CITATION:	*William Payne v McArthur River Mining Pty Ltd* [2004] NTMC 22
PARTIES:	WILLIAM PAYNE v MCARTHUR RIVER MINING PTY LTD
TITLE OF COURT:	WORK HEALTH COURT
JURISDICTION:	WORK HEALTH
FILE NO(s):	20305659
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JUDGMENT OF:	MR H BRADLEY

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WORKERS COMPENSATION -- WORK HEALTH -- NORMAL WEEKLY -- EARNINGS -- REMUNERATION

Normal Weekly Earnings – what benefits other than salary are to be included – basis for valuation of benefits other than salary

The Work Health Act 1986 (NT) s 49,

Pulumpa Station v Fox (1999) NTSC 144
Fox v Pulumpa Station Pty Ltd (1999) NTMC 024
Muwangi Community Aboriginal Corporation v Carroll [2002] NTCA 9
Sedco Forex Pty Ltd v Sjoberg (1997) 7 NTLR 50
Plewright v Passman SCNT 4 April 1997
R v Postmaster General 1 Q.B.D. 663, 664
Dothie & Others v Robert MacAndrew and Co. (1908) 1 KB 803
Skailes v Blue anchor Line Ltd (1911) 1 KB 360
Connally v The Victorian Railways Commissioner [1957] VR 466
Dawson v Bankers and Traders Insurance Co Ltd [1957] VR 491
Leighton v Australian Telecommunications Commission [1990] 34 IR 250
Butler v Egg & Eggpulp Marketing Board [1996] 114 CLR 185
K.P. Welding Construction Pty Ltd v Herbert (SCNT)
Cooper Brookes (Wollongong) Pty Ltd v The Commissioner of Taxation (1980-81) 147 CLR 297

Hughes v AAT Kings Tours Pty Ltd (NTSC 29 April 1994)
AAT Kings Tours P/L v Hughes 99 NTR 33
Francese v Corporation of the City of Adelaide [1989] 51 SASR 522
Thomas v Francis Creek Iron Mining Corporation (unreported)
Smith v Hastings Deering (Australia) Ltd [2003] NTMC 029
McFarland v NT Drilling Pty Ltd [2003] NTMC 62
Turner v The Granites Goldmine (unreported 15 April 2003)
Normandy NFM Ltd t/a The Granites Goldmine v Turner [2003] NTSC 112
Sharpe v Midland Railway Co (1903) 2 KB 26
Great Northern Railways Ry.Co. v Dawson [1905] 1 KB 331
Abram Coal Co Ltd v Southern [1903] AC 306

REPRESENTATION:

Counsel:

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Employer:	Ms Robertson

Solicitors:

Worker:	Priestly Walsh
Employer:	Cridlands

Judgment category classification:	A
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IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20305659

BETWEEN:

WILLIAM PAYNE
Worker

AND:

MCARTHUR RIVER MINING PTY LTD
Employer

REASONS FOR DECISION

(Delivered 25 March 2004)

Mr H B BRADLEY CM:

Background

1. Mr Payne was injured in the course of his employment with McArthur River Mining Pty Ltd (McArthur River) on 13 January 2000. He claims compensation for his partial loss of earning capacity.

2. Mr Payne commenced his employment with McArthur River in 1997 as a result of an invitation to do so expressed in a letter dated 14 March 1997 (Exhibit E2). The letter of offer set out his commencing salary and generally set out the nature and terms of his employment. There is no evidence to suggest other than that those general terms and conditions of employment continued to apply up until the date upon which Mr Payne sustained his injury namely 13 January 2000.

3. In the period leading up to the hearing there were substantial matters in dispute including the question as to whether Mr Payne was entitled to compensation at all. Just prior to the hearing commencing the parties largely resolved the issues between them and as a consequence a Further Amended Statement of Claim and an Amended Defence were filed in court during the conduct of the hearing. These fresh pleadings indicate that the employer has accepted liability to continue to pay weekly compensation under *The Work Health Act* 1986 (NT) (the Act) for partial incapacity. Although the admissions contained in the Amended Defence are sometimes differently expressed from the Statement of Claim (and there are some matters of past history denied) the issue is to determine "normal weekly earnings", in particular the court needs to decide: -

    3.1 Whether the Workers weekly salary was $1,429.48 or $1436.54 per week. Somewhat ironically it is the Worker who asserts the former and the Employer the later.

    3.2 Whether the Worker is entitled to include in the calculation of his "normal weekly earnings" an amount representing the value of remuneration other than that salary and if so how much that should be.

4. It is this later question which has generated the most heat and upon which the parties have devoted their attention in argument. The parties did not ask the court to adjudicate on question of superannuation which would in ordinary circumstances have formed part of this argument.

Salary

5. Looking at the conditions of employment (Exhibit 2) I note that Mr Payne was to be employed on the basis of an annualised salary paid on a calendar monthly basis. He was to work twelve-hour shifts on a seven days on – seven days off roster. He was to be responsible for travelling to and from

the Darwin Airport to connect with a plane to fly him into the mine site and out again each alternate week. The conditions also provide "as your role is task rather that time oriented, you will be expected to work the hours as are required for the satisfactory performance of your duties. Your salary allows for such hours".

6. The Act defines Normal Weekly Earning's in s 49. The relevant provisions of which are:

> "s 49…
>
> "normal weekly earnings", in relation to a worker means –
>
> (a) subject to paragraphs (b), (c) and (d), remuneration for the worker's normal weekly number of hours of work calculated at his or her ordinary time rate of pay;
>
> (d) where -
>
> (i) by reason of the shortness of time during which the worker has been in the employment of his or her employer, it is impracticable at the date of the relevant injury to calculate the rate of the relevant remuneration in accordance with paragraph (a), (b) or (c); or
>
> (ii) subject to paragraph (b) or (c), the worker is remunerated in whole or in part other than by reference to the number of hours worked,
>
> the average gross weekly remuneration which, during the 12 months immediately preceding the date of the relevant injury, was earned by the worker during the weeks that he of she was engaged in paid employment."(Paragraphs (b) and (c) are not relevant here).

7. When one considers the salary component of his remuneration therefore it seems to me that the approach adopted by the Court of Appeal in *Sedco Forex Australia Pty Ltd v Sjoberg* 1997 7NTLR 50 is to be preferred. That case also involved a worker who was flown to and from his employment although on a two week cycle rather than a one week cycle. At page 11 His

Honour Mr Justice Bailey (with whom the balance of the court concurred) said of the definition of normal weekly earnings in s 49(1) that:

> "Paragraph (a) of that definition is directed at a worker whose remuneration can be assessed by reference to his normal weekly number of hours of work calculated at his ordinary time rate of pay. It is implicit that this paragraph can only apply to workers whose weekly remuneration bears a direct relationship to the number of hours actually worked by the worker.
>
> (d)(ii) on the other hand, is applicable to a worker whose remuneration is fixed in whole or in part by reference to some factor other than the number of hours worked."

