



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

1052403

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

9.44 AM, FRIDAY, 11 SEPTEMBER 2015

Continued from 10/09/2015

PN3294

MR DOWLING: Good morning, your Honour. Just two brief administrative matters to inform the Bench. Firstly, I understand the Commission has been provided a new statement of John Hart to replace the existing statement.

PN3295

JUSTICE ROSS: Mm-hm.

PN3296

MR DOWLING: I've notified my friend Mr Clarke that in those circumstances we don't require Mr Hart for cross-examination.

PN3297

JUSTICE ROSS: All right. I just want to clarify the position with the Restaurant Catering. My chambers contacted someone from I'm not sure who when we received this just chasing you up on what was said yesterday, which was that we wanted a statement that reflected where did we end up after the redactions and the rulings we had made. You recall some of the rulings were in your favour and we retained paragraphs which had inserted the words 'in my experience' and then a statement, and you were going to continue your position in relation to two of the survey materials. What I was informed by my associate was that the indication from your organisation was that the only thing you wanted to proceed with was this document.

PN3298

MR CLARKE: That's correct, your Honour.

PN3299

JUSTICE ROSS: All right, so you're no longer pressing the material that was in fact left from Mr Hart's statement after the rulings we made and the objections that were taken?

PN3300

MR CLARKE: They are my instructions.

PN3301

JUSTICE ROSS: Well that's your choice. I'm just making that clear, because the way it was communicated to me seemed to be that there was nothing left from Mr Hart's statement. That's not the case. There was something left but you've made the decision not to pursue it? I'm just wanting to clarify that's the case.

PN3302

MR CLARKE: Your Honour, we stand before you on a 4-year review. Mr Hart is willing to give evidence this afternoon. If you would like, or the Bench would like to put stuff to Mr Hart then Mr Hart is - - -

PN3303

JUSTICE ROSS: No, Mr Hart is – you keep saying it's a review but you're the proponent of a change and you put in a witness statement for Mr Hart. What I don't want is to create the misleading impression that we have somehow removed

all of his evidence. We haven't. We've made rulings about it. You've made the decision to only press this aspect of his evidence. That's a matter for you.

PN3304

MR CLARKE: Your Honour, Mr Hart stands willing to come to the Commission this afternoon.

PN3305

JUSTICE ROSS: But on what basis do we call him?

PN3306

MR CLARKE: On the basis that we've got a 4-year review, and from my understanding from yesterday there's some significant matters that you put to me that the head of the association stands willing to come and answer those concerns.

PN3307

JUSTICE ROSS: But you're not going to call him? And you're not putting in a witness statement that sets out what his evidence would be?

PN3308

MR CLARKE: We are putting forward a witness statement, your Honour, and my instructions are that that's all that - - -

PN3309

JUSTICE ROSS: That's all you wish to say in putting evidence from Mr Hart, that's your instruction?

PN3310

MR CLARKE: That is the instruction.

PN3311

JUSTICE ROSS: That's all right. Well you've had the opportunity.

PN3312

MR CLARKE: Yes, but we acknowledge that, your Honour.

PN3313

JUSTICE ROSS: Yes.

PN3314

MR CLARKE: But we're not debating that opportunity.

PN3315

JUSTICE ROSS: Yes, all right. Well he's not required for cross-examination so we'll mark his statement and accept that evidence on that basis.

PN3316

MR CLARKE: Yes. Thank you, your Honour, and also there was just the matter of the common material that we're seeking leave to file.

PN3317

JUSTICE ROSS: Yes.

PN3318

MR CLARKE: We understand that's by consent, so that - - -

PN3319

JUSTICE ROSS: So we could just mark those as exhibits, is that the case?

PN3320

MR DOWLING: Yes, your Honour.

PN3321

JUSTICE ROSS: Do you have the list of that material?

PN3322

MR CLARKE: I've provided a copy by email and also provided a USB copied this morning – sorry, it's a rather large document that was coming.

PN3323

JUSTICE ROSS: So there are six items, is that right?

PN3324

MR CLARKE: There is six items, your Honour, yes.

PN3325

JUSTICE ROSS: Okay. Well if we mark those sequentially, so you've got that schedule, Mr Dowling?

PN3326

MR DOWLING: I do, your Honour.

PN3327

JUSTICE ROSS: The first item, the ABS exhibit RCI1. The second, ABS document exhibit RCI2. The third, Department of Employment exhibit RCI3. The Account of Australian Businesses exhibit RCI4. The Visitor Economy Taskforce, exhibit RCI5. Food Services Suppliers Association dining out data, exhibit RCI6, and the statement of Mr Hart, exhibit RCI7.

PN3328

MR CLARKE: That's it, your Honour.

PN3329

JUSTICE ROSS: Okay.

PN3330

MR DOWLING: Your Honour I might be being overly cautious. I wonder if the last item could be identified as the statement of John Hart dated 11 September, just so there's no confusion.

PN3331

JUSTICE ROSS: Yes, no, certainly; it is the statement of John Hart of the 11th of September.

PN3332

MR CLARKE: Sorry, I think it's dated the 10th, I think Mr Hart signed it last - - -

PN3333

JUSTICE ROSS: No, it's dated the 11th.

PN3334

MR CLARKE: Is it? Sorry, your Honour.

PN3335

JUSTICE ROSS: No, that's all right.

PN3336

MR CLARKE: Sorry, it was prepared last night.

PN3337

JUSTICE ROSS: It's the five-paragraph statement with the attachment?

PN3338

MR CLARKE: That's it, that's correct, your Honour.

PN3339

JUSTICE ROSS: Yes, okay.

EXHIBIT #RCI1 ABS EXHIBIT

EXHIBIT #RCI2 ABS DOCUMENT

EXHIBIT #RCI3 DEPARTMENT OF EMPLOYMENT EXHIBIT

**EXHIBIT #RCI4 ACCOUNT OF AUSTRALIAN BUSINESSES
EXHIBIT**

EXHIBIT #RCI5 VISITOR ECONOMY TASKFORCE EXHIBIT

**EXHIBIT #RCI6 FOOD SERVICES SUPPLIERS ASSOCIATION
DINING OUT DATA**

EXHIBIT #RCI7 STATEMENT OF JOHN HART DATED 11/09/15

PN3340

JUSTICE ROSS: Yes, Mr Dowling?

PN3341

MR DOWLING: Thank you, your Honour. The only other thing I wanted to mention was to let your Honour know that the discussions are ongoing in respect of the amendments to the timetable that your Honour raised last night.

PN3342

JUSTICE ROSS: I'm going to issue a statement shortly setting out what we think the revised timetable should look like and give that to you. You can use that as a focal point for discussions. I got a message, there was some confusion about what was intended or anything like that. It's a fairly short proposition that we want to

try and clear the witnesses that are currently listed on Monday week, and it's a question of how we do that, so I've got a proposal that I'll put to you and to all the parties, and it will go on the web and you'll have a look at it.

PN3343

Essentially, it moves the Monday AHA witnesses to the Tuesday. It compresses the time, so they're listed for 30 minutes apart, because on the experience today they're not going to be required for more than that. United Voice witnesses that were on the Tuesday afternoon, most of them have moved to the Wednesday, and again some compression of timetabling, because I think it's unlikely they'll be required for more than 20 minutes, bearing in mind there's not the financial cross-examination – it'll be likely to be sharper, and of course if it takes a bit longer it takes a bit longer.

PN3344

Then it schedules the expert evidences as you were all previously advised the other day - Ms Pazuelo starting at 2 pm on Wednesday for a day-and-a-half, which is the estimate, and then I think the other two employer experts on the Friday – Sands and Rose, I think, from memory. So have a look at that and see where you go on it. If you like and the parties are here, we can provide it to you before it's posted and you can have a look at it during the course of the morning if you like.

PN3345

MR DOWLING: That would be helpful, your Honour.

PN3346

JUSTICE ROSS: And then come back with some - and we might be able to have an exchange about that, so that we can accommodate whatever timing issues. Because it's a very rough - and you will have a better idea, obviously, when some witnesses are available. I have also tried to group them so South Australian witnesses are together, so we do one link rather than the yo-yoing backwards and forwards. So there are some things like that, but we should have that to on the next - well, after this witness of shortly thereafter, at least in draft form for those at the Bar Table to have a look at it.

PN3347

MR DOWLING: We will undertake to contact any other union parties too, your Honour, that does impact upon - I think the SDA are the only one of those, but - -
-

PN3348

JUSTICE ROSS: Well, it shouldn't impact on them, because they were told on Tuesday when the experts would be called.

PN3349

MR DOWLING: Yes.

PN3350

JUSTICE ROSS: So that's the only impact on them. It's really the employers and yourselves.

PN3351

MR DOWLING: Yes, thank you, your Honour.

PN3352

JUSTICE ROSS: And it's particularly the AHA, and to some extent RCI, because there is one witness that moves around, but most of it is the AHA and yourselves and of course that might, depending on whether RCI wants to cross the United Voice witnesses or whether that's going to be done by somebody else, I don't know.

PN3353

MR CLARKE: Your Honour, it is our intention and probably by someone else as well. We have also on Monday, I think, Carlita Warren, a witness, is set down last on Monday. We are going to ask Ms Warren to be here earlier, just in case so that - Mr Parker we can't move, because he is on flights from Coffs Harbour as I understand, so he might be a bit more difficult. So we will have Ms Warren here earlier.

