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GENERAL ORDERS — Part II, Division 3 —

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 104 of 1985.

In the matter of the Industrial Relations Act 1979 and in the matter of proceedings under Division 3 of Part II of the said Act.

Order.

HAVING heard Mr A.R. Beech on behalf of the Trades and Labor Council of Western Australia; Mr S. Home on behalf of the Minister for Industrial Relations; Mr J.N. Uphill on behalf of the Confederation of Western Australian Industry (Inc.) and Mr L.H. Pilgrim on behalf of the Australian Mines and Metals Association, the Commission in Court Session, pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby orders and declares.

1. That this Order applies to all awards specified in the schedule attached hereto.

2. That Order No. 461 of 1983 be varied by substituting for paragraph 2 the following paragraph, namely:

2. That each Award specified in the Schedule attached hereto is hereby varied as follows, namely:—

(a) if it prescribes the minimum wage for adult employees, by substituting for that wage a wage of $194.80;

(b) by increasing each other total wage rate for an adult employee in force immediately prior to the date of this Order by 2.6 per cent;

(c) by increasing each total wage rate for a junior employee or an apprentice in force immediately prior to the date of this Order if it is expressed in money terms by 2.6 per cent;

(d) if it prescribes a rate for shift work expressed in money terms by increasing the amount of any such rate in force immediately prior to the date of this Order by 2.6 per cent;

(e) if it prescribes a rate for leading hands, by increasing the amount of any such rate in force immediately prior to the date of this Order by 2.6 per cent; and

(f) if it prescribes a supplementary payment or payments, by increasing the amount of any such payment in force immediately prior to the date of this Order by 2.6 per cent.

3. That this Order has effect from the beginning of the first pay period commencing on or after 6 April 1985.

4. That subject to this Order, Order No. 461 of 1983 shall continue in force until and subject to further order of the Commission.

Dated at Perth this 10th day of April 1985.
By the Commission in Court Session.

(Sgd.) E.R. KELLY,
[L.S.] Chief Commissioner.

Schedule.

The Aboriginal Police Aides Award No. 31 of 1979.
Aerated Water and Cordial Manufacturing Industry Award No. 10 of 1975.
Air Conditioning and Refrigeration Industry (Construction and Servicing) Award No. 10 of 1979.
Ambulance Service Employees' Award No. 50 of 1968.
Animal Welfare Industry Award No. 8 of 1968.
Art Gallery Attendants and Groundsmen Award No. 31 of 1980.
Asbestos-Cement Workers Award No. 23 of 1960.
Asbestos Jointings Industry Award 1967 No. 7 of 1967.
Australasian Society of Engineers, Moulders and Foundry Workers W.A. Branch (Egg Marketing Board) Agreement No. 5 of 1979.
The BP Refinery (Kwinana) (Security Men's) Award No. 56 of 1978.
Bag, Sack and Textile Award No. 3 of 1960.
Bakers' (Country) Award No. 18 of 1977.
Bakers' (Metropolitan) Award No. 15 of 1961.

Bespoke Bootmakers' and Repairers' Award No. 4 of 1946.
Biscuit and Cake Manufacturing Award No. 7 of 1971.
Boilermakers (State Engineering Works) Award No. 9 of 1957.
Boilermakers (Gold Mining) Award No. 33 of 1947.
Breadcarters' (Country) Award No. 17 of 1975.
Breadcarters' (Metropolitan) Award No. 35 of 1963.
Brewery Craftsmen Agreement No. C368A of 1979.
Brewery Engine Drivers' and Firemen Agreement No. C368B of 1979.
The Brewery Laboratory Employees Award 1983 No. 8 of 1983.
The Brewing Industry and Malting Industry Award 1982 No. 33 of 1982.
Brick Manufacturing Award No. 19 of 1979.
Brushmakers' Award No. 30 of 1959.
Building Materials Manufacture (CSR Limited — Welshpool Works) Award No. 10 of 1982.
Building Trades (Fremantle Port Authority) Award No. 31B of 1966.
Building Trades (State Energy Commission) Consolidated Award No. 1 of 1959.
Building Trades Award 1968 No. 31 of 1966.
Building Trades (Goldmining Industry) Award No. 29 and 32 of 1965 and 4 of 1966.
Building Trades Mining and Processing Award No. 15 of 1969.
Building and Engineering Trades' (Nickel Mining and Processing) Award 1968 No. 20 of 1968.

Caretaker-Watchmen's (State Electricity Commission) Award No. 3 of 1967.
Case and Box Makers' Award No. 48 of 1951.
Catering Employees and Tea Attendants (Government) Award No. 34 of 1981.
Catering Workers' (Food Service Management) Award No. 22 of 1976.
Cement Tile Manufacturing Award No. 3 of 1966.
Cement Workers' Award No. 10 of 1967.
Cereal Processing, Extracting and Manufacturing Award No. 26 of 1970.
Child Care (Lady Gowrie Child Centre) Award No. A3 of 1983.
Child Care Centres (Child Care Workers) Award No. A4 of 1983.
Child Care Centres (Pre-School Teachers) Award No. A3 of 1983.
Child Care Centres (Aides) Award No. A2 of 1983.
Child Care Workers (Education Department) Award No. A20 of 1984.
Children's Services Consent Award No. A1 of 1985.
Cleaners and Caretakers (Government) Award No. 32 of 1975.
Cleaners and Caretakers (Metropolitan Market Trust) Agreement, 1967 No. 9 of 1967.
Cleaners and Caretakers Award No. 12 of 1969.
Cleaners (General and Window) Contractors Award No. 3 of 1968.
Cleaners and Caretakers (Car and Caravan Parks) Award No. 5 of 1975.
Clerks' (Accountants' Employees) Award No. 8 of 1982.
Clerks' (Bailiffs' Employees) Award No. 19 of 1976.
Clerks' (Breweries) Award No. 29 of 1963.
Clerks' (Commercial Radio and Television Broadcasters) Award No. 14C of 1968.
Clerks' (Commercial, Social and Professional Services) Award No. 14 of 1972.
Clerks' (Control Room Operators) Award No. A14 of 1981.
Clerks' (Credit and Finance Establishments) Award No. 16 of 1952.
Clerks' (Customs and/or Shipping and/or Forwarding Agents) Award No. 47 of 1948.
Clerks' (Hotels, Motels and Clubs) Award No. R7 of 1977.
Clerks' (On-Course Totalisator) Award No. 34 of 1976.
Clerks' (Racing Industry — Betting) Award No. 22 of 1977.
Clerks' (Taxi Services) Award No. 14B of 1968.
Clerks' (Timber) Award No. 61 of 1947.
Clerks' (Wholesale and Retail Establishments) Award No. 38 of 1947.
Cliffs Robe River Iron Associates Iron Ore Production and Processing Agreement No. 10 of 1979.
Clothing Trades Award No. 16 of 1972.
Club Workers' Award No. 12 of 1976.
The Cockburn Cement Limited Laboratory Employees Award No. CR175 of 1980.
Commercial Travellers and Sales Representatives' Award No. 43 of 1978.
Community Welfare Department Hostels Award No. A27 of 1981.
Concrete Masonry Block Manufacturing Award No. 28 of 1969.
Confectionery Manufacturing Award No. 19 of 1967.
Copper/Zinc Mining and Processing Award No. 7 of 1980.
Country High School Hostels Award No. 7A of 1979.
Crown Seal Manufacturing Award No. 43 of 1982.
Crumpet Manufacturing Award No. 12 of 1970.

Dairy Factory Workers' Award No. 15 of 1982.
Deckhands (Passenger Ferries, Launches and Barges) Award No. 15 of 1972.
Dental Technicians' and Attendant/Receptionists' Award No. 29 of 1982.
The Draughtsmen's, Tracers', Planners' and Technical Officers' Award No. 11 of 1979.
The Draughtsmen's, Tracers' and Planners' (Mt. Newman Mining Company Pty Limited and Goldsworthy Mining Limited) Award No. 3 of 1975.
Dresser Minerals — A.W.U. Barites Mining and Process Award No. 33 of 1979.
The Dried Vine Fruits Industry Award No. 8 of 1951.
Drum Reclaiming Award No. 21 of 1961.
Dry Cleaning and Laundry Award No. 35 of 1978.

Earthmoving and Construction Award No. 10 of 1963.
Egg Processing Award No. 42 of 1978.
Electrical Contracting Industry Award No. R22 of 1978.
Electrical Trades (Goldmining) Award No. 57 of 1968.
Electrical Trades (Security Alarms Industry) Award No. 27 of 1979.
Electronic Servicing Employees (Public Works Department Architectural Division) Consent Award No. A40 of 1982.
Engine Drivers' (Government) Award No. A5 of 1983.
Engine Drivers' (State Energy Commission) Award No. 15 of 1977.
Engine Drivers' Country Power Station (State Energy Commission) Award No. 19 of 1975.
Engine Drivers' (Building and Steel Construction) Award No. 20 of 1973.
Engine Drivers' (General) Award No. 21A of 1977.
Engine Drivers' (Gold Mining) Consolidated Award No. 37 of 1947.
Engine Drivers' (Nickel Mining) Award No. 37 of 1968.
Engine Drivers' (North West Abattoirs) Award No. 4 of 1969.

Engine Drivers' (Sawmills) Award No. 23 of 1952.
Engine Drivers' (Shire Councils) Award No. 24 of 1964.
Engine Drivers' (Town of Kalgoorlie) Award No. 18 of 1979.
Engine Drivers' Minerals Production (Salt) Industry Award No. 43 of 1968.
Engineering Trades (Fremantle Port Authority) Award Nos. 42 and 48 of 1968.
Engineering Trades (Government) Award Nos. 29, 30 and 31 of 1961 and 3 of 1962.
Engineering Trades (State Energy Commission) Consolidated Award No. 1 of 1969.
Engineering Trades and Engine Drivers' (Nickel Refining) Award No. 10 of 1971.
Engineering and Engine Drivers' (Nickel Smelting) Award No. 4 of 1973.
Engineers (Gold Mining) Award No. 26 of 1947.
Enrolled Nurses and Nursing Assistants (Government) Award No. R7 of 1978.
Enrolled Nurses and Nursing Assistants (Private) Award No. 8 of 1978.

Farm Employees' Award No. A19 of 1984.
Ferries Masters' and Engineers' (Transport Trust) Award No. 8 of 1965.
Fibrous Plaster and Cement Workers' Award No. 11 of 1969.
Fire Brigades Employees' (Servicemen, Extinguisher and Hose Services Branch) Consolidated Award No. 3 of 1969.
Fire Brigade Employees' (Workshops) Award No. 6 of 1981.
Fire Brigade Employees' Consolidated Award No. 26 of 1971.
Fire Brigade Officers' Consolidated Award No. 489 of 1972.
Fitters (Continuous Process Work) Hospitals Award No. 20 of 1971.
Foodland Associated Limited (Western Australia) Warehouse Award No. 27 of 1982.
The Frozen Foods Award No. 25 of 1977.
The Fruit Growing and Fruit Packing Industry Award No. 17 of 1979.
Fruit and Produce Market Employees Award No. 50 of 1955.
Fruit and Vegetable Processing and Packing Award No. 41 of 1978.
Funeral Directors' Assistants' Award No. 18 of 1962.
Furniture Trades (Government) Award No. 34 of 1979.
Furniture Trades Industry Award No. A6 of 1984.

Gaol Officers' Award No. 12 of 1968.
Gardeners (Education Department) Award No. 46 of 1968.
Gas Workers' (SEC) Agreement, 1977 No. 6 of 1978.
Gas Workers' (Fremantle Gas and Coke Company) Agreement No. 1 of 1974.
Gate, Fence and Frames Manufacturing Award No. 24 of 1971.
Glass Reinforced Plastics (Polymains Pty Ltd) Award No. 11 of 1980.
Glassfibre Reinforced Cement Award No. A24 of 1984.
Gold Mining Consolidated Award No. 21 of 1967.
Goldsworthy Mining Limited ADSTE Staff Award No. 33 of 1981.
Golf Link and Bowling Green Workers' Award No. 16 of 1967.
Government Chauffeur's Agreement No. 13 of 1972.
Government Engineering and Building Trades Foremen and Sub Foremen Award No. 15 of 1973.
Government School Teachers Salaries Award (1981).
Government Water Supply (Kalgoorlie Pipeline) Award No. 15 of 1981.
Government Water Supply Sewerage and Drainage Employees Award No. 2 of 1980.
Government Water, Sewerage and Drainage Foremen's Award No. A10 of 1983.
Grocery and Match Manufacturing Award No. 11 of 1971.
Groundsmen (Department of Agriculture) Award No. 35 of 1981.

Health Attendants Award No. 49 of 1978.
Health Workers — Community and Child Health Services Award No. 21 of 1979.
Hospital Employees' (Perth Dental Hospital) Award No. 4 of 1970.
Hospital Employees' (Homes of Peace) Consolidated Award No. 26 of 1960.
Hospital Workers' (Ngal-a) Award No. 6A of 1958.
Hospital Laundry and Linen Service (Government) Award No. 36 of 1981.
Hospital Salaried Officers (Dental Therapists) Award No. 27 of 1977.
Hospital Salaried Officers (Nursing Homes) Award Nos. 18 and 19 of 1974.
Hospital Salaried Officers (Private Hospitals) Award No. 28 of 1977.
Hospital Salaried Officers (Red Cross Blood Transfusion Service) Award No. 17 of 1974.
Hospital Salaried Officers (Red Cross Social Work Service) Award No. 17A of 1974.
Hospital Salaried Officers (Silver Chain) Award No. 38 of 1978.
Hospital Salaried Officers (Spastic Welfare) Award No. 37 of 1978.
Hospital Workers (Government) Award No. 21 of 1966.
Hospital Workers (Cleaning Contractors — Private Hospitals) Award No. 2 of 1977.
Hospital Workers (Hostel Domestics) Award No. 19 of 1977.
Hospital Workers (Hostel Supervisors) Award No. 6 of 1978.
Hostel Workers (Aged and Disabled Persons Hostels) Award No. 5 of 1976.
Hotel and Tavern Workers' Award No. 31 of 1977.
Ice Cream and Frozen Confectionery Manufacturing Award No. A32 of 1982.
Immigration Reception Centres Workers Award No. 9 of 1966.
Independent Schools' Teachers Award No. 27 of 1976.
Industrial Catering Workers' Award No. 29A of 1974.
Iron and Steel Industry Workers' (Australian Iron and Steel Pty Ltd) Award No. 1 of 1968.
Iron Ore Production and Processing (BHP Minerals Ltd) Award No. 22 of 1981.
The Iron Ore Production and Processing (Goldsworthy Mining Limited) Award No. 43 of 1981.
Iron Ore Production and Processing (Hamersley Iron Pty Limited) Award No. A6 of 1983.
Iron Ore Production and Processing (Mt. Newman Mining Company Pty Limited) Award No. A29 of 1984.

The John Lysaght (Australia) Limited Award No. 27 of 1967.
Journalists' (Suburban and Free Newspapers) Award No. 1 of 1981.

Kalgoorlie Printing Award No. 28 of 1950.

Laboratory and Technical Employees' (Peters [W.A.] Limited) Award No. 12 of 1981.

Ladies' Hairdressers Award No. 30 of 1962.
Landscape Gardening Industry Award No. 18 of 1978.
Laundry Workers' Award No. 29 of 1981.
Leslie Salt Co. Award No. 31 of 1982.
The Licensed Car Salesmen's Award No. 24 of 1978.
Licensed Establishments (Retail and Wholesale) Award No. 23 of 1977.
Lift Industry (Electrical and Metal Trades) Award No. 9 of 1973.

Male Hairdressers' Award No. 17 of 1963.
Manufacturing Chemists Award No. 3 of 1976.
Marine Stores Award No. 13 of 1958.
Materials Testing Employees' Award No. A5 of 1982.
Meat Industry (Government) Award No. A44 of 1981.
Meat Industry (North West Abattoirs) Award No. 18 of 1981.
Meat Industry (Sausage Casing Manufacturing) Award No. 32 of 1979.
Meat Industry (State) Award No. 9 of 1979.
Meat Industry (Western Australian Lamb Marketing Board) Award No. 37 of 1981.
Meat Industry (Western Australian Meat Commission — Robb Jetty Division) Award No. 16 of 1976.
Meat Industry (Wyndham) Award No. 16 of 1981.
Mechanical and Electrical Contractors (North West Shelf Project Platform) Award No. A10 of 1984.
Mental Health Nurses Consolidated Award No. 13 of 1947.
Mental Health Rehabilitation Assistants Award No. 36 of 1965.
Metal Trades (General) Award No. 13 of 1965.
Metal Trades (Metropolitan Perth Passenger Transport Trust) Award No. 1 of 1974.
Metropolitan Prison Complex Catering Staff Award No. 1 of 1980.
Mineral Earths Employees' Award No. 9 of 1975.
Minerals Production (Salt) Industry Award No. 36 of 1968.
Mineral Sands Mining and Processing (Engineering and Building Trades) Award No. 6 of 1977.
Mineral Sands Mining and Processing Industry Award No. 38 of 1981.
Miscellaneous Workers' (Slow Learning Children's Group) Award No. A20 of 1980.
Mothercraft Home and Training Centre Nurses' Award No. 15 of 1965.
Mowing and Gardening Services (Public Works Department) Award No. 30 of 1969.
Municipal Employees (King's Park Board and Others) Outside Workers' Award No. 12 of 1972.
Museum Attendants Award No. 34 of 1980.
Musicians' Award No. 10 of 1972.

Nickel Mining and Processing Award No. 18 of 1975.
Nickel Refining Award No. 6 of 1971.
Nickel Smelting (Western Mining Corporation Limited) Award No. 18 of 1972.
The Nuserymen's Award No. A30 of 1980.
Nurses' (Community and Occupational Health) Award No. A26 of 1984.
Nurses' (Perth Dental Hospital) Award No. 4 of 1965.
Nurses' (Public Hospitals) Award No. 6 of 1968.
Nurses' (Welfare and Corrections) Award No. 3 of 1973.
Nurses' (Day Care Centres) Industrial Agreement No. 18 of 1974.
Nurses' (Day Care Centres) Award No. 11 of 1976.
Nurses' (Dentists Surgeries) Award No. 44A of 1976.
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Nurses' (Home of Peace) Award No. 28 of 1963.
Nurses' (Independent Schools) Award No. 21B of 1962.
Nurses' (Private Hospitals) Award No. 1 of 1966.
Nurses' (Red Cross Blood Transfusion Service) Award No. 16 of 1979.
Nurses' (Royal Flying Doctor Service) Award No. 18 of 1982.
Nurses' (Silver Chain Association) Award No. 14 of 1965.

Optical Mechanics' Award No. 9 of 1970.

Paint and Varnish Makers' Award No. 22 of 1957.
Particle Board Employees' Award No. 22 of 1964.
Particle Board Industry (S.W.L.D.) Award No. 10 of 1978.
Pastrycooks' Award No. 24 of 1981.
Permanent Building Societies (Administrative and Clerical Officers) Award No. 26 of 1975.
Pest Control Industry Award No. 9 of 1982.
Photographic Industry Award No. 9 of 1980.
Pipe, Tile and Pottery Manufacturing Industry Award No. 34 of 1978.
Plaster Mill Workers' Award No. 6 of 1962.
Plastic Manufacturing Award No. 5 of 1977.
Plywood and Veneer Workers' (S.W.L.D.) Award No. 28 of 1981.
Plywood and Veneer Workers' Award No. 24 of 1952.
The Police Award No. 2 of 1966.
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Poultry Breeding Farm and Hatchery Workers' Award No. 20 of 1976.
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Printing (Government Printing Office) Award No. 31 of 1975.
The Printing (Newspaper) Award No. 23 of 1979.
Private Hospital Employees' Award No. 27 of 1971.
Professional Accountants' Officers' Award No. 20 of 1972.
Psychiatric Nurses' (Public Hospitals) Award No. 14 of 1973.
Public Service Administrative and Clerical Divisions Salaries Award No. 1 of 1982.

Quarry Workers' Award No. 13 of 1968.

Radio and Television Employees' Award No. 3 of 1980.
Rangers (National Parks Authority) Award No. 17 of 1981.
Refractory Workers' (Kaiser Refractories) Award No. 3 of 1981.
Residential Child Care Award No. A28 of 1981.
Retail Pharmacists' Award No. 23 of 1965.
The Rock Lobster and Prawn Processing Award No. 24 of 1977.
Roof Tile Fixers Award No. 20 of 1975.
Rope and Twine Workers' Award No. 11 of 1963.

Saddlers and Leatherworkers' Award No. 7 of 1962.
Salt Production and Processing — Dampier Salt (Operations) Pty Limited — Dampier and Lake McLeod Award No. A7 of 1983.
Saw Servicing Establishments Award No. 17 of 1977.
School Employees (Independent Day and Boarding Schools) Award No. 7 of 1979.
School Employees (University Colleges and Swanleigh) Award No. 7B of 1979.
Second Engineers (P.W.D.) Award No. C392 of 1982.
Security Officers' Award No. R25 of 1981.
Sheet Metal Workers' (Government) Award No. 31 of 1973.

Sheet Metal Workers' Award No. 10 of 1973.
The Shop and Warehouse (Wholesale and Retail Establishments) State Award No. 32 of 1976.
Show Grounds Maintenance Workers' Award No. 55 of 1968.
Slow Learning Children's Group (Salaried Officers) Award No. 13 of 1977.
Soap and Allied Products Manufacturing Award No. 25 of 1960.
Social Trainers (Slow Learning Children's Group) Award No. A15 of 1984.
Soft Furnishings Award No. 23 of 1982.
The State Batteries Agreement No. 42 of 1977.
State Energy Commission Construction Award No. 23 of 1970.
State Research Stations, Agricultural Schools and College Workers' Award No. 23 of 1971.
Storemen (Government) Consolidated Award No. 20 of 1969.
Storemen (State Energy Commission) Award No. 4 of 1971.
Storemen's (Explosive Magazines) Award No. 7 of 1965.
Storemen Independent Wooldumpers Pty Ltd Award No. 36 of 1982.
Storemen's Rapid Metal Developments (Aust) Pty Ltd Award No. A44 of 1982.
The Sugar Refining Award No. A41 of 1982.
Supermarkets and Chain Stores (Western Australia) Warehouse Award No. A26 of 1982.
Superphosphate Workers' Award No. 7 of 1975.
The Surveying Industry Award No. A45 of 1982.
Swanleigh (Salaried Staff) Award No. A30 of 1978.

Tea Attendants and Canteen Workers' (S.E.C.) Award No. 27 of 1974.
The Teachers' (Kindergarten) Award No. 22 of 1963.
Teachers' Aides' Award No. 4 of 1979.
Teachers' Aides' (Independent Schools) Award No. 1 of 1983.
Telfer Gold Mine (Production and Maintenance Employees') Award No. CR403 of 1983.
Theatrical Employees' (Perth Theatre Trust) Award No. A9 of 1983.
Thermal Insulation Contracting Industry Award No. 1 of 1978.
Ticketwriters' Award No. 29 of 1958.
Timber Workers' Award No. 36 of 1950.
Timber Yard Workers' Award No. 11 of 1951.
Tin Mining Award No. 14 of 1971.
Titanium Oxide Manufacturing Award No. 8 of 1975.
Tool and Material Storemen (Education Department) Award No. 24 of 1974.
Transport Workers' (Government) Award No. 2A of 1952.
Transport Workers' (State Energy Commission) Award No. 40 of 1965.
Transport Workers' (Eastern Goldfields Transport Board) Award No. 23 of 1976.
Transport Workers' (General) Award No. 10 of 1961.
Transport Workers' (Passenger Vehicles) Award No. 47 of 1978.

The Vehicle Builders' (P.W.D.) Agreement No. 36 of 1971.

Vehicle Builders' Award No. 9 of 1971.

Ward Assistants (Mental Health Services) Award No. 35 of 1966.
Watchmakers' and Jewellers' Award No. 10 of 1970.
The Western Australian Arts Orchestral Foundation Inc. Award No. A4 of 1984.
Wineries Award No. 31 of 1969.
Wire Manufacturing (Australian Wire Industries Pty Ltd) Award No. 24 of 1970.
Woodchip Industry Award No. 21 of 1976.
Wool Scouring and Fellmongery Industry Award No. 32 of 1959.
Wool Sorters' (Wool Scouring Works) Award No. 41 of 1956.
Wool, Hide and Skin Store Employees' Award No. 8 of 1966.

Zoological Gardens Employees' Award No. 29 of 1969.

FULL BENCH — Appeals against decision of Commission.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 981 of 1984.

Between West Australian Branch, Australasian Meat Industry Employees' Union, Industrial Union of Workers, Perth, Appellant and Metro Meats (Katanning) Ltd, Respondent.

Before the Full Bench.
His Honour the President D.J. O'Dea,
Commissioner G.A. Johnson,
and Commissioner O.K. Salmon.
The 29th day of March 1985.

Mr J. Gerritsen on behalf of the appellant.

Mr R.A. Heaperman on behalf of the respondent.

Mr C.M. Brown intervening on behalf of the Trades and Labor Council.

Reasons for Decision.

THE PRESIDENT: The West Australian Branch, Australasian Meat Industry Employees' Union, Industrial Union of Workers, Perth has brought this appeal. The appellant alleges that the Commission erred in holding that a claim relating to employment and retrenchment of persons on the basis of preference to employees according to seniority was not within the jurisdiction of the Commission.

The matter which was referred to the Commission for hearing and determination comprised a claim expressed in the following way:

Observance of Seniority.

(i) The employer shall engage employees for employment covered by the award and/or retrench employees from such employment and/or step up such employees and/or stand down such employees according to their seniority.

(ii) Nothing in this clause shall require the employer to employ or retain an employee in any position the duties of which he/she is not able and competent to perform.

(iii) Nothing in this clause shall require the employer to provide a position within the ability and competence of any particular employee.

(iv) Nothing in this clause shall affect any right which the employer may have at common law or under the award to suspend or dismiss an employee summarily.

(v) This order shall apply to casuals in that engagement of casuals shall be determined by the length of service of a casual.

The Commission ruled that the subject matter of the claim was excluded from the jurisdiction of the Commission and ordered that the claim be dismissed.

The Commission's jurisdiction derives from the nature of the matter before it being an "industrial matter", which is defined in section 7 of the Industrial Relations Act 1979, and amendments. At the time the definition provided that industrial matter means —

> any matter affecting or relating to the work, privileges, rights, or duties of employers or employees in any industry or of any employer or employee therein and, without limiting the generality of that meaning, includes any matter relating to —
>
> (a) . . .
>
> (b) the hours of employment, sex, age, qualification, or status of employees and the mode, terms, and conditions of employment including conditions which are to take effect after the termination of employment;
>
> (c) the employment of children or young persons, or of any person or class of persons, in any industry, or the dismissal of or refusal to employ any person or class of persons therein;
>
> (d) . . .
>
> (e) . . .
>
> (f) . . .
>
> (g) . . .
>
> (h) what is fair and right in relation to any industrial matter, having regard to the interests of the persons immediately concerned and of the community as a whole,
>
> but does not include —
>
> (i) . . .
>
> (j) . . .
>
> (k) any of the following matters —
>
> (i) . . .
>
> (ii) . . .
>
> (iii) . . .
>
> (iv) housing rentals, collection of union dues and matters of managerial prerogative,
>
> or any matter relating thereto;

The exclusions in (iv) were added by Act No. 121 of 1982 and were subsequently repealed.

The claim related to the efforts of the appellant union to obtain continuity of employment for meat workers with the respondent Metro Meats (Katanning) Ltd which operates a substantial abattoir at Katanning. Periodically the abattoir shuts down for economic or other reasons and contracts of employment are terminated and employees are recruited or re-engaged when work resumes. A number of conferences failed to resolve the dispute between the union and employer which objected, in particular, to that part of the claim which requires the employer to engage employees for employment according to their seniority. The employer wished to retain the discretion as to those it wished to employ or lay off. The employer submitted to the Commission that this is a matter of managerial prerogative and is excluded from that which is an industrial matter. It therefore challenged the jurisdiction of the Commission to deal with the claim. In upholding the employer's contention the Commission accepted as a fundamental exercise of managerial prerogative, the right of an employer to choose who is and who is not to be employed or laid off. It held that the proposition that, in isolation, the subject matter of the claim is an industrial matter does not prevail over the exclusion of matters of managerial prerogative from the interpretation of industrial matter under the Act.

In the proceedings below the employer made reference to previous cases in which the Commission regarded claims relating to retrenchment and re-employment on a basis of seniority as an unwarranted intrusion on an employer's right to engage or retain the most suitable employees. The union attempted to persuade the Commission that there was jurisdiction to deal with the matter because it was an industrial matter within paragraph (b) despite the exclusion. It relied upon the practice in this jurisdiction and elsewhere of treating matters such as those the subject of it's claim as industrial matters even though they impinge upon managerial prerogative but not unfairly.

The basis of the appeal is that the Commission erred in that the claim is an industrial matter within the meaning of section 7 (1) and is not a matter of managerial prerogative or a matter relating thereto. The Trades and Labor Council of Western Australia was granted leave to intervene in order to support the appellant's argument. In substance it is contended that the legislative intention to exclude matters of managerial prerogative from interpretation of industrial matter was ineffectual because the ruling provisions and the particular provisions of the interpretation provide such a wide power to deal with matters concerning relations between the employer and employee that it includes matters which relate to the conduct of an employer's business. In the appellant's submission the discretion of employers is not unfettered and in cases where the jurisdiction of the Commission is invoked it has been the practice to make an order unless the order would impinge unfairly upon the employer's prerogative. Instances were cited in respect of retrenchment (60 WAIG 256 and 62 WAIG 175), manning levels (61 WAIG 1795) and generally reference was made to the matter of re-employment. It was pointed out that matters of managerial prerogative have usually been regarded as imposing a qualification upon the Commission's basic source of power albeit that managerial discretion is not unfettered.

In substance the proposition of the intervenor is that the exclusion of matters of managerial prerogative by amendment to the definition of industrial matter was unnecessary because, as with other industrial tribunals, the Commission has always differentiated between industrial matters and other matters. This can be seen from cases in which orders have been made or refused according to their impact upon what the Commission recognised as legitimate managerial rights. Particular reference was made to those cases cited above which related to retrenchment. The intervenor submitted that the effect of the amendment was that the Commission was authorised to enquire into any matter affecting or relating to the primary matters described in the definition and there was a competing requirement of the Commission that it not deal with matters which were excluded. According to the submission the amendment failed to deprive the Commission of jurisdiction to deal with matters which were seen to relate to managerial prerogative because there remained ample authority under the primary provisions to enable the Commission to decide whether a matter before it was a matter of managerial prerogative for which it should refuse an order or was a matter affecting or relating to something covered by the primary provisions of the definition and did not impinge unfairly upon legitimate managerial rights. In summation we understand the appellant's proposition to be that jurisdiction has been declined

where the Commission's order would intrude on what was recognised as legitimate areas of management discretion. It is only to such matters that the exclusion refers. To the extent that the Commission has always eschewed jurisdiction over such matters the amendment is said to be meaningless.

The Act contains no definition of the expression "matters of managerial prerogative" which generally refers to the right or discretion of an employer in respect of the management of his business. The conception of an industrial matter contained in the interpretation is broad enough to include many matters which relate to matters of managerial prerogative in the broad sense, which, taken literally, are intended by para (k) to be excluded. The notion that such matters are excluded is hard to reconcile with the power of the Commission to deal with industrial matters. For example, in respect to the express power to deal with employment under para (b) and the power to deal with retrenchment according to seniority which has been held to constitute an industrial matter (see R. *v.* Flight Crew Officers 11 ALR 149 at 154 and see also 60 WAIG 250).

The Commission, however, was in no doubt that the claim contained matters of managerial prerogative and it was necessary to decide whether that which was accepted as relating to the matter of managerial prerogative constituted an industrial matter. The Commission was required to have regard for the words which are used in order to give effect to the intention of the Act to exclude matters of managerial prerogative. Taking the appellant's approach that would require that expression to be read down so as to refer only to those matters relating to managerial prerogative where the Commission has declined to make orders because they would impinge unfairly on legitimate managerial rights. That view did not prevail, rather the Commission considered that it was excluded from consideration of any matter relating to matters of managerial prerogative as that was what the law provided according to the statute at that time.

So far as jurisdiction is concerned the Act provides that the Commission shall act in relation to the prevention and resolution of conflict in respect of industrial matters which we have understood to extend jurisdiction very broadly in respect of such matters. The difficulty of reconciling the exercise of a broad power after introduction of exclusions by amendment suggests that it was not intended that all matters of managerial prerogative be excluded. It is difficult however to know the extent of exclusion of such matters which was intended. In any event we are not persuaded that the Commission in the present case erred in declining to act, particularly in respect to that part of the claim which required the employer to engage employees in a particular manner.

In the circumstances we propose that this appeal be dismissed.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

No. 981 of 1984.

Between West Australian Branch, Australasian Meat Industry Employees' Union, Industrial Union of Workers, Perth, Appellant and Metro Meats (Katanning) Ltd, Respondent.

Before the Full Bench.

His Honour the President D.J. O'Dea,
Commissioner G.A. Johnson,
and Commissioner O.K. Salmon.

Order.

THIS MATTER having come on for hearing before the Full Bench on the 14th day of March 1985 and having heard Mr J. Gerritsen on behalf of the appellant, Mr C.M. Brown intervening on behalf of the Trades and Labor Council and Mr R.A. Heaperman on behalf of the respondent and the Full Bench having reserved judgement on the matter and judgement being delivered on the 29th day of March 1985, wherein the Full Bench unanimously dismissed the appeal and gave reasons therefor, it is this day, the 29th day of March 1985 ordered that the appeal be dismissed.

By the Full Bench.

(Sgd.) D.J. O'DEA,
[L.S.] President.

UNIONS —
Application for registration —

I, the undersigned Registrar of Industrial Unions, hereby give notice that pursuant to subsection (3) of section 73A of the Industrial Relations Act 1979, I have this day registered "The State School Teachers' Union of W.A. (Incorporated)" as an organization of employees.

1 March 1985.

K. SCAPIN,
Registrar.

I, the undersigned Registrar of Industrial Unions, hereby give notice that pursuant to subsection (3) of section 73A of the Industrial Relations Act 1979, I have this day registered "West Australian Railway Officers' Union" as an organization of employees.

1 March 1985.

K. SCAPIN,
Registrar.

UNIONS — President — matters dealt with under section 66.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

No. 169 of 1985.

Between Ruth Geneff, Applicant and the Registrar, the Western Australian Industrial Relations Commission, Respondent.

Before His Honour the President D.J. O'Dea.

The 18th day of April 1985.

Mrs R. Geneff on her own behalf.

Mr K. Scapin, Registrar, on his own behalf.

Reasons for Decision.

THE PRESIDENT: The rules of The Western Australian Clothing and Allied Trades' Industrial Union of Workers, Perth make provision in rule 15 for the business of the union to be conducted by a Committee of Management consisting of the offices of President, Vice President, Secretary, Treasurer, two Trustees and one Representative from each of six nominated sections of the clothing trade industry. The number of representatives on the Committee of Management shall be reduced by one for each section of industry in which no members of the union are employed and no election is then required for that section. Each member of the Committee of Management other than the Trustees, and the Secretary who may combine with that office the office of Treasurer, shall hold one office only. The persons occupying the offices, and the representatives, are to be elected for a period of four years and it follows that at the end of that time the position to which each member was elected becomes vacant and another election is required if that position is to be filled. There is provision for resignation and removal from the Committee of Management that is from office or representative position and when such an event occurs the member concerned must vacate the office or representative position occupied in which case there is a casual vacancy in that office or representative position. The acts of the Committee of Management are not invalidated by the existence of a casual vacancy. The Committee of Management has some discretion regarding the filling of casual vacancies as indicated by the following provisions of paragraphs (2) and (3) of rule 16.

> (2) Casual vacancies shall, if considered necessary by the Committee of Management, be filled in accordance with the provisions of these Rules, provided that any person so elected shall hold office only for the unexpired portion of the term of office of the person vacating the office.
>
> (3) Should the Committee of Management decide not to fill a casual vacancy, the vacancy shall be filled in accordance with these Rules, if a requisition signed by at least 40 per cent of the financial members of the Union eligible to elect a person to fill the casual vacancy is delivered to the Secretary, in which case the Committee of Management shall take immediate steps to comply with such requisition.

The rules of the union also provide for nomination and election of persons for the offices of the Committee of Management and the representative positions thereon which are to be filled. It is provided that the times and dates of commencement and close of the period inviting nominations from financial members eligible for such offices shall be announced by the President of the union and the Returning Officer appointed by the Committee of Management is required to cause those dates to be published. Nominations for all positions to be filled are required to be in the hands of the Returning Officer "on or before the last meeting night in November or such other date as the returning officer shall determine". Otherwise there is no stipulation in the rules as to the time at which a general election shall be held for positions for the Committee of Management though it is plainly necessary to apply the provisions which relate to election, other than in the case of a casual vacancy, where by effluxion of time the persons elected no longer occupy the offices or represent the sections to which they were originally elected.

In 1980, for the first time under the present rules, elections were conducted for positions for the Committee of Management. It was a general election for all positions save that of Secretary for which position a different elective period applied and election for that position was not due or held until 1981. The office of Treasurer is combined with that of Secretary and is held presently by Ruth Margaret Geneff the present applicant, who was evidently elected to those offices in 1981 and again in 1985. The matter before me is not concerned with either of those offices. At the 1980 elections nominations were called and persons were elected for all offices other than Secretary and Treasurer, and for Representatives of each section except that of Tailor or Tailoress — Order or Stock Male Garments. I have not been informed of any reason why the latter position was not filled by election.

Some of the persons elected to positions in the 1980 elections subsequently resigned and in some cases the vacant offices were filled by election. In 1984 nominations were called and elections held to fill the office of President, Vice President, one Trustee, one Representative for Tailor etc., one Representative for Machinists. Nominations were not called for the remaining offices and representative positions on the Committee of Management for which the rules provide which offices and representative positions purport to be held by persons who were elected to such positions subsequent to the 1980 elections and have occupied them for less than four years.

The Registrar decided that a request that an election be conducted was duly made by a person authorised to make the request and by and on behalf of not less than one-twentieth of the members of the union. The Registrar accordingly informed the union and made arrangements with the Chief Electoral Officer appointed under the Electoral Act 1907 for the conduct of an election for the offices of:—

(a) One Trustee
(b) One Representative — Cutters (all sections)
(c) One Representative — Examiners, pressers, and cottoners and finishers (all sections)
(d) One Representative — Alteration hand (all sections)
(e) One Representative — Dry cleaner or Presser (Dry cleaners section)

The upshot of the Registrar's decision is the application now before me by which the Secretary/Treasurer of the union seeks an order which would avoid the decision of the Registrar to grant the request for an election at least so far as it relates to the following:—

One Trustee

One Representative — Alteration hand (all sections)

One Representative — Dry cleaner or Presser (Dry cleaners section)

The Secretary/Treasurer asserts that these positions were filled by financial members of the union being elected in elections held in 1983 and that they were elected for a period of four years. For the purpose of these proceedings I accept that the positions referred to above became available and were filled in the following circumstances.

One Trustee — J. Gilbert was elected unopposed in 1980, resigned the position in 1983, R. Barlow was declared elected 6 May 1983.

One Representative — Alteration hand (all sections) — A. Dimoff was elected unopposed in 1980, resigned the position in 1980, B. Godfrey was declared elected unopposed 6 March 1981, resigned 1981, M. Ridley was declared elected unopposed 18 February 1983.

One Representative — Dry cleaner or Presser (Dry cleaners section) — R. Tetlow was elected unopposed in 1980, resigned 1982, B. Matthews was declared elected unopposed 6 May 1983.

The term of office of each of the foregoing persons who were originally elected in 1980 was four years in each case the office (in which term I include a Representative position) which was left vacant by resignation was filled in accordance with the rules. Pursuant to rule 16 each person elected to fill a casual vacancy is to hold office only for the unexpired portion of the term of office of the person vacating that office. However on the applicant's argument the persons subsequently elected and now occupying those offices were elected pursuant to rule 15 for a period of four years. If that be a proper application of the rules when a person is elected to replace another in an office vacated by resignation what is the purpose of paragraph (2) of rule 16? I accept the contention of the Registrar that it is superfluous, indeed it is meaningless, to refer to the unexpired portion of the term of office of the person vacating the office if each person elected to replace a person vacating an office is elected for four years. It is made clear in rule 15 that a member elected to fill an office is elected for a period of four years. It is equally clear that rule 16 refers to an event which occurs when the person who was elected for the original term of four years vacates the office and the rule contemplates the election of another person to replace the first in occupation of that office, which is to say that the second person is elected for the unexpired portion of the term of office of the person vacating that office. Of course rule 15 has application when a member is first elected to occupy an office, that is where no other person has occupied the position or if it has been occupied and the four year term of the occupant has expired.

The facts disclose that the office of one Trustee and the positions of one Representative — Alteration Hand (all sections) and one Representative — Dry cleaner or Presser (Dry Cleaners section) were at one time occupied by persons elected for four years that term expiring in 1984. Each of those persons resigned and was replaced by a person who in accordance with rule 16 was elected to hold office only until the expiry of the original term in 1984. Those positions remain occupied although the term of office of the occupants has expired and it is appropriate that nominations be called for candidates for election to fill those positions since the occupants do not occupy those positions by right of election. That at any rate is the position according to the construction which I place upon rule 16 and in particular the proviso to that rule. On that construction the provisions of the rules for the filling of a casual vacancy are in conformity with section 56A of the Industrial Relations Act 1979 and amendments and the person who filled the vacancy in each of the positions with which this application is concerned is taken for the purposes of the Act to have been elected to that office only for the unexpired portion of the original term. Having regard to the rules, an election for those positions is overdue and should have been conducted in 1984.

For the reasons stated I can see no reason which would prevent the operation of the Registrar's decision to grant a request that an election for such positions be conducted. In my opinion because of the particular circumstances such an election should be treated as though it were an election to fill casual vacancies in those positions. In that way those elected shall hold office only for the balance of the period of four years from the time when the person filling the position should have vacated it. The interests of the union will be best served if at the one time in 1988 an election is held for all offices and Representative positions for the Committee of Management but I except the offices of Secretary and Treasurer, the term of which, *prima facie,* expires in 1989.

I propose to dismiss this application and it seems to me to be unnecessary to make any other order in these proceedings, which leaves unaffected the action taken by the Registrar in relation to elections within the union.

Order accordingly.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

No. 169 of 1985.

Between Ruth Geneff, Applicant and the Registrar, the Western Australian Industrial Relations Commission, Respondent.

Before His Honour the President D.J. O'Dea.

Order.

THIS MATTER having come on for hearing before me on the 4th day of April 1985 and having heard Mrs R. Geneff on her own behalf and Mr K. Scapin, Registrar, on his own behalf and having found that the application should be dismissed and having given reasons for so finding, it is this day, the 18th day of April 1985 ordered that the application be dismissed.

(Sgd.) D.J. O'DEA,
[L.S.] President.

AWARDS — Application for —

CHILD CARE (Out of School Care — Playleaders). Award No. A13 of 1984.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL COMMISSION.

No. A13 of 1984.

Between the Federated Miscellaneous Workers' Union of Australia, Hospital, Service and Miscellaneous, W.A. Branch, Applicant and Catherine McAuley Centre — Day Care and Others, Respondents.

Award.

HAVING heard Mr A.R. Beech on behalf of the applicant and Mr D.M. Jones on behalf of the respondents, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Arbitration Act 1979 hereby makes the following award.

The operative date of this Award shall be 1 January 1985 with respect to Clauses 9, 11 and 13;

1 July 1985 for Clause 22 and from the first pay period on or after 7 February 1985 for the balance of the award.

1.—Title.

This award shall be known as the Child Care (Out of School Care — Playleaders) Award.

2.—Arrangement.

3.—Area and Scope.

This award shall apply to employers and employees providing Centre-based Care for school aged children outside the ordinary hours of their school and during the holidays observed by their school throughout Western Australia.

4.—Definitions.

"School Term" shall mean the school term observed generally by government schools.

"Term Playleader" shall mean an employee providing care for children in school term outside the ordinary hours of government schools.

"Playleader Qualified" shall mean a Playleader who holds the Certificate in Children's Recreation and Care.

"Holiday Playleader" shall mean an employee engaged to provide care for children during a scheduled holiday care programme.

"Union" shall mean the Federated Miscellaneous Workers' Union of Australia, Hospital, Service and Miscellaneous, W.A. Branch.

5.—Contract of Service.

The contract of service may be terminated by either party by the giving of two weeks' notice on any day to the other party, or by the forfeiture or payment as the case may be of two weeks' pay in lieu of such notice. Provided that this shall not affect the right of the employer to dismiss an employee for misconduct, in which case salary shall be paid up to the time of dismissal only.

6.—Hours of Work.

(1) Term Playleaders:

(a) The ordinary hours of work shall not exceed 37.5 hours per week and shall be worked on any day Monday to Friday between the hours of 6.30 a.m. and 6.30 p.m. Provided that attendance at P. & C. or local Management Committee meetings outside the spread of hours stated herein shall be deemed to be work performed during ordinary hours.

(b) A Playleader in charge of a morning programme shall be paid for a minimum of two hours.

(c) Playleaders required to be employed pursuant to subclause (1) of Clause 16.—Staffing Scale of this award, shall be paid for a minimum of three hours which includes preparation and contact time. Provided that staff employed in addition to the foregoing shall be paid for a minimum of 1½ hours.

(2) Holiday Playleaders:

(a) The ordinary hours of work shall be worked on any day Monday to Friday between the hours of 6.30 a.m. to 6.30 p.m.

(b) 37.5 hours shall constitute a week's work. Not more than seven hours and 30 minutes shall be worked on any day without the payment of overtime.

(c) A day's work shall be worked in one "unbroken" shift provided that a shift shall not be deemed to be broken by the taking of meal breaks. Provided further that an employee may work a day's work in a "broken" shift in which case an additional payment of $2.00 per day shall be paid to such worker who does not live in the locality of the work place.

