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TRANSCRIPT OF PROCEEDINGS

O/N 9486

TASMANIAN INDUSTRIAL COMMISSION

PRESIDENT P.L. LEARY

DEPUTY PRESIDENT R.J. WATLING

COMMISSIONER T.J. ABEY

T No 10817 of 2003

**BUILDING AND CONSTRUCTION INDUSTRY AWARD
DAIRY PROCESSING AWARD
FISH AQUACULTURE AND MARINE PRODUCTS AWARD
MEAT PROCESSING INDUSTRY AWARD
SHELLFISH INDUSTRY AWARD**

**Application pursuant to the provisions of
section 23(2)(b) of the Industrial Relations Act 1984
by the Australian Workers Union, Tasmania Branch
to vary the above awards re to increase the casual
loading and alter arrangements in relation to casual
employment**

HOBART

2.15 PM, THURSDAY, 12 JUNE 2003

HEARING COMMENCED

[2.15pm]

PN1

THE PRESIDENT: Good afternoon. Do I take it that we are dealing with these as a collective?

PN2

MS J. BORNSTEIN: Yes. It would be the application of the AWU, if the Commission pleases, that they be heard at the same time.

PN3

THE PRESIDENT: Any objection to that, Mr Watson?

PN4

MR M. WATSON: No, President.

PN5

THE PRESIDENT: All right, thank you. Well, we will deal with them all together. I will take appearances, please.

PN6

MS BORNSTEIN: If the Commission pleases, I seek leave to appear on behalf of the Australian Workers Union.

PN7

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

PN8

THE PRESIDENT: Thank you. Any objection to leave being granted?

PN9

MR WATSON: No, President.

PN10

THE PRESIDENT: Thank you. Leave is granted, Ms Bornstein.

PN11

MS BORNSTEIN: Now that leave is granted, if the Tribunal pleases, would it be convenient if Mr Flanagan appeared with me to avoid the possibility of being excluded?

PN12

THE PRESIDENT: That is fine. Just before we start, can I advise you - and I will make copies available. We have had a fax from the National Meat Association in respect to the Meat Processing Award advising they are unable to attend today but they are interested in any orders for progressing the matter - and we will keep them advised about that.

PN13

MS BORNSTEIN: If the Commission pleases, as I understand the purpose of today's listing, it is to give consideration to directions in relation to the progress of this matter. Could I indicate at the outset that I have had in the last few

minutes the advantage of some very preliminary discussions with my friend for the respondents and my instructor and co-appearer will also, as I understand it, be seeking to follow up on those preliminary discussions. We would therefore see that a threshold matter would be discussions as between the parties to explore whether there is any capacity for resolving these applications or, at the very least, to narrow the issues or even get some agreement as to the sort of material that might be able to be put by consent to this Commission.

PN14

To that end, I have indicated to my friend that we will make available to him in the near future copies of such Federal awards as may be relevant, or possibly relevant, to particular awards, the subject of this application. Beyond that, could I also foreshadow, if the Tribunal pleases, that the Australian Workers Union intends to make similar applications in respect of some five other State awards and, subject to confirmation, could I indicate that they are butter and cheese maker, farming and fruit-growing, plant nurseries, silviculture and afforestation, and the last being leather, canvas and sheet plastic fabrication.

PN15

THE PRESIDENT: So you are going to put in further applications in respect to those.

PN16

MS BORNSTEIN: Yes, and that will be done, if the Tribunal pleases, within the next few days; and, subject again to the Tribunal's wishes, we would seek that all the claims be heard together, although I would stress that there will be matters peculiar to each award that would, of course, be dealt with in relation to that award, but for convenience - - -

PN17

THE PRESIDENT: Yes, some specific issues.

PN18

MS BORNSTEIN: Yes, but there will also be global matters of perhaps general application and, in particular, it would be the intention to put evidence before the Tribunal as to changes in work patterns generally in industry.

