

**INTERPRETATION OF THE ANGLICAN SCHOOLS COMMISSION SUPPORT STAFF  
ENTERPRISE AGREEMENT 2015  
WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**

**CITATION** : 2019 WAIRC 00806

**CORAM** : COMMISSIONER D J MATTHEWS

**HEARD** : TUESDAY, 15 OCTOBER 2019

**DELIVERED** : TUESDAY, 12 NOVEMBER 2019

**FILE NO.** : APPL 25 OF 2019

**BETWEEN** : THE INDEPENDENT EDUCATION UNION OF WESTERN  
AUSTRALIA, UNION OF EMPLOYEES  
Applicant  
AND  
SWAN VALLEY ANGLICAN COMMUNITY SCHOOL  
Respondent

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CatchWords : Industrial law (WA) - Interpretation of agreement - Questions answered

Legislation : *Western Australian Industrial Relations Act 1979*

Result : Agreement interpreted

**Representation:**

Applicant : Mr J Fiala

Respondent : Mr M Jensen (of counsel)

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*Reasons for Decision*

- 1 On 21 March 2017 the Anglican Schools Commission Support Staff Enterprise Agreement 2015 was registered as an industrial agreement under the *Industrial Relations Act 1979*.
- 2 There had not previously been an industrial agreement applying to the employees to whom the Anglican Schools Commission Support Staff Enterprise Agreement 2015 applied.
- 3 Immediately prior to registration of the Anglican Schools Commission Support Staff Enterprise Agreement 2015 some employees of the respondent eligible to be members of the applicant were subject to the Independent Schools' Administrative and Technical Officers' Award 1993. This included Mr Justin Oxford, who had commenced with the respondent on or about 2 February 2015.
- 4 As at the time of the registration of the Anglican Schools Commission Support Staff Enterprise Agreement 2015, Mr Justin Oxford had progressed to Level 2.1 under the Independent Schools' Administrative and Technical Officers' Award 1993.
- 5 The Anglican Schools Commission Support Staff Enterprise Agreement 2015 provided at clause 17(1)(a) as follows:
 

Salaries for the various classifications are contained in schedule 1 of this Agreement.
- 6 It was agreed that the reference to “schedule” should read “appendix” and that nothing turns on this.
- 7 Going to Appendix 1 there is a “first” table headed:
 

Staff Employed under the Independent Schools' Administrative and Technical Officers' Award 1993
- 8 The “first” table contains a remuneration figure for Level 2.1, the level Mr Justin Oxford had reached under the Independent Schools' Administrative and Technical Officers' Award 1993.
- 9 The applicant says, however, that that figure does not apply to Mr Justin Oxford. It says that the “second” table containing pay rates applies. That “second” table is headed:
 

Staff Employed under the Independent Schools' Administrative and Technical Officers' Award 1993 – Salary Ranges Above ATO Award Levels 1 to 4
- 10 The table goes on to specify remuneration for certain positions with the amount of that remuneration being affected by the size of the school. In short, the bigger the school, the more money a person in a certain position gets.
- 11 The applicant says, referring to the “second” table, that Mr Justin Oxford works in a position of “IT Support Staff” at a school that has between 601 and 1250 students and is, accordingly, entitled to the remuneration specified against that descriptor.
- 12 The applicant says that interpretation is plainly correct and is bolstered by a note at the bottom of the “second” table which reads:
 

Staff members employed in these roles in schools with fewer than 300 enrolled students are accommodated in the ATO scales Levels 1 to 4 set out [in the first table].
- 13 The applicant says that under the Anglican Schools Commission Support Staff Enterprise Agreement 2015 a person who is employed in an IT support staff position is entitled to be paid according to the size of the school at which they work.

- 14 If the school has less than 300 students, the “first” table applies. If the school has more than that number, the “second” table applies.
- 15 I have been asked to declare whether or not this is the true interpretation of the Anglican Schools Commission Support Staff Enterprise Agreement 2015 pursuant to section 46 *Industrial Relations Act 1979*.
- 16 I follow what Beech J said at [50] of *Re Harrison; ex parte Hames* [2015] WASC 247. I also have regard to my observations at [20] and [21] of my reasons for decision in *Public Transport Authority of Western Australia v Australian Rail, Tram and Bus Industry Union of Employees, Western Australian Branch* (2017) 97 WAIG 354.
- 17 As I read the Anglican Schools Commission Support Staff Enterprise Agreement 2015, I find that I do not, from a mere consideration of the text alone, understand the heading to the “second” table and in particular its reference to “Salary Ranges Above ATO Award Levels 1 to 4”. This is because the Independent Schools' Administrative and Technical Officers' Award 1993 only provides for Levels 1 to 4.
- 18 Absent other information, I would be left to wonder how someone could be employed under the Independent Schools' Administrative and Technical Officers' Award 1993 and yet have a salary range above it?
- 19 Fortunately, other information provided to me at the hearing allows me to formulate an answer.
- 20 Mr Jason Paul Bartell, the Principal of John Septimus Roe Anglican Community School, gave evidence that some people employed under the Independent Schools' Administrative and Technical Officers' Award 1993 were, before registration of the Anglican Schools Commission Support Staff Enterprise Agreement 2015, paid at over award rates. He gave evidence that there was a table that set out the positions that were paid the over award rates and the salaries attached to those positions. He said the contents of that table appear to be similar to what is in the “second” table at Appendix 1 in the Anglican Schools Commission Support Staff Enterprise Agreement 2015.
- 21 I reproduce Mr Bartell’s evidence under cross-examination. The reference to paragraph 7 is a reference to the paragraph in his witness statement in which Mr Bartell gave evidence about the table:

Okay, Mr Bartell. In your paragraph 7, you mentioned that informal table of salaries, is it reflective of the EBA what’s in now? And I’ve got a copy I can hand to the witness if he’d like to have a look of the EBA. Thank you?---So, Mr Fiala, through my recollection, ah, there was always a – a discussion around the Principal’s tables – thank you – around the Principal table, that there was an above award, ah, rate applied to some positions, um, and applied at the Principal’s discretion, um, before the formal adoption of the EBA in, ah, 2017.

Okay. So looking at page 27 - - -?--- Twenty-seven, sorry, of the, ah – of the - - -

Of the enterprise agreement, yes?---Yes, thank you.

So, to the best of your recollection, does that table reflect the informal – what you understood to be the informal table?---Um, through the discussion which was the, ah – had between, I guess, Anglican Schools Commission and the Independent Education Unit of Western Australia, um, my sense there was that this is reflective of the, ah, informal table, its form, its, um, ah – the manner it’s presented here. Um, I cannot, ah, tell you whether it, ah, reflects the informal.

Okay?---But to my knowledge, that is the, um - - -

**MATTHEWS C:** You weren't involved in negotiations with the EBA?---No, I wasn't, Commissioner.

You had seen the informal table before the EBA was registered?---That's correct.

Does what now appears at 27 look like what was in the informal table that you saw - - -?---And - - -

- - - prior to the EBA being registered?---I couldn't tell you whether they were the same – one in the same, and that's what I'm saying.

**MATTHEWS C:** Does it look similar?---Similar, yes.

Okay.

- 22 I find that paragraph 7 of Mr Bartell's witness statement and the passage above solves the mystery as to the title of the "second" table and its reference to "Salary Ranges Above ATO Award Levels 1 to 4".
- 23 The tables in Appendix 1 work this way. If prior to the registration of the Anglican Schools Commission Support Staff Enterprise Agreement 2015 you were employed under the Independent Schools' Administrative and Technical Officers' Award 1993 and paid at Levels 1 to 4 you would, after registration, be paid as per the "first" table.
- 24 If, prior to the registration of the Anglican Schools Commission Support Staff Enterprise Agreement 2015, you were employed under the Independent Schools' Administrative and Technical Officers' Award 1993 but paid at an above award level, that is if you were paid according to the table to which Mr Bartell referred, you would, after registration, be paid according to the "second" table in the Anglican Schools Commission Support Staff Enterprise Agreement 2015.
- 25 Under the "second" table the size of the school and the position you hold is relevant to the level of remuneration you receive. It appears that if you were on the informal table but the school at which you work had less than 300 students that would make a difference to whether you come under the "first" or "second" table, but that is not something I need to decide.
- 26 I am emboldened in my conclusion by the evidence that if the "second" table applied to Mr Jason Oxford his salary would have jumped more than \$20,000 per annum (or by over 40 per cent) overnight. Interpretations that accord with industrial reality are preferable. Such an interpretation would completely offend industrial reality.
- 27 The applicant asks me to answer two questions in the application filed 9 May 2019 (as amended at the hearing):
1. Should IEU member Mr Justin Oxford be classified as School Category 7/6 IT Support Staff employee in accordance with Appendix 1 – Support Staff Salary Scales and Classifications under the table named "Staff Employed under the Independent Schools' Administrative and Technical Officers' Award, 1993-Salary Ranges Above ATO Award Levels 1 to 4" in accordance with the Anglican Schools Commission Support Staff Enterprise Agreement 2015, AG 42 OF 2016 (2017 WAIRC 00163)?
  2. Should the Commissioner make a determination in favour of 1 above, is Mr Oxford entitled to be paid the determined salary rate effective from the 1 July 2015?
- 28 The answer to question 1 is no. There is no need to answer question 2.
- 29 I make no declaration in these reasons for decision but will do so if a request is made under section 46(2) *Industrial Relations Act 1979*.