7.—Meal Breaks and Allowances.

(1) Holiday Playleaders shall be allowed a break of not less than half an hour nor more than one hour for a meal on each day of the week, Monday to Friday inclusive.

(2) Where any employee, without being notified on the previous day, has to continue working after the usual finishing time for more than two hours he or she shall be paid $4.00 for a meal or be provided with a meal at the Centre.

8.—Overtime.

For all work performed on Monday to Friday beyond the ordinary hours or outside of the spread of hours as prescribed in Clause 6.—Hours of Work of this award, payment shall be made at the rate of time and one-half for the first two hours and double time thereafter.

Work performed on a Saturday prior to 12.00 noon shall be paid for at the rate of time and one-half for the first two hours and double time thereafter and all work performed after 12.00 noon on a Saturday or on a Sunday shall be paid for at the rate of double time.

9.—Absence Through Sickness.

(1) (a) An employee who is unable to attend or remain at his or her place of employment during the ordinary hours of work by reason of personal ill health or injury shall be entitled to payment during such absence in accordance with the following provisions.

(b) Entitlements to payment shall accrue at the rate of one-sixth of a week for each completed month of service with the employer.

(c) If in the first or successive years of service with the employer an employee is absent on the ground of personal ill health or injury for a period longer than his or her entitlement to paid sick leave, payment may be adjusted at the end of that year of service, or at the time the employee's services terminate, if before the end of that year of service, to the extent that the employee has become entitled to further paid sick leave during that year of service.

(2) The unused portions of the entitlement to paid sick leave in any one year shall accumulate from year to year and subject to this clause may be claimed by the employee if the absence by the reason of personal ill health or injury exceeds the period for which entitlement has accrued during the year at the time of the absence. Provided that an employee shall not be entitled to claim payment for any period exceeding 10 weeks in any one year of service.

(3) To be entitled to payment in accordance with this clause the employee shall as soon as reasonably practicable advise the employer of his or her inability to attend for work, the nature of his or her illness or injury and the estimated duration of the absence. Provided that such advice, other than in extraordinary circumstances shall be given to the employer within 24 hours of the commencement of the absence.

(4) The provisions of this clause do not apply to an employee who fails to produce a certificate from a medical practitioner dated at the time of the illness or who fails to supply such other proof of the illness or injury as the employer may reasonably require provided that the employee shall not be required to produce a certificate from a medical practitioner with respect to absences of two days or less unless after two such absences in any year of service the employer requests in writing that the next and subsequent absences in that year, if any, shall be accompanied by such certificate.

(5) (a) Subject to the provisions of this subclause, the provisions of this clause apply to an employee who suffers personal ill health or injury during the time when he or she is absent on annual leave and an employee may apply for and the employer shall grant paid sick leave in place of paid annual leave.

(b) Application for replacement shall be made within seven days of resuming work and then only if the employee was confined to his or her place of residence or a hospital as a result of his or her personal ill health or injury for a period of seven consecutive days or more and he or she produced a certificate from a registered medical practitioner that he or she was so confined. Provided that the provisions of this paragraph do not relieve the employee of the obligation to advise the employer in accordance with subclause (3) of this clause if he or she is unable to attend for work on the working day next following his or her annual leave.

(c) Replacement of paid annual leave by paid sick leave shall not exceed the period of paid sick leave to which the employee was entitled at the time he or she proceeded on annual leave and shall not be made with respect to fractions of a day.

(d) Where paid sick leave has been granted by the employer in accordance with paragraphs (a), (b) and (c) of this subclause, the portion of the annual leave equivalent to the paid sick leave is hereby replaced by the paid sick leave and the replaced annual leave may be taken at another time mutually agreed to by the employer and the employee or, failing agreement, shall be added to the employee's next period of annual leave or, if termination occurs before then, be paid for in accordance with the provisions of Clause 11.—Annual Leave.

(e) Payment for replaced annual leave shall be at the rate of wage applicable at the time the leave is subsequently taken provided that the annual leave loading prescribed in Clause 11.—Annual Leave shall be deemed to have been paid with respect to the replaced annual leave.

(6) Where a business has been transmitted from one employer to another and the employee's service has been deemed continuous in accordance with subclause (3) of Clause 2 of the Long Service Leave provisions published in Volume 64 of the *Western Australian Industrial Gazette* at pages one to four inclusive, the paid sick leave standing to the credit of the employee at the date of transmission from service with the transmittor shall stand to the credit of the employee at the commencement of service with the transmittee and may be claimed in accordance with provisions of this clause.

(7) The provisions of this clause with respect to payment do not apply to employees who are entitled to payment under the Workers' Compensation and Assistance Act 1981 nor to employees whose injury or illness is the result of the employee's own misconduct.

(8) The provisions of this clause do not apply to casual employees.

10.—Location Allowances.

(1) Subject to the provisions of this clause, in addition to the salaries prescribed in Clause 22.—Salaries of this award, a married employee shall be paid the following allowances when employed in the towns described hereunder:

Town	$
Agnew	20.00
Argyle (see subclause 12)	49.30
Balladonia	18.00
Barrow Island (see subclause 13)	19.00
Boulder	7.70
Broome	31.20
Bullfinch	9.70
Carnarvon	15.70
Cockatoo Island	34.40
Coolgardie	7.70
Cue	20.00
Dampier	26.80
Denham	15.70
Derby	32.50
Esperance	6.60
Eucla	21.90
Exmouth	27.10
Fitzroy Crossing	38.50
Goldsworthy	19.90
Halls Creek	43.20
Kalbarri	6.10
Kalgoorlie	7.70
Kambalda	7.70
Karratha	31.00
Koolan Island	34.40
Koolyanobbing	9.70
Kununurra	49.30
Laverton	19.80
Learmonth	27.20
Leinster	20.10
Leonora	19.80
Madura	20.00
Marble Bar	45.70
Meekatharra	17.20
Mount Magnet	20.90
Mundrabilla	21.00
Newman	18.90
Norseman	15.70
Nullagine	45.40
Onslow	32.20
Pannawonica	25.30
Paraburdoo	25.30
Port Hedland	26.50
Ravensthorpe	10.80
Roebourne	35.40
Sandstone	20.10
Shark Bay	15.70
Shay Gap	19.90
Southern Cross	9.70
Telfer	43.30
Teutonic Bore	20.10
Tom Price	24.90
Whim Creek	30.90
Wickham	30.50
Wiluna	20.60
Wittenoom	40.80
Wyndham	47.30

(2) Except as provided in subclause (4) of this clause, a single employee shall be paid 50 per cent of the allowance prescribed in subclause (1) of this clause.

(3) An employee, whose spouse is employed by the same employer and who is entitled to an allowance of a similar kind to that prescribed by this clause shall be paid 50 per cent of the allowance prescribed in subclause (1) of this clause.

(4) Where an employee is provided with board and lodging by his or her employer, free of charge, such employee shall be paid 33⅓ per cent of the allowance prescribed in subclause (1) of this clause.

(5) Junior workers, casual employees, part-time employees, apprentices receiving less than adult rate and employees employed for less than a full week shall receive that proportion of the location allowance as equates with the proportion that their wage for ordinary hours that week is to the adult rate for the work performed.

(6) Where an employee is on annual leave or receives payment in lieu of annual leave he or she shall be paid for the period of such leave the district allowance to which he or she would ordinarily be entitled.

(7) Where an employee is on long service leave or other approved leave with pay (other than annual leave) he or she shall only be paid district allowance for the period of such leave he or she remains in the district in which he or she is employed.

(8) For the purpose of this clause a married employee includes:

(a) a person who has a *de facto* spouse, and

(b) a person who is a sole parent with dependent children.

(9) Where an employee is employed in a town or location not specified in this clause the allowance payable for the purpose of subclause (1) of this clause shall be such amount as may be agreed between Australian Mines and Metals Association, the Confederation of Western Australian Industry and the Trades and Labor Council of Western Australia or failing such agreement, as may be determined by the Commission: Provided that, and pending any such agreement or determination, the allowance payable for that purpose shall be an amount equivalent to the district allowance in force under this award for that town or location on 1 June 1980.

(10) Nothing herein contained shall have the effect of reducing any "district allowance" currently payable to any employee subject to the provisions of this award whilst that employee remains employed by his or her present employer.

(11) Subject to the making of a General order pursuant to section 50 of the Act, that part of each location allowance representing prices shall be varied from the beginning of the first pay period commencing on or after the 1st day of July of each year in accordance with the annual percentage change in the Consumer Price Index (excluding housing) for Perth measured to the end of the immediately preceding March quarter, the calculation to be taken to the nearest 10 cents.

(12) The allowance prescribed for Argyle is equated to that at Kununurra as an interim allowance. Liberty is reserved to the parties to apply for a review of the allowance for Argyle in the light of changed circumstances occurring after the date of this order.

(13) The allowance prescribed for Barrow Island shall be the allowance prescribed by Clause 8 of the Hydrocarbons and Gas (Production and Processing Employees) Consolidated Award 1981, which at the date of this Order is $19.00 per week. The terms of this clause shall not apply where they are inconsistent with the terms of Clause 8 of the Hydrocarbons and Gas (Production and Processing Employees) Consolidated Award 1981.

11.—Annual Leave.

(1) Except as hereinafter provided a period of four consecutive weeks' leave with payment of ordinary wages as prescribed prior to proceeding on annual leave, shall be allowed annually to an employee by his or her employer after a period of 12 months' continuous service with such employer.

(2) (a) In addition to his or her payment for annual leave an employee shall be paid a loading of 17.5 per cent calculated on his or her ordinary wage as prescribed.

(b) The loading prescribed by this subclause shall not apply to proportionate leave on termination.

(3) If any award holiday falls within an employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day there shall be added to that period one day being an ordinary day for each such holiday observed as aforesaid.

(4) (a) An employee whose employment terminates after he or she has completed a 12 monthly qualifying period and who has not been allowed the leave prescribed under this clause in respect of that qualifying period shall be given payment as prescribed in subclauses (1) and (2) hereof in lieu of that leave or, in lieu of so much of that leave as has not been allowed unless:—

(i) he or she has been justifiably dismissed for misconduct; and

(ii) the misconduct for which he or she has been dismissed occurred prior to the completion of that qualifying period.

(b) If after one month's continuous service in any qualifying 12 monthly period, an employee leaves his or her employment, or his or her employment is terminated by the employer through no fault of the employee, the employee shall be paid 3.08 hours' pay at his or her ordinary rate of wage in respect of each completed week of continuous service.

(5) Any time in respect of which an employee is absent from work except time for which he or she is entitled to claim sick pay or time spent on holidays, annual leave or long service leave as prescribed by this award shall not count for purpose of determining his or her right to annual leave.

(6) In special circumstances and by mutual consent of the employer and the employee annual leave may be taken in not more than two periods, and in such circumstances and by mutual consent of the employer, employee and the Union, annual leave may be taken in not more than three periods.

(7) Notwithstanding anything else herein contained an employer who observes a Christmas closedown for the purpose of granting annual leave may require an employee to take his or her annual leave in not more than two periods but neither of such periods shall be less than one week.

(8) In the event of any employee being employed by an employer for portion only of a year, he or she shall only be entitled, subject to subclause (4) of this clause, to such leave on full pay as is proportionate to his or her length of service during that period with such employer, and if such leave is not equal to the leave given to the other employees he or she shall not be entitled to work or pay whilst the other employees of such employer are on leave on full pay.

(9) The provisions of this clause shall not apply to casual employees.

(10) (a) An employer may allow annual leave to an employee before the completion of 12 months' continuous service as prescribed in subclause (1) of this clause.

(b) Where a period of leave has been granted pursuant to this subclause and the services of an employee are terminated and where the period of leave so taken exceeds that which would become due, pursuant to subclause (4) of this clause, the employee shall be liable to pay the amount received by the employee for the period of leave taken and the amount which would have accrued. The employer may deduct this amount from the moneys due to the employee by reason of the other provisions of this award at the time of the termination.

12.—Public Holidays.

(1) The following days or the days observed in lieu thereof shall, subject as hereinafter provided, be allowed as holidays without deduction of pay, namely: New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day.

Provided that another day may be taken as a holiday by arrangement between the parties in lieu of the days named in this subclause.

(2) When any of the days mentioned in subclause (1) hereof fall on a Saturday or Sunday the holiday shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday.

(3) Any employee who is required to work on the day observed as a holiday as prescribed in this clause shall be paid for the time worked at the rate of double time and one-half or, if the employer agrees, be paid for the time worked at the rate of time and one-half and, in addition, be allowed to observe the holiday on a day mutually acceptable to the employer and employee.

(4) When an employee is absent on leave without pay, sick leave without pay or workers' compensation any such absence shall not be treated as a paid holiday. Where the employee is on duty or available on the whole of the working day immediately preceding a holiday, or resumes duty or is available on the whole of the working day immediately following a day observed as a holiday prescribed by this clause, the employee shall be entitled to be paid for such holiday.

(5) Where —

(a) a day is proclaimed as a public holiday or as a public half holiday under section 7 of the Public and Bank Holidays Act 1972; and

(b) that proclamation does not apply throughout the State or to the metropolitan area of the State,

that day shall be a whole holiday or as the case may be, a half holiday for the purposes of this award within the district or locality specified in the proclamation.

(6) This clause shall not apply to casual employees.

13.—Long Service Leave.

(1) An employee in a government subsidised centre shall be allowed long service leave in conformity with the provisions for long service leave applying to Child Care Workers employed by the Western Australian Education Department.

(2) An employee in other than a government subsidised centre shall be allowed long service leave according to the provisions published in Volume 64 of the *Western Australian Industrial Gazette* at pages one to four inclusive.

(3) An employee employed by a Local Government authority shall be allowed long service leave in accordance with the provisions of the Local Government (Long Service Leave) Regulations.

14.—Right of Entry.

(1) Accredited representatives of the Union shall be permitted to interview employees on the business premises of the employer. Provided that they shall not unduly interfere with the work being carried out.

(2) Provided further that the duly accredited representative shall notify the employer beforehand of his or her intention to exercise his or her rights under this clause.

15.—Payment of Salaries.

The salary of all employees shall be paid weekly or fortnightly in cash or, with the approval of the employee, by cheque or by direct transfer into an account nominated by the employee. No deduction shall be made from an employee's salary unless the employee has authorised such deduction in writing.

16.—Staffing Scale.

(1) A minimum of two people will be employed in every Centre between the hours of 8.00 a.m. and 5.30 p.m., one of whom must be trained or training or have been employed in the industry for 12 months as at the date of this award. (The date of this award is the first pay period on or after 7 February 1985).

(2) A Playleader in charge of a Centre must be over the age of 21 years.

(3) The number of staff employed who are less than 18 years of age shall not exceed the number of staff employed who are over 18 years of age.

17.—Stand Down.

An employer is not obliged to pay wages for any day on which a Term Playleader cannot be usefully employed during a term or Christmas vacation observed generally by government schools.

18.—No Reduction.

Nothing herein contained shall entitle the employer to reduce the salary or conditions of employment of any employee who at the date of this award is receiving higher than the minimum prescribed.

19.—Time and Salary Record.

A record of the time worked and salary paid to each employee employed under this award shall be maintained by the employer and shall be available for inspection by an accredited representative of the Union upon the giving of reasonable notice to the employer.

20.—Maternity Leave.

(1) Eligibility for Maternity Leave: An employee who becomes pregnant shall, upon production to her employer of a certificate from a duly qualified medical practitioner stating the presumed date of her confinement, be entitled to maternity leave provided that she has had not less than 12 months' continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

For the purposes of this clause:

(a) An employee shall include a part-time employee but shall not include an employee engaged upon casual or seasonal work.

(b) Maternity leave shall mean unpaid maternity leave.

(2) Period of Leave and Commencement of Leave.

(a) Subject to subclauses (3) and (6) hereof, the period of maternity leave shall be for an unbroken period from 12 to 52 weeks and shall include a period of six weeks' compulsory leave to be taken immediately before the presumed date of confinement and a period of six weeks' compulsory leave to be taken immediately following confinement.

(b) An employee shall, not less than 10 weeks prior to the presumed date of confinement, give notice in writing to her employer stating the presumed date of confinement.

(c) An employee shall give not less than four weeks' notice in writing to her employer of the date upon which she proposes to commence maternity leave, stating the period of leave to be taken.

(d) An employee shall not be in breach of this order as a consequence of failure to give the stipulated period of notice in accordance with paragraph (c) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.

(3) Transfer to a Safe-Job: Where in the opinion of a duly qualified medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified

necessary by a duly qualified medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (7), (8), (9) and (10) hereof.

(4) Variation of Period of Maternity Leave.

(a) Provided the addition does not extend the maternity leave beyond 52 weeks, the period may be lengthened once only, save with the agreement of the employer, by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened.

(b) The period of leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

(5) Cancellation of Maternity Leave.

(a) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.

(b) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer which shall not exceed four weeks from the date of notice in writing by the employee to the employer that she desires to resume work.

(6) Special Maternity Leave and Sick Leave.

(a) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then —

(i) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work.

(ii) for illness other than the normal consequence of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a duly qualified medical practitioner certifies as necessary before her return to work.

(b) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed 52 weeks.

(c) For the purposes of subclauses (7), (8) and (9) hereof, maternity leave shall include special maternity leave.

(d) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (3), to the position she held immediately before such transfer.

Where such position no longer exists but there are other positions available, for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage as that of her former position.

(7) Maternity Leave and Other Leave Entitlements: Provided the aggregate of leave including leave taken pursuant to subclauses (3) and (6) hereof does not exceed 52 weeks.

(a) An employee may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part thereof to which she is then entitled.

(b) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during her absence on maternity leave.

(8) Effect of Maternity Leave on Employment: Notwithstanding any award, or other provision to the contrary, absence on maternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of the award.

(9) Termination of Employment.

(a) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this award.

(b) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(10) Return to Work After Maternity Leave.

(a) An employee shall confirm her intention of returning to her work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.

(b) An employee, upon the expiration of the notice required by paragraph (a) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (3), to the position which she held immediately before such transfer. Where such position no longer exists but there are other positions available for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(11) Replacement Employees.

(a) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.

(b) Before an employer engages a replacement employee under this subclause, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

(c) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

(d) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

(e) A replacement employee shall not be entitled to any of the rights conferred by this clause except where her employment continues beyond the 12 months' qualifying period.

21.—Bereavement Leave.

An employee shall, on the death within Australia of a wife, husband, *de facto* wife or *de facto* husband, father, father-in-law, mother, mother-in-law, brother, sister, child or stepchild be entitled on notice, of leave up to and including the day of the funeral of such relation and such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in two ordinary working days. Proof of such death shall be furnished by the employee to the satisfaction of the employer.

Provided that payment in respect of compassionate leave is to be made only where the employee otherwise would have been on duty and shall not be granted in any case where the employee concerned would have been off duty in accordance with his or her roster, or on long service leave, annual leave, sick leave, workers' compensation, leave without pay, or on a public holiday.

22.—Salaries.

The following shall be the minimum rates of salary payable:

(1) Wage Rates.

Grade 1 — Uncertificated Worker	$ Per Hour
1st year	6.58
2nd year	6.65
3rd year	6.72
Grade II — After completion of Certificate	
During 1st year of experience in the industry	7.66
During 2nd year of experience in the industry	7.80
During 3rd year of experience in the industry	8.15

(a) Provided that an Uncertificated Worker with three or more years' experience, and who completes the Certificate in Children's Recreation and Care shall be paid the rate of wage applicable to a Certificate holder in the second year of experience.

(b) Provided further that an Uncertificated Worker who has been employed in the industry continually prior to 31 December 1979 shall be paid $6.85 per hour from the date of operation of this clause and $7.00 per hour after the expiry of 12 months from that date. The wage rates prescribed by this proviso shall not increase until the rate prescribed for Grade I — 3rd year of experience equals $6.85 per hour.

(2) Junior Rates: Junior employees shall be paid the following percentage of the rate prescribed for a Grade I — Uncertificated Worker in his or her 1st year of experience —

	%
At 17 years of age	60
At 18 years of age	75
At 19 years of age	85
At 20 years of age	95

Thereafter, the adult rate.

(3) General Conditions.

(a) An employee in charge of a Centre shall be paid 10 per cent in addition to his or her ordinary hourly rate of pay.

(b) An employee who has had previous experience relevant to employment covered by this award may have that experience taken into account in determining the 'year of employment' at which an employee is appointed and paid.

(c) Travelling Allowance: When an employee at the employer's direction uses any kind of conveyance of his or her own in travelling in the employer's service, the following shall apply —

Rates of Hire for use of Employee's own Vehicle on Employer's Business.

Schedule — Motor Car.

	Engine Displacement (in cubic centimetres)	
Distance travelled during a year on official business	Over 1600cc c/km	1600cc & Under c/km
Metropolitan Area:		
First 8 000 kilometres	31.5	23.3
Over 8 000 kilometres	20.4	15.5
South West Land Division:		
First 8 000 kilometres	32.3	23.9
Over 8 000 kilometres	20.9	15.8
North of 23.5 degrees South Latitude:		
First 8 000 kilometres	36.0	26.8
Over 8 000 kilometres	23.3	17.6
Rest of State:		
First 8 000 kilometres	33.6	24.8
Over 8 000 kilometres	21.8	16.5

23.—Leave Reserved.

Leave is reserved to the Union to apply to amend the award in regard to the following matters —

(1) Staffing Scale.

(2) 4th and 5th year salary increments for Play-leaders after the completion of the Certificate.

Appendix I — Schedule of Respondents.

Communicare,
177 Hillview Terrace, South Bentley WA 6102.

Shire of Wanneroo,
Post Office Box 21, Wanneroo WA 6065.

Save the Children Fund,
Post Office Box 160, Subiaco WA 6008.

City of Stirling,
96 Hertha Road, Stirling WA 6021.

City of Fremantle,
Post Office Box 807, Fremantle WA 6160

Mt. Hawthorn Primary School,
Matlock Street, Mt. Hawthorn WA 6016.

City of Cockburn,
Post Office Box 21, Hamilton Hill WA 6163.

Bernice Hargraves,
178 Third Avenue, Kelmscott WA 6111.

Coolbinia Primary School,
21 Warralong Crescent, Coolbinia WA 6107.

Gibbs Street Primary School,
Gibbs Street, Canning WA 6107.

Subiaco Children's Centre,
18 McCallum Avenue, Daglish WA 6008.

City of Nedlands,
Stirling Highway, Nedlands WA 6009.

Out of School Child Care Association,
Mimosa Avenue, Graylands WA 6010.

Dated at Perth this 7th day of February 1985.

(Sgd.) G.G. HALLIWELL,
[L.S.] Commissioner.

FARM EMPLOYEES'.
Award No. A19 of 1984.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. A19 of 1984.

Between the Australian Workers Union, West Australian Branch, Industrial Union of Workers, Applicant and David Blair and Others, Respondents.

Award.

HAVING heard Mr N. Cinquina on behalf of the applicant and Mr S.R. Malley on behalf of the respondents, and Mr R.A. Heaperman of the Meat and Allied Trades Federation, intervening on behalf of Intensive-bred piggeries, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby makes the following award —

1.—Title.

This award shall be known as the "Farm Employees'" Award 1985 and replaces Award No. 6 of 1946 as varied, consolidated and varied.

2.—Arrangement.

3.—Area and Scope.

This award shall apply throughout the State of Western Australia to employees employed:—

(a) On farms in connection with the sowing, raising, harvesting and/or treatment of grain, fodder or other farm produce.

(b) On farms or properties in connection with the breeding, rearing or grazing of horses, cattle, sheep, pigs or deer; or

(c) In clearing, fencing, well sinking, dam sinking or trenching on such farms or properties except employees who are bound by the award of the Australian Conciliation and Arbitration Commission and known as the "Pastoral Industry Award 1965" as varied or replaced from time to time and the award of the Western Australian Industrial Commission, known as the "State Research Stations, Agricultural Schools and College Workers' " Award No. 23 of 1971 as varied, and as varied or replaced from time to time. Provided that this award shall not apply to the land and premises occupied by:—

(1) Any institutions declared by proclamation under the "Aboriginal Affairs Planning Authority Act 1972"; or

(2) Any of the following institutions: Parkerville Children's Homes Incorporated; Tom Allan Memorial Home for Boys, Weeribee; St. Joseph's Farm and Trades School, Bindoon; Christian Brothers' Agricultural School, Tardun.

4.—Term.

The term of this award shall be for one year from the beginning of the first pay period commencing on or after the date hereof.

5.—Contract of Service.

(a) An employer shall have the option of engaging an employee other than an apprentice either under terms of weekly hiring or as a casual employee. An employee not specifically engaged as a casual employee, shall be deemed to be employed on terms of weekly hiring. A casual employee shall mean an employee engaged and paid as such.

(b) If the engagement is on terms of weekly hiring, it shall be terminated only by a week's notice or by payment or forfeiture of one week's pay in lieu of notice by either side. Provided that this clause shall not affect the right of the employer to dismiss an employee without notice for incompetence or misconduct and in such cases wages shall be paid up to the time of dismissal.

6.—Apprentices.

(1) Apprentices may be taken to the trade of "Farm Tradesman" in the ratio of one apprentice for every two or fraction of two (the fraction not being less than one) "Farm Tradesmen" and shall not be taken in excess of that ratio unless:

(i) the Union so agrees; or

(ii) the Commission so determines.

(2) Where an employer or manager usually and customarily works at the trade he may be counted as a "Farm Tradesman" for the purposes of subclause (1) of this clause.

7.—Hours.

The hours of work shall be by agreement between the employer and the employee provided that subject to necessary attention to stock, all employees shall be allowed one full day off each week.

8.—Holidays and Annual Leave.

(1) (a) The following days or the days observed in lieu shall be allowed as holidays without deduction of pay, namely:—

New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day, Boxing Day.

Provided that another day may be taken as a holiday by arrangement between the parties in lieu of any of the days named in this subclause.

(b) Where

(i) a day is proclaimed as a public holiday or as a public half holiday under section 7 of the Public and Bank Holidays Act 1972; and

(ii) that proclamation does not apply throughout the State or to the Metropolitan area of the State,

that day shall be a public holiday, or as the case may be, a public half holiday for the purpose of this award within the district or locality specified in the proclamation.

(c) When any of the days mentioned in paragraph (a) of this subclause falls on a Saturday or a Sunday the holiday shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday. In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

(2) On any public holiday not prescribed as a holiday under this award, the employer's establishment or place of business may be closed, in which case an employee need not present himself for duty and payment may be deducted, but if work be done ordinary rates of pay shall apply.

(3) (a) When an employee is off duty owing to leave without pay or sickness, including accidents on or off duty, except time for which he is entitled to claim sick pay, any holiday falling during such absence shall not be treated as a paid holiday.

(b) Any employee absenting himself from work, without reasonable cause, on the ordinary working day preceding or the ordinary working day succeeding a holiday provided for herein shall not be entitled to payment for such holiday.

(4) Except as hereinafter provided a period of four consecutive weeks leave with payment of ordinary wages as prescribed shall be allowed annually to an employee by the employer after a period of 12 months' continuous service with such employer.

(5) (a) During a period of annual leave an employee shall be paid a loading of 17½ per cent of the rate of wage prescribed in Clause 14.—Wages of this award.

(b) The loading prescribed by this subclause shall not apply to proportionate leave on termination.

(6) If any award holiday falls within an employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day, there shall be added to that period one day, being an ordinary working day, for each such holiday observed as aforesaid.

(7) Any time in respect of which an employee is absent from work, except time for which he is entitled to claim sick pay, or time spent on holidays, annual leave or long service leave as prescribed by this award, shall not count for the purpose of determining his right to annual leave.

(8) In special circumstances and by mutual consent of the employer, the employee, and the Union, annual leave may be taken in not more than two periods.

(9) (a) If after one month's continuous service in any qualifying 12 monthly period an employee leaves his employment or his employment is terminated by the employer through no fault of the employee, the employee shall be paid one third of a week's pay at his ordinary rate of wage in respect of each completed month of service.

(b) In addition to any payment to which he may be entitled under paragraph (a) of this subclause, an employee whose employment terminates after he has completed a 12 monthly qualifying period and who has not been allowed the leave prescribed under this award in respect of that qualifying period shall be given payment in lieu of that leave or unless:—

(i) he has been justifiably dismissed for misconduct;

(ii) the misconduct for which he has been dismissed occurred prior to the completion of that qualifying period.

(10) The provisions of this clause do not apply to casual employees.

9.—Absence Through Sickness.

(1) (a) An employee who is unable to attend or remain at his place of employment during the ordinary hours of work by reason of personal ill health or injury shall be entitled to payment during such absence in accordance with the following provisions.

(b) Entitlement to payment shall accrue at the rate of one sixth of a week for each completed month of service with the employer. Provided that absence through sickness through such ill health or injury shall be limited to five days in the first year of service and 10 days in each subsequent year of service.

(c) If in the first or successive years of service with the employer an employee is absent on the grounds of personal ill health or injury for a period longer than his entitlement to paid sick leave, payment may be adjusted at the end of that year of service, or at the time the employee's services terminate, if before the end of that year of service, to the extent that the employee has become entitled to further paid sick leave during that year of service.

(2) The provisions of this clause with respect to payment do not apply to employees who are entitled to payment under the Workers' Compensation and Assistance Act 1981 nor to employees whose injury or illness is the result of the employees own misconduct.

(3) To be entitled to payment in accordance with this clause the employee shall as soon as reasonably practicable advise the employer of his inability to attend for work, the nature of his illness or injury and the estimated duration of the absence. Provided that such advice, other than in extraordinary circumstances shall be given to the employer within 24 hours of the commencement of the absence.

(4) The provisions of this clause do not apply to an employee who fails to produce a certificate from a medical practitioner dated at the time of the absence or who fails to supply such other proof of the illness or injury as the employer may reasonably require provided that the employee shall not be required to produce a certificate from a medical practitioner with respect to absences of two days or less unless after two such absences in any year of service the employer requests in writing that the next and subsequent absences in that year if any, shall be accompanied by such certificate.

(5) The unused portions of the entitlement to paid sick leave in any one year shall accumulate from year to year and subject to this clause may be claimed by the employee if the absence by reason of personal ill health or injury exceeds the period for which entitlement has accrued during the year at the time of the absence.

Provided that an employee shall not be entitled to claim payment for any period exceeding 10 weeks in any one year of service.

(6) (a) Subject to the provisions of this subclause, the provisions of this clause apply to any employee who suffers personal ill health or injury during the time when he is absent on annual leave and an employee may apply for and the employer shall grant paid sick leave in place of paid annual leave.

(b) Application for replacement shall be made within seven days of resuming work and then only if the employee was confined to his place of residence or a hospital as a result of his personal ill health or injury for a period of seven consecutive days or more and he produces a certificate from a registered medical practitioner that he was so confined.

Provided that the provisions of this paragraph do not relieve the employee of the obligation to advise the employer in accordance with subclause (3) of this clause if he is unable to attend for work on the working day next following his annual leave.

(c) Replacement of paid annual leave by paid sick leave shall not exceed the period of paid sick leave to which the employee was entitled at the time he proceeded on annual leave and shall not be made with respect to fractions of a day.

(d) Where paid sick leave has been granted by the employer in accordance with paragraphs (a), (b) and (c) of this subclause, that portion of the annual leave entitlement equivalent to the paid sick leave is hereby replaced by the paid sick leave and the replaced annual leave may be taken at another time mutually agreed to by the employer and the employee or, failing agreement, shall be added to the employee's next period of annual leave or, if termination occurs before then, be paid for in accordance with the provisions of Clause 8.—Holidays and Annual Leave of this award.

(e) Payment for replaced annual leave shall be at the rate of wage applicable at the time the leave is subsequently taken provided that the annual leave loading prescribed in Clause 8.—Holidays and Annual Leave of this award shall be deemed to have been paid with respect to the replaced annual leave.

(7) Where a business has been transmitted from one employer to another and the employee's service has been deemed continuous in accordance with subclause (3) of Clause (2) of the Long Service Leave provisions published in Volume 65 of the *Western Australian Industrial Gazette* at pages one to four, the paid sick leave standing to the credit of the employee at the date of transmission from service with the transmittor shall stand to the credit of the employee at the commencement of service with the transmittee and may be claimed in accordance with the provisions of this clause.

(8) The provisions of this clause do not apply to casual employees.

10.—Record of Wages.

(1) The employer shall keep or cause to be kept, a wages record showing the name of each employee, the wages and allowances paid and the deductions made from such wages.

(2) The wages record shall be open for inspection at a mutually convenient time, by a duly accredited official of the Union at the employer's property or other convenient place. Provided that only one demand for such inspection shall be made in any one fortnight at the same property.

11.—Bereavement Leave.

An employee shall on the death within Australia of a close relative, be entitled on notice to leave up to and including the day of the funeral of such relation and such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in two ordinary working days. Proof of such death shall be furnished by the employee to the satisfaction of his employer.

12.—Accommodation.

(1) Where an employee is provided with board and lodging the employer shall be allowed to make a deduction at the rate of $45.60 per week of seven days.

(2) For the purpose of this clause "Board and Lodging" shall mean a reasonable supply and standard of food together with a reasonable standard of accommodation.

(3) Should any dispute arise under this clause the matter shall be decided by a Board of Reference.

13.—Protective Clothing.

The employer shall provide, free of charge, all necessary protective clothing including gum boots for use when required. Such clothing shall be issued in good condition and retained by the employee during the period of his employment and it shall be renewed by the employer when required.

14.—Wages.

The following shall be the minimum weekly rates of wages payable to employees covered by this award:—

(a) Adult Employees:

Farm Hand	$
(1) With less than 12 months' experience in the industry	220.00
(2) With 12 months' experience in the industry	221.90
(3) General Farm Hand	223.60
(4) Farm Tradesman (as defined)	234.60

"Farm Tradesman" shall mean a farm hand who has satisfactorily completed the approved apprenticeship in "farming" or who has been issued with an approved trade certificate and provides proof satisfactory to the employer of such qualification or who has by other means achieved a standard of knowledge deemed by his employer as equivalent thereto and is appointed as such in writing by his employer.

(b) Junior Employees — other than Apprentices:

	Percentage of the rate for a Farm Hand with less than 12 months' experience
15 years of age	45%
16 years of age	50%
17 years of age	55%
18 years of age	65%
19 years of age	75%
20 years of age	90%

(c) Casual Employees: A casual employee shall be paid 20 percentum in addition to the rates prescribed.

(d) Apprentices:

	Percentage of weekly rate of wage for a Farm Tradesman
First year of service	47.5%
Second year of service	71%
Third year of service	90.3%

15.—First Aid Kit.

At each place where employees are employed the employer shall supply a suitable first aid kit which shall be accessible to the employees at all times.

16.—Representative Interviewing Employees.

An accredited representative of the Union shall, with the consent of the employer, be permitted to inspect the working place of employees at a time mutually convenient and interview employees covered by this award.

17.—Long Service Leave.

The Long Service Leave Provisions published in Volume 65 of the *Western Australian Industrial Gazette* at pages one to four inclusive are hereby incorporated in and shall be deemed to be part of this award.

18.—Liberty to Apply.

Liberty is reserved to the Union to apply to vary Clause 3.—Area and Scope of this award to include the "Dairy Industry".

Schedule of Respondents.

David Blair, Doodlakine.
Garth Butcher, Bedfordale.
Noel Fallow, Morawa.
Murray Field, Esperance.
John Newing, Tambellup.
Norman Payne, Morawa.
Peter Wahlsten, Walgoolan.

Dated at Perth this 20th day of March 1985.

By the Commission in Court Session.

(Sgd.) G.G. HALLIWELL,
[L.S.] Commissioner.

AWARDS — Variation of —

AMBULANCE SERVICE EMPLOYEES'. Award No. 50 of 1968.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 1076 of 1984.

Between the Federated Miscellaneous Workers' Union of Australia, Hospital, Service and Miscellaneous, W.A. Branch, Applicant and the St John Ambulance Association in Western Australia (Incorporated), Respondent.

Order.

HAVING heard Mr M.G. Nolan on behalf of the applicant and Mr C. Weeks on behalf of the respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby orders —

That the "Ambulance Service Employees' " Award No. 50 of 1968 as varied be further varied in accordance with the following schedule and that such variation shall have effect on and from the 30th day of April 1985.

Dated at Perth this 30th day of April 1985.

(Sgd.) G.J. MARTIN,
[L.S.] Commissioner.

Schedule.

1. Clause 7.—Hours of Duty: Delete subclause (2) of this clause and insert in lieu:

(2) In the case of Officers engaged for day work only, the ordinary hours of duty shall be 40 per week to be worked in five shifts of eight hours, Monday to Friday inclusive.

In the case of Officers in their initial 20 weeks induction training, the ordinary hours of duty shall be 40 per week, worked in five shifts of eight hours each. Where such shifts are worked other than day shift, Monday to Friday, the appropriate shift and/or weekend penalty rate as prescribed in Clause 32, subclauses (i) and (ii) shall apply.

2. Clause 8.—Overtime: After subclause (8) of this clause insert a new subclause (9) in the following terms:

(9) Rest Period after Overtime.

(a) When overtime is necessary it shall wherever reasonably practical be so arranged that Officers have at least eight consecutive hours off duty between the work of successive days.

(b) An Officer (other than a casual officer) who works so much overtime between the termination of his ordinary work on one day and the commencement of his ordinary work on the next day that he has not had at least eight consecutive hours off duty between those times shall, subject to this subclause, be released after the completion of such overtime until he has had eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

If, on the instruction of the employer, such Officer resumes or continues work without having such eight consecutive hours off duty, he shall be paid at double rates until he is released from duty for such period, and he shall be entitled to be absent until he has had eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

Provided that the provision of this subclause shall not apply to Officers working overtime pursuant to an On-Call roster as prescribed in Clause 29.—On Call Allowance, of this Award.

CATERING WORKERS' (Food Service Management). Award No. 22 of 1976.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 405 of 1983.

Between Federated Liquor and Allied Industries Employees' Union of Australia, Western Australian Branch, Union of Workers, Applicant and Nationwide Food Service (West) Pty Ltd, Respondent.

Order.

HAVING heard Mr E. Fry on behalf of the applicant and Mr R.H. Gifford on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979 having satisfied itself that the terms of the General Order of the Commission No. 461 of 1983, dated 2 March 1984, have been complied with, and by consent, hereby orders —

That the Catering Workers' (Food Service Management) Award No. 22 of 1976 be varied in accordance with the following Schedule and such wage rates prescribed in Column "A" shall apply as from the first pay period commencing on or after the date hereof and such wage rates as prescribed in Column "B" shall apply as from the first pay period commencing on or after 15 May 1985.

Dated at Perth this 2nd day of April 1985.

(Sgd.) J.A. NEGUS,
[L.S.] Commissioner.

Schedule.

Clause 19.—Wages: Delete subclause (1) from this clause and insert in lieu thereof the following:—

(1) Classification (total wage per week).

		"A" $	"B" $
(1)	Chef	256.00	273.30
(2)	Qualified Cook	234.80	251.30
(3)	Cook Employed Alone	222.70	238.50
(4)	Other Cooks	219.60	235.60
(5)	Waiter/Waitress	216.20	231.90
(6)	Cashier	222.00	238.00
(7)	Counterhand	216.20	231.90
(8)	Cleaner	213.80	229.30
(9)	Kitchenhand	213.80	229.30
(10)	General Hand	213.80	229.30

CLEANERS AND CARETAKERS (Government).
Award No. 32 of 1975.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 927 of 1984.

Between the Federated Miscellaneous Workers' Union of Australia, Hospital, Service and Miscellaneous, W.A. Branch, Applicant and the Hon. Premier of Western Australia and Others, Respondents.

Order.

HAVING heard Dr S.A. Kennedy on behalf of the applicant and Mr J. Flood on behalf of the respondents, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby orders —

That the Cleaners and Caretakers (Government) Award No. 32 of 1975 be varied in accordance with the following schedule and that such variation shall have effect as from the beginning of the first pay period commencing on or after the date hereof.

Dated at Perth this 12th day of March 1985.

(Sgd.) G.G. HALLIWELL,
[L.S.] Commissioner.

Schedule.

1. Clause 16.—Compassionate Leave: Delete this clause and insert the following in lieu:

16.—Compassionate Leave.

(1) A worker shall, on the death within Australia of a wife, husband, *de facto* wife or *de facto* husband, father, father-in-law, mother, mother-in-law, brother, sister, child or stepchild, be entitled on notice to leave up to and including the day of the funeral of such relation and such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the worker in two ordinary working days. Proof of such death shall be furnished by the worker to the satisfaction of his employer.

(2) Provided that payment in respect of compassionate leave is to be made only where the worker otherwise would have been on duty and shall not be granted in any case where the worker concerned would have been off duty in accordance with his roster, or on long service leave, annual leave, sick leave, workers' compensation, leave without pay or on a public holiday.

2. Clause 21.—District Allowance: Delete subclauses (3) and (4) of this clause and insert in lieu thereof the following:

(3) The weekly allowance payable to workers employed in the districts of the State described in subclause (2) of this clause are as follows:

District	Column A $
1.	NIL
2.	5.90
3.	8.20
4.	13.00
5.	25.90
6.	31.70

Provided that the allowances prescribed in Column "A" shall operate from the beginning of the first pay period commencing on or after 1 January 1985.

(4) Workers employed in the towns shown hereunder in the districts referred to in subclause (2) of this clause shall be paid the following allowances in lieu of the rates prescribed in subclause (3) of this clause.

District	Town	Column A $
1.	Nil	Nil
2.	Kalgoorlie	1.90
	Ravensthorpe	7.80
	Norseman	7.80
	Salmon Gums	7.80
	Marvel Lock	7.80
	Esperance	7.80
3.	Meekatharra	13.00
	Mount Magnet	13.00
	Wiluna	13.00
	Laverton	13.00
	Leonora	13.00
	Cue	13.00
4.	Warburton Mission	34.90
	Carnarvon	12.30
5.	Fitzroy Crossing	34.90
	Halls Creek	34.90
	Turner River Camp	34.90
	Nullagine	34.90
	Abydos Research Station	32.30
	Liveringa (Camballin)	32.30
	Marble Bar	32.30
	Wittenoom	32.30
	Port Hedland	28.40
6.	Nil	Nil

Provided that the allowances prescribed in Column "A" shall operate from the beginning of the first pay period commencing on or after 1 January 1985.

DRUM RECLAIMING.
Award No. 21 of 1961.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 950 of 1984.

Between the Federated Miscellaneous Workers' Union of

Australia, Hospital, Service and Miscellaneous, W.A. Branch, Applicant and Imerito Drum Company and Others, Respondents.

Order.

HAVING heard Dr S.A. Kennedy on behalf of the applicant and Mr J.N. Uphill on behalf of the respondents, and by consent the Commission in Court Session, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders —

That the Drum Reclaiming Award No. 21 of 1961 as varied and consolidated be further varied in accordance with the following schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 18 March 1985.

Dated at Perth this 18th day of March 1985.

By the Commission in Court Session.

(Sgd.) B.J. COLLIER,
[L.S.] Commissioner.

Schedule.

1. Clause 7.—Overtime: Delete subclause (2) of this clause and insert in lieu:

(2) (a) An employer may require any worker to work reasonable overtime at overtime rates and such worker shall work overtime in accordance with such requirement.

(b) No Union or Association party to this award, or worker or workers covered by this award, shall in any way, whether directly or indirectly, be a party to or concerned in any ban, limitation, or restriction upon the working of overtime in accordance with the requirements of this subclause.

(c) A worker who is recalled to work after his/her normal shift has been completed shall be paid for a minimum of three hours at overtime rates.

2. Clause 8A.—Annual Leave: Delete this clause and insert in lieu:

8A.—Annual Leave.

(1) Except as hereinafter provided, a period of four consecutive weeks' leave with payment of ordinary wages as prescribed shall be allowed annually to a worker by his/her employer after a period of 12 months' continuous service with that employer.

(2) A worker before going on leave shall be paid the wages he/she would have received in respect of the ordinary time he/she would have worked had he/she not been on leave during the relevant period.

(3) (a) In addition to his/her payment of annual leave a worker shall receive a loading of 17.5 per cent calculated on his/her ordinary rate of wage as prescribed.

(b) The loading prescribed by this subclause shall not apply to proportionate leave on termination.

(4) (a) A worker whose employment terminates after he/she has completed a 12 monthly qualifying period and who has not been allowed the leave prescribed under this clause in respect of that qualifying period shall be given payment as prescribed in subclauses (2) and (3) of this clause in lieu of that leave or in lieu of so much of that leave as has not been allowed unless:

(i) he/she has been justifiably dismissed for misconduct; and

(ii) the misconduct for which he/she has been dismissed occurred prior to the completion of that qualifying period.

(b) If, after one month's continuous service in any qualifying 12 monthly period a worker lawfully leaves his/her employment or his/her employment is terminated by the employer through no fault of the worker, the worker shall —

(i) if such termination occurs before 6 August 1984 be paid 3.08 hours pay at the rate of wage prescribed by subclause (1) of this clause, divided by 40, in respect of each completed week of continuous service; or

(ii) if termination occurs on or after 6 August 1984 be paid 2.923 hours pay at the rate of wage prescribed by subclause (1) of this clause, divided by 38, in respect of each completed week of continuous service.

(5) In the event of a worker being employed by an employer for a portion only of a year, he/she shall only be entitled subject to subclause (5) of this clause, to such leave on full pay as is proportionate to his/her length of service during that period with such employer, and if such leave is not equal to the leave given to the other workers, he/she shall not be entitled to work or pay whilst the other workers of such employer are on leave on full pay.

(6) If any prescribed holiday falls within a worker's period of annual leave and is observed on a day which in the case of that worker would have been an ordinary working day, there shall be added to that period one day being an ordinary working day, for each such holiday observed as aforesaid.

(7) Any time in respect of which a worker is absent from work, except time for which he/she is entitled to claim sick pay, or time spent on holidays, annual leave or long service leave, as prescribed by this award, shall not count for the purposes of determining his/her right to annual leave.

