



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

1052405

TRANSCRIPT IN CONFIDENCE

**JUSTICE ROSS, PRESIDENT
VICE PRESIDENT CATANZARITI
DEPUTY PRESIDENT ASBURY
COMMISSIONER HAMPTON
COMMISSIONER LEE**

AM2014/305

s.156 - 4 yearly review of modern awards

**Four yearly review of modern awards
(AM2014/305)**

Sydney

9.36 AM, WEDNESDAY, 9 SEPTEMBER 2015

Continued from 8/09/2015

PN1248

JUSTICE ROSS: I have just got a couple of preliminary matters to raise. I recall we asked the question about the challenges to the expert evidence and whether 9.30 to 11.30 would be sufficient and I foreshadowed that they might be required to put in full written submissions. I note the directions already require that, so on that basis I wouldn't expect any objector to say anything. You won't be making any oral submission. You will be putting in your full written submission. If we have got any questions for you, then we will ask you. So anything you want to say should be in the full written submission. Then we will hear from those who are seeking to call the experts and then the objectors would have a right of reply to that.

PN1249

So given that is the compass of it, did you have a discussion with Mr Moore and on what basis could it go beyond two hours?

PN1250

MR DOWLING: I did, your Honour, and we are both content - we both had contemplated and were aware - or at least were reminded of the orders that were made. We are cognisant of the full written submissions and we are both content that the time allocated, 9.30 to 11.30, will be sufficient.

PN1251

JUSTICE ROSS: Thank you. I note - I think I also slipped a date for the filing of that material. I think it used to be the 8th and now it's the 15th. So there's the extra week.

PN1252

MR DOWLING: Yes.

PN1253

JUSTICE ROSS: Yes, all right. The second issue I wanted to raise is in - is there a representative here of Restaurant & Catering Industrial? Can one of you undertake - can you undertake to talk to their representative during one of the breaks? The question is this; they have foreshadowed - well, they either want to attach the Productivity Commission report to one of the witness statements or they want to tender it separately. We said we would deal with that on Thursday morning. One issue that occurs to me is if that is going to be sought to be tendered as common material as opposed to material in the hospitality case, then I think the parties in the retail matter - the interested parties in that should be put on notice.

PN1254

Now, that may mean that we don't deal with the Productivity Commission report and the objections to it tomorrow morning, but we deal with it at some - perhaps Friday of next week when all the parties will be here because I don't want any decision that we make in relation to whether it's admitted in the hospitality matter to prejudice the position of parties in the retail matter and I apprehend the retail employers will seek to tender it or somebody else will in that case, so we may as well have all of the argument at once.

PN1255

In relation to the objections to the lay evidence, I am just reminding you that whatever time we might finish today we will still schedule the report back for 4 o'clock and then you can let me know where those objections are up to, hopefully with a document, but if not, we will see how we go and we will determine any outstanding issues, I think we said at 9.30 - 9.00 am on Thursday morning, so tomorrow morning.

PN1256

One final matter. Anyone here from Clubs Australia? Yes, okay. I am sorry to put this on you, Mr Stanton, but since you are the last man standing, can you communicate to them that attached to Mr Tait's statement is an annexure, Annexure A, which is an excerpt of the findings from the KPMG report. No objection is taken to that and I don't want to encourage one, but I do want to say that speaking for myself, I want a copy of the full report unless there is some reason I can't have it because I would rather have that than the extract because I want to see the full context and if they can bring one along tomorrow, preferably - look, if you can communicate with them today, it would be - if they don't have an objection, if they can send it to my associate or file it this afternoon and if they can also provide a copy to the United Voice instructors so that they can have a look at it as well.

PN1257

MR STANTON: Yes, we'll undertake that.

PN1258

JUSTICE ROSS: I don't apprehend it will extend the cross-examination necessarily, but speaking for myself, I always prefer to see the full context in which something is put. So I think the first - there has been an agreement about how to deal with the range of objections. Is that right?

PN1259

MR DOWLING: There is. I can give you an update, your Honour, this morning. In respect of AHA, we have reached agreement in terms of the balance of the witnesses for this week on all of the objections but three and we think those three can be dealt with very quickly in the running as was done yesterday. I can tell you also in respect of Clubs we have agreed all of the objections apart from Messrs Tait and Reeves who are the two association witnesses who fall into the - -
-

PN1260

JUSTICE ROSS: That's really the objection - from recollection, the thrust of the objection is it's in the nature of submissions.

PN1261

MR DOWLING: Yes.

PN1262

JUSTICE ROSS: That's particularly the case in the second one.

PN1263

MR DOWLING: Yes, Mr Reeves.

PN1264

JUSTICE ROSS: I think in Mr Tait's they're more - your objections are more confined to a couple of paragraphs. Well, a few paragraphs, but the other witness, it is almost all of her evidence. Is that right?

PN1265

MR DOWLING: It's almost all of the Reeves statement, but there's a - I don't want to understate the Tait one either. There's a significant amount of that that is said to be a submission also.

PN1266

JUSTICE ROSS: I remember. I read it earlier this morning and there just seemed to be less. I didn't mean it wasn't quite a bit of it, but the other one was - you're really saying almost of the statement should go.

PN1267

MR DOWLING: Yes. The last of the employer parties relevant for this hearing, Restaurant & Catering, we have agreed all of the lay objections apart from Mr Hart and he - - -

PN1268

JUSTICE ROSS: Have you made any progress with Mr Hart?

PN1269

MR DOWLING: Yes, there has been some progress. There is some agreement that there will be some paragraphs extracted or withdrawn. There is still some ongoing discussion about Mr Hart.

PN1270

JUSTICE ROSS: All right. I encourage to keep having those and it may be that you can make an observation about what weight or probative value should be attached to it because ultimately some of these matters come down to that.

PN1271

MR DOWLING: Yes.

PN1272

JUSTICE ROSS: I also want to make it clear that whilst we haven't given reasons in relation to - and we are not proposing to in relation the matters that we have dealt with to date, we have not dismissed your objections on the basis that we don't think they amount to hearsay. We are not applying the - we are dismissing them on the basis that we are entitled to not apply the rules of evidence and to inform ourselves as we see fit. You will have noticed and, no doubt that's informed your discussions, but we accept that the objections that seek to communicate employee preferences, that on their face they're hearsay and they give rise to an unfairness as to how you would test that in any meaningful way. So on that basis - and we're not sure what probative value we could attach to them because we don't know how many employees were spoken to or how the opinion was derived and for that reason, we have upheld those objections.

PN1273

In relation to what you have described as the community hearsay, we have taken the view that that will ultimately be a matter of weight but we have tendered to favour the reception of that material on the basis of the witnesses' involvement in the local community, running a significant business and like.

PN1274

MR DOWLING: Yes. Without foreclosing our opportunity to say, it's still a question of weight.

PN1275

JUSTICE ROSS: No, no, absolutely. It will absolutely be a question of weight and some of the issues where we have made - where the relevance of it might not be central to the findings but more a peripheral, similarly you are not precluded from - it depends really on what, if anything, ultimately the proponent puts on it. What do they seek to draw from that proposition? I suspect not much in some of them where it's of peripheral relevance.

PN1276

MR DOWLING: Yes. Can I just identify two last things? The witness who is attaching the Productivity Commission report in this proceeding is Mr Hart. Now, Mr Hart is giving evidence on Friday. I accept completely what your Honour has said in relation to this issue affecting the other parties. I am sure that can be accommodated. I just wanted to bring to your Honour's attention that Mr Hart will have already given evidence - - -

PN1277

JUSTICE ROSS: On the face of it - and we will hear what Restaurant & Catering says, but I don't think that it's appropriate thing to attach to a witness statement. He's had no involvement, he's not from the Productivity Commission, he's - it's another way of getting the evidence in. I think it would be better to tender that separately.

PN1278

MR DOWLING: Agreed.

PN1279

JUSTICE ROSS: So have the discussion with Restaurant & Catering. They won't be precluded - their main objective is to get it in one way or the other.

PN1280

MR DOWLING: Yes.

PN1281

JUSTICE ROSS: They're not going to be precluded from arguing that. It needn't - I mean what's going to happen? Is Mr Hart going to be cross-examined around the Productivity Commission report but he's had no - he hasn't been involved in the drafting of it. It just doesn't make any sense to me on the face of it. But they're not here and they might want to agitate that. We can deal with it tomorrow morning, but they have already put in their submissions the fall-back position that they're going to want to tender it separately and, of course, the problem is if they

just tender it through Mr Hart, then it's part of the lay evidence in the hospitality proceedings and can't be relied on in the retail matter. So at some point we're going to - the retail employers, I have no doubt, will come along and seek to tender the Productivity Commission report. Let's just have the argument with everyone involved.

PN1282

MR DOWLING: We are in complete agreement, your Honour. The very last thing, the KPMG Clubs Census that your Honour referred to, that's attached to - the excerpts of it, at least, is attached to Mr Tait.

PN1283

JUSTICE ROSS: That's right.

PN1284

MR DOWLING: Mr Tait, I think, is the first witness tomorrow.

PN1285

JUSTICE ROSS: Yes.

PN1286

MR DOWLING: Again, that just means there is more urgency as to when we get the entire document. There is a limited extent to which he can be cross-examined about it given he didn't prepare it, but - - -

PN1287

JUSTICE ROSS: Well, that's right because it's - yes. What is the order for tomorrow?

PN1288

MR DOWLING: Mr Tait is the first witness at 9.30 and Mr Reeves is the next witness at 11.00. The time allocated to both of those two witnesses may be subject to, of course, the objections about the submission contained in their statements.

PN1289

JUSTICE ROSS: Indeed, yes. Well, I think we will see how quickly you can get the material. In fact, it might be preferable for us to stand down for five minutes to allow for that communication to take place so we can move that along rather than wait until lunchtime. Mr Tait is based in New South Wales and will be giving evidence here and if need be, you can ask for a short adjournment depending on when you get the document.

PN1290

MR DOWLING: Yes.

PN1291

JUSTICE ROSS: But bearing in mind he is not the author of the document. He is just pointing to aspects of it and it is a - he is a vehicle to put the material in evidence, but there is nothing to stop them tendering the document anyway subject to whatever objections are made. Is that convenient? I think you had - is

there an agreed document for the balance of the evidence today that you wanted to tender?

PN1292

MR DOWLING: No, I think what has been agreed is that the documents have been marked and they will be handed up to each witness.

PN1293

JUSTICE ROSS: All right, that's fine.

PN1294

MR DOWLING: With a strike through and any other changes indicated on them.

PN1295

JUSTICE ROSS: All right. Well, are you content if we stand down for five minutes to allow that communication with Clubs Australia so we can try and get the KPMG report as quickly as possible? They may have an objection to providing it, but I would be interested to hear it. It's annexure A.

PN1296

MR STANTON: Annexure A to the - - -

PN1297

JUSTICE ROSS: Mr Tait's evidence and it's the report by KPMG.

PN1298

MR STANTON: So it's the full report, your Honour?

PN1299

JUSTICE ROSS: Yes. They have provided an excerpt and speaking for myself, I've not - my colleagues may have a different view, but from my perspective I prefer to see the full documents rather than extracts so you can have regard to the full context of it.

PN1300

MR STANTON: Yes. As I report that, shall I say that that is to be maybe sent to your associate?

PN1301

JUSTICE ROSS: Yes. If they - you can say that I have expressed an interest in seeing it and unless they have got an objection, can they forward it to my associate as soon as possible and we will print out a copy and will provide it to United Voice.

PN1302

MR STANTON: And because I always assume the worst, if there is an objection, your Honour - - -

PN1303

JUSTICE ROSS: Well, so be it. We'll hear it tomorrow.

PN1304

MR STANTON: May it please.

PN1305

JUSTICE ROSS: That may mean that, if their objection is overruled, Mr Tait has to be recalled, but so be it.

PN1306

MR STANTON: If it please.

PN1307

JUSTICE ROSS: So we will stand down for five minutes to allow that to happen. Thank you.

SHORT ADJOURNMENT

[9.51 AM]

RESUMED

[10.05 AM]

PN1308

JUSTICE ROSS: Thank you, Mr Stanton. How did you go?

PN1309

MR STANTON: In relation to Clubs, we have put a message through and subject to any objections, I don't know what they might be and I'm not sure that there are any, but I understand that that report will make its way to your associate. In relation to the other matter, that's the productivity report - - -

EMERGENCY WARNING TEST ALARM

[10.05 AM]

PN1310

MR STANTON: I was about to make my best point.

PN1311

JUSTICE ROSS: Can I ask the person at the back are you taking photos of the proceedings and for what purpose? I'm just asking the question.

PN1312

UNIDENTIFIED SPEAKER: (Indistinct).

PN1313

JUSTICE ROSS: What are you doing?

PN1314

UNIDENTIFIED SPEAKER: Just the hearing.

PN1315

JUSTICE ROSS: Can you just come to the front for a second?

PN1316

UNIDENTIFIED SPEAKER: I'm sorry?

PN1317

JUSTICE ROSS: Can you come forward to the table so that we can hear you?
Normally we don't allow photos of proceedings and I am just wondering for what
purpose are you taking the photos?

PN1318

UNIDENTIFIED SPEAKER: Sorry.

PN1319

JUSTICE ROSS: Are you taking photos of the proceedings?

PN1320

UNIDENTIFIED SPEAKER: No, no, no. I just - I just (indistinct).

PN1321

JUSTICE ROSS: No, that's fine. All right, thank you. Mr Stanton, the
Productivity Commission?

PN1322

MR STANTON: Yes. I understand that all of the employers would intend to rely
on that and to have it as part of the common material.

PN1323

JUSTICE ROSS: All right. Well, then we might deal with that issue at the
commencement of the proceedings on the 18th when everyone will be here. If
you can get one of the employers in the retail proceedings to write to us saying
they propose to - they're going to seek to tender it as part of the common material
in both cases and then we will put that on the website. That will put the SDA on
notice and that should deal with that issue.

PN1324

MR STANTON: May it please.

PN1325

JUSTICE ROSS: Well, barring any other emergency announcements, let's deal
with the first witness. Are we up to AHA13?

PN1326

MR STANTON: 12, your Honour, it would be.

<DEAN WILLIAM TRENGOVE, AFFIRMED [10.08 AM]

EXAMINATION-IN-CHIEF BY MR STANTON [10.08 AM]

PN1327

Sir, you are Dean William Trengove and you are a director of Mulga Hill Pty Ltd
trading as the Mulga Hill Tavern at 264 Oxide Street, Broken Hill?---That's
correct.

*** DEAN WILLIAM TRENGOVE

XN MR STANTON

PN1328

For the purposes of these proceedings, have you made a statements?---That's correct, yes.

PN1329

If I could show you these. One of those documents just being passed to you is a stapled three pages. Is that a copy of a statement that you have made in these proceedings?---Yep, that's right.

PN1330

I think that's your statement of 26 June 2015?---Yes.

PN1331

And the single page, is that a copy of the statement you have made in these proceedings - supplementary statement, I should say of 25 August 2015?---That's correct.

PN1332

In relation to the first of those statements, the one made on 26 June, is there anything that you wanted to draw attention to in terms of any correct?---Yeah, there is. The first statement I omitted the three security staff that I have.

PN1333

Which paragraph should we refer to?---Paragraph 8 where it says, "I currently employ 30 employees." In the supplementary statement it says I employ 33. I've got three security staff. When I prepared the statement I went through the roster and they're on a different roster.

PN1334

So should 30 as it appears at paragraph of that statement read 33?---That's correct.

PN1335

That is the only correction?---That's right, other than the flow on into the A, B, C categorisations.

PN1336

I see. What effect does it have on that?---A being 10 full time would remain the same. B being two part time will become four part time and C being 12 casuals - sorry, 18 casuals would become 19 casuals. The difference being two part time and one casual security staff.

PN1337

All right. With those corrections do you say the statement is true and correct to the best of your knowledge and belief?---That's correct.

PN1338

Do you say that the supplementary statement is true and correct to the best of your knowledge and belief?---Yes, that's correct.

*** DEAN WILLIAM TRENGOVE

XN MR STANTON

PN1339

If it please, I would seek that the statement - your Honour, I might just hand up copies of the substantive statement of 26 June. It does show and it might assist if I just draw the Bench's attention to paragraph 16 and the agreement is represented by the strike out. So I hand up five copies of that. I'm sorry, I've handed four.

PN1340

JUSTICE ROSS: That's fine. So it's struck out, para 16?

