

AUSCRIPT PTY LTD

ABN 76 082 664 220

Suite 25, Trafalgar Centre 108 Collins St HOBART Tas 7000

Tel:(03) 6224-8284 Fax:(03) 6224-8293



TRANSCRIPT OF PROCEEDINGS

O/N 0414

TASMANIAN INDUSTRIAL COMMISSION

PRESIDENT P.L. LEARY

DEPUTY PRESIDENT P.C. SHELLEY

COMMISSIONER J.P. McALPINE

T No 11349 of 2004

RUBBER TRADES AWARD

**Application pursuant to the provisions of
section 23(2)(b) of the Industrial Relations
Act 1984 by the National Union of Workers
(Central Branch) to vary the above
award to increase casual loading**

HOBART

2.15 PM, TUESDAY, 11 MAY 2004

PN1

MR P. RICHARDSON: I appear for the National Union of Workers.

PN2

MR I. PATERSON: I appear for the Australian Municipal, Administrative, Clerical and Services Union.

PN3

MR M. WATSON: I appear on behalf of the Tasmanian Chamber of Commerce and Industry.

PN4

THE PRESIDENT: Thank you. Could I just advise that notices were placed in the three major newspapers in Tasmania advising of this application. There has been no response to those advertisements. Mr Richardson?

PN5

MR RICHARDSON: Thank you, your Honour. Your Honour, before turning to the application, if I could seek the bench's indulgence to welcome Commissioner McAlpine to the Commission. The union was unable to attend the ceremonial hearing and we wish you well in your appointment, Commissioner.

PN6

COMMISSIONER McALPINE: Thank you.

PN7

MR RICHARDSON: Equally, we acknowledge that Commissioner Shelley has been appointed to the position of Deputy President and we congratulate her upon that appointment. If the Commission pleases.

PN8

DEPUTY PRESIDENT SHELLEY: Thank you.

PN9

MR RICHARDSON: Your Honour, this is an application to vary the Rubber Trades Award to increase the loading paid to employees who are engaged on a casual basis. The union's original application sought that the loading be increased to an amount of 25 per cent. The current provision in respect of the casual loading appears within clause 13(d) of the award and prescribes a loading of 15 per cent. Arising from discussions between the union and the TCCI, a consent position has been reached wherein the union seeks leave to amend its application to vary the casual loading by 5 per cent to a total of 20 per cent. I have provided to each of the bench members' associates a draft order reflecting that change.

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THE PRESIDENT: Yes, thank you. There is no objection to the amendment, I take it?

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MR WATSON: No, President.

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THE PRESIDENT: Thank you.

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MR RICHARDSON: Arising from that, your Honour, the union's submissions will be brief, in light of the position of consent. The proposition that the union

advances is that this award primarily applies to persons who would be engaged in those establishments that provide a range of retail services orientated around tyre fitting and tyre retreading. The corresponding Federal award is an award - well, there are in fact two awards in our submission. The first is the Rubber, Plastic and Cablemaking Industry Award of 1996. Historically that award has had a casual loading of 20 per cent, although in proceedings last year before the Federal Commission that was adjusted to 25 per cent in a manner consistent with the Full Bench of the Federal Commission's deliberations in the Metal Industry Award.

PN14

I say that that award has some historical relevance because up until the mid-1990s, that award was the Federal award that would apply to the occupations of tyre fitter and tyre retreader in the absence of a State award such as the Rubber Trades Award applying. However, as a consequence of award restructuring, the appropriate Federal award at this point is an award known as the Vehicle Industry Repair Service and Retail Award and that award contains a casual loading of 20 per cent. There are still some activities and some occupations of tyre fitting that are covered by the Rubber, Plastic and Cablemaking Industry Award, but the delineation that the Federal Commission has accepted is that those occupations are removed from a retail environment, so there is no retail activity occurring, no interaction with the public.

