrial officer at the UWU and he is based in Brisbane. I'm an IR advisor for the Labour Downer Group(?), my role is not supervisory or managerial in nature and it is not related - it is not based at the Sunshine Coast University Hospital. The applicant simply has not met any part of this dispute resolution clause's requirements.

PN17

The UWU has claimed that they may raise a dispute on behalf of an employee and in the absence of an employee communicating to the business that they have appointed the UWU as a representative for such a dispute.

PN18

The applicant, similarly, relies on the case of *Energy Australia Yallourn Pty Ltd v AMWU*, however, the respondent notes that these circumstances are substantially distinguished from the facts in that case, mainly due to the fact that that case considered the union representation of members, or eligible members, in disputes, without being appointed, and this point being communicated by the business.

PN19

It is the respondent's submission that the UWU have failed to establish that their rules extend to the coverage of the role of security supervisor in the state of Queensland. In their submissions they have referenced part 25(1) and part 17(f) and subsection (g)(ii) as the relevant sections extending coverage to security supervisors.

PN20

Part 25(1), seemingly, relates to persons employed by operators in correctional facilities and prisoner transports and parts 17(f) and (g)(ii) seemingly relate to security employees in the retail industry and employees of contract catering companies.

PN21

The respondent submits these sections are completely irrelevant to the respondent's business activity as it relates to these security supervisors.

PN22

In the applicant's reply submissions it has been stated that the security supervisor's eligibility for UWU membership is irrelevant to the question, however, I do not think the applicant has refused to have this matter heard, on the papers, in order to deal with these particular jurisdictional issues and in these circumstances we would request leave - respectfully request the Deputy President to comment on the matter of membership eligibility as this will clarify matters that may further delay the recommencement of negotiations for the replacement agreement.

PN23

Deputy President, I should comment that it is our focus today to get this matter resolved. If these jurisdictional issues will, in fact, prevent this matter from going ahead, we do intend to withdraw them, just to allow this matter to be resolved and for us to get back to negotiations as soon as possible, which we believe to be in the best interests of our employees and the union's members.

PN24

Thank you.

PN25

THE DEPUTY PRESIDENT: Okay, thank you.

PN26

Yes, Mr de Rooy?

PN27

MR DE ROOY: Thank you, Deputy President.

PN28

It's our respectful submission that if the respondent no longer presses the jurisdictional objections, we would also just - our preference would be to continue today. I can address you on the three, however, if it's no longer pressed, then we could - - -

PN29

THE DEPUTY PRESIDENT: Just run through them thank you and then if it's not pressed then we can go straight to the merits.

PN30

MR DE ROOY: Thank you, Deputy President.

PN31

Firstly, on the issue of whether the dispute's procedure was followed, we rely on the statement of Matthew Williams, particularly his second annexure, an email of September 2022, between Dave Malley of the union and Mark Phillips of Spotless. That is a discussion at the workplace level and discussions were occurring at the workplace level during bargaining. That was then escalated to Mr Jack Mortley of the respondent and Mr Simon Ong, who I note is no longer with the union. So it's our respectful submission that that disputes procedure has been followed. If it hasn't, then unfortunately we would have to go away and come back to you, which we don't see as practical, given that there clearly is a dispute before you today.

PN32

Secondly, and party to the dispute, Deputy President, we provided some authorities in our submissions in reply, namely, the AMWU case, there are two points here, firstly, that the union can be a party to a disputes procedure if it's party to an agreement, particularly in the event where employees wish to remain anonymous. The second point is, it would be counterproductive for a union to be able to seek civil remedy provisions for breaches of agreements if they can't bring disputes in their own right. So, in this case, Deputy President, we say that we are a party to the dispute and we can bring it.

PN33

Lastly, Deputy President, the rules of the union. It's our respectful submission this is not a decision that you are tasked to determine. It's not an agreed question between the parties and it would go further than the application that's before you today, so we don't seek, in any way, a ruling on our rules.

PN34

Thank you, Deputy President.

PN35

THE DEPUTY PRESIDENT: I note, and as you have said, you don't press the jurisdictional, on the basis that you just want the matter heard, decided and get back to bargaining?

PN36

MR MORTLEY: That's correct, Deputy President.

PN37

THE DEPUTY PRESIDENT: Okay, thank you. Thank you for those submissions. Well, let's get into the meat of it. So I'll open the case then and we'll continue.

PN38

MR DE ROOY: Thank you, Deputy President. We'd like to, if it pleases the respondent as well, call, in order, Mr Caldwell; secondly, Mr Williams; and, thirdly, Mr Phillips.

PN39

THE DEPUTY PRESIDENT: Yes.

PN40

MR DE ROOY: Deputy President, we'll just get Mr Williams for you. Mr Caldwell, my apologies.

<DONALD WILLIAM CALDWELL, AFFIRMED

[10.19 AM]

EXAMINATION-IN-CHIEF BY MR DE ROOY

[10.19 AM]

*** DONALD WILLIAM CALDWELL

XN MR DE ROOY

PN41

MR DE ROOY: Could you please state your full name and address, for the Commission?---Donald William Caldwell (address supplied).

PN42

Have you made two witness statements in this matter?---I have.

PN43

Is your first statement dated 22 December and 24 paragraphs in length?---Yes.

PN44

Thank you. And your second statement is dated 31 January 2023 and nine paragraphs in length?---Yes.

PN45

Thank you. And you have a copy of those two statements in front of you?---Yes, I do.

PN46

Thank you. Deputy President, I'd like to tender the statement of 22 December 2022.

PN47

THE DEPUTY PRESIDENT: Thank you. I'll accept them as part of a bundle currently in front of us.

PN48

MR DE ROOY: Thank you.

PN49

Deputy President, I'd also like to tender the statement of 31 January 2023, so that's Mr Caldwell's statement in reply.

PN50

THE DEPUTY PRESIDENT: What page is that on?

PN51

MR DE ROOY: One hundred and nine of the court book, Deputy President.

PN52

THE DEPUTY PRESIDENT: Thank you. Yes, okay. Thank you.

PN53

MR DE ROOY: Deputy President, have you exhibited those two? My apologies, I missed it.

PN54

THE DEPUTY PRESIDENT: Yes, I've accepted them as part of that bundle, so there's no need to mark them specifically, I have accepted them as evidence.

*** DONALD WILLIAM CALDWELL

XN MR DE ROOY

PN55

MR DE ROOY: Thank you. Thank you, Deputy President.

PN56

Mr Caldwell, I'd like to show you an excerpt from a contract, and I'm going to hand it up to you and I'm also going to hand it to the Deputy President and the respondent. It's an appendix to Mr Phillip's statement of January 2023, and it's page 89 of the court book. There's two copies there.

PN57

Mr Caldwell, do you have that in front of you?---Yes, I do.

PN58

Great. I'm just going to ask you a few questions on this document, Mr Caldwell. Have you seen this document before?---No, I haven't.

PN59

So prior to today and prior to preparing for these proceedings, you were never shown or given this document?---No, I haven't, no.

PN60

Deputy President, I'd like to tender the appendix to Mr Phillip's statement.

PN61

THE DEPUTY PRESIDENT: Is it already in the bundle here?

PN62

MR DE ROOY: It is already in the bundle.

