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TRANSCRIPT OF PROCEEDINGS

O/N 1344

TASMANIAN INDUSTRIAL COMMISSION

PRESIDENT P.L. LEARY

T No 11787 of 2004

RISDON PRISON REDEVELOPMENT PROJECT AWARD

**Application pursuant to the provisions of
section 23(2)(b) of the Industrial Relations Act 1984
by the Construction, Forestry, Mining and Energy
Union to vary the above award re making of the Risdon
Prison Redevelopment Project Award**

HOBART

2.45 PM, TUESDAY, 9 NOVEMBER 2004

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

HEARING COMMENCED

[2.50pm]

PN1

MR T. BENSON: I represent the Construction, Forestry, Mining and Energy Union, Tasmanian Branch.

PN2

MR D. HANISCH: I am from the AMWU.

PN3

MR K. HARKINS: I appear on behalf of the CEPU.

PN4

MR M. KERSCHBAUM: I represent the Master Builders Association at late notice.

PN5

MR F. IRELAND: I represent the Air Conditioning Contractors Employees Industrial Relations Group.

PN6

MR A. COWIE: I represent the Master Plumbers Association of Tasmania.

PN7

THE PRESIDENT: Thank you. Mr Benson, you have filed, would you like to speak to - - -

PN8

MR BENSON: How would you like me to address you, President; Madam President, your Honour or - - -

PN9

THE PRESIDENT: Just don't call me madam. Anything.

PN10

MR HARKINS: Your Honour.

PN11

THE PRESIDENT: That will do.

PN12

MR BENSON: I believe there are some matters that you wanted to discuss with us before we kicked off here today - three or four amendments in fact that - - -

PN13

THE PRESIDENT: Oh, some changes to some of the wording?

PN14

MR BENSON: Yes.

PN15

THE PRESIDENT: Yes.

PN16

MR BENSON: Yes.

PN17

THE PRESIDENT: I think I - - -

PN18

MR BENSON: Do you want that on record?

PN19

THE PRESIDENT: I think you all agree.

PN20

MR BENSON: I don't know if some of the parties realise what they are.

PN21

MR HARKINS: No.

PN22

THE PRESIDENT: Don't they? Okay. Well, perhaps we had better go through them then. The first one was the date of operation which should be - and it merely says date of certification and it is noted that this Tribunal doesn't certify, it registers.

PN23

MR BENSON: Your Honour, can I make a suggestion in that area?

PN24

THE PRESIDENT: Yes.

PN25

MR BENSON: We would like the date of operation to be 1 June 2004. We ask that in relation to section 37(5) - we believe your authority lies there. The reason we ask that is that the job has been going for a number of months now and certain commitments have been given by employers to employees on that job in relation to the rate that would be paid given that the rate had been struck and the award was in the process of being developed. Now, commitment has been given by Hazell Brothers and by others that have employees that have been working on that job since that period.

PN26

THE PRESIDENT: Well, I am not aware of that, you will have to see what the Master Builders and the employers have to say about that.

PN27

MR BENSON: I haven't got a problem with that at all.

PN28

THE PRESIDENT: No. What - do you have any difficulty with 1 June operative date?

PN29

MR KERSCHBAUM: I am really not sure to be perfectly honest.

PN30

THE PRESIDENT: What - are you aware of - - -

PN31

MR IRELAND: I was aware that maybe something like this would be coming up. It doesn't affect any of our members because their work hasn't started yet, there is nothing off the ground.

PN32

THE PRESIDENT: Okay. Mr Cowie, what is your understanding?

PN33

MR COWIE: It could impact on some of our members, your Honour, and we would like an opportunity to review that.

PN34

THE PRESIDENT: Well, maybe the best thing that we can do is adjourn and you have some discussions. I mean, this was listed because I was of the understanding that there was agreement on all of the issues and all of the contents of the proposed award. This is a new one on me and obviously on some of the employers.

PN35

MR HARKINS: Your Honour, could I make a suggestion, obviously you will adjourn if you wish to but if this is the only matter that we can't agree on today the reason for that would be because Chris Atkins is not here from the Master Builders Association.

PN36

THE PRESIDENT: Yes, and I understand the concerns about that, that he is unable to be here unfortunately.