(8) In special circumstances and by mutual consent of the employer, the worker and the Union, annual leave may be taken in not more than two periods.

(9) The provisions of this clause shall not apply to casual workers.

3. Clause 12.—Meal Money: Delete this clause and insert in lieu:

12.—Meal Money.

(1) (a) Subject to the provisions of this clause a worker who is required to continue working after his/her usual ceasing time for more than two hours shall be supplied with a meal by his/her employer or be paid $2.71 for a meal.

(b) For the purpose of paragraph (a) of this subclause the continuity of work shall not be deemed to have been interrupted by any meal break allowed.

(2) Where the amount of overtime worked necessitates more than one meal, the employer shall supply each such additional meal or pay to the worker $1.90 for each such additional meal.

(3) The provisions of subclauses (1) and (2) of this clause shall not apply —

(a) in respect of any period of overtime for which the worker has been notified on the previous day or earlier that he/she will be required; or

(b) to any worker who lives in the locality in which the place of work is situated in respect of any meal for which he/she can reasonably go home.

(4) If a worker to whom paragraph (a) of subclause (3) of this clause applies has, as a consequence of the notification referred to in that paragraph, provided him/herself with a meal or meals and is not required to work overtime or is required to work less overtime than the period notified he/she shall be paid for each meal provided and not required, the appropriate amount prescribed above.

4. Clause 28.—Bereavement Leave: Delete this clause and insert in lieu:

28.—Bereavement Leave.

A worker shall, on the death within Australia of a wife, husband, *de facto* wife or *de facto* husband, father, father-in-law, mother, mother-in-law, brother, sister, child or stepchild be entitled on notice, to leave up to and including the day of the funeral of such relation and such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the worker in two ordinary working days. Proof of such death shall be furnished by the worker to the satisfaction of his/her employer.

Provided that payment in respect of bereavement leave is to be made only where the worker otherwise would have been on duty and shall not be granted in any case where the worker concerned would have been off duty in accordance with his/her roster, or on long service leave, annual leave, sick leave, workers' compensation, leave without pay or on a public holiday.

5. Clause 30.—Payment of Wages — 38 Hour Week: After subclause (9) of this clause, insert a new subclause (10) in the following terms:

(10) No deduction shall be made from a worker's wages unless the worker has authorised such deduction in writing.

ELECTRICAL CONTRACTING INDUSTRY.
Award No. 22 of 1978.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 26 of 1985.

Between Electrical Trades Union of Workers of Australia (Western Australian Branch), Perth, Applicant and the Electrical Contractors' Association of Western Australia (Union of Employers) and Others, Respondents.

Order.

HAVING heard Mr L.J. Benfell on behalf of the applicant and Mr L. Girdlestone on behalf of the respondents, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby orders —

That the Electrical Contracting Industry Award No. 22 of 1978 be varied in accordance with the following Schedule and that such variation shall have effect as from the beginning of the first pay period commencing on or after the date hereof.

Dated at Perth this 20th day of March 1985.

(Sgd.) G.G. HALLIWELL,
[L.S.] Commissioner.

Schedule.

Clause 20.—Allowance for Travelling and Employment in Construction Work: Delete subclause (2) (a) and insert in lieu thereof:

(2) An employee to whom subclause (1) of this clause does not apply and who is engaged on construction work shall be paid an allowance in accordance with the provisions of this subclause to compensate for travel patterns and costs peculiar to the industry, which includes mobility requirements of employees and the nature of employment in the construction work covered by this award —

(a) On jobs measured by radius from the General Post Office, Perth, situated within the area of —

	Per Day $
(i) Up to and including 50 kilometres radius	6.50
OR	
(ii) Over 50 kilometres up to and including 60 kilometres radius	9.85
OR	
(iii) Over 60 kilometres up to and including 75 kilometres radius	13.85
OR	
(iv) Over 75 kilometres up to and including 90 kilometres radius	17.50
OR	
(v) Over 90 kilometres up to and including 105 kilometres radius	19.85

ELECTRICAL CONTRACTING INDUSTRY.
Award No. R22 of 1978.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 120 of 1985.

Between Electrical Trades Union of Workers of Australia (Western Australian Branch), Perth, Applicant and Electrical Contractors' Association of Western Australia (Union of Employers) and Others, Respondents.

Order.

HAVING heard Mr L.J. Benfell on behalf of the applicant and Mr L. Girdlestone on behalf of the respondents, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby orders —

That the Electrical Contracting Industry Award No. R22 of 1978 be varied in accordance with the following Schedule and that such variation shall have effect as from the beginning of the first pay period commencing on or after the date hereof.

Dated at Perth this 20th day of March 1985.

(Sgd.) G.G. HALLIWELL,
[L.S.] Commissioner.

Schedule.

Clause 21.—Distant Work: Delete subclauses (6) and (9) of this clause and insert in lieu:

(6) An employee to whom the provisions of subclause (1) of this clause apply shall be paid an allowance of $13.00 for any weekend that he returns to his home from the job but only if —

(a) He advises the employer or his agent of his intention no later than the Tuesday immediately preceding the weekend in which he so returns;

(b) He is not required for work during that weekend;

(c) He returns to the job on the first working day following the weekend; and

(d) The employer does not provide or offer to provide suitable transport.

(9) Where an employee supplied with board and lodging by his employer, is required to live more than 800 metres from the job, he shall be provided with suitable transport to and from that job or be paid an allowance of $5.75 per day provided that where the time actually spent in travelling either to or from the job exceeds 20 minutes, that excess travelling time shall be paid for at ordinary rates whether or not suitable transport is supplied by the employer.

ELECTRICAL TRADES
(Security Alarms Industry).
Award No. 27 of 1979.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 30 of 1985.

Between Electrical Trades Union of Workers of Australia (Western Australian Branch), Perth, Applicant and Wormald Security Controls and Others, Respondents.

Order.

HAVING heard Mr L.J. Benfell on behalf of the applicant and Mr L. Girdlestone on behalf of the respondents, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby orders —

That the Electrical Trades (Security Alarms Industry) Award No. 27 of 1979 be varied in accordance with the following Schedule and that such variation shall have effect as from the beginning of the first pay period commencing on or after the date hereof.

Dated at Perth this 20th day of March 1985.

(Sgd.) G.G. HALLIWELL,
[L.S.] Commissioner.

Schedule.

Clause 18.—Distant Work: Delete subclause (5) of this clause and insert the following in lieu:

(5) Where an employee, supplied with board and lodging by his employer, is required to live more than 800 metres from the job he shall be provided with suitable transport to and from that job or be paid an allowance of $5.75 per day provided that where the time actually spent in travelling either to or from the job exceeds 20 minutes, that excess time shall be paid for at ordinary rates whether or not suitable transport is supplied by the employer.

ENGINEERING TRADES
(Government).
Award Nos. 29, 30 and 31 of 1961 and 3 of 1962.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 27 of 1985.

Between Electrical Trades Union of Workers of Australia (Western Australian Branch), Perth, Applicant and Hon. Minister for Works and Others, Respondents.

Order.

HAVING heard Mr L.J. Benfell on behalf of the applicant and Mr J. Radisich on behalf of the respondents, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby orders —

That the Engineering Trades (Government) Award Nos. 29, 30, 31 of 1961 and 3 of 1962 be varied in accordance with the following schedule and that such variation shall have effect as from the beginning of the first pay period commencing on or after the date hereof.

Dated at Perth this 20th day of March 1985.

(Sgd.) G.G. HALLIWELL,
[L.S.] Commissioner.

Schedule.

Clause 18.—Fares and Travelling Allowances: Delete subclauses (1) (a), (b) and (c) and insert the following in lieu:

(1) (a) On places within a radius of 50 kilometres from the General Post Office, Perth — $6.50 per day;

(b) For each additional kilometre to a radius of 60 kilometres from the General Post Office, Perth — 33 cents per kilometre;

(c) Subject to the provisions of paragraph (d) work performed at places beyond a 60 kilometre radius from the General Post Office, Perth shall be deemed to be distant work unless the employer and the employees with the consent of the union, agree in any particular case that the travelling allowance for such work shall be paid under this clause in which case an additional allowance of 33 cents per kilometre shall be paid for each kilometre in excess of the 60 kilometre radius.

Clause 19.—Distance Work-Construction: Delete subclauses (6) and (7) and insert the following in lieu:

(6) An employee to whom the provisions of subclause (1) of this clause apply shall be paid an allowance of $13.00 and for any weekend that he returns to his home from the job but only if:—

(a) he advises the employer or his agent of his intention no later than the Tuesday immediately preceding the weekend in which he so returns;

(b) he is not required for work during that weekend;

(c) he returns to the job on the first working day following the weekend; and

(d) the employer does not provide or offer to provide suitable transport.

(7) Where an employee supplied with board and lodging by his employer, is required to live more than 800 metres from the job, he shall be provided with suitable transport to and from that job or be paid an allowance of $5.75 per day provided that where the time actually spent in travelling either to or from the job exceeds 20 minutes, that excess travelling time shall be paid for at ordinary rates whether or not suitable transport is supplied by the employer.

ENGINEERING TRADES
(State Energy Commission).
Award No. 1 of 1969.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 67 of 1985.

Between Electrical Trades Union of Workers of Australia (Western Australian Branch), Perth, Applicant and State Energy Commission of Western Australia, Respondent.

Order.

HAVING heard Mr L.J. Benfell on behalf of the applicant and Mr B. Duplock on behalf of the respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby orders —

That the Engineering Trades (State Energy Commission) Award No. 1 of 1969 be varied in accordance with the following schedule and that such variation shall have effect as from the beginning of the first pay period commencing on or after the date hereof.

Dated at Perth this 20th day of March 1985.

(Sgd.) G.G. HALLIWELL,
[L.S.] Commissioner.

Schedule.

Clause 19.—Overtime: Delete subclause (9) and subclause (10) and insert the following in lieu:—

(9) (a) A worker required to return to work overtime after leaving his employer's premises, and who returns home on completion of that overtime, shall be paid $6.50 in addition to the following minimum payments for any overtime worked, namely:—

(i) if notified of the requirement to work overtime before leaving his employer's premises —

(aa) for a minimum of two hours at overtime rates on a Saturday;

(bb) for a minimum of one hour at overtime rates on any other week day;

(ii) if not so notified —

(aa) for a minimum of three hours at overtime rates on a Saturday;

(bb) for a minimum of two hours at overtime rates on any other week day,

and the worker shall not be obliged to work for the minimum period applicable to him if the job for which he has been brought in has been completed in less time.

(b) Subject to the provisions of paragraph (c) hereof, the allowance of $6.50 prescribed in paragraph (a) of this subclause shall be halved where the employer provides transport.

(c) The provisions of paragraph (b) hereof shall not apply to workers located at Muja Power Station who shall be paid an allowance of $1.00 when special provisions apply in relation to the provision of transport by the employer.

(10) (a) A worker who works overtime on a Sunday shall be paid for not less than four hours at the rate applicable to that day, and the worker shall not be obliged to work for the four hours if the job for which he was brought in is completed in less than four hours, but if he is called out for duty more than once within a period of four hours from the start of a previous call-out for duty, he shall not be entitled to any further payment for time worked within that period of four hours.

(b) Subject to the provisions of paragraphs (c) and (d) hereof, in addition to the minimum payment detailed in subclause (a), a worker required to return to work overtime after leaving his employer's premises, and who returns home on completion of that overtime, shall be paid $6.50.

(c) The allowance of $6.50 prescribed in paragraph (b) of this subclause shall be halved where the employer provides transport.

(d) The provisions of paragraphs (b) and (c) hereof shall not apply to workers located at Muja Power Station when special provisions apply in relation to the provision of transport by the employer.

FOODLAND ASSOCIATED LIMITED (Western Australia) WAREHOUSE.
Award No. 27 of 1982.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 1053 of 1984.

Between the West Australian Shop Assistants' and Warehouse Employees' Industrial Union of Workers, Perth, Applicant and Foodland Associated Limited, Respondent.

Order.

HAVING heard Mr M. Bishop on behalf of the applicant and Mrs P. Bentley on behalf of the respondent, and by consent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby orders —

That the Foodland Associated Limited (Western Australia) Warehouse Award No. 27 of 1982 be varied in accordance with the following schedule.

Dated at Perth this 19th day of April 1985.

(Sgd.) E.R. KELLY,
[L.S.] Chief Commissioner.

Schedule.

1. Clause 11 (1).—Meal Money: Delete the figure of $3.00 and insert in lieu $3.80 from the first pay period on or after 19 April 1985 and $4.10 from the first pay period on or after 19 July 1985.

2. Clause 27.—Wages: Delete the figure 25 cents in subparagraph 4 (a) (i) and insert in lieu 35 cents from the first pay period on or after 19 April 1985 and 38 cents from the first pay period on or after 19 July 1985.

Delete the figure 30 cents in subparagraph 4 (a) (ii) and insert in lieu 40 cents from the first pay period on or after 19 April 1985 and 43 cents from the first pay period on or after 19 July 1985.

Delete the figure 35 cents in subparagraph 4 (a) (iii) and insert in lieu 45 cents from the first pay period on or after 19 April 1985 and 49 cents from the first pay period on or after 19 July 1985.

FUNERAL DIRECTORS' ASSISTANTS'.
Award No. 18 of 1962.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 949 of 1984.

Between the Federated Miscellaneous Workers Union of Australia, Hospital, Service and Miscellaneous, W.A. Branch, Applicant and Bowra and O'Dea Pty Ltd and Others, Respondents.

Order.

HAVING heard Dr S.A. Kennedy on behalf of the applicant and Mr R.H. Gifford on behalf of the respondents, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby orders —

That the Funeral Directors' Assistants' Award No. 18 of 1962 be varied in accordance with the following schedule and that such variation shall have effect as from the beginning of the first pay period commencing on or after the date hereof.

Dated at Perth this 25th day of February 1985.

(Sgd.) G.G. HALLIWELL,
[L.S.] Commissioner.

Schedule.

1. Clause 4.—Arrangement: Delete this clause and insert the following in lieu:

4.—Arrangement.

2. Clause 9.—Meal Times and Meal Allowances: Delete this clause and insert the following in lieu:

9.—Meal Times and Meal Allowances.

(1) No worker shall be compelled to work for more than five hours without a break for a meal, such break to be not less than 30 minutes nor more than one hour.

(2) When a worker is required for duty during any meal time, whereby his/her meal time is postponed for more than 30 minutes, he/she shall be paid at overtime rates until he/she gets his/her meal.

(3) A worker required to work overtime for more than two hours without being notified on the previous day or earlier, that he/she will be so required to work, shall be supplied by the employer with any meal required or paid $4.00 for such meal.

(4) If the amount of overtime required to be worked necessitates a second or subsequent meal, the employer shall, unless he has notified the worker concerned on the previous day or earlier that such a second or subsequent meal will also be required, provide such meals or pay an amount of $3.25 for each second or subsequent meal.

(5) No such payment need be made to workers living in the same locality as their place of employment who can reasonably return home for such meals.

(6) If a worker in consequence of receiving such notice has provided him/herself with a meal or meals and is not required to work overtime, or is required to work less overtime than notified, he/she shall be paid the amount above prescribed in respect of the meals not then required.

3. Clause 11.—Overtime: Delete this clause and insert the following in lieu:

11.—Overtime.

(1) For all work done beyond the ordinary hours of duty, payment shall be made at the rate of time and a half for the first three hours and double time thereafter.

(2) (a) All work done by workers other than After Hours Attendants on Saturday after 12.00 noon and on Sundays shall be paid for at the rate of double time.

(b) All work done by workers other than After Hours Attendants on the holidays prescribed in Clause 12.—Public Holidays of this award shall be paid for at the rate of double time and a half.

Provided that a Branch officer or an After Hours Attendant who is required by the employer to remain on the employer's premises on a public holiday shall have added to his/her annual leave an additional day and a half on full pay for each such holiday or alternatively an additional day and a half payment shall be made.

A worker who receives payment or additional leave in accordance with this proviso shall not also be entitled to double time and a half for work performed on the holiday.

(3) An employer may require any worker to work reasonable overtime at overtime rates and such worker shall work overtime in accordance with such requirement.

(4) No union, party to this award or worker or workers covered by this award, shall in any way whether directly or indirectly be a party to or concerned in any ban, limitation or restriction upon the working of overtime in accordance with the requirements of this subclause.

(5) In the calculation of overtime rates, each day's work shall stand alone.

(6) When a worker is recalled to work after leaving the job he/she shall be paid for a minimum of two hours' work at the appropriate rate, provided that this subclause shall not apply to casuals or workers provided with accommodation or paid the loading required in accordance with Clause 8.—Accommodation and Night Work of this award. Such worker shall also be reimbursed for all reasonable expenses incurred in returning to work.

4. Clause 12.—Holidays and Annual Leave: Delete this clause and insert the following in lieu:

12.—Public Holidays.

(1) The following days or days observed in lieu shall, subject to Clause 11.—Overtime of this award, be allowed as holidays without deduction of pay, namely: New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day. Provided that another day may be taken as a holiday by arrangement between the parties in lieu of any of the days named in this subclause: Provided further that an employer may substitute Royal Show Day for Sovereign's Birthday in any year.

(2) When any of the days mentioned in subclause (1) hereof falls on a Saturday or a Sunday the holiday shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday. In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

(3) Where —

(a) a day is proclaimed as a public holiday or as a public half-holiday under section 7 of the Public and Bank Holidays Act 1972; and

(b) that proclamation does not apply throughout the State or to the metropolitan area of the State, that day shall be a public holiday or, as the case may be a public half-holiday for the purposes of this award within the district or locality specified in the proclamation.

(4) On any public holiday not prescribed as a holiday under this award the employer's establishment or place of business may be closed in which case a worker need not present him/herself for duty and payment may be deducted but if work be done ordinary rates of pay shall apply.

5. Clause 15.—Special Rates and Conditions: Delete this clause and insert the following in lieu:

15.—Special Rates and Conditions.

(1) A worker who is required to come into contact with a body which is in an advanced state of decomposition shall be paid $9.80. No worker shall be entitled to more than one payment in respect of each such case.

(2) A worker who is required to do any work in connection with an exhumation shall receive an allowance of $13.00 for each body exhumed. No worker shall be entitled to more than one payment in respect of each such case.

(3) When a worker is required by the employer to wear a uniform such uniform shall be supplied by the employer. Any worker required to wash, polish or service a motor vehicle shall be supplied with all necessary protective clothing and footwear.

6. Clause 25.—Payment of Wages: Delete this clause and insert the following in lieu:

25.—Payment of Wages.

(1) Unless wages are paid on or before Thursday of each week, wages shall be paid in cash on or before Friday of each week in the employer's time.

(2) No deduction shall be made from a worker's wages unless the worker has authorised such deduction in writing.

7. Clause 26.—Standing By: Delete this clause and insert the following in lieu:

26.—Standing By.

A worker other than a Branch Officer or After Hours Attendant called upon to stand by, that is to hold him/herself available if wanted, shall be paid the following rates:—

(1) Between the hours of 5.30 p.m. and midnight (Monday to Friday) — $2.93 per night.

(2) Between 7.00 a.m. and midnight on a Saturday, Sunday or any of the holidays prescribed in Clause 12.—Public Holidays of this award — $9.83 per day.

(3) The allowances prescribed in subclauses (1) and (2) hereof shall be in addition to appropriate payments for any work done during the hours therein mentioned.

(4) Subject to subclause (6) of Clause 11.—Overtime of this award, any worker who is required to stand by and is called back between the hours of midnight and 7.00 a.m. on any day shall be paid at the rate of double time for the hours so worked.

8. Clause 27.—Car Allowance: Delete this clause and insert the following in lieu:

27.—Car Allowance.

Where a worker is required and authorised to use his/her own motor vehicle he/she shall be paid 27 cents per kilometre for each kilometre travelled on his/her employer's business.

9. Clause 28.—Preference to Unionists: Delete this clause and insert the following in lieu:

28.—Annual Leave.

(1) Except as hereinafter provided a period of four consecutive weeks' leave with payment of ordinary wages as prescribed shall be allowed annually to a worker by his/her employer after a period of 12 months' continuous service with that employer.

(2) A worker before going on leave shall be paid the wages he/she would have received in respect of the ordinary time he/she would have worked had he/she not been on leave during the relevant period.

(3) During a period of annual leave a worker shall be paid a loading of 17.5 per cent calculated on his/her ordinary wage as prescribed.

(4) The loading prescribed by this subclause shall not apply to proportionate leave on termination.

(5) (a) A worker whose employment terminates after he/she has completed a 12 monthly qualifying period and who has not been allowed the leave prescribed under this clause in respect of that qualifying period shall be given payment as prescribed in subclauses (2) and (3) of this clause in lieu of that leave or in lieu of so much of that leave as has not been allowed unless —

(i) he/she has been justifiably dismissed for misconduct; and

(ii) the misconduct for which he/she has been dismissed occurred prior to the completion of that qualifying period.

(b) If, after one month's continuous service in any qualifying period a worker lawfully leaves his/her employment or his/her employment is terminated by his/her employer through no fault of the worker, the worker shall be paid 3.08 hours' pay for each completed week of continuous service.

(6) If any award holiday falls within a worker's period of annual leave and is observed on a day which in the case of that worker would have been an ordinary working day there shall be added to that period one day being an ordinary working day for each such holiday observed as aforesaid.

(7) Any time in respect of which a worker is absent from work except for which he/she is entitled to claim sick pay or time spent on holidays, annual leave or long service leave as prescribed by this award shall not count for the purpose of determining his/her right to annual leave.

(8) The provisions of this clause shall not apply to casual workers.

(9) In special circumstances and by mutual consent of the employer, the worker and the union, annual leave may be taken in not more than two periods.

10. Clause 31.—Bereavement Leave: Delete this clause and insert the following in lieu:

31.—Bereavement Leave.

A worker shall, on the death within Australia of a wife, husband, *de facto* spouse, father, mother, parent-in-law, brother, sister, child or stepchild, be entitled on notice of leave up to and including the day of the funeral of such relation and such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the worker in two ordinary working days. Proof of such death to be furnished by the worker to the satisfaction of his/her employer.

Provided that payment in respect of bereavement leave is to be made only where the worker otherwise would have been on duty and shall not be granted in any case where the worker concerned would have been off duty in accordance with his/her shift roster, or on long service leave, annual leave, sick leave, workers' compensation, leave without pay or on a public holiday.

GOVERNMENT WATER SUPPLY, SEWERAGE AND DRAINAGE EMPLOYEES'.
Award No. 2 of 1980.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 1004 of 1984.

Between the Federated Miscellaneous Workers' Union of Australia, Hospital, Service and Miscellaneous, W.A. Branch, Applicant and the Commissioner, Metropolitan Water Authority, Respondent.

Interim Order.

HAVING heard Mr A.R. Beech on behalf of the applicant and Mr N.R. Whitehead on behalf of the respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby orders —

That the Government Water Supply, Sewerage and Drainage Employees' Award No. 2 of 1980 be varied in accordance with the following schedule and that such variation shall have effect as from the beginning of the first pay period commencing on or after the date hereof.

Dated at Perth this 6th day of March 1985.

(Sgd.) G.G. HALLIWELL,
[L.S.] Commissioner.

Schedule.

Clause 10.—Special Rates and Provisions.

1. In subclause (8) of this clause insert the following definition after the definition "shaft":

"Tunnelling" shall include all work performed in a tunnel until it is commissioned.

2. Immediately after subclause (31) of this clause, add the following:

(32) An employee required to use a scrub cutter shall be paid an allowance of 33 cents per hour. No employee shall be required to work for more than 50 consecutive minutes without a break of 10 minutes.

3. Clause 20.—Annual Leave: Delete subclause (3) of this clause and insert the following in lieu:

(3) (a) A seven-day shift worker, i.e. a shift worker who is rostered to work regularly on Sundays and Holidays shall be allowed 38 hours' leave in addition to the leave to which he is otherwise entitled under this clause.

(b) Where an employee with 12 months' continuous service is engaged for part of a qualifying 12 monthly period as a seven-day shift worker, he shall be entitled to have the period of annual leave to which he is otherwise entitled under this clause increased by 0.7308 hours for each week he is continuously so engaged, up to a maximum of 38 hours' additional leave entitlement.

HOSPITAL WORKERS' (Government).
Award No. 21 of 1966.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 147 of 1985.

Between the Federated Miscellaneous Workers' Union of Australia, Hospital, Service and Miscellaneous, W.A. Branch, Applicant and the Board of Management, Royal Perth Hospital and Others, Respondents.

Order.

HAVING heard Dr S.A. Kennedy on behalf of the applicant and Ms M.H. Kuhne on behalf of the respondents, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby orders —

That the Hospital Workers' (Government) Award No. 21 of 1966 as varied, consolidated and varied be further varied in accordance with the following schedule and that such variation shall have effect as from the beginning of the first pay period commencing on or after the 19th day of April 1985.

Dated at Perth this 19th day of April 1985.

(Sgd.) G.J. MARTIN,
[L.S.] Commissioner.

Schedule.

1. Clause 15.—Overtime: Delete subclause (4) of this clause and insert in lieu:

(4) Where a worker is required to work overtime and such overtime is worked for a period of at least two hours in excess of the required daily hours of work, the worker shall be provided with a meal free of cost, or shall be paid the sum of $3.80 as meal money.

2. Clause 20.—Higher Duties: Delete this clause and insert in lieu:

20.—Higher Duties.

(1) A worker who performs duties which carry a higher minimum rate than that which such worker usually performs shall be entitled to the higher minimum rate while so employed.

(2) Where such worker is engaged in the higher grade of work for more than two hours on any day or shift, the worker shall be paid the higher rate for the whole day or shift.

(3) An ALL Purpose Orderly who drives in excess of 15 hours per week shall be entitled to higher duties payment for such hours in excess of 15 hours per week.

(4) Notwithstanding the provisions of this clause payment for higher duties shall not apply to a worker required to act in another position whilst the permanent worker is on a single Accrued Day Off as prescribed by subclause (2) of Clause 6.—Hours of this Award.

LIFT INDUSTRY
(Electrical and Metal Trades).
Award No. 9 of 1973.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 29 of 1985.

Between Electrical Trades Union of Workers of Australia (Western Australian Branch), Perth, Applicant and Otis Elevator Co. Pty Ltd and Others, Respondents.

Order.

HAVING heard Mr L.J. Benfell on behalf of the applicant and Mr L. Girdlestone on behalf of the respondents, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby orders —

That the Lift Industry (Electrical and Metal Trades) Award No. 9 of 1973 be varied in accordance with the following Schedule and that such variation shall have effect as from the beginning of the first pay period commencing on or after the date hereof.

Dated at Perth this 20th day of March 1985.

(Sgd.) G.G. HALLIWELL,
[L.S.] Commissioner.

Schedule.

Clause 18.—Fares and Travelling: Delete subclause (2) and insert the following in lieu:

(2) A worker to whom subclause (1) of this clause does not apply and who is engaged on construction work or regular repair service and/or maintenance work shall be paid an allowance in accordance with the provisions of this subclause to compensate for excess fares and travelling time from the worker's home to his place of work and return:

(a) On places within a radius of 50 kilometres from the G.P.O., Perth — $6.50 per day.

(b) For each additional kilometre up to 60 kilometres — 33 cents per kilometre.

(c) Subject to the provision of paragraph (d) work performed at places beyond 60 kilometres from the G.P.O., Perth shall be deemed to be outside work unless the employer and the workers, with the consent of the union, agree in any particular case that the travelling allowance for such work shall be paid under this clause in which case an additional allowance of 33 cents per kilometre shall be paid for each kilometre in excess of 60 kilometres.

(d) In respect to work carried out from an employer's depot situated more than 60 kilometres from the G.P.O., Perth, the main Post Office in the town in which such depot is situated shall be the centre for the purpose of calculating the allowance to be paid.

(e) Where transport to and from the job is provided by the employer from and to his depot or such other place more convenient to the worker as is mutually agreed upon between the employer and worker, half the above rates shall be paid; provided that the conveyance used for such transport is provided with suitable seating and weatherproof covering.

Clause 19.—Distant Work: Delete subclause (7) of this clause and insert the following in lieu:

(7) Where a worker, supplied with board and lodging by his employer, is required to live more than 800 metres from the job he shall be provided with suitable transport to and from that job or be paid an allowance of $5.75 per day provided that where the time actually spent in travelling either to or from the job exceeds 20 minutes, that excess travelling time shall be paid for at ordinary rates whether or not suitable transport is supplied by the employer.

MARINE STORES.
Award No. 13 of 1958.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 1039 of 1984.

Between the Federated Miscellaneous Workers' Union of Australia, Hospital, Service and Miscellaneous, W.A. Branch, Applicant and Hayes Enterprises Pty Ltd and Others, Respondents.

Order.

HAVING heard Dr S.A. Kennedy on behalf of the applicant and Mr J.N. Uphill on behalf of the respondents, and by consent, the Commission in Court Session, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders —

That the Marine Stores Award No. 13 of 1958 as varied be further varied in accordance with the following schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 18 March 1985.

Dated at Perth this 18th day of March 1985.

By the Commission in Court Session.

(Sgd.) B.J. COLLIER,
[L.S.] Commissioner.

Schedule.

1. Clause 2.—Arrangement: Delete this clause and insert in lieu:

2.—Arrangement.

1. Title.
2. Arrangement.
3. Area and Scope.
4. Term.
5. Hours of Labour.
6. Rates of Pay.
6A. Minimum Wage.
7. Casual Workers.

8. Contract of Service.
9. Overtime.
10. Meal Time.
11. Holidays.
12. Annual Leave.
13. Sick Leave.
14. General Conditions.
15. Right of Entry.
16. Breakdowns.
17. Under-rate Workers.
18. Junior Worker's Certificate.
19. Board of Reference.
20. Long Service Leave.
21. Higher Duties.
22. Payment of Wages.
23. Meal Money.
24. Bereavement Leave.
25.
26. Time and Wages Record.
27. Rest Period.
28. Part-time Workers.
29. Maternity Leave.

2. Clause 9.—Overtime: After subclause (5) of this clause, insert the following new subclause (6):

(6) A worker who is recalled to work shall be paid for a minimum of three hours at overtime rates.

3. Clause 12.—Annual Leave: Delete this clause and insert in lieu:

12.—Annual Leave.

(1) Except as hereinafter provided a period of four consecutive weeks' leave with payment of ordinary wages as prescribed shall be allowed annually to a worker by his/her employer after a period of 12 months' continuous service with such employer.

(2) A worker before going on leave shall be paid the wages he/she would have received in respect of the ordinary time he/she would have worked had he/she not been on leave during the relevant period.

(3) (a) In addition to his/her payment for annual leave a worker shall receive a loading of 17.5 per cent calculated on his/her ordinary rate of wage.

(b) The loading prescribed by this subclause shall not apply to proportionate leave on termination.

(4) If any award holiday falls within a worker's period of annual leave and is observed on a day which in the case of that worker would have been an ordinary working day, there shall be added to that period one day being an ordinary day, for each such holiday observed as aforesaid.

(5) If after one month's continuous service in any qualifying period a worker lawfully leaves his/her employment or his/her employment is terminated by the employer through no fault of the worker, the worker shall be paid 3.08 hours' pay at his/her ordinary rate of wage in respect of each completed week of service.

(6) Any time in respect of which a worker is absent from work except time for which he/she is entitled to claim sick pay or time spent on holidays, annual leave or long service leave as prescribed by this award shall not count for the purpose of determining his/her right to annual leave.

(7) In the event of a worker being employed by an employer for portion only of a year he/she shall only be entitled subject to subclause (5) of this clause to such leave on full pay as is proportionate to his/her length of service during that period with such employer, and if such leave is not equal to the leave given to the other workers, he/she shall not be entitled to work or pay whilst the other workers of such employer are on leave on full pay.

(8) A worker whose employment terminates after he/she has completed a 12 monthly qualifying period and who has not been allowed the leave prescribed under this clause in respect of that qualifying period shall be given payment as prescribed in subclauses (2) and (3) of this clause in lieu of that leave or in lieu of so much of that leave as has not been allowed unless:

(a) he/she has been justifiably dismissed for misconduct; and

(b) the misconduct for which he/she has been dismissed occurred prior to the completion of that qualifying period.

(9) Notwithstanding anything else herein contained an employer who observes a Christmas close down for the purpose of granting annual leave may require a worker to take his/her annual leave in not more than two periods but neither of such periods shall be less than one week.

(10) The provisions of this clause shall not apply to casual workers.

(11) In special circumstances and by mutual consent of the employer, the worker and the union concerned, annual leave may be taken in not more than two periods.

4. Clause 21.—Preference to Unionists: Delete this clause and insert in lieu:

21.—Higher Duties.

A worker who performs duties which carry a higher minimum rate than that which such worker usually performs shall be entitled to the higher minimum rate while so employed; provided that where such worker is engaged in the higher grade of work for more than two hours in any one day, the worker shall be paid the higher rate for the whole day.

5. Clause 22.—Payment of Wages: Delete this clause and insert in lieu:

22.—Payment of Wages.

(1) All wages shall be paid weekly; not later than Friday in each week and shall be available in the time of the employer.

(2) Where an obligation to pay a final amount contains a decimal figure of 0.5 of a cent or more, the amount to be paid shall be the next whole cent. Example — 5.5 cents becomes 6.0 cents. Where the amount to be paid contains a decimal figure of less than 0.5 of a cent, such decimal figure shall be disregarded. Example — 5.4 cents becomes 5.0 cents.

(3) No deduction shall be made from a worker's wages unless the worker has authorised such deduction in writing.

6. Clause 23.—Meal Money: Delete this clause and insert in lieu:

23.—Meal Money.

A worker required to work overtime for more than two hours without being notified on the previous day or earlier, that he/she will be so required to work shall be supplied with a meal by the employer or paid $2.71 for a meal.

If the amount of overtime required to be worked necessitates a second or subsequent meal, the employer shall, unless he/she has notified the workers concerned on the previous day or earlier that such a second or subsequent meal will also be required, provide such meals or pay an amount of $2.17 for each second or subsequent meal.

No such payments need to be made to workers living in the same locality as their workshops who can reasonably return home for such meals.

If a worker in consequence of receiving such notice has provided him/herself with a meal or meals and is not required to work overtime, or is required to work less overtime than notified, he/she shall be paid the amount above prescribed in respect of the meals not then required.

7. Clause 24.—Bereavement Leave: Delete this clause and insert in lieu:

24.—Bereavement Leave.

(1) A worker shall, on the death within Australia of a spouse, *de facto* spouse, parent, parent-in-law, brother, sister, child or stepchild, be entitled on notice, of leave up to and including the day of the funeral of such relation and such leave shall be without deduction of pay for a period not exceeding the number of hours by the worker in two ordinary working days. Proof of such death shall be furnished by the worker to the satisfaction of the employer.

(2) Provided that payment in respect of bereavement leave is to be made only where the worker otherwise would have been on duty and shall not be granted in any case where the worker concerned would have been off duty in accordance with his/her roster, or on long service leave, annual leave, sick leave, workers' compensation, leave without pay or on a public holiday.

METAL TRADES (General).
Award No. 13 of 1965.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 75 of 1985.

Between Electrical Trades Union of Workers of Australia (Western Australian Branch), Perth, Applicant and Anchorage Butchers Pty Ltd and Others, Respondents.

Order.

HAVING heard Mr L.J. Benfell on behalf of the applicant and Mr L. Girdlestone on behalf of the respondents, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby orders —

That the Metal Trades (General) Award No. 13 of 1965 be varied in accordance with the following Schedule and that such variation shall have effect as from the beginning of the first pay period commencing on or after the date hereof.

Dated at Perth this 20th day of March 1985.

(Sgd.) G.G. HALLIWELL,
[L.S.] Commissioner.

Schedule.

Part I — General.

Clause 21.—Distant Work: Delete subclauses (4) and (5) of this clause and insert the following in lieu:

(4) A worker to whom the provisions of subclause (1) of this clause apply shall be paid an allowance of $13.00 for any weekend that he returns to his home from the job but only if —

(a) he advises the employer or his agent of his intention no later than the Tuesday immediately preceding the weekend in which he so returns;

(b) he is not required for work during that weekend;

(c) he returns to the job on the first working day following the weekend; and

(d) the employer does not provide or offer to provide suitable transport.

(5) Where a worker, supplied with board and lodging by his employer, is required to live more than 800 metres from the job he shall be provided with suitable transport to and from that job or be paid an allowance of $5.75 per day provided that where the time actually spent in travelling either to or from the job exceeds 20 minutes, that excess time shall be paid for at ordinary rates whether or not suitable transport is supplied by the employer.

Part II — Construction Work.

Clause 6.—Allowance for Travelling and Employment in Construction Work: Delete paragraphs (a), (b) and (c) of subclause (1) of this clause and insert the following in lieu:

(a) On places within a radius of 50 kilometres from the General Post Office, Perth — $6.50 per day.

(b) For each additional kilometre to a radius of 60 kilometres from the General Post Office, Perth — 33 cents per kilometre.

(c) Subject to the provisions of paragraph (d) work performed at places beyond a 60 kilometre radius from the General Post Office, Perth shall be deemed to be distant work unless the employer and the workers, with the consent of the union, agree in any particular case that the travelling allowance for such work shall be paid under this clause in which case an additional allowance of 33 cents per kilometre shall be paid for each kilometre in excess of the 60 kilometre radius.

Clause 7.—Distant Work: Delete subclauses (6) and (7) of this clause and insert the following in lieu:

(6) A worker to whom the provisions of subclause (1) of this clause apply shall be paid an allowance of $13.00 for any weekend that he returns to his home from the job but only if —

(a) he advises the employer or his agent of his intention no later than the Tuesday immediately preceding the weekend in which he so returns;

(b) he is not required for work during that weekend;

(c) he returns to the job on the first working day following the weekend; and

(d) the employer does not provide or offer to provide suitable transport.

(7) Where a worker, supplied with board and lodging by his employer, is required to live more than 800 metres from the job he shall be provided with suitable transport to and from that job or be paid an allowance of $5.75 per day provided that where the time actually spent in travelling either to or from the job exceeds 20 minutes, that excess time shall be paid for at ordinary rates whether or not suitable transport is supplied by the employer.

MINERAL EARTHS EMPLOYEES'.
Award No. 9 of 1975.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 1034 of 1984.

Between the Federated Miscellaneous Workers' Union of Australia, Hospital, Service and Miscellaneous, W.A. Branch, Applicant and Universal Milling Co. Pty Ltd and Others, Respondents.

Order.

HAVING heard Dr S.A. Kennedy on behalf of the applicant and Mr J.N. Uphill on behalf of the respondents, and by consent, the Commission in Court Session, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders —

That the Mineral Earths Employees' Award No. 9 of 1975 as varied be further varied in accordance with the following schedule and that such variation shall have effect as from the beginning of the first pay period commencing on or after 18 March 1985.

Dated at Perth this 18th day of March 1985.
By the Commission in Court Session.

(Sgd.) B.J. COLLIER,
[L.S.] Commissioner.

Schedule.

1. Clause 2.—Arrangement: Delete this clause and insert in lieu:

2.—Arrangement.

2. Clause 7.—Overtime: Delete this clause and insert in lieu:

7.—Overtime.

(1) All work performed before the usual starting time or beyond the usual finishing time, or beyond eight hours on any one day or shift, shall be deemed overtime and shall be paid for at the rate of time and a half for the first two hours and double time thereafter.

(2) Call back — Where a worker is recalled to work after leaving the job he/she shall be paid at least three hours at overtime rates.

(3) When a worker is required for duty during his/her usual meal time and his/her meal time is thereby postponed for more than one hour he/she shall be paid at overtime rates until he/she gets his/her meal.

(4) (a) Work done on Saturday after 12 noon or on Sunday, shall be paid for at the rate of double time.

(b) Work done on any day prescribed as a holiday under this award shall be paid for at the rate of double time and a half.

(5) Any worker who is required to work on Sunday shall be paid a minimum of three hours at the rate applicable for that day.

(6) Where a worker without being notified on the previous day or earlier is required to continue working after the usual knock-off time for more than two hours, he/she shall be provided with any meal required or he/she shall be paid $2.71 in lieu thereof; provided that this payment need not be made to any worker residing in the same locality as his/her place of employment who can reasonably return home for a meal.

(7) Notwithstanding anything contained in this award —

(a) an employer may require any worker to work reasonable overtime at overtime rates and such worker shall work overtime in accordance with such requirements;

(b) no organisation, party to this award or worker or workers covered by this award shall in any way, whether directly or indirectly, be a party to or concerned in any ban, limitation or restriction upon the working of overtime in accordance with the requirements of this subclause.

3. Clause 16A.—Annual Leave: Delete this clause and insert in lieu:

16A.—Annual Leave.

(1) Except as hereinafter provided a period of four consecutive weeks' leave with payment of ordinary wages as prescribed shall be allowed annually to a worker by his/her employer after a period of 12 months' continuous service with that employer.

(2) A worker before going on leave shall be paid the wages he/she would have received in respect of the ordinary time he/she would have worked had he/she not been on leave during the relevant period.

(3) (a) In addition to his/her payment for annual leave a worker shall be paid a loading of 17.5 per cent calculated on his/her ordinary rate of wage.

(b) The loading prescribed by this subclause shall not apply to proportionate leave on termination.

(4) If any prescribed holiday falls within a worker's period of annual leave and is observed on a day which in the case of that worker would have been an ordinary working day there shall be added to that period one day being an ordinary working day, for each such holiday observed as aforesaid.

(5) Any time in respect of which a worker is absent from work, except time for which he/she is entitled to claim sick pay or time spent on holidays, annual leave or long service leave as prescribed by this award, shall not count for the purpose of determining his/her right to annual leave.

(6) If, after one month's continuous service in any qualifying period, a worker lawfully leaves his/her employment or his/her employment is terminated by his/her employer through no fault of the worker, the worker shall be paid 3.08 hours' pay at his/her ordinary rate of wage in respect of each completed week of continuous service.

(7) In the event of a worker being employed by an employer for portion only of a year, he/she shall only be entitled, subject to subclause (6) of this clause, to such leave on full pay as is proportionate to his/her length of service during that period with such employer and, if such leave is not equal to the leave given to the other workers, he/she shall not be entitled to work or pay whilst the other workers of such employer are on leave on full pay.

(8) A worker whose employment terminates after he/she has completed a 12 monthly qualifying period and who has not been allowed the leave prescribed under this clause in respect of that qualifying period shall be given payment as prescribed in subclauses (2) and (3) of this clause in lieu of that leave or in a case to which subclause (9) of this clause applies, in lieu of so much of that leave as has not been allowed unless:

(a) he/she has been justifiably dismissed for misconduct, and

(b) the misconduct for which he/she has been dismissed occurred prior to the completion of that qualifying period.

(9) In special circumstances and by mutual consent of the employer, the worker and the union concerned, annual leave may be taken in not more than two periods.

(10) Notwithstanding anything else herein contained an employer who observes a Christmas close-down for the purpose of granting annual leave may require a worker to take his/her annual leave in not more than two periods but neither of such periods shall be less than one week.

(11) The provisions of this clause shall not apply to casual workers.

4. Clause 24.—Bereavement Leave: Delete this clause and insert in lieu:

24.—Bereavement Leave.

A worker shall, on the death within Australia of a spouse, *de facto* spouse, parent, parent-in-law, brother, sister, child or stepchild, grandfather or grandmother be entitled on notice, of leave up to and including the day of the funeral of such relation and such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the worker in two ordinary working days. Proof of such death shall be furnished by the worker to the satisfaction of his/her employer.

Provided that payment in respect of bereavement leave is to be made only where the worker otherwise would have been on duty and shall not be granted in any case where the worker concerned would have been off duty in accordance with his/her roster, or on long service leave, annual leave, sick leave, workers' compensation, leave without pay or on a public holiday.

5. Immediately after Clause 25.—Maternity Leave, add the following new clause:

26.—Payment of Wages.

(1) All wages will be paid in the employer's time.

(2) No deduction shall be made from a worker's wages unless the worker has authorised such deduction in writing.

PHOTOGRAPHIC INDUSTRY.
Award No. A9 of 1980.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 1044 of 1984.

Between the Federated Miscellaneous Workers Union of Australia, Hospital, Service and Miscellaneous, W.A. Branch, Applicant and Illustrations Pty Ltd and Others, Respondents.

Order.

HAVING heard Dr S.A. Kennedy on behalf of the applicant and Mr J.N. Uphill on behalf of the respondents, and by consent, the Commission in Court Session, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders —

That the Photographic Industry Award No. A9 of 1980 as varied be further varied in accordance with the following schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 18 March 1985.

Dated at Perth this 18th day of March 1985.

By the Commission in Court Session.

(Sgd.) B.J. COLLIER,
[L.S.] Commissioner.

Schedule.

1. Clause 2.—Arrangement: Immediately after the numbers and title "26.—Maternity Leave", add the numbers and title "27.—Payment of Wages".

2. Clause 8.—Overtime: Delete this clause and insert in lieu:

8.—Overtime.

(1) All time worked beyond the hours of duty shall be paid for at the rate of time and a half for the first two hours and double time thereafter.

(2) All work performed on Saturday after 12 noon or on Sunday shall be paid for double time rates.

(3) All work performed on any day prescribed as a holiday under this award shall be paid at the rate of double time and a half.

(4) (a) An employer may require any worker to work reasonable overtime at overtime rates, and such worker shall work overtime in accordance with such requirement.

(b) No organisation, party to this award, or worker or workers covered by this award, shall, in any way, whether directly or indirectly, be a party to or concerned in any ban, limitation or restriction upon the working of overtime in accordance with the requirements of this subclause.

(5) In the computation of overtime each day's work shall stand alone.

(6) A meal break of not more than one hour nor less than 30 minutes shall be granted each day.

(7) A worker recalled to work after his/her normal finishing time shall be paid a minimum of three hours at the appropriate overtime rate.

3. Clause 9A.—Annual Leave: Delete this clause and insert in lieu:

9A.—Annual Leave.

