

PUBLIC SECTOR REMUNERATION TRIBUNAL
23 OCTOBER 1999

JUSTICE MORLING Formally --- for the Association and for the ----
..the President of the Association ----

MR MENZIES Two vice presidents

JUSTICE MORLING I see

MR BUFFETT (CAO) Excuse me Judge, I was wondering. Jan is having some
difficulty picking up what you're saying because it's being recorded and no microphone
is on the table at which you sit

JUSTICE MORLING What if I move to this one over here. Is there a...I see.
Well I can sit here

MR BUFFETT (CAO) It might be best for the purposes of recording Judge

JUSTICE MORLING Well I'll sit here if you like. Now who's speaking for the
Government

MR SMITH George Smith, Chief Minister, Your Honour

JUSTICE MORLING Well Gentlemen, I think I should leave it initially first to you
to tell me the current state of the discussions between you and to identify those matters
which are outstanding on the current application. Who would like to say something
about that first

MR WESTWOOD Well, maybe I could address the Tribunal on that Your
Honour. Various negotiations took part with the Government over a period of time. At
least twelve months ago we started initial advise to the Government that we proposed
to proceed with a wages claim and through a stage of negotiation we passed through a
phase of a fat pay claim which was costed out at approximately \$423,000 and the
Government came back to us and said they couldn't really afford to fund a claim of that
size so we continued negotiations with them and agreed on a figure of approximately
\$334,000 and we felt we came away with a firm agreement on that figure which
comprised a fortnightly increase of \$25 and a 4% adjustment. At some stage after
that...

JUSTICE MORLING That \$334,000 figure, how was that calculated

MR WESTWOOD That was calculated on the salaries bill

JUSTICE MORLING No, but was it prospective or have you mentioned a
reference to backpay

MR WESTWOOD Yes

JUSTICE MORLING Was the \$334,000 for a full year or what

MR WESTWOOD Yes, it was the cost of a full year. We agreed to drop the
backpay claim

- JUSTICE MORLING I see. So that was going forward
- MR WESTWOOD That was coming forward yes
- JUSTICE MORLING Right. Right
- MR WESTWOOD And then, subsequent to that a couple of association committee members approached the government again and discussed the fact that the original claim was a cost of living adjustment and that, seeing the government was prepared to fund an increase to this figure that they canvassed the idea of dividing that sum by the number of employees
- JUSTICE MORLING That's the \$334,000
- MR WESTWOOD The \$334,000
- JUSTICE MORLING Yes
- MR WESTWOOD To reach and across the board figure of approximately \$72 per fortnight per employee. However that was a canvassed option or a concept that the committee was canvassing amongst its members and they wished to put before the Tribunal as an option on the \$25 plus 4%
- JUSTICE MORLING Right. Right. And what's the member's view about that
- MR WESTWOOD Well members prefer the \$72 per fortnight option, mainly because the original claim was purely cost of living, and the membership argue that the cost of living costed the high salary earners the same as the low salary owners and it was therefore their preference to receive an across the board amount that was equal. However that was purely a canvassed option that they wished to put before the Tribunal
- JUSTICE MORLING So is the position this morning that you are putting forward both options, is that right
- MR WESTWOOD Yes
- JUSTICE MORLING And as from a particular date, as from a commencing date
- MR WESTWOOD The first of July
- JUSTICE MORLING And does that cost of living adjustment, the last determination I think took effect, well was made about two and a half years ago. I'm not quite sure.. effective from February 1997 so is the cost of living adjustment suggested to be from that date, from 1 February 1997 to now or 'til 1 July is it. Have there been any adjustments since 1 February 1997, since the date of the last determination which was made on the 24th April and became effective on the 1st February 1997
- MR WESTWOOD Nothing since then
- MR MENZIES No, nothing since then
- JUSTICE MORLING Nothing since then?