8. Given the matters I have identified above particularly the relevance of the number of hours he has to work and the fact that he is paid monthly whether or not he works for two weeks or two and a half weeks in any calendar month, I hold that the correct approach is to adopt the definition in paragraph (d)(ii) of the definition of normal weekly earnings. I understand the parties are agreed that in the twelve months to 13 January 2000 Mr Payne earned $74,333.08. When this is divided by 365 and multiplied by 7 a weekly salary of $1425.57 is achieved.

9. I therefore hold that the relevant salary component of the normal weekly earnings of Mr Payne is the sum of $1,425.57.

Earnings other that salary

10. When one then approaches the second and more critical issue, the issues are a little more complicated. Evidence was given by Mr Payne, and a Mr Latham who is the person in charge of Occupation, Health and Safety for McArthur River. On the basis of their evidence, which was mostly uncontroversial I find that Mr Payne was employed by McArthur River on the basis that he worked to a roster of day and night shifts on a seven day on and seven day off basis. In addition to rostered time off Mr Payne was separately entitled to 28 days annual leave. Mr Payne was ordinarily a

resident in Darwin where he occupied a flat rented by him on a permanent basis. He got himself to and from the airport each week and flew, at the employer's expense, to and from the McArthur River Mine Site for the purposes of carrying out his work duties. Whilst in Darwin he received no benefits from his employer other than the salary component as calculated above.

11. On the weeks however when he was at work at the McArthur River Mine Site he was provided with a number of things which in his evidence he identified as benefits accruing to him. His evidence was and there is no reason to dispute that he was provided with:

    11.1 Camp accommodation in a self contained air-conditioned room approximately four metres by five metres with an ensuite. This room was part of a demountable unit set-up and in it he had a bed, a wardrobe for his own use, table, chair and television with programs via the cable. He shared the room with a person who worked on the alternate seven-day roster; that being the explanation for his own lock up wardrobe, otherwise, I assume the room facilities were shared. In association with this accommodation he had the share of a fridge with four other rooms.

    11.2 The room was cleaned by the employer during the period of his service twice per week, and the linen changed, although this was reduced to once a week after he had sustained his injury.

    11.3 He was provided three meals a day free of charge. Breakfast consisted of a choice of a hot or cold meal plus tea, coffee and juices. A variety of makings were available for lunch which the worker made up himself and took to work with him. The workers evidence indicates that he made up his own sandwich. The evening meal consisted of a choice of three main courses plus salads with

fruit and desserts etc. No charges what so ever were made in respect of these meals.

11.4 At work he was provided with morning and afternoon tea including pies, sausage rolls and biscuits etc.

11.5 In addition to the accommodation on site the facilities had a number of amenities including, swimming pool, gymnasium, canteen, tennis courts, basketball courts and a dry mess including a pool table and table tennis table. He indicated that he was able to access these facilities without payment. There is no evidence however whether or not the worker ever accessed such facilities nor indeed, given that he was working twelve hours a day, when he would have much time to do so.

11.6 The workers work clothes were laundered by the employer and a washing machine was made available to him for washing his own clothes.

11.7 The cost of Mr Payne's air travel to and from Darwin each week was paid for by the employer and he was bussed each day approximately two kilometres to the work site.

12. There is little or no evidence in relation to the value to be placed on some of these benefits. It may be that if they are to be allowable some estimate would need to be made by the court having regard to its own resources.

13. The Darwin premises consisted of a rental property which he regarded as his permanent place of residence. He resided there with a de facto partner and kept all his personal chattels there. He advised the court that he took very little in the way of his personal effects to work other than toiletries and clothes for work. These in any event he tended to keep on site. He told the court that he used the room provided by the employer for the purpose of resting and sleep. When in Darwin the evidence indicated that his habits

varied but that he usually shopped each week to have meals at home and occasionally ate out. When he entered his employment he was told that meals and accommodation would be supplied in camp/motel style accommodation with facilities. There was a code of conduct for people residing on site. The room on site was shared with another worker who worked on the alternate seven-day roster. I gather the two occupants seldom if ever saw one another.

14. Mr Latham's evidence basically confirmed that of Mr Payne as to the nature of the facilities and he identified the camp rules as being basically that there was to be no unnecessary noise and no visitors without permission. If these rules were broken the employee may have to source their own accommodation. The Company's attitude was that there was nil provision in the contract for the value of accommodation on the basis that the Company supplied it for its own convenience. The mine is a twenty-four hour seven day operation and it was important for the Company to have the workers on site. He said the cost of a return airfare was $220.

15. Through Mr Latham, a document (Exhibit 6) was tendered indicating the billed costs to the employer for providing accommodation, management and catering services to the mine. The company, referred to as Eurest, billed the employer it would seem on a monthly basis. Separate costs are identifiable for management fees, catering costs, cleaning costs, freight and other incidentals. The document in summary shows for example at line 23 that the cost per man-day of catering for the period March 2001 – June 2002 was equated to $12.83 plus $7.80 for associated labour costs. It does not seem to me to be possible to otherwise break down any of the other costs specifically to the services which were provided to the workers and in particular to Mr Payne. Even the catering costs would, I imagine, include a cost for Eurests own staff and at best the table can only give an indication of the price of food acquired on a commercial basis for the purposes of provisioning the canteen in a remote location. From the schedule in Exhibit 6 it would seem

that for the period 1 July 2001 – 30 June 2002 the costs of providing bed and board for mine staff ranged from $22.05 to $29.66 per day, an average of $25.76 a day or $180.32 per week. This is shown by the figures in lines 29 - 40 of the schedule. The total including management costs charged by Eurest to McArther River would seem to be in the order of $38 - $40 as shown in column Q of the Exhibit. In my view these show the commercial cost of the provision of camp accommodation and may not necessarily show the value of such services to the worker. That may be more or less depending on other findings and the test to be applied.