PN19

THE PRESIDENT: In respect to each of the industries covered by the awards or - - -

PN20

MS BORNSTEIN: If that is possible, but certainly more broadly, depending on statistical information that is available and the information that might be also available from employers in these industries.

PN21

THE PRESIDENT: I don't know whether Mr Watson has a position on the other awards. I guess it depends whether there are other parties involved - and I won't put you on the spot as to whether they are going to be heard together, but that is obviously something we need to know before we lurch forth into this exercise.

PN22

MS BORNSTEIN: Subject to any points that the Tribunal might wish to clarify, the instructions I have obtained from the AWU in terms of the time-tabling of this matter, of course, subject to the availability of the Commission, is that the preferred listing would be in late October. The reason for that is that the union is otherwise quite busily engaged, as I am instructed, before this Commission and - - -

PN23

THE PRESIDENT: That far advanced, are they?

PN24

MS BORNSTEIN: - - - it would place some difficulties on their resources.

PN25

THE PRESIDENT: Yes. That is for the formal proceedings?

PN26

MS BORNSTEIN: The formal proceedings. Beyond that, I would anticipate that the union would need some time to gather the necessary evidence and, of course, the respondents, I would apprehend, would need adequate time to consider that and respond.

PN27

THE PRESIDENT: So what sort of time - I have done some rough outlines as to dates and things, but I looked at something much earlier than October, so I will just ignore those now. What sort of time are you looking at for your own preparation?

PN28

MS BORNSTEIN: It would seem that it might be convenient if a date for the filing and service of any material upon which the union relied was set in about mid-September. I suggested to my friend from the respondents that the union would be prepared to file, if it assisted them, an outline of submissions as well and that might also be of some assistance to the Tribunal.

PN29

THE PRESIDENT: Yes, that is what I would normally be asking for.

PN30

MS BORNSTEIN: Yes, and he, as I would understand, would be happy with that. So might I suggest that the applicant union file and serve an outline of submissions and any witness statements upon which it intends to rely by, say, mid-September?

PN31

THE PRESIDENT: Mid-September.

PN32

MS BORNSTEIN: Subject to hearing from the respondent, I would suggest three or four weeks later for them.

PN33

THE PRESIDENT: Yes.

PN34

MS BORNSTEIN: And a brief period, if convenient, for the union to reply to any matters that might be raised in the respondents' material.

PN35

THE PRESIDENT: How many days would you suggest? I don't want to not put enough days away at this stage. I would rather have too many that we don't need, maybe.

PN36

MS BORNSTEIN: Well, I did discuss this with my learned instructor and we agreed that probably four would be convenient. If the parties can agree on material to be put to the Tribunal, that could, of course, substantially reduce the amount of hearing time.

PN37

THE PRESIDENT: Yes. I would rather have four days put aside and perhaps only use one rather than put one aside and need four.

PN38

MS BORNSTEIN: Yes.

PN39

THE PRESIDENT: It is difficult enough to get three members together for one day let alone a run of four. So we will put four days aside towards the end of October and then, subject to what happens in the interim period, it may be that we don't need them all, but I would rather have them there just in case. All right. I was just going to ask, are any of the other unions who have an interest in these awards going to be putting anything or is it all going to be through the AWU?

PN40

MS BORNSTEIN: If the Tribunal pleases, I am instructed that there has been some preliminary discussions with some unions who have indicated an interest. The extent to which that interest is to be expressed is unclear at this stage. It may be that in the course of discussions between the applicant union and the respondent other unions might become involved and that can become clearer.

PN41

THE PRESIDENT: Yes. My only concern would be if they all wanted to put something specific. It may blow the time out but I think that with the lead time we have got you should have some indication prior to at least September as to whether that will happen or not.

PN42

MS BORNSTEIN: Yes.

PN43

THE PRESIDENT: Thank you. Mr Watson?

