

**TASMANIAN INDUSTRIAL COMMISSION**  
Industrial Relations Act 1984

T No. 6257 of 1996

**IN THE MATTER OF** an application by the  
Tasmanian Chamber of Commerce and  
Industry Limited for interpretation of the  
Abattoirs Award

re wage rates for apprentices

PRESIDENT

HOBART, 5 August 1996

**TRANSCRIPT OF PROCEEDINGS**

Unedited

PRESIDENT: Could I have appearances, please.

**MR T.J. EDWARDS:** If it please the commission, EDWARDS, T.J. Appearing with me, **J. BROWN**, for the Tasmanian Chamber of Commerce and Industry.

PRESIDENT: Thank you, Mr Edwards.

5 **MR J.E. SWALLOW:** SWALLOW, J.E., AMIEU.

PRESIDENT: Thanks, Mr Swallow.

**MR G. COOPER:** If the commission pleases, I appear on behalf of the Australian Workers' Union, Tasmanian Branch, COOPER, G.

PRESIDENT: Thank you, Mr Cooper.

10 **MR T. BENSON:** If the commission pleases, TONY BENSON. I appear on behalf of the Construction, Forestry, Mining and Energy Union, Tasmanian Branch.

PRESIDENT: Very good. Thank you, Mr Benson. All right, it's your application, Mr Edwards.

15 MR EDWARDS: Yes, it is, president. Thank you. President, this is an application pursuant to section 43 of the act for an interpretation of the Abattoirs Award. The matter in contention between the parties is the proper - I shouldn't use that term, should I - between, certainly the TCCI and the AMIEU, is the proper meaning and application to be given to the proviso which appears in Clause 8, Wage Rates, Division I, Apprentices of the Abattoirs Award. Specifically, that form of words reads:

20 *Provided always that employees employed as apprentices and who do not receive accredited off the job technical training shall be paid the relevant tradespersons' weekly wage rate as set out in Clause 8, Wage Rates.*

25 Mr President, the manner in which provisions such as this one are to be considered are, in our view, set out in the Reasons for Decision of the then president, Lloyd Koerbin, in matter T30 of 1985, which was the first application brought before this commission for interpretation. Those rules for interpretation - if I can use the word 'rules' have of course been somewhat amended by the passage of time, wherein there's the overriding doctrine of generous construction which the commission applies which enables the commission, or yourself specifically, to take into account the general  
30 structure of the award and the context of the award as a whole in interpreting matters such as this. We have no difficulty with that approach, sir.

We would be asking that the commission apply those general guidelines, T30, with that overriding contextual comment in your deliberations in this matter.

Briefly, sir, in pursuance of the first -

35 PRESIDENT: Have you ever had a look at the other two decisions of the former president, which went to interpretation and appeared to review the guidelines, add one or two points, and I'm specifically referring to T530 of 1986, which was a principle, I presume, designed to avoid the situation where - as was put by the then president, where the rules should not be applied to become absolute authority for construing a  
40 provision in such a way as to confer extreme advantage or disadvantage on an employee?

MR EDWARDS: I vaguely recall reading the provision, president. I don't have in my mind exactly what the matter was but I do vaguely recall that set of words.

PRESIDENT: Yes. Anyway, that was T530 of 1986.

5 MR EDWARDS: Again, from the point of view of the TCCI, we have no quarrel at all with that as a general statement. Interpretations shouldn't be used to confer extreme advantage or disadvantage on employees, or indeed on employers. I think that particular principle may get a run in this matter, president.

PRESIDENT: Well, I thought I should raise it.

10 MR EDWARDS: It's a very important one, in the context of this matter and, frankly, I am at some considerable disadvantage in trying to argue the exact construction of the form of words used in the proviso and what they really mean, given their normal English usage because it produces, potentially, a number of nonsensical outcomes depending on what interpretation one applies to any one of the words in the provision and frankly, sir, I'm glad I'm on this side of the podium and not sitting up there,  
15 because this one is certainly going to take the wisdom of Solomon and perhaps even the patience of Job to get to the bottom of it.

PRESIDENT: Yes. I'm not certain I've got either of those.

MR EDWARDS: I have the greatest confidence in you, sir. It's not to say you've got either of those qualities, sir, but I do have confidence.

20 In general pursuance of the first of the ground rules that the then president, Lloyd Koerbin, laid down in T30, we advise the commission that this application revolves around the engagement of, I think it is, five employees as apprentices by the Devonport Abattoir and those apprentices have been engaged pursuant to the provisions of the Vocational, Education and Training Act 1994, or at least partially in  
25 conformity with that act, would probably be a better way of saying it.