16. Mr Payne has provided a valuation of the accommodation and daily meals. This is contained in the valuation report – Exhibit w4. This report relied on a description of facilities provided rather than an inspection. The accommodation description, comments and valuation methodology are set out on pages 3 - 7 of the valuation report. It can be seen that the valuation is based on an assumption that the accommodation was a single en-suite style room with sole occupancy rights. I have concluded from the evidence that room is in fact shared with another person who is on the alternate roster week and for this reason each occupant is provided with a lockable closet for their personal effects, likewise the valuation proceeds to compare the charges made for commercially available one bedroom rental premises and motel accommodation and meals. No allowance is made for the camp rules relating to noise and guests. One question is whether these premises are an appropriate comparison. The valuer while mentioning several facilities available to the workman does not appear to have separately valued them. It is desirable that each item be valued so that the court can decide what weight to attach to the value and includes such items as are by law to be included.

17. The valuation calculation is then expressed as follows:

"By direct comparison to the above, and after due consideration of the rental evidence, the value attributable to the described benefits is considered to be as follows: -

Accommodation (one single serviced, A/C room, with en-suite)

	$50 per day ($350 per week)
Breakfast	$10 per day
Lunch (sandwich/salad/meats)	$10 per day
Dinner (3 course)	$20 per day
Total value per day	**$90 per day ($630 per week)**

Fair market value: As at January 2000. The value attributable to the described benefits is $630 per week for the service provided at the McArthur River mine for the one bedroom demountable unit and rent (sic) as described.

The above valuation has been made on the basis of a well informed service provider and a well informed beneficiary both acting at arms length on a bona fide transaction."

18. It is well settled in the workers compensation field and in particular in the *Work Health Act* that there are benefits other than salary that may be included in the expression "earnings" or "remuneration". In s 65 the Act provides that after the first 26 weeks of incapacity the worker is entitled to 75 per cent of his loss of earning capacity or 150 per cent of average weekly earnings at the time the payment is made, which ever is the lesser. Loss of earning capacity is then defined as being the difference between the workers "normal weekly earnings" and the amount he or she is reasonably capable of earning. The pleadings have agreed that at the time of the hearing the worker was reasonably capable of earning $850.00 per week and so it is incumbent only upon the court to determine what the "normal weekly earnings" of the worker were at the time of his injury. The salary component has already been determined (see above) and the task now is to

determine what additional benefits are to be added to the salary component and valued for the purposes of establishing "the average gross weekly remuneration" of the worker during the preceding 12 months.

19. It appears from above that the worker has claimed a substantial number of benefits from his employment. He has quantified the value of a number of them and some assistance as to valuation is provided by the evidence of the employer.

20. Mr Southwood QC's submissions were very brief and did not assist me on the issue as to any distinction that should be drawn between the various kinds of benefits which the worker was led through in his evidence in chief. I suspect that he believes that the principles will finally be determined elsewhere – a matter with which I have no argument – but it would have been of more help to me if he had addressed me on more than the two decisions in *Pulumpa Station* v *Fox* 1999 NTSC 144 and *Murwangi Community* v *Carrol1* [2002] NTCA 9 which are referred to in more detail later. (Refer to the Supreme Court's comments generally on the obligations of counsel in *Works Social Club v Rozycki* 120 NTR 9 at 16).

21. As I perceive it the issue of benefits over and above salary is an emerging issue in Work Health Law. Recently argument has been addressed in this court and in the Supreme Court on such issues and in particular relating to superannuation, board and lodging. Generally in cases like the present the value of accommodation and meals has not been addressed until recent times, see for example *Sedco Forex Pty Ltd v Sjoberg* (1997) 7 NTLR 50. In that case the value of board on the drilling rig was not even raised. It seems therefore appropriate that I explore the issues so that certain principles can be adopted or the need for same determined if necessary by this or a superior court to guide the parties in the future.

22. It would appear that there is a prospective rich harvest for work health lawyers in this area. Should a worker, for example, have included in his

normal weekly earnings something, and if so what, representing the value of;

22.1 accommodation in any or all situations. At one end of what I perceive to be the spectrum is the situation existing in *Pulumpa Station Pty Ltd v Fox* where full time accommodation was provided to a workman working in the outback. At the other end of the spectrum, should a care-giver sleeping over at his then clients house be provided for by adding to the salary the value of the bed that is made available to him; should the live-in care-taker of a luxury seaside villa be entitled to the commercial or some other value of that accommodation if he were injured during the term of such employment,

22.2 a uniform or safety equipment required to be worn at work whether or not the same is of value or use outside of employment; one can see the benefit of a uniform but a safety helmet provided at work may be a different matter,

22.3 employer discounts, for example an employee may be entitled to purchase goods at a hardware or other store at a 10 or 20 per cent discount. Likewise an employee in an insurance company, may be and is often entitled to a meaningful discount on insurance and finance services, (see comments of Blackburn J in *R v Postmaster-General* 1 Q.B.D. 663, 664 and generally definition of "remuneration" in Strouds Judicial Dictionary of Words & Phrases – 6th Edition),

22.4 morning and afternoon teas provided by an employer,

22.5 phone calls accustomed to be made at work,

22.6 leave loading?

23. The list could obviously go on however this is enough I believe to identify the nature and extent of the issues that could evolve. Not only should the principles to establish the areas or benefits be reviewed but some basis must be set for the valuation of those benefits which are to be included. Is the valuation to be at cost, market value or value to the worker? If the later which seems likely on the authorities, how is such a valuation to be achieved consistent with the purposes of the Northern Territory *Work Health Act* – see Martin CJ in *Plewright v Passman* SCNT, 4 April 1997 approved and accepted by Justice Baily in *Palumpa Station Pty Ltd v Fox* 1999 NTSC 144 at [17] – [18].

Early Case History

24. My colleague Mr Trigg SM has in *Fox v Pulumpa Station Pty Ltd* (1999) NTMC 024 identified that the meaning of remuneration was considered quite early by the English Courts of Appeal, in particular in *Dothie and Others v Robert MacAndrew and Co.*(1908)1 KB 803 and *Skailes v Blue Anchor Line Ltd* (1911) 1 KB 360 and some other cases referred to therein. It is meaningful at this stage to note that in these cases, like the subsequent early Victorian cases, were decided in the context of determining whether or not a person was to be included or excluded from the category of a worker entitled to benefits based on the amount of income received. The law at the time in those jurisdictions provided that the definition of "workmen" did not include a person whose remuneration exceeded a particular sum. Although these decisions are helpful, some caution needs to be adopted given this background and the era and social circumstances in which they were made.