MR MENZIES Your Honour the Association as a group decided ----- from
1st July

JUSTICE MORLING That's the current one

MR MENZIES Yes

JUSTICE MORLING Yes. Is it possible to tell me, you say the views of the members of the association were canvassed. Was there any voting on it. What was

MR WESTWOOD No, there wasn't

JUSTICE MORLING Just a feeling taken by the executive

MR MENZIES Your Honour the whole committee of twelve delegates from various areas of the work force at a monthly meeting we asked them to canvass their area, which we assume they did, and at the next meeting when they came back they said the preferred option was the \$72 per fortnight so we're just working on that basis without voting or anything

JUSTICE MORLING So give me, so that I can compare the \$25 and 4%. What would be fairly typical annual remuneration of

MR WESTWOOD We believe in our calculations that the two figures cross at approximately \$27,000 which is about the level for a qualified tradesman

JUSTICE MORLING So, the option for him is \$72 in one option or something like \$50 no hang on, \$25 per fortnight would be about \$1300 per year would it. I'm just trying to get in dollar terms per fortnight. 4% is \$25 per fortnight is about \$1250/\$1300

MR MENZIES I think Your Honour, on the figure I wrote here on the \$26,874 which is your rounded \$27,000 the \$25 per fortnight plus 4% is around about \$66

JUSTICE MORLING \$66? Right. Per fortnight. So he's \$6 worse off on your original proposal of \$25 per fortnight and 4%. Thank you. Mr Smith is it conceded that the lump sum if I can call it that of \$334,000 on annual basis is acceptable to the government

MR SMITH Maybe Your Honour if I could do a bit of a background on this position. Firstly I must commend the PSA and also members of the Government for actually having discussions leading up to the claim. I don't know that that's been done often in the past but it's been fairly realistic throughout the process. The PSA approached the Chief Minister originally and wanted to negotiate which I believe helped the government a lot in understanding what the claims were about. There were various meetings with the government which were fruitful and issues were debated at those meetings. There was the view put to the government about the previous back claim. The government and the PSA had come to a reasonable agreement that if we put it all into one claim it would be much better for all concerned, which is how we've ended up with a form of agreement leading up to the annual budget Your Honour which happens in June, when the Assembly deals with the budget. We had actually proposed, or I proposed in the budget that there would be some funds available for an increase, whatever it may end up being. Unfortunately that was removed from the budget in the budget process so that gives an indication that we were prepared to fund some sort of

pay rise which as you will see from our submission the government agrees that the PSA is due for an adjustment. You will remember that we asked if you did sit at a later date because of that hiccup in the system. The only problem with that happening is the longer we leave it the more problem it becomes for the people that work in the service in being able to keep up with the cost of living as they are claimed. We had proposed to the PSA as you will see in the submission that if it comes to around that value of money, \$330,000 or thereabouts, there is no exact figure on that, that's... but we accept that that's probably what it would come to. We agreed that there should be some sort of pay out along those lines provided that it falls in this financial year all past claims were ---- in the same claim and we have said that we will look for the funds although the funds we could find in the budget review which is a process Your Honour that we take up in December of the financial year and if the funds are available we would be prepared to make that a back pay to the beginning of the financial year of 1st July 1999. The only proviso is, as we state, we aren't in a position at this very moment to find the funds, in the current annual budget but we would be looking to how we could deal with that in the budget review

JUSTICE MORLING Good. It is common ground that the two options have approximately the same cost of approximately \$334,000. From the government's point of view which of the two options, if either, I mean, does it wish to make a submission in favour of one or the other or is it content to leave it to the Tribunal to decide which of the two should be adopted

MR SMITH Your Honour, it's the government's view that whatever the result of the Tribunal was, would be acceptable to the government, however, there needs to be added that there was approaches to the government from people in the higher salary range I guess to point out that they would be disadvantaged with \$72 per fortnight, the dollar amount being paid out. However as we have written to the Tribunal saying that to us it doesn't really matter whichever it is and if the Tribunal want to make a determination on that we would accept that

JUSTICE MORLING I cannot remember without going back many years to earlier determinations but I think I would have said because I think it would be my general view that ordinarily a flat figure payable to all persons who might benefit is not usually the best form of order but at this time it's already closer to three years than two years since there was any adjustment and I can clearly remember saying and I'll check it from past determinations, I can clearly remember holding back so to speak past increases because of the state of the Norfolk Island economy and I would have thought that if indeed a \$72 payment flat per fortnight would little or no more than allow for a straight cost of living adjustment there. There is a persuasive argument it seems to me in favour. That's a prima facie impression that I have. I would give it more thought but would you like to criticise that prima facie view. I'm here to hear any view and I'm humble enough to think there are arguments for and against most propositions and certainly clearly arguments in favour of the first option because it just is necessary to have margins between various classes of public servants. We all recognise that and there's a strong argument in favour of that, I do recognise that, but two and a half, nearly three years is a long time by anybody's standards between adjustments of any kind. As I say I will give the matter more thought but my prima facie view is that the second option, on this occasion, not necessarily on other occasions, but on this occasion the second option might be one which a Tribunal should accept