There certainly appears to me to have been some issues within the training authority, if I can use that short term, which haven't been complied with, which call into question whether or not these training agreements ought to have been approved or not. They are issues we have to take up elsewhere. They're not matters, I don't think -  
30 well, maybe not for this commission. It could well become an issue as part and parcel of the prosecution of this interpretation however, so I do briefly refer to it.

It revolves around whether or not there exists within this state a form of structured training for apprentice slaughtermen. It certainly appears to me that there was not and perhaps as at today, is not. The employer in this instance is importing a  
35 programme of structured training from the mainland which has been accredited by the National Training Board and therefore will be recognised by the Tasmanian authority. However, there then comes questions of accredited providers of that training.

40 I think you are somewhat familiar with the Vocational, Education and Training Act and probably very familiar with its forebears.

PRESIDENT: Yes. I'm more familiar with the previous legislation.

45 MR EDWARDS: Yes. Well, it has changed quite dramatically, as you'll appreciate, but it is still quite a complex piece of legislation because it establishes a number of committees which are required to do specific things and it appears to me, at least as an outsider looking in, that it hasn't done those things in this instance and I suppose we're not here to apportion blame, we're here to find out what the award means, but it

certainly makes it extraordinarily difficult for an employer, who in good faith, undertakes certain functions along with advice from the relevant statutory authority, only to latterly find out that that creates other problems which were not foreseen, or potentially not foreseen, maybe even confer extreme disadvantage on that employer, to  
5 revert back to the earlier discussion we were having.

As I'm advised, these apprentices were previously engaged under a traineeship which was in fact concluded and some credit has been provided to the trainees in the context of undertaking an apprenticeship. That transfer took place, as I'm advised, under the terms of the Working Nation Programme, but I don't know the precise details of how  
10 that occurred. What I do know is, that the training agreements were terminated as having been completed - that is the traineeships, and an apprenticeship commenced and that was facilitated, as I understand it, by the training authority.

PRESIDENT: Do you have dates and papers to substantiate that?

MR EDWARDS: I don't have them with me, president. I can undertake to provide  
15 them if that becomes material. I don't think there's any difference between the parties that there was a traineeship, but those traineeships were terminated as having been completed and that an apprenticeship was entered into. If anyone does have a quarrel with that, maybe it would be a good opportunity to say so and we'll have to make reasonable enquiries to get that information if it's going to be pivotal to the  
20 determination.

PRESIDENT: I just - I'm really not certain what direction your argument is going to take and that might change the need for material.

MR EDWARDS: Well I'm going to revert - almost immediately, I intend to revert to the form of words in the award and try and make some sense of them. I don't know  
25 how far that's going to take us, except into a maze of enormous confusion. If this issue that we're now talking about, which is briefly establishing the factual basis of the employment, becomes pivotal, I would need an opportunity to get that information and Mr Swallow may be able to -

PRESIDENT: Just as a preliminary, unless you can convince me otherwise, I really  
30 can't see what else these terms - these words can mean. I mean, they look pretty plain and it would be a matter of fact as to whether or not the individuals fell within or without it.

MR EDWARDS: Well, perhaps we need to explore those words a little further. I don't know that they're anywhere near as plain as you're obviously indicating.

35 PRESIDENT: Okay. Well -

MR EDWARDS: Certainly, I've got enormous trouble understanding them, and that's without confirming extreme advantage or disadvantage, except for disadvantages probably to me, as the advocate, trying to make some sense of them.

PRESIDENT: Yes. Okay. Look, I understand that.

40 MR EDWARDS: Can we revert to that question later, of the factual situation?

PRESIDENT: Yes, I think we might have to.

MR EDWARDS: And if it does become pivotal, then I'm going to need an opportunity to obtain those papers and I'd be seeking to get them from the training authority, I think, so there is no doubt about their authenticity.

The real issue to be considered, Mr President, is how the employer is to ascertain the correct rate of pay for apprentices in accordance with the provisions of Division I of Clause 8 of the award. From the beginning, I believe, from my point of view, I would say that this particular provision is a classic example of vague and imprecise drafting.  
5 It makes it inordinately difficult for employers in the field to apply the award with confidence and is in fact, what I would describe, as a classic underpinning of the award review process that's been set in train by the State Wage Case.

PRESIDENT: Hopefully, that will occur.

MR EDWARDS: It's certainly the intent of it. Let's hope the intent is brought into  
10 being. There has already been some difference, as I understand, what the intent was. Let's hope they're only teething difficulties and we can settle it down and do something positive.

PRESIDENT: I share your hope.