25. In *Dothies* case it is said that the value of board and lodging had to be included when calculating the sea captains remuneration. The captain spent the greater part of his life at sea or at ports at which the ship called, it was said that "with the exception of a small number of holidays – a few days at a time in a year when he was able to go home to his wife and family – he lived

on board this ship". Although the Master of the Roles referred in his decision to the concept of board and lodging he focused in his decision, as did the other Lord Justices, on the value of food provided. At no time is there a discussion of the value of the room provided to the sea captain for his convenience and accommodation. The case seems to decide that the value of the benefit to the servant was not what the captain saved by the arrangement or what he could have boarded himself for but what would a reasonable form of board would cost him if he had to purchase an appropriate similar service or item himself. Lord Justice Fletcher Moulton said that p 809;

> "Now let us suppose that a workman was within the Act and a claims compensation. He is in the receipt of certain monetary payments, but he is also in receipt of his food. Now it is incontestable that you must reckon the value of the food as part of the remuneration he gets. It is remuneration in the sense that it is something that he receives for his labour; it is remuneration in the sense that it is something the expense of which has to be borne by his master in order to procure that labour. But of course we cannot give compensation in food; we must turn it into money. Now how are we to turn it into money? The first thing that is evident is that it must in some way or other depend on what that food is. If a workman is entitled to or is, in his service, in receipt of good food, he is in receipt of a higher remuneration than if the food were poor, and his master has to bear a greater expense in giving him that good food than if he gave him poorer food. So he must obviously look at the actual food which he is receiving as part of his remuneration. Then we must turn that into money. How are we to do that? Under ordinary circumstances we should have to consider the cost of that food. If we can get the actual cost, and can shew that it is bought under circumstances which justify our thinking that the price paid is not extravagant, that is a very easy way of getting at its value. It is quite possible, even in the case of food, however, that an element might come in akin to that which was present in *Great Northern Railways Ry.Co. v Dawson* [1905] 1 KB 331 where the consideration of display came in, so that food costly beyond its value to the workman might for the masters purposes be given to him in the place of equally good food which would have cost much less, but which would have been of a different character. The court would then have to consider to the **what the value to the workman of equally good food would be**, just as in the case of the

> uniform, it calculated **what was the value to the servant of an equally good coat**."

26. At p 810 Lord Justice Buckley approached the question of valuation as follows:

> "The next question is how are we to ascertain that value, because the value to one person and the value to another person is often a different thing. I think that the value we ought to arrive at is the value to the workman reasonably ascertained. It is not necessarily the cost to the employer, it is the value to the workman."

27. The decision in *Scailes'* case was based similarly on the definition of workmen and involved items such as "extra wages" which we might now refer to as a bonus. It also involved commissions on sale of wines. There it was decided that the case should be remitted to the court of original jurisdiction to ascertain the value of such items to determine whether the claimant, in this case a Chief Steward on a ship, was a workman within the meaning of the legislation.

28. Lord Justice Fletcher Moulten said "if in addition to the wages there is remuneration in kind, such as gratuitous board and lodging, it must take a fair estimate of the annual **value of such remuneration to the workmen**." Lord Justice Farwell concurred with the approaches taken by the other justices and acknowledged the background to the inquiry when he said at p374 " the whole scheme of compensation provided by the Act is based on earnings, it is only reasonable to suppose that when a man is excluded from the operation of the Act on account of the magnitude of "remuneration" this word should be used in the same sense as earning. I am confirmed in this view by the words of Sch 1.,par 2(a), "average weekly earnings **shall be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated**".

29. The issue of earnings was also addressed in Australia in the same context as the English cases in the Victorian case of *Connally v The Victorian Railways*

Commissioner [1957] VR 466, in that case there was a twist in that although the limit for the purposes of being defined as a worker was £2,000 the worker acknowledged that he received more than this but attempted to deduct from the total amount received an expense incurred by him in order to earn the amount received. The applicant, who was employed to supply sleepers at a fixed rate, claimed he was entitled to deduct £272.02 paid by him to carters and £40.00 for tools, replacements and repairs. In a joint decision Herring CJ and Gavan Duffy J said that the word "remuneration" should be given its natural meaning unless there were some reason to do otherwise. They said "in our judgement that natural meaning is the full sum for which the worker is engaged to do the work in question and it does not mean the sum founded by balancing his gains and losses or by deducting from monies received by him for his services the expenses he had to incur for the purpose of putting himself in a condition to earn his remuneration. This is just as well, for to use the words of Lord MacNaghten in *Abram Coal Co Ltd v Southern* [1903] AC 306, "at p 308:

> "The difficulty would be endless if the court had defined out in each case the net remuneration received by the workmen, or the balance left for him to spend on himself and his family" ".

30. Mr Justice Hudson agreed by saying that "remuneration" was to include "any sum payable by an employer as consideration for the performance of work; and if that performance requires as well as the labour of the person employed, the provision by him at his own expense of plant, implements or materials and the contract makes no provision for an apportionment of the total consideration as between the labour of the person employed and other items then the whole of the sum payable must be regarded as remuneration for the purposes of the section".

31. In a subsequent case of *Dawson v Bankers and Traders Insurance Co Ltd* [1957] VR 491, Schoal J again considered the issue of remuneration once again in the context of determining whether or not the applicants

remuneration exceeded the limit of £750.00. The matter was complicated by a contest of liability between an insurer under the Workers Compensation legislation and an insurer who held the common law coverage. The case involved an employee who was induced to leave his home at Rushworth and work with Baker Motors as a spray painter in Seymour. It would seem from the facts, that part of the inducement to work in Seymour was that he would receive in addition to his wage of £11.10 per week an entitlement to remain for five days (or seven days if he wished) at a boarding house in Seymour at the cost of the employer. The cost of this boarding appears to have been £3 per week. In addition the firm provided motor vehicle transport at weekends to his home town of Rushworth if he wished to go there but this was not obligatory. The court followed the decision of Connally's case and included both board and transport in the definition of earnings for the purpose of determining whether the person, a Mr Fieldon, was a worker within the meaning of the Act. His Honour said that to his cash salary each year should "clearly be added the **value to Fieldon of his board and lodging** for 50 weeks, not 52 weeks, because of the position as to annual leave. At £3 per week, which was the cost to the employer on what was evidently a kind of wholesale basis, that would be worth £150, but I think the sensible conclusion is that it would actually be worth appreciatively more to Fieldon as an individual worker. Fieldon chose to take the employment. No doubt it suited him to keep his home going at Rushworth, but he got the benefit of the board and lodging. I certainly could not be satisfied that the value to him was not more than £152; and I further find, on the probabilities, – if, contrary to my own view, such a finding be necessary, - that it was worth more than that figure to him". The court went on to hold that Fieldon was a person who's remuneration exceeded £750 a year and was therefore not a workman within the meaning of the legislation.

