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## **TRANSCRIPT OF PROCEEDINGS**

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O/N 1408

### **TASMANIAN INDUSTRIAL COMMISSION**

#### **COMMISSIONER T.J. ABEY**

**T No 10742 of 2003**

**T No 10764 of 2003**

**T No 10782 of 2003**

#### **METALLIFEROUS MINING AND PROCESSING AWARD**

**Applications pursuant to the provisions of  
section 23(2)(b) of the Industrial Relations Act 1984  
by the Australian Workers Union, Australian Mines and  
Metals Association (Incorporated) and Automotive, Food,  
Metals, Engineering, Printing and Kindred Industries  
Union to vary the above award re the inclusion of  
further provision**

**HOBART**

**9.30 AM, FRIDAY, 26 NOVEMBER 2004**

**Continued from 4.10.04**

**This transcript was prepared from tapes recorded  
by the Tasmanian Industrial Commission**

PN262

THE COMMISSIONER: Yes, I should indicate that I have correspondence from Mr Chris Hinds, State President of the CFMEU. In essence, the correspondence indicates an intention to - or seek leave to intervene in these proceedings. I suspect that a view of - be granted in the interest in the award. Mr Hinds said that he is unable to be here today and foreshadowed that if the matter wasn't adjourned that he would like to have his application for an intervention heard at a later date. I have discussed the matter with Mr Hinds and he is quite content to allow these proceedings to continue today with a view of any application that he wished to pursue will be made at a later date. Mr Flanagan or Mr FitzGerald? Or who do I look to?

PN263

MR FITZGERALD: Mr Flanagan, I think.

PN264

MR FLANAGAN: Perhaps, if I might, Commissioner. Commissioner, on the last occasion the parties were before you on 4 October arising from the conference, the parties reached agreement in principle on the outstanding issues and indicated that we would go away and draft a document to reflect those understandings. Mr Mays - and we thank him and the CEPU for their efforts - has done that and forwarded by email a copy of the proposed new award to myself, Mr FitzGerald, Mr Hanisch and I understand the Commission. For the sake of certainty, I would just seek to tender a copy of the proposed new award, and I would seek to have that marked Commissioner.

PN265

THE COMMISSIONER: Yes, we will mark that AWU4 unless I correct it.

**EXHIBIT #AWU4 COPY OF PROPOSED NEW AWARD**

PN266

MR FLANAGAN: Now, in terms of AWU4, firstly, the parties would like the opportunity to thoroughly proof read the draft and with that in mind we would simply seek a period of 14 days to contact the Commission if we believe there are any errors or omissions contained in the document and failing contact from the parties we simply ask that the Commission make the award in terms of AWU4 as amended, and when I say as amended there are a couple of issues which I need to take to the Commission's attention in relation to the AWU4, and the first, Commissioner, is award interest and parties bound on page 2.

PN267

THE COMMISSIONER: Yes.

PN268

MR FLANAGAN: The format which is contained within AWU4 actually reflects an earlier formatting structure. The structure which is currently contained

within the award is the current structure and in lieu of what is contained in clause 5 of this award, we would ask that the current award interest and parties bound as it presently appears in the award continue to apply as a part of the making of the award.

PN269

THE COMMISSIONER: Yes.

PN270

MR FLANAGAN: The next issue which I need to draw to the Commission's attention appears in relation to the classification structure which is at page 4 of the document and it is headed up Mining Employees. Do you have that, Commissioner?

PN271

THE COMMISSIONER: Just getting there. Yes.

PN272

MR FLANAGAN: What applies from thereon is definitions which relate to the classification structure which commences on page 18. In both the definition section and subsequently from page 18 on, the draft has omitted the surface mining classification structures which were identified in AWU3 on the previous - well, on 4 October when the parties were before you. I would simply indicate that those surface classifications should have continued to appear, that is, the surface mining classifications should have continued to appear in the draft but don't, so the union will forward to you the material in relation to that.

PN273

Specifically, the AWU3 had it structured that the surface operations in terms of mining or types of mining open cut and then went through to mine employee grade 1, grade 2, grade 3, grade 4, and grade - the four grades. It identified the rates of pay, there is no intention to walk away from those rates of pay, which was for grade 1, 528.50, for grade 2, 550.90, for grade 3, 593.10, and for grade 4, 602.70, but it is simply an omission, so we will provide you with an amendment, if you like, to - - -

PN274

THE COMMISSIONER: So is clause 8 incorrect too, is it?

PN275

MR FLANAGAN: Which clause, I beg your pardon?

PN276

THE COMMISSIONER: Clause 8, Wages and Related Matters.

PN277

MR FLANAGAN: Yes, that is - - -

PN278

THE COMMISSIONER: That is the - it has got all processing.

PN279

MR FLANAGAN: Yes, unfortunately, it doesn't pick up the surface. What you have got, is you have got processing which is actually the mill operations, if I can describe it in that way.

PN280

THE COMMISSIONER: Yes.

PN281

MR FLANAGAN: And the mill operations relate to both underground and open-cut mining.