PN37

MR HARKINS: That is right, and from our union's point of view we have had dialogue with Chris over the last few months too and understand that it was the intention that the award would apply from that date. If that is the only matter that we don't reach agreement on perhaps if we could allow - - -

PN38

THE PRESIDENT: Well, I mean, there shouldn't be anything else that is up for grabs.

PN39

MR HARKINS: No, but there is - - -

PN40

THE PRESIDENT: I mean the - - -

PN41

MR HARKINS: - - - there was a couple of other things that I understand - - -

PN42

THE PRESIDENT: They were merely cosmetic.

PN43

MR HARKINS: Yes, well, then we are probably right to go - - -

PN44

THE PRESIDENT: Yes.

PN45

MR HARKINS: - - - given that that has got to be discussed and agreed on and if Chris could give us a commitment then away we go, so - - -

PN46

THE PRESIDENT: If Chris can give - - -

PN47

MR BENSON: Your Honour, can we go through those matters?

PN48

THE PRESIDENT: Hang on. Can Chris give you a commitment about what?

PN49

MR HARKINS: No, if Chris Atkins from the Master Builders Association can confirm with yourself that that is the understanding then I think that puts the matter to rest.

PN50

THE PRESIDENT: Yes. Well, Mr Cowie has also got a problem with it.

PN51

MR HARKINS: Have you?

PN52

MR COWIE: Well, I have got a problem with a number of matters in the award to be quite honest.

PN53

THE PRESIDENT: Well, look - - -

PN54

MR HARKINS: I think the wheels are off the billycart.

PN55

MR BENSON: I don't know what we are doing here.

PN56

THE PRESIDENT: Exactly, that is what I am asking.

PN57

MR BENSON: Just wondering what we are doing here - - -

PN58

THE PRESIDENT: I have been - - -

PN59

MR BENSON: Your Honour, could I suggest we go through these matters that have been brought to my attention that require amendment before we - - -

PN60

THE PRESIDENT: Well, you will have to tell me what they are - - -

PN61

MR BENSON: Right.

PN62

THE PRESIDENT: - - - because I don't have my notes with me.

PN63

MR BENSON: That was clause 4, date of operation.

PN64

THE PRESIDENT: Yes, which was to be a simple fact of just changing the name.

PN65

MR BENSON: Clause 11, redundancy. Now, that was raised with me and I was - - -

PN66

THE PRESIDENT: Hang on, clause 11?

PN67

MR HARKINS: Redundancy.

PN68

THE PRESIDENT: Yes.

PN69

MR HARKINS: Clause 16F - - -

PN70

THE PRESIDENT: Yes. Well, wait a minute, clause 11 redundancy, the only query on that was 11B subclause (3) should refer to the Tasmanian Industrial Commission rather than the Tasmanian Industrial Relations Commission. That is the only - - -

PN71

MR HARKINS: We agree.

PN72

MR BENSON: Not a problem, we will support that.

PN73

MR HARKINS: We agree.

PN74

THE PRESIDENT: Is there any other - you have got no other difficulties with that?

PN75

MR BENSON: No. 16F - - -

PN76

THE PRESIDENT: All agreed, say aye?

PN77

MR BENSON: Aye.

PN78

MR HARKINS: Aye.

PN79

MR COWIE: No, we have a lot of difficulties with the redundancy clause, your Honour.

PN80

THE PRESIDENT: Well, you have been party to these discussions.

PN81

MR COWIE: No, we haven't - we haven't in fact been party to any discussions, your Honour.

PN82

THE PRESIDENT: Well, you are named as a party to the award.

PN83

MR COWIE: Indeed, but this is - - -

PN84

THE PRESIDENT: Or do you want to drop out of it.

PN85

MR COWIE: Indeed.

PN86

THE PRESIDENT: You don't want to be a party to it?

PN87

MR COWIE: That is a possibility.

PN88

THE PRESIDENT: Well, I mean - - -

PN89

MR BENSON: Is that your position, that you want to drop out of it?

PN90

MR COWIE: If we are forced - if our hand is forced - - -

PN91

MR BENSON: You are not forced to do anything.

PN92

MR COWIE: You want to drop out?