PN63

THE DEPUTY PRESIDENT: Okay.

PN64

MR DE ROOY: It's page 89 of the court book, Deputy President.

PN65

THE DEPUTY PRESIDENT: Thank you.

PN66

MR DE ROOY: Mr Caldwell, I'd like to show you a letter of offer addressed to you, it's dated 18 September 2020, from Mr David Griffin, who was the contract manager. I'm just going to hand you up a copy?---Thank you.

PN67

Can I take you to page 3, at the heading, 'Duties and responsibilities' of that letter of offer?---Yes.

PN68

Let me know when you're there?---I'm there.

*** DONALD WILLIAM CALDWELL

XN MR DE ROOY

PN69

Thank you. You'll see, Mr Caldwell, it says:

PN70

You will initially report to the security manager. A position description detailing your duties and responsibilities is set out at schedule 2.

PN71

Mr Caldwell, did you ever receive a schedule 2 attached to the offer?---No, I didn't.

PN72

Thank you. Mr Caldwell, can I take you to your statement of 22 December, and let me know when you have it in front of you?---Yes, I have it.

PN73

Thank you. Attached to your statement is an annexure labelled DC1, can you turn to that annexure?---Yes.

PN74

Deputy President, this is page 50 of the court book.

PN75

THE DEPUTY PRESIDENT: Thank you.

PN76

MR DE ROOY: Mr Caldwell, in DC1 you answer some questions around what does an average work day look like. In addition to that, Mr Caldwell, in your role as a security supervisor, do you issue rosters or do you have a say in rosters?---No, I don't.

PN77

Mr Caldwell, in your role as a security supervisor are you involved in disciplinary decision making of security officers?---No.

PN78

Thank you. Deputy President, that's all I have for Mr Caldwell.

PN79

THE DEPUTY PRESIDENT: Thank you very much.

PN80

Yes, cross-examination?

PN81

MR MORTLEY: We have no questions for Mr Caldwell.

PN82

THE DEPUTY PRESIDENT: Thank you. There's nothing in reply, I think that's fair to say?

*** DONALD WILLIAM CALDWELL

XN MR DE ROOY

PN83

MR DE ROOY: No, thank you, Deputy President.

PN84

THE DEPUTY PRESIDENT: Thank you for coming in. It was short and brief?---Thank you.

<THE WITNESS WITHDREW

[10.26 AM]

PN85

MR DE ROOY: Deputy President, we're just fetching Mr Williams.

PN86

THE DEPUTY PRESIDENT: Thank you.

<MATTHEW STUART WILLIAMS, AFFIRMED

[10.26 AM]

EXAMINATION-IN-CHIEF BY MR DE ROOY

[10.26 AM]

PN87

MR DE ROOY: Thank you, Mr Williams. Could you please state your full name and address, for the Commission?---Matthew Stuart Williams (address supplied).

PN88

Thank you. Have you made a witness statement in this matter?---Yes.

PN89

Is that statement 23 paragraphs long and dated 22 December 2022?---That is correct.

PN90

Deputy President, I'd like to tender that, it's already part of the bundle.

PN91

THE DEPUTY PRESIDENT: Thank you very much, we'll accept that in.

PN92

MR DE ROOY: I have nothing further for Mr Williams.

PN93

THE DEPUTY PRESIDENT: Thank you. Anything in cross-examination?

PN94

MR MORTLEY: No questions from us, Deputy President.

PN95

THE DEPUTY PRESIDENT: Thank you for coming in. That was another brief appearance?---Thanking you.

<THE WITNESS WITHDREW

[10.27 AM]

MATTHEW STUART WILLIAMS

XN MR DE ROOY

<MARC PHILLIPS, AFFIRMED

[10.28 AM]

EXAMINATION-IN-CHIEF BY MR MORTLEY

[10.28 AM]

PN96

MR MORTLEY: In your statement you have provided evidence that your name is Marc Phillips, is that correct?---Yes, that's correct.

PN97

And you've provided evidence that your current role is the national head of security for Spotless, is that correct?---That's also correct, yes.

PN98

Thank you. Deputy President, I'd like to tender Mr Phillips' statement for this matter, it can be found at page 85 of the court book.

PN99

THE DEPUTY PRESIDENT: Thank you.

PN100

MR MORTLEY: Mr Phillips, prior to your engagement at Spotless, it is understood that you were a police officer. Can you please expand on your experience there?---Certainly, yes. So prior to working for Spotless I moved from the UK to Australia, in 2016. I had a career in the police service of approximately 15 years, nine of those years was as a sergeant in the counter-terrorism unit and then my final two years as an inspector, as chief of staff to the chief officer. Then, subsequently to that, I moved to Australia in 2016 and commenced my role with Spotless in May of 2016.

PN101

Thanks a lot. Mr Phillips, in your professional experience do you consider the security operations of the Sunshine Coast and University Hospital to be complex in nature?---Yes, I do. It's a complex sight in nature, but particularly in relation to security and particularly in relation to the security services that Spotless are contracted to provide. So in the private security industry many security services that are subcontracted to provide, such as Spotless, would be sites such as supermarkets, shopping centres where, predominantly, the site procedures are written and prepared by the client that you're providing services for, the contract between SCUH and Spotless is a public/private partnership, for a duration of 25 years, and that's a scope that encompasses all of the security services for the site. So in terms of technical security, the installation of CCTV, duress alarms, fixed duress, mobile duress, integrations into the security system, such as the fire system, helicopter landing sites, there's a childcare centre on site, there's a university on site, there's research labs on site, so the variety of incidents that you could respond to could vary from a critical incident in a mental health setting, working alongside the clinical staff, to an evacuation of a research lab, due to a chemical spill, which is something we experienced last year. So in comparison to regular work, the role of security teams in the security industry, absolutely it's a complex site.

*** MARC PHILLIPS

XN MR MORTLEY

PN102

Thank you very much. Mr Phillips, do you have a copy of your statement in front of you?---Yes, I do.

PN103

I refer to paragraph 9 of your statement, you state that you were involved in the initial structuring of the security team and implementing the role of the security supervisor at the hospital, can you expand on your role in these processes?---Yes, certainly. So my initial role with Spotless was a mobilisation security manager for SCUH and that role commenced approximately 10 months before the operational commencement of the hospital, so I began in May of 2016 and the hospital was due to open in March of 2017. My job was to basically set up the security services, from the hospital, so there was an initial bid, submitted by Spotless, in 2012, and then I had to build the solution for security for a successful opening of the hospital in March. So that included writing policies and procedures, it included coming up with an organisational structure and, as part of that organisational structure, I had clearly articulated, in the operating plans, that we would have security officers and then a three tiered managerial team, which was security supervisors, security coordinator and a security manager. That was, primarily, how we set up in 2016 and that's how it's been ever since.

PN104

Thank you. Can I take you to paragraph 14 of your statement, where you have stated your involvement with enterprise agreement negotiations for the current agreement?---Yes.

PN105

What was your role in the negotiation process?---I was the site security manager for Spotless at SCUH at that time and I had - I guess I was the manager with authority for negotiations at that time.

PN106

Excellent. So would it be accurate to say that you had the authority to accept or reject claims?---Yes. So the budget allocated to the security team is mine and the responsibility of the security team was, ultimately, mine was well, at that time.