PN3354

JUSTICE ROSS: No, I appreciate that and that way if we can get her on, we don't hold the parties up.

PN3355

MR CLARKE: Yes, thank you.

PN3356

JUSTICE ROSS: All right.

PN3357

MR DOWLING: There is one other matter your Honour should know.

PN3358

JUSTICE ROSS: Yes.

PN3359

MR DOWLING: On my instructions, ABI propose to cross-examine United Voice witnesses, so perhaps it is that one of the employer parties shd contact them, just so that they know what's happening. I am not sure that they should have much control over it in those circumstances, but - - -

PN3360

JUSTICE ROSS: No. Well, they will know when they get the draft statement and they will have the opportunity to comment then. I just think if there's an opportunity for those who are present to have a bit of input before the proposed revision goes out, but there will - it's built in that there will be some opportunity for anyone not here to comment. But by all means, if they're available and they can come in, then you can have some discussion about it later on in the course of the morning.

PN3361

All right. Mr Lovell, is that right?

PN3362

MR STANTON: Yes, your Honour. I call Mr Rick Lovell, who I understand will take an affirmation.

PN3363

THE ASSOCIATE: Please state your full name and address.

PN3364

MR LOVELL: Richard Stefan John Lovell. Home address or business address?

PN3365

THE ASSOCIATE: Home address, please.

PN3366

MR LOVELL: Home address (address supplied)

<RICHARD STEFAN JOHN LOVELL, AFFIRMED [9.57 AM]

EXAMINATION-IN-CHIEF BY MR STANTON [9.57 AM]

PN3367

MR STANTON: Sir, you are the owner of the Marryatville Hotel at Kensington Road, Kensington in South Australia?---That's correct, yes.

PN3368

And is the case you have held that ownership position since 1993?---Yes, September 1993, yes.

PN3369

Sir, for the purposes of these proceedings, is it the case you have made a statement of the 26 June of this year?---Yes, I have.

PN3370

Do you have a copy of that statement with you this morning?---Yes, I do. Yes, I do.

PN3371

Is it also the case that you have made a statement in these proceedings dated 26 August of this year?---Yes, that's correct.

PN3372

And can I just confirm, do you have that statement also with you this morning?---Yes. Yes, I do.

PN3373

In relation to each statement, do you say that they are true and correct to the best of your knowledge and belief?---Yes, certainly.

*** RICHARD STEFAN JOHN LOVELL

XN MR STANTON

PN3374

Yes. Your Honour, I might just inform the Bench that this was a statement; that is, the first of those statements which were subject to objections, largely but not completely resolved, but my friends will address on what continues outstanding, but if I could hand up five marked copies of the statement, which I seek to have entered into the proceedings as the evidence-in-chief and also the evidence of the supplementary statement.

PN3375

JUSTICE ROSS: I note there are deletions made to paragraphs 15 and 16, and paragraph 19 is deleted, is that right?

PN3376

MR STANTON: Yes.

PN3377

JUSTICE ROSS: All right. What is the remaining objection?

PN3378

MS BURKE: Your Honour, can I ask that the witness link be muted?

PN3379

JUSTICE ROSS: Mr Lovell, we are just going to mute your link for a moment, while we deal with some issues arising from objections to parts of your statement?---Sure, that's all right.

VIDEO LINK MUTED

[10.00 AM]

PN3380

JUSTICE ROSS: Can you hear me, Mr Lovell? All right.

PN3381

MS BURKE: The objection that remains is in paragraph 15 of the statement. The words that are there read, "Casuals that are students elect to work on Sundays and public holidays." The objection is taken to the word "elect" for this reason, whether workers choose or are available to work on weekends and public holidays is a contested issue in these proceedings more generally. It's the union's strong position that availability doesn't equate to a free choice or a desire to work on weekends and public holidays, and there is considerable expert evidence filed on this topic.

PN3382

JUSTICE ROSS: I'm sorry, can you just - so the fact that they are available to work doesn't mean that's their preference or choice?

PN3383

MS BURKE: That's right.

PN3384

JUSTICE ROSS: Well, if it said, "Casuals that are students are available to work on Sundays and public holidays."

*** RICHARD STEFAN JOHN LOVELL

XN MR STANTON

PN3385

MS BURKE: I would be happy with that.

PN3386

JUSTICE ROSS: What do you think about, Mr Stanton?

PN3387

MR STANTON: Yes, your Honour.

PN3388

JUSTICE ROSS: So the words "elect to work" to work would be "that are students that are available to work".

PN3389

MR STANTON: May it please.

PN3390

JUSTICE ROSS: I wonder - I think you should put that to your witness and get instructions from your witness about that. So I think we should withdraw, re-establish the link, allow you to do that to confirm that.

PN3391

MR STANTON: Yes.

PN3392

JUSTICE ROSS: And not under oath, he should step down and have the discussion with you as if it was a conference with you. So the others can leave the room and get confirmation that that would be his evidence and then away we go. Okay? Is everyone content with that course?

PN3393

MS BURKE: Thank you, your Honour.

PN3394

JUSTICE ROSS: All right. We will re-establish the link, obviously, so you can talk to him.

<THE WITNESS WITHDREW

[10.02 AM]

SHORT ADJOURNMENT

[10.02 AM]

RESUMED

[10.09 AM]

PN3395

JUSTICE ROSS: Where did you get to?

PN3396

MR STANTON: Yes, the words "elect to" are replaced with "are available" at paragraph 15.

*** RICHARD STEFAN JOHN LOVELL

XN MR STANTON

PN3397

JUSTICE ROSS: I'm sorry?

PN3398

MR STANTON: Paragraph 15 of the main statement, the words "are available" replace "elect to". I don't - I beg your pardon, I am grateful for my instructor. The word "elect" at paragraph 15 is replaced with the words "are available". have handed those up if that's noted.

PN3399

JUSTICE ROSS: No, that's fine. And that resolves the objection from your perspective Ms Burke?

PN3400

MS BURKE: It does, Your Honour.

PN3401

JUSTICE ROSS: All right.

PN3402

MR STANTON: So with those matters dealt with, I would seek to have that entered as the witness' evidence in the proceedings.

EXHIBIT #AHA28 WITNESS STATEMENT OF RICHARD LOVELL

EXHIBIT #AHA29 SUPPLEMENTARY STATEMENT OF RICHARD LOVELL

<RICHARD STEFAN JOHN LOVELL, RECALLED [10.11 AM]

CROSS-EXAMINATION BY MS BURKE [10.11 AM]

PN3403

MS BURKE: Mr Lovell, can you see and hear me all right?---Yes, I can.

PN3404

Can I first just start by asking for some clarification about the number of staff you employ?---Yes.

PN3405

In your second shorter statement you say there's 28 staff covered by the award?---Yes.

PN3406

Those eight staff there who are on an annualised salary - - -?---Yes.

PN3407

- - - they're managers. Is that right?---Yes. Well, a head chef, second chef, duty managers, manager and so on, yep.

*** RICHARD STEFAN JOHN LOVELL

XXN MS BURKE

PN3408

If you have a look at paragraph 13 of your first statement?---Yes.

PN3409

You will see there at sub-paragraphs (a), (b) and (c) you have got eight - you're referring there to eight salaried staff who are managers. Is that the same eight as - -?---Yes.

PN3410

- - - in your second statement?---Yes, yes.

PN3411

Mr Lovell, you're the secretary and the treasurer of the South Australian branch of the Australian Hotels Association. That's right, isn't it?---Yes.
Secretary/treasurer, yes.

PN3412

Is it fair to say that you're pretty familiar with the terms of the Hospitality Industry Award?---Well, to some extent. I mean I don't do the pays but I have some familiarity with it, yes.

PN3413

Is it also fair to say you've got some familiarity with the award as it applied in South Australia before 1 January 2015?---Yes, I do. Yeah.

PN3414

You said you don't do the payroll. Do you do the quarterly BAS for the hotel?---When you say I do - I don't. That's a process that involves obviously a number of people, stocktakes, MYOB entry. You know, I don't do that. I've got a bookkeeper who does the MYOB processing and so on, but we do do a quarterly BAS for the hotel, yes.

PN3415

Sorry, I wasn't very clear there. Perhaps I'll just ask a much simpler question?---Right.

PN3416

You've got a good idea of what your wage costs are each week or each month, don't you?---Absolutely, yes. We do a detailed wage analysis each week by department and compare it with the same week in terms of hours and cost for the same week this year and the last three years or so, yep.

PN3417

It's your evidence, isn't it, that after the Queen's Birthday holiday this year, which was 8 June, you decided to close the dining area on public holidays?---That's correct.

*** RICHARD STEFAN JOHN LOVELL

XXN MS BURKE

PN3418

But actually, Mr Lovell, you decided to close the dining area on public holidays quite some time before 5 June, didn't you? Sorry, 8 June?---Well, not that I'm

aware of that. I was - I've been in a monitoring pattern since the 1st of January when we became part of the HIGA arrangement. I've been monitoring each public holiday since that time to make an assessment about whether it was worthwhile being open or not with a view to - for the sake of consistency and to avoid confusion with customers, staff and everybody else, to make a decision as to whether we would remain open on public holidays or not.

PN3419

Well, perhaps you could help me - - -?---So - yeah, sorry.

PN3420

That's all right. I didn't mean to cut you off?---No. Well, no, so I wouldn't have made a decision to then. I was probably tending towards that view as a result of looking at the previous public holidays, but I've only just more recently made that decision.

