

**TASMANIAN INDUSTRIAL COMMISSION**  
Industrial Relations Act 1984

T No. 6556 of 1996

**IN THE MATTER OF** an application by the  
Automotive, Food, Metals, Engineering,  
Printing & Kindred Industries Union for an  
interpretation of the Vegetable Preservers  
Award

re clause 2 - Scope

PRESIDENT

DEVONPORT

HOBART, 21 November 1996

**TRANSCRIPT OF PROCEEDINGS**

Unedited

PRESIDENT: Appearances, please.

**MR P. BAKER:** Sir, I appear on behalf of the applicant organisation, and with me today appearing with me is **MRS A. URQUHART**.

PRESIDENT: Thank you, Mr Baker.

5 **MR W. FITZGERALD:** If it pleases, Mr President, I appear on behalf of the Tasmanian Chamber of Commerce and Industry and here to assist me from Perfecta Produce **MR DARREN BROADBY**.

PRESIDENT: Thank you, Mr Fitzgerald. Very good. Mr Baker.

10 MR BAKER: Thank you, sir. I just thought today that I would do this exercise in three parts. The first part we have attended to by way of inspection and I will make some comment on that as I proceed through the submission. Secondly, I intend to just give a brief overview of where we have been and why we are here today; and, thirdly, I would like to call as a witness Ms Catharine McKean who accompanied us on the inspection this morning to provide a commentary of an expert nature as to her  
15 observations in the processing of the product of which we unfortunately didn't see, but the process we did see.

PRESIDENT: Yes. All right. And before you proceed with that I perhaps should put on the record the commission's appreciation of the Perfecta company providing the inspection for us this morning. Thank you.

20 Yes. Okay, Mr Baker.

MR BAKER: Thank you, sir. This matter has finally reached this stage today as a consequence of an application which we made in February of this year in Matter T.6081 of 1996 which was an application by us concerning the company Perfecta Exports Pty Ltd trading as Perfecta Produce of Kimberleys Road, Ulverstone, in that we  
25 sought an application against that company for their failure to observe the terms and conditions of the Vegetable Preservers Award.

There was, in fact, a preliminary hearing on that matter again in February of this year where the matter was brought on for mention and it was subsequently adjourned.

30 The matter was before the commission again, although that particular matter wasn't before us, but certainly Matter T.6094 which was an application by the AWU and Perfecta Produce in an application to register an agreement pursuant to section 55 of the act.

35 You may recall, sir, that we sought leave to intervene on that occasion and those reasons are outlined in the transcript of those proceedings. Subsequently, during those proceedings we in fact did withdraw and did not press the issue of intervention on that occasion.

40 The matter again came before the commission, or that matter T.6081 of 1996 was again before the commission in April of this year where following submissions by ourselves and comments by yourself it was agreed that in fact that application would be withdrawn and a fresh application, that is an interpretation of the award - of the Vegetable Preservers Award would in fact be sought, and those two matters did in fact occur. The original application was withdrawn and the application T.6556 was subsequently lodged and is before you today.

PRESIDENT: Just to help my memory or make me feel more confident about my memory the Matter T.6081 was withdrawn but that was virtually on the basis that the individuals subject to the dispute reached some settlement. Is that correct?

MR BAKER: No, sir, that was another matter altogether.

5 PRESIDENT: Right. Okay. All right.

MR BAKER: In fact there was -

PRESIDENT: My memory is very faulty.

MR BAKER: I think, sir, there were three other matters at the time and those matters were either concluded or I think in once instance that one of them was in fact  
10 withdrawn. But, again, I am not too sure, either.

PRESIDENT: All right. Anyway, there has been a long history of -

MR BAKER: Yes; but this application has - sorry, sir, - the previous application was only in fact before the commission on two occasions - once for mention and, if you like, sir, on the other occasion one could perhaps say that it was there for directions,  
15 and as a consequence of those discussions - on record discussions between yourself and the AMWU - it was agreed that the application would in fact be withdrawn and the application that is before us today would be in fact lodged.

I should perhaps also point out at this stage now that in fact we did undertake an inspection of Perfecta Produce and I, too, extend my appreciation to the company for  
20 the tour this morning. It was most informative. And, perhaps for the record, I'll put on the record that we did in fact conduct an inspection at Perfecta Exports Pty Ltd trading as Perfecta Produce of Kimberleys Road, Ulverstone, and we also did an inspection at -

MR FITZGERALD: Fieldings Way.

25 MR BAKER: Fieldings Way. Thank you. The application before you today, sir, deals with an interpretation of the scope clause of the Vegetable Preservers Award and, in essence, what the AMWU is seeking today as the applicant organisation is whether or not the scope clause of that award encompasses the work which is undertaken by Perfecta Produce.

30 The scope of the award is as follows:

*This Award is established in respect of -*

*(a) fruit or vegetable preservers, or*

*(b) sauce, soup, including soup concentrates, or vinegar maker, or*

*(c) producer of fruit juices or vegetable juices.*

35 And, in particular, sir, we would turn our attention to subparagraph (a):

*This award is established in respect of fruit or vegetable preservers.*

- and what does the term 'preserver' mean? Well, sir, that will be the discussion which will occur at some time later this morning, but in the interim I would offer to you the definition which is contained in the Oxford Dictionary of 'preserve', and it is as

follows: 'To keep safe from harm, decay, keep alive, maintain, retain the quality, that is of the condition, showing little sign of ageing, preparing fruit or meat, etc., by boiling with sugar, pickling, etc. To prevent decomposition or fermentation, or to keep from decomposition by means of refrigeration or by chemical treatment, etc.'

5 And then it goes on to talk about elderly persons, which we won't get into.

'To keep from decomposition by refrigeration or chemical treatment, etc. Maintain and retain the quality of the condition of the product', as the definition indicates.

I will turn your attention, sir, to the time that we were before you on the previous occasion in the Matter T.6094 of 1996 and that was in the matter of the Australian  
10 Workers' Union, Tasmania and Perfecta Exports for the following of the Perfecta Produce Industrial Agreement, and at page 22 of those proceedings at paragraph 15 - and I quote Mr Fitzgerald about halfway through that paragraph:

*In any case, in the case of onions, Mr President, simply taking the tops of the onions, clearing the debris which where the onion comes in from the fields, grading them and packing of them into bags, bins, or in fact the normal size  
15 container you see and then export it.*

On that occasion Mr Fitzgerald was indicating what was in fact happening to the onion, and then he goes on to indicate how they are graded and packed at paragraph 25.

20 It is our contention that in fact that there if some change occurs that they are simply not picked, packed and sent.

Prior to the evidence which has been offered by Ms McKean today I make some following comments to the commission in consideration of the two quotes. That is, the quote from the dictionary and the quote from Mr Fitzgerald.