PN282

THE COMMISSIONER: Okay.

PN283

MR FLANAGAN: But the actual surface mining or open-cut mining structure and classifications don't appear and they should.

PN284

THE COMMISSIONER: Right.

PN285

MR FLANAGAN: In terms of classification structure - in terms of production - and I think also trades but Mr Hanisch can talk on that - the AWU and Australian Mines and Metals have agreed that if either of us identify concerns with the implementation of the new structure and believe as a consequence that structure is not appropriate, we reserve the right to make application to vary the award to reflect our concerns.

PN286

THE COMMISSIONER: Yes.

PN287

MR FLANAGAN: The next issue which arises out of the draft appears on page 22 under the heading Allowances and in particular the first aid allowance of \$1 per hour. In the negotiations in conference before the Commission on 4 October, the parties agreed to remove that allowance and I would simply ask that the Commission delete it from the proposed award.

PN288

THE COMMISSIONER: Yes.

PN289

MR FLANAGAN: Other than that, from the perusal of the document, it appears to reflect the intention of the parties. Now, Commissioner, this is a first award and it is an award which has been some 15 years in the making. I think it is probably the longest making award exercise before the Commission.

PN290

THE COMMISSIONER: It could be described as an epic journey, Mr Flanagan.

PN291

MR FLANAGAN: Yes, an epic journey, and there have been reasons for that. For a long time, as you would be aware, it was the position of the unions that the Pasmaico Rosebery mining award in fact was an industry award and the renewed focus and attention of the parties over the last 18 months to two years has really been as a consequence of the direction of the president following her determination that the Pasmaico Rosebery mining award was not an industry award as contended by all unions for a number of years.

PN292

The purpose of this award is to put into place - having regard for those comments - for the first time, employment arrangements and minimum rates of pay which will apply to those employers and employees not party to enterprise agreements, industrial agreements, certified agreements, or AWAs, but the award will also act as a benchmark, if you like, a reference point for the operation of no disadvantage test in both the State and Federal jurisdictions.

PN293

So the making of the award takes with it a serious and significant step for employees that would be otherwise unregulated. In those circumstances, the union submits that it is clearly in the public interest that the award be made, that it is not in the public interest that employees continue to operate in a situation where they are not guaranteed minimum conditions and rates of pay through the industrial processes.

PN294

The award is by consent of the parties and therefore the Commission is being asked to approve the award in terms of AWU4 as discussed previously in the application. It provides for comprehensive regulation of employment conditions. It reflects the standards of the Commission in most respects, and I say in most respects because the casual loading continues to reflect 20 per cent and we don't accept that that is necessarily the contemporary standard but I would indicate that it is likely that an application to vary that loading will occur at a point in time in the future, but that we were not prepared to have that issue delay the making of the award. So in those circumstances the union would simply seek with the consent of the parties that the award be made in terms of AWU4.

PN295

THE COMMISSIONER: Thank you, Mr Flanagan. Mr Hanisch, what is your position?

PN296

MR HANISCH: Yes, thank you, if the Commission pleases. I am actually a little bit confused. I seem to have the wrong document, all the numbers are all out of wack and I have here - and I am not sure if your copy says the same - but on my heading it has got page 1 of 61, but going through the title it refers to 120 pages, although I only have 61 of them.

PN297

THE COMMISSIONER: Mine is 1 of 61.

PN298

MR FITZGERALD: So is mine.

PN299

MR HANISCH: What about in the titles, does it refer to 120 pages?

PN300

MR FITZGERALD: No.

PN301

MR HANISCH: Well, I don't know what has happened there but for some reason I - I am even having difficulty following what has happened here and Ken Mays sent me the same email as he sent the Commission, so it may have been something in my computer that is not quite right. I am just trying to go over some of the issues that the AMWU did have initially in regards to the part-time provisions and so forth that, you know, having heard what Robert Flanagan said about having a 14 day period, I would obviously like to utilise that period just to ensure that our provisions are what we had discussed and agreed to in this forum. Other than that, on the face value of it, I think the AMWU will be happy to certify this agreement on the basis of the 14 day period.

PN302

THE COMMISSIONER: Yes.

PN303

MR HANISCH: On the basis that, as Robert said, it is, you know, of benefit to the community as well as the mining industry. This award has been - well, I have been in the process for almost two years now, I am happy to see it come to where it has and subject to the 14 day period, we are quite happy for it to be certified. If the Commission pleases.

PN304

THE COMMISSIONER: Mr Hanisch, I have an email from Mr Mays indicating that you will in fact appear for him today. Can you confirm that is your position?

PN305

MR HANISCH: That is my position.

PN306

THE COMMISSIONER: Yes, thank you. Mr FitzGerald?

PN307

MR FITZGERALD: Thank you, Commissioner, I will be brief. It is indeed the year of the mining - metalliferous mining and processing award and, you know, I am certainly pleased also to get to this point. It has been somewhat of a time-consuming process and I think just to add to what Mr Flanagan said, certainly I don't think there has been lack of faith by the parties it has just been circumstantial and the industry is a busy industry and Mr Flanagan and myself have been otherwise engaged and often it gets put back but we are certainly pleased to be able to say that it is before you today.

