



*Tasmanian Industrial Commission*  
Industrial Relations Act 1984

T No. **7984 of 1998**

**IN THE MATTER OF** an application by the Australian Mines and Metals Association (Incorporated) to vary the Metalliferous Mining and Processing Award

Re: variation of award

T No. **9482 of 2001**

**IN THE MATTER OF** an application by the Australian Mines and Metals Association (Incorporated) to vary the Metalliferous Mining and Processing Award

Re: Variation of award

COMMISSIONER IMLACH

HOBART, 23 April 2001  
Continued from 28 April 1999

**TRANSCRIPT OF PROCEEDINGS**

Unedited

**(WOULD PARTIES PLEASE READ THIS TRANSCRIPT CAREFULLY)**  
**(ANY QUERIES SHOULD BE DIRECTED TO THE COMMISSION WITHIN 14 DAYS)**

**HEARING RECOMMENCED 10.37am**

COMMISSIONER: I'll take appearances.

**MR FITZGERALD:** I appear on behalf of Australian Mines and Metals Association Incorporation, FITZGERALD W.J., and with me **MR I. MASSON** and **MR D. BUSCALL**.

COMMISSIONER: Some - what's the word - salubrious, or whatever.

**MR FLANAGAN:** Not necessarily the word we'd use, commissioner. If it pleases the commission, FLANAGAN R., for the Australian Workers' Union, Tasmania Branch and with me is **MR WAKEFIELD**.

COMMISSIONER: Thanks, Mr Flanagan. Yes, Mr FitzGerald?

**MR FITZGERALD:** Yes, commissioner. I note that there's been some correspondence from the commission to the parties about today's hearing and that includes, for the want of a better title, the CEPU and the AMWU. I know that's the abbreviated name of the two unions and they are obviously not here today. We wouldn't want that fact to hold up proceedings. They've been notified properly. They have obviously known the hearing was on because they've communicated with you and you've indicated that the matter would proceed and it's good that the AWU have appeared here today and I think we should progress it.

I appear in respect of both the applications. They're both our applications. I think, at some stage, commissioner, we would be seeking leave to withdraw the earlier application and replace it with the later application, the one made in April this year.

COMMISSIONER: It might be a good idea if we did that now.

**MR FITZGERALD:** If I could seek leave to do that, commissioner.

COMMISSIONER: Yes. What do you say?

**MR FLANAGAN:** Could I seek some clarification about what was proposed there?

COMMISSIONER: What was?

**MR FLANAGAN:** What was proposed by Mr FitzGerald.

COMMISSIONER: It's very much the same as today's matter, Mr Flanagan. It was a draft?

**MR FLANAGAN:** Which application was it he was seeking to withdraw?

COMMISSIONER: T7984.

MR FLANAGAN: We'd object to that being withdrawn, commissioner. The situation with that application was that at the time the application was made there was subsequently an application by the CFMEU to establish award interest and the transcript to those proceedings which  
5 formed part of 7984, as I understood it, there were certain arrangements or understandings entered into. In particular, it was recognised that the TEMCO Award and the Goliath Award and the Pasminco (Hobart Smelter) Award would not be within the purview or scope of the application as it then existed.

10 That concern, if the Australian Mines and Metals Association wish to indicate that the undertakings given in what became 8044 of 1998 continue in respect of this application, to some extent that may overcome our concerns but the other concern that we have is that the AMWU and the CEPU, which represent the bulk of trades persons in  
15 the industry are also not present and it may be that they would like the opportunity to address the commission in respect of that matter.

Certainly, I've seen the correspondence from those organisations and can fully appreciate, given our limited resources in the trade union movement, that they had some difficulty in attending today's  
20 proceedings. Fortunately, I was on leave so I was able to come back and have the pleasure of everyone's company this morning but obviously that flexibility wasn't available to them.

In our view, it would not be appropriate at this stage in the absence of those organisations addressing the commission on the application to  
25 withdraw 7984 and, secondly, given the commitments which form part of 7984, our view is that rather than withdrawing the application it should simply be joined to the matter, the fresh application, 9482 of 2001. If it pleases the commission.

COMMISSIONER: What do you say about all that, Mr FitzGerald?

30 MR FITZGERALD: I think the undertakings which Mr Flanagan sought in respect to the applications of those various enterprise awards, we could continue to reaffirm those undertakings here today. I think it's probably unnecessary that they be there but we can do so because those awards, by the specific nature of their scope, apply in  
35 any event, in my view, but if it makes Mr Flanagan happy, we will certainly reaffirm those.