25 Is the vegetable simply allowed to dry in the field; is it then simply picked and processed; what action is taken, if any, to arrest the continuing growth of the vegetable or, indeed, the decay of the vegetable, for we know that the vegetable will continue to inhale CO<sup>2</sup> and to exhale heat which, of course, will render both the product to continue to grow or to decay; what measures are taken to ensure the  
30 uniformity of the product.

The reason that people make these changes, or seek to make these changes, is able to maintain one market share as a supplier of produce, the presentation of the vegetable is enhanced post-harvest because of its ability to maintain the quality and also to extend the shelf life of the product. What controls, if any, are put in place to achieve  
35 this is by the introduction of airflow, a process of maintaining or preserving the vegetable What of humidity? Is it able to be raised or lowered in certain circumstances? Is the fermentation of the vegetable arrested or allowed to continue? What measure of care is extended to the product? Other fruits such as apples, barley, apricots, for example, have their growth arrested at harvest and brought to sale by  
40 some form of artificial means. For example, the use of sulphite in drying of apricots. What is the quality control process that is put in place to maintain the quality of the product? Is the use of driers and other equipment such as cold storage and the like used to maintain the product?

45 The two quotes, sir, I have raised earlier on are important and, as the evidence develops I think you will see that it becomes paramount in the final conclusion, and that is, are the onions simply picked from the field, processed and sold or,

alternatively, is there some intervening process which occurs which assists in the marketing of the product and, indeed, in the extension of the life of it.

At that point in time, Mr President, I would conclude my submission and I would call Ms Catharine McKean to the stand.

**CATHARINE ANNE McKEAN, sworn:**

5 MR BAKER: I wonder, for the record, if you could just indicate your occupation to the commission ?... I'm a practising food technologist. I have a Bachelor of Food Technology which I acquired at Massey University in New Zealand in 1978 with First Class Honours. I also have a Master of Science from the University of Grafton in Canada, which I gained as a result of a Commonwealth Scholarship and with distinction. I am a member of the Australian Institute of Food Science and  
10 Technologists and I run a consulting practice to the food industry.

And are you also the author of any textbooks ?... I am. I regularly lecture in food technology at the La Trobe University in Melbourne and Victoria University of Technology and I also am the editor author of Australian Food, a complete reference to the food industry which was published in 1995.

15 Thank you very much. I wonder if we may start by drawing your attention to the inspection which you were a part of this morning and would you be able to give us an overview of that walk-through, as we walked through the plant and perhaps you could deliver to the commission your impressions of what you saw in the way of maintaining and/or preserving the product of onion, which you saw during the time you were there  
20 ?... Okay. Food technologists understand preservation to be a set of activities which happens post harvest and for us we consider post harvest to be the point at which it leaves the paddock. That includes the transportation systems from the paddock to the factory, so that's post harvest and that's our reference point for preservation so things that happen after that fall into the area of food processing preservation. We would  
25 take a definition as broad as the Oxford Dictionary that says: anything at all that you do to maintain the harvest quality, condition, state of your produce is preservation. If you preserve an old building, you keep it in its original form. Food technologists think that preservation is holding that produce in its harvest state or a stable condition of some kind and the motivation for doing it is that you can't stop, in all cases, but you  
30 can slow down the process of deterioration to extend the shelf life and give the manufacturer a reasonable period of time in which to market his product, to distribute it to the market and to retail it.

So, that's what we understand preservation to mean. If you look at the onion operation we've just seen, if the onions were fully cured to a stable condition in the  
35 field, simply brought into a facility in which they were packed or contained in some appropriate manner for distribution, you might say that no preservation has occurred but I'm not sure that that's what we saw - particularly produce which is arriving too moist and not - and in a condition of stability - not finally cured in the paddock is going into large bins, firstly, which are exposed to a ventilation system and quite a  
40 sophisticated one and in some cases into what any food technologist would regard as a drying chamber - the room that has the gas heaters, the temperature control is, to a food technologist, a dehydration operation, albeit, that you don't take it to two per cent moisture. The purpose is to dry out the outer leaves of the onion, partially so the skin falls off and that's important for appearance but also so that you form a barrier  
45 against microbial attack. If you have moisture on the outside of the onion, you have the potential for decay. So, there are two reasons for doing that.

If you didn't ventilate onions - they're a living organism as are all fruits and vegetables, and they continue to live post harvest and the ultimate evidence of that is, if you do nothing, onions will grow roots and they will sprout just as potatoes will and  
50 many other fruits and vegetables. So, the metabolic processes of the vegetable will continue. They take in oxygen, they convert stored organic materials into things such as carbon dioxide which come out, heat and water vapour. So, there's a process of

evaporation occurring and as that water vapour comes out, if it's not removed it will condense on the outside of the onion and then you have the risk of microbial attack and deterioration. So the ventilation is there to prevent that process of decay. If condensation had no effect, you wouldn't worry about ventilation, you wouldn't worry about getting the outside moisture content right down. So, from a food technologist's point of view, those things are preservation.

At the other end of the process, after you've packed the onions off into, say, export containers, again, one of the critical factors to keeping them in good condition is air flow and you see, we would not regard ventilation as much different from refrigeration. If you were modifying the atmosphere in any way, albeit by the temperature or the rate of flow of air, you are doing things to maintain quality of the product, to extend shelf life. That's a very broad definition and some people think of preserving as making jam and pickling onions but food technologists don't. You don't have to change the state of the produce to say you've preserved it. Good examples would be apples. You could pick an apple off a tree, sell it at your farm gate and you wouldn't claim you've done anything really to preserve it. You may have handled it carefully to stop bruising et cetera but if you put it in a cool store, then there's only one reason to do that and that's to get a shelf life that allows you to bring it out in the supermarket 10 months from now - in icy ventilation, and I think all food technologists would, in much the same way - it's a manipulation of the environment, to maintain quality.

Well, perhaps if we could just sort of go back and just cover some of the points specifically that we saw this morning and if we could turn our attention to the area of the company which had the drying bins specifically - perhaps you could just indicate the nature of that process and what it does ?... Well, essentially all you're doing is using hot air, moving air, to cause some evaporation of moisture from the outer surfaces of the onion and to get evaporation happening you've got to turn water to steam, so you need some heat. If you can't move that pocket of air above the produce away from it, you reach a point of humidity where no further evaporation can occur, so you need both the temperature to get it happening and you need the air. It's the same as drying clothes on your clothes line, you need a nice hot day and some wind blowing to make it all happen. So, that's just a simple dehydration process. It's done in other food industries. Dried apricots are exactly the same. You split them open and remove the stone and then you dry them. Now, some of them are sun dried in paddocks and you use solar energy and other cases, they're put into drying chambers and it's artificial energy but whichever way you look at it, the reason you are drying is to increase the stability of the product because if you didn't dry the apricot it would be rotten in 10 days and if you didn't dry the onion it would also be lost in a short period of time. So, in both cases the dehydration, although it's to a differing extent, has the same purpose.

