



**[2016] AATA 672**

Division            **TAXATION & COMMERCIAL DIVISION**

File Number        **2015/2809**

Re                    **Kris Reany**

APPLICANT

And                  **Commissioner of Taxation**

RESPONDENT

**DECISION**

Tribunal            **Senior Member CR Walsh**

Date                 **1 September 2016**

Place                **Perth**

The Tribunal varies the decision under review by:

- (i) allowing the Applicant a deduction for his laundry expenses (totalling \$150) for the 2012 income tax year; and
- (ii) remitting the penalty imposed on the Applicant in respect of the 2012 income tax year in full.

.....[Sgd].....

Senior Member CR Walsh

## **CATCHWORDS**

*INCOME TAX – whether deductions claimed for certain work related travel expenses deductible – whether applicant required by employer to transport of bulky tools and equipment from home to work – whether secure storage provided to the applicant by his employer at his workplace - work related travel expenses “private” in nature - decision under review affirmed in part*

## **LEGISLATION**

*Fair Work Act 2009 – s 185*

*Income Tax Assessment Act 1936 – s 51(1)*

*Income Tax Assessment Act 1997 – s 8-1 – s 8(1)(b) – s 8-1(1) – s 8-1(2)(b) – Division 28 – subdivision 900-1 – s 900-200(1) – s 900-200(2) – s 900-200(3) – s 900-215 – s 900-215(2)*

*Taxation Administration Act 1953 – s 14ZZK(b)*

## **CASES**

*Crestani v Federal Commissioner of Taxation (1998) ATC 2219*

*Federal Commissioner of Taxation v Dalco (1990) 168 CLR 614*

*Ford v Commissioner of Taxation [2014] AATA 361*

*Hayley v Federal Commissioner of Taxation; Lunney v Federal Commissioner of Taxation (1958) 100 CLR 478; (1958) 11 ATD 404*

*Taxation, Federal Commissioner of v Vogt [1975] 1 NSWLR 194; (1975) 75 ATC 4073; (1975) 5 ATR 274*

## **SECONDARY MATERIALS**

*Taxation Ruling IT 2543*

*Taxation Ruling TD 93/174*

*Taxation Ruling TR 95/34*

*Total Corrosion Control Enterprise Agreement 2010-2012*

## REASONS FOR DECISION

Senior Member CR Walsh

1 September 2016

## INTRODUCTION

1. This application concerns whether Mr Reany, a first class “sheet metal worker” employed by Total Corrosion Control Pty Ltd (**TCC**), is entitled to deductions under the *Income Tax Assessment Act 1997 (ITAA 1997)* for certain “work related” travel expenses in the year ended 30 June 2012.

## FACTUAL & PROCEDURAL BACKGROUND

2. In the 2012 year, Mr Reany’s employment with TCC as a first class “sheet metal worker” required him to attend the Alcoa Alumina Refinery at Wagerup, Western Australia (**the Wagerup Refinery**) on a daily basis and, on one occasion, he was required to attend the Alcoa Alumina Refinery at Oakley (near Pinjarra) Western Australia (**the Pinjarra Refinery**).
3. Throughout the 2012 year, Mr Reany’s employment conditions were set by the *Total Corrosion Control Enterprise Agreement 2010-2012 (the Enterprise Agreement)* which was approved, pursuant to s 185 of the *Fair Work Act 2009*, by the Fair Work Commission on 10 May 2010.
4. Throughout the 2012 year, Mr Reany:
  - lived 57.5 kilometres, by road, from the Wagerup Refinery and 20.5 kilometres, by road, from the Pinjarra Refinery; and
  - drove from home to the Wagerup Refinery on a daily basis and drove from home to the Pinjarra Refinery on one occasion in a Commodore motor vehicle, owned by him.

5. During the 2012 year, TCC paid Mr Reany the following amounts that were described in the pay slips TCC issued to Mr Reany as “allowances”<sup>1</sup>:

<b>“Travel Allowance”</b>		
Wagerup Travel	\$13,471.44	
“AW (Alcoa Wagerup?) Travel Weekend”	\$3,009.13	
“Pinjarra Travel”	\$37.70	\$16,518.27
<b>Overtime Meal Allowances</b>		
Pinjarra Tea Allowance	\$10.50	
Tea Allowance MT	\$476.88	\$486.88

### 2012 Income Tax Return

6. The above “allowances” were included in Mr Reany’s taxable income in his income tax return for the 2012 year.
7. Mr Reany’s income tax return for the 2012 year (lodged on 13 July 2012) disclosed a taxable income of \$102,277, after claiming the deductions listed in the table below.