PN3421

Well, perhaps you could help me clear up some confusion. I believe there is someone in the court room who can you show you a document?---Right.

PN3422

And there are copies for the Full Bench and for my friend?---We are open on every public holiday excluding - - -

PN3423

Sorry, just hold on a second, Mr Lovell?---Sorry, yes.

PN3424

I just want to ask you is this a printout of your website?---Well, I assume it is. I don't maintain my website. One of my duty managers does that.

PN3425

So - - -I see - sorry.

PN3426

There is a news and archive heading and then there's a headline saying "Open on public holidays" and then it's dated 12 January 2015. Is that what you have got in front of you?---Yes, that's what I've got in front of me. Yep.

PN3427

Does it say that you are open every public holiday excluding the dining room?---Yes, it does, but I'm not - well, I say computer literate, you know, to the extent of I certainly don't know anything about Facebook or how this is maintained. One of my duty managers maintains our site. Just as a reference, the decision was not made at the - on the 12th of January that we would be - sorry, it says, "We are open on every public holiday excluding dining room," and so on. That decision was not made as at the 12th of January. That was not made as at the 12th of January.

*** RICHARD STEFAN JOHN LOVELL

XXN MS BURKE

PN3428

Mr Lovell, you're the owner of the Marryatville Hotel, aren't you?---Yes, I am.

PN3429

So do I understand that it's your website that's wrong and not your statement?---That's correct, which is something I will take up with the duty manager who does it because they - that wasn't the decision at that time. In fact, we were open on Australia Day, we were open on Easter Monday, we were open on Easter Saturday and so on. So that statement isn't right. It's certainly not correct as at the 12th of January.

PN3430

The duty manager - does the duty manager act on your instructions? He does, doesn't he?---Well, generally yes, of course, but I can - - -

PN3431

Thank you, Mr Lovell?---Okay.

PN3432

You also say in your statement that as a result of - sorry, excuse me. As a result of - one of the consequences of the change on 1 January 2015 is that you have decided to close the dining area on public holidays. You say that you have instituted a 15 per cent surcharge on meals and I just want to make sure I understand paragraph 21 of your statement properly?---Yes.

PN3433

You say because of the change to penalty rates for casual workers you have instituted a 15 per cent surcharge on meals. That surcharge and that change to penalty rates you're referring to there is only for public holidays. That's right, isn't it?---Yes, that's correct. Yes, the 15 per cent surcharge would apply on public holidays.

PN3434

So you say that the effect of the change on 1 January 2015 has had a negative impact on your business?---Well, I would say that instead of paying 150 per cent to casuals on a public holiday, we are paying 275 per cent on casuals - - -

PN3435

So it has had a negative - - -?---Per hour for casuals.

PN3436

Sorry. So it has had - - -?---It's had - - -

PN3437

- - - a negative impact on your business?---Well, it's had a negative effect on the wage cost of operating on those days.

PN3438

It's the case, isn't it, Mr Lovell, that before 1 January 2015 you paid your casuals a loading of 50 per cent every day of the week?---That's correct.

*** RICHARD STEFAN JOHN LOVELL

XXN MS BURKE

PN3439

So that's 150 per cent on Mondays to Fridays and on Saturdays - - -?---Yes.

PN3440

- - - Sundays and public holidays?---That's right. That's right, yes.

PN3441

COMMISSIONER HAMPTON: Ms Burke, it might be useful if you clarify for those that are not as familiar with those arrangements as perhaps I and others are of it. What you are talking about there, I understand, is the end of some transitional provisions.

PN3442

MS BURKE: Yes. Thank you. (To witness) I am talking about the end of the transitional provisions in schedule B to the Hospitality Industry (General) Award and those transitions came through at various times. The last change was to schedule B clause B.3.1(f)(fa)(iii) and that is the penalty rates applicable to casuals in South Australia.

PN3443

DEPUTY PRESIDENT ASBURY: They weren't phased in. There weren't percentage differences like in other - - -

PN3444

MS BURKE: As far as I understand, it didn't sort of drop down from 50 to 45 and so on. There was - but that other parts of the transitional provisions did come in at other times earlier.

PN3445

COMMISSIONER HAMPTON: What took effect on 1 January this year?

PN3446

MS BURKE: The change to penalty rates for casuals.

PN3447

COMMISSIONER HAMPTON: My understanding is there was a 50 per cent loading that effectively brought out the penalty rates for casuals and that as of 1 January this year the more traditional casual loading has been applied but the full penalty rates apply, including for casuals.

PN3448

MS BURKE: That's my understanding, yes.

PN3449

JUSTICE ROSS: So that would result in a lower cost for the engagement of casuals Monday to Friday.

PN3450

MS BURKE: Your Honour has just skipped about five points ahead of my cross-examination.

*** RICHARD STEFAN JOHN LOVELL

XXN MS BURKE

PN3451

JUSTICE ROSS: All right.

PN3452

MS BURKE: Mr Lovell, I am just going to ask you some specific questions about that. After the change on 1 January 2015 you are obliged to pay your casuals an additional time and three quarters on public holidays. That's the case, isn't it?---That's correct.

PN3453

And on Sundays - so just to be clear, you used to pay them 150 and now you pay them 275?---That's right, yes.

PN3454

And on Sundays you have to pay them now an additional 25 per cent?---That's correct.

PN3455

So you've gone from 150 to 175?---Yes, that's right.

PN3456

Saturdays are the same?---Yes.

PN3457

And on Monday to Friday - - -

PN3458

JUSTICE ROSS: Sorry, when you say "Saturday the same" you mean - - -

PN3459

MS BURKE: It's 150 per cent - - -

PN3460

JUSTICE ROSS: To 175?

PN3461

MS BURKE: Pre and post.

PN3462

JUSTICE ROSS: Right. So the same. No change. Not the same as Sunday.

PN3463

MS BURKE: That's right, yes.

PN3464

THE WITNESS: No change, yep.

PN3465

MS BURKE: Monday to Friday you actually pay your casuals less now. Instead of paying them 150, you pay them 125. That's right, isn't it?---That's correct.

*** RICHARD STEFAN JOHN LOVELL

XXN MS BURKE

PN3466

So before 1 January, on an ordinary week, if you add up the 50 per cent loading for each of the seven days, that totals an overall loading of 350 just in the numbers?---Well, simplistically, yeah. Okay.

PN3467

Yes, it's simplistic. I accept that?---All right. Okay.

PN3468

And now, if you - you pay an additional 25 per cent over five days, so 25 times five is 125?---Okay.

PN3469

On Saturdays you pay another 50, so that takes us up to a total of 175?---Yeah, I guess. I guess that's right, yeah.

PN3470

And on Sundays you pay an additional 75. If you add that 75 to the 175 that you've already got during the week, that total is 250, isn't it?---Well, I'll accept that. Yeah, I guess. I haven't got a calculator, but I'll take that, yeah. That's correct.

PN3471

So overall, on an ordinary week - - -?---Yes.

PN3472

- - - without public holidays you pay - - -?---Yes.

PN3473

- - - your casuals and your casual wage bill is less than it was before the change on 1 January 2015.

PN3474

JUSTICE ROSS: Doesn't that depend on how many casuals work how many hours at which times?

PN3475

MS BURKE: It does, but on this simple calculation - - -

PN3476

JUSTICE ROSS: Well, the simple calculation is theoretical.

PN3477

MS BURKE: Well, I'm asking the witness if I'm right.

PN3478

JUSTICE ROSS: What I'm letting you know is that it's not going to be of assistance to me, because on that theoretical construct, that might be right, but if he doesn't employ any casuals Monday to Friday then it's not right, is it?

*** RICHARD STEFAN JOHN LOVELL

XXN MS BURKE

PN3479

MS BURKE: No, it's not right but Mr Lovell's evidence is that he employs 20 casuals and 8 managerial staff.

PN3480

JUSTICE ROSS: Yes, and does he saw when he employs them?

PN3481

MS BURKE: He doesn't.

PN3482

JUSTICE ROSS: No, well - - -

PN3483

MS BURKE: Well that's a matter, with respect, for my friend to raise in his re-examination if necessary.

PN3484

JUSTICE ROSS: No, it's a matter I'll raise when you're finished.

PN3485

MS BURKE: Understood. Mr Lovell, it's the case, isn't it, that on an ordinary week your wages bill for casuals is less than it was last year, without public holidays?---Yes, without public holidays, assuming a standard sort of week, in a traditional Monday to Friday weighted hours as opposed to Saturday and Sunday, that would be correct.

PN3486

And there are 13 public holidays in South Australia, that's right, isn't it?---I believe so.

PN3487

I think you say you close on Christmas Day and Good Friday?---Yes.

PN3488

So ordinarily you'd be open on 11 public holidays?---That's right.

PN3489

By ordinarily I mean last year, for example?---Last year and every other year for the last 22 years, yes.

PN3490

So it's really only those 11 public holidays that you're paying more this year than you did last year in wages?---Yes, if you exclude the Sunday issue, yes.

PN3491

On a per day basis?---Yes, on a Sunday we'd be paying more. On a public holiday we're paying more, yes.

*** RICHARD STEFAN JOHN LOVELL

XXN MS BURKE

PN3492

But on a Monday, Tuesday, Wednesday, Thursday, Friday, you're paying less, aren't you?---That's correct, yes, certainly.

PN3493

Thank you.

PN3494

JUSTICE ROSS: Mr Lovell, can I ask you about the closure of the dining room on public holidays?---Yes, certainly.