Similarly, what comment would you offer in so far as the large storage bins we witnessed this morning - that is the steel ones with the mesh sides and the fans in the base of those? What impact do they have on the onion ?... Well, again, I think that that ventilation preserves the quality of the produce. Without it, you would get a build up of condensation and the onions would basically sweat and when they begin to sweat, they become susceptible to deterioration. Again, there are lots of other examples in the food industry where this sort of thing is common - the harvesting of grains - of wheat and barley. It's not uncommon if the harvest temperature, due to weather conditions - if the harvest moisture is too high for the barley or the wheat to be taken into a processing facility and in a kiln for the temperature to be dried down and then it can be stored in a silo. So, that's a common operation and we would think of that as preservation because it preserves, it maintains the quality of the product at harvest. It slows down deterioration.

I don't like to repeat myself, but so we're perfectly clear on the record, have you any concerns at all that the process that was demonstrated to you this morning is not a

preserving of the vegetable ?... No. I think I said earlier, that to lay people there's some misunderstanding about what preservation is. They think that it has to go into a jar, that it has to take a different shape form, change colour. To a food technologist, that isn't necessary to describe it as preservation. It just has to be any activity that you carry out. When we talk about deterioration, we normally refer to spoilage - either chemical spoilage, which might be rancidity, microbiological spoilage, mould, rotting, physical spoilage, which may be bruising or damaging. Now, even handling of produce with gentle rubber rollers and not dumping it on a three feet drop into a truck or something, would be seen to be preserving the condition of the produce. Now, I appreciate that that's a broader understanding than many people would have of food preservation but it is definitely the position held by food technologists. We feel we are responsible for all of those activities that maintain quality.

In your opening remarks, you indicated that as a food technologist, you are concerned from the point of harvest onwards. There was some comments passed this morning concerning -

MR FITZGERALD: Well, I'm not sure that I can agree to that sort of statement. It was an inspection only.

PRESIDENT: It's all right. I was just about to make the point.

MR BAKER: Yes, I was going to stop. It's all right, Bill. There's no need to get excited.

MR FITZGERALD: I'm not getting excited. Wait until I do get excited, you'll see what happens.

MR BAKER: I look forward to it.

With the onion specifically, how long would the onion survive in a period where no action was taken at all, when it was left, if you like, for the want of better terminology, rot on the ground ?... Left in the field, or left after harvest?

Well, both ?... They're difficult things to answer because they're dependent on moisture levels but you would have mould in a matter of days if the product sweats, if there's moisture. Microbial growth really is dependent on having a supply of nutrients, which you clearly have with any fruit or vegetable, and moisture, and if that's present then your produce is at risk. Now, that might not mean the entire container but there will be pockets, there will certainly be onion bulbs that start to rot but you have no way of knowing without understanding how much soil is around, how much contamination and what moisture levels are there.

MR FITZGERALD: Mr President, the question was put in two different ways and I'm not sure whether the witness is answering the questions in terms of after harvest, or left in the ground. I just wonder whether that could be clarified. Is that the answer to both, or are there two different answers to both situations.

PRESIDENT: Do you want to respond to that?... Yes, I think I was referring to, after harvest. Again, the food technologist's definition of post harvest is after you take it out of the paddock. I think what occurs when it is drilled up and turned over and left in the paddock to cure, is really farming. That's the farming practice and I think food technologists wouldn't concern themselves with the preservation that is occurring during that time, although it is recognised that it is when the wheat blows around in the paddock and turns from green to gold, it's the dehydration process but we don't claim it for preservation. We say that's farming. If, after we've cut it and headed it and put it in a grain silo, then the things we then do to it we regard as the domain of preservation.

5 So, if I just take you back to your answer, and perhaps you may just like to reiterate it, if there was no action taken at all in so far as the vegetable itself is concerned following the arresting of its life, then it would rot within a few days?... It would begin deterioration within a matter of days. If you have microbial contamination and it's pretty difficult with farm produce not to have that - if there is moisture present and the rate at which it occurs is influenced by temperature. So, warm, hot, sweaty, wet conditions, micro organisms love. So, they will start deteriorating, I would have said, within days.

10 I read to the commission earlier on this morning the scope clause which is contained in the Vegetable Preservers Award and I'll just read it again:

*This Award is established in respect of fruit or vegetable preservers.*

15 Now, without getting into an argument about your ability to determine the scope, but as a food technologist do you see that the undertakings which were witnessed this morning would fall within the scope as I have read it out?... Yes, I do. I think the activities are geared towards preservation of the quality of the produce and I think to that extent it's covered. I said earlier if all you did was field, cure, bring them in, pack them - and I mean pack them and only pack them - don't ventilate, don't do anything else, I don't think you could claim it was preservation, but when you add ventilating and dehydration we've moved into the area of preserving, of stabilising that produce against further decay.

20 So long as we're clear. We also had an inspection at Fielder's Way -

MR FITZGERALD: Fieldings Way.

25 MR BAKER: Fieldings Way - where there was a demonstration offered insofar as squash was concerned. Would that fall into your earlier definition of simply bringing the product in, washing it and then putting it into a box?... Yes. I think it would. The only problem there was it went into, from memory, I think a refrigerated contained partly because of fruit fly, rather than an extension of the shelf life of the squash itself. But, yes, if all that you were doing was bringing it in and brushing off dried dirt and putting it in another container for distribution, then I don't think that's preservation. 30 Whether the refrigerated contained also assists, I mean, it is well known that fruit and vegetables respire if you drop the temperature by 10 degrees their respiration rate is cut in half, and the respiration rate is directly proportional to shelf life. So it may be that by cooling the squash down you are actually extending the shelf life, but from what I understood from Darren it was really purely a control against fruit fly.

35 So, in other words, this morning it is true to say that we actually saw two processes. One of simply bringing the product from the farm, washing it and packing it, and the other was bringing the product from the farm and processing it?... Preserving it.

Preserving it. I beg your pardon?... Yes. I don't think there is much processing.

Sorry, I beg your pardon, yes?... That's another definition. But preserving it, yes.

40 I have no further questions at this stage, Mr President.

PRESIDENT: Yes, all right. Thank you, Mr Baker. Mr Fitzgerald?

45 MR FITZGERALD: Thank you, Mr President. If I could just proceed with some cross-examination of the witness, and I did have a couple of comments to make in terms of this application and its current status, particularly in view of the agreement which exists.

PRESIDENT: Well, I mean, I think you should cross-examine.

MR FITZGERALD: I'll do that certainly. I'll do that certainly.

Ms McKean, you stated that you are the occupation and food technologist. Are there similar occupations here in Tasmania, are you aware of ?... Food technologists, yes.  
5 Almost every food company has a food technologist on staff.

Have you had any contact with any such person, particularly in respect of Perfecta ?...  
No. I have spoken with the Australian Onion Growers' Association in South Australia.

