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AUSCRIPT

TRANSCRIPT OF PROCEEDINGS

O/N 2333

TASMANIAN INDUSTRIAL COMMISSION

DEPUTY PRESIDENT SHELLEY

T No 12360 of 2005

T No 12361 of 2005

T No 12362 of 2005

DAIRY PROCESSING AWARD

FISH, AQUACULTURE AND MARINE PRODUCTS AWARD

SHELLFISH INDUSTRY AWARD

**Applications 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 award re casual employment provisions**

HOBART

9.30 AM, THURSDAY, 1 DECEMBER 2005

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

PN1

THE DEPUTY PRESIDENT: Thank you. I will take appearances, please.

PN2

MR M. WATSON: I appear on behalf of the Tasmanian Chamber of Commerce and Industry and it is my pleasure to appear also on behalf of the Australian Workers' Union, Deputy President.

PN3

THE DEPUTY PRESIDENT: Thank you, and it is my understanding that there will be written confirmation of that authority to appear on behalf of them, arriving this afternoon. Well, Mr Watson, you have all the power; off you go.

PN4

MR WATSON: Okay, Deputy President. This application is a consent matter. It has been the subject of discussion between myself and Mr Flanagan on behalf of the union. What it does is actually takes the award back to where it was prior to the last variation. What happened was that the parties had agreed that the casual loading would increase as per what the award reflects at the moment but that was the total of the agreement and what happened was that when the variations went through they actually put new casual provisions in other than the loading, but that was never the intention, the intention was simply to vary the loadings. So what we have done is taken the award back to what it was before in terms of all the other bits and pieces around the casual clause, but kept the loading increases in there.

PN5

THE DEPUTY PRESIDENT: So that just wasn't noticed when that came before the Commission for previous variation that - - -

PN6

MR WATSON: Look, honestly, Deputy President, I don't actually know how it happened but I think what happened was, I think it was either the President, or the President acting on behalf of the Full Bench had actually approved the original application to vary a number of awards and then after that the orders were subject to discussions between the parties, and I think the orders were actually issued without a hearing, as I recall and it just got lost in the translation. So, certainly Mr Flanagan is well aware of what has happened. We raised it with him and he was quite happy to make the change knowing that we had agreed only to vary the loading and nothing else.

PN7

There is another part to Mr Flanagan's application, which I understand he will be lodging at some point, and that is the conversion provisions as well, which have been agreed between the parties too. So that will be the next stage, Deputy President, but this particular application simply takes the award back to what it was prior to the loading increase, which was the position of the parties.

PN8

THE DEPUTY PRESIDENT: Well, that explains it. I couldn't actually quite follow what was meant by the type in bold and italics:

PN9

...proposing a clause as existing casual loading clause prior to AWU casual loading variation - - -

PN10

MR WATSON: Yes.

PN11

THE DEPUTY PRESIDENT: - - - and I really didn't know what it was talking about.

PN12

MR WATSON: So I hope that explains it to you but, certainly, as I say, there is consent in relation to this because that was the understanding of the parties. So there will be second part, as I have said, about conversion, which will be subject to another application which is also a consent matter, Deputy President.

PN13

THE DEPUTY PRESIDENT: Okay, and the same for all three awards?

PN14

MR WATSON: Yes. Yes, I don't think the casual clause is exactly the same for each award but it is designated in the draft order, yes.

PN15

THE DEPUTY PRESIDENT: Well, given that it is a consent matter and it fixes up an unintended error, the awards will be varied in the manner sought with an operative date of, on or after - - -

PN16

MR WATSON: It is actually, Deputy President, the operative date would be - it would go back to the date that the award was varied last time for the previous variation.

PN17

THE DEPUTY PRESIDENT: Do you have that date?

PN18

MR WATSON: No, I don't, I am sorry, I was hoping that Mr Flanagan was going to be here today. No, I haven't, but it would simply be the date of that last order when the casual loading went into, the new casual loading went into the award. So I think, from memory - - -

PN19

THE DEPUTY PRESIDENT: Would you be able to confer with the AWU - - -

PN20

MR WATSON: Yes, I will. I will.

PN21

THE DEPUTY PRESIDENT: - - - and advise of the dates. I just want to be certain that both parties absolutely agree as to what the operative date should be.

PN22

MR WATSON: Yes.

PN23

THE DEPUTY PRESIDENT: Especially since it is going to be retrospective.

PN24

MR WATSON: Yes, that is fine.

PN25

THE DEPUTY PRESIDENT: Yes, thank you. When will that happen?

PN26

MR WATSON: The discussions, Deputy President?

PN27

THE DEPUTY PRESIDENT: Yes, and the - - -

PN28

MR WATSON: Well, Mr Flanagan, as I understand, is in transit today so I will try and get him on his mobile.

PN29

THE DEPUTY PRESIDENT: Okay. Well, the written decision and the orders will be issued once we receive that information.

PN30

MR WATSON: Yes. What I might do is, when Mr Flanagan confirms in writing our appearance on his part today, I will get him to put a line in there about operative dates, if that is okay, and that will confirm it.

PN31

THE DEPUTY PRESIDENT: Okay, thank you. Well, they will be varied once we receive that information and it will be in writing and these matters are adjourned.

ADJOURNED INDEFINITELY

[9.55am]