

37/84

## INDUSTRIAL RELATIONS COMMISSION OF VICTORIA IN COURT SESSION

***TUCKER v RISING SUN TOWING SERVICE PTY LTD***

KD Marshall, President

3 October, 12, 13 December 1983; 14 February 1984 — [1984] 7 IR 75

**INDUSTRIAL LAW – COMMERCIAL CLERKS AWARD – EMPLOYEES OF TOW-TRUCK SERVICE – BASE RADIO OPERATORS – WHETHER PERFORMING CLERICAL WORK – WHETHER SUBJECT TO AWARD.**

Clause 1 (Scope.) of the Commercial Clerks Award provides:

"SCOPE: This Award applies to the whole of Victoria to the process, trade, business, or occupation of a person or persons or classes of persons (by whatever name called) employed wholly or principally in clerical work in connection with a trade or business including, without limiting the generality of the foregoing, stenographers, typists, tele-type operators, switchboard attendants and operators of machines used to perform or assist in performing clerical work; ...

The defendant company conducted a tow-truck service and employed F. and W. as Base Radio Operators to receive information – usually by telephone but sometimes by radio – concerning any broken down or damaged vehicle and to arrange for trucks to go to the location of the vehicle with the object of obtaining for the company the job of towing it to an appropriate place. Upon termination of their service, F. and W. claimed that they were underpaid for work performed by them and that they were not paid for any *pro rata* annual leave. The company refused the claim on the basis that it did not employ F. and W. as clerks, and that it was award-free in relation to the operators. When the informations came before the Metropolitan Industrial Court for breaches of the *Industrial Relations Act* 1979, they were dismissed. Upon appeal—

**HELD: Appeals allowed.**

**(1) For industrial purposes, 'clerical work' includes more than a mere recording function; it covers work of different kinds leading to or resulting from recording but in fact is part of the general office administration system.**

*Federated Clerks' Union (NSW) v Australian Workers' Union* [1971] 71 AR (NSW) 419, applied.

**(2) In the present case, the employees were carrying out duties in a clerical capacity and accordingly, their work came within the Commercial Clerks Award, and the company was liable to pay the amounts owing.**

**MARSHALL P:** *[After setting out the facts and the relevant provision of the Commercial Clerks' Award, the President continued]:* ... [8] In the course of their submissions, counsel cited a number of cases in which courts or tribunals have been required to consider the term "clerical work" or "clerical workers" or comparable expressions.

I have found it convenient to refer to a judgment of the New South Wales Industrial Commission (Sheldon J) in *Federated Clerks' Union of Australia, New South Wales Branch v Australian Workers' [9] Union* [1971] 71 AR (NSW) 419 as the starting point for my consideration of the question raised by these proceedings. In that case Sheldon J was required to consider the constitution rule of the Clerks Union which contained the phrase "engaged in any clerical capacity". In the course of that judgment he said at p421:

"The constitution rule of the Clerks Union provides (*inter alia*) coverage for persons "engaged in any clerical capacity". The Commission has described the phrase in any clerical capacity" as "a wide one" although not without limitations, and as one of "indefinite meaning" (*Accountants and Secretaries Case*). ... This phrase, in my view, must be read against the background of the way industry has developed and is now conducted. Clerical work in industry has long since moved from the Dickensian era of the high stool and the quill pen. The voice and the mind are now part of clerical stock-in-trade. So is the acceptance of responsibility and the exercise of discretion. The conception is fluid and progressive and recourse to a dictionary gives only partial help. It is impossible, and in any event it would be undesirable, to attempt to devise a code as to what in the setting of industry today can fairly be regarded as clerical work. But too fine a toothcomb should not be used in solving this question in particular cases. Obviously all employees in an office are not engaged in a clerical capacity. It is clear that professional employees are not nor are those who are truly and basically executive

officers. But an employee does not cease to be employed in a clerical capacity merely because his work includes many administrative and non-recording functions. No doubt there are cases near the border which would be difficult to determine ... But the salient point is that for years clerical work has been regarded for industrial purposes as including more than mere recording and covers work of different kinds which no doubt leads to or results from recording but in fact is part of the general office administration system.'

Those views have been cited in judgments of other industrial courts or tribunals with obvious approval. I readily adopt them as the base upon which this decision is constructed ... *[The President then considered other cases, counsels' arguments, and concluded]: ... [13]* When the evidence is reduced to essentials, it is clear that to perform their important duty of getting tow-trucks to the place where an accident or breakdown had occurred, the operators were required to operate a telephone switchboard. It may be true that they did not switch many incoming telephone calls to extensions on the switchboard, but they did switch some. In addition, they were required to make frequent use of a telephone and a not unrelated piece of communication equipment, a two way radio. In modern times, and in the circumstances of this case, it would be unreal to hold that the use of a telephone by the operators was not a significant part of the Company's general office system. In my opinion, that function does not disqualify them from being engaged in a clerical capacity.

They were also required to receive cash or cheques and give receipts on behalf of the Company. A not un-related duty they were required to perform was to give money quotes for towing jobs. Details of the manner in which they carried out those duties lead me to accept them as being clerical work. But in addition to the foregoing functions they were required to record information on running sheets, and information sheets. Those records were used by management for various purposes.

They were also required to make accurate and adequate entries in the uncollected goods book which was inspected by police officers. In the light of the totality of the evidence I have no hesitation in deciding that the work performed for the Company by Mr Fowler and Mr Warner was work which came within the jurisdiction (scope) clause of the *Commercial Clerks Award*. In **[14]** my opinion they were clearly persons employed principally in clerical work in connection with a trade or business. It follows that the appeals are allowed...

---