Right. Okay. In terms of your work generally and, indeed an impressive list of qualifications, do you specialise in any particular food product ?... No, not at all. As a  
10 consultant my work is very diverse, so it's anything from fresh fruit and vegies to confectionary to meat. Basically the processes of preservation are the same regardless of the produce - whether you are freezing, drying, canning, pickling, the chemistry - or the science of what's happening - is really independent of produce.

Right. In terms of your experience generally, what experience have you had with onion  
15 packing and distribution ?... No particular experience at all.

So would it be so that the first time you appeared on inspections this morning would have been the first contact you've had with an organisation such as Perfecta ?... Certainly with specific onion packing. I have been through many - I have toured many fruit and vegetable processing facilities.

20 Right, but this would be the first onion one you have done ?... Yes, the first specific -

So, have you had any specific area of your work which is concentrated on onion exporting? You have had no specific - ?... No. No, more so than just general handling of fruits and vegetables.

I assume that you have had, you have done thesis, or the speciality of the area of work  
25 in certain other products ?... During my training?

Yes ?... Soya beans.

And during your consultancy, I mean, do you have - ?... Yes, continually.

Have you consulted to any onion packer or producer ?... Ready-Cut Fresh Vegetables in Melbourne, yes, who handle capsicums, onions.

30 Right, so they are onion growers ?... No, they are processors of onions.

So, what, how does their process compare to what we saw this morning ?... Well, as I say, they are processors, so they are bringing in the onions to either fresh dice, freeze or dehydrate.

So will you say that it is a different process to what you saw this morning ?... The  
35 processes are different, but the science and the understanding of handling fruits and vegetables post harvest is no different.

If you could just answer my question. Would you say - you talked about dicing - and what was the other process involved at that company ?... Freezing.

Freezing. Right. Was that evident at all at Perfecta this morning on those inspections  
40 ?... No - totally different.

Right. So is it true - it is very difficult to make the comparisons between that company you mentioned and Perfecta. ?... Yes.

5 Okay. So, just to reaffirm, this is really your first experience with a company like this and seeing the processes of drying in bins, etc., or storing in bins, etc. Is that the first time ?... Yes.

10 All right. Have you any research, or is there any knowledge backup which you would, if you like, support what you are saying here this morning, or is it just your feel as a food technologist ?... Well, as I say, I am a qualified food technologist. I am a senior lecturer at two universities in food technology and I teach fruit and vegetable processing and handling, so to that extent I'm knowledgeable about the science and chemistry and the spoilage of fruits and vegetables post harvest.

Okay. Let me just come back to Perfecta's operations, particularly in those activities and particularly in lecturing activities. Do you ever touch on a process as we have seen today ?... Yes.

15 Specifically in respect to the onion side ?... Yes.

All right. How then how do you impart knowledge to your students in respect of this process if it is in fact the first time you have seen it here today ?... Well, I understand what the process is.

20 Well, how do you understand what the process is if, in fact, it is your very first time you have seen it here today ?... I am well read.

25 Would it be so that in terms of getting an understanding of any process that you would actually have to see it in action, rather than just reading about it in some textbook?... I think that's true, but I have seen many similar processes in action. I have seen potatoes being packed, I have seen apples and oranges being packed. I mean, we are talking about -

30 We are talking about onions, though, don't forget. We are talking about onions in this context. I don't think it is fair to make comparisons with other food products ?... Yes. I guess I would have to say for a food technologist, although we appreciate the difference in commodities, they all come down to protein, fat, carbohydrate and a set of metabolic processes that are extremely similar across a range of fruits and vegetables. So it is the understanding of the science that you require, not the intimate details of what kind of roll or a conveyor belt or -

Well, prior to going to the site this morning, did you have any knowledge of the storage bins or the drying area ?... Yes.

35 How did you gain that understanding ?... Through observation at other sites.

How did you know that? You hadn't been to that site, so how could you say you had observed it ?... I have seen onions in wooden storage bins at Campbell Soups, at McCains Food, so I have seen -

40 But isn't that a very different - there are obviously onions being used in a process of making soups and others. This is not the same process, surely ?... But they have come from factories just like Perfecta and you asked me how I knew how they would be stored, and I am just explaining to you - I know how they would be stored because I have seen them arriving at other places.

Right. So how did you know that that was the same process at Campbell's Soups, for instance, as it would be at Perfecta?... Well, I mean, I didn't know for sure and I guess that what was part of the tour was about.

5 Right. So you had no knowledge of the process before today?... I think I could have written down on paper the process for you step by step without any difficulty. Describing exactly the dimensions of the wooden boxes, or the containers, I don't think I could have done, but the process itself - there was nothing I saw today that I could not have envisaged -

10 But you acknowledge that in terms of the process it is very different from the experiences that you have had at Campbells Soups and other organisations?... Yes. Every factory is different. You could go to five different tomato processors and the layout of their factory and their kinds of bins or pallets they use, the conveying equipment, could all be different, although the ultimate process is essentially the same.

15 Would you acknowledge that the end product in a Campbells Soup factory or the other company - I am not sure - if you could just repeat the other company?... McCains Foods.

Was it McCains? I think it was something dealing with capsicums as well - I just can't recall that?... Ready Cut Vegetables.

20 Would you acknowledge that the final product is very different than what comes out at the other end at Perfecta?... Absolutely.

So, in respect to Campbells Soups, what happens with onions there?... They come out in a can of tomato, onion and basil soup and at McCains they come out on the top of a pizza.

25 Right. So the product has changed nature in some way, has it not?... Absolutely.

Significantly?... Yes, significantly.

In your professional opinion the product has in fact changed in nature significantly? Would that be so?... In those operations, yes.

30 How then, how then, can you make a comparison with Perfecta? Where is the change in the nature of the product?... I think I said earlier that it doesn't have to change. Those companies were cited as examples of places where I have seen onions stored in wooden bins. You had asked me whether I had ever seen them before and that was my response. I said earlier that for a food technologist produce does not have to change to have been preserved. If you put something in a modified atmosphere you change the  
35 carbondioxide, the oxygen levels. It will appear absolutely the same, but its shelf life will be significantly changed. The same when you put apples into cool storage, they don't come out looking any differently if it is done properly, but their shelf life is greatly increased.

40 Okay. Could I suggest, Ms McKean, that your experience which is clearly - and you have indicated in evidence - it is clearly based on other organisations which are not of the same nature as Perfecta, that your opinion which you have expressed to the commission today is very much based on those experiences rather than what you have seen at Perfecta today?... Well, it is based on my knowledge and my qualifications as a food technologist.

But you have already admitted to the commission that you have not seen Perfecta's operations. You predicted what you would see, but you could say that you couldn't do that with any great degree of certainty. Is that the case?... Of course not, no.

5 Right. Okay. Well, if your opinion which you have been giving to the commission here, and I respect your view as a qualified person certainly, clearly in my view - and I would like your response to this - it is in respect of the organisations which you have previously worked with or have knowledge of, but not in respect to Perfecta's operations you have seen here today?... I think the opinion I have given is not in respect of any operation whatsoever. It is an interpretation of what I understand my  
10 profession to be about and what food preservation constitutes, and I have said a number of times that we take it to mean, we food technologists, all those activities undertaken in order to stabilise the produce to extend shelf life, to preserve its quality.