PN1341

MR STANTON: Paragraph 16, yes.

PN1342

JUSTICE ROSS: Yes, that's fine.

PN1343

MR STANTON: I will be correct if this is not the case, but I understand that was the extent of the objection.

PN1344

JUSTICE ROSS: It was, yes.

PN1345

MR STANTON: And that's been resolved. So with that, I would seek that the statement and the supplementary be received as the witness' evidence-in-chief.

PN1346

JUSTICE ROSS: No objection with those amendments.

**EXHIBIT #AHA12 WITNESS STATEMENT OF DEAN TRENGOVE
DATED 26/06/2015**

**EXHIBIT #AHA13 SUPPLEMENTARY STATEMENT OF DEAN
TRENGOVE DATED 25/08/2015**

PN1347

MR STANTON: May it please.

CROSS-EXAMINATION BY MS BURKE

[10.13 AM]

PN1348

MS BURKE: Mr Trengove, can I ask you to look at paragraph 14 of your statement? This is the first statement, please?---Yes.

PN1349

In that paragraph you say that if the AHA's proposal to reduce penalty rates is accepted it might be possible to do a number of things. Can I take it from that statement that you worked out what your hourly wage bill would be or the rates you would pay per hour if that proposal was accepted?---If that proposal was accepted it would mean that the wages cost for those days would - for the Sundays would be similar to other days where we've already done the sums.

*** DEAN WILLIAM TRENGOVE

XXN MS BURKE

PN1350

So you have worked that out. When you made your statement here at paragraph 14 you had worked out what your wage bill might be if the AHA's proposal was accepted?---Not specifically because it would be the same as every other day of the week.

PN1351

What about for public holidays? It wouldn't be the same, would it?---Public holidays is a different - - -

PN1352

JUSTICE ROSS: Just a minute. Is that the witness coming in for the Queensland matter? Who is on the interstate link?

PN1353

UNIDENTIFIED SPEAKER: I'm sorry, we're just an audience here who's come in so we're not witnesses in the matter. We've just been asked to sit here - - -

PN1354

JUSTICE ROSS: So none of you are witnesses in these proceedings?

PN1355

UNIDENTIFIED SPEAKER: No.

PN1356

JUSTICE ROSS: All right.

PN1357

UNIDENTIFIED SPEAKER: Thank you.

PN1358

UNIDENTIFIED SPEAKER: We've got an audience.

PN1359

MS BURKE: Terrific. (To witness) Sorry, I was asking you about whether you had worked out what the public holiday rate would be if the AHA's proposal was accepted. When you made this statement had you worked it out?---No, because the wages - wage rates were just about to change.

PN1360

You mean - - -?---An hourly rate.

PN1361

Because of the 1 July turnover, and you - okay?---So I didn't do the sums because I knew wages would change.

PN1362

You could have still done the sums anyway?---I could have but - - -

*** DEAN WILLIAM TRENGOVE

XXN MS BURKE

PN1363

All right. So sticking to that paragraph, you say that if the AHA's proposal was accepted then it might be possible to offer a full service at all times. Can I just make sure I understand that right. You're just talking here about having lunch and dinner on - sorry - lunch on Saturdays and lunch and dinner on public holidays?---That's correct. On a Monday to Friday I'll employ usually four staff, three to four staff for lunch, for example, whereas on Saturdays and Sundays I'll only employ one in that area.

PN1364

Right.

PN1365

JUSTICE ROSS: Ms Burke, apologies for interrupting but can you just clarify that 1 July turnover issue?

PN1366

MS BURKE: On 1 July my understanding is the minimum of wages increased.

PN1367

JUSTICE ROSS: I see. That's what's meant. Okay. Yes, they did.

PN1368

THE WITNESS: As they should.

PN1369

JUSTICE ROSS: Let's not broaden this debate (indistinct).

PN1370

MS BURKE: (To witness) Sorry, I think - please go on. You were saying four staff on Monday to Friday, is that right, for lunch, and one on Saturday?---During a lunchtime, that's correct, and on - this is - that's specifically in the food area. On a Saturday and Sunday currently I only employ one person.

PN1371

You're not open for lunch on Saturday and Sunday?---We still have our requirement to provide food, so we still have somebody there that will do bar snacks, for example, to other areas of the hotel.

PN1372

Right, and that requirement is under the liquor licence requirement?---That's correct.

PN1373

And does that bar service involve preparation of any food or is it opening packets of chips and things like that?---No, no, there's some preparation required.

*** DEAN WILLIAM TRENGOVE

XXN MS BURKE

PN1374

Okay. So when you're saying in paragraph 14 that you might be able to offer a full service, you mean in addition to bar snacks, a proper full lunch?---I would

open the dining room and have a fully qualified cook, kitchen hand or an apprentice and two waitresses.

PN1375

Okay. Should I understand then that - and let's just start with Sunday as an example - that you've calculated the cost of doing that?---Not specifically. I have calculated the - it's not cost effective in previous times, so I stopped doing it basically.

PN1376

Okay, but you haven't put anything about that in your statement that you used to do it and you don't do it now. Have I got that right? Did you used to do it and now you've stopped or did you think about it doing it in the past and decided not to?---We thought about doing it in the past and decided not to.

PN1377

When you had thought about doing it in the past and decided not to, you had done some calculations?---We'd done the calculations then, which would now be outdated but - - -

PN1378

How long ago was that?---Several years.

PN1379

So the calculations would be a bit different now?---They probably have blown out by now.

PN1380

But you haven't done it, this is a sort of guesstimate. You also say that one of the things you might do if the proposal is accepted is put live entertainment, and I think you talk about live music for times?---Yes.

PN1381

Have you done a similar sort of costs estimate of what they might cost you?---No, because I've just decided it would be not cost effective.

PN1382

Can I just stop you there. How did you decide it wouldn't be cost effective if you hadn't done that calculation?---Most of the times you're - when you're running live entertainment, it's a margin effect. Obviously you've got to pay for live entertainment, you've got to hire security, and there are the other odd costs. If all those on costs were doubled it would just blow it out of the water.

PN1383

But you have already got security, don't you?---I've got casual and part-time security.

*** DEAN WILLIAM TRENGOVE

XXN MS BURKE

PN1384

So you think if you were going to put live entertainment on you would need additional security?---I would increase those hours for those particular people.

They're only casual or part-time. They only work Friday night at the moment. If I was to introduce live entertainment on the Sunday, for example, then they'd be offered work on the Sunday but it's - - -

PN1385

You say it's more cost effective but you haven't really worked it out. This is just your impression, isn't it?---No, it's not my impression. It's been worked out in the past and it's not cost effective.

PN1386

And there's nothing in your statement about that though?---That's correct.

PN1387

And you also - sorry, just having a look now at paragraph 17 of your statement, you're still talking here about things you would do if the penalty rates proposal were reduced. You say that you would offer additional shifts and hours to your current employees and they're your casual employees, is that right?---Some would be casual. Some would be full-time. So some casual staff would be - perhaps be offered full-time employment.

PN1388

Sorry, I've seen that in your statement, I'm just trying to deal with each one separately. So - - -?---So for example, if members of staff are employed for 30 hours a week on a casual basis, the fact that I can give them an extra shift on a Sunday would mean that they would be full-time employed.

PN1389

I see. So that would be your existing casual staff getting - you would offer your existing casual staff more shifts and more hours, and other things too which - - - ?---The possibility of full-time employment, job security.

PN1390

Should I take it then that you've worked out how many extra hours or extra shifts you would be able to offer if the penalty rates proposed by the AHA were accepted by the Full Bench?---I have. I don't have the calculations with me.

PN1391

Had you worked it out when you swore this statement on 26 June?---I was aware of it.

PN1392

Have you worked it out?---It's just supposition at this point in time, so I didn't spend the time to do the calculations until I had something specific to work to. If the AHA proposal is that or around that - it may not be that, it may be something different. So just been working with something that's not concrete.

PN1393

You're speculating?---That would be exactly what I would have been doing.

*** DEAN WILLIAM TRENGOVE

XXN MS BURKE

PN1394

You also say that you would be able to convert some of your casual staff to permanent full-time. Do you mean - by that you mean they'd go on a salary, or do you mean that they would be working full-time hours but still paid an hourly rate?---Full-time hours, still paid an hourly rate. I don't have any annualised salaried employees.

PN1395

Okay.

PN1396

JUSTICE ROSS: It might be best if you clarify whether they would be employed as casuals for a full week, or whether they would be employed as full-time employees, not casuals.

PN1397

MS BURKE: Did - if you were going to - - -

PN1398

JUSTICE ROSS: Sorry, could you - - -

PN1399

MS BURKE: No - - -

PN1400

JUSTICE ROSS: I can ask the short question, if you like. You say in your statement when you were asked questions about you might provide the opportunity for some casuals to become permanent full-time. Do you mean that they would cease to be casual employees and they would become full-time employees?---That's correct.

PN1401

So they wouldn't be engaged by the shift, they would be engaged on a full-time roster and would not be paid the casual loading as a consequence, because they get the benefits of leave and other things?---Exactly, yes, and job security.

PN1402

MS BURKE: Thank you. And finally you also say that a cut in penalty rates would result in the employment of new employees, and have you worked out how many new employees you might be able to afford to employ at these rates?---Not until I have the rates.

PN1403

Have you worked out though - if you don't have the rates, how can you say that you would be able to employ new employees?---(Indistinct) there would be a substantial reduction in the hourly rate and then I would introduce extra trading times in other areas.

PN1404

You know the reduction sought on Sundays is a reduction of 25 per cent?---Yes.

*** DEAN WILLIAM TRENGOVE

XXN MS BURKE

PN1405

Would you describe that as a substantial reduction?---Well, I believe so.

PN1406

You would be able to afford to employ someone new on the basis of that reduction you say?---I would at least match Sunday staffing levels with Saturday staffing levels that are currently 150 per cent with casuals.

PN1407

You would do that by offering more shifts and more hours to your existing employees, wouldn't you?---The casuals would be offered more and if they become full time then there'd be other casuals to fill other spots also.

PN1408

So you might take on one - - - ?---Some roles are specifically casual, for example, a lunch shift on a Saturday which currently doesn't exist would be three to four hours for a waitress or two waitresses. If they were extended to Sundays then obviously those shifts would be additional. For example in a bottle shop where on a Saturday - or a Friday, for example, I have an overlap shift that might start at midday and finish at 8 o'clock at night. I don't have that shift on a Sunday, I just have two staff working 10 until six and then two until 10, there is no overlap shift, we do without that. There's - - -

PN1409

Just to see if I'm understanding this correctly. When you are talking about new employees you're talking about a few hours here and there for new casuals, is that right?---Casuals would be waitressing, for example, lunch shifts - - -

PN1410

But have I got that right?---Lunch shifts that don't exist currently at the moment. Full time employees would be bottle shop attendants.

PN1411

Sorry, I'm not sure I quite understand. Full time employees, these are new full time employees that you would hire?---Previously casual.

PN1412

So they're not new bodies, so to speak, they are people who are currently casual who then become full time?---That's correct, but also there are additional casual shifts as well. So if you go from one - - -

PN1413

No, I understand that but then what you are saying is you would go out and find a whole new person to do those additional casual shifts?---Or offer existing casuals with maybe, you know, for example, 10 to 15 hours a week, maybe they'd earn - maybe there'd be shifts available to 20/25 hours a week.

*** DEAN WILLIAM TRENGOVE

XXN MS BURKE

PN1414

I see. But these are just sort of - these are guesses really by you, you haven't got anything like this in your statement have you?---When you say they're guesses, they're based on - - -

PN1415

I'm not saying you're just making it up?---Based on 20 years' experience.

PN1416

But as you said it's speculation because you haven't really bothered to sit down and do the calculations until you know what the new rates might be, if there are new rates?---Precisely.

PN1417

So if the penalty rates that the AHA are seeking are made by the Commission you would look at converting some casuals to full time?---Correct.

PN1418

Offering more shifts, more hours to existing staff?---Existing casuals or new casuals if they weren't in a position to accept more hours.

PN1419

You would have the bistro open or you would be serving full service lunch on weekends and public holidays and you'd have live music?---A lot of times we get a request for Sunday - for example, for a Sunday session from bands, live bands -
- -

PN1420

I will just stop you there. Have I got those four or five things right?---Yes.

PN1421

But you haven't actually costed any of them, not in this statement, have you?---Not in the statement I haven't costed them, no.

PN1422

Thank you. I don't have any more questions.

PN1423

MR STANTON: Nothing arising, sir.

PN1424

JUSTICE ROSS: Mr Trengove, can I ask you a question. You said that if the Sunday penalty rate reduced down to the level of the Saturday rate then you would at least match the Saturday and Sunday staffing levels, is that your evidence?---Yes.

*** DEAN WILLIAM TRENGOVE

XXN MS BURKE

PN1425

On Saturday you trade between 10 am and 2 am in the morning on Sunday. On Sunday you trade between 11 am and 11.30 pm. Do you envisage, if there was the equalisation of the penalty rate between the Saturday and the Sunday would you change your trading hours on a Sunday?---They'd be subject to licensing

restrictions. So you wouldn't necessarily increase your hours but you'd increase the employees that you employ for those hours.

PN1426

So what would that mean if you matched the Saturday staffing levels? Presumably you're not going to match them precisely because you've got different trading hours because on the Saturday you're between 10 am and 2 am and the Sunday you're between 11 am and 11.30 pm. But for the same block of trading hours on the two days, what is the difference in the staffing levels at the moment?---Some of the staffing levels are - for example, are bottle shop staff, so you're restricted to 10 pm closing therefore you can't trade past - so there's nothing outside of those hours available. However, there would be an extra shift on a Sunday and an example of that is the bottle shop on a Friday employs four staff, four full time shifts. On the Saturday it drops back to three and on the Sunday it drops back to two.

PN1427

I'm just trying to understand in a concrete way, what do you mean by, you'd match the Saturday and Sunday staffing levels? What does that mean for the Sunday levels? What is going to be the difference?---At specific times that you're open, so - for example, the lunch time trade, Saturday would match Friday, Sunday would match Saturday.

PN1428

But what does that mean? How many extra people would be on if you matched Sunday and Saturday?---So currently for a Saturday I have one cook on whereas on a Friday I'll have - - -

PN1429

Don't worry about the Friday so much. I'm just interested in the Saturday/Sunday for the moment?---All right, well, to demonstrate the difference in the staffing levels, on a Friday I have two full time cooks and two waitresses and possibly another back-up waitress whereas on Saturday I only have a cook. That will deliver meals to a table if they're required and on a Sunday the same. There's no waitresses, there's no kitchen hands, those are the hours that would be additional. So you would open the dining room - - -

PN1430

I'm just having trouble following that. Your evidence was that you'd match the Saturday and Sunday staffing levels. Saturday you've got one cook and you've got one cook on the Sunday. We are only dealing here with the Sunday penalty rate. The Friday is sort of irrelevant to it?---Yes, right.

PN1431

I am asking you to assume that the penalty rate on Sunday drops to the Saturday rate?---Yes.

*** DEAN WILLIAM TRENGOVE

XXN MS BURKE

PN1432

What you have said is, well, if that happens you will have the similar staffing levels between Saturday and Sunday?---Yes. I currently actively discourage weekend lunch time trade. For example, when I received phone calls last week for Father's Day lunches I said I'm sorry, our dining facilities are closed for Sunday.

PN1433

I don't want to start cross-examining the witness. I think I've taken it as far as I can. Is there anything arising? Is there anything you want to cross on that, Ms Burke or is there anything arising in re-examination? I must say I'm still not clear what the difference would be.

PN1434

MS BURKE: No, there's nothing else. Thank you.

PN1435

MR STANTON: This might stray beyond re-examination but if I can just clarify, what are the actual numbers on Saturday, are you in a position - - - ?

PN1436

MS BURKE: I do make the objection on the basis of straying.

PN1437

MR STANTON: It might assist if there was some - - -

PN1438

JUSTICE ROSS: I have asked the witness and I've got the answer I've got which, you know, I still don't know but there we are.

PN1439

MR STANTON: Yes, I don't - - -

PN1440

JUSTICE ROSS: Anything further for the witness? No. Thank you for your evidence, Mr Trengove, and for your time this morning. You are excused.

<THE WITNESS WITHDREW

[10.35 AM]

PN1441

JUSTICE ROSS: I think the next witness is Ms Anderson and that is in Cairns. We were having a little bit of trouble with the remote connection so what we might do is just stand down for a couple of minutes to enable that to be done. Can I also ask when you are in contact with your witnesses, making sure they've got their statement with them.

