

BEFORE THE WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS
COMMISSION

No. 763 of 1982.

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

O R D E R

HAVING heard Mr A.R. Beech on behalf of the Trades and Labor Council of Western Australia, Mr K. Dwyer on behalf of the Minister for Industrial Relations and Mr J. Uphill on behalf of the Confederation of Western Australian Industry (Inc.) the Commission in Court Session, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders and declares that this Order applies to all Government wage employees employed by a public authority, except as specified herein and shall have effect from 1st January, 1986.

LONG SERVICE LEAVE CONDITIONS

State Government Wages Employees

1. Subject to the conditions hereinafter prescribed all Government wages employees employed by a Public Authority shall become entitled to thirteen weeks' long service leave:
 - (a) after a period of ten years' continuous service; and
 - (b) after each further period of seven years' continuous service.

The long service leave prescribed in this clause may, by consent between the employer, the employee and the employee's union be taken in more than one portion provided that no portion shall be less than four consecutive weeks.

Provided further that these conditions shall have no application to employees who are subject to long service leave entitlements on an industry basis or wage employees who at the date of this order, or subsequent to this order, receive long service leave conditions which, when viewed as a whole, are more favourable than the conditions specified in this order.

Any qualifying service prior to 1st January, 1986 for the second period of long service leave, shall be calculated on a ten year qualifying period basis but all qualifying service after 1st January, 1986 shall be calculated on a seven year qualifying period basis.

2. (a) For the purpose of these conditions "service" means service as an employee of a Public Authority and shall be deemed to include:-
- (i) absence of the employee on annual leave or public holidays;
 - (ii) absence of the employee on paid sick leave or on an approved rostered day off;
 - (iii) absence of the employee on approved sick leave without pay except that portion of a continuous absence which exceeds three months. Provided that prior to 1st July, 1957 only two weeks in any year shall be allowed and provided that prior to 1st April, 1974 and after 1st July, 1957 only six weeks in any year shall be allowed;
 - (iv) absence of the employee on approved leave without pay, other than sick leave without pay but not exceeding two weeks in any qualifying period;
 - (v) absence of the employee on National Service or other military training, but only if the difference between the employees' military pay and his civilian pay is made up, or would, but for the fact that his military pay exceeds his civilian pay, be made up by his employer;
 - (vi) absence of the employee on workers' compensation for any period not exceeding six months, or for such greater period as the Minister for Industrial Relations may allow;

3.

- (vii) absence of the employee on long service leave which accrues on or after 1st April, 1974;
 - (viii) absence of an employee on approved leave to attend Trade Union training courses or on approved leave to attend Trade Union business; and
 - (ix) employment in the service of the Commonwealth or another State of Australia as provided in Clause 16 hereof, when employment in the State Government commences on or after 1st April, 1974.
- (b) The Service of an employee shall be deemed NOT to include:-
- (i) service of an employee after the day on which he has become entitled to twenty-six weeks' long service leave until the day on which he commences the taking of thirteen weeks of that leave;
 - (ii) any period of service with an employer of less than twelve months. Provided where after 1st April, 1974 an employee has service of a month or more but less than twelve months immediately prior to being transferred by one State Government employer to another; becoming redundant or qualifying for pro rata payment in lieu of leave pursuant to clause 11, then such period of service shall count;
 - (iii) any period during which an employee has been paid as a casual;
 - (iv) any other absence of the employee except such absences as are included in service by virtue of subclause (a) hereof; and
 - (v) any service of an employee prior to 1st April, 1974 where that employee was less than eighteen years of age.

3. Subject to the provisions of Clause 2 of these conditions the service of an employee shall not be deemed to have been broken -

- (a) by resignation, if he resigns from one Public Authority in this State and commences with another Public Authority in this State within

4.

one working week of the expiration of any period for which payment in lieu of annual leave and/or public holidays has been made by the employer from which he resigned, or, if no such payment has been made, within one working week of the day on which his resignation became effective;

(b) if his employment is ended by his employer for any reason other than serious misconduct, but only if -

(i) the employee resumes employment with the Government not later than six months from the day on which his employment was ended; and

(ii) payment pursuant to Clause 11 of these conditions has not been made; or

(c) by any absence approved by the employer as leave whether with or without pay.