PN107

Thank you. Did you review and approve the agreement before it was finalised?---Yes, I did.

PN108

Did you, in fact, sign the agreement on behalf of the company, after it was voted up by employees?---Yes, I did.

PN109

Mr Phillips, you've provided evidence, at paragraph 15, that there was no intention, during negotiations for the agreement, for the position of security supervisors to be covered. At the time the agreement was finalised, was it your view that it covered the security supervisor role?---No, it was not.

*** MARC PHILLIPS

XN MR MORTLEY

PN110

Thank you. Mr Phillips, of the four security supervisors who are currently engaged at the hospital, were any hired externally directly into the role for security supervisor?---Yes, one. So, initially, when we, as I mentioned earlier, in 2016, we actually mobilised the security team approximately six months before the hospital opened, so we recruited four security supervisors from a selection from an expression of interest. We then held a selection centre, which was a two day selection centre, and the four highest performing staff members, from that selection centre, were appointed as security supervisors. Three of those have since left the organisation. We have a supervisor called Mr Haas, and he still remains as a security supervisor at this time. The three other supervisors that I currently have, have all been promoted from security officers.

PN111

Excellent. So of the three supervisors who have been promoted through the ranks, only one direct hire, what level of experience did these securities have, at the time of their appointment to the security supervisor role?---Yes. So it's an expression of interest that we advertise, internally, to the security team. We tend not to recruit externally because we want to give an opportunity for, you know, advancement for the security officers in the team, so we look for a proven ability to perform as a security officer, at SCUH, given that security officer function you can learn at other sites, but the site specifics of SCUH, we need to make sure that they are really understood and that those security officers have performed to a high standard. Then we also look for prior experience, before joining Spotless as an organisation, and, generally, our supervisors have had either managerial or team leader experience in the security sector previously. So I guess their experience, coupled with the performance as employees at Spotless, leads them to become successful in the application process.

PN112

Excellent. So this level of experience that you've described the company requires, as the first level to be appointed to the security supervisor role, how does that contrast with the level of experience required to be appointed to the security officer role?---So the fundamentals of the security work are the same, however, the responsibilities of the security officer hold a lot of weight, in terms of contractual risk and operational risk to the site. So the qualities, in terms of ability to lead teams, ability to manage individuals, the ability to liaise with the client and influence the decision making of the clinical staff is really important. So, essentially, we're looking for a much higher standard of staff member for our supervisors than we are for the security officers.

PN113

For a new security officer, how long would it typically take for them to become proficient in that role of security officer?---It varies from officer to officer but, generally, we will recruit security officers with some experience in the security industry prior. So, really, it's just the time for them to learn the nuances and the sort of intricacies of the site itself. But I would say within a couple of months they should be up to speed.

*** MARC PHILLIPS

XN MR MORTLEY

PN114

Mr Phillips, can I please take you to paragraph 22 of your statement, where you have provided an overview of the security supervisor role and listed a number of duties? One of the duties listed, under subparagraph (a), is:

PN115

The appropriate management of resources to ensure deployment to security and emergency incidents.

PN116

Can you please elaborate on that?---Yes, sure. So as I mentioned earlier, the contract for the provision of security services at SCUH is quite a broad thing and essentially there are many things that Spotless have to do at that site. One of those things are respond to all security incidents and respond to all emergency incidents. Now, sometimes, well, a lot of the time there can be multiple incidents occurring at the same time and our contractual obligations are such that we have to attend all of those incidents. So the security supervisor role is a role whereby that individual is continuously reviewing the operational risk and determining where those resources are needed to mitigate that risk. So, for example, we may have two security incidents running at the same time. The security supervisor will have to make a decision, very quickly, if they split the resources equally between the two incidents or, perhaps, they may even make a determination that the risk of this incident is very low and the risk of this incident is very high. They would then, perhaps, assign all security officers to one incident and leave another one without any security officers at that time. Further to that, their role is also then to engage with the clinical staff to justify why they have done that and to give reassurance that we will be back, at some point in the future. So I guess it's an environment whereby sometimes there aren't any security incidents and then all of a sudden, out of the blue, there can be two or three, at the same time, so the security supervisor really has to draw on their experience and risk assessing skills to make a decision to mitigate not just contractual risk to Spotless where, I guess, the abatement implications are very severe for us, from a financial point of view, but also, probably more importantly, is the safety risk to the patients, the clinical staff members and other people in the hospital. So it can't really be understated how important that is.

PN117

Thank you. At subparagraph (c) you have listed:

PN118

The appropriate fatigue management ensuring allocation of meal breaks and equal roster rotation across operational roles.

*** MARC PHILLIPS

XN MR MORTLEY

PN119

Can you please expand on that?---Yes. So the security supervisor ensures that there's equal rotation across roles. So we work 12 hour shifts and, as I just explained, it's a busy site. It's high pressure, high stress, so ensuring that people aren't in a high risk situation or high risk area of the hospital for the entire shift is really important. But also we have a roster, not an overarching one, where you

assign staff to a shift, but a roster whereby staff rotate throughout the course of the shift, and that roster is the security control room, emergency department and roving around the hospital. So there's - it's the security supervisor, at the beginning of the day, has five security officers and themselves. Those five security officers are assigned to that roster that every two hours they'll move to the next step, but the security supervisor isn't included in that five, they are surplus to those roles that are fixed. So the security supervisor has to make sure we are rotating through. There's also some EBA implications there, because our security officers are paid a hybrid rate of generally level 3, but because of the control room they can work an average of four hours per shift, which is a level 4 role, so it's really important and our supervisors understand that we can't exceed the three hours on an average. So there's that part of that as well. Sorry, what was the other part of the question? Then obviously ensuring that working the 12 hour shifts that staff are allocated a break off of the floor, get some food et cetera. Does that adequately explain?

PN120

Yes, perfectly, thank you. Now, I'll refer to subparagraph (g):

PN121

Liaise with clinical staff to agree legal, justifiable and proportionate security responses, including the use of physical intervention, such as physical restraint.

PN122

Can you please expand on that?---Yes. So in the mental health setting, predominantly, and emergency department setting as well, there's multiple requests, per shift, to physical restrain an individual. It might be to provide medication intravenously, it might be to place a patient into a seclusion room, and generally - well, if it's a pre-planned event, as in there's some time to safely determine how we're going to achieve the outcome that the clinicians need, the security supervisor will liaise with those clinical staff to formulate a plan and then it's the role of the security supervisor to then give a briefing to their team about how they're going to actually achieve the outcome in a safe way. Then also factoring in what I mentioned earlier about sometimes clinical staff will want a security guard to watch an individual, maybe to be present in an area, but if the resources aren't available because they're somewhere else, the security supervisor will go and have a conversation with the clinical staff member to maybe come up with an alternate option, which is usually, given their background and experience, sometimes we may have two patients in the emergency department, for example, that are violent or have the potential to be so, and we only have one security officer, so the supervisor might suggest putting the patients next to each other, as an example, so that the security officer is able to perform the task at the same time. So, essentially, it's a key role between agreeing what the clinicians want and what the security team can actually safely achieve, given the resources, tools, the training, et cetera.