PN3495

Was the dining room open on the public holidays that took place this year prior to the Queen's Birthday public holiday?---Well the dining room has been open up until now on every public holiday this year. Subsequent to the Queen's Birthday public holidays when we were open, I made a decision after that time and entered into the dining room book, you know, the comment that the dining room will not be open on each public holiday from the Queen's Birthday on, but not including the Queen's Birthday; we have entered into our bookings book the fact that the dining room will not be open on all future public holidays.

PN3496

In relation to the impact of the changes to casual rates from the 1st of January this year, remember you were asking questions about that?---Yes. Certainly, yes.

PN3497

As I understood your evidence, leave aside public holidays for a moment, that if we're just looking at the changes to the Sunday rate and the Monday to Friday rate, there was no change to the Saturday rate?---That's correct.

PN3498

So the Sunday rate's increased?---Yes.

PN3499

And the Monday-Friday rate's reduced, in relation to casuals?---That's right, yes, exactly.

PN3500

Assuming that your pattern of rostering casuals was the same last year and this year, have those changes meant that you've got a lower wage bill for casuals?---Yes, certainly, yes, that's correct.

PN3501

Is that because you have more casual hours that are worked Monday to Friday, where you'll get the benefit of the reduction, than you'll have casual hours worked on the Sunday, where there's an increase?---That's right, exactly right, yes.

PN3502

What's the order of that difference? What's the amount of that saving?---Well I estimate that the saving over the course of a year – and this is just a, you know, rough guide – will be a saving in the order of about \$30,000.

*** RICHARD STEFAN JOHN LOVELL

XXN MS BURKE

PN3503

Okay, and that's the saving from those changes?---Yes.

PN3504

What's been the effect – you've been asked about – I think you're open on 11 public holidays?---Yes.

PN3505

And the public holiday rate has increased for casuals?---Exactly, yes.

PN3506

What's that cost you?---I haven't looked at it that way. The way that I think I've got to look at it is, what is the marginal impact of the public holiday regardless of the other days' tradings. In other words, what is the - - -

PN3507

No, I understand how you might look at it; we're just trying to get a feel for the impact of these changes?---Yes, sure. No, I don't know. I haven't calculated – it's difficult to calculate because obviously different public holidays have different attendances and different income strands from the food and drink, associated revenue of the dining room, so, you know, the hours will fluctuate. I haven't calculated, to tell you the truth, the extra on that. I've only looked at individual public holidays to see what the effect has been.

PN3508

How many casuals would you normally employ on a public holiday that your open?---On a public holiday in the dining room you mean?

PN3509

No, generally?---Or in the whole hotel?

PN3510

Yes, across the operation?---Across the operation, in the order of 15 or 16 possibly.

PN3511

And they're employed for, what, an 8-hour shift?---No, well no, varying shifts. I mean, some will be employed for – it may be, for example, in the dining room two lots of 3-hour shifts, for example; some might be employed for just a lunch shift of 3 hours or something; you know, there might be people in the bottle shop who do a 5-hour shift, and people in the bar who do a 6-hour shift – it varies - I mean, depending on the area and so on.

PN3512

Well perhaps if you're able to do the calculation and forward it through your association?---Sure.

PN3513

About what would be your standard number of casual hours that you would roster on on a public holiday - let's say last year?---Right.

PN3514

And then if you can work out what you see as the impact if you were to work that pattern into the future - leave aside what you've said about not opening the dining room – but if you were to work that pattern into the future, with the additional penalty that's come in from the 1st of January for casuals, what's the difference in the cost for you? So it's really, if - - -?---Yes, I can certainly do that.

PN3515

Yes. If you were to continue as you were doing last year with that sort of casual staffing on public holidays, the 11 you're open – so you've got the dining room open and the rest of it, whatever you did last year - then what's been the cost increase as a result of the increase in the casual penalty on that day. Are you able to do that for us?---Well yes, making certain assumptions too, and it's a bit of a work in progress because, you know, I may have to look at other areas apart from the dining room, with the impost of this additional so, you know, I can do it on the basis that the other areas continue to operate in the same way that they did last year, although that's subject to review going forward anyway.

PN3516

Bearing in mind I'm not asking you to speculate?---Right.

PN3517

I'm asking you to look at last year you were open 11 public holidays?---Yes.

PN3518

On those public holidays what were the casual hours that were provided and what was the cost of those hours?---Sure, I can do that.

PN3519

Yes, and then simply apply the increased penalty to those hours and those wage rates. Don't try and change any of the weights, whatever you provided – just - - - ?---No.

PN3520

Yes, increase the penalty and that will give us an idea about the order of magnitude?---Yes, that will show the effect for the same number of hours of the increase in the rate.

PN3521

That's right, yes?---Yes, I can certainly do that, no problem.

PN3522

Okay. Yes?---No problem.

PN3523

All right, thank you?---Yes.

PN3524

MR STANTON: Your Honour, just on that exercise, the year would be the calendar year 2014?

PN3525

JUSTICE ROSS: Yes.

PN3526

MR STANTON: I just raise that in case the witness had thought it might have been the financial year.

PN3527

JUSTICE ROSS: Sure.

PN3528

MR STANTON: Not that your Honour had - - -

PN3529

JUSTICE ROSS: No, it's just the calendar year last year.

PN3530

MR STANTON: Calendar year.

PN3531

JUSTICE ROSS: Yes.

PN3532

MR STANTON: That's fine.

PN3533

JUSTICE ROSS: Yes.

PN3534

MR STANTON: No problem. Yes.

PN3535

JUSTICE ROSS: That makes sure we cover all the public holidays otherwise - - -

PN3536

MR STANTON: Yes, yes. Sure, and that could be done as a supplementary affidavit?

PN3537

JUSTICE ROSS: You can just put it in. You can tender it as an exhibit and if anyone wants to take exception to it, they can. We can call him back if we need to.

PN3538

MR STANTON: May it please.

PN3539

JUSTICE ROSS: Yes.

*** RICHARD STEFAN JOHN LOVELL

XXN MS BURKE

PN3540

MS BURKE: If I can just formally reserve our right to recall the witness if necessary and cross-examine.

PN3541

JUSTICE ROSS: Sure. Sure, yes.

PN3542

MS BURKE: Thank you.

PN3543

JUSTICE ROSS: Anything arising? Any re-examination?

PN3544

MR STANTON: I think we'll examine that material, and there's nothing other than that.

PN3545

JUSTICE ROSS: Okay.

PN3546

Anything else?

PN3547

COMMISSIONER HAMPTON: Yes, just before you leave, Mr Lovell, can I raise with you what I think is at least the implication in some of the earlier questions, and that is that because you've had a reduction in your casual wages billed Monday to Friday and you might have had an increase in your actual or potential wages bill on Sundays and public holidays, I think the implication is that why don't you just cross-subsidise? Why don't you use the reduction - - -?---Sure.

PN3548

- - - Monday to Friday to keep the service on the Sunday and the public holidays. So you've apparently taken a decision not to do that. Can you tell me why?---Well, you - yes I understand that's the implication but I'd be a fairly poor business person if I undertook to do the cross-subsidisation like that. I mean, I've got to look at each day as it stands on its own. We've had a saving in wage costs, there's no doubt. Thank goodness, because we've had a lot of areas where costs have gone up, up, that we've got no control over. So yes, we have had some relief on that. But I'd be - it'd be foolish from a business point of view, for myself to make a decision to cross-subsidise an extra cost on a public holiday and stay open even though we may be making a loss, because we've had some saving in another area. That's just not rational business thought procedure. I'd be a fairly poor business man I would have thought if I looked at it that way.

*** RICHARD STEFAN JOHN LOVELL

XXN MS BURKE

PN3549

Even if that meant you kept your level of service up to the clientele in the community?---Well, you know, my first obligation is to make money, keep my bank manager happy, and I do everything I can in relation to all expense items, all revenue streams we try to increase. We try to pay attention to gross profit margins and all those sorts of issues and of course every item of expense that I can

- we pay attention to and I make whatever savings I can to increase the profitability of the business.

PN3550

Thank you Mr Lovell.

PN3551

JUSTICE ROSS: Anything else?

PN3552

Thanks Mr Lovell. Let me know if you manage to keep your bank manager happy. I'd be interested to know how you manage to do that, but?---Well, that's increasingly difficult.

PN3553

Yes?---But.

PN3554

All right, nothing further for the witness?

PN3555

Thank you very much for your time, Mr Lovell, you're excused?---Thank you very much.

<THE WITNESS WITHDREW

[10.37 AM]

PN3556

JUSTICE ROSS: We're now with the three United Voice witnesses?

PN3557

MR DOWLING: Yes, your Honour.

PN3558

JUSTICE ROSS: Okay.

PN3559

MR DOWLING: I call Miss Mary Quirk.

PN3560

THE ASSOCIATE: Can you please state your full name and address?

PN3561

MS QUIRK: Mary Quirk (address supplied).

<MARY QUIRK, SWORN

[10.38 AM]

EXAMINATION-IN-CHIEF BY MR DOWLING

[10.38 AM]

*** MARY QUIRK

XN MR DOWLING

PN3562

MR DOWLING: Ms Quirk, could you please state your full name for the transcript please?---Mary Claricoats-Quirk.

PN3563

And your address?---(Address supplied).

PN3564

And your occupation?---Bar tender.

PN3565

Now can you explain to the Commission whether you have prepared a statement for the purposes of this proceeding?---I have.

