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TRANSCRIPT OF PROCEEDINGS

O/N 8841

TASMANIAN INDUSTRIAL COMMISSION

COMMISSIONER P.C. SHELLEY

T No 10344 of 2002

CLAY AND MUD PRODUCTS AWARD

Application pursuant to the provisions of section 29(2)(b) of the Industrial Relations Act 1984 re (1) to delete the current rate of pay for a Grade 4 appearing in Part III Clause 8(a) - Wage Rates of the award and insert in lieu thereof the amount of \$431 and vary the relativity accordingly and (2) to insert a new subclause (f) - Minimum Wage - in terms of Schedule A

HOBART

10.30 AM, THURSDAY, 12 SEPTEMBER 2002

HEARING COMMENCED

[10.44am]

PN1

MR R. FLANAGAN: I appear for the Australian Workers Union Tasmania Branch.

PN2

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

PN3

THE COMMISSIONER: Thank you.

PN4

MR FLANAGAN: Commissioner, this application seeks to vary the Clay and Mud Products Award to give effect to the State minimum rate as determined by the State wage case of 2002 in accordance with section 35(1)(b) of the Act. Principle 7 establishes three criteria which the Commission must take into account. Firstly, that the comments within paragraph 17 are taken into account by the Commission; secondly, that the operative date of any variation cannot be retrospective, and thirdly, that a clause - a standard-format clause under the heading Minimum Rate is inserted into the award at the time that the rate is brought into line with that State minimum rate.

PN5

So that is what the application before you seeks to do. In accordance with the comments of the Commission in paragraph 17 of the reasons for decision a conference was convened by the Commission as presently constituted and that occurred, as the Commission will recall, on 1 August this year. Following that conference there were negotiations between the union and the TCCI and we have reached an agreement for a consent way forward in respect to this award. The effect of that agreement is that the award would be varied in two stages and what I would seek to do is to vary the application in the terms of two draft orders which I would seek to tender to the Commission.

PN6

THE COMMISSIONER: Yes. I have actually been thinking about what we do in the case of these two phased increases.

PN7

MR FLANAGAN: Yes.

PN8

THE COMMISSIONER: Are you simply relying upon the Commission to generate a new order, presumably next April or whenever, but initially, with the initial decision, what will be sent out is an order that will vary the award.

PN9

MR FLANAGAN: Yes.

PN10

THE COMMISSIONER: And then, the second one, how does that actually - what triggers the second order to appear?

PN11

MR FLANAGAN: The expectation, Commissioner, is that there would be a decision issued if the Commission approves the application and that decision would identify a first increase operative from 1 October with the schedule attached, and a second increase operative from 1 April with the schedule attached, and that is the type of approach which was adopted by a Full Bench of this Commission in considering the State wage case increase, not last year but the year before when it was divided into two separate phased-in arrangements to give effect - - -

PN12

THE COMMISSIONER: 2000, you are saying?

PN13

MR FLANAGAN: That is correct.

PN14

MR WATSON: 1998.

PN15

MR FLANAGAN: I beg your pardon, 1998 I am told. Time flies. It seemed more recent than that. But certainly that was the approach which was adopted by the Full Bench on that occasion. And in the State wage case of 2002 it makes it clear that the parties are to make a separate application to give effect to any variation which addresses this issue of the minimum rate.

PN16

Now, in this case we have made an application to do that, but the approach of the parties is to do it in two steps rather than the one. In our submission that does not require a separate application. There is nothing which restricts the Commission at this point in time identifying prospectively that there will be a variation on 1 April and 1 October. In fact, it is usually the situation that industry pursues prospective dates of variation so that their members can be informed ahead of time of the changes which are coming. That is a submission I have often heard from those representing an employer. So the approach which the union is proposing, which is consented to by the TCCI, is consistent with that view.

PN17

THE COMMISSIONER: Well, I will have a look at the format of the decisions flying from the State wage case of 1998 - - -

PN18

MR FLANAGAN: Yes.

PN19

THE COMMISSIONER: - - - and I will hear from Mr Watson as the way that this should be handled in terms of applications and orders.

PN20

MR FLANAGAN: I wonder if we could have the documents tendered marked, Commissioner.

PN21

THE COMMISSIONER: Yes. We will mark the one that deals with the first increase as A1 and the one that deals with the second stage as A2.

EXHIBIT #A1 DOCUMENT DEALING WITH FIRST INCREASE

EXHIBIT #A2 DOCUMENT DEALING WITH SECOND STAGE OF INCREASE

PN22

MR FLANAGAN: I also need to tender a draft copy of the rates of pay which apply as a consequence of the State wage case 2002.

PN23

THE COMMISSIONER: Thank you. Well, I will make that A3.

EXHIBIT #A3 DRAFT COPY OF RATES OF PAY WHICH APPLY AS A CONSEQUENCE OF THE STATE WAGE CASE 2002

PN24

MR FLANAGAN: If I could take the Commission firstly to A3 and to page 2 of that. On page 2, under the heading Clause 8 Wage Rates, Subclause (a) Adult Employees, grade 4 within the classification indicates a base rate relativity of 76 per cent, which leads to a weekly wage rate of \$423.10. That is a gap of \$8.30 below the State minimum wage of 431.40. So the parties have agreed that we will move the award in two steps, as identified in A1 and A2, and each one of those steps will be half of the \$8.30, therefore \$4.15.

