



LONG SERVICE LEAVE.

—
No. 86 of 1973.
 —

ANALYSIS.

1. Short title, citation, and commencement.
2. Interpretation.
3. What constitutes continuous employment.
4. Computation of "ordinary pay".
5. Recovery of amounts unpaid to an employee under this Act.
6. Amendment of the *Long Service Leave Act 1964*.

 AN ACT to amend the *Long Service Leave Act 1956*
 and the *Long Service Leave Act 1964*.

[19 December 1973.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—(1) This Act may be cited as the *Long Service Leave Act 1973*. Short title, citation, and commencement.

(2) The *Long Service Leave Act 1956*, as subsequently amended, is in this Act referred to as the Principal Act.

(3) Paragraph (c) of section two and paragraph (c) of section three shall be deemed to have commenced on the commencement of the Principal Act.

Interpretation.

2 Section two of the Principal Act is amended—

(a) by omitting from subsection (1) the definition of “ordinary pay”;

(b) by omitting subsections (2) and (3); and

(c) by adding at the end thereof the following subsection:—

“(5) References in this Act to employment shall be construed as including references to employment on a regular basis, regardless of the number of hours worked by an employee.”.

What constitutes continuous employment.

3 Section five of the Principal Act is amended—

(a) by inserting after paragraph (a) of subsection (1) the following paragraph:—

“(ab) any absence from work of the employee on a public holiday in accordance with the terms of his employment;”;

(b) by inserting in subsection (2), after the symbol “(a),” the symbol “(ab),”;

(c) by inserting after that subsection the following subsection:—

“(2A) Without prejudice to the foregoing provisions of this section, employment shall not be regarded as being not continuous by reason only of the fact that, in accordance with the terms of his employment, an employee is engaged otherwise than full-time in that employment.”.

4 After section nine A of the Principal Act the following section is inserted:—

Computation of “ordinary pay”.

“9B—(1) Subject to this section, where, for the purposes of this Act, it is necessary to determine the ordinary pay of an employee for any period in respect of any employment (in this section referred to as ‘the relevant period’), that ordinary pay shall, subject to this section, be reckoned as a sum equivalent to the remuneration that he would reasonably be expected to have received in respect of that period from that employment if he had continued throughout that period to have worked therein.

“(2) For the purposes of subsection (1) of this section, the following provisions have effect, namely:—

(a) It shall be assumed that, throughout the relevant period, the employee works his normal weekly number of hours of

work and does not receive, or become entitled to, any payments by way of overtime or as a consequence of his working in excess of that weekly number of hours;

- (b) Where the employee is ordinarily employed on any shift or roster system or any other similar system whereby the times at which he is required to attend at his work vary from time to time, it shall be assumed, subject to paragraph (a) of this subsection, that he continues to be so employed throughout the relevant period;
- (c) Any payments to which the employee may become entitled by way of disability allowance shall be disregarded;
- (d) Subject to paragraph (e) of this subsection, where the employee is provided with board and lodging by his employer, the cash value thereof shall be regarded as part of his remuneration;
- (e) Where, because the work done by the employee is in such a locality as to necessitate his sleeping elsewhere than at his genuine place of residence, or because of other special circumstances, board and lodging are provided, or payments in respect thereof are made, by his employer, the value of that board and lodging and the payments made in respect thereof shall be disregarded;
- (f) Subject to paragraphs (d) and (e) of this subsection, the value of any meals or refreshments provided for the employee, or any payments made in respect of meals or refreshments taken by him, shall be disregarded;
- (g) Any payments to which an employee may become entitled in respect of his travelling to or from, or in the course of, his work, or the use of a vehicle for that purpose, shall be disregarded; and
- (h) Any payments that are, or may be, made to an employee at the discretion of his employer by way of bonus shall be disregarded.

“(3) Subject to the provisions of subsection (2) of this section, where the remuneration received by an employee in his employment depends on the results achieved by him, it shall be assumed, for the purposes of subsection (1) of this section, that the rate of his remuneration in that employment for the relevant period is the average rate of the remuneration received by him in that employment during the period of three months ending on the commencement of that period.

“(4) Subject to subsections (2) and (3) of this section, where no ordinary rate of remuneration is fixed for an employee’s work under the terms of his employment, the rate of his remuneration in that employment for the relevant period shall be taken to be the average rate of his remuneration in that employment during the period of twelve months ending on the commencement of the relevant period.

“(5) Subsections (3) and (4) of this section apply to a part of the remuneration of an employee as if references therein to his remuneration included references to a part of his remuneration.

“(6) Where no normal weekly number of hours of work is fixed for an employee under the terms of his employment, his normal weekly number of hours of work shall, for the purposes of this section, be taken to be the average weekly number of hours worked by him in that employment during the period of twelve months ending on the commencement of the relevant period.

“(7) For the purposes of subsection (2) of this section, a disability allowance is any allowance payable to an employee as a consequence of his working in specified circumstances, being circumstances that involve, or are likely to involve, special danger, hardship, or inconvenience to the employee, but it does not include any such allowance in any case where it is reasonably to be expected that persons engaged in the type of employment in which the employee is ordinarily engaged would be entitled to that allowance for the whole, or the greater portion, of the time in which they are so engaged.

“(8) The cash value of any board or lodging provided for an employee shall be deemed to be that fixed by or under the terms of his employment or, if it is not so fixed, shall be computed at such rate as may be agreed between the employer and employee or determined by the Secretary on the application of either of them.

“(9) In the computation of the ordinary pay of an employee for a period for the purposes of section nine or for the purposes of subsection (2) of section ten, any variation in the terms of his employment that would have come into effect during that period if he had remained in his employment shall be disregarded.”

5 Section eighteen of the Principal Act is amended—

Recovery of
amounts unpaid
to an employee
under this Act.

- (a) by omitting from subsection (1) the words “ , as modified by subsection (2) of this section, and with such other adaptations and modifications as may be necessary ”, and substituting therefor the words “ , with such adaptations and modifications, if any, as are necessary, ”; and
- (b) by omitting subsection (2).

6—(1) Section six of the *Long Service Leave Act 1964* is amended by omitting from paragraphs (a) and (b) thereof the word “ paragraph ” (wherever occurring) and substituting therefor, in each case, the word “ section ”.

Amendment of
the *Long Service
Leave Act 1964.*

(2) This section shall be deemed to have commenced on the commencement of the *Long Service Leave Act 1964*.