MR EDWARDS: Mr President, on its face, I agree with you, that the provision seems  
15 reasonably straightforward - that's the proviso. However, when one then tries to make actual sense of it in a factual situation, there are several issues that I think need to be considered. Firstly, the term apprentices, is not defined in the award, nor indeed is it defined in the Vocational, Education and Training Act, so it's an imprecise term but I would normally take it to mean someone who was under, what used to be called, an  
20 indenture of training. In broad, it would be an employee who is, if you like, tied to an employer for a specific period or to achieve certain competencies these days. It's not all time based and that there is a reciprocal right on the employer to provide training to that employee. That's sort of - in broad terms, how I would consider an apprentice, but that's not of course what the award necessarily means.

25 So, it's a broad term and it says: Employees employed as apprentices and who do not receive accredited - accredited by whom - off the job - does that mean, remote from the employer's establishment or could it be on the employer's establishment but remote from the work face? They are questions that are not answered by the award.

30 The term, 'technical training' isn't defined. There is no way in which the award enables us to determine what technical training is.

Then you read those set of words as a whole: 'accredited off the job training' - I'm not  
quite certain what that means in the context of the Vocational, Education and Training Act, if indeed that's relevant to this interpretation, but in any event - and, anyone who doesn't receive that training shall be paid the relevant tradesperson's  
35 weekly rate of wage.

The next question that arises, in our view, out of that set of words is, at what time one takes the measurement? Whether or not the training is being provided, has been provided, will be provided. There are a number of possible outcomes to that question. If one took a very, very narrow view, one could say that it is from minute one of  
40 employment, which means for virtually every apprentice engaged under the terms of this award they would be paid for the first week of their employment as a fully qualified tradesperson, until they do go off and receive some accredited off the job technical training.

45 Now, we submit, that that would be an example of the award being read in way to confer extreme advantage or disadvantage. Advantage to the employee and disadvantage to the employer and shouldn't therefore be supported by this commission and certainly not supported by us. Equally, I suppose, ridiculous interpretation could be, that the term of the indenture is for a designated period of time of four years, but providing the training is provided inside that four-year period

the provisions of the proviso are in fact met and that is really the only time which one could, with any great certainty, say that off the job accredited technical training has or has not been supplied during the apprenticeship.

5 Again, we suggest that that's probably conferring an extreme advantage or disadvantage and perhaps shouldn't be countenanced for that reason. Somewhere in the middle perhaps lays the answer. In the instant case, the first accredited off the job technical training that has been provided to these apprentices, was provided commencing the 6 July 1985 - very last minute research, sir.

PRESIDENT: That was most impressive.

10 MR EDWARDS: It was.

PRESIDENT: Sorry. Would you go through it again for me?

15 MR EDWARDS: Yes. The first accredited off the job training - technical training - and I'll come back to that - the first accredited off the job technical training that was provided to these employees, was by virtue of occupational, health and safety training which commenced on 6 July 1995. The accredited provider of that training in this instance was the Tasmanian Chamber of Commerce and Industries, through Paul **Jewel**, who is an accredited provider within the meaning of the Vocational, Education and Training Act and the TCCI OH & S course is an accredited course within the meaning of that act as well.

20 So, if we take the term, accredited, as applying to accreditation under the terms of the Vocational, Education and Training Act, there has been accredited off the job - certainly not conducted at the work face, but there has been accredited off the job training provided in July. Now, as I understand it, these apprentices were indentured in February of 1995. So, they were indentured in February, they had their first off the  
25 job accredited -

PRESIDENT: So, when you put quotes around the word, indentured -

MR EDWARDS: I'm not sure that the word, indentured, is a modern term, president. I think there is a contract of training- I think it's called.

PRESIDENT: So, there was a contract of training entered into?

30 MR EDWARDS: There is a contract of training in place.

PRESIDENT: Right. And that was?

MR EDWARDS: February.

PRESIDENT: February.

35 MR EDWARDS: Again, if that needs to be demonstrated in factual and precise terms, then I am more than happy to do that. I just don't have it with me today.

PRESIDENT: February 1995?

MR EDWARDS: Yes.

PRESIDENT: Well, I would have thought it was fairly significant.

MR EDWARDS: I'm quite prepared to obtain that information. I didn't think there was any difference between the parties on that point and this matter has been before the commission in other guises on a number of occasions.

PRESIDENT: Okay.

5 MR EDWARDS: But if it is an issue, then as I say, I'm more than prepared to obtain that information. It should be readily available through the - what I call the training authority. I don't know what their title is these days.

I'm merely put inverted commas around the word indentured, because that's the old-fashioned term which I still tend to use.

10 PRESIDENT: Yes. But it might explain what the contract of training was - what the arrangements for training were and that would get to what - whether or not it was accredited.

MR EDWARDS: Well, as I understand it, president, this gets quite a run through the Vocational, Education and Training Act.

15 PRESIDENT: I thought the contract had to specify the form of training.

MR EDWARDS: Well, that's exactly right, but does not. Arguably it does because it cannot be accepted by TASTA, which is the training - I'm trying to find the proper name for that body.