MR SMITH Your Honour there is one point to be dealt with now, per fortnight is that the public service had asked for a salaries relativity's study to be done which is in the process of being done. It was pointed out to us during that process that we need to be

careful if we come up with the formula of this salaries relative that we don't upset that balance, however your determination will come in before we have the results of that salaries relativity's study that is being done

JUSTICE MORLING Well, I mean this determination is a determination as at now. If it is thought at any time in the future that margins are not sufficiently marked to sufficiently award some public servants then I think that's the time to address that matter. This decision is not set in stone, it's only to deal with certain things as they presently exist and if I adopted the second option it certainly would not be pursuant to some reasoning which accepts that across the Board flat movements are always desirable, indeed I think a reference to the past agreed determinations will show that that's accepted as not being always desirable

MR WESTWOOD Your Honour another considerable that the membership raised in approaching fixed dollar amount of \$72 per fortnight was that most of the higher salary persons were on contract in any case and they are subject to regular salary package reviews so they can, in a sense, to a certain degree operate outside the auspices of the Tribunal to gain extra funding

JUSTICE MORLING Yes. I suppose the bulk of the people whose ears were canvassed would be better off would they on the \$72 flat

MR WESTWOOD I have no doubt

JUSTICE MORLING Yes. I must say Gentlemen that it's gratifying that there is such a degree of agreement between the Association and the Government as has been the case in the past. I do think that's a very laudable thing, particularly on the island and I really genuinely congratulate you on removing from what could otherwise be an acrimonious application. It's all but, really, a question of fine tuning. I think that's very laudable. One thing you may remember – well does anybody wish to say anything more about the matter. I won't give a decision today

MR BROWN Your Honour I'm a backbench Member of the Legislative Assembly and at a time convenient to the Tribunal I would like if convenient to you to make a brief submission

JUSTICE MORLING Well before I ask the Association and the Chief Minister to conclude any remarks they might want to make I don't have any problem about - these are informal Sittings. I'm not sure you have any lockers Mr Brown but I'm not one for taking points on people so I will be happy to hear what you have to say

MR BROWN That Your Honour is a copy of a memorandum which I sent to Members of the Legislative Assembly on the 15th September and in it I endeavoured to point out that the task of the Tribunal in my view is more onerous than simply seeking to know whether the Public Service Association and the government have reached an agreement about the matter. In my submission the Tribunal is about to enquire into the various matters which are set out in the Act, in particular, the matters set out in section 9 and in my submission the Tribunal will be unable at present to make a decision because the information which needs to be provided have simply not been provided. I don't argue for or against the question of whether there should be an adjustment. I don't argue for or against the question of whether the adjustment should be \$72 per fortnight or some other figure but it is in my submission that the Tribunal will be unable to make a decision in the absence of necessary information from the government and in closing Your Honour might I say that although the government and

the PSA have met this is not a matter which has been the subject of any form of public consultation and to such extent as the government is expressing a view to the Tribunal it is view of a majority of the members of the government and no doubt a majority of the Members of the Legislative Assembly, nevertheless my submission is, with all due respect to them, that they are in error in failing to provide the Tribunal with the information which the Tribunal really requires in order to fulfil its function. Thank you

JUSTICE MORLING When you say there's been no public discussion, what do you envisage should have happened. That the people elect the Members and the Executive Members, aren't they there to detect as best they can detect the wishes of the people who put them there