4. Application for leave without pay in respect of any absence must be made before the commencement of the absence unless the cause of the absence occurs after the employee has left the job, in which case the application must be made not later than fourteen days after the day on which the employee resumes work.
5. Long service leave shall be taken at a time convenient to the employer but not less than thirty days' notice shall be given to each employee of the day on which his long service leave is to commence, except in cases where the employee and the employer agree to a lesser period of notice, or in other exceptional circumstances.
6. Long service leave must be commenced within six months of becoming due unless written permission of the employer concerned is obtained for postponement, but where the postponement sought is for more than twelve months, the approval of the Minister for Industrial Relations must be obtained. Provided that where an employer and an employee have agreed that the leave period will be taken in more than one portion the final portion of leave must be taken within three years of its becoming due, unless the approval of the Minister for Industrial Relations has been obtained to extend the period.
7. Any public holiday occurring during an employee's absence on long service leave shall be deemed to be a portion of the long service leave and extra days in lieu thereof shall not be granted.

8. No employee is to undertake during long service leave, without the written approval of the Minister for Industrial Relations, any form of employment for hire or reward. Contravention of this clause may be followed by dismissal.
9. An employee who has become entitled to long service leave in accordance with Clause 1 of these conditions and whose employment is ended before that leave is taken shall be granted payment in lieu of that leave, unless he has been dismissed for an offence committed prior to the day on which he became entitled to that leave.
10. If an employee who has become entitled to Long Service Leave in accordance with Clause 1 of these conditions dies before taking that leave, payment in lieu of that leave shall be made to that employee's estate unless the employee leaves a spouse, children, parent or invalid brother or sister dependent on him. In which case such payment shall be made to such spouse or other dependant.
11. If the employment of an employee ends before he has completed the first or further qualifying periods in accordance with Clause 1 of these conditions, payment in lieu of long service leave proportionate to his length of service shall not be made unless the employee -
 - (a) has completed a total of at least three years' continuous service and his employment has been ended by his employer for reasons other than serious misconduct; or
 - (b) is not less than fifty-five years of age and resigns, but only if the employee has completed a total of not less than twelve months' continuous service prior to the day from which the resignation has effect; or
 - (c) has completed a total of not less than twelve months' continuous service and his employment is ended by his employer on account of incapacity due to old age, ill health or the result of an accident; or
 - (d) has completed a total of not less than three years' continuous service and resigns or whose services are terminated because of her pregnancy after 1st April, 1974 and who produces at the time of resignation or termination certification of such pregnancy and the expected date of birth from a legally qualified medical practitioner; or

- (e) dies after having served continuously for not less than twelve months before his death and leaves a spouse, children, parent or invalid brother or sister dependant on him in which case the payment shall be made to such spouse or other dependant; or
 - (f) has completed a total of not less than three years' continuous service and resigns in order to enter an Invitro Fertilisation Programme provided she produces written confirmation from an appropriate medical authority of the dates of involvement in the programme.
12. (a) Notwithstanding the provisions of subclauses (a) and (c) of Clause 11, a worker whose position has become redundant and who refuses an offer by the employer of reasonable alternative employment or who refuses to accept a transfer in accordance with the terms of his employment, shall not be entitled to payment in lieu of long service leave proportionate to his length of service.
- (b) Any dispute as to whether the alternative employment offered is reasonable shall be determined by the Long Service Leave Appeal Committee.
13. For the purpose of subclause (c) of Clause 11 a medical referee shall, if there is disagreement between the employee's doctor and the employer's doctor as to the employee's incapacity, be selected from an appropriate panel of doctors either by agreement between the employer and the employee or, failing agreement, by the Minister for Industrial Relations.
14. (a) Subject to the provisions of this clause an employee shall be paid during long service leave at his permanent classified rate of pay.
- (b) Except where otherwise approved by the Minister for Industrial Relations the rate of pay of an employee shall be deemed to be the total wage applicable to the classification which, for the purpose of this clause is, or is deemed to be his permanent classification.
- (c) If an employee has been employed in one or more positions each of which carries a higher rate than his permanent classified rate for a continuous period of twelve months ending not earlier than two weeks before the day on which he commences long service leave or is paid pro rata in lieu of leave in accordance with

Clause 11 hereof, the rate which he has received for the greatest proportion of that twelve month period shall, for the purpose of this clause, be deemed to be his permanent classified rate.