32. Apart from Northern Territory authorities I am not aware of any other specific or indeed relevant interstate decisions concerning the issue of

remuneration in the Workers Compensation arena however the question of bringing to account loss of earning capacity was approached by His Honour Mr Justice Abadee in New South Wales in the matter of *Leighton v Australian Telecommunications Commission* [1990]34 IR 250. In that case His Honour was considering the question of damages in a common law claim where liability had been admitted. The plaintiff, Leighton, had been injured in the course of his employment as a linesman and was claiming compensation. While the court was no doubt dealing with the issue of tortious liability the question still concerned the issue of compensation for loss of earning capacity. The issue was whether or not there should be added to the plaintiff's wage an additional amount representing the balance of travelling allowance unexpended on a regular basis by the plaintiff. It seems that there was evidence that the plaintiff received almost on a weekly basis a substantial amount for travelling allowance and that he only spent a limited portion of it and brought the balance home for the benefit of himself and his family. His honour said that "**in assessing damage the principle of law is undoubted and uniform: "the injured party should receive compensation in a sum which, so far as money can do, will put him in the same position as he would have been in if the contract had been performed** or the tort had not been committed: *Butler v Egg & Eggpulp Marketing Board* [1966] 114 CLR 185 at 191". At p 259 His Honour went on to say;

> "It would seem to me that in the calculation of the present value of lost earnings, or, in the ascertainment of the financial loss the plaintiff will probably suffer there is no reason why I should disregard the balance of the regular daily travelling allowance. When one has recourse to consider some of the cases under the early workman's compensation legislation dealing with the meaning of the word "earnings" in that legislation, it is clear that earnings were regarded as being something more than wages. Under the first English Act of 1897 there was a case decided of *Midland Rai*lway *Co. v Sharpe* [1904] AC 349, where a fixed sum was paid to a railway guard whenever his duties required him to lodge away from home; no account was asked from him and no inquiry was made as to

whether he spent that sum or not and it was held by the House of Lords that his total remuneration was to include that sum paid".

33. Although a travel allowance is not, probably could not be an issue under the Act it seems to me that there are two necessary elements in this decision. Firstly, that the additional benefits of employment are to be added to salary but that the value of such benefits are to be assessed in accordance with the net benefit to the workman; that is, not the total amount of the travelling allowance but the actual benefit received by the workman at the end of the day.

Approach to Interpretation

34. It is well settled now that the interpretation of the Work Health Act is to take into account the general purpose of the Act. In *K. P. Welding Construction Pty Ltd v Herbert* (SCNT 4 January 1995), His Honour Mr Justice Kearney had the task of construing the definition of "worker" and "P.A.Y.E. taxpayer". His Honour quoted and adopted the well known phrases of *Cooper Brookes (Wollongong) Pty Ltd v The Commissioner of Taxation* (1980-81) 147 CLR 297, where their Honour's Mason and Wilson JJ said at pp320-321:-

> "In some cases in the past these rules of construction [that is, the literal construction rule and the so-called "golden rule" of construction] have been applied too rigidly. **The fundamental object of statutory construction in every case is to ascertain the legislative intention** by reference to the language of the instrument viewed as a whole. But in performing that task the courts look to the operation of the statute according to its terms and to legitimate aids to construction.
>
> The rules, as D.C. Pearce says in Statutory Interpretation, p14, are no more than rules of common sense, designed to achieve this object. They are not rules of law. If the judge applies the literal rule it is because it gives emphasis to the factor which in the particular case he thinks is decisive. When he considers that the statute admits of no reasonable alternative construction it is because (a) the language is intractable or (b) although the language is not intractable, the

operation of the statute, read literally, is not such as to indicate that it could not have been intended by the legislature.

On the other hand, when the judge labels the operation of the stature as "absurd", "extraordinary", capricious", "irrational" or "obscure" he assigns a ground for concluding that the legislature could not have intended such an operation and that an alternative interpretation must be preferred. But the propriety of departing from the literal interpretation is not confined to situations described by these labels. It extends to any situation in which for good reason the operation of the stature on a literal reading down not conform to the legislative intent as ascertained from the provisions of the stature, including the policy which may be discerned from those provisions.

Quite obviously questions of degree arise. If the choice is between two strongly competing interpretations, as we have said, the advantage may lie with that which produces the fairer and more convenient operation so long as it conforms to the legislative intention. If, however, one interpretation has a powerful advantage in ordinary meaning and grammatical sense, it will only be displaced if its operation is perceived to be unintended."

35. Subsequently in *Hughes v AAT Kings Tours Pty Ltd* (NTSC 29 April 1994), His Honour Mr Justice Angel needed to address the issue of "normal weekly earnings". The issue related to the question of whether or not the certain amounts of overtime ought to be included into normal weekly earnings. His Honour said at p 12 that "**The object of the definition of normal weekly hours of work is to arrive at a 'norm' of earnings, that is a standard level by which a loss of an earning capacity, if any, might be calculated**". His Honour cited with approval some comments of Chief Justice King in *Francese v Corporation of the City of Adelaide* [1989] 51 SASR 522, when the Chief Justice said;

> "The emphasis is upon estimating what the worker could have reasonably have expected to earn during the period of disability. Average weekly earnings during the previous twelve months are merely taken into account as part of the process of estimation. The estimate is to include overtime worked in accordance with a regular and established pattern but not otherwise.

> I think that these considerations throw light upon the meaning to be attributed to the expression "regular and established pattern" as used in the section. **The objective of the provisions appears to be to provide to the worker during disability amounts by way of compensation equivalent to the earning which he could have counted upon receiving if there had been no disability.** I think that the expression should be understood in the sense which best achieves that objective".

36. That decision was taken on appeal before the full Supreme Court of the Northern Territory in *AAT Kings Tours Pty Ltd v Hughes* 99 NTR 33. In a joint decision of Gallop ACJ, Kearney and Morling JJ, Their Honours upheld the decision of His Honour Mr Justice Angel specifically approving the quotation referred to immediately above. Their Honours went on to say **"in our opinion it is a legitimate approach to the construction of the definition to look to the object of the legislation. The intention appears to be to provide to the worker during disability amounts by way of compensation calculated by reference to the normal weekly earnings which he could have counted upon receiving if there had been no disability"**.