<b>Salary and Wages</b>			\$120,122
<b>Allowances</b>			<u>\$486</u>
			<b>\$120,608</b>
<b><u>Less Deductions Claimed</u></b>			
<b>D2. Work related travel fully expended per Award</b>		\$14,901	
<b>D3. Work related clothing</b>			
Laundry	\$150		
Work Socks – 36 pairs @13	\$468		
Work Clothing	\$215	\$833	
<b>D5. Other work related expenses</b>			
AMWU	\$523		
Overtime Meals – 38 @ \$26.45	\$132		
Mobile phone - \$50 per month x 12	\$600		

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<sup>1</sup> The pay slips issued by TCC to Mr Reany in the 2012 year are contained in Exhibits 1 and 3.

Tool replacement	\$151		
Sun Protection	\$85	\$2,364	
<b>D9. Donations</b>		\$50	
<b>D10. Cost of managing tax affairs -</b>			
Rayme Accountancy	\$165		
Travel to agent 24km x \$0.75	\$18	\$183	<b><u>\$18,331</u></b>
<b><u>Taxable income per IT Return</u></b>			<b><u>\$102,277</u></b>

### Review of 2012 Income Tax Return

8. Following a review of Mr Reany's 2012 income tax return, the Commissioner determined that none of the claimed expenses were deductible, except for the following:
- "D5. Other work related expenses – AMWU - \$523" (the deduction for union fees was increased by the Commissioner from \$523, as claimed to by Mr Reany in his 2012 income tax return, to \$827 as the Commissioner found that "this was the cost actually incurred" by Mr Reany);
  - "D9. Donations - \$50"; and
  - "D.10 Cost of managing tax affairs" - \$183.

### 2012 Assessments

#### *2012 Income tax assessment*

9. On 18 December 2012, the Commissioner issued Mr Reany with a Notice of assessment for the 2012 year that assessed Mr Reany's taxable income as \$119,548, calculated as follows:

<b>Taxable income as per IT return</b>		<b>\$102,277</b>
<b>Add: Deductions Disallowed</b>		
<b>D2. Work related travel fully expended per Award</b>	\$14,901	
<b>D3. Work related clothing</b>		
Laundry	\$150	
Work sox 36c x \$13	\$468	

Work Clothing	\$215	
<b>D5. Other work related expenses</b>		
Union fees	\$523	
Overtime meals 38 x \$26.45	\$1,005	
Tool replacement	\$151	
Phone \$50/m x 12	\$600	
Sun Protection	\$85	<b><u>\$18,098</u></b>
		\$120,375
<b>Less: Deductions Allowed</b>		
Union Fees		-\$827
<b><u>Taxable Income per Assessment</u></b>		<b>\$119,548</b>

### ***2012 Penalty assessment***

10. On 18 December 2012, the Commissioner also issued Mr Reany with a Notice of assessment of shortfall penalty in the amount of \$3,411.60.
11. This penalty amount is 50% of the difference between the tax applicable to Mr Reany's taxable income, as assessed, and the tax applicable to Mr Reany's taxable income, as per his 2012 income tax return. That percentage was determined on the basis that the shortfall arose as a result of "recklessness" on the part of Mr Reany, or his tax agent, as to the operation of a taxation law.

### **Objection to 2012 Assessments**

12. On 6 March 2013, Mr Reany's accountant, Mr Ivan Robinson of Rayme Accountancy, lodged an objection (dated 20 December 2012) against Mr Reany's 2012 income tax and penalty assessments, on his behalf.
13. In support of his objection, Mr Reany's accountant, Mr Robinson, provided a letter, dated 20 December 2012, detailing the reasons for Mr Reany's objection to the 2012 assessments (**the Objection Letter**). The relevant part of the Objection Letter is summarised in paragraph 25 below.