PRESIDENT: That'll do.

20 MR EDWARDS: TASTA, you understand that one, fine. That TASTA can't in fact approve a training agreement between an employer and an employee unless it contains all those issues which are set out in section 35, subsection (1) of the Vocational, Education and Training Act, which says:

25 *A training agreement must be in writing and contain provisions relating to the following matters - the accredited course covered by the agreement.*

30 And that's the very first one, and as I understand it, there is no accredited course, or there wasn't at that time in Tasmania an accredited course of training, for an apprentice slaughterman. Which is the vocation into which these particular persons have entered but there is, as part of the nationally accredited course, a requirement that they be given accredited training in occupational, health and safety. That's why I say, the form of words in the award are not that clear at all because the accreditation question poses a number of questions. Who is required to do the accreditation of the off the job technical training that's required by the award?

35 It appears to me that the training authority, through TASTA, have said, these training agreements comply with the law. We will bring them into force, which they have done. They have been brought into force. As I understand it, there is further an obligation on the training authority to accredit courses and there is a live application before the training authority at the moment to accredit a course which has been imported from the mainland, which in total, leads to a trade level outcome for apprentices and that  
40 incorporates a range of factors including occupational, health and safety and a range of other facets, which I did have a list of - which I can't quickly put my hands on - or, for example, as we understand it, the off-the-job training that has been provided to these apprentices includes Calculations A and Calculations B, Hygiene and Sanitation A, B and C, Industrial Communications A, B and C, Occupational Health and Safety A  
45 and B, Quality Assurance A and B, Cleaning and Sanitation A and B, Packaging A, which is all off-the-job training.

Now, the question arises what does the term in this award 'accredited training' refer to? That is all training, but is accredited by the Training Authority of Tasmania that has been provided to these apprentices, but does 'accredited off-the-job training' only mean that total package of training that adds up to a tradesman slaughterman. I don't  
5 know the answer to the question. Hopefully, you do, because that's really the question around which this interpretation turns, and I really don't know the answer to it. I am not being facetious when I say that.

And I again say that this is a provision which is to be understood by an employer in the field who doesn't have a detailed knowledge of awards - the Vocation Education and Training Act - and was being led by the officers of the department that administer  
10 that act who have brought into being with that employer these training agreements as complying with the law, and training has been provided.

PRESIDENT: Okay, well let's try and stick to what the words might lead us to.

MR EDWARDS: Well, as I say, there's a number of possible outcomes. Probably the  
15 only one that I would attack with any great surety would be that the outcome really is that providing within the term of the apprenticeship accredited off-the-job technical training is provided, then the provisions of this aspect of the award are met.

Now, as I said, that brings about an extreme advantage or disadvantage and, from our point of view, from the employer's point of view that's involved in this particular case  
20 is a ridiculous outcome where you could potentially have an apprentice in your employee for 4 years and only provide training in the last year.

Now, that makes no sense at all and it certainly does nothing to assist the young person who is trying to obtain skills to become a tradesperson and operate as a tradesperson.

25 PRESIDENT: Give me a bit of help here.

MR EDWARDS: Certainly.

PRESIDENT: Are these people all apprentice slaughtermen?

MR EDWARDS: Yes, sir.

30 PRESIDENT: If I can use - that's the award term - and they are all employed at the one time around about?

MR BROWN: No. Most of the school leavers left school, but two or three of them were there that were labours became slaughtermen. Let's say, half of them out of school came straight to us and the other half were labourers that became slaughtermen - our better skilled labourers.

35 MR EDWARDS: Were they indentured at the same time?

MR BROWN: At the same time.

MR EDWARDS: The 'indentures' were all executed at about the same, Mr President.

PRESIDENT: Right.

40 MR EDWARDS: Notwithstanding the source of the employees was different, as you have just heard Mr Brown explain.

PRESIDENT: Yes, yes. They were all contracted -

MR EDWARDS: Some were school leavers, but they were all contracted into a contract of training at the same time in the declared vocation of slaughterman.

PRESIDENT: It is a declared vocation?

MR EDWARDS: Well, certainly it was. As best I understand, all the declared  
5 vocations from the previous acts of the parliament have been imported into this act. To that extent, I would suggest that the answer to the question is 'Yes', but I am saying that from the point of view of someone that doesn't have a detailed knowledge of the internal workings of TASTRA or the Vocation Education and Training Act.

PRESIDENT: Yes, I sort of go back a few too many years

10 MR EDWARDS: As many as I do on this question.

PRESIDENT: - and slaughterman wasn't a proclaimed trade as it was called then.