37. The issue of the proper approach to the interpretation of the legislation was addressed again by the court of appeal in *Sedco Forex Australia Pty Ltd v Sjoberg* (1997) 7 NTLR 50. The judgement of Bailey J which was agreed to by Gallop A CJ and Mildren J clearly imposes an obligation to determine the purpose of the legislation and to avoid results which might lead to ridiculous or unintended results. The facts were that Sjoberg was employed by Sedco Forex on 26 March 1991. He was initially employed as a casual roustabout and he worked a two-week hitch in that capacity. Employment on the oilrig operated by Sedco Forex was generally on a four-week cycle of two weeks on and two weeks off. During the two weeks on the rig employees worked seven days a week ten hours a day and were remunerated in accordance with the award. The award also provided for the employment of casual persons but it was said that that person was not to be employed in the capacity of a

casual employee for more that two hitches. A casual employee was to be paid at the rate of twice a permanent employee plus 20 per cent, Sjoberg was thus entitled to receive remuneration of $305.10 on a daily basis whilst a permanent employee engaged in the same work would receive only $127.12. Sjoberg was on the second two-week hitch as a casual employee when he was injured. He was later declared fit to work as a floor man or utility attendant but not as a roustabout. The difference between these two forms of permanent employment in terms of annual income was in the order of $1,000 - $2,000 per annum. As His Honour said "In contrast, by adopting the casual daily rate as the basis for calculating "normal weekly earnings" the gross loss of earning capacity for the respondent worker increases to $66,449 ($305.10 x 365 = $111,361 - $44,712) a figure which would result in the respondent worker being entitled to receive the maximum weekly compensation payable under the Act – despite the very small loss of real earning capacity when measured against the award rates for employment on a non casual basis". Counsel for the appellant had argued that that could not have been the intention of the legislature and that a purposive approach to the construction of the Act ought to be taken. In the event, the court found an alternative way of resolving the apparently absurd result but said of the submission at p 56 that there was "a good deal of force in the submissions of Mr Riley QC as to the proper approach to be taken to the word "ordinary" in the Act's definition (and there is even greater force in his observation that the approach adopted in the judgement appealed from leads to an absurd result)".

38. In *Sjoberg* the worker also had his own permanent home on shore and the court noted that "the nature of work on oil drilling rigs is for the workers to work long hours; seven days a week for periods of fourteen days, followed by fourteen days of inactivity. In practicable terms such a worker completes a similar number of hours of work in fourteen days that a full-time shore based worker would complete in 28 days". As noted above no issue arose as

to the value of the board or lodging on board the rig. The court also had to consider the question of allowances and whether or not allowances should be permitted for either or both of the calculations of normal weekly earnings and the amount which the worker could reasonably be expected to earn. The court agreed with the conclusions reached by Angel J that "notwithstanding the absence of expressed reference to the question of allowances in s 65(2) of the Act, it would be quite inequitable for relevant allowances to be excluded for the calculation of a workers "normal weekly earnings" and "ordinary time rate of pay" but count against him in assessing the amount that he is "reasonably capable of earning" for the purpose of assessing loss of earning capacity".

39. It is clear therefore that the legislative intent in early English and Victorian cases was to determine whether a person was a worker within the meaning of the legislation. The legislative intent in Part V of the Act is to fairly compensate for earnings which he could have counted upon if there had been no disability.

Northern Territory Decisions

40. The first matter dealing within the extended meaning of earnings of which I have any knowledge is the matter of *Thomas v Francis Creek Iron Mining Corporation* (unreported). This was a decision of the Workmans Compensation Court under the repealed legislation. In that case, if my recollections are correct, the worker was employed and accommodated full time at the employers camp near Pine Creek. He lived on site permanently and was provided with accommodation, food and electricity. The court held an appropriate value for these items ought to be included in the workers remuneration as calculated under schedule 2 of that Act. The schedule was in fairly similar terms to the present s 49.

41. Interestingly, it appears that the issue was not followed up in subsequent cases or at least not litigated again until the matter of *Pulumpa Station Pty*

Ltd v Fox [1999] NTMC 024 where this court was asked to determine the remuneration of the worker who was employed as manager at Pulumpa Station via Adelaide River in the Northern Territory of Australia. In particular in paragraphs [60] – [92] Mr Trigg discusses the issue relevant to this case. In that case His Worship gathered and reviewed many of the authorities which I too have referred to and I am indebted to His Worship's industry in that regard. His Worship held at [76]

> "I therefore find that for the purpose of the definition of "normal weekly earnings" in assessing what the workers gross weekly remuneration was that he earned, that the court is not limited to the actual wages received but may look at all of the benefits of the employment. The onus would be upon the worker to establish that any particular benefit was in fact part of his remuneration and then to introduce sufficient evidence to enable the court to quantify it".

42. On the subject of valuation His Worship proceeded to value accommodation based on a single valuation report submitted by the worker and left uncontested. On the question of meat the workers experience as a butcher was sufficient to persuade His Worship that a valuation of $25 per week for the value of meat was appropriate. His Worship then went on to include a valuation for gas, electricity and telephone based on records that were available to the parties. Total added remuneration was $170.23.

43. The matter was subject to an appeal in the Supreme Court where His Honour Mr Justice Bailey in *Pulumpa Station Pty Ltd v Fox* 132 NTR 1 upheld the decision to include housing, meat, electricity and gas in the workers normal weekly earnings. In that case there was further debate as to whether these matters should be regarded as part of the remuneration or as allowances not excluded by the provisions of section 49(2). The general issue was next considered by the Supreme Court and the Court of Appeal in the matter of *Murwangi Community Aboriginal Corporation v Carroll* [2002] NTCA 9. In that case the worker was employed as an abattoir supervisor in a remote location in the Northern Territory. He was paid a wage and given the benefit of free food, accommodation and electricity. In that case the

combined value of all of these items was assessed by the court at first instance at $155 per week, in this case the claim amounts to $630 per week. Putting aside the issue of quantum which was not considered, the Court of Appeal said that the appropriate definition of normal weekly earning in such cases is contained in par (d)(ii) of the definition which is set out above

44. At paragraph [9] the court said:

> "In our view there can be little doubt that the remuneration of a worker in this case is not limited to the wages paid to the worker but extends to include benefits of other kinds received by the worker in respect of services rendered for or on behalf of the employer. The identified non-monetary benefits form part of the reward for work done and services rendered and therefore comprise "remuneration….earned by the worker…".

45. The court then went on to cite Fletcher Moulten LJ in *Skailes v Blue Anchor Line Limited* with approval when he said at p 369, "if in addition to wages there is remuneration in kind such as gratuitous board and lodging, it must take a fair estimate of the annual value of such a remuneration to the workman". The full court also said that contrary to *Pulumpa Station Pty Ltd v Fox* that such "benefits received by the worker in this case in respect of rent, board and electricity are not allowances and they are therefore not "other allowances" as contemplated by section 49(2) of the Act. Rather they are part of the remuneration of the worker simpliciter".