## **Objection Decision**

14. On 20 March 2013, the Commissioner partially allowed Mr Reany's objection to his 2012 income tax assessment by allowing the following additional deductions (totalling \$792) for the following "D5. Other work related expenses";
  - Tools - \$147 – on the basis of receipts submitted; and
  - Overtime meals - \$645 – on the basis of 43 meals times \$15 per meal, being the amount that the applicant claimed that he actually spent (**the Objection Decision**).
15. In accordance with the Objection Decision:
  - on 28 March 2013, the Commissioner amended Mr Reany's 2012 income tax assessment by reducing his taxable income by \$792 from \$119,548 to \$118,756; and
  - on 20 March 2013, the Commissioner reduced Mr Reany's penalty by \$156.45 from \$3,411.60 to \$3,255.15.

## **Application for Review by Tribunal**

16. Mr Reany requested an extension of time to make an application for review to the Tribunal of the Objection Decision.
17. On 4 June 2015, Mr Reany applied to the Tribunal for a review of the Objection Decision. Mr Reany's stated "Reasons for Application" are as follows:

*My Tax Agent believes some of the decisions made in this review were incorrect at law and in others no regard was taken of circumstances stated in the objection notice.*

*My Tax Agent also believes the penalties imposed are excessive in the circumstances of the original claim.*
18. On 24 June 2015, the Tribunal granted Mr Reany an extension of time until 5 June 2015 to lodge his review application.

## ISSUES

19. In the “Respondent’s Statement of Facts, Issues and Contentions”, dated 3 June 2016, the Commissioner concedes (at [63]) that Mr Reany’s claim for “D3. Work related clothing – Laundry - \$150” in the 2012 year is an allowable deduction<sup>2</sup>.
20. In the “Applicant’s Statement of facts, Issues and Contentions”, dated 28 July 2016 (**SFIC**), Mr Reany concedes:
- (at [62]) that his claim for “D5. Other work related expenses – Overtime Meals – 38 @ \$26 45 - \$132” in the 2012 year is not an allowable deduction as he has already been allowed the maximum deduction allowable for this item;
  - (at [68]) that his claim for “D3. Work related clothing – Work Socks 36 pairs @\$13 - \$468” in the 2012 year is not an allowable deduction as this item has not been substantiated;
  - (at [71]) that his claim for “D3. Work related clothing – Work Clothing - \$215” in the 2012 year is not an allowable deduction as this item has not been substantiated; and
  - (at [78]) that his claim for “D5. Other work related expenses – Sun Protection - \$85” in the 2012 year is not an allowable deduction as this item has not been substantiated
21. Further, at the hearing of this application:
- Mr Reany’s representative stated that Mr Reany no longer wished to pursue his claim for a deduction for “D5. Other work related expenses – Mobile phone - \$50 per month x 12 - \$600); and
  - the Commissioner’s representative conceded that Mr Reany’s remaining penalty for the 2012 year should be remitted in full (i.e. reduced from 50% to nil).

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<sup>2</sup> At the hearing of this application, the Commissioner’s representative confirmed that the Commissioner concedes that Mr Reany’s laundry expenses for the 2012 year (totalling \$150) are deductible.



22. Consequently, the only remaining issue for consideration by the Tribunal in this application is whether Mr Reany is entitled to a deduction for “D2. Work related travel - \$14,901”. At the hearing, the parties’ representatives informed the Tribunal that it is not in dispute that if the Tribunal decides that Mr Reany is entitled to a deduction for his work related travel expenses for the 2012 year, the maximum deduction available to him under the ITAA 1997 is \$5,444.00 (i.e. not \$14,901): refer to paragraphs 57 to 62 below.
23. This issue is considered below.

## **CONSIDERATION**

### **D2. Work related travel - \$14,901**

#### ***Onus of Proof***

24. Mr Reany bears the onus of proving that the amended assessment issued to him for the 2012 year is excessive: s 14ZZK(b) of the *Taxation Administration Act 1953 (the TAA)*. Mr Reany must also prove what the correct assessment for the 2012 year should have been: *Federal Commissioner of Taxation v Dalco* (1990) 168 CLR 614 at 621 per Brennan J. Practically, this requires Mr Reany to show that he was entitled to claim a deduction for work related travel expenses of greater than nil.