In respect to the concern for his fellow union colleagues and their lack of input here today, both matters were listed and in terms of the  
40 outcomes of those matters, it's hard to predict what they will be but if the unions had an interest in respect to the outcomes of both those matters, you would have thought they would be here today. So, I don't think it's reasonable for Mr Flanagan to make a plea in absentia, if you like, for those two unions. If they had an interest, they would have been here.

For those reasons - I think for the sake of neatness, commissioner, and there are some other matters I know which in terms of the application of the award interest clause, I think it's important that those issues be tidied up. So, rather than the commission dealing with two applications - the first application which we made which we're seeking to withdraw is in many respects similar to the application which we make currently. So, I think it would be much tidier and neater if we proceeded with one and then the application which we seek to withdraw be considered by the commission. If it pleases.

10 COMMISSIONER: Yes, thanks, Mr FitzGerald. Mr Flanagan, that's my understanding as to this particular award. It's been made in title and scope only and the scope specifically excludes the Pasminco Rosebery (Mining) Award at this stage and also the other two, I take Mr FitzGerald's points, they stand on their own two feet, separate from this particular award. I'm speaking about the Pasminco Hobart and the TEMCO Award. In other words, the only award at this stage that could be affected by this award has been specifically excluded in the scope.

I think that covers the points that you made. I certainly agree that we have to be aware of the ramifications but that's how I see it at this stage. I'll just read that proviso out so we're clear: *Provided that until the making of this award has been finalised in respect to wage rates and conditions of employment or until this proviso has been deleted, employers falling within the scope of this award shall, where appropriate classifications appear therein, observe the Pasminco Rosebery (Mining) Award in all respects.*

It's slightly different to what I said but it's still the same. That's what I say about that. As to proceeding, I certainly want to get the interest matter completed because that's been a bug bear for some time and it's long overdue and I think in this present application that matter is covered, apart from other things but that's quite a significant item. That's in matter T9482.

In all that context, I find it inadvisable to be loading ourselves up with various applications when we should really have one only so we can concentrate our minds.

What was that other application that you quoted, Mr Flanagan?

MR FLANAGAN: It was matter 8044 of 1998 and that was the application by the CFMEU for award interest which gave rise to the understandings between the parties that the Metalliferous Mining Award which is presently before you would not have application to the downstream processing facilities, if you like, TEMCO, Pasminco (Hobart Smelter) and Goliath Cement.

COMMISSIONER: Yes. Thanks, for that. I think I've covered that but, nevertheless, what I propose to do is to adjourn for the parties to have

discussions in relation to interest because I think from what I remember looking at the present application, the interest provisions in there should be acceptable to everyone, the Australian Workers' Union, the Automotive Foods, Metals, Communication, Electrical, Mines and Metals Association and the Tasmanian Chamber of Commerce and Industry.

What about the Trades and Labor Council, Mr FitzGerald?

MR FITZGERALD: I was going to ask on both those points. I'm unsure, and you might be able to advise me here, commissioner, whether the Tasmanian Trades and Labor Council and the Tasmanian Chamber of Commerce and Industry in fact have that statutory right to be interested in every award. I thought the Trades and Labor Council were in fact deleted and I suspect if that's the case, then also the Chamber of Commerce would be also, but we're not really - we're ambivalent about that.

COMMISSIONER: As far as I know, and I stand to be corrected, the Chamber and the Trades and Labor Council, which name is still registered here as far as I know or is still recognised by this commission and far be it for me to be changing what stands at the moment - as far as I know they are still mentioned in the Act as statutory parties.

MR FITZGERALD: I thought, and I haven't researched this - I thought there was some change in respect to the Tasmanian Trades and Labor Council in that they didn't have an active involvement in particular awards unlike the Chamber of Commerce and Industry who do but I stand to be corrected. That's something which I suppose could be done on proper research.

COMMISSIONER: Yes.

MR FITZGERALD: But I thought there were some changes made there and I think the pattern of awards generally now made by the commission is that the Tasmanian Trades and Labor Council no longer have interest in separate awards. They have rights of course to make applications for State Wage Cases and similar matters under the Act but I don't think their rights extend to individual interest matters in awards.

COMMISSIONER: Yes. Do you want to say anything about that, Mr Flanagan?