46. The issue of "normal weekly earnings" was again ventilated in *Smith v Hastings Deering (Australia) Ltd* [2003] NTMC 029 and *McFarland v NT Drilling Pty Ltd* [2003] NTMC 62. In the first of these decisions my colleague Ms Blokland SM found that superannuation ought to be part of normal weekly earnings. In the second Mr Wallace SM followed that decision on the issue of superannuation and included the value of the use of motor vehicles, rent and food as being appropriate to be included within "normal weekly earnings". He did so on the basis that *Murwangi and Carroll* should be followed. He approached the valuation of the use of the

car on the basis of valuation evidence to the effect that the Australian Tax Office rate of 58.8 cents per kilometre for a car of the relevant capacity should be adopted. Accommodation and food were valued on the actual costs incurred by the employer for the provision of accommodation and food. No question of the proper basis for such a valuation was addressed by the court.

47. The most recent case is that of *Turner v The Granites Goldmine* (unreported 15 April 2003) a decision of Mr Ward DCM at first instance sitting in this court in Alice Springs. That case concerned a mine-worker who was found to have been provided with accommodation for 35 weeks each year. The issues relevant to this case included questions as to whether an area allowance, general allowance, value of meals and accommodation ought to be included in "normal weekly earnings". The findings at first instance which do not appear to have been disturbed were that for 35 weeks of each year the worker was on-site working for the employer and was supplied with accommodation and all his meals.

48. The court seems to have permitted the addition of an area allowance as being the same as a district allowance in nature but disallowed the general allowance as being excluded by the provisions of section 49(2).

49. More relevantly on the question of meals the court held on the basis of *Murwangi and Carroll* that they should be included in "normal weekly earnings" and looked to the workers description of the quality of the meals and put its own estimate on their value by saying at [25] "In my view, the cost to the employer of supplying such meals in such location could be around $50 per day, $10 for breakfast and lunch each, $20 for dinner, and $10 for the in-betweens. This by large accords (sic) with the Taxation Commissioners ruling ($47.40) and the amount claimed". There is no prior reference to the issue of "in-betweens" and no discussion as to why the cost to the employer was the proper basis for valuation.

50. On the question of accommodation the court also relied on *Murwangi and Carroll* and accepted a valuation from the property manager of LJ Hooker in Alice Springs in which he assessed the value of the accommodation provided at $80 per week. The basis upon which that valuation is made is not clear and is not discussed by the court. I am therefore not able to compare it with the assessed value in this case of $350.

51. On appeal in the Supreme Court His Honour Mr Justice Mildren in *Normandy NFM Ltd t/a The Granites Goldmine v Turner* [2003] NTSC 112 accepted that the case was indistinguishable from *Murwangi and Carroll*. He expressed the view that it did not matter whether the benefits were part of the terms of engagement. He dismissed entirely an argument that the food and accommodation were for the benefit of the employer and relied on *Sharpe v Midland Railway Co* (1903) 2 KB 26 and *Skailes v Blue Anchor Line* as authority for saying it did not matter that the benefit of food and accommodation was on a two weeks on two weeks off basis. It appears however that these presumed facts are not necessarily identical to the findings of the Work Health Court at first instance. That court as indicated above identified that there were 35 weeks of accommodation on site and it appears that the court at first instance equated the weeks off with periods of leave. His Honour was not asked to address the issue of the method or basis of valuation. The case is also different from the case before me in that there appears to be no evidence as to the accommodation relied upon by the worker when away from the mine. It may be that for the 13 weeks that remained each year when he was not at the mine or on holidays, that he did not permanently maintain another dwelling.

52. It would appear that His Honour also was not asked to address the issue of benefit to the worker or the purposive tests discussed and applied in such cases as *KP Welding, Hughes* and *Sjoberg*.

53. The worker has argued through Mr Southwood QC that all of the benefits claimed should be averaged over the year and included in normal weekly earnings by force of the decisions in *Pulumpa v Fox* and *Murwangi v Carroll*. By averaging he means that the total additions to salary for the weeks spent at the mine site should be divided by two to ascertain the average weekly benefit to the workman. He has made no attempt to address the different type of benefits or to look at the purpose for which the weekly compensation provisions are enacted. On the face of the subsequent decision of His Honour Mr Justice Mildren in *Normandy v Turner* there is much force in this approach. However as I have identified, it seems to me there are some factual differences in this case and His Honour was not there asked to address some of the vital issues that have arisen here.

54. The employer argues through Ms Robertson that I should adopt par (a) of the definition of "normal weekly earnings" in s 49. It is further argued that the total package of benefits to the worker were those set out in the letter of offer. She says the balance of the costs and benefits were in fact costs incurred by the employer for its own benefit. She says they were therefore not a reward for service and were no benefit to the worker. It is pointed out that he has his own house in Darwin which he regards as home and maintains permanently. The employer says that it has the right to remove all or some of the other benefits and that that therefore creates a different legal entitlement between the parties. Ms Robertson also argues that accommodation is in the nature of an allowance and thereby excluded by the provisions of s 49(2). I think that given the decision in *Murwangi v Carroll* and *Fox v Pulumpa* that the question of how normal weekly earnings are to be calculated in this type of case is beyond doubt. It seems to me that par(d)(ii) of the definition must apply and the issue of allowances also is now closed down at least until the matter is reviewed by a Superior Court.

55. Ms Robertson acknowledges that the value of meals probably were a private benefit to Mr Payne but that the value of same is less than the amount

claimed. She says that the cost of the caterer is an indication of actual costs and value of that benefit.

56. To address the issues therefore holistically it seems appropriate for this court to determine:

56.1 What the Work Health Act is seeking to achieve in this area,

56.2 The nature and extend of the benefits claimed,

56.3 Whether those benefits are of the type that should be included in the concept of "normal weekly earnings", and

56.4 The method of and actual value of benefits to be included.

57. Given the line of Northern Territory authorities it is clear that the weekly compensation provisions of the Act are intended to compensate the worker for what he "could have reasonably expected to earn during a period of disability". In determining the meaning of "normal weekly earnings" a court should avoid the absurd and do equity to the parties.

58. It is clear to me that the legislature did not intend a worker to receive more during incapacity than he would have if working in his pre-accident employment. The calculation or "normal weekly earnings" should therefore not be addressed on that basis. The Act in fact provides that after 26 weeks the level of benefits is to be reduced by 25 per cent. That is an indication that something less than a common law approach to compensation is intended.