(1) (a) Except as hereinafter provided a period of four consecutive weeks' leave with payment of ordinary wages as prescribed shall be allowed annually to a worker by his/her employer and shall be taken annually by the worker after a period of 12 months' continuous service with that employer.

(b) Where, pursuant to paragraph (3) of subclause (2) Long Service of the Long Service Leave provisions published in volume 64 *Western Australian Industrial Gazette* at pages one to four, the period of continuous service which a worker has had with the transmittor (including any such service with any prior transmittor) is deemed to be service of the worker with the transmittee then that period of continuous service shall be deemed to be service with the transmittee for the purposes of this subclause.

(2) A worker before going on leave shall be paid the wages he/she would have received in respect of the ordinary time he/she would have worked had he/she not been on leave during the relevant period.

(3) (a) During a period of annual leave a worker shall be paid a loading of 17.5 per cent calculated on his/her ordinary wages as prescribed.

(b) The loading prescribed by this subclause shall not apply to proportionate leave on termination.

(4) If any prescribed holiday falls within a worker's period of annual leave and is observed on a day which in the case of that worker would have been an ordinary working day there shall be added to the period one day being an ordinary working day for each such holiday observed as aforesaid.

(5) Any time in respect of which a worker is absent from work except time for which he/she is entitled to claim sick pay or time spent on holidays, annual leave or long service leave as prescribed by this award, shall not count for the purpose of determining his/her right to annual leave.

(6) (a) For the purposes of this clause service shall be deemed to be continuous notwithstanding —

(i) the transmission of business where paragraph (b) of subclause (1) of this clause applies;

(ii) any absence from work referred to in subclause (5) of this clause;

(iii) any absence from work on account of personal sickness or accident proof whereof shall be upon the worker or on account of leave granted by the employer;

(iv) any absence with reasonable cause proof whereof shall be upon the worker but in such a case the worker shall inform the employer in writing, if practicable, within seven days of the commencement of the cause.

(b) Any absence from work by reason of any cause not being a cause specified in paragraph (a) hereof shall not be deemed to break the continuity of service for the purposes of this clause unless the employer during the absence or within 14 days of the termination of the absence notifies the worker in writing that such absence will be regarded as having broken the continuity of service.

Such notice may be given to a worker by delivering it to him personally or by posting it to his/her last known address in which case it shall be deemed to have reached the worker in due course of post or, where a number of workers are absent from work, by posting up of a notification in the employer's establishment.

(c) Any absence from duty referred to in this subclause shall not, except as provided in subclause (5) of this clause, be taken into account in calculating the period of 12 months' continuous service.

(7) (a) A worker whose employment terminates after he/she has completed a 12 monthly qualifying period and who has not been allowed the leave prescribed under this clause in respect of that qualifying period shall be given payment as prescribed in subclauses (2) and (3) of this clause in lieu of that leave or, in a case to which subclause (8) of this clause applies, in lieu of so much of that leave as has not been allowed unless —

(i) he/she has been justifiably dismissed for misconduct; and

(ii) the misconduct for which he/she has been dismissed occurred prior to the completion of that qualifying period.

(b) If, after one month's continuous service in any qualifying 12 monthly period, a worker lawfully leaves his/her employment, or his/her employment is terminated by the employer through no fault of the worker, the worker shall be paid 3.08 hours' pay at his/her ordinary rate of wage in respect of each completed week of continuous service.

(8) In special circumstances and by mutual consent of the employer, the worker and the union concerned, annual leave may be taken in not more than two periods, but neither such period shall be less than one week.

(9) By arrangement between the employer and the worker annual leave may be allowed to accumulate from year to year but where the leave to which a worker is entitled or any portion thereof is allowed to accumulate to meet the convenience of the worker the ordinary wage for that leave shall be the ordinary wage applicable to the worker at the date at which he/she became entitled to the leave unless the employer agrees in writing that the wage be that applicable at the date the leave commences.

(10) The provisions of this clause shall not apply to casual workers.

4. Clause 13.—Meal Money: Delete this clause and insert in lieu:

13.—Meal Money.

(1) (a) Subject to the provisions of this clause a worker who is required to continue working after his/her usual ceasing time for more than two hours shall be supplied with a meal by his/her employer or be paid $2.71 for a meal.

(b) For the purpose of paragraph (a) of this subclause the continuity of work shall not be deemed to have been interrupted by any meal break allowed.

(2) Where the amount of overtime worked necessitates more than one meal, the employer shall supply each such additional meal or pay to the worker $2.15 for each such additional meal.

(3) The provisions of subclauses (1) and (2) of this clause shall not apply —

(a) in respect of any period of overtime for which the worker has been notified on the previous day or earlier that he/she will be required; or

(b) to any worker who lives in the locality in which the place of work is situated in respect of any meal for which he/she can reasonably go home.

5. Immediately after Clause 26.—Maternity Leave, add the following new clause:

27.—Payment of Wages.

(1) All wages shall be paid in the employer's time.

(2) No deduction shall be made from a worker's wages unless the worker has authorised such deduction in writing.

PRINTING (Newspaper).
Award No. 23 of 1979.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 150 of 1985.

Between West Australian Newspapers Ltd, Applicant and Printing and Kindred Industries Union, Western Australian Branch, Industrial Union of Workers, Respondent.

Order.

HAVING heard Mr C. Stanley on behalf of the Applicant and Mr G. Bucknall on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, and by consent, hereby orders —

That the Printing (Newspaper) Award No. 23 of 1979 as varied be further varied by the deletion of the classification of Photo-Engraver-Multi-Skilled-Basic from Clause 39.—Wages of the award and the insertion in lieu thereof of the classification of Graphic Reproducer-Multi-Skilled-Basic.

Dated at Perth this 26th day of April 1985.

(Sgd.) J.A. NEGUS,
[L.S.] Commissioner.

PRINTING (Newspaper).
Award No. 23 of 1979.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 105 of 1985.

Between Printing and Kindred Industries Union, W.A. Branch, Industrial Union of Workers, Applicant and Nationwide News Pty Ltd trading as The Sunday Times, Respondent.

Before Mr Commissioner J.A. Negus.
The 18th and 19th days of April 1985.

Mr J. Williams on behalf of the Applicant.

Mr L.A. Jackson (of Counsel) on behalf of the Respondent.

Mr B. McCarthy intervening on behalf of the Confederation of W.A. Industry.

Mr C. Stanley intervening on behalf of West Australian Newspapers.

Reasons for Decision.

THE COMMISSIONER: This application to vary the Printing (Newspaper) Award No. 23 of 1979 by the addition of a new Clause 39 1 (a) to apply only to the Sunday Times, was lodged with the Commission on 15 February 1985. The effect of the new clause would be to provide wage increases for four classifications of workers employed at the Sunday Times newspaper by the Respondent company.

The Respondent company agrees with the claim of the Applicant union and also seeks an order that the new clause, if approved, should take effect from 10 July 1984.

The matter first came to the Commission by way of a proposed agreement which was discussed at an Anomalies Conference chaired by the Chief Commissioner. As a result of that conference, the parties were advised that their only hope of pursuing the matter to their desired end was to establish a work value case under Principle 4 of the guidelines.

The Commission heard the parties and the intervenors, carried out inspections and heard testimony from the expert witnesses on 18 and 19 April 1985.

Mr McCarthy, intervening on behalf of the Confederation, was anxious that the guidelines should be strictly adhered to in the interests of the community at large. He drew attention to Principle 4 (f) which warns the Commission to "guard against contrived classifications and over classification of jobs". He also suggested that the case should be drawn to the attention of the Chief Commissioner in accordance with section 27 (1) (t) of the Act for possible reference to a Commission in Court Session. There was an adjournment for that purpose and in the event, the matter proceeded before the Commission as presently constituted.

Mr Stanley, intervening on behalf of West Australian Newspapers Ltd, was anxious to ensure that any wage increase approved in these proceedings would not flow-on to employees at the West Australian. He indicated that claims for similar amounts had already been made by the union. The Commission was assured by Mr Williams that the circumstances of the two newspapers in regard to justifying claims were "as different as chalk and cheese". He indicated that the union could not justify a flow-on to the West Australian; there were no grounds for a case and he would not be arguing it. The Commission takes these statements to be a re-affirmation by the union of its commitment to the wage fixing principles and for that reason as well as other matters spelt out in the evidence, it is reasonable to assume that there will be no flow-on effect as a result of this application.

The situation in the printing and publishing departments at the Sunday Times is, I understand, unique in Australia. There is a team of workers, almost 50 in number, comprising about 30 printing machinists, 11 publishing hands, four brake hands and two general hands. The increases in wages, for which both parties seek Commission approval, amount to $21.60, $18.30, $18.30 and $16.80 per week respectively for the four groups.

Each of the workers is an integral part of a sophisticated printing and publishing process which was subjected to two major technological changes during 1984. The first innovation was the introduction of photopolymer plates to the letterpresses in May 1984 and the other development was the five million dollar FERAG conveyor belt for collation and publishing. The FERAG became operational in the latter part of 1984 and is the only system of its kind in Australia. It was submitted by the applicant that the new technology has saved the company $19 500 per week in casual wage costs. The number of casuals employed on a Friday has been reduced from 100 to 14 and on a Saturday from 140 to 26.

The parties were careful in evidence to establish the differences between the operations at the Sunday Times and those at the West Australian. The Sunday Times operates a mixed function printing shop with rotary letterpresses, webfed litho or offset presses and commercial machines. All of the printing machinists are required to be skilled in all three areas and they are rotated through the sections on a monthly roster. Much stress was placed on the policy at the Sunday Times of employing only indentured tradespeople.

An example was quoted of a person who was qualified to be a machinist at the West Australian but could be employed only as a brake hand at the Sunday Times because he had not served an apprenticeship. Prior to the introduction of photopolymer plates the machinists were in receipt of special allowances which varied up to a maximum amount of $24.00 per week according to the length of time spent in the offset printing area. These allowances were absorbed into the $21.60 per week increase which the parties have calculated as being the appropriate work value increase for machinists when they were negotiating their agreement on this matter.

It is accepted at this point that the "mixed function rotational" aspect of the duties outlined above does indeed constitute a marked change in the work which one would otherwise envisage under the classification of printing machinist in the award.

The actual change in work involved for the machinists as a result of the new photopolymer plates turns on the nature of those plates as compared with the hot metal stereoplates which were formerly used. It was submitted that the depth of print face on the old hot metal plates was about 38 thousandths of an inch whilst on the new photopolymer plates this was reduced to 13 thousandths of an inch. The effect of the reduction is to require a much finer tolerance in the setting of the rollers on the presses. A small setting inaccuracy across a 70 inch roller can result in the background being inked as well as the print. The overall thinness of the plate also allows expansion and contraction through temperature variations whilst the presses are operating. The witness, Mr Johnston was justifiably proud of the achievement of his work team who had gained second placing in a world wide competition sponsored by the manufacturers of the photopolymer plates.

Mr Stanley, intervening, led evidence from experts employed by West Australian Newspapers, seeking to discount or deny the suggested extra skills involved. It was admitted by those witnesses that they were not themselves tradesman printers but in their managerial and supervisory capacities they claimed many years of experience in newspaper operations. Their evidence served Mr Stanley's purpose without damaging the case being developed by the parties. They did convince the Commission that the photopolymer plates about to be introduced at the West Australian are markedly different from those under consideration at the Sunday Times.

The depth of print face on the hot metal system at the West Australian was quoted as 27 thousandths of an inch and the new plates will have a print depth of 20 thousandths of an inch. The magnitude of the change from the old to the new will in that respect be much less than has been introduced at the Sunday Times.

The parties had greater difficulty in establishing that there had been a significant change in the tasks performed by brake hands. There is clearly a good deal of skill involved in dressing new rolls of paper and in feeding those reels into the operation. The FERAG system has required some changes in the tasks performed. The correct placing of an adhesive, metal tag is essential to the later automatic rejection by the system of the spoilage copies. It is arguable that brake hands have always had the task of placing some sort of marker on the reels, even when the spoiled copies were to be removed manually. The rotation in duties from one type of press to another involves the brake hands in operating three different types of braking systems at various times and this adds to the weight of their claim to be included.

It is not possible to establish any change in the work of the general hands but since there are only two of them in the 50 strong team it is reasonable to follow the lead given by the Commission in Court Session in the Cliffs Robe River Agreement No. 10 of 1979 (65 WAIG p. 145). On that occasion the Commissioners said —

> While we consider one or two of the changes to be borderline, they are ones where costs are negligible and, in the circumstances of the package negotiations, which include a firm guarantee as to term, we consider that no good purpose would be served if the Commission acted pedantically.

To a certain extent, the same reasoning can be applied to the inclusion of the brake hands if the matter was in any doubt.

Little need be said of the publishing hands who operate the new FERAG system. As Mr Jackson remarked — it is a "most extraordinary contraption" which one could observe for hours at a time. The changes in the work would be obvious to the most casual observer. As suggested earlier, it is the cost savings in this area alone which provide reassurance, if it was needed, that in approving the award variations as requested no violence is being done to the spirit of the wage fixing principles.

On the question of the quantum of the increases, it has been remarked on numerous occasions that wage fixation is at best an imprecise science. The parties to this application have agreed on the appropriate amounts which clearly bear some relationship to the allowances which are being absorbed by the increases. The calculations have been made with a view to preserving the long established relativities among the four classifications. Attention might well be drawn to the Principles in section 4 (a) where it is stated:

> The strict test for an alteration in wage rates is that the change in the nature of the work should constitute such a significant net addition to work requirements as to warrant the creation of a new classification.

In effect this award variation is following that direction precisely. The striking of a new wage rate, to apply specifically to the four classifications at the Sunday Times and to those workers alone, effectively creates four new and unique classifications.

The question of retrospectivity provides some little difficulty as the Commission understands that the FERAG system, which provides so much of the justification for the success of the application, was not operational on even a partial basis until 22 July 1984. The new clause should therefore have effect from that date and an order will issue to reflect that view.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

No. 105 of 1985.

Between Printing and Kindred Industries Union, W.A. Branch, Applicant and Nationwide News Pty Ltd trading as The Sunday Times, Respondent.

Order.

HAVING heard Mr J. Williams on behalf of the applicant and Mr L.A. Jackson (of Counsel) on behalf of the respondent, Mr B. McCarthy on behalf of the Confederation of Western Australian Industry (Intervening) and Mr C. Stanley on behalf of West Australian Newspapers Pty Ltd (Intervening) and by consent, the Commission, being satisfied that the variation conforms with the principles enunciated by the Commission in Court Session in Matter No. 461 of 1983 and pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby orders —

> That the Printing (Newspaper) Award No. 23 of 1979 as varied be further varied in accordance with the following schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 22 July 1984.

Dated at Perth this 29th day of April 1985.

(Sgd.) J.A. NEGUS,
[L.S.] Commissioner.

Schedule.

Add a new Clause 39 (1) (a):—

(1) (a) To apply to the Sunday Times only.

Printing Machinist	$363.20
Brake Hand	$308.40
General Hand	$287.00
Publishing Hand	$306.80

RADIO AND TELEVISION EMPLOYEES.
Award No. 3 of 1980.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 28 of 1985.

Between Electrical Trades Union of Workers of Australia (Western Australian Branch), Perth, Applicant and Hills Industries Ltd and Others, Respondents.

Order.

HAVING heard Mr L.J. Benfell on behalf of the applicant and Mr L. Girdlestone on behalf of the respondents, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby orders —

That the Radio and Television Employees Award No. 3 of 1980 be varied in accordance with the following Schedule and that such variation shall have effect as from the beginning of the first pay period commencing on or after the date hereof.

Dated at Perth this 20th day of March 1985.

(Sgd.) G.G. HALLIWELL,
[L.S.] Commissioner.

Schedule.

Clause 14.—Distant Work: Delete subclause (5) and insert the following in lieu:

(5) Where an employee, supplied with board and lodging by his employer, is required to live more than 800 metres from the job he shall be provided with suitable transport to and from that job or be paid an allowance of $5.75 per day provided that where the time actually spent in travelling either to or from the job exceeds 20 minutes, that excess travelling time shall be paid for at ordinary rates whether or not suitable transport is supplied by the employer.

RAILWAYS OFFICERS'.
Award No. RCB A1 of 1985.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. RCB 1 of 1985.

Between West Australian Railway Officers' Union, Applicant and Western Australian Government Railways Commission, Respondent.

Order.

HAVING heard Mr R.L. Robinson on behalf of the Applicant and Mr C. Mitsopoulos on behalf of the Respondent, the Railways Classification Board, pursuant to the powers conferred on it under the Industrial Relations Act 1979, having satisfied itself that the terms of the General Order of the Commission No. 461 of 1983, dated 2 March 1984, as amended, have been complied with, and by consent, hereby orders —

That the Railways Officers' Award No. RCB A1 of 1985 be amended in accordance with the following schedule with effect on and from 12 February 1985.

Dated at Perth this 24th day of April 1985.

(Sgd.) G.L. FIELDING,
[L.S.] Chairman, Railways Classification Board.

Schedule.

1. Clause 18.—Away From Home and Meal Allowances: Delete subclauses (1) (a) and (b), 2 (c) and (3) of this clause and insert in lieu the following:

(1) (a) Allowances to meet travelling expenses of officers where an overnight stay at a hotel or motel is involved will be paid:

	A All Officers for 42 days per day $	B Married Officers after 42 days per day $	C Single Officers after 42 days per day $
WA — Suburban Area	61.20	30.60	20.40
South of 26 degrees Latitude	53.90	26.95	17.95
Interstate — Capital City	85.20	42.60	28.40
Other than Capital City	53.90	26.95	17.95

(b) Where accommodation other than at a hotel or motel is obtained:

South of 26 degrees Latitude		$26.90
Interstate		$38.85
(2) (c)	(i) Breakfast	$5.40
	(ii) Lunch	$5.40
	(iii) Evening Meal	$12.35

(3) An officer travelling on duty within a radius of 50 kilometres from his normal place of employment which requires his absence from his home station over the usual meal period shall be paid the amount of $2.50 for each meal necessarily purchased, provided that

(i) such travelling is not a normal feature in the performance of his duties;

(ii) total reimbursement under this subclause for any one pay period shall not exceed the amount of $12.50.

2. Clause 22.—District Allowance: Delete subclause (1) of this clause and insert in lieu the following:

(1) Married Officers shall be paid allowances as under:

(a) $201 per annum — Esperance, Kalgoorlie, Miling, Mullewa, Southern Cross, Kambalda.

(b) $402 per annum — Trayning, Mogumber, Norseman.

(c) $679 per annum — Bencubbin, Kalannie, Koolyanobbing, Koorda, Mukinbudin, Newdegate, Perenjori, Wubin, Eneabba, Morawa.

(d) $1 358 per annum — Leonora, Salmon Gums.

SADDLERS AND LEATHER WORKERS'.
Award No. 7 of 1962.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 1098 of 1984.

Between the Federated Miscellaneous Workers Union of Australia, Hospital, Service and Miscellaneous, W.A. Branch, Applicant and A. & B. Leather & Canvas Manufacturers and Others, Respondents.

Order.

HAVING heard Dr S. Kennedy on behalf of the applicant and Mr Kenner on behalf of the respondents, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, having satisfied itself that the terms of the General Order of the Commission No. 461 of 1983, dated 2 March 1984, have been complied with, and by consent, hereby orders —

That the Saddlers and Leather Workers' Award No. 7 of 1962 be amended in accordance with the following schedule with effect from the beginning of the first pay period commencing on or after 3 April 1985.

Dated at Perth this 3rd day of April 1985.

(Sgd.) J.A. NEGUS,
[L.S.] Commissioner.

Schedule.

1. Clause 7.—Overtime: Immediately after subclause (4) of this clause, add the following:

(5) A worker who is recalled to work after his/her normal hours of duty shall be paid for a minimum of three hours at overtime rates.

2. Clause 8.—Meal Money: Delete this clause and insert the following in lieu:

8.—Meal Money.

A worker required to work overtime for more than two hours without being notified on the previous day or earlier, that he/she will be so required to work, shall be supplied with any meal required by the employer or paid $3.95 for such meal.

If the amount of overtime required to be worked necessitates a second or subsequent meal, the employer shall, unless he/she has notified the workers concerned on the previous day or earlier, that such a second or subsequent meal will also be required, provide such meals or pay an amount of $3.25 for each second or subsequent meal.

No such payments need be made to workers living in the same locality as their workshops who can reasonably return home for such meals.

If a worker in consequence of receiving such notice has provided him/herself with a meal or meals and is not required to work overtime, or is required to work less overtime than notified, he/she shall be paid the amount above prescribed in respect of the meals not then required.

3. Clause 15A.—Annual Leave: Delete this clause and insert the following in lieu:

15A.—Annual Leave.

(1) Except as hereinafter provided a period of four consecutive weeks' leave with payment of ordinary wages as prescribed shall be allowed annually to a worker by his/her employer after a period of 12 months' continuous service with such employer.

(2) A worker before going on leave shall be paid the wages he/she would have received in respect of the ordinary time he/she would have worked had he/she not been on leave during the relevant period.

(3) (a) During a period of annual leave a worker shall be paid a loading of 17.5 per cent calculated on his/her ordinary rate of wage. Provided that where the worker would have received any additional rates for the work performed in ordinary hours, as prescribed by this award, had he/she not been on leave during the relevant period and such additional rates would have entitled him/her to a greater amount than the loading of 17.5 per cent, then such additional rates shall be added to his/her ordinary rate of wage in lieu of the 17.5 per cent loading. Provided further, that if the additional rates would have entitled him/her to a lesser amount than the loading of 17.5 per cent, then such loading of 17.5 per cent shall be added to his/her ordinary rate of wage in lieu of the additional rates.

(b) The loading prescribed by this subclause shall not apply to proportionate leave on termination.

(4) If any award holiday falls within a worker's period of annual leave and is observed on a day which in the case of that worker would have been an ordinary working day, there shall be added to that period one day being an ordinary day, for each such holiday observed as aforesaid.

(5) If, after one month's continuous service in any qualifying 12 monthly period a worker lawfully leaves his/her employment or his/her employment is terminated by the employer through no fault of the worker, the worker shall be paid 3.08 hours' pay at his/her ordinary rate of wage in respect of each completed week of continuous service.

(6) Any time in respect of which a worker is absent from work except time for which he/she is entitled to claim sick pay, or time spent on holidays, annual leave or long service leave as prescribed by this award, shall not count for the purpose of determining his/her right to annual leave.

(7) (a) Notwithstanding anything else herein contained an employer who observes a Christmas close-down for the purpose of granting annual leave may require a worker to take his/her annual leave in not more than two periods but neither of such periods shall be less than one week.

(b) In the event of a worker being employed by an employer for portion only of a year he/she shall only be entitled subject to subclause (5) of this clause to such leave on full pay as is proportionate to his/her length of service during that period with such employer and, if such leave is not equal to the leave given to the other workers, he/she shall not be entitled to work or pay whilst the other workers of such employer are on leave on full pay.

(8) In special circumstances and by mutual consent of the employer, the worker and the Union concerned, annual leave may be taken in not more than two periods.

(9) In addition any payment to which he/she may be entitled under subclause (5) of this clause, a worker whose employment terminates after he/she has completed a 12 monthly qualifying period and who has not been allowed the leave prescribed under this award in respect of that qualifying period shall be given payment in lieu of that leave or, in a case to which subclause (7) or (8) of this clause applies, in lieu of so much of that leave as has not been allowed, unless —

(a) he/she has been justifiably dismissed for misconduct; and

(b) the misconduct for which he/she has been dismissed occurred prior to the completion of that qualifying period.

(10) The provisions of this clause do not apply to casual workers.

4. Clause 24.—Special Rates: Delete this clause and insert the following in lieu:

24.—Special Rates.

Any worker required to repair goods which are of an unusually dirty or offensive nature shall be paid 22 cents per hour in addition to the ordinary rate.

5. Clause 28.—Payment of Wages: Delete this clause and insert the following in lieu:

28.—Payment of Wages.

(1) Where an obligation to pay a final amount contains a decimal figure of .5 of a cent or more, the amount to be paid shall be the next whole cent. Example — 5.5 cents becomes 6 cents. Where the amount to be paid contains a decimal figure of less than .5 of a cent, such decimal figure shall be disregarded. Example — 5.4 cents becomes 5 cents.

(2) All wages shall be paid in the employer's time.

(3) No deduction shall be made from a worker's wages unless the worker has authorised such deduction in writing.

6. Clause 30.—Bereavement Leave: Delete this clause and insert the following in lieu:

30.—Bereavement Leave.

A worker shall, on the death within Australia of a spouse, *de facto* spouse, parent, parent-in-law, brother, sister, child or step-child, be entitled on notice, of leave up to and including the day of the funeral of such relation and such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the worker in two ordinary working days. Proof of such death shall be furnished by the worker to the satisfaction of his/her employer.

Provided that payment in respect of bereavement leave is to be made only where the worker otherwise would have been on duty and shall not be granted in any case where the worker concerned would have been off duty in accordance with his/her roster, or on long service leave, annual leave, sick leave, workers' compensation, leave without pay or on a public holiday.

"STOREMEN (Government)."
Award No. 20 of 1969.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 10 of 1985.

Between the West Australian Shop Assistants and Warehouse Employees' Industrial Union of Workers, Perth, Applicant and the Treasurer of the State of Western Australia and Others, Respondents.

Order.

HAVING heard Mr J.A. Smith on behalf of the applicant, Mr J. Tinson on behalf of the Fremantle Port Authority and Mr B. Arlow on behalf of other respondents, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby orders:—

That the "Storemen (Government)" Award No. 20 of 1969 as varied, consolidated and varied be further varied in accordance with the following schedule and that such variation shall have effect as from the beginning of the first pay period, commencing on or after the 3rd day of April 1985.

Dated at Perth this 3rd day of April 1985.

(Sgd.) G.J. MARTIN,
[L.S.] Commissioner.

Schedule.

1. Clause 10.—Definitions: Add two new definitions to this clause in the following terms:—

"Storeman Operator I" means a worker carrying out the duties of a Storeman Grade I, who is required to operate the following Mechanical Equipment in the performance of his duties.

(a) Ride on power operated tow motor
(b) Ride on power operated pallet truck
(c) Walk beside power operated high lift stacker

"Storeman Operator II" means a worker carrying out the duties of a Storeman Grade I and who is required to operate the following Mechanical Equipment in the performance of his duties.

(a) Ride on power operated forklift
(b) High lift stacker
(c) High lift stock picker
(d) Power operated overhead traversing hoist

2. Clause 9.—Meal Money: Delete subclause (1) of this clause and insert in lieu:

(1) Where a worker is required to continue working after the usual finishing time for more than one hour, he shall be paid $4.10 for the purchase of any meal required.

3. Clause 20.—Wages: Delete this clause and insert in lieu:

20.—Wages.

The rates of wages payable to employees under this award shall be as follows:

(1) Adults (Classification and wage per week)

		First year of service	Second year of service	Third and subsequent year of service
(a)	Storeman in Charge	$330.80	$333.80	$336.80
(i)	Storeman GR 1	287.90	290.90	293.90
(ii)	Storeman GR 2	290.50	293.50	296.50
(iii)	Storeman GR 3	296.80	299.80	302.80
(iv)	Storeman GR 4	304.60	307.60	310.60
(v)	Storeman GR 5	320.60	323.60	326.60
(vi)	Storeman Operator I	297.40	300.40	303.40
(vii)	Storeman Operator II	301.60	304.60	307.60

(2) Junior Workers

(Minimum wages per week)

Under 16 years of age	$125.40
16 to 17 years of age	153.80
17 to 18 years of age	179.70
18 to 19 years of age	211.30
19 to 20 years of age	239.70
at 20 years of age	266.20

On attaining 21 years of age the worker shall advance to the second year of adult wage as prescribed in subclause (1) of this clause.

(3) (a) A worker other than those classified Storeman Operator GRI or GRII required to operate a ride-on power operated tow motor, a ride-on power operated pallet truck or a walk beside power operated high lift stacker in the performance of his duties shall be paid an additional 25 cents per hour whilst so engaged.

(b) A worker required to operate a ride-on power operated fork lift, high lift stacker or high lift stock picker or a power operated overhead traversing hoist in the performance of his duties shall be paid an additional 36 cents per hour whilst so engaged.

(4) Cold Chamber Allowances.

(a) A worker shall receive an additional payment for every hour of which he spends 20 minutes or more in a cold chamber in accordance with the following:

In a cold chamber in which the temperature is:

(i) Below 0 degrees Celsius to −20 degrees Celsius 38 cents per hour.

(ii) Below −20 degrees Celsius to −25 degrees Celsius 43 cents per hour.

(iii) Below −25 degrees Celsius 49 cents per hour.

(b) Employees required to work in temperatures less than −18.9 degress Celsius shall be medically examined at the employers expense.

(5) Casual workers shall receive 20 per centum in addition to the rates prescribed in this clause.

AWARDS — Application for variation of — no variation resulting.

GAOL OFFICERS'.
Award No. 12 of 1968.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 533 of 1984.

Between Western Australian Prison Officers Union of Workers, Applicant and The Hon. Minister for Prisons, Respondent.

Order.

HAVING heard Mr T.M. Connolly on behalf of the Applicant and Mr D.J. Cloghan on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders —

That the Application be and is hereby withdrawn by leave.

Dated at Perth this 27th day of March 1985.

(Sgd.) G.L. FIELDING,
[L.S.] Commissioner.

MEAT INDUSTRY (Wyndham).
Award No. A16 of 1981.

MEAT INDUSTRY (North West Abattoirs).
Award No. A18 of 1981.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 1139 of 1984.

Between Norwest Beef Industries Limited, Applicant and West Australian Branch, Australasian Meat Industry Employees' Union, Industrial Union of Workers, Perth, Respondent.

No. 1140 of 1984.

Between Derby Meat Processing Company Limited, Applicant and West Australian Branch, Australasian Meat Industry Employees' Union, Industrial Union of Workers, Perth, Respondent.

Before Mr Commissioner G.J. Martin.
The 16th day of April 1985.

Mr R.I. Viner QC and with him Mr F. Wilson of Counsel on behalf of the Applicants.

Mr J. Gerritsen on behalf of the Respondent.

Reasons for Decision.

THE COMMISSIONER: By these two applications, Orders are sought from the Commission correcting alleged errors contained in the "Meat Industry (Wyndham)" Award No. A16 of 1981 as varied (61 WAIG p. 893) and the "Meat Industry (North West Abattoirs)" Award No. A18 of 1981 as varied (61 WAIG p. 1209).

The ground upon which the applications are made and the details of the remedies sought are set out in the applicants "Amended Statement of Claim in Support of Application" for application No. 1139 of 1984 and which reads:

1. The Meat Industry (Wyndham) Award No. 16 of 1981 was consented to by the parties on 2 June 1981.
2. There was no dispute between the parties nor any doubt on the part of the Commission as to the meaning and application of Clauses 12 and 25 to tally employees at the time the Award was made as is evidenced by the transcript of proceedings in the matter heard on 2 June 1981; namely, that but for the changes referred to therein the new Award would operate in the same way as the Award it replaced had operated in the preceding season and thereby maintain the good industrial relations of that year.
3. An error was made in the Award or the Award which the Commission issued on 2 June 1981 was defective in that the words used in Clause 12 of the Award in respect of tallies and penalties did not, as the Commission has since found, give effect to the intention of the Commission or of the parties that the payment of penalties to tally employees should be assessed according to the number of carcasses presented and to apply penalty to the carcass rate in the same manner as the Award which it replaced had been applied.
4. The Commission, in exercise of its powers under section 41 (3) of the Act, should have required the parties to effect a variation to the terms of the Award consented to for the purpose of giving clear expression to the true intention of the parties.
5. The applicant applies to have the Commission correct the said error or rectify the said defect in the manner set out below in exercise of its powers under section 27 (m) of the Industrial

Arbitration Act or of its power to do what is just between the parties and its obligation to act according to equity and good conscience and the substantial merits of the case pursuant to section 27 (v) and section 26 of the Act and in exercise of its general jurisdiction under section 24 of the Act.

6. Clause 12 to provide that: The provisions of Clause 12 (1) (b) (i) and (ii), Clause 12 (2) (b) (i) and (ii), and Clause 12 (3) (b) (i) and (ii) shall only apply to the payment of penalty on each carcass processed. For the purposes of Clause 12 (1) (a), Clause 12 (2) (a), and Clause 12 (3) (a) and Clause 25 of this Award the daily tally of a tally employee and the excess tally of the tally employee shall be calculated on the number of carcasses processed each day.

The "Amended Statement of Claim in Support of Application" entered for application No. 1140 of 1984 apart from variations in the dates leading to the issuance of Award No. A18 of 1981 is in the same terms.

The applications are wholly opposed by the respondent.

By agreement between the parties the two applications were heard together.

I heard the applications on the 6th and 27th days of March 1985 and reserved my decision.

THE BACKGROUND.

The subject matter of the applications was first raised before the Commission in application Nos. 558 and 559 of 1983.

Those applications were made pursuant to section 46 of the Industrial Arbitration Act, seeking a declaration of the true interpretation of parts of Clause 12.—Tallies and Penalties of the "Meat Industry (Wyndham)" Award No. A16 of 1981 as varied and the "Meat Industry (North West Abattoirs)" Award No. A18 of 1981 as varied.

The applications were made by the union party to those two awards and which union is the respondent in the present proceedings.

In the reasons for decision of the 3rd day of February 1984 I endeavoured to simply describe the matter of disagreement between the parties in the following way:

> The particular point of difference between the parties centres upon the slaughtering, boning or slicing of bodies of beef and bulls or genuine stags exceeding the weights specified in paragraph (b) of subclauses (1), (2) and (3) of Clause 12.—Tallies and Penalties of the respective awards.
>
> For simplicity I will refer to such bodies and animals as "overweights".
>
> The paragraphs so referred to confer upon "overweights" a value greater than unity "for the purpose of calculating tally" and as previously stated the applicant contends that such values are equations or equivalents to be used in determining the tally total for the day and overtally payments in accordance with paragraphs (a), (b), (c) and (d) of subclause (2) — Tally Employees of Clause 25.—Overtime, whereas the respondents contend that those values are penalty rates not to be used in the manner suggested by the applicant but to create constant additional payments (64 WAIG p. 326 at p. 328).

and

> The difference between the two methods, in money terms becomes more pronounced as the value allocated to an overweight in excess of unity increases; for example a bull weighing in excess of 136 kilograms equals two beasts (61 WAIG p. 1209 at p. 1211).
>
> The difference in method arises from the applicant using the "overweight" value to increase the number of cattle actually processed to a number of cattle "deemed" to have been processed. The respondent's method deals only for tally purpose with the number of cattle actually processed and adds the overweight value to the number of overweights processed as an additional or penalty rate (64 WAIG p. 326 at p. 329).

I concluded upon the material before me in those matters (and which included a lengthy and detailed analysis of the historical background to the awards concerned and other awards) that:

> From all of the material I have traversed the following is clear.
>
> In the Meat Industry (State) Award which applies to the majority of employees and employers in the industry of killing, dressing and processing cattle in this state "overweights" are penalties for slaughtermen and equivalents for boners and slicers.
>
> Such a situation, illogical though it may appear in the case of boners and slicers and the criticism of penalty upon penalty or double counting is not so when it is understood that for these employees it is a recognised and confirmed method to convert portions of a carcase of different sizes or weight into standard units be they quarters or carcases (or in the case of the instant awards, sides).
>
> The instant awards were to mirror that situation in the expressed words of their author in the awards which preceded them but they did not and do not.
>
> The instant awards do not contain specific reference to the word equivalents although the provisions for boners are structured in the traditional manner of equivalents.
>
> The wording "for the purpose of calculating tally" refers to the final count of product processed for the day in units of head of cattle (carcases) for slaughtermen and sides of cattle for boners and slicers and if these words mean equivalents for "boners" they must have the same meaning for slaughtermen and slicers in the absence of any qualification to the contrary.
>
> Traditionally and generally the tally calculations for slicers are the same as for boners including the prescription of equivalents and their application to tally calculations.
>
> The respondents having regard to the reasons for decision accompanying those earlier awards and the author's subsequent confirmation of the intention derived therefrom were entitled to act in accordance therewith. However, their interpretation of the instant awards is traditionally correct in respect of slaughtermen but not for boners and slicers.
>
> The plain meaning of the two instant awards provides a clearly different interpretation and on the plain meaning of the uniforms words of the awards the applicant's interpretation is correct for slaughtermen, boners and slicers.
>
> Do I therefore determine this matter in the industrial relations sense in accordance with the findings I have itemised above or in the "strict sense" of interpretation.
>
> (64 WAIG p. 326 at p. 335)

In the result I concluded that I was bound to follow the rules of interpretation as enunciated from time to time by the Full Bench (see 63 WAIG p. 1159 at p. 1160) and as the meaning of the language read in its ordinary and natural sense is obtained the intentions of the parties and the award maker must be ignored.

I thus concluded:

> Accordingly I answer the question posed as follows —
>
> > The provisions of placita (i) and (ii) of paragraph (b), of subclause (1), paragraphs (b) and (d) of subclause (2) and paragraph (b) of subclause (3) of Clause 12.—Tallies and Penalties of the Meat Industry (Wyndham) Award No. A16 of 1981 as varied and the Meat

> Industry (North West Abattoirs) Award No. A18 of 1981 as varied are "equivalents" to be used for the purpose of determining the tally achieved on any day by slaughtermen, boners and slicers and payment for overtally pursuant to Clause 25.—Overtime, subclause (2) Tally Employees of the aforesaid awards.
>
> I consider that industrial relations equity would prevail if the applicant took this matter no further in the light of its background and that the parties varied the awards to operate for the next northern season to properly reflect the general practices at large in the industry.
> (64 WAIG p. 326 at p. 336)

The respondent employers to those applications appealed to a Full Bench of the Commission against my interpretation by matters Nos. 164 and 165 of 1984.

On the 22nd day of May 1984 the reasons for decision upon those applications were delivered (64 WAIG p. 862).

The majority of the Full Bench dismissed the appeals, His Honour, the President and Commissioner Collier saying *inter alia*:

> In our opinion Martin C. had no alternative in these circumstances but to seek the clear expression of intention from the language of the awards. There is ample provision to apply for their amendment.
>
> . . . It is no part of the duty of the Court in construing an award on an application for interpretation to give it a meaning either with the object of prescribing that which it considers to be proper or for the purpose of carrying out what it supposes to be the intention of the award-making authority unless the words of the award can reasonably bear that meaning. (The Australian Workers Union *v.* E.A. Abbey and Others 40 CAR 494 at 495.)
> (64 WAIG p. 862 at p. 865)

The then Senior Commissioner Mr D.E. Cort in finding that the appeals should be upheld said *inter alia*:

> A principal object of the Act is "to promote and encourage the use of conciliation in preference to all other means of resolving industrial issues" *and it is fundamental to the operation of the Act that a ruling from a compulsory conference which an employer and the union in an industry had agreed to accept should be maintained until it is altered by mutual agreement of the parties or is subjected to review by the Commission having regard to the substantial merits of the case. This is not simply a matter of custom and practice "over-riding" the meaning of words used in an award but a ruling given in the settlement of a dispute and where in the words of Nevile J. we can be "absolutely sure" of the intention of the award making tribunal. In my view a dispute of this nature once settled should not be the subject of a different finding except, of course, when the Commission is exercising its power to make or amend an award.*
> (My emphasis) (64 WAIG p. 862 at pp. 868 and 869)

and

> *To borrow the words used in 1950 by His Honour Mr Justice Jackson (as he then was) "justice and equity should be done" by interpreting the awards according to the intention of the award maker and the basis upon which an industrial dispute was settled in 1972.* That has been the method of payment used in this industry both before and after that intention became known. What was proper in 1972 should be proper today and perhaps more so because the ruling in 1972 was made in the course of what may be described as the settlement of a dispute by conciliation. I would uphold the appeals.
> (64 WAIG p. 862 at p. 869) (My emphasis)

The next step was the initiation by the employers of an appeal to the Industrial Appeal Court from the decision of the Full Bench just discussed.

In determining those appeals, matters Nos. 4 and 6 of 1984 on 30 October 1984 the Presiding Judge Brinsden J. found that the appeals should be allowed. He said, *inter alia*:

> . . . I am however, quite satisfied that in award 11/74 the words "for the purpose of calculating tally" did not mean and were not intended to mean that what followed thereafter should be used for the purpose of calculating the daily tally. *The same construction, I think, goes for both of the current awards and consequently I am of the view the construction put forward by the appellants is the correct construction, which is abundantly supported not only by the historical context but also by the way in which the parties themselves have conducted their affairs pursuant to the awards for many years.*
>
> This appeal should be allowed and this Court should declare the true interpretation of the awards so far as Clause 12 was concerned. That declaration should be along these lines:
>
> > The provisions of placita (i) and (ii) of paragraph (b), of subclause (1), paragraphs (b) and (d) of subclause (2) and paragraph (b) of subclause (3) of Clause 12.—Tallies and Penalties of the Meat Industry (Wyndham) Award No. A16 of 1981 as varied and the Meat Industry (North West Abattoirs) Award No. A18 of 1981 as varied are penalties to be applied to the carcases actually presented and slaughtered and are not equivalents for the purpose of determining the tally achieved on any day by slaughtermen, boners and slicers and for payments of over tally pursuant to Clause 25.—Overtime, subclause (2) of the aforesaid awards.
>
> If that declaration is made I do not think any order under 46 (1) (B) of the Act need be made.
> (My emphasis) (64 WAIG p. 2124 at pp. 2128 and 2129)

Kennedy J. dismissed the appeals saying *inter alia*:

> In my opinion, the relevant provisions of the awards are sufficiently clear to deny any resort to extrinsic aids. *I have arrived at this conclusion with considerable reluctance, having regard to the basis upon which the parties have conducted themselves for such a period of time.* In an ordinary contractual situation, the facts may possibly have given rise to an estoppel by convention — see Amalgamated Investment and Property Co. Ltd *v.* Texas Commerce International Bank Ltd (1982) Q.B. 84. However, in these proceedings, the function of this Court is to determine whether the Full Bench has erred in law. In my opinion, it has not, there being no "doubt or uncertainty or ambiguity", as contended in ground 2 of the grounds of appeal, in the meaning of the relevant provisions. This being so, there is no room for the application of section 46 (1) (b) of the Industrial Arbitration Act 1979.
>
> For the foregoing reasons, I would dismiss these appeals.
> (64 WAIG p. 2124 and p. 2129) (My emphasis)

Olney J. also dismissed the appeals saying *inter alia*:

> In my opinion the Full Bench has erred neither in the application of any principle nor in its conclusion that the award when construed in accordance with principle has the unambiguous meaning ascribed to it by the Full Bench and the Commissioner at first instance. I would dismiss both appeals.
> (64 WAIG p. 2124 at p. 2133)

THE ARGUMENTS.

In the proceedings before me on the present applications the applicants seek again to bring about a clear statement and recognition in the awards of what they submit has been the method of calculation of earnings for tally workers when processing "overweight cattle" as defined in the particular provisions of Clause 12.—

Tallies and Penalties and Clause 25.—Overtime — subclause (2) Tally Employees, of the Awards, at least since 1972.

To that end the applicants presented, again, a detailed analysis of the history of the awards, existing and their predecessors, extensive exhibits relating thereto and the expressed intentions of the parties therein from time to time and the comments of industrial tribunals in settling disputes associated therewith and varying or replacing them.

Additionally in support of their applications the applicants presented evidence from senior management of two of the companies, their industrial representatives and a past secretary of the respondent union.

All of that material it was submitted, clearly established that a mistake or error had been made by the parties in the drafting of those provisions of Clause 12.—Tallies and Penalties to which the applications relate or that such drafting was defective in that it did not reflect the intentions of the parties.

That being so it was then submitted that the Commission has power to and indeed is bound to correct that mistake or error or rectify that defect when it is brought to the attention of the Commission.

The correction could be effected either by the Commission exercising its powers under section 27, subsection (1) (m) of the Industrial Relations Act 1979-82 or by the Commission's "inherent jurisdiction" as a Court of Record to vary its own orders once made so as to carry out its own meaning or to make its meaning plain.

The applicants also contend that section 27 subsection (1) (v) could be invoked by the Commission to correct errors in its own orders or awards.

Section 27 subsection (1) (m) of the Industrial Relations Act 1979-82 reads as follows:

> 27 (1) Except as otherwise provided in this Act, the Commission may, in relation to any matter before it — . . .
>
> (m) correct, amend or waive any error, defect or irregularity whether in substance or form.

Speaking of that subsection the applicants submitted that the power contained in subsection (1) (m) was:

> One, a procedural matter is generally a matter of form and (m) speaks of matters of substance. That means a matter which goes, if one likes, to the root of the matter before the Commission, that if the mistake was allowed to stay on the record it could defeat the whole proceedings, or the proceedings in their final determination could have a different effect to that which was sought or, I would add, intended. So whilst it comes as one of the many things the Commission can do in the course of dealing with a matter pursuant to its jurisdiction it nevertheless has to be applied in a meaningful way to what the court is allowed to do in respect of a matter. *What I am saying is that there are no words of limitation which either say that therefore it only applies to procedures which might happen day by day* or in the course of advocates standing before the Commission and the argument going on, *but it encompasses the whole of the proceedings which makes up the matter before the Commission.* So the Commission is empowered to act both during those proceedings leading up to the determination, at the determination or, in my submission, after the determination, because all the different actions, all the different parts of the matter, go to make up the whole.
>
> *If it were limited simply to procedural things in the course of a matter beginning and ending — that is an application filed and an order made — then one would have the position where the only way in which an error in an order or award could be corrected would be on appeal.* Then you have the question: On what grounds of appeal? There may be some things for which there was no power in the appellate court to correct.
>
> (My emphasis) (Transcript Notes of Proceedings pp. 38-39 and 40-41)

As to the other avenue available to the applicants, an application to vary the awards pursuant to section 40 of the Act the applicants submitted:

> It might say, "Well, we can do it one or other of two ways: You, the companies can file an application for variation. No question of retrospectivity worries anybody and it will be a formal matter to vary the awards by way of amendment; or what would be the more appropriate way to correct the error or remedy the defect (however one describes it) as from the commencing date of the award." If that was the position, say, within a week or a fortnight of the making of those awards what difference does the passage of time make to the power of the court to do those things?
>
> I would think the justice of the case requires not that the companies be limited to making an application to vary but that they be put in the position that they ought to have been in 2 and 29 June 1981 so that the correction operated from the date of commencement of the awards.
>
> (Transcript Notes of Proceedings p. 50-51)

It should be recorded at this point that the applicants filed in the Commission applications to vary the two awards, application Nos. 446 and 500 of 1984 on 25 May and 8 June 1984 respectively to vary the provisions of Clause 12.—Tallies and Penalties in the manner they now seek in these proceedings.