MR BROWN Your Honour the public has only normally one opportunity each three years to decide whether their wishes are being reflected. Norfolk Island doesn't have a party political system, it has nine independent Members and the majority of those nine Members decide how many Executive Members or Ministers there will be and who can fill those roles. I would express a view to the Tribunal that it is not always the case that the individual views of a majority of the Ministers in fact represent the general community view and in this particular situation the government is saying to Your Honour that firstly, they feel that the figure of \$334,000 per year is a reasonable sort of a figure; in saying so they are committing themselves to that payment each and every year for the future, it's not a once only payment. The chief Minister has said to the Tribunal that he doesn't really know where the funds are going to come from, that they are going to be found in some fashion at the time of the next half year budget review. With all due respect Your Honour that is a somewhat vague statement and ---- the Chief Minister said a few minutes before that he had endeavoured to provide funds in the budget for the current year and that as part of the process to try and balance the budget that funding was removed. The Chief Minister did not – and I'm not suggesting that he should have – but he didn't tell the Tribunal about the other matters which were also shelved as part of the budget process. For example he didn't tell the Tribunal that spending on the roads was cut significantly in order to allow the budget to be as close to balanced as possible. It is my submission that additional funds can only be found at the time of the half yearly budget review by either increasing taxation and certainly the community would have a concern at that stage even if they don't have a concern today, or alternatively by further reducing the scale of works which the government proposes to undertake through the remainder of the year

JUSTICE MORLING But aren't they the very sorts of things which governments are elected to decide. Now maybe - I take your point, I'm sure it's right, that at any given point of time a decision taken by the Norfolk Island Government or any other government which I've had anything to do with will not be popular and indeed may not reflect the then current view of the majority of the electorate, but that's the way democracy works. You've got to face the electors the next time up and if they are still disenchanted with it then out you go, I assume. On the other hand, the passage of time since an unpopular decision was made between that time and election may have caused the electors to think, well, our elected representatives got it right, or at least we still think they are better than the other people who were standing against them, so I don't think a Tribunal such as I am cannot accept the formal view put indeed through the Chief Minister of a duly elected government. Now I also take you point – but let me assume that you are right, and you probably are I think – that the fund is increased, either there has to be an increase in revenue, whether that's tax or some other form, it could well be tax, or a reduction in expenditure on some government services. But isn't a prime consideration of government to say to itself as it presumably has done here,

well to maintain the standard of living at February 1997 standards of the public service, to do no more than that, not to improve their standard of living but to maintain their standard of living at a level nearly three years past, will cost the government \$334,000, we think we should do that and if it means we've got to spend less on the roads or we've got to increase taxes, well that's what we'll do and if the electors don't like it they'll have their say next time around. Isn't that really the answer to what you are saying

MR BROWN With respect, no Your Honour. Your Honour firstly I would refer to Tribunal to section 9 of the Act. That sets out the matters which the Tribunal must take into account

JUSTICE MORLING I accept that but

MR BROWN And nowhere, with respect, nowhere does it say that the Tribunal must take into account the view of the Chief Minister. In my submission it is necessary for the Tribunal to be provided, it needn't be by the Chief Minister, but be provided with sufficient information

JUSTICE MORLING What section are you referring to again

MR BROWN Section 9

JUSTICE MORLING Section 9, yes

MR BROWN The Tribunal must take into account public interest; there's no indication that the public interest can be taken into account in my submission purely by the Chief Minister suggesting that discussions had taken place between the government and the Public Service Association. It goes on, economic conditions in Norfolk Island; there's been no information provided to assist the Tribunal in that regard. Concepts of equity and fairness. One of those concepts that the Tribunal may wish to take into account is the question of who should pay for taxation increases generally because in recent times there have been taxation increases which have increased the cost of living

JUSTICE MORLING But Mr Brown I cannot imagine that the Tribunal is given the task of second guessing the government on say, variable rates of taxation in the community surely

MR BROWN Well my point Your Honour is for example, taxes on cigarettes and liquor have been increased in recent times. That causes an increase in the cost of living. Is it fair that the rest of the community not receive compensation for that tax increase, but those who are employed by the Public Service actually receive compensation for it, so that in effect, the increase is only payable by the remainder of the community. I put that to the Tribunal as part of the concept of equity and fairness

JUSTICE MORLING If I were going to go into that I'd become the de facto government of Norfolk Island wouldn't I

MR BROWN With respect Your Honour, it is my submission that the Act anticipated that the Tribunal would be provided with sufficient information to satisfy itself that it has taken into account the matters listed in Section 9