- (d) Where an employee engaged on construction work has had no permanent designation or rate of wage for the period of twelve months prior to the commencement of his leave, the rate of wage applicable to the work he performed for the greatest proportion of that twelve month period shall, for the purpose of this clause, be deemed to be his permanent classified rate.
 - (e) In the case of a pieceworker the permanent classified rate shall be deemed to be the ordinary time rate of pay payable to an employee engaged on the same type of work on a time basis and not on piecework.
 - (f) If any variation occurs in the rate of wage applicable to an employee during any period when he is on long service leave, the employee's pay while he is on leave shall be varied accordingly and, if the employee has been paid in full for the leave before its commencement payment shall be adjusted as soon as practicable after the employee resumes work.
 - (g) District allowance shall not be paid during long service leave unless the family or dependants of the employee remain in the district.
15. (a) A part time employee shall be paid the proportion of the amount specified in Clause 14 hereof that his ordinary hours bear to the ordinary hours of a full time employee in the same classification.
- (b) If the hours of a part time employee have varied he shall be paid a rate based on the average number of hours worked over the full qualifying period.
 - (c) A full time employee, who, during a qualifying period has been continuously employed on both full time and part time employment, may elect to take three months' long service leave at a rate determined by the proportion of service on a part time basis to that on a full time basis; or, to take a lesser period than three months calculated by converting the part time service to equivalent full time service; or to work such additional time as will effectively

make up the part time service into full time service so that the employee qualifies for three months' long service leave at the full time rate of pay.

- (d) A part time employee, who, during the qualifying period has been continuously employed on both part time and full time employment, shall be paid at a rate determined by the proportion of service on a part time basis to that on a full time basis.
 - (e) The provisions of this clause shall not apply with respect to any part time service for which the employee has received additional remuneration to compensate for or in lieu of long service leave.
16. (a) Subject to subclause (c) of this clause where an employee was, immediately prior to being engaged, employed in the service of the Commonwealth or another State of Australia and that employment was continuous with this service under Clause 3 of these conditions that employee shall be entitled to long service leave determined in the following manner:
- (i) Service with the previous employer shall be converted into service for the purpose of these conditions by calculating the proportion that the service with the previous employer bears to a full qualifying period in accordance with the provisions that applied in the previous employment and applying that proportion to a full qualifying period in accordance with the provisions of these conditions.
 - (ii) Service with the State necessary to complete a qualifying period for an entitlement of long service leave shall be calculated in accordance with the provisions of these conditions.
 - (iii) An employee shall not become entitled to long service leave or payment for long service unless he has completed three years' continuous service with the State.
 - (iv) Where an employee would but for the provisions of paragraph (iii) hereof have become entitled to long service leave before the expiration of three

years' continuous service with the State, service subsequent to that date of entitlement shall count towards the next grant of long service leave.

- (b) No employee shall be entitled to the benefit of this clause if service with the previous employer was terminated for reasons which would entitle that employer to dismiss the employee without notice.
 - (c) Nothing in these conditions confers on any employee previously employed by the Commonwealth or another State of Australia any entitlement to a complete period of long service leave that accrued prior to the date on which the employee was employed by the State.
 - (d) Any dispute as to the application of paragraph (i) of subclause (a) hereof or whether the employee was previously engaged in the service of the Commonwealth or another State of Australia shall be determined by the Long Service Leave Appeal Committee.
17. Where an employee, through personal ill health, is confined to his place of residence or a hospital for a continuous period of fourteen days or more during any period of long service leave taken after 1st April, 1974 and such confinement is certified to by a duly qualified medical practitioner, such period shall be considered sick leave and subject to the provisions of the relevant sick leave clause of the award or agreement governing the conditions of employment of the employee.

The period during long service leave for which paid sick leave has been approved shall be given as additional long service at a time convenient to the employer.

18. (a) There shall be a long service leave appeal committee consisting of the following honorary members:-
- (i) Industrial Registrar - Western Australian Industrial Relations Commission (Chairman);
 - (ii) A representative of the Trades and Labor Council of W.A. (Member);
 - (iii) Director, Office of Industrial Relations (Member), or an officer nominated by the Director to act as his deputy.

10.

- (b) The function of the Committee shall be to hear appeals by any wages employee in respect of his long service leave entitlement or the rate to be paid during long service leave and to deal with any dispute arising out of the application of these conditions.
- (c) An appellant may appear in person or may be represented by an accredited representative of the Union to which he belongs.
- (d) Decisions of the Committee shall be final and binding on all parties thereto.

Dated at Perth this 16th day of December, 1985.

By the Commission in Court Session.

(R. S.) (Sgd.) B. J. COLLIER

Senior Commissioner