SHORT ADJOURNMENT

[10.35 AM]

*** DEAN WILLIAM TRENGOVE

XXN MS BURKE

RESUMED

[10.41 AM]

PN1442

JUSTICE ROSS: Yes.

PN1443

MR STANTON: Yes, may it please, I call Vanessa Anderson who will take an Oath.

<VANESSA ANDERSON, SWORN [10.42 AM]

EXAMINATION-IN-CHIEF BY MR STANTON [10.42 AM]

PN1444

MR STANTON: Ms Anderson, you are the Human Resources Manager of the Pacific Hotel, Cairns? Is that the case?---Right.

PN1445

And for the purpose of these proceedings, have you made statements?---Yes, I have.

PN1446

Yes, and do you have those statements with you at the Commission this morning?---Yes, I do.

PN1447

Yes. Can I confirm that one is a statement of 25 June 2015 consisting of four pages?---Yes, that's right.

PN1448

And the other statement is a later statement of one page – well, it appears to be undated, but do you have a one-page statement with you, a supplementary statement?---Yes, I do.

PN1449

All right. And do you say that in relation to both statements that the information is true and correct to the best of your knowledge and belief?---Yes, it is.

PN1450

Yes. May it please the – if I could hand up five copies of the substantive statement, that is the statement of 25 June, and it represents – it might assist, paragraph 19 represents the resolved objections there. And I'll be corrected if this is not the case, there are no outstanding objections that need to be resolved in relation to this matter.

PN1451

JUSTICE ROSS: Right. So for clarification and in terms of the statement that's been filed, the words, "that is more beneficial to them", at the end of paragraph 19, has been deleted.

PN1452

MR STANTON: They have been deleted.

*** VANESSA ANDERSON

XN MR STANTON

PN1453

JUSTICE ROSS: And no further objections are pressed, is that's right?

PN1454

MR DOWLING: Yes, your Honour.

PN1455

JUSTICE ROSS: Thank you.

PN1456

Right, I'll mark the main statement as Exhibit AHA14.

**EXHIBIT #AHA14 WITNESS STATEMENT OF VANESSA
ANDERSON DATED 25 JUNE 2015**

PN1457

JUSTICE ROSS: The supplementary statement as Exhibit AHA15.

**EXHIBIT #AHA15 SUPPLEMENTARY STATEMENT OF VANESSA
ANDERSON**

PN1458

JUSTICE ROSS: Cross-examination?

PN1459

MR DOWLING: Yes, your Honour.

CROSS-EXAMINATION BY MR DOWLING

[10.45 AM]

PN1460

MR DOWLING: Ms Anderson, can you see and hear me clearly?---I can hear you and I can see your outline. The vision's not great, but I can see you enough, thank you.

PN1461

Thank you. Now, you've referred to two statements you've provided this morning. The first of those, the longer statement sets out those staff you employ at the hotel at paragraph 6. Do you see that?---Yes, I do.

PN1462

And that describes 101 staff?---That's right.

PN1463

And the subsequent statement also sets out the staff you employ and that describes 105 staff?---That's right.

*** VANESSA ANDERSON

XXN MR DOWLING

PN1464

Should we understand that there's been – you've engaged four new staff in between the first statement and the second statement?---That's correct, there was

attrition and new recruitment between the first statement and the second statement being given.

PN1465

All right. Now, returning to the first statement and the longer statement, you give some evidence about, at paragraph 14, about a process that the hotel's accountant carried out. Do you see that evidence?---Yes.

PN1466

That's not – just to be clear for everyone, that's not an exercise that you undertook but something the accountant undertook?---That's right.

PN1467

All right. And in part that that's related to an exercise with respect to Sundays, and you give some evidence about the hotel's restaurants on Sunday and you say that it's closed between March and June. Is that correct?---Yes, we took the decision to close on Sundays between March and June.

PN1468

All right. So that's March, April, May and June?---Yes.

PN1469

Are they quieter months for you also?---They can be, but not consistently.

PN1470

But one of the things you considered, in terms of making that decision was, the level of demand over those months. Is that's right?---Certainly.

PN1471

Now, in terms of the exercise that the accountant performed, should we understand that the accountant carried out an exercise assessing penalty rates under the Hospitality Award as it presently stands?---He undertook it as the Hospitality Industry Award presently stood at the time.

PN1472

All right. And are you able to say whether he also performed the same exercise with respect to the penalty rates, as they are sought by the AHA's proposal?---To my knowledge, he has not done that exercise.

PN1473

Should we understand then that that is the reason you say, at paragraph 18, in respect to some of the things you propose, that a full cost analysis would need to be done?---That's right.

PN1474

Nobody's undertaken that exercise to see whether these things can be done, that's right?---That's right.

*** VANESSA ANDERSON

XXN MR DOWLING

PN1475

And you wouldn't do them without having undertaken that analysis?---We may do them, we just haven't done them at this time.

PN1476

All right, so you're not able to say above may?---No, I'm not.

PN1477

Now, one of the things that is included in those options, "More opportunities for our staff". Should we understand that if there are to be any opportunities, in terms of additional hours, that what you are there talking about is allocating any additional hours to your existing 105 staff members?---We would allocate existing staff members as a first priority, provided that they could fill those hours and if they couldn't, then we would recruit more staff.

PN1478

But again, that's not something you know at this stage, because that's not something you've raised with any of your existing staff members?---We haven't raised it with existing staff members, no.

PN1479

All right. Now, your evidence is, you confirm that as a result of the recent recruitments, there's a total of 105 employees, but there is no enterprise agreement that applies at the Pacific Hotel?---That's correct.

PN1480

You understand that there is a process by which you are able to negotiate an enterprise agreement under the Fair Work Act. Is that something you understand?---Yes, I do.

PN1481

All right. And do you also understand that that process would enable you to tailor the terms and conditions to suit your business?---Yes, I do.

PN1482

And that it could provide you with some flexibility as to how you roster and pay your employees?---It may well but we haven't entered into discussions about using an EBA.

PN1483

So you've had no discussions internally and no discussions with your staff about that process?---We've had discussions internally about whether or not we wanted to go down that road and the decision was no, we do not. And we have not had discussions with our staff about it.

PN1484

And why did you decide not to do it?---I can't really recall the exact discussion that went on at the time. There were various reasons, but I wouldn't like to speculate today.

*** VANESSA ANDERSON

XXN MR DOWLING

PN1485

Are you aware also that there's a provision in the Award that entitles you, by agreement, to vary penalty rates to suit the genuine individual needs of the employer and the employee? Are you aware of that provision in the Award?---No, I'm not.

PN1486

So I take it from that answer, that's not something you've explored or discussed with your staff?---No, I've not.

PN1487

Thank you. Nothing further, your Honour.

PN1488

JUSTICE ROSS: Re-examination?

PN1489

MR STANTON: Nothing further.

PN1490

JUSTICE ROSS: Thank you for your evidence and your time this morning, Ms Anderson, you're excused?---Thank you very much.

<THE WITNESS WITHDREW

[10.52 AM]

PN1491

JUSTICE ROSS: The next witness is in Western Australia and scheduled for 11.

PN1492

MR STANTON: Yes, your Honour, 11 our time, yes.

PN1493

JUSTICE ROSS: Okay, well we'll adjourn until 11, to allow that to take place. I think we discussed yesterday, interposing one of the afternoon witnesses in the morning. What's the availability of that witness?

PN1494

MR STANTON: I'll just check. That's Ms Booth. I beg your pardon. Yes, I'm instructed that Ms Blair will be here at 12.15 and Ms Booth at 2 o'clock.

PN1495

JUSTICE ROSS: Yes, so we'll hopefully then deal with Ms Blair in the morning, Ms Booth at 2 on the resumption and then Ms Walder will follow Ms Booth. If she can – if Ms Walder can be here sort of ready to go, if that's convenient to her, rather than waiting till 2.45. Okay? All right, well we'll stand down till 11. Thanks.

SHORT ADJOURNMENT

[10.54 AM]

RESUMED

[11.04 AM]

*** VANESSA ANDERSON

XXN MR DOWLING

PN1496

MR STANTON: May it please, I call Fiona McDonald to take an affirmation.

<FIONA MAUREEN MCDONALD, AFFIRMED [11.04 AM]

EXAMINATION-IN-CHIEF BY MR STANTON [11.04 AM]

PN1497

MR STANTON: Ms McDonald, you are the Accounts Manager, Payroll of the Timber Creek Hotel, located at Timber Creek, Northern Territory?---Yes. That's correct.

PN1498

And for the purposes of these proceedings, you have made a statement of 29 June and a further supplementary statement of 26 August 2015. Is that correct?---That is correct.

PN1499

Yes, and do you have those with you this morning?---Yes, the first one's here and the second one's here, from August.

PN1500

Thank you. If it pleases, if I hand up what I can be fairly confident is five copies of the chief statement, and again I'll be corrected if I'm wrong, I understand that we've resolved the objections. They are indicated in red at paragraphs 20, 21 and 23.

PN1501

JUSTICE ROSS: Just to confirm them for the record.

PN1502

MR STANTON: Yes.

PN1503

JUSTICE ROSS: Paragraph 20 is deleted.

PN1504

MR STANTON: That is deleted, your Honour, yes.

PN1505

JUSTICE ROSS: Paragraph 21, the last four words, "and he was delighted", are deleted.

PN1506

MR STANTON: Yes.

PN1507

JUSTICE ROSS: Paragraph 23, the last eight words, "as they are so eager for the shifts", are deleted by agreement.

*** FIONA MAUREEN MCDONALD

XN MR STANTON

PN1508

MR STANTON: Yes. Yes, your Honour.

PN1509

JUSTICE ROSS: And with those deletions, the objections have been resolved, is that's right?

PN1510

MR DOWLING: Yes, your Honour.

PN1511

JUSTICE ROSS: Right, thank you. I'll mark the main statement with the redactions as Exhibit AHA16.

**EXHIBIT #AHA16 WITNESS STATEMENT OF FIONA MAUREEN
McDONALD DATED 29 JUNE 2015**

PN1512

JUSTICE ROSS: And the supplementary statement as Exhibit AHA17.

**EXHIBIT #AHA17 SUPPLEMENTARY WITNESS STATEMENT OF
FIONA MAUREEN McDONALD DATED 26 AUGUST 2015**

PN1513

MR STANTON: May it please.

PN1514

JUSTICE ROSS: Cross-examination?

CROSS-EXAMINATION BY MR DOWLING

[11.07 AM]

PN1515

MR DOWLING: Thank you, your Honour.

PN1516

Ms McDonald, can you see and hear me clearly?---I can hear you pretty clearly and I can see you, yes.

PN1517

Thank you very much. Now, your evidence is, you've confirmed this morning, you are the Accounts Manager at the Timber Creek Hotel, yes?---That is correct.

PN1518

And I take it, in that role your duties include the payment of wages for the hotel's employees?---Yes. By EFT, like electronically, yes.

PN1519

Yes. And so you're familiar with the wage payments made on any day?---Pardon? Yes.

*** FIONA MAUREEN MCDONALD

XXN MR DOWLING

PN1520

So you're familiar with the wages obligations that the hotel has on any day?---Yes, I am aware.

PN1521

Now, you give some evidence about the impact of penalty rates on weekends and public holidays and the effect that has on the business of the hotel. Should we understand from that evidence that you have calculated in respect of – let's deal with Sunday for an example – you have calculated that proportion of wages that are paid on a Sunday that are attributable to penalty rates. Is that an exercise you've carried out?---We've calculated what they – what they were worth. We have to – it's also a hotel and a roadhouse, so we are the only stop between two major towns, so I've given the distance in my – in the first, section 5, I think it is, of our distance. So we also have to operate – we don't close. So regardless of the penalty rates, we have to have staff manning our establishment during those hours that we operate. And we have also put in a 24 hour fuel, automatic system, which is temporary – it falls down because of our bad internet service, but to try and provide the traveller with service if we are not – like we're closed between 7 am – after 7 – before 7 am and after 10 pm at night, so- - -

PN1522

I understand?--- We can't close because there's a public holiday or a weekend, we close a few times a year which are nominated, Christmas- - -

PN1523

I understand, you are open 7 days a week, 7 am until 10 pm and you've described some arrangements outside of those times. I'll ask my question – I'll try and be clearer. What I'm asking – if we deal with a Sunday?---Yes.

PN1524

I'm not asking what your total wages bill is on a Sunday, but whether anyone has carried out the exercise of working out what the proportion, over and above normal wages is, that's paid on a Sunday because of penalty rates. Is that an exercise anyone has carried out?---I have done it at different times, but I haven't got any of the figures with me, no.

PN1525

Okay?---But I have done that exercise before, but we're not – you can't pay someone the wrong wage, so when we do use our electronic, we put the hours in for a Sunday rate, it pays them at the Sunday rate. So I have done it on paper at different times, but I haven't got any of that paperwork with me today.

PN1526

Again, just so I'm clear and so I understand, I'm not talking about for any one particular person necessarily. Well, sorry, I withdraw that. I'm not talking about only for one person, I'm talking about whether you're able to say over an entire day, the proportion that you pay in wages over that entire Sunday, to stick with our example, that is paid in penalty rates. Is that a figure that you know?---Not off the top of my head, sorry, no.

*** FIONA MAUREEN MCDONALD

XXN MR DOWLING

PN1527

Are you also able to say then whether any calculations have been performed with respect to the variation in rates that the AHA propose in this proceeding? And I'm talking about the same process, whether you've look at the AHA penalty rates and worked out on the Sunday, what your penalty payments would be under that proposal?---I did quick calculations, but only just on a – like a single employee. But I didn't bring any of that paperwork, I literally just brought the two statements that I wrote, so I couldn't quote any of my calculations at the moment, I'm sorry.

PN1528

Perhaps I'll just clarify your answer. I think your answer was, you did that calculation for a single employee. Is that what you said?---Yes, just to see what the difference would be, but – yes.

PN1529

But you didn't do the exercise for the entire wage bill on a Sunday?---I didn't do it as part of – yes, I didn't do it as part of this statement and I – and I didn't do – like I haven't brought those workings, so I'd hate to quote something that I can't be sure of.

PN1530

I'm suggesting, in terms of the second category of calculations we're talking about, it hasn't been done at all. Nobody has worked out, over the total wage bill on a Sunday, what the penalty rates payable under the AHA variation would be. Is that correct?---Yes. No, I suppose not. Like I don't have any of that paperwork with me, so I'm not going to quote numbers.

PN1531

It's not an exercise you have done?---I've fiddled with the percentages and I went, "Okay, well this is what this is going to cost us if this came in and this is what it costs us now". But yes, like I don't believe I know exactly what you are asking. I looked at what we would save on a Saturday, looked at Sunday and a public holiday, because we get a lot of public holidays in the start of the year and we hold functions over those weekends which are a really big drawing card for our small community, so we have – yeah, we pay a lot. Over the Easter long weekend we have a lot more people in our town as (inaudible)11.14.30, called the May Day Weekend in May for Northern Territory. So they're really busy weekends for our staff and we – our whole establishment is very busy, so they were exercises I worked out because they are very expensive weekends for us.

PN1532

Perhaps if I can just be clear about that exercise. What I am suggesting that exercise should be is a calculation - and we will stick with Sunday - a calculation in respect of Sunday as to the total payment across all employees and not just a general feel or not just a guess but across all employees, the amount that you would pay in penalty rates under the AHA proposal?--- Yes.

*** FIONA MAUREEN MCDONALD

XXN MR DOWLING

PN1533

That is not an exercise you have done, is what I am suggesting?---No, not exactly, as you say.

PN1534

Can we safely assume that if you haven't done it, nobody has done it?---I have done a lot of calculations, so I can't vouch for other people. I wouldn't. I wouldn't like to do that. We have done quite a few calculations. I wasn't aware I needed to bring them so that was not something I brought with my statement, so - - -

PN1535

Perhaps I will ask my question more fairly. The calculation I have described, you are not aware of anyone else having done it?---From what I am aware, people are all over Australia that are giving evidence. I don't actually physically know another person that is sitting going - - -

PN1536

Sorry, I am talking about - I am sorry to interrupt you, but just to make it clearer I am talking about at your hotel. I am not talking about more broadly than your hotel?---Okay, so - - -

PN1537

No-one, to the best of your knowledge, has done the calculation at your hotel?---No, they wouldn't. It's my responsibility. I would. I do that stuff. I don't take it to the management but, yes, that's my responsibility. They wouldn't do that. That's with me.