MR EDWARDS: I wonder if some guidance might be taken from clause 10 of the award in that regard, Mr President, which is that clause -

PRESIDENT: Yes, I have -

15 MR EDWARDS: - which says:

*No person under the age of 20 years shall be permitted to work in any of the occupations in the trades that are proclaimed as apprenticeship trades under the Industrial and Commercial Training Act.*

PRESIDENT: That's right.

20 MR EDWARDS: Which I think is the immediate predecessor to the Vocation Education and Training Act, and then refers to two particular occupations - they being, slaughterman and sausage case maker, unless apprenticed in accordance with the act.

PRESIDENT: Yes. So there must have been a proclaimed occupation.

25 MR EDWARDS: Well, that's the presumption I have taken. Mr Swallow, I am sure will be able to assist us in that regard. I think this is an area that he is far closer to than I am or could ever be.

PRESIDENT: Yes. Okay.

30 MR EDWARDS: I think the realities are that whilst it may have been a proclaimed trade there has been no-one apprenticed as a slaughterman for many, many years, and I don't think that is an issue over which Mr Swallow and I have any difference, but I believe it is something that hasn't been addressed.

PRESIDENT: Well, it is not a question, really, of whether or not that had occurred, it's whether the slaughterman occupation is or was a proclaimed trade.

35 MR EDWARDS: Yes. I believe it is.

MR BROWN: It is.

MR EDWARDS: It is?

MR SWALLOW: No doubt.

MR EDWARDS: Okay, as I thought, Mr Swallow and myself are as one on that.

PRESIDENT: All right.

MR EDWARDS: You weren't taking the -

5 PRESIDENT: Yes, I was interested as to whether or not there was a proclaimed trade or occupation of slaughterman. There is, so - and there are presumably apprentices still under the law?

MR EDWARDS: I think they are called 'trainees', and I think a type of trainee is an apprentice, but I don't think that turns -

10 PRESIDENT: When did that occur?

MR EDWARDS: It's in the current the Vocation Education and Training Act. There is no definition of 'apprentice'. There is a definition of a:

*'Trainee' means a person undergoing a training course under a training agreement or vocation or placement agreement or:*

15 *(b) an apprenticeship.*

So they are a trainee under that form of words.

PRESIDENT: Yes, but there would be apprentices and trainees under a training agreement.

MR EDWARDS: Well, the definition of trainee says an apprenticeship.

20 PRESIDENT: It includes apprentice.

MR EDWARDS: Yes. So it is a trainee. I am not trying to be cute, I am just trying to understand it in the context of the act as opposed to the award, which is silent on the question.

PRESIDENT: But it still refers to an apprenticeship.

25 MR EDWARDS: As a trainee.

PRESIDENT: Yes. So, and no other reference in the act to what an apprentice is?

MR EDWARDS: I couldn't find other references in the act to 'apprentice' at all. The only one I could find was in section 3 which is the interpretation section.

30 PRESIDENT: But there is a distinction between an apprenticeship and a trainee agreement?

MR EDWARDS: An apprentice operates under a training agreement, as I would -

PRESIDENT: No, in the legislation.

MR EDWARDS: Well, no, I don't think there is. It talks about an apprenticeship, but an apprenticeship is just another form of a training agreement.

PRESIDENT: Yes, but there's another category under training agreement, which is trainee.

MR EDWARDS: No, under training agreement it just simply refers to an agreement or a contract between an employer and a trainee. Now that 'trainee' mentioned there is  
5 trainee (as defined) which includes an apprenticeship.

Now, I am not trying to be cute, but I really can't understand why that distinction exists, because they don't go on and then make any distinction between an apprenticeship and a traineeship, as best I can understand the Vocation Education and Training Act.

10 So I thought maybe the reason for the inclusion of 'apprenticeship' in section 3 was simply to pick up the old-fashioned reference in terminology to apprenticeship so that there was no mistake over what trainee meant. But they operate under a contract of training in exactly the same way as a trainee does.

15 In fact, as far as I can see, under the act there is no distinction between the two, save and except for ensuring that one is incorporated into the other in terms of section 3.

PRESIDENT: Okay. Well, we will just make a prima facie - we have come to a prima facie conclusion that an apprentice is a trainee, and then we get to the next bit about receiving accredited off-the-job technical training, and we can't really go too far with that until we find out what their contracts say.

20 MR EDWARDS: Perhaps not. From a global perspective than rather getting down to an .... of the contract, the first thing we think needs to be sorted out in the context of trying to understand this award is at what point that accredited off-the-job technical training has to be provided.

25 Is it from minute one, is it during the first year, is it during the second year or at any time.

PRESIDENT: Well, we can only establish that from the contract.

MR EDWARDS: Well, I think I can tell the commission that the contract will be most unhelpful in that regard. As I say, I am quite happy to obtain those, and I will.