PN15

In our submission, the Rubber Trade Award, being an award of this jurisdiction, applies in circumstances where the Vehicle Industry Repair Service and Retail Award would not, and that it would be appropriate to have regard to the otherwise applicable Federal award in the Commission determining a casual rate. By seeking, by consent, an increase in the loading to 20 per cent the union in effect seeks to do no more than would otherwise be the case in the Federal award. That is not to say that there is nexus between either the Rubber Trades Award and the Vehicle Industry Award, or for that matter the Rubber Trade and the previously applying Rubber, Plastic and Cablemaking Award, however, we believe that as a submission of merit, regard should be had to what would otherwise apply to casual employees who are subject to different jurisdictions.

PN16

To some extent, therefore, we rely upon the reasoning of Commissioner Imlach in his decision of 21 June 2002 in T Number 9626 of 2001 where he considered and granted an application made by the AMWU to increase the casual loading in the State Metal Industry Award, and he had regard to the changes that had occurred in the corresponding award of the Australian Industrial Relations Commission.

PN17

We reiterate that the amended application is one of consent, so whilst there will be a cost to employers, it is a cost that has been canvassed and that they have indicated through the TCCI are able to absorb and we would seek the granting of the application in the form of the draft order. I hasten to add one other point. We did provide, before these proceedings, an exhibit to each of your associates, which, based upon the union's research, identifies the casual loadings currently applying to most of the private sector awards of this jurisdiction. The union accepts that there are a few deficiencies in that exhibit and perhaps a few errors, but makes this general proposition, that the overwhelming majority of private sector awards that provide for casual employment provide a loading that is either 20 per cent or greater, and that as such we say that by increasing or granting the

application, the Commission is doing no more than providing a loading that is reflected in most, but certainly not all, private sector awards as a minimum. If the Commission pleases.

PN18

THE PRESIDENT: But even making allowances for some errors that you refer to, 20 per cent seems to be the pretty general loading.

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MR RICHARDSON: Yes. I can take you to - to the extent that there are errors, perhaps - Mr Watson for instance has indicated that our reference to the loading in the Nursing Homes Award is wrong, and I accept that point.

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DEPUTY PRESIDENT SHELLEY: And the Cleaning and Property Services Award as well.

PN21

MR RICHARDSON: Yes. The other error that appears is that there was some reference to attachments where - for example in the Security Industry Award and the attachment isn't there, and that is because, if my memory serves me correctly, there are a multitude of different loadings depending on the hours that employees are working. But we would stand by the basic proposition that most awards applicable in the private sector of this jurisdiction are 20 per cent or greater. If the Bench pleases.

PN22

THE PRESIDENT: All right. Thank you, Mr Richardson. Mr Paterson?

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MR PATERSON: I have no submissions to make on this matter other than to endorse the consent.

PN24

THE PRESIDENT: Thank you. Mr Watson?

PN25

MR WATSON: Thank you, President. I can confirm that there have been discussions between Mr Richardson and myself and we do come here to advise you of a consent position in relation to this matter. We have considered the original application and we have considered the safety net of this particular award, and also given the submissions of Mr Richardson about the 20 per cent loading, which seems to be, certainly as far as this document is concerned, and I guess our general understanding of casual loadings, that 20 per cent is certainly the predominant casual loading in this jurisdiction.

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THE PRESIDENT: At this stage it would appear so.

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MR WATSON: So on that basis, President, we advise of consent to this particular application as the safety net for the Rubber Trades Award. If it pleases.

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THE PRESIDENT: You have seen the draft order and you agree with its terms?

PN29

MR WATSON: Yes.

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THE PRESIDENT: All right, thank you. Any questions?

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DEPUTY PRESIDENT SHELLEY: No.

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THE PRESIDENT: Any questions?

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COMMISSIONER McALPINE: No.

PN34

THE PRESIDENT: You have got a bonus by having a Full Bench. It is really a matter that could have been dealt with by a single member, but there are reasons for that and I won't bore you with the details of it. Nevertheless, we endorse the consent agreement between the parties and an order and decision will be issued in due course. The order will come into effect from the first pay period on or after today and will be in terms of the draft tendered. This matter is adjourned. Thank you.

ADJOURNED INDEFINITELY

[2.30pm]