PN1538

You give some evidence about what might be an investment in improved toilet and shower facilities at the caravan park. Do you recall that evidence?---Sorry, can you give me the point - the number, so I can get the right page?

PN1539

Paragraph 24?---Twenty-four, penalty rates, yes.

PN1540

Yes, which is on the third page of your larger statement, about halfway down the page?---Yes, yes. No, I have got point 24. So we would - - -

PN1541

I just want to ask you some questions about that. I don't need you to say anything at the moment. Do you have that part of your evidence?---Yes, I do.

PN1542

Thank you?---I have got my fingers on it.

PN1543

Has there been an assessment prepared or a quote obtained in relation to the cost of that capital works?---No.

*** FIONA MAUREEN MCDONALD

XXN MR DOWLING

PN1544

You have given some evidence also about the make-up of your workforce and your total workforce is 14 and half of those are casual; is that right?---That's correct.

PN1545

Should I understand that if there were any additional hours as the result of any change, that the additional hours, that it is your expectation that those additional hours would go to those, that existing casual workforce?---They're usually more keen, yes, except they're casual.

PN1546

I am not asking about their enthusiasm. I am just asking about the allocation of the work. And what I am asking you is you have got full-timers and you have got casuals and I am asking you whether if there is any additional hours it is most likely to be allocated to those casual employees?---It is. It depends on the duties as well because we have - some of our permanent staff - there's a few roles that we would require a certain person to - and sometimes some of the casuals don't hold all of the skills that we would require. So there are a few roles and it would really depend. If it was just as basic role that we needed to fill for those casual hours or if it is someone that I needed to be able to rely on and had more responsibility and more knowledge of our establishment. And so it's hard, I have to say. I can't give you a definite hours per person. Like, it really has - we have to adjust our staff to suit - to provide the service for our customers. We are also an Australia Post agent. We have a bar. We have to make sure that we are meeting the needs. We are also the Greyhound agent so we are also freight. There is some of the casual staff that aren't as skilled in some of those areas. So, therefore, when we set the hours, we try and have our permanent staff on a permanent shift, but occasionally an NT would come in. So it is a little bit hard. We are a really multi - you know, we have a lot of facets to our business. It's not just a general hotel. We have got a lot of hats.

PN1547

So there are some roles that require a detail of the operations of the business?---Yes.

PN1548

And if there are any additional hours that required that detail operation, it might go to the existing full-timers that already had that knowledge; is that correct?---Yes, that is very correct, yes. So, like, there is one - - -

PN1549

If it was other work that didn't require that detailed knowledge, it would go to the existing casual workforce; is that correct?---That's correct.

PN1550

Thank you. Nothing further, your Honour.

PN1551

JUSTICE ROSS: Re-examination.

*** FIONA MAUREEN MCDONALD

XXN MR DOWLING

PN1552

MR STANTON: Nothing arising.

PN1553

JUSTICE ROSS: Ms McDonald, can I ask you a question? Can I take you to paragraph 24 of your first statement?---Yes, that's correct.

PN1554

Do you see the latter part of that paragraph you say if the penalty rates were as those proposed you would increase the quality of the services provided to your customers. Can you just expand on that?---Yes, sure.

PN1555

What did you have in mind there?---We would like to just improve the facilities within the caravan parks and in our - not all of our hotel rooms actually have ensembles so they share the caravan park facilities. And we would just like to improve the facilities within the park so we can - it's also been quite hard in the last few years, so, with travelling and people coming in from our grey nomads and things like that. So we'd just like to improve our facilities so that they're more user friendly and easier for our staff to be able to clean and maintain and also offering that to hopefully invite more customers into our park as well, because there is really no competition. We have got another park aside us, but we are nearly 200 kilometres from either town so people are driving, we are a stop, but there are also a lot of free Roadstar stops along the way and caravan parks or caravans and the like of what people travel in nowadays are more self-sufficient. So there's new things like dumping points and things like that we haven't invested in. So if we could - we're big on recycling in the Northern Territory, so we're trying to put recycling all through the park so that the people will come and stay there and then they can get rid of their waste. Things like that. So really we are only looking to improve it for our employees for their ease of maintenance and also to our customer. So it would definitely be reinvested within our establishment. We're not - - -

PN1556

You were asked some questions by Mr Dowling that if the hours increased with that expectation that would be done by casuals, et cetera. What I am not clear on is if I can focus for a moment on the proposal to reduce the Sunday penalty rate and you have got in your evidence what that proposal is?---Yes.

PN1557

So if the Sunday penalty rate was reduced to the same as the Saturday penalty rate, what is your evidence about what impact would that have on your staffing levels on Sunday?

PN1558

MR STANTON: Your Honour, I am sorry to interrupt. The proposal in relation to Sunday would see the rate at 150. It would be different from Saturday which is 25.

*** FIONA MAUREEN MCDONALD

XXN MR DOWLING

PN1559

JUSTICE ROSS: I see. Yes, all right.

PN1560

MR STANTON: Yes, and I could be - I just don't recall the witness saying anything different, but perhaps my friend - - -

PN1561

JUSTICE ROSS: No, no. That is fine. You understand that proposal is to reduce the Sunday penalty rate?---That's correct, yes.

PN1562

Given that you were operating - you are open on the Sunday anyway for the reasons you have said, would that reduction in the penalty rate - do you see that having any impact on how many people or the number of hours you would provide for staff to work on the Sunday?---We still have to try and keep our four hours. However, instead of saying, "Well, we mightn't do a thorough clean, we can come back in the morning," and, you know, and get people to sort out that. So sometimes we would knock off staff a little earlier, like scatter them, on a Sunday, and you may - to do - if you weren't looking at those higher penalty rates then we could say, "Well, just finish the shift as you normally would on a weekday." Whereas sometimes on a Sunday, a person that is not so busy but there is cleaning processes still in play, so someone will knock off. Like, usually the chef will go or the cook person will go off first and then the other people will keep cleaning. Whereas we could just keep him on and things like that. So it would be - we would try - it would be more like a normal day for our staff so they would be getting - they would probably get more hours in such just - - -

PN1563

All right. Anything arises?

PN1564

MR STANTON: Not from that, but I should just clarify a point that I may have inadvertently misrepresented the position. The consequence of the variation would be the Sunday rate for a casual would be 150 and that would be the same as the Saturday rate for a casual. The Sunday rate for full-timers and part-timers would be 150 and that's different for Saturday at 125.

PN1565

JUSTICE ROSS: Yes. It might have been helpful if you had made that point to Mr Trengove when he was in the box.

PN1566

MR STANTON: Yes.

PN1567

JUSTICE ROSS: But we will come back how the evidence is going in a moment.

*** FIONA MAUREEN MCDONALD

XXN MR DOWLING

PN1568

MR STANTON: Yes, may it please.

PN1569

JUSTICE ROSS: Is there any further for the witness? Anything arising?

PN1570

MR DOWLING: Just two short matters arising.

PN1571

JUSTICE ROSS: Yes, Mr Dowling.

FURTHER CROSS-EXAMINATION BY MR DOWLING [11.27 AM]

PN1572

MR DOWLING: You were asked some questions by His Honour in relation to the quality of service, the expression 'quality of service,' and you described some things that you had in mind from that. Is it a fair assessment of those things to describe them all in the capital works category? Works on your infrastructure?---Yes.

PN1573

That is the quality of service additions you are talking about, is it?---Yes.

PN1574

Has there been any estimate on the costs of those?---No.

PN1575

You were asked some questions about any additional work on the Sunday and I just want to make sure I understood it. What you are talking about is if the chef - the example, as I understand it, is the chef that is working might have an hour of cleaning in the kitchen to do, but because there is a penalty rate you might get them to do the next day. But if the penalty rate is reduced, you will let them do that extra hour; is that right? Is that the example you gave?---Well, yes, yes. The chef would not come back the next day. We would pay the normal like on a reduced rate anyway. The chefs generally get a little bit more privileges in that side of things because of their skill. But, yes, like if you can have - - -

PN1576

But as a general proposition. I am sorry, the video link makes it a bit difficult?---The chef normally knocks off - knocks off before the other staff anyway and particularly on a penalty rate day they definitely clock themselves off. It's not something that we have an open conversation with them, but it's something that we don't have a duty manager going around saying, "Hey, I want you to go off," so they actually take it upon themselves off as well. It's an honesty thing with our - - -

PN1577

I understand. I am just trying to clarify the additional hours that you described, the additional hours of the type that would - - -?---It would be a for a casual. It would be a casual on a lesser pay rate.

*** FIONA MAUREEN MCDONALD

FXXN MR DOWLING

PN1578

Sorry, I didn't quite hear that?---If we had someone come in the next morning to do - to do say a little bit extra cleaning because we didn't do it on the Sunday afternoon, the Sunday evening, then it would be an all-rounder, you know, the casual. The majority of the time it would be a casual would come in and they would do - they would do a more thorough clean the next day on a Monday which would not be a public holiday generally.

PN1579

Is it your evidence that that casual, one of your existing casuals, might then do it on the Sunday instead of coming in on the Monday?---Well, it makes sense to. It definitely does.

PN1580

Thank you.

PN1581

JUSTICE ROSS: Anything further for this witness?

PN1582

MR STANTON: Nothing arises.

PN1583

JUSTICE ROSS: Thank you very much for your evidence and your time this morning. You are excused?---Thank you.

<THE WITNESS WITHDREW

[11.30 AM]

PN1584

JUSTICE ROSS: Our next witness is at 12. Mr Stanton, I just want to make some observations to you that are provisional in nature. But to the extent that you are wanting to go to argue that these reductions are going to lead to some employment increase and you are going to rely on the lay witness evidence, well, on the evidence that we have seen to date, that evidence would best be described as patchy. Now, you have chosen not to re-examine and clarify some of the issues. That is a tactical matter for you.

PN1585

But in relation to Mr Trengove's evidence, it was left in a very unsatisfactory state. He says on the one hand in cross-examination that he doesn't employ a cook on the Sunday because they have bar snacks and the rest. When I asked him the question, he says, well, he employs a cook on the Saturday and the Sunday. And at the end of the day, I am left not knowing how many extra shifts would he offer on the Sunday if there was the reduction in the penalty rate.

PN1586

You are stuck with that evidence, but I think the quality of the evidence is going to need to lift and you are going to need to address it on your way through. We are not going to be cross-examining the witnesses. We will ask for clarification on some issues, but they are your witnesses and that is the state of the evidence.

*** FIONA MAUREEN MCDONALD

FXXN MR DOWLING

PN1587

Leave aside the question of have they done the calculation and those issues and the matters they have been crossed on. No doubt there will be an argument about then what weight could we give to what is said about the increase in employment, effectively. I am just focussing on what is said about the increased employment effect is not very much to date. So take that on board, but I am putting you on notice now. But speaking for myself, that is my provisional impression from the witnesses we have received.

PN1588

So if you are coming back when you are make submissions and you are going to try and make much of Mr Trengove's evidence, well, good luck with that because for myself I wasn't left with any state of knowledge. Even assuming that we accept at face value what was said about the increase, I just don't know what his evidence was about that.

PN1589

So I don't want you to engage with me about Mr Trengove and everything else. I have said it is a provisional view and you will both be able to make submissions about it later and obviously it is without the benefit of the transcript, et cetera. But I have sort of got the feeling I am left with a handful of not very much about the employment effects from the witnesses today. All right? So you need to think about that because it might operate adversely to your interests later.

PN1590

MR STANTON: Yes, your Honour. I will make a note of that; may it please.

PN1591

JUSTICE ROSS: We will adjourn until 12, then we will have the next witness.

SHORT ADJOURNMENT

[11.33 AM]

RESUMED

[12.01 PM]

PN1592

JUSTICE ROSS: Just before we go to our next witness, Mr Dowling, I understand you've now got a copy of that KPMG report that Clubs Australia has provided?

PN1593

MR DOWLING: We do, thank you very much.

PN1594

JUSTICE ROSS: Mr Stanton, it occurs to me from the previous conversation about the nature of the change that's proposed that I think it was canvassed in a document early in the proceedings. I'm not sure, given the morass of material - I haven't gone through it during the break - but I'm not sure if we have anywhere a proposed variation order that would precisely identify which clauses are to be varied in the relevant awards and it occurs to me that that would be useful to have; not only in the hospitality awards but also in retail. So I might - if you can discuss that with your instructor - - -

PN1595

MR STANTON: Of course.

PN1596

JUSTICE ROSS: - - and perhaps your colleagues on the employer's side.

PN1597

MR STANTON: Yes.

PN1598

JUSTICE ROSS: That would be helpful because the way it's expressed in the witness statements it sort of expresses a - - -

PN1599

MR STANTON: Yes.

PN1600

JUSTICE ROSS: - - I'm not sure the full import is clear from those. It might just be useful to put it beyond doubt.

PN1601

MR STANTON: Yes.

PN1602

JUSTICE ROSS: So if you can take that on board - - -

PN1603

MR STANTON: Indeed, we will. Can I just say in relation to the AHA outline of submissions, it does have within it what we hope is a helpful table comparing the current and the proposed rates and I apologise if I confused things earlier this morning.

PN1604

JUSTICE ROSS: No, no, no, that's fine. Look, there is sort of an inevitability about it with these sorts of cases, that the first tranche of evidence is - it's a bit like the estimates on cross-examination, you know?

PN1605

MR STANTON: Yes. Well, of course, the bench is dealing with - in the hospitality area - three awards and not all of the proposals are identical. The current rates are not identical.

PN1606

JUSTICE ROSS: No. Well, that's probably why we would benefit from a variation determination that are proposed in each award and then it just sort of crystallises that issue for us.

PN1607

MR STANTON: Your Honour has in mind a consolidated document? Mr Dowling has some - - -

PN1608

MR DOWLING: Perhaps I can assist, your Honour: annexed to United Voice's submissions of 10 August, which were those submissions that set out the conclusions we sought be made based on the lay evidence, the Commission will find a table of three pages and each with a separate - each one of the separate hospitality awards identified, the current rate and the proposed rates in respect of Sundays and public holidays and any other variations that are sought set out in that table.

PN1609

JUSTICE ROSS: Mr Stanton, perhaps if you have a look at that - - -

PN1610

MR STANTON: Yes.

PN1611

JUSTICE ROSS: - - if there is any issue between you. It probably still leaves us with the retail issue but if you can take that up with the retail employers then - - -

PN1612

MR DOWLING: Yes, we will undertake to do that.

PN1613

JUSTICE ROSS: It may be the SDA has done similar or will do something similar once their material is in but nevertheless - as you say there are differences between the proposals in respect of each of the awards. Okay.

PN1614

MR STANTON: Your Honour, I call Ashley Wynn.

<ASHLEY WYNN, SWORN [12.05 PM]

EXAMINATION-IN-CHIEF BY MR STANTON [12.05 PM]

PN1615

JUSTICE ROSS: Mr Wynn, could I just get you to move a bit closer to the microphone? We're just having a little bit of trouble picking you up?---Sure.

PN1616

And if you wouldn't mind speaking up a little?---Is that better?

PN1617

Yes. Mr Stanton?---Was that better for you?

PN1618

It is, thank you.

*** ASHLEY WYNN

XN MR STANTON

PN1619

MR STANTON: Sir, you are the hotel manager of the - is it the Halikos Hospitality Pty Ltd?---For the Frontier Hotel but also with the Halikos Group, so I

have been the food and beverage manager across the group and I am currently the general manager of the Frontier Hotel.

PN1620

I see. Is this the case that the hotels within the group consist of the H Hotel, Frontier Hotel and the H 105 Mitchell Hotel and Apartments?---Yes, that's correct.

PN1621

Yes, and for the purposes of these proceedings you have made statements?---Yes, that's correct.

PN1622

One of which is a statement made at 29 June 2015 and the other a supplementary statement made on 26 August 2015; is that correct?---Yes.

PN1623

Do you have both of those statements with you this afternoon?---Yes, I do.

PN1624

Yes. Your Honour, I understand there is no - this statement did not provoke any - did not raise, I beg your pardon, any objections. So there is no amended statement, so to speak.

PN1625

JUSTICE ROSS: Okay. So you're seeking to tender those?

PN1626

MR STANTON: I seek to tender those.

PN1627

JUSTICE ROSS: Any objections?

PN1628

MR DOWLING: No, your Honour.

PN1629

JUSTICE ROSS: Yes?