Okay. Let me ask you another question. Were you briefed in terms of the process by the applicant union?... No.

15 Good. So you came in with a completely open mind?... Mm.

Okay. I again just put the question to you, that the opinion which you have offered to the commission today is very much based on your preconceived notions of what you've come across and what exposure you've had to other industries performing quite a different function to what is happening at Perfecta?... No. I think I'd like to repeat, it's  
20 not based on any other organisation. It's not preconceived. It's my understanding of what food technology and food processing is about. That's the basis for my view and my interpretation of the word, preserve.

So, is it fair to compare those organisations - where you refer to in your evidence as against Perfecta, as a similar organisation?... Well, I didn't compare them. I didn't  
25 raise them as being similar or of any comparison. They simply buy onions in boxes.

Okay. Let me just move on. I won't persist with that. I think I've gone far enough in that area. I think you made a statement and I just want you to clarify this - I wrote it down and I'm not absolutely certain - I think you said, even if you do nothing, you're still involved in a preserving function. Is that the case?... I don't remember saying  
30 that. Preserving always means undertaking some activity to stabilise the produce.

So, if the onions, as we saw this morning, and I think we saw something like 10 per cent of the onions and that will obviously vary from year to year - in fact undertake that drying process, what about the bulk of onions which don't?... Yes, and may be  
35 that's the quote you wrote down. I think what I said was, if you field cured them to a point of stability in the paddock, then brought them into a facility that only packed them and by packing, I mean containment and perhaps in some container that's adequately labelled for the end market. So, if that was the only function, then I would say that's not preservation because you're doing nothing to try and extend or maintain the current status of the product but that didn't appear to me to be what was  
40 happening. Even those that didn't go into the drier were put into bins that had fans in the bottom of them.

Now, if you didn't need to ventilate you wouldn't. If the quality of the onions was no different, whether you had air circulating or you didn't, no-one would bother. It's an extra step in the handling, it's an extra expense and it's done because it helps to  
45 remove the moisture, stop sweating and decrease the chance of spoilage.

We saw, particularly in the drying room that there was no humidity control. Is that the case?... Yes, that's true.

Does that alter your view at all ?... No, because dehydration has to do with air temperature, air movement, air humidity, but you don't need all of them controlled.

I think - if I can just put to you, that it was maintained at 20 degrees really to simulate the conditions which would normally happen out in the field. Is that the case ?... Yes, but drying temperatures - they don't have to relate at all to what would happen in the field.

Is that why - why isn't it at a higher temperature then, in your view, as a food technologist ?... The same reason you don't leave onions out in the paddock in the sunshine. They get sun burnt. You don't want too high a temperatures. Obviously high temperatures promote microbial spoilage. The temperature that is ideal is the temperature that produces an adequate amount of evaporation and removal of moisture. You don't want to bake the onions, you will get change in colour and flavour.

Aren't you just carrying out the processes - or simulating the processes which would just happen naturally out in the field if they were left after harvest in the field, with the natural air circulating amongst the product ?... That's pretty much what you're doing but to me that doesn't mean that it's not preservation. I think I said earlier, if you took wheat or barley from the paddock - if you could leave it there long enough under superb weather conditions it would dry to a point where it would be absolutely stable in the silo but frequently that's not the case, so you take it into a factory and you then impose those conditions to get the moisture content down so it's stable.

If you did nothing post harvest you would not have stability. You would not be able to preserve and maintain the quality of the produce.

Can I put to you that may be there are two definitions here - we can always get the Oxford Dictionary out but maybe there are two sets of definitions. There's yours, as a food technologist and mine, as an average lay person, in terms of what preserving means and if I can put to you that the lay person's definition of preserving is in fact, in change in the nature of the product in some way like the example you gave in Campbell's soups ?... At some level, I'd agree with you. I think the lay person's understanding of preservation is quite different from the food technologist's but I think you have to keep coming back to what the word preserve means and it means to keep the same as in the original condition -

That's your definition as a food technologist ?... No. I think my definition included extension of shelf life.

I think you used the example of apples going to a cool store. Is there a similarity in that situation, compared to what we saw this morning with the onions ?... No. I think I used that by way of an example, in saying that if you picked an apple off the tree and took it to a roadside stall at the front of your farm and did nothing else to it, I wouldn't consider that to be preservation. However, if you take the apples off the tree, put them in bins and take them somewhere and subject them to cool storage, there's only one reason for doing it, it's to decrease the rate of respiration of the apple and by doing that, to extend its shelf life. So, I consider that to be preservation.

So, is it different than onions? Can I just clarify that? Are there some similarities to which you can draw between what you saw this morning and the example you just gave in respect to apples ?... Yes. If you took the onion out of the paddock and did absolutely nothing to it, except perhaps put it in a bag to contain it and then sent it off, again, doing absolutely nothing to it, I would say you haven't preserved it. If, however, you take it out of the paddock and you carry out operations that are intended to delay the processes of deterioration, preserve its original state, i.e. ventilation, dehydration, then that's preservation.

Okay. You gave the example of dried apricots. Surely, you're not saying that they're - there's quite a different process involved there with what we saw this morning ?... Again, I wasn't trying to draw a comparison. I was really just pointing out that the purpose of dehydration is to end up with a stable product - a shelf stable product. A  
5 dried apricot is reduced to a certain moisture content so that the water activity is reduced to a level that micro organisms cannot grow. You're doing exactly the same when you dry the outer surfaces of an onion.

As a consumer only, I'd rather eat dried apricots, I suppose. Isn't there some other process. Isn't there sulphates, or some other chemical which is used in that process  
10 ?... Yes. It's used to maintain colour - prevent browning reaction.

Surely there's an artificial process there which is a distinction of what we've seen here this morning, where there are natural functions of using air for ventilation as against an unnatural product being introduced in the apricot drying process. Surely, there's a distinction there ?... Well, sulphates aren't used in all apricot drying. I agree, it's a use  
15 of chemical preservation which we're not discussing but that's just one means of preservation. There are many apricots sun dried with no sulphate and you see them in the health food shops because they're a lovely dark brown colour.

You mentioned a process of going over rubber rollers - that that was in some way consistent with the preserving function. Could you explain that ?... I think I used that  
20 by way of example of saying that, if taken to its broadest definition, food preservation is anything that preserves the quality of the produce. Now, generally speaking, in the handling of fruits and vegetables, there's an attempt made to minimise physical damage because spoilage can be microbial damage, chemical damage, physical damage - any of those constitute deterioration in the condition of the product. So,  
25 gentle rollers could be interpreted to be. I'm not, in this instance, suggesting that that constitutes preservation. I think it's the ventilation and the drying.