JUSTICE MORLING Mr Brown I think you've got a very good point. I think you do have a point, more particularly under (b) but the point really is, from my point of view, whether, when you get a formal submission from a body such as the government who above everybody else on this Island collectively should know more about its economic conditions than let's say, a private economist imported from Sydney to say well he's looked at the budget and he thinks so and so, isn't the Tribunal entitled to have regard to what the government says. I mean, I could ask Mr Smith to give me some formal evidence and I've seen something here in some of the correspondence that makes me very gratified to read that the Island's economy seems to be in reasonably good shape but leaving that aside, and tourist numbers increasing and so on, leaving that aside I think the way that these sort of applications have always been dealt with in Australia, and I can remember appearing for the Commonwealth Government in the days of the late 1970's when there was great disputation between the then liberal government and the unions about wage increases, and certainly the Commonwealth Arbitration Commissioners as it then was, accepted submissions from the Government as to what the Government views were and so on, because no doubt, there were behind them, a lot of thinking and I don't think I should assume that behind what Mr Smith has said to me as reflecting his government's views, I don't think that I should assume that they are not based upon the government's views of economic conditions in the Norfolk Island community

MR BROWN In my submission Your Honour it is necessary for the Tribunal to go further than to simply accept the Chief Minister's view

JUSTICE MORLING Well it's a good point Mr Brown, I must concede that and I have to say that Mr Smith at least in some past applications has been a modest amount of what I'll call economic data in that tourist numbers and there was a... Mr Buffett will remember what it was and I...Well, I don't know whether. Perhaps I'd better get it back to see what material is here and I've got from Mr Menzies... Mr Brown I think what you say is quite an important view, it is quite a significant point, I really do but if I go back looking quickly to a letter from the Association of the 13th April there's material showing the movements in the retail price index, all groups, quarterly annually in Norfolk Island, financial indicators apparently discussed at the Legislative Assembly in March 1999, other taxes, expenditure, health, education, welfare, this year, last year, revised budget this year, and they look to be official figures and therefore I imagine they could not be refuted but I would imagine that if the government thought they were inaccurate then they would have told me.

MR BROWN Your Honour I simply wanted to put those submissions to this Tribunal. They weren't intended to

JUSTICE MORLING No, No Mr Brown, they are very apposite

MR WESTWOOD Your Honour, may I just say one thing there. With this initial submission we put in, with this particular claim we did not include any figures like was with the previous submission. We were quite prepared to let the figures of the Annual Reports of Norfolk Island stand for themselves because it was over such a long period

JUSTICE MORLING Yes. Well

MR WESTWOOD but those matters were certainly raised, the economic indicators were certainly raised with Members of the government during the initial discussions

JUSTICE MORLING Yes, but Mr Brown's point is rather different. What he is saying is I don't have – I have a statutory obligation under section 9. It's an obligation not a discretion, I must take into account certain things, and what he's saying is, well, he may disagree with the government's decision I don't know, but he's saying whether it's right or whether it's wrong – what it hasn't done is to satisfy the statute by putting in front of me all the material which was in front of it and that's not a bad point. Now I strongly suspect that, obviously the government has had this information, taken it into account and registered a decision so that I would be surprised if having seen the material I not only disagreed with the Government's interpretation of it, but disagreed to such an extent that I took it into account to the extent of disagreeing with the government. The wording of the statute is important and I must obey the statute. I must take it into account, the economic conditions into account, but it's only one of four concepts and I suppose could come to the view well, if there's something in the papers to indicate that the government thinks it can spend this money without increasing taxation or reducing services, I think well I would say to myself, well I doubt that, but I would just take it into account. I wouldn't necessarily, and the statute have to reject what the government, or put it another way, what the Association asks for. However, I think Mr Brown's point should be addressed. What material is there readily available, such as the Annual Reports. They certainly haven't been furnished to me have they, on this application

MR WESTWOOD No Your Honour

JUSTICE MORLING Well, what readily available material is there which could be sent to me or given to me today, because I propose not to give a decision today, I propose – I think the Island's government and Association are entitled to a formal reasoned determination and I shall give you that in the next two or three weeks. And it will be effective from the 1st July when the determination is made whether it's x or y, I'll accept that date. But do the Annual Report Chief Minister contain the relevant economic data or some of it which gives me some idea of the Islands economy

MR SMITH Your Honour the current Annual Report hasn't been completed. The most current one would be 1996/97 and 97/98 years both of which the PSA has available for you here. I also have with me which I submit to you Your Honour the audited financial statements up to June 1998. I have unaudited versions of the financial statements for the Administration of Norfolk Island to 30th June 1999 although those aren't audited at this point

JUSTICE MORLING Well no, that's alright. I think Mr Brown's point – I'll not to be taken as saying that I can't take account of economic conditions on the say so of a government but nevertheless that information just referred to, if it's readily available I think I would like to see and should have.