PN1630

MR STANTON: I raised with my friend, I wanted to seek leave to pursue examination on paragraphs 24 of the substantive and 29 of that statement.

PN1631

JUSTICE ROSS: Yes.

*** ASHLEY WYNN

XN MR STANTON

PN1632

MR STANTON: In relation to 24, it was in relation to the expression, "skeleton staff," and in relation to 29 to - for want of a better word - to amplify, if you like, hopefully in a helpful way for these proceedings, the consequences of the change

in terms of the employment of casuals. I've raised it with my friend and I don't wish to speak for him. He may have a - - -

PN1633

MR DOWLING: We object to that course, your Honour. It's obvious to the full bench that these statements were filed in June, pursuant to directions made in March. We've prepared our case on the basis of these statements and in our submission it would be unfair and prejudicial to my client if it was expected to respond to what will become new evidence in the running of the case.

PN1634

JUSTICE ROSS: Well, if we hadn't required witness statements - it's not unusual, certainly in the Federal Court - to just call a witness and get them to give viva voce evidence and you cross-examine on your feet.

PN1635

MR DOWLING: That's true, but even in that environment, your Honour, there's an outline and one knows what to expect, at least with some degree. We were given an indication of what to expect and we're now being told that we're going to amplify it.

PN1636

JUSTICE ROSS: Well, I think they're seeking clarification.

PN1637

MR DOWLING: "Amplify," was the word my friend used. That's why I used it.

PN1638

MR STANTON: For want of a better word, yes.

PN1639

JUSTICE ROSS: Yes, all right.

PN1640

MR DOWLING: Well, we maintain our objection, your Honour.

PN1641

JUSTICE ROSS: We'll allow - give leave for you to clarify the evidence. Don't lead the witness.

PN1642

MR STANTON: I'll do my best, your Honour.

PN1643

JUSTICE ROSS: We'll see where you go and if it gives rise to something that requires an adjournment or time for the other side then we'll consider that at the appropriate point.

*** ASHLEY WYNN

XN MR STANTON

PN1644

MR STANTON: Yes, of course; may it please. Might the statements be marked?

PN1645

JUSTICE ROSS: Yes, we'll mark the first statement exhibit AHA18.

EXHIBIT #AHA18 WITNESS STATEMENT OF ASHLEY WYNN

PN1646

JUSTICE ROSS: The supplementary statement is exhibit AHA19.

EXHIBIT #AHA19 SUPPLEMENTARY STATEMENT OF ASHLEY WYNN

PN1647

MR STANTON: May it please. Mr Wynn, can I just take you to paragraph 24 of the substantive statement - that's the statement made on 29 June?---Yes.

PN1648

Do you have that before you? You see you say there: "All of the hotels are run on skeleton staff on Sundays and public holidays as a result of the penalty rates that apply on these days." Now, sir, you've used the expression, "skeleton staff." Are you in a position to explain what you mean by that term?---Realistically for us at the properties, we do run on what we would call a skeleton staff. We do try and run with less staff on board. SO we would actually have that - for Sundays and public holidays - reduction in staff where we can or with full-time staff working because we do find that it is very hard to actually have extra events or to try and put things on to try and make that actually viable and so we're really left in a position that we would say, "Let's put on less staff," and we will cut down our amenities to the public to have it as reduced as possible. So it is rather hard and we do find a lot of that is because of the penalty rates that we do have that apply.

PN1649

Yes, now, what might less staff represent, say, in numbers? Is there a formula? How might we understand that?---Realistically, if we were working for a Friday or a Saturday where it was a busier day we would be pretty much at full capacity on staff, whereas if we look at a Sunday then we would reduce the amount of staff that we have, so we might run at, say, a 60 per cent of our staff force that we would have compared to the Friday and Saturday.

*** ASHLEY WYNN

XN MR STANTON

PN1650

Sir, at paragraph 29 of that statement, you depose there that if the AHA's proposal is accepted it would be possible to roster casual staff members to work on public holidays so that full-time staff are not required to work. Insofar as you refer there to casual staff members, what did you have in mind? Is it current casual staff members?---Realistically at the moment we do require the full-timers to work on the public holidays and that is to try and give as much of a service as we can but to have the casual staff number reduced. If there was a reduction in the rate which is being proposed then it would actually allow us to employ more casuals, to have more casuals working on either the Sundays and especially the public holidays

and also allow us to - if we, especially being in a tourist region up in Darwin we would be able to offer more services, look at whether we could offer events and I feel that that would actually allow more people to actually have casual positions.

PN1651

One moment, please. What might that roster look like? Are you able to - - -

PN1652

MS BURKE: I've got to object to this. This is straying well beyond the bounds of clarification.

PN1653

JUSTICE ROSS: It is, yes.

PN1654

MR STANTON: I don't take it further.

PN1655

JUSTICE ROSS: If you want to elicit further evidence you should do it by way of supplementary statements so the other side is on notice.

PN1656

MR STANTON: May it please.

PN1657

JUSTICE ROSS: We'll consider then whether we grant leave to admit it or not and clarification is one thing but 29 only goes to the public holiday change and on the evidence as I read it - and it may be the subject of cross or re-examination - it's the exchange of full-time to casuals; so rather than employing full-time they'd employ casuals on those days and that's the evidence. Nothing is said about the Sundays.

PN1658

MR STANTON: No, that's - - -

PN1659

JUSTICE ROSS: Ms Burke.

PN1660

MS BURKE: Your Honour, can I request a short adjournment of between five and 10 minutes just to consider this evidence?

PN1661

JUSTICE ROSS: Yes, no problem.

PN1662

MS BURKE: Thank you.

<THE WITNESS WITHDREW

[12.15 PM]

*** ASHLEY WYNN

XN MR STANTON

SHORT ADJOURNMENT

[12.15 PM]

RESUMED

[12.26 PM]

PN1663

JUSTICE ROSS: Good to you, Ms Burke?

PN1664

MS BURKE: Thank you, yes.

<ASHLEY WYNN, RECALLED ON FORMER OATH

[12.26 PM]

CROSS-EXAMINATION BY MS BURKE

[12.26 PM]

PN1665

Mr Wynn, can you hear me and see me properly?---Yes, I can.

PN1666

Thank you. Can I start just by clarifying a couple of matters. In your statement at - at various parts of your statement you refer to the number of staff that the H Hotel employs, that's 54 staff?---Yes.

PN1667

And then at paragraph 17 you say the Frontier Hotel employs 51 staff?---Yes.

PN1668

And at 21 you say the H105 Mitchell Hotel will employ approximately 65 staff?---Yes, that's correct.

PN1669

The H105 Mitchell Hotel, is that open and running yet?---Yes, that opened on August the 1st.

PN1670

Right, and so is it the case that that hotel is only available to major projects contractors, it's not open to the general public?---No, that is also open to FIT guests as well.

PN1671

Sorry, I missed that. To - - -?---That is also open to the public for guests.

PN1672

Thank you. So adding up the numbers in your first statement, that's 170 staff. In your supplementary statement at paragraph 3 you say that as at 30 June - so this is before the H105 Mitchell Street Hotel is opened - you employ 133 staff, and you've got the breakdowns there for who's casual and so on?---Yes.

*** ASHLEY WYNN

XXN MS BURKE

PN1673

Can you just clarify for me how many employees that you engage? Is it 133 or is it 170?---That was the number of staff that were actually at the time, so the numbers are as per - - -

PN1674

Sorry, which time?---The numbers that were as the date that the - that that was actually made.

PN1675

So the first - - -?---So we had not employed - sorry - - -

PN1676

The first statement though, you say the H105 Mitchell Street Hotel will employ 65 employees. So at the time that statement was sworn you didn't have 65 employees there, is that right? That was just what you hoped to employ?---At that stage we did have staff that were being employed, that had - that were actually working on that property, but the building wasn't open at that stage and we didn't have the full amount of numbers.

PN1677

Okay?---I hope that clarifies things.

PN1678

And now it's 133?---We have the higher number now, yes. So I haven't got the exact number that we have as of today, but the numbers that we provided at the time were correct and were from our payroll office.

PN1679

The higher number is the one in your first statement which is 170, and then later on 26 August you said 133.

PN1680

VICE PRESIDENT CATANZARITI: That's not a fair reading of his statement. He says as of 30 June 2015 it's 133.

PN1681

MS BURKE: Sorry, that's quite correct. I'm sorry about that.

PN1682

VICE PRESIDENT CATANZARITI: Thank you.

PN1683

MS BURKE: (To witness) Sorry, how many employees have you got at the moment?---As I said, I don't have those exact numbers in front of me at the moment. I would need to confirm that with payroll.

PN1684

Can you give me a rough guess or a rough estimate. Is it closer to 170 or is it closer to 133?---I'm sorry, I don't want to take a guess on that because that is across three properties and I would need to check with payroll.

*** ASHLEY WYNN

XXN MS BURKE

PN1685

Okay?---Sorry about that.

PN1686

No, that's fine. Either way you've got well over 100 so - - -?---Yes.

PN1687

I just want to confirm that the Halikos Group - Halikos Hospitality doesn't have an enterprise agreement?---No, we don't. We're run by the HIGA Award.

PN1688

And you understand that by the enterprise agreement process you can tailor terms and conditions of employment to suit your business?---That would be taken up through the company directors.

PN1689

That's not something that you have any responsibility for?---That is not my area. That would be through the HR department and the company directors.

PN1690

So your role which I think you said was the hotel manager of the Frontier Hotel, in that role you don't make any decisions - sorry, you don't make any recommendations about ways to employ people?---Yes, recommendations are made. We will sit with the management group and discuss these with the directors, but ultimately it is their decision.

PN1691

Certainly, but you haven't proposed to any of the directors or the management group that it might be open to you to engage in an enterprise agreement negotiation process?---No, I have not, no.

PN1692

You haven't been asked by the directors or managers to look into that process?---Not personally, no.

PN1693

Okay. You understand though that that process, if you did engage in it, could give you some flexibility in terms of paying employees?

PN1694

MR STANTON: I object. I've tolerated some of these questions but they're vague. What is flexibility? The witness has already answered the question about his responsibilities in this area.

PN1695

VICE PRESIDENT CATANZARITI: If the witness is having trouble with the question, the witness can ask for clarification.

PN1696

MR STANTON: May it please.

*** ASHLEY WYNN

XXN MS BURKE

PN1697

VICE PRESIDENT CATANZARITI: And you can deal with anything that's left over in re-examination.

PN1698

MS BURKE: Thank you, your Honour.

PN1699

(To witness) Just one more question about that process. If you did enter into an enterprise agreement with your employees, you understand that would apply instead of the award?---Yes, as I've said before, that would be up to the company directors.

PN1700

Yes. Turning now to paragraph 27 of your statement please?---Yes.

PN1701

You say there - and you're talking about public holidays - that full-time staff are expected to work on public holidays in order to reduce wages caused by penalty rates?---Yes.

PN1702

By "full-time staff" do you mean salaried staff or staff who are full-time but paid per hour?---Annualised salaried staff.

PN1703

Are you familiar with the terms of the award, Mr Wynn?---Yes, fairly - fairly so, yes.

PN1704

And you know then that under the award any annual salary paid over a year to an employee who is on an annualised salary can't be less than what the employee would be entitled to if all of their overtime and penalty rates entitlements were paid?---Yes, that is correct.

PN1705

And you know that you're required to keep records of the start and finish time of all the days worked by those salaried employees?---Yes, that is correct.

PN1706

And those records are to be signed on a weekly basis by those employees?---Yes, that is correct.

PN1707

And do you do that?---Yes, we do as a company, yes.

*** ASHLEY WYNN

XXN MS BURKE

PN1708

So given that salaried employees over the year can't be paid less than what they would earn if they were receiving penalty rates, it doesn't reduce wages to have salaried employees working on public holidays, does it?---It would be more so the

flexibility of the staff, to have the staff that they were not working on this day which would give the ability for more casual staff to be employed.

PN1709

I am not sure I follow that answer. My question was whether - that it's not cheaper, is it, to have full-time staff working on public holidays, given that under the award their salary is required to incorporate what they would get from penalty rates?---Were you saying cheaper - sorry, if you could please clarify. Were you saying it would be cheaper for - it wouldn't be cheaper for the full-time staff or for the amount of staff that you have on? I'm sorry, you're just a little bit ambiguous.

PN1710

Yes, I'll just use the words that you used in your statement. You say that "full-time staff are expected to work on public holidays in order to reduce wages caused by penalty rates"?---Yes. These staff would be given another day off so - but they are generally expected to work on the full - on the public holidays.

PN1711

These staff are receiving salaries?---Yes, that's correct.

PN1712

And those salaries over the year can't be less than what they would get if their penalty rates entitlements were paid?---That's correct. I think we've already substantiated that, haven't we?

PN1713

Thank you?---Sorry.

PN1714

Just looking now at paragraph 29 of your statement?---Yes.

PN1715

You say there that if the AHA's proposal is accepted it would be possible to roster casual staff members to work on public holidays?---Yes, that's right.

PN1716

Sorry, I didn't mean to cut you off. Those are your existing casual staff, aren't they?---It would also give us the ability to hire more casual staff.

PN1717

That's not in your statement, is it?---Not specifically, no.

PN1718

Not at all. The words of your statement say "roster casual staff members". There's nothing in your statement about hiring new people, is there?---"Roster casual staff members" would not pertain to having to hire more or have more. That actually - it is actually encompassed within all of the casual staff. It does not mean that we will not hire more staff, no. I think that's an assumption that you're making there.

*** ASHLEY WYNN

XXN MS BURKE

PN1719

So the words of your statement, I'm getting that wrong. "Casual staff members" doesn't mean existing staff members, does it?---It wouldn't just be for just existing staff members, no.

PN1720

So how many more casual workers would you employ?---That would be yet to be seen. At this stage I would say there would be possibly 10 per cent increase.

PN1721

What is that 10 per cent based on?---Just the amount of - the amount of work that is there that needs to be done. Also with having the full-time staff that could take the public holidays off and that would allow more staff to be working on those days.

PN1722

This 10 per cent increase, that's just a guess that you're making right now, isn't it?---It is something that I have looked at over the past - over the past week but yes, it is - at the moment it's not a - it's not something that I have as - in concrete, no.

PN1723

Thank you. I don't have any more questions.

PN1724

JUSTICE ROSS: Any re-examination?

PN1725

MR STANTON: Can I just have a moment?

RE-EXAMINATION BY MR STANTON

[12.40 PM]

PN1726

MR STANTON: Sir, you were asked questions about the salaried employees working on the public holidays. Just to clarify, these employees, what is their position, are they managerial or - - - ?

PN1727

MS BURKE: I object to that, it's leading.

PN1728

MR STANTON: Let me say that in terms - the witness was asked about the operation of the salary provisions of the award. Now, the award actually operates in two ways, it provides salary provisions for - - -

PN1729

MS BURKE: Sorry, I'm going to object to that as well because I think my friend is straying into an area that he shouldn't. Mr Wynn has given evidence about his workers in his statement. There is no mention of any managers in this statement.

*** ASHLEY WYNN

RXN MR STANTON

PN1730

JUSTICE ROSS: No mention of what?

PN1731

MS BURKE: Of managers or managerial staff. It hasn't arisen in his evidence it didn't arise during cross-examination.

PN1732

MR STANTON: He has given evidence about people covered by the award. Managers are not excluded by the award. My reference was to - well, I was going to take - - -

PN1733

JUSTICE ROSS: What difference does it make whether the salaried staff are managers or not?

PN1734

MR STANTON: Because there's two clauses in the award that deal with salaried provisions, one for managers, it's at 27.2.

PN1735

JUSTICE ROSS: Yes I see.

PN1736

MR STANTON: And one for non-managers, 27.1. It wasn't - - -

PN1737

JUSTICE ROSS: That's fine. I asked the question and you clarified that point. If there's anything that arises you can re-cross on it.

PN1738

MS BURKE: If your Honour pleases.

PN1739

MR STANTON: Sir, those employees - do you recall my question? Those people who are working on the public holiday, you've referred to them as salaried staff?---Yes.

PN1740

Are they managerial staff?

PN1741

MS BURKE: Object, leading.

PN1742

MR STANTON: Well, it will clarify.

*** ASHLEY WYNN

RXN MR STANTON

PN1743

JUSTICE ROSS: Well, it is leading. Just ask the question. Can you describe the nature of the position occupied by the salaried staff to which you are

referring?---Yes, your Honour. Most of the salaried staff that are being referred to are in managerial positions or they are in positions of authority.