PN3566

I'll hand you a document?---Thanks.

PN3567

So I take it, your Honour, that each member of the Full Bench has a copy of Ms Quirk's statement?

PN3568

JUSTICE ROSS: We do.

PN3569

MR DOWLING: Thank you.

PN3570

Now I've handed you a document which is a statement and some attachments. The statement itself, the first four pages, is that a statement of 20 paragraphs and on the fourth page you will see a signature and a date. Do you have those four pages?---I do.

PN3571

And is that your signature on the fourth page?---It is.

PN3572

All right, and the statement that you indicated you have made for the purposes of this proceeding, that is the statement that you have in front of you?---Yes.

PN3573

All right, and there's one large annexure and it is a series of pay slips. Do you have that also?---I do.

PN3574

Now can I firstly take you to paragraph 15 of the statement?---Mm-hm.

PN3575

Do you wish to make a correction to paragraph 15?---Yes, my rent went up.

PN3576

Your rent is listed there at \$475. Can you tell the Commission what your rent is now?---Yes, it's \$500.

*** MARY QUIRK

XN MR DOWLING

PN3577

All right, so that's an additional 25 so in the table that appears at paragraph 15 next to rent it should say \$500?---It should, yes.

PN3578

And that will mean there's an additional \$25 in the total of the bottom, so that should say \$1225.34, is that correct?---Yes.

PN3579

All right, are there any other corrections you wish to make to that statement?---No.

PN3580

I tender that, your Honour.

PN3581

MR WARREN: No objection.

PN3582

JUSTICE ROSS: I'll mark that exhibit UV5.

EXHIBIT #UV5 WITNESS STATEMENT OF MARY QUIRK WITH ONE ANNEXURE

PN3583

MR DOWLING: Thank you, your Honour.

PN3584

If you just wait there, Ms Quirk.

CROSS-EXAMINATION BY MR WARREN

[10.41 AM]

PN3585

MR WARREN: Thank you, your Honour.

PN3586

JUSTICE ROSS: Are there any other witnesses coming in? Are any of those people your witnesses?

PN3587

MR DOWLING: No, they're not, your Honour. There are two additional witnesses and they're both appearing by video.

PN3588

JUSTICE ROSS: Okay. Thank you.

PN3589

MR WARREN: Ms Quirk, you've certainly worked at the Coledale RSL for a long time?---I have.

*** MARY QUIRK

XXN MR WARREN

PN3590

35 years?---I know.

PN3591

Can we take it that it suits you working there?---I love it, yes.

PN3592

What are the opening hours of the Coledale RSL?---11 am and it varies.

PN3593

11 am?---Till - it varies.

PN3594

Yes, every day of the week?---Yes.

PN3595

So it's open at 11 am Monday through Sunday?---Yes.

PN3596

And finishes, when you say it varies have you got any - - -?---Well, depending on how busy we are. Because it's a very small town so it may close at 9 o'clock on a Monday or Tuesday but on a Saturday and Friday it might stay open till 11 or 12.

PN3597

And I see your hours are till 7.30?---Yes.

PN3598

At night time?---Yes.

PN3599

So you start at 9.30 in the morning and go till 7.30 at night?---I do.

PN3600

Do you have any idea how many employees are employed at the club?---There's just myself as a full-time and perhaps about 11, it - 12, so it varies, casuals and some part-timers.

PN3601

And you work four days a week?---Yes.

PN3602

So you have your Thursday, Friday, Saturday off?---Yes.

PN3603

I see. You're working every Sunday, you actually get five weeks' annual leave, don't you?---I do.

PN3604

So you get the additional week's leave?---I do.

*** MARY QUIRK

XXN MR WARREN

PN3605

Yes and how long have you had that?---I don't know.

PN3606

A long time?---Yes, like that - yes, I think that's - yes.

PN3607

Yes, and you know that's because you work on Sundays?---I do.

PN3608

Now have you ever sought to change your roster and have Sunday off?---No, it wasn't really doable.

PN3609

Wasn't doable for you?---No, for like the whole staff, the way it's kind of set up.

PN3610

So if someone else does your role, obviously on Thursdays, Fridays and Saturdays?---Yes, we share it between the casuals.

PN3611

I see. But you're the full-timer, aren't you?---I am.

PN3612

Are there other full-time employees?---No.

PN3613

Only you?---Yes.

PN3614

And as you said, part-timers?---Yes.

PN3615

They're permanent part-time?---Yes.

PN3616

Do you know how many there are?---Three.

PN3617

Three and then the rest are casuals?---Yes.

PN3618

I see. You say that you don't work on Saturdays. I'm looking at paragraph 8 of your statement there. You say you don't work on Saturdays unless the club is short staffed or there's a special function. What, a wedding or something like that?---Yes.

PN3619

And when you do work on Saturdays, you'd be paid overtime for that?---I would be, yes.

*** MARY QUIRK

XXN MR WARREN

PN3620

Yes. So you haven't asked to be relieved of your Sunday work at any time?---No.

PN3621

You say you attend mass. What, do you go to the – your local St Brigid's church?---Yes, sometimes.

PN3622

- - - at (indistinct)?---Yes, sometimes.

PN3623

Is that the only church you go to?---No, sometimes I go in with my sister to the cathedral.

PN3624

I see. The cathedral has hours – mass at 7 o'clock on a Sunday morning?---They do.

PN3625

Yes. Ever thought of going there?---I've gone a few times.

PN3626

Yes?---Not a lot.

PN3627

No. You could go there at 7 o'clock and still get to your work at 9.30, couldn't you?---I could.

PN3628

Yes. You say if you call in sick on a Sunday, you wouldn't do that very often, would you?---No, I don't.

PN3629

You'd only do it when you're sick, too, don't you?---Well, yes. Sometimes there's a special occasion, I might do that.

PN3630

Have you ever thought to take Sundays as an annual leave day, if you need for a special occasion?---I may have done that.

PN3631

You say your partner lost his job some five years ago, when he had an accident?---He did.

PN3632

It wasn't a work-related accident, I assume?---Yes, it was.

PN3633

I see. Didn't have Workers' Compensation?---No.

*** MARY QUIRK

XXN MR WARREN

PN3634

I see. So you give evidence that you rely on the Sunday rates to boost your income. That would only have been for the last five years though, wouldn't it, since your partner lost his job?---Well, it's become that I'm more reliant on it. Yes, definitely. But I guess I still relied on it prior to that. Yes, I don't know.

PN3635

Yes. And you say your partner works in contract for the council and obviously summertime, things grow a bit better than in winter time?---That's exactly true.

PN3636

So he gets more work in the summertime?---He does, definitely.

PN3637

It's quite a variance, isn't it?---Yes.

PN3638

Thank you?---Thank you.

PN3639

JUSTICE ROSS: Any re-examination?

PN3640

MR DOWLING: Just two matters, your Honour.

RE-EXAMINATION BY MR DOWLING

[10.48 AM]

PN3641

MR DOWLING: You were asked about why you might not have asked to work on Sundays and the answer you gave was, "It's not really doable". Can you explain what you meant by, "It's not really doable"?---Well, Sunday's our most important day, like that's when you're busy the whole day. It's, you know, we might have 220 for lunch and there's just the two of us on. So we kind of need to be there. It's too hard – and I don't want to big note myself, but I'm really good.

PN3642

Thank you. Now, you were also asked some questions about the 7 am mass at the cathedral and I think you said you'd been a few times?---Yes, not often. Twice, I think.

PN3643

And why is that?---Well, that's not the one that my sister and her family go to. So I like to be with them.

PN3644

Thank you. Nothing further, your Honour.

PN3645

JUSTICE ROSS: Thank you very much for your evidence. You're excused?---Thank you.

*** MARY QUIRK

RXN MR DOWLING

<THE WITNESS WITHDREW

[10.49 AM]

PN3646

JUSTICE ROSS: I think we've got the links then to Queensland starting at 11. We might stand down for 10 minutes. Can I provide you with – and this applies to any other organisations in the room – with the draft of that statement I mentioned earlier? I haven't had a chance to proof it but I think if you have an early look at it, you might want to tweak some things before it's converted from a draft into a statement and then before parties are formally given an opportunity to comment on it.

PN3647

Is the AHA still here, or around?

PN3648

MR DOWLING: I'll check whether they are, your Honour.

PN3649

JUSTICE ROSS: Yes, all right.

PN3650

MR DOWLING: If they are, we'll provide them with a copy. We know they are coming back at 12 because we're talking to them about this very issue, so at least by then they'll- - -

PN3651

JUSTICE ROSS: Okay, well we can get the comments from the others before then and what we can probably do is, discuss it then and just let my associate know when your discussions conclude. I don't think it will take you that long, I'm assuming. And then I'll just come in and have a chat with you about whether there are any tweak changes that the two of you agree with and I'll hear from any of the others before we adjourn, after the evidence. And once we've got all that information, we'll put out a statement and parties will be formally given an opportunity to comment on it.

PN3652

MR DOWLING: Thank you, your Honour.

PN3653

JUSTICE ROSS: Okay. We'll stand down till 11.

SHORT ADJOURNMENT

[10.50 AM]

RESUMED

[11.00 AM]

PN3654

MR DOWLING: Thank you, your Honour. I call Mr Wayne Jones.

*** MARY QUIRK

RXN MR DOWLING

PN3655

THE ASSOCIATE: Mr Jones, can you please state your full name and address, and put your right hand on the Bible.