The applicants requested a date of hearing for those applications on 16 November 1984 and I listed them for the 20th day of February 1985.

However by letter dated 18 February 1985 the agent for the applicants requested that they be adjourned *sine die,* with the concurrence of the respondent and that was done.

(The present proceedings have of course the advantage to the applicants if their submissions are upheld, that the limitations imposed by the Act on retrospectivity in award making or award varying procedures would not apply, a matter of importance to the applicants when the results of the interpretation already referred to are enforced by the respondent union.)

Section 27 subsection (1) (v) reads:

> 27 (1) Except as otherwise provided in this Act, the Commission may in relation to any matter before it . . .
>
> (v) generally give all such directions and do all such things as are necessary or expedient for the expeditious and just hearing and determination of the matter.

It was the applicant's argument that this subsection confers an even wider discretionary power for the Commission to exercise in respect of orders or awards that are made by the Commission.

I was referred to a decision of the House of Lords in Lawrie *v.* Lees — 1881 — of Appeal Cases at pages 34 and 35 and to Mellor *v.* Sware 1885 — 30 Chancery Division p. 239 as authority for the proposition that "every Court has the power to vary its own orders which are drawn up mechanically or in the office of the Court to vary them in such a way as to carry out its own meaning and where language has been used which is doubtful to make it plain".

I was also referred to the "concept of estoppel", and authorities thereon and which were adverted to by Mr Justice Kennedy in his reasons for decision in Matters Nos. 4 and 6 of 1984 and referred to earlier in these reasons for decision, and which concept the applicants submitted "squarely meets the circumstances of this case".

The respondent in essence submitted that the applicants' evidence and historical analysis of the awards and other proceedings were irrelevant to the issues raised in these proceedings in that firstly the Commission had exhausted its jurisdiction in the award making procedures once it had issued the awards and as those awards in that state were no longer before the Commission it was "*functus officio*" and it could not now resurrect the procedures relating thereto to effect a correction or remedy a defect therein as suggested by the applicants.

Secondly the respondent submitted that the provisions of section 27 — of the Industrial Relations Act 1979-82 be it subsection (1) (m) or subsection 1 (v) were clearly restricted to the purposes outlined by the preamble to that section, namely:

> Except as otherwise provided in this Act, the *Commission may in relation to any matter before it* . . .
> (My emphasis)

and that those purposes were solely matters of procedure whilst a matter was in the process of being dealt with.

It was not a specific power as is the case with the power to vary, interpret or make an award and which arises as specific powers in the appropriate sections of the Act.

Other "powers" referred to by the applicants were argued as being inapplicable to the Commission's powers.

Such being the case it was the respondent's submission that the applications could not be allowed and must be dismissed.

MY DETERMINATION.

In my view the applicants have amply demonstrated that history and the conduct of the parties upon the application of the relevant provisions of Clause 12.— Tallies and Penalties of the two awards supports their contention, that is to say it was intended that "overweights" and beasts possessing certain physical characteristics attract for the purpose of the earnings of employees employed on a piecework or tally system of remuneration additional "penalty" payments and that the provisions therefor do not constitute a means or method whereby the daily tally of carcases per man as specified in the award, is varied.

However, in my view the respondent has also demonstrated that the Commission does not have a specific power of correction other than in the course of procedures in running and thus cannot act in accordance with section 27 (1) (m) or (v) or any other section of the Act as contended by the applicants.

I also take the view that as a creature of statute the Commission does not possess any "inherent jurisdiction" as suggested by the applicants, being restricted to the specific powers conferred by the Industrial Relations Act 1979.

Accordingly whilst I consider the application worthy of success and as I have remarked before it would be in my view contrary to industrial relations equity for the respondent to take advantage of the oversights or errors of the applicants or their agents, I conclude that the applications cannot be allowed and must be determined by Orders of dismissal.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 1140 of 1984.

Between Derby Meat Processing Company Limited, Applicant and West Australian Branch, Australasian Meat Industry Employees' Union, Industrial Union of Workers, Perth, Respondent.

Order.

HAVING heard Mr R.I. Viner Q.C. and Mr F. Wilson of Counsel on behalf of the applicant and Mr J. Gerritsen on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby orders:

That the application be dismissed.

Dated at Perth this 16th day of April 1985.

(Sgd.) G.J. MARTIN,
[L.S.] Commissioner.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 1139 of 1984.

Between Norwest Beef Industries Limited, Applicant and West Australian Branch, Australasian Meat Industry Employees' Union, Industrial Union of Workers, Perth, Respondent.

Order.

HAVING heard Mr R.I. Viner Q.C. and Mr F. Wilson of Counsel on behalf of the applicant and Mr J. Gerritsen on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby orders:

That the application be dismissed.

Dated at Perth this 16th day of April 1985.

(Sgd.) G.J. MARTIN,
[L.S.] Commissioner.

TEACHERS' (Kindergarten).
Award No. 22 of 1963.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL COMMISSION.
No. 296 of 1980.

Between Hon. Minister for Education, Applicant and Pre School Teachers' and Associates Union of Western Australia (Union of Workers), Respondent.

Before Senior Commissioner E.R. Kelly.
The 5th day of September 1980.

Mr M.A. O'Connor and with him Ms L.M. Auld on behalf of the applicant.

Mr J.A. McGinty on behalf of the respondent.

Reasons for Decision.

THE COMMISSIONER: This is an application to amend the Teachers' (Kindergarten) Award No. 22 of 1963. The nature and purpose of the application can best be described in the following way —

In pre-primary and pre-school centres there may be found three types of employee namely, qualified teachers, qualified assistants and teachers' aides. The last mentioned class of employee is not required to hold any formal qualification and her job carries a lower rate of

pay than the job of a qualified assistant. In particular circumstances which it is not necessary to discuss here the Minister wishes to classify positions as unqualified aides positions rather than qualified assistants positions but does not wish to be prevented from employing qualified assistants in those positions if they desire to be so employed. However, the instant award defines an assistant as "a worker who holds a recognised qualification in early child care and who is employed in a kindergarten under the direction of a teacher". The parties are of the opinion that because of that definition a person who holds the "recognised qualification in early child care" is for the purposes of the award an assistant even if she has been expressly engaged as an aide. Without deciding that question I proceed on the footing that that is so. On that footing it is apparent that whenever the Minister decides that an aide should be employed rather than an assistant he must either decline to employ in the position in question any person who holds or obtains the "recognised qualification in early child care" or have his decision frustrated.

The principles which govern the application may be simply stated. It is the Minister's responsibility to decide how his schools shall be staffed and subject to what is said later in these reasons it is not for this Commission to tell him that he must employ a qualified assistant when, in the Minister's assessment, all that is necessary is an unqualified aide. However, the Minister is not entitled to have the duties of a qualified assistant performed at the unqualified aide's rate of pay simply by describing the position in question as that of an aide.

The application of those principles is in practice subject to some difficulty because there is some overlapping between the work done by teachers' aides and that done by assistants and because the distinction between the two classes of employment is in part a matter of the nature and degree of responsibility rather than the physical duties that are carried out. It is in large measure the ability to assess needs and make relevant judgements about the children under her supervision — an ability which is formalised in the course of study leading to the certificate in early child care — which distinguishes the assistant from the aide and which enables the assistant to assist in the teaching function as distinct from merely assisting the teacher to function. Naturally enough, when placed in the pre-school environment it is often difficult for the trained person to refrain from applying her acquired knowledge even if she is employed in a position in which she is not required to have such knowledge nor expected to use it. However, as the evidence of M/s Withers made clear (transcript page 89) the question as to the degree of responsibility to be accepted is a matter for decision by the Minister and for implementation by the teacher in charge. Moreover, if at the time of engagement of a person in an aide's position the nature and duties of the position and the level of responsibility expected from the occupant of it are clearly explained to the appointee there should not be any room for subsequent disagreement about the nature of the contract which has been entered into.

Subject to what follows I am of the opinion that the award should be amended to give the result which the Minister seeks. I may say that I find that conclusion easier to reach as a consequence of the undertaking given on behalf of the Minister at page 66 of the transcript that qualified assistants presently employed by the Minister will continue to be employed in that capacity. Be that as it may it is, as was said, clearly inconsistent with common sense that the Minister should be able to employ a trained teacher as an aide if she is willing to be so employed but not, on the footing on which this application has proceeded, a trained assistant.

However, I am not satisfied that the definition proposed in the claim should be allowed and I direct the parties to confer in an endeavour to agree upon a definition in terms which, in the event of any future dispute, would enable the Commission, a board of reference or the Industrial Magistrate to decide whether a person was or was not an assistant or (to use the title which now seems to be preferred) a child care worker. The words "appointed as such" make the proposed definition far too arbitrary in its application; the "approved qualification" should itself be described; the words "under the direction of a teacher" appear to serve little purpose in distinguishing a child care worker from an aide; and the definition should, I think, be such as to distinguish the "teaching" responsibilities of the child care worker from the "helping" function which appears to be the essential characteristic of the aide.

To enable the parties to undertake that task the application will be adjourned *sine die*.

However, before adjourning the application I think I should mention that the evidence relating to the Koonawarra Pre-School did not appear to me to be relevant to the matter in issue in these proceedings. The question at issue there appears to be whether the teacher in charge needs a (trained) child care worker. The kind of circumstances in which the Commission's intervention might be sought in that kind of issue are discussed in the cases referred to under the heading "Manning Dispute" in the *Australian Labour Law Reporter* at page 43, 452 *et seq*. That is not the issue here. The question before me is whether the Minister should be able to employ a (trained) child care worker in an (untrained) aide's position performing an aide's duties at the level of responsibility expected of such an aide and at the appropriate rate of pay prescribed in the aide's award. It is the latter question that has now been decided.

EDITORS NOTE: No order issued, the matter having been withdrawn consequent upon the issuance of the Child Care Workers (Education Department) Award No. A20 of 1984.

K. SCAPIN,
Registrar.

AWARDS — Interpretation of —

"METAL TRADES (General)."
Award No. 13 of 1965.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 1141 of 1984.

Between Watson's Food (WA) — a branch of George Weston Foods Ltd, Applicant and Amalgamated Metal Workers' and Shipwrights' Union of Western Australia, Respondent.

Before Mr Commissioner G.J. Martin.
The 18th day of April 1985.

Mr L. Girdlestone on behalf of the applicant.
Mr B. Davey on behalf of the respondent.

Reasons for Decision.

THE COMMISSIONER: By this application brought pursuant to section 46 of the Industrial Relations Act 1979 the applicant seeks a declaration of the true interpretation of that part of the "Metal Trades (General)" Award No. 13 of 1965 as varied consolidated and varied

(46 WAIG p. 707, a consolidation appearing in 63 WAIG p. 2101) contained in Clause 18.—Special Rates and Provisions, subclause (12) Abattoirs and Tallow Rendering Works. That subclause reads as follows:

> (12) Abattoirs and Tallow Rendering Works: A worker employed in and about an abattoir or in a rendering section of a tallow works shall be paid an allowance calculated at the rate of $8.15 per week. The allowance shall be paid during overtime but shall not be subject to penalty additions. A worker receiving this allowance is not entitled to any other allowance under this clause (63 WAIG p. 2101 at p. 2109).

The basis for the application is recited in the "statement" accompanying the application, as follows:

> Statement.
>
> (A) The applicant operates a garage at its abattoir and meat processing and treatment works at Hamilton Road, Spearwood. The respondent has claimed the abattoir and tallow rendering allowance of $8.80 per week should be paid to two motor mechanics who work in a garage which is separately located some 30 metres from the abattoir or the rendering section.
>
> (B) No. 13 of 1965 as amended: Metal Trades (General) Award. Clause 18.— Special Rates and Provisions, subclause (12) — Abattoirs and Tallow Rendering Works.
>
> (C) The applicant seeks the true interpretation whether the two motor mechanics are "employed in and about an abattoir or in a rendering section of a tallow works".

The applicant contends that the question posed in paragraph (C) of that statement should be answered in the negative and the respondent that it should be answered in the affirmative.

It was the applicant's argument that whilst there is no ambiguity about the wording of the subclause which would necessitate a departure from the basic rules of interpretation, the purpose of the subclause can be well understood from the reasons for decision by the Commission when it was reviewed in 1966.

The facts of the situation around which the matter of disagreement between the parties revolve are not really in dispute.

The applicant some 2½ years ago constructed a garage on its Spearwood site for the purpose of servicing its vehicles. Two employees engaged in the calling of "Motor Mechanic" are employed for that purpose and work primarily in that garage, which is situated some 25 to 30 metres from the respondent's abattoir and meat processing works. In the event of breakdowns or the like the motor mechanics attend to vehicles parked within or located within the applicants total complex.

The allowance prescribed in subclause (12) of Clause 18.—Special Rates and Provisions has not been paid to the two motor mechanics on the grounds that "they do not work in the abattoir and experience the offensive features for which the composite allowance was designed to compensate".

To better understand the purpose of the allowance the applicant referred me to the reasons for decision of the Commission when subclause (12) was last reviewed in depth.

That was on the occasion of the issuance of the award in 1966 and the Commission said of the subclause:

> Abattoirs and Meat Treatment Works.
>
> The union claimed a provision in the following terms:
>
> > The minimum rates prescribed for all classifications in the award shall be increased by an amount calculated at the rate of $4.00 per week for workers in abattoirs and treatment works in respect of all work done in and around the plant. Provided that this clause shall not exclude workers entitled to claim the allowance as set out in (5), (7), (8), (a) and (b) and (17).
>
> This claim was prosecuted vigorously both by way of evidence and inspections. Mr Ince strongly opposed the claim for a flat rate allowance and contended that metal trades workers in this industry should be compensated for any unpleasant features associated with their work under the appropriate special rates already prescribed.
>
> Both sides referred me to the Federal Metal Trades Award and the Engineering Trades (Government) Award. Those awards support the claim in one respect but not in another; and they support the answer in one respect and not in another. In each case they make provision for a flat allowance and in each case the allowance falls considerably short of the amount claimed. In South Australia, the determination of the Abattoirs Industrial Board also makes provision for a flat allowance and the amount accords with the present claim.
>
> Quite apart from the awards and determinations referred to, I am satisfied that a composite allowance is the most convenient and satisfactory method of compensating these workers for the unpleasant features of their work and I am also satisfied that most of that work is unpleasant to a greater or lesser extent and that a good deal of it is highly obnoxious. In addition to the offensive features of their work, these workers quite frequently encounter work in hot, cold, wet and confined places which, though often not hot enough, cold enough, wet enough or confined enough to qualify independently for a special rate, combined with and accentuate those offensive features.
>
> In all the circumstances I am satisfied that an allowance of $2.50 is reasonable in the case of workers in abattoirs. No evidence was given or inspections made of any place which was not an abattoir and the provision awarded has been restricted accordingly (46 WAIG p. 707 at p. 731).

That provision then awarded read as follows:

> 19.—Special Rates and Provisions.
>
> (12) Abattoirs: A worker employed in and about an abattoir shall be paid an allowance calculated at the rate of $2.50 per week. The allowance shall be paid during overtime but shall not be subject to penalty additions. A worker receiving this allowance is not entitled to any other allowance under this clause (46 WAIG p. 744 at p. 753).

The present wording of the subclause arose from application Nos. 494 of 1976 and 570 of 1976, applications to vary the award in a number of respects including the subclause in question.

In its reasons for decision on those applications on the 9th day of May 1977 the Commission said *inter alia*:

> The parties were agreed that the abattoir allowance be extended to certain other meat works, but in the absence of wording to express that agreement the existing subclause has been shown in the minutes. This matter may be raised at the speaking to those minutes.

In the result the parties agreed to reword the subclause to its present form as is evidenced by the Order issued in determination of those two applications on the 30th day of May 1977 (see 57 WAIG p. 886 at p. 887).

The applicant in analysing the relevant words of the subclause "employed in and about an abattoir" (putting aside the other indicative words "or in a rendering section of a tallow works" which are not susceptible of any doubt or ambiguity) submitted that:

> It is our view that to qualify for the payment of a weekly allowance a worker firstly must be employed in an abattoir and, having thus qualified the payment continues for work done about the abattoir. We are saying one goes with the other. We argue

that the word "and" being a joining word, a conjunction, joins the word "in" with the word "about" in a manner which does not extend to include a worker who does not work inside the abattoir.

The manner of the word "in" expresses inclusion within limits of space, and in the sense of this interpretation the limit of space can only mean the abattoir — that is the worker employed in an abattoir.

However, immediately following the word "in" is the word "and", a conjunctive word which joins the word "about".

"About" means "on all sides", "on every side", "all the way round", "near or close to". We argue that the clause is intended to apply to the individual worker who is physically employed in the abattoir and including when employed about the abattoir, since "about" means both "in" and "out".

It is our view that the expression "in and about" cannot be separated and cannot be read separately to read that the allowance is payable to a worker employed about an abattoir.

We believe the wording expresses that the individual employee is covered and is entitled to the allowance each week, even though the whole week was not spent in the abattoir. The allowance is still payable for the time spent outside (Transcript Notes of Proceedings p. 4).

The respondent contended that the word "abattoirs" was not necessarily the place where animals are slaughtered and dressed but should be construed as the whole of the area occupied by the meat processing complex.

By reference to the transcript notes of proceedings of the evidence given in the award making process the respondent endeavoured to demonstrate that at the meat processing words (to use a neutral term) inspected and from which evidence was drawn and which did not include the applicant's operation at Spearwood, the range of work in meat processing works was in fact spread over the entire geographical areas of such works.

In my view the wording of subclause (12) Abattoirs and Tallow Rendering Works — where it refers to "a worker employed in and about an abattoir" is not ambiguous or uncertain and is capable of simple application given the purpose for which it was constructed.

(The words "or in a rendering section of a tallow works" were not called into question although the applicant has a tallow rendering plant.)

That purpose is clearly discernible from the reasons for decision of the award maker and is to provide a constant weekly allowance for metal tradesmen and their assistants employed by meat processing establishments working upon plant and machinery within the works and who in the usual and regular (though not constant) course of their employment have to work in an environment of blood, guts, waste, odours and temperatures of the slaughter floor and ancillary areas such as the by products area, chillers and boning rooms. Sometimes they are right in those areas and sometimes they are not but in lieu of specific allowances for specific disabilities encountered when they are, they receive a "composite allowance" each week.

Thus an employee whose work is usually and regularly not concerned with or associated with that environment of the meat processing works and who is not required to be in that environment regularly (though not constantly) does not qualify for that allowance.

The applicant's analysis of the phrase is in my view correct.

The question posed by the applicant in item "C" of the statement accompanying the application is answered in the negative and I declare that upon the true interpretation of subclause (12) Abattoirs and Tallow Rendering Works the employees employed by the applicant in the calling of "motor mechanic" and based in a workshop which is apart from the abattoir and its ancillary departments are not employed "in and about an abattoir or in a rendering section of the tallow plant" and that phrase does not include their workshop for the purpose of the subclause.

"PRINTING (West Australian Newspapers Limited Guaranteed Employment and Voluntary Retirement)." Award No. 21 of 1982.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 156 of 1985.

Between Printing and Kindred Industries Union, Western Australian Branch, Industrial Union of Workers, Applicant and W.A. Newspapers Pty Ltd, Respondent.

Before Mr Commissioner J.A. Negus.
The 11th day of April 1985.

Mr G. Bucknall on behalf of the Applicant.
Mr C.D. Stanley on behalf of the Respondent.

Reasons for Decision.

THE COMMISSIONER: By this application, brought pursuant to section 46 of the Industrial Relations Act 1979-82, the applicant seeks a declaration of the true interpretation of the word "Regression" contained in Clause 5.—Definitions of the "Printing (West Australian Newspapers Limited Guaranteed Employment and Voluntary Retirement)" Award No. 21 of 1982 (62 WAIG p. 1866).

In Clause 5.—Definitions the word "Regression" shall be deemed to include loss of status, loss of wage rate, loss of personal margin or loss of any permanent shift loading where applicable (62 WAIG 1866 at p. 1867).

The applicant asks the following question:

(a) is Clause 5 "Regression" exhausted such that the word "include" does not permit any other application than those mentioned herein, or

(b) is Clause 5 "Regression" not exhausted that on a proper interpretation the word "Regression" is to be given its ordinary meaning as per the extract from the Shorter Oxford English Dictionary (see attachment).

In the event the Commission declares that on a proper interpretation is as per (b) above, then the Commission is further asked to declare that:

(c) for the respondent to compel a permanent employee working a four day week in an area declared redundant through technological change and thereafter work a nine day fortnight is a regression within the meaning of the Award and would be in breach of Clause 6 (i).

This dispute concerns the rosters to be worked by 22 linotype operators whose positions have been declared redundant in terms of the "Printing (W.A. Newspapers Ltd Guaranteed Employment and Voluntary Retirement)" Award No. 21 of 1982. The dispute was not resolved at a Conference held by Mr Commissioner G.J. Martin pursuant to section 44 of the Industrial Arbitration Act 1979 on the 22nd day of February 1985.

The applicant union now seeks a declaration from the Commission that Clause 5 "Regression" of the Guaranteed Employment Award should be interpreted in such a way that the new rosters proposed by the respondent company would constitute a regression for the workers involved and would therefore be in breach of Clause 6 (1) of the said award.

The principles governing the often uncertain pursuit of interpretation are quoted in a number of places, perhaps none more apposite to this case than in the recent Full Bench upholding of an appeal by Boans Ltd and others against a decision of Martin C. which had been in favour of an application brought by the Federated Clerks' Union regarding hours of duty for Clerks in Wholesale and Retail establishments. The appeal is to be found in 64 WAIG 651 and the original decision at 227 in the same volume.

There seems to be general agreement that a satisfactory overview of the principles to be followed can be gleaned by reference to:

Australian Workers' Union *v.* Abbey 40 CAR494.

The Western Australian Locomotive Engine Drivers', Firemen's and Cleaners' Union of Workers *v.* The West Australian Government Railways Commission (1983) 63 WAIG 1159, 1160.

The Western Australian Branch, Australasian Meat Industry Employees' Union, Industrial Union of Workers, Perth *v.* The Meat and Allied Trades Federation of Australia (W.A. Division) Union of Employers (1981) 61 WAIG 1061).

The United Furniture Trades Industrial Union of Workers *v.* Dale Manufacturing Co. *et al* (1950) 30 WAIG 539 at 540.

On this occasion some appropriate advice appears in AWU *v.* Abbey 40 CAR494 at 495.

> Where the Court is asked to interpret an award, its function is to ascertain the meaning of the words used and state what that meaning is. It is no part of the duty of the Court in construing an award on an application for interpretation to give it a meaning either with the object of prescribing that which it considers to be proper or for the purpose of carrying out what it supposes to be the intention of the award-making authority unless the words of the award can reasonably bear that meaning.
>
> To give the words of an award a meaning they cannot properly bear will only mislead and confuse people who have to work under and apply the award. *If it is claimed that the award upon a proper construction is unjust or does not carry out the intentions of the parties or the Court the proper method of remedying the matter is to apply for variation.* (My emphasis.)

I heard the submissions of the parties on the 22nd day of March 1985 and reserved decision.

The applicant union based its argument on the meaning of the word "regression" which is specifically defined in the relevant award as follows:

> "Regression" shall be deemed to include loss of status, loss of wage, loss of personal margin or loss of any permanent shift loading where applicable.

The union argues that if the term regression could be given a broader and more encompassing meaning such as that of the Oxford Dictionary *viz* — "Return to or into a state or condition; relapse; reversion to a less developed form", then it would follow that a change of roster from a four day week to an 18 day month would constitute a regression for the employees involved and would be in breach of Clause 6 which reads in part —

> 6.—Guarantee of Employment.
>
> (1) The Company guarantees that no employee shall be compulsorily retrenched or regressed because of technological change to production processes of the Company . . .

Mr Bucknall, for the applicant, made a persuasive argument that the use of the words "deemed to include" indicate that the definition of "Regression" is not exhaustive nor was it intended to be exhaustive. He made it quite clear that the employees required to change from an eight day to a nine day fortnight viewed this as a regression in their working conditions.

The counter argument made to this point by Mr Stanley is one which seems to have general acceptance; that is that in such an interpretation as this, one should give much attention to a consideration of the award as a whole.

I have followed that path and I am of the opinion that an ordinary, reasonable person would agree that the parties to this award, which originated as an agreement, would have considered the matter of rosters when they were negotiating the agreement. Rostering was certainly a topic of discussion in 1982 when Case No. 354 was heard in order to resolve a disagreement on additional leisure time. This case was referred to at some length by the applicant during the present hearing. It seems to me reasonable to assume that the parties to the agreement would not have ignored or forgotten roster changes when they were negotiating the items to be included in their definition of "Regression". If there had been agreement on the matter then I feel sure that the definition would have been "deemed to include" changes of roster as well as the four items which are specifically stated. For this reason I find myself unable to make the interpretation requested by the applicant.

Having come to the conclusion just stated, I am able to find reassurance of the equity and good conscience involved, if such assurance was needed, by reference to the aforementioned CR354 of 1982 (62 WAIG 2628).

In his decision on that matter, Martin C. determined that the introduction of a new set of rosters was giving the workers additional leisure time in accordance with an earlier agreement. He indicated that the agreement would be satisfied by the implementation of rosters which caused the employees to work

> . . . either —
>
> (a) A four day week; or
> (b) A nine day fortnight; or
> (c) A 19 day month; or
> (d) In lieu of any of those alternatives having time added to annual leave or time off at a mutually convenient time.
>
> Provided that such arrangements where applicable continue to reduce an employee's ordinary hours of work at the rate of two hours per week and provided further that the provisions of the said award are not contravened in any way thereby (62 WAIG 2628 at 2630).

The statement quoted above carries, to my mind, the implication that rosters which create the conditions expressed in (a) or (b) or (c) or (d) are all equally acceptable alternatives which do not contravene the award. This lends further strength to an argument which would say that even if the definition of regression was broadened as requested it would still be difficult to establish that the change from a four day week to a nine day fortnight is, in terms of the award, a deterioration in working conditions.

Accordingly, I answer the applicant's question (a) in the affirmative and in light of that decision it is not necessary to make any further declaration. I remind the parties of their rights under paragraph (2) of section 46 of the Act.

NOTICES — Award/agreement matters —

APPLICATION FOR AN AWARD TITLED "CLERKS (Associations and Societies). Award No. A3 of 1985".

NOTICE is given that an application has been made to the Commission by the Federated Clerks' Union of Australia Industrial Union of Workers, W.A. Branch under the Industrial Relations Act 1979 for the above Award.

As far as relevant, those parts of the proposed Award which relate to area of operation or scope are published hereunder.

4.—Scope.

This award shall apply and relate to:—

(a) All employees engaged for or substantially employed in clerical work and without limiting the generality of the term "clerical work", this includes:—
  (i) typists, stenographers, secretaries, telephonists or the operators or monitors of any medium of communication or information or document transference;
  (ii) receptionists and messengers where such employees do clerical work;
  (iii) employees employed on or in connection with calculating, billing, computing, copying or other machines designed to perform or assist in performing any clerical work whatsoever;
  (iv) supervisors of employees performing clerical work;
  (v) administrative officers who have charge of records, correspondence and accounts, and who may in addition superintend the general conduct of the business of the employer;
  (vi) employees substantially engaged in any combination of the abovementioned duties.

(b) The industries engaged in by all manner of non profit organisations, societies, churches, clubs, guilds and associations however named or styled engaged in business, civic, cultural, educational, religious, sporting, welfare or other activities, including the activities of subsidiary instrumentalities and companies of the aforementioned organisations. Provided that this award shall not apply to:—
  (i) any employer who, on the 1st day of January 1985, was bound by award other than the awards replaced by this award with respect to the callings covered by subclause (a) hereof; or
  (ii) any industrial union of employees;
  (iii) any employer other than an employer of the kind listed above.

A copy of the proposed Award may be inspected at my office at 815 Hay Street, Perth.

23 April 1985.

K. SCAPIN,
Registrar.

APPLICATION FOR VARIATION OF AWARD TITLED "THE HARBOUR AND LIGHT DEPARTMENT WHARFINGERS, ASSISTANT WHARFINGERS AND CLERKS. Award No. 20 of 1978".

NOTICE is given that an application has been made to the Commission by the Federated Clerks' Union of Australia Industrial Union of Workers, W.A. Branch under the Industrial Relations Act 1979 for a variation of the above Award.

As far as relevant, those parts of the proposed amendment which relate to area of operation or scope are published hereunder.

3.—Area and Scope.

This award shall apply throughout the State of Western Australia to the workers referred to in Schedule "A" of this award and employed by the respondent in or in connection with services to navigation, the regulation of shipping, the mooring of vessels, the handling of cargo or construction and maintenance work.

Schedule A.—Classification and Grading of Workers.

(1) Wharfinger;
(2) Assistant Wharfinger;
(3) Clerk;
(4) Typist and Clerk/Typist.

A copy of the proposed amendment may be inspected at my office at 815 Hay Street, Perth.

23 April 1985.

K. SCAPIN,
Registrar.

INDUSTRIAL MAGISTRATE — Complaints before —

BEFORE THE INDUSTRIAL MAGISTRATE AT PERTH.
Complaint Nos. 895, 896 and 898 of 1984.

Between Amalgamated Metal Workers and Shipwrights Union of Western Australia, Complainant and Wynthea Pty Ltd as Trustee for Enzed Hydraulics Unit Trust trading as C. and S. Hydraulic Services (W.A.), Defendant.

Before the Industrial Magistrate K.F. Chapman Esq S.M.
The 2nd day of May 1985.

Reasons for Decision.

THE INDUSTRIAL MAGISTRATE: There are three complaints before me, each dealing with alleged breaches against Award No. 13 of 1965 in that the defendant failed to keep an accurate "Time and Wages" book in accordance with Clause 17 of that Award and that the defendant failed to pay overtime in accordance with the Third Schedule in relation to two employees, a Laurence Charles Sargeson and a Henry Donnell.

The complainant contends that the defendant is bound by the provision of the Award in that the two employees were employed in a calling mentioned in Clause 32 and that the defendant was engaged in an industry mentioned in the Second Schedule.

The defendant would deny the work carried out by the employees falls within a mentioned calling nor that the defendant was engaged in any industry mentioned in the Second Schedule. They would also dispute the hours alleged to have been worked.

Clause 3.—The Area and Scope Clause of the Award reads as follows:

> This Award relates to each industry mentioned in the Second Schedule to this Award and applies to all workers employed in each such industry in any calling mentioned in Clause 32.—Wages (including the appendix thereto) of Part I — General of Clause 10.—Wages of Part II Construction Work of this Award but does not apply within the area occupied and controlled by the United States Navy at and in the vicinity of North-West Cape in relation to Increment 1 of the construction of the Communications Centre.

When examining the Second Schedule it is clear that there is no industry described as Hydraulic Services or any like nature. The complainant contends that the industry in which the defendant operated was that of Earth Moving Equipment Distributors as their work is on all fours with at least part of the work carried on by Wesfarmers Tutt Bryant Pty Ltd and more lately carried on by Westutt Hydraulics which, as Mr Abley said, is simply the hydraulics part of the former company Wesfarmers Tutt Bryant Pty Ltd.

On the evidence before me I am satisfied that the defendant has been properly named and note that in the Certificate of Registration of the Business Name which became Exhibit "C", the nature of the business is described as "Sales of Hydraulic Hoses and Couplings".

Apart from the Certificate of Registration of the Business Name there is other evidence which indicates the nature of the business carried on by the defendants. Firstly, there are copies of Works Orders which were tendered in evidence and became Exhibit "1". The originals are on printed forms which have the nature of the work anticipated printed on them. The forms would indicate the work carried out by the defendant and may include, to make up new hydraulic hose assemblies, to repair hydraulic hose assemblies and supply hydraulic fittings. It also indicates that the defendants are suppliers of rigid steel tube assemblies, hydraulic hose assemblies, high pressure steel adaptors, hydraulic quick release couplings and pneumatic couplers. Apparently it is also anticipated that other work may be conducted in connection with the fitting of such equipment in that towards the bottom of the Works Order are three boxes; one entitled "Machining", one "Welding" and one "Assembly". In that regard none of the Works Orders tendered had any of those boxes completed.

In the main the Works Orders indicate that most of the work dealt with the supply and fitting of hydraulic hoses and fittings. Some Works Orders however, indicate that further work was done, namely Works Order No. 11723 where the work is described as "by-pass oil cooler per instructions"; 11749 where the work is described as "make and install steel hydraulic line". Works Order No. 11627 where split flange clamps and flanges were required in the installation of the hydraulic hoses. Works Order No. 11563 which described the work as "to remove power pack, overhaul pump and filters, reinstall". Admittedly I have only referred to four Works Orders out of a total of some 46, but those four would indicate to me that some of the work was not as straightforward as Mr Smith would have me believe, but rather supports the contention of Mr Donnell and Mr Sargeson.

Secondly there is the evidence of Mr Donnell, Mr Sargeson and Mr Smith relating to the work carried on by the defendant. I accept that much of the work was of a more complex nature than Mr Smith would have me believe.

I am satisfied that the work carried on by the defendant is indeed on all fours with part of the work which was carried on under the heading of Earth Moving Equipment Distributors by Wesfarmers Tutt Bryant Pty Ltd, a named respondent at the time of handing down of the Award. I think it is of help to examine the decision of Mr Justice Wickham in the Western Australian Carpenters and Joiners, Bricklayers and Stoneworkers Industrial Union of Workers *v.* Terry Glover Pty Ltd, 50 WAIG 704 at page 706 where his Honour said:

> On the learned Magistrate's finding there was ample evidence to conclude that the industry of fixing aluminium windows carried on by the employer was a branch of an industry of prefabricating and fixing aluminium windows carried on by H.L. Brisbane and Wunderlich Ltd, a respondent in the Schedule to the Award, and this is sufficient to bring this employer within the scope of the Award.

And further on that page where he said:

> If the headings are designed to describe industries rather than employers I think it probable, without finding it necessary to decide, that the industry of building contracting in any event sufficiently covers the industry of an aluminium window fixer.

In this regard I am satisfied that the industry "Earth Moving Equipment Distributors" is such that it encompasses within it the work relating to hydraulic systems as conducted by Westutt Hydraulics and in particular the defendant. It is clear from the evidence and I think most people's general knowledge that most, if not all, earth moving machinery has as a basic component, hydraulic systems and thus, as is consistent with the evidence, one can readily conclude that the industry of Earth Moving Equipment Distributors would include within it the distribution of hydraulic equipment. I am therefore satisfied on the evidence that the work conducted by the defendant comes within an industry mentioned in the second Schedule and it is now necessary to consider whether or not either of the employees were employed in a calling mentioned in Clause 32.

The appropriate grouping within Clause 32.—Wages clause seems to me to be subparagraph (2) — General Engineering Section. Thereunder are listed a number of callings. The one most appropriate would seem to me to be Tradesman. Tradesman is not define within Clause 32 but it is within Clause 5.—Definitions clause, subparagraph (2) which is headed "General Engineering", first category being "Tradesman" defined as follows:

> Means a worker who in the course of his employment works from drawings or prints, or makes precision measurements, or applies general trade experience, but does not include an apprentice.

The evidence is such that I am not satisfied that either of the employees worked from drawings or prints on any regular basis nor made any precision measurements, thus if they are covered in this definition, it is only on the basis that they applied general trade experience.

In evidence both Mr Donnell and Mr Sargeson stated that at the interview with Mr Smith, each were asked to present their Trade Papers. In that regard Mr Smith at page 34 of the transcript had this to say when asked whether or not he had required Trade qualifications.

> I don't recall. I don't think it was really a part of what we were doing. I think that we were interested in where references as to the character of the people who we were employing. It was probably more that, but I don't recall — They may have produced them when we had an interview with them but as to whether — I doubt very much whether we would have asked for Tradesmen because we were not really after Tradesmen as such.

As to that evidence I accept the account as given by Mr Donnell and Mr Sargeson and accept from the nature of the interview that the clear inference was the Trade qualifications and experience were not only discussed but were significant in the employment of these two employees.

Both the employees described the nature of their trade and stated the work that they conducted for the defendant was work which was included within their trade. This evidence was supported by Mr Bastow who stated that up until recently work on hydraulic systems would

have been covered by Certified Fitters. It may be as Mr Smith contends, that people who are not fully qualified tradesmen can carry out much of the work carried on by the defendants, but I am satisfied on the evidence that the work carried on by the two employees was such that they applied general trade experience and as I previously stated the inference is quite clear, in my view, that the trade qualifications and trade experience of the two employees was considered at the time of their employment and was utilised during the course of their employment.

On the evidence I am thus satisfied that this period of employment is covered by the Award and that the provisions of the Award apply.

As to the hours worked I accept the evidence given by Mr Donnell that he recorded in a diary on a regular basis, if not a daily basis, the hours he worked for the defendant. The evidence in regard to Mr Sargeson is not as persuasive but despite the evidence called in rebuttal I am satisfied on the balance of probabilities that the hours given by Mr Sargeson are a close approximation of the hours worked and as I have nothing more reliable to go on, I accept them.

The defendant alleges that a $10.00 Tool Allowance was paid to each of the employees but this evidence is not clear and not such that persuades me that this in fact was paid. Indeed I do not consider this sum should be taken into account when considering any underpayment.

I am satisfied on the evidence that the information contained in the "Time and Wages" records were not such to satisfy Clause 17 of the Award. I am satisfied that that charge as laid has been proved. In relation to the complaint dealing with Mr Donnell I am satisfied that the complaint as laid has been proved that the underpayment is as outlined in the Schedule and am prepared to make an appropriate order in that regard. As to the complaint dealing with Mr Sargeson I consider it is appropriate that I refer to Clause 6 of the Award — Contract of Service, in particular subparagraph (4) (a) which reads as follows:

> Where a worker leaves his employment:
>
> (i) without giving the notice referred to in subclause (2) of this clause; or
>
> (ii) having given such notice, before the notice expires,
>
> he forfeits his entitlement to any moneys owing to him under this Award except to the extent that those moneys exceed his ordinary wages for the period of notice which should have been given.

Subparagraph (5) of the clause indicates that the appropriate period of notice for this employee would have been one week. I do not agree with the Counsel's submission that in view of the discussions which took place between Mr Sargeson and Mr Smith any rights under this provision have been waived. In my view section 114 of the Industrial Arbitration Act is a two-edged sword which applies both in favour and against an employee depending on the particular provisions of an Award being considered. In my view this employee is bound by that section and one cannot contract out of the provisions of the Award. Thus in my view, even if the evidence goes far enough to establish that any rights under Clause 6 subparagraph (4) have been waived, and I have some doubts about that, in my view section 114 would prohibit the parties contracting out of the terms of the Award and thus this provision applies.

I am therefore satisfied that the complaint in relation to the underpayment of Mr Sargeson has been proved but that any underpayment due to him should exclude one week's pay at his ordinary wage rate.

BEFORE THE INDUSTRIAL MAGISTRATE AT PERTH.

Complaint No. 29 of 1985.

Between Electrical Trades Union of Workers of Australia (Western Australian Branch), Perth, Complainant and John William Rounsevell and Franklyn Legendre Starkie Jardine trading as Universal Hearing and Instrument Service, Defendant.

Before the Industrial Magistrate K.F. Chapman Esq S.M.
The 2nd day of May 1985.

Reasons for Decision.

THE MAGISTRATE: On the evidence before me I am satisfied that the defendant has been properly named, the verbal evidence being supported by a Certificate of Registration which indicated the nature of business of the defendant, as from 25 February 1984, was that of sales of hearing aids and products — manufacturers of electronic scoreboards. I have not been advised as to what the nature of the business was before that date but presumably it was that of hearing aids wholesale/retailer as described in the other document attached to the Certificate. In any event, for the greater part of the period of employment covered by these complaints the nature of the business is that contained in the Certificate of Registration.

I am satisfied on the evidence that Mr Kevin Andrew Pollard was employed by the defendant, he having obtained the employment through CES having registered with them in the field of electronic work. In the initial interview Mr Pollard was told that he would be working on scoreboards, hearing aids and various other electronic devices. The CES training agreement, which was signed by both Mr Pollard and Mr Rounsevell, described the job title as Electronic Serviceman, and the training programme to be undertaken as (1) assisting in the manufacture and servicing of electronic equipment, (2) will be component handling and soldering, (3) servicing of hearing aids — basic repairs, (4) cutting out wood and plastic for circuit boards.

Mr Pollard stated that the nature of work he was engaged in was the manufacture of electronic scoreboards, repairing of hearing aids, putting plugs into T.V.s for personal audio loops and installing audio loops. He did not give any evidence as to the amount of time spent on each of those aspects of his employment.

The complainant endeavoured to place some weight on the CES training agreement, in particular the job title, and the title of the Award under which training was to take place. Under normal circumstances I would accept that where an employer has signed such an agreement there would need to be strong evidence to satisfy me that that employment was not covered by the Award as specified in the agreement. In this instance however, Mr Rounsevell explained that he did not fully read the training agreement and this is supported by the misdescription of the defendant within the training agreement itself. The reliability of the agreement is further weakened by the fact that (1) the job title is "Electronic Serviceman" and under the Award specified in the agreement there is no such job title. (2) The current Award Wage shown in the agreement bears no relationship to any of the wages set out in the Award.

Indeed, in the training agreement itself, under the heading "Title of Award/Legislation" there is contained in brackets the following words "or nearest where no coverage" and within that box the Radio and Television Serviceman's Award has been added.

Whilst I accept the training agreement is a significant piece of evidence, in my view its reliability as to the appropriate Award has been considerably weakened for the reasons I have specified.

I now refer to the "Area and Scope" clause of the Award, namely Clause 3 which reads as follows:

> This award relates to the Radio and Television Industry within the State of Western Australia and to all work done by employees employed in the classifications shown in Clause 29.—Wages and employed by the respondents in connection with the making, installing, repairing and altering, assembling, testing, aligning, fault locating, rewinding and rewiring radio machines, instruments, or other apparatus (including public address and background music systems, tape recorders, stereo and hi-fidelity amplifiers, electronic musical instruments and electronic amusement machines) and television machines, instruments or other apparatus.

In this regard, does any of the work performed by Mr Pollard fall within this clause? To this end the complainant called what may be loosely described as an expert witness in Mr Perry. Mr Perry specified his extensive experience in the industry although it is interesting to note, that whilst he describes himself as working under the provisions of the Award, he described himself repeatedly as a Radio and Television Technician and no such classification is contained within the Award. In examination in chief Mr Perry was asked several questions and I quote from the transcript as follows:

> Page 17:
>
> Mr Benfell: Could a hearing aid be described as a very simplistic form of radio which receives and then —?
>
> Mr Perry: I would say not as a radio, but as a very similar device. A crystal radio — one of the most primitive forms of radio — works on very similar principles.
>
> On page 18:
>
> Mr Benfell: Could you briefly describe how a loop system works?
>
> Mr Perry: A loop system is a device which enables normal audio frequencies to be radiated in a local aspect as in such a way that they can be received by a hearing aid — that is just audio frequency radiation.
>
> Mr Benfell: Is that dis-similar from the functions of a radio?
>
> Mr Perry: No. We are using the same basic principles of receiving electro-magnetic radiation out of the air and converting it to something which can be heard.
>
> Mr Benfell: Electronic scoreboards — do you understand how they are manufactured?
>
> Mr Perry: I understand the basic principles of how they operate.
>
> Mr Benfell: Have you had any experience with electronic amusement machines?
>
> Mr Perry: Yes. I have repaired electronic amusement machines — for instance, Space Invaders machines. I have had a quick look at — No, that would not come under the classification.
>
> And further at page 22:
>
> Mr Benfell: From your experience and from what has been said this morning, could you (bearing in mind the area and scope) comment as to whether, in your view, Universal Hearing and Instrument Services would be covered by the scope of the award?
>
> Mr Perry: From the work done by Mr Pollard, I would say that sections of his work that he has been doing, would be covered under this general description.
>
> Mr Benfell: With regard to electronic scoreboard, where in the scope or area and scope would you see that?
>
> Mr Perry: As an assembler of electronic equipment in one aspect. The fact that he is also testing — It states here that if he is testing, aligning or fault locating — He has already stated that he tests the units and if there are any faults on the units, he locates the faults and corrects them.
>
> Mr Benfell: With regard to hearing aids would you see that to be within the scope — working on hearing aids?
>
> Mr Perry: I can see there amplifier or public address systems. The loop system is a form of public address system for hard of hearing people. I think it would fall within that Scope.

From the quotes given it is clear that Mr Perry does not agree that a hearing aid is a radio, albeit that he would accept that it is a similar device. Likewise, he does not agree that the loop system is a radio, but that it uses similar basic principles and he would agree that electronic scoreboards do not come under the same category as electronic amusement machines.