MR SMITH I submit also Your Honour that in a previous determination or the last determination, determined in this forum here at which Mr Brown as a Minister of the Government at that particular time, the Minister on behalf of – John, Mr Brown and I were the Ministers that were submitting to the Tribunal that the Assembly get an increase in salaries or remuneration Your Honour. At that time just looking back through my files I find no evidence that we submitted at that time the economic conditions of Norfolk Island. At the same time the Hospital put in a submission to the Tribunal. I cannot find any information which suggests that the public interest was taken account of so I believe that ----- to debate Your Honour. I believe that Mr Brown at that time didn't raise the issue of whether the public's interest was taken up,

the economic conditions of Norfolk Island, because you were quite right Your Honour, that the people elect the Government to make a decision. If the Minister for Finance, which I am besides being Chief Minister, also have various other portfolios as do the other Ministers in the Government, if we aren't able to keep our eye on what's happening the electorate will decide that within the next six months. I would like to address those issues in section 9. Public Interest which is part (a) of that, Your Honour you won't be aware and maybe I

MR MORLING Mr Smith I don't have any doubt and I don't have to have formal evidence about the public interest. I could have a six month inquiry on this Island. I'm quite sure that a hundred people would have different views about any matter of importance. That's what our society is all about. That's why you're where you are. You people think, who elect you, think that you will represent the public interest as I said and I don't have, I find it difficult to see how you could control evidence about the public interest. If you open it to every Tom, Dick and Harry if I use that term, I'm not intending to be disrespectful, I think I would have the Association on one side representing a large section of the Norfolk Island community, I have the Government representing everybody. I think I'm perfectly entitled to act and draw such conclusions as I think I should draw as to public interest, so forget about that. I think the same thing, that the concepts of equity and fairness are matters for argument rather than evidence. Everybody can see that there's something both equitable and non equitable about a man earning \$40,000, getting no more adjustment as a man earning \$25,000. There's an argument both ways and it's fair and equitable that everybody who suffers the same increase in cost of living should be treated the same way. On the other hand it's inequitable that they should be treated the same way in some sense, if their salary levels are different. That doesn't worry me either. But I think economic conditions if, I think, because in the past I can clearly remember having a page out of the Annual Report but I think it would be useful to have those for the years ended 1997/98 and the unaudited figures for 99 and if they're here now I'll take them away with me. Just looking at what I, in fact, already have from the Association. Does the Association want to make any comment on what Mr Brown has said?

MR WESTWOOD No Your Honour, we just agree with your comments

JUSTICE MORLING Very well. Well then I would encourage the parties jointly to let me have and if they are not available this morning, Mrs Keeping will send it to me in Sydney, I think the Annual Reports 97/98 and unaudited this year and I will either Mr Brown implement the agreement of the parties in one form or other of the option. If I were not to do that I think there would be no option but to coming back to the Island to have sort of a general inquiry into economic conditions to as to show that they do not justify the adjustment because it would be a very serious thing for it to be on such as I am to reject a considered view of the Government on economic matters in the absence of the most compelling evidence from others, other experts, showing that the economic conditions were such that the Government's approach was wrong

MR BROWN Your Honour I was not seeking to submit that there should or should not be an increase

JUSTICE MORLING No

MR BROWN I was not seeking

JUSTICE MORLING No, but what you are submitting is that I must have material which I take into account, and this is right because the Act says that on

economic conditions, the question simply is, the narrow question is whether I can act on the view of the Government or whether I should have so to speak the raw material behind the Government's decision

MR BROWN

That's the extent of my submission Your Honour

JUSTICE MORLING

Yes, thank you. Well thank you Gentlemen, I'll give you a decision, a determination. I'm very busy but I'll try and get it done next week, if I get those reports before I leave the Island tomorrow. Thank you