#### ***Mr Reany’s position***

25. In the Objection Letter, Mr Reany contends that:
- he was paid \$14,901 as an “allowance” by his employer, TCC, under an industrial award for travel from his home to his various workplaces and return on a daily basis as well as for travel between those workplaces during the 2012 year;
  - he was entitled to a deduction for the cost of this travel because:
    - it was travel between home and “shifting places of work”;
    - “travel is attributable to carrying bulky tools and equipment used in rigging operations” that “could not be left on a site that is not under the control of the employer”;

- he was paid an allowance by his employer for the cost of this travel pursuant to an industrial award; and
- he did not claim more than the relevant allowance that he was paid by his employer (claimed to be \$16,634.45 for the year);
- he was entitled to a deduction for this amount (i.e. \$14,901) despite not satisfying the substantiation requirements for “car expenses” specified in Division 28 of ITAA 1997;
- the industrial award pursuant to which the relevant allowance was paid was the “*Metal Trade (General) Award*” as subsequently “varied by *Application No 344 of 1986*” and another unspecified variation made to that Award in 2007;
- the amount of the allowance paid was calculated on the following basis, which he contended is consistent with the industrial award and subsequent variations to it described above:

Basic allowance per day	\$14.65
Additional daily allowance for travel in excess of 50km/day	<u>\$35.10</u>
Total daily allowance	\$49.75
Number of days in year on which travel undertaken	300
Total allowance	<b>\$14,901</b>

- the allowance was calculated on the basis that he travelled 95 kilometres per day so that his daily travel in excess of 50 kilometres was 45 kilometres; and
- the relevant award provided that the additional daily allowance was calculated on the basis of \$0.78 per kilometre in excess of 50 kilometres per day. Consequently, the claimed additional daily allowance for travel in excess of 50 kilometres per day was said to be 45 km x \$0.78 - \$35.10.

26. In his SFIC, Mr Reany submits (at [43]) that he has established:

- a) *that he was required by TCC to provide his own tools and equipment as per the list provided.*
- b) *that he was required to provide most of his own tools, that the tools that he provided himself are too bulky or awkward to be transported to and from work*

*other than by car. On the basis of information and photographic evidence provided to the respondent by the applicant – i.e. that most tools required by the applicant to do his job would have been supplied by himself including hand tools such as shifters (shifting spanners) and screw drivers – it is certain that any required tools that are not supplied by TCC would be so bulky or awkward as to require transport by car.*

- c) *that the employer does not provide adequate secured storage for those tools at the relevant work sited. The advice provided to the respondent by TCC is that lockers are provided but the applicant contends that these were not secure enough to leave the tools overnight. In addition, the fact that clause 31.2 of the Enterprise Agreement provides that an employee whose tools are lost due to breaking and entering whilst securely stored at the Employer's direction in a room or building on the Employer's premises, job or workshop or are otherwise lost or stolen is entitled to be reimbursed by the Employer to a maximum of \$1,800 gives rise to the doubt that the employer fully believed in their security.*

### **General deductions**

27. Section 8-1 of the ITAA 1997 sets out the general rules for deductibility under the ITAA 1997. Section 8-1 of the ITAA 1997 provides:

#### **General deductions**

- (1) *You can deduct from your assessable income any loss or outgoing to the extent that:*
- (a) *it is incurred in the course of gaining or producing assessable income; or*
- ...
- (2) *However you **cannot deduct** a loss or outgoing under the section **to the extent that:***
- ...
- (b) *it is a **loss or outgoing of a private or domestic nature;***  
[Emphasis added]

#### **General rule – cost of travel between home and work**

28. The starting point in cases such as this is the well-established principle that the cost of travelling between home and a place of employment is generally not deductible under s 8-1 of the ITAA 1997. Such expenditure is considered “private” in nature and not allowable pursuant to s 8(1)(b) of the ITAA 1997: see *Hayley v Federal Commissioner of Taxation*; *Lunney v Federal Commissioner of Taxation* (1958) 100 CLR 478: 11 ATD 404 per Dixon CJ, Williams, Kitto and Taylor JJ (with McTiernan J, dissenting) at 498-499 and 501.