PN1744

MR STANTON: Is there a difference, managerial and positions of authority? Do you distinguish - is there a particular distinction?---It would depend on the position of the staff member but most of them are in the category of managers.

PN1745

Are you aware of the salary provisions under the award?---Yes.

PN1746

Sorry, I missed that, is that yes?---Yes.

PN1747

Which provisions are you aware of?---That the annualised salary is to cover for all of the time that is actually worked.

PN1748

Nothing further.

RE-EXAMINATION BY MS BURKE

[12.44 PM]

PN1749

MS BURKE: If I could just ask one or two, I shouldn't commit myself to one. Mr Wynn, managerial staff under the award, you know that they're paid an annual salary of at least 25 per cent above the minimum wage, don't you?---Yes, that's correct.

PN1750

That is 25 per cent above the minimum wage of their classification?

PN1751

MR STANTON: I object, this needs to be clarified, your Honour. It may lead to confusion in the sort of incomplete evidence that I understand that and appreciate that the Bench would be concerned with. There are two provisions in this award and they're not expressed in exactly the same way and I think it is only fair that if witnesses - not just this witness - but if this is a line of questioning - - -

PN1752

JUSTICE ROSS: The witness is being taken in the cross-examination to the difference and is asked whether he understands it. You are sort of stuck with the answer. It ought to have been done when the statements were prepared, if there's need for clarification or when the witnesses were proved but we are where we are and let's see where the cross-examination goes. But you can't cross-examine your own witness, if he's wrong about a particular thing or he has mis-characterised. His evidence is his evidence and you can make submissions - - -

*** ASHLEY WYNN

RXN MS BURKE

PN1753

MR STANTON: I was only concerned that the question be fairly put to the witness who is there without the award and, as I say, the award deals with this issue in different ways.

PN1754

JUSTICE ROSS: He is asked whether he is familiar with it and he said yes. So what are we to do with that?

PN1755

MR STANTON: I appreciate - I just - - -

PN1756

JUSTICE ROSS: His evidence might be wrong but that doesn't necessarily go to his credit. We are conscious he doesn't have the award in front of him and you can make submissions about what the award says.

PN1757

MR STANTON: May it please, sir.

PN1758

JUSTICE ROSS: Yes, Ms Burke.

PN1759

MS BURKE: Sorry, just half a second.

PN1760

JUSTICE ROSS: Yes.

PN1761

MS BURKE: Thank you, I don't have any more questions for Mr Wynn.

PN1762

JUSTICE ROSS: Anything arising from the last question?

PN1763

MS BURKE: I didn't ask the last - - -

PN1764

JUSTICE ROSS: No, no, I mean, you asked a question in further cross-examination. I am asking if anything arises from that for re-examination.

PN1765

MR STANTON: Nothing arises, your Honour.

PN1766

JUSTICE ROSS: Thank you very much for your evidence, Mr Wynn, you are excused.

<THE WITNESS WITHDREW

[12.47 PM]

*** ASHLEY WYNN

RXN MS BURKE

PN1767

JUSTICE ROSS: Can we have Ms Blair.

PN1768

MR STANTON: I formally call Ms Joanne Blair who will take an oath.

<JOANNE BLAIR, SWORN [12.48 PM]

EXAMINATION-IN-CHIEF BY MR STANTON [12.48 PM]

PN1769

MR STANTON: I just confirm, Ms Blair, you are the director of - is it Zamovisa?---Zamovisa.

PN1770

Zamovisa Employment Pty Ltd which operates three hotels?---Yes it does.

PN1771

If I might have a moment. Your Honour I wonder if we could seek an indulgence. There were some matters that I understand have been resolved in relation to the witness's statements. We just need a moment to organise ourselves, if you like, in relation to that.

PN1772

JUSTICE ROSS: You want us to adjourn for a couple of minutes?

PN1773

MR STANTON: Yes please.

<THE WITNESS WITHDREW [12.49 PM]

SHORT ADJOURNMENT [12.49 PM]

JOANNE BLAIR

XN MR STANTON

RESUMED [12.52 PM]

<JOANNE LESLEY BLAIR, RECALLED [12.52 PM]

EXAMINATION-IN-CHIEF BY MR STANTON, CONTINUING [12.52 PM]

PN1774

MR STANTON: Now, Ms Blair, for the purpose of these proceedings have you made statements, written statements?---Yes.

PN1775

I will show you this. If you could just take a moment to look at what has been passed to you. You will see the first, which is a stapled document of three pages. Is that the statement - do you recognise that as a statement you made on 29 June?---Yes.

JOANNE LESLEY BLAIR

XN MR STANTON

PN1776

There is a single page document. Do you recognise that as a supplementary statement you made on 25 August 2015?---Yes.

PN1777

Do you say that in respect of each they are true and correct to the best of your knowledge and belief?---Yes.

PN1778

I seek that they be entered into the proceedings as the evidence-in-chief. We have resolved objections, and my friend will tell me if this is not the case, and I am in a position to hand up to the Bench five copies of the statement. If it assists, paragraph 14 is the relevant paragraph that was the subject of resolution.

PN1779

JUSTICE ROSS: So for the record, that is deleting from the first sentence the words "and it is my experience that they will work regardless of whether it is a Sunday or a public holiday." Then deleting the sentence that immediately follows that, and deleting the last two sentences?

PN1780

MR STANTON: Yes, your Honour. I confirm that is the case.

PN1781

JUSTICE ROSS: So in effect, that was the totality of the objection made in the schedule you provided?

PN1782

MS BURKE: There was one more objection which we have withdrawn.

PN1783

JUSTICE ROSS: Just bear with me for a second. Yes, on eight.

PN1784

MS BURKE: Yes.

PN1785

JUSTICE ROSS: But that is not pressed.

PN1786

MS BURKE: It is not.

PN1787

JUSTICE ROSS: But it resolves the objection in relation to 14. Thank you. We will make those redactions to the statement and on that basis we will mark the statements as Exhibits AHA20 and AHA21.

**EXHIBIT #AHA20 STATEMENT OF JOANNE LESLEY BLAIR
DATED 29/06/2015.**

*** JOANNE LESLEY BLAIR

XN MR STANTON

**EXHIBIT #AHA21 STATEMENT OF JOANNE LESLEY BLAIR
DATED 25/08/2015.**

PN1788

MR STANTON: May it please.

PN1789

JUSTICE ROSS: Cross-examination?

CROSS-EXAMINATION BY MS BURKE

[12.55 PM]

PN1790

Thank you, Ms Blair. Can I take you first, please, to paragraph 13 of your statement?---Sure.

PN1791

You say there that you roster on management to work on public holidays. You say they are less expensive as they are not covered by the award?---The licensee is not covered by the award. The other managers are salarised staff. Yes, they still do come under an award condition but I can give them a cheaper day off just by giving them a day in lieu rather than paying the public holiday rate when they work.

PN1792

I just wanted to clarify there that the management staff, other than the licensee, who work that day are covered by the award. That is right, isn't it, but they are on salaries?---Yes, that's correct, yes.

PN1793

You know, don't you, that salaried employees under the award must receive a salary that is 25 per cent above the minimum wage in the award multiplied by 52?---Yes.

PN1794

The same applies for managers, the salary must cover what the employee would have been entitled to if they had received penalty rates?---Yes, that's correct.

PN1795

You are required to keep a record of the number of hours that your salaried employees work every week?---Yes, that's correct, yes.

PN1796

And have that signed by the employee at the end of the week?---Yes.

PN1797

Is that something that you do?---Yes.

*** JOANNE LESLEY BLAIR

XXN MS BURKE

PN1798

The purpose of that is to do a reconciliation, isn't it, at the end of the year to ensure that they are being paid - to determine what they are being paid?---Yes. We average it over a period of time.

PN1799

Of a year?---Well, I've never specifically looked at it at exactly a year but we do review it from time to time to ensure we are complying, yes.

PN1800

You also say that you then give your management staff a day off after they work on a public holiday?---Yes, we can give them a day in lieu.

PN1801

You know, don't you, that under the award it is open to you to ask casuals to work on a public holiday at reduced rates and then give them a day off?---Can you repeat that, sorry?

PN1802

Sure. Under the award, there is a provision there that allows you to negotiate or agree with your casual employees to work on public holidays at reduced rates, so not the normal penalty rate that they would get on a public holiday, and then give them a day off? Did you know about that clause?---I'm not following you. If I give them another day off - I only pay them for when they work, so no, I wasn't aware there is a clause there to do that.

PN1803

But the idea would be that they work on a public holiday at a reduced rate and then instead of working the next shift that they would ordinarily work, they have that time off?---Well, my casuals don't work an ordinary shift. They will be rostered from week to week as to what they are required to do, so you're saying we should plan in advance for five hours at a Monday to Friday casual rate?

PN1804

I'm just asking if you know that you have got that option under the award?---No, I didn't know that.

PN1805

JUSTICE ROSS: Can I just go back to your questions about managerial staff? There is no requirement in the award to do a reconciliation for managerial staff under clause 27.2. The reconciliation relates to the annualised salary arrangements under 27.1, which is for employees other than managerial staff.

PN1806

MS BURKE: Your Honour is quite right. I am sorry, Ms Blair, for misleading you, if I did, about that requirement but you do it anyway, so - - -

PN1807

JUSTICE ROSS: No.

*** JOANNE LESLEY BLAIR

XXN MS BURKE

PN1808

MR STANTON: Well, that is not what she said.

PN1809

MS BURKE: I am sorry. I don't mean you comply with a clause you do not have to comply with. I won't - - -

PN1810

JUSTICE ROSS: No. The point is that it is whether it is cheaper or not. Well, they do not have to do the reconciliation, so it would not necessarily. The answers do not follow.

PN1811

MS BURKE: The answers don't?

PN1812

JUSTICE ROSS: To the extent that you want to argue that it is no cheaper, well, that does not necessarily follow because you do not have to do the full reconciliation. You have to pay 25 per cent in excess of the minimum annual salary of \$43,475.

PN1813

MS BURKE: Yes. And at least before 30 June 2000 and - sorry, before 1 July this year, the additional 25 per cent on top of that brings it up to about - - -

PN1814

JUSTICE ROSS: To \$54,334.

PN1815

MS BURKE: I think I am looking at the old financial year award.

PN1816

JUSTICE ROSS: Okay.

PN1817

MS BURKE: But we are in the ball park.

PN1818

JUSTICE ROSS: Yes. In any event, I think if you want to put clauses of the award to the witness, you should put them and copy them and hand them up because I think the previous witnesses was misled as well.

PN1819

MR STANTON: I was going to raise that. I have a current copy of the award.

PN1820

JUSTICE ROSS: No, no. I don't think we need to explore it any further. If you want to, then that is what we want you to do.

*** JOANNE LESLEY BLAIR

XXN MS BURKE

PN1821

MS BURKE: Thank you, your Honour. At paragraph 10 of your statement, Ms Blair, you give a bit of evidence there - this is, sorry, at 10 and 11, about opening the bistro in Leichardt on public holidays?---Yes.

PN1822

That is something that you did but no longer do?---I did for a short period. I didn't for a while, and then I tried it out for a couple of events and it just was not successful. We tried charging a 20 per cent surcharge like I do in my other hotel in Dubbo and the customers just rejected it and walked away, so we just close altogether on - in the bistros at that time.

PN1823

You don't have any detail in your statement about why you stopped running the bistro on - opening the bistro on public holidays?---Yes, I do. I say that it is far too expensive. We pay around \$1,500 in wages for about \$500 in sales. Commercially, it is just unviable.

PN1824

What you say there, and I know you are looking at paragraph 10, is that you estimate that you would be paying - and perhaps I just don't understand it but you estimate you would be paying around \$1,500 in wages for an extra \$500 in sales. So is that an estimate of what you might pay or is that what you did pay?---That is an estimate of what it would cost me to open the bistros and an estimate of what kind of sales that would be. I only opened the bistro on two occasions in Leichardt for a public holiday and, in my living memory, that's all I've done and I certainly haven't done it in the last couple of years.

PN1825

This amount here of \$1,500 in wages, that is the total wage bill, the additional wage bill, on that day?---The additional wages to operate the bistro, yes.

PN1826

Not the penalty rate part of the wage bill?---No. That is what it would cost to open the doors to the bistro on that day.

PN1827

A little further down, at paragraphs 15 and 16 of your statement, you say that if the penalty rates proposed by the Australian Hotels Association were reduced, you would open on public holidays, you would open the bistro on public holidays?---Yes.

PN1828

Is that both Kingswood and Leichardt or just one?---Yes, I would. No. Yes, I would, most definitely.

*** JOANNE LESLEY BLAIR

XXN MS BURKE

PN1829

Can I take it from that statement that you have worked out how many staff you would need on that day?---Well, I - yes. Well, I have to have a minimum of one chef for the entire time I'm open and I'd have to have a minimum of one counter hand for the entire time I'm open.

PN1830

You would know, wouldn't you, whether the chef and counter hand would be full-time or casual?---Yes.

PN1831

So does that mean that you have actually costed that cost - sorry, costed that cost?---Yes.

PN1832

Poorly expressed. You have calculated that cost?---Yes.

PN1833

You have not put that in your statement, have you?---No, not at this particular time, I didn't, no.

PN1834

That is because you hadn't done that calculation when you made the statement?---I've done the - probably not on that exact day when I made this statement, although I've done it numerous times and that is my reason for not opening.

PN1835

You also say that you would consider having promotions, live music or promotions. This is, sorry, at paragraph 16. What do you mean by promotions?---Okay. It's my current business practice not to hold any promotions on Sundays because the money you spend in doing those promotions, and that could be - - -

PN1836

Sorry, I just want to take a step back?---Okay.

PN1837

I don't understand what promotions means?---Anything to promote the business going forward.

PN1838

What does that look like?---It could be an entertainer. It could be a trivia event. It could be a raffle day. It could be those sorts of things to encourage trade.

PN1839

So live music might be a promotion?---It might be a promotion.

PN1840

You say that you would consider having live music or promotions and I think later you also refer to trivia and you would like to do at least live musical promotions with the money saved from labour costs. Can I take it from that statement that you know what money you would save from labour costs?---Beg your pardon? Sorry?

*** JOANNE LESLEY BLAIR

XXN MS BURKE

PN1841

You say at paragraph 16 - - -?---Yeah.

PN1842

- - - you would consider having live music, et cetera, on a Sunday with money saved from labour costs?---Yes.

PN1843

What I am asking you is if that statement means that you know the dollar figure of the money that you would save from labour costs on a Sunday?---Yes.

PN1844

You do know what that amount is?---Yes. Well, it's about 14 per cent of whatever the wage cost is for that day.

PN1845

The dollar amount?---The dollar amount? Well, currently on a Sunday we're probably at about - I'd have to think of individual venues, so probably about \$2,000 to operate the business on a Sunday at Kingswood, for example. So \$300, \$350, somewhere around \$300.

PN1846

That is the money you would save from labour costs on a Sunday - - -?---Yes.

PN1847

- - - if the AHA's proposal was accepted?---Yes.

PN1848

\$300?---Yes, in one venue, yes.

PN1849

That would be enough to put on live music?---It can be enough to put on a solo guitarist, yes.

PN1850

That wouldn't involve employing any more staff, would it?---It involves employing a solo guitarist.

PN1851

Quite right. Other than a solo guitarist?---Yeah.

PN1852

Thank you. I don't have any more questions?---Thank you.

PN1853

JUSTICE ROSS: Can I just ask you about paragraph 15 of your statement where you say you would extend the hotel and bistro trading hours on a Sunday at your Sydney hotels if the penalty rate reduction was granted for the Sunday?---Yes.

PN1854

So your Sydney hotels are in Leichardt and Kingswood?---Yes.

*** JOANNE LESLEY BLAIR

XXN MS BURKE

PN1855

They currently are open from 10 am to 10 pm on Sundays. Do I take it, when you say extend the hotel - let's deal with the hotel to begin with - trading hours on a Sunday, what extension would you have in mind?---Okay. If I could deal with the bistro first? Do you mind, sorry?

PN1856

No, no, no, that's fine. I was going to come to the bistro anyway so we may as well deal with that?---Okay. Sorry. The bistro currently, in the country, I trade from 11 am until 11 pm, all day, every day. That is a big cost on a Sunday but I sort of wear the cost of that because I really like the consistency of the trading hours. It's good for the customers to know that. In Sydney, the trade hasn't been - Dubbo is more of a tourist location than Sydney is. My two hotels in Sydney are far more local hotels. So they are only trading, due to the costs and the lower turnover at this point in time, they are only trading from 12 noon to 3 pm.