PN93

THE PRESIDENT: This is as I understand it, a consent award. Now, all of the documents that have been sent to me I have been through and the only queries that I have raised, as Mr Benson has pointed out, are in respect to cosmetic things, terminologies rather than issues of substance. The issues of

substance have nothing to do with me, that is what the parties have agreed to. I thought it was a blissful experience because I didn't have to worry about Electrolux and objectionable matters and allowable matters and other such things. Now, the thing was listed today on the basis that this was an agreed position between all the parties, now, that is obviously not the case.]

PN94

MR BENSON: Well, if I might, your Honour, that was our understanding as well.

PN95

THE PRESIDENT: Indeed.

PN96

MR BENSON: And there was - and I am going to take him outside in a minute.

PN97

THE PRESIDENT: No you are not.

PN98

MR BENSON: I just want to have a gentle word to him.

PN99

THE PRESIDENT: That is all right.

PN100

MR BENSON: There was one further matter and that was the title.

PN101

THE PRESIDENT: Yes.

PN102

MR BENSON: Okay? Now, my understanding was that it would be more appropriate to be an enterprise award.

PN103

THE PRESIDENT: Yes, they are referred to in this jurisdiction as enterprise awards.

PN104

MR BENSON: And we have no problem from this side of the floor in relation to that matter.

PN105

THE PRESIDENT: I don't think there is any objection on the other side? No, okay. So those were the issues that I raised with you which were merely cosmetic.

PN106

MR HARKINS: So the operative date is the only one, your Honour - - -

PN107

THE PRESIDENT: Well, it is news to me.

PN108

MR HARKINS: Yes, and once that is confirmed by Mr Atkins from the Master Builders Association then there shouldn't be any reason to hold the thing up. If Mr Cowie - sorry, if Mr Cowie was not happy with it then he should withdraw from the award I reckon.

PN109

THE PRESIDENT: Well, I don't know whether that is what he wants to do but he needs to be given - he is named as a party to it and he has some rights at this stage to express an opinion. Now, I don't know whether your concerns are clarification, whether they are issues of substance; whether you want to sit down with the other parties and renegotiate some of these things or whether you want to withdraw. That is something you have got to - down boys. That is something Mr Cowie has to think about.

PN110

MR COWIE: Well, do you want me to speak to that, your Honour, or would you prefer me to think about for the time being.

PN111

THE PRESIDENT: Well, you haven't got long to think about it because the matter is now here.

PN112

MR COWIE: No, I understand that.

PN113

MR BENSON: Can you think about it while we raise a couple of matters?

PN114

MR COWIE: You go ahead and raise as many as you like.

PN115

THE PRESIDENT: All right.

PN116

MR BENSON: Your Honour, this was supposed to be an agreed position.

PN117

THE PRESIDENT: A painless exercise, yes.

PN118

MR BENSON: Yes. My concern now is the operative date and we move aside and we start opening negotiations up again with the Master Plumbers Association, that operative date is stretched out further and may become a contentious issue here. I mean, that is - and this was supposed to have been an agreed position today.

PN119

THE PRESIDENT: Indeed.

PN120

MR BENSON: This is the first time that I have even had any comment from the Master Plumbers Association in relation to their involvement or lack of

involvement in this process. Now, I don't know where Adrian has been, whether Adrian has been involved in negotiations on the employer's side of things or not, I don't know. There has certainly been no discussions with us. If those discussions were taking place with the CEPU all well and good, but we came here today, and I have got a letter here from Peter Fraser from the CEPU Plumbing Division that says:

PN121

Further to our phone conversation of today as you are aware I am attending the 23rd bi-annual ANZRA conference in Hobart until Thursday and will be unavailable to be there for the making of the Risdon Prison Redevelopment Enterprise Award 2004. In my absence, and if need be, could you speak on behalf of myself and the CEPU in this agreed matter.

PN122

Now, I haven't raised this because the CEPU has been represented here. Now, that - - -

PN123

MR HARKINS: And I am the secretary of their union and - - -

PN124

MR BENSON: That is right, that was - it was expected it would be an agreed matter. Now, I don't know what Mr Cowie wants to do but I would strongly object to these proceedings being held up here today.