59. If we were to add the value of all of the benefits or employer costs listed in par [11] above then clearly the workers normal weekly earnings would be well in excess of his take home pay even if he were fully employed. For that reason some assessment must be made to determine an equitable basis for assessing "remuneration" as used in the definition of "normal weekly earnings". The answer in my view comes from the purpose of the Act itself

(as expressed in *AAT Kings v Hughes* and *Sjogerg*) and the expression used in the early cases namely "value to the workman reasonably ascertained". Thus if there is no real benefit to the workman or loss after injury then the employers cost should not be included within the concept of remuneration for the purposes of determining normal weekly earnings as defined in s 49. If there is a benefit to the workman then the value to him may be more or less that the cost to the employer.

60. Applying that test to this case I am of the view that the benefits which might be included in normal weekly earnings and valued for that purpose are;

60.1 the provision of three meals per day whilst on the mine site,

60.2 morning and afternoon teas for the same period,

60.3 the washing of work clothes,

60.4 free access to sports and social facilities, and

60.5 the value of the twice weekly cleaning and change of linen in the room that he was occupying on the basis that that relieves him of that duty which he would have had to perform if he had been at home.

61. Each of the items if accessed and able to be valued should be added to his salary to determine his "normal weekly earnings". The reasoning for these items to be included is that each of them are a benefit to him at no cost to him or effort on his behalf as there would have been had he been in Darwin.

62. On the question of accommodation the facts clearly indicate that the worker pays rent in Darwin 52 weeks of the year and that accommodation is therefore available to him at all times. There is no reduction in costs to him associated with the provision of a place to sleep by virtue of the accommodation provided at the mine nor is there any additional cost to him as a result of his injury. There is therefore no benefit to him in the sense of value adding to his salary or lifestyle.

63. On the question of airfares there is no benefit to the worker for the cost of his airfare. His contract of employment requires him to present himself at the Darwin Airport each week to travel to work. In effect one could equate the value of airfares to something akin to bussing workers around a workplace during the course of their employment. In my view the same argument applies to bussing the worker to and from the camp site to the mine site each day. Similarly there is no cost to him or loss as a result of his incapacity. These items should therefore be excluded.

Valuation

64. There is no discussion in recent cases of the basis upon which the value to the worker of the benefits to be included is to be ascertained. Is the value of meals to be ascertained by simply establishing the weekly cost of food for him at home. I think not, because he has been saved the labour of preparing it and washing up and because the style and quality of food may be quite different (see Dothies case referred to in [25] above). Likewise the cost to the employer may not be appropriate because of distortions caused by distance and bulk billing.

65. The best guide to this in my view is suggested by their Lordships in *Dothies* case namely that the court should find the "value to the workman reasonably ascertained" and regard therefore would be had to the nature of the benefit itself, its quality, cost, commercial value and its value to the worker.

66. In order that the matter will hopefully not have to be remanded back to this court if a superior court finds an alternative valuation I will seek to make findings with regard to the value of each and every benefit referred to by the worker in his evidence. In passing I note that no claim is apparently made by Mr Southwood in respect of some of these matters or at least no evidence of value was adduced to the court notwithstanding that his client was lead to describe the claimed benefits.

67. On the issue of accommodation and meals I do not think that the approach of the valuer is fair and reasonable in the circumstances. There appears to be an emphasis on the commercial value of facilities of a nature slightly different to that provided. For example so far as the rental provisions were concerned valuations were obtained for one bedroom flats rather than a bed sitter in a camp situation. So far as the value of rooms are concerned the values obtained were commercial valuations and the costs are costs chargeable to persons on a short term commercial basis.

68. In Darwin for example, a bed sitter might be able to be rented for $100 per night or between $100 and $150 per week. Two bedroom units are certainly available in the same price range.

69. On the question of meals the value has taken into account the valuation, the actual costs incurred by the company in the provision of these facilities, what it would cost for a person to feed himself when at home and the quality of the meals as described by the workman.

70. In approaching the value of the morning and afternoon teas I have assumed he accessed some or all of the items on mixed basis and estimated what they were worth to him.

71. On the value of the washing of work clothes I have regard to both the cost and effort of washing clothes at home and my estimate of the commercial cost of same.

72. There is no evidence at all of his having accessed the sporting and recreational facilities. I have valued them on the basis of what it might cost annually to join a club with those facilities. Since there is no evidence of his using them let alone on a regular basis I hesitate but have included the value in the concept of earnings. This is because notwithstanding the paucity of evidence he must have used the facilities from time to time.

73. The value of room cleaning and change of linen, I assume has been taken into account by the valuer under the heading of accommodation. I have approached the value of the room on other than a commercial basis and that is a service not available to him at home. He is therefore entitled to add the value of that service to him, I have made a common sense assessment of the value not based on cost or commercial value.

74. Doing the best that I can therefore with the available information and using a certain amount of common sense I make the following valuations of the services and facilities provided to the workman during his period at the mine site.

Item	**Worker's Valuation/Wk**	**Cost to Company/Wk 2001-2002**	**Court Estimate of Value of Item/Wk**	**Amounts to be included in earnings/Wk**
Accommodation	$630	$180.32	$100	
3 Meals per day			$175	$175
Cleaning & linen changes x 2/wk			$10	$10
Wash working clothes	Not valued		$10	$10
Morning & afternoon teas	Not valued		$10	$10
Availability of Sports facilities etc.	Not valued		$5	$5
Airfare to and from Darwin	Not valued	$220	$220	
Bussing to work each day	Not valued	Not valued	$20	
TOTALS	**$630**	**$400.32**	**$510**	**$210**

75. On the basis of valuations put to the court by the worker an amount of $630 per week should be added to salary. On the value put by the employer the amount is $400.32. If the valuations assigned above by the court to all of the matters which might be claimed based on the workers evidence, the additional amount is $510.

76. The items allowed by this court total $210. The workman appears from Exhibit E1 to have taken two weeks and two days (2.3 weeks) leave in the preceding year. Allowing therefore for the fortnightly cycle he would have received these benefits for 23.7 weeks in the year leading up to his injury and it is appropriate to calculate the average, thus; $210 ÷ 52 x 23.7 = $95.77.

77. Given all the above I find that the workers normal weekly earnings are $1425.57 plus $95.71 namely $1521.28.

78. Given the history of the litigation I propose to adjourn the matter to a date to be fixed for Counsel to address the court as to whether any other findings are necessary and what orders should flow from the findings made by the court.

Dated this 25th day of March 2004.

_____

Mr Hugh Bradley
CHIEF MAGISTRATE