PN1857

That is in the bistro?---In the bistro. And from 5 pm to 9 pm at night. So immediately I would be able to extend those hours from 11 am to 11 pm, the same as I do in my Dubbo hotel. That is what I would prefer to do and people, particularly on a Sunday, do not more or less stick to lunch hours and dinner hours like they do during the week days. The hotel itself, we have to get a special extension to the liquor licence to be able to trade from 10.00 am to midnight. That is a fairly lengthy process which, one, I wouldn't undertake if I couldn't extend the trading hours of the bistro because the cost benefit is just irrelevant. But most places, the food is shut down at sort of 8 o'clock on a Sunday night around us and I think there would be a lot of benefit to be able to extend the food through to 10 or 11 o'clock at night.

PN1858

If I can just look at the bistro. You have said there the shift would be from the current openings hours from 12 noon to 3 pm and 5 pm to 9.00 pm on a Sunday, it would go from 11 am to 11 pm?---Yes.

PN1859

What does that change mean in terms of staffing on that day?---Well, it would be an extra five hours.

PN1860

For one person or more than one?---Well, it has to be for two people. I mean, the most essential person that has to be there obviously is the chef and he is the person that we can't replace with a casual or the manager can't step in and suddenly be the chef.

PN1861

I think you said before the chef and there would be a counter hand?---A counter hand. At a minimum, yes.

*** JOANNE LESLEY BLAIR

XXN MS BURKE

PN1862

So those two would need - there would be an additional five hours for those two?---Yes.

PN1863

Thank you. Anything arising? Ms Burke?

PN1864

MS BURKE: No, thank you.

PN1865

JUSTICE ROSS: Re-examination?

RE-EXAMINATION BY MR STANTON

[1.11 PM]

PN1866

His Honour asked you just a moment ago about that extra - well, a question which you answered there would be an extra five hours staffing?---Yes.

PN1867

With the extended bistro hours. As I understood it, the extra hours would be for the chef and a counter hand?---Yes.

PN1868

How would that counter hand be engaged?

PN1869

MS BURKE: Your Honour. Sorry, I just object. I am not sure of the extent to which my friend is re-examining arising from the answers to your Honour's questions or arising from my cross-examination.

PN1870

JUSTICE ROSS: It doesn't matter. He is allowed to re-examine from my questions. You were allowed to cross in relation to my questions, otherwise there is no way of clarifying any ambiguity.

PN1871

THE WITNESS: The counter hand could be casual or it could be full-time.

PN1872

MR STANTON: Yes. And the chef, just to clarify, is that the existing chef, the current chef?---Well, being open seven days per week, we can't run a chef seven days per week, so we would have to be employing an extra chef.

PN1873

Nothing further.

PN1874

JUSTICE ROSS: Is there anything you want to ask about that?

*** JOANNE LESLEY BLAIR

RXN MR STANTON

PN1875

MS BURKE: No, thank you.

PN1876

JUSTICE ROSS: All right. Thanks very much for your evidence. You are excused?---Thank you.

<THE WITNESS WITHDREW [1.12 PM]

PN1877

JUSTICE ROSS: We will now adjourn until two, and then is it Ms Booth?

PN1878

MR STANTON: Ms Booth, your Honour.

PN1879

JUSTICE ROSS: At 2 o'clock, great. Thanks very much.

LUNCHEON ADJOURNMENT [1.13 PM]

RESUMED [2.03 PM]

PN1880

JUSTICE ROSS: Yes, Mr Stanton?

PN1881

MR STANTON: Yes, your Honour, I call Jackie Booth.

<JACKIE BOOTH, SWORN [2.03 PM]

EXAMINATION-IN-CHIEF BY MR STANTON [2.03 PM]

PN1882

MR STANTON: Now Ms Booth, can I confirm, you are the Chief Operating Officer of the – is it the Za Game Corporation?---Zagames. Yes, I am.

PN1883

Thank you, Zagames Corporation?---That's correct.

PN1884

Yes. And for the purposes of these proceedings, have you made two statements, one on 29 June 2015 and one on 25 August 2015?---I have, that's correct.

PN1885

And do you have both of those statements with you this afternoon?---I do.

PN1886

Yes. And do you say that in relation to both statements, that they are true and correct to the best of your knowledge and belief?---Yes, they are.

*** JACKIE BOOTH

XN MR STANTON

PN1887

your Honour, I seek to have those entered as the evidence-in-chief of Ms Booth.
They are- - -

PN1888

JUSTICE ROSS: I don't think there are any objections to that.

PN1889

MR DOWLING: No, your Honour.

PN1890

JUSTICE ROSS: No, we'll mark the main statement as Exhibit AHA 22.

**EXHIBIT #AHA 22 WITNESS STATEMENT OF JACKIE BOOTH
DATED 29 JUNE 2015**

PN1891

JUSTICE ROSS: And the supplementary statement as Exhibit AHA 23.

**EXHIBIT #AHA 23. SUPPLEMENTARY STATEMENT OF JACKIE
BOOTH DATED 25 AUGUST 2015**

PN1892

MR STANTON: May it please.

PN1893

JUSTICE ROSS: Right, thank you. Cross-examination?

PN1894

MR DOWLING: Yes, thank you, your Honour.

CROSS-EXAMINATION BY MR DOWLING

[2.05 PM]

PN1895

MR DOWLING: Ms Booth, can you see and hear me clearly?---I can.

PN1896

Thank you. Now, your evidence is you are the Chief Operating Officer of the Zagames Corporation?---That's correct.

PN1897

And you have set out in your – in the longer of your two statements the venues that are included within the Zagames group?---That's correct.

PN1898

And there's seven of them listed there?---That's correct.

PN1899

Right. And is it correct that until recently, Zagames also owned and operated the Paradise Resort on the Gold Coast?---That's correct, yes.

*** JACKIE BOOTH

XXN MR DOWLING

PN1900

And that was sold in or about February of this year, is that right?---That was sold in February of this year and it's due to settle this month.

PN1901

And the sale figure was somewhere just in excess of \$70 million, is that right?---I actually don't know.

PN1902

You're the Chief Operating Officer and you don't know what you sold it for?---Of Victoria I am.

PN1903

Well, there were reports of it in the paper, are you saying you have no idea at all of the sale price of the Paradise Resort on the Gold Coast?---I haven't seen the sale documents, no.

PN1904

Do you have an estimate, or are you able to say approximately what you think the sale figure was, from the best of your knowledge?---From – I read the paper too, and it said 70 million.

PN1905

Do you know – and that resort was purchased, I think, in or about 2010, is that your understanding?---Yes, that's correct.

PN1906

And are you able to say, to the best of your knowledge, what it was purchased for in 2010?---No, I don't know. Sorry.

PN1907

Approximately?---I have no idea, I'm sorry.

PN1908

My reports say it was sold for – sorry, it was purchased for 40 million, does that accord with an understanding you have, or you just don't know?---I don't know.

PN1909

All right. Do you have any information about the nett income of the resort when it was purchased in 2010?---No. I'm not privy to those figures.

PN1910

And- -?---I look after Victoria.

PN1911

All right. Okay, thank you. All you know is what you've read and that is that it was sold for about \$70 million?---In the paper, that's what I read, yes.

PN1912

All right. Are you aware that there is an employee of Zagames that has filed a statement in this proceeding?---I am.

*** JACKIE BOOTH

XXN MR DOWLING

PN1913

And that's Mr Steven Petrov?---That's correct.

PN1914

And he is employed at the Zagames Ballarat Club Hotel, is that's right?---He is, yes.

PN1915

And I understand, and can you confirm for me, that his title is Gaming Supervisor. Is that's right?---That's correct, yes.

PN1916

And he is paid under the Award, can you confirm for me, as a Food and Beverage Supervisor level 5, is that's right?---That's correct, yes.

PN1917

All right. Have you seen his statement?---I have.

PN1918

And you will have seen that he attached his payslip to it as well?---I don't recall seeing his payslip.

PN1919

All right. Did you read in his statement what he said about this annual salary?---I – to be honest, I glanced over it but I didn't read it in detail, so – he is on an annualised salary, yes. Are you able to read it to me?

PN1920

I can. I can, I'm sorry. If we were in person, I would provide you with a copy. I'm sorry. At paragraph 19 of his statement, his evidence is:

PN1921

For the financial year ending 30 June 2015 I was paid a base salary, including the annual loading, of 51,600 plus 9.5 per cent super for a total package of \$56,502.

PN1922

Does that accord with your understanding of what he's paid?---I'd have to check payroll records, but it sounds about correct for a Grade 5.

PN1923

Are you aware of what the minimum weekly wage is for a level 5 in the Award?---Not off the top of my head, no.

PN1924

Can I tell you that the award presently prescribes that the minimum weekly wage is \$812.80?---Okay, I don't have that- - -

PN1925

I'm sorry, your Honour?--- - - -in front of me.

*** JACKIE BOOTH

XXN MR DOWLING

PN1926

Yes. I'm sorry your Honour, again because of the video link- - -

PN1927

JUSTICE ROSS: Sure, but where's all this going?

PN1928

MR DOWLING: Well, your Honour, there's some evidence given about the financial viability of this organisation and its ability to pay certain amounts and the burden that's created by penalty rates and I want to explore with this witness whether they're meeting those obligations to begin with. And if they're not- - -

PN1929

JUSTICE ROSS: Well then, isn't the witness entitled to – not to incriminate herself?

PN1930

MR DOWLING: She is, yes. And if my learned friend wants to give her a warning, he can do so. And now would be the appropriate time.

PN1931

JUSTICE ROSS: It would be.

PN1932

MR STANTON: Well, just to be clear on this, what the- - -

PN1933

JUSTICE ROSS: Well, I think it's going to be – look, to be blunt, I think it's going to be important that they're not meeting their award obligations in respect of the witness that- - -

PN1934

MR STANTON: They being who, I'm sorry?

PN1935

JUSTICE ROSS: Zagames.

PN1936

MR STANTON: Not the witness.

PN1937

JUSTICE ROSS: Well no, sure, not the witness, but the corporation that she's representing.

PN1938

MR STANTON: Yes. She's here to provide evidence in relation to a review and she's filed a statement. I appreciate it's on behalf of the organisation, but- - -

PN1939

JUSTICE ROSS: Are you going to take the point or not?

*** JACKIE BOOTH

XXN MR DOWLING

PN1940

MR STANTON: Well, I wasn't aware this point was going to be taken.

PN1941

JUSTICE ROSS: Well, people really are. Are you going to take the point and warn the witness or not?

PN1942

MR STANTON: Yes, I think I'll take the point. Could I just seek a short adjournment for a moment?

PN1943

JUSTICE ROSS: All right. And look, whether the point's taken or not, you can still explore it in relation to the witness you're going to call and it will be clear on the face of the documents, won't it.

PN1944

MR STANTON: Yes.

PN1945

JUSTICE ROSS: Well, I'm not sure we need to put the witness to the concession when she doesn't have the documents anyway and – but anyway, give that some thought and we'll see when we come back.

PN1946

MR STANTON: May it please, your Honour.

SHORT ADJOURNMENT

[2.13 PM]

RESUMED

[2.32 PM]

PN1947

JUSTICE ROSS: Okay, were are we up to?

PN1948

MR STANTON: Yes, your Honour, we've had the opportunity to consider the position of the witness and the warning, which will be taken. I'm sorry.

PN1949

JUSTICE ROSS: Ms Booth, are you there?---Yes, I am.

PN1950

MR STANTON: Ms Booth, can you hear me all right?---Yes.

PN1951

Yes. Ms Booth, you were being asked questions before by my friend. You may take objection to giving the evidence on the grounds that the evidence may tend to prove that you have committed an offence or are liable to a civil penalty?---Yes.

*** JACKIE BOOTH

XXN MR DOWLING

PN1952

Do you understand?---Yes, I do.

PN1953

Do you wish to take that objection?---No.

PN1954

JUSTICE ROSS: I think, my point still remains, Mr Dowling, about how you want to – I understand the point you want to raise.

PN1955

MR DOWLING: Yes, yes.

PN1956

JUSTICE ROSS: Well, see how we go.

PN1957

MR DOWLING: Yes, well I'm happy to take your Honour's suggestion on board and we'll deal with it through Mr Petrov.

PN1958

JUSTICE ROSS: And look, the other side will be on notice.

PN1959

MR STANTON: Yes.

PN1960

JUSTICE ROSS: And away we go. All right, thank you.

PN1961

MR DOWLING: Ms Booth, you still have both of your statements there with you?---I do.

PN1962

And if you open firstly the largest of the statements which is the five-page document, and on the second page you set out the workforce of the five different – sorry, of the seven different Zagames venues. Do you see that?---Yes.

PN1963

And is it fair to say that with the exception of the Downtowner, which I'll return to, the vast majority of employees at each of those venues are casual staff members?---That's correct.

PN1964

And is it right that the Downtowner is the only one of those that is a hotel? Is that correct?---It's our only accommodation hotel.

PN1965

Yes, thank you. Now, you give some evidence about an analysis that was done in respect of the bistro over Easter which is at paragraph 22 of your statement?---That's correct.

*** JACKIE BOOTH

XXN MR DOWLING

PN1966

Do you recall that?---I do.

PN1967

Now, is correct to say that that analysis required looking at the revenue from food and the revenue from drinks and comparing it against wages?---Wages, costs, goods and expenses.

PN1968

All right, but in terms of input, in terms of revenue, it only looked at food and beverage and didn't look at gaming or any other revenue that the club might receive. Is that's right?---My analysis was done on our bistro departments.

PN1969

So is that an answer yes, does that mean the analysis just looked at food and beverage and not any of the other revenue?---That's correct, yes.

PN1970

All right, thank you. Now, are you able to tell the Commission whether the same analysis was performed by using the penalty rates as proposed by the AHA in this proceeding?---No, we haven't undertaken that.

PN1971

All right. Thank you. Now, you have given some evidence that in respect of these proposed changes, one of the things that Zagames is looking at is capital expenditure to rejuvenate and update each of the venues?---That's correct.

PN1972

Has there been a costing done on that capital expenditure?---We're currently in the planning stages at Zagames Ballarat. We've just submitted to council and we're looking – my belief is, it's in excess of \$2 million.

PN1973

Of 2 million?---Yes.

PN1974

And is that the only rejuvenating that you're talking about in that paragraph 28?---Where – in that?

PN1975

Sorry, my apologies. If you turn to your statement, in your statement to the fourth page, the larger of the statements to the fourth page?---Yes.

PN1976

And you'll see there, in the first sentence at paragraph 28:

PN1977

Zagames is considering considerable capital expenditure to rejuvenating our facilities.

*** JACKIE BOOTH

XXN MR DOWLING

PN1978

Do you see that?---Yes, that's correct.

PN1979

And you're there talking about the capital works at Ballarat that you just describe?---That and our other sites.

PN1980

So- - -?---So Reservoir – our plan would be to do Reservoir next.

PN1981

And has any assessment been made of the cost of the capital works at Reservoir?---Not at this stage, no.

PN1982

So all we know, in terms of cost, is that the Ballarat rejuvenation is costing in excess of \$2 million?---That's correct.

PN1983

You're not seriously suggesting the Commission that penalty rates are going to cover that? You're saying they're some contribution to it, are you?---Yes, that's correct.

PN1984

All right. Now, if you can just turn back to paragraph 23 of your statement. Your Honour, I'm concerned that I'm heading into the territory of wanting to put the salaried – annualised salary clause.

PN1985

JUSTICE ROSS: Well, let's see how we go.

PN1986

MR DOWLING: Thank you, your Honour.

PN1987

You there give some information about management – did I direct you to paragraph 23?---You did.

PN1988

Thank you. There you say:

PN1989

Management and salary staff are rostered on for the bulk of the day on Sundays and public holidays. Due to the high cost associated with rostering casuals on and due to the high penalty rate they attract, these members are only used to supplement staff if there are not enough salaried staff.

*** JACKIE BOOTH

XXN MR DOWLING

PN1990

Can I just clarify firstly with respect to salaried staff? We'll leave management to one side for the moment. Salaried staff. Are you talking about those people that are on an annualised salary under the award?---That's correct.

PN1991

JUSTICE ROSS: Perhaps if you make the distinction. Are they non-managerial staff and which section of the award are they under?