29. This is because travel to and from work is regarded as a pre-requisite to a taxpayer earning assessable income rather than being an expense incurred in the course of gaining or producing assessable income. Put differently, the cost of travelling between home and work is generally incurred to put an employee in a position to perform duties of employment, rather than in the performance of those duties.
30. Expenses of commuting between home and work are generally not deduction, even where a travel allowance is received by the employee taxpayer: *Taxation Ruling* IT 2543; *Taxation Determination* TD 93/174. This issue is discussed in further detail below under paragraph 60.
31. There is no evidence before the Tribunal to suggest that the majority of Mr Reany's claim for travel expenses in the 2012 year relates to anything other than travel between home and his primary place of employment, the Wagerup Refinery. Consequently, Mr Reany's work related travel expenses for the 2012 year are *prima facie* not deductible under s 8-1(2)(b) of the ITAA as they are "private" in nature.

***Exceptions to the general rule – cost of travel between home and work***

32. The courts have found a number of exceptions to the above general rule, including where the taxpayer:
  - (i) is required by his employer to carry bulky tools or equipment between home and work;
  - (ii) is on call/stand by;
  - (iii) is "itinerant" – i.e. he has shifting places of work; and
  - (iv) is required to attend a business trip on the way to or from work;
33. It is common ground that only exception (i) above is relevant in Mr Reany's case.
34. However, for completeness, the Tribunal notes that in relation to exception (iii) above, the evidence before the Tribunal is that Mr Reany was not "itinerant" during the 2012 year. Mr Reany's payslips for the 2012 year (contained in Exhibits 1 and 3) show that he was paid an allowance to travel from home to the Wagerup Refinery on 257 days during the 2012 year and from home to the Pinjarra Refinery on one day during the 2012 year. As such,

during the 2012 year Mr Reany had one fixed place of business, being the Wagerup Refinery. Mr Reany concedes this in his SFIC at [40] - [41].

***Taxpayer required to carry bulky tools or equipment from home to work***

35. One exception to the general rule that the costs of travel between home and work is not deductible, which is relevant in Mr Reany's case, is where an employee is required by his employer to carry bulky tools or equipment from home to work and no secure storage is provided by the employer to the employee to store the tools and equipment at the worksite: see *Federal Commissioner of Taxation v Vogt* (1975) 1 NSWLR 194; (1975) 75 ATC 4073; (1975) 5 ATR 274 (**Vogt**) and *Crestani v Federal Commissioner of Taxation* (1998) 98 ATC 2219 (**Crestani**). The reason for this exception is that in such circumstances the expenditure shifts in nature from being "private" in nature (and not deductible) to being expenditure incurred in the course of gaining or producing assessable income (and deductible).
36. In *Vogt*, a professional musician, who played acoustic bass, electric bass, trumpet and flugel horn, was allowed deductions under s 51(1) of the *Income Tax Assessment Act 1936 (ITAA 1936)*, the predecessor to s 8-1 of the ITAA 1997, for motor vehicle expenses incurred by him in travelling between his home and the various places at which he performed. Mr Vogt had to transport his instruments and related equipment, which Waddell J of the Supreme Court of New South Wales described as "very bulky", between various work locations and home, and sometimes from one work location to another. Waddell J held (at ATC 4078) that the "essential character" of the expenditure was such that it should be regarded as "having been incurred in gaining or producing the assessable income".
37. In *Vogt* (at ATC 4078), Waddell J considered that the first step in determining whether the expenditure was deductible under s 51(1) of the ITAA 1936 was to state the relevant aspects of the operations carried on by the taxpayer for the production of his income. These were that the taxpayer earned his income by performing at several places, on musical instruments and associated equipment on terms that he brought the instruments and equipment to the place of performance; the instruments and equipment were of substantial value; they were bulky - which meant they could be transported conveniently only by the use of a motor vehicle; the taxpayer kept the instruments and equipment at his

residence for justifiable reasons of convenience and for the purposes of practising on them.

38. The next step Waddell J took was to determine the “essential character” of the expenditure itself. His Honour thought that three matters were relevant to this:

- (i) the expenditure was incurred as part of the operations by which the taxpayer earned his income;
- (ii) the expenditure was essential to the carrying on of those operations - there was no other practicable way of getting his instruments to the places where he was to perform; and
- (iii) in a practical sense, the expenditure should be attributed to the carriage of the taxpayer’s instruments rather than to his travel to the places of performance – the mode of the taxpayer’s travel was simply a consequence of the means which he employed to get his instruments to the place of performance, that is by carrying them in the motor vehicle which he drove.