MR FLANAGAN: No, commissioner. We're happy to enter into discussions with the applicant in relation to the award interest component and we look forward to the opportunity to have those discussions with them. In terms of the responsiveness of the TCCI and the Tasmanian Trades and Labor Council, my understanding is that they have a statutory right of award interest. In those circumstances

both organisations ought to be contained within that but we can discuss that in the adjournment, commissioner.

5 COMMISSIONER: Yes, thanks, Mr Flanagan. That's how I see it. Those two ought to be quoted but that's a legal technicality as far as I am concerned today. Nevertheless, if I am going to issue an amendment to the award to cover interest, I'll settle that matter but it wouldn't hurt for the parties to discuss it as well.

10 MR FITZGERALD: Just on that point, commissioner. It's obvious that this needs to be fixed and our application attempted to do that. I just wonder - and you indicated that you were intending to settle it. I was just wondering whether it does require much discussion. It seems to be very much a procedural matter which we could, with the AWU's consent, agree to today, just on that issue of interest and the various operative dates.

15 COMMISSIONER: Yes. I agree in that I don't think there should be too much discussion about it because it's a technicality and a legal matter which I'll certainly settle one way or the other but I still will adjourn this hearing now for a few minutes so the parties can discuss award interest with a view to a settlement on it and I say now, that I don't propose to go into the other details, unfortunately, Mr FitzGerald, but I am prepared to settle a date today for when we do go into the other details.

20 MR FITZGERALD: Before you do that, I would like to just get some points on record - some very brief points on record about that, before we do adjourn the major matter. Whether I do that now or whether -

COMMISSIONER: I'd prefer it if you had a discussion with the other side first, then we'll certainly give you that opportunity, Mr FitzGerald.

MR FITZGERALD: Thank you.

COMMISSIONER: Is that all right with you, Mr Flanagan?

30 MR FLANAGAN: No difficulty there, commissioner. We'd only indicate that we're happy for Mr FitzGerald to put his comments onto the record prior to going into the adjournment but otherwise, we'll be guided by the commission.

35 COMMISSIONER: Yes. I think we'll adjourn first because I'm anxious to get that first part finalised, then you can discuss that and any other matters. Then I'll give Mr FitzGerald the opportunity to make his comments to which you'll have an opportunity to reply, Mr Flanagan, and we'll see where we go from there. Thank you.

**INTO CONFERENCE 10.53am**

40 **HEARING RESUMED 2.17pm**

COMMISSIONER: Who is going to report?

MR FITZGERALD: I can report, commissioner. Thanks very much for that opportunity to talk over the position. The position I think we've reached and Mr Flanagan can confirm this, is that we are intending to meet again on 7 May and we will in the intervening period write to the other unions advising of this in an attempt to progress the matter and we would like if we could, depending on your diary, to have this matter listed again for a report back on 21 May - the week starting 21 May.

That's the position, commissioner. The issue of the award interest, commissioner, we will handle that when the matter comes back on before the commission formally.

COMMISSIONER: You don't want me to fix it up in the mean time, Mr FitzGerald?

MR FITZGERALD: No, I think we'll do it as one exercise.

COMMISSIONER: All right. I'll accede to - I presume the parties' wishes. All I can say is, I'm anxious to get that part done because it has been long outstanding and it's got so long that we've all forgotten what happened. I'd like to get on with it. I take what you say. Mr Flanagan?

MR FLANAGAN: Just one point of clarification, commissioner. The AWU has agreed to meet with Australia Mines and Metals the week beginning 7 May, at some stage during that week, and we're hoping that with discussions with the other unions, they'll also be able to participate in those discussions. Certainly, we'd confirm that we'd be seeking a date in the week of 21 May for a report back and it's at that time that the parties would hope that we could finalise the award interest matter. If it pleases the commission.

COMMISSIONER: Thanks, Mr Flanagan. We'll go off the record for a minute, thanks.

**OFF RECORD 2.20pm**

**ON RECORD 2.22pm**

COMMISSIONER: Thanks for that, gentlemen. I just confirm, these matters will resume Tuesday, 22 May at 10.30, here, and as I advised the parties off the record, if there are other applications before the commission that have gone out of sight shall we say, I'll put them on as well so we can deal with them one way or the other, that's connected with this matter of course.

Mr FitzGerald, you did say you wanted to say something. Is there anything else you want to say?

MR FITZGERALD: No, that's all. There's nothing further, Mr Commissioner.

COMMISSIONER: Thanks for that, gentlemen. I hope we've progressed a little. I'm certainly looking forward to some sort of  
5 finalisation later in May. Thank you.

**HEARING ADJOURNED 2.25pm**