

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 7087 of 1997

IN THE MATTER OF an application by the
Tasmanian Trades and Labor Council to
vary all private and public sector awards

re flow on of minimum wage component
contained in the decision of the Australian
Industrial Relations Commission of April
1997 (Print P1997)

FULL BENCH

PRESIDENT
DEPUTY PRESIDENT JOHNSON
COMMISSIONER WATLING

HOBART, 5 November 1997
continued from 28/8/97

TRANSCRIPT OF PROCEEDINGS

Unedited

PRESIDENT: Any changes in appearances?

MR T.J. EDWARDS: Yes, if it please the commission, EDWARDS, T.J. I now appear with **MR W.J. FITZGERALD** for those organisations Mr Fitzgerald announced an appearance for on the last occasion.

5 PRESIDENT: Very good. Thank you, Mr Edwards. Ms Fitzgerald.

MS L. FITZGERALD: Thank you. Good morning, Mr President and members of the bench. Since we were last before you we have met with representatives of the TCCI on a number of occasions to discuss the flow on of the remaining part of the Federal Commission's Safety Net Review Wages Decision of April 1997, the flow on of that to
10 the state jurisdiction.

We had hoped to be in a position this morning to either present an agreed position to you, or to seek arbitration and run our case in the event that there was no agreement. Late yesterday in final discussions with the TCCI the prospect of an agreed position emerged, however we've not been able to realise that prospect before this hearing. We
15 believe however that the parties should be able to resolve the matters within two weeks at the most, and for our part we will require this time to fine tune a number of elements of the potential agreement and to further consult with our affiliates. While Mr Edwards obviously can speak for the TCCI, we understand that the TCCI will likewise use this time to consult with their constituents

20 Mr President and members of the bench, the resolution of the remaining elements of this case has been a sometimes frustrating exercise. We were hoping, and we suspect like yourselves, that this matter could be finalised over the next two days. However we believe that it is preferable to use every endeavour to present an agreed position to you rather than request that you and - that you use your powers of arbitration. We
25 therefore request that this matter be adjourned to allow discussions to continue with a view to reaching and presenting to you an agreed position for your consideration. We would therefore ask that a further - that a further and hopefully the last hearing be scheduled sometime after November 19. If the commission pleases.

30 PRESIDENT: Yes, all right. Thank you, Ms Fitzgerald. No comments from other union representatives? No. Mr Edwards.

MR EDWARDS: Thank you president and members of the bench, I would support the remarks made by Ms Fitzgerald from TTLC. The prospect of a consent position being reached between the TTLC and the TCCI emerged in a meeting very late
35 yesterday afternoon, in fact it was about 5.00pm by the time we had reached the conclusion that there did seem to be the possibility - a real possibility of reaching agreement on all issues that surround this particular application.

Having said that, there are some very hard core issues that remain to be resolved, from our point of view, before we would be prepared to offer our consent to any proposal of this nature. And it is on those issues that I need to return to those who
40 provide me with my instructions before I'm able to further progress the discussions with the TTLC. I've put that proposition to Ms Fitzgerald and she fully understands, I believe, accepts the need to do that. Certainly on this particular case the instructions have come to me quite firmly from the Industrial Relations Council within the TCCI, and it's certainly not my province to alter those instructions, nor would I attempt to.

45 The actual prospect of an agreement emerged upon our receipt of a proposal from the TTLC, which was faxed to the TCCI at approximately 11.15pm on the 3rd November, where Ms Fitzgerald obviously was trying to break the impasse between the organisations. And having considered that proposal and met with my staff during the course of yesterday, we believe that there is a chance of us agreeing substantially with

the content of that document, which is a little different to the one that we believe was being progressed by Ms Fitzgerald in the previous proceedings before this full bench. And it's on that basis that I think we're able to shift positions sufficiently to perhaps be able to meet in the middle somewhere with a consent position, which we could present back to this bench.

That having been said, we would support the application for an adjournment. Certainly the two week period that Ms Fitzgerald has referred to would be sufficient from our point of view to further canvass the position of the TCCI constituents and to have further meetings with the TTLC hopefully to resolve those outstanding thorny issues that still exist between us. So we would support the application for an adjournment on that basis, president.

PRESIDENT: Well there may -

MR EDWARDS: If it please the commission.

PRESIDENT: - there may be some questions of you later, Mr Edwards.

MR EDWARDS: I'll do my best to answer them, president.

PRESIDENT: Yes, okay. Any other submissions in relation to the application for adjournment? Mr Pearce.

MR PEARCE: Thank you, Mr President, members of the bench, the minister would support the application for the adjournment for the reasons advanced by both the applicant and Mr Edwards of the TCCI. If it please the commission.

PRESIDENT: Thank you, Mr Pearce. Ms Fitzgerald, how long do you think you might need if - to put submissions to the commission if your endeavours to reach a consent position fail?

MS FITZGERALD: So if we are seeking arbitration I would think that certainly our initial submission would be no longer than a couple of hours. We might need to put further points to you given the TCCI's response. So I would think we would probably - we would be looking at probably a day's hearing if we are going to arbitration.

PRESIDENT: Yes, all right. Thanks for that. And your response to that.

MR EDWARDS: Can I foreshadow the same question?

PRESIDENT: Yes.

MR EDWARDS: Yes, president, I've just conferred with Mr Fitzgerald. We believe we would need at least a day. It is our intention if this case does run to arbitration to present some very, very extensive economic material which contrasts the material that was used before the federal tribunal. And in that regard we foreshadow our intention to call witness evidence to buttress certain exhibit material which we will use, so we would need at least a day, perhaps a bit more.

PRESIDENT: Mm.

MR EDWARDS: If that assists you.

PRESIDENT: Yes. So - and would you be ready to proceed immediately the unions had completed their submissions?

MR EDWARDS: Providing that the sands don't shift between now and then. By that I mean that the position that is to be pursued by the TTLC remains that that's been put to us now, the answer is yes. If the TTLC revert to some alternative position then we'd have to judge that at the time to see what position they put. But certainly if things
5 remains constant, the answer is yes we would continue straight on from the end of the Labor Council submissions.

PRESIDENT: Yes.

MR EDWARDS: If it please.

PRESIDENT: So if - if the submissions - if the application is pursued on the basis of
10 the current system we look like possibly two and a half to three days.

MR EDWARDS: That would be my best guess, I mean we need a right of response I suppose from the TTLC.

PRESIDENT: Yes. Yes, all right. Any questions? Any questions at this stage? No. We will go off record briefly.

15 **OFF THE RECORD**

PRESIDENT: Yes, well your application, Ms Fitzgerald, for the matter to be adjourned for a short period is granted, and we have set aside the 28th November, 1st December and 2nd December to see the matter to conclusion. We think the fortnight - sorry, the two days between the 28th and the 1st should be sufficient for the employer
20 to consider its submissions in response.

MR EDWARDS: I only work a 38 hour week, president.

MR: Join the union.

PRESIDENT: All right. Well thank you for your contributions, the matter stands adjourned till 28th November.

25 **HEARING ADJOURNED**