39. Similar reasoning has been applied in other cases. For example, in *Crestani Senior Member Block* (as he then was) allowed deductions to an aircraft engineer who transported “bulky” tools from work to home, in circumstances where the taxpayer’s employer provided no secure location for the tools to be stored at work. The travel expense was accepted as reasonably attributable to the tools, which formed as essential part of the taxpayer’s work.

40. As Deputy President Frost said in *Ford v Commissioner of Taxation* [2014] AATA 361:

- 15. *Cases in which taxpayer’s claims have been unsuccessful are generally those where the travel expense has retained its character as “travel between work and home”, and has not taken on the flavour of a work-related activity.*
- 16. *The attributes that tend to shift the expense (generally a car expense) from the category of non-deductible private transport to that of a deductible work-related activity are that:*
  - *The equipment being carried is necessary for the income-generating activity;*
  - *The equipment is “bulky”;*
  - *There is no secure storage at the workplace; and*
  - *The only practicable way to transport the equipment is by car.*

41. Mr Reany is a first class "sheet metal worker". The necessary or "essential" tools and equipment that are required by him are those that assist him to carry out that activity.

42. In his signed but undated "Statement", Mr Reany states the following in relation to this issue:

13. *While some of the tools were provided by the employer, most were supplied by me to ensure they are decent quality items which is not always the case with those provided by the employer.*

14. *In particular tools and consumable items such as snips, cutters and hacksaw blades need to be as sharp as possible and the only way to be sure of this is to buy my own.*

15. *The tools listed and which I provided would have had a value of \$1225 and weighed at least 30kg.*

16. *The full list of tools provided by me were:*

<i>Variety of files, round, flat, half round, smooth, coarse</i>	<i>100</i>
<i>G clamps of various sizes</i>	<i>120</i>
<i>Vice grips of a range of shapes and sizes</i>	<i>120</i>
<i>3-5 Chisels of various sizes</i>	<i>100</i>
<i>Protractors</i>	<i>10</i>
<i>Squares</i>	<i>10</i>
<i>Adjustable sliding bevel</i>	<i>15</i>
<i>Band strap machine</i>	<i>100</i>
<i>Rubber mallets big and small</i>	<i>45</i>
<i>Ball pin hammer</i>	<i>60</i>
<i>Tech bits</i>	<i>20</i>
<i>Centre punches</i>	<i>50</i>
<i>Hack Saw</i>	<i>25</i>
<i>Ratchet straps X 2</i>	<i>40</i>
<i>Aviation snips, left and right</i>	<i>30</i>
<i>Straight snips</i>	<i>30</i>
<i>Scraper</i>	<i>10</i>
<i>Small level</i>	<i>10</i>
<i>Line of chords ruler</i>	<i>15</i>
<i>Dividers, small and large</i>	<i>20</i>
<i>Trammel points</i>	<i>10</i>
<i>Screw drivers</i>	<i>25</i>
<i>Scriber</i>	<i>15</i>

<i>Pilers of various sizes</i>	30
<i>Allen keys of various sizes</i>	40
<i>Tape measures, 3 and 8 metres</i>	20
<i>Stanley knife</i>	10
<i>Lagging knife</i>	10
<i>Wire brush</i>	15
<b>Total of</b>	<b>1075</b>

17. *Plus safety equipment supplied by me was:*

<i>Welding helmet</i>	150
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***This makes a total of tools and equipment supplied by me of 1225***

18. *The equipment that would have been supplied by the employer was:*

<i>Goggles for eye protection</i>	20
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<i>Ear muffs</i>	30
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<i>Gympy hammer</i>	40
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<i>Silicon gun</i>	15
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<i>Podgey bar</i>	60
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<i>Pop rivet gun</i>	35
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***This makes a total of tools and equipment supplied to me of 200***

43. In his oral evidence, Mr Reany said that “second class” sheet metal workers were provided with all of their tools and equipment by TCC but that “first class” sheet metal workers, like himself, had to buy their own tools and equipment.