I would now like to comment on the answers given by Mr Perry as recorded on page 22 of the transcript. Initially Mr Perry indicated that he would say that some of the sections of work done by Mr Pollard would be covered by the general description as contained in the "Area and Scope" clause. However, in my view his following two answers would indicate that he has not applied an appropriate test. I have come to this conclusion for the following reasons. In regard to the question relating to electronic scoreboards, his answer commences by dealing with an assembler of electronic equipment. My first observation is that within the Award there is no classification of "Assembler of Electronic Equipment". Certainly, Assembler is therein contained and is defined in Clause 5 subparagraph (2) (iii), as meaning an employee employed in or in connection with the manufacturing or assembling of radio or television sets or amplifying equipment, or with any repetitive hand processes in connection therewith. Mr Perry has already conceded that a hearing aid or an electronic scoreboard or a loop, is not a radio, and they would seem to me not to be a television set although he has not so specified. Thus I think his description of an Assembler of Electronic Equipment, whilst it may be an appropriate description of the work carried out by Mr Pollard, is not one which is contemplated in the Award. In any event, he goes on to say that the fact that Mr Pollard was testing, aligning or fault finding on electronic scoreboards would bring him within the provisions of the Scope clause. However, in my view he has misunderstood the Scope clause in coming to that conclusion, for clearly the aligning and fault locating and testing relates to either radio machines, instruments or other apparatus, or alternatively television machines, instruments or other apparatus, and as he has already agreed that electronic scoreboards do not come into either of these categories I do not consider that that observation is sound. In relation to the last question put to him, which related to hearing aids, his answer rather related to what has been called a loop system and not hearing aids *per se*.

I accept that the "Area and Scope" clause is wide in its terms and that there is good reason for this. With the advancement in technology the industry is changing on a fairly rapid basis, and to be precise in defining the Area and Scope would necessitate constant amendments to the Award in order to keep up with that technology. I do not however consider that the Award is all embracing and covers the whole electronics field, as some would seem to suggest. I feel it is helpful to look at Clause 5, the "Definitions" clause, as I consider this helps in defining the ambits of the industry. The definition of Radio and Television Servicemen by and large follows the description of the industry as set out in the "Area and Scope" clause. Radio and Television Serviceman, Grade 1, is helpful.

> (a) who has not less than 12 months' experience as a "Radio-Television Serviceman" making or maintaining monochrome television receivers who is employed in making, repairing and altering, assembling, testing, aligning, fault locating and rewinding colour television receivers and who has

successfully completed the Television Receiver Servicing Course No. 3563 conducted by the Technical Education Division, Education Department of Western Australia or who has by other means achieved a standard of knowledge deemed by his employer as comparable thereto, or . . .

In this subclause a course of education conducted by the Technical Education Division of the Education Department namely the Television Receiver Servicing Course No. 3563 is referred to.

It will be readily seen that to become a Radio Television Serviceman Grade 1 (the most senior position covered by this Award) at least 12 months' experience is required coupled with the completion of the course just referred to.

The syllabus of this course is as follows:

Syllabus:— Colour physics. Chromaticity diagrams. Constant luminance from three colour signals. Vector diagrams. I and Q channels. B and W compatibility. Generation of three colour signal. Resolution. Chroma information — modulation, luminance, separation. Demodulation of I and Q channels. Mixing and Matching. Display devices. R.C.A. three gun tube. Alignment techniques and procedures. Errors and faults — detection, location and correction. Theory of delay lines. P.A.L. automatic phase error detection. A.B.C.B. specifications and tolerances.

I am led to believe that although this course is still current it has not been conducted for a few years.

From an examination of the syllabus it is readily apparent that this course is confined to the television industry. It is comprised of only the one unit and as a consequence does not go into any great depth.

Subparagraph (b) reads as follows:

(b) who has had not less than 12 months' experience as a "Radio-Television Serviceman" and who is engaged on work covered by this award, other than that referred to in paragraph (a) and paragraph (c) hereof, in or in connection with complicated or intricate circuitry requiring a standard of knowledge deemed by his employer as comparable to that achieved by an employee under paragraph (a) hereof. "Experience" for the purpose of this paragraph shall mean experience with the work referred to herein, or . . .

It deals with work covered by this Award in connection with complicated or intricate circuitry requiring a standard of knowledge deemed by the employer as comparable to that achieved by an employee under paragraph (a). Subparagraph (c) seems to me to expand the horizon so to speak, of the industry in that it talks about radar and marine depth locating equipment, which perhaps at first sight would not be covered by the "Area and Scope" clause.

On the evidence before me I am not satisfied that an electronic scoreboard falls within the "Area and Scope" of the Award, nor am I satisfied that a hearing aid comes within that category. It would appear to me that part of the installation of what has been called a "loop" may fall within the "Area and Scope" clause, in that part of the procedure relates to the altering of television machines.

Even if it could be said that the work done on hearing aids and the audio loops for deaf people, was work covered by the Award, I am not satisfied that the work in connection with the manufacturing and servicing of electronic scoreboards is so covered. Mr Pollard gives a general description of the work he did whilst employed with the defendant, but he does not give a break down of the number of hours he spent on any of the duties he undertook.

He gives evidence that in the interview he was advised that the work he would be doing would be scoreboards, hearing aids and various other electronic devices. The training agreement indicates that the work he would be doing in training, would be, assisting in the manufacture and servicing of electronic equipment; (2) will be component handling and soldering; (3) servicing of hearing aids — basic repairs; (4) cutting out wood and plastic for circuit boards. Neither the evidence of Mr Pollard nor the training agreement would indicate that the major and substantial purpose of his employment was to carry out work covered by the Award. Indeed, I would have thought that the training agreement would indicate that the majority of the work involved was work other than that covered by the Award.

On the evidence I am not satisfied that the substantial and major purpose of the employment as contemplated at the time of employment or indeed as carried out during the period of employment was for work which is covered by the Award and I would thus dismiss the complaints.

BEFORE THE INDUSTRIAL MAGISTRATE AT PERTH.

Complaint Nos. 26, 27 and 28 of 1985.

Between Kimberley Frederick Richardson, Office of Industrial Relations, Complainant and Action Food Barns (Western Australia) Pty Limited, Defendant.

Before the Industrial Magistrate K.F. Chapman Esq S.M.

The 16th day of April 1985.

Reasons for Decision.

THE MAGISTRATE: As I mentioned before I do not propose to rise but to give my reasons now verbally, reserving the right to edit the tape should written reasons be required at a subsequent time.

There are three complaints before the court each alleging that Mrs Bardsley was employed in such a way that the Shop and Warehouse (Wholesale and Retail Establishments) State Award of 1977 as consolidated in WAIG of 26 May 1982 is applicable.

The appropriate clause to examine in that regard is Clause 3:

This award shall apply to all workers employed in any calling or callings herein mentioned in the industry or industries carried on by the Respondents named in Schedule "B" and to all employers employing those workers.

Clause 4 states that the award shall apply over the whole of the State of Western Australia — Clearly the areas where the defendant carries on its business and certainly where at least Mrs Bardsley was employed — fall within the State of Western Australia.

The defendant is not named in Schedule "B" but evidence has been given of Charlie Carters Pty Ltd which is therein listed and the type of establishment they run. Evidence has been given by Mrs Bardsley as to the work she performed together with the nature of the defendants business and this has not been contradicted. I am satisfied that the defendant did carry on their business within an industry with sufficient similarity to a named respondent so that the provisions of the appropriate section in the Industrial Arbitration Act would rope this particular defendant into the provisions of this award subject, of course, as to whether or not this particular employee was employed in any calling or callings mentioned in the award.

It would seem to me that that really is the crux of the matter before me today.

The only area in which this particular person could possibly fall would be that of a shop assistant and of course the contention is that if she is a shop assistant then she is a shop assistant in charge, as is discussed in the wages clause.

Quite clearly, as has been pointed out for the complainant, there is no definition as to what a shop assistant in charge is. There is, however, a clear definition as to a shop assistant which is contained in Clause 6 and reads as follows:

> "Shop Assistant" shall mean a worker substantially performing one or more of the following duties in retail establishments —
>
> Selling goods, weighing, assembling and/or preparing goods for sale, attending to stock, receiving cash and dressing out for display of goods.
>
> The term shall include soda fountain and/or milk bar assistants, assistants in country order departments and messengers.

The last sentence is not appropriate in this particular case. There is evidence that Mrs Bardsley from time to time worked on cash registers, this I think could be said to fall within the category of selling goods. There was also evidence that she stacked shelves and I think that generally can fall within the area of "preparing goods for sale". So clearly there are some of her duties which would fall within the classification of a shop assistant and she would say a great part of her time fell within that area. From the evidence before me that would appear to be the case.

As I found in the case of the Western Australian Shop Assistants and Warehouse Employees Industrial Union of Workers, Perth *v.* Richard Spaanderman trading as Carry On Camping Pty Ltd 63 WAIG 1956 in determining the principle of major and substantial employment the test is not merely a matter of quantifying the time spent on various elements of work performed but that the quality of the different types of work done is also a relevant consideration.

When one looks at Clause 28.—Wages, it can be seen in part 1 paragraph (1) subparagraph (c) that a shop assistant placed in charge is referred to. Subparagraph (c) (i) reads:

> "If placed in charge of a shop, store or warehouse with no other employees or if placed in charge of less than three other employees" a certain rate of pay . . .

I understand the complainant is arguing that (iii) applies, this reads as follows:

> "If placed in charge of 10 or more other employees . . ." then a certain rate of pay would apply.

As I pointed out in the case I referred to, I think the first point that one must look at in considering a matter such as this would be whether a person is in fact a manager or rather a shop assistant in charge. This case is no different really from the other case which has been referred to.

I think the starting point must be this: What were the terms of the contract which was entered into? The mere fact that Commissioner Fielding has come to a conclusion that under the terms of the contract entered into, Mrs Bardsley was entitled to a bonus of $1 000, does not necessarily decide the point.

I have to rely upon the evidence which is before me and come to the conclusion on that evidence. I am not bound by the decision of Commissioner Fielding in this respect.

I think it is relevant, though, and I have allowed into evidence the fact that there was a hearing and that Mrs Bardsley gave evidence under oath as to her position with the defendant.

The mere fact that a contract may have been entered into which gave benefits over and above the award does not necessarily establish that Mrs Bardsley was not covered by the award. So the decision of the Commission, even if it were relevant and admissible and I do not consider it is, does not necessarily answer the question.

It is important to look at the terms of the contract entered into. It is clear, in my view, on the evidence of Mrs Bardsley that the contract which was entered into was that she would work for the defendant in the capacity firstly as a trainee manager and, once the period of training was completed, then she would become an assistant manager. That is not a term which is covered within the award and, as I have said on numerous occasions, the mere giving of a title to a position does not necessarily mean that the person was in reality employed to fulfil the duties normally expected of that title. I find for various reasons that people like to call themselves all manner of fancy names and that mere calling of a name does not alter the duties they are employed to perform. It may impress other people, it may give them a feeling of satisfaction but one not only has to look at what they are called but also what they were employed to do. I think that is an important consideration here.

It is true that not a great deal was discussed in the initial interview as to the duties of Mrs Bardsley. It is also true, on the evidence before me at least, that no discussion took place in terms of overtime and conditions of that nature. Mrs Bardsley has given evidence as to what Coles pay their managers. What she said might be so but that also does not take us far. What is quite clear is that both the defendant, through its representative, Mrs O'Neill, and Mrs Bardsley agreed to enter into a contract wherein she would be employed first as a trainee manager and then become an assistant manager.

She discussed with Mrs O'Neill the employment she had at Coles and gave evidence in court today that there were two things which ultimately induced her to leave that and take on employment with Action. They were firstly that Mrs O'Neill had pointed out to her that Action was a woman's company and that she had an opportunity of moving up the managerial ladder, whereas that would appear not to have been an option open to her at Coles because it was a male dominated organisation. The inducement was that she would get into management and have an opportunity of increasing her responsibilities and so forth because she described herself as an ambitious person and that is to her credit.

Secondly, she would get a bonus, and apparently it is the custom of the company to pay bonuses of between $1 000 and $10 000. She says it was indicated that the bonus would be in the vicinity of $5 000. It would seem to me that she understood what she was being employed as and that was, as I say, firstly as a trainee shop manager and, secondly, as an assistant manager. Indeed, she has agreed with what was put to her by Mr Momber on behalf of the defendant, that in another forum under oath she gave evidence that that was in fact the case, that she was first a trainee manager and then she became an assistant manager.

She would say, however, in court today that much of her duties fell within the definition of a shop assistant and, therefore, she is a shop assistant. That does not, in my view, necessarily answer the question because the primary question is what was she employed as; was that description of her employment an appropriate one? In my view it was. In my view the duties that she was ultimately to perform, and did perform, were not inconsistent with the title that was given. That is, firstly a trainee manager and, secondly, an assistant manager.

In her own evidence she admits that when she was at the Dog Swamp Store, which was for the period of these complaints and for the major portion of her employment with the company, she in fact had a responsibility to give direction to the staff and to assist Mrs Coffey who was the manager. Apparently, because of the way Mrs Coffey ran the establishment she was not able, in her view, to exercise that managerial role. Of course, I have only heard her evidence on that aspect. Mrs Bardsley conceded she was to assist Mrs Coffey in her managerial role although she would say she did not get an opportunity. The mere fact that she did not carry out the duties because of the way Mrs Coffey ran the establishment does not mean, in my view, that she was not employed as an assistant manager.

Certainly she concedes that on alternate Mondays and alternate Thursday nights during late night shopping she was the one ultimately responsible for the store. She did point out, however, that the store basically ran itself and

I think the comment of Mr Momber is appropriate that that might have been by good luck or by, indeed, good management. Whatever the reason she was in charge and if something had gone wrong she would have been the one the customers would have looked to, that the other staff would have looked to and that, no doubt, management would have looked to to carry out her responsibilities.

In my view on the evidence the reason for her employment, the purpose of her employment, was that of firstly a trainee manager and once she obtained the experience she was to become assistant manager. She did go through various stores and get some experience. She worked very long hours. It is, perhaps, fair to say that my observation of the evidence thus far is that her employer expected their pound of flesh but the question here is to determine whether or not she was entitled to the overtime and the other benefits provided for in this award. She is only entitled to those provisions if she is employed in one of the callings or any of the callings covered by the award. In my view the purpose for the employment was such that it did not fall within any of the categories covered by the award. Her evidence does not persuade me that the title of her position was simply a sham and thus she was employed as a shop assistant and not a manager.

I have come to the conclusion on the evidence before me that she does not fall within any of the categories or callings as mentioned in the award. Thus, I would uphold the application for no case to answer and would dismiss each of the complaints on that basis. The orders will be that each of them be dismissed for the reasons given.

BEFORE THE INDUSTRIAL MAGISTRATE
AT PERTH.
Complaint No. 901 of 1984.

Between the Federated Miscellaneous Workers' Union of Australia, Hospital, Service and Miscellaneous, W.A. Branch, Complainant and St. David's Home for the Aged, Defendant.

Before the Industrial Magistrate K.F. Chapman Esq S.M.
The 29th day of March 1985.

Reasons for Decision.

MAGISTRATE: When exhibit A, that is the roster book, was first handed up I had an opportunity of examining page 117. The conclusion I first jumped to, and one which has now been confirmed in evidence, was that Monday 6 August although clearly marked in the unaltered roster as a rostered day off for Alice Heard was worked by her in lieu of Del Holben as Del Holben had taken what is commonly called a sickie. As I say that was confirmed in evidence by Mrs Heard and has not been challenged. I would have thought that filling a vacancy caused by a sickness of another employee of the Home would clearly come into hospital exigencies as referred to in Clause 18.

In my view, when one looks at Clause 8 subparagraph (2), a rostered day off must mean the rostered day off as the roster stood at the time you are considering the situation. I take this view as Clause 18 provides that a roster may be altered. There is no definition in the Award, that I can readily see, that defines the term "roster" albeit most of us would have a general idea of what is meant by this term.

For the purpose of this award, I think Clause 18 is helpful in establishing what "roster" means. It says therein:

> A roster of the working hours shall be exhibited in such place as it may conveniently and readily be seen by each worker concerned.

Thus, in my view, the roster is a list of hours required to be worked — by those named therein. Clause 18 continues:

> The roster shall be posted not less than 48 hours preceding the day on which the roster commences.

It would seem to me that the award contemplates that rosters will change from time to time, in the sense that there will be a roster for a period of time, then at the end of that time a new roster will be struck. Whether the new roster is in exactly the same terms as the former is another matter. On occasions it might be. On others it may not. But clearly it seems to me the award in its terms, and particularly in Clause 18, takes into account that it is anticipated that a roster will be set for a period of time and at the end of that time a new roster will be established. Therefore, not only is the document one that contains the working hours to be worked but it also is to be for a finite period — a definite period, one that can be readily ascertained from looking at it. That roster shall be available and that roster may be altered. From a reading of Clause 18 I would have thought that once the roster has been struck, for whatever period of time it might be, the roster may be altered and one would not have to wait until that roster runs out to alter it by striking a new one. If this were not so the last paragraph of Clause 18 would be meaningless. That last paragraph must, in my view, be read to indicate that the roster once it is struck may be altered before its expiry, for once it expires it is no longer a current roster.

That conclusion does not end the matter. A roster lists the hours a person is required to work. The evidence before me makes it quite clear that Alice Heard was not required to work on 6 August, it was her choice. She was asked whether she would work or whether she would not.

In my view the word "altered" can mean two things. It can mean, a notation on the roster which alters it on its face. But I think the wording of Clause 18 would indicate that if a roster is to be altered it must be altered in real terms — that is, not only will there be a notation on its face but also in real terms it has been altered in that it requires a person to work at different times than it first indicated.

This roster has been altered in the sense that there is a notation placed on it that on 6 August rather than Del Holben working Alice Heard is to work in her place. As the roster first stood Alice Heard is rostered off on this day.

I would have thought that for the roster to have been altered in real terms rather than simply by a notation it would be altered in such a way as to require Alice Heard to work on that day. It would not simply be her choice as to whether she wished to or not. When this roster was first struck on 26 July — I am sure Matron did not go to Alice Heard and ask, "Do you want to work on the 26th or the 27th, the 29th?" and so forth. The roster required her to work on those days. Although Alice Heard worked on 6 August she worked because of an agreement, between herself and the employer which agreement was made before any notation was made on the roster. Although this is a very fair way of doing things it is my view that if the roster had been altered as anticipated by Clause 18 then there would have been no choice by Alice Heard as to whether she would work or not.

The alteration, that now appears on the roster, is, in my view, simply a notation; in fact the roster in real terms was not altered, albeit that Alice Heard worked on that day. It was by mutual agreement. Such agreement was not one that altered the roster in real terms. The roster stood. It is quite clear on the evidence that if Alice Heard had declined to work on that day other employees would

have been offered the work. If they could not work then the hospital would have gone outside their employees to find a replacement.

As I say a roster should be interpreted as being a document which sets out the times that a person is required to work. The alteration to this particular roster did not come within that category. In my view, therefore, the roster was not altered and Alice Heard worked on a rostered day off and is entitled to be paid the extra percentage.

SECTION 29 (2) — Applications dealt with —

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 45 of 1985.

Between Bernard Gibson Beard, Applicant and Lenny's Stainless Steel Fabrication Pty Ltd (Receiver and Manager Appt'd), Respondent.

Before Mr Commissioner G.L. Fielding.
The 27th day of March 1985.

Mr B.G. Beard in person.

Mr C. Vella on behalf of the Respondent.

Reasons for Decision.

(Given extemporaneously at the conclusion of the submissions, taken from the transcript as edited by the Commissioner).

THE COMMISSIONER: This is a claim which is brought pursuant to the provisions of section 29 of the Industrial Arbitration Act, as it then was, by which the Applicant, who was formerly employed by the Respondent company, seeks to recover a benefit under his contract of employment, said to have been *pro rata* entitlement to long service leave. In my view the claim must fail and be dismissed, for a number of reasons, which I should briefly outline.

The basis of the Applicant's claim is that he was employed by the Respondent company as its production manager for approximately 6½ years. His employment was terminated because the company was wound up. The company has since gone into liquidation and did that, formally at least, some time in January of this year.

The Applicant does not claim to have been unfairly dismissed, but claims to have been entitled to *pro rata* long service leave on the basis of the standard conditions of long service leave as they apply in this Commission and particularly having regard for the Commission's attitude of recent times to awarding compensation by reference thereto to individuals whose employment has been terminated through no fault of their own when companies have fallen on hard times. The Applicant has drawn my attention to two instances of employees of the Respondent having received the benefit of such an award in November, or thereabouts, of last year.

Be all that as it may, in my view the claim must fail. In the first case, it must fail because it is brought under section 29 (2). That section only allows the Commission to entertain claims for benefits which are non-award benefits or benefits which are not due under an order of the Commission. For the Applicant to claim a benefit as of right under the standard conditions of long service leave, he would need to rely on an order of the Commission, the Commission's general order in respect of long service leave. That is something which, in these proceedings, he cannot do. He can overcome that hurdle by bringing proceedings under section 44 (7) (iii) of the Industrial Relations Act, although the sad fact for the Applicant is that the Respondent company has no funds to meet its secured creditor. Any exercise alternative to this might, if successful, be little more than an academic one. But even if that course is adopted there is yet another hurdle for him to overcome: that is section 371 of the Companies (Western Australia) Code, which provides that once an order for winding up of a company has been made, no "action or other civil proceeding" may be commenced or proceeded with against the company except by leave of the Supreme Court and in accordance with such terms as it proposes. As the Applicant has, not surprisingly, revealed, he does not have leave to do that on this occasion. An attempt to enforce a contractual benefit quite clearly falls into the category of action mentioned in section 371, as I suggest does a claim for compensation in respect of dismissal from employment, whether it be based on long service leave entitlements or otherwise. Such a claim is an action akin to civil proceedings which could result in the creation of a debt payable by the company. The scheme of the Code is to regulate in an orderly fashion the collection and disbursement of such funds as the company has to its credit. That process would break down if claims under section 29 or 44 of this nature were able to be commenced without leave. The Code recognises debts for wages and for leave due under an award of the Commission, amongst the other debts of an insolvent company, and indeed gives them priority. Thus I do not think it unrealistic to regard proceedings of this nature as being within the contemplation of the Code. Furthermore, insolvency legislation of the type embodied in section 371 of the Code has traditionally been interpreted broadly in order that there might be an orderly arrangement of the affairs of an insolvent corporation (see: *Re* B B; *ex parte* Caucasian Trading Corporation [1896] IQB 386, and cf: Federated Amalgamated Government Railway and Tramway Service Association *v.* New South Wales Railway Traffic Employees Association [1906] 6 CLR 488).

For the reasons I have announced, the Industrial Relations Commission is without jurisdiction to entertain a claim of the nature of that brought by the Applicant on this occasion.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 45 of 1985.

Between Bernard Gibson Beard, Applicant and Lenny's Stainless Steel Fabrication Pty Ltd (Receiver and Manager Appointed), Respondent.

Order.

HAVING heard the Applicant in person and Mr C. Vella on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders —

That the Application be dismissed for want of jurisdiction.

Dated at Perth this 27th day of March 1985.

(Sgd.) G.L. FIELDING,
[L.S.] Commissioner.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 837 of 1984.

Between Phillip Rockett Butler, Applicant and Ian Donald Thomas, Respondent.

Order.

HAVING heard the applicant on his own behalf and there being no appearance by or on behalf of the respondent, the Commission pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby orders —

That the respondent shall, within 14 days from the date hereof, pay to Mr P.R. Butler of 1 Ayrton Street, Melros, the amount of $275.00.

Dated at Perth this 10th day of April 1985.

(Sgd.) G.J. MARTIN,
[L.S.] Commissioner.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 123 of 1985.

Between Donald Edward Eade, Applicant and Leslie Peter Meade, Score Price Match Promotions, Respondent.

Before Mr Commissioner J.A. Negus.
The 12th day of April 1985.

Mr K. Schultz on behalf of the Applicant.
The Respondent appeared on his own behalf.

Reasons for Decision.

THE COMMISSIONER: By this application brought pursuant to section 29 of the Industrial Relations Act 1979, the Applicant seeks an order for payment of amounts claimed to be owing to him by the Respondent under the terms of his contract of employment.

The amounts claimed were in detail:

1. Balance of commission on sale to Charles St. Aquariums — $50.00
2. Spotter's fee on a sale to Gangin's Jewellery — $50.00.
3. Phone calls and postage from the Applicant's home — $20.00.
4. 30 hours clerical work by the Applicant and Barbara Miles at $6.66 per hour — less $100 already paid — $99.80.

Evidence was given at the hearing by the Applicant, by the Respondent and by a Mr Duncan Cowie, who had been employed on similar terms to the applicant. The extra witness was of assistance in providing the corroboration needed to allow me to establish what were indeed the terms of the contract of service.

It seems that in the latter half of 1984 the Respondent in attempting to promote a co-operative advertising scheme for small businesses had engaged a team of sales-persons on a "commission only" basis. He allocated areas in which the sales-persons could canvass for business. He provided some limited office space and telephone service for the sales team. The only remuneration agreed upon was a commission of approximately 10 per cent on all deals signed up by the sales-people. A piece of paper, purporting to be an appointment and referring to some of the agreed terms, was signed by both parties.

There was some mention of the Respondent having informed the sales-people that their commissions would be reduced by $50.00 on each occasion that he found it necessary to become involved in a deal. It is arguable that this was a unilateral decision which was not agreed to by the other parties.

In mid-October of 1984 a quantity of promotional leaflets was posted out to prospective clients. The Applicant and his wife spent some 15 hours each, along with other salespeople, in preparing this material. The Respondent made an "*ex gratia*" payment of $50.00 to each of the people who assisted in the project. I can find no connection between this activity and the contract of service and therefore must dismiss the claim for the amount of $99.80.

Similarly there is no evidence of any agreement for reimbursement of the cost of phone calls and postage incurred by the salesperson from his residence. That portion of the claim must also fail.

On the question of the amounts of commission and spotting fee, withheld by the Respondent and therefore in dispute; on the balance of the evidence presented, I find in favour of the Applicant and allow his claim for an amount of $100.

Decision accordingly.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 123 of 1985.

Between Donald Edward James Eade, Applicant and Leslie Peter Mead, Score Price Match Promotions, Respondent.

Order.

HAVING heard Mr K. Schultz on behalf of the applicant and the Respondent on his own behalf, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby orders —

That the Respondent pay to the Applicant the sum of $100 within 21 days from the date hereof.

Dated at Perth this 17th day of April 1985.

(Sgd.) J.A. NEGUS,
[L.S.] Commissioner.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 146 of 1985.

Between Maureen Hilda Eckworth, Applicant and J. & A. De Boer Transport, Respondent.

Order.

HAVING heard the applicant on her own behalf, there being no appearance on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby orders —

That the Respondent pay the Applicant the sum of $282.20 within 30 days of the date of this order.

Dated at Perth this 17th day of April 1985.

(Sgd.) J.A. NEGUS,
[L.S.] Commissioner.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 85 of 1985.

Between Ronald David Grayden, Applicant and Plunkett Homes (W.A.) Pty Ltd, Respondent.

Before Mr Commissioner O.K. Salmon.
The 17th day of April 1985.

Mr R.D. Grayden on his own behalf.
Mr I.V. Klopper on behalf of the respondent.

Reasons for Decision.

THE COMMISSIONER: This matter concerns an application pursuant to section 29 (b) (ii) of the Industrial Relations Act 1979 brought by Ronald David Grayden (the applicant), building consultant, who claims that he is owed money for commissions by Plunkett Homes (W.A.) Pty Ltd (the respondent) by whom he was employed between September and October 1984.

The original claims for commission corresponded with certain job numbers and were set out as follows:

Job No. 7545	Amount	$275
Job No. 7555	Amount	$385
Job No. 7555	Amount	$150
Job No. 7557	Amount	$626
Total amount due		$1 436

I have some difficulty with the quality and detail of the evidence in this case but at least I am able to say that the money claimed by the applicant would have been due to him in the absence of reasons advanced by the respondent for withholding it. The respondent's defence was structured entirely on the belief that it could withhold all but $80.00 of the amount claimed for reasons outlined in the answering letter dated 27 February 1985 set out below and supported by some documents purporting to show the applicant's true position regarding "give aways" to clients.

> We wish to file our answering statement in respect to the claim made by the abovementioned person.
>
> Particulars of our statement are as follows and supporting documents are attached:
>
> 1. JOB 7545 — $275: Salesman agreed to give to the client flyscreens to all doors and windows. Refer to copy of addenda signed by the salesman.
>
> 2. JOB 7555 — $385: Salesman had incorrectly advised the clients. A separate mortgage was required for the land purchase as no extension on the land settlement could be obtained. The clients refused to pay the costs as they were originally misled, and proceeded to cancel the deal.
>
> The salesman was charged only the additional fees, the clients agreed to continue and thereby received commission which would otherwise have been lost had the clients cancelled.
>
> 3. JOB 7555 — $150: Part of the above. However only $70.00 should have been deducted as explained by the attached copy of request for cheque. This is purely a clerical error and we naturally are prepared to refund $80.00 to Mr Grayden.
>
> 4. JOB 7557 — $626: Again the salesman agreed to give flyscreens to the clients as evidenced by the signed copy of addenda. The balance of $331.00 is a deduction for legal fees which the salesman neglected to outline to the clients. Commission was again earned for Mr Grayden by persuading the clients not to cancel with an offer to counteract the fees.

It was Mr Grayden's unchallenged evidence that he left his employment of his own accord because he was misled regarding arrangements made between himself and the respondent's general manager at the start. Furthermore, he had raised a complaint about money owing to him after terminating his employment and had already been successful in obtaining $1 500. Clearly the respondent has always believed it was entitled to withhold money from the applicant; nevertheless, by paying $1 500 it must admit to an error in its original assessment.

Starting at the point where, but for the respondent's reasons, the applicant was entitled to the money claimed, I observe that as a general proposition an employer cannot make deductions from wages for bad workmanship or misconduct unless there is an agreed term in the contract to the contrary. I think that what has been variously described in this case as the applicant's negligence, neglect and incorrect advice to clients would be seen by the respondent as the equivalent of bad workmanship and I also think that the applicant's claim can be fairly categorised as a claim for wages. I conclude, therefore, that the onus in this case lies properly on the respondent which must prove justification for withholding money earned by the applicant. The evidence of Mr Klopper was that no agreement existed between the respondent and the applicant regarding deductions arising from cases of wrong advice to clients. Moreover, the evidence generally does not support the respondent's actions in this respect. I find that amounts of $385 and $331 deducted in respect of job Nos. 7555 and 7557 respectively are due to the applicant and my order will make provision for these amounts to be paid.

Deductions for salesman's "give aways" to clients are a different matter because it is common ground that these are the subject of agreement. The dispute really comes down to the amount in the case of each sale. The applicant says that it was his agreement with the respondent's general manager that "give aways" would be shared as to their costs between himself and the company on a 50/50 basis. As to documents provided by the respondent which purport to show how much the applicant had given the clients and in what form, he denied their validity saying that information contained in them was not in his handwriting and that they were signed by persons whom he did not believe had authority to deduct amounts from commissions due to him. Mr Klopper's evidence was that there was no strict adherence to a policy when it came to "give aways" on each deal. Using an example of $500 he said that the company might contribute $300 and salesman $200, or vice versa. It was customary that each deal be treated according to its merits.

With Mr Klopper's explanation in mind I return to the only question put by him when cross examining the applicant. The relevant part of the question, and the answer was as follows:

> . . . You are saying it was a 50/50 split on the give-away for the flyscreens and did it apply to every job that you procured? — The situation, as he explained it to me, was that every job had to come before him for his perusal before acceptance and so every job would be counted on its merits, but I could take it as a basis that it would be a 50/50 split.

There is not much difference between the two versions of the split between salesman and company when Mr Klopper's version is applied over a number of sales. Overall the contribution by both parties may even out at 50 per cent. One could "take it as a basis that it would be a 50/50 split" and I think that is the best interpretation I can place on the evidence at this point. Having decided this I must also consider the supporting documents tendered by the respondent and I conclude that their value is that they merely show the amount attributable to the salesman's "give aways" in each case as an amount to be halved. In other words, the documents do not amount to evidence to prove the respondent's case.

It is my decision that an order should be made in the applicant's favour. Taking all amounts into account including the applicant's share on "give aways" I assess the amount due to the applicant at $1 116.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 85 of 1985.

Between Ronald David Grayden, Applicant and Plunkett Homes (W.A.) Pty Ltd, Respondent.

Order.

HAVING heard the applicant on his own behalf and Mr I.V. Klopper on behalf of the respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby orders —

That the respondent pay to the applicant the sum of $1 116 within 30 days of the date of this order.

Dated at Perth this 17th day of April 1985.

(Sgd.) O.K. SALMON,
[L.S.] Commissioner.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 37 of 1985.

Between Michael Thomas Haworth, Applicant and John Kelly, Respondent.

Order.

HAVING initially heard Mr W.R.T. Baxter and later Mr E.L. Fry on behalf of the Applicant, and there being no appearance by the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders —

That the Application be and is hereby withdrawn by leave.

Dated at Perth this 4th day of April 1985.

(Sgd.) G.L. FIELDING,
[L.S.] Commissioner.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 136 of 1985.

Between Stephen David Mark Larsen, Applicant and P.G. Prendiville, Balladonia Hotel Motel, Respondent.

Order.

THERE being no appearance by either the Applicant or the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders —

That the Application be dismissed for want of prosecution.

Dated at Perth this 23rd day of April 1985.

(Sgd.) G.L. FIELDING,
[L.S.] Commissioner.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 729 of 1984.

Between Donald Edward Lay, Applicant and Hortico (Australia) Pty Ltd, Respondent.

Order.

HAVING heard Mr I.A. Wilson (of Counsel) on behalf of the Applicant and Mr G.H. Lawton (of Counsel) on behalf of the Respondent, and after a conference between the parties at which agreement was reached, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, and by consent, hereby orders —

That the Application be dismissed.

Dated at Perth this 19th day of April 1985.

(Sgd.) G.L. FIELDING,
[L.S.] Commissioner.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 137 of 1985.

Between Christine Janet Rose Leveille, Applicant and P.G. Prendiville, Balladonia Hotel Motel, Respondent.

Order.

THERE being no appearance by either the Applicant or the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders —

That the Application be dismissed for want of prosecution.

Dated at Perth this 23rd day of April 1985.

(Sgd.) G.L. FIELDING,
[L.S.] Commissioner.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 126 of 1985.

Between Barry John Niquet, Applicant and Belair Tavern, Respondent.

Before Mr Commissioner J.F. Gregor.
The 19th day of April 1985.

The applicant appeared in person.
No appearance for the respondent.

Reasons for Decision.

(Given extemporaneously at the conclusion of the hearing, taken from the transcript of proceedings as edited by Mr Commissioner J.F. Gregor.)

THE COMMISSIONER: This is an application by Barry John Niquet for payment of contractual benefits, not being a benefit arising out of an Award. The Applicant has evidenced that he commenced work as a Tavern Manager at the premises known as Belair Tavern. On the evidence I have been given those premises and that tavern is owned by Sangras Pty Ltd. The Applicant continued

that employment until 11 February 1985 when his services were terminated by a Mr Uratoriu. His termination took place at the office of Sangras in Ventnor Avenue, West Perth. In later correspondence the Respondent alleges certain misconduct by Mr Niquet in respect of actions and alleged malpractices. However, a letter to him (the Applicant) on 11 February 1985 set out deductions which have been made against fees in liquidation of those so-called debts which arise from those alleged malpractices.

I am unable to find one way or the other whether the conduct was malpractice or not. What I do find is that an appropriate sum, that is, the sum decided by the Respondent was deducted from the moneys due under his contract with Mr Niquet for the month of February, who makes no further claim in respect of that money. The question to be decided is whether the contract between the parties gives rise to a claim for payment for a contract fee for a whole calendar month. In Mr Niquet's letter of appointment, a document which is before the Commission and which is dated 18 December 1984, the question of termination of the contract is covered in paragraph three. That paragraph provides:

> We hereby confirm and agree that your contract fee for this service is fixed at $1 200 per calendar month and that following the initial 12 month period a further term will be negotiated to our mutual satisfaction.

Prima facie that contract does not give rise to a liquidated damage in lieu of notice. However, on the evidence of the Applicant, taken together with a letter to him signed by Mr L. Uratoriu, the Director of Sangras, and dated 11 February 1985, it is said in the third paragraph:

> Because your dismissal has been brought about by your insubordination of our agreed contractual conditions we are now not obligated nor bound to adhere to the terms of the original agreement, namely to give you one month's notice in writing nor to pay you the fee in lieu of notice.

I draw from those two pieces of evidence that it was the intention of the original contract to provide a liquidated damage in lieu of the appropriate notice. I note further that there has been no appearance by the Respondent in these proceedings and the Commission, after ascertaining to its satisfaction that appropriate notice has been served upon the Respondent, proceeded to hear the matter and determined it pursuant to the powers contained in section 27 (d) of the Industrial Relations Act.

After so proceeding, and in view of the evidence presented, I uphold the claim of the Applicant and an order for one month's contract fee, that is, $1 200 will now issue.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

No. 126 of 1985.

Between Barry John Niquet, Applicant and Belair Tavern, Respondent.

Order.

HAVING heard Mr Barry J. Niquet in person and there being no appearance by the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, and having considered the evidence, hereby orders —

> That the Respondent pay to the Applicant the sum of $1 200 within 21 days of the date hereof.

Dated at Perth this 19th day of April 1985.

(Sgd.) J.F. GREGOR,
[L.S.] Commissioner.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

No. 44 of 1985.

Between William Lewis Pirie, Applicant and 'K' Shipyard Construction Co. Pty Ltd, Respondent.

Before Mr Commissioner J.F. Gregor.
The 1st day of April 1985.

The applicant appeared in person.
Mr K.G. Leech appeared for the respondent.

Reasons for Decision.

THE COMMISSIONER: The Applicant was dismissed from the Respondent's employ on the 18th day of January 1985. He claims his dismissal was unfair and seeks reinstatement or alternatively, compensation therefor.

The evidence discloses that the Applicant Pirie joined the predecessors to the Company 'K' Shipyard Construction Pty Ltd on 6 August 1971. There was no dispute concerning the continuity of employment notwithstanding a number of changes to name during that period. On employment the Applicant, because of his experience as a Ship Loftsman and in ship construction, generally assisted the Company in the establishment of a ship building facility. He was appointed as a Ship Designer in 1972 and supervised draughtsmen and design and drawing office staff until 1983. During this period the Applicant was associated with a broad range of works associated with ship design, the business of the Company.

In October 1983 the Company, because of a large increase in ship building work caused by the acceptance of a contract from the yard to build 20 ships for Indonesia, appointed Mr K.G. Leech as the Manager of the ship building sector of the business. Later a further appointment was made in the area of work which had previously been the sole province of the Applicant. Mr Pietraszko joined the Company in December 1983. He was appointed to the position of Chief Draughtsman in December 1984. A memorandum notifying his appointment to the rest of the staff, including the Applicant, was distributed at that time.

In evidence on behalf of the Respondent, Mr Leech advised that due to a diminution in orders, coupled with the completion of the large contract from Indonesia and a smaller contract from India, action had to be taken to wind down the operations of the ship yard. In assessing how the wind down should take place, on 7 January 1985 Mr Leech asked the Chief Draughtsman for an assessment of his staff. This assessment was produced and submitted to Mr Leech who then made the decision to terminate Mr Pirie, based upon both the assessment and upon his own knowledge of Mr Pirie's work.

The assessment by the Commission of the true facts in this matter was somewhat hampered by the approach by both the Applicant and the Respondent to the proceedings. Both parties were unrepresented and appeared to have a misplaced understanding of their role when placed in the unfamiliar adversary situation of the arbitral proceedings. This resulted in undue emphasis being placed on the proper classification of Mr Pirie. It is obvious from the evidence that Mr Pirie was employed as a Draughtsman and, clearly, he was appointed as a Ship Designer in 1972. This position is set out in a reference produced in evidence before the Commission. However, in respect of the matters to be considered by the Commission, nothing of note turns upon this issue, although the attitude and the conduct of the parties during their evidence at this stage was of use to the Commission in assessing the relative balance of the evidence.

For the Applicant's part it was clear that he had been involved in the Industry for most of his working life and that he was a meticulous worker, but that in being so he was not readily amenable to change. It was clear during

the evidence of Mr Pietraszko that there was an antipathy between them and that the Applicant did not readily accept the authority of Mr Pietraszko. In the same way there was an indication of reluctance by the Applicant to accept the authority of Mr Leech after he was appointed. In the final analysis this attitudinal approach by the Applicant left him in a position that when the termination was effected by Mr Leech, he was deeply hurt by it. His main concerns expressed to the Commission that he was now on the market and he was not as healthy and young as he used to be, and was concerned for his future. Be that as it may, Mr Leech appearing for the Respondent, was fulsome in his praise of the professional standard of work done by Mr Pirie, acknowledged that the Company was satisfied in the generality with the work and service that he had given but at the same time, made the point that a decision had to be made concerning a wind down of the operations and assessments were therefore requested. On the basis of those assessments he had terminated Mr Pirie and all outstanding entitlements under his contract of service were paid to him. In the first instance this amounted to a gross termination pay of $10 658.52. On enquiry from Mr Pirie, that period of notice was found to be deficient and a further payment of $675 was made. Mr Pirie was further informed that a non-contributory superannuation fund, of which he was a member by virtue of his employment, would be subject to a decision of the Trustees as to whether vesting of any payment under the scheme would be made. The total payment referred to above included payment for 13 years long service leave and all outstanding annual leave plus loadings.

It is against a background of these facts that the Commission must assess whether the dismissal has been unfair or not. Section 29 of the Act permits an employee to bring an application to the Commission on his own application when unfair dismissal is claimed. That the Commission has discretion to interfere when it is considered fair and just is set out in the decision of the Full Bench in Douglas Ratcliff *v.* P.C. Kerr and Associates, (1983) 63 WAIG 1819. The principles involved in a consideration by the Commission of unfair dismissal are set out by reference to the Wongan Hills Hospital case (59 WAIG 11 at 12) and the Royal Australian Nursing Federation *v.* the Honourable Minister for Health (61 WAIG 1722). The Full Bench considered further that:

> in this case as in each other case the Commissioner is required to exercise his authority by acting in accordance with equity and good conscience and the substantial merit of the case (section 29). It is in this way that the Commissioner is required objectively to decide whether it was unfair to terminate the services of the employee in the present circumstances.

It is further observed:

> the question was whether in all of the circumstances it was unfair to the Appellant to terminate his services. The unfortunate consequence for the Appellant, having regard to his age and the difficult economic circumstances, was material but the question of fairness did not depend on that consideration alone but upon an objective balancing of all the relevant circumstances including the right of the employer to conduct its business which includes the freedom to terminate an employment contract.

Further attention to this principle is contained in the decision of Fielding C. in Lawrence Cecil Turner *v.* Horwood Bagshaw Limited (1984) (64 WAIG 2189 at 2190) where the learned Commissioner observes:

> The decision of the Commission in the often-quoted Hospital Employees' Industrial Union of Workers WA *v.* Wongan Hills Hospital 1979 (59 WAIG 11) is not . . . authority for the proposition that an employee has the right to remain in employment so long as he does nothing wrong, and goes about his duties in a proper and workmanlike manner. If that were so there would be no point in providing at all for termination on notice. What that case and those which follow it confirm, and the Act make clear, is that if the contractual right of dismissal is shown to be exercised unfairly, the Commission has authority to interfere to protect the employee. A dismissal effected as part of a genuine or *bona fide* restructuring by an employer of its business, is a justifiable exercise of that right.

This approach is consistent with that set out in Ratcliff *v.* P.C. Kerr and Associates (*supra*). It is obvious from those cases that the employer has a right to conduct his business in an efficient way.

It remains to test this case law against the circumstances in this instant matter. It is apparent to the Commission that the Company has been faced with the situation of diminishing orders and on the evidence of Mr Leech, has retrenched a number of its workforce until the stage when the only employees left in the ship yard are apprentices close to the finish of their time, foremen have been asked to take leave while the Company seeks to obtain new orders. In these circumstances, a judgement had to be made concerning the professional staff as well and assessments were requested and made. The type of relationship that the Applicant had with his fellow workers then became a relevant consideration and in the interest of maintaining the most efficient working unit the Company decided, rightfully in the Commission's view, that it should terminate the services of the Applicant.

In these circumstances the Company has not, in the view of the Commission acted unfairly and the claim for reinstatement or compensation by the Applicant therefore is dismissed.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 44 of 1985.

Between William Lewis Pirie, Applicant and 'K' Shipyard Construction Co. Pty Ltd, Respondent.

Order.

HAVING heard Mr W.L. Pirie, the applicant and Mr K.G. Leech on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979-82 hereby orders —

That the application be dismissed.

Dated at Perth this 17th day of April 1985.

(Sgd.) J.F. GREGOR,
[L.S.] Commissioner.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 25 of 1985.

Between Paul Victor Shinn, Applicant and Lake Grace Sportsman's Club (Inc), Respondent.

Before Mr Commissioner G.L. Fielding.
The 19th day of April 1985.

Miss H.M. Leslie (of Counsel) on behalf of the Applicant.

Mr I. Carija (of Counsel) on behalf of the Respondent.

Reasons for Decision.

THE COMMISSIONER: The Applicant was employed by the Respondent to take charge of the day-to-day running of its club. As to his precise job title, there is some dispute. He claims to have been appointed initially as manager on the understanding that after he "settled in" he would be appointed to the position of Secretary-Manager, which he said was done, but the Respondent says he was appointed simply as supervisor. There is, however, no dispute as to the nature of his duties and responsibilities, which were to have charge of the day-to-day running of the club, including the hiring of staff and where necessary working behind the club's bar. Also in dispute is the status of the Applicant's employment. The Respondent claims that the Applicant was engaged on probation, and his appointment was never confirmed, which the Applicant disputes.

What is common ground is that the Applicant's employment commenced on 4 October 1983, and terminated on 11 April 1984. He was dismissed from his employment on that day and given one week's pay in lieu of notice because his services were said to be unsatisfactory. The Applicant was said to have poorly managed the control of stock in the club to the extent that there was gross overordering of liquor. He was also said to have offended some members of the club, to have failed to ensure that the club premises were kept in good order and condition, to have neglected to care for the house supplied to him by the Respondent, to have falsified wages records, and to have failed to carry out a directive of the President to reduce the amount of money expended on wages, particularly in respect of overtime. The main objections appear to have been concern at the increasing stock levels, and lack of any significant reduction in the money expended on wages. The catalyst which appears to have led to his dismissal on the day in question was his decision some days earlier to dismiss a barmaid and a cleaner within days of each other.