*** MARC PHILLIPS

XN MR MORTLEY

PN123

Mr Phillips, are the security supervisors involved in the training of security officers?---Sorry, can you say that again?

PN124

Are the security supervisors involved in the training of security officers?---Parts of it, yes.

PN125

What training are they responsible for?---So, predominantly, the security supervisors are responsible for the training that directly impacts their team. So such as how the rotations will work on their team, how that team will respond to duress incidents, to restraint incidents. So really the supervisors have the autonomy to be able to train their staff members and the casual staff members that are appointed to them, to be able to train them in the way that they want their team to run. The more formal training is delivered by people other than the supervisors.

PN126

Excellent. So the training that the supervisors deliver, do they assist anybody else in the delivery of that training, or is that their primary - is it primarily their responsibility?---Their responsibility for the things that impact their team and there's no - the other parts of training are delivered by other people, either internally to Spotless or external to Spotless.

PN127

So what other training do security officers receive?---So there's mandatory training, which is a Cert III in Security Operations, which is a pre-employment requisite. So all staff would have done that before commencement of employment. There's first aid and CPR training, which Spotless, as an organisation, pay for and it's provided by Allen's First Aid Training, which is an external training provider. Then there's MABO, which is the violence and aggression restraint training, which the health service provide.

PN128

And do the security supervisors assist in the provision of that training?---No.

PN129

Thank you?---There's further training as well, which is contractual requirement training and legislative training. So two examples are when the body - when we introduced the body cameras, that training needs to comply with certain Acts and the security coordinator designed and rolled out that training. Then, likewise, there was training in relation to the issue of infringements for parking and smoking, and the security coordinator was responsible when we rolled that out.

PN130

Do supervisors assist in that?---No.

*** MARC PHILLIPS

XN MR MORTLEY

PN131

Just to be clear, is there any other training that we haven't covered that security officers receive?---Mental health first aid training which, again, is delivered by an external agency.

PN132

Do the security supervisors assist in the delivery of that training?---No.

PN133

Mr Phillips, are you familiar with the classification level 5, under the enterprise agreement?---Yes, I am.

PN134

It is your view - sorry, is it your view that the security supervisors assist in the provision of training, in conjunction with supervisors and/or trainers?---No. The training that we provide in the security team, in my opinion, is clearly segregated into some is provided by the supervisors on their own, some is provided by the coordinator on their own and then some is provided externally, which we don't have any input for.

PN135

Mr Phillips, would it be accurate to say that they are the supervisors that provide the training?---They absolutely are the supervisors, yes.

PN136

Thank you. Mr Phillips, what impacts or risks would the business face if the inherent requirements of the security supervisor role were not being performed adequately?---Well, I think I touched on this earlier, you know, the nature of the contract is it's a long-term contract, 25 years, and the risk is heavily weighted to Spotless, as an organisation, in terms of the contractual risk, from a financial point of view, and the safety risk. So the security supervisors are the operational manager, they are the eyes and ears on the ground ensuring that our security officers are safely responding to security incidents and minimising or mitigating risk to everybody else in the hospital. I can't really understand how important it is. If the security officers didn't have that supervisor above them ensuring that they were attending these incidents and ensuring that if we were already at an incident and something of a higher risk happened, that supervisor is critical in identifying that there's new risks that we now have to move resources here over to there. So the commercial risk, the contractual risk, the physical risk to occupants of the hospital is huge.

PN137

Mr Phillips, I'll read out paragraph - sorry, before I get to that, have you read Mr Caldwell's amended statement, provided for these proceedings?---Yes, I have, but I don't have it here.

PN138

That's all right. I will read paragraph 4 of that statement. This can be found at page 110 of the court book. Mr Caldwell states:

*** MARC PHILLIPS

XN MR MORTLEY

PN139

I strongly disagree with the statement that in my role as a security supervisor I spend the majority of my time supervising the work of others and acting as the primary escalation point for clinical staff, in relation to all security related matters. I work side by side with other security officers and clinical staff. I play an active role in the provision of security services on the floor.

PN140

Now, do you agree with that statement?---No, I don't. No.

PN141

Why is that?---I think - all right, it's my opinion that Mr Caldwell underestimates the importance of his role. There's been numerous occasions where I recall that Mr Caldwell has had to attend and speak with senior clinical staff to explain why we can't provide something that they've asked for and given them alternative options. Sorry, I've lost my train of thought, can you just repeat what the question was. I don't want to go off track.

PN142

That's all right. So this is in relation to Mr Caldwell's statement, regarding - and I'll just read that again, he strongly disagrees with the statement that in the role of security supervisor that he spends the majority of his time supervising the work of others and acting as a primary escalation point for clinical staff, in relation to all security related matters and he worked side by side with security officers and clinical staff and plays an active role in the provision of security services on the floor?---Yes. So I lost my train of thought there a little bit. But, yes, no, I don't agree with the statement. I think that Mr Caldwell underestimates the importance of his role. There's been numerous occasions where his communication with clinical staff - there's other examples where security specials, which is dedicated resources that are brought in, on overtime, clinical staff will speak to the supervisor to make the request for those. Sometimes we're able to facilitate it, sometimes there aren't staff available on the roster so Mr Caldwell will explain the reasons why we're unable to facilitate it and then, as an example, will come up with an operational alternative to keep the clinical staff safe and the patients safe. But I do - I'll expand on that a bit more is that I will acknowledge that Mr Caldwell personal style, as a supervisor, he is - he leads from the front, so there's very much - I have four supervisors and their styles vary from supervisors who like to lead from the front and be out on the floor, alongside their teams. I have another supervisor who is completely the opposite, will manage from the security office, and then I have two others that sit somewhere in the middle, but I think what Mr Caldwell doesn't - hasn't got in the narrative there is that when he's out on the floor, alongside his team, he's managing and supervising those staff, leading the restraints of the patients, to make sure they're safe for the patient and for the staff members involved. Being that team leader in those extreme incidents to - if a security guard has put a hand somewhere that they shouldn't, he will give feedback immediately and after. So I will acknowledge, yes, he's out on the floor a lot of the time, but in a supervisory role, overseeing the services being provided by the security officers.

*** MARC PHILLIPS

XN MR MORTLEY

PN143

Would it be accurate to say the security supervisors have the seniority to determine their own management style and how they discharge the obligations of the security supervisor role?---I absolutely - although I am no longer the substantive security manager for SCUH, I currently am because the manager left in January and we haven't found a replacement yet, but previous to me leaving and my handover to the manager to take over from me, the supervisors have full autonomy to run their teams how they see fit and interference from the manager is very little.

PN144

Mr Phillips, you referenced before that you observed Mr Caldwell performing his duties, is that correct?---Yes, I do. Not all the time but, yes, I do, at times.

PN145

When was the last time you observed Mr Caldwell performing his duties?---Last week, so Friday was the last time I was on a day shift when Mr Caldwell was on a day shift as well.