PRESIDENT: So it doesn't refer to training?

30 MR EDWARDS: Not in specific terms. I don't think there is any detail in the contract of training as to what the training will be and when it is to be provided.

PRESIDENT: So the next question then is, what's been accredited.

35 MR EDWARDS: Well, that's a good question. Is it, what's been accredited under the general heading of tradesman/slaughterman or is it generally the question of what is accredited off-the-job training.

PRESIDENT: Surely for that apprentice.

MR EDWARDS: I'm not sure that that's what those form of words say.

PRESIDENT: I don't know what else it could mean. I don't know who else it could refer to.

MR EDWARDS: Well, I mean, there are a range of accredited off-the-job training courses that are available, including the one I mentioned, for example, of occupational health and safety which is a general accredited off-the-job training program.

PRESIDENT: Is that just for apprentices?

5 MR EDWARDS: It's for all people.

PRESIDENT: Yes.

MR EDWARDS: But it would include apprentices. I mean, apprentices aren't excluded from the general occupational health and safety -

PRESIDENT: No, but this is a provision that deals solely with apprentices.

10 MR EDWARDS: Well, I am not sure that that's what it says, but setting that aside just for a moment, even if it was as I understand it there is no detailed course of training available for an apprentice slaughterman in Tasmania.

PRESIDENT: Yes.

15 MR EDWARDS: But there is no doubt that off-the-job in the form of occupational health and safety has been provided, as well as other courses which I read out a moment ago.

PRESIDENT: I'm not trying to - I wouldn't try to denigrate the form of training that's available in those general areas, but if you're looking to impart an occupational skill by way of a training contract surely the training would have to be in the areas of skill.

20 MR EDWARDS: Well, as I understand the course of training that's been accredited by ANTRA - the national accreditation body - which, as I understand it, is virtually automatically accredit nation-wide once ANTRA has given its stamp, which is the course we're importing in Tasmania, there are components in that for occupational health and safety and a variety of other general training courses.

25 PRESIDENT: Yes, and that's the case right across the training spectrum.

MR EDWARDS: Which would be identical to what's been provided, because -

PRESIDENT: But there is nothing provided in skill terms.

MR EDWARDS: Not at this stage.

PRESIDENT: No.

30 MR EDWARDS: There is no requirement under the training agreement for there to be any, either.

PRESIDENT: No. no. Look I understand what you are saying -

MR EDWARDS: So all that can be provided is the general accredited off-the-job training, because there is no other available.

35 Now if we are going to interpret this not to apply extreme prejudice to one party or the other, I think we have got to take account of those sort of things. If we don't, there will be extreme prejudice on one or the other parties; and this is a very important question in the context of the future of these five people.

PRESIDENT: Well, why hasn't it arisen in other areas?

MR EDWARDS: Because there has been no apprentice slaughtermen in this state, simply put, and I, for one, am at an absolute loss to understand.

PRESIDENT: How long has the provision been in the award?

5 MR EDWARDS: Quite some considerable time. I vaguely recall when it went in - only  
vaguely - but, I mean, I am at a complete loss to understand how a government  
department could introduce a contract of training in the full knowledge that no  
training is available. It is just beyond my belief to understand that that could have  
10 occurred but, nevertheless, it has occurred, and those that sit on the various  
accreditation committees within the training authority should be asking themselves  
the question 'how it could occur'; but it has led us to this situation where an  
employee is facing extreme prejudice under a narrow interpretation of a form of words  
in an award because of that exercise.

15 Now, the employer has acted in good faith, and at some considerable expense to this  
employer, is importing to the state a nationally accredited training program for  
apprentice slaughtermen and is, therefore, addressing the problem, but the question  
remains, what is the situation so far as the award provision that applies over the last  
18 months.

PRESIDENT: What's the period of the contract of training?

20 MR EDWARDS: It's a 4-year training program, but the employer has been advised  
that because the majority of employees have completed a traineeship, some credit will  
be allowed for that, so the employer is required to accredit competence of the  
employees in various facets of their work. So it could, in fact, be a shorter period than  
4 years. It's a question of the designated competence. So, again, it is another grey  
25 area, if I could use that expression. But, it seems to me from what you have said thus  
far, Mr President, that this matter can't progress very far until such time as I do  
produce the contracts of training.

I hadn't considered that that would be all that necessary, but as you raise it in the  
way you have it seems to me that it will be necessary.

30 In that context, I am more than happy to go away and obtain those, not because I  
want to delay this but because I want it to be conducted properly. I mean, I am not  
convinced in any event that there is going to be anything in there that will assist.

PRESIDENT: Well, it is your case.