The Applicant complains that the action of the Committee to dismiss him was unfair, and seeks to remedy that by asking that the Commission award him compensation in the region of 10 weeks' pay. He admits to allowing an over-run of stock, particularly beer, but says that was due in part to the local hotel reopening with a consequent loss of patronage to the club. He says he worked as often as necessary and incurred overtime payments no more than was absolutely necessary. In his dealings with the staff, he did what he was entitled to, and what a competent manager or supervisor should have done. Any complaints from club members as to his conduct generally resulted from his attempts to raise the standard of conduct within the club. Moreover, the Applicant says that at the March meeting of the Committee, he was appointed as Manager-Secretary of the club, as was foreshadowed would be the case when he first took up his appointment. In the circumstances, he sees it as odd that he would be dismissed so soon thereafter on the grounds of unsatisfactory service. His claim for compensation is based largely on the fact that he had of necessity to relocate himself and his family away from Lake Grace, and by reason of the nature of the industry in which he worked, he was unlikely to readily obtain another job because of the stigma associated with a dismissal for unsatisfactory service.

The evidence adduced in these proceedings traversed far and wide. The principals in the matter were the Applicant and the Respondent's President at the time, Mr Evans. Where their evidence conflicts, I prefer the testimony of Mr Evans, although I cannot say that either was strikingly convincing. The Applicant left me with the impression of being somewhat devious, and of having adjusted his recollection of the events in question to suit the exigencies of this occasion. Mr Evans left me with the impression of being vague but not deliberately so. The other witnesses impressed as being frank and highly reliable, and I accept their evidence without reservation. Although I accept the evidence of Mr Boys as to the practice in the industry with respect to the employment of supervisors as distinct from managing secretaries, all that is relevant in proceedings of this nature is the nature and extent of the dealings between the present parties, rather than the practice of others.

I am satisfied and find on balance that the Applicant was, as Mr Evans said, employed as supervisor of the club under the terms of the Club Workers' Award. At least the Applicant acknowledges he was paid as such under that Award. Although the Minutes of the Respondent's Management Committee refer to him as attending its meetings as "Manager", his letter of appointment refers to his "appointment as Supervisor to the Lake Grace Sportsman's Club". Furthermore, the Minutes of the Committee meeting on 20 September 1983, whilst making no direct reference to the Applicant being formally employed, do make reference under the heading of "Correspondence" to the "position" of "supervisor". The Applicant's duties were to manage the club, subject to direction from the Committee, and the Respondent seems to have used the terms "supervisor" and "manager" interchangeably, but at all times regarding him as a supervisor within the meaning of the Club Workers' Award. Furthermore, I am quite satisfied that he was initially appointed on probation for a period of three months, to be reviewed in January of 1984. Although that is not mentioned in the letter of appointment, neither are any of the terms of his appointment. Indeed, the letter of appointment is notable for what it does not say rather than for what it does say. Not only is it the evidence of Mr Evans that he was told at his interview that his appointment would be on probation, it was confirmed by Mr Taylor, a member of the Respondent's Committee of Management, and who I thought to be a most reliable witness. Moreover, the Minutes of the Committee meeting of 21 February 1984, at which the Applicant's position was reviewed, record under the heading of "General Business":—

> Supervisor: Position *re* P. Shinn on probation for three months now extended to five months — appears okay — justification in additional staff — made mistakes.

It is to be noted that the Applicant was at the Respondent's Committee meeting of 19 March 1984, where the Minutes of the meeting on 21 February were confirmed. Indeed, he was at the February meeting although asked to leave whilst his position was discussed. The reason that the Applicant's position was not reviewed in January as originally planned was that there were insufficient members of the Committee present for such a decision to be made. There was some feeling amongst the Committee at the meeting in February that the Applicant should not be kept in employment. However, the majority apparently took the view that he should be given a further opportunity to prove himself capable of satisfactorily performing the work in question. I accept Mr Evans' testimony that soon after that meeting he spoke to the Applicant and told him that the Committee was not happy with his performance and had extended his period of probation. Mr Evans testified, and I accept his evidence on the matter, that he told the Applicant that he had to improve his performance, and in particular had to reduce the club's wages bill, especially that part which related to overtime. Indeed, I accept Mr Evans' testimony that he prepared a

roster in consultation with the Applicant, which would give effect to a reduction in overtime. The Applicant acknowledges that he was spoken to about his performance and moreover that he was given a directive to do work without overtime. It should be noted that on many occasions the overtime paid to the Applicant was more than double his weekly salary. Indeed, for the three weeks about the time of the Committee meeting in February, his overtime varied between 31 and 42 hours per week. Mr Evans' claim is that the Applicant kept to the roster he had prepared for a week or so, and then went back to his old habits of claiming what the Committee regarded as excessive amounts of overtime. To a large degree, that is borne out by the wages book.

I am satisfied, too, that the Applicant did allow an over-run of stock, particularly liquor, as is claimed by the Respondent. Whatever might be said of the activities of the local hotel, its activities are something which a person in the Applicant's position should have acted upon. Moreover, I am satisfied that he was spoken to from time to time by Mr Evans about the overstocking, although there is no mention of such concern in the Minutes, as perhaps there should have been. Having had the opportunity of hearing from Mr Evans and from the author of the Minutes, I am quite satisfied that the Minutes, though accurate on their face, are not a complete record of matters discussed and agreed at the meetings. I accept also the position to be as Messrs Evans and Taylor testified, that the bar area got progressively dirtier, and the storeroom untidier, as time went by, and that this was the responsibility of the Applicant. It is clear, however, that the Respondent's concern over this was never raised with the Applicant during the course of his employment, as perhaps it should have been. On the other hand, I am not satisfied that there was any falsification of the wages book, as claimed by the Respondent, other than to the extent it knew of, and acquiesced in.

Whatever might be said of the Applicant's shortcomings, and I am satisfied that he had some of the shortcomings claimed by the Respondent in the performance of his work, the fact remains that at all material times he was working under probation. Probationary employment has a character distinct from permanent employment. The period of probation is but a step in the selection process; it is a period of testing to see whether the appointee should be selected for permanent employment. That is well settled and no better explained than in In *re* Alchin & South Newcastle Leagues Club Ltd (1977) AR (NSW) 236, a case which has many similarities with the instant case, even to the point of the club being concerned with stock control and initially refusing to give reasons for dismissal. As there explained on page 241, normally by employing someone on probation an employer retains for itself "the right to decide whether or not it wanted to employ him — the same right that any employer would have had at an initial interview when deciding whether or not to engage an employee". I am quite satisfied and find that was the basis of the Applicant's employment in this case. It is supported by the Respondent's evidence, and in particular by the actions of the employer's Committee of Management in February 1984, which the Applicant appears to have accepted as routine, even if the value judgements made were not to his liking.

I do not accept the Applicant's claim that his position was confirmed at a meeting of the Committee on 19 March 1984, when it was agreed that with the aid of his wife he would take over the secretarial duties of the club. I accept the position to be as explained by the then Secretary-Treasurer, that he was a reluctant office-holder, and too busy to perform many of the clerical duties required in connection with the club. It was put to the meeting and agreed that the Applicant and his wife would "take over" these duties, on the basis that his wife would perform the typing functions initially at the rate of $4.00 an hour to overcome the "backlog". I accept that the position was that no more than a transference of duties from the former Secretary-Treasurer to the Applicant and his wife took place, in order to relieve the then Secretary-Treasurer of the workload which he found burdensome. It involved no change in status for the Applicant, nor as he admits any increase in his rate of remuneration. The reference in the Minutes of that meeting to the Applicant being present as "Sec/Manager" I take to be no more than an indication of the fact that the Applicant was responsible for the secretarial functions previously performed by an honorary officer. The Minutes record only that he was to take over the duties in question, and there is no mention of his appointment on a permanent basis. The evidence of the Respondent's witnesses is that they were at all times dissatisfied with the Applicant's performance, and it would indeed be odd and inconsistent with the previous conduct of the Committee if the Applicant had been effectively promoted as he claims.

When the Applicant took up his job he knew, as I find, that it was on probation, and thus he ought to have known that his position was not secure. Moreover, that was reinforced on 21 February when the Committee refused to confirm his employment but rather extended his period of probation for a further two months. He was aware that the Respondent was not happy with his performance. That was the reason why in February his probationary period was extended for another two months. The purpose of employment on probation is, as mentioned, to give an employer the opportunity of selecting employees after seeing whether the employee is capable of properly performing the tasks required of the position in question. Clearly, the Applicant failed that test. He was dismissed on 11 April, but paid up until 18 April, a period of eight weeks or all but two months after his probationary period was extended for that length of time. Having regard to the nature of his employment, he cannot now be heard to complain if that decision was not to his liking. His remedy was not to accept employment on that basis.

Apart from any considerations of the entitlement which follows by nature from probationary employment, the circumstances which gave rise to his dismissal, looked at objectively, leave me far from convinced that the dismissal was unfair. The Applicant was aware that the Committee was not satisfied with his performance, and in February was told that, and also of his shortcomings. He was told he needed to improve, and given an opportunity to do so, but as I find failed in that. It cannot be the case that an employer is bound forever to maintain in its employ an employee who has not met the requirements of the job, and shows no indication of doing so, more particularly if he is engaged on probation. There comes a time when enough is enough. Although the manner of his dismissal was not ideal it was not as inept as the Applicant suggested. I think the Applicant could have been given reasons for his dismissal, but that was subsequently remedied. He was not immediately evicted from the house he occupied, but allowed additional time to make the necessary domestic arrangements. Of themselves they are not matters which in the circumstances call for intervention by the Commission.

For the foregoing reasons the claim should be dismissed.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 25 of 1985.

Between Paul Victor Shinn, Applicant and Lake Grace Sportsman's Club (Inc.), Respondent.

Order.

HAVING heard Mr H.M. Leslie (of Counsel) on behalf of the Applicant and Mr I. Carija (of Counsel) on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders —

That the Application be dismissed.

Dated at Perth this 19th day of April 1985.

(Sgd.) G.L. FIELDING,
[L.S.] Commissioner.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL COMMISSION.
No. 843 of 1984.

Between Gloria Jean Taylor, Applicant and Greenough River Resort Hotel, Respondent.

Before Mr Commissioner G.L. Fielding.
The 1st day of February 1985.

The Applicant in person.

Mr I.L.K. Marshall (of Counsel) and with him Mr M. Fadjiar (of Counsel) on behalf of the Respondent.

Reasons for Decision.

(Given extemporaneously at the conclusion of the submissions, taken from the transcript as edited by the Commissioner.)

THE COMMISSIONER: The Applicant brings these proceedings pursuant to section 29 (2) (b) of the Industrial Arbitration Act, claiming to have been denied a benefit under her contract of employment with the Respondent. That benefit, in a nutshell, is *pro rata* annual leave amounting to $480, and what might be said to be overtime for work performed in a second position, to use the Applicant's words, of hotel manageress, whilst also employed as restaurant manageress for the Respondent Company. That overtime is said to amount to $10 260, making a total claim of $10 740.

It is a prerequisite for the Applicant to succeed in her claim that she establish that she has been denied a benefit under her contract of service. It is therefore necessary for her to establish that there was a contract of service between her and the Respondent and, secondly, that the benefits she claims — namely, *pro rata* holiday pay and overtime or additional payment — were benefits to which she was entitled under her contract of employment.

A number of witnesses have given evidence in these proceedings and I do not think anything is to be gained by commenting on that evidence in any detail. I accept almost without any reservation that the evidence which the Applicant has given is an accurate recitation of the events as they occurred. Where her evidence conflicts with that of Mr Chew, I have not the slightest doubt in accepting Mrs Taylor's evidence. Likewise, I have not the slightest doubt in accepting the evidence of the other individuals who gave evidence in these proceedings, they being former employees of the Respondent Company. I have not the slightest doubt that their evidence was truthful and I accept it as being such.

I am quite satisfied, at least on balance, that the Applicant did perform some of the additional work, as she calls it, and to which she has referred at some length in these proceedings — that is, she filled in for the office manageress during the period which she states when there was no-one to do that work. There is no evidence, really, to challenge her assessment of the extra hours she claims she worked in that position. For these purposes I am prepared to accept that. She says that she is entitled to be remunerated for that work because it was over and above the normal 40 hours she claims she was required to work as restaurant manageress. In calculating her claim she has made reference to the overtime rates which she has been led to believe apply to clerical workers at large who work in an office. However, in my view that is where the Applicant's claim breaks down.

She was engaged by the Respondent on 7 November 1983, in the classification so-called of "restaurant manageress" to work a full seven days a week without any fixed hours. To use the words in her written contract which she signed on that occasion, her work was to be performed on a "flexible" basis so far as time was concerned.

When the last of the office manageresses apparently left the hotel, she filled in for her on what she believed was a temporary basis. That went on for a number of months and there was nothing forthcoming about the extent of the temporariness or otherwise of that position. She said there were no discussions as to whether she would be paid anything for that extra work or when it would end. I think the position was as she has said it was, both in her evidence and in her summing up — that she thought the work in the office was temporary and, thus, there was no real need to discuss the payment therefor.

Mr Chew has said there was no discussion about payment, nor did he do anything to lead her to believe that she would be paid for it, nor has the Applicant said anything to contradict that. Indeed, the other witnesses called by the Applicant somewhat confirm my impression and incidentally damn the Applicant's case. Their evidence is that from time to time managers of other sections helped in other areas, including that area which is normally the realm of the office manageress. They say that the hotel resort was run as a family affair with co-operation amongst all the staff. Whilst I appreciate the distinction between helping out and taking over another person's job, the fact is that initially, at least, all the Applicant thought she was doing was helping out. That had been the usual practice in the past, and so it was that there was really no need to discuss payment.

In my view there is simply no scope to infer that there be any implied term that she was to be paid for that extra work, quite apart from the difficulty associated with any system that overtime rates fixed by an award in industry were to be the basis for payment of this work. She says there was no discussion about it and so does Mr Chew. What is more, it seems to have been part and parcel of the operation for the sectional manageresses to help out. Thus I do not think there is any scope to infer a contractual right to payment. Initially at least that appears to have been the Applicant's attitude. It was not until some time after she left the Respondent's employ that the Applicant sought additional payment. Indeed, when she wrote to the Respondent soon after leaving its employ she mentioned only outstanding holiday pay.

I cannot accept that the discussions which took place apparently in February 1984, between Mr Chew and Mr and Mrs Taylor about a suggestion that they would be paid more when business picked up amounted to a formal offer to pay her anything extra at that time. No sum was discussed and, if anything, the offer was too vague to be contractual in nature and really I do not think Mrs Taylor disputes that.

So it is that I am simply not satisfied on balance that Mrs Taylor has made out a claim that it was a term of her contract of employment with the Respondent Company, either express or implied, that she would be paid for the extra work she did. Indeed, my conclusion of the evidence is that it was never intended either by her or the

Respondent that when she took on that task she would be paid for it. Rather the position was, I think, as she mentioned in re-examination, that she did it in an endeavour to help lift the business viability of the resort, and in retrospect, considering the amount of help she gave, thought it fair that she should be paid something extra for it. As I said to her in the course of her address, that circumstance is simply not enough to erect a contract in the terms she suggests.

Whilst the provisions of the Industrial Arbitration Act, and in particular section 26, command the Commission in the exercise of its jurisdiction to act having regard for equity and good conscience as well as the substantial merits of the matter, that in my view does not authorise the Commission to put into a contract of employment terms which simply were not there or intended. One's sympathy might be with Mrs Taylor, but that is not enough to allow her to claim in circumstances such as this.

As to her claim for holiday pay, I can only repeat that individuals do not have an automatic right to four weeks' annual leave or any at all, unless it is a term of their contract, either inserted by an award or as a result of negotiations between the employer and the employee. On this occasion, the evidence of Mrs Taylor clearly is that there was no discussion whatever about annual leave. Thus, although Mrs Taylor asks me in effect to infer that she had an entitlement to annual leave of four weeks there is simply no evidence on which I could infer there was to be any such entitlement. Moreover, as I have indicated to her, even if there was an entitlement to four weeks' annual leave, there needs to be a clear agreement for annual leave to accrue on a *pro rata* basis. Annual leave accrues annually and unless and until an employee works for a year or more accurately 48 weeks there is no entitlement to any annual leave in the absence of an agreement to the contrary. A decision of the former Commonwealth Industrial Court, Gordon *v.* Carroll (1975) 27 FLR 129, 144, makes that abundantly clear (see too: Lyons Advertising Service *v.* Nerad [1981] 61 WAIG 854).

What is also fatal to the Applicant's holiday claim is that it has been settled by the Supreme Court of this State in H.A.W. Jones Pty Ltd *v.* Neille (1967) WAR 181, and also endorsed by the former Commonwealth Industrial Court in Gordon *v.* Carroll (*supra*), that there is no entitlement for annual leave which has accrued, not on a *pro rata* basis but on any basis, to be converted into cash when an employee leaves his employment, unless there is an express agreement to that effect. Annual leave is meant to be recreational leave in order to provide a period of recreation and refreshment and not to be the source of an additional cash payment (see too: Pearce *v.* Para Gold Pty Ltd [1984] 64 WAIG 1180).

Thus it is for all those reasons that in my view there is no alternative but for the claim to be dismissed and I intend to so order.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL COMMISSION.
No. 843 of 1984.

Between Gloria Jean Taylor, Applicant and Greenough River Resort Hotel, Respondent.

Order.

HAVING heard the Applicant in person, and Mr I.L.K. Marshall (of Counsel) and with him Mr M. Fadjiar (of Counsel) on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Arbitration Act 1979, hereby orders —

That the Application be dismissed.

Dated at Geraldton this 1st day of February 1985.

(Sgd.) G.L. FIELDING,
[L.S.] Commissioner.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 32 of 1985.

Between Debra Kaye Thompson, Applicant and Lifestyle Homes, Respondent.

Before Mr Commissioner G.L. Fielding.
The 4th day of April 1985.

Miss D.K. Thompson in person.
Mr P.R. Sims on behalf of the Respondent.

Reasons for Decision.

(Given extemporaneously at the conclusion of the submissions, taken from the transcript as edited by the Commissioner.)

THE COMMISSIONER: The Applicant alleges that she has been underpaid in respect of work she did for the Respondent Company in connection with decorating display homes which the Respondent has in and around the city. She has admitted that she carries on business under the style and firm name of Devon Interiors. She has acknowledged that she was not an employee of the company but in effect an independent contractor and the evidence she has given clearly supports that view. She did work on the basis of a fixed price per job. She had no fixed hours of work and went about her work in a manner which she thought appropriate rather than at the direction of the company. The company, once having in consultation with her settled on a concept of decoration, left it to her to carry out the work in question. She did work for others at the same time that she was working for the Respondent, and it is clear that she was, as indeed she has frankly admitted, not an employee.

Section 29 (2) of the Industrial Arbitration Act, as it was at the time this claim was lodged, provides that a claim may be brought by an employee in relation to a benefit which has not been allowed under a contract of service. The Applicant admits that she was not an employee and the contract under which she claims the money is not a contract of service but rather a contract for services. So it follows that the claim must be dismissed for want of jurisdiction. I say nothing about the merits or otherwise, either of the Applicant's claim or the Respondent's contention that she has been overpaid. That is a matter for another place.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 32 of 1985.

Between Debra Kaye Thompson, Applicant and Lifestyle Homes, Respondent.

Order.

HAVING heard the Applicant in person and Mr P.R. Sims on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders —

That the Application be dismissed for want of jurisdiction.

Dated at Perth this 4th day of April 1985.

(Sgd.) G.L. FIELDING,
[L.S.] Commissioner.

CONFERENCES — Matters arising out of —

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

No. C118 of 1985.

Between Amalgamated Metal Workers and Shipwrights Union of Western Australia, Applicant and the Minister for Works, Respondent.

Order.

HAVING heard Mr J. Sharp-Collett on behalf of the applicant and Mr J. Radisich on behalf of the respondent, the Commission, pursuant to the powers conferred on it under section 44 (9) of the Industrial Relations Act 1979 hereby orders —

That (1) The amount of $2 056.07, the subject of the dispute, is deemed to have been correctly paid.

(2) All action to recover the above amount shall cease as of the date of this order.

Dated at Perth this 3rd day of April 1985.

(Sgd.) G.G. HALLIWELL,
[L.S.] Commissioner.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

No. C87 of 1985.

Between Australasian Society of Engineers, Moulders and Foundry Workers Industrial Union of Workers, Western Australian Branch; Amalgamated Metal Workers and Shipwrights Union of Western Australia; Electrical Trades Union of Workers of Australia (Western Australian Branch), Perth; and the Federated Engine Drivers' and Firemen's Union of Workers of Western Australia, Applicants and James Hardie and Co. Pty Ltd, Respondent.

Order.

HAVING heard Dr J. Crouch and Mr S. Pike on behalf of the applicants and Mr T. Durack on behalf of the respondent, and by consent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby orders —

1. The terms of this Order replace those contained in Order No. 649 of 1982.
2. Notwithstanding the provisions of the Metal Trades (General) Award No. 13 of 1965 and the Engine Drivers' (General) Award No. 21A of 1977, the ordinary weekly rates of wage (not including tool allowance), payable to the employees covered by this Order, shall be as follows for the purposes of the award.
3. (a) Fitter and Turner 337.50
   (b) Motor Mechanic 337.50
   (c) Electrical Fitter 337.50
   (d) Electrical Installer 337.50
   (e) Tradesman's Assistant who uses a grinding machine 286.80
   (f) Boiler Attendant 317.50
4. The rate for each classification mentioned in Clause 3 of this Order shall be adjusted in accordance with any decision of the Commission in Court Session which alters wage rates generally following movement in the Consumer Price Index.
5. The rates of pay set out in Clause 3 of this Order include an Industry Allowance, which at the date of this Order is $5.40 per week.
6. The rates of pay shall apply from the first pay period commencing on or after the date hereof.

Dated at Perth this 19th day of April 1985.

(Sgd.) E.R. KELLY,
[L.S.] Chief Commissioner.

CONFERENCES — Matters referred —

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

No. A4 of 1985.

Between the Amalgamated Metal Workers and Shipwrights Union of Western Australia and Others, Applicants and Amalgamated Industries Pty Ltd, Respondent.

No. CR45 of 1985.

Between the Breweries and Bottleyards Employees Industrial Union of Workers of Western Australia, Claimant and Amalgamated Industries Pty Limited, Respondent.

Before Mr Commissioner G.A. Johnson.

The 29th day of March 1985.

Mr S. Edwards (of Counsel) on behalf of the Amalgamated Metal Workers and Shipwrights Union of Western Australia in Application No. A4 of 1985.

Mr L. Benfell on behalf of the Electrical Trades Union of Workers of Australia, Western Australian Branch, Perth in Application No. A4 of 1985.

Mr G. Droppert (of Counsel) on behalf of the Breweries and Bottleyards Employees Industrial Union of Workers of Western Australia in Application No. CR45 of 1985 and as intervenor in Application No. A4 of 1985.

Mr L. Girdlestone on behalf of the Respondent in both applications.

Reasons for Decision.

THE COMMISSIONER: These proceedings concern the decision of the respondent to set up a plant for the production of cans made from sheet aluminium. It is intended that the bulk of the production will be sold to the Swan Brewery and that the balance will go to other producers of canned drinks. The plant is situated on land owned by the respondent in the vicinity of the beer production plant of the Swan Brewery Company Limited at Canning Vale. The two plants are separated by a road.

In evidence the operation of making aluminium cans is described this way. The first machine stamps out circular pieces of sheet aluminium which are then drawn into cups. Cups move to a group of five machines each of which draws and irons the cup into the can's final shape. Dies are used in these machines but the operators in carrying out die setting operations do so for only a small part of their time. The next machine trims the tops of the cans and they then proceed to the next machine where they are washed. From there they go to the next machine where they are decorated. The next machine coats the inside of the cans and the final machine provides a neck and flange so that the top may be fitted during the filling process.

Employees will be required to monitor the operation of the machines ensuring that the product meets the required specifications. Some adjustment is possible and necessary to maintain appropriate tolerance levels. It is intended that employees will rotate to spend time on each of the machines. As I comprehend the evidence the operation is totally automatic and no employee uses the machines to produce cans. In addition to those employees monitoring the operation, there are a number of tradesmen being persons eligible to join the Amalgamated Metal Workers and Shipwrights Union of Western Australia (AMWSU) and Electrical Trades Union of Workers of Australia, Western Australian Branch, Perth (ETU).

On 7 February 1985 the AMWSU and the ETU made application to the Commission for an award to apply to the work of can production and to the maintenance of the can making plant. The proposed award contains a description of the work envisaged for three grades of operator by way of definition and they are as follows:

> (1) Operator Grade 1 means an employee appointed as such who operates all plant and process equipment associated with the can making process and directs the work of other operators including maintaining visual checks on equipment, checks product complies to quality standards, keeps production records, maintains area in a clean safe and orderly condition, performs a variety of routine tasks related to the plant, handles materials and equipment associated with the manufacturing process and ancillary operations.
>
> (2) Operator Grade 2 means an employee who operates and assists in the operation of all plant process equipment associated with the can manufacturing process including maintaining visual checks on equipment, checks product complies to quality standards, keeps production records, maintains area in a clean safe and orderly condition, performs a variety of routine tasks related to the plant, handles materials and equipment associated with the manufacturing process and ancillary operations.
>
> (3) Operator Grade 3 means an employee who performs miscellaneous tasks of a general utility nature including assisting tradesmen, moving materials and equipment within the plant, assists in receival and despatch of material and equipment, maintains clean and safe work area, plant offices, wash and toilet areas, lunchrooms, general work of a manual nature.

and on the evidence the description of the work is substantially correct.

On 8 February 1985 the Brewery and Bottleyards Employees Industrial Union of Workers of Western Australia (BEU) lodged with the Commission a notice of intention to seek leave to intervene in any proceedings concerning the proposed award sought by the AMWSU and the ETU.

On 12 February 1985 the BEU sought a conference pursuant to the provisions of section 44 (now amended) of the Industrial Relations Act 1979 in which a claim was made on the respondent in these proceedings that it should apply the conditions of the Brewing Industry and Malting Industry Award No. 32 of 1982 to those employees engaged in can making at the premises of the respondent with particular attention being given to the classifications described in the AMSWU-ETU claim as operator.

From that conference the claim of the BEU was referred to the Commission for determination.

The respondent indicated in the preliminary discussions that it was prepared to settle conditions of employment with whichever union was successful in securing the right to award coverage. It objected to the two claims merely to facilitate the determination of that question. Those discussions also revealed that the AMWSU and ETU objected to any order of the Commission giving the BEU rights with respect to operators on the ground that the BEU did not have the right to enrol such persons as members and therefore were unable to represent them. There was a similar objection by the BEU with respect to the AMWSU and ETU on the ground that they did not have the right to enrol operators as members. At the hearing the parties to the two matters before the Commission agreed that they be heard together as if they were a single action. It was also agreed that argument would be devoted solely to the matter of interpretation of constitution rules of the AMWSU and the BEU leaving the survivors to enter into negotiations with the respondent after that matter had been decided. The respondent elected not to make substantive submissions.

I turn first to the interpretation of the constitution rule of the AMWSU and two arguments were put forward in support of its application. First that the work of operators is specifically catered for in the rule and second that, even if the work is also included in the general meaning of the constitution rule of the BEU, an exclusion in favour of the AMWSU precludes any interest by the BEU.

In the first argument I was directed to a number of trades or branches or vocations in the AMWSU rule and I set each one out in turn and emphasised.

> The union shall consist of workers employed or usually employed
>
> (a) in the State of Western Australia and engaged in any of the following trades or branches or vocations:
>
> (i) Smith, shipsmiths, angle iron smiths, . . . iron workers' assistants including *process workers,* assemblers, fitters assistants, moulders assistants, boiler makers assistants, blacksmiths strikers, dressers, drillers, pipe makers, riggers, furnacemen, *die makers, die setters, press operators,* fettlers, . . .
>
> (ii) Marking off, making templates, making jibs (except precision work associated therewith), . . . *hydraulic presses* (except helpers and labourers to boilermakers), nipping and notching machines, operators of oxy-acetylene gas welding and cutting plants, . . .
>
> (iii) *Sheet metal workers* including spinners, draw moulders, ceiling fixers, welders, metal polishers and revolving shutter machinists engaged on sheet metal work in the tinplate, tinsmithing, sheet metal working, gas meter making, sheet metal trunk and boxmaking or *canister making* industries and including painting, japanning, tinning, galvanising, sheradising, lacquering, oxidising or electroplating or vitreous enamelling.

So far as the trades or branches or vocations in item (i) of paragraph (a) are concerned, I do not see operators as process workers. My understanding of that expression is that employees so titled are involved in "a continuous and regular action or succession of actions taking place or carried on in a definite manner; a continuous (natural or artificial) operation or series of operations" *6 Shorter Oxford English Dictionary.* The operation of can making may well be a process but the operators are ancillary to it, taking no part in the individual sections of the process.

On evidence the operators are not die makers and that part of their time spent on die setting type duties will not make up a major and substantial part of their work. Similarly in items (i) and (ii) whilst there may be press or hydraulic press actions undertaken by the machines they

are an integral part of the automatic function and in any event I am not satisfied that the operator has any control over the press process except to start and stop it.

The final area to be examined is that of item (iii) which relates to sheet metal workers. I have set out the whole of this item and it can be seen that the can making operation is fixed in relation to persons operating a revolving shutter machine. The machines of the respondent do not fall into that category.

As I understand the rules of interpretation, the words following the word "including" are to be read as additions to the general meaning of the words "sheet metal workers". Moreover those additions are finite. I am unable to see the work of an operator being described in those additions.

I have taken the word "includes" to provide an enlargement of the expression "sheet metal workers" on the basis of my limited general knowledge of this area of work there being no evidence from the parties to assist me. I do not believe the work described after the word "includes" is an exhaustive description of all of the work of a sheet metal worker.

That leaves the primary classification of sheet metal worker. A simple dictionary meaning of the words does not assist except to the extent that the words suggest that the person works sheet metal. The opinion of a witness experienced in the engineering field was that the operators were not sheet metal workers.

If the wages clause and definitions clause of the Sheet Metal Workers Award No. 10 of 1973 (53 WAIG 791) is examined to see how the expression "sheet metal workers" is understood in the industry there appears to be no class of work described there which is similar to that carried out by operators. In the absence of any other material I conclude that the work of operators is not sheet metal work.

As to the second argument, in view of the conclusion I have reached in the matter of the operators, there is no need to deal with the exclusion in the constitution rule of the BEU except to the extent that it forms part of the argument by the BEU in support of its claim that the work of operators is within its rule and I turn to that question now.

Subrule (1) of rule 3. Constitution is in these terms:

> (1) This Union may admit to membership any worker who is employed in and/or about a Brewery, Beer Bottling Works, Malt House and/or Bottleyards, together with the person appointed or elected to the position of Secretary, provided that no person who was eligible to be a member of any Industrial Union registered under the provisions of the Industrial Arbitration Act 1912 as amended before the 5th day of February 1946, shall be eligible for or admitted to membership of this Union, and provided further that no person shall be a member of the Union (except in the capacity of an honorary member or member who or whose personal representative is entitled to some financial assistance under the rules of the Union while not being a worker) who is not a worker within the meaning of the aforesaid Act.

It will be observed that the BEU is, subject to the exclusions, an industry union while the AMWSU is a vocational union. In that context the matter of technological change is not relevant in an interpretation of the rule of the BEU. It is of course important for the union if the change produces a new industry falling outside its constitution rule and if that new industry is a replacement for one of the industries described by the rule but that is not a matter for these proceedings.

Similarly I am of the opinion that the views of the employees concerned are not relevant in determining what is essentially a matter of interpretation of a document registered with this Commission.

That discussions may have taken place over some time between the BEU and officials of the Swan Brewery in which understandings may have been reached is not a matter contributing to the meaning of the words of the constitution rule of the BEU.

The argument of the BEU upon which I will comment in some length can be summarised this way. History shows that, where a brewing company owns another company which puts a key element into the process of the brewing industry, the BEU has had coverage. Such a practice has as its basis the words "in and/or about a brewery" interpreted to mean legal and related product proximity rather than geographical proximity. Evidence was adduced to support this contention.

The essence of the case put by the BEU is that, as the respondent in these proceedings is closely aligned with the Swan Brewery Company Limited which operates a brewery and as the cans produced by the respondent provide a key element in the process of the brewing industry and as the work of operators is not otherwise covered by another union, it must fall within the rule of the BEU and that in any event the physical separation between the two plants is not sufficient to deny the application of the rule as the respondent's plant is in and/or about a brewery.

In support of the proposition, reference was made to a number of cases which concerned such links however my reading suggests that those links depended on the meaning of "in or in connection with" rather than the words "in and/or about". Reference was also made to the custom and practice of the past as it relates to the coverage of persons who perhaps should otherwise have been excluded by the operation of the rule or to organisations which lost their relationship with a brewery and therefore cease to be subject to the BEU rule. Some discussion took place on the history of various organisations having an interest in the brewing industry.

Evidence was clear that there had been the best of relationships between the BEU and employers in the brewing and associated industries and that with the exception of tradesmen all wage employees in those industries were and are members of the BEU.

As I read the authorities, evidence of a common understanding among people concerned is relevant in having regard to the meaning to be attributed to words used in a constitution rule. However I do not see that practice going to the extent to which it has gone in these proceedings because if I am to have regard for all that has been said by the BEU the specific exclusion, as it relates to persons eligible to join other unions, becomes meaningless and the words "in and/or about" have to be given a meaning which the words simply cannot sustain in their broadest interpretation.

The authority to which I refer is a summary of recent decisions contained in *Re* Williams, Moore and Alley *ex parte* Australian Building Construction Employees and Builders Labourers Federation where it was said by majority

> The eligibility provisions in the rules of a registered organisation of employees serve the function of defining the general area or areas of industry or industrial pursuit from which members can legitimately be drawn and with which the organisation can legitimately be concerned (see Reg. *v.* Dunlop Rubber Australia Ltd; *Ex p.* Federated Miscellaneous Workers' Union of Australia [1957], 97 CLR 71, at p. 87; Reg *v.* Clarkso; *Ex p.* Victorian Employers Federation [1973], 131 CLR 100, at pp. 113 and 113; Co-operative Bulk Handling Ltd *v.* Waterside Workers' Federation of Australia [1980], 49 FLR 355, at pp. 357-358). Since such eligibility provisions constitute a reference point for courts, commissions, employers, employees and other organisations in determining or ascertaining an organisation's proper coverage and field of operation, they must be construed objectively (see Reg. *v.* Aird; *Ex p.* Australian Workers' Union

[1973], above, at p. 659; Reg *v.* Cohen; *Ex p.* Motor Accidents Insurance Board [1979], 53 ALJR 719, at pp. 720 and 723). In so construing them, however, it is permissible to pay regard to any common understanding among people concerned with relevant industries and particularly with industrial matters of the ordinary application of the words used and to take account of evidence of that common understanding furnished by the previous use of the words in the relevant organisation's rules and in statutory provision, decisions, determinations, awards, reports and other papers concerned with the relevant industry or industries (see, for example Rex *v.* Hickman; *Ex p.* Fox and Clinton [1945], 70 CLR 598, at p. 613; Reg *v.* Aird; *Ex p.* Australian Workers' Union, above, at p. 659).
(1983 57 ALJ 38 at p. 39)

The words "in and/or about" connote a geographical parameter, see for example the cases cited in *Strouds Judicial Dictionary* under the heading "in or about" or in *Butterworths Words and Phrases Judicially Defined* under the heading "about". I am unable to find authority for the concept of legal relationship and produce relationship to come within the accepted meanings of the expression "in and/or about".

The evidence is quite clear that the respondent is an organisation with a corporate identity of its own and is the only respondent to these proceedings; it is not a brewery, beer bottling works, malt house and/or a bottle yard and it is geographically separate from the Swan Brewery as it occupies its own land and is about ½ km as the crow flies across a road from the brewery. My conclusion is that the work of the respondent is not work which falls within that contemplated by the rule of the BEU.

In these proceedings I have been given every assistance by counsel and in the ordinary course I would have recognised that fact by relating in full detail the arguments put forward as courtesy demands. Having regard for the time constraints which exist I trust the omission will be excused.

It is now clear, subject to appeals, for the AMWSU and the ETU to pursue their negotiations with the respondent for an award to cover trade classifications; application A4 of 1985 will be adjourned for that purpose. An order will issue now to dismiss the application of the BEU.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. CR45 of 1985.

Between the Breweries and Bottleyards Employees Industrial Union of Workers of Western Australia, Claimant and Amalgamated Industries Pty Limited, Respondent.

Order.

HAVING heard Mr G. Droppert (of Counsel) on behalf of the claimant and Mr L. Girdlestone on behalf of the respondent the Commission pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby orders —

That the application be dismissed.

Dated at Perth this 29th day of March 1985.

(Sgd.) G.A. JOHNSON,
[L.S.] Commissioner.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. CR40 of 1985.

Between WA Dental Technicians' and Employees' Union of Workers, Perth, Applicant and Lawrence G. Bartlett, Respondent.

Order.

HAVING heard Mr I.J. Sands on behalf of the Applicant and there being no appearance by the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders —

That the Application be and is hereby withdrawn by leave.

Dated at Perth this 26th day of April 1985.

(Sgd.) G.L. FIELDING,
[L.S.] Commissioner.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. CR314 of 1983.

Between BP Refinery (Kwinana) Pty Ltd, Applicant and the Federated Engine Drivers' and Firemen's Union of Workers of Western Australia, Respondent.

Before Mr Senior Commissioner B.J. Collier.
The 27th day of March 1985.

Mr M.C. Williams on behalf of the applicant.
Mr R.A. Keegan on behalf of the respondent.

Reasons for Decision.

THE SENIOR COMMISSIONER: The matter now before the Commission was the subject of decisions by myself and the Full Bench on 22 August 1984 and 24 October 1984 respectively. On that latter date the application was remitted to me by the Full Bench for further hearing and determination.

In view of the Commission's earlier doubt on the safety aspects of the demanning proposals it decided to enlist the aid of an expert and, with the co-operation of the parties, the Chief Inspector of Machinery, Department of Industrial Affairs, Mr K. Collins, was requested to inspect the Cooling Water Pump House at BP Refinery (Kwinana) and report on whether he considered it safe for the manning level to be reduced from two men to one man per shift.

On 4 January 1985 Mr Collins forwarded his report to the Commission and this was made available to the parties. This indicated, amongst other things, that there were sufficient hazards present to prevent a reduction of operators from two to one. However, if the Company were prepared to remove the hazards there was no reason why one operator could not move around confident in his safety.

At the request of the Union the Commission made arrangements for the parties to have a discussion with Mr Collins on his report and this took place on 7 March 1985, followed by a further full inspection of the area on 18 March 1985. As a result of that inspection two further hazards were identified which, in Mr Collins' view, required rectification before demanning could occur.

The Company has now informed the Commission that, not only has it attended to all the matters raised by Mr Collins, it will also complete the modifications of a large number of additional items which the Union representatives considered to be desirable within one month.

When the hearing was resumed on 22 March 1985 the Union advised that it still had "nagging doubts" over the proposal and drew the Commission's attention to some matters on which he sought action or assurance from the applicant. I am satisfied with the answers given to the Union by the Company and having accepted Mr Collins' report as evidence propose to adopt the recommendation therein.

The use of electric motors in lieu of steam turbines to drive the cooling water pumps is a significant factor in the proposed demanning. Although the Union has been assured that the intention is to run steam turbine pumps mainly as stand-bys it expressed doubts about this and after discussing the matter with Mr Collins the Commission is not convinced that the Company has yet achieved its objective in this regard.

For the purpose of ensuring that the Company's intention materialises and to enable most if not all of the non-essential but desirable modifications to be finished before the demanning takes place the Commission considers that an order should issue authorising the reduction in manning to take effect from the beginning of the first pay period commencing on or after 17 April 1985.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. CR314 of 1983.

Between BP Refinery (Kwinana) Pty Ltd, Applicant and the Federated Engine Drivers' and Firemen's Union of Workers of Western Australia, Respondent.

Order.

HAVING heard Mr M.C. Williams on behalf of the applicant and Mr R.A. Keegan on behalf of the respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders —

That manning of the Cooling Water Pump House at the Kwinana Oil Refinery may be reduced from two employees to one from the beginning of the first pay period commencing on or after 17 April 1985.

Dated at Perth this 27th day of March 1985.

(Sgd.) B.J. COLLIER,
[L.S.] Commissioner.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. CR111 of 1985.

Between Federated Liquor and Allied Industries Employees' Union of Australia, Western Australian Branch, Union of Workers, Applicant and Court Hotel, Respondent.

Before Mr Commissioner J.A. Negus.
The 10th day of April 1985.

Mr E.E. Fry on behalf of the Applicant.
Mr A. Normoyle on behalf of the Respondent.

Reasons for Decision.

THE COMMISSIONER: This dispute came to the Commission when agreement was not reached at a conference initiated by the Applicant Union. It concerns an application for reinstatement in employment of one of the Union's members, Mrs Clark whom it is claimed was unfairly dismissed by Mr Devon, one of the proprietors of the Respondent Hotel.

Mr and Mrs Devon, in partnership with a Mr Max Eade, took over the proprietorship of this city hotel in February 1984. It was arranged that Mr Eade, because of his long and successful experience in the industry, would be the licensee and Bar Manager, responsible for staffing matters. Early in 1985, it was agreed that the partnership would be dissolved because of continuing health problems necessitating Mr Eade's retirement from active work. There is considerable conflict between the memories of Mr Eade and Mr Devon regarding any conversations they may or may not have had on the subject of continuing employment of one or other of two full time bar attendants, Mrs Clark and a Mrs Tomasini.

Fortunately it is not necessary to delve deeply into the accuracy of the memories of the two witnesses because the vital facts, germane to this application, are not in doubt.

Mr Devon had alleged that on Monday 25 February 1985 a customer in the hotel had informed Mrs Devon that Mrs Clark, whom he identified as "Carol, the tall blonde one", had given him cheap drinks. This accusation of alleged misconduct was not drawn to Mrs Clark's attention, even though she worked at the hotel on each day of that week. Mr Devon has also indicated that he did not take any steps to observe Mrs Clark at her work during that week in order to satisfy himself as to her honesty or otherwise.

Mr Eade, in his evidence, claimed to have a keen eye for the detection of misconduct among bar attendants and agreed that Mrs Clark, during his association with her, had never given him any cause for concern or complaint regarding her performance or her honesty. Mr Devon agreed, in his testimony that Mrs Clark "was very popular with the clientele" and that she was a reliable worker who had never "taken a sickie".

It is not in dispute that on Friday 1 March, in the forenoon, Mr Devon lodged an advertisement in The West Australian's Employment column, seeking applicants for positions as full time and casual bar attendants.

Under cross examination, Mr Devon revealed that the timing of his action in summarily dismissing Mrs Clark for misconduct was to some extent dependent upon the responses elicited by the advertisement which appeared in the morning paper of Saturday 2 March. It appears that his intention was to postpone the actual dismissal of Mrs Clark until such time as he had been able to find someone of sufficient experience or suitability to replace her.

The only other portion of the evidence which needs noting at this time is that Mr Devon, in the weeks prior to the hearing, had made a considerable effort to identify, locate and bring forward the person who allegedly accused Mrs Clark of "giving him cheap drinks". In the event, no such witness was brought before the Commission.

It is not the role of the Commission to interfere in the rights of employers using their managerial prerogative to decide whom they will employ. It is incumbent upon it however to ensure that employees, once hired, are treated fairly.

In cases of dismissal for misconduct, it is a well established principle that the onus rests on the employer to prove the misconduct (Blyth Chemicals *v.* Bushnell [1933] — 49 CLR p. 66). The question of delay arises in this case of dismissal. It is suggested that summary dismissal is a proper action only if it is accomplished without undue delay. For the employer to delay the dismissal is tantamount to condoning the alleged misconduct. This matter is referred to in Halsbury, 3rd edition, Vol. 25 at p. 488.

> A master who with full knowledge of a servant's misconduct elects to continue him in his service cannot subsequently dismiss him for the offence which he has condoned . . .

For two reasons then, the summary dismissal of Mrs Clark must be seen as unfair and unreasonable in the circumstances. The employer has not been able to prove that misconduct occurred. Even if such proofs had been forthcoming thre is an element of condonation and of cavalier treatment in the time taken by the employer to take the action he believed was his right.

The always difficult question of reinstatement was made easier to resolve by the demeanour of the parties at the hearing. Mr Devon agreed that he and Mrs Clark would be able to work together again in the bar of the hotel and in any case new proprietors were expected to take over the business in the near future. I believe that Mr Devon's actions were without malice towards Mrs Clark but were based on ignorance of the obligations which are always concomitant with the rights of an employer. There was ready agreement between the parties that the matter might be treated as an unfortunate misunderstanding and that four weeks of Mrs Clark's enforced inactivity would be treated as the annual leave entitlement for which she had been paid.

Mrs Clark will be reinstated in her employment without loss of entitlements and without blemish to her valued reputation as a bar attendant of "skill, courtesy and diligence . . . who is punctual and reliable . . ." (former employer's reference).

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. CR111 of 1985.

Between Federated Liquor and Allied Industries Employees' Union of Australia, Western Australian Branch, Union of Workers, Claimant and Court Hotel, Respondent.

Order.

HAVING heard Mr E. Fry on behalf of the claimant and Mr T. Normoyle on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders —

That the respondent reinstate Mrs Carolynn Clark as a full time bar attendant forthwith, and, futher that the respondent, allow her all benefits lost by the termination as if her contract had not been determined on 5 March 1985 including reimbursing her the remuneration which would have accrued to her during the period of her unemployment. For the purposes of this order it has been agreed between the parties that in calculating the period of unemployment to be reimbursed, a deduction of four weeks will be made, those four weeks to be regarded as annual leave with pay, being taken by Mrs Clark.

Dated at Perth this 11th day of April 1985.