PN146

What did you observe during the shift?---So my recollection of the entire day isn't entirely clear but I recall, from the morning, that Mr Caldwell was in the security control room, which is where the control room operator will sit and the security control room is essentially the hub of the security team, where the cameras are there, the duress alarms will feed into there, the fire alarms will feed into there. Generally, the supervisors, when they're not out on the floor supervising, will position themselves in there because that's where all the communication feeds in. From my recollection, Mr Caldwell was in there for a couple of hours in the morning. Operationally there weren't too many incidents occurring and then mid-morning I recall that some incidents started to come in and some resources needed to be moved around and assisted, so Mr Caldwell, essentially, went out and made some operational changes to resources. I'm not 100 per cent certain but I believe there were - there was a security special going on in the mental health unit and so he went down to liaise with the staff there to understand what the challenges were.

PN147

Would you say this quantity of supervisor duties would be typical for a security supervisor shift?---Yes. It varies from shift to shift, but my observation of not just Mr Caldwell but the other supervisors is that they will generally supervise from the control room and then will go out and supervise operationally on the floor when it's - when there's multiple incidents occurring at the same time, or when there's incidents that meet a threshold of risk. So, generally, the menial tasks, and I don't mean to describe it in that way, but if a staff member has locked some property in a locker, the security officers will attend that on their own. The supervisor would never attend that alongside the security officer. The supervisors are only attending incidents alongside the security officers that meet a threshold of risk.

*** MARC PHILLIPS

XN MR MORTLEY

PN148

Excellent. Thank you very much for your time, Mr Phillips, that concludes my questions, Deputy President.

PN149

THE DEPUTY PRESIDENT: Thank you. Any questions in cross-examination?

PN150

MR DE ROOY: Yes, thank you, Deputy President.

CROSS-EXAMINATION BY MR DE ROOY

[11.00 AM]

PN151

MR DE ROOY: Thank you, Mr Phillips. When did you move from the role of security manager to national head of security?---In April 2022.

PN152

That's why, in June 2019, you signed the undertakings for the agreement, as security manager?---That's correct.

PN153

Thank you. Can I take you to your statement of 23 January, paragraph 11? Let me know when you're there?---Yes.

PN154

Thank you. It's your evidence that the organisational structure at SCUH, in order of seniority, is security officer, security supervisor, security coordinator and security manager, is that correct?---In order of seniority it's the other way round, but - - -

PN155

Sorry, other way round?---Yes.

PN156

So in order of seniority there's security manager, security coordinator, security supervisor and security officer?---Yes, correct.

PN157

Thank you. You say, in your statement, that a security supervisor role is mandated by the services specification of the facilities management contract, an excerpt of which is attached to your statement. Deputy President, that's page 89 of the court book. Mr Phillips, do you have that appendix in front of you?---No, I don't. No.

PN158

I'll hand one up to you. Do you have a copy of it now?---Yes, I do. Thank you.

PN159

So this was an annexure for an appendix to your statement. I'm just going to ask you a few questions on it, Mr Phillips?---Certainly.

*** MARC PHILLIPS

XXN MR DE ROOY

PN160

Is this a contract between SCUH and Spotless or SCUH and Downer?---No, it's quite hard to explain. So it's the public/private partnership. Spotless are the facilities maintenance provider, as appointed by Exemplar Health. Exemplar Health are part of a consortium called Project Co, and Project Co are made up of Exemplar Health, Spotless, Lend Lease and Seamans, so Lend Lease, essentially, constructed it, Seamans essentially were responsible for the technical solutions and then Spotless are responsible for hard and soft services for the duration of the term. So the reason it's a bit complicated is because Spotless work for Exemplar Health, Queensland Health have engaged Exemplar Health and Exemplar Health have engaged Spotless. So we actually work for Exemplar Health and not for Queensland Health.

PN161

Thank you. So, in that case, then this is a contract between SCUH and Exemplar Health?---It's a contract between - this is an excerpt of what Exemplar Health must find a security provider that can provide this to Queensland Health.

PN162

Yes, so it's a contract between Queensland Health and Exemplar?---Correct.

PN163

Okay, thank you. You accept then, if it's a contract between Queensland Health and Exemplar, that workers wouldn't necessarily see this document, would they?---Workers wouldn't necessarily see the document, no.

PN164

No. Thank you. Can I take you to the document, Mr Phillips, to page 7?---What document are you referring to, sorry?

PN165

The same document?---Yes.

PN166

So the excerpt of the contract between Queensland Health and Exemplar?---Yes.

PN167

So page 7, you'll see at the top, it has 'Position Title - Security Administrator'?---Yes.

*** MARC PHILLIPS

XXN MR DE ROOY

PN168

What's a security administrator?---So the security administrator is a role that essentially sits in the middle of the security supervisors and the security manager. However, we have offered service beyond that, for Exemplar Health, and we have a security administrator and a security coordinator, so those roles - so some of the duties have been split between those two roles rather than one. So the security coordinator role isn't mandated in the contract, but given what we spoke about earlier, the complexities and the risks associated with the site, we introduced an additional role to be able to support us, from a contractual point of view, and from a risk point of view.

PN169

Thank you. So to clarify, you split the security administrator role or - - - ?---Yes. So there was too much work involved for just an individual, so it's been split into two roles.

PN170

Thank you. Those two roles are security manager and security coordinator?---Security coordinator and security administrator.

PN171

So at paragraph 11 of your statement it should read - so security administrator should be in that hierarchy?---So the security administrator doesn't have any staff reporting to that role, which is why I've excluded it.

PN172

Okay?---So the security supervisors are the first line supervisor for the security officers. The security coordinator is the second line. Then the security coordinator is the first line for the supervisors and the manager is the second line.

PN173

Thank you. Can I take you to page 8 of that excerpt, so the next page?---Sure.

PN174

At the top of that page you'll see 'Position Title - Security Shift Supervisor'?---Yes.

PN175

Is a security shift supervisor the same as a security supervisor?---Yes, correct.

PN176

Thank you. If you go to the key competencies underneath that?---Yes.

PN177

Point 1, dot point 2, it reads:

PN178

Communicating to business and operational objectives and providing direction to team leaders and officers.

PN179

Who are team leaders?---We haven't appointed them. We have made the security supervisors the - we broadened the security supervisor role which is why, when I asked the question earlier on, I made a conscious choice, at the beginning, when we mobilised the team, to have security supervisors that was a position above the classification 5, because they weren't going to have any team leaders above them. They essentially are the team leaders.

*** MARC PHILLIPS

XXN MR DE ROOY

PN180

Okay?---So this is the minimum service that we would have to offer but we've exceeded it by adding additional roles and expanding on the roles here. So, yes, I could call it like a value add.

PN181

So you haven't strictly followed the SCUH or the services specification of the facilities management contract, you do have some flexibility to add roles within that?---So this is a minimum level of service that we have to provide. We've exceeded it. So because we've exceeded it, they've accepted that it's a better outcome for Exemplar Health and for Queensland Health.

PN182

Thank you. Where does the contract manager sit within that structure. So the security manager reports in to the contract manager and the contract manager is, essentially, responsible for all of the service lines. So security; RFM(?), which consists of electrical engineering; cleaning; car parking services; et cetera.

PN183

Does the national head of security report to the contract manager?---No.

PN184

They're separate lines?---So the national security manager is a support function for the group, doesn't have any lines into the contract manager. There is a dotted reporting line out for the security managers into the national head of security.