44. On 16 November 2015, the Commissioner wrote to TCC seeking information concerning Mr Reany’s work arrangements in the 2012 year. By email dated 3 December 2015, TCC advised the Commissioner of the following:

*I know of the...[employee]...K Reany.*

*Most tools required for [his trade] were supplied by [TCC], the only exception being hand tools such as shifters and screw drivers etc. The list you have supplied seems to have a lot on it that would cover all trades such as scaffolders, painters etc not just the one trade [Mr Reany] was employed as.*

45. On 25 July 2016, the Commissioner wrote again to TCC requesting the following information:

- 1. A list of the tools (and other items) that an employee doing Mr Reany’s job as a sheet metal worker at Wagerup (in the 2012 financial year) would have been required to have on site, as a minimum, that were not supplied by TCC;*



2. *Details of any break-ins that occurred in the TCC tool/machine shop at Wagerup (i.e. that we were shown on Thursday) during the period 1 Jan thru to 31 Dec 2014;*
3. *...a phot of a typical tools, carry bag used by tradesmen like Mr Reany...*

46. By email dated 27 July 2016, TCC responded to the Commissioner's email, dated 25 July 2016, as follows:

*The following tools are required:*

- *Aviation snips left and right*
- *Tape measure, 3 and 8 metre*
- *Line of Chords Ruler*
- *Dividers small and large*
- *Trammel Points*
- *Hammer*
- *Gilbow snips left and right*
- *Screw drivers*
- *Ratchet straps for pipe work*
- *Scriber*
- *Pop River Gun*

***Employees supply their own hand tools only as per the list above.*** [Emphasis added]

47. It is clear from the above that there is some inconsistency between the evidence of Mr Reany and TCC in relation to which tools and equipment were provided by Mr Reany and which tools and equipment were provided to Mr Reany by TCC, to carry out his work as a first class "sheet metal worker" for TCC in the 2012 year. For reasons discussed below, ultimately nothing turns on this in this case. The outcome is the same whichever position (i.e. Mr Reany or TCC) is accepted.

48. It is not in dispute that TCC provided Mr Reany with a locker to store his tools and equipment at his primary place of work, at the Wagerup Refinery, in the 2012 year.

49. What is in dispute is whether the storage locker provided by TCC to Mr Reany in the 2012 year was "secure". This is a question of fact.

50. The storage TCC provided to Mr Reany to store his tools and equipment at his place of work at the Wagerup Refinery in the 2012 year was a metal locker, measuring 540mm X 600mm high X 700mm deep (with an internal shelf), which was housed, together with all of the other TCC employees' lockers, in a workshop/shed (made out of sheet metal with one door/entrance) at the Wagerup Refinery. The workshop/shed, containing the

employees' storage lockers, was locked at night but not during the day. The workshop/shed was situated on a site used by TCC (and Alcoa) and was surrounded by a high perimeter (security) fence. The perimeter fence was patrolled by security guards. The site on which the workshop/shed is situated could only be accessed by entering through a gated security section using a security swipe card or by producing appropriate identification.

51. TCC employees were required to bring in their own padlock, for whatever security protection that they believed was necessary, for their own lockers in the workshop/shed.
52. Mr Reany conceded in his oral evidence at hearing that he was not "required" by TCC to transport his tools and equipment between work and home each day. Rather, it was his decision to take his tools and equipment home each night as did not believe the storage lockers provided by TCC at the Wagerup Refinery to be secure. He felt that they could be broken into easily (in "two seconds") and his tools and equipment could be stolen. Mr Reany claimed to have heard of two break-ins to the workshop/shed, containing the lockers, in the period 2009 to 2012. However, by email to the Commissioner, dated 28 July 2016, TCC confirmed that there had only been one break-in to the workshop/shed at the Wagerup Refinery on 7 July 2012, which post-dates the 2012 income tax year (being the relevant tax year in these proceedings). Mr Reany told the Tribunal that he was, however, content to leave his locker unlocked during the day.
53. Mr Reany transported all of his necessary or essential tools and equipment between home and work in two large carry bags. Several photographs of these carry bags were tendered into evidence as Exhibit 3. Mr Reany's evidence before the Tribunal was that he could "at a stretch" fit all of the content of these two carry bags into his locker, perhaps with the exception of his welding helmet. As such, the majority of Mr Reany's necessary or essential tools and equipment could be securely stored in Mr Reany's locker at his workplace.
54. Clause 31.2 of the Enterprise Agreement states:

*employees whose tools are lost due to breaking and entering whilst securely stored at the employer's direction in a room or building on the employer's premises, job or workshop or are otherwise lost or stolen is entitled to be reimbursed by the employer to a maximum of \$1,800.*
55. The evidence establishes that Mr Reany is not entitled to a deduction for any amount of his work related travel expenses in the 2012 year as he was not required by TCC to carry his bulky tools and equipment from home to work. By his own admission, this was Mr

Reany's own personal choice, arising out of his unsupported safety concerns. As such, these expenses are "private" expenses which cannot be deducted under s 8-1(1) of the ITAA pursuant to s 8-1(2)(b) of the ITAA 1997: *Hayley; Lunney* applied and cf *Vogt* and *Crestani*.