(Sgd.) J.A. NEGUS,
[L.S.] Commissioner.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. CR60 of 1985.

Between Federated Liquor and Allied Industries Employees' Union of Australia, Western Australian Branch, Union of Workers, Applicant and Shafto Lane Tavern, Respondent.

Order.

HAVING heard Mr E.L. Fry on behalf of the Applicant and Mr K.J. Farrell on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, and by consent, hereby orders —

That the Application be and is hereby withdrawn by leave.

Dated at Perth this 4th day of April 1985.

(Sgd.) G.L. FIELDING,
[L.S.] Commissioner.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. CR532 of 1984.

Between the Federated Miscellaneous Workers' Union of Australia, Hospital, Service and Miscellaneous, W.A. Branch, Applicant and the Commissioner, Metropolitan Water Authority, Respondent.

Before Mr Commissioner G.G. Halliwell.
The 2nd day of April 1985.

Mr A.R. Beech on behalf of the Applicant.
Mr N.R. Whitehead on behalf of the Respondent.

Reasons for Decision.

THE MATTERS referred to the Commission for hearing and determination pursuant to section 44 of the Act are as follows:—

The Union claims that:

(a) Members of the applicant union who are employed at the reservoir site at Shenton Park be paid a site allowance equal to that being paid to contractors at that site doing the same work.

(b) Members of the applicant union who are employed on the construction of the new water tower at Nollamara be paid a site allowance of $1.50 per hour.

The Respondent objects to and opposes the claim. The facts are that at and within the confines of the Shenton Park sewerage treatment complex, construction of five aeration tanks is being carried out by employees of the respondent and construction of a blower house is being done by employees of a contractor, Sabemo. The Sabemo employees are apparently in receipt of a site allowance of $1.00 per hour.

The applicant contends that as the M.W.A. employees are "rubbing shoulders" with Sabemo employees that both groups are working on the same site and entity, albeit different parts thereof, the site allowance should be extended to employees of the M.W.A. as they are subject to the same disabilities. *Prima facie,* such an argument has merit; however there are presently wage fixation principles in force by general order of this Commission and the Australian Conciliation and Arbitration Commission.

A Full Bench of the latter tribunal (Print F1957) commenting on site allowances stated, *inter alia*:—

> We see the existing arrangements as they were operating on 23 December last continuing to apply, subject to the following:
>
> (i) In relation to a claim for a new site allowance the first issue to be decided is whether the site is one for which an allowance is appropriate. As the unions acknowledged, not all projects attract an allowance. The test is whether at 23 December 1982 the site would have attracted such an allowance. It would be quite contrary to the intention of the wage pause to grant a site allowance for areas or circumstances where one would not have customarily applied or in any other way to create a precedent for the extension of site allowances beyond the areas or circumstances to which they have previously applied.
>
> (ii) As to the quantum of any allowance, this should be assessed on the same basis as immediately prior to 23 December and therefore the level should not exceed what would have been appropriate at that date for the circumstances on the site.
>
> (iii) Fixation of a new site allowance should have no regard to other site allowances, even in the immediate area, *which have not been assessed by the Commission* or where the Commission is not satisfied that the amount agreed between the parties is appropriate.
>
> (iv) The foregoing applies to all claims for site allowances made before 23 December 1982 and not determined at that date as well as new claims after that date.
>
> *Claims for Increases in Existing Site Allowances:* These claims all concern Western Australia and extend to Muja, Kwinana, Pinjarra and Wagerup. In these cases also the notices of disputes had been lodged but not processed prior to 23 December 1982.
>
> (Emphasis Mine)

Further, the National Building Trades Construction Award 1975 provides in Clause 9.6 Site Allowances that:—

> Where the parties have considered the merit of the claim and have agreed on a proposed rate *it shall be referred to the Commission for ratification.*
>
> (Emphasis added)

As far as was able to be ascertained by the respondent, who let the contract to Sabemo, the $1.00 per hour site allowance has not been ratified by the Australian Conciliation and Arbitration Commission. In those circumstances and as the employees receive a construction allowance, the claim is outside the wage fixation principles and must therefore be refused.

Claim (b) arises from the construction, on M.W.A. property at Mt Yokine, of a water tower by M.W.A. employees. It is conceded by the respondent that the water tower and the method of construction are similar, although of larger capacity, to a water tower built under contract for the M.W.A. at Coolbellup in December 1983 through March 1984.

In a decision dated 1 February 1984 (Print F4427) Mr Commissioner Coleman of the Australian Conciliation and Arbitration Commission determined a site allowance for the water tank construction of 40 cents per hour in lieu of payments for confined space, dirty work, wet underfoot and handling of second hand timber. In awarding the site allowance, Coleman C. stated:—

> It is my conclusion that the work being performed on the site, in and around the columns that support the tank, and on the tank itself are of a complex and exacting nature, requiring extra effort in the performance of skills and physical activity in the preparation of form work, erecting and working on scaffolding in hazardous situations underneath and around the sides of the tank, and on the columns.
>
> While the price of the contract is under $1 million, that does not disguise the fact that over the nine months of construction a series of disabilities will be present to which the employees will be exposed from time to time and which in my opinion are not adequately covered by the award provisions.

As stated earlier, the water tower at Yokine is on M.W.A. property which includes a reservoir. At or about 30 May 1984 Coleman C. inspected the Mt Yokine site during the construction of roofing to cover the No. 3 pond. In the subsequent decision of 31 May 1984 (Print F5643) Coleman C. stated *inter alia*:—

> The reservoir at Yokine is situated on one of the highest hills in the metropolitan area and is exposed to the climatic conditions. The major works to be performed will take place during the autumn, winter and spring seasons when strong cold winds and rainy conditions will be prevalent.
>
> During the wet weather periods work around the perimeter columns will be performed on wet and damp ground and in the bed of the reservoir on wet and watery concrete.
>
> The large size of the reservoir will, in the winter months, create unpleasant and uncomfortable conditions for those working on foundations, columns and the roof, and to that extent it is my view that the special allowances of the awards are really not adequate to cope with that situation.
>
> I have decided to award a site allowance of 40 cents per hour for each hour worked. It shall be paid in lieu of payments for dirty work, confined space, wet underfoot, and the handling of second hand timber.

It is plain from the above that ". . . strong cold winds and rainy conditions . . . and the side effects of the rain on the job itself *viz* . . . wet and damp ground . . . wet and watery concrete . . ." were at the core of the decision. In the present case the construction work on the water tower at Mt Yokine has been over the warmer months, however the applicant submits that exposure to the elements in particular wind and dust and an element of working in a confined space warrant the awarding of a site allowance to M.W.A. employees. Further, as Coleman C. awarded a site allowance to construction employees at the identical site, it is submitted that the site has been assessed by arbitration for site allowance purposes.

The respondent's opposition to claim (b) is best summed up in Mr Whitehead's words:—

> It is also the union's argument in this instance that the construction work allowance and also the special rates and provisions are not adequate to cater for the disabilities associated with that site. The employer strongly disagrees with this. It is considered that the special rates and provisions, in particular dirty work, height work and confined space, are adequate to cater for any disability associated with this particular site. That, combined with the construction allowance, in the employer's submission, quite adequately caters for any disability on that site.
>
> The union went on to say that the engineer indicated that the mode of construction of the water tower at Mount Yokine was complicated and, from memory, the engineer clarified that situation by saying the actual plans and the nature of construction were complicated.
>
> However, the employees, themselves, were not put in a position where they were affected by that complication. I think that is a point of note.
>
> The other so-called unique disability which Mr Beech referred to was the exposure to the elements and we would argue that this is catered for in the

construction allowance. It is a component of the construction allowance as indicated in the National Building Trades Construction Award. It quite simply caters for such exposure to the elements and, after all, they are building workers on a construction site.

Confined space: As the Commission has been advised by Mr Beech there is a special rate in the award for confined space. There is also a special rate for height work and obviously, in this instance, the height of the tower structure itself would warrant the payment of that allowance.

The position confronting the Commission is firstly that the M.W.A. employees are permanently employed in the water supply industry and not the construction industry. The construction industry is by its nature an industry where employment is on a job by job basis rather than permanent employment as is the case with the M.W.A. employees. Further, the M.W.A. employees whilst engaged on construction work are paid a construction allowance for the disabilities associated therewith. That allowance is the same as that prescribed in the National Building Trades Construction Award 1975 which states that the industry allowance is to compensate for:—

(a) Climatic conditions when working in the open on all types of work.
(b) The physical disadvantage of having to climb stairs or ladders.
(c) The disability of dust blowing in the wind, brick dust, and drippings from newly poured concrete.
(d) Sloppy and muddy conditions associated with the initial stages of the erection of a building.
(e) The disability of working on all types of scaffolding or ladders other than a swing scaffold, suspended scaffold, or a bosun's chair.
(f) The lack of the usual amenities associated with factory work (e.g. meal rooms, change rooms, lockers).

Having inspected the Mt Yokine site the Commission is not satisfied that the conditions on the site are so exceptional as to warrant a site allowance over and above the disabilities for which the construction allowance of $12.40 per week is paid. Claim (b) is therefore refused.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. CR532 of 1984.

Between the Federated Miscellaneous Workers' Union of Australia, Hospital, Service and Miscellaneous, W.A. Branch, Applicant and the Commissioner, Metropolitan Water Authority, Respondent.

Order.

HAVING heard Mr A.R. Beech on behalf of the applicant and Mr N.R. Whitehead on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby orders —

That the two claims herein be dismissed.

Dated at Perth this 2nd day of April 1985.

(Sgd.) G.G. HALLIWELL,
[L.S.] Commissioner.

UNIONS — Full Bench application for alteration of rules —

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 1124 of 1984.

In the matter of the Industrial Relations Act 1979 and in the matter of an application by Hospital Salaried Officers Association of Western Australia (Union of Workers) for alteration of rule 3.—Constitution of its registered rules.

Before the Full Bench.
His Honour the President D.J. O'Dea,
Senior Commissioner B.J. Collier,
and Commissioner G.A. Johnson.
The 29th day of March 1985.

Mr G.N. Hocking on behalf of the applicant.

Mr B.J. Finlay on behalf of the Federated Clerks' Union of Australia Industrial Union of Workers, W.A. Branch.

Reasons for Decision.

THE PRESIDENT: This is an application to alter rule 3.—Constitution of the rules of the Hospital Salaried Officers Association of Western Australia (Union of Workers) to allow for the inclusion of those engaged in professional, administrative, technical, supervisory or clerical capacities employed by Good Samaritan Industries or F.C.B. Industries.

The Federated Clerks' Union of Australia Industrial Union of Workers, W.A. Branch objects to the registration of the alteration so far as it relates to persons eligible to be its members, claiming that it is likely to be affected by loss of membership and/or potential membership and the potential for industrial disputation. The grounds of objection are that persons who are eligible to be members of the F.C.U. are amongst those whom the alteration seeks to cover; that it can and does adequately represent the industrial interests of such persons, and that the application is contrary to the provisions and/or intent of the Industrial Arbitration Act 1979 (now the Industrial Relations Act 1979, and amendments).

No oral evidence was adduced but the applicant relied upon a number of exhibits which were tendered for the purpose of illustrating the nature of the organisations, Good Samaritan Industries and F.C.B. Industries. Other exhibits included material by which the applicant sought to demonstrate that amongst the employees who would become entitled to membership there was a keenness that the H.S.O.A. should accept them as members and act to represent their interests. Mr Finlay, who appeared for the objector, questioned the extent to which such material could be relied upon but after considering the contents of the exhibits and in the absence of contrary evidence we are satisfied on balance that the organisations share a common industry and that a number of their employees, who could be eligible, have evinced an interest in obtaining membership of the H.S.O.A.

It was indicated that some 20 members of the workforce at Good Samaritan Industries and six at F.C.B. Industries have applied for membership of the H.S.O.A. and of those who are engaged in clerical or administrative capacities about nine out of 16 have applied. It appears that there is a maximum of four members of the F.C.U. amongst the employees.

Exhibits 1 and 2 comprise structural charts which illustrate that each organisation employs persons in the administrative and supervisory capacities covered by the constitution rule of the H.S.O.A.

There was further material before us the purpose of which was to show the involvement of the H.S.O.A. in fostering support from salaried staff, managers and

clerical staff. This was largely confined to Good Samaritan Industries but there has been some contact as well with employees of F.C.B. Industries.

It is noted that F.C.B. Industries is a respondent to the Clerks (Wholesale and Retail Establishments) Award and that the F.C.U. has lodged with the Commission an application for a new award to cover employees engaged in clerical work employed by Good Samaritan Industries. We are unable to say, on what is before us, whether that constitutes adequate representation of the industrial interests of persons eligible to be members as the F.C.U. claims. In any event that is a question properly within the province of the Commission as otherwise constituted.

Although there is limited evidence concerning the interest in the H.S.O.A. which has been exhibited, particularly by the employees of F.C.B. Industries, we are satisfied that there are sound reasons for granting this application even though some overlapping of eligibility for membership will occur.

It is evident that Good Samaritan Industries and F.C.B. Industries are similar organisations which operate to aid the rehabilitation of disabled persons. The principal function of each organisation appears to be the conduct of sheltered workshops and there are related industrial activities and persons are employed in a variety of administrative, supervisory and clerical callings as illustrated in exhibits 1 and 2. We are informed and accept that the activities of these two organisations are similar to those of other employers referred to in rule 3.—Constitution, namely the Paraplegic-Quadriplegic Association of Western Australia (Inc.), the Spastic Welfare Association of Western Australia (Incorporated) and the Slow Learning Children's Group of Western Australia (Inc.) each of which conducts a sheltered workshop.

The constitutional rule has been extended from time to time to cover persons employed by the employers to which we have referred and other employers of a like nature. The starting point for the rule in its modern form was in 1976 when the Commission in Court Session approved a proposed rule which effectively covered employees engaged in professional, administrative, technical, supervisory, and clerical capacities employed by public or private hospitals (other than those established under the Mental Health Act 1962), the Western Australian School of Nursing or any service ancillary to the practice of medicine including the Western Australian Division of the Red Cross Society and the Spastic Welfare Association of Western Australia (Incorporated). The rule, as formulated at that time, contained provisos which qualified the coverage afforded by excluding specified employees (55 WAIG 1596).

The Commission has recognised that each of the employers specified in paragraphs (d) to (i) of subrule (1) of rule 3 are organisations solely or substantially engaged in the provision of health services through the medium of hospitals or facilities akin to hospitals. As such these employers were arguably within the existing rule 3, but in each case alteration of the rule was approved in a form which related to employment in facilities or services *other than* (our emphasis) public or private hospitals or services ancillary to the practice of medicine. In each case the Commission saw fit to extend the rule by permitting persons employed in facilities or services other than those referred to in subrules (a) and (c) (which should have been, and is now, correctly expressed as paragraphs [a] and [c]) of subrule (1).

There can be no doubt that the constitution rule relates to employees who may be eligible for membership of the F.C.U. but the proposed rule was then approved and substantially extended as we have indicated, despite the objection of that union.

In approving the proposed rule in 1976 the Commission was satisfied that registration of the rule in the form proposed would not of itself act to the detriment of the F.C.U. or prevent it raising objection at any time if it believed the H.S.O.A. was seeking industrial coverage in areas which the F.C.U. believed should be reserved to it. The F.C.U. now asserts that the Commission's confidence was misplaced.

Again in 1977 the Commission in Court Session considered it appropriate to authorise registration of a similar alteration which added paragraphs (f), (g) and (h), despite objection by the F.C.U. with respect to employees which it covered. On this occasion the Commission noted that objections to earlier extensions had also failed and it was pointed out that the decision to approve the extensions did not foreclose the manner of industrial regulation for those employed as clerical workers (57 WAIG 415).

As recently as November 1984 the Commission again authorised a similar extension to rule 3 by adding paragraph (i). On this occasion there was no objection and the appellant was able to satisfy the Full Bench that the Paraplegic-Quadriplegic Association of Western Australia (Inc.) was in an industry similar to that of other employers referred to in rule 3 and a considerable proportion of those employed by that employer had demonstrated an intention to become members of the applicant union.

We have already noted the similarity between Good Samaritan Industries and F.C.B. Industries on the one hand, and that they compare closely to Paraplegic-Quadriplegic Association of Western Australia (Inc.) and other employers named in rule 3, on the other hand. We have also observed that there is sufficient material before us to demonstrate a desire on the part of a significant number of employees to be represented by the H.S.O.A. In this respect it will be seen that there are features of this application which are similar to matters which persuaded the Commission to authorise a similar alteration in November last. It will also be seen that being in the hospital industry or in a service ancillary to the practice of medicine is the essential feature of each of those employers whose employees are already covered by extension to the H.S.O.A. rule. The fact that that is a central feature of the present application would in the ordinary course encourage the Commission to grant the application as a matter of consistency. There is one different aspect to the present application which should be noted. It is that the applicant submitted the alteration in a form which would have excluded, in relation to the specified employers, the words "in facilities or services other than those referred to in paragraphs (a) and (c) etc." Mr Finlay submitted that in doing so the applicant hoped to avoid any qualification to coverage which might be contained in paragraphs (a) and (c). He pointed out that paragraph (c) contains a proviso which, *inter alia,* excludes from eligibility for membership of H.S.O.A. any person employed in any wholesale or retail distributing or manufacturing organisation. It is contended that in the context of rule 3 as a whole, that constitutes a general exclusion from membership under the rule as distinct from a particular exclusion from eligibility if employed as a clerk by the Western Australian Division of the Red Cross Society in accordance with the proviso to paragraph (d). Mr Finlay further contended that in each case the reference to facilities or services other than those referred to in paragraphs (a) and (c) of subrule (1) of the rule, picked up (and thereby excluded) the facility or service specified in the proviso namely "wholesale or retail distributing or manufacturing". That may well be correct as a matter of construction but we prefer to express no concluded views since the point has not been debated before us. If it is as Mr Finlay contends then the omission of the words "in facilities or services other than those referred to in paragraphs (a) and (c) etc." operates to deprive the F.C.U. of the benefit of the exclusion in the proviso to paragraph (c). It is necessary to consider the effect of all of this upon the necessity or desirability for the purposes of the Act of authorising an alteration if the alteration is in a form different from that approved by the Commission on previous occasions in respect of similar organisations.

We are informed that all those organisations named under the lettered paragraphs (d), (e), (f), (g) and (i) conduct hospitals or services ancillary to the practice of medicine and the wording adopted for the purposes of those paragraphs was intended to cover those who worked outside the area which the H.S.O.A. already covered. We are unable to say whether in choosing to express each extension of rule 3 in similar terms the H.S.O.A. intended, each time, to apply, in respect of each employer named, the exclusion which it had conceded by including the proviso in paragraph (c) in 1976. That however, according to Mr Finlay, is the effect which is achieved by construction.

The only reason we have been given as to why the alteration now applied for was expressed in a different way is that, unlike the other employers, Good Samaritan Industries and F.C.B. Industries do not conduct hospitals. They are, however, said to be involved in services ancillary to the practice of medicine namely the conduct of sheltered workshops and the intention is to cover work outside the area in which the H.S.O.A. would normally have cover. We are of opinion that Good Samaritan Industries and F.C.B. Industries should be treated for the purposes of rule 3 like the other employers referred to in paragraphs (d), (e), (f), (g) and (i) which are employers with whom they share common features related to the area of their work.

It was suggested to Mr Hocking that the rule be altered by amending paragraph (i) to include after Paraplegic-Quadriplegic Association of Western Australia (Inc.) a comma followed by "Good Samaritan Industries or F.C.B. Industries". Mr Hocking accepted that in that manner what was intended would be expressed. We consider that to be an appropriate way to formulate the apparent intention and it would be consistent with the manner in which previous applications for similar alterations have been dealt with by the Commission.

Despite the objection little was put to us to support the contention that the application is contrary to the provisions or intent of the Act. In our opinion the application has met the requirements of the Act sufficient to bring it within section 55 under which we are empowered to refuse to authorise registration of the alteration if we are of opinion that registration was not necessary or desirable for or would not be likely to advance the purposes and objects of the Act. It has been said that:—

> . . . registration of an alteration is to be granted unless the Full Bench can be persuaded of or reaches the necessary opinion. If one is to talk in terms of onus than the onus would be on the objector to convince the Full Bench that it ought to reach such an opinion.
> (62 WAIG 511 per Brinsden J. at 514).

In formulating an opinion the Full Bench will normally proceed as the Commission has done in such cases despite legislative changes, that is by:—

> . . . balancing in all the circumstances of the case the principle that there shall not be a needless multiplicity of unions against the principle that, other things being equal, the workers have a right to belong to such society as they think best suits their interests . . .
> (35 WAIG 94 per Nevile J. at 95)

It is in that context and against the background of matters to which we have specifically referred that we have considered the objection to registration which is substantially because some of the employees concerned are eligible to be members of the F.C.U. We are unable to uphold that objection and would authorise the Registrar to register an alteration to rule 3 by amendment to paragraph (i) of subrule (1) so that it reads:—

> Paraplegic-Quadriplegic Association of Western Australia (Inc.), Good Samaritan Industries or F.C.B. Industries in facilities or services other than those referred to in paragraphs (a) and (c) of subrule (1) of this Rule.
>
> For the purposes of this paragraph only, the word "Supervisory" appearing in the preamble to subrule (1) shall include categories of work which oversee and/or supervise the execution or performance of tasks by or the actions and activities of persons who are not employees under Western Australian industrial law.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 1124 of 1984.

In the matter of the Industrial Relations Act 1979 and in the matter of an application by Hospital Salaried Officers Association of Western Australia (Union of Workers) for alteration of rule 3.—Constitution of its registered rules.

Before the Full Bench.
His Honour the President D.J. O'Dea,
Senior Commissioner B.J. Collier,
and Commissioner G.A. Johnson.

Order.

THIS MATTER having come on for hearing before the Full Bench on the 26th day of February 1985 and having heard Mr G.N. Hocking on behalf of the applicant and Mr B.J. Finlay on behalf of the Federated Clerks' Union of Australia Industrial Union of Workers, W.A. Branch, and the Full Bench having reserved judgment of the matter and judgment being delivered on the 29th day of March 1985 wherein the Full Bench approved the application and gave reasons therefor it is this day, the 29th day of March 1985 ordered that the Registrar register an alteration to the rules of the applicant union in the terms of the following schedule.

By the Full Bench.

(Sgd.) D.J. O'DEA,
[L.S.] President.

Schedule.

Rule 3.—Constitution: Delete paragraph (i) of subrule (1) and insert in lieu thereof:—

> Paraplegic-Quadriplegic Association of Western Australia (Inc.), Good Samaritan Industries or F.C.B. Industries in facilities or services other than those referred to in paragraphs (a) and (c) of subrule (1) of this Rule.
>
> For the purposes of this paragraph only, the word "Supervisory" appearing in the preamble to subrule (1) shall include categories of work which oversee and/or supervise the execution or performance of tasks by or the actions and activities of persons who are not employees under Western Australian industrial law.

Application No. 1124 of 1984.

In the matter of the Industrial Relations Act 1979 and in the matter of an application by the "Hospital Salaried Officers Association of Western Australia (Union of Workers)" for alteration of its rules.

Decision.

HAVING been directed by the Full Bench, I have this day registered an alteration to rule 3.—Constitution of the registered rules of the applicant union in the terms of the attached schedule.

Dated at Perth this 29th day of March 1985.

T. POPE,
Deputy Registrar.

Schedule.

Rule 3.—Constitution: Delete paragraph (i) of subrule (1) and insert in lieu thereof:—

Paraplegic-Quadriplegic Association of Western Australia (Inc.), Good Samaritan Industries or F.C.B. Industries in facilities or services other than those referred to in paragraphs (a) and (c) of subrule (1) of this Rule.

For the purposes of this paragraph only, the word "Supervisory" appearing in the preamble to subrule (1) shall include categories of work which oversee and/or supervise the execution or performance of tasks by or the actions and activities of persons who are not employees under Western Australian industrial law.

CONFERENCES — Notation of —

PARTIES		NUMBER — COMMISSIONER	DATE	MATTER	RESULT
Amalgamated Metal Workers' Union	Cliffs Robe River Iron Associates	C543 of 1984 Halliwell C.	30/11/84 04/12/84	Strike over apprentice working during a stop work meeting	Concluded
Amalgamated Metal Workers' Union	Cliffs Robe River Iron Associates	C155 of 1984 Halliwell C.	16/04/84	Dispute *re* Company's intention to employ a temporary sheet-metal worker	Concluded
Amalgamated Metal Workers' Union	J.F.K. Engineering (W.A.)	C81 of 1985 Salmon C.	29/03/85	Dismissal of worker	Concluded
Amalgamated Metal Workers' Union and Australian Workers' Union	Cliffs Robe River Iron Associates	C563 of 1984 Halliwell C.	01/03/85	Demarcation Dispute	Concluded
Amalgamated Metal Workers' Union	Mt Newman Mining Company Pty Limited	C3 of 1985 Halliwell C.	14/01/85 21/02/85 26/02/85 04/04/85	Dispute *re* dispute over manning levels at Newman minesite	Concluded
Amalgamated Metal Workers' Union	Mt Newman Mining Company Pty Limited	C4 of 1985 Halliwell C.	21/02/85 04/04/85	Dispute *re* introduction of a four panel shift in the ore truck workshop service bay at the minesite	Concluded
Association of Draughting, Supervisory and Technical Employees' Union	Cockburn Cement Limited	C221 of 1984 Halliwell C.	03/07/84	Dispute *re* inclusion of a detrimental report in an employee's personnel file	Concluded
Association of Draughting, Supervisory and Technical Employees' Union	Cockburn Cement Limited	C222 of 1984 Halliwell C.	03/07/84	Dispute *re* detrimental report in an employee's personnel file	Concluded
Australian Workers' Union	Cliffs Robe River Iron Associates	C567 of 1984 Halliwell C.	07/01/85	Ban by truck crew on radio coverage	Concluded
Australian Workers' Union and Others	Cliffs Robe River Iron Associates	C75 of 1985 Halliwell C.	27/02/85	Dispute over allocation of housing	Concluded
Australian Workers' Union	Hamersley Iron Pty Limited	C390 of 1984 Salmon C.	23/08/84	Claim for housing allocation	Concluded
Brick, Tile and Pottery Union	Bristile Ltd Services Pty Limited	C30 of 1985 Halliwell C.	05/02/85	Dispute *re* the implementation of proposed shorter working week	Concluded
Building Trades Association	L.J. Hooker	C104 of 1985 Halliwell C.	26/04/85	Dispute *re* rates of pay and reinstatement of an employee	Concluded
Civil Service Association	The Hon. Minister for Employment and Training Industrial Relations and Consumer Affairs and Others	PSA C3 of 1985 Fielding C.	01/04/85	Registration of a proposed industrial agreement	Concluded

PARTIES		NUMBER — COMMISSIONER	DATE	MATTER	RESULT
Electrical Trades Union	Cliffs Robe River Iron Associates	C121 of 1985 Halliwell C.	29/04/85	Dispute *re* driving of haulpaks at the maintenance workshop at Pannawonica	Referred
Electrical Trades Union	Hamersley Iron Pty Limited	C107 of 1985 Salmon C.	26/03/85	Absence from duty without permission	Concluded
Electrical Trades Union	W.A. Newspapers Limited	C50 and C51 of 1985 Martin C.	13/02/85 22/02/85	Dispute *re* claim for a new award	Concluded
Federated Clerks Union	Australian Bank Employees Union	C97 of 1985 Fielding C.	19/03/85	Alleged non-payment of national wage increase of two employees	Concluded
Federated Engine Drivers' Union	Cliffs Robe River Iron Associates	C126 of 1984 Halliwell C.	27/03/84	Ban on overtime shifts	Concluded
Federated Engine Drivers' Union	Hamersley Iron Pty Limited	C272 of 1984 Halliwell C.	19/06/84 04/07/84	Dispute *re* provision of free midshift meals to continuous shift operators at Hamersley Iron Pty Limited power stations	Concluded
Liquor Industries Employees' Union	Court Hotel	C111 of 1985 Negus C.	21/03/85	Termination of employment	Referred
Miscellaneous Workers' Union	Berkeley Cleaning Co. (Management) Pty Ltd	C41 of 1985 Halliwell C.	05/03/85	Dispute *re* contracts of employment of part-time workers	Referred
Miscellaneous Workers' Union	Hon. Minister for Education	C126 of 1985 Negus C.	04/04/85	Dispute *re* refusal to pay increments to three child care workers	Concluded
Miscellaneous Workers' Union	The Administrator, R.J. & Co.	C516 of 1984 Halliwell C.	05/12/84	Dismissal of an employee	Concluded
Miscellaneous Workers' Union	The Administrator, San Marcelle Nursing Home	C381 of 1984 Halliwell C.	28/08/84	Dismissal of an employee	Concluded
Printing and Kindred Industries' Union	Western Australian Newspapers Ltd	C124 of 1985 Negus C.	29/03/85	Dispute *re* roster changes during Easter weekend	Concluded
Royal Australian Nursing Federation	Hon. Minister for Health	C198 of 1984 Halliwell C.	14/05/84	Dispute *re* promotion and employment prospects of registered general nurses at Lemnos Hospital	Concluded
Timber Industry Union	Colli & Sons	C95 of 1985 Salmon C.	13/03/85	Dismissal of worker	Concluded
Transport Workers' Union	Eveready Plant Hire	C115 of 1985 Collier C.	23/04/85	Claim for *pro rata* long service leave and one week's pay in lieu of notice	Concluded

PARTIES		NUMBER — COM-MISSIONER	DATE	MATTER	RESULT
University Salaried Officers' Association	University of Western Australia and Others	C541 of 1984 Halliwell C.	13/12/84	Dispute relating to union coverage of workers	Concluded
University Salaried Officers' Association	Vice Chancellor, University of Western Australia	C216 of 1984 Halliwell C.	25/05/84	*Re* conditions of employment of research staff employed by respondent and/or Sir Charles Gairdner Hospital	Concluded
University Salaried Officers' Association	Vice Chancellor, University of Western Australia	C217 of 1984 Halliwell C.	25/05/84	Dispute *re* non-adherence to classification review committee decision	Concluded

CORRECTIONS.

CHILD CARE (Lady Gowrie Child Centre).
Award No. A3 of 1984.

WHEREAS an error occurred in the Order No. 616 of 1984 of the above award, published in the *Western Australian Industrial Gazette* on 27 December 1984, volume 64 — part 2, subpart 6; page 2155, the following correction is made:

Title of Award incorrect.

Correct Title:

Child Care (Lady Gowrie Child Centre) Award No. A3 of 1984.

23rd day of April 1985.

K. SCAPIN,
Industrial Registrar.

RAILWAY OFFICERS'.
Award No. RCB A1 of 1985.

WHEREAS an error occurred in the Order No. 1 of 1985 of the above award, published in the *Western Australian Industrial Gazette* on 24 April 1985, volume 65, part 1, subpart 4, page 606, the following correction is made:

Title of Award incorrect. Correct Title: Railway Officers' Award No. RCB A1 of 1985.

6 May 1985.

K. SCAPIN,
Industrial Registrar.

ENGINEERING TRADES (State Energy Commission).
Award No. 1 of 1969.

WHEREAS an error occurred in the Order No. 943 of 1984 varying the above award, published in the *Western Australian Industrial Gazette* on 24 April 1985, volume 65, part 1, subpart 4, page 463, the following correction is made:

Delete from the Schedule the numbers and words "Clause 31.—Special Rates and Conditions" and insert in lieu the numbers and words —

"Clause 31.—Special Rates and Provisions"

6 May 1985.

K. SCAPIN,
Industrial Registrar.

PROCEDURAL DIRECTIONS AND ORDERS.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Nos. 832-836, 840 and 851-852 of 1984.

Between Bill Yiannopoulos and Others, Applicants and East West Promotions Pty Limited, Respondent.

Order.

HAVING heard Mr V. Hockless of Counsel on behalf of the applicants and Mr G. Vickerage of Counsel on behalf of the respondent, the Commission pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby orders —

That the application be struck out.

Dated at Perth this 12th day of April 1985.

(Sgd.) G.J. MARTIN,
Commissioner.

[L.S.]

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 987 of 1984.

Between Linda Evans, Applicant and Competative Foods, Respondent.

Order.

HAVING heard the applicant on her own behalf and Mr P.G. Clifford of Counsel on behalf of the respondent, the Commission pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby orders —

That the application be struck out.

Dated at Perth this 29th day of March 1985.

(Sgd.) G.J. MARTIN,
[L.S.] Commissioner.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 25 of 1985.

Between Paul Victor Shinn, Applicant and Lake Grace Sportsman's Club (Inc), Respondent.

Direction.

HAVING heard Miss H.M. Leslie (of Counsel) on behalf of the Applicant and Mr I. Carija (of Counsel) on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby directs —

That the Respondent file and serve further and better particulars of its Answer to the claim on or before 1 April 1985.

Dated at Perth this 26th day of March 1985.

(Sgd.) G.L. FIELDING,
[L.S.] Commissioner.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 160 of 1985.

Between Richard Henry Gregory Watson, Applicant and J.F. Mort and Co. (Surveyors) Pty Limited, Respondent.

Order.

HAVING heard the applicant on his own behalf and Mr D.M. Jones on behalf of the respondent, the Commission pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby orders —

That the application be struck out.

Dated at Perth this 26th day of April 1985.

(Sgd.) G.J. MARTIN,
[L.S.] Commissioner.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 210 of 1985.

Between Elizabeth Newton Bursey, Applicant and Undercliffe Nursing Home, Respondent.

No. 211 of 1985.

Between Cecelia Annie King, Applicant and Undercliffe Nursing Home, Respondent.

Before Mr Commissioner G.L. Fielding.
The 23rd day of April 1985.

Miss C.P. Crawford (of Counsel) on behalf of the Applicants.

Mr M.T. Posa (of Counsel) on behalf of the Respondent.

Reasons for Decision.

(Given extemporaneously at the conclusion of the submissions, taken from the transcript as edited by the Commissioner.)

THE COMMISSIONER: As it happens these two applications raise a question which is not difficult to resolve. They do, however, raise an interesting matter of principle about which I think something should be said.

It is sufficient to say that the parties to these applications, which seek orders for the production of certain documents, are currently parties to proceedings before a Special Board of Reference established for the purposes of the Commission's General Order with respect to Long Service Leave (see: [1982] 62 WAIG 1). Those proceedings stand adjourned so that the Applicants might prosecute these proceedings and obtain an order directing the Respondent in each case to produce the documents in question. Those documents are contracts of sale relating to the business carried on at the Undercliffe Nursing Home. The Applicants see the production of those documents as vital to their attempts to satisfy the Board of Reference that there has been a series of transmissions of the one business with a consequent long service leave benefit for them. The Respondent now, as I understand it, consents to an order for the production of those documents, although a reading of the transcript of the proceedings before the Board suggests that it was not prepared to make available those documents without some guarantee of confidentiality of the financial information contained in them. It apparently believed that if ordered to produce the documents in the Commission, the protection which is afforded confidential information contained in documentary evidence produced before the Commission by virtue of section 33 (5) of the Industrial Relations Act would attach to the confidential material in the contracts sought to be made the subject of orders in these proceedings.

In my view, these proceedings are misconceived. Regulation 80 of the Industrial Relations Commission Regulations, under which these two applications purport to have been made, quite clearly and specifically refers to a "party to any proceedings before the Commission" being able to apply to seek an order of the kind sought on this occasion. Neither the Applicants nor the Respondent to these proceedings are parties to any such proceedings. The relevant proceedings are those before the Board of Reference. There is no ambiguity about the term "Commission" as it appears in the regulation. Indeed, counsel for the Applicant now acknowledges that to be so. It is defined by section 7 of the Industrial Relations Act to mean "the body continued and constituted" under the Industrial Relations Act "under the name of The Western Australian Industrial Relations Commission", and that does not include a Board of Reference constituted under the Act or under an award or order of the Commission.

Not only is regulation 80 unambiguous in its terms, section 27 (1) (o) of the Industrial Relations Act, which might be seen as the source of the Commission's incidental powers in respect of procedural matters, gives the Commission power to order the production of documents, but does so only in terms of proceedings "before the Commission". In my view the Commission has no power either by regulation or otherwise to order a party to proceedings not before it but rather before a Board of Reference, to produce documents to the other.

Reference was made in these proceedings and in the proceedings before the Board of Reference to the matter of Leighton *v.* The Commercial Hotel, Moora before a Special Board of Reference under the Hotel and Tavern Workers Award (1980) 60 WAIG 1561. In particular, reference was made to the fact that the Chairman of the Special Board of Reference in that matter held that, at least for the purposes of the Long Service Leave Order, a Special Board of Reference "stands for the Commission". With all respect, that is simply not so. Such a Board of Reference is a tribunal in its own right and it is not the delegate or an agent of the Commission. Boards of Reference established under the Act or otherwise by the Commission constitute a separate medium established to provide an expeditious means of administering awards of the Commission with the minimum of formalities, with the powers set out in section 48 of the Industrial Relations Act, and in particular those set out in subsection (6) of that section.

The status of and the procedures to be adopted before Boards of Reference of this Commission were explained by Dwyer, J. in 1926 in his capacity as the President of the then Court of Arbitration when explaining the purpose of Boards of Reference under the Act. That dissertation is reported at (1926) 6 WAIG 104. The status of Boards of Reference and particularly the procedures to be adopted before them are even more explicitly explained by Olsson, J. in his capacity as President of the South Australian Industrial Commission in Fire Brigade Officers Award (Appeal) Case (1975) 42 SAIR 750. I commend a reading of both those decisions to all those who are connected or likely to be connected with the operations of Boards of Reference under the Industrial Relations Act.

Although those cases deal with legislation which was in a form authorising the Commission to establish Boards of Reference in making awards, whereas they are now automatically established by force of statute, that is by section 48 of the Industrial Relations Act, the principles still remain the same. In particular I share the view of Olsson, J. and contrary to the assertion of the Chairman of the Special Board of Reference in Leighton *v.* The Commercial Hotel, Moora (*supra*), that Boards of Reference are not bound in their deliberations to act according to equity, good conscience and the substantial merits of the case, as is the Industrial Relations Commission. Although in most cases I think it would be sensible for a Board of Reference to adopt that course, it is not statutorily bound to do so. Section 26 of the Industrial Relations Act is expressed to govern proceedings before the Commission and not in general to proceedings under the Act.

Furthermore, as Dwyer, J. explained on the occasion I have mentioned, Boards of Reference established under the Industrial Relations Act do not have the power to summons witnesses or order the production of documents and the like, as does the Commission. Although subsequently to that dissertation the regulations under the now repealed 1912 Industrial Arbitration Act, and in particular regulation 107 (2), which subsequently became regulation 60 (8), expressly gave the Board of Reference the same powers as the old Court and subsequently the Commission in respect of summoning witnesses and the like, that was a procedure not adopted in the regulations made under the 1979 Industrial Arbitration Act and that position remains under the regulations which were promulgated only some months ago. Given the terms of section 113 (1) of the Industrial Relations Act and in particular subparagraphs (c) and (e), it is doubtful if the Commission has the power to make such a provision, even if it were minded to do so.

Apart from the lack of authority in the Commission to accede to the orders sought on this occasion, I doubt whether an order made under regulation 80 attaches the statutory protection given by section 33 (5) to confidentiality of financial matters and the like contained in documents produced in evidence before the Commission. The protection given under that section does not arise until the documents have been produced in evidence. The mere production of documents by one party to the other before a hearing, as the Applicants seek on this occasion, even though by order of the Commission, does not bring with it that protection. It might be that the protection the Respondent seeks on this occasion could be attached by virtue of section 27 (1) (o) of the Industrial Relations Act by such a condition being attached to the order. However, it would not give the Respondent the statutory protection which it apparently was seeking and which in my view can only be achieved once the documents have been tendered in evidence. That matter can await another day, because as I have already indicated to counsel there is simply no authority in the Commission to accede to or, indeed, entertain the applications now before it. In my view they should be dismissed.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

No. 210 of 1985.

Between Elizabeth Newton Bursey, Applicant and Undercliffe Nursing Home, Respondent.

Order.

HAVING heard Miss C.P. Crawford (of Counsel) on behalf of the Applicant and Mr M.T. Posa (of Counsel) on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders —

That the Application be dismissed for want of jurisdiction.

Dated at Perth this 23rd day of April 1985.

(Sgd.) G.L. FIELDING,
[L.S.] Commissioner.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

No. 211 of 1985.

Between Cecelia Annie King, Applicant and Undercliffe Nursing Home, Respondent.

Order.

HAVING heard Miss C.P. Crawford (of Counsel) on behalf of the Applicant and Mr M.T. Posa (of Counsel) on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders —

That the Application be dismissed for want of jurisdiction.

Dated at Perth this 23rd day of April 1985.

(Sgd.) G.L. FIELDING,
[L.S.] Commissioner.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

No. 236 of 1985.

In the matter of the Industrial Relations Act 1979 and in the matter of an application for a reduction of the time in which an answering statement to Application No. 235 of 1985 is to be filed in the Commission.

WHEREAS an application was made by the Confederation of Western Australian Industry (Inc.) agent for Foodland Associated Limited in accordance with the Industrial Relations Act 1979; and whereas the application was heard *ex parte* before me I, the undersigned Chief Commissioner of the Western Australian Industrial Commission, pursuant to the powers conferred upon me under the Industrial Relations Act 1979 do hereby order and direct —

1. That the applicant shall forthwith serve a copy of Application No. 236 of 1985, its accompanying statement and this order on the The West Australian Shop Assistants' and Warehouse Employees' Industrial Union of Workers, Perth, with respect to the claim in matter No. 235 of 1985.
2. That an answer to the claim in matter No. 235 of 1985 filed with the Commission on the 11th day of April 1985, shall be lodged with the Commission and a copy thereof served on the Confederation of Western Australian Industry (Inc.) within seven days from the date upon which the documents mentioned in one above are served on The West Australian Shop Assistants' and Warehouse Employees' Industrial Union of Workers, Perth.

Dated at Perth this 16th day of April 1985.

(Sgd.) E.R. KELLY,
[L.S.] Chief Commissioner.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

No. 238 of 1985.

In the matter of the Industrial Relations Act 1979 and in the matter of an application for a reduction of the time in which an answering statement to Application No. 237 of 1985 is to be filed in the Commission.

WHEREAS an application was made by the Confederation of Western Australian Industry (Inc.) agent for Foodland Associated Limited in accordance with the Industrial Relations Act 1979; and whereas the application was heard *ex parte* before me I, the undersigned Chief Commissioner of the Western Australian Industrial Commission, pursuant to the powers conferred upon me under the Industrial Relations Act 1979 do hereby order and direct —

1. That the applicant shall forthwith serve a copy of Application No. 238 of 1985, its accompanying statement and this order on the Federated Clerks' Union of Australia Industrial Union of Workers, W.A. Branch with respect to the claim in matter No. 237 of 1985.
2. That an answer to the claim in matter No. 237 of 1985 filed with the Commission on the 11th day of April 1985 shall be lodged with the Commission and a copy thereof served on the Confederation of Western Australian Industry (Inc.) within seven days from the date upon which the documents mentioned in one above are served on the Federated Clerks' Union of Australia Industrial Union of Workers, W.A. Branch.

Dated at Perth this 16th day of April 1985.

(Sgd.) E.R. KELLY,
[L.S.] Chief Commissioner.

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

No. 275 of 1985.

In the matter of the Industrial Relations Act 1979 and in the matter of an application pursuant to regulation 81 of the Industrial Relations Commission Regulations 1985 by the Australasian Society of Engineers, Moulders and Foundry Workers, Industrial Union of Workers, Western Australian Branch for an order that further and better particulars be furnished in respect of Application No. 1111 of 1984 made by Raymond Hope.

Before His Honour the President D.J. O'Dea.

Order.

WHEREAS this application was filed on the 16th day of April 1985; and whereas I was advised by the applicant on the 29th day of April 1985 that it was not necessary for the application to proceed, it is this day, the 29th day of April 1985 ordered that the application be dismissed.

(Sgd.) D.J. O'DEA,
[L.S.] President.

JOINDER OF PARTIES — Application for —

BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
No. 144 of 1985.

Between Chicken Treat (Subiaco) and Others, Applicants and Federated Liquor and Allied Industries Employees' Union of Australia, Western Australian Branch, Union of Workers, Respondent.

Order.

HAVING heard Mr L.A. Jackson (of Counsel) on behalf of the Applicants and Mr E. Fry on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, and by consent, hereby orders —

That the Catering Workers' (Fast Food Operations Catering and Restaurant) Agreement No. 23 of 1979 be varied by joining as parties to the agreement the applicants listed in the attached schedule. This variation shall have effect from 13 April 1981.

Dated at Perth this 29th day of April 1985.

(Sgd.) J.A. NEGUS,
[L.S.] Commissioner.

Schedule.

List of Applicants.

1. Anthony George Rolph and Rita Marie Rolph trading as "Chicken Treat (Subiaco)".
2. Rosina Murabito trading as "Chicken Treat (Balga)".
3. Widja Pty Ltd trading as "Chicken Treat (Victoria Park)".
4. Henry Collins and Jean Collins trading as "Chicken Treat (Geraldton)".
5. Mertel Pty Ltd trading as "Chicken Treat (Ferndale)".
6. Corita Pty Ltd.
7. Douglas Preston trading as "Chicken Treat (Hamilton Hill)".
8. Kypica Security Pty Ltd trading as "Chicken Treat (Kenwick)".
9. Henry John Piestreniewicz trading as "Chicken Treat (Inglewood)".
10. Thomas Brown trading as "Chicken Treat (Langford)".
11. Heathersett Pty Ltd trading as "Chicken Treat (Wanneroo)".

NOTICES — Appointments.

NOTICE.

The constitution of the Industrial Appeal Court from 21 March 1985 is shown below:

Presiding Judge:	The Honourable Mr Justice Brinsden
Deputy Presiding Judge:	The Honourable Mr Justice Kennedy
Member:	The Honourable Mr Justice Olney
Member:	The Honourable Mr Justice Rowland

12 April 1985.

K. SCAPIN,
Clerk of the Court.