PN44

MR WATSON: Thanks, President. I suppose that we did have the benefit of some discussions prior to the hearing today and I did have a brief conversation

with Mr Flanagan on 29 May about the applications, but I suppose that it does bring forward the issue of the fact that I think with applications such as these, it is always advisable for the applicant to seek out the other respondents prior to making applications to the Commission, both to save time in just the general process and the Commission's time as well.

PN45

So that is just a general comment about the process that has led up to today. We do, as you are probably aware, have, I suppose a bit of an unofficial agreement with the TTLC at the moment that that actually happens and the onus is on the applicant to do those things. Now, I understand that obviously the AWU are not affiliated and this really doesn't have any bearing on the relationship that we do have with the AWU - particularly, with Mr Flanagan, I think it is pretty good. however, that point needs to be made.

PN46

The application, I suppose, is also a bit unusual because before today I thought it was for five awards and now possibly for 10 - or could be for 10. I suppose the issue for us, too, is that they do across a fairly diverse range of industries and we are going to need to consult with those industries separately, as to their particularly needs, how they view this particular application and what their views are about the way this provision could work if it did go into the award.

PN47

Now, I understand that the way things have been processed federally is that where this matter broadly has been determined, that it has been done on an award-by-award basis; so whilst I didn't have any problem with joining the matters for the purposes of today, it may be - and perhaps if I am able to keep my powder dry about this one for the moment - it may be that we would be suggesting that the matters can't be heard together; that because they are particularly industry awards that have different needs, then they may need to be separated out.

PN48

THE PRESIDENT: They could be heard concurrently but I think Ms Bornstein has also acknowledged that there can be specific evidence required for each particular industry, so we would have to deal with them individually to some degree anyway, but whether we can deal with them collectively for procedural purposes is something that maybe you can consider.

PN49

MR WATSON: President, in terms of the proposed time-frame, I must say that when we were walking in and I was informed that they were looking at late-October, I thought, well, probably that is a bit better than perhaps your time-frame that you suggested.

PN50

THE PRESIDENT: Much better, let me tell you.

PN51

MR WATSON: However, it doesn't, in my view, really give a lot of time to do all that we need to do and then come back to the Commission because, you

know, like the AWU have said to you, we have also got a lot of issues that we have got to deal with between now and then and, you know, whilst I am probably happy at the moment to look at that time-frame that has been suggested, I would also, if I can, reserve my right to perhaps put to you, after I have had a bit more time to think about this, and also after we have consulted some of these industries on an initial basis to alert them to the application, etcetera, etcetera - - -

PN52

THE PRESIDENT: I think perhaps the first step would be, though, a direction from the bench that there be some discussions between yourself and the AWU and Ms Bornstein or whoever is going to be doing the on-the-ground discussions so that there is some idea of just what is involved.

PN53

MR WATSON: Yes, I am happy with that, President, and perhaps after those discussions have taken place we can come back to you within a short time-frame to actually either have an agreement as to the time that we need or, in the absence of no agreement, actually put submissions to you formally as to how much time is required because I can see that, you know, I mean, you have also got the National Meat Association, The MBA, etcetera, who have interests in those awards as well, who may or may not have a different position to us - I am not sure.

PN54

THE PRESIDENT: You have had no discussions with those - - -

PN55

MR WATSON: I have had a phone conversation with the National Meat Association. I can't remember his name now.

PN56

THE PRESIDENT: Garry Johnson.

PN57

MR WATSON: That is him. But I haven't discussed it with the MBA at all. I mean, I understand that the onus probably is on us to do that - and we will do that. So I think probably at this stage my submission to you would be that we are happy to proceed with the discussions that we need to have but I would say to you that I think it would be perhaps a little bit premature at this stage to actually be looking at October until we actually know what we are looking and, particularly from our point of view, how industry is going to respond to these applications and the work that is going to be required, both in terms of getting the case together; either if it is going to be some levels of consent, well, maybe not such a bit deal, but if it is not going to be, I would suggest there is going to be a fair bit of work involved and we would just simply ask for the indulgence of the Commission, given the magnitude of this case, that we be given a fair opportunity to get that stuff together.