PN3656

MR JONES: Wayne Alan Jones, (address supplied).

<WAYNE ALAN JONES, SWORN [11.01 AM]

EXAMINATION-IN-CHIEF BY MR DOWLING [11.01 AM]

PN3657

MR DOWLING: Mr Jones, can you see and hear me clearly?---I can see you clearly. Hearing - could be a bit louder.

PN3658

Is that better? Can you hear me more clearly now?---I can hear you now, yes.

PN3659

Thank you. Can you please repeat your full name again?---Wayne Alan Jones.

PN3660

Your address?---(Address supplied)

PN3661

Your occupation?---I'm purchasing - head cellarman at the Bribie Island Bowls Club.

PN3662

You have prepared a statement for the purposes of this proceeding?---That is correct.

PN3663

Do you have a copy of that statement in front of you?---Yes, I do.

PN3664

Is that a statement of five pages and 35 numbered paragraphs?---Yes.

PN3665

There is a signature on the last page and a date, 10 August 2015. Is that your signature?---That is my signature, yes.

PN3666

JUSTICE ROSS: Who is the other person in the room?

PN3667

REGISTRY OFFICER: Your Honour, it's Matthew. I'm a registry officer. I was just fixing the volume here in Brisbane.

PN3668

JUSTICE ROSS: That's fine. Thank you.

*** WAYNE ALAN JONES

XN MR DOWLING

PN3669

MR DOWLING: Your Honour, there's another person at the table, too, that I don't know.

PN3670

MR MURRAY: I'm Christopher Murray. I'm from the union.

PN3671

MR DOWLING: Are you content for him to remain there or would you like him to - - -

PN3672

MR WARREN: Well, maybe move away.

PN3673

JUSTICE ROSS: Yes, perhaps if you could move down the other end.

PN3674

MR MURRAY: Yes, your Honour.

PN3675

MR DOWLING: Now, you have a copy of the statement and there is an annexure to the statement. Do you have a copy of that also, Mr Jones?---Yes, I do.

PN3676

That annexure is a copy of four pay slips. Is that right?---That is correct, yes.

PN3677

You wish to make some corrections to your statement. Is that correct?---That's correct.

PN3678

The first correction at paragraph 2, it there says you were born on 2 April 1956. Should that say 2 April 1957?---Yes.

PN3679

Accordingly, where it says you are - in the same sentence - 59 years of age, that should say 58 years of age?---That's correct.

PN3680

At paragraph 4, you see there it says the last words are, "From my previous marriages." Do you wish to change "marriages" to "relationships"?---Yes, I do.

PN3681

If you could next, please, turn to paragraph 14. You see there it says you work 38 hours, Tuesday to Friday, 7 am to 3.30 pm, and Saturday, 7.30 am to 1.30 pm. Do you wish to change the Saturday to from 7 am to 1.30 pm?---That's correct.

*** WAYNE ALAN JONES

XN MR DOWLING

PN3682

If I can ask you then to turn to paragraph 26 and the table that appears on the top of page 4. Do you have that table, Mr Jones?---Yes, I do.

PN3683

You'll see there the very first item in the table is rent and it says \$340?---Yes.

PN3684

Do you wish to change that to \$370?---That's right, yes.

PN3685

Just one last matter. If I can take you back to paragraph 15 - - -

PN3686

Just before you leave the total, does that mean the total goes up, as well?

PN3687

MR DOWLING: My apologies, your Honour It does.

PN3688

You've added \$30 on the rent. Does that mean the total at the bottom should now say \$780?---Yes.

PN3689

One last matter of clarification. At paragraph 15, it says, "I do not work on Sundays and Mondays." Do you see that?---I see that.

PN3690

Do you wish to make some clarification about that paragraph?---Yes, I do.

PN3691

Can you explain what that is, please?---I only work on Sunday and Mondays or public holidays if I have to do a stocktake. We do a stocktake every month. If a Monday falls on a public holiday, our employee get the full-time - whatever is the - public holidays. My work hours are 2 am to 10.30 am.

PN3692

So should I understand from that that stocktakes are on the first day of the month. Is that right?---That is correct.

PN3693

Every month?---Every month.

PN3694

So if one of them falls on a Sunday, you'll be asked to work?---I'll be asked to work it, yes.

PN3695

The hours you said were - - -?---2 am in the morning until 10.30 am in the morning.

*** WAYNE ALAN JONES

XN MR DOWLING

PN3696

JUSTICE ROSS: Perhaps if we don't amend the statement and that can be elicited as evidence in relation to that issue.

PN3697

MR WARREN: I have no problem with that.

PN3698

MR DOWLING: I am content with that course, your Honour.

PN3699

As a result of those corrections, is the statement you have true and correct?---Yes, it is.

PN3700

I tender that, your Honour.

PN3701

JUSTICE ROSS: Any objection?

PN3702

MR WARREN: No objection, your Honour.

PN3703

JUSTICE ROSS: I'll mark that exhibit UV6.

EXHIBIT #UV6 STATEMENT OF WAYNE JONES DATED 10/08/15

PN3704

MR DOWLING: Thank you. If you'd just wait there, Mr Jones.

CROSS-EXAMINATION BY MR WARREN

[11.08 AM]

PN3705

MR WARREN: Mr Jones, just on that last point you were speaking of with respect to stocktake - - -?---Yes.

PN3706

- - - do I take it then that with the stocktake occurring on the first day of every month, if that stocktake fell on a day when you would normally be rostered to work, you would do the stocktake and not your normal work?---That's correct.

PN3707

Does that mean your hours of work would change on that day?---Yes.

PN3708

So on that day you would work 10.30 am to 2.30 am. Is that correct?---No, 2 am to 10.30 am.

*** WAYNE ALAN JONES

XXN MR WARREN

PN3709

2 am to 10.30 am. I wrote that down the wrong way?---Yes.

PN3710

At 2 am you start the stocktake, do you?---2 am in the morning, yes.

PN3711

On the first of every month?---First of every month.

PN3712

Whatever day that might fall?---Yes, whatever day it falls. Even on New Year's Day.

PN3713

So you do 2 am to 10.30 am?---Yes.

PN3714

Then if the 10.30 am is falling on one of your normal working days, do you then continue on working until - for example, if it's a Tuesday through Friday, you then work through to 3.30 pm or do you knock off?---No, we have a casual come in. I knock off at 10.30.

PN3715

So the first day of every month, your hours are 2 am to 10.30 am?---That's correct.

PN3716

And your ordinary working time which you say is 7 am to 3.30 pm, the hours outside of - those hours are covered by a casual?---That's correct.

PN3717

When you are doing your stocktake, you are not doing your normal day's work?---No.

PN3718

So even though it overlaps with your normal working day, you don't do your normal day's work between 7.00 am and 10.30 am on the first day of any month?---We do. If we've got - if we finish the stocktake earlier, I do normal work. Usually we finish our stocktake about 8 o'clock.

PN3719

And then go home after your normal - and then go home after 10.30?---Then go home after 10.30.

PN3720

Right. I understand. How many employees are employed at the Bribie Island Bowls Club?---About 42.

PN3721

That is a mixture, I suppose, of full-time, part-time and casual?---That's correct.

*** WAYNE ALAN JONES

XXN MR WARREN

PN3722

Your part-time, as you say in paragraph 12, are permanent part-times?---Yes.

PN3723

Do you know what hours they work? If you don't know, don't tell me?---No, I don't know.

PN3724

It's a bowls club. Do members of the bowls club bowl every day?---Except for Mondays.

PN3725

Don't bowl on Mondays?---No. Monday's they try to give the greens a rest, unless there is a special competition day.

PN3726

Or a public holiday?---No. They still bowl on public holidays sometimes.

PN3727

So although there is no bowls going on on Mondays, do members of the club still visit the club?---Yes, they do.

PN3728

So you have members in the club every day of the week?---That's correct.

PN3729

I note that you say in paragraph 13 that the liquor licence runs from 9.00 am until midnight, seven days a week?---Yes.

PN3730

Are they the opening hours of the club or do you open outside of those hours as well?---No, they're the opening hours of the club, and the liquor licence.

PN3731

You have been working in the hospitality industry, the club industry, for quite some time now, haven't you?---Yes.

PN3732

You say in paragraph 19 that you have set an expectation for your own staff that they should be willing to work on weekends and public holidays?---That's correct.

PN3733

Just bear with me, please. So that is your understanding, that it is an expectation when you work for the Bribie Island Bowls Club that you have to be in a position to work on weekends and public holidays?---That's in most hospitality industries they ask you to do that.

PN3734

It's the rub of the green for hospitality industry, isn't it?---Yes, it is.

*** WAYNE ALAN JONES

XXN MR WARREN

PN3735

You say in paragraph 16 you've been asked to work on Monday 10 August, or you were asked. I assume you did end up working on Monday 10 August, is that right?---Yes.

PN3736

It was a show day. Was there a particular event on at the club, was there?---No. It was our - it was our local show day, or Exhibition Wednesday. We have it on the Monday.

PN3737

You were paid overtime for that day?---Yes, I was, at public holiday rate.

PN3738

Thank you very much?---Thank you.

PN3739

JUSTICE ROSS: Re-examination?

RE-EXAMINATION BY MR DOWLING

[11.14 AM]

PN3740

Just one matter, Your Honour. Mr Jones, you were asked some questions about the numbers of full-time and part-time and casual. Do you recall those questions?---Yes.