I think you did in your evidence, Ms McKean. That was certainly my note - that was in your evidence. I was surprised by the comment, hence me recording it but that was as I understood it, certainly. So, would you say now that there's no preserving function  
30 involved in the passing over of a series of rubber rollers ?... No. I think it is preserving. It's preserving the quality of the produce.

Is it in any way changing the nature of the produce ?... It doesn't need to, to preserve it.

As a lay person, how would you think a lay person - take off your food technologist's  
35 hat, if you could - how would you see that view you've just expressed, that there is some preserving function by passing over a series of rubber rollers ?... I wouldn't expect they'd agree with me.

Okay. I know you're not an industrial expert but I just wonder whether awards are in fact written in the terms of your expertise as a food technologist, or in terms of the  
40 average person as a layman, how they would understand it. Do you have any view to offer there ?... No. I mean - the award to me - the only sentences I've read are to do with the scope and it said that the Vegetable Preservers Award covered certainly things. Clearly, you're not producing fruit juice, you're not making jam or vinegar, but the question is, are you preserving the vegetable.

45 Wouldn't you agree, in terms of the award and the way it's expressed, and I don't think you can just necessarily take point A in isolation, that is, Fruit or Vegetable Preservers, but include sauce and soup or vinegar making -

MR BAKER: Objection. I think we might be going a little far.

MR FITZGERALD: I can put questions at large to the witness. There's nothing objectionable about the -

MR BAKER: I think you're going to the legality to the scope clause in the award and obviously -

5 MR FITZGERALD: Well, it's a bit hard for Mr Baker to predict that. I haven't asked the question yet.

MR BAKER: Well, I think I know where you're going.

MR FITZGERALD: Well, you know my mind better than me.

10 PRESIDENT: As long as I understand what you're asking, Mr Baker. As long as you don't seek to put in the witness' mouth some expert connotation on the way the award should be read.

MR FITZGERALD: Not at all. I'm just asking the witness for a view in terms of how the layman would - as opposed to a food technologist, would view the award.

PRESIDENT: That's probably a bit difficult too.

15 MR FITZGERALD: Well, we all have different views, depending on our fields of expertise.

PRESIDENT: I think it's a bit hard to ask the witness to take the expert hat off and apply a lay person's view to something. I think that's what you're asking her to do.

20 MR FITZGERALD: It's already been conceded, Mr President, that the lay person would not agree with certain views Ms McKean has expressed here today.

PRESIDENT: Yes. I think she said they probably wouldn't agree.

MR FITZGERALD: Yes. Well -

PRESIDENT: But anyway, word your question and I'll see what it sounds like.

MR FITZGERALD: I think I might have to start from scratch again.

25 In terms of the award, and there are three parts to it - there's the Fruit or Vegetable Preservers, there's Sauce, Soup or Vinegar Maker, or Producers of Fruit Juices or Vegetable Juices. Would you agree that both B and C - Sauce, Soup or Vinegar Maker or Producers of Fruit Juices or Vegetable Juices connotes some change to the product - in the nature of the product, as the process is undertaken. Would you agree with that ?... Yes.  
30

PRESIDENT: Perhaps you should show the witness a copy of the -

MR FITZGERALD: I'd be happy to do that ?... Fruit Juices, Sauces -

The question is B and C ?...

PRESIDENT: On the top of page 2.

35 MR FITZGERALD: The question is B and C - those places that are producing vinegar and soup and sauces et cetera in fact involve significant change in a product to achieve that outcome ?... Yes.

Right. And you see that clause A, relating to Vegetable or Fruit Preservers is not in the same vein, or something quite different? How would you see that?... I just don't think the appearance - the end appearance of the product has anything to do with whether or not it has been preserved. We export broccoli overseas in boxes - it looks as though  
5 it has just come out of the paddock but there's modification of the gaseous environment in which it's packaged and you'd have to say that that is preservation, that you've gone to some lengths to change the internal metabolic processes that are going on within that broccoli, even though externally you can't tell any difference at all.

10 Have you ever actually seen an onion, particularly at Perfecta or any other plant within Tasmania, because there is a number of others, after harvest and at the point of sale?... Yes. Well, not at Perfecta I haven't, but I've seen plenty of onions in paddocks and I've seen them in the supermarkets. So, yes.

15 You've had that experience and you're aware that Perfecta's operation is principally an export market so it would obviously end up in a supermarket in some other country but you would have never seen the product actually from harvest to the point of supermarket in this instance?... Not at Perfecta.

20 Okay. In terms of your experience there and it's your own lay experience, I assume, how would you see that the product has changed from the point of harvest to the point that you actually receive it in - when you purchase it at the supermarket?... In some cases it may not have changed at all. If, however, I've seen a wet, soggy onion coming in from a paddock and know that it would be deteriorated inside a week, then I think the thing I'm buying in the supermarket is significantly different from that. But, again, I don't think change has got anything to do with the word preservation.  
25 Preservation in some definitions is the opposite. It's the maintenance of the harvest condition and along with that, the stabilising of produce against deterioration. They're what food technologists understand it to be. So, if you've pickled or canned or done something else, it's in the interest of saving that crop from one season to the next. That's what we mean by preservation. Again, I suppose from a lay person's point of  
30 view the product which you - which is harvested to go to Perfecta for distribution and the time you receive the product hasn't changed in any significant respect - is that what you're saying?... Its external appearance hasn't changed at all.

35 Right. Its state generally, has it changed?... Yes, it's lost moisture, it's respired, there's been breakdown of organic materials within the onion - you can't see that. It's generated heat, it's released carbon dioxide. If you didn't remove the water from the outside it would be showing the signs of condensation. It just so happens that the preservation activities mean that that's no longer visible.

40 Good. I just wanted to clarify one other aspect of the evidence in respect to, I think you distinguished between the farming and harvesting side - can you just - from the food technology point of view, can you just clarify that evidence?... I think I gave it in relation to field curing versus factory curing and said that food technologists regard the cut-off point, what we call post harvest, as when produce leaves the paddock. So from thereon in - and that may mean even putting it on a truck and carting it to a  
45 factory, we would worry about the temperature of the peas or how long it took them to get from the farm to the factory, that's within our jurisdiction. The activities that occur up until that point that you dig up the onions, that you leave them for three weeks in the paddock, that you come along and turn them over, that you cut the roots off underneath - any of those things, they - they are to do with preservation but they're in the arena of the farmer.

Right. What about the small farmer, the ones who are not contracted to companies like Perfecta - who simply harvest their product and put on a roadside stall and don't change it; how do you see that? Is there any preserving function involved there?... No.

5 Well, what's the difference with that situation compared to what we've seen at Perfecta?... Well you've got drying cabinets, chambers, you've got ventilation systems, you are undertaking activities intended to extend the shelf life of the produce, maintain its condition. The farmer who digs some onions out of his back garden and takes them down to a stall at the front road is not doing any of those things.

10 Doesn't the product change the same way as you've described before in terms of the metabolic state?... Yes. And there's no - there's nothing in place to prevent those processes going crazy, so the guy selling his produce at the farm gate has a product that is deteriorating much more quickly.