PN1992

MR DOWLING: You have described management and salaried staff in that paragraph and I want you to be clear on the difference between the two. With respect to the salaried staff, what levels or grades or classifications are we talking about?---In our bistros most of our salaried staff are either grade 2 or grade 5.

PN1993

By grade 2 or grade 5 am I correct in assuming that we're talking about a food and beverage attendant grade 2 or a food and beverage attendant grade 5?---That's correct.

PN1994

With respect to the management staff, what classification or position description are you talking about there?---Our managerial staff are generally duty managers of the hotel or our assistant managers and then we have some above common law contracts as well for our venue managers.

PN1995

So where you're talking - if we can be clear on the distinction between management and salaried staff, in terms of the salaried staff we are talking food and beverage attendants grade 2 or grade 5 and in terms of the management we're talking about duty managers or assistant duty managers?---Duty managers or assistant venue managers.

PN1996

All right, thank you. When you're talking about using those staff on Sundays and public holidays would I be safe to assume that you are more often using the food and beverage attendants to do that work?---Not necessarily. We have a pretty - I guess a good combination between management and salaried staff within the bistros.

PN1997

If we stick then with the food and beverage attendants, is the purpose of using them that you won't be paying them penalty rates and they will be cheaper than using casuals or rostering casuals to whom you are obliged to pay penalty rates? Is that the purpose of that paragraph 23?---The casuals attract a higher rate. We pay a day in lieu to our salaried staff which they can take at a later date and they're also generally more skilled than our casual staff.

*** JACKIE BOOTH

XXN MR DOWLING

PN1998

You're not suggesting that you save money by rostering the salaried staff or the management then?---There is a cost reduction with - on the day, yes.

PN1999

Well, if we stay with salaried staff, how is there a cost reduction from using a salaried staff member?---A salaried staff member, from the best of my knowledge, is a day in lieu and a casual staff member is 275 per cent.

PN2000

You appreciate that the award obliges you to ensure in respect of the salaried staff that their annualised salary is no less than, over a year, what it would have been had they received all of the overtime and penalty rates that was due to them?---Yes, definitely.

PN2001

So if that's right, you're certainly not saving any money in respect of overtime and penalty rates for that salaried staff member. Do you agree with that?---On that particular day or over the year?

PN2002

Well, at all. Over the year?---Over the year, no, we're not. Over a year you - the annualised salary is equivalent to a full timer.

PN2003

I think I took you to paragraph 10 and you described to me or you confirmed for me the level of casual staff. You accept that there is a large number of them. That's correct, yes?---Yes, that's correct.

PN2004

Can I just take you to your paragraph 26 to clarify? You say there:

PN2005

If the AHA's proposal is accepted it will be possible to roster casual staff members to work on public holidays so that full time staff are not required to work.

PN2006

Are you there talking about rostering those existing casuals to do any additional hours on public holidays?---That's correct. We would also look at extending our trading hours. So at the moment we shorten our trading hours. So that for a - - -

PN2007

Well, I didn't ask you about trading hours, so perhaps if you would just stick to my questions for the moment?---Sure.

PN2008

You also say that rostering those casuals would mean that full time staff can take public holidays off to spend with their family. I take it that that is something that's important to Zagame's?---It is very much so.

PN2009

Nothing further, your Honour.

*** JACKIE BOOTH

XXN MR DOWLING

PN2010

JUSTICE ROSS: Any re-examination?

PN2011

MR STANTON: Nothing further, your Honour.

PN2012

JUSTICE ROSS: Thank you very much for your evidence, Ms Booth. You are excused?---Thank you.

<THE WITNESS WITHDREW [2.47 PM]

<SAMANTHA WALDER, SWORN [2.49 PM]

EXAMINATION-IN-CHIEF BY MR STANTON [2.50 PM]

PN2013

Ms Walder, you are the Director of Human Resources at the Intercontinental Sydney Double Bay?---Yes.

PN2014

How long have you held that position?---Five and a half months.

PN2015

How long have you been engaged or - what is your experience in the hospitality industry in terms of years?---Twenty-eight years.

PN2016

Ms Walder, for the purpose of these proceedings, have you made statements?---Yes.

PN2017

I will show you these documents. What has been passed to you, you will see several pages stapled together. Is that a copy of a statement made by you for the purpose of these proceedings of 29 June of this year?---Yes.

PN2018

And there is a single page. Is that a copy of a statement made by you on 26 August of this year?---Yes.

PN2019

I would seek to have that entered as the evidence-in-chief. I will hand up, your Honour - this was a statement that drew some objection. I understand it has been resolved and I can hand up - again I'll just check the numbers - five copies of the statement. It's paragraph 7 that I will draw the Bench's attention to.

PN2020

JUSTICE ROSS: So it's proposed that all of paragraph 7 will be removed?

*** SAMANTHA WALDER

XN MR STANTON

PN2021

MR STANTON: Yes, your Honour.

PN2022

JUSTICE ROSS: And that removes the objection?

PN2023

MR DOWLING: Yes, your Honour.

**EXHIBIT #AHA24 WITNESS STATEMENT OF SAMANTHA
WALDER DATED 29/06/2015**

**EXHIBIT #AHA25 SUPPLEMENTARY STATEMENT OF
SAMANTHA WALDER DATED 26/08/2015**

CROSS-EXAMINATION BY MR DOWLING

[2.52 PM]

PN2024

Ms Walder, your evidence is you are the Director of Human Resources for the Intercontinental Hotel in Double Bay?---Yes.

PN2025

Is it correct that the hotel opened only recently in December - sorry, November of 2014?---Yes.

PN2026

So it hasn't yet traded for a full year since opening?---Correct.

PN2027

There are 140 staff or thereabouts is your evidence, yes?---Approximately, yes.

PN2028

I think it is also your evidence that they are all employed under the award?---There's approximately 20 people that are not employed under the award.

PN2029

JUSTICE ROSS: Paragraph 5 of her statement actually says that, Mr Dowling.

PN2030

MR DOWLING: Yes, your Honour, thank you. I think just to be clear, and I am grateful to the Vice President, there is 140 staff. There are 60 casuals at grade 2 and 80 permanent employees under the award. So that's the 140, those people?---To clarify it, there's - it varies from day to day what the staffing levels are, but approximately 140 people. Approximately 60 casual employees all award covered and then 80 full time employees. Approximately 60 of those would be award covered.

PN2031

So the 22 you describe in paragraph 5 are to be included within the approximate 80 number?---Yes.

*** SAMANTHA WALDER

XXN MR DOWLING

PN2032

They're not an additional 22?---Yes, correct.

PN2033

In terms of the staff that are award covered, or indeed, in terms of all them, you agree that there is nothing to prevent you from negotiating an enterprise agreement with those staff?---Yes.

PN2034

Sorry, that's yes, you agree there's nothing to prevent you?---Well, the hotel has chosen not to establish an enterprise agreement.

PN2035

Is there a reason for that?---I was not involved in the discussions. I wasn't employed with the company at the time.

PN2036

Do you have any knowledge of whether the other Intercontinental Hotel in Sydney has an enterprise agreement?---Yes, it does.

PN2037

Were you involved in any of the discussions as to why that hotel as an enterprise agreement and the Double Bay one doesn't?---No.

PN2038

Are you aware of the clause of the award that provides for flexibility in terms of penalty rates and provides that you can reach agreement on penalty rates that suit the genuine individual needs of the employer and the individual employee? Are you aware of that clause?---No.

PN2039

I take it from that that that's not something in the award that's ever come across your desk or you have ever sought to exercise with any of the employees covered by the award?---No.

PN2040

You say - sorry. Can I ask you one other question in terms of the award? To be fair to you, I will recite the words and I am happy to provide you with a copy if it assists. It provides that:

PN2041

Employees who work on a prescribed holiday may, by agreement, perform such work at their applicable ordinary hourly rate plus 50% additional loading, rather than the penalty rate prescribed provided that equivalent paid time is added to the employee's annual leave or one day instead of such public holiday will be allowed to the employee during the week in which such holiday falls.

PN2042

Is that a clause you are familiar with in the award?---Yes.

*** SAMANTHA WALDER

XXN MR DOWLING

PN2043

Is that one you have sought to exercise in respect of the award covered employees?---Not since I have been there, no.

PN2044

Were you party to any discussion about why you should or should not exercise that flexibility in the award?---No.

PN2045

You say in paragraph 9 that you engage - in respect of under the heading "Penalty Rates" you engage salaried employees to work. "That is because it is more cost effective." Do you see that? It's the last sentence of paragraph 9?---M'mm.

PN2046

Can I just identify firstly those salaried employees, what grade or level or classification of employee are you talking about in that paragraph?---I could be talking about annualised salary. I could be talking about managerial award covered salary and I could be talking about common law.

PN2047

When you say you "could be" talking about it, I wonder if you could clarify when you wrote that statement which employees are you talking about?---I'm talking about salaried - annualised salary and managerial and also common law.

PN2048

Now, perhaps if I can delineate all of those three classifications or those three groupings for the moment? The salaried employees, what classification or what sort of work are you talking about in terms of those employees?---Annualised salary, we're talking about supervisors and chefs.

PN2049

Are you aware in respect of those salaried employees that the award provides that you are not able to pay an annual salary less, over an entire year, that is equivalent to the money they would have earned had they been paid all the penalty rates and the overtime?---Yes, I am aware of that.

PN2050

Well, I suggest to you that in respect of those employees you are not saving any money at all because you have to pay them at least what they would have earned in penalty rates. Do you agree with that?---Yes.

PN2051

Can I take you to paragraph 14 of your statement and perhaps this is already clear, but just to confirm it so I understand, in the first sentence you talk there about if the penalty rates proposed by the AHA were implemented you "would also engage more of my casual employees to work on Sundays and public holidays, depending on business needs." Firstly, when you are talking about "my casual employees" you're talking about those existing casual employees that we identified earlier when we went through your staff, yes?---Yes.

*** SAMANTHA WALDER

XXN MR DOWLING

PN2052

All right. Thank you. I think I said "firstly". I'm sorry, there's no "secondly". That's all the questions there is, your Honour.

PN2053

JUSTICE ROSS: Any re-examination?

RE-EXAMINATION BY MR STANTON

[3.00 PM]

PN2054

Those supervisors and chefs that you described as salaried, are they permanent employees?---Yes.

PN2055

Nothing further.

PN2056

JUSTICE ROSS: Thank you very much for your evidence and for your time this afternoon. You are excused?---Thank you.

<THE WITNESS WITHDREW

[3.00 PM]

PN2057

JUSTICE ROSS: I think that's the evidence for today. I have been advised that ABI have sent an email indicating a settlement with United Voice in respect of all but five - I'm not sure if it's five of the objections or five of the witnesses. We had said come back at four but are you in a position now to tell us where all that's up to?

PN2058

MR DOWLING: I think I am, your Honour. In respect of the AHA, we have resolved - I think I said this morning the position hasn't altered. We've resolved all but three objections for the witnesses that will be called for the balance of this week, and we are hopeful, given the progress on all of those, that we will then be able to deal with the AHA witnesses and their objections to ours for the balance of the hearing. We just haven't been able to do that in time but we are hopeful we will be able to do that before any of those witnesses are called.

PN2059

In respect of Clubs I can confirm, as I did this morning, that all of those objections that we took to the - I'm calling them non-association employees - sorry, non-association witnesses, that is the witnesses that aren't employed by one of the associations - they are resolved. And that only leaves Mr Tait and Mr Reeves, and despite some further discussion during the course of today, we have not been able to resolve our objections in respect of those two.

PN2060

JUSTICE ROSS: So it's Tait and Reeves are left. What about the objections taken to your witnesses by ABI?

*** SAMANTHA WALDER

RXN MR STANTON

PN2061

MR DOWLING: Sorry, your Honour, can I say one last thing on Clubs?

PN2062

JUSTICE ROSS: Yes.

PN2063

MR DOWLING: I am told by Mr Warren that Mr Della, who is a witness to be called late in the afternoon at 2.15, will be available from 11 am in the event that there's some ruling adverse to him in respect of Mr Tait and Mr Reeves, just as a backup.

PN2064

JUSTICE ROSS: Okay. He is a witness from Victoria, is that right?

PN2065

MR DOWLING: He is. Mr Cox will also be available but he is giving evidence here in Sydney.

PN2066

JUSTICE ROSS: He is.

PN2067

MR DOWLING: I think that only means, your Honour, that in respect of Mr Della, if he was to be called at 11, the video link is not presently arranged for that time, it's arranged at 2.15. So I'm not sure how quickly those things can be done but if there's a gap in the morning created by Mr Tait or Mr Reeves, he is available subject to the Commission and video link being available.

PN2068

JUSTICE ROSS: Okay. So we've got Tait and Reeves to deal with in the morning.

PN2069

MR DOWLING: Yes.

PN2070

JUSTICE ROSS: Where are you up to with - or is that answered by the ABI correspondence, because they took objection to four of your witnesses, and there's also Mr Hart, I suppose.

PN2071

MR DOWLING: Yes, Mr Hart is still outstanding. The first statement of Mr Hart, not the second, dealing with the Productivity Commission, that's been - - -

PN2072

JUSTICE ROSS: Yes.

PN2073

MR DOWLING: We had a discussion with Mr Izzo over lunch and we managed to refine but not do away with all of those objections that he takes to our witness

statements. I think there are now objections with respect to three witnesses remaining.

PN2074

JUSTICE ROSS: All right.

PN2075

MR DOWLING: And a total of six objections.

PN2076

JUSTICE ROSS: Where are we in relation to Mr Harvey's statement?

PN2077

MR DOWLING: The only party to take objection to Mr Harvey is the AHA, and I'm sorry, that is one we haven't got to because he was to be called next week.

PN2078

JUSTICE ROSS: It's just that it is in a similar category - - -

PN2079

MR DOWLING: Sorry, the week after next, my apologies.

PN2080

JUSTICE ROSS: It is in a similar category to the objections you take to aspects of the Tait, Reeves and Hart statements.

PN2081

MR DOWLING: Yes. There is one important difference we say, and that is Mr Harvey actually does the research himself. He says "I did this research, here are the results". Whereas Mr Tait and Mr Reeves simply say "Here's some documents and I'll make some submissions about them" is what we say. But Mr Harvey at least - and we were careful that Mr Harvey did not seek to give an opinion that we sought, rather - - -

PN2082

JUSTICE ROSS: He gives an opinion at the end because he characterises the employees covered as being award reliant or highly award reliant or something like that.

PN2083

MR DOWLING: Yes, I accept that, your Honour, and perhaps that's something we can do something about, but that's the distinction we saw at least, that we were bringing someone that had done the research and said "Here's the results of the research", then didn't opine about it with the exception of what your Honour says.

PN2084

JUSTICE ROSS: All right. So do I take it in the morning we're dealing with Tait, Reeves, Hart and the ABI matters, is that right, and then you're going to continue to have discussions with the AHA and try to resolve the rest?

PN2085

MR DOWLING: Yes.

PN2086

JUSTICE ROSS: Is that where we're up to?

PN2087

MR DOWLING: That's where we're up to, your Honour. I think my learned friend is anxious not to be here at 9 o'clock, and I take it from - sorry - I take it from that that he doesn't need to. I do. He doesn't.

PN2088

JUSTICE ROSS: I think we would be assisted by - if you start - because there's been several iterations of where the Hart statement is up to.

PN2089

MR DOWLING: yes.

PN2090

JUSTICE ROSS: Perhaps you could advise who is appearing for them that if they can be in a position to hand up where it's been left after all of this.

PN2091

MR DOWLING: Yes. The only thing I can add to all of that, your Honour, is that we have arranged to speak to Mr Clarke at 4 o'clock, a further set of discussions. We had discussions with him at the end of court today. We haven't been able to hear him today but we've arranged to talk with him again at 4, so we may get even closer, and we will make sure - if it's resolved completely, of course, we'll get a message to your Honour's Chambers.

PN2092

JUSTICE ROSS: Thank you. All right. The 4.30 link to Johns C I think will be in this room.

PN2093

MR DOWLING: Thank you, your Honour.

PN2094

JUSTICE ROSS: But if it's not my associate will be here to take you to wherever it is.

PN2095

MR DOWLING: Thank you, your Honour.

PN2096

JUSTICE ROSS: That is all. We will adjourn until 9 o'clock tomorrow morning.

ADJOURNED UNTIL THURSDAY, 10 SEPTEMBER 2015 [3.08 PM]

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