PN25

So if I can take you to A1, you will see that all that A1 does is vary subclause (a) of clause 8 wage rates, and I need to amend A1. It says "2" as the number for wage rates. It should say "8". And if I could take you down to grade 4, which is the classification in issue, we have deleted the wage relativity for the first step. The safety net adjustment should say \$106 - I have written that in hand; the typed version said 108 - and that leads to a total figure of 427.25 and it is proposed that that variation take effect from 1 October this year.

PN26

If I can then take the Commission to A2, and again we need to amend A2 where it refers to clause 2 wage rates, or the heading Clause 2 Wage Rates, that should say Clause 8 Wage Rates. Again, if one goes to clause 4 you will see that the new relativity of 78 per cent has been inserted. Again the safety net adjustment there should read \$106, not the typed \$108, and that leads to the

minimum rate of 431.40. The second variation, which is comprehended by A2, is to insert the State minimum wage clause as determined by the State wage case of 2002, and you will see that the parties propose that that variation take effect from 1 April 2003.

PN27

So in terms of the requirements of the State wage case the parties have taken into account the fact that the Commission directed that a conference should occur. That has occurred. It directed the parties to take into account the consideration of the cost impact. That has been taken into account. It also directed the parties to take into account the award.

PN28

Now, this award regulates the employment of approximately 50 employees in the State of Tasmania who are predominantly engaged in the manufacturing of clay bricks. There is one operator in the north of the State and one operator in the south of the State. There are also some very small clay/ceramic manufacturers who make pots, as I understand it.

PN29

So it is limited in terms of its scope and who it impacts on, but as is the case with some of our awards, it is an award which is observed and paid, albeit a minimum rates award. So taking into account the nature of the award and the cost impact, the parties have come to the view that this represents a reasonable way forward, balancing those circumstances.

PN30

So that deals with the issues raised within the reasons for the decision. The second criteria is that the variation not be put before the matter is heard before the Commission. Both variations have a prospective application, therefore, in our submission, we meet that requirement. And the third criteria is that the standard minimum wage clause be inserted, and that is inserted by A2 at the time that the rate of 431.40 comes into place. So in the union's submission we satisfy the three criteria established by principle 7 of the wage-fixing principles.

PN31

The other relevant consideration, Commissioner, is that - as we have indicated at the beginning of the hearing - section 35(1)(b) provides the Commission with the authority to determine a minimum wage and consistent with that section of the Act the Full Bench have done that and this application is consistent with those requirements as identified by the Full Bench. And finally, section 36 requires the Commission to take into account the public interest.

PN32

The public interest on this occasion is made up of two components. First, obviously, the cost impact to industry, which has been minimised and done in a way that can be managed so as not to lead to any unnecessary burden on industry, but that is balanced with the need to recognise that the rates of pay prescribed by the award are currently below the minimum standard established at both a national and State level throughout the rest of the Commonwealth and

this application simply seeks to bring the minimum rate for people engaged as a grade 4 employee in line with that minimum.

PN33

So in those terms we say that the application does not offend the public interest when both of those factors are balanced. So in those circumstances, the parties, by consent, would seek that the Commission approve the application as amended by A1 and A2 in these proceedings. If it pleases the Commission.

PN34

THE COMMISSIONER: Thank you, Mr Flanagan. Mr Watson?

PN35

MR WATSON: Thank you, Commissioner. Yes, I can confirm that we do have consent in relation to the application: two instalments, and I don't intend to go over the ground that Mr Flanagan has covered. But as to the actual form of orders, I am really not fussed about it, but I think it does make a lot of sense that there be one order for the two instalments and as far as we are concerned I am quite happy with that approach. The only other comment I would make is that I think we should have consistency with the awards that went through yesterday, so whatever happens should be consistent with those two awards from yesterday's proceedings.

PN36

THE COMMISSIONER: Yes.

PN37

MR WATSON: We would submit to you, Commissioner, that the agreement or the consent position we put before you certainly doesn't offend the public interest and doesn't offend the Commission's wage-fixing principles. Just one comment about the order that has been tabled here signed by yourself yesterday.

PN38

THE COMMISSIONER: Don't tell me there is a problem with it.

PN39

MR WATSON: Yes, well, I think it needs an amendment because it actually contains the minimum wage clause. I just picked this up just then. You have got - still in this order from 1 August you have got 423.10 as the grade 4 rate, but it has actually got the minimum wage clause in it, so I think that order would need to be re-issued, Commissioner, and the minimum wage clause can't go in until 1 April.

PN40

THE COMMISSIONER: Yes, you are quite right. I apologise for that. It was done in a hurry - - -

PN41

MR WATSON: That is all right. Look, it is not a problem. I am just pointing it out.

PN42

THE COMMISSIONER: - - - to get it done in time for this morning's hearing and obviously it wasn't checked as thoroughly as it should have been.

PN43

MR WATSON: So that is fine as long as that minimum wage clause can come out and it goes in on 1 April 2003, we would be happy with the orders, Commissioner.

PN44

THE COMMISSIONER: Yes. Well, we will have to send out a correction order for yesterday's orders, and then we can move on to today's.

PN45

MR WATSON: Yes, fine. If it pleases.

PN46

THE COMMISSIONER: Do you need to add anything?

PN47

MR FLANAGAN: No, we have nothing further, thank you, Commissioner.

PN48

THE COMMISSIONER: Okay. Yes, I take your point, Mr Watson, that the form of orders should be consistent with those of yesterday and I have given it some thought overnight as to how we should do that, but I indicate to the parties that the award will be varied to reflect those two phased-in pay increases and the order and the decision will issue as soon as possible. That concludes this matter.

ADJOURNED INDEFINITELY

[11.01am]

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