35 MR EDWARDS: Well, as you are aware, Mr President, just on that point, I mean,  
whilst that was a throw-away line, it is important to realise that this application comes  
before you out of a dispute matter notified by the AMIEU which is part-heard before  
Commissioner Watling, which seeks that the employer retrospectively pay to each of  
these employees amounts necessary to equate to -

PRESIDENT: The slaughterman rate.

40 MR EDWARDS: The slaughterman rate from Division A of the award compared to  
the apprentice rates that were paid. Now that's a very considerable sum of money.

PRESIDENT: I recall having dealt with similar cases when I was on the  
Apprenticeship Commission.

MR EDWARDS: You are far better placed than I then, Mr President. I haven't had any experience of these sort of cases at all, particularly a situation which would see, prima facie, from minute one of employment an apprentice being entitled under a narrow construction of these awards to the full tradesman's rate of pay, simply because he hasn't been trained. I mean, he has been employed to be trained. But for  
5 doing that you pay the full tradesperson's rate.

PRESIDENT: Yes.

MR EDWARDS: Now that is a nonsense outcome, frankly, and I don't think it is one that was intended, but intention has got nothing to do with this, except to the extent  
10 where you are able to determine what does or does not apply extreme prejudice one way or the other.

The award is silent on so many questions that it is very, very difficult to actually indicate precisely what this form of words means. I mean, like everyone else I know what it was intended to mean, but that is not helpful. The form of words there are  
15 saying, someone employed as an apprentice who does not received accredited off-the-job training shall be paid the relevant tradesperson's weekly rate of wage. Now, as a statement of fact, that could apply from minute one, or you could say take the entire contract of training period and say, provided the training is provided inside that period it's being provided in accordance with the apprenticeship, in which case the reference  
20 back to the tradesperson's rate would be a nullity because the training will have been provided.

Now, is it also the case, and this posed almost by way of a question, I am not sure I have got the answer, but the minute the employer provides one minute of accredited off-the-job training does that render the clause .... for all time, for the rest of the  
25 apprenticeship? The answer has to be 'Yes' under that form of words, because there has been applied accredited off-the-job technical training, or does it mean that that accredited off-the-job technical training has got to be applied in each and every week of employment, and if it is not the tradesperson's rate of pay applies.

Again I would suggest to you that that is another possible interpretation or meaning to  
30 be applied to this set of words.

There are three or four different outcomes to these set of words which you and I both described as seemingly innocuous and straightforward which, frankly, are not, because they are vague and there are a lot of terms in there that are not defined; and I  
35 went back to the definitions clause of this award to get some guidance on the accreditation side of things and could find none, so I am not sure who the accrediting body is.

Could it be that the employer accredits the training? Does that make it accredited, because it doesn't tell you here who can accredit the training, and it doesn't say training accredited under the Vocation Education and Training Act which, in my  
40 opinion, it should to make it a very clear award prescription.

So we say that providing some accredited off-the-job technical training has or will be provided during the term of the apprenticeship there is no requirement on the employer to make the payment required for a tradesperson under the award, because  
45 if during the period that the employee has been employed as an apprentice, which is the period in question here, they have been or will be provided with accredited off-the-job technical training.

Now, I would be the first to concede that that is pushing the form of words in the award to their limit, but it is a very possible interpretation and one that is quite rational on the words in the award.

Now that's not the outcome we wish to see out of this but before we can proceed to settle the dispute between the AMIEU and Devonport Abattoir we must first have an understanding of what this set of words means, because there is a difference between us over the meaning of the words, and certainly in the proceedings before  
5 Commissioner Watling we were unable to come to a conclusion as to exactly what the form of words does mean.

We did ask for some private guidance from Commissioner Watling as to his understanding but he wasn't prepared to give that, and probably rightly so, inasmuch as it was a matter that was likely to come here for interpretation.

10 So that's really where that dispute matter is at, and we are here to try and apply the rules of interpretation to this form of words and, from our point of view, we say a number of things.

15 Firstly, the employer has provide off-the-job technical training which is accredited by the Training Authority of Tasmania, or whatever their current title is, and that is the Occupation Health and Safety and other issues.

It's also relevant to say that these employees have previously undertaken an accredited traineeship which, again, is accredited by those that administer the Vocation Education and Training Act.

20 PRESIDENT: Could I just stop you there on that point? When you say an 'accredited traineeship' did that involve off-the-job technical training?

MR EDWARDS: Yes. In that regard, they undertook several courses of accredited off-the-job training for which they are receiving credit as part of their 'apprenticeship'. Once we have the accredited training for the apprenticeship imported into Tasmania, which I understand it's a matter that will go before the training authority or whatever  
25 they are called these days, next week for the accreditation of that course of training, which is already nationally accredited through ANTA, and I read out some of the issues that arose out of that.