Okay, I have no further questions. Thank you very much for your evidence.

PRESIDENT: I think you may be still required, Ms McKean. Mr Baker.

15 MR BAKER: Perhaps if I just sort of take up Mr Fitzgerald's last - last question and I - and so that it's very, very clear for the record, if we go back to the - to the example which was both afforded by yourself and indeed by Mr Fitzgerald of the small farmer, or, indeed, of the backyard producer who simply takes - who harvests the product and puts it on display for sale at the corner or out the front gate as opposed to what we've  
20 seen at Perfecta this morning. What is the - what is the fundamental difference in that process?... Well I think it's simply that the small farmer is not doing anything at all to intervene in the normal processes of deterioration of the produce, so those processes are occurring uninterrupted. There's no refrigeration, there's no ventilation, there's no freezing, there's no anything to arrest those processes. So they are not preserving  
25 anything; change is happening all along and it's going through a natural cycle of changes all fruits and vegetables do post harvest. And the difference when you go into an operation such as Perfecta is that there are clearly operations, activities, carried out in place to prevent those changes or slow them down. And I think that the dehydration that's occurring to make sure product is stable before it's packed off, the  
30 ventilation to stop the sweating and the risk of microbial attack are all to do with extending shelf life and preserving product quality.

So long as I'm - just so long as I'm perfectly clear, the intervention by someone or by some process is - creates the preserving of the product?... Yes.

In whatever form as you've described it here this morning?... Yes.

35 Thank you. I have no further questions, Mr President.

PRESIDENT: All right, thank you, Mr Baker.

Thank you, very much, Ms McKean, you may step down.

**WITNESS WITHDREW**

MR FITZGERALD: Thanks.

40 PRESIDENT: Mr Baker.

MR BAKER: Well, sir, at this point in time that would conclude our submission and I would wait on a response from Mr Fitzgerald.

MR FITZGERALD: I'm able to give a response, I think, Mr President. A couple of unusual features of this case which I think need to be - need to be looked at - and not in terms of Ms McKean's evidence by any means, but in terms of interpretation of the award and whether in fact it has to be in terms of the set of circumstances.

5 Now as you're aware, Mr President, you have in a previous matter ratified an agreement with the Australian Workers Union which deal with - is current. In terms of the interpretation and how it would apply to Perfecta at this point in time, and that's all that can be assessed, in my submission, it is clear that the interpretation is a nonsense. The application to seek an interpretation where in terms of whether the  
10 Vegetable Preservers Award applies to Perfecta or not clearly at this point in time it doesn't because we have in place, and which is still current, an agreement ratified by this commission with an alternative union.

And even though I haven't with - haven't got with me the guidelines of the interpretation in this commission set by your predecessor, clearly state that it can  
15 only apply in respect to a set of circumstances which are currently applying.

Now that is - they are the set of circumstances which are currently applying and there is no doubt in my view that it's not possible to make a positive finding that the Vegetable Preservers Award applies because of the interpretation of the 'preserving' in the scope clause, because in respect of Perfecta that's overridden by an agreement  
20 registered pursuant to section 55.

So I just make that point at this time, and whilst that agreement exists and continues to exist it is, in my submission, impossible for this commission to make a favourable finding in favour of Mr Baker's application. If that's not accepted -

PRESIDENT: Are you saying that the - then that the application is worded in a  
25 manner which really cannot be properly interpreted?

MR FITZGERALD: There's nothing deficient about the application, in my submission, it's the effect of the application which needs to be assessed. Mr Baker is seeking to - for the commission to declare that the Food Preservers Award applies to this company. Now in terms of the agreement which is currently applying, and at all  
30 times whilst that agreement continues to apply, it may be a different situation in terms of .... the application if the agreement in fact expires, but whilst that agreement continues to apply, it is impossible for the commission to make such a finding. And the commission can only make it in terms of the prevailing circumstances. It can't make it in terms of what may or could apply. That's a hypothetical. It must apply - it  
35 must apply in respect to prevailing circumstances.

So it's a submission which I must admit I should have made some time earlier, but often with these cases as they unravel, the facts become clearer and the purpose of the application become clearer and that would be my submission in respect to the effect of this application. So -

40 PRESIDENT: Well just to put you at ease there somewhat, Mr Fitzgerald, even though you maybe should have raised it earlier, I had formed the view that the application had the potential if I were to find and declare that Perfecta Exports was a company that should be covered by the Vegetable Preservers Award of extending the potential coverage to a number of other onion processors -

45 MR FITZGERALD: Certainly.

PRESIDENT: - packers.

MR FITZGERALD: Yes.

PRESIDENT: And so I saw it in a much broader sense than -

MR FITZGERALD: Oh, I haven't lost sight of that at all -

PRESIDENT: - Perfecta.

MR FITZGERALD: - and as you're aware there are -

5 PRESIDENT: And on the second point, I don't see a problem in making a declaration on these circumstances even though it could not or may not affect the company directly because of the existence of the agreement.

MR FITZGERALD: Well I'd have to -

PRESIDENT: No, I know. Your submission is-

10 MR FITZGERALD: - I can't agree with that view.

PRESIDENT: - that you - that that can't be so, but I'm just telling you I - that's the way I would find.

MR FITZGERALD: I understand that but I can't agree with that view, and what that is effectively doing, Mr President, with respect, is that it is making an assessment of a situation which may - it doesn't apply at this time.

15

PRESIDENT: Well I think - well - just to interrupt you there - I think it does and it's simply the existence of the agreement which could have been made anyway, is hanging over the whole exercise but it doesn't change the circumstances or the facts.

MR FITZGERALD: Well I cannot agree with that view, Mr President.

20 PRESIDENT: All right. Okay.

MR FITZGERALD: Clearly, if in fact you make a finding or declaration that the award could apply, that is in terms of a set of hypothetical facts which don't apply at this time, the facts which apply at this time is that there is a current section 55 agreement in place. So I -

25 PRESIDENT: That doesn't do anything though to change the potential effect of the scope.

MR FITZGERALD: Well -

PRESIDENT: Anyway -

MR FITZGERALD: - you can only -

30 PRESIDENT: - we disagree.

MR FITZGERALD: And I don't think there's any point in trading - in trading views.

PRESIDENT: Argument - yes.

MR FITZGERALD: But certainly that's my very strong view.

PRESIDENT: Okay.

MR FITZGERALD: In terms of - in response to the evidence - and if that's the way the commission feels inclined, we certainly would indicate that it is not consistent in our view with Commissioner - President Koerbin's view in the earlier matter - I think it was T -

5 MR BAKER: Thirty.

MR FITZGERALD: - 30 - and there was another matter following that - thank you for that - which clearly states that it must be - the interpretation must be assessed in terms of circumstances which apply at that time. It's a bit like making a declaration that an award could apply to a company which is yet to come into existence but  
10 simply because they operate in this area. Now that, in my submission, is in similar circumstances. But I won't proceed any further with that. What I'd say in respect to the evidence is, firstly, I'd just make comments that it is of a specialised nature. We were aware that there was going to be some evidence of some kind but we're not quite sure.