PN125

THE PRESIDENT: Well, I can't do anything at this stage. What I suggest that you do, and it is going to be done within the next 48 hours, have some discussions - and I mean all of the parties. Mr Cowie should outline to you what his concerns are. They may merely be clarification, they may not be - outline his concerns. If they can't be addressed he then has to decide whether he wants to maintain being party to it or we will have to then deal with it in some other way.

PN126

MR BENSON: The problem I have got is that Mr Cowie's discussions will take place with Mr Fraser, not with me.

PN127

MR COWIE: No, but - - -

PN128

THE PRESIDENT: Well, I am directing that they take place with all of the parties to these proceedings.

PN129

MR BENSON: Okay.

PN130

THE PRESIDENT: And that includes Mr Ireland, if he wants to be there, and Mr Kerschbaum.

PN131

MR KERSCHBAUM: Hopefully Chris will be back on board by tomorrow.

PN132

THE PRESIDENT: Right.

PN133

MR BENSON: I beg your pardon, Kevin, I am thinking your are electricity, he's a plumber.

PN134

THE PRESIDENT: Somebody from the MBA, anyway.

PN135

MR KERSCHBAUM: Yes, certainly.

PN136

THE PRESIDENT: Because you are all - you all have an interest in it so there is no point in you and Mr Cowie going in to a room and sorting something out and then the other parties not agreeing so it has got to be a collective discussion so what I am doing, is I am directing that you do that and that you come back to me in 48 hours from today, close of business, which is what, Wednesday, Thursday, as to what the issues are. It may be that you can resolve them all. Now, if you can't we then obviously need to look at some way of fixing it because the award has got to go through. If work has already started that concerns me, I wasn't aware of that, but the award has to go through.

PN137

As I understood it, it was an agreed thing, that there were no issues outstanding. There is the issue of the operative date and the Master Builders or Chris Atkins will come back on that as to that. Now, hopefully that can be resolved but Mr Cowie has some issues that need to be addressed and they need to be addressed fairly quickly so that is what I am directing you to do.

PN138

MR BENSON: Your Honour, I might just add that negotiations commenced on this award prior to Christmas 2003 so it has been a very lengthy process
- - -

PN139

THE PRESIDENT: Well, we are going to have it finished prior to Christmas 2004.

PN140

MR BENSON: - - - I am just wondering where people have been in the process.

PN141

THE PRESIDENT: Yes. Look, I understand the frustration, I am equally frustrated because I was of the view that this was going to be a pretty quick exercise. It was a consent agreement - or consent award, sorry. It was just a case of putting it through the system and that was it but there are some issues that need to be addressed, they need to be addressed fairly quickly and what I

am proposing is that we either do it by telephone or you come back to me by close of business Thursday as to what the circumstances are and we have to deal with whatever that information brings back.

PN142

MR BENSON: Can I just suggest to the bench that possibly - give us half an hour, let us go in the back room, let us have a talk and see if we can't continue here now - - -

PN143

THE PRESIDENT: That is fine by me if you can do it in that short space of time. My only concern was that Mr Atkins wasn't here.

PN144

MR BENSON: Well, I don't know what the problems are that the Master Plumbers have got. I think it is worth a try rather than throw us all away now and in 48 hours come back again.

PN145

THE PRESIDENT: Yes. Look, if you can go into a conference room somewhere, identify what the problems are, see if you can fix them, that is better still.

PN146

MR HARKINS: Lovely, half past 3 - - -

PN147

MR BENSON: Are you agreeable with that?

PN148

THE PRESIDENT: My only concern is that Chris Atkins is not here - - -

PN149

MR BENSON: Yes, I understand that.

PN150

THE PRESIDENT: - - - and that may cause some delay but if it can be resolved subject to Mr Atkins being advised, I am happy with that.

PN151

MR BENSON: Well, the parties here, your Honour, might be able to satisfy Mr Cowie, I don't know.

PN152

THE PRESIDENT: Yes. I am hoping that can happen. All right, look, I am happy to adjourn, I have got another matter at 3 o'clock but I won't let you out of the building until you come back and tell me what you have done.

PN153

MR BENSON: Thank you.

PN154

THE PRESIDENT: Okay; all right, we will adjourn, thanks.

ADJOURNED INDEFINITELY

[3.05pm]