PN308

We would also agree that the 14 day time period - 14 day review period, if I can call it that, is a sensible idea and we would like to go through that, and one area which we would like to discuss with Mr Flanagan, it was something which, sort

of, came up at the last minute this morning, was the open-pit classifications and I just need to have some further discussion about that with Mr Flanagan, one small issue, but I think we can have - come back with agreed classifications.

PN309

The only other change which I had an issue with - and I am not sure whether Mr Flanagan missed it or not - was - and I think it was agreed on the last occasion - was that the mining industry allowance in clause - of clause 4, Part, whatever it is - it is on page 23 - in my view should be, you know, included in the rates of pay and I think that was the agreement on the last occasion. It doesn't appear - it appears that it is an additional allowance. I just wonder whether we can seek some clarification on that but certainly it was my view that that should be included in the rates of pay and not be paid as an additional allowance.

PN310

Other than that, I would certainly agree with Mr Flanagan's submission that it is a first award, it is a minimum rates award, which provides a basis for no disadvantage in various agreements which can be made. I have had consultation with my members in October and they have endorsed the document. There weren't too many issues there of concern, so I, like Mr Flanagan and Mr Hanisch, am happy to proceed to indicate our consent subject to the 14 day time period of review and also subject to the, I suppose, errors and omissions and also review if the award isn't working, but we feel it will. So I will just seek some clarification in respect to that matter.

PN311

THE COMMISSIONER: Thanks, Mr FitzGerald. Yes?

PN312

MR FLANAGAN: Thank you, Commissioner. Look, in terms of what has been put, there is certainly - the agreement was that the rates of pay at the base trade level would reflect a \$15.30 increment, if you like, which for want of a better term, would be defined as an industry allowance. So it would need to be checked but I believe the \$15.30 margin, if you like, has been included in all of the rates. When I say, the base trade, the situation that we had was that we would accept that the rates included within all of them, \$15.30 as an industry allowance. So whilst it should be expressed separately, there is no recognition, if you like, in the clause that the \$15.30 has already been incorporated into the rates that appear within the document.

PN313

So I think that if the clause were simply amended to say words to the effect that this allowance is incorporated in the wages contained within Part III, clause 1, that would deal with it. It is not an intention of the parties to double dip as it were to put the \$15.30 in a consolidated rate and then to have the industry allowance of \$15.30 apply on top of that.

PN314

THE COMMISSIONER: Yes. Part III, clause 1. Does that answer your question, Mr FitzGerald?

PN315

MR FITZGERALD: That answered my question. If it can be amended in those terms and if Mr Flanagan seems happy with that. I assume Mr Hanisch is as well?

PN316

MR HANISCH: If the Commission pleases, I would have to confer with Ken Mays on this issue because I am unsure of what has actually happened here, but, yes, obviously we are not into double dipping. If that is what has happened, certainly be fixed up to the way that Bill has suggested.

PN317

THE COMMISSIONER: Right. That can be part of the 14 day exercise.

PN318

MR HANISCH: Yes.

PN319

THE COMMISSIONER: Can you just go off the record for a moment?

**OFF THE RECORD**

□

**RESUMED**

□

PN320

THE COMMISSIONER: Having heard the parties, I am satisfied that this application is consistent with the wage fixing principles and it is certainly consistent with the public interest requirements of the Act. I am firmly of the view that it is contrary to the public interest to have a group of employees not subject to any industrial regulation and this application will overcome that position. I congratulate the parties on reaching this position. It has been a long road but we are now pretty close to the end of it. As I say, this application will be approved in transcript today. The parties will be allowed a period of 14 days to correct any errors and omissions and drafting changes they may wish to make. The award will apply from 1 January 2005. Is there anything further for the record?

PN321

MR FLANAGAN: We would simply thank the Commission for its assistance during the conference in helping the parties overcome their difficulties and facilitating the making of the award. Thank you, Commissioner.

PN322

THE COMMISSIONER: Thank you, Mr Flanagan.

PN323

MR HANISCH: Yes, likewise from the AMWUs point of view and I think I can fairly say from the ETUs point of view we would like to thank the Commission for their assistance during this process and I thank all the parties for getting to the position that we have.

PN324

THE COMMISSIONER: Thank you, Mr Hanisch.

PN325

MR FITZGERALD: And similarly also from the employers' side, we also would like to thank the Commission for its persistence. I think you have certainly facilitated and caused the parties to gain a bit more momentum, it was drifting along a bit and we certainly appreciate your role there.

PN326

THE COMMISSIONER: Thank you. Well, on that basis, I will wait the 14 days before I issue a formal decision, but I am issuing a decision in transcript that the award is effectively made as of this date with an operative date of 1 January 2005. The Commission stands adjourned.

**ADJOURNED INDEFINITELY**

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LIST OF WITNESSES, EXHIBITS AND MFIs

**EXHIBIT #AWU4 COPY OF PROPOSED NEW AWARD .....PN266**