PN3741

I think you weren't sure of the make-up. Can I just direct you to paragraph 12 of your statement and ask you what you say about the make-up of the staff?---And what hours they worked?

PN3742

No. The numbers of them I understood the question you were asked?---About 10 permanent - 10 to 12 permanent, eight permanent part time, and 20 to 25 casuals.

PN3743

What do you say about whether that's correct?---I couldn't - I couldn't understand that.

PN3744

Sorry. What do you say about, to the best of your understanding, whether those figures are correct?---Well, that's the best of my understanding that those figures are correct, yes.

PN3745

Thank you. Nothing further, Your Honour. If the witness might be excused.

PN3746

JUSTICE ROSS: Thank you for your evidence and your time, Mr Jones. You are excused?---Thank you very much, Your Honour.

*** WAYNE ALAN JONES

RXN MR DOWLING

<THE WITNESS WITHDREW

[11.15 AM]

PN3747

JUSTICE ROSS: I think Mr Cooper is due at 11.30, is that right? Do we know if he is there?

PN3748

MR DOWLING: He is. We have asked him to be there early and he is in the same location, so we are hoping he is not very far away.

<DAMIEN COOPER, SWORN

[11.17 AM]

EXAMINATION-IN-CHIEF BY MR DOWLING

[11.17 AM]

PN3749

Mr Cooper, could you please repeat your full name and address?---Damien Cooper. (Address supplied.)

PN3750

Your occupation?---Bar person/courtesy bus driver.

PN3751

You have prepared a statement for the purposes of this proceeding?---Yes.

PN3752

Do you have a copy of that statement there in front of you?---Yes, I do.

PN3753

Is that a statement of four pages and 24 numbered paragraphs?---Yes.

PN3754

On the last page you will see it has a signature. Is that your signature?---Yes.

PN3755

Do you have, together with it, two annexures, one marked Annexure A and one marked Annexure B?---I don't have that in here but I do know of them.

PN3756

I apologise, Your Honour. Can I solve part of the problem at least? The first of the annexures was filed in error and it is not relied upon. It's a letter from a firm of lawyers. The second of the annexures is a roster of the witness. We have hard copies. It can be emailed immediately if that is of any assistance.

PN3757

JUSTICE ROSS: We will do that and we'll stand down for five or so minutes while that happens.

PN3758

MR DOWLING: Thank you, Your Honour. We tried to be very vigilant about this issue.

*** DAMIEN COOPER

XN MR DOWLING

PN3759

JUSTICE ROSS: No, that's fine. Just bear with us for a moment, Mr Cooper. We are just sending you some material so you have got those aspects of your statement in front of you. In relation to the draft statement on the scheduling, can I just go to that while we are dealing with this other matter. You're meeting with the AHA when, Mr Dowling?

PN3760

MR DOWLING: Midday, Your Honour.

PN3761

JUSTICE ROSS: Well, I will come in and see how you're going about 12.30. In relation to Clubs and Restaurant and

PN3762

Catering, if you can - I don't want to detain you, but if you - once we finish with this witness, perhaps you can give me an indication as to how long you will need to have a quick read through it bearing in mind it's not your last opportunity. It's just so that you can make whatever observations and we can try and settle any corrections or changes before it's actually released to all parties including yourselves for a formal comment.

PN3763

So just bear that in mind that once we finish with this witness, let me know how long you need to have a quick look at it and then I will come back and hear whatever you want to say about it. We won't be doing any of that on the record. It will just be an informal opportunity to consult with you before the document goes out

PN3764

MR DOWLING: Thank you.

PN3765

JUSTICE ROSS: We will stand down for five minutes.

<THE WITNESS WITHDREW [11.21 AM]

SHORT ADJOURNMENT [11.21 AM]

RESUMED [11.29 AM]

<DAMIEN COOPER, RECALLED ON FORMER OATH [11.29 AM]

EXAMINATION-IN-CHIEF BY MR DOWLING [11.29 AM]

PN3766

MR DOWLING: Thank you, your Honour. Mr Cooper, do you now have a 3-page document that is headed at the top 'Staff Time Card Report' for Damien Cooper?---Yes, I do.

*** DAMIEN COOPER

XN MR DOWLING

PN3767

And I think I said, but you've got three pages?---Yes.

PN3768

Thank you. Can you confirm for me please that the content of the statement to which I've referred is true and correct?---Yes, it is.

PN3769

Thank you. I tender that, your Honour.

PN3770

MR WARREN: Your Honour, I don't have any objection, just in the document downloaded from the web by my instructors there's another page which I'll show my friend. It's a handwritten document that says AH Holly – yes, that's it.

PN3771

MR DOWLING: We don't rely on that, your Honour, it's their valuer.

PN3772

MR WARREN: In that case, no, no objection.

PN3773

JUSTICE ROSS: I'll mark that exhibit UV7.

**EXHIBIT #UV7 THREE PAGE DOCUMENT HEADED STAFF
TIME CARD REPORT FOR DAMIEN COOPER**

PN3774

JUSTICE ROSS: Cross-examination?

PN3775

MR WARREN: Yes, thank you, your Honour.

CROSS-EXAMINATION BY MR WARREN

[11.31 AM]

PN3776

MR WARREN: Mr Cooper, you say in paragraph 7 that you completed year 12 at school and then you have a Certificate III in Hospitality. When did you do that?---The Certificate III in Hospitality was in 1998.

PN3777

So that was when you were, what, 31?---Yes, that's correct.

PN3778

You hadn't worked in hospitality before then?---That is correct.

PN3779

So you chose to get into the hospitality industry?---Yes, at that time I was unemployed and was offered the opportunity to partake in the Certificate III Hospitality certificate which I accepted.

*** DAMIEN COOPER

XXN MR WARREN

PN3780

And that was a 12-month course, was it, or - - -?---That was a 6-month course.

PN3781

I see, and then you went into hospitality directly after that?---No, I didn't. I didn't start work in hospitality until 2009.

PN3782

You chose to go into hospitality to get employment, is that right?---That is correct.

PN3783

And you knew when you went into hospitality that there was a very good chance of being required to work on the weekends?---Yes.

PN3784

And on public holidays?---Yes.

PN3785

You say you worked at South Juniors - in paragraph 10 I'm referring to here – in April 2015. What did you do there?---I was a bar person, courtesy bus driver, gaming attendant.

PN3786

What hours did you work there?---I worked mainly weekends - Friday nights, Saturday nights, Sunday during the day, and Wednesday and Thursday evenings.

PN3787

When you say courtesy bus driver, that's taking your patrons – picking them up and taking them home?---Yes.

PN3788

And those patrons could be members of the club or otherwise?---They were members of the club.

PN3789

So the Goodna Services Club is an ex-services club?---The Acacia Ridge is a leagues club.

PN3790

Sorry I had my – yes, please proceed – is a leagues club?---It's a junior rugby league club.

PN3791

And the place you are currently working is the Goodna Services Club?---I'm sorry, could you repeat that question, sir?

PN3792

Yes, certainly. You are currently working at the Goodna Services Club?---Correct.

*** DAMIEN COOPER

XXN MR WARREN

PN3793

Goodna Services Club - am I pronouncing it correctly?---Yes, Goodna.

PN3794

Thank you.

PN3795

JUSTICE ROSS: Don't worry, there are a couple of Queenslanders here that'll pick you up as you go along.

PN3796

MR WARREN: So the Goodna Services Club is an ex-services club?---Yes.

PN3797

So you have as members ex-service personnel, as in ex-military service personnel, plus others?---Yes. Yes, we have ex-service, members of the public.

PN3798

When you say ex-service members of the public, do you mean ex-services who are members of the public and also you have members of the public who are not necessarily ex-services persons?---Yes.

PN3799

What facilities are available at the Goodna Services Club for members?---There's gaming, there's a bar, there's a restaurant and there is a courtesy bus - - -

PN3800

But there's no - - -? - - - everything that - my apologies.

PN3801

No, I interrupted you when you were thinking - I'm sorry?---All the facilities that an everyday club has.

PN3802

What hours of operation occur at the Goodna Services Club? When does it open?---Is open Monday to Thursday 10 am till 1 am, Friday 10 am till 2 am, Saturday 10 am till 2 am, Sunday 10 am till midnight.

PN3803

And public holidays?---Public holidays, open 10 am till midnight, or 1 o'clock on the manager's discretion.

PN3804

You say in paragraph 16 that you worked public holidays, as required by your employer. Have you ever said you're not available to work on a public holiday?---No.

PN3805

Whenever you've been asked, you've attended for work?---Yes.

*** DAMIEN COOPER

XXN MR WARREN

PN3806

You are currently engaged as a casual employee or a full-time?---Casual employee.

PN3807

So when you say in paragraph 19 that you couldn't get away for the weekend because you had to work, you chose to accept work that was offered to you?---Yes.

PN3808

In paragraph 20 you speak of working on Boxing Day. Is the club open on Christmas Day?---No, it doesn't.

PN3809

Would you be able to indicate to the Commission, and only do so if you can, how many employees are employed at the Goodna Services Club?---Approximately 40.

PN3810

And I suppose you don't know the breakdown of those, between full-time or casual, or part-time?---There would be 90 per cent casual, 10 per cent full-time including management.

PN3811

Thanks, Mr Cooper. You say in paragraph 14 that you're paid penalty rates under the hospitality certified agreement 2014, and you say that your accepted public holiday rate's 150 per cent. Can I suggest to you it's 150 per cent above the ordinary rate of pay?---Could you explain that question again, sorry, sir?