30 There is also the off-the-job training that was provided way of occupational health and safety which is a very important issue inside any abattoir operation in light of current workers' compensation legislation, and the like, and good practice, anyway.

They have also undertaken a number of courses in fire safety and training including evacuation procedures, and the like, which again is an accredited course of training, which was provided by again the TCCI, as I understand it, through their accredited OH&S ....

35 So we say that there has been accredited off-the-job training provided and that on the form of words there that is sufficient to overcome the outcome that would provide extreme prejudice to the employer.

40 We also say that in any event, even if it had not, providing there was an intention to do that during the duration of the apprenticeship, that too is sufficient to meet the test of the award.

PRESIDENT: Intention on whose part?

MR EDWARDS: The employer's part to provide training during the term of the apprenticeship - accredited off-the-job technical training.

PRESIDENT: But it would virtually at the direction of the authority, wouldn't it?

MR EDWARDS: There is no direction from the authority. They have signed the contract of training and said go ahead, but there is nothing to do, there is no training.

PRESIDENT: I'm sorry, you have just been telling me there has been.

MR EDWARDS: That was in the apprenticeship. I've told you that there is accredited training but it is not the accredited training that is listed under the as set out  
5 precisely for this particular contract of training as an apprentice slaughterman because there is nothing listed under that.

What we are saying is, this doesn't limit itself to the training applicable to an apprentice slaughterman. What it does say is that it has got to be accredited off-the-  
10 job training, and that has been provided.

I am sorry, I don't mean to sound circuitous, but there is a fine line.

PRESIDENT: No. This gets us back to the need for the contract.

MR EDWARDS: Yes, and with that in mind I am more than happy to seek that with some degree of urgency, because I don't want to delay this. This matter has got to be  
15 addressed and addressed quickly.

But, with that in mind, I am not sure how much further I can take it this morning. If you wish to be satisfied on those issues, and it is right that you do, then I'm going to need to seek an adjournment to pursue those issues.

PRESIDENT: Yes. Do you think it appropriate for the other side to say anything  
20 before you conclude your submissions?

MR EDWARDS: Well, possibly not. I mean, if I were in their position I wouldn't seek to make my submission until I had heard the total submissions from the applicant, I must admit, to be perfectly frank, and I would be lying if I said otherwise. So I will leave it to their discretion, but I must admit in their position I wouldn't.

25 PRESIDENT: Yes, all right. Thanks, Mr Edwards.

MR EDWARDS: If it please the commission.

PRESIDENT: Gentlemen, you would prefer to wait until you hear -

MR SWALLOW: Wait until the extent of the submissions from the TCCI, sir.

MR COOPER: Yes, that's our view as well, Mr President.

30 PRESIDENT: Yes. All right. Well, I think - I mean, unless you tell me that you don't think it is relevant - I would like to see the contract of training. What do you say to that, Mr Swallow?

MR SWALLOW: I am not so sure there is a lot in it, but I am just testing my memory a little bit, sir.

35 PRESIDENT: Well, it might be better if we get all the facts first.

MR SWALLOW: I think that may assist. Probably that's the way to go.

PRESIDENT: Well -

MR EDWARDS: I would be inclined to that view, Mr President, and on that basis I would make a formal application for an adjournment. It should only take a few days, I would have thought at the most, for this particular body to dig these out. I'll get them, as I said, directly from the training authority.

5 PRESIDENT: It wouldn't be held by the employer?

MR EDWARDS: Well, they would, but I would like to get one to make sure it has got a stamp on it, and things like that, so that there is no question when they come here, and I also want to obtain the ones relevant to the traineeship. I think they could become relevant if credit is being given in the apprenticeship for training undertaken as part of the traineeship.

10 PRESIDENT: All right. Yes. Thank you. We will go off the record for a second, thanks.

### **OFF THE RECORD**

15 PRESIDENT: Thank you. Your application for an adjournment hasn't been opposed by the other side, Mr Edwards, so I presume it's acceptable and we have fixed the date of August the 20th at 1.30 to resume.

In the meantime, could you provide me with the copies and the parties with the copies so that we have an opportunity to examine them before the date?

MR EDWARDS: Are able to tie down the term 'the parties'?

20 PRESIDENT: Yes, all right.

MR EDWARDS: Those other persons appearing here, perhaps.

PRESIDENT: Okay. The persons who are parties to this particular application.

MR EDWARDS: Thank you, Mr President.

PRESIDENT: Which are the organisations which have an interest in the award.

25 MR EDWARDS: Employee and employer organisations?

PRESIDENT: I won't go into that one too far at this stage. I hope that other matter will solve itself.

MR EDWARDS: I believe it was. We will know at 2.15.

30 PRESIDENT: Very good. That allows me to depart this stage of the hearing with some confidence. Thank you.

### **HEARING ADJOURNED**