PN185

Thank you?---I'll just expand that a bit further. So the - - -

PN186

That's okay, thank you. Thank you very much. Is the contract manager still a Mr David Griffin?---No, it's Juan Combrink, C-o-m-b-r-i-n-k.

PN187

When did Mr Griffin depart that role?---Twelve months ago, approximately. I'm not certain, I'm sorry.

PN188

That's okay, thank you. I'm now going to turn to Mr Caldwell's employment, and I'm going to take you to his first statement. You don't have a copy of that in front of you, do you?---No.

PN189

It's page 47 of the court book. Sorry, Mr Phillips, we'll just get you a copy?---That's okay, thank you. Yes, I have that, thank you.

PN190

Thank you. Have you read this statement before?---I have, yes.

*** MARC PHILLIPS

XXN MR DE ROOY

PN191

You have. Would you like a moment to familiarise yourself with it?---Not the entirety. Perhaps when you ask me something about it I might just take a moment to pause just to read the relevant section.

PN192

Thank you. Can you see, at paragraphs 1 to 3 of the statement, Mr Caldwell was employed casually, from March 2019 and converted to permanent in September 2019?---Yes.

PN193

Do you accept Mr Caldwell was covered by the agreement, when it commenced in July 2019?---If - I assume he would be, yes.

PN194

So it is your evidence that he was covered by it?---Yes.

PN195

Thank you. What level of security officer was Mr Caldwell, when he was casual?---Security officer.

PN196

Sorry, what level of security officer was Mr Caldwell, when he was casual?---Level 3.

PN197

What level of security officer was Mr Caldwell when he was made permanent, in September of 2019?---The same, but it's because of the EA classifications and how the blended rate works, it's, as I mentioned earlier, it's a hybrid of level 3 and 4.

PN198

So when he was made permanent, in September 2019, he would have been a hybrid of level 3 and 4?---That's correct.

PN199

Due to the supervisor allowance, or - - -?---No, due to the control room aspect of the rotation of the security officers. I mentioned earlier that the security officers rotate through the posts during the course of the day so, on average, they'll do three hours in the control room, over the course of the eight weeks, per shift.

PN200

Thank you. So Mr Caldwell was level 3 when he was casual, a hybrid of level 3 and 4 when he was permanent. What level of security officer was Mr Caldwell when he was offered a supervisor position, in September 2020?---He was no longer covered by levels in the award or the EBA because when he took the job as a supervisor the supervisor position exceeds level 5 of the classification and the job is a completely different job. So there isn't a transition, it's just a - it's just a start again.

*** MARC PHILLIPS

XXN MR DE ROOY

PN201

Thank you. Can I take you to a letter of offer, dated 18 September 2020.

PN202

Deputy President, this was marked earlier in the day, attached to Mr Caldwell's evidence.

PN203

Let me know when you've received that, Mr Phillips?---Yes, I have that, thank you.

PN204

Thank you. Have you seen this document before?---I have – I don't know if I've seen this exact one before, but I have seen copies of letters of offers to supervisors previously. But I don't recollect having seen this exact letter before.

PN205

We provided this to your representatives on 3 January, it's addressed from David Griffin, who you earlier said had left the contract manager position?---Yes.

PN206

Can I take you to the set off clause of the offer, at the bottom of page 2?---Yes.

PN207

You can see here:

PN208

The company is entitled to set off any claim for additional compensation or any entitlements that may otherwise be owed, under an industrial instrument, if this contract exceeds minimum entitlements under any relevant instrument.

PN209

Can you see that?---I can.

PN210

It's right that the relevant instrument the offer makes reference to is the Spotless Security Enterprise Agreement 2019, isn't it?---I'm not an expert in the IR space, so I'm not really equipped to answer that question, but I would assume that that's what it would refer to, yes.

PN211

So it's your evidence that, yes, that's what it would refer to?---That's what I said, I'm not an IR expert and I didn't write the letter, so I'm not entirely sure, but if I had to make an assumption I would say yes.

PN212

Thank you. Can I take you to the duties and responsibilities clause of the offer?---Yes.

PN213

You can see there, it says:

*** MARC PHILLIPS

XXN MR DE ROOY

PN214

A position description detailing your duties and responsibilities is set out at schedule 2.

PN215

?---Yes.

PN216

Do you know why there is no schedule 2 attached to the document?---No, I don't know why.

PN217

Do you know if a schedule 2 was ever provided to workers who were made the offer?---I don't know.

PN218

It's Mr Caldwell's evidence that he was never given a schedule 2. Were workers notified that they were taken off the agreement when they were made supervisors?---I don't know.

PN219

So you were the security manager at the time and you don't know if workers were advised or notified that they would be taken off the agreement when they become security supervisors?---Well, in my opinion, it would be quite obvious that they would have been taken off the agreement because the letter of offer states, on - I just scanned it, that it's a fixed annual remuneration, on the remuneration section, which is the third paragraph of page 2. So if you're going from an EBA to a fixed annual salary, I would suggest that it would be quite clear that they were no longer on the agreement, but that's just me.

PN220

Yes. However, it was the evidence earlier that the industrial instrument the offer makes reference to is the enterprise agreement?---Yes, but I don't, as I mentioned, I really don't understand what that section means, because I'm not an IR expert.

PN221

I appreciate you're not an IR expert, however you have provided undertakings to the Commission and you have been through an enterprise bargaining process, so you do have some human resources and industrial knowledge, correct?---I do, yes.

PN222

So it's your evidence that you're not sure if workers were notified that they would be taken off the agreement, and you're not sure if a schedule 2 was ever provided to workers, setting out their roles and responsibilities?---Well, the document - I can't explicitly say yes or no for either of those questions, but I guess I can only speak personally, that if I was asked to sign a document that asked me to refer to schedule 2 and I hadn't received schedule 2, I would probably ask for schedule 2 before I signed the document.

*** MARC PHILLIPS

XXN MR DE ROOY

PN223

Thank you, Mr Phillips. Now I might just show you the statement of Mr Williams, of the union. I'll just pass it up to you because you don't have it in front of you, do you?---No, I don't. Unless it's in this book in front of me?

PN224

It's page 54 of the court book?---Yes, I have that, thanks.

PN225

Can I take you to attachment 5 of Mr Williams' statement?---MW5?

PN226

MW5, yes, thank you?---Yes, I have that.

PN227

Have you seen Mr Williams' statement before?---I have, but I must admit I didn't read it to completely memorise what it said, but I have seen it, yes.

PN228

Thank you. Have you reviewed the calculations attached to Mr Williams' statement?---Yes, I have.

PN229

Based on the calculations, do you agree that security supervisors earn an amount similar to what they would earn under the agreement?---Based on those calculations it would appear that way, yes.

PN230

Thank you. Just a last question for you, Mr Phillips. We've established that not all the roles in the appendix document, so the contract between the Queensland Health Department and the overarching employer, aren't used in your structure, so we've established that. We've also established that the schedule 2 was never provided, or in your knowledge not provided to workers when they signed as security supervisors. Do you accept then the only document available to workers to review their roles and responsibilities is the agreement?---I don't agree with the statement you just said, first and foremost. I don't think I said that I'd established that they weren't provided a schedule 2.