PN3812

I'll re-word that for you. When you normally work you get paid 100 per cent on an ordinary work day Monday through Friday, say. If it's a public holiday you get paid 250 per cent, being an additional 150 per cent on top? Do you agree with that?---Yes.

PN3813

Thank you, your Honour, Mr Cooper?---Thank you.

PN3814

JUSTICE ROSS: Any re-examination?

RE-EXAMINATION BY MR DOWLING

[11.40 AM]

*** DAMIEN COOPER

RXN MR DOWLING

PN3815

MR DOWLING: Mr Cooper, you were asked some questions about working on a public holiday, and I think you were asked or it was put to you that when you're asked you attend. Can you explain to the Commission how that process works in terms of how you're rostered or how it comes to be that you are to work on a public holiday?---It depends on if a public holiday falls on a Friday or a Wednesday or a Tuesday, well they are days that I normally work so I will -

whether it's a public holiday or not they will put me on the roster. If it's a weekend or a Boxing Day where they know it's going to be extra busy they will ask me if I wish to work, and I will accept and they will put me on the roster. It's all - it's part of hospitality, working public holidays.

PN3816

Just to go back to the first part of your answer, you said if it's part of your - sorry, can you still hear me okay?---Yes.

PN3817

If it's one of those normal days they will put you on the roster and you work. What input if any do you get into that roster process?---I get given a set roster every week which is normally five days a week and I work to that roster.

PN3818

Now you were asked some questions about the rate and particularly the public holiday rate. Can you tell the Commission what your hourly rate, what your normal Monday to Friday hourly rate is?---It is 20 - on level 2 it is \$22.71 per hour and on level 3 it is \$23.09 an hour.

PN3819

Okay and you gave two levels, level 2 and level 3, why did you do that?---Level 2 is for a courtesy bus driver. Level 3 is for a bar gaming attendant.

PN3820

And you work as both of those things. So when you're working as the bar gaming attendant you're a level 3 and when you work as the courtesy bus driver you're a level 2?---Yes.

PN3821

All right. Can you tell the Commission then what your rate is on a Saturday?---On a Saturday it is \$27.71.

PN3822

And can you tell the Commission what your rate is on a Sunday?---It is \$32.31.

PN3823

And can you tell the Commission what your rate is on a public holiday?---My rate on a public holiday is the same as the Sunday rate.

PN3824

And what was that again?---\$32.31.

PN3825

Thank you.

PN3826

There's nothing further, your Honour.

*** DAMIEN COOPER

RXN MR DOWLING

PN3827

JUSTICE ROSS: Thank you.

PN3828

Anything arising from that?

FURTHER CROSS-EXAMINATION BY MR WARREN

[11.44 AM]

PN3829

MR WARREN: Mr Cooper, I'm going to ask you some more questions about your rates of pay. You're paid under the HospitalityX Certified Agreement 2014 aren't you?---Can I get you to clarify that question?

PN3830

Yes, certainly. You say in paragraph 13?---Yes.

PN3831

That:

PN3832

My actual employer is HospitalityX Pty Ltd which is a labour hire firm.

PN3833

And your employment is covered by the HospitalityX Pty Ltd Agreement?---Yes.

PN3834

Do you see that?---Yes.

PN3835

So to the best of your knowledge you're paid in accordance with that agreement?---At that stage. On the 30th of June this year Goodna Services Club submitted a pay rate to HospitalityX which they agreed to and which they are paying us now.

PN3836

And are you suggesting that's different from the HospitalityX Agreement?---Different to the original agreement of 2014.

PN3837

Do you have any knowledge of why the club provided that rate to HospitalityX?---Because they - Goodna RSL felt that the flat rate that HospitalityX was paying them was unfairly justified for the hours that they were working and the times that they were working.

PN3838

And when you say "they", they being the employees of HospitalityX?---Yes.

PN3839

You mention in paragraph 9 a flat rate when you were employed by AWX Pty Ltd?---Yes.

*** DAMIEN COOPER

FXXN MR WARREN

PN3840

You don't mention a flat rate other than that?---At that time HospitalityX were paying employees of Goodna Services Club a flat rate for any shift.

PN3841

That was the \$23 an hour you mentioned in paragraph 9?---Yes.

PN3842

But you are now paid under the HospitalityX Pty Ltd Agreement but you're saying that the club - please explain to the extent you can?---It's an agreement that the club came to with HospitalityX to pay the workers.

PN3843

JUSTICE ROSS: Mr Warren I think - yes, and I don't want you to give evidence from the Bar table - - -

PN3844

MR WARREN: Right.

PN3845

MR CLARKE: No, your Honour.

PN3846

JUSTICE ROSS: But you can have a discussion with Mr Warren if you think it will assist.

PN3847

MR WARREN: Sorry, I didn't realise there was someone - - -

PN3848

JUSTICE ROSS: Yes, Mr Clarke has some knowledge of it - - -

PN3849

MR WARREN: - - - attracting my - excuse me please.

PN3850

JUSTICE ROSS: Yes.

PN3851

MR WARREN: I won't ask any further questions of Mr Cooper. Thank you.

PN3852

JUSTICE ROSS: Is there anything further for this witness?

PN3853

MR DOWLING: No, your Honour.

PN3854

JUSTICE ROSS: No?

*** DAMIEN COOPER

FXXN MR WARREN

PN3855

MR DOWLING: If the witness might be excused?

PN3856

JUSTICE ROSS: Thank you for your evidence and your time this afternoon, Mr Cooper - or this morning, Mr Cooper. You're excused?---Thank you.

<THE WITNESS WITHDREW

[11.48 AM]

PN3857

JUSTICE ROSS: So that concludes we've got scheduled for today. Before we adjourn formally to 9.30 on Monday can I just make an inquiry of Mr Clarke and Mr Warren as to how long you'd like to have a look at that draft, and then we can come back and get any comments you might have on it?

PN3858

MR WARREN: It doesn't appear to affect us, your Honour.

PN3859

JUSTICE ROSS: Doesn't it? No, I think that's - - - - -

PN3860

MR WARREN: So we are content with whatever it might be.

PN3861

JUSTICE ROSS: Yes. Look, it affects restaurant and catering in so much as - well, at least in so much as the scheduled time for I think it's Ms Kindness' evidence. Now another option that you might want to discuss with United Voice is trying to squeeze Ms Kindness in on Monday when you're here in any event. I mean, I put it at 9, so you don't have to wait around. United will be at a set time and it'll be in and out. But the other option would be to - and look, I'm sure there'd be time in the program on that Monday the 14th and that might be the other way of doing it.

PN3862

But talk to United Voice and I'll come back in 15 minutes or so and see where you're up to with that. And then as I say, I'll come back, I think 12.30 and see where the United Voice and AHA discussions are at. Okay?

PN3863

MR WARREN: Your Honour, can I just raise one other thing, please? I note, in your - in the Bench's revised directions of 7 August 2015- - -

PN3864

JUSTICE ROSS: Yes.

*** DAMIEN COOPER

FXXN MR WARREN

PN3865

MR WARREN: - - -that in paragraph numbered 14, it speaks of the employer parties filing their final hospitality submissions by 14 October. I understand

there's some discussion about moving that, if at all possible, out by another week. I didn't know whether the Commission's been- - -

PN3866

JUSTICE ROSS: No. I think we're going to revisit that, once we see where the expert evidence is.

PN3867

MR WARREN: Thank you.

PN3868

JUSTICE ROSS: And we'll do that, once we get to the end of these sittings, because we have to accommodate some availability issues, I think, with Professor Lewis and two of the union experts and we'll – I think we'll just try and juggle that. The problem with doing much about the expert evidence much at this stage is the union expert evidence, I don't think is in yet, or the employer's – I don't think it's been filed. So it needs to be filed.

PN3869

MR DOWLING: It's been filed, your Honour, sorry.

PN3870

JUSTICE ROSS: Right, okay. Well, the employers need to look at it and consider whether, how much cross-examination is going to be required and I'd encourage them to have a discussion and the unions have a discussion with the employer organisations and try and sort out, well how much time do we need. And I've had some indications of limited availability of some experts. We'll obviously try and accommodate all of that, even if it means we're out of order with some witnesses.

PN3871

But until we get that – those estimates, we don't know well one, whether the time we've got available is going to be sufficient or how we're going to schedule it.

PN3872

MR WARREN: I was just raising it because we'll be stepping aside from now till the remainder of these- - -

PN3873

JUSTICE ROSS: Yes. No, that's fine. There will be a further statement once there's some clarity around it and we'll see how we go then. Okay.

PN3874

The Bench will adjourn until 9.30 on Monday, but I'll come back in conference in 15 minutes or so to seek the views of the others.

ADJOURNED UNTIL MONDAY, 14 SEPTEMBER 2015

[11.52 AM]

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EXHIBIT #RCI2 ABS DOCUMENT	PN3339
EXHIBIT #RCI3 DEPARTMENT OF EMPLOYMENT EXHIBIT	PN3339
EXHIBIT #RCI4 ACCOUNT OF AUSTRALIAN BUSINESSES EXHIBIT	PN3339
EXHIBIT #RCI5 VISITOR ECONOMY TASKFORCE EXHIBIT	PN3339
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EXHIBIT #RCI7 STATEMENT OF JOHN HART DATED 11/09/15	PN3339
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