PN58

THE PRESIDENT: Are you in a position to have some discussion this afternoon, with Ms Bornstein, particularly, to get some idea of what is

proposed? The reason I am asking is, I don't want to leave it too long before we are given some indication, because dates are very difficult at the best of times, and trying to get three of us together for four days is nigh on impossible if we leave it for too long. But maybe if you have some discussion when we adjourn to get some idea of what is involved. Obviously you then have to go back to your members and the other employer organisations perhaps to find out what their position is, but it may be that we can put those days aside and, within a week or so, if you feel that that is not going to work, have some further discussions and we can have a look at it then.

PN59

MR WATSON: Yes.

PN60

THE PRESIDENT: I don't want to not put anything away at this stage.

PN61

MR WATSON: I am happy to do that, President, but I am really not going to know in definite terms until we have actually been to each of the industries.

PN62

THE PRESIDENT: Yes. I think it would also be helpful to hear from the union what it is proposing to put, which means that it is something that you have to respond to, which will possibly give you some indication of what you have got to do and what you need to put to your members.

PN63

MR WATSON: Yes, that is right. So I guess the other thing, too, about the industry approach is that it is probably not going to be possible for us to meet with all the industries together because they are going to have different needs and probably different views about it; so that is also going to take some time. So I am not here to make a submissions to you to delay this but I would suggest that if you want to list those matters for the end of October, or mid-October at this stage, given your comments, then, fine, but, you know, I would appreciate the opportunity to come back to you if we don't believe - - -

PN64

THE PRESIDENT: We won't list. We will put the days in reserve, and the parties are aware that they are there, for the proceeding. If after you have had some discussions - and let us not make it any longer than two weeks if we can for some indication, whether we need to keep those days or whether we need to look at something else. Once you tell us that, we will then issue some directions as to the exchange of documents and witness statements and those sorts of things.

PN65

MR WATSON: Yes.

PN66

THE PRESIDENT: Obviously, the reason for providing witness statements is so that unless you really want to cross-examine someone, you either accept the statements and we don't waste time having somebody sit in the box and read them to us.

PN67

MR WATSON: Yes, that is fine. Okay, well, look those comments of mine at this stage, President, is probably all I have to put. Thank you.

PN68

THE PRESIDENT: All right, thanks.

PN69

MS BORNSTEIN: If the Tribunal pleases, that course of action would be most convenient to the AWU. Could I just indicate to the Commission that the AWU is involved in a matter that is listed 15, 16 and 17 October by this Commission and, therefore, that is the reason for suggesting late-October.

PN70

THE PRESIDENT: All right.

PN71

MS BORNSTEIN: I won't ask the Commission's indulgence to avoid Melbourne Cup Day.

PN72

THE PRESIDENT: It doesn't make much difference down here. We do have a television set - if you have got the good tips. All right.

PN73

MR WATSON: President, just one matter. Just in relation to the dates, I will be interstate in that last week in October so, along with the Melbourne Cup, perhaps if could avoid that, if possible?

PN74

THE PRESIDENT: Okay, all right, I have noted that. What we will do is, we will look at four days towards the end of October taking into account Mr Flanagan's obligations mid-October and Mr Watson's at the end of the October. We will put those four days aside and, subject to hearing back from either or both of the parties in about two weeks as to a feel for where we are going, we will then issue some directions as to the exchange of outlines and witness statements, and so forth, and hopefully the dates in October will be suitable. If not, we will look at some other dates. Do we need to do anything else?

PN75

MR WATSON: I don't think so.

PN76

MS BORNSTEIN: If the Tribunal pleases.

PN77

THE PRESIDENT: On that basis, we will adjourn the proceedings and await the advice of the parties. Thank you.

ADJOURNED INDEFINITELY

[2.40pm]