PN231

It was your evidence that you don't know - - -?---I said - I said I was unable to answer a yes or a no, but I didn't say they weren't.

PN232

But it's your evidence that you don't know if they were provided a schedule 2?---Yes, because the letter was from somebody else, so I had no involvement in the letter so I can't really answer the question.

PN233

So do you accept then that the only document available to workers, in absence of a schedule 2, to review their roles and responsibilities, is the agreement?---What agreement do you mean, the enterprise agreement?

*** MARC PHILLIPS

XXN MR DE ROOY

PN234

Yes?---And when you say 'workers' what do you mean, supervisors or security officers?

PN235

Both?---Security officers, yes, but security supervisors, no, because there was no intent for the agreement to provide coverage for the supervisors, so in the absence of schedule 2, I fail to understand how the supervisors would understand their role fully, which is why I find it hard to believe - maybe I'll change that word, I find it - which is why I said I wouldn't sign anything until I'd seen what the expectations of the role were. So if employees weren't provided with a schedule 2 when they were asked to sign the document, that's the point that they should have asked for it. But I - yes, that's - - -

PN236

Thank you, Mr Phillips. I'd like to show you two documents now, the first is the page 143 of the court book. Let me know when you've got that in front of you?---Yes, I have that.

PN237

Thank you. The second is this one, associated - my apologies, it's an excerpt of the Security Services Industry Award 2020?---Thanks.

PN238

Mr Phillips, do you accept that the classifications in the agreement are a copy and paste of the classifications in the award?---I wouldn't describe it that way, but I'd say that they are the same, yes.

PN239

Thank you. Can I take you to page 146 of the court book, which is the level 5 classification?---Yes.

PN240

Specifically 1.5.3(b)?---Yes.

PN241

You can see:

PN242

The coordinating, monitoring or recording of the activities of security officers, using verbal or computer communications, with a central station, at the particular site or location, is indicative of the task that a level 5 employee would perform.

*** MARC PHILLIPS

XXN MR DE ROOY

PN243

Do you accept that Mr Caldwell does coordinate, monitor and record the activities of security officers?---To an extent yes, although the coordination - I think it goes beyond that. As I mentioned earlier, they have full autonomy to decide how they utilise the resources on their teams. So 'coordination' suggests to me more

moving staff around positions and roles that are already fixed or set, so I would suggest that the security supervisor's role is actually further than that.

PN244

Thank you. You do accept, though that at 1.5.3 it says, 'Indicative of the tasks', so there may be other tasks or additional tasks?---Yes.

PN245

So Mr Caldwell is employed casual, as level 3, is made permanent as a hybrid of level 3 and 4 and then is made a security supervisor and skips level 5?---Correct.

PN246

So that's how it works?---Absolutely, yes.

PN247

Do you employ anyone on level 5?---No.

PN248

Why not?---Because we don't have an operational need to.

PN249

I put to you that the security supervisors are, in fact, level 5 and that they are covered by the agreement, in accordance with Mr Caldwell's progression at SCUH?---I'm sorry, I don't really understand. So when we - when you progress in an organisation you don't just have to go one step up each time. The security supervisor role, as I've explained, is responsible for the commercial interests of our organisation - - -

PN250

Thank you, yes?--- - - - and the physical risks.

PN251

Thank you?---So we have - we have set a determination that that person needs to exceed level 5 because of the gravity of that role.

PN252

Earlier you agreed with Mr Williams' calculations that level 5 is similar to the security supervisor wage?---Earlier I agreed that those calculations were similar. I didn't agree - I didn't say that I agreed with the calculations and our calculations don't match the calculations in Mr Williams' evidence.

PN253

Sorry, it's your evidence that your calculations don't match the calculations in Mr Williams' evidence?---That's correct.

PN254

But you haven't provided those calculations to the Commission?---That's correct.

*** MARC PHILLIPS

XXN MR DE ROOY

PN255

Okay. I'm just - so earlier you agreed that Mr Williams' calculations, between the level 5 and security supervisor, are similar, correct?---I worded it very carefully and I said those calculations are, yes. But I didn't say - you didn't ask me if I agreed with the calculations.

PN256

So you have alternative calculations that we don't have in front of us?---I don't personally, but our Spotless team have done calculations of our own and they don't exactly match.

PN257

THE DEPUTY PRESIDENT: Just a question on that, do you have the table in front of you?---If you refer me back to where it is, sorry, I can go back to it.

PN258

Somewhere around page 70. It might be – just to explain the spreadsheet?---Sixty-four and 65.

PN259

Sixty-nine and 70, I've got a spreadsheet?---Yes.

PN260

I understand it's not your spreadsheet, it's not your evidence, so perhaps both of us can have a look at it, otherwise we'll recall the witness. Footnote 1, top left-hand corner, 96 hours of which is made up of the 12 hour shifts, Monday, Tuesday, Wednesday and Thursday, I assume. I know it's not your spreadsheet, so - - - ?---Yes.

PN261

It says, '96 hours at level 3 and zero at level 4', okay?---Yes.

PN262

That's repeated down the columns, there's no hours put as level 4?---Yes.

PN263

But you said there's a hybrid rate or a blended rate. At the bottom of the spreadsheet I note there's a headline that says, 'Blended rate, bottom central 38 89'?---Yes.

PN264

As I keep saying, it's not your spreadsheet?---Yes.

PN265

I don't - when you say 'blended rate' from what I understood, of the 12 hours they spent four hours in the control room?---Of the 12 hours they spend an average of 3 hours in the control room, correct.

PN266

Three hours?---Yes, correct.

*** MARC PHILLIPS

XXN MR DE ROOY

PN267

And that's each shift?---Correct, yes.

PN268

Okay. So, in theory, wouldn't I see, and - I'd see 12 hours not at level 3, I'd see 9 hours at level 3?---Yes, potentially. I don't know if this spreadsheet refers to security officers or supervisors, so if this spreadsheet refers to the security supervisors, then the security supervisors aren't included in the rotation, so they wouldn't actually be performing the role as the control room operator.

PN269

Okay. Perhaps we'll recall that witness to explain the spreadsheet a bit?---I can actually make an observation that this spreadsheet was initially mine, which I was asked to provide, just for transparency, of maybe a year or so ago, about how we had calculated our rates on bargaining, the first time round, so I recognise the spreadsheet, but it's obviously being used in a different way. So I am familiar with the spreadsheet and the layout, but the calculations and the formulas behind it, I don't know if they've been changed in any way, so I can't really comment on the spreadsheet, as it is.

PN270

But it appears on the face it would look like the 12 hours are costed as straight at level 3, so it could be just the officer though, not the supervisor rate?---It could be, yes.

PN271

Okay, I understand. It's interesting that it is your spreadsheet, which we've established, but it's had some development since then, okay.

PN272

I think if you want to ask questions about the spreadsheet and the dollar rates, we're going to have to recall your witness to explain how it's calculated. The printout doesn't show everything of course, the formulas. But it's up to yourself if you want to pursue the sort of questions on the dollar rate, then we perhaps have to dig a little deeper.

PN273

MR DE ROOY: Thank you, Deputy President.