15 It does have an impact for the industry as a whole in this state, although as you'd be aware, there are other members of the industry who are subject to agreements. It is complex, technical evidence which we will need to assess and if necessary call evidence of our own of a similar nature to rebut such evidence. It is - and I didn't pull it up at the point of inspection because I was unaware that this was happening this  
20 way until I got to the inspections - it is unusual that a witness - a prime witness in terms of a particular - from a technical point of view - in fact witnesses those inspections and then gives - gives evidence as to what the processes are.

PRESIDENT: I thought you were aware of

MR FITZGERALD: I was aware of the witness but I wasn't aware the witness had  
25 attended the inspections. In fact, at the inspections I was unaware of who the witness was until we got some way into the -

PRESIDENT: Yes, all right.

MR FITZGERALD: - I thought in fact she was from the Workplace Standards Authority.

30 PRESIDENT: Yes. All right.

MR FITZGERALD: And I think Mr Baker indicated that some time during the inspections. So that in itself is very unusual and I think the commission should take some regard for that. As to whether -

PRESIDENT: Yes, I've already noted that.

35 MR FITZGERALD: - as to whether the commission - as to whether the witness can give a completely objective view - I'm not suggesting that the witness is going to give an untruthful view at all, but clearly the evidence is based on the witness's experience at other organisations and quite clearly the first time she's seen this organisation.

40 So I'd have some concerns about that, and I would have - I would require some time to prepare some further submissions in respect to that, but more so I would require further time to prepare our case in response, particularly of a technical nature, and in my submission it would not be reasonable for us to have to respond now. We didn't know - we knew the basis of the evidence but we didn't know, despite -

45 PRESIDENT: No, look, Mr Fitzgerald, I have no problems with your application for an adjournment.

MR FITZGERALD: Okay. Well I'd simply leave it at that. I'd seek to adjourn it at a time to be fixed when it would be suitable for the parties and the commission of course to allow us to put our response.

PRESIDENT: Yes.

5 MR FITZGERALD: If it please.

PRESIDENT: All right. Anything from you on that, Mr Baker?

MR BAKER: Well there are a number of technical issues which Mr Fitzgerald has raised and I'm not too sure whether it's appropriate for me to sort of make comment on those today, particularly the reference to the T.30 - in relation to matter T.30 of a  
10 number of years ago - the exact date now escapes me - insofar as the -

PRESIDENT: I think it was 1985.

MR BAKER: - '85 - thank you very much, sir - any - insofar as his comments are in relation to a set of circumstances prevailing at any one time - and I take that on board and I need to sort of perhaps at an appropriate time respond to that. There are also  
15 the other issues which he's raised which I think are also worthy of comment, particularly the comments he made in respect of it applying to other industries. Perhaps that in fact negates the first point which he raised.

It is, as I've indicated, there are a number of -

PRESIDENT: Mr Fitzgerald is vigorously shaking his head on that -

20 MR FITZGERALD: Thank you. Well I'm glad that's recorded.

PRESIDENT: - Mr Baker, and I'm inclined to agree with him.

MR BAKER: Well, be that as it may, I would no doubt like the opportunity of presenting a proper submission in respect of that, and as I indicated insofar as those matters are concerned as well.

25 PRESIDENT: Yes.

MR BAKER: I mean, I just make the point insofar as the complex technical evidence was concerned this morning and the - and our witness accompanying us during those inspections, as was pointed out to you during the testimony which was rendered this morning, that she had not been briefed by the union this morning principally on the -  
30 as a result of the fact that neither my colleague beside me or myself had in fact seen the - seen the premises earlier. So it was impossible for us to provide any sort of form of personal observation in that respect. And I would have thought it was appropriate for her to accompany us in order to be able to present the testimony she did this morning.

35 I did indicate to Mr Fitzgerald, perhaps not clearly, because he and I have sort of been at arms lengths so as to speak as far as trying to get hold of one another in the last few days to try and coordinate this morning's proceedings, but if he feels that he's - if he feels that his position is - has been disadvantaged, I only take it on board and I look forward to his rebuttal of the evidence when he's prepared his submission.

40 PRESIDENT: And what about timing and place, Mr Baker, for the resumption?

MR BAKER: Well I would think we could - and I'm subject to any comments from Mr Fitzgerald - I presume we could - if there is to be a rebuttal, then I presume that that could be dealt with in Hobart.

5 MR FITZGERALD: I'm not really certain about that. I'd be a bit reluctant to give a view on that. It would really depend on the source of the evidence I'd suggest, so I'd probably be inclined -

PRESIDENT: All right.

MR FITZGERALD: - to say it should be here rather than Hobart, but -

PRESIDENT: Okay.

10 MR FITZGERALD: - I'm not fixed on that.

PRESIDENT: What sort of time period are you thinking of?

MR FITZGERALD: Well it's a question of - and the other thing which I indicated is there may be need to consult with other members of the industry, so - because of the potential effect on them - I think we'd be looking -

15 PRESIDENT: The applicant's - the application has been in since early October.

MR FITZGERALD: It has, yes, it has. I understand that, but at the same time I think the commission has got to allow a reasonable period in which - for us to get instruction - the industry get instructions and to consider the implications of it. You know, I'd submit that it would be necessary to in fact - could - given the detail and technical nature of the evidence that we'd be required to get transcript which could be made available to not only Mr Broadby but also the members of the industry. I think that's an essential requirement. So if that's the case I'd be looking at least two to three weeks - probably longer.

PRESIDENT: Mm. All right. Well, okay.

25 MR BAKER: I suppose given those comments, that we're really looking at '97.

PRESIDENT: Could well be.

MR BAKER: And I should also find out -

PRESIDENT: Into the next season.

MR BAKER: - that the application in one form or another has been before the commission since February of this year.

MR FITZGERALD: Well I don't - I'm not certain that that is correct. There's been a host of applications which have been dealt with in various ways by the commission and I wouldn't agree with that. This application in terms of this award and what has been revealed here today has really been before the commission for that length of period, and whether it has or hasn't I think the relevant fact really is that the parties should be allowed reasonable opportunity to be able to respond to such a case and, you know, quite clearly, given the nature of the evidence it's - there is a requirement to consult in the industry.

40 PRESIDENT: What are you like on the 18<sup>th</sup> and 19<sup>th</sup> of December - the week before Christmas?

MR FITZGERALD: I think I've kept it clear actually. The 19<sup>th</sup> is a problem.

**OFF THE RECORD**

PRESIDENT: Well thank you for that short discussion. We will adjourn this matter until 10:00am, Friday the 20<sup>th</sup>, at a place to be determined. Very good. Thank you.

5 **HEARING ADJOURNED**