56. Even if this were not the case, and Mr Reany was required by TCC to carry bulky tools and equipment from home to work, Mr Reany would nevertheless not be entitled to a deduction for any amount of his work related travel expenses in the 2012 year because the evidence establishes at all times during the 2012 year TCC provided him with secure storage locker at the worksite at the Wagerup Refinery. Mr Reany's view that the storage lockers were not secure is simply that, his view. It is not supported by objective evidence. As stated, the one break in that did occur at the worksite occurred after the end of the 2012 year and, further, it is unclear from the evidence whether the break-in was to workshop/shed or to the lockers within the workshop/shed.

#### **Subdivision 900-I of the ITAA 1997 - Award transport payments**

57. Having found that none of the work related travel expenses claimed by Mr Reany in the 2012 are allowable deductions, it is unnecessary to consider the application of Subdivision 900-I of the ITAA 1997, titled "Award transport payment". However, for completeness, the Tribunal notes the following.
58. An "award transport payment" is a "transport payment" (broadly meaning an allowance for "transport expenses") that is paid to an employee, under an industrial award, that was in force on 29 October 1986: s 900-220(1), (2) and (3) of the ITAA 1997. The payments are made on the basis that employees *may* incur transport costs associated with discharging their employment duties: *Taxation Ruling* TR 95/34 at [87].
59. In the case of Mr Reany, the relevant travel "allowances" were paid to him pursuant to the Enterprise Agreement: see paragraph 5 above. The allowances were paid to Mr Reany regardless of whether he incurred travel expenses.
60. Where a taxpayer receives an "award transport payment" *and* incurs deductible travel expenses, the taxpayer may rely on Subdivision 900-I of the ITAA 1997 to relieve him from substantiating the transport expenses. However, the receipt of such an allowance does not mean that the employee is automatically entitled to claim a deduction: TR 95/34

at [88]. In order to be relieved from substantiation under Subdivision 900-I of the ITAA 1997 in respect of his work related travel expenses in the 2012 year, Mr Reany would first have to have incurred a deductible work related transport cost in the 2012 year which, for reasons set out above, he did not.

61. Section 900-215(2) of the ITAA 1997 limits the deduction for “award transport payments” to no more than the amount that a taxpayer could have deducted if the industrial instrument that the payment is under were still in force as it was on 29 October 1986. In Mr Reany’s case the deduction limit is \$5,544. This is not in dispute. If the claim exceeds that amount, then a taxpayer cannot use this exception and must use one of the 4 substantiation methods set out in Division 28 of the ITAA 1997. This is not in dispute.
62. Therefore, even if Mr Reany could demonstrate that he incurred a deductible work related travel expense in the 2012 year, and he sought to rely on s 900-215 of the ITAA 1997, he would be limited to claiming up to \$5,444 (of the \$14,901 that he claimed for this expense in the 2012 year), being the portion of the travelling allowance that he received from his employer that is referable to the relevant “award transport payment” as at 29 October 1986. Mr Reany concedes this at [55] of his SFIC and Mr Reany’s representative confirmed this concession at the hearing.

## **DECISION**

63. For the above reasons, the Objection Decision is varied by:
  - (i) allowing the Applicant a deduction for his laundry expenses (totalling \$150) for the 2012 income tax year; and
  - (ii) remitting the penalty imposed on the Applicant in respect of the 2012 income tax year in full (i.e. the penalty imposed is reduced from 50% to nil).
64. For completeness, in all other respects the Objection Decision is otherwise affirmed.

I certify that the preceding 64 (sixty-four) paragraphs are a true copy of the reasons for the decision herein of Senior Member CR Walsh

.....[Sgd].....

Administrative Assistant

Dated 1 September 2016

Date of hearing

**25 August 2016**

Representative for the Applicant

**Mr I Robinson  
Rayme Accountancy**

Representative for the Respondent

**Ms V Hammond  
Australian Taxation Office**