PN274

So in reviewing Mr Williams' statement, Mr Caldwell, you didn't think to provide that table or any alternative calculations, in response to Mr Williams?---My understanding was that today was regarding the coverage of the wording of the classifications so if it - if you're asking me questions about how much the supervisors are being paid, which is more of a concern regarding what they're paid, rather than the classification that they're employed under, so I'm a bit confused, if I'm honest.

*** MARC PHILLIPS

XXN MR DE ROOY

PN275

That's okay. One of the considerations the Commission can look at is how much a level 5 worker would earn under the agreement versus how much the security supervisors are earning and we're putting it to you that it's extremely similar, which is why security supervisors are level 5, or slightly above level 5 and covered by the agreement.

PN276

THE DEPUTY PRESIDENT: Sorry, I might just hear from the respondent. Is there something there you'd like to say?

PN277

MR MORTLEY: Yes, Deputy President, I would object to this line of questioning, on the issue of relevance. How the security supervisors are remunerated do not have any bearing on the considerations which are at the heart of this dispute, being whether or not the coverage clause applies to the security supervisors and whether the classification structure of the enterprise agreement applies to the supervisors.

PN278

THE DEPUTY PRESIDENT: What do you say about the pay rates? Obviously there's one document I've got on pay rate.

PN279

MR MORTLEY: So I'll just confirm, is this the spreadsheet pro forma?

PN280

THE DEPUTY PRESIDENT: Page 69 I guess I'm looking at.

PN281

MR MORTLEY: Yes. So, once again, as Mr Phillips has alluded to, it's a bit unclear as to what has happened with the spreadsheets, as it was in our control. I do note that there are a number of issues that we've identified previously, being that the ordinary hours aren't calculated correctly. Each shift lists 12 ordinary hours and this is in addition to the overtime hours and then it's - this obviously results in a higher rate. But this also does not seem to be reflective of the current security officer position, as I have seen, and we do have in our - I've seen spreadsheets, as you have noted, reflect the nine and three distribution of hours correctly, so I'm not sure where this spreadsheet has come from or what's been done to it since.

PN282

THE DEPUTY PRESIDENT: Thank you very much. Anything further on that one, Mr de Rooy?

PN283

MR DE ROOY: Deputy President, as I mentioned before, remuneration is relevant to the question of whether employees are covered by an agreement or not, so, in our submission, it's a line of questioning that should continue, however, I am pretty much done.

*** MARC PHILLIPS

XXN MR DE ROOY

PN284

THE DEPUTY PRESIDENT: Yes. My concern, obviously, is that we have a spreadsheet with two authors but it hasn't, necessarily, been established as that's what actually paid. So my concern is that we have a spreadsheet that we can't really adduce much evidence from because it's not - we don't have it linked to any pay rates in particular, or any robustness around how the figures were generated. That's my concern.

PN285

MR DE ROOY: I appreciate that, Deputy President. I would just point out that these were in originating submissions and the respondent did not respond to them.

PN286

THE DEPUTY PRESIDENT: Okay. I think - I'll give it due weight, but I do have concerns it's not the right - we're not talking about the right dollar figure, so we can move on.

PN287

MR DE ROOY: Thank you, Deputy President.

PN288

That's all from me, Deputy President.

PN289

THE DEPUTY PRESIDENT: Okay, thank you very much, Mr de Rooy.

RE-EXAMINATION BY MR MORTLEY

[11.36 AM]

PN290

MR MORTLEY: Mr Phillips, on the matter of the security supervisor remuneration, how are the security supervisors remunerated?---On an FAR, so fixed annual remuneration.

PN291

Employees who are under the enterprise agreement, how are they remunerated?---An aggregated annualised wage, which is with even fortnightly pays. So the aggregated annualised wage is the aggregated hourly rate that was on the spreadsheet that we just saw, so that's basically paid as a flat rate, which is a calculation spat out by the ordinary hours, the overtime hours, the weekends and the loadings, first aid allowance, et cetera.

PN292

Is there any contemplation, as far as you're aware, and are any employees under the agreement paid at an FAR, as the supervisors are?---No.

*** MARC PHILLIPS

RXN MR MORTLEY

PN293

Thank you. I'll take you the matter of the letter of offer that was raised by my learned friend. This letter of offer, is this something that you, as a security manager or a national head of security would review before it goes out?---No. I

mean the seniority of security managers and contract managers is as such that they would have the autonomy to do letters of offer with their own HR advice.

PN294

Did you draft any part of the contract, or do you have an understanding of the binding legal obligations or the application of something like a set off clause under the contract?---No.

PN295

Are you involved - sorry, I've already asked that. Finally, has there been discussions around the increase or an increase to the security supervisor remuneration, prior to this dispute?---With regards to who, sorry?

PN296

The security supervisors?---So, yes, the security supervisors have raised concerns about remuneration. When I say 'concerns', the - the mechanism to increase the EBA rate isn't the same as the mechanism to increase an FAR. There was intentions to discuss, with the supervisors, about a remuneration increase to re-establish the gap between them and the security officers. Unfortunately we then received formal notification that a dispute was going to occur around the classification, so we paused that until such time we get an outcome here.

PN297

Mr Phillips, did you draft the set off clause, in the letter of offer?---No.

PN298

Mr Phillips, is it your understanding that the letter of offer is a template?---Is it a template?

PN299

Yes?---It's my understanding that there's a template listed of documents that are pre-set in the system and generally there'll just be gaps that are filled in so, yes.

PN300

No further questions, thank you.

PN301

THE DEPUTY PRESIDENT: Thank you very much.

<THE WITNESS WITHDREW

[11.40 AM]

PN302

THE DEPUTY PRESIDENT: I asked previously about closing submissions, how would you like to - do you have a preference, Mr de Rooy, on closing submissions, do you want to make them orally or in written format?

PN303

MR DE ROOY: Deputy President, our preference would be some brief oral closing submissions and then a request for the transcript and some written submissions, from the parties.

*** MARC PHILLIPS

RXN MR MORTLEY

PN304

THE DEPUTY PRESIDENT: You want both?

PN305

MR DE ROOY: Both.

PN306

THE DEPUTY PRESIDENT: Okay. What's your preference?

PN307

MR MORTLEY: Deputy President, we do not hold the view that any further submissions, past the oral submissions, will be necessary, but we'll respectfully comply with whatever the Deputy President decides.

PN308

THE DEPUTY PRESIDENT: Thank you. Well, I understand that bargaining has been halted until a result here, is that the case, Mr de Rooy?

PN309

MR DE ROOY: That's my understanding, Deputy President.

PN310

THE DEPUTY PRESIDENT: There's an agreement to not bargain until this is resolved.

PN311

MR MORTLEY: This is one of a couple of issues that the UWU have indicated they will not continue bargaining until it has resolved, that's correct.

PN312

THE DEPUTY PRESIDENT: I'm just conscious that obviously we need to get on with this, if we want to get bargaining moving. If I can limit you to seven days, post the transcript, for your submission and both parties can submit at the same time, so no reply. We'll just see the transcript and then you can make your written submissions then. Then we can see if we can get things moving as quickly as we can, okay?

PN313

Thank you very much for your time.

PN314

MR DE ROOY: Thank you, Deputy President.

PN315

THE DEPUTY PRESIDENT: We'll adjourn.

ADJOURNED INDEFINITELY

[11.41 AM]

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